No. 18-1297

IN THE
Supreme Court of the United States

NEW DOE CHILD #1, ET AL.;

Petitioners,

v.

THE UNITED STATES OF AMERICA, ET AL.;

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONERS: JUSTICE THOMAS'S RECENT APPEARANCE AT THE PEPPERDINE UNIVERSITY SCHOOL OF LAW; CONGRESS'S "SO HELP ME GOD" CONTROVERSY

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Pursuant to Supreme Court Rule 15.8, Petitioners respectfully submit this Supplemental Brief in support of their Petition for a Writ of Certiorari.

I. JUSTICE THOMAS'S RECENT COMMENTS DEMONSTRATE FLAWS IN THE EIGHTH CIRCUIT'S OPINION IN THIS CASE

On March 30, 2019, Justice Thomas appeared at the Pepperdine University School of Law as part of a videotaped discussion that included the school's incoming president and one of its graduates (who had recently clerked for Justice Thomas).[1] During the discussion, the conversation turned to how faith in God might come into play as judges do their work. Referring specifically to the taking of an oath and when "you say at the end of it 'so help me God,'"[2] Justice Thomas – as is likely the case for all individuals who strongly adhere to a given religious viewpoint – opined that his chosen religious viewpoint is beneficial. Being "faithful" to God, he said, "actually enhances your view of the oath."[3]

Of course, the "so help me God" language does not lead to any enhancement for Atheists such as Petitioners in this case. On the contrary, they believe that "so help me God" detracts from an oath because (to them) it introduces a false notion into what is supposed to be a solemn promise of truth. Moreover, that phrase serves to remind Petitioners that their religious viewpoint is disrespected by their government, despite that government's absolute duty to act otherwise.

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[1] Justice Thomas's appearance is available at https://www.c-span.org/video/?459257-1/justice-clarence-thomas-dispels-retirement-rumors-pepperdine-law-appearance [hereinafter "C-SPAN Video #1"].
[2] C-SPAN Video #1 at 19:45–19:51.
[3] *Id*. at 20:31–20:35.

Justice Thomas's feeling that, for him, having God in an oath enhances that oath's meaning is totally appropriate. No one doubts that religious acts and verbiage are fundamental and extremely important aspects of many individuals' lives (which, after all, is the reason why the first sixteen words of the First Amendment exist within our Bill of Rights). However, it must be recalled that "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise clauses protect." *Westside Community Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990). At the Pepperdine event, Justice Thomas was clearly purveying private speech endorsing religion, "which the Free Speech and Free Exercise clauses protect" for Supreme Court justices just as much as they do for any other individuals. Yet Atheists (such as Petitioners here) are supposed to be protected as well in their beliefs that an oath is degraded when it includes an ancillary clause of homage to a religious entity that they consider to be a myth. As Justice Scalia (of whom Justice Thomas spoke with affection and admiration at the Pepperdine event) wrote, "The government may not … lend its power to one or the other side in controversies over religious authority or dogma." *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990). Clearly, in the controversy over God's existence (and importance), government is lending its power to the side that believes God exists (and that "He" is important) when it adds "so help me God" to its official oaths. Government does this also when it mandates the inscription of "In God We Trust" on every one of the nation's coins and currency bills.

Justice Thomas, as an individual, is free to add "so help me God" to the oaths that he takes if he finds that, for him, the phrase "enhances" those oaths. But, as is revealed by the *Mergens* and *Smith* quotations just provided, government does not have the same freedom. In fact, government is specifically forbidden by the First Amendment from making such one-sided religious additions to its official oaths. How, then, did the Eighth Circuit conclude that the government's espousal of "In God We Trust" is permissible? It did so by misconstruing *Town of Greece v. Galloway*, 572 U.S. 565 (2014), missing key distinguishing features between that case and the case at bar. Additionally, it turned *Galloway*'s foremost command – i.e., that "a practice that classified citizens based on their religious views would violate the Constitution," *id.*, 572 U.S. at 589 – on its head.

