

No. 25-125

IN THE
Supreme Court of the United States

KIM DAVIS,
Petitioner,

v.

DAVID ERMOLD, ET AL.,
Respondents.

**On Petition for Writ of Certiorari to United States
Court of Appeals for the Sixth Circuit**

**MOTION FOR LEAVE TO FILE AND BRIEF OF
AMICUS CURIAE FOUNDATION FOR MORAL
LAW IN SUPPORT OF NEITHER PARTY OUT OF
TIME**

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MOTION FOR LEAVE TO FILE

The Foundation for Moral Law respectfully moves for leave to file the attached brief as *amicus curiae* in support of neither party.

The Foundation for Moral Law is a 501(c)(3) public-interest organization based in Alabama dedicated to defending religious liberty and the Constitution's original meaning as intended by its Framers. The Foundation regularly files amicus briefs on issues of religious freedom, the sanctity of life, and other inalienable, God-given rights. It has a strong interest in this case because it believes *Obergefell v. Hodges* wrongly redefined marriage, undermining state marriage laws and the free exercise of religion, particularly in Alabama.

The Foundation's proposed brief will be especially helpful to the Court because it 1) details how *Obergefell* upended state law with a specific account of its effect on the State of Alabama; 2) explains the existential incompatibility between *Obergefell* and religious liberty; and 3) underscores that the judiciary had no rightful jurisdiction to redefine traditional marriage which is a matter of the transcendent law of nature and of nature's God. The Foundation's brief will be especially helpful to the Court because it addresses an issue that, the Foundation believes, no other brief in this case addresses, *e.g.*, the unique relationship of the *Obergefell* decision to then-pending decisions of the Alabama Supreme Court, that involved statutes,

constitutional provisions, and facts unique to Alabama.

Supreme Court Rule 37.2(a) requires that a brief in support of a petition be filed within 30 days after the case was placed on the docket or a response was called for, whichever is later. The Court's initial call for a response was made August 7, 2025, making September 8, 2025, the deadline under Rule 37.2(a). The attached brief in support of neither party is being filed after that deadline because counsel misunderstood the interplay between the Respondents' extension granted August 13, 2025, extending the deadline for all Respondents to October 8, 2025, and the *amicus* deadline, therefore believing that the deadline for *amicus* briefs in support of neither party moved with the Respondents' extended due date.

Granting this motion will not prejudice any party. The petition is still pending before the Court, and Respondents' brief in opposition has not yet been filed or considered by the Court. Counsel of record for all parties received notice of *amicus curiae's* intention to file a brief at least ten days prior to September 8, 2025.

Respectfully submitted,

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Sept. 26, 2025

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Foundation for Moral Law (“the Foundation”) is a 501(c)(3) non-profit, national public interest organization based in Alabama, dedicated to defending religious liberty, God’s moral foundation upon which this country was founded, and the strict interpretation of the Constitution as intended by its Framers who sought to enshrine both. To those ends, the Foundation directly assists or files *amicus* briefs in cases concerning religious freedom, the sanctity of life, and other issues that implicate the God-given freedoms enshrined in our Bill of Rights.

The Foundation has an interest in this case because it believes that religious liberty is the foremost gift of God. In addition, the Foundation believes that the Framers of the Fourteenth Amendment did not intend for it to protect a right to same-sex marriage. This Court’s decision in *Obergefell* to the contrary redefined marriage and set it on a collision course with religious liberty and the duly promulgated laws of over half the States. Being an Alabama based firm, the Foundation also presents a specific account of how *Obergefell* caused

¹ Counsel of record for all parties received notice at least ten days prior to the due date of *amicus curiae*’s intention to file this brief. Pursuant to Rule 37.6, *amicus curiae* certifies that no party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

chaos in the Alabama judicial system, where—to this day—traditional marriage is law of the land in the State of Alabama.

