

**Case No.: 14-35420 & 14-35421**

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

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SUSAN LATTA, et al.,  
*Plaintiffs-Appellees,*

v.

C.L. "BUTCH" OTTER, et al.,  
*Defendants-Appellants,*

and

STATE OF IDAHO,  
*Defendant-Intervenor-Appellant.*

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On Appeal from the United States District Court  
for the District of Idaho  
Case No. 1:13-cv-00482-CWD  
The Honorable Candy W. Dale, Magistrate Judge

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**BRIEF OF AMICI CURIAE BAY AREA LAWYERS FOR INDIVIDUAL  
FREEDOM ("BALIF"), ET AL. 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.<sup>1</sup>

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<sup>1</sup> 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 bans (collectively, “the Marriage Ban”) that prohibit same-sex couples from marrying in Idaho betray these longstanding values.<sup>2</sup> 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

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<sup>2</sup> The lower court held unconstitutional three provisions of Idaho law. *Latta v. Otter*, No. 1:13-cv-00482-CWD, 2014 WL 1909999, at \*7 (D. Idaho May 13, 2014). Idaho Code section 32-201 defines marriage as “a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making it is necessary.” *Id.* Idaho Code section 32-209 does not recognize marriages contracted outside of Idaho “that violate the public policy of [Idaho],” including “same-sex marriages.” *Id.* The Idaho Constitution reads: “A marriage between a man and a woman is the only domestic legal union that shall be valid or recognized in this state.” Idaho Const. art. III, § 28.

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 Idaho), 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 court's conclusions and find that the Marriage Ban disadvantages gays and lesbians without any legitimate justification. *See Latta*, 2014 WL 1909999, at \*7.

## **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).<sup>3</sup> “The State may not rely on a classification whose 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

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<sup>3</sup> The decision of the district court correctly found that the Marriage Ban is subject to heightened scrutiny under the Equal Protection Clause of the Constitution. *Latta*, 2014 WL 1909999, at \*15-\*17 (applying the “unqualified” and “broadly applicable equal protection principle” that distinctions based on sexual orientation are subject to heightened scrutiny, citing *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)); *accord Kitchen v. 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); *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.

(1973)) (emphasis and alteration in original). 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, 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 inflicts upon gay men and lesbians, as *amici* explain below, “outrun and belie” any legitimate governmental purpose that might be claimed for them.

## **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 Idaho 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.<sup>4</sup>

**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 Baltimore City 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).

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<sup>4</sup> The Seventh Circuit's recent interim order holding that Indiana must immediately recognize the validity of the out-of-state marriage of a plaintiff same-sex couple, one of whom suffers from a severe terminal illness and only has weeks to live, highlights—in especially heartbreaking circumstances—the irreparable harm suffered by 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); *see* Plaintiffs-Appellees Quasney and Sandler's Emergency Motion to Lift the Court's Stay In Part, *Baskin, et al., v. Bogan, et al.*, No. 14-2386, Dkt. 13-1 (7th Cir. June 30, 2014).



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 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 available in Idaho, that would not remedy the harm caused by the exclusion from marriage but rather would provide 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 Sweatt*, 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*, 32 Cal.2d 711, 714

(1948) (“Marriage is . . . something more than a civil contract subject to regulation by the state; it is a fundamental right of free men.”). As a result of the special significance of marriage in society, the institution has a critical “signaling” role, apart from the specific legal obligations it entails. Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 Va. L. Rev. 1901, 1930-33 (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,<sup>5</sup> and their meaning is ever-shifting.<sup>6</sup> Even the name of the category varies from state to state. *Compare* Nev. Rev. Stat. § 122A (2013) (“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 California, for example, only same-sex couples or couples in which one member is more than

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<sup>5</sup> The City of West Hollywood enacted the first domestic partnership ordinance in the mid-1980s.

<sup>6</sup> For example, in 1997, Hawaii’s statutory scheme granted same-sex couples only sixty rights associated with marriage, but recently expanded the number of such rights. *See* Haw. Rev. Stat. §§ 572B, 572C-2 (2013).

sixty-two years old are eligible to apply for a domestic partnership. *See* Cal. Fam. Code § 297(b)(4) (2014). In contrast, 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 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 1101. Marriage also tends to reduce a couple’s transaction costs: marriage “promotes economic efficiency by reducing transaction costs for couples, mainly by removing the need to renegotiate the terms of the legal



relationship as couples experience changed circumstances.” *Id.* Furthermore, married individuals enjoy greater employment-related economic gains, whereas same-sex couples who cannot marry face uncertainty and pressures that may adversely affect their work performance and reduce their economic rewards. *Id.* at 1102-03. Though difficult to quantify, these economic benefits of marriage are well-known and acknowledged in the field of economics. *Id.*

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). 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 (2014).

