

## HOUSE RESOLUTION NO. 329

Reps. Pohutsky, Brabec, Clemente, Hope, Brixie, Glanville, Rogers, LaGrand, Weiss and Sneller offered the following resolution:

1       A resolution to affirm that *Obergefell v. Hodges* was rightly  
2 decided.

3       Whereas, In 2015, the United States Supreme Court recognized  
4 in *Obergefell v. Hodges* that the fundamental right to marry extends  
5 to same-sex couples, under the Due Process and Equal Protection  
6 Clauses of the Fourteenth Amendment to the United States  
7 Constitution. It is one of several essential cases under the  
8 substantive due process doctrine, protecting rights that are deeply  
9 rooted in our nation's history and tradition and are implicit in  
10 the concept of ordered liberty. The implicit constitutional right  
11 to marry, long protected under the Constitution, should continue to  
12 extend to same-sex couples; and

1           Whereas, *Obergefell* correctly decided that the reasons why  
2 marriage is a fundamental right apply equally to same-sex and  
3 opposite-sex couples. Decisions about marriage are an expression of  
4 individual autonomy; they are "among the most intimate that an  
5 individual can make" and "shape an individual's destiny." Marriage  
6 is "a two-person union unlike any other in its importance to the  
7 committed individuals." It "safeguards children and families,"  
8 providing both material and emotional benefits such as permanency  
9 and stability. And marriage is "a keystone of our social order,"  
10 recognized since the earliest days of our republic and historically  
11 as the basis for many governmental rights, benefits, and  
12 responsibilities. None of these truths apply with less force to  
13 same-sex couples than to opposite-sex couples, and thus same-sex  
14 couples should be included among those who enjoy the fundamental  
15 right to marriage; and

16           Whereas, Since marriage is a fundamental right, it cannot  
17 baselessly be denied to certain classes of people, in violation of  
18 the Equal Protection Clause of the Fourteenth Amendment. *Obergefell*  
19 correctly concluded that bans on same-sex marriage "are in essence  
20 unequal: Same-sex couples are denied all the benefits afforded to  
21 opposite-sex couples and are barred from exercising a fundamental  
22 right." Such a ban serves only to stigmatize and perpetuate a  
23 history of discrimination, disrespect, and subordination. Same-sex  
24 couples cannot be denied the right to marry on the same terms and  
25 conditions as opposite-sex couples; and

26           Whereas, The 2022 decision *Dobbs v. Jackson Women's Health*  
27 *Organization* should not threaten *Obergefell* and the right to same-  
28 sex marriage. The majority should be true to its word that this  
29 decision "concerns the constitutional right to abortion and no

1 other right. Nothing in this opinion should be understood to cast  
2 doubt on precedents that do not concern abortion." Substantive due  
3 process doctrine has not been overturned, the right to marriage is  
4 still protected as an implied right under the Constitution, and the  
5 reasons why marriage is a fundamental right still apply equally to  
6 same-sex and opposite-sex couples. The history and importance of  
7 marriage are not changed by the *Dobbs* decision, and the right of  
8 same-sex couples to equally enjoy the ancient institution of  
9 marriage is not changed by this decision; and

10       Whereas, There are many Michigan families exercising their  
11 rights under *Obergefell*. The United States Census Bureau estimates  
12 that, as of 2019, there were approximately 12,557 married same-sex  
13 households in Michigan. Around 18.9 percent of these married same-  
14 sex couples have at least one minor child living with them, so  
15 same-sex couples provide homes to many of Michigan's children; and

16       Whereas, Without *Obergefell*, these Michigan couples and  
17 families would lose many important rights. Under Article I, Section  
18 25 of the *Constitution of the State of Michigan of 1963*, marriage  
19 is still defined as the union of one man and one woman. *Obergefell*  
20 overrides this provision of the state constitution to ensure same-  
21 sex couples in Michigan can choose to marry and receive important  
22 benefits related to taxation, Social Security benefits, and the  
23 right to make medical decisions, as well as intangible benefits in  
24 the form of dignity, respect, and equality; now, therefore, be it

25       Resolved by the House of Representatives, That we affirm that  
26 *Obergefell v. Hodges* was rightly decided.