

Rep. Hooker offered the following concurrent resolution:

**House Concurrent Resolution No. 17.**

A concurrent resolution to express the sense of the Michigan Legislature that the United States Supreme Court's decision in *Obergefell v. Hodges* is illegitimate and to urge the Governor and all executive officers in the state of Michigan to uphold their oaths of office and not recognize or enforce the decision.

Whereas, The Declaration of Independence declares, "Governments are instituted among Men, deriving their just powers from the consent of the governed..."; and

Whereas, The people of the United States established the United States Constitution as the rule of law for the nation, expressly granting limited powers to the legislative, executive, and judicial branches of the United States government; and

Whereas, On June 26, 2015, the United States Supreme Court ruled in *Obergefell v. Hodges* that, under the Fourteenth Amendment to the United States Constitution, same-sex couples may exercise the "fundamental right" to marry in all states and state laws are invalid to the extent they exclude same-sex couples from marriage on the same terms as accorded to couples of the opposite sex; and

Whereas, The Supreme Court's decision purportedly amends the constitutional law of the nation by adding a new liberty: the fundamental right of "personal identity." Article V of the United States Constitution expressly provides specific politically accountable processes as the only means for amending the Constitution, including adding new liberties or fundamental rights. Neither Article III, nor any other delegated power in the United States Constitution, authorizes the federal judiciary, including politically unaccountable Supreme Court justices, to amend the Constitution; and

Whereas, The Supreme Court's decision is an act of will, not judgment. The American people only delegated to the federal judiciary very limited power to decide certain disputes. As stated in Federalist No. 78, the Constitution authorizes courts to exercise "neither force nor will but merely judgment." The right announced in the majority decision has no basis in the Constitution or the Supreme Court's precedent; and

Whereas, The Supreme Court's decision neglects the restrained conception of the judicial role, seizing for itself a question the Constitution leaves to the people, at a time when the people are engaged in a vibrant debate on that question. The decision is a naked judicial claim to legislative—indeed, super-legislative—power; a claim fundamentally at odds with our system of government. The Supreme Court is not a legislature. Courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws; and

Whereas, The Supreme Court's decision usurps the constitutional right of the people to decide whether to keep or alter the traditional understanding of marriage. The United States Constitution itself says nothing about marriage, and the Framers thereby entrusted the states with the whole subject of the domestic relations of husband and wife. The Tenth Amendment to the United States Constitution states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; and

Whereas, The Supreme Court's decision, imposed by five justices politically accountable to no one, forces the states of the United States of America to surrender their sovereignty to the federal judiciary, thereby holding that the ruler of 320 million Americans coast-to-coast is a majority of the nine lawyers on the United States Supreme Court. If a bare majority of justices can invent a new right and impose that right on the rest of the country, the only real limit on what

future majorities will be able to do is their own sense of what those with political power and cultural influence are willing to tolerate; and

Whereas, The majority's approach has no basis in principle or tradition, except for the unprincipled tradition of judicial policymaking that characterized discredited decisions such as *Lochner v. New York*; and

Whereas, The majority's inversion of the original meaning of liberty will likely cause collateral damage to other aspects of our constitutional order that protect liberty; and

Whereas, It is the duty of elected officials to uphold the Constitution, even in the face of extra-constitutional United States Supreme Court decisions. Under Article XI, Section 1 of the state constitution, all Michigan legislative, executive, and judicial officers, solemnly swear (or affirm) to support the state constitution and the Constitution of the United States; now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Michigan Legislature that the United States Supreme Court's decision in *Obergefell v. Hodges* is illegitimate because the five justice majority, in reaching its decision, acted without constitutional authority and unconstitutionally usurped power expressly reserved by the United States Constitution to the states and the people; and be it further

Resolved, That under these circumstances, it is the duty of the politically accountable branches of the federal and state governments to preserve and protect constitutional governance under the rule of law; and be it further

Resolved, That we urge the Governor and all executive officers in the state of Michigan to uphold their oaths of office and re-claim this state's sovereignty by not recognizing or enforcing the United States Supreme Court's *Obergefell* decision as a rule of law; and be it further

Resolved, That copies of this resolution be transmitted to the Governor of Michigan, the Michigan Attorney General, the Michigan Secretary of State, the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.