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 AMICI CURIAE LGBT STUDENT ORGANIZATIONS AT UNDERGRADUATE, GRADUATE, AND PROFESSIONAL SCHOOLS IN SUPPORT OF PETITIONERS

ANDREW MELZER*
DEBORAH MARCUSE
DAVID TRACEY
SANFORD HEISLER KIMPEL, LLP
1350 AVENUE OF THE AMERICAS, 31ST FLOOR
NEW YORK, NY 10019
(646) 402-5657
AMELZER@SANFORDHEISLER.COM
COUNSEL FOR AMICI CURIAE STANFORD GRADQ, ET AL.

MARCH 6, 2015 **COUNSEL OF RECORD*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

TABLE OF CONTENTS

Page

TABLE OF CONTENTS – Continued

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

CONSTITUTIONAL PROVISIONS

STATUTES

TABLE OF AUTHORITIES—Continued

Page

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

STATEMENT OF INTEREST

Amici Curiae are student organizations* at colleges and universities across the nation. *Amici* share a longstanding commitment to foster and protect the lesbian, gay, bisexual, and transgender ("LGBT") communities on their campuses.[1] *Amici* wear many hats: they organize social events, provide academic and employment advice, and offer other guidance and support. They also advocate for non-discrimination laws and policies and social equity and against prejudice on their campuses. *Amici's* primary constituents are LGBT undergraduate, graduate, and professional students enrolled at schools throughout the country, including colleges and universities, law schools, medical schools, and business schools. Because they represent LGBT students who stand poised to enter the workforce, *Amici* are uniquely equipped to inform the Court of the harms which "non-recognition" laws inflict on LGBT Americans who face the prospect of moving to Respondent States to follow employment opportunities.[2]

---

* Statements of interest for the organizations and a list of individual signatories may be found in Appendix A.

[1] The Parties have consented to the filing of this amicus brief. Counsel for *Amici* authored this brief in its entirety. No person or entity other than *Amici*, their staff, or their counsel made a monetary contribution to the preparation or submission of this brief.

[2] *Amici* support and adopt Petitioners' position that the Fourteenth Amendment requires states to license marriages

Amici write to highlight how non-recognition laws amplify the preexisting discriminatory barriers LGBT individuals already face in obtaining employment, keeping their jobs, and advancing in their professions. Members of the LGBT community report high rates of employment discrimination, including failure to hire, discrimination in pay and promotions, sexual harassment, and workplace hostility. Non-recognition laws, like those enacted by the Respondent States, compound these already significant obstacles by limiting *where* validly-married same-sex couples may live, work, and raise their children. When circumstances compel same-sex couples to move to jurisdictions that refuse to recognize their marriages, they and their families lose essential rights and their lives and relationships are plunged into legal limbo. These harms loom large over the life prospects of graduate and professional students, who are about to join a highly mobile labor force while at the same time often embarking on their most enduring life relationships and starting their own families. Non-recognition laws restrict *Amici's* constituents from pursuing clerkships, internships, residencies, research and teaching positions, and other employment on a fair and equal basis with their non-LGBT peers, leaving them at a distinct disadvantage in their respective fields. This imposes a handicap out of the starting gate that will

---

between individuals of the same sex (the first question certified by this Court), and urge the Court to strike down both marriage bans and non-recognition laws in unison. However, because non-recognition laws inflict distinct Constitutional and dignitary harms that *Amici* are well-positioned to address, *Amici* write separately on this topic.

inevitably exacerbate itself over the course of their careers, inhibiting not only their own futures but those of their spouses and children as well. Further, while recent graduates are likely to undertake public service projects and opportunities in underserved communities, non-recognition laws may well inhibit LGBT graduates from pursuing such endeavors, thereby barring populations in need from access to valuable resources.

Accordingly, *Amici* submit this brief in support of Petitioners' argument that the right to travel encompassed by the Fourteenth Amendment requires states to recognize valid same-sex marriages contracted in other jurisdictions. The non-recognition laws currently in place in fourteen states impose direct penalties and burdens on same-sex couples' fundamental right to travel. Because non-recognition laws do violence to the protections of the Fourteenth Amendment, they must be relegated to the annals of history.

SUMMARY OF THE ARGUMENT

For married same-sex couples, the cost of residency in fourteen states in our Federal Union is impossibly high: to live in one of these states, same-sex couples must check their marital status—often including their legal relationships with their children—at the door. States impose this admission fee through "non-recognition laws," which strip same-sex spouses and their families of the rights, benefits,

and responsibilities of civil marriage.[3] This is certainly no better than depriving married same-sex couples and their children of dignity, stability, and integrity by relegating them to "second-tier" marriages, *see United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013): under state non-recognition laws, same-sex couples who are fully married in one state are stripped of that status merely by taking up residence in another locale.[4] By exacting such a draconian price, non-recognition laws eviscerate the Fourteenth Amendment's protection of a citizen's right to travel to and take up residence in a new state. Such laws present only a Hobson's choice to LGBT individuals who seek to live in these jurisdictions.

This Court has long recognized that the right to travel between and among the Sister States is inherent in the very notion of a Federal Union. This implicit right dates back to the Articles of Confederation and finds its home in multiple clauses of the Constitution, including the Fourteenth Amendment. The Fourteenth Amendment

---

[3] As of the date of filing, the following states have statutes or constitutional amendments that refuse to recognize a same-sex marriage validly licensed by another State: Alabama, Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Texas. Under an order of the United States District Court for the District of Nebraska, Nebraska's prohibition will be enjoined effective March 9. *See Waters v. Ricketts*, 8:14-cv-00356-JFB-TDT, slip op. at 34 (D. Neb. Mar. 2, 2015).

[4] For at least some purposes, the federal government recognizes a marriage valid in the place of celebration. *But see Tanco* Petitioners Br. at 6 n.1.

specifically encompasses the right to travel to and dwell in any State of the Union. A state infringes upon this elemental right by enacting laws that penalize newcomers. Where any law imposes such a penalty on the fundamental right to travel, the law triggers strict scrutiny, requiring the state in question to demonstrate that the law both furthers a compelling state interest and provides the least restrictive means of achieving that end.

Non-recognition laws inflict precisely the type of harm that this Court has found to be an impermissible burden on the right to travel. Same-sex spouses who move to one of the fourteen states with non-recognition laws are instantly stripped of their legally-married status, essentially rendered legal strangers to each other solely by virtue of their new home address. This harm flows directly from same-sex couples' exercise of their constitutional right to travel. The concrete manifestations of this penalty range "from the mundane to the profound." *Windsor*, 133 S. Ct. at 2694. Among other things, non-recognition laws disturb or destroy health insurance coverage, hospital visitation rights, tax benefits, inheritance rights, marital and spousal evidentiary privileges, and child custody and support arrangements. In the never planned but always possible event that a relationship breaks down, spouses may be prevented from divorcing and thereby hindered from reordering their lives and affairs, including the legal and custodial status of their children. Apart from dispossessing same-sex couples and their families of the myriad material benefits of marriage, non-recognition laws also inflict dignitary harm by divesting couples and their

children of the symbolic value of marriage and the legitimacy that it provides. Yet despite the onerous burden non-recognition laws place on the right to travel, these laws fail to further any legitimate governmental purpose. Moreover, because they are blanket bans, non-recognition laws cannot be construed as narrowly tailored. Accordingly, these laws fall far short of what strict scrutiny requires.

