

**In The
Supreme Court of the United States**

DENNIS HOLLINGSWORTH, ET AL.,

Petitioners,

v.

KRISTIN M. PERRY, ET AL.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF AMICUS CURIAE
MARRIAGE EQUALITY USA
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS CURIAE¹

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 recognized by the federal government. Many of the organization's members are same-sex couples who wish to marry in their home states or who are legally married in their home states and seek the same rights, responsibilities, and recognition that all other married couples have under federal law.



SUMMARY OF ARGUMENT

This brief presents the personal voices of lesbian and gay Americans as they express in their own words why the Constitution's guarantees of liberty

¹ The parties have provided blanket consents to the filing of amicus briefs, and these consents are on file with the Clerk. Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution toward preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to the brief's preparation or submission.

and equality should extend to them and include the essential freedom to marry the person they love.

Millions of lesbian and gay Americans share the same hopes and dreams of other Americans, including finding a special person to marry, building a family and life together, and growing old with each other. When gay people find that special person, they want to have the same freedom to be able to stand before their friends and family and vow to be there for one another for better or for worse, in sickness and in health, and to love, honor, and cherish for always. Like other loving and committed couples, same-sex couples seek the opportunity to fulfill their dreams and make a lifetime commitment in marriage. And they want their marriages to have the same legal validity and official recognition that everyone else's marriages have.

This Court has long recognized that every American has a fundamental right to marry. *See, e.g., Loving v. Virginia*, 388 U.S. 1, 12 (1967). The “essence” of that right is the “freedom to join in marriage with the person of one’s choice.” *Perez v. Sharp*, 32 Cal.2d 711, 717, 198 P.2d 17 (Cal. 1948); *accord In re Marriage Cases*, 43 Cal.4th 757, 811, 814-15, 183 P.3d 384 (Cal. 2008). “[D]ecisions relating to marriage. . . ‘involv[e] the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy . . . [and] central to the liberty protected by the Fourteenth Amendment.’” *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Planned Parenthood of Southeastern Pa. v. Casey*,

505 U.S. 833, 851 (1992)). Lesbian and gay Americans cannot partake in that liberty if the government can exclude them from marriage.

Same-sex couples who have been able to marry have experienced great joy and have found that marriage profoundly deepens their love and commitment to each other. But many lesbian and gay Americans live in states without the freedom to marry, and have no legal recognition or protection for their relationships. This exclusion exacts a terrible toll on them. Still other lesbian and gay Americans live in states where they have the option to register their relationships as domestic partnerships or civil unions but are denied the right to marry. These non-marital registrations fail to provide the same meaning, recognition and respect as marriage, and communicate that same-sex couples' relationships are inferior to heterosexual ones.

The Fifth and Fourteenth Amendments should ensure that lesbian and gay Americans, just like everyone else, have the freedom to marry the person they love in every state in our nation.



ARGUMENT

I. The Freedom to Marry Has Been Enormously Beneficial to Same-Sex Couples Who Have Been Able to Marry.

Same-sex couples, like opposite sex couples, “have happy, satisfying relationships and form deep

emotional bonds and strong commitments” that form the basis for successful marriages. Pet. App. 235a-237a. Marriage can provide great value and benefit for those who have the freedom to enter into it. Pet. App. 223a-225a, 239a. Indeed, marriage has been extremely meaningful to the over 100,000 same-sex couples who have married in nine states and the District of Columbia since 2004.²

Case in Point: John Mace and Richard Dorr, New York, New York

John Mace, now 93 years old, and Richard Dorr, now 86 years old, met at the Juilliard School of Music in 1948 and became a couple in 1950, making New York City their home. They still remember the moment they met. John recalled, “I had a part-time job at the Juilliard . . . and in walked this young man. I knew my life was changing right there and then, and it did. . . . He would find excuses to come and sing for me.”³ Richard remembered that he would say to John, “‘I want to sing for you.’ I would. Which really meant, ‘I want to be near you.’”⁴ John described the strong

² See *Massachusetts v. U.S. Dep’t of Health & Human Servs.*, 682 F.3d 1, 6 & n.3 (1st Cir. 2012), petitions for cert. pending, Nos. 12-13 (filed June 29, 2012), 12-15 (filed July 3, 2012) and 12-97 (filed July 20, 2012).

³ SuchIsLifeVideos, *CNN – NY Gay Couple Waiting 61 Years to Marry*, YOUTUBE (June 19, 2011), http://www.youtube.com/watch?v=B237YJBK_Tw (video content originally appeared on CNN).

⁴ *Ibid.*

connection they felt from the very beginning: “I first looked at Richard, and my heart went pitter pat; it’s been that way ever since.”⁵ As Richard put it, there was “a never-ending sense of togetherness right from the start.”⁶ “[W]e had to be together. . . . We could not stay away.”⁷

When John and Richard fell in love more than six decades ago, their relationship was illegal in every state in the country and had to be kept secret from everyone except their closest friends. As Richard put it, “You can imagine, we encountered some problems 60 years ago, but our love helped us overcome them.”⁸ When they each served in the military in World War II before they met, they hid their sexuality. John, who was awarded the Bronze Star for his valor in the Battle of the Bulge, briefly married a woman because he “thought [he] could hide” that he was gay.⁹

⁵ Alicia Dennis, *Just Married*, PEOPLE (Aug. 8, 2011), available at <http://www.people.com/people/archive/article/0,,20514059,00.html>.

