GAY MARRIAGE AND THE PROBLEM OF PROPERTY

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ABSTRACT

The Supreme Court's gay marriage decision in Obergefell *has been hailed in almost all corners as a milestone in American jurisprudence. From topics as varied as adoption and taxes, a myriad of rights have now descended upon gay couples as a result of the Court's ruling. In this Commentary, we explore the little discussed downsides of the decision when it comes to the property rights and debts of the spouses. This is particularly important when considering the rights of third parties and their settled expectations in the context of retroactivity, as well the ways in which the Court's decision may have the undesirable affect of undoing the carefully laid plans of the spouses. We conclude that courts and legislatures have by no means seen the end of the gay marriage debate. Rather, a host of unforeseen collateral issues lies on the horizon.*

INTRODUCTION

The United States Supreme Court's decision in *Obergefell v. Hodges* has received much acclaim.[1] It has brought a sense of dignity and pride to

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1. 135 S. Ct. 2584 (2015). *Obergefell* resulted from the consolidation of six cases decided by the lower federal appellate courts and brought by a host of plaintiffs, including fourteen gay couples, their children, a widower (James Obergefell), and others. *Id.* at 2594–95. At the time the case was decided, all federal circuit courts to have been faced with the issue—those being the Fourth, Seventh, Ninth, and Tenth Circuits—had struck down state law bans on gay marriage, except for the Sixth Circuit, which upheld the bans. *See* Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014); Baskin v. Bogan, 766 F.3d 648 (7th Cir. 2014); Latta v. Otter, 771 F.3d 456 (9th Cir. 2014); Bishop v. Smith, 760 F.3d 1070 (10th Cir. 2014); Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 2014). This divergence among the federal circuit courts ultimately made the Supreme Court's involvement inevitable. After much anticipation, on June 26, 2015, the Court struck down all state law prohibitions on same-sex marriage as violative of the Equal Protection and Due Process clauses of the Constitution of the United States. *Obergefell*, 135 S. Ct. at 2604–05. By the time of *Obergefell*, thirty-six states and the District of Columbia had already legalized same-sex marriage. *See* Nina Totenberg, *Legal Battle over Gay Marriage Hits the Supreme Court Tuesday*, NPR (Apr. 27, 2015, 5:03 AM), http://www.npr.org/sections/itsallpolitics/2015/04/27/402456198/legal-battle-over-gay-marriage-hits-the-supreme-court-

gay couples and their families, and a feeling of justice and equality to the hearts of many Americans. Not only can gay couples now marry, but they also enjoy a host of civil benefits flowing from this age-old institution. Same-sex spouses now have the same rights as heterosexual couples with regard to estate and income taxation, employment-related spousal benefits, and rights of survivorship. Gay spouses should also now be able to adopt children and enjoy the various rights and benefits that are appurtenant to parenthood. The Court's decision, and these consequences, have been widely celebrated from almost all corners, and in the days following the decision, a simple flip through any newspaper or a quick scroll through one's Facebook or Twitter feed revealed a host of celebratory messages, supportive editorials, and rainbow-colored profile pictures.

Still, not all aspects of the decision have been viewed as positive. Critics noted the decision's possible impact on religious freedom, the role of the states versus the federal government in the formulation of family law, and the extent to which many religious-based educational institutions will retain their preferential tax treatment.[2] One impacted area that has received little attention, however, is the law of property. Although perhaps less obvious, the Court's decision will have significant effects with regard not only to the traditional property of gay spouses—such as real estate, household items, and personal effects—but also to property rights in each spouse's earnings and debts. Moreover, the decision leaves open the possibility that the rights of third parties such as buyers, mortgagees, and transferees of the property of either spouse might unwittingly suffer a significant loss due to the operation of community and other matrimonial property rules. Lastly, gay spouses themselves might be surprised to find that the legal sanctioning of their unions has inured, in large part, to the benefit of their creditors.

This Commentary ruminates on the little-considered problem of property rights arising in connection with gay marriage. While certainly a milestone in the story of civil rights in America, the Court's decision has

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tuesday; *The Changing Landscape of Same-Sex Marriage*, WASH. POST (June 26, 2015), http://www.washingtonpost.com/wp-srv/special/politics/same-sex-marriage/ (showing all states where same-sex marriage was legal prior to *Obergefell* being decided).

