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

In the Supreme Court of the United States

JAMES OBERGEFELL, *et al.*, *Petitioners*,
v.
RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, *et al.*, *Respondents*.

VALERIA TANCO, *et al.*, *Petitioners*,
v.
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.*, *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 JASON FELICIANO AND SEVENTEEN PASTORS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

Sandra F. Gilbert, Esq.
Counsel of Record
3020 Garland Lane
Plymouth, MN 55447
612.715.5049
SandyFGilbert@msn.com

Counsel for Amici Curiae

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?

Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS

RULES

OTHER AUTHORITIES

STATEMENT OF IDENTITY AND INTEREST OF *AMICI*[1]

Pursuant to Supreme Court Rule 37, *Amici* Jason Feliciano and Seventeen Ohio Pastors respectfully submit this brief in support of Respondents in Case Nos. 14-556, 14-562, 14-571 & 14-574. *Amici* are Ohio ministers or pastors across denominational lines who have come together for the purpose of submitting this Brief. The *Amici* and their congregations are directly affected by the outcome of this case. *Amici* believe that Marriage must only remain between one man and one woman.

SUMMARY OF ARGUMENT

Marriage predates the state, and remains between one man, one woman, and God. The state has recognized the benefit of male - female marriages, and has subsequently decided to subsidized it. The 14th amendment does not require States to recognize same sex marriage, nor does it require out of state marriages to be recognized.

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[1] Pursuant to Supreme Court Rule 37.3, *amici curiae* certify that counsel of record of all parties received timely notice of the intent to file this brief in accordance with this Rule [and they have consented to the filing of this brief.] Respondents have filed consents to the filing of Amicus Briefs on behalf of either party or no party. Petitioners have consented to the filing of this Amicus Brief and its consent is submitted simultaneously with this Brief. Pursuant to Rule 37.6, *amici* also certify that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief. A complete list of *amici* is included as Appendix A.

ARGUMENT

I. Christian Marriage Perspective

The Christian definition of marriage is a much higher standard than the secular definition used by the state. In Christianity, God created marriage on the sixth day of creation when He formed man out of the dust of the ground and breathed into his nostrils the breath of life (Genesis 2:7). "Then God said, 'Let us make man in our image... in the image of God He created him, male and female He created them" (Genesis 1:16-27). Christians understand God as a trinity: God the Father, God the Son Jesus Christ, and God the Holy Spirit. This doctrine is key to the Christian belief, and is found again here in Genesis 1:27 "Let *Us* make man in *Our* image" (emphasis added). Christians do not worship three gods, but one Holy and Separate Godhead. This is key to understanding marriage from a Christian perspective. To The Church[2], marriage like God is a triune.[3] "Biblical marriage is a threefold covenant relationship between one man, one woman, and one God who externally exists in three persons as Father, Son, and Holy Spirit" (Church of God Resolutions, Marriage and Family, 2012). Again, the uniqueness of male and female are important to marriage.

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[2] Church here is not referring to a building or house of worship, but instead refers to every person who believes that Jesus Christ has come in the flesh, was crucified, dead, and buried, and on the third day He rose again, and will one day come to judge the living and dead. Globally, people who put their trust in Jesus Christ for remission of sin are otherwise known as believers, or Christians.

[3] God, Husband, and Wife

> "When God created man, He created them male and female (Genesis 1:27). He gave them distinctly different characteristics (I Corinthians 11: 14, 15; 1 Peter 3:7) as well as different responsibilities (Genesis 3:16-19; 1 Peter 3:1-7). In God's order, the husband is head of the home (Ephesians 5:22-31; Colossians 3:18, 19), parents are to nurture and admonish their children (Ephesians 6:4, Colossians 3:21), and children are to obey and honor their parents (Exodus 20:12; Ephesians 6:1-3; Colossians 3:20). In order for harmony to exist in the home, God's order of responsibility must be observed." (*Divine Order in the Home*, Church of God, http://www.churchofgod/practical-commitments/family-responsibility)