⁶ Corey Kilgannon, *After 60 Years, an Unfaded Desire to Make It ‘Legal’*, N.Y. TIMES CITY ROOM BLOG (May 11, 2011, 7:30 AM), <http://cityroom.blogs.nytimes.com/2011/05/11/after-60-years-an-unfaded-desire-to-make-it-legal/>.

⁷ Guy Adams, *New York Gay Couple Can Finally Marry After 60 Years*, THE INDEPENDENT (June 27, 2011), <http://www.independent.co.uk/news/world/americas/new-york-gay-couple-can-finally-marry-after-60-years-2303231.html>.

⁸ Kilgannon, *supra* note 6.

⁹ *Ibid.* See also Susan Jackson, *Spotlight on John Mace and Richard Dorr*, JUILLIARD (Oct. 2011), <http://www.juilliard.edu/alumni/news/spotlight/archive/2011-12/201110.php>.

The marriage dissolved amicably after John met Richard, and he describes that “[i]t was like a load off. No more making believe that you’re who you are not.”¹⁰ John was awarded custody of his infant son Paul from the marriage, and together John and Richard raised the boy, who called John “Pop” and Richard “Unc.” John and Richard also helped raise their housekeeper’s daughter. John and Richard, both still active voice teachers, “attribute the longevity of their relationship to a perfect match in heart and art.”¹¹ Their “mutual love for singing”¹² and a “shared passion for music”¹³ have nourished their relationship over the many decades.

John and Richard felt “engaged ever since . . . [they] met,”¹⁴ and indeed first thought of marriage over 40 years ago. As John put it, “I come from an Italian family, and they’re the marrying kind.”¹⁵ As they anticipated gaining the freedom to marry, they explained:

To be able to start a new phase of life by being married after 61 years would really be

¹⁰ SuchIsLifeVideos, *supra* note 3.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Adams, *supra* note 7.

¹⁴ Dennis, *supra* note 5.

¹⁵ SuchIsLifeVideos, *supra* note 3; Adams, *supra* note 7.

a completion of something that's been quite marvelous and wonderful for us both. We've always thought of ourselves as a couple, as a pair, but it would be wonderful to be able to say we're married.¹⁶

After 62 years together, John and Richard were finally able to marry in New York in August 2012.¹⁷

A. Marriage brings joy, meaning, and satisfaction to same-sex couples, their families, and their friends.

Like John and Richard, many other same-sex couples have experienced great joy, meaning, and satisfaction when they have been able to marry. Kathi Gose, who wed her partner of 11 years, Karen Briefer, in Bakersfield, California, on June 17, 2008, said, "We are so happy, we can't stop smiling."¹⁸ Jim Scales, who married his partner of 35 years, William Tasker, on January 1, 2013, in Baltimore, Maryland, exclaimed,

¹⁶ FreedomToMarry, *Richard and John*, YOUTUBE (Apr. 25, 2011), <http://www.youtube.com/watch?v=W-0436fi780>.

¹⁷ Cameron Tolle, *Richard and John: Finally Married After 62 Years*, FREEDOM TO MARRY (Aug. 17, 2012, 10:32 AM), <http://www.freedomtomarry.org/blog/entry/richard-and-john-finally-married-after-62-years>.

¹⁸ Jesse McKinley, *Hundreds of Same-Sex Couples Wed in California*, N.Y. TIMES (June 18, 2008), <http://www.nytimes.com/2008/06/18/us/17cnd-marriage.html>.

“This is as happy as I’ve ever been, to be able to spend the rest of my life with Bill – legally.”¹⁹

Sarah Cofer, who married her partner of 11 years Emily, in Washington State on December 9, 2012, described the “whole experience . . . [as] just wonderful. We’re totally in love with each other, and we support each other through good times and tough times, just like any other marriage. And so it’s really important to us that we can honor that love with each other through marriage.”²⁰

And Lia Shigemura, who wed her “soulmate in life” and partner of 20 years Helen Zia,²¹ on June 17, 2008, summed it up when she said she had “always wanted to get married,” and described her wedding day as “the most meaningful day of . . . [her] life.”²² Plaintiffs Jeff Zarrillo and Paul Katami and Sandy Stier and Kris Perry spoke at trial of wanting to marry and experience those same things. In Jeff’s words: “[S]hare the joy and the happiness that my

¹⁹ CNN Staff, *Same-Sex Maryland Couples Ring in New Year with Wedding Bells*, CNN (Jan. 2, 2013, 12:13 PM), <http://www.cnn.com/2013/01/01/us/maryland-same-sex-marriage>.

²⁰ Tom Yazwinski, *Same Sex Couple in King County to Make History*, Q13FOX (Dec. 8, 2012), <http://www.cnn.com/2013/01/01/us/maryland-same-sex-marriage>.

²¹ Transcript of Proceedings at 1224:2, *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal., 2010) (No. C 09-2292-VRW).

²² Lisa Leff, *Hundreds of Gay Couples Wed Across California*, AP (June 18, 2008), available at http://www.usatoday.com/news/topstories/2008-06-18-668737864_x.htm.

parents felt, my brother felt, my friends, my co-workers, my neighbors, of having the opportunity to be married.” J.A. 333.

