HOUSE BILL 1412
By Pody

SENATE BILL 1437

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 36, relative to the "Tennessee Natural Marriage Defense Act".

WHEREAS, The Constitution of Tennessee, Article XI, § 18, states the following: The historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state. Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one man and one woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee. If another state or foreign jurisdiction issues a license for persons to marry and if such marriage is prohibited in this state by the provisions of this section, then the marriage shall be void and unenforceable in this state; and

WHEREAS, in *Obergefell v. Hodges*, No. 14-556, 2015 WL 2473451 (June 26, 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; and

WHEREAS, the *Obergefell* opinion is "an act of will, not legal judgment," and the "right it announces has no basis in the Constitution or th[e] Court's precedent;" *Id*. at *24 (Roberts, C.J., dissenting); and

WHEREAS, the *Obergefell* opinion is "the furthest extension in fact—and the furthest extension one can even imagine—"of the United States Supreme Court's "claimed power to create 'liberties' that the Constitution and its Amendments neglect to mention;" *Id*. at *42 (Scalia, J., dissenting); and

WHEREAS, the *Obergefell* opinion is “an opinion lacking even a thin veneer of law,” *Id*. at *43 (Scalia, J., dissenting); and

WHEREAS, the *Obergefell* opinion “is a naked judicial claim to legislative—indeed, *super*-legislative—power; a claim fundamentally at odds with our system of government;” *Id.* at *43 (Scalia, J., dissenting); and

WHEREAS, a mere two years prior to *Obergefell v. Hodges*, the Supreme Court stated that “regulation of domestic relations” is “an area that has long been regarded as a virtually exclusive province of the States,” *United States v. Windsor*, 133 S. Ct. 2675, 2680 (2013); and

WHEREAS, the Supreme Court in *Windsor* stated “the states, at the time of the adoption of the Constitution, possessed full power over the subject of marriage and divorce ... [and] the Constitution delegated no authority to the Government of the United States on the subject of marriage and divorce;” and that “The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States;” *Windsor* at 2691, internal citations omitted; and

WHEREAS, Elena Kagan and Ruth Bader Ginsburg, two justices essential to the bare five justice majority in *Obergefell*, failed to recuse themselves from consideration of the case, after demonstrating personal bias in its outcome, by officiating at and advocating for same-sex “marriage” ceremonies, during the pendency of proceedings on the issue, in violation of 28 U.S.C. § 455 (“Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”); and

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

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

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; and

WHEREAS, the English common law was the source of the early American common law; and

WHEREAS, the English jurist Sir William Blackstone, in his *Commentaries upon the English Common Law*, 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"; and

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 man-made 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"; and

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

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; and

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; and

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; *Obergefell* at *25 (Roberts, C.J., dissenting); and

WHEREAS, the United States 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; and

WHEREAS, 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;" *Obergefell* at *43 (Scalia, J., dissenting); and

WHEREAS, 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; *Id*. at *43 (Scalia, J., dissenting); and

WHEREAS, a bare majority of five judges 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," *Id.* at *44 (Scalia, J., dissenting); and

WHEREAS, 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; *Id.* at *54 (Thomas, J., dissenting); and

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

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

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

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

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

WHEREAS, unlawful orders, no matter their source – whether from a military commander, a federal judge, or the United States Supreme Court – are and remain unlawful, and should be resisted; and

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; and

WHEREAS, the *Obergefell* opinion "usurps the constitutional right of the people to decide whether to keep or alter the traditional understanding of marriage;" *Id.* at *57 (Alito, J., dissenting); and

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

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"; and

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"; and

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; and

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*, 3 Wis. 1 (1854), series of cases; and

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

WHEREAS, in response to the outrageous and unconstitutional decision of the United States Supreme Court, the Wisconsin Legislature passed a series of resolutions denouncing the actions of the United States 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 United States Supreme Court; and

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

WHEREAS, other government officials in free states actively nullified the misguided commands of Congress in the Fugitive Slave Act; the United States Supreme Court's approval of the Act; as well as the United States Supreme Court decision *Dred Scott v. Sandford* of 1857, as they were a violation the rule of law and of natural law; and

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 United States Supreme Court, by passing "personal liberty" laws, making it nearly impossible to enforce the Fugitive Slave Act in those states; and

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; and

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; and

WHEREAS, the United States Supreme Court does not have unlimited power, but is a court of limited jurisdiction pursuant to Article III of the United States 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 United States Constitution; and

WHEREAS, the United States 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; and

WHEREAS, 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 United States 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 ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 3, Part 1, is amended by adding the following as a new, appropriately designated section:

(a) This act shall be known and may be cited as the "Tennessee Natural Marriage Defense Act".

(b) It is the policy of the State of Tennessee to defend natural marriage as recognized by the people of Tennessee, in the Constitution and laws of the State of Tennessee, consistent with natural law, and the written United States Constitution.

(c) Natural marriage between one (1) man and one (1) woman as recognized by the people of Tennessee remains the law in Tennessee, regardless of any court decision to the contrary. Any court decision purporting to strike down natural marriage, including *Obergefell v. Hodges*, 576 U.S. ___ (2015), is unauthoritative, void, and of no effect.

(d) The attorney general and reporter shall defend any state or local government official from any lawsuit regarding the official's recognition of natural marriage as defined by this section.

(e) No state or local agency or official shall give force or effect to any court order that has the effect of violating Tennessee's laws protecting natural marriage.

(f) No state or local agency or official 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 Tennessee.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act shall be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.