Non-recognition laws carry especially harsh consequences for same-sex couples compelled to relocate to Respondent States in pursuit of employment opportunities. Currently, there are no federal protections against employment discrimination on the basis of sexual orientation or gender identity. Such discrimination remains prevalent in workplaces across the country. LGBT individuals already face significant employment barriers because of their sexual orientation, including underemployment, underpayment, and high rates of workplace discrimination. Especially because of these baseline disadvantages, LGBT individuals must be able to freely follow available employment opportunities without the risk that doing so will nullify their marriages and legal relationships with their children. LGBT individuals and their families should not be forced to give up the material benefits and symbolic value of marriage in exchange for gainful employment or professional advancement.

I. THE FOURTEENTH AMENDMENT PROTECTS THE FUNDAMENTAL RIGHT TO TRAVEL; LAWS THAT PENALIZE THE EXERCISE OF THIS ENTRENCHED RIGHT MUST WITHSTAND STRICT SCRUTINY

A. It is Firmly Established that the Right to Travel is Essential to Our Nation's Status as a Federal Union

The right to travel "occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized." *United States v. Guest*, 383 U.S. 745, 757 (1966). The ability to move freely between the states has always been central to the Nation's status as a union of Sister States. The Founders specifically enumerated the right to travel in the Articles of Confederation, providing that "the people of each State shall free[ly] ingress and regress to and from any other State." Articles of Confederation of 1781, art. IV, para. 1. Before the Founding, the right to travel can be traced to William Blackstone, 1 William Blackstone, Commentaries *130 (1st ed. 1765) (invoking "the power of loco-motion, of changing situation, of moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law."). Accordingly, this Court has often recognized the "unquestioned historic acceptance of the principle of free interstate migration, and of the important role that principle has played in transforming many States into a single Nation." *Attorney Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 902 (1986) (plurality opinion).

In light of the unquestioned standing of the right to travel as a bedrock principle of our Nation, this Court for many years saw no need "to ascribe the source of this right to travel interstate to a particular constitutional provision." *Shapiro v. Thompson*, 394 U.S. 618, 630 (1969). Instead, this Court explained that the Founders had little reason to specifically enumerate the right; it is "a right so elementary [it] was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created." *Guest*, 383 U.S. at 758. Eventually, however, the Court clarified that certain "components" of this right find their home in the Fourteenth Amendment. *Saenz v. Roe*, 526 U.S. 489, 500-502 (1999). Specifically, the Fourteenth Amendment protects the right to "become a citizen of any State of the Union by a bona fide residence therein." *Id.* at 503. It is axiomatic that all citizens are entitled "to migrate, resettle, find a new job, and start a new life" in a new state. *Shapiro*, 394 U.S. at 629.

B. State Laws Which Burden or Penalize the Fundamental Right to Interstate Travel Are Subject to Strict Scrutiny

This Court has fashioned a multi-tiered framework for evaluating whether a law offends the Constitution; the most rigorous test is strict scrutiny. Strict scrutiny applies when a law interferes with or burdens a fundamental right, such as the right to travel. *See Sosna v. Iowa*, 419 U.S. 393, 418 (1975) ("As we have made clear in *Shapiro* and subsequent cases, any classification that penalizes exercise of the constitutional right to travel is invalid unless it is justified by a compelling governmental interest.");

see also Washington v. Glucksberg, 521 U.S. 702, 719–20 (1997); *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978). Under strict scrutiny, when a state law penalizes interstate migration, the state must put forth a compelling governmental interest and must demonstrate that the law is narrowly tailored to effectuate that end. *Soto-Lopez*, 476 U.S. at 904; *Dunn v. Blumstein*, 405 U.S. 330, 339 (1972) ("[T]he Court must determine whether the exclusions are necessary to promote a compelling state interest.").

A state law need not expressly regulate movement to impermissibly burden the right to travel. Rather, a law implicates the right to travel and thereby triggers strict scrutiny "when it actually deters such travel, when impeding travel is its primary objective, or when it uses any classification which serves to penalize the exercise of that right." *Soto-Lopez*, 476 U.S. at 903 (internal citation and quotation marks omitted). This Court's jurisprudence confirms that state laws may be found to impose impermissible burdens on the right to travel even in the absence of "evidence that anyone was actually deterred from travelling by the challenged restriction." *Mem'l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 257 (1974). The proper inquiry, then, asks whether the law operates as a penalty on those who would exercise the right to travel.

State laws clearly burden the right to travel when they deny significant benefits to those who enter into the state as new residents. *See Mem'l Hosp.*, 415 U.S. at 259 (noting that denials of "fundamental political right[s]" and denials of "the basic 'necessities of life'" amount to penalties on the

right to travel); *Soto-Lopez*, 476 U.S. at 908 (noting that a denial of a veterans' preference for civil service jobs amounted to a denial of a "significant benefit."). Indeed, "even temporary deprivations of very important benefits and rights can operate to penalize migration." *Soto-Lopez*, 476 U.S. at 907. This Court has held that short-term denials of welfare benefits, *Shapiro*, 394 U.S at 638, non-emergency healthcare for the indigent, *Mem'l Hosp.*, 415 U.S. at 261, and the right to vote, *Dunn*, 405 U.S. at 342, all impermissibly burden the right to travel.

II. NON-RECOGNITION LAWS IMPOSE MASSIVE AND UNJUSTIFIABLE PENALTIES ON SAME-SEX COUPLES WHO EXERCISE THEIR FOURTEENTH AMENDMENT RIGHT TO TRAVEL

As set forth above, the freedom to move between the states inheres in our Federal Union and is protected by the Fourteenth Amendment. Non-recognition laws erect obstacles that deter and inhibit interstate mobility and do not satisfy strict scrutiny. Such laws inflict unconstitutional penalties on same-sex spouses and therefore cannot stand.

The Sixth Circuit below fashioned an unprecedentedly narrow definition of the right to travel and, in doing so, failed to appreciate how non-recognition laws penalize interstate migration. In actuality, the burden on travel imposed by such laws upon married same-sex couples is staggering. When same-sex spouses enter jurisdictions with non-recognition laws, they are forced to relinquish the rights, obligations, and protections of marriage. These myriad rights and benefits affect virtually every aspect of married individuals' lives and legal

relations, including their relations with their children. Legally-married same-sex couples and their children are dispossessed of the profound and far-reaching tangible and intangible benefits of marriage as a direct and immediate result of relocating to a non-recognition state. By divesting same-sex couples of an emotional and legal cornerstone of their lives, namely their hard-won marital status, non-recognition laws penalize these couples' exercise of the right to travel.

