

From: Columbia Christians for Life  
Sent: 3/5/2016 11:00:39 AM  
To:  
Cc:  
Subject: [WND] Alabama Chief Justice: 'Same-sex marriage' creation 'lawless'

Columbia [Christians for Life <http://www.christianlifeandliberty.net/>](http://www.christianlifeandliberty.net/) (CCL  
<<http://www.christianlifeandliberty.net/>>)  
Columbia, South Carolina  
March 5, 2016

**[WND]**

## **Alabama Chief Justice: 'Same-sex marriage' creation 'lawless'**

'Like Dred Scott and Roe v. Wade ... it [ Obergefell ] is an immoral, unconstitutional, and tyrannical opinion'

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### **Alabama Chief Justice Roy Moore:**

"Does an opinion of the United States Supreme Court, like Obergefell, which blatantly affronts the Constitution, automatically become the 'rule of law' and the 'law of the land?' Sir William Blackstone's Commentaries on the Laws of England became the 'manual of almost every student of law in the United States' during this nation's formative years. Blackstone stated that 'the law, and the opinion of the judge are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge may mistake the law.'"

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**Also:**

**LIBERTY COUNSEL**

**Alabama Supreme Court Rejects U. S. Supreme Court's Marriage Opinion**

<<http://www.lc.org/newsroom/details/alabama-supreme-court-rejects-u-s-supreme-courts-marriage-opinion>>

Mar 4, 2016

FOUNDATION FOR MORAL LAW

**STATEMENT OF THE CHIEF JUSTICE AFTER RULING OF API**

<<http://morallaw.org/2016/03/04/statement-of-the-chief-justice-after-ruling-of-api/>>

American Principles Project

**Statement Calling for Constitutional Resistance to Obergefell v. Hodges**

<<https://americanprinciplesproject.org/founding-principles/statement-calling-for-constitutional-resistance-to-obergefell-v-hodges%E2%80%AF/>>

October 8, 2015

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**WND EXCLUSIVE**

**Alabama's top judge: 'Same-sex marriage' creation 'lawless'**

'Like Dred Scott and Roe v. Wade ... it [ Obergefell ] is an immoral, unconstitutional, and tyrannical opinion'

<[http://www.wnd.com/2016/03/alabamas-top-judge-same-sex-marriage-creation-lawless/?cat\\_orig=us](http://www.wnd.com/2016/03/alabamas-top-judge-same-sex-marriage-creation-lawless/?cat_orig=us)>

March 4, 2016

[ Note: portions omitted ]

Judge Roy Moore

The Alabama Supreme Court on Friday dispensed with what probably was the last legal case over the U.S. Supreme Court's creation last summer of "same-sex marriage," dismissing several related petitions and ripping the nation's highest court as "lawless."

The Alabama court also left undisturbed its determination that the state's

Sanctity of Marriage Amendment and Marriage Protection Act, limiting marriage to one man and one woman, are constitutional and should be followed by the state's probate judges, the only ones in Alabama who can issue marriage licenses.

Alabama Chief Justice Roy Moore wrote in the order dismissing several petitions in the case: "As stated at the beginning of this special concurrence, the certificate of judgment in this case does not disturb the March 2015 orders of this court that uphold the constitutionality of the Sanctity of Marriage Amendment and the Alabama Marriage Protection Act. For that reason, as explained above, I concur."

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He said the Supreme Court's marriage ruling "is completely without constitutional authority, a usurpation of state sovereignty, and an effort to impose the will of 'five lawyers,' as Chief Justice Roberts stated ... on the people of this country.

"Indeed, the Obergefell majority even presumes to override the Federal Rules of Civil Procedure, which limit the applicability of injunctions to parties, their agents, and those acting in concert with them," he wrote in a scathing submission.

"Our forefathers would not have stood idly by to watch our liberties destroyed and our Constitution violated. James Madison stated in 1785 that 'it is proper to take alarm at the first experiment on our liberties. ... We revere this lesson too much, soon to forget it.' ... I believe that in the Obergefell opinion and the response of many to it, we may have forgotten that lesson sooner than we ought."

Moore wrote that the U.S. Supreme Court ruling is "like Dred Scott and Roe v. Wade that preceded it, is an immoral, unconstitutional, and tyrannical opinion."

"Its consequences for our society will be devastating, and its elevation of immorality to a special 'right' enforced through civil penalties will be completely destructive of our religious liberty."

He said it's immoral because it "elevates into a fundamental right that which was historically regarded by our law as 'the infamous crime against nature.'"

It's unconstitutional because it "ignores the text" of the Constitution, he wrote.

And its "tyrannical," because the creation of same-sex marriage will be "used to vilify Americans who are unwilling to assent to the new orthodoxy."

