No. 16-111

In The
Supreme Court of the United States

MASTERPIECE CAKESHOP, LTD., *et al.*,

Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION, *et al.*,

Respondents.

On Writ of Certiorari to the Court of Appeals of Colorado

BRIEF OF AMICI CURIAE THE NATIONAL BLACK RELIGIOUS BROADCASTERS AND THE NATIONAL HISPANIC CHRISTIAN LEADERSHIP CONFERENCE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici are the National Black Religious Broadcasters and the National Hispanic Christian Leadership Conference. The National Black Religious Broadcasters is a national coalition of over 10,000 black religious broadcasters throughout the country who use broadcast and cable television, the internet, and radio to minister and spread the Gospel. The National Hispanic Christian Leadership Conference-CONEL is the largest Hispanic Evangelical organization in America, representing 40,118 churches.

Together, *Amici* speak on behalf of millions of people in the Nation's black and Hispanic communities who believe in and advocate for the view that marriage is a union between one man and one woman. They have an interest in ensuring that their First Amendment rights to express and exercise these deeply-held religious beliefs are protected. They submit this brief to debunk the spurious notion that understanding marriage to be a union between a man and a woman is akin to holding racist views about marriage.

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[1] Letters consenting to the filing of amicus briefs from Petitioners and Respondent the Colorado Civil Rights Commission are on file with the Court, and Respondents Charlie Craig and David Mullins have consented to the filing of this brief. *See* SUP. CT. R. 37.3(a). Pursuant to SUP. CT. R. 37.6, amicus certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than amicus, its members, or its counsel made such a monetary contribution.

INTRODUCTION

When this Court recognized a fundamental right to marriage that extends to same-sex couples, it acknowledged widespread, good-faith disagreement about the practice. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2594 (2015).

Specifically, the Court "emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned." *Id.* The Constitution not only permits such convictions; it removes them from the realm of state coercion. "The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered." *Id.*

This is consistent with the "fixed star in our constitutional constellation," that "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). "If there are any circumstances which permit an exception" to this rule, *id.*, they do not include an orthodoxy on same-sex marriage.

The decision below, and the law it upholds, disregard that fixed star. Among many First Amendment offenses, they permit government officials to pick and

choose which sincerely-held beliefs justify an exception to a public accommodations law interpreted to prohibit those in the wedding industry from declining to create custom expression that celebrates same-sex marriage ceremonies. This practice implicates the First Amendment protections this Court reaffirmed in *Obergefell*. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993) (holding that strict scrutiny applied to an ordinance prohibiting "unnecessary" killing of animals because "application of [an] ordinance's test of necessity devalues religious reasons for killing by judging them to be of lesser import than nonreligious reasons."). Yet the undeniable imposition on and devaluation of religious beliefs has been justified by, *inter alia*, resorting to the same compelling governmental interests advanced to overcome asserted First Amendment justifications for racial discrimination.

The attempt to draw a legal and moral comparison between opposition to same-sex marriage and opposition to interracial marriage disrespects the "sincere conviction" held by many religious and non-religious persons of good faith, *Obergefell*, 135 S. Ct. at 2607, and belittles the suffering of those who lived under the unjust anti-miscegenation laws that have blighted our Nation's history.

The decision to treat marriage as a fundamental right that extends to same-sex couples does not remove from the realm of legitimate disagreement questions about the definition and moral precepts of marriage. In this way, it stands in sharp contrast to our

"fundamental national public policy" against racial discrimination. *Bob Jones Univ. v. United States*, 461 U.S. 574, 593 (1983). While traditional views of marriage enjoy deep historical roots and cohere with the purposes of marriage, anti-miscegenation laws represent a departure from the common law definition of marriage, were borne of animus, and worked against the purposes of that institution. There is no equivalency, and the Court should reject any argument premised on the cynical assumption that there is.