Yet the Respondent States and other states with non-recognition laws cannot proffer any legitimate justification for these laws, let alone a compelling one. *Cf. Windsor*, 133 S. Ct. 2675 (no valid constitutional basis for Section 3 of the Defense of Marriage Act ("DOMA"), which precluded the federal government from recognizing same-sex marriages lawfully-contracted in the spouses' home states); *id.* at 2696 ("no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity.").[5] Even if states

---

[5] While the federal DOMA was especially suspect because it "rejected the long-established precept" that determinations regarding marriage are reserved for the states (*see Windsor* at 2691-93), non-recognition laws for their part reject the long-established precept that valid marriages from other states are generally recognized even if they could not be lawfully contracted in the relocation state. Like DOMA, state non-recognition laws "divest[ ] married same-sex couples of the duties and responsibilities that are an essential part of married life and that they in most cases would be honored to accept were [non-recognition laws] not in force" *Id.* at 2695. *See also id.* at 2696.

could articulate an important interest animating their non-recognition laws, the blanket bans these laws impose sweep far too broadly to be sustained.

A. The Sixth Circuit's Cursory Analysis Misapprehends How Non-Recognition Laws Burden the Right to Travel

In its opinion below, the Sixth Circuit cabined the right to travel in a way that is inconsistent with this Court's precedent. As a result, the Court of Appeals completely bypassed the strict scrutiny analysis it should have employed. A proper application of this Court's precedent demonstrates that non-recognition laws squarely implicate the right to travel and therefore must satisfy the compelling state interest test.

First, the Sixth Circuit wrongly concluded that non-recognition laws do not implicate the right to travel at all because they do "not ban, or for that matter regulate, movement into or out of the State other than in the respect all regulations create incentives or disincentives to live in one place or another." *Deboer v. Snyder*, 772 F.3d 388, 420 (6th Cir. 2014). But the right to travel has never been so hollow as to only protect literal movement. Instead, as set forth above in Part I.B, *supra*, a state can impermissibly interfere with the right to travel in a number of ways, including when it deters interstate migration by curtailing the preexisting rights of newcomers. This is not simply an instance of states having different laws or regulations (such as tax rates); instead, non-recognition laws essentially operate retroactively to strip a particular category of citizens of their already-conferred legal status and its

attendant rights and benefits. *Cf. Windsor, supra*. Citizens ordinarily carry their marriages with them between jurisdictions.[6]

Second, the Court of Appeals held that the right to travel covers only "(1) 'the right of a citizen of one State to enter and to leave another State'; (2) 'the right to be treated as a welcome visitor rather than an unfriendly alien' when visiting a second State; and (3) the right of new permanent residents 'to be treated like other citizens of that State.'" 772 F.3d at 420 (quoting *Saenz*, 526 U.S. at 500). Again, this Court has never so limited the right. Rather, *Saenz* held that "[t]he 'right to travel' . . . embraces *at least*" those components. *Saenz*, 526 U.S. at 500 (emphasis added). By circumscribing its definition of the right to travel, the Court of Appeals ignored a well-established component of that right under this Court's longstanding precedent, namely: "the right to migrate, 'with intent to settle and abide.'" *Mem'l Hosp.*, 415 U.S. at 255 (quoting *Shapiro*, 394 U.S. at 629).

Third, the Court of Appeals incorrectly premised its analysis on the fact that states with non-recognition laws also deny marriage to longtime resident same-sex couples. But as this Court held in *Memorial Hospital*, the fact that a state law also inflicts in-state harm does not necessarily lessen or negate its burden on interstate travel. 415 U.S. at

---

[6] *E.g.*, *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968, 974 (S.D. Ohio 2013) ("The general rule in the United States for interstate marriage recognition is the 'place of celebration' rule, or *lex loci contractus*, which provides that marriages valid where celebrated are valid everywhere.")

255-56 (finding that a county residency requirement which applied to both new and longtime residents of Arizona constituted an impermissible infringement on interstate travel). Respondent States' demand that same-sex spouses forfeit their already-solemnized legally-married status—"a dignity and status of immense import," *Windsor*, 133 S. Ct. at 2692—imposes an obvious and virtually unparalleled burden on these LGBT couples as a condition of their taking up residence in a non-recognition state.

If anything, the Court should compare the states' treatment of out-of-state same-sex marriages to their general treatment of out-of-state opposite-sex marriages. For example, as discussed in the *Tanco* Petitioners' brief, Tennessee (along with the other three Respondent States in the cases at bar) typically applies the doctrine of *lex loci contractus* to find that marriages valid where contracted are also valid in the Respondent State.[7] From this well-established doctrine, the Respondent States have carved out a single blanket exception: non-recognition of same-sex

---

[7] *See, e.g.*, *Noble v. Noble*, 299 Mich. 565, 300 N.W. 885 (1941) (holding that a marriage valid where contracted will be recognized as valid in Michigan); *McDowell v. Sapp*, 39 Ohio St. 558, 560 (1883) ("It is well settled that the validity of a marriage must be determined from the *lex loci contractus*. If valid where solemnized, it is valid elsewhere; if invalid there, it is invalid everywhere."); *Stevenson v. Gray*, 56 Ky. 193, 194 (1856) ("A marriage valid in the country where celebrated will be held valid in other countries where the parties may be domiciled, though it would have been invalid by the law of the subsequent domicile, if it had been originally celebrated there."); *Morgan v. McGhee*, 24 Tenn. 13, 14 (1844) ("Our courts of justice recognize as valid all marriages of a foreign country, if made in pursuance of the forms and usages of that country.").

marriages validly obtained in other jurisdictions.[8] By inappropriately comparing couples in lawful out-of-state same-sex marriages to in-state same-sex couples, the Sixth Circuit overlooked how Respondent States have affirmatively singled out extant same-sex marriages for differential treatment in order to deter, if not completely inhibit, migration of married same-sex couples to their jurisdictions. Non-recognition laws have the purpose and effect of sending a clear message: *We don't want your kind here*. Because these laws condition relocation on the forfeiture of one's marital and familial rights, they bear upon and burden same-sex spouses' constitutionally-protected right to travel, and must be analyzed according to the proper constitutional standard.

B. Non-Recognition Laws Amount to an Impermissible Levy on Same-Sex Couples Who Exercise their Constitutional Right to Resettle in Non-Recognition States

States with non-recognition laws levy an unconstitutional tariff on same-sex couples, nullifying marriages between legally-wedded spouses upon their entry into the jurisdiction. Non-recognition laws may also disrupt the legal relationship between at least one of the spouses and the couple's children. Non-recognition laws thereby

---

[8] As the *Tanco* petitioners highlight, Tennessee has only ever recognized two exceptions for opposite-sex couples: (1) interracial marriage bans, long regarded as anathema; and (2) non-recognition of marriages based on a case-by-case determination that they would constitute a felony under the criminal law.

deprive same-sex couples and their families of numerous protections, benefits, and obligations. These deprivations follow directly from same-sex couples' migration across the borders into Respondent States.