Marriage is also a representation to Christians of the long lasting, holy unity, and divine relationship of, "Christ, and The Church" (Ephesians 5:32). According to the Orthodox Church of America, "In the sacrament of marriage, a man and a woman are given the possibility to become one [in] spirit..." (*The Sacraments [of] Marriage*, Volume II - Worship, http://www.oca.org/the-orthodox-faith/worship/the-sacraments/marriage). This "oneness" is unique among Christian relationships, and reminds us of our unity with Christ. Scripture also affirms that Holy Matrimony creates a family unit that is God's design for the nurturing of children (Deuteronomy 6:4–9; Psalm 127:1–5; Ephesians 6:1-4).

While the states marriage laws do not touch on the "Sacrament of Marriage", or the "Order in the Home", or the "threefold covenant of marriage" we believe it is

the role of The Church to share and hold to these teachings with or without the states' approval. The Church will continue to share the biblical mandate of marriage with God honoring sexual relationships as a holy standard.

II. Text of the Laws

At issue in this case is not whether a one man, one woman definition of marriage is best, or even whether it is good. The core issue is whether or not it is allowed under the US Constitution. The Supreme Court exists to carry out the process of judicial review, in which it determines whether or not a given law is constitutional, as established in *Marbury v. Madison* (1803). In that case, the Court held that the Judiciary Act of 1789 was attempting to enlarge the original jurisdiction of the Supreme Court beyond what the Constitution permitted. The major implication of this decision was that the judicial system's role was determined to be only interpreting what the Constitution allows. In other words, the judicial branch should not be setting policy. The sole function of the courts in the United States is determining the constitutionality of a given policy.

In the Preamble of the United States Constitution, several goals are laid out. It is important to understand the entire Preamble in a grammatically correct way. It reads as follows:

> We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves

> and our Posterity, do ordain and establish this Constitution for the United States of America.

In this instance, the phrase "in order to" serves as a subordinating conjunction, which is defined as "a conjunction that introduces a dependent clause, joining it to a main clause." (Richard Nordquist, *Subordinating Conjunction*, About Education, http://www.grammar.about.com/od/rs/g/subordconj.htm) This is distinct from a coordinating conjunction, which would join "two similarly constructed and/or syntactically equal words or phrases or clauses within a sentence." (Richard Nordquist, *Coordinating Conjunction,* About Education, http://www.grammar.about.com/od/c/g/coordconjterm.htm). Essentially, this means that the entire middle phrase from "form" to "Posterity" is dependent on and connected to the last phrase, "do ordain and establish this Constitution for the United States of America". Therefore, with the above-named goals in mind, the Constitution was established.

Considering the preceding information, we must look further into the Constitution to determine what authority the federal government does or does not have on this matter. We have already established that the Preamble does not give *carte blanche* to the government to establish any policies it might deem beneficial. At this point, it becomes helpful to contemplate the 10th Amendment. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." United States Constitution, *10th Amendment*. It is clearly stated that the federal government has authority only over matters on which authority is specifically granted to it by the

Constitution. Under the Constitution, powers not specifically given to the federal government and not prohibited to the states belong to the states, or to the people. Clearly, the issue of marriage is not referenced anywhere in the text of the Constitution. The only conclusion that can be reached based on this is that authority over marriage is reserved to the states, or to the people.