**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* (Jan. 23, 2004)). By denying same-sex couples the right to marry,

Idaho 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), <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,<sup>7</sup> but many agencies have stated explicitly that they *will not* extend protections to registered domestic partners.

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<sup>7</sup> To date, the federal government agencies extending protections based on lawful marriage include the Department of Agriculture, the Department of Defense, the Department of Education, the Department of Health and Human Services, the Department of Homeland Security, the Department of Justice, the Department of Labor, the Department of State, the Department of the Treasury, the Department of Veterans Affairs, the Federal Election Commission, the Federal Retirement Thrift Investment Board, the General Services Agency, the Internal Revenue Service, the Office of Governmental Ethics, the Office of Personnel Management, the Peace Corps, the Pension Benefit Guaranty Corporation, and the Social Security Administration. *See* Memorandum from Attorney Gen. Eric Holder to President Barack Obama (June 20, 2014) [hereinafter “Holder Memorandum”], <http://www.justice.gov/iso/opa/resources/9722014620103930904785.pdf>.

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), <http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf>. Likewise, on August 30, 2013, the Internal Revenue Service (“IRS”) ruled that all legal marriages of same-sex couples will be respected for federal tax purposes. Rev. Rul. 2013-17, 2013-38 I.R.B. 201. 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], <http://www.uscis.gov/family/same-sex-marriages>. These benefits would not be available to same-sex couples in domestic partnerships or civil unions.<sup>8</sup>

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*

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<sup>8</sup> 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 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.

*Supreme Court Ruling on the Defense of Marriage Act*, (July 1, 2013), [http://www.dhs.gov/news/2013/07/01/statement-secretary-homeland-security-janet-  
napolitano-implementation-supreme-court](http://www.dhs.gov/news/2013/07/01/statement-secretary-homeland-security-janet-napolitano-implementation-supreme-court).<sup>9</sup> 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), <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), <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

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<sup>9</sup> That directive was formalized on July 26, 2013. *See* USCIS FAQ. *See also* U.S. Dep't of State, *U.S. Visas for Same-Sex Spouses*, available at <http://travel.state.gov/content/dam/visas/DOMA/DOMA%20FAQs.pdf> (last visited July 23, 2014) (spousal eligibility based on valid marriage).

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 this case—from enjoying these benefits because they live in a state (like Idaho) that prohibits marriage of same-sex couples. *See Latta*, 2014 WL 1909999, at \*4; 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 Idahoans 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 such 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.



**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*, 43 Cal.4th 757, 855 (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 846; *see also Kerrigan*, 957 A.2d at 474 (“[B]ecause of the long and celebrated history of the term ‘marriage’ and the widespread understanding that this word describes a family relationship unreservedly sanctioned by the community, the statutory provisions that continue to limit access to this

designation exclusively to opposite-sex couples—while providing only a novel, alternative institution for same-sex couples—likely will be viewed as an official statement that the family relationship of same-sex couples is not of comparable stature or equal dignity to the family relationship of opposite-sex couples.””) (quoting *In re Marriage Cases*, 443 Cal.4th at 855); *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 statutes and constitutional provision. As was true of Section 3 of DOMA, 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 Appellant contends 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. *Latta*, 2014 WL 1909999, at \*22-\*25.

As the district court rightly concluded, the Marriage Ban fails to advance the State’s interest in child-rearing because same-sex couples also raise children. There is a “prevailing consensus [among social scientists] that the children of

same-sex parents, on average, fare no better or worse than the children of opposite-sex parents.” *Id.* at \*22. In fact, as the district court noted, non-recognition of same-sex marriages actually harms children by withholding “state and federal legal protections, economic resources, family stability, and social legitimacy”—benefits that are “equally advantageous for children and adolescents in families headed by same-sex and different-sex couples.” *Id.* at \*24 (quotation marks omitted).

Given the absence of any rational justification, the Marriage Ban is motivated by nothing other than a “bare . . . desire to harm a politically unpopular group.” *See Romer*, 517 U.S. at 634. The district court properly recognized that animus against same-sex couples prompted Idaho’s Marriage Ban, especially since the statutory list of out-of-state marriages that violate Idaho’s public policy includes only ““same-sex marriages, and marriages entered into . . . with the intent to evade the prohibitions of Idaho’s Marriage Laws.” *Latta*, 2014 WL 1909999, at \*19 (quoting Idaho Code Ann. § 32-209). Idaho singles out same-sex marriage for special, unfavorable treatment—by refusing to recognize such marriages even when they were validly performed in another state. “The constitutional issue is clear[]” when a state treats one group differently from all the others: the law must be based on “irrational prejudice.” *See City of Cleburne, Tex.*, 473 U.S. at 447, 450.