As the district courts below spelled out in detail, state non-recognition laws inflict numerous material and dignitary harms on same-sex couples and their families. For example, as an immediate result of migration, non-recognition laws prevent same-sex couples from adopting children together;[9] deny them certain state and local tax benefits;[10] deny them

---

[9] Or. Rev. Code § 3107.03; *In re Adoption of Doe*, 130 Ohio App. 3d 288, 292 (Ohio Ct. App., Summit County 1998) ("Based upon the clear meaning of R.C. 3107.15(A), we find the trial court did not err in finding the biological mother's parental rights would terminate upon adoption of the child by appellant, a non-stepparent."); *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804, 837 (Ky. Ct. App. 2008) (finding Kentucky law does not permit second-parent adoptions); Mich. Comp. Laws § 710.24.

[10] *See* Kentucky Department of Revenue, Same-Sex Married Couples Filing Guidance, Kentucky Tax Alert, Nov. 2013, *available at* http://www.revenue.ky.gov/nr/rdonlyres/9ba15c3d-34cc-45fe-bfb6-0d346d93bac5/0/kytaxalertnov2013.pdf; Michigan Department of Treasury, Same-Sex Couples Filing Joint Federal Income Tax Return Must File Michigan Income Tax Returns as Single Filers, Sep. 19, 2013, *available at* http://www.michigan.gov/documents/taxes/DOMAnotice_434103_7.pdf; Ohio Department of Taxation, Filing Guidelines for Taxpayers Filing a Joint or Married Filing Separately Federal Income Tax Return With Someone of the Same Gender, Information Release 2013-01, Oct. 11, 2013, rev. Dec. 19, 2013, *available at* http://www.tax.ohio.gov/Portals/0/ohio_individual/individual/information_releases/DOMA%20PIT%20Information%20Release%2012-19-13.pdf.

access to entitlement programs such as Medicaid;[11] and deny them the remedies of loss of consortium and wrongful death. *See Bourke v. Beshear,* 996 F. Supp. 2d 542, 546 (W.D. Ky. 2014) (listing state benefits denied to same sex couples); *Henry v. Himes*, 14 F. Supp. 3d 1036, 1049-1050 (S.D. Ohio 2014) (same); *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968, 980 (S.D. Ohio 2013) ("The benefits of state-sanctioned marriage are extensive, and the injuries raised and evidenced by Plaintiffs represent just a portion of the harm suffered by same-sex married couples due to Ohio's refusal to recognize and give the effect of law to their legal unions.").

Non-recognition laws inflict particular harm on the children of same-sex couples. They deprive these children of the stability and social acceptance that derive from their parents' legally recognized marriages. *See Baskin v. Bogan*, 766 F.3d 648, 663 (7th Cir. 2014) ("Consider now the emotional comfort that having married parents is likely to provide to children adopted by same-sex couples."); Ellen C. Perrin et al., *Promoting the Well-Being of Children Whose Parents Are Gay or Lesbian*, 131 Pediatrics e1374, e1381 (2013) ("Marriage equality can help reduce social stigma faced by lesbian and gay parents

---

[11] Memorandum from the Department of Health and Human Resources on United States v. Windsor to State Health Officials and Medicaid Directors 2 (Sep. 27, 2013), *available at* http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-13-006.pdf ("[W]ith respect to Medicaid and [Children's Health Insurance Program] CHIP, a state is permitted and encouraged, but not required, to recognize same-sex couples who are legally married under the laws of the jurisdiction in which the marriage was celebrated as CHIP.").

and their children, thereby enhancing social stability, acceptance, and support.").

Non-recognition laws also "bring[ ] financial harm to children of same-sex couples." *Windsor*, 133 S. Ct. at 2695. They "raise[ ] the cost of health care for families by taxing health benefits provided by employers to their workers' same-sex spouses[,]" and they "den[y] or reduce[ ] [Social Security] benefits allowed to families upon the loss of a spouse and parent." *Id.*; *accord Waters v. Ricketts*, No. 14-cv-00356, slip op. at 3-7 (D. Neb. Mar. 2, 2015) (finding Nebraska's non-recognition law inflicts upon children of same-sex couples the very economic injuries identified in *Windsor*, 133 S. Ct. at 2695, among other financial and dignitary harms). Denying such governmental benefits to same-sex spouses "undermines . . . one of the central historical bases for civil marriage, namely, family stability." *Deboer v. Snyder*, 973 F. Supp. 2d 757, 764 (E.D. Mich. 2014); *see* Perrin et al., *supra*, at e1381 ("Marriage supports permanence and security (the basic ingredients for the healthy development of children.)").[12]

These deprivations are equally acute for children born or adopted after the couple's relocation to a non-recognition jurisdiction. For instance, in Michigan, "children being raised by same-sex couples have only

---

[12] The American Academy of Pediatrics has "conclude[d] that it is in the best interests of children that they be able to partake in the security of permanent nurturing and care that comes with the civil marriage of their parents, without regard to their parents' gender or sexual orientation." Perrin et al., *supra*, at e1381.

one legal parent and are at risk of being placed in 'legal limbo' if that parent dies or is incapacitated." *Deboer*, 973 F. Supp. at 764. Should the legal parent die, "the surviving non-legal parent would have no authority under Michigan law to make legal decisions on behalf of the surviving children without resorting to a prolonged and complicated guardianship proceeding." *Id.* at 771.

Similarly, Ohio prohibits same-sex couples from placing both parents' names on their children's birth certificates, denying these couples, "the basic currency by which parents can freely exercise . . . protected parental rights and responsibilities." *Henry v. Himes*, 14 F. Supp. 3d 1036, 1050 (S.D. Ohio 2014). As the district court noted in *Henry*:

> the birth certificate can be critical to registering the child in school; determining the parents' (and child's) right to make medical decisions at critical moments; obtaining a social security card for the child; obtaining social security survivor benefits for the child in the event of a parent's death; establishing a legal parent-child relationship for inheritance purposes in the event of a parent's death; claiming the child as a dependent on the parent's insurance plan; claiming the child as a dependent for purposes of federal income taxes; and obtaining a passport for the child and traveling internationally.

Id. Accordingly, non-recognition laws penalize the interstate migration of same-sex parents by directly undermining their ability to raise children.