The two key features that distinguish *Galloway* from the instant case were both evident in Justice Thomas's words. The first has already been mentioned: that there is a "crucial difference" between individual and government speech. Justice Thomas never discussed "so help me God" in terms of governmental belief or espousal. His remarks on that phrase were all reflections of what "so help me God" means to him as an individual. He was thus similar to the clergy in *Galloway*, who were "free to compose their own devotions." *Id.*, 572 U.S. at 571. Those carrying money in their pockets have no such freedom. They are the couriers of "In God We Trust" – i.e., pure government speech that furthers a purely religious notion which they find offensive. *Cf. Wooley v. Maynard*, 430 U.S. 705, 717 (1977) ("[W]here the State's interest is to disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual's First Amendment right to avoid becoming the courier for such message.").

The second key distinguishing feature is that *Galloway* specifically noted that the town leaders "maintained that a minister or layperson of any persuasion, including an atheist, could give the invocation." *Galloway*, 572 U.S. at 571. Atheists are never afforded an opportunity to express their Atheistic views on the money. In fact, as Justice Thomas suggested regarding the official "so help me God" language, Atheists are excluded by governmental espousals of Monotheism:

> [I]f you're an atheist, what does an oath mean? If you are a Christian, and you believe in God, what does an oath mean? You know do you say at the end of it "so help me God?"[4]

As for *Galloway*'s warning that "classif[ying] citizens based on their religious views would violate the Constitution," 572 U.S. at 589, the Court of Appeals made the bizarre claim that "by requiring the inscription of 'In God We Trust' on U.S. coins and currency, the statutes do not create any express or implied classifications. Rather they apply equally to all individuals." App. 26. That makes as much sense as saying that laws mandating separate water fountains for blacks and whites "apply equally to all individuals."

> "You want water, black person? No problem. Just recognize that government classifies black and white races differently."
>
> "You want to use currency, Atheist? No problem. Just recognize that government classifies Atheism and Monotheism differently."

[4] C-SPAN Video #1 at 19:34–19:51.

It seems clear that when he rhetorically asked what an oath means to an Atheist, followed by his rhetorical question about what an oath means to a Christian who believes in God, and then he highlighted the "so help me God" language, Justice Thomas was recognizing that there are undeniable "express or implied classifications" based on whether or not the oath-taker believes in a divinity. "In God We Trust" – (i) with its attribution of Monotheistic belief to all Americans, (ii) which any individual desiring the freedom to use the nation's sole legal tender must physically bear for most of every day, and (iii) which is a message one proselytizes whenever cash is used – has even greater religious effects.

These effects are especially relevant to Petitioners' claims under RFRA, which demands "a broad protection of religious exercise, **to the maximum extent permitted** by the terms of this chapter and the Constitution," 42 U.S.C. 2000cc-3(b) (emphasis added). *See also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 696 (2014). Government is certainly "permitted" to not favor one religious view over another and to keep religion out of its oaths and off its money. Accordingly, Atheists should not be forced to violate their religious principles in order to enjoy the benefit of cash transactions. The Petition for a Writ of Certiorari in this case should thus be granted to see if the Eighth Circuit's contention that:

> [T]he statutes do not create any express or implied classifications. Rather they apply equally to all individuals.

App. 26, comports with reality, or if it is simply one more example of bigotry, myopia, and the denigration of Atheists that government continues to foster in American society.

Justice Thomas's Pepperdine appearance also, to some degree, countered the lesson of *Galloway* upon which the Eighth Circuit relied – i.e., "'that the Establishment Clause *must* be interpreted by reference to historical practices and understandings.'" *New Doe Child #1*, 901 F.3d at 1020 (citation omitted), *see* App. 7. The only "reference to historical practices" in all of the Justice's comments concerning the "so help me God" phrase was that "I thought we got away from religious tests."[5] Of course, Justice Thomas was not writing a judicial opinion at the Pepperdine event; he was just speaking about what the "so help me God" phrase in an oath means to him and how it affects him. But that is precisely the point. Beyond the briefs and judicial opinions that are carefully crafted to reach a desired legal result lie the realities of the issues in the lives of real people. And on March 30 of this year, Justice Thomas demonstrated the reality in his life (and undoubtedly in the lives of millions of others): That the use of "God" in our government has genuine and robust religious significance that, for many in the present Monotheistic majority, "enhances" their lives and their roles in American society. The problem is that for many in the Atheistic minority, it does the exact opposite. In other words, a governmental message such as "so help me God" in an official oath (or "In God We Trust" on the nation's money) "is impermissible because it sends the ancillary message to members of the audience who are nonadherants 'that they are outsiders, not full members of the political community, and an accompanying message to adherants that they are insiders, favored members of the political community.'" *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 309-10 (2000) (citation omitted).