SUMMARY OF ARGUMENT

I. The understanding of marriage as an opposite-sex relationship is as old as—and was until recently as universal as—the institution of marriage itself. Its existence has never depended upon or been correlated with a certain set of views about homosexuality. Nor has it been used as a tool to reinforce a caste system in which a certain people are relegated to the status of second-class citizens in every aspect of their lives.

Racial restrictions on marriage, on the other hand, have an ugly and peculiar pedigree in this Country: a departure from the common-law definition of marriage, anti-miscegenation laws were uniformly premised on the view that non-white races were inferior and served an important role in perpetuating oppression and segregation.

II. As this history reveals, the concern for longstanding, well-recognized (albeit in recent years hotly debated) purposes of marriage drives adherence to the understanding of it as an opposite-sex union. Central among these purposes is to channel relationships capable of producing offspring into stable family units in which any resulting children will flourish. Regardless of whether one agrees with the varied social and religious underpinnings of this understanding, they reflect rational, caring beliefs that the Government cannot possibly be said to have a compelling interest in suppressing.

By contrast, interracial marriage bans served no legitimate purpose. Instead, they perverted the procreative feature of marriage into a tool for perpetuating racial segregation, and in so doing, undermined the very social values marriage was intended to promote.

ARGUMENT

I. Unlike the Historically-Rooted Definition of Marriage as a Relationship Between a Man and a Woman, Racialized Views of Marriage Are Historical Aberrations that Depart from the Common Law and Reinforce a Racial Caste System.

As this Court has recognized, until very recently "marriage between a man and a woman . . . had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization." *United States v. Windsor*, 133 S. Ct. 2675, 2689 (2013). The same cannot be said of racial restrictions: Interracial marriage bans are the exception in world history.

To be sure, anti-miscegenation laws once blighted the legal landscape of some of the States for part of this Nation's history. But such laws were never universal throughout history, across civilizations, or even in this Country. To the contrary, interracial marriages were legal at common law, in six of the thirteen original States at the time the Constitution was adopted, and in many States that at no point ever enacted anti-miscegenation laws. *See, e.g.*, Irving G. Tragen, *Statutory Prohibitions Against Interracial Marriage*, 32 CAL. L. REV. 269, 269 & n.2 (1944) ("[A]t common law there was no ban on interracial marriage."); Lynn D. Wardle & Lincoln C. Oliphant, *In Praise of Loving: Reflections on the "Loving Analogy" for Same-Sex Marriage*, 51 HOW. L.J. 117, 180–81 (2007) (State-

by-State description of historical anti-miscegenation statutes); PETER WALLENSTEIN, TELL THE COURT I LOVE MY WIFE: RACE, MARRIAGE, AND LAW—AN AMERICAN HISTORY 41, 253–54 (2002). Other States abandoned such laws in the wake of the adoption of the Fourteenth Amendment, at least until Reconstruction gave way to the Jim Crow system of White Supremacy.[2] And outside the Jim Crow South, anti-miscegenation laws were both rare and rapidly disappearing

[2] *See Hart v. Hoss & Elder*, 26 La. Ann. 90 (La. 1874) (holding that the Civil Rights Act of 1866 invalidated anti-miscegenation law); *Burns v. State*, 48 Ala. 195, 198–199 (1872) (holding that the Fourteenth Amendment invalidated anti-miscegenation law); CHARLES F. ROBINSON II, DANGEROUS LIAISONS 29 (2006) (noting that in 1874 Arkansas omitted its anti-miscegenation law from its revised civil code); *id.* (noting that in 1871 Mississippi omitted its anti-miscegenation law from its revised civil code); *id.* at 30 (noting that in 1868 the Louisiana legislature repealed the state's anti-miscegenation law); Wardle & Oliphant, *In Praise of Loving*, 51 HOW. L.J. at 180 (noting that the Illinois legislature repealed its anti-miscegenation law in 1874); *see also* ROBINSON, DANGEROUS LIAISONS 29 (noting that in 1868 "South Carolina implicitly abrogated its intermarriage law by adopting a constitutional provision that 'distinctions on account of race or color in any case whatever, shall be prohibited, and all class of citizens shall enjoy all common, public, legal and political privileges' "); Peter Wallenstein, *Law and the Boundaries of Place and Race in Interracial Marriage: Interstate Comity, Racial Identity, and Miscegenation Laws in North Carolina, South Carolina, and Virginia, 1860s–1960s*, 32 AKRON L. REV. 557, 558, 561 (1999) (noting that after 1868 South Carolina had a "temporary tolerance of interracial marriage" that "attracted interracial couples from a . . . neighboring state").