Moore also contended the five justices in the majority had no authority for their decision.

"That a majority of the court may identify an 'injustice' that merits constitutional correction does not dispense with the means the Constitution has provided in Article V for its own amendment," he wrote.

"Although the court could suggest that the Constitution would benefit from a particular amendment, the court does not possess the authority to insert the amendment into the Constitution by the vehicle of a court opinion and then to demand compliance with it."

### **Overtured millions of votes**

Same-sex marriage was mandated for the nation in 2015 by the bare 5-4 majority made up of Anthony Kennedy, Ruth Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan. John Roberts, Clarence Thomas, Samuel Alito and the late Antonin Scalia opposed it.

The majority found in the Constitution a right to same-sex marriage, overturning millennia of established legal precedent regarding marriage as well as the will of tens of millions of voters in dozens of states.

The decision that dismissed the Alabama case petitions, but not the March 2015 orders to probate judges, came in a case actually launched before the U.S. Supreme Court's decision, and was virtually unanimous.

But it elicited remarkably harsh criticism of the five justices in the U.S. Supreme Court majority.

Moore, whose willingness to be a no-nonsense buttress against judicial activism is legend, cited the "novel departures from the text of the Constitution" employed by the majority.

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He noted Scalia already described those as the "abandonment" of

“disciplined legal reasoning” that descended to “the mystical aphorisms of the fortune cookie.”

Some of the majority’s comments:

- “Marriage responds to the universal fear that a lonely person might call out only to find no one there.”
- The “hope [of homosexuals] is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions.”
- “A truthful statement by same-sex couples of what was in their hearts had to remain unspoken.”

“The opinion appeals more to emotion than law, reminding one of the 1974 song ‘Feelings’ by Morris Albert, which begins: ‘Feelings, nothing more than feelings.’ The court’s opinion speaks repeatedly of homosexuals being humiliated, demeaned, and denied ‘equal dignity’ by a state’s refusal to issue them marriage licenses.

“Riding a tidal wave of emotion, the ensuing tears and pathos then suffice to fertilize a new constitutional right nowhere mentioned in the Constitution itself,” Moore wrote.

“Chief Justice Roberts portrays the majority as thieves who are ‘stealing’ the marriage issue from the people. Justice Scalia uses a similar metaphor, stating that the majority ‘robs the people of ... the freedom to govern themselves.’ These metaphors identify the essence of the majority’s actions: an illegal displacement and usurpation of the democratic process.”

He issued a warning, too: “The definition of marriage as the union of one man and one woman has existed for millennia and has never been considered an ‘ill tendency.’ By contrast, the court’s attempt the redefine marriage is ‘a dangerous fallacy which at once destroys all religious liberty.’ ... Obergefell promises to breach the legal protections that have shielded believers from participating in acts hostile to their faith.”

Moore told WND that his order should be viewed as a judicial explanation on how Americans should respond to an unconstitutional ruling from the Supreme Court. He said it highlights how the American judiciary has become, gradually over the years, the “supreme law of the land,” actually replacing the Constitution.

### **‘It sometimes may happen that the judge may mistake law’**

Further, he said: “Does an opinion of the United States Supreme Court, like *Obergefell*, which blatantly affronts the Constitution, automatically become the ‘rule of law’ and the ‘law of the land?’ Sir William Blackstone’s *Commentaries on the Laws of England* became the ‘manual of almost every student of law in the United States’ during this nation’s formative years. Blackstone stated that ‘the law, and the opinion of the judge are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge may mistake the law.’”

[WND reported just a few weeks ago <http://wnd.com/?p=2969644>](http://wnd.com/?p=2969644) when marriage activists in Alabama pressured the court for a ruling.

The underlying case was brought on behalf of the Alabama Policy Institute and others. It came after U.S. District Judge Callie Granada, prior to the U.S. Supreme Court’s ruling, ordered the establishment of same-sex marriage in the state.

Then Moore ordered probate judges to follow the state constitution, which recognizes marriages only between a man and a woman. The state court’s order eventually replaced Moore’s order.

After the U.S. Supreme Court’s decision, the state court “invited the parties ... to address the ‘effect of the Supreme Court’s decision on this court’s existing orders in this case.’” All of the petitions now have been dismissed.

Moore was not the only justice unhappy with the U.S. Supreme Court.

Justice Michael Bolin wrote that the opinion was “without any constitutional basis” but said the “Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.”

### **‘Not deeply rooted ... anywhere’**

But it pointed out, “It is without dispute that the concept of same-sex marriage is not deeply rooted in either this nation’s or this state’s history and tradition – or frankly anywhere. To the contrary, from its earliest days, circa 1800s, Alabama has, with little modification, provided a statutory scheme for the formal licensing and recognition of marriages as being between a man and a woman.”