In 2003 *Lawrence v. Texas*, this Court made clear reference to the European Court on Human Rights as a standard to follow, "to the extent *Bowers* relied on values shared with a wider civilization, the cases reasoning and holding have been rejected by the European Court of Human Rights," *Lawrence v. Texas*, 539 U.S. 558 (2003). With that same emphasis *Amici* now remind this Court that just last year, The European Court on Human Rights declared, "The European Convention on Human Rights does not require member states' governments to grant same-sex couples access to marriage." It further explained - correctly - that, "a child could not have two mothers," and, "it cannot be said that there exists in any European consensus on allowing same-sex marriage." (Austin Ruse, *European Human Rights Court: No Right to Same-Sex Marriage*, Breitbart (July 25, 2014), http://www.breitbart.com/london/2014/07/25/european-human-rights-court-says-no-right-to-same-sex-marriage/)

III. Historical and Political Context

A. Europe's Same Sex Marriage Cases

In *Hämäläinen v. Finland* the European Court of Human Rights had two seemingly competitive laws. First, was "Section 1 of the Marriage Act (*avioliittolaki, äktenskapslagen*; Act no. 411/1987) provides that marriage is between a woman and a man" *Hämäläinen v. Finland* no. 37359/09, ECHR §§ 24, (2014). "Section 115 of the same Act (as amended by Act 226/2001) provides the following:

> 'A marriage concluded *between a woman and a man* in a foreign State before an authority of that State shall be valid in Finland if it is valid in the State in which it was concluded or in a State of which either spouse was a citizen or in which either spouse was habitually resident at the time of conclusion of the marriage'" (emphasis added) *Hämäläinen v. Finland* no. 37359/09, ECHR § 25 (2014).

Secondly,

> "Article 6 of the Constitution (*Suomen persutuslaki, Finlands grundlag*; Act no. 731/1999) provides: 'Everyone is equal before the law. No one shall, without an acceptable reason be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability, or other reason that concerns his or her person. Children shall be treated equally and as individuals, and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development."

Hämäläinen v. Finland no. 37359/09, ECHR § 23 (2014).

Amici remind the court that like the European Court on Human Rights in *Hämäläinen v. Finland*, the Supreme Court of the United States today faces some noteworthy similar challenges. Comparatively, the United States Constitution's 14th Amendment is similar to Article 6 of the Constitution in Finland; and Ohio, Kentucky, Tennessee, and Michigan's Constitutional Marriage Amendments are similar to Section 1, and Section 115 of the Marriage Act in Finland. The case before this Court today should have a similar outcome.

The European Court of Human Rights in *Hämäläinen v. Finland* no. 37359/09, ECHR § 96 (2014) under, "The Court's Assessment," states:

> "96. The Court reiterates that Article 12 of the [European] Convention [of Human Rights] is a *lex specialis* for the right to marry. It secures the fundamental right of a man and woman to marry and to found a family. Article 12 expressly provides for regulation of marriage by national law. It enshrines the traditional concept of marriage as being between a man and a woman (see *Rees v. the United Kingdom*, cited above, § 49). While it is true that some Contracting States have extended marriage to same-sex partners, Article 12 cannot be construed as imposing an obligation on the Contracting States to grant access to marriage to same-sex couples (see *Schalk and Kopf v. Austria*, cited above, § 63)" (emphasis added) *Hämäläinen v. Finland*, no. 37359/09, § 96 ECHR (2014).

> "71. The Court reiterates its case-law according to which Article 8 of the Convention cannot be interpreted as imposing an obligation on Contracting States to grant same-sex couples access to marriage (see Schalk and Kopf v. Austria, no 30141/04 § 101, ECHR 2010)" *Hämäläinen v. Finland*, no. 37359/09, § 71 ECHR (2014).
>
> The Court noted,
>
> "73. From the information available to the Court… it appears that currently 10 member States allow same-sex marriage." *Hämäläinen v. Finland*, no. 37359/09, § 73 ECHR (2014).
>
> "74. Thus it cannot be said that there exists any European consensus in allowing same-sex marriages." *Hämäläinen v. Finland*, no. 37359/09, § 74 ECHR (2014).

Paralleling *Lawrence Amici* remind this Court that, "Other nations, too, have taken action consistent with an affirmation of the protected right of *states* to engage in defining marriage to *one man, one woman* relationships only. The right the *respondents* seek in this case has been accepted as an integral part of *states'* freedom in many other countries. There has been no showing that in this country the governmental interest in circumscribing state marriage is somehow *less* legitimate or urgent" (emphasis added).