SUMMARY OF THE ARGUMENT

This case arose because Kim Davis refused to issue the Respondents a marriage license with her name on it. She objected because the Respondents were a same-sex couple, and her Christian faith teaches that marriage is between one man and one woman. Kentucky law did not require Davis to issue the marriage license to the Respondents. The only basis for their lawsuit against her was this Court’s decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

Obergefell was decided 5-4,² and the Court’s composition has changed significantly since then. As the *Obergefell* dissenters argued, the Court’s decision did not comport with the text or history of the Constitution. It also did not comport with the Court’s traditional substantive due process analysis. Instead, as Chief Justice Roberts lamented, it came down to the personal views of five unelected lawyers, who read their own philosophies of “liberty” into the Fourteenth Amendment. In doing so, the Supreme Court took an incredibly important issue away from the democratic process, imposed same-sex marriage

² Arguably, Justices Ginsburg and Kagan, who voted for the majority of the opinion, should have recused themselves, because they conducted same-sex marriage ceremonies while *Obergefell* was impending. See Motion for Recusal by *Amicus Curiae* Foundation for Moral Law, *Obergefell*, 135 S. Ct. 2584 (2015).

by judicial fiat, and put the religious liberty of millions of Americans like Kim Davis in jeopardy.

Obergefell was wrongly decided and must be overturned. There is not a right to same-sex marriage anywhere in the Constitution, which left the matter of marriage to the States. As a result, the *Obergefell* Court disregarded the laws of over 30 States that had—by democratic vote—recognized marriage as strictly between one man and one woman. In particular, *Obergefell* spurred a constitutional crisis in the State of Alabama where traditional marriage is still the law of the land.

ARGUMENT

I. *Obergefell* totally disregarded the separation of powers between the Federal government and the States, leaving states such as Alabama to face constitutional crisis.

Just two years before *Obergefell*, this Court considered the federal Defense of Marriage Act (DOMA) which for federal purposes defined marriage as a legal union between one man and one woman as expressly recognized the right of states to refuse to recognize same-sex marriages from other states. In *United States v. Windsor*, 570 U.S. 744 (2013), this Court ruled 5-4 that Section 3 of DOMA was unconstitutional. Writing the majority opinion, Justice Kennedy stated emphatically that marriage laws are a state matter, not a federal matter. He stated, “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.” *Id.* at 2691.

And yet, just two years later, Justice Kennedy authored *Obergefell* to say the exact opposite: Same-sex marriage is a federal matter, and state laws must fall because they allegedly violate a so-called constitutional right that is found nowhere in the Constitution.

At the time *Obergefell* was decided, thirty-two democratically elected state legislatures had duly enacted laws which recognized marriage as between one man and one woman. *Obergefell*, 135 S. Ct. at 2638 (Thomas, J., dissenting). Three state legislatures came down on the other side of the ongoing national debate and legalized same-sex marriage. *Id.* But, with the *Obergefell* decision, “[f]ive lawyers [] closed the debate and enacted their own vision of marriage as a matter of constitutional law.” *Id.* at 2611-12 (Scalia, J., dissenting). As Petitioner is all too painfully aware, the Court’s steamrolling of the democratic process caused a constitutional crisis in her home state of Kentucky.

To further demonstrate how far-reaching this usurpation has been, *amicus* presents an account of how the State of Alabama faced its own constitutional crisis in the wake of *Obergefell*. In 2006, the people of Alabama overwhelmingly approved the Sanctity of Marriage Amendment to their state constitution by a vote of 81% to 19%, defining marriage exclusively as between one man and one woman. This reflected the long-standing authority of states to regulate domestic relations and underscored the depth of popular consensus in Alabama on the definition of marriage.

In 2015, U.S. District Judge Callie Granade

issued injunctions barring the Alabama Attorney General from enforcing Alabama's Sanctity of Marriage Amendment and the Alabama Marriage Protection Act in the cases *Searcy v. Strange*, 81 F. Supp. 3d 1285 (S.D. Ala. Jan. 23, 2015) and *Strawser v. Strange*, 44 F. Supp. 3d 1206 (S.D. Ala. Jan. 26, 2015). Judge Granade held that Alabama's laws respecting traditional marriage violated the Fourteenth Amendment to the U.S. Constitution. These orders, however, clashed directly with Alabama's own constitutional provisions and the state judiciary's duty to enforce them. The stage was set for a collision between federal judicial orders and state sovereignty.