2. *See, e.g.*, Laurie Goodstein & Adam Liptak, *Schools Fear Gay Marriage Ruling Could End Tax Exemptions*, N.Y. TIMES (June 24, 2015), http://www.nytimes.com/2015/06/25/us/schools-fear-impact-of-gay-marriage-ruling-on-tax-status.html; Emma Green, *Gay Rights May Come at the Cost of Religious Freedom*, THE ATLANTIC (July 27, 2015), http://www.theatlantic.com/politics/archive/2015/07/legal-rights-lgbt-discrimination-religious-freedom-claims/399278/; John Yoo, *Judicial Supremacy Has Its Limits*, NAT'L REV. (July 6, 2015, 6:00 PM), http://www.nationalreview.com/article/420810/ obergefell-judicial-supremacy.

the potential to cause a host of unexpected, and sometimes negative, consequences for the property rights of gay spouses—problems that legislatures and courts may soon find themselves forced to confront.

I. RETROACTIVITY AND VESTED RIGHTS

Perhaps one of the most significant questions in the wake of *Obergefell* is the impact of the apparent retroactivity of the Court's decision. As in many other instances in which the high court has struck down a law as violative of a protected right, if a right exists under the Constitution, then it has always existed.[3] If a law is unconstitutional, it has always been unconstitutional, and retroactive application is appropriate.[4]

The issue of retroactivity of constitutional law decisions—that is, whether the effects of a pronouncement by the court should be applied to facts arising before the decision—has had quite a stormy history in Supreme Court jurisprudence.[5] Justice Scalia,[6] for example, has advocated for a strict retroactivity approach to constitutional decisions, but other Justices, from Justice O'Connor[7] to Justice Frankfurter,[8] have advanced the view that common sense considerations demand a more flexible approach that might often lead to selective prospectivity. Nevertheless,

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3. *See generally* James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 549 (1991) (Scalia, J., concurring) (citation omitted) ("[The judicial power is the ability] 'to say what the law is' . . . not the power to change it."); *see also* Harper v. Va. Dep't of Taxation, 509 U.S. 86, 97 (1993) ("When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule."); Am. Trucking Ass'ns v. Smith, 496 U.S. 167, 168–70 (1990).

4. *See* Peg Quann, *Bucks County Judge Rules Same-Sex Widow Entitled to Benefits*, INTELLIGENCER (July 29, 2015, 8:00 PM), http://www.theintell.com/news/local/bucks-county-judge-rules-same-sex-widow-entitled-to-benefits/article_abf34af5-01ee-523c-b3b4-c73c5efad959.html (discussing an opinion dealing with the retroactive application of a same-sex common law marriage in Pennsylvania and consequential conferral of disability benefits upon the surviving spouse beneficiary); *see also* Order, Hard v. Strange, No. 2:13-CV-922-WKW (M.D. Ala. July 29, 2015), ECF No. 96 (dealing with same-sex marriage retroactivity relative to rights to wrongful death-benefits in Alabama).

5. *See, e.g.*, 1 WILLIAM J. RICH, MODERN CONSTITUTIONAL LAW § 1:9 (3d ed. 2014) (analyzing the progression of the retroactivity debate in Supreme Court jurisprudence).

6. *See, e.g.*, *James B. Beam Distilling Co.*, 501 U.S. at 548–49 (Scalia, J., concurring) (arguing that it is beyond the power of the Court to apply decisions on a purely or even only selectively prospective basis, which is due to the long-standing theory that the Supreme Court can only proclaim what the law already is and cannot create new law).

7. *See, e.g.*, *Harper*, 509 U.S. at 117 (O'Connor, J., dissenting) ("Such a rule is both contrary to established precedent and at odds with any notion of fairness or sound decisional practice.").

8. *See, e.g.*, Griffin v. Illinois, 351 U.S. 12, 26 (1956) (Frankfurter, J., concurring) ("It is much more conducive to law's self-respect to recognize candidly the considerations that give prospective content to a new pronouncement of law.").

recent case law has indicated a trend toward more retroactivity, even in the face of efforts by Congress to change such results.[9]

Under strict retroactivity theory, then, gay couples validly married under the laws of one state, but domiciled in a non-recognition state, have been living under a marital property regime from the date of their marriage. This means that many of the acts these individuals may have taken with respect to property must now satisfy a multitude of legal rules that were most assuredly not anticipated by the parties at the time of the transaction. For instance, in community property states, the law generally requires that both spouses consent for community real property to be sold, mortgaged, or otherwise transferred.[10] However, if the marriage of a seller of real property was not recognized at the time of the transfer, it is a virtual certainty that this dual consent was not obtained. The retroactive application of *Obergefell* seriously calls into question the validity of such transactions.

