Nos. 14-556, 14-562, 14-571 & 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.

VALERIA TANCO, ET AL., PETITIONERS,

v.

WILLIAM EDWARD "BILL" HASLAM, GOVERNOR OF TENNESSEE, ET AL., RESPONDENTS.

APRIL DEBOER, ET AL., PETITIONERS,

v.

RICK SNYDER, GOVERNOR OF MICHIGAN, ET AL., RESPONDENTS.

GREGORY BOURKE, ET AL., AND TIMOTHY LOVE, ET AL., PETITIONERS,

v.

STEVE BESHEAR, GOVERNOR OF KENTUCKY, ET AL., RESPONDENTS.

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM, ET AL. AS AMICI CURIAE SUPPORTING PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Bay Area Lawyers for Individual Freedom (BALIF) is a bar association of more than 600 lesbian, gay, bisexual, and transgender (LGBT) members of the San Francisco Bay Area legal community. As the nation's oldest and largest LGBT bar association, BALIF promotes the professional interests of its members and the legal interests of the LGBT community at large. To accomplish this mission, BALIF actively participates in public policy debates concerning the rights of LGBT individuals and families. BALIF frequently appears as *amicus curiae* in cases, like this one, where it believes it can provide valuable perspective and argument that will inform court decisions on matters of broad public importance.

Additional *amici* include a broad array of organizations, including state, metropolitan, local, and minority bar associations and non-profit organizations. Each organization supporting this *amicus* brief is dedicated to ensuring that its constituents and all others in this country, including gay men and lesbians, receive equal treatment under the law. *See* App., *infra*, 1a-14a.

[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to *amici*'s submission of this brief either in writing or by blanket consent letter. No person other than the *amici curiae*, or their counsel, made such a monetary contribution. A full list of *amici curiae* appears in the Appendix to this brief.

SUMMARY OF ARGUMENT

Foundational to the Equal Protection Clause of the Fourteenth Amendment is the principle that "the Constitution 'neither knows nor tolerates classes among citizens.'" *Romer v. Evans*, 517 U.S. 620, 623 (1996) (quoting *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)). In line with this principle, it has long been bedrock law that "separate but equal" treatment does not satisfy the Federal Constitution. The very notion is a contradiction in terms: as this Court has emphasized since *Brown v. Board of Education*, the Constitution's promise of true equality is necessarily breached by government-sponsored separation of a disfavored class.

The statutory and constitutional bans in Kentucky, Michigan, Ohio, and Tennessee that prohibit same-sex couples from marrying and that prohibit recognition of legally performed marriages in other states (collectively, the "Marriage Bans") betray these longstanding values. They exclude a class of people—gay men and lesbians—from the venerated institution of marriage. They do so for no purpose other than to deny that class of people access to marriage, creating a pernicious distinction that is as obvious and emotion-laden as it is difficult to fully articulate. And this unjustifiable differentiation of gay and lesbian couples, as *amici* explain below, inflicts profound injury upon them. Because the Marriage Bans set them apart, gay men, lesbians, and their families are deprived of critical benefits enjoyed by their heterosexual neighbors, are subjected to debilitating stigma, and are exposed to increased discrimination on the basis of their sexual orientation. These effects are repugnant to the Constitution's guarantee of equality and are in no way miti-

gated by access—where available—to separate and inherently inferior systems of domestic partnership or civil union.

The Marriage Bans cannot survive even rational basis review. *Amici* agree with Petitioners' argument that these bans lack any legitimate justification; they have been enacted "for the purpose of disadvantaging the group burdened by the law." *Romer*, 517 U.S. at 633. They "classif[y] homosexuals not to further a proper legislative end but to make them unequal to everyone else." *Id.* at 635.

There is widespread consensus among the district courts of the Sixth Circuit as well as other Courts of Appeals that laws such as the Marriage Bans unconstitutionally disadvantage gays and lesbians without any legitimate justification. *Amici* respectfully urge this Court to hold likewise. *See Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014); *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014); Pet. App. 161a-218a[2]; 14-571 Pet. App. 103a-139a; 14-562 Pet. App. 108a-130a; Pet. App. 124a-157a. As explained below, *first,* the Court should not abandon its judicial responsibility, as the Sixth Circuit did, by refusing to adjudicate the constitutionality of the Marriage Bans and by leaving the constitutional legitimacy of the Marriage Bans exclusively in the hands of state voters. Doing so would amount to a stunning rejection of the constitutional underpinnings of our judicial system and over two hundred years of jurisprudence by this Court. *Second*, in deciding the constitutional issue,

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[2] Unless otherwise noted, citations to "Pet. App." are to the Appendix in No. 14-556.

this Court should recognize that the institution of marriage is special, that nothing short of granting same-sex couples the *same* marriage rights enjoyed by opposite-sex couples fulfills the Constitution's mandate of equal protection, and that the Marriage Bans inflict real, tangible, and unjustifiable harm on gay men and lesbians, as well as on their families and children.

ARGUMENT

I. It Is The Province And Duty Of This Court To Hold That The Marriage Bans Violate The Equal Protection Clause

A. Classifications That Are Intended Only To Disadvantage A Group Of People Fail Even Rational Basis Review

The Equal Protection Clause of the Fourteenth Amendment is "a commitment to the law's neutrality where the rights of persons are at stake." *Romer*, 517 U.S. at 623. In forbidding any state from "deny[ing] to any person within its jurisdiction the equal protection of the laws," U.S. Const. amend. XIV, § 1, the Equal Protection Clause "requires the consideration of whether the classifications drawn by any statute constitute an arbitrary and invidious discrimination." *Loving v. Virginia*, 388 U.S. 1, 10 (1967). Even under the most deferential review—the rational basis test—a state law must be "rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).[3] "The State may not rely on a

[3] *Amici* believe that the Marriage Bans should be subject to heightened scrutiny. *See, e.g.*, *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 480 (9th Cir. 2014) (distinctions based on sexual orientation are subject to heightened scrutiny). However, because the Marriage Bans fail to advance any legit-

classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *Id.* at 446.

A "classification of persons undertaken for its own sake" fails even rational basis review, because by definition it serves no legitimate governmental purpose. *Romer*, 517 U.S. at 635. As this Court repeatedly has explained, "[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." *Id.* at 634-35 (quoting *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). Accordingly, in *Romer*, this Court struck down a Colorado constitutional amendment that prohibited governmental protection of gay and lesbian individuals. *Id.* at 636. The amendment, the Court held, was a "status-based enactment" that "impose[d] a special disability upon [gays and lesbians] alone." *Id.* at 631, 635. It "inflict[ed] on [gays and lesbians] immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it." *Id.* at 635; *see also Eisenstadt v. Baird*, 405 U.S. 438, 454-55 (1972) (law prohibiting distribution of contraceptives to unmarried individuals lacked a rational basis and violated the Equal Protection Clause).

