

No. 14-50196

IN THE
**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**CLEOPATRA DE LEON, NICOLE DIMETMAN, VICTOR HOLMES, and
MARK PHARISS,**

Plaintiffs-Appellees,

v.

**RICK PERRY, in his official capacity as Governor of the State of Texas;
GREG ABBOTT, in his official capacity as Texas Attorney General; and
DAVID LAKEY, in his official capacity as Commissioner of the Texas
Department of State Health Services,**

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF TEXAS, SAN ANTONIO DIVISION, No. 5:13-CV-00982

**BRIEF OF *AMICI CURIAE*
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IN SUPPORT OF PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

None of *Amici Curiae* (identified in Appendix) has a parent corporation. No publicly held company owns more than 10% of stock in any of *Amici Curiae*.

STATEMENT OF INTEREST

Bay Area Lawyers for Individual Freedom (“BALIF”) is a bar association of more than 700 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 national, metropolitan, local, and minority bar associations and national and local 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* Appendix. All parties have consented to *Amici*’s submission of this brief.¹

¹ Pursuant to Federal Rule of Appellate Procedure 32, *Amici Curiae* affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici Curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

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 the Supreme 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 ban (collectively, “the Marriage Ban”) that prohibits same-sex couples from marrying in Texas betrays these longstanding values. They exclude a class of people—gay men and lesbians—from the venerated institution of marriage.

This brief explains the harm inflicted on gay men and lesbians as a result of the Marriage Ban’s pernicious classification. It also explains how nothing short of or different from marriage itself can cure the constitutional violations. Specifically, this brief discusses why neither civil unions nor domestic partnerships, which are available to same-sex couples in some states (though not in Texas)—would be an adequate or appropriate constitutional remedy. Because the Marriage Ban excludes committed same-sex couples from access to the institution

of marriage, these couples and their families are separated out, stigmatized, deprived of benefits and responsibilities enjoyed by their heterosexual counterparts, and exposed to increased discrimination. These effects are repugnant to the Constitution’s equality guarantee and are in no way mitigated by access to the separate and inherently inferior systems of domestic partnership or civil union. *Amici* urge this Court to uphold the district courts’ conclusions and find that the Marriage Ban disadvantages gays and lesbians without any legitimate justification. *See De Leon v. Perry*, 975 F.Supp. 2d 632, 639,40 (W.D. Tex. 2014).

ARGUMENT

I. CLASSIFICATIONS THAT SERVE ONLY TO DISADVANTAGE THE BURDENED GROUP FAIL 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. The 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, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).² “The State may not rely on a classification whose

² Plaintiff-Appellee De Leon amply demonstrates, and *amici* agree, that the Marriage Ban should be subject to heightened scrutiny. *See, e.g., Kitchen v.*

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

A law that classifies persons for no reason other than to confer disfavored legal status fails even rational basis review because it serves no legitimate governmental purpose. *See Romer*, 517 U.S. at 633-35. As the Supreme 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 *Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). Accordingly, in *Romer*, the Supreme Court struck down a Colorado constitutional amendment that prohibited governmental protection of gay and lesbian individuals. *Id.* at 635-36. The amendment, the Court found, 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,

Herbert, No. 13-4178, 2014 WL 2868044, at *21-22 (10th Cir. June 25, 2014) (applying strict scrutiny to Utah Constitution and statutes prohibiting same-sex marriage when evaluating due process and equal protection claims); *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 480 (9th Cir. 2014), *reh’g en banc denied*, No. 11-17357 (9th Cir. June 24, 2014) (applying heightened scrutiny to peremptory strike of juror based on sexual orientation); *Windsor v. United States*, 699 F.3d 169, 185 (2d Cir. 2012), *aff’d*, 133 S. Ct. 2675 (2013) (applying intermediate scrutiny to equal protection review of Section 3 of the federal Defense of Marriage Act). However, as this brief explains, the Marriage Ban’s failure to advance a legitimate governmental purpose causes it to fail under even the most deferential standard of review.

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).

So too, here. The injuries that the Marriage Ban inflict upon gay men and lesbians, as *amici* explain below, “outrun and belie” any legitimate governmental purpose that might be claimed for it.