Judging from decisions by the federal government[11] and various states[12] in allowing gay couples to recapture benefits lost prior to marital recognition, retroactivity certainly seems to be the rule for gay marriage. To that end, a number of issues arise in this context. How will the rights of third parties be affected by the marital property implications of the Court's ruling? Moreover, will legislatures craft transition laws that allow gay spouses to avoid certain marital property institutions, as heterosexual spouses are allowed to do by contract prior to or at the onset of their marriages? Or will legislatures pass laws designed to protect the rights of innocent third parties and their settled expectations? And will states be limited in their ability to take any such actions given the risk of deprivation of a spouse's constitutionally protected interest in newly

9. *See, e.g.*, 1 RICH, *supra* note 5, § 1:9 (explaining *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 240 (1995), where the Court invalidated an attempt by Congress to revive the potential for certain securities litigation when the Court had, in a prior case, upheld a truncated statute of limitations for securities fraud).

10. *See, e.g.*, Reimann v. United States, 315 F.2d 746, 749 (9th Cir. 1963); *In re* Marriage of Brooks, 86 Cal. Rptr. 3d 624, 632 (Cal. Ct. App. 2008), *abrogated by In re* Marriage of Valli, 324 P.3d 274 (Cal. 2014); Lovelass v. Sword, 90 P.3d 330, 333 (Idaho 2004); Bridges v. Bridges, 692 So. 2d 1186, 1194–95 (La. Ct. App. 1997); Treadwell v. Henderson, 269 P.2d 1108, 1116 (N.M. 1954); Rustad v. Rustad, 377 P.2d 414, 416 (Wash. 1963).

11. *See, e.g.*, Rev. Rul. 2013-17, 2013-38 I.R.B. 201 (providing a mechanism for the retroactive recapturing of lost tax benefits).

12. *See, e.g.*, Mueller v. Tepler, 95 A.3d 1011, 1030 (Conn. 2014) (citing Marone v. Waterbury, 707 A.2d 725 (Conn. 1998) (holding that "judgments that are not by their terms limited to prospective application are presumed to apply retroactively to *pending cases*")); *see also supra* note 4 and accompanying text.

reckoned marital property? These issues are far from simple and resist an easy solution—both for states and the federal courts.

II. PROPERTY RIGHTS AFTER *OBERGEFELL*: THE MARITAL PROPERTY REGIMES

If *Obergefell* is ultimately given retroactive effect, it will result in the automatic vesting of property rights across the patrimonies of both spouses. What was once property owned and controlled by just one of the spouses will now become subject to the rights of another spouse, and to a number of third parties.

Up until now, many gay couples across the United States were unable to avail themselves of the marital property regimes that opposite-sex spouses so frequently take for granted. Indeed, gay couples very often engaged in a great deal of property and estate planning maneuvers that would normally be relegated to only the wealthiest and most sophisticated of couples so as to work around the unavailability of default marital property rules. It has been quite common for gay couples, who heretofore could not wed, to execute various legal documents ranging from wills and powers-of-attorney to various trust and corporate instruments in order to effectuate a marriage-like regime.[13] These couples—married by all outward appearances—were required to engage in a complicated and expensive series of legal transactions in order to ensure that their rights and duties vis-à-vis each other were arranged so as to give legal effect to their non-legal union.[14]

Because of the probing analysis in which gay couples were forced to engage in order to undertake these legal transactions, they made decisions that diverged from what the normal marital property rules might otherwise provide. Indeed, a wealthy partner might prefer that the couple not be subjected to community property or to spousal support obligations in the event of a split. Similarly, an individual who might enjoy the benefits of supplemental security or other welfare programs might desire to avoid having his assets combined with those of his partner, lest he be disqualified from government assistance. Due to the gay couple's inability

13. *See* Tara Siegel Bernard, *What Gay Unions Don't Guarantee*, N.Y. TIMES (Oct. 31, 2008), http://www.nytimes.com/2008/11/01/business/yourmoney/01couples.html?referer=; *see also* Tara Siegel Bernard & Ron Lieber, *The High Price of Being a Gay Couple*, N.Y. TIMES (Oct. 2, 2009), http://www.nytimes.com/2009/10/03/your-money/03money.html.