B. Marriage can deepen a couple’s sense of love and strengthen their level of commitment.

Darlene Garner, who married Candy Holmes in the District of Columbia in 2010, 13 years after Darlene first proposed to Candy, explained: “From the very first second after we were pronounced legally married, we felt different. There was an element of something deeper, an even more profound depth of commitment at that moment.”²³ Ruth Siegel, who married her partner of 15 years, Nina Nethery, in Maryland, described how marriage cemented their commitment to each other since it “changes your perception on how you work through problems, because running away is no longer an option.”²⁴

²³ HRC, *Darlene Garner and Candy Holmes Celebrate Their 1 Year Wedding Anniversary*, YOUTUBE (Mar. 3, 2011), <http://www.youtube.com/watch?v=6yFsnNABwgM>; see also Adam Serwer, *First Same-Sex Marriages Celebrated in D.C.*, THE ROOT (Mar. 9, 2010, 7:01 AM), <http://www.theroot.com/views/first-same-sex-marriages-celebrated-dc>.

²⁴ Michael Laris, *Same-Sex Couples Ring in New Year in Maryland with Marriage Vows*, THE WASHINGTON POST (Jan. 1, 2013), http://articles.washingtonpost.com/2013-01-01/local/36323638_1_gay-marriage-ruth-siegel-maryland.

Eddie Windsor, plaintiff in *United States v. Windsor* (No. 12-307), also before this Court, put it this way:

I ask all gay couples who have lived together a long time and got married, “Was it different the next morning?” And everybody says yes, and they don’t know how to explain it. Marriage itself, you know, it’s a magic word, everybody knows what it means, it means love and commitment and trust . . . – but there’s this extra thing when it was always denied to you. But it’s profound. Whatever loving was there, it becomes really profound loving.²⁵

At trial, plaintiff Jeff Zarrillo testified that he too was “confident” that if he and Jeff were able to marry their “capacity to love . . . [would] . . . grow” and their “capacity to be committed to” each other would “expand.” J.A. 333-334.

C. Marriage allows same-sex couples to communicate that they are a family.

Justice of the Peace Greg Trulson, who performed the first marriage for a same-sex couple in Vermont, put it succinctly: “Ask anyone on earth, on any continent, in any country if they know what being married means and yes they do. It is the universal word for a

²⁵ Chris Geidner, *Meet the Hero of the Marriage Equality Movement*, BUZZFEED (Jan. 10, 2013, 11:00 PM), <http://www.buzzfeed.com/chrisgeidner/meet-the-hero-of-the-marriage-equality-movement>.

couple that has professed their love to one another.”²⁶ Tinasha Broadus, who married her long-time partner Alicia Rice in Fresno, California, on June 17, 2008, exclaimed: “It feels great to be able to tell the world how we feel about each other.”²⁷

Being recognized as a family through marriage is especially important for same-sex couples who have children. Pet. App. 226a. Peter Hams-Shepherd, who was raised by his two mothers, Susan Shepherd and Marsha Hams in Massachusetts, describes a transformation that he and his family underwent when his parents were finally able to marry: “[A]s a kid, if your parents are different, . . . you don’t want to talk about your family. . . .”²⁸ Whenever he told someone that his parents were gay, “[N]o matter what they said, my next reaction was, ‘Don’t tell anybody.’” He continued:

After my parents got their marriage license, all that changed. For the first time in my life I could stand there and I had a word to

²⁶ Michael Jamrock, *Vermont’s First Legal Same-Sex Marriage Ceremony: Interview with JP Greg Trulson*, ENGAYGEDWEDDINGS.COM (Sep. 1, 2009), <http://www.engaygedweddings.com/vt/first-legal-gay-marriage-performed-vermont.html>.

²⁷ John Koopman, Erin Allday and Michael Cabanatuan, “*Love in Air*” as State’s Same-Sex Couples Wed, SFGATE (June 18, 2008, 4:00 AM), <http://www.sfgate.com/news/article/Love-in-air-as-state-s-same-sex-couples-wed-3280314.php>.

²⁸ New Jersey Civil Union Review Commission, *The Legal, Medical, Economic & Social Consequences of New Jersey’s Civil Union Law* (Dec. 10, 2008), at 22*f.*, available at <http://www.nj.gov/oag/dcr/downloads/CURC-Final-Report-.pdf>.

describe my family and that word could describe it to everybody because everybody already knew what a marriage was. . . .

It's been the biggest thing in my life. You know, I can't stop talking about my parents. When you say that your family is married, they just get it and there's not a question. . . .

It was just the best feeling I ever had. And part of it, too, I think was I felt like finally I was protected.²⁹

Other parents echo the same. Erin and Rachel Dodd-McConnell, a married couple in West Des Moines, Iowa, raising two children, said that being married “made a huge difference” to their family in their school. “[W]e're very proud of our family and our children. We can go to school and they can have a married couple as their parents.”³⁰ At trial, plaintiff Jeff Zarrillo testified that he and Paul wanted to marry before having children so that their “nuclear family” would be recognized and protected. J.A. 335. And plaintiff Sandy Stier, who with plaintiff Kris Perry is raising four children together as a family, spoke of their desire for respect and recognition for their family through marriage: “I love my children

²⁹ *Ibid.*

³⁰ ABC5News, *Three Year Anniversary of Same Sex Marriage*, YOUTUBE (Apr. 4, 2012), <http://www.youtube.com/watch?v=QRpwIRwHjH4>.

with all my heart. Kris loves our children with all her heart. . . .”³¹ Being married “would provide . . . a sense of inclusion in the social fabric. . . . [and] our family could feel proud. And I want our children to be proud of us. I don’t want them to feel worried about us or in any way like our family isn’t good enough.” J.A. 390. (internal punctuation omitted).