Because the Sixth Circuit adopted a circumscribed definition of the right to travel, in contravention of this Court's precedent, it failed to consider these significant burdens in its analysis. Unlike the temporary deprivations at issue in *Shapiro*, *Dunn*, and *Memorial Hospital*, non-recognition laws *permanently* deprive same sex couples of a broad spectrum of state benefits and rights. And rather than touching on just one area of life—e.g. welfare benefits or medical coverage—non-recognition laws touch upon a vast expanse of rights and obligations, ranging "from the mundane to the profound." *Windsor*, 133 S. Ct. at 2694. The constitutional harm imposed by non-recognition laws is also particularly pronounced because such laws are tantamount to unconstitutional conditioning of one right upon another. *See, e.g., Speiser v. Randall*, 357 U.S. 513 (1958) (striking down a California law for conditioning receipt of a tax benefit on swearing an oath, in violation of the First Amendment). As Petitioners have set forth in their principal briefs, marriage is itself a fundamental right. Thus, non-recognition laws condition one right, the right to marriage, on the non-exercise of another right, the right to travel. Hence, the strict scrutiny analysis required here is even more demanding: when the state's infringement upon the right to travel also implicates another constitutionally protected right, such as the right to marry or the right to vote, the

Court "undertake[s] intensified equal protection scrutiny of that law." *Soto-Lopez*, 476 U.S. at 904.[13]

Couples who are married upon departure from their original home states become legal strangers the moment they set foot in a state with a non-recognition law. The abrupt loss of their marital status and its attendant rights, privileges, and responsibilities flows directly from their exercise of the right to interstate migration. Where the cost of admission is so high, Respondent States must demonstrate that their burdensome laws further a compelling state interest and offer the least restrictive means of doing so. Respondent States cannot meet this standard, and therefore non-recognition laws cannot prevail.

---

[13] Further, by treating a same-sex marriage as a nullity, non-recognition laws can inhibit the right to divorce established in all states. Same-sex spouses' inability to obtain divorces and dissolve their legal binds would prevent them from moving on with their lives and, crucially, would jeopardize children of the marriage—who would benefit from resolution of their family and legal status. Perrin et al., *supra*, at e1376. Without recognized marriages in their states of residence, same-sex spouses may be unable to secure division of marital property, alimony, child support, or child custody and visitation decrees. *Id.* Although no one plans on getting divorced, as a practical matter, members of same-sex unions—as opposed to their straight counterparts—must remain acutely aware of these consequences when deciding where to live and raise their families.

C. The Only Interest Non-Recognition Laws Serve Is to Disfavor and Exclude Same-Sex Spouses, an Interest That Is Neither Legitimate Nor Compelling

The Fourteenth Amendment requires states that burden the fundamental right to travel to justify their actions by presenting a compelling state interest and demonstrating that the burdensome law is narrowly tailored to achieve that end. Non-recognition laws cannot satisfy strict scrutiny.

Previously, this Court has allowed states to burden the right to travel in certain, limited circumstances. For example, this Court upheld a Georgia law that deemed voluntarily abandoning a minor child to be a misdemeanor, but abandoning a child and then leaving the state to be a felony. *See Jones v. Helms*, 452 U.S. 412 (1981). This Court deemed a state's interest in preventing those who commit crimes from fleeing the jurisdiction sufficiently weighty to allow a burden on the right to travel. Similarly, this Court found a state's interest in protecting divorce decrees from collateral attack to be compelling enough to justify a durational residency requirement. *See Sosna v. Iowa*, 419 U.S. 393 (1975).

Non-recognition laws do not prevent abuse of the judicial system or deter criminal conduct. Most states justify their same-sex marriage bans as necessary to preserve the "tradition" of marriage between a man and a woman, uphold the integrity of the democratic process, and promote intact families.[14] Such

---

[14] *See, e.g.*, *Bourke v. Beshear*, 996 F. Supp. 2d 542 (W.D. Ky.

rationales, however, are nothing more than "generalized, post hoc, and litigation-reactive justifications." *Jernigan v. Crane*, No. 4:13-CV-00410 KGB, 2014 WL 6685391, at *18 (E.D. Ark. Nov. 25, 2014). To begin with, as articulated in Petitioners' briefs, none of these rationales would pass even rational basis review. They reflect little more than the majority's moral disapproval of a disfavored minority. *See Romer v. Evans*, 517 U.S. 620, 635 (1996); *see also Windsor*, 133 S. Ct. at 2693-94; *Lawrence v. Texas*, 539 U.S. 558, 582-83 (2003) (O'Connor, J., concurring). First, if mere tradition were enough to lock society's conception of marriage in place, married women would still be the property of their husbands, interracial marriage would still be banned in swathes of the country, and divorce would not exist. Tradition is not to be honored for its own sake when it exacts a cognizable harm on a class of citizens. Second, judicial review exists precisely to safeguard individual rights from overweening majorities—whether their will is expressed through their elected representatives or by direct plebiscite. Third, the so-called "responsible procreation" rationale is faulty on its face; it serves no rational end to seek to protect offspring of opposite-sex unions by limiting marriage to opposite-sex couples (fertile

---

2014); *Henry v. Himes*, 14 F. Supp. 3d 1036 (S.D. Ohio 2014); *Deboer v. Snyder*, 973 F. Supp. 2d 757 (E.D. Mich. 2014); *Tanco v. Haslam*, No. 3:13-CV-01159, 2014 WL 997525 (M.D. Tenn. Mar. 14, 2014); *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013); *see also De Leon v. Perry*, 975 F. Supp. 2d 632 (W.D. Tex. 2014); *Robicheaux v. Caldwell*, No. CIV.A. 13-5090, 2014 WL 4347099 (E.D. La. Sept. 3, 2014).

and infertile alike) and by gratuitously harming the children of same-sex couples.

Crucially, even these deficient rationales do not relate to the states' specific interests in refusing to recognize validly-contracted marriages from other jurisdictions. In the courts below, the Respondent States failed to present any separate justifications for their non-recognition laws distinct from their justifications for same-sex marriage bans.[15] The link, for example, between fostering "responsible procreation" and stripping spouses and families of their existing legal status is so specious as to amount to sheer farce.

The fact that non-recognition laws apply exclusively to same-sex marriages strongly demonstrates that they serve no legitimate purpose. If any administrative or budgetary concerns were served by nullifying out-of-state marriages—concerns which would be inadequate under this Court's right to travel jurisprudence, *see Sosna*, 419 U.S. at 406—there would be no reason to distinguish between couples on the basis of gender or sexual orientation. As the Ohio district court pointed out:

> for example, under Ohio law, out-of-state marriages between first cousins are recognized by Ohio, even though Ohio law

---

[15] The same holds true for other states with non-recognition bans. *See, e.g.*, *De Leon v. Perry*, 975 F. Supp. 2d 632, 662 (W.D. Tex. 2014) ("Defendants have not provided any specific grounds that justify the refusal to recognize lawful, out-of-state same-sex marriages that is not related to the impermissible expression of disapproval of same-sex married couples.") (internal quotation marks omitted).

> does not authorize marriages between first cousins. Likewise, under Ohio law, out of state marriages [sic] of minors are recognized by Ohio, even though Ohio law does not authorize marriages of minors.

Obergefell v. Wymyslo, 962 F. Supp. 2d 968, 983 (S.D. Ohio 2013). Non-recognition laws thus target and invalidate same-sex marriages alone. This limited scope reveals that the true interest which non-recognition laws serve is to deter a disfavored minority from taking up residence in the enacting states. Non-recognition laws are tailored to achieve only one end: fencing out same-sex couples. Animus is not, and has never been, a legitimate state interest.