On March 3, 2015, just months before the U.S. Supreme Court decided *Obergefell v. Hodges*, the Alabama Supreme Court ordered probate judges in the state to cease issuing marriage licenses to same-sex couples in the case *Ex parte State ex rel. Alabama Policy Institute*, 200 So. 3d 495 (Ala. 2015). Writing per curiam, the Alabama Supreme Court concluded that Alabama's marriage amendment remained valid and binding until overturned by the people of Alabama or the Supreme Court of the United States ruled on a case or controversy arising out of Alabama. This ruling placed Alabama squarely in the national spotlight, as one of the few states actively resisting the rapid federalization of marriage law through lower federal court rulings. The conflict vividly illustrates the federalism concerns raised by state courts enforcing their constitutions and laws in the face of aggressive federal judicial decrees.

When the U.S. Supreme Court issued *Obergefell*

in June 2015, the decision purported to invalidate state marriage amendments like Alabama's and ordered every state to license and recognize same-sex marriages. Yet the Alabama Supreme Court had already spoken, and its order requiring probate judges to enforce the state marriage amendment remained in force. This created immediate uncertainty and chaos: Alabama probate judges were caught between two conflicting commands—one from their own state supreme court and another from the Supreme Court of the United States. The result was confusion, inconsistent enforcement across counties, and an open question as to whether state officials owed their first duty to their state constitution or to a federal judicial mandate untethered from constitutional text.

To address the uncertainty, the Chief Justice of the Alabama Supreme Court issued an administrative order in January 2016. The Chief Justice instructed Alabama's probate judges to continue following state law and the Alabama Supreme Court's existing order until that Court explicitly vacated or modified its judgment in light of *Obergefell*. The Chief Justice did not deny that the U.S. Supreme Court's ruling was binding on the parties involved, but he insisted that only the Alabama Supreme Court could formally resolve the conflict for state officers. In his view, probate judges could not simply disregard their own state's constitution and supreme court order. The Chief Justice's stance underscored the federalism crisis created by *Obergefell*: five justices in Washington had overridden the democratic will of the people of Alabama and placed state officials in an impossible

position of divided loyalties.

The Chief Justice of the Alabama Supreme Court's insistence on upholding Alabama's constitution led to personal and institutional consequences. The Alabama Judicial Inquiry Commission charged him with ethics violations for allegedly instructing judges to disobey *Obergefell*. *Moore v. Ala. Judicial Inquiry Comm'n*, 234 So. 3d 458 (Ala. 2017). In September 2016, the Alabama Court of the Judiciary suspended him from the bench for the remainder of his term—effectively removing him from office. *Id.* at 484. Thus, the Chief Justice of a state supreme court was ousted not for corruption or misconduct, but for refusing to unilaterally abandon the constitutional amendment adopted by his state's voters. This episode highlights how *Obergefell* not only short-circuited democratic debate but also destabilized the constitutional order, pitting state officials' oaths to their own constitutions against an activist Supreme Court ruling.

In an effort to sidestep the political and legal contradictions of *Obergefell vis a vis* Alabama law, the Alabama Legislature passed a law effective August 29, 2019, that eliminated the requirement for county probate judges or staff to issue marriage licenses. Ala. Act 2019-340. Instead, the law created a process whereby the couple completes a "marriage certificate form" which is then simply recorded by the office, rather than the probate court granting or issuing a marriage license. The legislature expressly adopted this law to accommodate public officials who have religious objections to affirming same-sex marriage. However, this half-measure nevertheless

does nothing to amend Alabama’s Constitution which still recognizes only traditional marriage between one man and one woman. Sanctity of Marriage Amendment, Ala. Const. Amend. 774 (2006). Nor does it change the ruling of the Alabama Supreme Court which affirmed traditional marriage in its March 12, 2015, order, and which judgment the Alabama Supreme Court ultimately certified on March 4, 2016—after *Obergefell*—as discussed *infra*.