II. THE MARRIAGE BAN ESTABLISHES AN UNEQUAL, TWO-TIERED REGIME AND HARMS GAY AND LESBIAN INDIVIDUALS AND THEIR CHILDREN

The Marriage Ban’s overt discrimination against same-sex couples in Texas establishes a regime in which same-sex couples are not simply relegated to second-class status, but rather are not recognized – and therefore do not “count” – at all. Further, as explained below, the availability of domestic partnership or civil union as exists in some other states would not cure the Marriage Ban’s constitutional deficiency. Whether or not such options are available, by excluding same-sex couples from marriage itself, the Marriage Ban causes severe, actual harm to gay and lesbian individuals and their families.³

³ In Indiana, a district court issued an emergency interim order holding that Indiana must immediately recognize the validity of the out-of-state marriage of a plaintiff same-sex couple on this basis. In that case, one of the plaintiffs suffered from a terminal illness and only had weeks to live, which highlighted—in especially heartbreaking circumstances—the real, palpable and irreparable harm suffered by

A. The Legalistic Designation of Domestic Partnership Available in Some States Is Patently Inferior to the Revered Institution of Marriage

Time-honored precedent establishes that state-created, separate institutions for disfavored groups are inherently unequal. As the Supreme Court has repeatedly recognized since *Brown v. Board of Education*, 347 U.S. 483, 495 (1954), such separate institutions offend the guarantees of the Equal Protection Clause. *See, e.g., Mayor & City Council of Balt. v. Dawson*, 350 U.S. 877 (1955) (public beaches and bathhouses); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (public golf courses); *Gayle v. Browder*, 352 U.S. 903 (1956) (public transportation); *New Orleans City Park Improvement Ass’n v. Detiege*, 358 U.S. 54 (1958) (public parks); *Peterson v. City of Greenville*, 373 U.S. 244 (1963) (restaurants); *Brown v. Louisiana*, 383 U.S. 131 (1966) (public libraries).

Even where separate institutions have the trappings of their more well-regarded counterparts, inequalities remain by definition. Though some distinctions may be intangible, their social significance is real, and they remain constitutionally impermissible. *See Sweatt v. Painter*, 339 U.S. 629, 634 (1950) (noting, in striking down Texas’s segregated law schools, that “the [all-white] Law School possesses to a far greater degree those qualities which are incapable of objective

gay and lesbian couples and their families when their marriages are not immediately recognized by their state of residence. Emergency Order, *Baskin, et al. v. Bogan, et al.*, No. 14-2386, Dkt. 20 (7th Cir. July 1, 2014).

measurement but which make for greatness in a law school”); *United States v. Virginia*, 518 U.S. 515, 557 (1996) (holding that Virginia could not restrict women to a military program that lacked, among other features, the “prestige” of Virginia Military Institute).

Nor would the blatant separation wrought by the Marriage Ban be cured by shunting same-sex couples into something short of real marriage, such as the legalistic apparatus of “domestic partnership” or “civil union.” Both of these are different from and inferior to marriage. Even if domestic partnership were made available in Texas, that cannot remedy the harm caused by the exclusion from marriage but rather provides a square peg for a round hole. As in *Sweatt*, “[i]t is difficult to believe that one who had a free choice” between domestic partnership and true marriage “would consider the question close.” *See* 339 U.S. at 634.

1. Marriage Is a Uniquely Revered Institution in American Society

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,” *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013), 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.”). The enormous personal and social significance of marriage is, indeed, a core premise of the decision below. *See De Leon v. Perry*, 975 F. Supp. 2d at 659 (noting that marriage is a “personal choice” of enormous significance and that marriage includes important social and financial benefits).

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 designation of marriage establishes norms for how the two married individuals conduct themselves 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* 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 individuals in meeting their own and their spouse’s expectations and motivates them to work through temporary difficulties. *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 account, or checks into a hotel, or applies for a credit card, or attends a parent-teacher conference, or accompanies a child on a plane flight, or jointly rents a car, 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).

2. Statutory Schemes that Recognize Domestic Partnership and Civil Unions Are Legalistic Mechanisms That Lack the Significance, Stability, and Meaning of Marriage

Nor would shifting to a scheme that recognizes domestic partnership and civil unions remedy the harm caused by the exclusion of same-sex couples from the institution of marriage. Domestic partnership and civil unions plainly lack the

status, cultural significance, and social meaning of marriage. Unlike marriage, these legalistic categories are not an effective marker of family relationships. And same-sex couples who have access only to domestic partnerships or civil unions are deprived of many of the tangible and intangible benefits and responsibilities that come with the marital commitment.

First, the legal categories of domestic partnership and civil union are novel and unstable. These categories were invented recently,⁴ and their meaning is ever-shifting.⁵ Even the name of the category varies from state to state. *Compare* Wis. Stat. § 770 (2014) (“Domestic Partnership”) *with* Haw. Rev. Stat. § 572B (2013) (“Civil Union”). In addition, state law varies as to which individuals are permitted to enter a domestic partnership or civil union. In Wisconsin, for example, domestic partnerships are available only to members of the same sex. *See* Wis. Stat. § 770.05(5). In California, opposite-sex couples in which one member is more than sixty-two years old are also eligible to apply for a domestic partnership. *See* Cal. Fam. Code § 297(b)(4) (2014). And in Hawaii, any couple that cannot legally marry (“such as a widowed mother and her unmarried son”) may enter a civil union. *See* Haw. Rev. Stat. §§ 572C-2, 572C-4 (2013). These different and

