STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE
RESOLUTION 1032 By: Brumbaugh

AS INTRODUCED

A Resolution relating to marriage; expressing disapproval of the United States Supreme Court decision in *Obergefell v. Hodges*; stating policy of state to defend natural marriage as recognized by the people of Oklahoma; declaring marriage between one man and one woman to remain law regardless of any court decision; finding any court decision purporting to strike down natural marriage as unauthoritative and void; directing Governor to resist unlawful court encroachments; requiring Attorney General to defend any state official in natural marriage lawsuits; prohibiting state agency or officer from giving force or effect to specified court orders; proscribing levy of property or arrest of any person refusing to comply with an unlawful court order; directing law enforcement to actively prevent arrest or imprisonment of any person refusing to comply with an unlawful court order; establishing a fund to pay fines of state officials acting in their official capacity to defend natural marriage.

WHEREAS, in *Obergefell v. Hodges*, 567 U.S, _____, 135 S.Ct. 2584 (2015) five justices of the United States Supreme Court issued a lawless opinion with no basis in American law or history, purporting to overturn natural marriage and find a "right" to same-sex

"marriage" in the United States Constitution and the Fourteenth Amendment;

WHEREAS, in Chief Justice John Roberts' dissenting opinion, he writes the *Obergefell* opinion is "an act of will, not legal judgment", and the "right it announces has no basis in the Constitution or this Court's precedent";

WHEREAS, in Justice Antonin Scalia's dissenting opinion, he writes the *Obergefell* opinion is "the furthest extension in fact — and the furthest extension one can even imagine — " of the U.S. Supreme "Court's claimed power to create 'liberties' that the Constitution and its amendments neglect to mention";

WHEREAS, Justice Scalia writes the *Obergefell* opinion is "an opinion lacking even a thin veneer of law";

WHEREAS, Justice Scalia writes the *Obergefell* opinion "is a naked judicial claim to legislative — indeed, super-legislative — power; a claim fundamentally at odds with our system of government";

WHEREAS, the decision in *Obergefell* purporting to overturn natural marriage flies in the face of the created order and the law of nature, just as if the court were to attempt to strike down the law of gravity or other natural laws;

WHEREAS, the people of the State of Oklahoma have recognized natural marriage as the only valid marital union recognized by the State of Oklahoma;

WHEREAS, natural marriage has been recognized and regulated by the states since the founding of America, and natural marriage was previously recognized and regulated by the English Common Law since time immemorial;

WHEREAS, the English Common Law was the source of the early American Common Law;

WHEREAS, the English jurist Sir William Blackstone, in his Commentaries on the Laws of England, described the natural law as the "law of nature, being coeval with mankind and dictated by God himself, is of course superior in any obligation to any other. It is binding over all the globe in all countries, and at all times; no human laws are of any validity, if contrary to this";

WHEREAS, Dr. Martin Luther King, Jr., in his famous "Letter from a Birmingham Jail" stated, "How does one determine whether a law is just or unjust? A just law is a manmade code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law";

WHEREAS, in contrast to the opinion of these five justices, the founders of America recognized that the rights of mankind find their source in the created order;

WHEREAS, the Declaration of Independence explicitly recognizes that the Creator has endowed mankind with inalienable rights to life, liberty and the pursuit of happiness, under the rule of law, consistent with the created order;

WHEREAS, natural marriage consistent with the created order and the law of nature and nature's God has always consisted of one man and one woman;

WHEREAS, according to John Locke, the "first society was between man and wife, which gave beginning to that between parents and children", and it is to the institution of marriage the true origin of society must be traced;

WHEREAS, the U.S. Constitution is silent on the issue of natural marriage, with the exception of the Ninth and Tenth Amendments which reserve all powers not explicitly delegated to the federal government to the People and States, respectively;

WHEREAS, Justice Scalia writes when "the Fourteenth Amendment was ratified in 1868, every state limited marriage to one man and one woman, and no one doubted the constitutionality of doing so";

WHEREAS, Justice Scalia writes the *Obergefell* opinion is based on the premise that "every state violated the Constitution for all of the 135 years between the Fourteenth Amendment's ratification and Massachusetts' permitting of same-sex marriages in 2003", which is absurd;

WHEREAS, Justice Scalia writes these five justices claim to have "discovered in the Fourteenth Amendment a 'fundamental right' overlooked by every person alive at the time of ratification, and almost everyone else in the time since";

WHEREAS, in Justice Clarence Thomas' dissenting opinion, he writes our rights come from the Creator, not the state, and our "Constitution — like the Declaration of Independence before it — was predicated on a simple truth: One's liberty, not to mention one's dignity, was something to be shielded from — not provided by — the state", and the *Obergefell* decision casts these truths aside;

WHEREAS, numerous officials in this state and others have articulated the historic position of the State of Oklahoma regarding marriage, including its constitutional and natural law grounds;

WHEREAS, the Governor of Oklahoma has sworn an oath to uphold the Constitution of Oklahoma and the Constitution of the United States;

WHEREAS, we, as duly-elected legislators of the State of Oklahoma, have sworn an oath to uphold the Constitution of Oklahoma and the Constitution of the United States;

WHEREAS, the fulfillment of this oath, in the American tradition, may not be read to contradict justice, reason and natural law;

WHEREAS, not all orders claiming authority under color of law are in fact lawful;

WHEREAS, unlawful orders, no matter their source - whether from a military commander, a federal judge, or the U.S. Supreme Court - are and remain unlawful, and should be resisted;