B. It Is Uniquely The Province Of The Courts To Decide The Equal Protection Challenge To The Marriage Bans

The Sixth Circuit Court of Appeals entirely abdicated its judicial responsibility in holding that, in the face

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imate governmental purpose, they fail to pass constitutional muster under even the most deferential standard of review.

of a federal constitutional challenge to the Marriage Bans under the Equal Protection Clause, state voters should have the last word as to whether the Marriage Bans were constitutional and when, if ever, they should be invalidated. This Court should not repeat that error.

It is both disappointing and surprising that such a fundamental precept of our nation's revered constitutional system, dating back to the founding, should have to be pointed out in a brief filed before this Court in the year 2015. Since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), this Court has been crystal clear on the issue, never flinching from the urgent duty imposed on the judicial branch:

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. . . . So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules govern the case. This is of the very essence of judicial duty.

Id. at 177-78.

And yet, despite these foundational principles, the Sixth Circuit held that it had no duty to "say what the law is" here because, in the face of a constitutional challenge to the Marriage Bans, the "definition of marriage" should be left "in the hands of state voters" and legislators. Pet. App. 29a; *see also id.* at 40a ("Do the benefits of standing by the traditional definition of

marriage make up for these costs? The question demands an answer—but from elected legislators, not life-tenured judges."). That destructive tautology, purporting to reassign to voters and legislators the inherently judicial task of evaluating the constitutionality of state provisions originally decided upon by voters and legislators, flies directly in the face of the rule of law and the principles in which our country rightfully takes such great pride. As this Court held in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943),

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

Id. at 638 (striking down regulation mandating flag-salute as violating First Amendment).

When majority-enacted state laws are challenged as contravening the Equal Protection Clause—*especially* when they are challenged on the ground that they separate, disadvantage, and harm a minority—this Court has been adamant: the federal courts *must* act. *See Reynolds v. Sims*, 377 U.S. 533, 566 (1964) (stating in the context of apportioning state legislative representation: "We are told that the matter . . . is a complex and many-faceted one. We are advised that States can rationally consider [various] factors . . . . We are admonished not to restrict the power of the States to impose differing views as to political philosophy on

their citizens. We are cautioned about the dangers of entering into political thickets and [other] quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; *our oath and our office require no less of us*." (emphasis added)). And the federal courts have never shied away just because a challenge presented social controversy or touched on fundamental issues; quite the contrary, that is when their responsibility to decide constitutional issues is most critical. *See Mayers v. Ridley*, 465 F.2d 630, 642 (D.C. Cir. 1972) ("[A]ppellees suggest that appellants should address their complaints of racial discrimination to the political branch of government and that attempting to wrench social reform from the judiciary disregards the principle of separation of powers. But while we must, of course, maintain proper respect for the jurisdiction of coordinate branches of government, *under our law the judiciary too has the obligation of enforcing constitutional rights*." (emphasis added)); *Baskin*, 766 F.3d at 671 ("Minorities trampled on by the democratic process have recourse to the courts; the recourse is called constitutional law.").

Finally, the obligation of the courts to decide constitutionality is even more momentous when the subject of the challenged law is so essential an institution as marriage. "State 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 Loving*, 388 U.S. at 7 ("While the state court is no doubt correct in asserting that marriage is a social relation subject to the State's police power, . . . the State does not contend in its argument before this Court that its powers to regulate marriage

are unlimited notwithstanding the commands of the Fourteenth Amendment. Nor could it do so . . . .").

The right to marry is not, as the *DeBoer* appellate court found, a mere "policy problem" or "social question[]," Pet. App. 37a, 62a, suitable for a "Burkean sense of caution," *id.* at 37a. Rather, "[m]arriage is one of the 'basic civil rights of man[kind],'" "one of the vital personal rights essential to the orderly pursuit of happiness[.]" *Loving*, 388 U.S. at 12. Whether it can constitutionally be denied to a class of people, and whether there is any rational basis for doing so, are questions for the judiciary.

II. Excluding Same-Sex Couples From The Institution Of Marriage Harms Gay And Lesbian Individuals, Their Families, And Their Children

In deciding the constitutionality of the Marriage Bans, this Court should recognize that marriage enjoys a privileged status among the institutions that this country is founded upon, and that barring entry into that institution to same-sex couples imposes serious harm on them and on their families and children.

A. Marriage Is A Uniquely Revered Institution In American Society

1. Marriage holds a hallowed status in our society. As courts repeatedly recognize, marriage can be an essential aspect of the human experience. Far "more than a routine classification for purposes of certain statutory benefits," *Windsor*, 133 S. Ct. at 2692, marriage is "an institution of transcendent historical, cultural and social significance," *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407, 418 (Conn. 2008), "an institution more basic in our civilization than any other."

Williams v. North Carolina, 317 U.S. 287, 303 (1942). Its significance to the couple involved is unparalleled; it is "intimate to the degree of being sacred." *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965). Furthermore, marriage is a time-honored demonstration to family, friends, and the community of a loving commitment and mutual responsibility between two people, and implies a return promise by society to respect that commitment. *See Turner v. Safley*, 482 U.S. 78, 95 (1987) (recognizing that marriage is an "expression[] of emotional support and public commitment"). The institution is "a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family." *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 954 (Mass. 2003).

The right to marry, accordingly, "has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men [and women]." *Loving*, 388 U.S. at 12; *see also Perez v. Lippold*, 198 P.2d 17, 18-19 (Cal. 1948) ("Marriage is . . . something more than a civil contract subject to regulation by the state; it is a fundamental right of free men."). As a result of the special significance of marriage in society, the institution has a critical "signaling" role, apart from the specific legal obligations it entails. Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 Va. L. Rev. 1901, 1917 (2000). The signal sent by the fact that two individuals are married alters how they view themselves, how they behave toward one another, and how society behaves toward them.

First, married people understand they are to be emotionally and financially supportive, honest, and faithful to one another. *See* Robert A. Burt, *Belonging*

in America: How to Understand Same-Sex Marriage, 25 BYU J. Pub. L. 351, 357 (2011) (noting that "[t]his faithfulness has always been at the core of the marital status for mixed-sex couples"). Although married couples may modify their expectations and behavior over time, they benefit by beginning with a common understanding of the marital relationship, gleaned from a lifetime of participating in society, hearing about marriage, and observing married couples. *See generally* Jeffrey M. Adams & Warren H. Jones, *The Conceptualization of Marital Commitment: An Integrative Analysis*, 72 J. Personality Soc. Psychol. 1177 (1997). This shared understanding assists married couples in meeting individual and spousal expectations, and motivates them to work through temporary difficulties. *See id.*

The institution of marriage likewise provides common ground for others in society to understand a couple's relationship. Because marriage is universally recognized, married couples are readily treated in a manner that reflects their personal commitment and concomitant legal and social status. *See Goodridge*, 798 N.E.2d at 955 ("Because [marriage] fulfills yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition."). Spouses are understood as family members. When a married couple opens a joint bank or retirement account, or checks into a hotel, or applies for a credit card, or attends a parent-teacher conference, or accompanies a child or grandchild on a plane flight, or rents a car together, there is no need for explanation or documentary proof of the relationship. *See generally Varnum v. Brien*, 763 N.W.2d 862, 883-84

(Iowa 2009) ("Iowa's marriage laws" are "designed to bring a sense of order to the legal relationships of committed couples and their families in myriad ways.").