[5] C-SPAN Video #1 at 17:40–17:43.

On occasion, courts (including this tribunal) have contrived excuses to justify such "outsider" and "insider" statuses, only to later recognize the decisions containing those excuses were "wrong the day they were decided." *See, e.g., Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) (declaring that *Korematsu v. United States*, 323 U.S. 214 (1944), was "gravely wrong the day it was decided"); *Planned Parenthood v. Casey*, 505 U.S. 833, 863 (1992) (declaring that *Plessy v. Ferguson*, 163 U.S. 537 (1896), was "wrong the day it was decided"). The case at bar, with the Eighth Circuit's claim that it is permissible for the federal government to engage in favoritism for Monotheism (by inscribing "In God We Trust" on every one of the nation's coins and currency bills) may well be but another example of litigation "wrong the day it was decided." Petitioners submit that until this tribunal directly addresses such favoritism, the nation's religion clause jurisprudence will remain uncertain and unclear.

Reliance upon historical practices that are manifestly inconsistent with the notion of equality – as, for instance, was the situation in *Loving v. Virginia*, 388 U.S. 1 (1967) – also merits review. According to *Loving*, historical practices and understandings are definitely **not** to serve as benchmarks when government persists in infringing upon the rights of disenfranchised minorities. Rather "the strength of those universal principles of equality and liberty provides the means for resolving contradictions between principle and practice." Clarence Thomas. *An Afro-American Perspective: Toward a "Plain Reading" of the Constitution -- The Declaration of Independence in Constitutional Interpretation*. 1987 How. L.J. 691, 702 (1987). In a nation comprised of Monotheists and Atheists (among others), it seems inane to suggest that repeated and pervasive governmental espousals of Monotheism serve those universal principles."

II. "ERRATA" WITHIN THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE ADDRESSED

The reference to the "historical practices" argument used by the Court of Appeals presents an opportunity to inform this tribunal of an error made by the undersigned during a last-minute edit as the Petition for a Writ of Certiorari was being sent to the printer. That edit affected the presentation of Petitioners' argument contrasting the Senate's concurrent resolution commemorating the 50th anniversary of the formal adoption of the "In God We Trust" motto (S. Con. Res. 96, 109th Cong. (2006), Addendum A, *infra*) with the House resolution passed the next year to commemorate the 40th anniversary of the *Loving v. Virginia* decision (H. R. 431, 110th Cong. (2007), Addendum B, *infra*). Because this contrast so clearly demonstrates the pride and rectitude of ending a practice "directly subversive of the principle of equality," *Loving*, 388 U.S. at 12, as opposed to the arrogance and hypocrisy of attempting to justify a direct subversion of the equality principle, Petitioners wish to ensure that the argument's power is not diminished due to an editing error.

In the Petition, S. Con. Res. 96 is first introduced in the initial paragraph of page 23. Originally, that introduction referred to the stated purpose of the concurrent resolution (which was "To commemorate, celebrate, and reaffirm the national motto of the United States on the 50th anniversary of its formal adoption." *See infra* at Add. A-002). That reference and the associated citation were inadvertently removed, resulting in (i) the absence of S. Con. Res. 96 from the Table of Authorities, (ii) errors in the "*id*." sequence in the footnotes, and (iii) readers likely being left a bit in the dark as the argument begins. This "errata" notice is meant to allow those readers to (i)understand the

Table of Authorities defect, (ii) recognize the footnote "*id.*" sequence error, and (iii) illuminate the fact that this Court's aspirations to have both racial and religious prejudice "subject[ed] to the most exacting scrutiny," *Smith*, 494 U.S. at 886 n.3, are, at present, nowhere close to being met as far as the inscriptions of "In God We Trust" on the money is concerned.