WHEREAS, the American tradition is one of resistance to unlawful orders, and our system of federalism envisions a political stance of resistance by states and their government officials against lawless federal court orders;

WHEREAS, in Justice Samuel Alito's dissenting opinion, he writes the *Obergefell* opinion "usurps the constitutional right of the people to decide whether to keep or alter the traditional understanding of marriage";

WHEREAS, Thomas Jefferson and James Madison were authors of the 1798 Virginia and Kentucky Resolutions, which were acts rejecting lawless federal government actions;

WHEREAS, when the federal government usurps powers not delegated to it by the people, the Virginia Resolution of December 24, 1798, maintained that the states which are parties to the Constitution "have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them";

WHEREAS, the Kentucky Resolution of November 10, 1798, stated in part that when the "general government" - the federal government - "assumes undelegated powers, its acts are unauthoritative, void, and of no force";

WHEREAS, the federal Fugitive Slave Act of 1850 required that all escaped slaves were, upon capture, to be returned to their

masters in slave states and that government officials and citizens of free states must assist in so doing;

WHEREAS, in 1854, the Wisconsin Supreme Court became the only state high court to unanimously declare the Fugitive Slave Act unconstitutional, in the *In Re: Booth* series of cases;

WHEREAS, the Wisconsin Supreme Court rejected the Fugitive Slave Act as unconstitutional under the U.S. Constitution and repugnant as a violation of natural law; following which, the U.S. Supreme Court purported to overrule the Wisconsin Supreme Court in the 1859 decision of *Ableman v. Booth* finding it "constitutional";

WHEREAS, in response to the outrageous and unconstitutional decision of the U.S. Supreme Court, the Wisconsin Legislature passed a series of resolutions denouncing the actions of the U.S. Supreme Court as "an arbitrary act of power ... without authority, void and of no force," and urging "positive defiance" by the states as the "rightful remedy", and Wisconsin officials refused to obey the U.S. Supreme Court;

WHEREAS, after the U.S. Supreme Court issued its opinion, the Wisconsin Supreme Court refused to file the U.S. Supreme Court's mandate upholding the fugitive slave law; and after more than 155 years that mandate has never been filed;

WHEREAS, other government officials in free states actively nullified the misguided commands of Congress in the Fugitive Slave Act, the U.S. Supreme Court's approval of the Act, as well as the

U.S. Supreme Court decision *Dred Scott v. Sandford* of 1857, as they were a violation of the rule of law and of natural law;

WHEREAS, in addition to Wisconsin, the legislatures of Maine, Massachusetts, Connecticut, Rhode Island and Michigan actively nullified the Fugitive Slave Act and repugnant decisions of the U.S. Supreme Court by passing "personal liberty" laws, making it nearly impossible to enforce the Fugitive Slave Act in those states;

WHEREAS, no matter which branch of the federal government - executive, legislative or judicial - is the source of lawless orders usurping the prerogatives of the people, the founders and others have left a clear course of action for resisting violations of the rule of law and natural law;

WHEREAS, federal judges across the nation have usurped powers undelegated to them and have violated reason, the rule of law and natural law by purporting to strike down state laws and acts of the people recognizing and protecting natural marriage;

WHEREAS, the U.S. Supreme Court does not have unlimited power but is a court of limited jurisdiction pursuant to Article III of the U.S. Constitution, whose interpretive exercise of that jurisdiction may not be read to encroach upon the power to amend the Constitution, which is solely the prerogative of Congress and the states, under Article V of the U.S. Constitution;

WHEREAS, the U.S. Supreme Court is not the sole and final arbiter of the powers of the states under the Ninth and Tenth Amendments, when it acts in an area outside of its jurisdiction;

WHEREAS, Justice Scalia writes the judiciary was created by the founders to have "neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm" and the states, "even for the efficacy of its judgments", and it is high time that the court be so reminded; and

WHEREAS, the U.S. Supreme Court is not infallible and has issued lawless decisions which are repulsive to the Constitution and natural law, including *Scott v. Sandford*, *Buck v. Bell*, *Korematsu v. United States*, *Roe v. Wade* and most recently, *Obergefell v. Hodges*.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE 2ND SESSION OF THE 55TH OKLAHOMA LEGISLATURE:

THAT it is the policy of the State of Oklahoma to defend natural marriage as recognized by the people of Oklahoma, in the Constitution and laws of the State of Oklahoma, consistent with natural law and the written United States Constitution.

THAT natural marriage between one man and one woman as recognized by the people of Oklahoma remains the law, regardless of any court decision to the contrary. Any court decision purporting to strike down natural marriage, including *Obergefell v. Hodges*, is unauthoritative, void and of no effect.

THAT the Governor, in faithful execution of the laws of this state, shall resist unlawful federal or state court encroachments upon the prerogative of the people of Oklahoma to protect natural marriage.

THAT the Attorney General shall defend any state government official from any lawsuit regarding natural marriage, simultaneously with the Governor's political resistance as outlined in this resolution.

THAT no state agency or officer shall give force or effect to any court order that has the effect of violating Oklahoma's laws protecting natural marriage.

THAT no Oklahoma state agency or officer shall levy upon the property or arrest the person of any government official or individual who does not comply with any unlawful court order regarding natural marriage within the state.

THAT law enforcement agencies in the state shall actively prevent the arrest or imprisonment of any individual who refuses to comply with any unlawful court order regarding natural marriage within the state.

THAT a fund is hereby established to pay any fines or levies that may be purportedly applied to the personal finances or property

of state government officials acting in their official capacity to defend natural marriage.

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