14. Such transactions ranged from ensuring that property was inherited by the surviving partner to guaranteeing that medical decision-making authority did not fall to a third party. *See* sources cited *supra* note 13.

to avail themselves of the marital property regimes of their home states, careful and often surprisingly complex planning often became an inherent part of many gay relationships.[15]

But now gay couples, who were married under the laws of one state but live in a state that had not recognized their union, will likely be surprised to find that some or all of their legal arrangements are rendered less effective or even void. Indeed, there are issues that arise in the context of marital property when it comes to equitable distribution that might diverge a great deal from the desires and expectations of many gay couples. For instance, in at least some states, educational degrees and professional licenses are considered to be marital property and thus subject to valuation and distribution upon termination of the marriage.[16] Moreover, the marital property law of many states allows a spouse to select either to take whatever is devised by the decedent spouse under a will, or instead select a statutorily set share—usually around one-half—of all the property that a decedent spouse owned at the time of death.[17] As a result, for a spouse who had carefully engaged in the process of will-making, it might come as quite an unexpected surprise to learn that her wishes could be so easily set aside.

The law of community property, which operates in nine states, presents additional complexities.[18] Community property law is based on the notion that married persons participate as an economic unit to which each makes valuable contributions.[19] Under this theory, ownership, acquisition, disposition, management, and control over the property of the spouses become subject to a strict set of rules.[20] The mixing of community

15. *See generally* Deborah L. Jacobs, *Married, With Complications*, FORBES (Aug. 3, 2011, 6:00 PM), http://www.forbes.com/forbes/2011/0822/investing-same-sex-marriage-legal-rights-married-complications.html (describing the documentation and planning that often accompanied gay relationships prior to *Obergefell*).

16. *See, e.g.*, N.Y. DOM. REL. LAW § 236(B)(5)(d)(7) (McKinney 2015); *see also* O'Brien v. O'Brien, 489 N.E.2d 712, 745–46 (N.Y. 1985); Elkus v. Elkus, 572 N.Y.S.2d 901, 902–03 (App. Div. 1991).

17. *See* UNIF. PROBATE CODE § 2-202(a) (amended 2010).

18. *See* Laura A. Rosenbury, *Two Ways to End a Marriage: Divorce or Death*, 2005 UTAH L. REV. 1227, 1234 n.19 (citations omitted) ("These states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. The first eight states have been community property states since they achieved statehood, reflecting their French or Spanish heritage. Wisconsin adopted the community property approach in 1984 when it adopted the Uniform Marital Property Act.").

19. Deborah H. Bell, *Equitable Distribution: Implementing the Marital Partnership Theory Through the Dual Classification System*, 67 MISS. L.J. 115, 120–21 (1997).

20. *See generally* J. Thomas Oldham, *Management of the Community Estate During an Intact Marriage*, 56 LAW & CONTEMP. PROBS. 99, 100 (1993) (describing the differences in the spousal management structures between the traditional common law and community property marital

property with separate property, for example, can be particularly complicated. One of the spouses might have purchased a home prior to the marriage using a mortgage loan. Once married, that spouse's earnings constitute community property, and the home, once considered separate property, can either suddenly become community property or trigger a number of reimbursement rights when community earnings are used to pay the mortgage loan.[21] In the context of gay spouses living in a non-recognition state prior to *Obergefell*, the use of what were considered separate funds at the time—now retroactively community funds—can have a significant effect on the other spouse's rights. Both unexpected and undesired outcomes are likely to result.

III. THIRD PARTY RIGHTS AND THE UNSETTLING OF SETTLED EXPECTATIONS

Although the Court's decision has significant effects on the rights of the spouses themselves, there are serious implications for the rights of third parties (i.e., those who deal or enter into transactions with either of the spouses) as well. In particular, the problem hits hard for those spouses living in community property states. For instance, one spouse might purchase a piece of real estate that would be considered community property if his state of domicile recognized his same-sex marriage, but at the time (before the *Obergefell* ruling) was instead considered separate property. Then, that spouse might donate or sell the property to a third party. If *Obergefell* is to be given full retroactive effect, the property was (albeit retroactively) a community asset. And, as such, the alienation of the property may well have required the consent of the other spouse.[22] In fact, some state laws allow the non-consenting spouse to void a transfer of real estate without concurrence after the fact.[23]

What is the impact of this on the donee or the buyer of the property? It was certainly within the settled expectations of the parties that the

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regimes); *see also* James W. Paulsen, *The Unsecured Texas Creditor's Post-Divorce Claim to Former Community Property*, 63 BAYLOR L. REV. 781, 786–88 (2011) (describing the classifications of community property and the management rules governing those categories).

