Nos. 14-556, 14-562, 14-571 and 14-574

IN THE

Supreme Court of the United States

JAMES OBERGEFELL, *et al.*
AND BRITTANI HENRY, *et al.*,

Petitioners,

v.

RICHARD HODGES, DIRECTOR, OHIO
DEPARTMENT OF HEALTH, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF NINETY-TWO PLAINTIFFS IN MARRIAGE CASES IN ALABAMA, ALASKA, ARKANSAS, INDIANA, KANSAS, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NORTH CAROLINA, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA AND TEXAS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

WESLEY R. POWELL
MARY J. EATON
SAMEER ADVANI
WILLKIE FARR
& GALLAGHER LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

RICHARD D. BERNSTEIN
Counsel of Record
WILLKIE FARR
& GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000
rbernstein@willkie.com

Counsel for Amici Curiae

258386

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Cited Authorities

Cited Authorities

Constitutions & Statutes

Cited Authorities

Cited Authorities

Cited Authorities

Page

Page

Page

Page

Cited Authorities

Page

Page

Page

Other Sources

Page

Page

Page

Cited Authorities

Page

INTEREST OF *AMICI*

Amici are ninety-two plaintiffs who have challenged the constitutionality of bans on marriage of same-sex couples imposed by their home states of Alabama, Alaska, Arkansas, Indiana, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, South Carolina, South Dakota and Texas.[1] This brief addresses the Sixth Circuit's question of "who decides" whether the laws denying marriage to same-sex couples unjustifiably treat *amici* and other gay men and lesbians as second-class citizens. This brief shows that using the customary tools of constitutional analysis – the words and historical context of the Equal Protection Clause and this Court's precedents – it is the federal judiciary and ultimately this Court, not the states, that decides that issue.

Who decides is critical to *amici*. This is because, under the Sixth Circuit's "leave it to the states" approach, the political reality in *amici's* home states offers no credible prospect of achieving marriage for same-sex couples through the legislative or electoral process for many years, if ever. That reality inflicts real and tangible harms every day on *amici*, their families, and countless other gay men and lesbians who would – if they could – marry in their home states.

---

1. Pursuant to Rules 37.3 and 37.6 of the Rules of the Supreme Court, all parties have consented to the filing of this *amici curiae* brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party made any monetary contribution to fund the preparation or submission of this brief. In addition, no persons or entities other than *amici* or their counsel made a monetary contribution to the preparation or submission of the brief.

Amici are a cross-section of Americans, and include among them teachers, military and law enforcement personnel, veterans, lawyers, medical professionals, small business owners, and stay-at-home parents.[2] Some *amici* have sought to marry in their home states, but have been denied marriage licenses. Others have obtained marriage licenses in jurisdictions that permit marriage of same-sex couples, but their home states have denied recognition of their marriages. All have filed lawsuits challenging their home states' denial of equal marriage rights as a violation of due process and equal protection.[3]

STATEMENT AND SUMMARY OF ARGUMENT

Petitioners and their *amici* show many independent grounds for holding that the Equal Protection and Due Process Clauses of the Fourteenth Amendment prohibit states from excluding same-sex couples from their marriage laws. Although we support all of them, this brief focuses on one issue in particular. The broad words of the Equal Protection Clause provide that "[n]o State shall . . . deny any person within its jurisdiction the equal protection of the laws." As we show in Part I, the Clause's plain language, its historical background, and this Court's precedents all demonstrate that it is this Court that

2. The *amici* are identified individually in the Appendix.

3. Some *amici* reside in states where federal court decisions that are no longer subject to appellate review invalidated state bans against marriage for same-sex couples. Those *amici* do not concede that an affirmance by this Court of the decision below would affect the finality of those decisions or the invalidity of the marriage bans they struck down. *Amici* who are awaiting a district court or appellate decision do not suggest that those proceedings should be delayed pending this Court's decision, nor do they speak for other plaintiffs in their cases.

decides whether a state's denial to gay men and lesbians of the protection of marriage unjustifiably singles them out for treatment as second-class citizens in violation of the Equal Protection Clause. The Sixth Circuit erred in concluding that because denying those protections is a "tradition" – recognized when the Clause was enacted and extant in a number of states today – it is state legislatures or electorates that have the final say.

Although under federalism the Court exercises its constitutional role as the arbiter of the scope of the Equal Protection Clause with restraint, we show in Part II that the four factors most pertinent to the Equal Protection Clause warrant ruling that states may not deny same-sex couples the protections of marriage laws.[4] First, equal protection is most necessary when there is discrimination solely against an unpopular group. Gay men and lesbians are such a historically-disadvantaged group. Second, the Court has found that marriage between two consenting adults is an important personal right. Third, denial of the protection of marriage laws to same-sex couples causes myriad real and deep harms to those couples and their children. Fourth, especially when the first three factors apply, the defenders of the law must at least show a justification that the Court finds rational after careful consideration. In these circumstances, pointing to a so-called "tradition" of denying marriage for same-sex couples, or the fact that a number of states continue to ban marriage of same-sex couples, neither constitutes nor substitutes for the necessary showing.

---

4. *Amici* agree with Petitioners' briefs that the Court should apply heightened scrutiny here. This *amicus* brief demonstrates that denial of same-sex couples' right to marry fails under any standard.

This Court's enforcement of the Equal Protection Clause is vital to *amici* because, although the Sixth Circuit identifies legislative progress in some states in favor of marriage for same-sex couples, *amici* reside in states with long and continuing legislative records of hostility to the rights of gay men and lesbians and of marriage for same-sex couples in particular. Deferring to state legislatures or electorates on this issue would mean upholding for some considerable time legislation that specifically targets gay and lesbian Americans for treatment as second-class citizens. This Court should not grant its *imprimatur* to the stigmatization and marginalization of same-sex couples and their children resulting from the denial of the many legal protections attendant to legally-recognized marriage.

ARGUMENT

I. THE LANGUAGE AND HISTORY OF THE EQUAL PROTECTION CLAUSE SUPPORTS MARRIAGE FOR SAME-SEX COUPLES.

The decision below is based on a foundational analytical flaw: It concluded that the Equal Protection Clause allows states to deny marriage to same-sex couples because states in 1868 did not recognize marriage of same-sex couples. *DeBoer v. Snyder*, 772 F.3d 388, 403 (6th Cir. 2014). Because of this, the court reasoned, the Equal Protection Clause could not have been intended to apply to marriage of same-sex couples. *Id.* at 403-04. "Tradition," said the Sixth Circuit, "reinforces the point" because the idea that marriage only "exists" between a man and a woman is still shared by "a significant number of the States" today. *Id.* This approach assumes its own answer: that "equal" is a static codification of existing

practices in 1868 rather than a dynamic concept to be explicated by the courts over time. As we demonstrate, the Sixth Circuit's assumption is wrong.

A. "Tradition" Is Not A Substitute For "Equal Protection."

The broad words of the Equal Protection Clause strongly support Petitioners. Those words say: "*No* State shall . . . deny to *any person* within its jurisdiction the *equal* protection of the *laws*." U.S. Const. amend. XIV, § 1 (emphasis added). Everyone agrees that gay men and lesbians are "persons" and that being legally married provides myriad protections under state law. (*See infra* Part II.) Nor does anyone dispute that states that reject marriage for same-sex couples deny gay men and lesbians those protections. This is critical because the Equal Protection Clause guarantees "equal" protection, not "traditional" protection. The framers of the Equal Protection Clause chose language that is more demanding than "tradition." "The guaranty of equal protection of the laws is a pledge of the protection of *equal* laws." *Romer v. Evans*, 517 U.S. 620, 633-34 (1998) (emphasis added; quotations and citations omitted). Because laws that reject marriage between same-sex couples single out those couples for "disfavored legal status" and thereby deprive them "in general" of government protections and benefits, *see* Part II, *infra*, they constitute "a denial of equal protection of the laws in the most literal sense," and therefore require judicial scrutiny. *Romer*, 517 U.S. at 633.

The Sixth Circuit erred in interpreting the Clause such that "traditional" protection given by state laws in 1868 constitutes "equal protection" for all times. Such a judicial gloss contradicts the history of the Equal

Protection Clause and the promise of equality it enshrines. The framers of the 1787 Constitution undoubtedly had believed in equality, as the Declaration of Independence expressly stated that "all men are created equal." This itself was an understanding of equality that would have been foreign in prior centuries dominated by monarchies and feudalism. Yet, many believed in 1787 that equality was compatible with government-enforced slavery of African Americans, as the 1787 Constitution itself recognized slavery. *See*, *e.g.*, U.S. Const. art. I, § 2, cl. 3.

By 1868, the framers of the Fourteenth Amendment unquestionably understood that recognition of what government practices violated the dynamic concept of equality had changed in the 81 years that had passed since the 1787 Constitution. Indeed, that recognition had been changing for thousands of years. It would make no sense to use the word "equal" if those framers intended to stop that dynamic process and thereby limit the guarantee of "equal protection" to codifying practices in 1868.

The framers of the Equal Protection Clause rejected narrower versions barring only unequal treatment "because of race, color or previous servitude." Steven G. Calabresi & Hannah Begley, *Originalism and Same-Sex Marriage*, Nw. U. Sch. Of Law, Northwestern Public Law Research Paper No. 14-51 (2014), at 19 ("Calabresi & Begley") (citations omitted). Rather, the final, far more expansive definition of equal protection "abolishe[d] all class legislation in the States and d[id] away with *the injustice of subjecting one caste of persons to a code not applicable to another*." Speech of Sen. Howard, April 30, 1866, Cong. Globe, 39th Congr., 1st Sess. at 2286 (1866) (emphasis added). The Clause left it to the courts over time to determine which laws impermissibly subjected a

caste or class of citizens to unjustifiable discrimination. *See* Speech of Sen. Eliot, April 30, 1866, Cong. Globe, 39th Congr., 1st Sess. at 2511 (describing Equal Protection as a "*doctrine*" that bars all "State legislation discriminating against classes of citizens") (emphasis added).