from the statute books at the time *Loving v. Virginia* was decided.[3]

Even where they existed, moreover, such laws were never understood to be a defining characteristic of marriage. And they were certainly never universally so understood, throughout history and across civilizations. Indeed, even in ante-bellum America, the leading treatise on marriage described racial restrictions on marriage as "impediments, which are known only in particular countries, or States." 2 JOEL PRENTISS BISHOP, COMMENTARIES ON THE LAW OF MARRIAGE & DIVORCE § 213 (1st ed. 1852).

By contrast, the same treatise stated categorically that "[i]t has always . . . been deemed requisite to the entire validity of every marriage . . . that the parties should be of different sex" and that "[m]arriage between two persons of one sex could have no validity." *Id.* § 225. As countless courts have recognized, "[u]ntil a few decades ago, it was an accepted truth for almost everyone who ever lived, in any society in which marriage existed, that there could be marriages only between participants of different sex." *Hernandez v. Robles*, 855 N.E.2d 1, 8 (N.Y. 2006).

Not only have racial distinctions never been thought to go to the very definition of the institution

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[3] As the Court in *Loving* explained, fourteen states had repealed their bans on inter-racial marriages in the fifteen years leading up to the *Loving* decision; such restrictions remained in only 16 States, concentrated in the South. *Loving v. Virginia*, 388 U.S. 1, 6 n.5 (1967).

of marriage, but historically, where they have existed, they have been imposed for invidious motives that bear no resemblance to those undergirding the understanding of marriage as an opposite-sex union. Penalties for interracial marriage "arose as an incident to slavery," *Loving v. Virginia*, 388 U.S. 1, 6 (1967), and were premised on the despicable view that black people were "altogether unfit to associate with the white race, either in social or political relations," *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 407 (1857). Even after slavery was abolished, prohibitions on interracial marriage continued to be promoted and defended on the ground that certain races were inferior to others. *See, e.g.*, *Perez v. Lippold*, 198 P.2d 17, 22–25 (Cal. 1948).

By contrast, the historical record makes unmistakably clear that the traditional view of marriage is ubiquitous, sweeping across virtually all cultures and all times, regardless views on same-sex relationships. "[E]ven societies in which homosexual conduct was the norm and was well accepted have not recognized same sex marriage." *Kerrigan v. Commissioner of Pub. Health*, 957 A.2d 407, 522–23 (Conn. 2008) (Zarella, J., dissenting); *see also* Richard Posner, *Should There Be Homosexual Marriage? And If So, Who Should Decide?*, 95 MICH. L. REV. 1578, 1579 (1997) ("[H]omosexual marriage has nowhere been a common practice, even in societies in which homosexuality was common."). Indeed, ideas regarding sexual orientation simply did not play a role in the institution's develop-

ment or in its universal practice. While "[t]he institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis," *Baker v. Nelson*, 191 N.W.2d 185, 186 (Minn. 1971), *appeal dismissed for want of a substantial federal question*, 409 U.S. 810 (1972), scholars have suggested that "the concept of the homosexual as a distinct category of person did not emerge until the late 19th century," *Lawrence v. Texas*, 539 U.S. 558, 568 (2003).

Showing that support for traditional marriage entails no animus toward LGBT citizens, many gays and lesbians themselves opposed redefining marriage to include same-sex couples. *See* Gregory M. Herek, et al., *Demographic, Psychological, and Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a US Probability Sample*, 7 SEXUALITY RES. & SOC. POL'Y 176, 194 (2010) (22.1% of self-identified lesbian, gay, and bisexual individuals did not agree with redefining marriage); M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED 129 (2009). Gay and lesbian opposition to same-sex marriage surely does not reflect a desire to dishonor gays and lesbians or to proclaim their lesser worth.