Alabama’s post-*Obergefell* turmoil demonstrates the unconstitutional nature of the decision. A fundamental issue of state domestic relations law was removed from the people and their legislatures and instead redefined by judicial fiat. This created a crisis of authority within Alabama, undermined the rule of law, and punished state officials for doing their duty under state constitutions. The Alabama Chief Justice’s fate is emblematic: he became a casualty of the U.S. Supreme Court’s willingness to substitute its will for the sovereign choices of the People. Viewed as a whole, this account serves as a testament of how unmoored substantive due process jurisprudence destabilizes both federalism and the separation of powers, leaving states in constitutional limbo whenever five unelected justices choose to “close debate.”

II. *Obergefell* perpetuates an inherent and existential clash with religious liberty.

The issue of religious liberty is inextricable from the institution of marriage and thus permeates not only *Obergefell*, but also *Ex Parte State ex rel. Alabama Policy Institute*, decided prior, as well as Kim Davis’s case before this Court today. In 2015,

dozens of *amici curiae* filed briefs in *Obergefell* that brought attention to the negative impact on religious liberty that would occur should same-sex marriage be adopted by this Court. Ultimately, however, a majority of the Court unilaterally changed the definition of marriage—an institution “defined by relationships between men and women. So long defined, the tradition is measured in millennia, not centuries or decades. So widely shared, the tradition until recently had been adopted by all governments and major religions of the world.” *DeBoer v. Snyder*, 772 F.3d 388, 395-96 (6th Cir. 2014).

Now, merely a decade after *Obergefell*’s redefinition of marriage to include same-sex relationships, this radical change’s negative impact on religious liberty is clearer than ever. The negative treatment suffered by Kim Davis in the present case is just one stark example. Soon after the release of this Court’s opinion in *Obergefell*, the entire staff of a Tennessee County Clerk’s Office resigned rather than issue same-sex marriage licenses.³ Similar results occurred in Mississippi and Arkansas.⁴ The blatant disregard for Kim Davis’ right to exercise her faith with regard to marriage was not an isolated

³ Sarah Denson, Entire Tenn. county clerk’s office resigns over same-sex marriage licenses, WKRN.COM, (July 2, 2015), <https://www.wkrn.com/news/entire-tenn-county-clerks-office-resigns-over-same-sex-marriage-licenses/>.

⁴ Kristine Marsh, County Clerks Resign Nationwide After Gay Marriage Ruling, mrcNewsBusters, (July 13, 2015), <https://www.newsbusters.org/blogs/kristine-marsh/2015/07/13/county-clerks-resign-nationwide-after-gay-marriage-ruling>.

event!

Regretfully, the *Obergefell* majority gave little consideration to concerns voiced by amici and other justices on the Court, and made only a weak overture to religious liberty in a single paragraph, stating

Finally, it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.

Obergefell, 135 S. Ct. at 2607.

The dissenters, however, were not satisfied with this concession. Chief Justice Roberts noted, “The majority graciously suggests that religious believers may continue to “advocate” and “teach” their views of marriage.... The First Amendment guarantees, however, the freedom to ‘exercise’ religion. Ominously, that is not a word the majority uses.” *Id.* at 2625 (Roberts, C.J., dissenting). Justice Thomas described the majority’s concession as a “weak gesture” that “indicates a serious misunderstanding of religious liberty in our Nation’s tradition,” which is “about freedom of *action*[.]” *Id.* at 2638 (Thomas, J., dissenting) (emphasis added). And Justice Alito warned, almost prophetically,

I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.

...

By imposing its own views on the entire country, the majority facilitates the marginalization of the many Americans who have traditional ideas.

Id. at 2642-43 (Alito, J., dissenting).

Chief Justice Roberts further contemplated some of the potential consequences of the majority's decision.