This Court thus has the authority to decide when laws constitute unconstitutional class legislation. *See Romer*, 517 U.S. at 650 ("Class legislation . . . [is] obnoxious to the prohibitions of the Fourteenth Amendment . . .") (quoting *Civil Rights Cases*, 109 U.S. 3, 24 (1883)). That is because the "commitment to the law's neutrality where the rights of persons are at stake" is the dynamic "principle" that "the Equal Protection Clause enforces." *Id.* at 623.

In contrast to the Equal Protection Clause, many constitutional provisions are static. To use an obvious example, when the Constitution says the President must be 35 years old, the Constitution left no room for judicial explication of what 35 means. U.S. Const. art. II, § 1. However, this Court's precedents correctly establish that the Equal Protection Clause is dynamic.[5] As Justice Black

5. Because of the concept of "equal," this is a case where the dynamic approach in this Court's precedents and original meaning produce the same result. Professor Calabresi, a co-founder of the Federalist Society, is one of the foremost scholars on original meaning. His article with Ms. Begley offers "an originalist argument for the right of same-sex marriage" based on the broad words in the Fourteenth Amendment. Briefly summarized, under original meaning, what counts are the words used in the Fourteenth Amendment, not the "intent" of the framers as to how it would apply to existing practices. *Id.* at 1. *See also*, Steven G. Calabresi & Andrea Matthews, *Originalism and Loving v. Virginia*, 2012 B.Y.U. L. Rev. 1393, 1462 (2012) ("Calabresi &

wrote for the Court in striking down Virginia's poll tax:

> the Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality . . . . *Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change.*

Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 669 (1966) (emphasis added).

The most famous illustration of this approach is *Brown v. Board of Education*, 347 U.S. 483 (1954). This Court expressly rejected the notion that what is "equal" today is limited by the traditions existing in 1868. "[W]e

---

Matthews") ("it is not the original expected applications of the legal text that bind us, but it is instead the original public meaning" of the words themselves). Professor Calabresi and Ms. Begley show that because "[t]he original public meaning of the [Fourteenth] Amendment" is that it "bars all systems of caste and class-based laws," Calabresi & Begley at 18-22 (citing numerous contemporary sources), the Fourteenth Amendment "bars the creation of anti-LGBTQ legislation that aims to limit the rights of gay and lesbian couples from marrying one another." *Id*. at 24-27; *see id.* at 25 ("A mark of caste is limits on intermarriage"); *id.* at 26 (denying gay and lesbian couples, specifically, the tax, property, economic, and health benefits of marriage "forces them into a form of second-class citizenship"); *id.* (same-sex couples are "stigmatized and socially relegated to a lesser, second-class form of citizenship as a direct result of the bans against same-sex marriage"). *See also* Calabresi & Matthews at 1427-29 (demonstrating that in 1868, "equal" was a "synonym for the word 'same' and that 'equal rights' therefore are 'the same rights.'")

cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written." *Id.* at 492. To the contrary, this Court "consider[ed] public education *in light of its full development and its present place* in American life," including certain "[in]tangible" factors that were not fully appreciated when *Plessy* was decided. *Id.* at 492-93 (emphasis added). Viewed through that lens, contemporary analyses of the psychological effects of segregation demonstrated that separate was not "equal" at all. *Id.* at 494-95. "Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*," the Court held, "*modern authority*" amply supported the determination that racial segregation in schools violated the Equal Protection Clause. *Id.* at 494 (emphasis added). Thus the Court did not overrule *Plessy* as wrongly decided, but instead concluded that a dynamic understanding of equal protection required a different decision in 1954. *Id.* at 495.

That same understanding underlay *Loving v. Virginia*, 388 U.S. 1 (1967). In seeking to defend Virginia's "miscegenation" statute, the state argued "that the Framers did not intend the Amendment to make unconstitutional state miscegenation laws," pointing to statements made in the Thirty-ninth Congress "about the time" of its passage. *Id.* at 9. Notwithstanding the contemporaneous, broad disapproval of marriage of persons of different races when the Fourteenth Amendment was enacted, *id.* at 6, and legislation barring the practice in 16 states at the time of the Court's decision, *id.* at 6 n.5, *Loving* nonetheless held that no state could deny the right of a person to choose his or her marriage partner, regardless of race, *id.* at 12.

"History" and "tradition" have likewise been rejected by this Court as a constitutionally-sufficient justification for the treatment of women as second-class citizens. *See, e.g.*, *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (noting the Nation's "long and unfortunate history of sex discrimination" in invalidating unequal requirements in federal benefits statute); *United States v. Virginia,* 518 U.S. 515, 531 (1996) (applying "skeptical scrutiny" under the Equal Protection Clause to state's traditional exclusion of women from its military academy).

There is simply no basis for a one-size-fits-all approach under which provisions of the Constitution – no matter their language or historical context – are all static or all dynamic. For example, *Trop v. Dulles*, 356 U.S. 86, 100 (1958), held that the "scope" of what constitutes "cruel and unusual punishment" is "not static" and could not be cabined by prior practices. *Id.* at 100-01. The Eighth Amendment, the Court observed, "must draw its meaning from the *evolving standards* of decency that mark the progress of a maturing society." *Id.* (emphasis added). Applying those standards, the Court later relied on modern "scientific and sociological studies" to explicate what constituted "cruel and unusual" punishment. *Roper v. Simmons*, 543 U.S. 551, 562, 568-69 (2005). The Due Process Clause has also been used to invalidate long-standing practices that a majority of states still followed. *See, e.g.*, *Fuentes v. Shevin*, 407 U.S. 67, 96-97 (1972) (prejudgment replevin statutes violated Due Process Clause notwithstanding their existence in "almost all the States") (White J., dissenting).

Indeed, it would hardly make sense that all constitutional provisions are static, when that is not

even true for all statutory provisions. In construing the Sherman Act, for example, this Court held that the term "restraint of trade" had inherently "*dynamic potential*" which enabled the courts to *change* what practices the statute barred and permitted based on "varying times and circumstances." *Bus. Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 731-32 (1988) (Scalia, J., for the Court) (emphasis added); *see also Towne v. Eisner*, 245 U.S. 418, 425 (1918) (Holmes, J., for the Court) (in both statutory and constitutional provisions, sometimes "[a] word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used"); *Browder v. United States*, 312 U.S. 335, 339–40 (1941) (new, unforeseen "use" of passport). In short, some "[w]ords in statutes can enlarge or contract their scope as other changes, in law or in the world, require their application to new instances or make old applications anachronistic." *West v. Gibson*, 527 U.S. 212, 218 (1999).

The Sixth Circuit's analogy to principles of contract interpretation is misplaced. The Sixth Circuit reasoned that, when "two individuals sign a contract to sell a house, no one thinks that, years down the road, one party to the contract may change the terms of the deal. That is why the parties put the agreement in writing and signed it publicly – to prevent changed perceptions and needs from changing the guarantees in the agreement." *DeBoer*, 772 F.3d at 403. The analogy fails because the terms of a contract to sell a house are static: the house, price, and date of delivery do not change with time. Instead, imagine an 1868 contract that required the promisor to use "reasonable practices" to deliver goods for 150 years. A horse-drawn delivery wagon would suffice in 1868, but it

would not in 2015. Moreover, the Constitution is not akin to a private contract, not least because it governs people who never signed it. *See* Randy E. Barnett, *The Misconceived Assumption About Constitutional Assumptions*, 103 Nw. U. L. Rev. 615, 617-18 (2009) ("Constitutions are not contracts. With a contract, all parties must consent to be bound. With a constitution, this is impossible. Constitutions must necessarily lack the unanimous consent of all persons upon whom they are imposed.") (footnote omitted).

In sum, whether government practices existed in 1868 is not the touchstone of "equal protection." Thus, the lack of legislative or public acceptance at the time of the Fourteenth Amendment's enactment does not preclude the Court from deciding that state laws banning marriage of same-sex couples unjustifiably treat gay men and lesbians as second-class citizens and thus deny them "the equal protection of the laws."

B. It Is The Court, Not State Legislatures, That Ultimately Decides Whether States Are Denying "Equal Protection."

Just as *some* constitutional provisions are dynamic, *some* constitutional provisions permit less deference than others to current majorities in some states. In particular, the federal judiciary and ultimately this Court, not state legislatures or voters, decide the scope of the Equal Protection Clause.

The framers of the Clause surely understood this in 1868. That was 65 years after Chief Justice John Marshall famously declared it "the province and duty of the Judicial Department to say what the law is." *Marbury*

v. Madison, 5 U.S. 137, 177 (1803). In the intervening years, the Court had repeatedly struck down state laws as violating various constitutional limits on state laws. *See, e.g.*, *McCullough v. Maryland*, 17 U.S. 316 (1819) (Supremacy Clause); *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819) (Contract Clause); *Fletcher v. Peck*, 10 U.S. 87 (1810) (same). It was against this background of judicial enforcement that the Fourteenth Amendment was adopted as "a limitation upon the States to correct their abuses of power." John Bingham, Aug. 24, 1866, Speech at Bowerstein, Ohio, as quoted in Kurt T. Lash, *The Fourteenth Amendment and the Privileges and Immunities of American Citizenship*, 193 (2014).

"Leave it to the States" is inconsistent with the circumstances that led to adoption of the Equal Protection Clause and its language. To start, before the Civil War, many Northern (and some Southern) Democrats who opposed abolition relied heavily on an argument called "Popular Sovereignty." James M. McPherson, *Battle Cry of Freedom: The Civil War Era*, 58, 62 (1988). Proponents of "Popular Sovereignty" argued that on divisive issues, such as slavery, decisions should be left to the majority of voters in each state as part of their "sacred right of self-government." *Id.* at 128 (quoting Stephen A. Douglas); *see also* Michael Morrison, *The Republic in Peril: Expansion, the Politics of Slavery, and the Crisis of the 1850s*, 440-41 (Andrew Shankman ed., 2014) ("Moderate democrats such as presidential hopeful Lewis Cass then advanced the position of non-interference or, as it became known, popular sovereignty . . . Most important, limited government and non-interference in the local affairs of citizens resonated with the longstanding principles of the Democratic party . . .").