III. NON-RECOGNITION LAWS ARE PARTICULARLY BURDENSOME FOR LGBT STUDENTS ENTERING A MOBILE WORKFORCE, DETERRING THEM FROM PURSUING VALUABLE TRAINING AND EMPLOYMENT OPPORTUNITIES

Non-recognition laws fortify the significant barriers to equal employment that LGBT workers already confront. LGBT individuals face high rates of workplace discrimination, making it harder for them to both find and keep gainful employment. The United States is a highly mobile country, in which citizens often need to relocate to secure or retain job opportunities. This is especially the case in the specialized academic and professional fields pursued by many of *Amici's* constituents. Jobs in these areas are simply not interchangeable and may be hard to come by. For example, judicial clerkships and medical residencies are prized commodities that

frequently take graduates to far-flung locales.[16] Academic postings in particular disciplines may be especially rare.[17] Although LGBT individuals reside in every state in the country,[18] their geographical flexibility is limited by societal discrimination. Non-recognition laws take this dilemma to an extreme: they force LGBT individuals to choose between gainful employment and the rights, benefits, and dignity of marriage and family recognition. Where the obstacles to employment are already so high, this Hobson's choice inflicts particularly severe harm.

---

[16] Data shows that the number of medical students exceeds the number of available residencies and that the gap is growing. *See* Brett Sholtis, *Some Med School Grads Fail to Get Residency*, Pittsburgh Post-Gazette, May 26, 2014, http://www.post-gazette.com/news/health/2014/05/26/Some-med-school-grads-fail-to-get-residency/stories/201405260083.

[17] The American Academy of Arts & Sciences reports a "pattern of decline" in job postings in the humanities fields, including English and other languages, history, philosophy, religion, and classical studies. *Danger Signs for the Academic Job Market in Humanities?*, The American Academy of Arts & Sciences (March 2015), https://www.amacad.org/content/research/dataForumEssay.aspx?i=21673. Similarly, doctoral candidates in psychology note increasing difficulty in finding academic positions. *See* Kristin Weir, *The New Academic Job Market*, 9 gradPSYCH Magazine, no. 3, 2011, *available at* http://www.apa.org/gradpsych/2011/09/job-market.aspx. To find such a job, "[f]lexibility is key." *Id.* at 18. Yet non-recognition laws inhibit flexibility by limiting the locations where LGBT candidates may pursue work.

[18] *See* Gary J. Gates and Frank Newport, LGBT Percentage Highest in D.C., Lowest in North Dakota, Gallup (2012), http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx.

The United States remains an internally mobile country. Between 2012 and 2013 alone, approximately 11.7% of the U.S. population moved.[19] The most recent United States Census Community Population Survey (CPS) reveals that of CPS respondents who moved, approximately nineteen percent did so for employment-related reasons.[20] Since 1999, between fifteen and twenty percent of CPS respondents who moved did so for their jobs.[21] Petitioners are a prime example: all three of the couples challenging Tennessee's same-sex marriage ban and non-recognition law married elsewhere and later moved to the state for employment reasons—pursuing new jobs, being relocated by their employer, or being transferred to another military facility.

When LGBT employees move, they are particularly burdened with the potentially far-reaching consequences of inconsistent state recognition of their marriages and familial rights.[22]

---

19 David Ihrke, U.S. Census Bureau, P20-574, Reasons for Moving 2012-2013 1 (2014), *available at* http://www.census.gov/prod/2014pubs/p20-574.pdf; *see also* Neli Esipova et al., *381 Million Adults Worldwide Migrate Within Countries: U.S. one of the most mobile countries in the world*, Gallup.com (May 15, 2013), http://www.gallup.com/poll/162488/381-million-adults-worldwide-migrate-within-countries.aspx?utm_source=alert&utm_medium=email&utm_campaign=syndication&utm_content=morelink&utm_term=All%20Gallup%20Headlines (finding approximately "one in four U.S. adults (24%) reported moving within the country in the past five years.").

20 Ihrke, *supra* note 15, at 3.

21 *Id.* at 5.

22 Businesses are burdened too. As the employer *Amici Curiae* argued to the Sixth Circuit below, inconsistent state laws

Unfortunately, such *de jure* discrimination is frequently accompanied by *de facto* discrimination in hiring, promotion, and the terms and conditions of employment.

Over the past ten years, LGBT individuals consistently report high levels of employment discrimination in national surveys. For example, a 2013 Pew Research Center survey found that twenty-one percent of LGBT respondents reported "being treated unfairly" by their employers because of their sexual orientation.[23] Similarly, the 2008 General Social Survey, a nationally representative survey conducted by the National Opinion Research Center at the University of Chicago, found that 42% of lesbian, gay, and bisexual respondents reported having experienced employment discrimination because of their sexual orientation at some point in their lives.[24] Twenty-seven percent of LGBT

---

concerning marriage "become even more serious given the mobile nature of today's workforce, where employees may work in several states, where they must then file taxes and determine their eligibility for state benefits." Br. of 57 Employers and Organizations Representing Employers as Amici Curiae in Support of Appellees, *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014) (No. 14-1341), 2014 WL 2800890 at *22.

[23] Pew Research Center, A Survey of LGBT Americans Attitudes, Experiences and Values in Changing Times 5 (2013) *available at* http://www.pewsocialtrends.org/files/2013/06/SDT_LGBT-Americans_06-2013.pdf.

[24] Jennifer C. Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 Loy. L. Rev. 715, 722 (2012); *see also* Senate Report 113-105, The Employment Non-Discrimination Act of 2013 (Sept. 12, 2013), at p. 15, Part VIII

respondents had experienced such discrimination in the past five years.[25]

Employment discrimination against transgender individuals is even more widespread. A 2010 national survey of transgender individuals revealed that "90%[ ] of respondents said they had directly experienced harassment or mistreatment at work or felt forced to take protective actions that negatively impacted their careers or their well-being, such as hiding who they were, in order to avoid workplace repercussions."[26] "78%[ ] of respondents said they experienced some type of direct mistreatment or discrimination."[27]

Similarly, studies have revealed pronounced discrimination against LGBT employees in specific geographic locales. For example, a recent study of university employees at rural schools in states lacking LGBT antidiscrimination laws found that "[m]ost participants (76%) had encountered at least one episode of harassment on the job."[28] A recent

---

(a) (same).

[25] *Id.* at 723. Among respondents who were open with coworkers about their sexual orientation, a majority (56%) reported having experienced discrimination over the course of their careers, while 38% had experience such discrimination in the past five years. *Id.*

[26] Jamie M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 56 (2011); *see also* Senate Report 113-105, The Employment Non-Discrimination Act of 2013 (Sept. 12, 2013), at p. 15, Part VIII (a) (same).