Instead, the gendered view of marriage has always been, and is now, supported by countless people of good faith who harbor no ill will toward gays and lesbians. As President Obama recognized, even as he announced his support for same-sex marriage, many people who "feel very strongly" about preserving the traditional definition of marriage do so not "from a

mean-spirited perspective" but rather because they "care about families." Transcript: Robin Roberts ABC News Interview with President Obama, ABCNEWS (May 9, 2012), https://goo.gl/JHNd67. He echoed these views in the wake of *Obergefell*, when he urged citizens to be "mindful of" the fact that "Americans of goodwill continue to hold a wide range of views on this issue," which are "based on sincere and deeply held beliefs." Press Release, The White House, Remarks by the President on the Supreme Court Decision on Marriage Equality (June 26, 2015), https://goo.gl/iqKiHg. Recognizing these different viewpoints, we must "revere our deep commitment to religious freedom." *Id.*

These different historical pedigrees also mean that the role that the racial view of marriage has played in society differs markedly from the role played by the gendered view of marriage. Unlike the artistic expression at issue in this case, which does not bar a group of people from essential services, our country's terrible sin of invidious race discrimination, especially during the Jim Crow era, created a pervasive and significant barrier to African Americans' full participation in society. As one scholar stated:

> There remains . . . a crucial difference between the race-based discrimination against African Americans in the Jim Crow South and *any* other form of discrimination or exclusion in our country. The pervasive impediments to equal citizenship for African Americans have not been matched by any other recent episode in American history. Our country has harmed

> many people . . . But the systemic and structural injustices perpetuated against African Americans—and the extraordinary remedies those injustices warranted—remain in a class of their own.

John D. Inazu, *A Confident Pluralism*, 88 S. CAL. L. REV. 587, 603 (2015). And anti-miscegenation laws were an important part of this odious system of oppression.

Conversely, an individual's objection to celebrating a same-sex marriage cannot reasonably be deemed to reflect a state-sponsored judgment that people in such relationships are inferior or undeserving, and it certainly does not bring the power of the state to bear in oppressing those who wish to enter such relationships. This case in particular is not about excluding or refusing to serve gays and lesbians, but only about declining to lend one's artistic expression to a same-sex marriage ceremony. Market forces in our pluralistic country, to say nothing of changing mores, are keeping these conscientious objections to same-sex couples fairly isolated. In every publicized case of a business owner declining to participate in the celebration or solemnization of a same-sex marriage, the service sought by the couple was readily available from other businesses. Neither does this isolated denial of a custom wedding cake send a symbolic message that society views the affected individuals as inferior, as anti-miscegenation laws did. To the contrary, and as discussed more fully below, the gendered definition of

marriage has prevailed in all societies throughout human history not because of anti-gay animus but because marriage is closely connected to society's vital interests in the uniquely procreative nature of opposite-sex relationships.

II. Unlike the Definition of Marriage as a Relationship Between a Man and a Woman, Racialized Views of Marriage Are at War with the Traditional Understanding and Purpose of Marriage.

History provides a ready answer to why the traditional definition of marriage did not arise from animus against homosexuals: the institution of marriage owes both its origin and its continued existence throughout history and across civilizations to society's universal and compelling need to address the risks and benefits that arise from the unique procreative potential of sexual relationships between men and women. Opposition to interracial marriage, by contrast, has always been overtly (and usually explicitly) premised on racial animus and works contrary to the very values that the institution of marriage was meant to promote.

Societies throughout history uniformly defined marriage as a relationship between individuals of the opposite sex not because individuals in such relationships are deemed virtuous or morally praiseworthy, but because of the unique potential such relationships have either to harm or to further society's interest in responsible procreation. That is why marriage has

never been conditioned on an inquiry into the virtues or vices of individuals who wish to marry. Society cannot prevent the immoral or the irresponsible from engaging in potentially procreative sexual relationships, but it presumes that even such individuals are more likely to assume the shared responsibility of caring for any children that may result from such relationships if they are married than if they are not.

