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Summary: South Carolina Natural Marriage Defense Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/3/2015	House	Prefiled
12/3/2015	House	Referred to Committee on **Judiciary**
1/12/2016	House	Introduced and read first time (House Journal-page 88)
1/12/2016	House	Referred to Committee on **Judiciary** (House Journal-page 88)
1/28/2016	House	Member(s) request name added as sponsor: G.R.Smith
3/2/2016	House	Member(s) request name added as sponsor: D.C.Moss

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VERSIONS OF THIS BILL

12/3/2015

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “SOUTH CAROLINA NATURAL MARRIAGE DEFENSE ACT” BY ADDING SECTION 20-1-17 SO AS TO DEFEND NATURAL MARRIAGE AS BETWEEN ONE MAN AND ONE WOMAN, TO INVALIDATE COURT DECISIONS TO THE CONTRARY, TO REQUIRE THE SOUTH CAROLINA ATTORNEY GENERAL TO DEFEND STATE OFFICIALS IN LAWSUITS RELATED TO THE STATE’S DEFINITION OF MARRIAGE, TO PROHIBIT ENFORCEMENT OF COURT DECISIONS CONTRARY TO SOUTH CAROLINA’S LAWS, AND TO PROTECT GOVERNMENT OFFICIALS FROM ARREST OR OTHER PENALTIES FOR NONCOMPLIANCE WITH UNLAWFUL COURT ORDERS.

Whereas, Section 15, Article XVII of the Constitution of South Carolina, 1895, states the following: “A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State. This State and its political subdivisions shall not create a legal status, right, or claim respecting any other domestic union, however denominated. This State and its political subdivisions shall not recognize or give effect to a legal status, right, or claim created by another jurisdiction respecting any other domestic union, however denominated. Nothing in this section shall impair any right or benefit extended by the State or its political subdivisions other than a right or benefit arising from a domestic union that is not valid or recognized in this State. This section shall not prohibit or limit parties, other than the State or its political subdivisions, from entering into contracts or other legal instruments”; and

Whereas, in Obergefell v. Hodges, 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; 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 [the] Court’s precedent” (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 Court’s claimed power to create ‘liberties’ that the Constitution and its Amendments neglect to mention” (Scalia, J., dissenting); and

Whereas, the Obergefell opinion is “an opinion lacking even a thin veneer of law” (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” (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. Section 5 (“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 South Carolina have recognized natural marriage as the only valid marital union recognized by the State of South Carolina; 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 follows: 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, in contrast to the opinions 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, as stated in the Obergefell decision, it is "to the institution of marriage the true origin of society must be traced" (Thomas, 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, as stated in Obergefell, 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" (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 (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" (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 (Thomas, J., dissenting); and

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

Whereas, the Governor of South Carolina has sworn an oath to uphold the Constitution of South Carolina and the United States Constitution; and

Whereas, we, as duly elected legislators of the State of South Carolina, have sworn an oath to uphold the Constitution of South Carolina 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" (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, 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

1 and others have left a clear course of action for resisting violations
2 of the rule of law and natural law; and
3
4 Whereas, federal judges across the nation have usurped powers
5 undelegated to them, and have violated reason, the rule of law, and
6 natural law by purporting to strike down state laws and acts of the
7 people recognizing and protecting natural marriage; and
8
9 Whereas, the United States Supreme Court does not have unlimited
10 power, but is a court of limited jurisdiction pursuant to Article Ill of
11 the United States Constitution, whose interpretive exercise of that
12 jurisdiction may not be read to encroach upon the power to amend
13 the Constitution, which is solely the prerogative of Congress and the
14 states, under Article V of the United States Constitution; and
15
16 Whereas, the United States Supreme Court is not the sole and final
17 arbiter of the powers of the states under the ninth and tenth
18 amendments when it acts in an area outside of its jurisdiction; and
19
20 Whereas, the judiciary was created by the founders to have "neither
21 Force nor Will, but merely judgment; and must ultimately depend
22 upon the aid of the executive arm" and the states, "even for the
23 efficacy of its judgments", and it is high time that the Court be so
24 reminded; and
25
26 Whereas, the United States Supreme Court is not infallible and has
27 issued lawless decisions which are repulsive to the Constitution and
28 natural law, including Buck v. Bell, Korematsu v. United States,
29 Roe v. Wade, and, most recently, Obergefell v. Hodges. Now,
30 therefore,
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32 Be it enacted by the General Assembly of the State of South
33 Carolina:
34
35 SECTION 1. This act may be cited as the "South Carolina Natural
36 Marriage Defense Act".
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38 SECTION 2. Article 1, Chapter 1, Title 20 of the 1976 Code is
39 amended by adding:
40
41 "Section 20-1-17. (A) It is the policy of the State of South
42 Carolina to defend natural marriage as recognized by the people of

1 this State in the Constitution and laws of the State of South Carolina,
2 consistent with natural law and the United States Constitution.
3 (B) Natural marriage between one man and one woman as
4 recognized by the people of this State remains the law in South
5 Carolina, regardless of any court decision to the contrary. A court
6 decision purporting to strike down natural marriage, including
7 Obergefell v. Hodges, 135 S.Ct. 2584 (2015), is unauthoritative,
8 void, and of no effect.
9 (C) The South Carolina Attorney General shall defend any state
10 or local government official from any lawsuit regarding the
11 official's recognition of natural marriage as defined by this section.
12 (D) No state or local agency or official shall give force or effect
13 to any court order that has the effect of violating South Carolina's
14 laws protecting natural marriage.
15 (E) No state or local agency or official shall levy upon the
16 property or arrest the person of any government official or
17 individual who does not comply with any unlawful court order
18 regarding natural marriage within South Carolina."
19
20 SECTION 3. If any section, subsection, paragraph, subparagraph,
21 sentence, clause, phrase, or word of this act is for any reason held to
22 be unconstitutional or invalid, such holding shall not affect the
23 constitutionality or validity of the remaining portions of this act, the
24 General Assembly hereby declaring that it would have passed this
25 act, and each and every section, subsection, paragraph,
26 subparagraph, sentence, clause, phrase, and word thereof,
27 irrespective of the fact that any one or more other sections,
28 subsections, paragraphs, subparagraphs, sentences, clauses, phrases,
29 or words hereof may be declared to be unconstitutional, invalid, or
30 otherwise ineffective.
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32 SECTION 4. This act takes effect upon approval by the Governor.
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