Hard questions arise when people of faith exercise religion in ways that may be seen to conflict with the new right to same-sex marriage—when, for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex married couples. Unfortunately, people of faith can take no comfort in the treatment they receive from the majority today.

Id. at 2025-26 (Roberts, C.J., dissenting).

Ultimately, the *Obergefell* majority decided that these potential conflicts with religious liberty were worthwhile costs. We have already seen some of

these conflicts in action. In *Fulton v. City of Philadelphia*, this Court had to adjudicate the conflict prompted by a city's refusal to work with a Catholic foster care agency because the agency would not certify same-sex couples as foster parents. 593 U.S. 522 (2021). Analyzing the case under *Employment Division v. Smith*, 494 U. S. 872 (1990), the Court held that the City of Philadelphia had discriminated against the agency, thereby violating its right to Free Exercise of Religion under the First Amendment. *Id.* at 543. However, as Justice Alito notes in his concurring opinion,

This decision might as well be written on the dissolving paper sold in magic shops. The City has been adamant about pressuring CSS to give in, and if the City wants to get around today's decision, it can simply eliminate the never-used exemption power. If it does that, then, *voilà*, today's decision will vanish—and the parties will be back where they started. The City will claim that it is protected by *Smith*; CSS will argue that *Smith* should be overruled; the lower courts, bound by *Smith*, will reject that argument; and CSS will file a new petition in this Court challenging *Smith*. What is the point of going around in this circle?

Id. at 522.

Granted, the greater part of the difficulty in *Fulton* lies in the Court's own convoluted Free Exercise jurisprudence as explained by Justice Alito. Nevertheless, *Fulton's* root issue stems from *Obergefell's* revolution of the time immemorial

institution of marriage. Without the judicial creation of same-sex “marriage,” the idea of same-sex adoption would be a non-starter—exactly as it was for time immemorial until a mere decade ago.

Likewise, the case *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018) is further evidence of the conflict and animosity prompted by the *Obergefell* decision. Jack Phillips, acting on his religious belief that marriage is only between one man and one woman as created by God, declined to create a customized wedding cake celebrating a same-sex wedding. *Id.* at 626-27. For this, he was dragged through the courts in an effort to compel him to personally celebrate same-sex marriage. While this Court ultimately ruled in Jack Phillip’s favor, he was immediately subjected to another lawsuit regarding a gender transition cake which was only just resolved by the Colorado Supreme Court in his favor on procedural grounds in October 2024. *Masterpiece Cakeshop, Inc. v. Scardina*, 2024 CO 67 (Colo. 2024). Again, the root of this bitter conflict was the judicial revolution of the time immemorial institution of marriage.

While both *Fulton* and *Masterpiece Cakeshop* involved state laws, these laws were precipitated by their own subjugation to Federal Court edict. In 2006, Colorado voters passed Amendment 43 which defined marriage as only between one man and one woman in the Colorado Constitution. Yet in 2014, U.S. District Court Judge Raymond P. Moore found Colorado’s marriage law unconstitutional on similar extraconstitutional grounds as *Obergefell* would. *Burns v. Hickenlooper*, 2014 U.S. Dist. LEXIS 148123 (D. Colo. 2014). The Tenth Circuit followed

suit in the case *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014) striking down Utah’s marriage law. Likewise, Pennsylvania defined marriage as between one man and one woman by statute. 23 Pa. Cons. Stat. § 1704 (enacted 1996). Just prior to *Obergefell*, U.S. District Court Judge John E. Jones III struck down Pennsylvania’s marriage law in the case *Whitewood v. Wolf*, 992 F. Supp. 2d 410 (M.D. Pa. 2014)—again based on similar reasoning that would later be adopted by the *Obergefell* majority.

