

114TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend title 28, United States Code, to limit the jurisdiction of Federal courts to consider cases involving same-sex marriage.

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IN THE SENATE OF THE UNITED STATES

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\_\_\_\_\_ introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend title 28, United States Code, to limit the jurisdiction of Federal courts to consider cases involving same-sex marriage.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Protect Marriage from  
5 the Courts Act of 2015”.

6 **SEC. 2. LEGISLATIVE FINDINGS.**

7        The Senate makes the following findings:

8            (1) In *Baker v. Nelson*, 409 U.S. 810 (1972),  
9 the Supreme Court of the United States upheld a  
10 State law defining marriage as the union of one man

1 and one woman against a constitutional challenge by  
2 a same-sex couple seeking to marry. The Court re-  
3 jected the challenge in a one-sentence order that  
4 read, “The appeal is dismissed for want of a sub-  
5 stantial federal question.”.

6 (2) The Supreme Court’s judgment in *Baker* is  
7 as sound today as it was then. Challenging a State  
8 marriage law on the basis that it does not extend to  
9 same-sex couples raises no substantial Federal ques-  
10 tion because nothing in the text or history of the  
11 14th Amendment to the Constitution of the United  
12 States even arguably indicates a general public un-  
13 derstanding at the time of ratification that the rati-  
14 fiers had adopted a constitutional principle that in-  
15 validated State laws defining marriage as a male-fe-  
16 male union.

17 (3) It follows that the power to decide whether  
18 to extend the legal status and benefits of marriage  
19 to same-sex couples does not belong to the courts,  
20 but rests instead with the people through their elect-  
21 ed State representatives, unless their State constitu-  
22 tions provide otherwise. The Constitution of the  
23 United States leaves it to the people of each State  
24 to decide for themselves through their democratic

1 processes how to redefine the legal meaning of mar-  
2 riage for purposes of their respective State laws.

3 (4) Numerous Federal courts, including the  
4 United States Courts of Appeals for the Fourth,  
5 Seventh, Ninth, and Tenth Circuits, have neverthe-  
6 less invalidated State marriage laws that do not  
7 allow the licensing of same-sex marriages. In so  
8 doing, these courts have exceeded their authority  
9 under the Constitution and have usurped the peo-  
10 ple's exclusive authority to decide this issue. Pending  
11 before the Supreme Court are 4 related cases chal-  
12 lenging the marriage laws in Kentucky, Michigan,  
13 Ohio, and Tennessee.

14 (5) The purpose of this Act (including the  
15 amendment made by this Act) is to maintain the au-  
16 thority of the States to define marriage and to pre-  
17 vent, consistent with the Constitution, any further  
18 unlawful action by Federal courts until such time as  
19 an amendment to the Constitution is enacted un-  
20 equivocally guaranteeing that the States have the  
21 power to define marriage as limited to the union of  
22 one man and one woman.

23 (6) This Act prevents that unlawful action by  
24 eliminating the jurisdiction of all courts created by  
25 Federal law, as well as the appellate jurisdiction of

1 the Supreme Court, to adjudicate claims pertaining  
2 to the constitutionality of State marriage laws. Be-  
3 cause section 1 of article III of the Constitution  
4 gives Congress the power to “ordain and establish”  
5 “inferior Courts”, the Supreme Court has long held  
6 that Congress has the power to limit the jurisdiction  
7 of the lower Federal courts. See *Palmore v. United*  
8 *States*, 411 U.S. 389, 400–01 (1973). In addition,  
9 section 2 of article III of the Constitution gives Con-  
10 gress the power to make “Exceptions” to the appel-  
11 late jurisdiction of the Supreme Court. The Supreme  
12 Court itself has acknowledged that this power ap-  
13 plies even to cases that are pending before the  
14 Court. See *Ex parte McCardle*, 74 U.S. (7 Wall.)  
15 506, 514 (1869).

16 (7) Finally, this Act makes clear that a court’s  
17 judgment only applies to the parties before the court  
18 and that nonparties have no legal obligation to com-  
19 ply with the decision until so ordered by a court.

20 **SEC. 3. LIMITATION OF JURISDICTION.**

21 (a) IN GENERAL.—Chapter 99 of title 28, United  
22 States Code, is amended by adding at the end the fol-  
23 lowing:

1 **“§ 1632. Limitations on Federal jurisdiction**

2 “(a) No court created by Federal law shall have juris-  
3 diction, and the Supreme Court shall have no appellate  
4 jurisdiction, to adjudicate or enforce any claim pertaining  
5 to the validity, under the Constitution of the United  
6 States, of a State law, or State administrative or judicial  
7 decision, that—

8 “(1) defines marriage as limited to the union of  
9 one man and one woman; or

10 “(2) refuses State recognition of or allows the  
11 State to refuse recognition of same-sex marriages  
12 performed and licensed in other States.

13 “(b) To the extent that either a court created by Fed-  
14 eral law or the Supreme Court has entered a final judg-  
15 ment on a claim described in subsection (a) before the ef-  
16 fective date of this section, that judgment binds only the  
17 parties to the case. No person who is not a party to the  
18 case shall have any obligation to comply with the decision  
19 in the case.”.

20 (b) SEVERABILITY.—If any provision of this Act, an  
21 amendment made by this Act, or the application of such  
22 provision or amendment to any person or circumstance is  
23 held to be unconstitutional, the remainder of this Act, the  
24 amendments made by this Act, and the application of such  
25 provision or amendment to any person or circumstance  
26 shall not be affected.

1 (c) EFFECTIVE DATE AND APPLICATION.—

2 (1) EFFECTIVE DATE.—This Act (including the  
3 amendment made by this Act) takes effect on the  
4 date of enactment of this Act.

5 (2) APPLICATION.—This Act applies to all  
6 claims pending on or after that date of enactment.

7 (d) AMENDMENTS TO THE TABLE OF SECTIONS.—  
8 The table of sections for chapter 99 of title 28, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing:

“1632. Limitations on Federal jurisdiction.”.