"Popular Sovereignty" as a means of determining equality was thoroughly rejected by the generation that produced the Fourteenth Amendment. Abraham Lincoln called "Popular Sovereignty" a "living, creeping lie from the time of its introduction to today." Robert W. Johannsen, ed., *The Lincoln-Douglas Debates of 1858* (New York: Oxford University Press, 1965), 309-10. Lincoln specifically explained why "Popular Sovereignty" could not be the arbiter of equality: "Near eighty years ago we began by declaring that all men are created equal; but now from that beginning we have run down to the other declaration, that for some men to enslave others is a 'sacred right of self-government.' These principles can not stand together. They are as opposite as God and mammon; and whoever holds to the one, must despise the other." Abraham Lincoln, Speech at Peoria, Illinois (Oct. 16, 1854), available at http://www.nps.gov/liho/historyculture/peoriaspeech.htm. "This eloquent speech expressed the platform of the new Republican party." James M. McPherson, *supra*, at 129.

The Equal Protection Clause was part of the triumph of the party that opposed "Popular Sovereignty." It therefore makes no sense to view the Equal Protection Clause as enshrining a central argument of the proponents of "Popular Sovereignty." To do so would not be to embrace judicial restraint, but rather to abdicate this Court's intended and historic role to determine whether a law treats a group as second-class citizens and thereby violates the Equal Protection Clause.

As history reveals, the argument that a political majority in numerous states provides the final resolution of what constitutes "equality," through legislative act or public referendum, has no limits. It was invoked against

abolition in the 1850s just as it is invoked today against marriage for same-sex couples. And if the response today is that the denial of freedom to slaves is less justifiable than the denial of any protection of the marriage laws to same-sex couples, the need to make that comparison proves our point: support by a majority in multiple states for a type of law has never been a dispositive criterion for whether a law denies equal protection. Thus, the directive of the Equal Protection Clause that "No state" shall deny any person the equal protection of the laws applies when any state violates that guarantee and when many states do.

This Court's jurisprudence correctly holds that appeals to "popular sovereignty" do not suffice to immunize laws – even if passed by political majorities – from equal protection review. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) ("It is plain that the electorate as a whole, whether by referendum or otherwise, could not order [government] action violative of the Equal Protection Clause, and the [government] may not avoid the strictures of that Clause by deferring to the wishes or objections of some fraction of the body politic.") (internal citation omitted); *Lucas v. Forty-Fourth Gen. Assembly of Colo.*, 377 U.S. 713, 736-37 (1964) ("A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be."); *W. Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) ("[F]undamental rights may not be submitted to a vote; they depend on the outcome of no elections.").

That is so even when the "popular" support for particular discrimination is long-standing and traditional. This Court has not "hesitated to strike down an invidious

classification even though it had history and tradition on its side." *Levy v. Louisiana*, 391 U.S. 68, 71 (1968); *see also Heller v. Doe*, 509 U.S. 312, 326 (1993) ("Ancient lineage of a legal concept does not give it immunity from attack for lacking rational basis.").

This Court has specifically rejected the continuing adherence by many states to a "tradition" as a rationale for denying equal access to marriage. In *Loving*, the Court rejected Virginia's argument that the tradition of denying "interracial" marriage, which remained the law of 16 states at the time, was a justification for denying marriage rights to "interracial" couples. *Loving*, 388 U.S. at 6, 12; *Loving v. Virginia*, Br. and App. on Behalf of Appellee, No. 395, 1967 WL 93641, *6 (Mar. 20, 1967). *Loving* held instead that, even though "marriage is a social relation subject to the State's police power," a state's powers to regulate marriage remains subject to the commands of the Fourteenth Amendment. *Loving*, 388 U.S. at 7. *Windsor* reaffirmed that principle, noting that "[s]tate laws defining and regulating marriage, of course, must respect the constitutional rights of persons." *United States v. Windsor*, 133 S. Ct. 2675, 2691 (2013); *see also id.* at 2692 ("The States' interest in defining and regulating the marital relation, *subject to constitutional guarantees*, stems from the understanding that marriage is more than a routine classification for purposes of certain statutory benefits.") (emphasis added).

Tradition has likewise been rejected as a rational basis for discrimination by multiple states against same-sex sexual relationships. *See Lawrence v. Texas*, 539 U.S. 558, 567 (2003) (that "many States" had made same-sex sexual relationships illegal "for a very long time" was not sufficient

to justify discrimination against those relationships). For this Court to endorse ongoing "tradition" as a basis for discrimination against gay and lesbian Americans could open the door to attempts to justify discrimination against them in many areas of state law.

Nor may a court evade its obligation to enforce the Equal Protection Clause by relying, as the Sixth Circuit appears to have done, on progress in state recognition of marriage equality and the "assumption that the future holds more promise than the past." *DeBoer*, 772 F.3d 388 at 415. Of the 37 states where marriage of same-sex couples is currently permitted, only 11 states reached that point through voter referenda or legislative enactment.[6] While that progress is welcome, it provides no basis for the Court to pass on the constitutional challenge raised by Petitioners. Indeed, by the time the Court decided *Loving* in 1967, the trend toward repeal of states' "miscegenation" laws was well under way, with 34 states having repealed such laws. *See Loving*, 388 U.S. at 6. Yet, that did not stop this Court from deciding the constitutional issue before it.

---

6. Those states are Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, New Hampshire, New York, Rhode Island, Vermont and Washington. In five other states (Connecticut, Iowa, Massachusetts, New Mexico and New Jersey), state court decisions led to the recognition of marriage equality, and efforts to amend those states' constitutions to ban such recognition have been unsuccessful. *See generally* States, Freedom to Marry (Feb. 28, 2015), http://www.freedomtomarry.org /states/.

As this Court held over 50 years ago, "the basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled." *Watson v. City of Memphis*, 373 U.S. 526, 533 (1963). This Court, for example, has refused to delay enforcing the Equal Protection rights of women on account of political progress. *See, e.g.*, *Frontiero* 411 U.S. at 688, 692 (rejecting dissent's argument to defer applying heightened scrutiny to gender discrimination because the Equal Rights Amendment might be "in [the] process" of resolving the issue).

The Sixth Circuit's "wait-and-see" approach provides little, if any, comfort to *amici* and other same-sex couples who live in states where the likelihood of marriage equality being achieved in the foreseeable future through the legislative or electoral process is dubious. One need look no further than the reaction in Alabama to a federal court decision finding the state's ban on marriage of same-sex couples unconstitutional. When efforts to stay that ruling failed, thereby opening the door for Alabama's probate judges to begin issuing marriage licenses to same-sex couples immediately, the elected Chief Justice of the Alabama Supreme Court, Roy S. Moore, issued an order, *sua sponte*, directing the state probate judges not to comply with the federal court decision. Administrative Order of the Chief Justice of the Supreme Court (Feb. 8, 2015), http://media.al.com/news_impact/other/Moore-order-to-judges.pdf.

Chief Justice Moore's intervention was heeded by many elected county probate judges, some of whom went so far as to stop issuing licenses to any couples seeking to

get married. *See* Lily Hiott-Millis, *Federal judge rules: the freedom to marry is law in Alabama*, Freedom to Marry (Feb. 12, 2015), http://www.freedomtomarry. org/blog/entry/federal-judge-rules-the-freedom-to-marry-is-law-in-alabama (reporting that only "23 counties were issuing marriage licenses to same-sex couples, with many of the counties that were not issuing marriage licenses to same-sex couples also not issuing to different-sex couples.") Chief Justice Moore was also praised by senior political figures in Alabama, including William Armistead, the former state senator who sponsored the 1998 bill that became the Alabama Marriage Protection Act, who said: "I definitely support Judge Moore and the way he's approaching this" issue. Mike Carson, *Alabama GOP Chairman Bill Armistead Says Same-sex Marriage Could Incur God's Wrath*, AL.com (Feb. 11, 2015), http://www.al.com/news/index.ssf/2015/02/alabama_gop_chairman_bill_armi.html. The Chief Justice's instruction to Alabama probate judges prohibiting the issuance of marriage licenses to same-sex couples has since been confirmed by a 6-1 decision of the Alabama Supreme Court. *See Ex parte Alabama ex rel. Alabama Policy Institute,* No. 1140460, 2015 WL 892752, at *43 (Ala. Mar. 3, 2015); *id.* at *40 (finding that *Windsor's* "'equal dignity' rationale . . . appears to be a legal proxy for invalidating laws federal judges don't like.").

Likewise, when there was a recent attempt in Fayetteville, Arkansas to enact a law barring discrimination against several classes of individuals, including "homosexuals," the Arkansas state legislature passed a bill prohibiting cities and counties from enacting such anti-discrimination laws. Jeff Guo, *Arkansas Wants to Attract Businesses by Allowing them to Discriminate*

Against Gay People, Wash. Post (Feb. 17, 2015), http://www.washingtonpost.com/ blogs/govbeat/wp/2015/02/17/arkansas-wants-to-attract-businesses-by-allowing-them-to-discriminate-against-gay-people/. The law passed with wide majorities in both houses, despite one representative reminding his colleagues during floor debate that a similar Colorado ordinance was struck down as unconstitutional in *Romer*. *Id*.

The continuing hostile climate in some states has revealed many state officials' unapologetic animus toward gay men and lesbians. In Texas, notwithstanding *Lawrence*, section 85.007 of the Texas Health and Safety Code provides that state education programs for minors concerning HIV prevention "must state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code." Tex. Health & Safety Code Ann. § 85.007. And when asked what he would tell gay and lesbian veterans returning to Texas from the Iraq war, then-Governor Rick Perry responded: "Texas has made a decision on marriage, and if there's a state with more lenient views than Texas, then maybe that's where they should live." R.A. Dyer, *Gay-rights group demands apology*, Fort Worth Star-Telegram, June 10, 2005, at B5; *see also* Rachel Stone, *Same-Sex Marriage Ban Goes to Perry; Governor Expected to Sign Bill that Got Only 9 'No' Votes in House*, San Antonio Express-News, May 1, 2003, at 6A (quoting former state representative Warren Chisum, proponent of the Texas statute banning recognition for out-of-state marriages of same-sex couples: "*This bill does discriminate*. It allows only for a man and a woman to be married in this state and to be recognized as married in this state. This bill does discriminate against any other kind of marriage.") (emphasis added).