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

⁵ For example, in 1997, Hawaii’s statutory scheme granted same-sex couples sixty specific rights associated with marriage but recently expanded that number. *See* Haw. Rev. Stat. §§ 572B, 572C-2 (2013).

inconsistent labels further obscure the legal rights and responsibilities of same-sex couples . *See Jackson v. Abercrombie*, 884 F. Supp. 2d. 1065, 1077 (D. Haw. 2012); *Sevcik v. Sandoval*, 911 F. Supp. 2d 996, 1001 (D. Nev. 2012).

Not surprisingly, in light of their novel and uncertain stature, domestic partnership 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. This is evident in the way government treats domestic partnership. In Nevada, for example, domestic partners need not solemnize their partnership, whereas marriage requires solemnization by a judge, justice or minister. *See Sevcik*, 911 F. Supp. 2d at 1000-01.

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 ministerial 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 reminders 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, powers of attorney, 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). Domestic partnership would be a patently inferior alternative. 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. Excluding Same-Sex Couples From the Institution of Marriage Causes Tangible Legal and Economic Harm

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). Because they are not married, same-sex couples may be denied employment-related benefits and may have limited access to affordable employment-based health insurance. *Id.* at 1084 (explaining that “coverage for same-sex domestic partners is still relatively rare”). Many same-sex couples eschew the institution of domestic partnership due to its lesser status. These couples are denied even the limited economic and legal protections that accrue to that designation.

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. *Id.* at 1102. 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.* at 1101.

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.*

Even in states that recognize domestic partnerships, domestic partners are afforded fewer rights than those offered to married couples. For example, in Nevada, domestic partners receive some, but not all, of the rights and responsibilities afforded to married couples: among other things, employers there are not legally required to provide health care benefits for domestic partners of their employees. Nev. Rev. Stat. § 122A.210(1) (2013). In Wisconsin, the legislature granted only a set of limited rights to domestic partners. *See* Howard A. Sweet, *Understanding Domestic Partnerships in Wisconsin*, 82 Wis. Law. 6, 56 (Nov. 2009). In enacting the State’s domestic partnership statute, the Wisconsin legislature made clear that “the legal status of domestic partnership” was specifically designed *not* to be “substantially similar to that of marriage.” Wis. Stat. § 770.001.

C. In the Wake of the Supreme Court’s Decision in *Windsor*, the Tangible Benefits Associated with Marriage Are Even More Substantial

The availability of federal benefits to married couples further demonstrates that the Marriage Ban inflicts real economic and legal harm on same-sex couples. 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 such benefits only to lawfully *married* couples. Now that the Supreme Court’s decision in *Windsor* has invalidated Section 3 of the Defense of Marriage Act (“DOMA”), which prohibited federal recognition of the validity of same-sex couples’ marriages, *Windsor*, 133 S. Ct. at 2695, a growing chasm separates the protections available to same-sex couples who are lawfully married under their state’s legal regime from those who are merely joined in domestic partnership or civil union.

The federal government uses “marriage” as a threshold for many federal protections and responsibilities. By defining “marriage” and “spouse” for federal purposes, Section 3 of DOMA effectively “control[led] over 1,000 federal laws” where marital or spousal status is a factor. *Windsor*, 133 S. Ct. at 2683 (citing U.S. Gov’t Accountability Office, GAO-04-353R, *Defense of Marriage Act: Update to Prior Report 1* (2004)). By denying same-sex couples the right to marry, Texas has placed those federal protections and responsibilities entirely off-limits to them. *See generally Garden State Equal. v. Dow*, 216 N.J. 314 (2013).

On the same day *Windsor* was decided, the President ordered a complete and comprehensive review of “all relevant federal statutes to ensure [the] decision, including its implications for Federal benefits and obligations, is implemented swiftly and smoothly.” *Statement by the President on the Supreme Court Ruling*

on the Defense of Marriage Act (June 26, 2013), available at

<http://www.whitehouse.gov/doma-statement>. However, in striking down Section 3 of DOMA, the Supreme Court confined its holding to “lawful marriages.”

Windsor, 133 S. Ct. at 2696. Consistent with their existing benefits frameworks, the agencies that have taken action to date in response to the President’s directive have extended protections and responsibilities to *married* same-sex couples,⁶ but many agencies have stated explicitly that they *will not* extend protections to registered domestic partners.

