
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 420 Session of
2015

INTRODUCED BY KRIEGER, WARNER, RAPP, MCGINNIS, METCALFE,
MILLARD, SCHEMEL, JOZWIAK, TALLMAN, WARD, KAUFFMAN, TOPPER,
BLOOM, GREINER, ZIMMERMAN, B. MILLER, SACCONI, FEE, GABLER
AND EVERETT, JULY 6, 2015

REFERRED TO COMMITTEE ON JUDICIARY, JULY 6, 2015

A RESOLUTION

1 Expressing grave concern over judicial activism and overreach
2 and calling for renewed public debate on the role of the
3 judiciary in a free and democratic society.

4 WHEREAS, The American system of democratic government was
5 established by the independent sovereign states, which upon
6 adoption of the Constitution of the United States retained all
7 sovereign powers not specifically delegated to the Federal
8 Government; and

9 WHEREAS, The Federal Government is comprised of three
10 separate, independent and coequal branches; and

11 WHEREAS, The legislative branch is charged with making all
12 laws necessary and proper for carrying into execution the
13 enumerated legislative powers of the Congress of the United
14 States, as well as all other powers vested by the Constitution
15 of the United States; and

16 WHEREAS, The executive branch is charged with ensuring that
17 the laws are faithfully executed; and

1 WHEREAS, The judicial branch is charged with securing a
2 steady, upright and impartial administration of the law; and

3 WHEREAS, In The Federalist No. 78, Alexander Hamilton
4 correctly described the proper and essential attributes of the
5 judiciary when he said that it should "have neither force nor
6 will, but merely judgment"; and

7 WHEREAS, In The Federalist No. 78, Alexander Hamilton
8 advocated for a strong Supreme Court but premised his view on
9 the assumption that the Court would be bound by the plain
10 meaning of the language of the Constitution; and

11 WHEREAS, The Supreme Court of the United States has
12 increasingly departed from the express language of the
13 Constitution in order that it not be constrained in its endeavor
14 to create an ever-expanding world of implied constitutional
15 rights; and

16 WHEREAS, This often results in the corresponding finding of
17 new limitations on the rights that are fundamental to our
18 freedom and which are expressly set forth in the Constitution,
19 such as the free exercise of religion; and

20 WHEREAS, Departure from the plain language of the
21 Constitution results in the Court's encroachment on the province
22 of the legislature, which expresses the sovereign will of the
23 people through the political process and the reserved powers of
24 the states; and

25 WHEREAS, From the very beginning, the United States has been
26 exactly what its name suggests: a union of individual state
27 governments, each with its own laws and public policy; and

28 WHEREAS, When the founders laid out the system through which
29 these states would come together and function as a Federal
30 Government, they were careful to delineate which governmental

1 powers were reserved for the Federal Government and which were
2 the sole province of the states; and

3 WHEREAS, Marriage law has historically been the province of
4 state law in the United States, and the Supreme Court of the
5 United States has historically recognized this, stating as early
6 as 1890 that "[t]he whole subject of the domestic relations of
7 husband and wife, parent and child, belongs to the laws of the
8 States and not to the laws of the United States"; and

9 WHEREAS, The people of many of the sovereign states,
10 including Pennsylvania, have expressed their will through the
11 representative political process: that marriage be limited to
12 one man and one woman; and

13 WHEREAS, In 1996, the General Assembly passed the Defense of
14 Marriage Act, which declared the strong and longstanding public
15 policy of the Commonwealth that marriage be between one man and
16 one woman and that marriage between persons of the same sex
17 which was entered into in another state or foreign jurisdiction
18 be void in this Commonwealth; and

19 WHEREAS, A Federal judge in 2014 overturned the Pennsylvania
20 law based on what he called the "bedrock constitutional
21 guarantees of due process and equal protection," which was on
22 its face a new application of the Constitution to justify the
23 creation of a new constitutional right; and

24 WHEREAS, In spite of the clear public response to the issue
25 as expressed by the people's elected representatives, same-sex
26 marriage is established in 25 states, including Pennsylvania, as
27 a result of judicial decisions rather than legislative
28 decisions; and

29 WHEREAS, In 2013, the Supreme Court of the United States
30 decided a challenge to the Federal Defense of Marriage Act that

1 limited Federal benefits to marriages between members of the
2 opposite sex in a decision that emphasized the dominance of
3 state law defining marriage and required the Federal Government
4 to recognize marriages that were valid under state law; and

5 WHEREAS, The Supreme Court of the United States, in its 5-4
6 decision in *Obergefell v. Hodges*, departed from both legal
7 judgment and precedent and took the extraordinary step of
8 constitutionalizing marriage and ordering every state not only
9 to recognize marriages lawfully entered into in other states,
10 but also to license same-sex marriages in their own states; and

11 WHEREAS, In so holding, the Supreme Court has invalidated the
12 marriage laws of more than half the states, removed the issue
13 from the voters of the states where it has been since the
14 founding and "ordered the transformation of a social institution
15 that has formed the basis of human society for millennia"; and

16 WHEREAS, The majority opinion elevates will over judgment and
17 the personal views of the justices over the express language of
18 the Constitution, in the process doing great damage to
19 federalism and the doctrine of separation of powers; and

20 WHEREAS, Chief Justice Roberts, in his dissenting opinion,
21 said that those who founded our country "would not recognize the
22 majority's conception of the judicial role" and that "they
23 certainly would not have been satisfied by a system empowering
24 judges to override policy judgments so long as they do so after
25 "a quite extensive discussion"; and

26 WHEREAS, Justice Scalia, in his dissenting opinion, called
27 the action of the five person majority "a naked judicial claim
28 to legislative--indeed--super--legislative power; a claim
29 fundamentally at odds with our system of government . . . A
30 system of government that makes the people subordinate to a

1 committee of nine unelected lawyers does not deserve to be
2 called a democracy"; and

3 WHEREAS, Justice Alito, in his dissenting opinion, said:
4 "Today's decision will also have a fundamental effect on this
5 Court and its ability to uphold the rule of law. . . What it
6 evidences is the deep and perhaps irremediable corruption of our
7 legal culture's conception of constitutional interpretation";
8 and

9 WHEREAS, Justice Thomas, in his dissenting opinion, said that
10 in the Court's "haste to reach a desired result, the majority. .
11 . distorts the principles on which this Nation was founded. Its
12 decision will have inestimable consequences for our Constitution
13 and our society"; and

14 WHEREAS, President Abraham Lincoln recognized the grave
15 danger we now face, stating in his first inaugural address on
16 March 4, 1861, that "the candid citizen must confess that if the
17 policy of the Government upon vital questions affecting the
18 whole people is to be irrevocably fixed by decisions of the
19 Supreme Court,. . . the people will have ceased to be their own
20 rulers, having to that extent practically resigned their
21 Government into the hands of that eminent tribunal";
22 therefore be it

23 RESOLVED, That the House of Representatives believe that it
24 is essential for the well-being of the people of this
25 Commonwealth that we engage in an immediate public debate on the
26 proper role of the judiciary in the formulation of public policy
27 and the relationship of the judiciary to the will of the people
28 of this Commonwealth as expressed through the formulation of
29 laws by their representatives in the General Assembly.