More recently, North Carolina's legislature put forth a successful ballot initiative to amend the state constitution to prohibit recognition of marriages of same-sex couples. *See* Mark Binker and Laura Leslie, *Fact Check: Did 60 percent of NC's Population Back Gay Marriage Ban?*, WRAL.com (Oct. 9, 2014), http://www.wral.com/fact-check-did-60-percent-of-nc-s-population-back-gay-marriage-ban-/14063284/. In proposing the ban, numerous legislators expressed animus against gay and lesbian Americans. *See, e.g.*, Rob Schofield, *Anti-gay lawmakers speak their (very troubled) minds*, The Progressive Pulse (Sept. 9, 2011), http://pulse.ncpolicywatch.org/2011/09/09/anti-gay-lawmakers-speak-their-very-troubled-minds (quoting State Senator James Forrester: "We need to reach out to them and get them to change their lifestyle back to the one we accept"; "[The City of Asheville, North Carolina is] a cesspool of sin."); Paige Lavender & Paul Stam, *North Carolina GOP Representative: Gay Marriage Leads to Polygamy, Incest*, HUFFINGTON POST (Aug. 31, 2011), http://www.huffingtonpost.com/2011/08/31/gay-marriage-north-carolina_n_943336.html (quoting House Majority Leader Paul "Skip" Stam: "[Y]ou cannot construct an argument for same sex-marriage that would not also justify philosophically the legalization of polygamy and adult incest," and that "[i]n countries around the world where they legitimized same-sex marriage, marriage itself is delegitimized.")

Recent developments in Kansas serve as a reminder that, when the rights of gay and lesbian citizens are subject to the vagaries of state politics, progress is not irrevocable. In February 2015, Governor Sam Brownback rescinded an executive order prohibiting harassment and discrimination against gay and lesbian state workers

that had been signed into law in 2007 by then-Governor Kathleen Sebelius. Bryan Lowry, *Gov. Sam Brownback Rescinds protected-class status for LGBT state workers in Kansas*, Kan. City Star (Feb. 10, 2015), http://www.kansascity.com/news/ government-politics/article9694028.html.

The question of marriage for same-sex couples is not a partisan issue and *amici* oppose making it a partisan issue. To the contrary, *amici* appreciate that there are many Republicans, including state legislators, who support marriage equality. *See Amicus* Brief of Republicans in Support of Petitioners. But the unavoidable reality is that ours is a two-party system, where most general election voters have no choice except between each of two candidates who reflect their views on some issues but not others. One of our two parties officially remains opposed to marriage of same-sex couples. *See, e.g.,* Republican Platform: Renewing American Values, Preserving and Protecting Traditional Marriage, https://www.gop.com/platform/renewing-american-values/ (Mar. 4, 2015) ("[T]he union of one man and one woman must be upheld as the national standard. . ."). Voting based on a wide variety of issues, voters have elected that party to control the legislature of every state in which *amici* live and the governorship of all but three of those states. For a governor or majority state legislator in those states to go against his or her party on this issue takes extraordinary political courage, as it virtually guarantees a primary fight for reelection.

As we show *infra* in Part II, with each passing day, there are real people who suffer real harms from the denial of equal marriage. It is simply no answer to say

that the wheels of the political process are, or may one day be, in motion. Rather, "[i]t is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants." *Pierson v. Ray*, 386 U.S. 547, 554 (1967).

II. THE COURT SHOULD EXERCISE ITS AUTHORITY TO EXPLICATE "EQUAL PROTECTION" TO BAR STATES FROM DENYING SAME-SEX COUPLES THE PROTECTIONS OF MARRIAGE LAWS.

Although this Court is constitutionally charged with deciding the contours of the dynamic concept of "equal" in the Equal Protection Clause, respect for federalism has led this Court to show restraint in its exercise of that power. In this case, however, all four factors that customarily warrant exercising that authority plainly apply.

First, the most deferential form of rational basis review applies only where the challenged law "neither proceeds along suspect lines nor infringes fundamental constitutional rights." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993); *see also* Pet'rs' Br. at 30, *DeBoer v. Snyder*, No. 14-571 (Feb. 27, 2015); Pet'rs' Br. at 49-50, *Obergefell v. Hodges*, No. 14-556 (Feb. 27, 2015); Pet'rs' Br. at 46, *Bourke v. Beshear*, No. 14-574 (Feb. 27, 2015); Pet'rs' Br. at 46, *Tanco v. Haslam*, No. 14-562 (Feb. 27, 2015). "When a law exhibits . . . a desire to harm a politically unpopular group," by contrast, the Court has "applied a more searching form of rational basis review to strike down such laws under the Equal Protection Clause."

Lawrence, 539 U.S. at 580 (O'Connor, J., concurring). In particular, *Windsor* applied "careful consideration" to DOMA because, like the state laws here, it imposed "a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages." *Windsor*, 133 S. Ct. at 2693. Just as the First Amendment is most needed for laws against unpopular speech, *see, e.g., Texas v. Johnson*, 491 U.S. 397, 421 (1989) (Kennedy, J., concurring), the Equal Protection Clause is most needed for laws applying only to an unpopular group. *Romer*, 517 U.S. at 634 ("[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest") (citation omitted).

This Court has specifically recognized gay men and lesbians as a politically unpopular group, warranting careful consideration of laws that impose disparate treatment of them. *See Windsor*, 133 S. Ct. at 2693-94 (describing same-sex couples as being part of "a politically unpopular group") (quotation omitted). Based in part on this historic status, the Court has rejected "tradition" as an alleged rational basis for laws targeting them. *See Windsor*, 133 S. Ct. at 2693, 2696. In striking down Texas's sodomy law, this Court held: "[T]he fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice; [just as] neither history nor tradition could save a law prohibiting miscegenation from constitutional attack." *Lawrence*, 539 U.S. at 577-78 (quoting *Bowers v. Hardwick*, 478 U.S. 186, 216 (1986) (Stevens, J., dissenting)).

Second, the Court has recognized marriage between two consenting adults as an important personal right and that federal and state laws impacting access to marriage merit closer scrutiny. *Loving*, 388 U.S. at 12 (marriage is a "vital personal right[] essential to the orderly pursuit of happiness by free men"); *see also Turner v. Safley*, 482 U.S. 78, 94-96 (1987) (prisoners entitled to the fundamental right to marry); *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (debtors owing child support have a fundamental right to marry); *Maynard v. Hill*, 125 U.S. 190, 205 (1888) (marriage is "the most important relation in life").

Third, the denial to same-sex couples of the protection of the marriage laws causes "immediate, continuing, and real injuries." *Romer*, 517 U.S. at 635. To start, this denial stigmatizes gay and lesbian couples and classifies them as second-class citizens. *See Windsor*, 133 S. Ct. at 2692 (denying marriage to same-sex couples is an "injury and indignity [that] is a deprivation of an essential part of the liberty protected by the Fifth Amendment."). They may co-habit, but they are denied the dignity of standing before friends, family, and their communities and entering into a legally recognized marriage. *See* Calabresi & Begley at 25 ("A mark of caste is a limit on intermarriage.")

Moreover, states that deny same-sex couples the protection of the marriage laws consign gay and lesbian Americans repeatedly to second-class status under a variety of intertwined state laws. They are thus denied:

- The right to make caretaking decisions and exercise other rights in times of death and disaster.[7]

- The right to make end of life and burial decisions.[8]

- The right to inherit the property of a spouse who dies intestate.[9]

- The right to obtain spousal support and divide communal assets if their union dissolves.[10]

---

7. Ala. Code §§ 22-8A-11, 26-2A-104; Alaska Stat. § 13.26.095; Ark. Code Ann. § 20-9-602; Ind. Code §§ 16-36-4-13, 16-39-2-10, 4-2; Miss. Code Ann. § 41-41-211; Mo. Rev. Stat § 475.050; Mont. Code Ann. §§ 40-2-108, 50-9-106; N.D. Cent. Code § 30.1-28-11; S.C. Code Ann. § 44-66-30; S.D. Codified laws § 29A-5-305; Tex. Health & Safety Code Ann. § 166.039.

8. Ala. Code §§ 22-8A-11(d), 34-13-11(a); Alaska Stat. §§ 13.52.010, 197; Ark. Code Ann. § 20-17-214; Ind. Code §§ 16-36-1-5, 2-3, 16-39-1-3, 7.1-5; Miss. Code Ann. § 73-11-58; Mo. Rev. Stat. § 194.119; N.C. Gen. Stat. § 90-322; N.C. Gen. Stat. § 130A-420(b); Mont. Code Ann. §§ 40-2-108, 50-16-804; N.D. Cent. Code §§ 23-06-02, 03; S.C. Code Ann. §§ 32-8-320; 44-66-30; S.D. Codified laws §§ 34-26-2, 4, 14, 16; Tex. Health & Safety Code Ann. § 711.004.

9. Ala. Code §§ 43-8-41, 70, 74, 110-112; Alaska Stat. § 13.12.102; Ark. Code Ann. § 28-11-102, 28-39-101, 301; Ind. Code §§ 29-1-2-1, 29-1-3-1(a), 29-1-4-1; Miss. Code Ann. §§ 91-1-7, 91-5-25, 91-5-27; Mo. Rev. Stat. § 474.010; Mont. Code Ann. § 72-2-112; N.C. Gen. Stat. § 29-14; N.D. Cent. Code §§ 30.1-04-02, 07-02; S.C. Code Ann. §§ 62-2-102, 201, 301; S.D. Codified laws §§ 29A-2-102, 301; Tex. Prob. Code Ann. § 201.003.