For example, in its extensive guidance regarding federal benefits post-*Windsor*, 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, Benefits Admin. Letter, *Coverage of Same-Sex Spouses*, No. 13-203, at 1-2 (July 17, 2013). Likewise, on August 29, 2013, the Internal Revenue Service (“IRS”) ruled that all legal marriages of same-

⁶ To date, many federal government agencies have extended protections based on lawful marriage, including the Department of Defense, the Department of Education, the Department of Homeland Security, the Department of Justice, and the Internal Revenue Service. See Memorandum from Attorney Gen. Eric Holder to President Barack Obama (June 20, 2014) [hereinafter “Holder Memorandum”], available at

<http://www.justice.gov/iso/opa/resources/9722014620103930904785.pdf>.

sex couples will be respected for federal tax purposes. Rev. Rul. 2013-17, 2013-381.R.B. However, the Revenue Ruling also specifically held that marital protections do not extend to persons “who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state” *Id.*

In the immigration context, 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. The United States Citizenship and Immigration Services (“USCIS”) has made clear that “same-sex marriages will be treated exactly the same as opposite-sex marriages” including, for example, with respect to eligibility for discretionary waivers of certain inadmissibility grounds based on marriage or status of a spouse, and to the residency period required for naturalization of non-citizens married to U.S. citizens. USCIS, *Same Sex Marriages*, at QA 8-9 (updated Apr. 3, 2014) [hereinafter USCIS FAQ], *available at* <http://www.uscis.gov/family/same-sex-marriages>. These benefits would not be available to same-sex couples in domestic partnerships or civil unions.⁷

⁷ Certain governmental agencies, including the USCIS, have stated that “[a]s a general matter, the law of the place where the marriage was celebrated determines whether the marriage is legally valid for immigration purposes. . . . The domicile state’s laws and policies on same-sex marriages will not bear on whether USCIS will recognize a marriage as valid.” USCIS FAQ, at QA 3. This means that a

The guidance and policies issued by the Department of Homeland Security, Department of Defense and the Department of State further exemplify the primacy of lawful *marriage* in extending federal benefits to same-sex couples. On July 1, 2013, then-Secretary of Homeland Security Janet Napolitano directed the USCIS to “review immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse.” *Statement by Secretary of Homeland Security Janet Napolitano on the Implementation of the Supreme Court Ruling on the Defense of Marriage Act* (July 1, 2013), available at <http://www.dhs.gov/news/2013/07/01/statement-secretary-homeland-security-janet-napolitano-implementation-supreme-court>.⁸ The Department of State followed suit, beginning with Secretary John Kerry’s announcement that U.S. embassies and consulates would adjudicate visa applications based on a marriage of a same-sex couple in the same way that they adjudicate applications for different-sex spouses. John Kerry, Sec’y of State, *Announcement on Visa Changes for Same-Sex Couples* (Aug. 2, 2013), available at

same-sex couple living in a state that provides only for civil unions or domestic partnerships, as well as such couples living in states that lack even these provisions, would be required to bear the burden of travelling out of state—and marrying far away from their friends and families—to qualify for the same federal benefits afforded to heterosexual married couples.

⁸ That directive was formalized on July 26, 2013. See USCIS FAQ; see also U.S. Visas for Same-Sex Spouses, Dep’t of State, available at <http://travel.state.gov/content/dam/visas/DOMA/DOMA%20FAQs.pdf> (last visited July 16, 2014) (spousal eligibility based on valid marriage).

<http://www.state.gov/secretary/remarks/2013/08/212643.htm>. Similarly, in August 2013, Secretary of Defense Chuck Hagel advised that “[i]t is now the Department’s policy to treat all married military personnel equally. The Department will construe the words ‘spouse’ and ‘marriage’ to include same-sex spouses and marriages, and the Department will work to make the same benefits available to all military spouses, regardless of whether they are in same-sex or opposite-sex marriages.” Chuck Hagel, Sec’y of Def., *Extending Benefits to the Same-Sex Spouses of Military Members* at 1 (Aug. 13, 2013), available at <http://www.defense.gov/home/features/2013/docs/Extending-Benefits-to-Same-Sex-Spouses-of-Military-Members.pdf>. Though the availability of federal benefits continues to evolve, agency guidance makes clear that the threshold requirement to attain many of these benefits is lawful *marriage*—not a civil union or domestic partnership.