It is undisputed that when procreation and childrearing take place outside stable family units, children suffer. As a leading survey of social science research explains:

> Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes than do children in intact families headed by two biological parents. Parental divorce is also linked to a range of poorer academic and behavioral outcomes among children. There is thus value for children in promoting strong, stable marriages between biological parents.

CAROL EMIG & KRISTEN ANDERSON MOORE, CHILD TRENDS RES. BRIEF, MARRIAGE FROM A CHILD'S PERSPECTIVE 6 (2002).

In addition, when parents, and particularly fathers, do not take responsibility for their children, society is forced to step in to assist, through social welfare programs and by other means. Indeed, according to a Brookings Institute study, $229 billion in welfare

expenditures between 1970 and 1996 can be attributed to the breakdown of the marriage culture. Isabel V. Sawhill, *Families at Risk*, *in* SETTING NATIONAL PRIORITIES: THE 2000 ELECTION AND BEYOND at 108 (Henry J. Aaron & Robert D. Reischauer, eds. 1999).

More than simply draining State resources, the adverse outcomes for children so often associated with single parenthood and father absence, in particular, harm society in other ways, as well. As President Obama emphasized:

> We know the statistics—that children who grow up without a father are five times more likely to live in poverty and commit crime; nine times more likely to drop out of schools and twenty times more likely to end up in prison. They are more likely to have behavioral problems, or run away from home, or become teenage parents themselves. And the foundations of our community are weaker because of it.

Barack Obama, Speech on Fatherhood at the Apostolic Church of God (June 15, 2008), *available at* https://goo.gl/cguXyh.

Because only sexual relationships between men and women can produce children, such relationships have the potential to help—or harm—future generations in a way, and to an extent, that other types of relationships do not. The traditional definition of marriage simply reflects the undeniable biological reality that opposite-sex unions—and only such unions—can

produce children. Marriage, thus, is "a social institution with a biological foundation." Claude Levi-Strauss, *Introduction, in* 1 A HISTORY OF THE FAMILY: DISTANT WORLDS, ANCIENT WORLDS 5 (Andre Burguiere, et al., eds., 1996). People who subscribe to a view of marriage that coheres with its biological foundation do so out of conscientious concern for these social implications of biological reality, not out of animus.

Whereas the traditional definition of marriage as the union of a man and a woman follows from the institution's traditional procreative purposes, the racial distinctions in anti-miscegenation laws served no legitimate purposes whatsoever. As the *Loving* Court explained: "There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy." *Loving*, 388 U.S. at 11.

The avowedly racist purposes of the anti-miscegenation laws—"to preserve . . . racial integrity[,] . . . prevent the corruption of blood; [and prevent] a mongrel breed of citizens," *id.* at 7 (quotation marks omitted)—recognized the procreative potential of inter-racial marital relationships, but sought to twist this core purpose of marriage for racist ends. *See also Perez v. Lippold*, 198 P.2d 17, 22–25 (Cal. 1948) (discussing the state's defense of anti-miscegenation law on the

ground that it "prevents the Caucasian race from being contaminated by races whose members are by nature physically and mentally inferior to Caucasians"). Far from reflecting the traditional understanding and purposes of marriage, anti-miscegenation laws were thus at war with that understanding and those purposes.

In addition to perverting the biological foundation of marriage for racist ends, anti-miscegenation laws worked against the social good that the traditional definition of marriage was meant to promote. Whereas "the institution of marriage" serves "the public interest" by "channel[ing] biological drives that might otherwise become socially destructive" and "ensur[ing] the care and education of children in a stable environment," *De Burgh v. De Burgh*, 250 P.2d 598, 601 (Cal. 1952), anti-miscegenation laws prevent the formation of stable family units when relationships between individuals of different races produce offspring. *See Perez*, 198 P.2d at 23 (observing that interracial marriage bans "covertly encourage[ ]" "illicit sexual relations" resulting in offspring between individuals who are prohibited from marrying).