For these reasons and others, many people regard getting married as the most important day in their lives—indeed, marriage "is the centerpiece of our entire social structure." Thomas B. Stoddard, *Why Gay People Should Seek the Right to Marry*, Out/Look: Nat'l Gay & Lesbian Q., Fall 1989, at 9, 12.

2. Domestic partnership laws and civil unions, which some states have attempted to use to remedy the harm caused by the exclusion of same-sex couples from the institution of marriage, lack the significance, stability, and meaning of real marriage. These novel and unstable categories were invented recently,[4] and their meaning is ever-shifting.[5]

Not surprisingly, in light of their novel and uncertain stature, domestic partnerships and civil unions are not valued by society in a way that compares to marriage. People do not associate these legalistic relationships with the stability and permanence that characterize marriage. In turn, the registration of a domestic partnership is less meaningful to same-sex couples than getting married would be. The complex emotions that people experience when they get married—as well as the joy and human closeness they feel when they attend a wedding—simply do not attach to the minis-

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[4] The City of West Hollywood, California, enacted the first domestic partnership ordinance in the mid-1980s.

[5] For example, in 1997, Hawaii's statutory scheme granted same-sex couples only 60 rights associated with marriage, but recently expanded the number of such rights. *See* Haw. Rev. Stat. §§ 572B, 572C-2 (2014).

terial step of registering a domestic partnership or entering a civil union. Even when domestic partners celebrate their legal registration with a ceremony, the terrain is unfamiliar: Is the event a wedding? A commitment ceremony? Something else? The lack of a common vocabulary underscores the institution's lack of societal stature.

These difficulties continue throughout the relationship. Even the simple act of referring to one's "partner" can be wrought with embarrassment and misunderstanding: members of same-sex couples can be left searching for a manner to explain, no matter how uncomfortable the setting, whether they are referring to their *domestic* partner or to their professional, athletic, or law partner. Consequently, same-sex couples must often explain the intricacies of state family law to friends and potentially hostile strangers alike. Such ambiguities, and the likelihood of differential treatment, would be reduced if same-sex couples could accurately refer to themselves as "married" or could refer to each other as "husband" or "wife," a vocabulary that is universally understood.

In sum, marriage has a unique status in American society. There is no dispute that marriage means far more than inheritance rights, tax advantages, or community property. It is, instead, the ultimate symbol of "unequaled commitment." Evan Wolfson, *Why Marriage Matters: America, Equality, and Gay People's Right to Marry* 6 (2004). Simply put: "No matter what language people speak—from Arabic to Yiddish, from Chinook to Chinese—*marriage* is what we use to describe a specific relationship of love and dedication to another person. It is how we explain the families that are united because of that love. And it universally

signifies a level of self-sacrifice and responsibility and a stage of life unlike any other." *Id.* at 3 (emphasis added).

B. Exclusion From Marriage Causes Tangible Harm

Denial of this fundamental right imposes serious harm on gay and lesbian individuals, couples, and their families. This harm is not limited to those same-sex couples who wish to marry. Rather, it is felt by all gay men and lesbians who see how people who share their sexual orientation are treated, as well as by their families and children.

1. Harm To Children

Harm to children lies at the heart of the issue. "Formally, [the same-sex marriage] cases are about discrimination against the small homosexual minority in the United States. But at a deeper level, . . . they are about the welfare of American children." *Baskin*, 766 F.3d at 654. Notably, "the ban on same sex marriage is likely to have an especially deleterious effect on the children of same sex couples." *Kerrigan*, 957 A.2d at 474. Children perceive and understand the unique institution of marriage in American society and know the difference when their parents—their families—are excluded from it. As recognized by this Court in *Windsor*, the perceived "differentiation" of same-sex couples not only "demeans the couple, whose moral and sexual choices the Constitution protects," but also "humiliates tens of thousands of children now being raised by same-sex couples." *Windsor*, 133 S. Ct. at 2694. While *Windsor* addressed the differentiation felt regarding federal recognition of a state-sanctioned marriage, this "humiliation" is only exacerbated for children whose

parents are barred from marriage completely. More so than in *Windsor*, the Marriage Bans "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." *Id.*

"A primary reason why many same sex couples wish to marry is so that their children can feel secure in knowing that their parents' relationships are as valid and as valued as the marital relationships of their friends' parents." *Kerrigan*, 957 A.2d at 474; *see also Baskin*, 766 F.3d at 664 ("If a child's same-sex parents are married . . . the child can feel secure in being the child of a married couple."). Whereas "[c]hildren who are raised by civilly married parents benefit from the legal status granted to their parents," children whose parents are not permitted to marry may suffer psychological harm. James G. Pawelski et al., *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-being of Children,* 118 Pediatrics 349, 358, 361 (2006). "Excluding same-sex couples from civil marriage . . . does prevent children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of a stable family structure in which the children will be reared, educated, and socialized." *Goodridge*, 798 N.E.2d at 964 (citation omitted).

As the President of the New Jersey Psychological Association has attested:

> Children of same-sex relationships must cope with the stigma of being in a family without the social recognition that exists through marriage . . . . Such stigma may be indirect such as the strain due to lack of social support and acceptance. Also, some

> children may be targeted due to teasing in school or from peers.

N.J. Civ. Union Rev. Comm'n, *The Legal, Medical, Economic & Social Consequences of New Jersey's Civil Union Law* 16 (Dec. 10, 2008), http://www.nj.gov/lps/dcr/downloads/CURC-Final-Report-.pdf (quoting testimony of Dr. Judith Glassgold).

In engaging in the rational basis analysis, the Court must look to the proffered "legitimate justification" provided by the state. As characterized by the dissent in *DeBoer*, this is "what has come to be known as the 'irresponsible procreation' theory: that limiting marriage and its benefits to opposite-sex couples is rational, even necessary, to provide for 'unintended offspring' by channeling their biological procreators into the bonds of matrimony." Pet. App. 72a (Daughtrey, J., dissenting).[6] This rationale and other theories claiming vague state-related interests in child rearing simply ignore the destabilizing and stigmatizing effect the Marriage Bans and similar laws have on over 200,000 children throughout the United States.

There are approximately 125,000 same-sex couples raising nearly 220,000 children in the United States. Gary J. Gates, Williams Institute, UCLA School of Law, *LGBT Parenting in the United States* 3 (2013), http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgbt-parenting.pdf. Some of these

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[6] The illogic of this theory was highlighted with some exasperation by the *Baskin* court as follows: "Heterosexuals get drunk and pregnant, producing unwanted children; their reward is to be allowed to marry. Homosexual couples do not produce unwanted children; their reward is to be denied the right to marry. Go figure." *Baskin*, 766 F.3d at 662.

families live in states where joint or second-parent adoption by same-sex couples is legal. In these states, the rationale simply proves that there is truly no basis for differentiating between same-sex and opposite-sex couples in conferring the right to marry.

> To the extent that children are better off in families in which the parents are married, they are better off whether they are raised by their biological parents or by adoptive parents. The discrimination against same-sex couples is irrational, and therefore unconstitutional even if the discrimination is not subjected to heightened scrutiny[.]

