

Madame Chair and members of the Committee:

Each of us has a belief about what it means to be human—a person—and what the sexual dimorphism of male and female means. And this bill puts your belief to the test because, until 2015, the distinction between male and female was fundamental to the Western Legal Tradition’s understanding of what we called a marital relationship, as distinct from all other kinds of relationships.

The reality of the marital relationship did not arise because civil government acknowledged it or because civil government licensed it. It is a pre-political reality law acknowledged, even as the law recognized the attorney-client privilege for centuries prior to the licensing of attorneys.

This marital relationship was viewed as foundational because only in the union of a man and a woman could there be that generation of persons on which history and the development of civilization depended.

But in 2015, the United States Supreme Court held that state marriage *licensing statutes* were “invalid to the extent they exclude same-sex couples from *civil marriage*.”

But this limitation to “civil marriage” and licenses is important. Legal experts have noted that the Court was not faced with, and did not rule on, the status of male and female marital relationships formed by their exchange of promises under common law; nor did the Court hold that *only* government-licensed marital relationships are lawful.

In other words, the Court did not require States to abandon the historical *common law*’s recognition of the husband-and-wife union as a pre-political, pre-licensure reality.

So, if you believe that the equality of men and women is not denied simply because we recognize the God-given distinction between men and women, and if you believe that the exchange of certain promises between a man and woman form a marital relationship predating *civil* government, then I ask you to vote for this bill. It does not change who is eligible to have a government-licensed marriage, but it does declare that this relationship is not created by government.

But I would make one last point. Last Monday, a unanimous United States Supreme Court held that whatever is subject to the Fourteenth Amendment is subject to Section 5 thereof that says, “Congress shall enforce, by appropriate legislation, the provisions of this article.”

I submit that a vote against this bill is an acknowledgment that the fundamental meaning of the marital relationship *should remain* subject to the Fourteenth Amendment and that Congress, therefore, should have the power to someday tell us what marriage must mean *for every Tennesseans*.

On the other hand, your a vote for the bill is your way of saying the fundamental meaning of the marital relationship under Tennessee’s common law is none of Congress’s business.