10. Ala. Code §§ 30-2-50-52; Alaska Stat. § 25.24.160; Ark. Code Ann. §§ 9-12-309, 312; Ind. Code § 31-15-2-17; Miss. Code Ann. §§ 93-5-2, 23; Mo. Rev. Stat. §§ 452.305, 315; Mont. Code §§

- The right to bring an action for wrongful death of a spouse.[11]

- The evidentiary protection of their personal, marital communications in the courts.[12]

- The rights afforded to a surviving spouse for worker's compensation, disability or pensions.[13]

- The benefits that married state employees enjoy, such as the right to coverage under their spouse's health insurance.[14]

40-4-104, 121; N.C. Gen. Stat. §§ 50-16.3A, 51; N.D. Cent. Code §§ 14-05-23, 24; S.C. Code Ann. §§ 20-3-120, 130, 610; S.D. Codified Laws §§ 25-4-38-41, 44; Tex. Fam. Code Ann. §§ 7.001, 7.003, 8.051.

11. Ala. Code §§ 25-5-31, 34-23-1-1; Alaska Stat. § 09.55.580; Ark. Code Ann. § 16-62-102(d); Miss. Code Ann. § 11-7-13; Mo. Rev. Stat. § 537.080; Mont. Code Ann. §§ 40-2-108, 27-1-513; N.C. Gen. Stat. §§ 28A-4-1, 18-2; N.D. Cent. Code § 32-21-03; S.C. Code Ann. § 15-51-20; S.D. Codified laws § 21-5-5; Tex. Civ. Prac. & Rem. Code Ann. § 71.004.

12. Ala. R. Evid. 504; Alaska R. Evid. 505; Ark. R. Evid. 504; Ind. Code § 34-46-3-1(4); Miss. R. Evid. 504, 601(a); Mo. Rev. Stat. § 546.260; Mont. Code Ann. § 46-16-212; N.C. Gen. Stat. §§ 8-56, 57; N.D. R. Evid. 504; S.C. Code Ann. § 19-11-30; S.D. Codified laws §§ 19-13-12, 13; Tex. R. Evid. 504.

13. Ala. Code §§ 11-40-17, 18, 18.1, 25-5-57; Ark. Code Ann. §§ 24-11-425, 24-6-216, 24-4-608, 24-7-710; Ind. Code § 22-3-3-19; Miss. Code Ann. §§ 21-29-329, 25-11-114, 25-13-13, 71-3-25; Mo. Rev. Stat. §§ 103.005, 104.012; Mont. Code Ann. § 39-71-723; N.C. Gen. Stat. § 97-39; N.D. Cent. Code § 65-05-12.2; S.C. Code Ann. §§ 42-9-110, 280, 290; S.D. Codified Laws §§ 3-12-95.6, 3-13A-15; Tex. Labor Code § 408.182; Tex. Fam. Code Ann. §§ 3.007, 3.008.

14. Ala. Code § 36-29-7; Ark. Code Ann. §§ 24-10-617, 24-12-117; Miss. Code Ann. § 25-15-13; Mo. Rev. Stat. § 103.005; Mont.

- The right to file joint tax returns.[15]

Children of same-sex parent couples likewise suffer real and substantial harm from states' denial of equal recognition of their parents' marriages. Equal Protection ensures that children of same-sex couples are not subject to the stigma of second-class treatment and discrimination based on factors outside of their control.[16] *See, e.g.*, *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175–76 (1972) (worker's compensation giving "unacknowledged illegitimate children" lower priority than "legitimate children" in benefits violated equal protection). "Obviously, no child is responsible for his birth and penalizing the [] child is an ineffectual – as well as an unjust – way of deterring the parent." *Id.* at 175.

Code Ann. § 2-18-704; N.C. Gen. Stat. § 135-48.40; N.D. Cent. Code §§ 54-52.1-03, 07; S.C. Code Ann. § 1-11-730; S.D. Codified laws § 3-6E-7; Tex. Gov't Code Ann. § 615.073.

15. *See, e.g.,* Ala. Code § 40-18-5; Employee Benefits Legal Resource Site, *Tax Guidance: Alabama Income Tax Filing Status for Same-Sex Couples* (Feb. 28, 2015), https://web.archive.org/web/20140909194610/http://revenue.alabama.gov/incometax/Tax-Guidance.pdf (archiving a tax guidance originally published on the State's Department of Revenue website); N.D. Cent. Code § 57-38-30.3, 68; S.C. Code Ann. § 12-6-5000; S.C. Dep't of Rev., Dir. William M. Blume, Jr., SC Revenue Ruling #14-1 (Feb. 3, 2014) (same-sex couples must "prepare their South Carolina returns as though they are single").

16. *Amici* respectfully direct the Court to the Brief of *Amici Curiae* Scholars of the Constitutional Rights of Children in Support of Petitioners, which details (1) this Court's precedent establishing that the equal protection rights of children are violated by laws that punish children for matters beyond their control (such as illegitimacy), and (2) the unjustifiable legal, economic and social harm to children of same-sex couples caused by state marriage bans.

Prohibitions on marriage for same-sex couples function to stigmatize children based on the sexual orientation of their parents, and in certain states also deprive the children among *amici* of adoptions that would otherwise be in their best interests. Some states have refused to issue birth certificates for children adopted by same-sex couples bearing both parents' names, and other state laws bar the second-parent adoption of a child unless its parents are legally married. *See* Elena Schnieder, *Seeking the State's Legal Recognition of Two Same-Sex Parents*, N.Y. Times (Jan. 26, 2013), http://www.nytimes.com/2013/01/27/us/gay-couples-seek-texas-recognition-as-legal-parents.html. Indeed, just last month in Alabama, Cari Searcy was denied the right to adopt her wife's nine-year-old biological son, whom the couple has raised together since his birth. Kim Chandler, *Couple in Ala. gay marriage case still not allowed to adopt*, Sun Herald (Feb. 24, 2015), http://www.sunherald.com/2015/02/24/6088726/couple-in-alabama-gay-marriage.html.

Children of same-sex couples, moreover, suffer unique harms when their parents' marriage is deprived of legal recognition. As the district court in one of the cases before this Court explained, children of same-sex couples face "an imminent risk of potential harm . . . during their developing years from the stigmatization and denigration of their family relationship." *Tanco* v. *Haslam*, No. 3:13-cv-01159, 2014 WL 997525, at *7 (M.D. Tenn. Mar. 14, 2014) *rev'd DeBoer* v. *Snyder*, 772 F.3d 388 (6th Cir. 2014) *cert. granted* 135 S. Ct. 1040 (2015). This Court similarly recognized in *Windsor* that denying marriage rights to same-sex couples "instruct[s] . . . all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of

others." 133 S Ct. at 2696. Laws discriminating against marriage for same-sex couples make it "even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Windsor,* 133 S. Ct. at 2694; *see also* Mem. Op. & Order at 9, *Searcy v. Strange*, 14-0208-CG-N, Dkt. 53 (S.D. Ala. Jan. 23, 2015) ("Alabama's prohibition of same-sex marriage detracts from its goal of promoting optimal environments for children.").

Many children of same-sex parents are especially vulnerable to the injury that comes from denigration of their family relationship because they have been adopted, through the foster system, from prior situations where they suffered abuse or neglect. These children particularly need the validation that comes from knowing that their "forever family" is stable and worthy in the eyes of the state and their communities.

There are other tangible harms that arise from a state's refusal to recognize marriages of same-sex parents. For instance, children of same-sex couples have been denied health insurance benefits and other entitlements that they would receive if their parents' marriage were recognized. *See Tanco v. Haslam*, 7 F. Supp. 3d 759, 764, 770 (M.D. Tenn. 2014). (noting, for example, that child may not receive Security Benefits if non-legal parent dies, and non-legal parent may not have access to child during medical emergencies).

Moreover, both parent and child face great uncertainty if the parent listed on the child's birth certificate were to die. Unlike different-sex couples, the surviving partner,

and any children of the couple, are shut out of the inheritance process if, like many Americans, the partner dies intestate, and any of the latter's assets passes to his or her next of kin. *See, e.g.* ALA. CODE § 43-8-41. Such laws jeopardize the future financial stability for the surviving partner and children. Ashlea Ebeling, *The Same Sex State Death Tax Trap Post DOMA*, Forbes (Jul. 1, 2013), http://www.forbes.com/sites/ashleaebeling/2013/07/01/the-same-sex-state-death-tax-trap-post-doma.

The denial of state level recognition for marriage also denies *amici* and other same-sex couples the protections of federal laws. Notwithstanding *Windsor*, important federal rights remain out of reach for same-sex couples where the federal government uses state law to determine marital status. These important rights include the ability to share Social Security Benefits, the right to take leave under the Family Medical Leave Act to care for a same-sex spouse, and the right to receive federal Medicaid benefits.

In particular, veterans who reside in states that do not recognize marriage for same-sex couples, such as Texas *amicus* and retired 22-year Air Force veteran Victor Holmes, are denied myriad benefits conferred by the Veterans Administration ("VA") due to the VA's policy of determining a veteran's marital status based on state law. *See* Travis J. Tritten, *New VA policy on same-sex marriage benefits triggers lawsuit*, Stars and Stripes (Aug. 20, 2014), http://www.stripes.com/news/veterans/new-va-policy-on-same-sex-marriage-benefits-triggers-lawsuit-1.299220.[17] Thus, under that policy, Holmes's partner of over 17 years,

17. *See also* Brief of *Amici Curiae* Outserve-Servicemembers Legal Defense Network & Am. Military Partner Ass'n in Supp. of Pet'rs at 20-24, *Obergefell v. Hodges*, No. 14-1556 (Mar. 3, 2015).

amicus Mark Phariss, would not be entitled to receive his death pension benefits (as Holmes wants) even if they were married in another state. Also, eight-year Navy veteran Crystal Von Kampen and her spouse Carla were denied VA benefits, including a VA home loan, because their home state of Nebraska does not recognize their marriage. Rachael Krause, Tim Seaman, *After Being Denied Certain V.A. Benefits, Norfolk Couple Joins Fight Over Same Sex Marriage*, www.Siouxlandmatters.com (Jan. 21, 2015), http://www.siouxlandmatters.com/story/d/story/after-being-denied-certain-va-benefits-norfolk-cou/84474/WJpgGDmqak6sKoDaTYfXGw.