As the district court found, the Marriage Ban “unambiguously expresses a singular purpose—to exclude same-sex couples from civil marriage in Idaho.” *Latta*, 2014 WL 1909999, at \*19. That purpose is made even clearer by the fact that the Marriage Ban prohibits state legislatures or any political subdivision within the state from creating or recognizing even domestic partnerships. *See Idaho Const. art. III, § 28* (2014) (“A marriage between a man and a woman is the only domestic legal union that shall be valid or recognized in this state.”).

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. Ass’n* 17 (1997). And frequent suicides by gay teenagers “ha[ve] 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), <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: July 25, 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 6,926 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 July 25, 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:

**AIDS Legal Referral Panel (“ALRP”)**

The AIDS Legal Referral Panel (“ALRP”) is a non-profit organization that helps people living with HIV/AIDS maintain or improve their health by resolving their legal issues. ALRP was founded in 1983 and has handled more than 50,000 legal matters for its clients over the last 29 years. ALRP’s goals are to provide counsel and representation on legal issues for a community of individuals who might otherwise not be able to afford or obtain legal assistance, and to leverage the resources of the private bar for the public good. ALRP is dedicated to addressing discrimination against people with HIV/AIDS and members of the LGBT community, including working to ensure their marriage rights.

**API Equality-LA**

API Equality-LA is a grassroots coalition committed to working in the Asian/Pacific Islander (“API”) community in the greater Los Angeles area for fair treatment of lesbian, gay, bisexual, and transgender (LGBT) people, and marriage equality for same-sex couples and families, through community education and advocacy. API Equality-LA recognizes that the long history of discrimination

against the API community, especially our nation's and California's history of anti-miscegenation laws and exclusionary efforts targeted at Asian immigrants, parallels the contemporary exclusion of gays and lesbians from marriage in the United States.

### **Asian Americans Advancing Justice | Los Angeles**

Asian Americans Advancing Justice | Los Angeles (“Advancing Justice-LA”) is the nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders. As part of its mission to advance civil rights, Advancing Justice-LA is committed to challenging discrimination and has championed equal rights for the LGBT community, including supporting marriage equality for same-sex couples.

### **Asian Pacific Islander Legal Outreach (API Legal Outreach)**

Asian Pacific Islander Legal Outreach (API Legal Outreach) is a community-based, social justice organization serving the Asian and Pacific Islander communities of the Greater Bay Area. Founded in 1975, our mission is to promote culturally and linguistically appropriate services for the most marginalized segments of the API community. Our work is currently focused in the areas domestic violence, violence against women, immigration and immigrant rights, senior law and elder abuse, human trafficking, public benefits, and social justice issues. API Legal Outreach has been fighting against all forms of discrimination,

especially against the LGBTQ community, for many years. API Legal Outreach is a member of API Equality, and also was the lead author of an amicus brief for the 2006 *Woo v. Lockyer* case advocating for the rights of same-sex marriage. The brief represented 28 Asian American organizations and was joined by over 60 Asian American organizations. In 2013, API Legal Outreach hosted a Pride Law fellowship focusing on domestic violence in the API LGBTQ community, and remains active in these issues, especially as it affects immigrant LGBTQ individuals.

### **California Employment Lawyers Association (“CELA”)**

The California Employment Lawyers Association (“CELA”) is an organization of over 1,000 attorneys who represent primarily plaintiffs in civil rights and other civil cases arising in the workplace. CELA helps its members protect and expand the legal rights of working women and men through litigation, education, and advocacy.

### **Equality Nevada**

Equality Nevada seeks to improve the lives of lesbian, gay, bisexual and transgender (LGBT) individuals and their families by advocating for equal rights and benefits in the workplace, ensuring individuals are treated equally under the law and increasing public support through innovative advocacy, education and outreach programs. Equality Nevada works to secure equal rights for individuals

in the state of Nevada by lobbying elected officials, mobilizing grassroots supporters, providing educational programs and partnering with other organizations.

### **Filipino Bar Association Of Northern California (“FBANC”)**

The Filipino Bar Association of Northern California (“FBANC”) is an association of Filipino and Filipino-American attorneys, students, and legal professionals in Northern California. It is our mission to support, educate, encourage and empower the members of our association to excel and succeed in their educational and professional endeavors. It is further our mission to guard against injustices affecting our community.