21. *See* Stewart W. Gagnon & Christina H. Patierno, *Reimbursement & Tracing: The Bread and Butter to a Gourmet Family Law Property Case*, 49 BAYLOR. L. REV. 323, 337–38 (1997) (discussing the reimbursement theory); *see also* Kimberly D. Higginbotham, Comment, *Reimbursement for Satisfaction of Community Obligations with Separate Property: Getting What's Yours*, 68 LA. L. REV. 181, 184 n.16 (2007) (discussing the buy-into-title theory).

22. *See, e.g.*, CAL. FAM. CODE § 1102 (West 2015); LA. CIV. CODE ANN. art. 2347 (2015); TEX. FAM. CODE ANN. § 3.102 (2015).

23. *See, e.g.*, LA. CIV. CODE ANN. art. 2353 (2015).

transaction was valid, and indeed the transferor at the time of the transfer was technically not married. But now, the retroactive vesting of community property rights in the real estate in favor of the other spouse threatens to seriously undermine these expectations and potentially upset the rights of third parties. Moreover, these third party rights may also be due constitutional protection, thereby creating a tension between competing constitutional rights. Retroactively granting the spouse a community property interest in the asset and thereby giving him a right to rescind the transaction for which he did not consent, for instance, necessarily means that the third party who acquired rights to the property (such as a buyer) is being deprived of his interest. The question arises, then, how the law should balance the settled expectations of the buyer in the finality of his purchase of the property and the societal policy of honoring the newly reckoned community interests of a spouse.

The same questions arise in the case of the buyer-spouse encumbering the property with a mortgage or granting an easement to a neighbor in a community property state. At the time of the granting of these rights, the law of the states not recognizing same-sex marriages almost assuredly afforded unilateral authority to the grantor-spouse to take such actions alone. However, if indeed *Obergefell* is to be given retroactive effect, then this property is now, and has been since acquisition, subject to community property rules. The granting of the easement and the imposition of the mortgage likely required the consent of the other spouse and that lack of dual consent could be fatal. But, without delving into the intimacies and personal details of the life of the grantor (such as by questioning the grantor as to his relationship status and ascertaining whether a would-be community property regime might be in the offing due to a case like *Obergefell*), how would a grantee know whether a possible marital property regime was lying in wait at the time of the transaction?

IV. UNINTENDED CONSEQUENCES AND THE RIGHTS OF CREDITORS

If marital property rules were to be imposed on gay spouses retroactively, a significant portion of those affected would likely find themselves dissatisfied. Most of us think of the application of marital property rules as a natural consequence that flows from the perfection of the marital union, and we assume that marital property rules are intuitive, equitable, and reflect a default law that most couples would select had they

given significant thought to the question.[24] In fact, they are anything but. When it comes to spouses' interaction with creditors, in particular, American marital property regimes can be particularly undesirable.[25] And for those spouses who assumed they would not be governed by marital property laws, the effects can be quite unexpected.

In the states governed by separate property regimes, marriage has only minor effects when it comes to the property available for seizure by the creditors of one of the spouses. Creditors seize the property of their debtors alone and, with a few narrow exceptions, marriage does not affect the creditor's position.[26] Not so for the roughly 30% of the American population governed by regimes of community property.[27] In these states, creditors have heavily increased access to seizable property simply because their debtors make the choice to marry.[28] The effect is so extreme that the community property regime has been described as a creditor collection device.[29]

For debts incurred during an existing marriage, most community property states provide for the seizure not only of the debtor spouse's property, but also of the couple's community property, even if that property is acquired by the non-debtor spouse.[30] The result is a sheer windfall to creditors; lending to married persons in a community property jurisdiction gives the creditor access to vastly greater stores of property than that which would be available when a debt is incurred by an unmarried individual. Worse still, in some of these states, even the *premarital* debts of one spouse can be satisfied from the entirety of the community property, including the non-debtor spouse's wages.[31] The marriage of a debtor spouse domiciled in a community property regime is

24. *See generally* Lawrence Kalevitch, *Gaps in Contracts: A Critique of Consent Theory*, 54 MONT. L. REV. 169, 176–78 (1993) (describing the purpose of default rules in contract, in part as being designed to be simple, efficient, and similar to what the parties would have chosen themselves).

