

# House Concurrent Resolution No. 119

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE POGUE.

6722H.011

D. ADAM CRUMBLISS, Chief Clerk

1           **WHEREAS**, within the last five years, the Supreme Court of the United States has  
2 overstepped it bounds and made rulings on cases that have negatively impacted states' rights and  
3 displayed judicial activism; and

4

5           **WHEREAS**, in 2012, the United States Supreme Court upheld, in *National Federation*  
6 *of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012), the Patient Protection and  
7 Affordable Care Act; and

8

9           **WHEREAS**, in *National Federation of Independent Business*, the Patient Protection and  
10 Affordable Care Act passed constitutional muster under Congress' taxing power, but the health  
11 care expansion amounted to an unconstitutional coercion on the states; and

12

13           **WHEREAS**, Justice Antonin Scalia wrote in his dissenting opinion in *National*  
14 *Federation of Independent Business* that there "are structural limits upon federal power—upon  
15 what it can prescribe with respect to private conduct, and upon what it can impose upon the  
16 sovereign States. Whatever may be the conceptual limits upon the Commerce Clause and upon  
17 the power to tax and spend, they cannot be such as will enable the Federal Government to  
18 regulate all private conduct and to compel the States to function as administrators of federal  
19 programs"; and

20

21           **WHEREAS**, in 2015, another case, *King v. Burwell*, 135 S. Ct. 2480 (2015), challenged  
22 the Patient Protection and Affordable Care Act; and

23

24           **WHEREAS**, in *King*, the United States Supreme Court held that tax credits are available  
25 to individuals in states that utilize a federally-facilitated exchange;

26

27           **WHEREAS**, according to Justice John Roberts, because the phrase "an Exchange  
28 established by the State" is ambiguous as it relates to tax credits under the Affordable Care Act,  
29 the court must look to the broader text and structure of the act to determine the meaning of that  
30 phrase;

31

32           **WHEREAS**, the United States Supreme Court interpreted the meaning of "an Exchange  
33 established by the State" to mean an Exchange established by the state or Federal Government;  
34 and

35

36           **WHEREAS**, Justice Scalia in his dissenting opinion in *King* stated that the Supreme  
37 Court's interpretation of "an Exchange by the State" to include the Federal Government is "quite  
38 absurd"; and

39

40           **WHEREAS**, Justice Scalia further stated in his dissenting opinion in *King* that  
41 "[e]quating establishment 'by the State' with establishment by the Federal Government makes  
42 nonsense of other parts of the Act"; and

43

44           **WHEREAS**, in 2015, the United States Supreme Court ruled in *Obergefell v. Hodges*,  
45 135 S. Ct. 2584 (2015), that under the Fourteenth Amendment of the United States Constitution  
46 that same-sex couples may exercise their "fundamental right" to marry in all states and state laws  
47 are invalid to the extent they exclude same-sex couples from marriage on the same terms as  
48 accorded to couples of the opposite sex; and

49

50           **WHEREAS**, in his dissenting opinion in *Obergefell*, Chief Justice John Roberts wrote  
51 that the *Obergefell* decision is "an act of will, not legal judgment," and the "right it announces  
52 has no basis in the Constitution or th[e] Court's precedent"; and

53

54           **WHEREAS**, in 2013, the United State Supreme Court stated that the "regulation of  
55 domestic relations" is an area that has long been regarded as a virtually exclusive province of the  
56 states; and

57

58           **WHEREAS**, Article III of the United States Constitution states:

59

60           "The judges, both of the supreme and inferior courts, shall hold their offices during good  
61 behavior...."; and

62

63           **WHEREAS**, the good behavior clause in Article III of the United States Constitution has  
64 been interpreted to mean that a judge may keep his or her position until he or she retires, dies  
65 while in office, or is removed by impeachment or for bad behavior; and

66

67           **WHEREAS**, a judge whose decision demonstrates a lack of "good behavior" is evidence  
68 of corruption, lack of integrity or ethics, bias, or lack of understanding of the law or the  
69 Constitution they swore to uphold; and

70

71           **WHEREAS**, the Justices on the Supreme Court when ruling on *National Federation of*  
72 *Independent Business*, *Obergefell*, and *King* lacked understanding of the law and the United  
73 States Constitution when they ruled on a case with no constitutional basis or precedent or ruled  
74 based on judicial activism, thereby lacked good behavior in their judgment:

75

76           **NOW THEREFORE BE IT RESOLVED** that the members of the House of  
77 Representatives of the Ninety-eighth General Assembly, Second Regular Session, the Senate  
78 concurring therein, hereby urge Congress to review rulings handed down by the United States  
79 Supreme Court and determine if the Justices of the United States Supreme Court acted with good  
80 behavior as required of them in Article III of the United States Constitution and did not make  
81 rulings based on judicial activism; and

82

83           **BE IT FURTHER RESOLVED** that the Chief Clerk of the Missouri House of  
84 Representatives be instructed to prepare a properly inscribed copy of this resolution for the  
85 Majority and Minority Leadership of the United States Congress and each member of the  
86 Missouri Congressional delegation.

✓