Even married same-sex couples who now reside in states that do not permit marriage of same-sex couples cannot enjoy all of the protections afforded by federal law. Federal statutes that explicitly link federal benefits to place of domicile inevitably prohibit some legally married couples—including the married plaintiffs in these cases—from enjoying these benefits because they live in a state (like Texas) that prohibits marriage of same-sex couples. *See* Holder Memorandum, at 3. For example, 38 U.S.C. § 103(c) (2012) requires the

Department of Veterans Affairs (“VA”) to define “spouse” according to the law of “place of residency rather than the place of celebration” of the marriage, rendering couples who traveled to other states to obtain a legal marriage license and then returned to their state of residency ineligible for all veterans’ benefits. News Release from Office of Pub. Affairs, U.S. Dep’t of Veterans Affairs (June 20, 2014) [hereinafter “VA News Release”], *available at* <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2562>; *see also* 38 U.S.C. § 103(c) (defining spouse according to “the law of the place where the parties resided at the time of the marriage or . . . when the right to benefits accrued”). Thus, despite complying with the President’s post-*Windsor* order, the VA is required by statute to discriminate against some Texans in otherwise legal same-sex marriages, treating them only “as equally *as possible* under the law.” VA News Release (emphasis added). The same is true of other critical federal benefits, such as Social Security benefits, the availability of which depend on the laws of the state where a same-sex couple resides. *See, e.g.*, 42 U.S.C. § 416(h)(1)(A)(i) (Social Security old-age, survivors, and disability insurance benefits available to applicants who are or were “validly married” according to the courts of the state “in which [the] insured individual is . . . or . . . was domiciled”); 29 C.F.R. 825.122(b) (definition of “spouse” in Family Medical Leave Act based on laws of the state “where the employee resides”).

D. Excluding Same-Sex Couples from Marriage Perpetuates Discrimination Against Gay Men and Lesbians

The Marriage Ban also causes real and intangible harms to same-sex couples and their immediate and extended families. Even to the extent that a domestic partnership or civil union may confer legal benefits of marriage, the two-tiered regime disadvantages same-sex couples in numerous ways. First, banning same-sex couples from the valued institution of marriage makes them “other,” and demeans and stigmatizes them. This stigma, in turn, affects their physical and emotional health and well-being and encourages further discrimination against gay and lesbian individuals. This in turn causes “minority stress” that harms their physical and emotional well-being, and face increased discrimination.

1. Excluding Same-Sex Couples from Marriage Expresses Government Disapproval of Same-Sex Relationships

The two-tiered regime that the Marriage Ban establishes conveys official disapproval of same-sex relationships. As the California Supreme Court explained in finding 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; *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.”).

The government disapproval expressed through the Marriage Ban is likewise constitutionally suspect in light of the motivations that underlie the legislation. As was true of Section 3 of the federal Defense of Marriage Act, the Marriage Ban’s “principal effect is to identify a subset of [relationships] and make them unequal. The principal purpose is to impose inequality.” *Windsor*, 133 S. Ct. at 2694. Although Appellants contend that the purpose of the Marriage Ban is to promote procreation and responsible child-rearing, the district court below properly found that these arguments provide no legitimate basis for denying same-sex couples the right to marry. *De Leon v. Perry*, 975 F. Supp. 2d at 653-54.

As the district court rightly concluded in *De Leon*, the State’s interest in child-rearing does not constitute a rational basis for excluding same-sex couples from marriage because same-sex couples also raise children. Citing an “abundance of evidence and research,” the district court noted that same-sex couples are just “as capable as other couples of raising well-adjusted children,” and therefore the Marriage Ban merely “causes needless stigmatization and humiliation for children being raised by the loving same-sex couples being targeted” by the Marriage Ban. *See id.* at 653. In addition, the court stated that the Defendants’ child-rearing argument failed because the Defendants could not establish that heterosexual couples would become worse parents or be less likely to marry if same-sex marriage were permitted. *See id.* (“Defendants have failed to establish how recognizing a same-sex marriage can influence, if at all, whether heterosexual couples will marry, or how other individuals will raise their families.”).

The court rejected the Defendants’ procreation argument for the same reason, stating, “Same-sex marriage does not make it more or less likely that heterosexuals will marry and engage in activities that can lead to procreation.” *Id.* at 654. Furthermore, the court noted that same-sex couples *can* procreate (“through assisted reproductive technology”), so the Marriage Ban is, in fact, detrimental to the goal of “encouraging stable environments for procreation” by denying such environments to same-sex couples. *Id.* at 655. Because it lacks any

rational basis, the lower court rightly concluded that the only possible motivation for the Marriage Ban was animus towards the gay and lesbian citizens of Texas.

See id.

Federal constitutional law does not permit a “hypothetical justification”—such as fostering child-rearing or procreation—to “overcome the clear primary purpose” of the Marriage Ban, which is to “disparage and demean” same-sex relationships. *See Obergefell*, 962 F. Supp. 2d at 995 (citing *Windsor*, 133 S. Ct. at 2696). The fact that the Marriage Ban expressly prohibits the state legislature or any political subdivision within the state from creating or recognizing even domestic partnerships only further demonstrates the Marriage Ban’s discriminatory purpose. *See* Tex. Const. art. I, § 32(b) (“This state or a political subdivision of this state may not create or recognize any legal status . . . similar to marriage.”).