In both instances, the will of the people was ignored for the sake of judicial fiat. And the *Obergefell* majority ultimately sanctioned this total disregard for democratic governance by imposing same-sex marriage on the entire country, ignoring the religious liberties of millions of Americans. Indeed, freedom to believe, profess, and teach something is a hollow right without the corollary right to act on those beliefs. And, most assuredly, those who believe that same-sex marriage is wrong and contradicts their faith and religious convictions will continue to suffer fines, court costs, fees, and persecution if they resist. Dissenting in *Obergefell*, Justice Thomas spoke of looming enforcement measures as “civil restraints. . . with potentially numerous consequences.” 135 S. Ct. at 2638-9. One need only look at *Fulton*, *Masterpiece*, and Kim Davis to see that this was not paranoia, but prophecy.

This same concern troubled Judge Nick Williams and Probate Judge John Enslen in Alabama’s *API* case, both of whom were greatly concerned with the arrest and jailing of Kim Davis in Kentucky after *Obergefell*. Judge Williams filed an emergency

petition before the Alabama Supreme Court “...to continue to enforce and effect this Court’s existing orders.” *In re King*, 200 So. 3d 495, 583 (Ala. March 4, 2016). Judge Enslen also filed a petition, which adopted Judge Williams’s in full, and requested a forthright statement from the Alabama Supreme Court that *Obergefell* would not be allowed to impair his First Amendment rights under the Free Exercise Clause, to wit: “I respectfully request the Court to uphold my First Amendment Rights and thereby protect me from diversified litigious attacks against my rights to believe, teach, and practice, share, and live my sincere religious beliefs, both in the public square and elsewhere.” *Id.* at 584.

The Alabama Supreme Court gave serious consideration to the requests of Judges Enslen and Williams when, on March 4, 2016, after *Obergefell* was released, it certified its judgment in *API* leaving in place both the existing Order of March 3, 2015 to, “. . . discontinue the issuance of marriage licenses to same-sex couples” as well as the existing Order of March 12, 2015, to issue marriage licenses between only one man and one woman. *In re King*, 200 So. 3d at 495.. These Alabama Supreme Court Orders have never been set aside and contradict the holding of the United States Supreme Court in *Obergefell*.

Obergefell is a more serious threat to religious liberty than even the abortion decisions by this Court. *Roe v. Wade*, 410 U.S. 113 (1973) and its progeny did not require or mandate a medical practitioner, who conscientiously opposed abortion to participate in it. In 1973, in the wake of *Roe*, Congress passed laws which protected individuals and entities that receive federal funds from

participation in abortion or sterilization procedures contrary to their “religious beliefs or moral convictions” 42 USC § 300a-7. Likewise, forty-five states allow some health care providers to refuse to provide abortion services. Guttmacher Institute, *State Policies in Brief: Refusing to Provide Health Services* (July 1, 2015).

Obergefell has breached the legal protections that have long shielded believers from participating in acts hostile to their faith. The issuance of marriage licenses was historically a state function performed by individuals; however, *Obergefell* upended this tradition by mandating the issuance of same-sex marriage licenses. This violated the conscience of many officials, including Kim Davis, who suffered severe penalties for refusing to violate her faith by issuing marriage licenses meant for one man and one woman to same-sex couples.

For the Court to mandate such compliance is simply wrong as explained by Justice Joseph Story in his *Commentaries on the Constitution*: “The rights of conscience are, indeed, beyond the reach of any human power. They are given by God, and cannot be encroached upon by human authority, without a criminal disobedience of the precepts of natural, as well as of revealed religion.” *Commentaries on the Constitution* § 1870 (1833).

Our history is replete with a fundamental truth, which many have forgotten. The reason government cannot interfere with our religious liberty is simply because those rights come from God, and not from Government. The Virginia Act for Establishing Religious Freedom, authored by Thomas Jefferson

in 1786 begins, “Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion. . .” Va. Act for Establishing Religious Liberty (1786).

Previously, the United States Supreme Court clearly defined the intimate relation of God and religious liberty. Chief Justice Charles Evan Hughes wrote, “One cannot speak of religious liberty without assuming the existence of a belief in supreme allegiance to the will of God. *United States v Macintosh*, 283 U.S. 605, 625 (1931). Fifteen years later Justice William O Douglas wrote,

The victory for freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the State. Throughout the ages, men have suffered death rather than subordinate their allegiance to God to the authority of the State. Freedom of religion is the product of that struggle.

