

IN THE HOUSE OF REPRESENTATIVES

HOUSE JOINT MEMORIAL NO. 1

BY STATE AFFAIRS COMMITTEE

A JOINT MEMORIAL

TO THE SUPREME COURT OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Sixty-eighth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the decision by the Supreme Court of the United States in *Obergefell v. Hodges*, 576 U.S. 644 (2015), is at odds with the Constitution of the United States and the principles upon which the United States is established; and

WHEREAS, liberty has long been understood as individual freedom from governmental action, not as a right to a particular governmental entitlement; and

WHEREAS, *Obergefell* invokes a definition of "liberty" that the framers would not have recognized, rejecting the idea captured in the Declaration of Independence that human dignity is innate, and instead suggesting that it comes from the government; and

WHEREAS, when the framers proclaimed in the Declaration of Independence that "all men are created equal" and "endowed by their Creator with certain unalienable Rights," they referred to a vision of mankind in which all humans are created in the image of God and therefore of inherent worth; and

WHEREAS, *Obergefell* undermines this vision by declaring that citizens must seek dignity from the state; and

WHEREAS, *Obergefell* relies on the dangerous fiction of treating the Due Process Clause of the Fourteenth Amendment to the Constitution as a font of substantive rights, a doctrine that strays from the full meaning of the Constitution and exalts judges at the expense of the people from whom they derive their authority; and

WHEREAS, *Obergefell's* inversion of the original meaning of liberty causes collateral damage to other aspects of our constitutional order that protect liberty, including religious liberty; and

WHEREAS, the Supreme Court recognized in *United States v. Windsor*, 570 U.S. 744 (2013), that the definition of marriage is "an area that has long been regarded as a virtually exclusive province of the States," meaning that Idaho, and not the Supreme Court, has the right to regulate marriage for its citizens; and

WHEREAS, *Obergefell* requires states to issue marriage licenses to same-sex couples and to recognize same-sex marriages in complete contravention of their own state constitutions and the will of their voters, thus undermining the civil liberties of those states' residents and voters; and

WHEREAS, marriage as an institution has been recognized as the union of one man and one woman for more than two thousand years, and within common law, the basis of the United States' Anglo-American legal tradition, for more than 800 years; and

1 WHEREAS, *Obergefell* arbitrarily and unjustly rejected this definition
2 of marriage in favor of a novel, flawed interpretation of key clauses within
3 the Constitution and our nation's legal and cultural precedents; and

4 WHEREAS, since court rulings are not laws and only legislatures elected
5 by the people may pass laws, *Obergefell* is an illegitimate overreach.

6 NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Ses-
7 sion of the Sixty-eighth Idaho Legislature, the House of Representatives
8 and the Senate concurring therein, that the Idaho Legislature rejects the
9 *Obergefell* decision.

10 BE IT FURTHER RESOLVED that the Idaho Legislature calls upon the Supreme
11 Court of the United States to reverse *Obergefell* and restore the natural def-
12 inition of marriage, a union of one man and one woman.

13 BE IT FURTHER RESOLVED that the Idaho Legislature insists on restoring
14 the issue of marriage and enforcement of all laws pertaining to marriage back
15 to the several states and the people.

16 BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representa-
17 tives be, and she is hereby authorized and directed to forward a copy of this
18 Memorial to the Supreme Court of the United States.