The Marriage Ban’s disapproval of same-sex couples is stigmatizing. Both judicial decisions and social science have recognized that government action singling out a group for disfavored treatment stigmatizes that group. *See Lawrence v. Texas*, 539 U.S. 558, 575 (2003) (stating that the “stigma” imposed by the Texas statute criminalizing “homosexual conduct” was “not trivial”); *Brown*, 347 U.S. at 494 (describing the “feeling of inferiority” that inevitably accompanies differential treatment); *Strauder v. West Virginia*, 100 U.S. 303, 308 (1879), *abrogated on other grounds by Taylor v. Louisiana*, 419 U.S. 522 (1975) (noting that exclusion

of non-white citizens from juries was “practically a brand upon them, affixed by the law, an assertion of their inferiority”).

2. The Stigma Created by the Marriage Ban Causes Emotional and Physical Harm

The stigma resulting from the Marriage Ban’s two-tiered regime has harmful consequences. That stigma 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. Policy* 33 (2006). “Greater exposure to discrimination and perceptions of stigma have been linked with poorer mental health in sexual minority individuals.” Adam W. Fingerhut, Letitia Anne Peplau, & Shelly L. Gable, *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. Assoc. 17 (1997). And frequent suicides by gay teenagers “has 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).

3. The Stigma Created by the Marriage Ban Perpetuates Discrimination Against Gay Men and Lesbians

By making sexual orientation a legally salient characteristic, the Marriage Ban also encourages and provides 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, 979 (N.D. Cal. 2010) (describing how Proposition 8 sent “a message that gay relationships are not to be respected; that 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, individuals may logically conclude that it is permissible to treat them as inferior. *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”).

Moreover, designating same-sex couples as different can trigger unintentional discrimination. Due to confusion regarding legal requirements, hospitals may refuse to allow a same-sex partner to be by a loved one's side during a medical emergency, and doctors may not permit domestic partners to make medical decisions on behalf of an incapacitated partner. In an analogous context, the New Jersey Civil Union Review Commission received testimony that gay and lesbian individuals who were legally entitled to hospital visitation rights were delayed in gaining access to their hospitalized partners. *See* N.J. Civ. Union Rev. Comm'n, *The Legal, Medical, Economic and Social Consequences of New Jersey's Civil Union Law* at 14-15 (Dec. 10, 2008), available at <http://www.nj.gov/lps/dcr/downloads/CURC-Final-Report-.pdf>. For example, a woman whose partner was admitted to the emergency room with a potentially fatal cardiac arrhythmia was prevented for a time from getting information about her partner's condition because the doctor was unfamiliar with civil unions. *See id.* at 1. Furthermore, employers may be less understanding of an employee's need to take leave to care for a domestic partner. *See id.* at 21. Even family members may not understand either the level of commitment expected of a domestic partner towards the couple's child or the degree of attachment of the child to a domestic partner.

Moreover, by segregating gay men and lesbians, the Marriage Ban causes society to focus on sexual orientation to the exclusion of other characteristics. As

with segregation on the basis of race, separating gay men and lesbians based on their sexual orientation causes that aspect of their identity to eclipse other attributes. *See* 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).

CONCLUSION

Numerous racial and religious minorities have, at various times in history, faced restrictions on their privilege to marry. *See* Nancy Cott, *Public Vows: A History of Marriage and the Nation* 4 (2000). 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.” *Virginia*, 518 U.S. at 557. The Marriage Ban creates a separate and unequal regime for a disfavored class. By excluding same-sex couples from the hallowed, state-sponsored institution of marriage, the Marriage Ban inflicts “immediate, continuing, and real injur[y]” on

gay and lesbian individuals. *Romer*, 517 U.S. at 635. Gay men and lesbians and their families are deprived of meaningful benefits, suffer from state-sanctioned stigma, and are exposed to further discrimination on the basis of their sexual orientation. The patently separate-but-unequal regime effected by the Marriage Ban fails any level of judicial scrutiny. *Amici* urge this Court to find that the Marriage Ban is unconstitutional.

DATED: September 16, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,928 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font.

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CERTIFICATION OF SERVICE

I hereby certify that on September 16, 2014, I electronically filed the foregoing Brief of Amici Curiae Bay Area Lawyers for Individual Freedom (“BALIF”), et al. in Support of Plaintiffs-Appellees with the Clerk of the Court using the CM/ECF System and served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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APPENDIX: STATEMENTS OF AMICI

Amici respectfully submit the following statements regarding their interests in this matter:

Austin LGBT Bar Association (“Austin LGBT Bar”)

The Austin LGBT Bar Association (“Austin LGBT Bar”) is a membership organization comprised of over 100 attorneys, judges, and law students located in Austin, Texas. It has a voting member on the Board of Directors of the Austin Travis County Bar Association. The Austin LGBT Bar conducts bi-monthly certified continuing legal education programs on the laws and statutes that impact the lives of LGBT persons and implements mentoring programs for law students. In addition to promoting education on issues relating to LGBT law, one of the stated purposes of the Austin LGBT Bar is to help raise the profile and acceptance of LGBT individuals within the legal community and to serve as examples for professionalism. The Austin LGBT Bar works hard to educate Texas attorneys on how to best represent their gay and lesbian clients in the extremely difficult climate that exists due to a disparate and unequal treatment of LGBT persons under the law— particularly with regard to gay and lesbian families.