More broadly, state marriage bans deny same-sex couples the well-documented health and economic benefits that marriage confers. *See* Christine M. Proulx & Linley A. Snyder-Rivas, *The Longitudinal Associations between Marital Happiness, Problems, and Self-Rated Health,* 27 J. Fam. Psychol. 194 (2013) (married couples have better mental and physical health than unmarried couples); Richard G. Wight, PhD, MPH, Allen J. LeBlanc, PhD, and M. V. Lee Badgett, PhD, *Same-Sex Legal Marriage and Psychological Well-Being: Findings From the California Health Interview Survey*, Am. J. Public Health (Oct. 15, 2012) (reaching same conclusion for same-sex couples); Andrew L. Yarrow, *Falling Marriage Rates Reveal Economic Fault Lines*, N.Y. Times (Feb. 6, 2015), http://nytimes.com/2015/02/08/fashion /weddings/falling-marriage-rates-reveal-economic-fault-lines.html ("Studies have shown that married women and men tend to be much better off financially than those who are unmarried").

The unavoidable effect of leaving the question of marriage for same-sex couples to state legislatures would be the creation of a balkanized nation of marriage "haves" and "have nots," where the protections and benefits under state marriage laws are available to the former and denied to the latter. Such a result cannot be countenanced under a Constitution that "neither knows nor tolerates classes among citizens." *Romer,* 517 U.S. at 623 (*quoting Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (dissenting opinion)). *See also* Calabresi & Begley, *supra*, at 18-27 (Fourteenth Amendment "bars all systems of caste and class-based laws" and therefore is violated by state laws denying the protection of the marriage laws to gay and lesbian Americans).

Fourth, and finally, when the first three factors are present – that is, a discriminatory law that applies only to an unpopular group, on a matter of fundamental interest, that causes great harms – tradition and popular sovereignty are not sufficient to prevent judicial recognition that a law unjustifiably treats some Americans as second-class citizens. *See* Part I, *supra*. The only other purported rational justification to which the Sixth Circuit gave near absolute deference is to foster responsible procreation by different-sex couples. *DeBoer*, 772 F.3d at 404-405. But it is this Court that decides after careful consideration if a purported justification withstands scrutiny, or rather merely masks legislation treating some Americans as a disfavored class. *Romer*, 517 U.S. at 633 ("By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, *we ensure* that classifications are not drawn for the purpose of disadvantaging the group burdened by the law.") (emphasis added). The irrationality of the

"procreation" canard has been thoroughly demonstrated by the Petitioners and other *amici.* We add only that many of this brief's *amici* are raising children, whose lives they seek to improve by marrying. *See* Appendix A.

In sum, because all these four factors are present here, this is not a case where enforcing the Equal Protection Clause would somehow turn this Court into a super-legislature. It is the confluence of all four factors that both distinguishes this case and compels the conclusion that the Equal Protection Clause secures for gay and lesbian Americans the same respect, dignity, and other protections of the marriage laws already enjoyed by the vast majority of Americans.

CONCLUSION

The Sixth Circuit's decision should be reversed.

Respectfully submitted,

Wesley R. Powell
Mary J. Eaton
Sameer Advani
Willkie Farr
& Gallagher LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

Richard D. Bernstein
Counsel of Record
Willkie Farr
& Gallagher LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000
rbernstein@willkie.com

Counsel for Amici Curiae

APPENDIX

Alabama Amici

April Aaron-Brush and Ginger Aaron-Brush have been in a loving, committed relationship for over seventeen years and, together, are raising their seven-year-old daughter. April is employed by the Social Security Administration and Ginger is an elementary school teacher. They were lawfully married in Massachusetts in 2012, but Alabama's Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. April and Ginger have challenged the denial of recognition of their marriage in the United States District Court for the Southern District of Alabama. *Aaron-Brush v. Bentley*, No. 14-cv-01091 (N.D. Ala. filed June 10, 2014).

Alaska Amici

Matthew Hamby and Christopher Shelden have been in a loving, committed relationship for nearly a decade. Matthew is employed by the State of Alaska and Christopher is a pharmacist. They were legally married in Canada in 2008 and remarried in Utah in December 2013, but the Alaska Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. Matthew and Christopher have challenged the denial of recognition of their marriage in the United States District Court for the District of Alaska, which ruled in *Amici's* favor. *Hamby v. Parnell*, 14-CV-00089, 2014 WL 5089339 (D. Alaska Oct. 12, 2014) (the "*Hamby* Action"). The case is on appeal to the United States Court of Appeals for the Ninth Circuit.

Appendix

Susan Tow and Christina Laborde have been in a loving, committed relationship for nearly a decade and together are raising two sons. Susan is a twenty-two-year, retired veteran of the U.S. Air Force and Christina is a former state and federal employee who now works in the private sector in Anchorage. Susan and Christina entered into a civil union in Hawaii in 2012 and were lawfully married in Maryland in 2013, but the Alaska Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. They have challenged the denial of recognition of their marriage in the *Hamby* Action.

Stephanie Pearson and Courtney Lamb have been in a loving, committed relationship since 2013. Stephanie works as a technician, and Courtney works in the medical field. The couple is engaged to be married, but the Alaska Constitution and related legislation bar issuance of marriage licenses to same-sex couples. They have challenged the denial of a marriage license in the *Hamby* Action.

Sean Egan and David Robinson have been in a loving, committed relationship for seven years. Sean is a Ph.D. student in Chemistry at the University of Alaska and David is a Petty Officer Third Class in the United States Navy. In 2011, Sean and David were lawfully married in the New York, but the Alaska Constitution and related legislation bar recognition of marriages of same-sex couples performed in other states. They have challenged the denial of recognition of their marriage in the *Hamby* Action.

Tracey Wiese and Katrina Cortez have been in a loving, committed relationship since 2011 and together are raising Tracey's three-year-old daughter from a prior marriage. Tracey is a forensic nurse at Providence Alaska Medical Center in Anchorage and provides mental health services to children in private practice. Katrina is a small business owner. Tracey and Katrina were legally married in Hawaii in March 2014, but the Alaska Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. They have challenged the denial of recognition of their marriage in the *Hamby* Action.

Arkansas Amici

Cody Renegar and Thomas Staed began a loving, committed relationship in 2009 and, together, raised Cody's son from a prior relationship. Cody is a hair stylist, and Thomas is a bank analyst. The couple wished to marry in Arkansas but could not do so because Arkansas law prohibits issuance of marriage licenses to same-sex couples. Cody and Thomas challenged their inability to obtain a marriage license in Arkansas state court, which entered a final order in plaintiffs' favor on May 15, 2014. *Smith v Wright*, 60-CV-13-2662 (Ark. Cir. Ct., Pulaski Co. filed July 2, 2013) (the "*Smith* Action"). The case is now on appeal to the Arkansas Supreme Court.

Indiana Amici

Michelle Bowling and Shannon Bowling have been in a loving, committed relationship for more than five years and together are raising their three children. Michelle is employed as a clerk of the Marion County, Indiana Small Claims Court, and Shannon is employed by the State of Indiana Department of Corrections. In January 2011, Michelle and Shannon were lawfully married in Iowa, but Indiana law prohibits recognition of marriages of same-sex couples performed in other states. Michelle and Shannon have challenged the denial of recognition of their marriage in the United States District Court for the Southern District of Indiana, which ruled in *Amici's* favor. *Bowling v. Pence*, 14-cv-00405, 2014 WL 4104814 (S.D. Ind. Aug. 19, 2014) (the "*Bowling* Action"). The appeal of the decision was dismissed as moot based on *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014) and the Supreme Court's subsequent denial of certiorari.

Linda Bruner was lawfully married to Lori Roberts in Iowa on July 20, 2010. Linda is currently employed as an EMT. On January 31, 2013, Linda filed a Petition of Dissolution of Marriage in Marion County, Indiana Superior Court, which was denied because Indiana prohibits recognition of marriages of same-sex couples performed in other states. Linda challenged the denial of the recognition and dissolution of her marriage in the *Bowling* Action.

Midori Fujii was lawfully married to Kristie Kay Brittain in California in 2008. Following Kristie's

death in October 2011, Midori was required to pay over $300,000 in Indiana inheritance tax and is ineligible to receive Kristie's social security benefits, because Indiana prohibits recognition of marriages of same-sex couples performed in other states. Midori challenged the denial of recognition of her marriage in the United States District Court for the Southern District of Indiana, *Fujii v. Indiana*, 14-cv-00404 (S.D. Ind. filed Mar. 14, 2014) (the "*Fujii* Action"). On June 25, 2014 the court entered a final judgment in plaintiffs' favor, *Fujii v. Indiana*, 14-cv-00404, (S.D. Ind. Jun. 25, 2014), and the Seventh Circuit affirmed in a consolidated opinion, *Baskin v. Bogan,* 766 F.3d 648 (7th Cir. Sep. 4, 2014).

Melody Layne and Tara Betterman have been in a loving, committed relationship for more than five years and together are raising their five-year-old daughter. Melody and Tara own a construction company in Central Indiana. In 2012, the couple was lawfully married in New York, but Indiana law prohibits recognition of marriages of same-sex couples performed in other states. Melody and Tara have challenged the denial of recognition of their marriage in the *Fujii* Action.