Baskin, 766 F.3d at 656. This regime exemplifies the impermissible "classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *Cleburne*, 473 U.S. at 446. In truth, "[t]o allow same-sex couples to adopt children and then to label their families as second-class because the adoptive parents are of the same sex is cruel as well as unconstitutional." *Latta v. Otter*, 771 F.3d 456, 474 (9th Cir. 2014).

Other states—including all the states of the Sixth Circuit—prohibit adoption by a second parent of the same sex, creating a legal void in the family relationship between the child and the non-adoptive parent. These states too lack a rational basis for prohibiting same-sex marriage simply because the evidence is overwhelming that *all marriage*, "whether between same-sex or opposite-sex partners, increases stability within the family unit." Pet. App. 84a-85a (Daughtrey, J., dissenting). As the *DeBoer* district court found, same-sex couples are just as able to provide for the welfare and development of children as opposite-sex couples. 14-571 Pet. App. 127a-131a. By contrast, the

ramifications of a ban on marriage (and by consequence, on adoption) can be life-altering. What happens if the adoptive or biological parent is not available in an emergency? Can the non-adoptive parent make medical decisions for the child? Will the non-adoptive parent be able to gain custody and care for the child if the recognized parent dies or becomes incapacitated? Because of the Marriage Bans, the answers to these fundamental questions are left uncertain.[7]

Every district court decision overturned by the Sixth Circuit found that the Marriage Bans had no rational basis and instead actively *harmed* children. Pet. App. 209a-210a ("Even if it were rational for legislators to speculate that children raised by heterosexual couples are better off than children raised by gay or lesbian couples, *which it is not*, there is simply no rational connection between the Ohio marriage recognition bans and the asserted goal, as Ohio's marriage recognition bans do not prevent gay couples from having children."); 14-574 Pet. App. 147a ("The Court fails to see how having a [same-sex parent] family could conceivably harm children."); 14-571 Pet. App. 129a (finding "no differences" between outcomes in raising children in same-sex versus opposite-sex households and that the Michigan marriage law "actually fosters the potential for childhood destabilization"); 14-562

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[7] As noted by the dissent in DeBoer, for example, in Michigan "[e]ven though one person can legally adopt a child, should anything happen to that adoptive parent, there is no provision in Michigan's legal framework that would 'ensure that the children would necessarily remain with the surviving non-legal parent,' even if that parent went through the arduous, time-consuming, expensive adoption-approval process." Pet. App. 78a (Daughtrey, J. dissenting).

Pet. App. 126a (issuing injunction due to "an imminent risk of potential harm to [Plaintiffs'] children during their developing years from the stigmatization and denigration of their family relationship").

The Sixth Circuit's rationale does not withstand rational-basis scrutiny, and the Court should reject it out of hand.

2. Legal And Economic Harm

Aside from the harm to children, of course, is the harm to the couple themselves. This harm, too, "outrun[s] and belie[s]" any purported state justification for the Marriage Bans. *Romer*, 517 U.S. at 635. Exclusion of same-sex couples from the institution of marriage results in the denial of many real and concrete legal and economic benefits that are premised upon *married* status. *See generally* M.V. Lee Badgett, *The Economic Value of Marriage for Same-Sex Couples*, 58 Drake L. Rev. 1081 (2010).

The legal harms suffered by same-sex couples barred from marriage are myriad: limits on medical access, death and inheritance benefits, federal benefits, and parental rights (as discussed above). In *Tanco v. Haslam*, 14-562 Pet. App. 108a-130a, the district court granted a preliminary injunction prohibiting Tennessee from enforcing its Marriage Ban against three couples who married outside Tennessee. The "irreparable harm" was extensive, affecting joint home ownership; availability of employer-sponsored health insurance plans; and parental rights, among other rights and privileges. The court called "particularly compelling" the circumstances of one couple whose

> baby is due any day, and any complications or medical emergencies associated with the baby's birth—

> particularly one incapacitating Dr. Tanco—might require Dr. Jesty to make medical decisions for Dr. Tanco or their child. Furthermore, if Dr. Jesty were to die, it appears that her child would not be entitled to Social Security benefits as a surviving child. Finally, Dr. Tanco reasonably fears that Dr. Jesty will not be permitted to see the baby in the hospital if Dr. Tanco is otherwise unable to give consent.

14-562 Pet. App. 126a.

The availability of federal benefits to married couples post-*Windsor* further demonstrates that the Marriage Bans inflict real economic and legal harm on same-sex couples. As *Windsor*'s holding was limited to "lawful marriages," *Windsor*, 133 S. Ct. at 2696, certain federal agencies have extended protections and responsibilities to *married* same-sex couples; but many agencies have stated explicitly that they *will not* extend protections to registered domestic partners. [8] Thus, statutory schemes that allow same-sex couples to enter domestic partnerships or civil unions, but that do not allow them to marry, result in the deprivation of federal benefits because many federal agencies offer

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[8] For example, the Office of Personnel Management expressly provided that "[b]enefits coverage is now available to a legally married same-sex spouse of a Federal employee or annuitant," but "same-sex couples who are in a civil union or other forms of domestic partnership . . . will remain ineligible for most Federal benefits programs." Office of Personnel Management, *Coverage of Same–Sex Spouses*, No. 13-203 (July 17, 2013), http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf; *see also* Rev. Rul. 2013-17, 2013-38 I.R.B. 201 (extending federal tax benefits to same-sex marriages but not domestic partnerships or civil unions).

such benefits only to lawfully *married* couples. Perhaps the most striking example of the resulting disparity arises in the immigration context, where the question of whether a same-sex couple is lawfully *married* or merely in a domestic partnership or civil union could mean the difference between deportation and a valid basis for a family-based immigration visa. USCIS, *Same Sex Marriages*, http://www.uscis.gov/family/same-sex-marriages (last updated Apr. 3, 2014). And by denying same-sex couples the right to marry, Kentucky, Michigan, Ohio, and Tennessee have placed those federal protections and responsibilities entirely off-limits to them. *See generally Garden State Equality v. Dow*, 79 A.3d 1036 (N.J. 2013).

More generally, marriage confers numerous economic benefits that stem from the unique commitment it represents. For example, marriage fosters greater specialization of labor, which can increase a couple's income and the time available for family. Badgett, *supra*, at 1101. Marriage also tends to reduce a couple's transaction costs: Marriage "promotes economic efficiency by reducing transaction costs for couples, mainly by removing the need to renegotiate the terms of the legal relationship as couples experience changed circumstances." *Id.* Furthermore, married individuals enjoy greater employment-related economic gains, whereas same-sex couples who cannot marry face uncertainty and pressures that may adversely affect their work performance and reduce their economic rewards. *Id.* at 1102-03. Though difficult to quantify, these economic benefits of marriage are well-known and acknowledged in the field of economics. *Id.*

3. Emotional And Physical Harm

Aside from harming children, divesting couples of state, federal, and constitutional legal rights, and depriving them of economic benefits, the Marriage Bans can have devastating emotional and physical consequences on individual gay and lesbian people. This is because the Marriage Bans legitimize and magnify societal prejudice and discrimination against gay and lesbian individuals—*whose "moral and sexual choices the Constitution protects*." *Windsor*, 133 S. Ct. at 2694 (emphasis added) (citing *Lawrence v. Texas*, 539 U.S. 558 (2003)).