D. Marriage can strengthen same-sex couples’ connection to extended family.

Chloe Harris, who married her long-time partner, Frankie Frankeny, in California in 2008, explained that when they married “[w]hat really changed was the relationship with our families. It’s when our relationship really gelled in their minds.”³² At trial, Helen Zia emphasized how her marriage to Lia Shigemura integrated their families and gave them vocabulary they had been lacking. J.A. 653-659. Helen’s niece exclaimed, “‘Auntie Lia, now you’re really my auntie,’” *Id.* at 654, and on his deathbed, Lia’s father identified Lia and Helen to hospice staff as his “daughter . . . and favorite daughter in law.” *Id.* at 658.

³¹ Transcript of Proceedings at 177:24-178:3, *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal., 2010) (No. C 09-2292-VRW).

³² Jesse McKinley, *California Couples Await Gay Marriage Ruling*, N.Y. TIMES (May 25, 2009), at A10, available at <http://www.nytimes.com/2009/05/26/us/26gay.html>.

Daniel Hernández, who married his partner of 12 years, Nevin Cohen, in New York City in 2011, offered a similar perspective:

You know I grew up in a really traditional Mexican-American household. Catholic. I was an altar boy. My family is really supportive. They love Nevin. They treat him like a son. I think it's really sort of indicative of parents being able to transcend a lot of the other traditions they live with. My parents are an incredible example of . . . saying, "I love my son, and I love what he's done. . . . and I'm going to support him." That makes me closer to them and it makes them closer to me.³³

Generations of the families of Cuc Vu and Gwen Migita, who wed in the District of Columbia in 2010, invoked centuries-old traditions in a three-day celebration. Cuc described it as "a perfect way to spend time with people who love us and to create memories that will last a lifetime."³⁴ All 30 members of Cuc's immediate family attended the wedding celebration dedicated to her father's memory. During the celebration, Cuc and Gwen held two different ceremonies, including a morning ceremony reflecting Cuc's Vietnamese heritage and honoring the family ancestors.

³³ Bryan Llenas, *Behind Every Marriage Certificate – A Love Story: Slide 4*, FOX NEWS LATINO (July 24, 2011), <http://latino.foxnews.com/slideshow/latino/news/2011/07/24/new-york-citys-gay-latinos-get-hitched/#slide=4>.

³⁴ Kera Yonker, *Passion for Equality*, GO MAGAZINE (Feb. 13, 2012), http://www.gomag.com/article/passion_for_equality/.

As part of this family-only ceremony the brides served tea to their parents, who in return offered the couple their wisdom and advice for marital happiness. At an evening ceremony, surrounded by a larger group of friends and family, the two women exchanged their vows. Cuc fondly recalled her 84-year-old mother's joyful pride "that her job as a parent was done now that I was the last of her six children to marry."³⁵

E. The freedom to marry gives same-sex couples and lesbian and gay Americans a profound sense of dignity, respect, and belonging.

Before New York ended the exclusion of same-sex couples from marriage, John Mace and his spouse, Richard Dorr, very much felt the stigma of not being able to marry. As John put it, "It's terrible to be looked down upon and be considered a second-class citizen."³⁶ "We have friends who say, 'I've always considered you guys married,' but the reality is, we don't have official status here," he said. "When I fill out a form, I have to identify myself as single, when in reality, it's spouse and spouse."³⁷ But after John and Richard were able to marry in New York in 2012,

³⁵ *Ibid.*

³⁶ Jeffrey Hartinger, *N.Y.: Gay Couple Wants to Make It Legal After Six Decades*, THE ADVOCATE (June 20, 2011, 2:00 PM), <http://www.advocate.com/news/daily-news/2011/06/20/ny-gay-couple-wants-make-it-legal-after-six-decades>.

³⁷ Kilgannon, *supra* note 6.

John exclaimed, “We are no longer second-class citizens.”³⁸

Juan Rodriguez, who married his partner of 36 years, Nelson, in New York City, echoed that sentiment:

As working people in this country and in this state, and tax paying citizens all of our lives, we have the right to be happy and share the same rights as everyone else. Just because we are the same sex it shouldn't be any different. . . . There is love, and love doesn't have sex, or color or anything.³⁹

Stuart Gaffney described the profound sense of dignity that he and his husband felt as they married:

When . . . [we] heard the words “by virtue of the authority vested in me by the State of California, I now pronounce you spouses for life,” we felt something transform within us. We experienced for the first time our government treating us as fully equal human beings and recognizing us as a loving couple worthy of the full respect of the law.⁴⁰

³⁸ Dennis, *supra* note 5.

³⁹ Bryan Llenas, *Behind Every Marriage Certificate – A Love Story: Slide 6: Finally . . . After 36 Years*, FOX NEWS LATINO (July 24, 2011), <http://latino.foxnews.com/slideshow/latino/news/2011/07/24/new-york-citys-gay-latinos-get-hitched/#slide=6>.