Pamela Lee and Candace Batten-Lee have been in a loving, committed relationship for almost twenty-seven years. Pamela is a military veteran who serves on the Indianapolis Metropolitan Police Department, and Candace works as a real estate assistant and a nanny to Pamela's sister's two young daughters. The couple was lawfully married in California on October 25, 2013. On or about January 27, 2014, Pamela applied to designate

Candace as her spouse and primary beneficiary under a state pension fund, but her application was denied because Indiana law prohibits recognition of marriages of same-sex couples performed in other states. Pamela and Candace have challenged the denial of recognition of their marriage in the United States District Court for the Southern District of Indiana, *Lee v. Pence*, 14-cv-00406 (S.D. Ind. filed Mar. 14, 2014) (the "*Lee* Action"). The District Court entered a final judgment on June 25, 2015 in plaintiffs' favor, *Lee v. Pence*, 14-cv-00406 (S.D. Ind. Jun. 25, 2014), and the Seventh Circuit affirmed in a consolidated opinion, *Baskin v. Bogan,* 766 F.3d 648 (7th Cir. Sep. 4, 2014).

Teresa Welborn and Elizabeth Piette have been in a loving, committed relationship for more than four years. Teresa has served as an officer with the Indianapolis Metropolitan Police Department for more than twenty-five years and Elizabeth is a nurse practitioner in palliative care at Indiana University Health Methodist Hospital. The couple was lawfully married in Hawaii on December 13, 2013. On February 20, 2014, Teresa applied to designate Elizabeth as her spouse and primary beneficiary under a state pension fund but her application was denied because Indiana law prohibits recognition of marriages of same-sex couples performed in other states. Teresa and Elizabeth have challenged the denial of recognition of their marriage in the *Lee* Action.

Ruth Morrison and Martha Leverett have been friends for over twenty years, and have been in a loving, committed relationship over three years. Ruth served in

the Indianapolis Fire Department as a Battalion Chief for over twenty-seven years. Martha is a technician with Amcor. The couple was lawfully married in Maryland on September 11, 2013. On or about September 18, 2013, Ruth applied to designate Martha as her spouse and primary beneficiary under a state pension fund but her application was denied because Indiana law prohibits recognition of marriages of same-sex couples performed in other states. Ruth and Martha have challenged the denial of recognition of their marriage in the *Lee* Action.

Karen Vaughn-Kajmowicz and Tammy Vaughn-Kajmowicz have been in a loving, committed relationship for thirteen years and, together, are raising their three children. Karen has served as a police officer in the Evansville Police Department for eighteen years, and Tammy cares for their children at home full-time The couple was lawfully married in Iowa on October 25, 2013. In or around October 2013, Karen applied to designate Tammy as her spouse and primary beneficiary under a state pension fund but her application was denied because Indiana law prohibits recognition of marriages of same-sex couples performed in other states. Karen and Tammy have challenged the denial of recognition of their marriage in the *Lee* Action.

Kansas Amici

Kail Marie and Michelle L. Brown have been in a loving, committed relationship for over twenty years. Kail is a home health worker who helps individuals with developmental disabilities, and Michelle is an assistant

District Attorney who primarily works on child abuse and neglect cases. On October 16, 2014, Kail and Michelle were denied a marriage license by the office of the Clerk of the Douglas County District Court because the Kansas Constitution and related legislation prohibit marriage of same-sex couples. Kail and Michelle have challenged the denial of marriage licenses to same-sex couples in *Marie v. Moser*, 14-cv-02518 (D. Kan. filed Oct. 10, 2014) (the "*Marie* Action").

Kerry Wilks and Donna Ditrani have been in a loving, committed relationship for five years. Kerry is a Dean and professor of Spanish Literature at Wichita State University. On October 6, 2014, Kerry and Donna were denied a marriage license by the Clerk of the District Court for the Eighteenth Judicial District in Wichita, Kansas, because the Kansas Constitution and related legislation bar issuance of marriage licenses to same-sex couples. They attempted to obtain a marriage license on three more occasions and each time were denied. Kerry and Donna have challenged their denial of a marriage license in the *Marie* Action.

James Peters and Gary Mohrman have been in a loving, committed relationship for more than thirty years. James is employed by the University of Kansas, and Gary is a freelance illustrator of grade school-level educational publications. The couple was lawfully married in Iowa on July 31, 2010. On November 16, 2014, Peter attempted to designate Gary as a dependent spouse on his state health insurance plan but was denied because Kansas law prohibits recognition of marriages of same-sex

couples performed in other states. James and Gary have challenged the denial of recognition of their marriage in the *Marie* Action.

Carrie Fowler and Sarah Braun have been in a loving, committed relationship for three years and are together raising four children from Carrie's previous marriage. Sarah is an Instrumental Band Director at a public high school, and Carrie is as a guidance counselor at a public elementary school. They are both currently working on their Ph.D.s. In June 2014, the couple lawfully married in Illinois. In July 2014, they went to the Department of Motor Vehicle for Carrie to obtain a new driver's license in her married name of Braun, but were denied because Kansas law prohibits recognition of marriages of same-sex couples performed in other states. Carrie and Sarah have challenged the denial of recognition of their marriage in the *Marie* Action.

Darci Bohnenblust and Joleen Hickman have been in a loving, committed relationship for over nineteen years. Darci works for the Kansas State University, and Joleen works for a local respiratory company helping customers install oxygen equipment in their homes. In November 2014, the couple was lawfully married in Kansas following a ruling by the Tenth Circuit of Appeals finding same-sex marriage bans to be unconstitutional, however the State of Kansas subsequently refused to recognize their marriage. Darci and Sarah have challenged the denial of recognition of their marriage in the *Marie* Action.

Louisiana Amici

Jon Robicheaux and Derek Robicheaux have been in a loving, committed relationship for ten years. Derek is a paramedic and Jon works as a bartender in New Orleans. In September 2012, the couple lawfully married in Iowa, but the Louisiana Constitution and related statutory provisions prohibit recognition of marriages of same-sex couples performed in other states. Jon and Derek have challenged the denial of recognition of their marriage in the United States District Court for the Eastern District of Louisiana, which ruled against the *Amici* on September 3, 2014. *Robicheaux v. Caldwell*, 2 F. Supp.3d 910 (E.D. La. 2014) (the "*Robicheaux* Action"). The case is currently on appeal to the United States Court of Appeal for the Fifth Circuit.

Courtney Blanchard and Nadine Blanchard have been in a loving, committed relationship for five years and together are raising a two year old son. Courtney is a provisioning analyst for a shipbuilding company, and Nadine cares for their son at home full-time. In August 2013, the couple lawfully married in Iowa, but the Louisiana Constitution and related statutory provisions prohibit recognition of marriages of same-sex couples performed in other states. Courtney and Nadine have challenged the denial of recognition of their marriage in the *Robicheaux* Action.

Appendix

Mississippi Amici

Jocelyn Pritchett and Carla Webb have been in a loving, committed relationship for eleven years and together are raising two children. Jocelyn is a civil engineer and Carla is an endodontist. In September 2013, the couple lawfully married in Maine, but the Mississippi Constitution and related statutory provisions prohibit recognition of marriages of same-sex couples performed in other states. Jocelyn and Carla have challenged the denial of recognition of their marriage in the United States District Court for the Southern District of Mississippi, which ruled in *Amici's* favor. *Campaign for Southern Equal. v. Bryant*, 2014 WL 6680570 (S.D. Miss. Nov. 25, 2014). The case is on appeal to the United States Court of Appeals for the Fifth Circuit.

Missouri Amici

Kyle Lawson and Evan Dahlgren have been in a loving, committed relationship for nearly two years. Kyle is a math teacher and Evan is a music teacher and private voice coach. Kyle and Evan were denied a marriage license by the office of the Jackson County, Missouri Recorder of Deeds, because the Missouri Constitution and related legislation bar issuance of marriage licenses to same-sex couples. Kyle and Evan have challenged their denial of a marriage license in the United States District Court for the Western District of Missouri, which ruled in *Amici's* favor. *Lawson v. Kelly*, 14-cv-0622, 2014 WL 5810215 (W.D. Mo. Nov. 7, 2014) (the "*Lawson* Action"). The case is on appeal to the United States Court of Appeals for the Eighth Circuit.

Angela Curtis and Shannon McGinty have been in a loving, committed relationship for eleven years and together are raising their three children. Both Angela and Shannon are professionals in the private financial sector. On June 20, 2014, Angela and Shannon were denied a marriage license by the office of the Jackson County, Missouri Recorder of Deeds, because the Missouri Constitution and related legislation bar issuance of marriage licenses to same-sex couples. Angela and Shannon have challenged their denial of a marriage license in the *Lawson* Action.

Montana Amici

Angela Rolando and Tonya Rolando have been in a loving, committed relationship for more than five years and together are raising Angela's sixteen-year-old son and Tonya's ten-year-old son from prior marriages. Angela is a training and development specialist for the Montana Department of Child and Family Services. Tonya is a retired E-4 Senior Airman in the United States Air Force who currently works as an EMT at the Pondera Medical Center in Conrad, Montana. On May 19, 2014, Angela and Tonya were denied a marriage license by the Cascade County, Montana Clerk of Court, because the Montana Constitution and related legislation prohibit marriage of same-sex couples. Angela and Tonya challenged their denial of a marriage license in the United States District Court for the District of Montana, which ruled in *Amici's* favor. *Rolando v. Fox*, 23 F.Supp.3d 1227 (D. Mont. 2014) (the "*Rolando* Action"). The case is on appeal to the United States Court of Appeals for the Ninth Circuit.

Chase Weinhandl and Benjamin Milano have been in a loving, committed relationship for seven years. Chase is a manager of the local Costco, and Benjamin is a senior account manager for the Chicago-based brand marketing firm, Brandmuscle. Chase and Benjamin entered into a civil union in Illinois in 2011 and were lawfully married in Hawaii in 2014, but the Montana Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. Chase and Benjamin have challenged the denial of recognition of their marriage in the *Rolando* Action.

Susan Hawthorne and Adel Johnson have been in a loving, committed relationship for seventeen years. Susan recently retired with the rank of Sergeant First Class after serving twenty-eight years in the U.S. Army, the Army Reserves, and Montana Army National Guard. Adel is employed by the United States the Department of Military Affairs, Environmental Office and has served in the Army National Guard for fourteen years, currently as Major. They were lawfully married in Washington in 2014, but the Montana Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. Susan and Adel have challenged the denial of recognition of their marriage in the *Rolando* Action.