The tragic results of that discrimination are well documented. It can cause gay men and lesbians to suffer "minority stress," which manifests itself through "prejudice events": expectations of rejection and discrimination, concealment of identity, and internalized homophobia. *See* Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 Psychol. Bull. 674 (2003). Such stresses negatively affect the mental health and well-being of gay and lesbian individuals. *See, e.g.*, Gilbert Herdt & Robert Kertzner, *I Do, But I Can't: The Impact of Marriage Denial on the Mental Health and Sexual Citizenship of Lesbians and Gay Men in the United States*, 3 J. Sexuality Res. Soc. Pol'y 33 (2006). "Greater exposure to discrimination and perceptions of stigma have been linked with poorer mental health in sexual minority individuals." Adam W. Fingerhut et al., *Identity, Minority Stress and Psychological Well-Being Among Gay Men and Lesbians*, 1 Psychol. & Sexuality 101, 105 (2010).

Internalized homophobia, for example, can lead to lowered self-esteem, anxiety, substance abuse, and depression. Gregory M. Herek et al., *Correlates of Internalized Homophobia in a Community Sample of Lesbians and Gay Men*, 2 J. Gay & Lesbian Med. Ass'n 17 (1997). And frequent suicides by gay teenagers have "drawn national attention to the insidious peer harassment that lesbian, gay, bisexual, and transgender (LGBT) youth face on a daily basis." Lisa C. Connolly, *Anti-Gay Bullying in Schools—Are Anti-Bullying Statutes the Solution?*, 87 N.Y.U. L. Rev. 248, 249 (2012); *see, e.g.*, Ashley Fantz, *An Ohio Transgender Teen's Suicide; A Mother's Anguish*, Jan. 4, 2015, CNN, http://www.cnn.com/2014/12/31/us/ohio-transgender-teen-suicide/ (discussing the Dec. 28, 2014 death of transgender teen Leelah Alcorn, whose suicide note pleaded, "The only way I will rest in peace is if one day transgender people aren't treated the way I was, they're treated like humans, with valid feelings and human rights. . . . Fix society. Please.").

C. The Marriage Bans Communicate Governmental Animus Toward Same-Sex Relationships

The harms outlined above are consequences of the legal operation of state prohibitions on same-sex marriage. This Court has long recognized that state-condoned discrimination and separate-but-unequal institutions inflict injuries even beyond the deprivation of particular benefits and can themselves be markers of official denigration which serve to perpetuate discrimination. *See, e.g.*, *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879) (noting that exclusion of non-white citizens from juries was "practically a brand upon them, affixed by the law, an assertion of their inferiori-

ty") (*abrogated on other grounds by Taylor v. Louisiana*, 419 U.S. 522 (1975)). First, barring one group from a valued institution demeans the group's members by officially designating them as somehow inferior. Second, exclusion of an unpopular group leads to stigmatization, which, in turn, leads to further discrimination.

1. The Marriage Bans Stigmatize Same-Sex Relationships

As the Court noted in *Windsor* when it struck down the Defense of Marriage Act, "The avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma" on same-sex couples. *Windsor*, 133 S. Ct. at 2693. "Responsibilities, as well as rights, enhance the dignity and integrity of the person." *Id.* at 2694. In depriving same-sex couples of the opportunity to take part in those rights and responsibilities, the Marriage Bans, like DOMA, "tell[] those couples, and all the world, that their" relationships are "unworthy of . . . recognition." *Id.* As was true for DOMA, the Marriage Bans' "principal effect is to identify a subset of [relationships] and make them unequal. The principal purpose is to impose inequality." *Id*.

That the Marriage Bans and similar laws convey official disapproval of same-sex relationships was noted as far back as 2008, when the California Supreme Court held that domestic partnership was not a constitutionally adequate substitute for marriage:

> [T]he statutory provisions that continue to limit access to [marriage] exclusively to opposite-sex couples—while providing only a novel, alternative institution for same-sex couples—likely will be viewed as an official statement that the family relationship

> of same-sex couples is not of comparable stature or equal dignity to the family relationship of opposite-sex couples.

In re Marriage Cases, 183 P.3d 384, 452 (Cal. 2008). To that end, the court reasoned:

> [T]here is a very significant risk that retaining a distinction in nomenclature with regard to this most fundamental of relationships whereby the term 'marriage' is denied only to same-sex couples inevitably will cause the new parallel institution that has been made available to those couples to be viewed as of a lesser stature than marriage and, in effect, as a mark of second-class citizenship.

Id. at 445; *see also Kerrigan*, 957 A.2d at 474 (citing *In re Marriage Cases*, 183 P.3d at 445) ("[B]ecause of the long and celebrated history of the term 'marriage' and the widespread understanding that this word describes a family relationship unreservedly sanctioned by the community, the statutory provisions that continue to limit access to this designation exclusively to opposite-sex couples—while providing only a novel, alternative institution for same-sex couples—likely will be viewed as an official statement that the family relationship of same-sex couples is not of comparable stature or equal dignity to the family relationship of opposite-sex couples."); *Goodridge*, 798 N.E.2d at 962 (statutory bar on marriage for same-sex couples "confers an official stamp of approval on the destructive stereotype that same-sex relationships are inherently unstable and inferior to opposite-sex relationships and are not worthy of respect").

As the district court found in *Obergefell*, "no hypothetical justification"—such as fostering natural pro-

creation—"can overcome the clear [] purpose" of the Marriage Bans, which is to "disparage and demean" same-sex relationships. Pet. App. 212a. The court noted that Ohio grants full faith and credit to out-of-state marriages that Ohio itself does not perform (*e.g.*, marriages between first cousins, marriages of minors)—*but not* to same-sex marriages. *Id.* at 190a-192a. Ohio singles out same-sex marriage for special, unfavorable treatment by refusing to recognize such marriages even when they were validly performed in another state. "The constitutional issue is clear[]" when a state treats one group differently from all the others: the law must be based on "irrational prejudice." *See Cleburne*, 473 U.S. at 447, 450.

That purpose to disparage and demean same-sex relationships is made even clearer by the fact that three states' Marriage Bans prohibit state legislatures or any political subdivision within the state from creating or recognizing even domestic partnerships (which, as this brief demonstrates, are inferior to marriage and insufficient to remedy the constitutional harms). *See* Ohio Const. art. XV, § 11 ("This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, . . . or effect of marriage."); Ky. Const. § 233A ("A legal status . . . substantially similar to that of marriage . . . shall not be valid or recognized."); Mich. Const. art. I, § 25 (ban on recognizing a "similar union" to marriage, such as a civil union).[9]

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[9] Tennessee is the only state in the Sixth Circuit which does not prohibit the creation of domestic partnerships that approximate the legal rights associated with marriage. *See* Tenn. Const. art. XI, § 18 (prohibiting state and local governments

The effect of the Marriage Bans is therefore not just exclusion from a set of "rights and responsibilities" associated with the legal institution of marriage, but official disapproval of same-sex couples that results in stigma. They have been enacted "for the purpose of disadvantaging the group burdened by the law." *Romer*, 517 U.S. at 633. "[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." *Id.* at 634-35 (quoting *Moreno*, 413 U.S. at 534). In *Romer*, the Court invalidated a voter-enacted constitutional amendment that, it stated, "classifie[d] homosexuals not to further a proper legislative end but to make them unequal to everyone else." *Id.* at 635. The Court should do likewise here for the Marriage Bans, whose broad harms betray the lack of any rational basis.