[27] *Id.*

[28] Veronica Caridad Rabelo & Lilia M. Cortin, *Two Sides of the*

survey of 215 lesbian, gay, and bisexual residents of Chicago, Illinois also found that "[d]uring the past 24 months, 168 (78.1%) participants experienced at least one instance of enacted stigmatization at work," such as witnessing offensive remarks, being told to conform to gender stereotypes, or having received negative evaluations because of their sexual orientation.[29] Similarly recent surveys of transgender individuals in California, Utah, and Colorado have found that 70%, 67%, and 52%, respectively, of respondents had experienced employment discrimination.[30]

Recent data also suggests that state laws figure prominently in LGBT workers' decisions regarding employment. A 2014 Harris Poll, conducted in partnership with the organization Out and Equal, found that "three out of five (60%) LGBT adults prefer a job with an employer in a state where same sex marriages are recognized over an employer in a

---

Same Coin: Gender Harassment and Heterosexist Harassment in LGBQ Work Lives, 38 Law and Human Behavior 378, 385 (2014).

[29] Trevor G. Gates & Christopher G. Mitchell, *Workplace Stigma-Related Experiences Among Lesbian, Gay, and Bisexual Workers: Implications for Social Policy and Practice*, 28 Journal of Workplace Behavioral Health 159, 165 (2013).

[30] Jennifer C. Pizer et al., 45 Loy. L. Rev. at 722. Currently there is no federal legislation prohibiting employment discrimination on the basis of sexual orientation. Moreover, twenty nine states lack state legislation protecting LGBT workers from employment discrimination. *See Non-Discrimination Laws: State by State Information Map*, ACLU, https://www.aclu.org/maps/non-discrimination-laws-state-state-information-map.

state that does not recognize same sex marriages, other factors being equal . . . ."[31] Indeed, "[n]early a third (30%) of LGBT adults would consider changing jobs if their employer required them to transfer to a state where same sex marriages were not recognized . . . ."[32]

This discriminatory employment environment presents particular challenges to LGBT graduates entering a specialized workforce. As a result, universities must specifically prepare LGBT students for the unique challenges they face applying for and maintaining jobs. For instance, Cornell University reminds students:

> For the most part, college life [at Cornell] has been a supportive environment . . . . The workplace can be quite different, in terms of the openness of and support for LGBT employees. Industries and geographic regions may vary widely in their policies and support, and you will want to research your options carefully to meet your individual needs and goals.[33]

---

[31] *Americans Favor Federal Job Protections Based On Sexual Orientation and Gender Identity*, Out & Equal (Oct. 30, 2014), http://www.outandequal.org/connect/about/media-announcements/2014-harris-poll/.

[32] *Id.*

[33] *LGBT Career Resources*, Cornell University Career Services, http://www.career.cornell.edu/resources/Diversity/lgbt.cfm. *See also LGBT Career Resources*, Career Services at University of Pennsylvania, http://www.vpul.upenn.edu/careerservices/affinity/LGBTResources.php (same).

Similarly, Stanford University counsels students:

> If you mention your involvement in the LGBT community on your resume or in the job interview, you will need to clearly explain how those experiences are transferable to the job. The pro is you may feel better about being completely honest. However, the con is that whoever is reviewing your resume or conducting a job interview may not be gay-friendly, in which case you may not even be considered for a job.[34]

Both *de jure* and *de facto* discrimination figure prominently in the LGBT job search and in the career advice universities provide to their LGBT

---

[34] *Being 'Out' on the Job Search and at Work*, Stanford University, http://studentaffairs.stanford.edu/cdc/jobs/job search-out-at-work. *See also LGBT Students and Alumni*, Career Center, University of California, Berkeley, https://career.berkeley.edu/Infolab/LGBTdisc.stm_ (advising LGBT students on strategies for resume writing and interviewing); *LGBTQ Job Search and Career Resources*, Virginia Tech, http://www.career.vt.edu/websites/LGBTQ.html (compiling resources); *LGBT Career Development Resources*, Duke University Student Affairs, http://studentaffairs.duke.edu/career/online-tools-resources/lgbt-resources/lgbt-career-development-resources (same); *Resources for the Lesbian, Gay, Bisexual, and Transgender Communities*, Williams College Career Center, http://careers.williams.edu/resources-for-the-gay-lesbian-bisexual-and-transgender-communities/ (same); *LGBTQ Career Resources*, Yale School of Forestry and Environmental Studies, http://environment.yale.edu/careers/lgbtq/ (same); *LGBT*, Teachers College at Columbia University, http://www.tc.columbia.edu/careerservices/index.asp?Id=Resources_Helpful+Websites&info=LGBT#LGBT ~ Job Search (same).

students. Non-recognition laws, and the attendant inconsistency in state-law rights and privileges, greatly exacerbate these difficult employment issues and particularly burden students at a critical early stage in their careers. Being unable to accept a clerkship on the Sixth Circuit, a research position at Oak Ridge National Laboratory, or an internship with a rural medical program[35]—to cite just a few examples—can have a defining impact on one's career trajectory. Married students must already consider the well-being of their spouses and children when deciding what professional opportunities to pursue; they should not face a state-imposed conflict between obtaining a job and preserving the dignity, stability, and integrity of the family unit.

---

[35] According to U.S. News and World Report, 6 of the 15 top medical schools for Rural Medicine are located in non-recognition states, including: #2 (tie)–University of North Dakota, #5–University of South Dakota (Sanford), #6–East Tennessee State University (Quillen), #9–University of Nebraska Medical Center, #11 (tie)–University of Alabama-Birmingham, and #11 (tie)–University of North Texas Health Science Center. *U.S. News and World Report Rankings of Rural Medicine Programs,* U.S. News and World Report, http://grad-schools.usnews.rankingsandreviews.com/best-graduateschools/top-medical-schools/ruralmedicine-rankings (noting that "Through these programs, students train to be physicians in rural and underserved communities."). Medical students who desire to practice in rural and underserved communities would be apt to pursue post-graduate opportunities at or affiliated with such institutions. But as argued in this brief and by Petitioners, non-recognition laws impose barriers to qualified LGBT professionals undertaking such endeavors.

CONCLUSION

For well over a century, this Court has endorsed the Fourteenth Amendment's firm protection of the right to travel: "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the 14th Amendment and by other provisions of the Constitution." *Williams v. Fears*, 179 U.S. 270, 274 (1900). The right to travel contemplates unencumbered movement between the states. Non-recognition laws directly undermine this fundamental right without serving a legitimate, much less a compelling, purpose. Lacking such justification, these laws also act as a hobble on LGBT graduates' career prospects. Hence, non-recognition laws—which inflict particular harm on *Amici* and their constituents—cannot pass constitutional muster.

Respectfully Submitted,

ANDREW MELZER
Counsel of Record
DEBORAH K. MARCUSE
LILA MILLER*
DAVID TRACEY
SANFORD HEISLER KIMPEL, LLP
1350 AVENUE OF THE AMERICAS,
31ST FLOOR
NEW YORK, NY 10019
(646) 402-5657
AMELZER@SANFORDHEISLER.COM

Counsel for Amici Curiae
Stanford GradQ, et al.