⁴⁰ *Declaration of Stuart M. Gaffney* (Aug. 30, 2004) in *In re Marriage Cases*, 43 Cal.4th 757 (2008), at 5, available at (Continued on following page)

II. Being Denied the Freedom to Marry Exacts a Terrible Toll on Lesbian and Gay Americans.

The millions of lesbian and gay Americans who are excluded from the freedom to marry suffer from it greatly. They do not partake in the many benefits of marriages, described in Section I *supra* and are left feeling less than fully American and isolated from the national community. Plaintiff Paul Katami spoke at trial about the pain of hearing people say that marriage was not for people like him: “[R]egardless of how proud you are, you still feel a bit ashamed. . . . [I]n that moment, being gay means I’m unequal. I’m less than. I am undesirable.” J.A. 345. “[B]eing excluded in that way is so incredibly harmful to me.” Transcript of Proceedings at 90:24-91:13, *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal., 2010) (No. C 09-2292-VRW).

Hundreds of thousands of same-sex couples who live in states without the freedom to marry yearn for that freedom for the same reasons that others have it.

Case in Point: Diana Travis and MaryAnn Mueller, Charlotte, North Carolina

Diana Travis and MaryAnn Mueller share their lives together on seven acres of land in Charlotte,

http://www.nclrights.org/site/DocServer/StuartGaffney_declaration.pdf?docID=1826.

North Carolina. They met at a mutual friend's birthday party 25 years ago and have been a loving, committed couple for nearly 23 years. Diana explained, "First we were friends, but then. . . I was writing in my journal about the kind of person I want to be with, and I kept writing about her. A light bulb went off. This is the person I want to spend my life with."⁴¹

Diana and MaryAnn built their relationship out of their close friendship. Diana described:

We started doing lots of things together – walking through the woods, bird watching, and learning how to make kindling out of cedar woods for the fireplace. Through being friends . . . we discovered we had a similar appreciation of life – a shared sense of humor, love of nature and gardening, and deep loyalty to friends and family.⁴²

Diana and MaryAnn credit honesty with each other and support for one another as the qualities that have sustained their relationship. As MaryAnn put it:

We've learned that we can rely on one another and be honest with each other even when it's difficult, because we always know that the

⁴¹ *Two Decades in North Carolina: Diana and MaryAnn's Love Story*, AFER MARRIAGE NEWS BLOG (Aug. 16, 2012), <http://www.fer.org/blog/two-decades-in-north-carolina-diana-and-maryanns-love-story/>.

⁴² *A Conversation with Diana Travis and MaryAnn Mueller*, MEUSA (Feb. 2013), http://www.marriageequality.org/Conversation_Diana_Travis_MaryAnn_Mueller.

other is not going away. Diana recently broke her leg in multiple places, and this experience has been challenging for both of us because Diana is dependent on me for a lot of things now. Even though I'm a retired physical therapist, it's really hard because it's day in and day out. But we talk about that, too, and work it out together.⁴³

Diana continued:

When you've been together for as long we have – and you've lost parents, siblings, and friends – it's so wonderful to have someone you can rely on. You can not only watch the sunrise together and appreciate that beautiful sky, but you can have someone to hold you when you've just lost your brother or parent. Our relationship together is a rich tapestry of all kinds of experience: friends, growth, changes, loss, and appreciation about how fragile life can be and how lucky we are to be together.⁴⁴

To Diana and MaryAnn:

This type of reliance, honesty, and shared experience is what makes a marriage. Marriage means the commitment to stick with things through thick and thin. . . . We share everything, both the good and the hard. We enjoy life, reflect on life, and are present for

⁴³ *Ibid.*

⁴⁴ *Ibid.*

life – together. We want to honor our relationship by being married.⁴⁵

But the State of North Carolina, where Diana was born and has now lived for 65 years, prohibits them from marrying. Last year North Carolina voters passed Amendment One, a state constitutional amendment banning the freedom to marry and any other legal recognition for same-sex couples in the state. Diana and MaryAnn worked tirelessly to defeat it, and upon its passage, Diana describes that “[w]e were heartbroken. We didn’t want to get out of bed the next morning.”⁴⁶ Diana commented further:

MaryAnn and I contribute as much or more to our community as anyone else. We are small business owners who pay a huge amount of taxes to our city and state. We volunteer in our community, we contribute to the organizations that seek to conserve our beautiful state, and we support our friends and neighbors regardless of their sexual orientation. No one has ever sent our taxes or donations back because they came from lesbians. Yet we are denied our basic right as human beings to be married simply because we are gay. This is very upsetting to us.⁴⁷

Even though Diana and MaryAnn are proud that the Charlotte area where they make their home voted

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

against Amendment One, they see the prospect of North Carolina voters reversing the initiative and creating marriage equality as bleak, and the women look “to the Supreme Court to ensure us our civil rights.”⁴⁸ Diana reflects: “We want to be able to be married in North Carolina. This is our home. We have not gotten married in another state, because this is where we live. We want recognition and validity here, as well as federally.”⁴⁹

A. Many other same-sex couples yearn for the freedom to marry.

Many other gay and lesbian couples have mirrored Diana and MaryAnn’s sentiments about the emotional and psychological toll of being excluded from marriage. Raymie Wolfe and his partner of seven years, Matthew Griffin, live in the tiny town of White Pine, Tennessee, and want to be able to marry there. Raymie explained, “We love this place. This is our land and we don’t think we should flee.”⁵⁰

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Lance Coleman, *Hamblen Same-Sex Couple Denied Marriage License*, KNOXVILLE NEWS SENTINEL (Jan. 10, 2013, 4:00 AM), <http://www.knoxnews.com/news/2013/jan/10/hamblen-same-sex-couple-denied-marriage-license/>.