### **Freedom To Marry**

Freedom to Marry is the campaign to win marriage nationwide. Through the “Roadmap to Victory” national strategy, Freedom to Marry creates the climate for a Supreme Court victory by working to win the freedom to marry in more states, grow the national majority for marriage, and end federal marriage discrimination. Headquartered in New York, Freedom to Marry partners with individuals and organizations across the country to end the exclusion of same-sex couples from marriage and the protections, responsibilities, and commitment that marriage brings.

## **Impact Fund**

The Impact Fund is a nonprofit foundation that provides funding, training, and co-counsel to public interest litigators nationwide. The Impact Fund is also a California State Bar Legal Services Trust Fund Support Center that offers assistance to legal services projects throughout the State. The Impact Fund has served as counsel in a number of major civil rights class actions, including cases challenging employment discrimination, lack of access for those with disabilities, and violations of other important civil rights laws.

## **Japanese American Bar Association (“JABA”)**

Japanese American Bar Association (“JABA”) is one of the oldest Asian Pacific American bar associations in the country and consists of a diverse membership of over 300 attorneys, judicial officers, and law students of Japanese and Asian Pacific Islander ancestry in the greater Los Angeles area and beyond, including gay and lesbian individuals. With a deep appreciation of the unique history of Japanese Americans in the United States and the failure of constitutional protections that led to their internment during World War II, JABA has a proud history of actively advocating and devoting resources to issues of civil rights and social justice, especially for those members of society who continue to suffer from discrimination and unequal treatment.



### **Lesbian And Gay Lawyers Association Of Los Angeles (“LGLA”)**

The Lesbian and Gay Lawyers Association of Los Angeles (“LGLA”) was founded in 1979 and has grown into a relevant, multi-cultural, open and active bar association of gay, lesbian, bisexual and transgender lawyers, judges, law students and other legal professionals. LGLA is dedicated to furthering justice and equality and the advancement of gay, lesbian, bisexual and transgender issues throughout California and around the nation by making judicial endorsements, appearing amicus curiae in cases such as this one, holding representation on the Conference of Delegates for the State Bar of California, and providing educational and networking opportunities for its members. LGLA has fought for equal justice for all persons without regard for their sexual orientation for more than thirty years.

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

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

### **Love Honor Cherish (“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.

**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.

**National LGBT Bar Association (“LGBT Bar”)**

The National LGBT Bar Association (“LGBT Bar”) is a non-partisan, membership-based professional association of lawyers, judges, legal academics, law students and affiliated lesbian, gay, bisexual and transgender legal organizations. The LGBT Bar promotes justice in and through the legal profession for the LGBT community in all its diversity. This case stands to impact our membership both professionally and personally. A ruling in favor of marriage equality would greatly increase our attorneys’ ability to safeguard the families and relationships they have formed in their own lives. We believe that marriage equality is a profound step in the right direction towards equitable treatment under the law for all citizens.

**New Mexico Lesbian And Gay Lawyers Association (“NMLGLA”)**

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

### **OUTLaws - University Of Idaho College Of Law**

The OUTLaws is a student organization at the University of Idaho College of Law and available to all students who are interested in extending civil rights to all people. OUTLaws serves as a support group for lesbian, gay, bisexual and transgender (LGBT) law students, in addition to law students who have family and friends in the LGBT community. This student organization focuses on education within the University of Idaho and the local community about LGBT issues as well as participating in legal issues that affect the LGBT community in Idaho. In order to promote awareness of LGBT issues, the OUTLaws annually sponsors educational and social programs with the local LGBT community including lectures and discussions at the College of Law as well as various fundraising events. Through these goals and opportunities, OUTLaws seeks to promote understanding, equality, and discourages discrimination among Idaho residents

### **Philippine American Bar Association of Los Angeles (“PABA”)**

The Philippine American Bar Association of Los Angeles (“PABA”) is an organization of attorneys, students, and community leaders who have been dedicated to advancing the interests of the Filipino-American community and the Asian-American community-at-large for over twenty years. PABA is fervently committed to creating a more compassionate and just future, and proudly joins its

colleagues on this *amicus* brief to ensure the preservation of equality for persons from every walk of life. and beyond.

### **Pride Foundation**

Pride Foundation is a regional community foundation inspiring giving to expand opportunities and advance full equality for lesbian, gay, bisexual, and transgender (LGBT) people across the Northwest. We invest in organizations, students, and leaders across Alaska, Idaho, Montana, Oregon, and Washington. Leveraging support from donors and volunteers, we provide resources that local advocates need to effect change in their communities—grant dollars, scholarships, technical expertise, and convenings. Since its establishment in 1985, Pride Foundation has invested over \$50 million across five Western States. In Idaho, we have partnered with more than 450 donors to award close to \$500,000 in grants and scholarships in support of LGBTQ equality over the past 29 years.