2. The Marriage Bans' Stigma Perpetuates Societal Discrimination Against Gay Men And Lesbians

When disapproval of same-sex marriage is enshrined in the law, moral disapproval and discrimination in society can fester and spread. By making sexual orientation a legally salient characteristic, the Marriage Bans encourage and provide "cover" for those who seek to treat gay men and lesbians differently based on their sexual orientation. *See, e.g.*, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 973 (N.D. Cal. 2010) (describing how Proposition 8 sent "a message that gay relationships are not to be respected; that

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from allowing or recognizing same-sex marriages, but not domestic partnerships); Tenn. Code Ann. § 36-3-113 (2013) (same).

they are of secondary value, if of any value at all; that they are certainly not equal to those of heterosexuals"). Because the state provides for separate and lesser treatment of gay men and lesbians, certain individuals may logically conclude that it is permissible to treat them as inferior.[10] *Cf. Lawrence*, 539 U.S. at 575 (criminalizing sexual conduct between same-sex couples was "an invitation to subject homosexual persons to discrimination both in the public and in the private spheres"); *Strauder*, 100 U.S. at 308 (exclusion of non-white citizens from juries was "a stimulant to . . . race prejudice"). As the California Supreme Court explained, "providing only a separate and distinct designation [of civil unions] for same-sex couples may well have the effect of perpetuating a more general premise . . . that gay individuals and same-sex couples . . . may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite-sex couples." *In re Marriage Cases*, 183 P.3d at 402; *cf. Baskin*, 766 F.3d at 658 ("Not that allowing same-sex marriage will change in the short run the negative views many Americans hold of same-sex marriage. But it will enhance the status of these marriages in the eyes of other Americans, and in the long run it may

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[10] One need look no further than the headlines for anecdotal evidence: when the Chief Justice of the Alabama Supreme Court directed counties to refuse to follow a federal court decision invalidating a gay marriage ban, news reports highlighted coverage of a South Carolina pastor's prayer vigil, literally in the shadow of the Alabama State Capitol, at which he "urged southerners to [ ] refuse to recognize marriages that he said came 'from the devil's hell'[.]" Kim Chandler, *Alabama Set to Become 37th State to Allow Gay Marriage*, Associated Press, Feb. 7, 2015, *available at* http://news.yahoo.com/gay-marriage-arrives-alabama-183946121.html.

convert some of the opponents of such marriage by demonstrating that homosexual married couples are in essential respects, notably in the care of their adopted children, like other married couples.").

Moreover, by segregating gay men and lesbians, the Marriage Bans cause society to focus on sexual orientation to the exclusion of other characteristics. As with segregation on the basis of race, when gay men and lesbians are singled out, and hence stigmatized, then an individual's sexual orientation

> and all the negative connotations generally imputed to it—eventually overshadows or 'eclipses all other aspects' of his or her self, essentially becoming all that anyone sees. [Sexual orientation] becomes a sort of mask, a barrier that both makes it impossible for the stigmatized person's true self to be seen and fixes the range of responses that others will have to that person.

Robin A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. Rev. 803, 818-19 (2004). Thus, when gay men or lesbians disclose that they are in a domestic partnership, others often see them *only* as gay—and treat them accordingly—rather than viewing them as full persons entitled to the same respect and dignity given to other members of society. *See generally* Marc R. Poirier, *Name Calling: Identifying Stigma in the "Civil Union"/"Marriage" Distinction*, 41 Conn. L. Rev. 1425, 1429-30, 1479-89 (2009) (describing the way in which the nomenclature distinction perpetuates bias and facilitates discrimination). There is no doubt that the effect of the Marriage Bans is "immediate, continuing, and real injur[y]" to gay and lesbian individuals. *Romer,* 517 U.S. at 635.

CONCLUSION

A number of racial, religious, and ethnic minorities have, at various times in history, faced restrictions on their right to marry. *See* Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* 4 (2000) (discussing for example Native Americans, African Americans, and Asian Americans). But "[a] prime part of the history of our Constitution . . . is the story of the extension of constitutional rights and protections to people once ignored or excluded." *United States v. Virginia*, 518 U.S. 515, 557 (1996). The Marriage Bans create a separate and unequal regime for a disfavored class. Continuing to exclude, demean, and stigmatize gay and lesbian individuals and families is inconsistent with that constitutional tradition.

The judgment of the Court of Appeals should be reversed.

Respectfully submitted.

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APPENDIX

APPENDIX

LIST OF AMICI CURIAE

AIDS Legal Referral Panel (ALRP)

The AIDS Legal Referral Panel (ALRP) provides legal services to people living with HIV/AIDS in the San Francisco Bay Area. ALRP is committed to ensuring justice for our clients in facing discrimination. Since roughly 80% of ALRP's clients are LGBT, discrimination against LGBT people directly impacts our clients.

API Equality-LA

API Equality-LA is a coalition of organizations and individuals who are committed to working in the Asian/Pacific Islander (API) community in the greater Los Angeles area for equal marriage rights and the recognition and fair treatment of LGBT families through community education and advocacy. API Equality-LA recognizes that the long history of discrimination against the API community, especially California's history of anti-miscegenation laws and exclusionary efforts targeted at Asian immigrants, parallels the contemporary exclusion of gays and lesbians from marriage.

The Asian American Bar Association of the Greater Bay Area (AABA)

The Asian American Bar Association of the Greater Bay Area (AABA) is one of the largest Asian American bar associations in the nation and one of the largest minority bar associations in the State of California. From its inception in 1976, AABA and its attorneys

have been actively involved in civil rights issues and community service. AABA members filed an amicus brief in the *Bakke* affirmative action case, filed a successful petition overturning the conviction of Fred Korematsu in the landmark *Korematsu v. United States* case, worked on the successful campaign to release Chol Soo Lee from prison, and were involved in efforts to release Wen Ho Lee and to unseal documents in his case.

The Asian Pacific American Bar Association of Los Angeles County (APABA-LA)

The Asian Pacific American Bar Association of Los Angeles County (APABA-LA) is a membership organization comprised of over 700 attorneys, judges and law students. Since its formation in 1998, APABA-LA has advocated on issues that impact the APA community and has demonstrated a commitment to civil rights, racial justice, and equal opportunity. APABA-LA has, and continues to, oppose initiatives designed to deprive immigrants, people of color, and other minorities of their civil rights, including initiatives that discriminate based upon sexual orientation. APABA-LA strives to address all issues relevant to the equal treatment of those in the APA community.

