

By: Senator(s) Chism

To: Rules

SENATE CONCURRENT RESOLUTION NO. 542

1 A CONCURRENT RESOLUTION CALLING UPON THE SUPREME COURT OF THE
2 UNITED STATES TO OVERTURN THE *OBERGEFELL V. HODGES* DECISION, AND
3 TO RESTORE THE RIGHTS OF THE STATE TO PRESCRIBE THE CONDITIONS FOR
4 MARRIAGE AND THE DISSOLUTION OF MARRIAGE.

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

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

12 WHEREAS, *Obergefell* invokes a definition of "liberty" that
13 the Framers would not have recognized, rejecting the idea
14 memorialized in the Declaration of Independence that human dignity
15 is innate; and

16 WHEREAS, when the Framers proclaimed in the Declaration of
17 Independence that "all men are created equal" and "endowed by
18 their Creator with certain unalienable Rights," they referred to a



19 vision of mankind in which all humans are created in the image of
20 God and are, therefore, of inherent worth; and

21 WHEREAS, *Obergefell* undermines this vision by declaring that
22 citizens must seek their identity and self-worth from the
23 government and positive law pronouncements; and

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

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

34 WHEREAS, the Supreme Court recognized in *United States v.*
35 *Windsor*, 57031 U.S. 744 (2013), that the definition of marriage is
36 "an area that has long been regarded as a virtually exclusive
37 province of the states," meaning that the State of Mississippi,
38 and not the Supreme Court, has the right to regulate marriage for
39 its citizens; and

40 WHEREAS, *Obergefell* requires states to issue marriage
41 licenses to same-sex couples and to recognize same-sex marriages
42 in complete contravention of their own state constitutions and the



will of their voters, thus undermining the civil liberties and democratic institutions 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 within common law, the basis of the United States' Anglo-American legal tradition, for more than 800 years; and

WHEREAS, the voters of the State of Mississippi defined marriage as the exclusive union of one man and one woman in a 2004 statewide initiative that passed with the support of 86% of voters; and

WHEREAS, *Obergefell* arbitrarily and unjustly rejected this Biblical, ancient and common law definition of marriage in favor of a novel, flawed and inaccurate interpretation of the Constitution; and

WHEREAS, the *Obergefell* decision was illegitimate because two of the justices in the majority ruling, Justices Ruth Bader Ginsburg and Elena Kagan, had previously officiated same-sex weddings, and thus were not impartial triers of fact, and therefore should have recused themselves according to 28 U.S. Code § 455; and

WHEREAS, since court rulings are not laws and only Legislatures elected by the people may pass laws, *Obergefell* is an illegitimate overreach:



66 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF
67 MISSISSIPPI, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN, That
68 the Legislature rejects the *Obergefell* decision.

69 BE IT FURTHER RESOLVED, That the Senate, the House of
70 Representatives concurring therein, calls upon the Supreme Court
71 of the United States to reverse the *Obergefell* decision, to
72 restore the natural and common law definition of marriage, a union
73 of one man and one woman.

74 BE IT FURTHER RESOLVED, That the Senate, the House of
75 Representatives concurring therein, insists on restoring the issue
76 of marriage and enforcement of all laws pertaining to marriage to
77 the several states and to the people.

78 BE IT FURTHER RESOLVED, That the Secretary of the Senate is
79 hereby authorized and directed to forward a certified copy of this
80 resolution to the Supreme Court of the United States.

81 BE IT FURTHER RESOLVED, That this resolution be furnished to
82 the Capitol Press Corps.