Girouard v United States, 328 U.S. 61, 68 (1946).

Obergefell not only failed to recognize that our right to religious liberty comes from God, but also that “the union for life of one man and one woman in the holy estate of matrimony is God’s plan for family and all that is stable and noble in our civilization.” *Murphy v Ramsey*, 114 U.S. 15, 45 (1885). As Justice Clarence Thomas stated in his dissent, “This Court’s decision today is at odds not only with the Constitution, but with the principle upon which our

Nation was built.” 135 S. Ct. 2631. Further, the “majority’s decision threatens the religious liberty our Nation has long sought to protect.” *Id.* at 2638.

Obergefell is not only at odds with the Constitution of the United States and this Nation’s history and heritage, but more importantly it disregards God’s gift of religious liberty to mankind, and destroys the “holy estate” of matrimony between one man and one woman as recognized by this Court in *Murphy*.

This Court has every right to set aside its opinion in *Obergefell* as not only contrary to reason and logic, but also contrary to the law of God upon which our Country was founded according to the first sentence of the Declaration of Independence, and under which our Constitution was entitled to exist.⁵

III. *Obergefell* must be overruled because the Courts have no authority to redefine marriage.

To make a point, Abraham Lincoln once asked a man, “How many legs does a dog have?” “Four,” was the answer. “Now, if we call the tail a leg, then how many legs does a dog have?” “Well, then he'd have five.” “No,” Lincoln answered, “he would still have four. Just calling a tail a leg doesn't make it a leg.”⁶

⁵ On Jan. 23, 1788, James Madison in Federalist Number 43, explained to the people of New York in the Independent Journal that authority for ratification of the Constitution by 9 of 13 states under Art. 7 of the Constitution was because of “the transcendent Law of Nature and of nature’s God...”

⁶ Reminiscences of Abraham Lincoln by Distinguished Men of His Time, ed. Allen Thorndyke Rice, (New York: Harper &

Calling a same-sex union a “marriage” is like calling a tail a leg, or calling a rottweiler a horse, or calling a cornstalk a tree. It is an attempt to distort plain reality. Furthermore, it is an attempt to change the higher law of God.

God established marriage as a divine institution in Genesis 2:18-24 (*See also* Malachi 2:14, Matthew 19:6, Ephesians 5:25-32), and He defined marriage as a union of one man and one woman.

Thomas Jefferson and the Continental Congress recognized in the Declaration of Independence, this nation is founded upon “the laws of nature and of nature’s God,” and James Madison in Federalist No. 43 spoke of “the transcendent law of nature and of nature’s God.” In 1982, Congress passed Public Law 97-280 declaring 1983 the “Year of the Bible” and recognizing that “Biblical teachings inspired concepts of civil government that are contained in our Declaration of Independence and the Constitution of the United States.”

God’s laws are therefore relevant to civil law. God has established three institutions for the governance of society: marriage and the family, the church, and the state. The judiciary is part of the third institution, the state, and has no authority to redefine the first institution, marriage and the family.⁷

Brothers Publishers, 1909). Some accounts say Lincoln used the example of calf rather than a dog.

⁷ *Obergefell* should be sharply distinguished from *Loving v. Virginia*, 388 U.S. 1 (1967), in which this Court struck down a Virginia law prohibiting interracial marriage. An interracial

CONCLUSION

Constitutional rulings must be based on the Constitution, not on some ephemeral emanation or penumbra. This Court has even stronger reasons to overrule *Obergefell* than it had to overrule *Roe v. Wade*, chief of which is the opinion's total disregard of the separation of power between the federal government and the states. This case presents an ideal opportunity to do so.

The Foundation urges this Court to grant this petition for writ of certiorari.

Respectfully submitted,

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marriage of one man and one woman, even though some may disapprove, is unquestionably a marriage. However, a same-sex union, by all traditional definitions, is not a marriage.