

"Neither in *Obergefell* itself nor in any case since has the Supreme Court clarified whether it meant to create, for the ***first time in our country's history***, a right *within the provisions of the 14<sup>th</sup> Amendment* to marry (and, moreover, without regard to the male-female sex binary). (italics in the original; bold added)." Gerard Bradley, Notre Dame Law School

**Due Process Applies.**  
"Right to marry" is in 14<sup>th</sup> Amendment.  
**Federal Government** now has **plenary** authority over marriage & family law **because of Supremacy Clause**

**Gov. Lee's "Rock and Hard Place"**

**Equal Protection Applies.**  
State still has **plenary** authority over marriage & Family law

**Result Either Way**

Federal government is now responsible for providing a means by which federal "right to marry" is exercised

State is not obligated to provide a means by which federal "right to marry" is exercised

A state **may** still license marriages, but **state** Constitution governs Marriage licenses subject **only** to Equal Protection Clause

*Obergefell* means that **if** state issues marriage licenses, then it must issue them regardless of sex to avoid violating Equal Protection Clause

However, *Obergefell* constitutionally **cannot mean** that a state **must** issue marriage licenses because licensure is still a **state law issue**

Therefore, *Obergefell* means a state **can still prohibit** the licensure of marriages defined without regard to sex.

Therefore, TN. constitutional provision is **not** invalid.

Federal government cannot "commandeer" state to provide license for federal marriage

TN. Constitution can prohibit state from issuing a license for the federal government because of dual sovereignty

TN. constitutional provision is still valid.

**County Clerks still prohibited from issuing *any* marriage license since federal law is plenary and *Obergefell* requires a type license TN's Constitution prohibits**

**County Clerks are prohibited from issuing *any* marriage license since *Obergefell* would require a type license TN's Constitution still prohibits**

"With each decision of ours that takes from the People a question properly left to them—with each decision that is unabashedly based not on law, but on the 'reasoned judgment' of a bare majority of this Court—we **move one step closer to being reminded of our impotence.**" Scalia, J., Dissenting, *Obergefell v. Hodges*. **BINGO!**

**Solution: Marital Contract at Common Law Recording Act**