Shauna Goubeaux and Nicole Goubeaux have been in a loving, committed relationship for eleven years and together are raising their one-year-old son. Nicole is a night shift nurse at Advanced Care Hospital in Billings. Shauna is also a nurse and provides homecare work for

Interim, a nurse staffing agency in Billings. The couple lawfully married in Iowa in August 2011, but the Montana Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. Shauna and Nicole have challenged the denial of recognition of their marriage in the *Rolando* Action.

Nebraska Amici

Sally and Susan Waters have been in a loving, committed relationship for over fifteen years and together are raising three children. Sally works as a leadership development consultant at Mutual of Omaha. Susan works at the University of Nebraska Omaha helping faculty use technology in the classroom. The couple was lawfully married in California in 2008, but the Nebraska Constitution prohibits recognition of marriages of same-sex couples performed in other states. Along with other plaintiffs, Sally and Susan have challenged the denial of recognition of their marriage in the United States District Court for the District of Nebraska, which ruled in *Amici*'s favor. *Waters v. Ricketts*, 8:14-CV-00356, 2015 WL 852603(D. Neb. Mar. 2, 2015) (the "*Waters* action"). The case is on appeal to the United States Court of Appeals for the Eight Circuit.

Nickolas Kramer and Jason Cadek have been in a loving, committed relationship for over ten years and, together, are raising their three-year-old daughter. Nick works as a management consultant and Jason is a compliance officer for a bank. Nick and Jason were lawfully married in Iowa in 2013, but the Nebraska

Constitution prohibits recognition of marriages of same-sex couples performed in other states. Nick and Jason have challenged the denial of recognition of their marriage in the *Waters* Action.

Crystal Von Kampen and Carla Morris-Von Kampen have been in a loving, committed relationship for five years. Carla works at a non-profit that helps families with children who have emotional and mental disabilities. Crystal served in the United States Navy for eight years. The couple was lawfully married in Iowa on November 1, 2013, but the Nebraska Constitution prohibits recognition of marriages of same-sex couples performed in other states. Crystal and Carla have challenged the denial of recognition of their marriage in the *Waters* Action.

Gregory Tubach and William ("Bil") Roby have been in a loving, committed relationship for twenty-eight years. Greg is an editor at a publishing company and Bil works at a state agency. Greg and Bil desire to marry, but the Nebraska Constitution prohibits same-sex marriage. Greg and Bil have challenged Nebraska's bar on same-sex marriage in the *Waters* Action.

Jessica and Kathleen Kallstrom-Schreckengost have been in a loving, committed relationship for over ten years and together are raising their infant son. Jessica is an attorney and Kathleen is a clinical psychologist. The couple was lawfully married in Massachusetts in 2010, but the Nebraska Constitution prohibits recognition of marriages of same-sex couples performed in other states. Jessica and Kathleen have challenged the denial of recognition of their marriage in the *Waters* Action.

Marjorie Plumb and Tracy Weitz have been in a loving, committed relationship for over ten years. Marj runs her own business, a firm providing management consulting and executive coaching to non-profit organizations. Tracy works at a local foundation. The couple was lawfully married in California in 2008, but the Nebraska Constitution prohibits recognition of marriages of same-sex couples performed in other states. Marj and Tracy have challenged the denial of recognition of their marriage in the *Waters* Action.

Randall Clark and Thomas Maddox have been in a loving, committed relationship for over thirty years. Randy is a CPA and serves as the chief financial officer for a Kansas City-based company and Tom is a family physician and teaches at a family medicine residency program. The couple was lawfully married in California in 2008, but the Nebraska Constitution prohibits recognition of marriages of same-sex couples performed in other states.. Randy and Tom have challenged the denial of recognition of their marriage in the *Waters* Action.

North Carolina Amici

Cathy Fry and Joanne Marinaro have been in a loving, committed relationship for eighteen years and, together, have raised two children. Joanne is a Senior Manager for a property casualty insurance company and Cathy owns and operates a small furniture company. On April 23, 2014, Joanne and Cathy were denied a marriage license by the Register of Deeds in Mecklenburg County, North Carolina because the North Carolina Constitution

and related legislation bar issuance of marriage licenses to same-sex couples. Along with other plaintiffs, Joanne and Cathy challenged the denial of a marriage license in the United States District Court for the Western District of North Carolina, and were granted final judgment in their favor on October 10, 2014, *General Synod of the United Church of Christ v. Resinger*, 14-cv-00213, 2014 WL 5342939 (Oct. 10, 2014) (the "*General Synod* Action"), which is now on appeal to the United States Court of Appeals for the Fourth Circuit.

Betty Mack and Carol Taylor have been in a loving, committed relationship for forty-two years. Betty and Carol are both in their seventies and are retired. On April 25, 2014, Betty and Carol were denied a marriage license by the Register of Deeds in Buncombe County, North Carolina because the North Carolina Constitution and related legislation bar issuance of marriage licenses to same-sex couples. They have challenged the denial of a marriage license in the *General Synod* Action.

Kay Diane Ansley and Catherine McGaughey have been in a loving, committed relationship for fourteen years. Kay is a retired a law enforcement officer who is currently employed as a patient scheduler and records custodian and Catherine is an accounts receivable specialist and bookkeeper for a local physician. On April 24, 2014, Kay and Catherine were denied a marriage license by the Register of Deeds in McDowell County, North Carolina, because the North Carolina Constitution and related legislation bar issuance of marriage licenses to same-sex couples. They have challenged the denial of a marriage license in the *General Synod* Action.

Elizabeth Cloninger and Kathleen Smith have been in a loving, committed relationship for fourteen years. Elizabeth works as a unit supervisor with Mecklenburg County Children's Development Services and Kathleen currently works at Duke Energy. On April 17, 2014, Elizabeth and Kathleen were denied a marriage license by the Register of Deeds in Mecklenberg County, North Carolina because the North Carolina Constitution and related legislation bar issuance of marriage licenses to same-sex couples. They have challenged the denial of a marriage license in the *General Synod* Action.

Shauna Bragan and Stacey Maloney have been in a loving, committed relationship for more than seven years and together they are raising Shauna's two children from a prior relationship. Shauna is a published environmental scientist who currently works as a customer service agent and Stacey is an adaptive physical education teacher. On April 24, 2014, Shauna and Stacey were denied a marriage license by the Register of Deeds in Cabarrus County, North Carolina because the North Carolina Constitution and related legislation bar issuance of marriage licenses to same-sex couples. They have challenged the denial of a marriage license in the *General Synod* Action.

Joel Blady and Jeffrey Addy have been in a loving, committed relationship for approximately four years. Joel is employed in the funeral industry and Jeffrey is employed in the healthcare industry. Joel and Jeffrey desire to marry but have not applied for a marriage license because the North Carolina Constitution and related legislation bar issuance of marriage licenses to same-sex

couples. They have challenged the denial of marriage licenses to same-sex couples in the *General Synod* Action.

North Dakota Amici

Celeste and Amber Carlson-Allebach have been in a committed, loving relationship for more than seven years and together are raising their three young children. Celeste is a social worker who works with homeless individuals and families and Amber operates an in-home daycare. They were lawfully married in Minnesota on August 1, 2013, but North Dakota's Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. Celeste and Amber have challenged the denial of recognition of their marriage in the United States District Court for the District of North Dakota. *Ramsay v. Dalrymple*, No. 14-cv-00057 (D.N.D. filed Jun. 6, 2014) (the "*Ramsay* Action").

Brock Dahl and Austin Lang have been in a loving, committed relationship for more than four years. Brock is a training coach in the training department of U.S. Bank, and Austin is an assistant manager at Holiday Stationstores. On June 4, 2014, Brock and Austin were denied a marriage license by the Cass County, North Dakota Treasurer's office, because North Dakota's Constitution and related legislation bar issuance of marriage licenses to same-sex couples. They have challenged the denial of a marriage license in the *Ramsay* Action.

South Carolina Amici

Tracie Goodwin Bradacs and Katherine Bradacs have been in a loving, committed relationship for five years and, together, are raising their two-year-old twins and Katherine's teenage son from a prior relationship. Tracie is a United States Air Force veteran and currently works in IT for the State of South Carolina, and Katherine is a Highway Patrol state trooper. The couple were married on April 6, 2012 in Washington, D.C, but the South Carolina Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. Tracie and Katherine have challenged the denial of recognition of their marriage in the United States District Court for the District of South Carolina, which ruled in their favor. *Bradacs v. Haley*, 13-cv-02351, 2014 WL 6473727 (D.S.C. Nov. 18, 2014). The case is on appeal to the United States Court of Appeals for the Fourth Circuit.

South Dakota Amici

Nancy and Jennie Rosenbrahn have been in a loving, committed relationship for over thirty years. Together, they own and manage a mobile home park. They were lawfully married in Minnesota on April 26, 2014, but South Dakota's Constitution and related legislation prohibit recognition of marriages of same-sex couples performed in other states. Nancy and Jenny have challenged the denial of recognition of their marriage in the United States District Court for the District of South Dakota, which ruled in their favor. *Rosenbrahn v. Daugaard*, 14-cv-04081, 2015 WL 144567 (D.S.D. Jan. 12, 2015). The

case is on appeal to the United States Court of Appeals for the Eighth Circuit.

Texas Amici

Victor ("Vic") Holmes and Mark Phariss have been in a loving, committed relationship for over seventeen years. Vic is a retired twenty-two year veteran of the United States Air Force and Mark is a practicing attorney in Texas. On October 3, 2013, Vic and Mark were denied a marriage license by the Bexar County, Texas Clerk's office, because the Texas Constitution and related legislation bar issuance of marriage licenses to same-sex couples. Along with other plaintiffs, Vic and Mark challenged the denial of a marriage license in the United States District Court for the Western District of Texas, which entered a final order in their favor. *DeLeon v. Perry* 975 F.Supp.2d 632 (W.D. Tex. 2014). The case is on appeal to the United States Court of Appeals for Fifth Circuit.