IV. Legitimate Rational is rooted in the Biological Reality

A. One Man and One Woman Relationships Are Unique.

Every child has a mother and a father, which remains true whether that child is conceived in a laboratory or through natural means. This Biological Reality is not contested by the petitioners or the respondents. One does not need to go further than understanding that man and woman are unique and together they are uniquely poised to procreate. Again, it is a Biological reality that human reproduction depends on a biological father and a biological mother. From the moment of conception our DNA determines the many characteristics of the human body. This is most evidently seen with the characteristic of physical sex. At the moment of conception 23 chromosomes from a mother, and 23 chromosomes from a father join together to form the unique DNA (46 chromosomes) that is the building block of every person. "Women have two X chromosomes (XX) and men have one X and one Y chromosome (XY). A man can pass on an X or a Y chromosome. The woman's egg always contains an X chromosome" (Linda J. Murray *Pregnancy from preconception to birth* p.32). Even at the earliest stages of human development a mother's son or daughter is unique, having a unique set of DNA. If the father passes on a Y chromosome then his offspring is male, or if the father passes on an X chromosome then his offspring is female. Therefore the uniqueness of male and female is determined at the moment of conception.

The 14th amendment to the US Constitution does not force state to enact same sex marriage. Marriage according to the Bible is a higher standard of marriage then the state secular definition. The issue in this case is that the Tenth Amendment requires that the state decide it's marriage laws. Ohio, Tennessee, Michigan, and Kentucky voted to uphold in their respective states the definition of marriage as between one man and one woman. The Fourteenth Amendment does not require state to change this definition based on other states chosen definition of marriage.

CONCLUSION

For all of the forgoing reasons, the Sixth Circuit's decision should be upheld.

Respectfully submitted,

Sandra F. Gilbert, Esq.
Counsel of Record
3020 Garland Lane
Plymouth, MN 55447
612.715.5049
SandyFGilbert@msn.com

Counsel for Amici Curiae

APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

Jason Feliciano
One Church Canton
813 Joel Cir.
Louisville, Ohio 44641

Pastor Norris Lindsey
Gospel Temple Christian fellowship
2147 5th Street northeast
Canton, Ohio 44704

Christina Martin Elder
River of Life Christian Fellowship
1217 19th Street northeast
Canton, Ohio 44714

Pastor Al Walker Sr.
3503 31st Street northeast
Canton, Ohio 44705

Pastor Yvonne Prince
LIFE Ministries and 12 Gates Ministries
Canton, Ohio

Pastor Michael Kelley
New Life Church
Louisville, Ohio 44641

Pastor Stan Hinshaw
First Friends Church
5455 Market Ave N.
Canton, Ohio 44714

Pastor Raymont Johnson
Spirit of Faith Christian Center of Ohio

Pastor Louanne Zakaski
River of Life Christian Fellowship

Pastors Shelton Tufts and Emily Tufts
Dominion Kingdom Family Ministries
1738 Tuscarawas Street East
Canton, Ohio 44707

Rev. Walker S. Stewart
Sanctuary Church of God
6535 Maplebrook St.
East Canton, Ohio 44641730

Bishop Wesley M. MooreJohnson

Pastor Kevin Andrews and Barbara Andrews

Pastor Alan Lamb
Paris Israel Church
12583 Lisbon St NE
Paris Ohio 44669

Pastor Larry Hinkle
Christ United Methodist Church
600 East Gorgas Street
Louisville, Ohio 44641

Dr. Michael D. Gross
5-Fold Global Ministries
1967 East Maple Street, Suite 136
North Canton, OH 44685

Pastor Kevin Thomas
First Baptist Church of Canton
4110 38th Street Northwest
Canton, Ohio 44718

Rev. Mark Stevenson,
Interdenominational Ministerial Association
Canton, Ohio