

# POLICY BRIEF

## What to Do About the U.S. Supreme Court's Same-Sex Marriage Ruling

**Summary:** On June 26, 2015, the U.S. Supreme Court handed down a 5-4 decision in *Obergefell v. Hodges* effectively nullifying marriage laws across more than three-fifths of America and legalizing same-sex marriage nationwide. Below is an overview of what we need to do in the wake of this ruling.

### Short-Term Goal: Protect Arkansans from This Bad Ruling

- ❖ **Protect Religious Liberty.** This ruling undermines religious liberty in significant ways. Arkansas passed a good Religious Freedom Restoration Act earlier this year. This act, along with the federal Religious Freedom Restoration Act signed by President Clinton in 1993, should help shield Arkansans with deeply-held religious convictions against same-sex marriage from some of the direct effects of this bad ruling.
- ❖ **Protect Freedom of Speech.** Supreme Court Justice Samuel Alito wrote that he imagines people who hold views against same-sex marriage likely will be vilified and treated as bigots if they express those views publicly. We need to work to ensure no one is penalized for expressing their deeply-held convictions and that the freedom of speech is not squelched.
- ❖ **Promote Healthy, Traditional Marriages.** The best place for children is with a married mom and dad. According to multiple studies, children reared in same-sex households fare worse than children from almost any other type. Governments recognize and honor marriage because it is a pillar of society. Because healthy, opposite-sex marriages are in the best interest of children and society Arkansas may be able to enact policies strengthening and promoting traditional marriage in spite of this bad ruling.
- ❖ **Fight the Urge to Remove the State from the “Marriage Business.”** State and federal laws on everything from child custody to property ownership hinge on the legal recognition of marriage. Legal recognition of marriage stresses the value of marriage to society in the eyes of the government, and it encourages couples to marry. Getting the state out of the “marriage business” might seem like a solution to this court ruling, but in the long run it creates more problems than it solves.
- ❖ **Fight the Urge to Create Two Classes of “Marriage.”** Some have advocated creating two classes of marriage: A secular marriage license and a religious marriage license. In theory this would allow the government to recognize same-sex marriage without forcing churches to do so as well. In practice, this completely fails to address all the areas in which same-sex marriage and religious liberty may conflict.

### Long-Term Goal: Restore the Rights of Voters to Define Marriage

- ❖ **Overturing Court Rulings.** The U.S. Supreme Court has issued bad rulings before, and it has overturned those rulings. Just like many Americans continue to work to overturn the *Roe v. Wade* abortion decision, there is always the potential for a future court to overturn *Obergefell v. Hodges*. Congress and the states can make that more likely by ensuring only the very best nominees are confirmed for the U.S. Supreme Court and adopting state and federal policies asserting the right of American voters to define and regulate marriage as they see fit.
- ❖ **Limiting the Power of the Court.** The Legislative Branch makes laws, and the Executive Branch enforces them. The Judicial Branch is supposed to be the weakest branch, legislatively speaking; its job is to say what the law *is*—not what the law *should be*—and like every other office of government, it derives its power from the People. With that in mind, steps may be taken to limit the power of the judiciary—for instance, by giving citizens or lawmakers the power to recall judges—to keep the Judicial Branch accountable to someone other than itself.



## Questions and Answers

### 1. **What did the U.S. Supreme Court do, exactly?**

**Answer:** The court ruled same-sex couples have a fundamental right to marriage, nationwide. To create this fundamental right, the court gave a broader interpretation to the fifth and fourteenth amendments to the U.S. Constitution than many believe appropriate, and it dismissed state marriage laws as demeaning and stigmatizing for homosexuals. The court failed to include any protections for people of faith with deeply-held religious convictions against same-sex marriage in its ruling.

### 2. **Did we lose? Is this fight over?**

**Answer:** No. In the short-run, the U.S. Supreme Court issued a very bad ruling, and dealt a serious legal blow to supporters of traditional marriage. However, just as *Roe v. Wade* was not a knockout punch to the pro-life movement, the court's ruling in *Obergefell v. Hodges* should not discourage us from standing up for traditional marriage. Marriage between a man and a woman is biblical; it's good for children and society; and it ought to be honored by our laws and policies. That was true before this ruling. That is still true today. The Supreme Court might have forced us to change tactics, but it cannot change facts.

### 3. **What can I do about this ruling?**

**Answer:** Email your state legislators, and let them know you hope they will find ways to strengthen and promote traditional marriage, religious freedom, and the freedom of speech in spite of this ruling. Then contact your congressman and Senators John Boozman and Tom Cotton to let them know you hope they will support any efforts to rein in our out-of-control Judicial Branch.

If your local school board tries to approve a class, book, or curriculum that embraces the court's redefinition of marriage, you can engage your schoolboard members as well.

### 4. **Can we impeach and remove the five U.S. Supreme Court justices who issued this ruling?**

**Answer:** The U.S. Constitution allows Congress to bring impeachment proceedings against public officials accused of "treason, bribery, or other high crimes and misdemeanors." The U.S. Senate votes whether or not to remove an impeached judge from the bench. Past judges have been impeached on charges ranging from alcoholism to unlawful rulings and abuse of power. There is no case, however, in which a U.S. Supreme Court justice was removed from office for issuing a bad ruling.

### 5. **Does this mean it's time for the state to quit issuing marriage licenses altogether?**

**Answer:** No. Ceasing to issue marriage licenses in the wake of this ruling would be like ceasing to issue medical licenses because of *Roe v. Wade*. There may come a day when marriage is so devalued by our government that it would be better if the government did not issue marriage licenses altogether. That day is not here yet. Legal recognition of marriage shows the government values marriage's positive impact on society; it encourages people to marry, and it simplifies laws concerning personal property, child welfare, taxes, and a multitude of other topics. Ceasing to recognize marriage sends the message the government no longer sees marriage as important, and it threatens to expand government significantly.