Another error noted since submission of the Petition for a Writ of Certiorari is on page 17, where it is mentioned that "godless" has been defined to mean "wicked; evil; sinful." That definition was provided without a citation. The citation is to the online dictionary, "Dictionary.com" at https://www.dictionary.com/browse/ godless?s=t.

III. "SO HELP ME GOD" IN OATHS IS NOW THE SUBJECT OF CONTROVERSY IN CONGRESS

On May 11, 2019, The New York Times ran a story about a hearing held on February 28, 2019, before the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties.[6] At the hearing, the chair (Rep. Steve Cohen of Tennessee) asked some witnesses to stand as he recited the following: "Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge,

[6] Catie Edmondson, '*So Help Me God' No More: Democrats Give House Traditions a Makeover*, N. Y. Times, May 11, 2019 at A25. The hearing is available at https://www.c-span.org/video/?458352-1/border-security-national-emergency-declaration [hereinafter "C-SPAN Video #2"].

information and belief?"[7] After the witnesses answered in the affirmative, the ranking minority member (Mike Johnson of Louisiana) made "a point of parliamentary inquiry," stating, "I think we left out the phrase, 'so help me God."[8] Rep. Cohen responded, "We did."[9]

Rep. Johnson then asked, "Can we have the witnesses do it again for the record?"[10] Rep. Cohen stated, "No, … I don't like to assert my will upon other people."[11] Rep. Johnson next inquired, "Could I ask the witnesses if they would – if they would choose to use the phrase?"[12] At that point, Rep. Nadler was recognized and stated, "If any witness objects, he should not be asked to identify himself. We should not have religious tests for office or for anything else, and we should let it go at that."[13]

The exchange reveals that there is a conflict among members of Congress as to whether governmental uses of Monotheism that may adversely impact individuals are constitutional By granting the petition for a writ of certiorari, this Court can assist Congress (as well as the lower courts) in answering that exceedingly important question.

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[7] C-SPAN Video #2 at 22:00–22:08.
[8] *Id*. at 22:11–22:18.
[9] *Id*. at 22:18–22:19.
[10] *Id*. at 22:19–22:23.
[11] *Id*. at 22:17–22:28.
[12] *Id*. at 22:35–22:40.
[13] *Id*. at 22:42–22:53.

CONCLUSION

Justice Thomas's recent comments about "so help me God" in oaths demonstrate that the phrase, to him, has a profound meaning that supports his religious views. His comments also suggest that he understands that the phrase is inconsistent with the religious views of Atheists such as Petitioners here. Whether government may act in a manner that has such differential effects on individuals of alternative religious persuasions – especially when (i) the intended effects have been to bolster (Christian) Monotheism from the outset,[14] and (ii) the chosen means of proselytization involves dispersal on every one of the tens of billions of coins and currency bills manufactured by the Treasury Department (while the chosen religious message also serves as the nation's sole official motto[15]) – raises important constitutional questions that should be settled by this Court. Granting the Petition for a Writ of Certiorari in this case will afford an excellent opportunity to answer those questions and, at long last, provide clarity to the lower courts in this matter of basic liberties.

Respectfully submitted,

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[14] *See* Petition for a Writ of Certiorari at 1 (quoting the Mint Director's official report stating, "Our national coinage … should declare our trust in God; in him who is 'King of kings and Lord of lords.").
[15] 36 U.S.C. §302: "'In God we trust' is the national motto."

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SUPPLEMENTAL BRIEF OF PETITIONER

ADDENDUM A
S. Con. Res. 96 (109th Cong. (2006))

109TH CONGRESS
2D SESSION

S. CON. RES. 96

CONCURRENT RESOLUTION

To commemorate, celebrate, and reaffirm the national motto of the United States on the 50th anniversary of its formal adoption.