Raymie expressed the pain of not being able to marry Matthew:

When I introduce Matthew sometimes I call him my partner, and usually when I use that word I get a blank stare that waits for me to fill in the rest, like what sort of business or trade do we own together. . . . I guess the thing that I call him most is my husband when I talk about him. We have rings that we had made together. But when I do call him my husband; that is a lie. We aren't married. We're not able to marry in this state. And when I think about what we have together, I think about my parents who were married for forty years until my mother died. And I think that what Matthew and I have is so much more similar to what my parents had than it is dissimilar. . . . When I think about Mathew, he is someone who supports me. Like a husband. He's someone who loves me. Like a husband. And when my father died, he was right beside me. Like a husband. . . . [W]e want the state to recognize that . . . [s]o that that is a truth that I can go out and say, and it doesn't have to be a lie.⁵¹

Dwayne Beebe, a 20-year Navy veteran, and Jonathon Franqui, who are denied the freedom to marry because they live in Florida, describe their aspiration

⁵¹ SouthernEquality, *WE DO Campaign: Matt and Raymie*, YouTube (Feb. 12, 2013), <http://www.youtube.com/watch?v=W3H042gyIi8>.

to marry in a way no different from anyone else. Jonathan said:

Marriage is the ultimate commitment you can make to the person that you love. It's important to have that union recognized in your community and in your home and in your family. It's important to us because we say "I love you" verbally, and we do the same things people do in a marriage, and we want respect for that. We want our community to understand how strong our commitment is to one another – how strong our commitment is to the person we love.⁵²

Same-sex couples who are unable to marry face a day-to-day exasperation and potential life-and-death consequences from not being recognized for who they are. Christine Allen, who with her partner of 27 years, Ann, raised five children together before they were able to marry legally,⁵³ explained:

I can't begin to describe the utter frustration when you are holding a feverish infant with whooping cough in the middle of the night, or your seven-year-old boy sobbing in pain from breaking his arm in a bicycle fall, or your four-year-old girl bleeding from accidentally

⁵² Adam Polaski, *Our Life in 17 Photos: A Gay Sailor's Love Story*, FREEDOM TO MARRY (Feb. 6, 2013, 3:00 PM), <http://www.freedomtomarry.org/blog/entry/our-life-in-17-photos-a-gay-sailors-love-story>.

⁵³ Christine and Ann married in California in 2008 before Proposition 8.

putting her arm through a window, and emergency room staff are debating who the “real” mother is and whether or not you have the “right” to get the child treated. If you are married, you automatically have a legal right to that child and things proceed in a normal manner.⁵⁴

B. Even legally married same-sex couples are vulnerable as long as the United States Constitution does not protect their freedom to marry in every state.

Without federal constitutional protection for their marriages, same-sex couples, legally married in their home states, lose recognition of their marriages if they move or even travel to another state without marriage equality. Jamila Tharp and Michelle Hastings, legally married in California in 2008, are raising three children together. But when they moved to Utah for Jamila’s ministerial internship, they lost their protection for their family because Utah does not recognize their marriage. In their daughter’s words: “If something were to happen to one of my moms – knock on wood – [we]. . . . wouldn’t be recognized as a family, which . . . [would] be tremendously bad for. . . . [our] family.”⁵⁵

⁵⁴ *A Conversation with Christine Allen*, MEUSA (Feb. 2013), http://www.marriageequality.org/Conversation_Christine_Allen.

⁵⁵ Peg McEntee, *McEntee: Utah Girl Wishes for a Happier Valentine’s Day for Her 2 Moms*, THE SALT LAKE TRIBUNE (Feb. (Continued on following page))

Furthermore, married same-sex couples face the unique threat and fear that their legally recognized marriages, unlike any other American's marriage, might be taken away from them by an initiative or legislative campaign. In California, Petitioners argued to the California Supreme Court in earlier litigation that Proposition 8 invalidated the marriages of the estimated 18,000 same-sex couples who married before its narrow passage. Although the court held that the initiative's language did not have that effect, it did not rule out the possibility that a differently worded initiative could do so. *See Strauss v. Horton*, 46 Cal.4th 364, 470-74, 207 P.3d 48 (2009). Efforts to repeal lesbian and gay Americans' freedom to marry have been successful in California through Proposition 8 and in Maine through a ballot initiative in 2009.⁵⁶ Although the freedom to marry in Maine was regained by initiative in 2012, two days after the election opponents began discussing whether they might commence another repeal effort.⁵⁷ Although so far unsuccessful, similar repeal efforts have been

14, 2013, 8:09 AM), <http://www.sltrib.com/sltrib/news/55826548-78/abigail-moms-marrriage-valentine.html.csp>; *See also Jamila and Michelle*, WHY MARRIAGE MATTERS, <http://www.whymarriage.org/stories/entry/jamila-and-michelle> (last visited Feb. 23, 2013).