Atlanta Bar Association

The Atlanta Bar Association has approximately 6,000 members and is interested in supporting this effort as a matter of justice.

Atlanta Women for Equality

Atlanta Women for Equality is a nonprofit organization dedicated to providing free legal advocacy to wom-

en and girls facing sex discrimination in the workplace or school and to helping our community build employment and educational environments according to true standards of equal treatment. Our central goal is to use the law to overcome the oppressive power differentials socially predetermined gender roles impose and to empower those who suffer adverse treatment because they do not fit within the confines of sex-based stereotypes. We believe that statutes banning same-sex marriage enforce precisely the kind of gender categorization that undermines the basic principles of equality, freedom, and justice it is our mission to serve and our Constitution's purpose to protect.

California Employment Lawyers Association (CELA)

The California Employment Lawyers Association (CELA) is an organization of approximately 1,200 attorneys who represent primarily plaintiffs in termination, discrimination, wage and hour, civil rights and other civil cases arising in the workplace. CELA helps its members protect and expand the legal rights of working women and men through litigation, education, legislative activities and advocacy.

Dallas Gay and Lesbian Bar Association (DGLBA)

The Dallas Gay and Lesbian Bar Association (DGLBA) is composed of approximately 35 lawyers, law students, para-professionals, and related professional allies who share an interest in the laws that affect and protect the gay, lesbian, bisexual, and transgendered community. The DGLBA issues a monthly newsletter to nearly 200 subscribers on current topics of interest

in LGBT law and the community and has over 800 Facebook followers. The DGLBA holds monthly luncheon meetings for its members where speakers provide continuing legal education on a broad range of topics affecting lawyers who represent LBGT clients. The DGLBA also holds networking events, gives scholarships to deserving law students, profiles its members on its website, and educates and promotes legal issues affecting the LGBT community.

Georgia Association for Women Lawyers

The Georgia Association for Women Lawyers' (GAWL) mission is to enhance the welfare and development of women lawyers and to support their interests. GAWL's Amicus Policy provides for filing or joining amicus briefs in cases which will advance or clarify the law regarding issues that fall within our mission or that relate to the administration of justice. GAWL has found this brief to fall within these categories and is pleased to support this effort.

Georgia Trial Lawyers Association

Pursuant to our constitution, the Georgia Trial Lawyers Association is founded for the purpose of supporting and defending the civil justice system, the right to trial by jury, and individual rights of our membership and our clients.

Japanese American Bar Association (JABA)

Japanese American Bar Association (JABA) is one of the oldest Asian Pacific American bar associations in the country and consists of a diverse membership of over 300 attorneys, judicial officers, and law students of Japanese and Asian Pacific Islander ancestry in the

greater Los Angeles area and beyond, including gay and lesbian individuals. With a deep appreciation of the unique history of Japanese Americans in the United States and the failure of constitutional protections that led to their internment during World War II, JABA has a proud history of actively advocating and devoting resources to issues of civil rights and social justice, especially for those members of society who continue to suffer from discrimination and unequal treatment.

LGBT & Allied Lawyers of Utah Bar Association

LGBT & Allied Lawyers of Utah is a non-profit organization of associated legal professionals and members of the Utah State Bar, whose mission is to promote education, advocacy, and equality with regard to sexual orientation, gender identity, and gender expression.

LGBT Bar Association of Greater New York (LeGaL)

The LGBT Bar Association of Greater New York (LeGaL) was one of the nation's first bar associations of the lesbian, gay, bisexual, and transgender legal community and remains one of the largest and most active organizations of its kind in the country. Serving the New York metropolitan area, LeGaL is dedicated to improving the administration of the law, ensuring full equality for members of the LGBT community, and promoting the expertise and advancement of LGBT legal professionals.

Lesbian and Gay Bar Association of Chicago (LAGBAC)

The Lesbian and Gay Bar Association of Chicago (LAGBAC), founded in 1987, is one of the country's oldest bar associations dedicated to serving the lesbian, gay, bisexual and transgender (LGBT) community and the only bar association in the Chicagoland area dedicated to serving the LGBT community. LAGBAC provides judges, attorneys and law students with educational experiences and career opportunities that support them throughout their career. LAGBAC hosts countless CLE seminars, networking programs and social events throughout the year for its members and nonmembers, alike.

With over 200 members, including practitioners, agency heads, professors, and law students, and dozens of judicial affiliates, LAGBAC has long been a leader in shaping public policy in Illinois and across the country. We, the board of directors, fully support the submission of this amicus brief to further achieve the organization's mission and to provide the Court with important insight on matters affecting public policy.

Lesbian and Gay Lawyers Association of Los Angeles (LGLA)

The Lesbian and Gay Lawyers Association of Los Angeles (LGLA) was founded in 1979 and has grown into a relevant, multi-cultural, open and active bar association of gay, lesbian, bisexual and transgender lawyers, judges, law students and other legal Professionals. LGLA is dedicated to furthering justice and equality and the advancement of gay, lesbian, bisexual and transgender issues throughout California and around the nation by making judicial endorsements,

appearing amicus curiae in cases such as this one, holding representation on the Conference of Delegates for the State Bar of California, and providing educational and networking opportunities for its members. LGLA has fought for equal justice for all persons without regard for their sexual orientation for more than thirty-five years.

Lesbian, Gay, Bisexual, And Transgender (LGBT) Bar Association Of Maryland

The Lesbian, Gay, Bisexual and Transgender (LGBT) Bar Association of Maryland is a state association of lawyers, judges and other legal professionals, law students, activists, and affiliate lesbians, gay, bisexual, and transgender legal organizations.

Love Honor Cherish

Love Honor Cherish (LHC) is the largest grassroots marriage equality organization in Southern California. Founded in May 2008 to defend the California Supreme Court's decision *In re Marriage Cases*, 43 Cal. 4th 757 (2008), LHC has strategically moved marriage equality forward since its inception. In 2010 and 2012, LHC launched efforts to gather signatures to put repeal of Proposition 8 on the ballot in California due to its unwavering dedication to restore marriage equality in California as soon as possible. While those efforts were unsuccessful due to the prohibitive cost of funding a signature gathering campaign, LHC's volunteers had more than one million conversations about the importance of marriage equality with California voters. LHC continues to advance marriage equality through public education, community empowerment and outreach in collaboration its coalition partners.

Minnesota Lavender Bar Association (MLBA)

The Minnesota Lavender Bar Association (MLBA) is a voluntary professional association of LGBT attorneys and allies, promoting fairness and equality for the LGBT community within the legal industry and for the Minnesota community. The MLBA envisions a Minnesota where LGBT attorneys, clients, and community members are treated equally and without discrimination. The MLBA's mission is to promote equality and justice in the legal profession and the LGBT community in Minnesota.

New Mexico Lesbian And Gay Lawyers Association (NMLGLA)

The New Mexico Lesbian and Gay Lawyers Association (NMLGLA), formed in 1995, is a non-profit, voluntary bar organization committed to promoting and protecting the interest of the lesbian, gay, bisexual and transgender lawyers and to achieving their full participation in all rights, privileges and benefits of the legal profession. The NMLGLA also strives to promote the efficient administration of justice and the constant improvement of the law, especially as it relates to lesbians, gay men, bisexual and transgender individuals.