### **Public Counsel**

Public Counsel is the nation's largest pro bono law firm. Founded in 1970, Public Counsel is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Public Counsel is dedicated to advancing equal justice under law by delivering free legal services to indigent and underrepresented children, adults and families throughout Los Angeles County,

ensuring that other community-based organizations serving this population have legal support, and mobilizing the pro bono resources of attorneys, law students and other professionals. With the help of over 5,000 volunteers, Public Counsel assists over 32,000 children, youth, families, and community organizations every year. Public Counsel's clients include gay, lesbian, bisexual and transgender youth and adults who are homeless or at risk of homelessness or who seek asylum in the U.S. because of persecution in their country of origin. As a civil rights organization, Public Counsel has steadfastly supported marriage equality.

### **QLAW, The GLBT Bar Association Of Washington**

QLaw, the GLBT Bar Association of Washington, is an association of gay, lesbian, bisexual, and transgender (GLBT) legal professionals and their friends. QLaw serves as a voice for gay, lesbian, bisexual, and transgender lawyers and other legal professionals in the state of Washington on issues relating to diversity and equality in the legal profession, in the courts, and under the law. The organization has five purposes: to provide opportunities for members of the GLBT legal community to meet in a supportive, professional atmosphere to exchange ideas and information; to further the professional development of GLBT legal professionals and law students; to educate the public, the legal profession, and the courts about legal issues of particular concern to the GLBT community; to empower members of the GLBT community by improving access to the legal and

judicial system and sponsoring education programs; and to promote and encourage the advancement of lesbian, gay, bisexual, and transgender attorneys in the legal profession.

**SacLEGAL (Sacramento Lawyers For The Equality Of Gays And Lesbians)**

SacLEGAL is a professional association of attorneys, legal professionals, and legislative advocates which seeks to promote equality for members of the lesbian, gay, bisexual, transgender, queer, questioning, intersex, and ally community through strong leadership, legislative advocacy, education, and participation in civic and social activities within the legal community and the community at large.

**San Francisco Chamber Of Commerce (“CHAMBER”)**

Founded in 1850, the San Francisco Chamber of Commerce (“Chamber”) is the oldest business organization in California, representing 1,500 San Francisco businesses of all sizes from every industry. These businesses employ over 200,000 persons in San Francisco, representing half of the city’s workforce. Chamber has a long history of supporting workplace diversity and equal rights. Chamber believes ending marriage discrimination against same-sex couples would improve the ability of California businesses to recruit and retain talented employees, a key to increased business development and economic growth.



### **San Francisco La Raza Lawyers Association (“SFLRLA”)**

San Francisco La Raza Lawyers Association (“SFLRLA”) is a professional membership organization of San Francisco Bay Area Latino/a attorneys. Central to its mission is SFLRLA’s interest in protecting fundamental constitutional rights and minority interests. Accordingly, in March 2004, SFLRLA filed the first amicus brief to be filed by a bar association with the San Francisco Superior Court in what eventually became *In re Marriage Cases*, 43 Cal.4th 757 (2008). SFLRLA’s core mission is to serve the public interest by cultivating the science of jurisprudence, promoting reform in the law, facilitating the administration of justice, and cooperating with other professional and community organizations in the furtherance of our mission.

### **Stonewall Law Association Of Greater Houston**

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

bar associations and legal organizations, and enhances the practice and professional expertise of lawyers who serve or are members of the LGBT community.

**Tom Homann LGBT Law Association (“THLA”)**

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

**Transgender Law Center**

Transgender Law Center is the leading national legal organization dedicated to advancing the rights of transgender and gender nonconforming people. Transgender Law Center works to change law, policy, and attitudes so that all people can live safely, authentically, and free from discrimination regardless of their gender identity or expression.

### **University Of New Mexico Lambda Law Student Association**

The Lambda Law Student Association's purpose is to provide support, networking, and social events for members of the gay, lesbian, bi-sexual, and transgendered community and their friends at the University of New Mexico School of Law. We participate in educating the law school community, as well as the community-at-large, regarding legal issues affecting the GLBT community. Furthermore, Lambda advocates for equal and legally-protected human rights, regardless of sexual orientation.

### **Western States Center**

Western States Center's mission is to build the power and connections among community organizations and leaders in order to make gender, racial and economic justice possible. Marriage equality is a critical component to providing the rights, recognition and resources that families of all types need to thrive in the United States. We work with community organizations across the west toward these ends and extend that support to the legal community working for the recognition of same sex couples to access marriage.