

IN THE HOUSE OF REPRESENTATIVES

HOUSE JOINT MEMORIAL NO. 17

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 Second 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 2,000 years; and

WHEREAS, *Obergefell* arbitrarily and unjustly rejected this definition of marriage, and in effect Section 28, Article III of our Idaho state con-

1 stitution's definition, in favor of a novel, flawed interpretation of key
2 clauses within the Constitution and our nation's legal and cultural precedents;
3 and

4 WHEREAS, 63% of the people of the State of Idaho and 75% of their legis-
5 lators voted to define marriage between one man and one woman in the Consti-
6 tution of the State of Idaho through the referendum of Amendment 2 in 2006;
7 and

8 WHEREAS, the *Obergefell* decision may have been illegitimately adjudi-
9 cated because two justices in the majority ruling, Justices Ruth Bader Gins-
10 burg and Elena Kagan, had previously officiated same-sex weddings, and thus
11 were not impartial triers of act and should have recused themselves accord-
12 ing to 28 U.S.C. 455; and

13 WHEREAS, since court rulings are not laws and only legislatures elected
14 by the people may pass laws, *Obergefell* is an illegitimate overreach; and

15 WHEREAS, residents of the State of Idaho, including our brave service-
16 men in the Idaho National Guard, have been unjustly persecuted for their be-
17 lief in the natural definition of marriage, a lifelong union of one man and
18 one woman; and

19 WHEREAS, Kentucky county clerk Kim Davis was persecuted for her faith
20 in refusing to issue marriage licenses, and the Supreme Court declined to
21 uphold and defend her First Amendment rights on account of the passage of
22 *Obergefell v. Hodges*.

23 NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular
24 Session of the Sixty-eighth Idaho Legislature, the House of Representatives
25 and the Senate concurring therein, that the Idaho Legislature rejects the
26 *Obergefell* decision.

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

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

33 BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representa-
34 tives is hereby authorized and directed to forward a copy of this Memorial to
35 the Supreme Court of the United States.