⁵⁶ *See, e.g.*, Kevin Miller, *Gay Marriage Repealed in Maine*, BANGOR DAILY NEWS (Nov. 3, 2009, 10:41 PM), <http://bangor.dailynews.com/2009/11/03/politics/gay-marriage-repealed-in-maine/>.

⁵⁷ Deb Wagner, *Where Do We Go from Here?*, CHRISTIAN CIVIC LEAGUE OF MAINE (Nov. 8, 2012), <http://www.cclmaine.org/where-do-we-go-from-here/>.

initiated in Iowa,⁵⁸ Massachusetts,⁵⁹ and New Hampshire.⁶⁰

The threat of having one's marriage taken away in an election campaign weighs particularly heavily on families of same-sex couples with children. A Contra Costa County parent reported: "My six-year-old, the day after we lost Prop 8, asked me, with tears running down his face, if we were still a family."⁶¹ A Riverside County parent explained, "My children were devastated. They don't understand why people want to take away their parent's right to be married."⁶²

⁵⁸ See, e.g., O. Kay Henderson, *House Advances Constitutional Amendment on Gay Marriage by 62-37 Vote*, RADIOIOWA (Feb. 1, 2011), <http://www.radioiowa.com/2011/02/01/house-advances-constitutional-amendment-on-gay-marriage-by-62-37-vote/>; Carlos Santoscoy, *Iowa House Majority Leader Says Bill to Ban Gay Marriage 'May Be Filed'*, ON TOP MAGAZINE (Jan. 15, 2013), <http://www.ontopmag.com/article.aspx?id=14114>.

⁵⁹ See, e.g., Raphael Lewis, *Reilly OK's 2008 Initiative on Ban of Gay Marriage*, BOSTON GLOBE (Sept. 8, 2005), http://www.boston.com/news/local/articles/2005/09/08/reilly_oks_2008_initiative_on_ban_of_gay_marriage/.

⁶⁰ See, e.g., Abby Goodnough, *Challenge to Gay Marriage Fails in New Hampshire*, N.Y. TIMES (Mar. 22, 2012), at A23, available at <http://www.nytimes.com/2012/03/22/us/politics/new-hampshire-refuses-to-repeal-gay-marriage-right.html>.

⁶¹ MEUSA, *Prop 8 Hurt My Family And How: A Compilation of Findings from Community Forums and On-Line Surveys* (Jan. 2009), at 4, available at http://www.marriageequality.org/uploads/REPORT%20TWO_PROP_8_HURT_MY_FAMILY_FINAL_VERSION.pdf.

⁶² *Id.* at 5.

Having one's marriage put up for a popular vote is psychologically damaging to other same-sex couples and lesbian and gay Americans as a whole. Describing the experience of living through the Proposition 8 campaign, a Santa Clara County resident stated: "It is frustrating and exhausting to go through the course of each day feeling like we somehow have to defend our marriage. It weighs on a person and on a couple."⁶³ A San Francisco resident described: "The psychological trauma of having my civil rights debated by people who do not even know me has been astounding."⁶⁴

Neil Blair and Jeffry Burr of Franconia, New Hampshire, married over three years ago in that state but remain apprehensive as equality opponents continue to try to take away their freedom to marry. After the latest attempt failed in March 2012, Neil said: "We're relieved for now. . . . But in New Hampshire, this can keep coming up every legislative session, so we're obviously concerned about having to battle this again and again."⁶⁵

⁶³ *Id.* at 4.

⁶⁴ *Ibid.* See also J.A. 563 (trial testimony of expert psychologist Ilan Meyer, Ph.D.: "[W]e know that for gay men and lesbians . . . there has been shown a relationship between experiencing those kinds of stressors and . . . adverse health outcomes.").

⁶⁵ Goodnough, *supra* at note 60.

III. Domestic Partnerships and Civil Unions Do Not Compare to Marriage.

Domestic partnerships and civil unions, non-marital registrations available to same-sex couples in different forms in 11 states, fail to provide the same meaning, recognition, or status of marriage; indeed, they are created intentionally to be something other than marriage. Pet. App. 243a-245a. At trial, plaintiff Sandy Stier put it succinctly that “[a domestic partnership agreement] has nothing to do with marriage.” J.A. 387.

Case in Point: Jeff Tabaco and Thom Watson, Daly City, California

Jeff Tabaco, an editor, and Thom Watson, an information technology consultant, met ten years ago in a very modern way – through reading each other’s blogs – but their relationship reflects age-old human experience. Thom explained: “We started reading each other’s words, and then began exchanging ideas, which evolved very naturally over time into friendship and then love.”⁶⁶ “Our relationship grew organically,” Jeff agreed. “I felt like he understood me. It became apparent very early on that we have this really nice rhythm.”⁶⁷ Thom continued, “We sometimes muse

⁶⁶ *A Conversation with Jeff Tabaco and Thom Watson*, MEUSA (Feb. 2013), http://www.marriageequality.org/Conversation_Jeff_Tabaco_Thom_Watson.

