

Federal Appeals Court Upholds Gay Marriage Ban in Prelude to Supreme Court Showdown

Today, a federal appeals court in Cincinnati has upheld natural marriage laws in Michigan, Ohio, Kentucky and Tennessee. Liberty Counsel filed an amicus brief at the Sixth Circuit case on behalf of the American Family Association of Michigan, which was one of the coauthors of the Michigan marriage amendment.

Circuit Judge Jeffrey Sutton wrote, "Of all the ways to resolve this question, one option is not available: a poll of the three judges of this panel, or for that matter all federal judges, about whether gay marriage is a good idea. Our judicial commissions did not come with such a sweeping grant of authority, one that would allow just three of us—just two of us in truth—to make such a vital policy call for the thirty-two million citizens who live within the four states of the Sixth Circuit."

The Sixth Circuit Court of Appeals upheld the law based on *Baker v. Nelson*, stating that it was still good law. "The Court has yet to inform us that we are not, and we have no license to engage in a guessing game about whether the Court will change its mind or, more aggressively, to assume authority to overrule *Baker* ourselves." In the *Baker* decision, the Minnesota Supreme Court ruled that a law defining marriage as one man and one woman did not violate the U.S. Constitution, and the United States Supreme Court ruled that there was no federal question, and *Baker* became precedent.

Sutton continued, "A dose of humility makes us hesitant to condemn as unconstitutionally irrational a view of marriage shared not long ago by every society in the world, shared by

most, or not all, or our ancestors, and shared still today by a significant number of states.”

“With a divide in the appeals court rulings, the Supreme Court will likely take up the issue,” said Mat Staver, founder and chairman of Liberty Counsel.

The Supreme Court has previously upheld marriage as a foundational social institution that is necessarily defined as the union of one man and one woman:

- Marriage is “fundamental to the very existence and survival of the race.” *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).
- “An institution in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.” *Maynard v. Hill*, 125 U. S. 190 (1888).

“Marriage is not merely a creation of any one civilization or its statutes, but is an institution older than the Constitution and, indeed, older than any laws of any nation. Marriage is a natural bond that society or religion can only ‘solemnize,’” Staver concluded.

Family Research Council President Tony Perkins released the following statement praising the decision:

“We applaud the U.S. Court of Appeals for the Sixth Circuit for upholding the freedom of the people to define marriage as the union of a man and woman. The Sixth Circuit rightly recognizes that the Constitution does not demand that this modern redefinition of marriage be forced on the States. The American people simply will not accept a nationwide redefinition of marriage imposed on them by a judicial oligarchy.

“As the debate continues, recent polls and the election

demonstrate that support for marriage redefinition is stalling as Americans begin to experience and consider the consequences for religious freedom, free speech, and parental rights.

“Where marriage is redefined, parents are increasingly finding a wedge being driven between them and their children as school curricula is changed to contradict the morals parents are teaching their children. And as more and more people lose their livelihoods because they refuse to not just tolerate but celebrate same-sex marriage, many Americans are beginning to see that this is about far more than the marriage altar, but is about fundamentally altering society,” concluded Perkins.