109TH CONGRESS
2D SESSION

S. CON. RES. 96

CONCURRENT RESOLUTION

Whereas the phrase "In God We Trust" is the national motto of the United States;

Whereas from the colonial beginnings of the United States, citizens of the Nation have officially acknowledged their dependence on God;

Whereas in 1694, the phrase "God Preserve Our Carolina and the Lords Proprietors" was engraved on the Carolina cent and the phrase "God Preserve Our New England" was inscribed on coins that were minted in New England during that year;

Whereas while declaring the independence of the United States from Great Britain, the Founding Fathers of the Nation asserted: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.";

Whereas those signers of the Declaration of Independence further declared: "And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.";

Whereas in 1782, one of the great leaders of the United States, Thomas Jefferson, wrote: "[C]an the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath?";

Whereas the distinguished founding statesman, Benjamin Franklin, when speaking in 1787 at the Constitutional Convention, declared: "Our prayers, Sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a Superintending providence in our favor. To that kind providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? or do we imagine that we no longer need His assistance. I have lived, Sir, a long time and the longer I live, the more convincing proofs I see of this truth—that God governs in the affairs of men. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings that 'except the Lord build they labor in vain that build it.' I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better than the Builders of Babel. . . .";

Whereas the national hero and first President, George Washington, proclaimed in his first inaugural address in 1789: "[I]t would be peculiarly improper to omit in this first official act my fervent supplications to that Almighty Being who rules over the universe, who presides in the councils of nations, and whose providential aids can sup-

ply every human defect, that His benediction may consecrate to the liberties and the happiness of the people of the United States a government instituted by themselves for these essential purposes, and may enable every instrument employed in its administration to execute with success the functions allotted to his charge.";

Whereas one stanza of the "Star Spangled Banner", which was written by Francis Scott Key in 1814 and adopted as the national anthem of the United States in 1931, states: "O thus be it ever when free-men shall stand, Between their lov'd home and the war's desolation; Blest with vict'ry and peace, may the heav'n-rescued land Praise the Pow'r that hath made and preserv'd us as a nation! Then conquer we must, when our cause it is just, And this be our motto: 'In God is our trust!' And the star-spangled banner in triumph shall wave O'er the land of the free and the home of the brave!";

Whereas in 1861, the Secretary of the Treasury, Salmon P. Chase, while instructing James Pollock, Director of the Mint at Philadelphia, to prepare a motto, stated: "No nation can be strong except in the strength of God, or safe except in His defense. The trust of our people in God should be declared on our national coins. You will cause a device to be prepared without unnecessary delay with a motto expressing in the fewest and tersest words possible this national recognition.";

Whereas the phrase "In God We Trust" first appeared on a coin of the United States in 1864;

Whereas in 1955, the phrase "In God We Trust" was designated as a mandatory phrase to be inscribed on all currency and coins of the United States;

Whereas on March 28, 1956, the Judiciary Committee of the House of Representatives, in its report accompanying H. J. Res. 396 (84th Congress), stated: "It will be of great spiritual and psychological value to our country to have a clearly designated national motto of inspirational quality in plain, popularly accepted English.";

Whereas on July 30, 1956, President Dwight D. Eisenhower signed H. J. Res. 396 (84th Congress), making the phrase "In God We Trust" the official motto of the United States; and

Whereas the occasion of the 50th anniversary of the formal adoption of the national motto of the United States, "In God We Trust", presents an opportunity for the citizens of the United States to reaffirm the concept embodied in that motto that—

(1) the proper role of civil government is derived from the consent of the governed, who are endowed by their Creator with certain unalienable Rights; and

(2) the success of civil government relies firmly on the protection of divine Providence: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) commemorates the 50th anniversary of the national motto of the United States, "In God We Trust";

(2) celebrates the national motto as—

(A) a fundamental aspect of the national life of the citizens of the United States; and

(B) a phrase that is central to the hopes and vision of the Founding Fathers for the perpetuity of the United States;

(3) reaffirms today that the substance of the national motto is no less vital to the future success of the Nation; and

(4) encourages the citizens of the United States to reflect on—

(A) the national motto of the United States; and

(B) the integral part that the national motto of the United States has played in the life of the Nation, before and after its official adoption.

Passed the Senate July 12, 2006.

Attest:

Secretary.