Bar Association of San Francisco (“BASF”)

The Bar Association of San Francisco (“BASF”) is a nonprofit voluntary membership organization of attorneys, law students, and legal professionals in the

San Francisco Bay Area. Founded in 1872, BASF enjoys the support of more than 7,500 individuals, law firms, corporate legal departments, and law schools.

Through its board of directors, committees, volunteer legal services programs, and other community efforts, BASF has worked to promote and achieve equal justice for all and oppose discrimination in all its forms, including, but not limited to, discrimination based on race, sex, disability, and sexual orientation.

Central Florida Gay and Lesbian Law Association (“CFGALLA”)

The Central Florida Gay and Lesbian Law Association (“CFGALLA”) was founded in 2004 as a regional Voluntary Bar Association of The Florida Bar. CFGALLA is a qualified 501(c)(6) non-profit organization under the Internal Revenue Code. It is the objective of CFGALLA to establish and maintain an integrated group to support, assist, and encourage gay and lesbian attorneys, legal professionals, and law students, and provide support and resources to the community at large on gay, lesbian, bisexual and transgendered issues.

Colorado Gay Lesbian Bisexual Transgender (“GLBT”) Bar Association

The Colorado Gay Lesbian Bisexual Transgender (“GLBT”) Bar Association is a voluntary professional association of gay, lesbian, bisexual and transgender attorneys, judges, paralegals and law students and allies who provide a GLBT presence within Colorado’s legal community. The mission of the GLBT

Bar Association includes promoting the recognition of civil and human rights; promoting sensitivity to legal issues faced by the GLBT community; assuring the fair and just treatment of members of the GLBT community and enhancing the practice and professional expertise of lawyers who serve or who are members of the GLBT community.

Dallas Gay And Lesbian Bar Association (“DGLBA”)

The Dallas Gay and Lesbian Bar Association (“DGLBA”) is composed of approximately 50 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. 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.

Freedom to Marry

Freedom to Marry is the campaign to win marriage nationwide. Freedom to Marry works with partner organizations and individuals to win marriage in more

states, solidify and diversify the majority for marriage, and challenge and end federal marriage discrimination. Freedom to Marry is based in New York, and has participated as amicus curiae in several marriage cases in the United States and abroad.

Lambda Law Society of the Indiana University Robert H. McKinney School of Law

The Lambda Law Society of the Indiana University Robert H. McKinney School of Law is a student, faculty, and staff organization dedicated to promoting the civil rights of LGBTQ citizens in Indiana and throughout the United States.

The amicus brief prepared by attorneys Jerome C. Roth and Nicole S. Phillis of Munger, Tolles & Olson encapsulates many ideals shared by our organization regarding the legalization of marriage equality in the State of Indiana and beyond.

Therefore, it is with great pride that the IU McKinney Lambda Law Society joins Munger, Tolles & Olson's amicus brief wholeheartedly and without reserve. We stand with Munger, Tolles & Olson and other organizations like ours on the right side of history knowing that one day, true equality for all Hoosiers will become a reality.

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 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 (“LHC”)

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.

Marriage Equality USA (“MEUSA”)

Marriage Equality USA is a national, not-for profit, volunteer-based organization, comprised of over 40,000 same-sex couples, lesbian, gay, bisexual, and transgender people, their families, friends, supporters, and allies. The organization leads nonpartisan, community-based educational efforts to secure the freedom to marry for all loving, committed couples without regard to sexual orientation or gender identity and to have those marriages fully recognized by the federal government.

Matthew Shepard Foundation (“MSF”)

The Matthew Shepard Foundation (“MSF”) is a Wyoming non-profit civil-rights advocacy and educational corporation organized in 1998. MSF works to counter prejudice against, prevent crimes of violence toward, and oppose unequal treatment under law of people who are, or are perceived as, lesbian, gay, bisexual or transgender. The organization conducts outreach programming in support of workplace, educational, legal and social acceptance for the LGBT community, publishes original educational content for and by LGBT and allied youth, and undertakes policy advocacy to inspire citizens to participate in civic processes in support of equal rights for LGBT persons and members of other minorities. As part of its mission to remedy unequal treatment of LGBT persons under law, MSF

strongly supports the recognition of an inalienable right for two consenting adults of the same sex to legally marry one another.