25. *See generally* Andrea B. Carroll, *The Superior Position of the Creditor in the Community Property Regime: Has the Community Become a Mere Creditor Collection Device?*, 47 SANTA CLARA L. REV. 1, 3–8 (2007) (describing community property law's strong bent in favor of creditors).

26. *Id.* at 4.

27. *See* U.S. CENSUS BUREAU, POPULATION DIV., ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR THE UNITED STATES, REGIONS, STATES, AND PUERTO RICO: APRIL 1, 2010 TO JULY 1, 2014 tbl.1 (2014), *available at* http://www.census.gov/popest/data/state/totals/2014/tables/NST-EST2014-01.xls. As of the 2010 Census, the total US population was 308,745,538. *Id.* Of that number, 92,063,744 individuals reside in one of the nine community property states.

28. *See, e.g.*, Carroll, *supra* note 25, at 4.

29. *Id.* at 3.

30. *Id.* at 9–20.

31. *Id.* at 4–9.

nothing short of a dream for creditors. Of course, it can be a nightmare for the spouses themselves.

It has been well-accepted for decades now that prospective spouses know relatively little about the default marital property rules that will ultimately govern their marriage.[32] Few individuals would likely wish, for instance, to have their wages garnished for their spouses' premarital credit card debt. Yet this is precisely the case in some community property states.

Savvy heterosexual couples have long had the ability to reject the application of such undesirable consequences by matrimonial agreement. After all, default marital property rules should be just that—rules that apply in the absence of any agreement between the parties. The trouble is that same-sex spouses who perfected a valid marriage in advance of *Obergefell*, and who are domiciled in a non-recognition state, simply had no equivalent opportunity. The vehicle through which couples renounce marital property regimes—namely, matrimonial agreements—was not available to them. And even if it were, same-sex couples certainly could not be saddled with the burden of having to execute a null contract, anticipating that a decision like *Obergefell* would one day be rendered that might give that contract effect. Parties to a same-sex marriage perfected in advance of *Obergefell* but living in a non-recognition state, then, simply did not have opportunities equivalent to those afforded to heterosexual couples to opt out of the default marital property regime.

In that light, the creditor-friendly effects of many marital property regimes become all the more offensive. And if *Obergefell* is ultimately given retroactive effect, the consequences for many gay couples—who would suffer substantially increased liability for their partners' debts, without fair warning—would be very troubling.

CONCLUSION

In these and other contexts, questions arise as to the extent to which gay spouses—who were legally married before *Obergefell* was decided but living in a non-recognition state—will be retroactively governed by marital property rules. Will they have a choice as to whether those rules govern, or will these sometimes odd and even undesired effects be foisted on them as a matter of law? A great deal remains to be decided and—with some states only begrudgingly complying with the Court's decision (and

32. *See, e.g.*, Carolyn J. Frantz, *Should the Rules of Marital Property Be Normative*?, 2004 U. CHI. LEGAL F. 265, 276.

often under great protest)—one wonders how eager state lawmakers will be to address these issues.[33]

33. *See, e.g.*, Marina Fang, *Bobby Jindal Gives Up Last Stand Against Gay Marriage Licenses in Louisiana*, HUFFINGTON POST (July 2, 2015, 7:58 PM), http://www.huffingtonpost.com/2015/07/02/bobby-jindal-marriage-equality_n_7718088.html; *see also* Charles J. Dean, *Roy Moore: Alabama Judges Not Required to Issue Same-Sex Marriage Licenses for 25 Days*, AL.COM (Jan. 6, 2016, 1:31 PM), http://www.al.com/news/index.ssf/2015/06/roy_moore_gay_marriage.html; Hanna Trudo, *Texas AG: State Workers Can Deny Marriage Licenses to Gay Couples*, POLITICO (June 29, 2015, 8:19 AM), http://www.politico.com/story/2015/06/texas-attorney-general-gay-marriage-119518.