†SCON 96 ES

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ADDENDUM B
H. Res. 431 (110th Cong. (2007))

H. Res. 431

In the House of Representatives, U. S.,

June 11, 2007.

Whereas the first anti-miscegenation law in the United States was enacted in Maryland in 1661;

Whereas miscegenation was typically a felony under State laws prohibiting interracial marriage punishable by imprisonment or hard labor;

Whereas in 1883, the Supreme Court held in Pace v. Alabama that anti-miscegenation laws were consistent with the equal protection clause of the 14th Amendment as long as the punishments given to both white and black violators are the same;

Whereas in 1912, a constitutional amendment was proposed in the House of Representatives prohibiting interracial marriage "between negroes or persons of color and Caucasians";

Whereas in 1923, the Supreme Court held in Meyer v. Nebraska that the due process clause of the 14th Amendment guarantees the right of an individual "to marry, establish a home and bring up children";

Whereas in 1924, Virginia enacted the Racial Integrity Act of 1924, which required that a racial description of every person be recorded at birth and prevented marriage between "white persons" and non-white persons;

Whereas in 1948, the California Supreme Court overturned the State's anti-miscegenation statutes, thereby becoming the first State high court to declare a ban on interracial marriage unconstitutional and making California the first State to do so in the 20th century;

Whereas the California Supreme Court stated in Perez v. Sharp that "a member of any of these races may find himself barred from marrying the person of his choice and that person to him may be irreplaceable. Human beings are bereft of worth and dignity by a doctrine that would make them as interchangeable as trains";

Whereas by 1948, 38 States still forbade interracial marriage, and 6 did so by State constitutional provision;

Whereas in June of 1958, 2 residents of the Commonwealth of Virginia—Mildred Jeter, a black/Native American woman, and Richard Perry Loving, a Caucasian man—were married in Washington, DC;

Whereas upon their return to Virginia, Richard Perry Loving and Mildred Jeter Loving were charged with violating Virginia's anti-miscegenation statutes, a felonious crime;

Whereas the Lovings subsequently pleaded guilty and were sentenced to 1 year in prison, with the sentence suspended for 25 years on condition that the couple leave the State of Virginia;

Whereas Leon Bazile, the trial judge of the case, proclaimed that "Almighty God created the races white, black, yellow, Malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.";

Whereas the Lovings moved to the District of Columbia, and in 1963 they began a series of lawsuits challenging their convictions;

Whereas the convictions were upheld by the State courts, including the Supreme Court of Appeals of Virginia;

Whereas the Lovings appealed the decision to the Supreme Court of the United States on the ground that the Virginia anti-miscegenation laws violated the Equal Protection and Due Process Clauses of the 14th Amendment and were therefore unconstitutional;

Whereas in 1967, the U.S. Supreme Court granted certiorari to Loving v. Virginia and readily overturned the Lovings' convictions;

Whereas in the unanimous opinion, Chief Justice Earl Warren wrote: "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. . . . To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law.";

Whereas the opinion also stated that "the Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.";

Whereas in 1967, 16 States still had law prohibiting interracial marriage, including Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, Mis-

souri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and West Virginia;

Whereas Loving v. Virginia struck down the remaining anti-miscegenation laws nationwide;

Whereas in 2000, Alabama became the last State to remove its anti-miscegenation laws from its statutes;

Whereas according to the U.S. Census Bureau, from 1970 to 2000 the percentage of interracial marriages has increased from 1 percent of all marriages to more than 5 percent;

Whereas the number of children living in interracial families has quadrupled between 1970 to 2000, going from 900,000 to more than 3 million; and

Whereas June 12th has been proclaimed "Loving Day" by cities and towns across the country in commemoration of Loving v. Virginia: Now, therefore, be it

Resolved, That the House of Representatives—

(1) observes the 40th Anniversary of the U.S. Supreme Court decision in Loving v. Virginia; and

(2) commemorates the legacy of Loving v. Virginia in ending the ban on interracial marriage in the United States and in recognizing that marriage is one of the "basic civil rights of man" at the heart of the 14th Amendment protections.

Attest:

Clerk.

•HRES 431 EH