



SUPREME COURT OF ALABAMA

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March 5, 2015

Honorable Probate Judges of Alabama
Attorneys and Parties of Record
Supreme Court Case Docket No. 1140460

RE: Ex parte State of Alabama ex rel. Alabama Policy
Institute, Alabama Citizens Action Program, and John E.
Enslin, in his official capacity as Judge of Probate for
Elmore County

EMERGENCY PETITION FOR WRIT OF MANDAMUS

(In re: Alan L. King, in his official capacity as Judge of
Probate for Jefferson County, et al.)

This is to certify that corrected pages 104 and 132-133
of the opinion released on March 3, 2015, have been inserted
in lieu of the original pages 104 and 132-133. Copies of the
corrected pages are forwarded herewith.

Sincerely,

A handwritten signature in cursive script that reads "Julia Jordan Weller".

Julia Jordan Weller
Clerk
Supreme Court of Alabama

CORRECTED PAGES ATTACHED

government sponsorship of it. Thus, under their own theory, either the aspect of marriage the same-sex partners insist should be included in the institution is not fundamental to its nature, in which case Alabama's laws enforcing the traditional definition of marriage are not unconstitutional, or marriage is a fundamental right but the characteristics upon which same-sex partners necessarily must hinge their definition of marriage fail to explain government's interest in marriage.

Having discarded other candidates for what aspect of marriage is so fundamental that it warrants constitutional protection, we are left with the characteristic that has remained unchanged throughout history: marriage has always been between members of the opposite sex. The obvious reason for this immutable characteristic is nature. Men and women complement each other biologically and socially. Perhaps even more obvious, the sexual union between men and women (often) produces children.³² Marriage demonstrably channels the results of sex between

³²See DeBoer, 772 F.3d at 404 ("One starts from the premise that governments got into the business of defining marriage, and remain in the business of defining marriage, not to regulate love but to regulate sex, most especially the intended and unintended effects of male-female intercourse.").

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traditional definition is inaccurate. In point of fact, we are concerned here with two different, mutually exclusive definitions. One that marriage is only between a man and a woman, and one that does not include this limitation. Both definitions cannot be true at the same time. Insisting that the law must legitimize one definition necessarily delegitimizes the other.

Throughout the entirety of its history, Alabama has chosen the traditional definition of marriage. Some other states, like New York, have more recently chosen the new definition. The United States Constitution does not require one definition or the other because, as the Windsor Court noted, "[b]y history and tradition," and one should add, by the text of the Constitution, "the definition and regulation of marriage ... has been treated as being within the authority and realm of the separate States." ___ U.S. at ___, 133 S.Ct. at 2689-90. That fact does not change simply because the new definition of marriage has gained ascendancy in certain quarters of the country, even if one of those quarters is the federal judiciary.⁴⁶

⁴⁶According to the National Conference of State Legislatures, only 11 states have accepted same-sex marriage as a result of choices made by the people or their elected

As it has done for approximately two centuries, Alabama law allows for "marriage" only between one man and one woman. Alabama probate judges have a ministerial duty not to issue any marriage license contrary to this law. Nothing in the United States Constitution alters or overrides this duty.

IV. Order

The named respondents are ordered to discontinue the issuance of marriage licenses to same-sex couples. Further, and pursuant to relator Judge Enslin's request that this Court, "by any and all lawful means available to it," ensure compliance with Alabama law with respect to the issuance of marriage licenses, each of the probate judges in this State other than the named respondents and Judge Davis are joined as respondents in the place of the "Judge Does" identified in the petition. Within five business days following the issuance of this order, each such probate judge may file an answer responding to the relator's petition for the writ of mandamus and showing cause, if any, why said probate judge should not

representatives. The 26 other states that, to any extent, now have same-sex marriage do so because it has been imposed on them by court order (21 of these by federal courts). See <http://www.ncsl.org/research/human-services/same-sex-marriage-laws.aspx#1> (last visited March 2, 2015; a copy of the Web page containing this information is available in the case file of the Clerk of the Alabama Supreme Court).