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Idaho goes after same-sex marriage

Story by RNS • 3d • 3 min read

(RNS) — This week, the Idaho House of Representatives [passed](#) a “[joint memorial](#)” (i.e. resolution) of the Legislature calling on the U.S. Supreme Court to reverse *Obergefell v. Hodges*, the landmark decision that in 2015 established a constitutional right to marry for same-sex couples and insisting that “the issue of marriage and enforcement of all laws pertaining to marriage” be returned to the states. The state Senate is expected to take up the memorial shortly.

“We wish to see a world where the state of Idaho is again permitted to acknowledge and enforce God’s design for marriage and family,” Edward Clark, of the [Idaho Family Policy Center](#), told [FāVS News](#)’ Tracy Simmons. The center, a conservative Christian nonprofit, seems to be making some headway. Last November, Idaho Gov. Brad Little [proclaimed](#) Nov. 24-30 “Christian History Week.”

The center is [also seeking](#) “to put the Bible back into our public schools so that children can once acknowledge God and hear His Word proclaimed in the classroom.” To that end, its petition quotes a rhetorical query from Justice Joseph Story’s opinion in [Vidal v. Girard’s Executors](#), a case dating to 1844: “Why may not the Bible, and especially the New Testament, without note or comment, be read and taught as a divine revelation in the college — its general precepts expounded, its evidences explained, and its glorious principles of morality inculcated?”

There's a bit of irony there, in that the court's decision was to allow clergy to be prohibited from teaching in the school, as stipulated in the bequest that established it.

There's more irony in the Idaho memorial, which cites, among its whereases, the Supreme Court's acknowledgement in [United States v. Windsor](#) (2013) that the definition of marriage is "an area that has long been regarded as a virtually exclusive province of the States." That decision, which declared Section 3 of the 1996 Defense of Marriage Act unconstitutional, determined that the federal government cannot withhold benefits and protections from same-sex couples.

More importantly, the memorial leaves out the rather substantial exception to the states' virtually exclusive province noted by the Court; namely, "certain constitutional guarantees, see, *e.g.*, *Loving v. Virginia*." [Loving](#), the 1967 Supreme Court decision declaring state laws that ban interracial marriage unconstitutional, established the precedent for Obergefell.

If the court were to reverse Obergefell and, as the Idaho House wishes, allow that states possess an exclusive right to define marriage, it's not hard to imagine someone — say, one of Idaho's own white supremacists — trying to bring a case challenging *Loving*. If such a case were to make its way up to the high court, the position of the interracially married Clarence Thomas, who dissented in both *Windsor* and *Obergefell*, would be a matter of some curiosity.

I doubt that will happen, though, because individuals are likely to be denied standing to bring such a case. However, a state could, as then-Alabama Supreme Court Chief Justice Roy Moore sought to do in the wake of *Obergefell*, legally prohibit same-sex marriages from taking place. A same-sex couple who tried to get married there would then sue, and the case would be off and running.

It's telling that the Idaho Legislature isn't taking that route. Rather than promoting an actual constitutional challenge, its request to the Supreme Court amounts to performative MAGA cosplay.

...on the 2023 census, there were 2,100 same-sex married couples living in Idaho. In 2022, Congress passed and President Biden signed into law the [Respect for Marriage Act](#), which repealed the Defense of Marriage Act and required federal and state governments to recognize the validity of same-sex (and interracial) marriages. In 2023, Idahoans [supported](#) same-sex marriage 59%-39%.

Gov. Brad Little's office has had no comment on the memorial. You can understand why.

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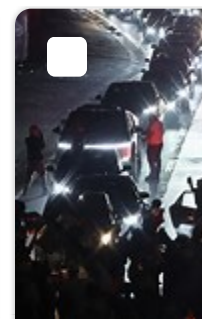


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