New York State Bar Association

The New York State Bar Association (NYSBA) was founded in 1876, and is the largest voluntary bar association in the United States, with over 74,000 members. NYSBA serves the profession and the public by, inter alia, promoting reform in the law and facilitating the administration of justice. NYSBA has long supported marriage equality for same-sex couples. In 2009, NYSBA passed a resolution supporting same-sex

marriage; and in 2010 the NYSBA was a lead sponsor of the American Bar Association's resolution in support of same-sex marriage. The NYSBA supports allowing same-sex couples to marry and recognizing marriages if contracted elsewhere as the Association believes only marriage can grant full equality to same-sex couples and their families.

OGALLA: The LGBT Bar Association of Oregon

The LGBT Bar Association of Oregon is a voluntary organization of legal practitioners – including attorneys, judges, paraprofessionals, and educators – dedicated to the promotion of the fair and just treatment of all people under the law regardless of sexual orientation, gender identity, or gender expression, to providing visibility for LGBT persons in the law, to educating the public, the legal profession and the courts about legal issues of particular concern to the LGBT community, to identifying and eliminating the causes and conditions of prejudice in society, and to promoting a spirit of unity, while valuing the diversity of our community.

Philippine American Bar Association of Los Angeles (PABA)

The Philippine American Bar Association (PABA) is an organization of attorneys, students, and community leaders who have been dedicated to advancing the interests of the Filipino-American community and the Asian-American community-at-large for thirty years. PABA is fervently committed to creating a more compassionate and just future, and proudly joins its colleagues on this amicus brief to ensure the preservation of equality for persons from every walk of life.

Public Counsel

Public Counsel is the largest *pro bono* law firm in the nation. Founded in 1970, Public Counsel is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Public Counsel is dedicated to advancing equal justice under law by delivering free legal services to indigent and underrepresented children, adults and families throughout Los Angeles County, ensuring that other community-based organizations serving this population have legal support, and mobilizing the *pro bono* resources of attorneys, law students and other professionals. Public Counsel's staff of 71 attorneys and 50 support staff, along with over 5,000 volunteer lawyers, law students, and legal professionals, assists over 30,000 children, youth, families, and community organizations every year. Public Counsel's clients include lesbian, gay, bisexual, and transgender youth and adults who are homeless or at risk of homelessness or who seek asylum in the U.S. because of persecution in their country of origin. As a civil rights organization, Public Counsel has steadfastly supported marriage equality.

QLaw: The GLBT Bar Association of Washington

QLaw, the GLBT Bar Association of Washington, is an association of gay, lesbian, bisexual, and transgender (GLBT) legal professionals and their friends. QLaw serves as a voice for gay, lesbian, bisexual, and transgender lawyers and other legal professionals in the state of Washington on issues relating to diversity and equality in the legal profession, in the courts, and under the law. The organization has five

purposes: to provide opportunities for members of the GLBT legal community to meet in a supportive, professional atmosphere to exchange ideas and information; to further the professional development of GLBT legal professionals and law students; to educate the public, the legal profession, and the courts about legal issues of particular concern to the GLBT community; to empower members of the GLBT community by improving access to the legal and judicial system and sponsoring education programs; and to promote and encourage the advancement of lesbian, gay, bisexual, and transgender attorneys in the legal profession.

Queen's Bench Bar Association

Queen's Bench Bar Association is a non-profit voluntary membership organization made up of judges, lawyers, and law students in the San Francisco Bay Area. Established in 1921, Queen's Bench is one of the oldest women's bar associations in the country. Queen's Bench seeks to advance the interests of women in law and society, and to serve the professional needs of women lawyers, judges, and law students. Queen's Bench has a strong and demonstrated interest in the preservation of the Constitutional right to equal protection of the laws.

San Francisco La Raza Lawyers Association (SFLRLA)

San Francisco La Raza Lawyers Association (SFLRLA) is a professional membership organization of San Francisco Bay Area Latino/a attorneys. Central to its mission is SFLRLA's interest in protecting fundamental constitutional rights and minority interests. Accordingly, in March 2004, SFLRLA filed the first

amicus brief to be filed by a bar association with the San Francisco Superior Court in what eventually became *In re Marriage Cases*, 43 Cal.4th 757 (2008). SFLRLA's core mission is to serve the public interest by cultivating the science of jurisprudence, promoting reform in the law, facilitating the administration of justice, and cooperating with other professional and community organizations in the furtherance of our mission.

Stonewall Bar Association of Georgia, Inc.

Stonewall Bar Association of Georgia, Inc. was established in 1995 as a coalition of attorneys, judges, law students, paralegals, and other legal professionals to utilize their expertise to support the rights of lesbian, gay, bisexual, and transgender people and oppose discrimination based on sexual orientation and gender identity. A voluntary bar association, consisting of almost 300 dues-paying members, SBA publishes an on-line directory of attorneys who are eager to serve gay, lesbian, bisexual and transgender clients. The organization also publishes a monthly newsletter that is emailed to approximately 800 legal professionals, provides scholarships to law students, conducts continuing education for attorneys, and provides opportunities for networking with judges and other legal professionals. SBA has worked with other organizations to file amicus briefs in cases that impact our community in Georgia. Such briefs have been submitted in *Hollingsworth v. Perry* and cases that overturned Georgia's sodomy law and secured the rights of local governments and private corporations to offer domestic partnership benefits to company employees and their life partners.

Stonewall Law Association of Greater Houston (SLAGH)

Stonewall Law Association of Greater Houston is a voluntary professional association of gay, lesbian, bisexual and transgender attorneys, judges, paralegals, law students and allies who provide a LGBT presence within the greater Houston legal community. SLAGH encourages the recognition of civil and human rights, promotes sensitivity to legal issues faced by LGBT community and those living with HIV, assures the fair and just treatment of members of the LGBT community, provides opportunities for LGBT attorneys, judges, law students and their allies to interact in a professional setting, builds alliances with other minority bar associations and legal organizations, and enhances the practice and professional expertise of lawyers who serve or are members of the LGBT community.

Tom Homann LGBT Law Association (THLA)

The Tom Homann LGBT Law Association (THLA) is a non-profit voluntary membership bar association of attorneys, law students, judges, and other legal professionals dedicated to the advancement of gay, lesbian, bisexual and transgender issues throughout California and the nation. We are the place for San Diego's LGBT lawyers to network, build friendships, and develop their careers. THLA members are also committed to establishing and maintaining personal connections with local law student community. Through our successful mentor program, we provide encouragement, guidance, insight and friendship to the next generation of LGBT lawyers entering the San Diego legal community.

Women Lawyers Association of Los Angeles (WLALA)

Women Lawyers Association of Los Angeles (WLALA) is a nonprofit organization comprised primarily of attorneys and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA believes that lawyer groups have a special obligation to protect the core guarantees of our Constitution from unlawful abrogation when a majority of voters has attempted to deprive a minority of its constitutionally protected rights.