To be sure, many people who adhere to the traditional understanding of marriage do so out of sincere religious beliefs. Such religious beliefs, however, are not grounded in invidious discrimination. Looking to Christianity as but one example: whatever one's position on deeper theological debates on which this Court should not and need not take a position, no one can deny that the Bible describes marriage as an opposite-

sex relationship. *See, e.g.*, *Mark* 10:6–9; 1 *Corinthians* 11:11–12. The same Bible commands all to love their neighbors as themselves, *see, e.g.*, *Mark* 12:30–31, and to judge not, lest they be judged, *Matthew* 7:1–3. It is not only deeply offensive but nonsensical to presume that all who would celebrate marriage as it is described in the Bible do so out of hatred for their neighbors.[4]

Religious faith in marriage as a sacred bond is not even grounded in views about same-sex relationships. Marriage is a theological institution dating to the Book of Genesis, *see, e.g.*, *Genesis* 2:18–24, celebrated as a covenant that models the relationship between Christ and the church, *see, e.g.*, *Ephesians* 5:25–33, and instituted by God "for the procreation of children and their nurture in the knowledge and love of the Lord." THE BOOK OF COMMON PRAYER 423 (2007). The institution of marriage is held by Christians to guard against temptation in sexual relationships, 1 *Corinthians* 7:5, but teachings about marriage come from different scriptural sources and are supported by different bodies of doctrine than teachings about same-sex relationships.

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[4] As but one example of the implementation of Jesus' teaching, the Catechism of the Catholic Church holds that men and women with homosexual desires "must be accepted with respect, compassion, and sensitivity," and that "[e]very sign of unjust discrimination in their regard should be avoided." *Catechism of the Catholic Church* § 2358.

The same religious beliefs that motivate many people of good faith to adhere the traditional definition of marriage helped serve to bring down anti-miscegenation laws. Indeed, the first court to strike down an interracial marriage ban did so in light of a religious argument advanced by an interracial Catholic couple. The couple pointed out that the Catholic Church "respects the requirements of the State for the marriage of its citizens as long *as they are in keeping with the dignity and Divine purpose of marriage*," and that the Church had consequently "condemned the proposition that" the institution should be shaped "to preserve and promote racial vigor and the purity of blood." FAY BOTHAM, ALMIGHTY GOD CREATED THE RACES: CHRISTIANITY, INTERRACIAL MARRIAGE, AND AMERICAN LAW 11, 21 (2009) (emphasis added).

Furthermore, in striking down the ban, the court linked marriage to its procreative purpose, quoting this Court for the proposition that "[m]arriage and procreation are fundamental to the very existence and survival of the race." *Perez*, 198 P.2d at 19 (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)). Two decades later, this Court followed suit in *Loving*, resting its own due process analysis on the central procreative purpose of marriage. 388 U.S. at 12 (quoting *Skinner*, 316 U.S. at 536).

In short, unlike the racialized view of marriage, the traditional view of marriage is no arbitrary grab-bag of rules. It is a coherent vision that can make sense of many of our shared convictions about marriage—*e.g.*, in the importance of its total commitment

and link to family life. To conclude otherwise impugns the motives of countless Americans who believe that traditional marriage continues to serve society's vital interests, including the citizens and lawmakers of nearly every state as of a decade ago, the Members of Congress and President who supported enactment of the federal Defense of Marriage Act, and until very recently, President Obama.

So whether the traditional view is ultimately correct or mistaken, it is the fruit of honest and rich rational arguments. Because individuals who wish not to participate in the solemnization of marriages with which they disagree are motivated by their faith and a conscientious concern for the social implications of opposite-sex relationships, not out of animus for same-sex couples, there is no compelling interest that justifies coercing them "to confess by word or act" a faith or belief that is contrary to their own.

CONCLUSION

For the above reasons, this Court should reverse the judgment of the Colorado Court of Appeals.

September 7, 2017 Respectfully submitted,

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