

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 HOUSE
4 RESOLUTION 1039

By: Brumbaugh

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7 AS INTRODUCED

8 A Resolution relating to marriage; expressing support
9 for natural marriage; stating policy of state to
10 defend natural marriage as recognized by the people
11 of Oklahoma; declaring marriage between one man and
12 one woman to remain law regardless of any court
13 decision; finding any court decision purporting to
14 strike down natural marriage as unauthoritative and
15 void; directing Governor to resist unlawful court
16 encroachments; requiring Attorney General to defend
17 any state official in natural marriage lawsuits;
18 prohibiting state agency or officer from giving force
19 or effect to specified court orders; proscribing levy
20 of property or arrest of any person refusing to
21 comply with an unlawful court order; directing law
22 enforcement to actively prevent arrest or
23 imprisonment of any person refusing to comply with an
24 unlawful court order; establishing a fund to pay
fines of state officials acting in their official
capacity to defend natural marriage.

20 WHEREAS, in *Obergefell v. Hodges*, 576 U.S, _____, 135 S.Ct. 2584
21 (2015) five justices of the United States Supreme Court issued a
22 lawless opinion with no basis in American law or history, purporting
23 to overturn natural marriage and find a "right" to same-sex
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1 "marriage" in the United States Constitution and the Fourteenth
2 Amendment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 WHEREAS, Thomas Jefferson and James Madison were authors of the
10 1798 Virginia and Kentucky Resolutions, which were acts rejecting
11 lawless federal government actions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 THAT a fund is hereby established to pay any fines or levies
21 that may be purportedly applied to the personal finances or property
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1 of state government officials acting in their official capacity to
2 defend natural marriage.

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