March 6, 2015

---

* Admission to the New York bar pending; practicing under the supervision of Sanford Heisler Kimpel, LLP partners who are members of the New York bar.

APPENDIX

ADDITIONAL BACKGROUND INFORMATION ON THE INDIVIDUAL STUDENT GROUPS COMPRISING THE AMICI CURIAE

Stanford University GradQ

The Stanford University GradQ is the largest student-run organization for LGBTQ graduate and professional students at Stanford University. Founded in 2007, GradQ is dedicated to developing a safe space for LGBTQ graduate students, creating a visible LGBTQ presence in the larger graduate community through networking and community building, and facilitating communication between the LGBTQ community and the Stanford administration. Representing over 200 queer and allied students, GradQ has a vested interest in creating a world in which LGBTQ students feel safe and empowered to pursue employment in the location of their choosing. GradQ firmly believes that respect for the dignity of all our citizens should be a common thread uniting all states in our Union, regardless of their sexual orientation and gender identity.

Cohort Q

Cohort Q is the LGBTQ student organization for the Boston University Graduate School of Management. The organization's mission is to connect and support LGBTQ students and allies at Boston University and increase awareness of LGBTQ issues within the School of Management. To fulfill its mission, Cohort Q informs LGBTQ students of events, career conferences, scholarships, and jobs that specifically target LGBTQ candidates, and facilitates networking with other Boston MBA programs. Cohort Q strongly supports this brief, as the organization has a fervent interest in ensuring that the rights of LGBTQ people are protected. Cohort Q agrees that the bans on same-sex marriage

and "non-recognition" laws violate the Fourteenth Amendment's guarantees of equal protection and the fundamental right to travel. The bans on same-sex marriage in many states limit Cohort Q members' ability to seek meaningful employment around the country, as we cannot live full lives by leaving our marital rights behind. The "non-recognition" laws directly impact Cohort Q members, as imminent business school graduates, particularly with limited flexibility in the job market. In addition to the discrimination already faced in the workplace, the non-recognition laws further alienate and marginalize LGBTQ people.

Columbia Outlaws

Columbia Outlaws is the LGBTQ student organization at Columbia Law School. Our primary goal is to create a safe space for LGBTQ students to develop professionally, socially, and academically at the Law School. Each academic year, we sponsor programming to support LGBTQ law students and to advance opportunities to advocate for the rights of the wider LGBTQ community. Because of the marriage non-recognition laws at issue in this case, Outlaws who marry face a difficult choice between the dignity that comes with full legal recognition for their families on the one hand—and on the other, a full set of professional opportunities after graduation, including clerkships, fellowships, and other positions in jurisdictions that refuse to recognize same-sex marriages. For these reasons, we join this amicus brief.

Harvard Law School Lambda

Harvard Law School Lambda is an inclusive organization devoted to the support of lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities and to the advancement of equal rights for individuals at Harvard and beyond. We represent over 200 Harvard Law School students of all genders, races, socioeconomic statuses, political affiliations, and sexual orientations. At any given point during the year, Lambda members are actively engaged in applying for jobs across the country and making decisions regarding employment for the summer months and beyond. These decisions become exponentially more difficult when we must consider in which geographic areas we will be treated as equal. For those of us who are married or who will marry in the future, same-sex marriage bans constrict our choices of where to live, work and start our families. We support a decision by the Court that lifts this barrier and enables members of our community to make these types of decisions free from discrimination.

The 2014-2015 Executive Board of NYU OUTLaw

The 2014-2015 Executive Board of NYU OUTLaw, the LGBTQ student organization at New York University School of Law, supports the contents of this amicus. State laws that forbid recognition of marriages between members of the same sex lawfully entered into in other states impair the ability of our current members and alumni to travel freely throughout the United States. Such laws unfairly limit the professional opportunities of current NYU OUTLaw members and alumni.

This statement of interest reflects the views of the 2014-2015 Executive Board of NYU OUTLaw, but does not purport to present the institutional views of New York University School of Law.

Out in Business

Out in Business, an organization of MBA students from the Michael G. Foster School of Business at the University of Washington, aims to position students as leaders of LGBTQ inclusion in business by providing a welcoming community and raising awareness about the value of equality in business. Out in Business joins this brief to bring attention to the issues at hand while emphasizing the impacts no-recognition laws have upon same-sex couples in a mobile and changing business community.

Stanford OutLaw

Stanford OutLaw is a group that represents lesbian, gay, bisexual, transgender, and queer students (LGBTQ) at Stanford Law School. The mission of OutLaw includes promoting the participation of LGBTQ law students in the law school community. OutLaw brings speakers to campus and hosts discussions of issues that affect LGBTQ law students, including marriage equality, employment discrimination, and accommodations for gender non-conforming students. Because of the patchwork of same sex marriage laws, OutLaw members are forced to make an unseemly decision between having their marriages recognized and living in the state of their choice.

UCLA OUTlaw Executive Board

UCLA OUTlaw is a coalition of LGBTQ law students at the University of California, Los Angeles. Our membership has a particularly vested interest in the outcome of this case. Many of our LGBT students are married, or hope to one day be married. While California currently recognizes same-sex marriage, many other states refuse to recognize our marriages as valid.

As law students, we have to decide where we want to practice law, and in which state we want to take the bar exam after graduation. The legal market is incredibly competitive, and the ability to expand our geographic options is vital. The legal implications of these "non-recognition" laws constrain many students' ability to move outside of California upon graduation, limiting our employment options.

The Williams College Queer Student Union (QSU)

The Williams College Queer Student Union (QSU) is the student-run group that organizes social and political programming for queer and trans* students on campus in an attempt to cultivate, nurture, and enrich the queer experience at Williams College. Representing over six percent of campus, we hope to confront discrimination and marginalization in an intersectional manner.

Williams College is ranked the #1 college in the United States by *Forbes* magazine and *U.S. News*. Williams students are driven, passionate, and multi-faceted individuals with a wide variety of skills and hopes for our futures. Many of us, as young graduates, will live all over the country. It is

incredibly demeaning that our opportunities after college will be constricted to states in which we can legally marry.

Yale OutLaws

The Yale OutLaws is an organization of lesbian, gay, bisexual, transgender, and queer (LGBTQ) members of the Yale Law School community. Our goals are to provide a community for LGBTQ-identified people within YLS, to provide opportunities and connections for members of the YLS community who are interested in LGBTQ rights, and to advocate for legal issues of interest to the LGBTQ community. Founded in the early 1970s, OutLaws sponsors speakers, supports activism, hosts social and other community-building events, and represents Yale Law School at LGBTQ legal conferences and events. OutLaws brings the Law School community's attention to issues of special concern to LGBTQ students, and serves as a bridge between Yale students, law school alumni, and the legal profession at large. Because of unequal marriage laws that still exist throughout the United States, OutLaws members who are married or wish to be married to their same sex partners must weigh the recognition of and dignity afforded to their relationships in choosing where to live and work. For this reason, we fully support this amicus brief.