Mexican American Bar Association of San Antonio (“MABA”)

The Mexican American Bar Association of San Antonio provides a forum and a means for lawyers to promote the social, economic, political and educational advancement of the people of the San Antonio community; and to serve the community as a professional association by providing legal services, assistance and advice on matters of concern to the community, to encourage respect for the judicial system by rewarding and commending those who persist in the pursuit of fairness, justice and equality and by vigilantly guarding the rights of those who the system would oppress; to work through legislation, advocacy and education to accomplish these goals.

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.

National Asian Pacific American Bar Association (“NAPABA”)

The National Asian Pacific American Bar Association (“NAPABA”) is the national association of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys and 62 local Asian Pacific American bar associations, who work variously in solo practices, large firms, corporations, legal services organizations, non-profit organizations, law schools, and government agencies. Since its inception in 1988, NAPABA has been at the forefront of national and local activities in the areas of civil rights. Equal access to the fundamental right to marry is one such right which Asian Pacific Americans were long denied through anti-miscegenation laws, and NAPABA joins amici to continue the defense of equal access to the fundamental right to marry.

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 interests 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.

OGALLA: LGBT Bar Association of Oregon

OGALLA: 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.

Oklahomans for Equality

Oklahomans for Equality seeks equal rights for Lesbian, Gay, Bisexual, and Transgender individuals and families through advocacy, education, programs, alliances, and the operation of the Dennis R. Neill Equality Center in Tulsa, Oklahoma.

Outlaw - Indiana University Maurer School of Law

Outlaw at Indiana University Maurer School of Law promotes equal rights and works to protect against discrimination based on sexual orientation or gender. We also seek to promote tolerance on behalf of the GLBT community within the Law School. Outlaw has been involved in the campaign for marriage equality in

Indiana. Our members have volunteered with Freedom Indiana in its phone bank to call Hoosiers and encourage them to call their representatives to express their support for marriage equality. We also helped raise awareness among Maurer's law students by hosting panel discussions on Indiana's same-sex marriage amendment. We would like to continue supporting the fight for marriage equality by signing on to the amicus brief in the Fifth Circuit case, *DeLeon v. Perry*.

OUTLaw – University of Texas School of Law

OUTLaw is an LGBTQ-specific organization of almost 100 students, both queer and allies, at the University of Texas School of Law. OUTLaw sponsors educational events addressing important LGBTQ related issues nationally and worldwide, organizes a Wills and Estates clinic for gay and lesbian couples annually, hosts monthly social events, and provide interview and application help for younger students to help prepare for the application process and work as an LGBTQ individual.

The amicus brief prepared by attorneys Jerome C. Roth and Nicole S. Phillis of Munger, Tolles & Olson encapsulates many ideals shared by our organization regarding the legalization of marriage equality in Texas and nationwide. This is an especially pertinent matter for each member of OUTLaw because it will affect us both professionally in our futures practicing law, and individually in our abilities to live openly as queer individuals and to form the families we want and deserve.

OUTLaws – S.J. Quinney School of Law at the University of Utah

The OutLaws is an association of LGBT and allied students at the S.J. Quinney School of Law at the University of Utah. We seek to educate law students and the community about issues facing the LGBT community, and partner with existing local organizations to improve the legal standing of Utah’s LGBT citizens and families. As such, we have a strong interest in the outcome of *DeLeon v. Perry*. We join the signatories of this brief in support of the plaintiff-appellees.

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.

SMU OUTLaw – Southern Methodist University Dedman School of Law

SMU OUTLaw is a student organization comprised of LGBT students and supporters at the Southern Methodist University Dedman School of Law.

OUTLaw promotes equality and advocacy by providing informational programs regarding current LGBT issues and professional skills events aimed at encouraging LGBT diversity in the legal field. As such, SMU OUTLaw has a strong interest in the outcome of *DeLeon v. Perry*.

Disclaimer: The views expressed herein are the views of OUTLaw, an unincorporated association of law students at the SMU Dedman School of Law, and do not represent the views of either Southern Methodist University or its Dedman School of Law.

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 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 ("SLAGH") 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.

Stonewall Bar Association of Michigan

The Stonewall Bar Association of Michigan is a voluntary state-wide professional association of lesbian, gay, bisexual and transgender lawyers and our allies providing a visible LGBT presence within the Michigan legal system. SBA members seek to protect and advance the rights of all Michiganders by providing legal representation, advocacy, education and outreach on the issues facing members of the LGBT community. Our membership forms a network for referrals and support, and provides a forum for discussing the needs of LGBT attorneys and clients throughout Michigan. SBA supports marriage equality for all Americans, and opposes discrimination based upon sexual orientation or gender identity or expression.