

In Opposition to HCR 3013, A concurrent resolution urging the United States Supreme Court to restore

March 11, 2025

Dear Senators of the Judiciary Committee,

I'm submitting this testimony on behalf of myself and not as a representation of any organization or employer.

The proposed House Concurrent Resolution 3013 represents a dangerous regression in civil rights, built upon a foundation of historical revisionism, constitutional misinterpretation, and religious dogma that contradicts both legal precedent and modern ethical standards. Through a review of historical record, legal scholarship, theological diversity, and real-world consequences, HCR 3013 can only be seen as a blatant unconstitutional attempt to codify discrimination against LGBTQ North Dakotans. Simply put, the authors of this resolution and their testimony have a central argument that fails under basic factual scrutiny, highlighting the resolution's roots in intolerance and prejudice.

Representative Tveit has claimed that this resolution is "a crucial step in taking back our country, our culture, and our communities". I must ask: taking it back from whom? From loving families? From taxpaying citizens? From dedicated service members? This framing reveals the true nature of this resolution – not as a policy position based on constitutional principles, but as an expression of prejudice against a minority group.

Representative Tveit has argued that marriage was "always" between one man and one woman until "a mere 10 years ago". This claim ignores the rich and diverse history of marriage across different cultures and time periods. Furthermore, it disregards the fact that numerous religious denominations and spiritual traditions have been celebrating same-sex unions for decades before legal recognition as demonstrated in other testimonies detailing anthropological evidence of same-sex unions. The definition of marriage has continuously evolved throughout human history, expanding to include interracial couples (*Loving v Virginia* (1967)) and to recognize women as equal partners rather than property. Each of these evolutions strengthened, rather than weakened, the institution of marriage.

The justification that marriage must be restricted because "you cannot conceive or birth children, except for the coming together of a male and a female" ignores reality. We do not require fertility tests or procreation commitments for heterosexual couples seeking marriage. In *Zablocki v. Redhail* (1978), the Supreme Court affirmed marriage as "a fundamental right of all individuals" regardless of fertility. No state requires fertility testing for marriage licenses, rendering Tveit's procreation argument legally incoherent. For the 1.2 million American children

being raised by same-sex parents, this resolution threatens stable home environments by delegitimizing their families' legal standing.

The resolution's premise of state authority over marriage recognition directly violates Article VI's Supremacy Clause and Section 1's Full Faith and Credit requirements. The representatives authoring this resolution, with even a basic review, would have seen that legal scholars from state bar associations unanimously confirm that overturning *Obergefell* would create immediate conflicts in child custody agreements across state lines, military spousal benefits for over 16,000 active-duty LGBTQ service members, and tax filing status for 135,000 same-sex households. As Representative Foss noted, overturning *Obergefell* would strip protections from same-sex households in North Dakota affecting hospital visitation rights during medical emergencies, inheritance of family farms/businesses, veterans' burial benefits, and parental custody agreements.

Again, I ask, what is this resolution for if not to directly target and discriminate.

Beyond the historical inaccuracies, HCR 3013 also presents serious constitutional problems. The suggestion that Justices Kagan and Ginsburg should have recused themselves from *Obergefell* because they had officiated same-sex weddings demonstrates a fundamental misunderstanding of judicial ethics by the authors and Representative Tveit. By this logic, any justice who had ever officiated a heterosexual wedding would be equally obligated to recuse themselves from cases involving marriage. Applying this logic, any Catholic justices could not rule on abortion matters or Protestant justices would need to be barred from religious liberty cases. This argument establishes a dangerous double standard and attempts to delegitimize the Supreme Court's decision through procedural objections rather than substantive legal reasoning, further demonstrating that HCR 3013 lacks a credible legal foundation.

Furthermore, the resolution's proponents rely on selective interpretations of religious texts to justify their position. In prior testimony, Genesis 2:24 was cited for defining marriage. While they are certainly entitled to their religious beliefs, using Genesis as the basis for civil law directly contradicts the constitutional separation of church and state. Many faith communities, including numerous Christian denominations, affirm same-sex marriage and interpret scripture differently. A resolution that imposes one particular religious interpretation on all citizens directly undermines religious freedom for those with different beliefs. Furthermore, this ignores scripture's own examples of polygamous unions (Solomon's 700 wives), levirate marriages (Deuteronomy 25:5-6), and political alliances (Esther's Persian marriage). The Bible describes marriages involving concubines (Judges 8:31), captives of war (Deuteronomy 21:10-14), rapists and victims (Deuteronomy 22:28-29). To selectively literalize one verse while ignoring others constitutes theological malpractice.

I must emphasize that the public record clearly demonstrates overwhelming opposition to this resolution. Reviewing the legislative testimony records, the majority of citizens who have taken the time to testify on HCR 3013 have urged a "do not pass" recommendation. When elected officials push forward with legislation despite clear public opposition, they fail in their most basic duty to represent their constituents. This resolution does not reflect the values of inclusion, fairness, and respect that most North Dakotans hold dear. The narrow margin by which this resolution passed the House (52-40) suggests that even among legislators, there is significant disagreement about its merits. I urge this committee to reject HCR 3013 and to focus instead on legislation that addresses the actual challenges facing North Dakotans – affordable housing, healthcare access, educational opportunities, and economic development.

This resolution represents not just a step backward for our state, but a direct attack on the rights, dignity, and everyday lives of our LGBTQ neighbors, colleagues, friends, and family members. I ask you to reject this harmful resolution and instead affirm that North Dakota is a place where all families are valued, all citizens are treated equally under the law, and where we focus on bringing people together rather than driving them apart.

Thank you for your consideration.

Benjamin Welte

District 44