⁶⁷ *Ibid.*

that we share a brain between us. We grew up on opposite coasts . . . but it feels like we were separated at birth. We often . . . find ourselves saying the same thing at exactly the same time . . . and . . . like old married couples we constantly finish each other's sentences."⁶⁸

What truly cemented Jeff and Thom's relationship was how they dealt with life's unforeseen challenges. "Within a few months after our first date, my father died very unexpectedly," explained Thom. "We were still just getting to know each other, and then – boom – I was faced with this horrible tragedy. . . . Jeff stood by me like a rock throughout the whole ordeal."⁶⁹ Three years later, mere weeks after the couple had moved across the country to California together, Jeff's father passed away very suddenly. Jeff described how Thom supported and comforted him in his own time of loss and grief: "Thom was with me at the hospital through my dad's last hours. My dad even took Thom aside and asked him to look out for me and my mother once he was gone. He understood that Thom was part of our family."⁷⁰ Thom continued, "We found strength in and for each other during life's darkest moments, and we recognized that supporting one another 'for better or worse' was more than just words."⁷¹ "[W]e began to understand that we were

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

meant to spend the rest of our lives together,” said Jeff.⁷²

“Not long after that, we began to realize that we wanted to take the next step in our relationship: to marry and make a public commitment in front of our friends and family and celebrate our mutual love and respect,” said Thom. “But we couldn’t, because of Proposition 8. And that hurts us both very deeply.”⁷³

Four years ago, Jeff and Thom registered as domestic partners for financial reasons, but doing so was no substitute for marriage. Even the process itself of registering their domestic partnership lacked the symbolism and significance of marriage. As Jeff put it: “While [opposite-sex] couples were over at City Hall actually getting married, we were in a little windowless room in the state building, where everyone else who was there was registering a business or changing their company’s name.”⁷⁴

Thom stated:

A domestic partnership registration includes no vows made to each other, only to the state. There’s no exchange of rings, only an exchange of paperwork and fees. No one says, “By the power vested in me by the State of California, I now declare you registered

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

domestic partners.” Who even would aspire to have that said to them?⁷⁵

Jeff explained further:

Being domestic partners just doesn’t carry the same meaning as being married. Especially among our family, like say among our mothers, the whole “partnership” thing was kind of abstract – you know, “What does that mean?” But when there’s a wedding, it’s in cultural language that they understand.⁷⁶

Other same-sex couples who want to marry described a similar inadequacy and indignity of domestic partnerships and civil unions.⁷⁷ Ed Hamilton and Gary Magruder of Plainfield, Illinois, together for 49 years, reported that when they applied for their civil union in 2011 the clerk at the Will County courthouse behaved as though the two men were obtaining nothing more significant than “a fishing license.”⁷⁸ Beverly Sevcik and Mary Baranovich of Carson City, Nevada, together for over 40 years, have a state domestic partnership but are prohibited from marrying. Mary explained that not being able to solemnize their love through marriage “[t]o me . . . says we are

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *See also* Pet. App. 240a-245a.

⁷⁸ *Ed and Gary*, ACLU OF ILLINOIS, <http://www.aclu-il.org/ed-and-gary/> (last visited Feb. 23, 2013).

second-class citizens, we aren't as good as everybody else."⁷⁹

At trial, plaintiff Jeff Zarrillo testified that he and Paul Katami had not registered as domestic partners, because:

Domestic partnership would relegate me to a level of second class citizenship, maybe even third class citizenship . . . [W]e hold marriage in such high regard [that if we registered a domestic partnership] we would be saying that we are satisfied with domestic partnership as a way to live our lives, but it doesn't give due respect to the relationship that we have had for almost nine years. Only a marriage could do that. J.A. 336.

This sentiment is borne out also by the experience of Ellen Pontac and her wife Shelly Bailes, who have been together for 39 years. Ellen and Shelly obtained a domestic partnership years before they married in California in 2008. Ellen explained:

We have both a domestic partnership and a marriage. Getting married has actually made us realize how inadequate being a domestic partner is. Now that we are married, we never refer to ourselves as domestic

⁷⁹ Ed Vogel, *Carson City Couple Make Gay Marriage Fight Personal*, LAS VEGAS REVIEW-JOURNAL (Apr. 30, 2012, 1:59 AM), <http://www.lvrj.com/news/carson-city-couple-make-gay-marriage-fight-personal-149461915.html>.

partners or even conceive of ourselves as such – we only refer to ourselves as married.⁸⁰

The message of inferiority that domestic partnerships and civil unions can carry is particularly damaging to children of same-sex couples. Pet. App. 247a. Beth Allen and Valerie Frey of Fletcher’s Landing Township, Maine have been together for five years and have two children. Before Maine gained the freedom to marry, Beth reported that:

[Our daughter] asked me a little while ago what a civil union was. She asked why Val and I needed to have something different from marriage. It broke my heart to have her think that her family is somehow different from the families of the kids she goes to school with.⁸¹

Caitlin, a college student who grew up in northwestern New Jersey, raised by two fathers in a civil union, explained:

If the law says that someone is equal, people are going to recognize it. And if the law is not

⁸⁰ *A Conversation with Shelly Bailes and Ellen Pontac*, MEUSA (Feb. 2013), http://www.marriageequality.org/Conversation_Shelly_Bailes_Ellen_Pontac.

⁸¹ Adam Polaski, *After 3 Years of Campaigning, Beth and Valerie Look Back on Winning Marriage in Maine*, FREEDOM TO MARRY (Dec. 14, 2012, 1:45 PM), <http://www.freedomtomarry.org/blog/entry/after-4-years-of-campaigning-beth-and-valerie-look-back-on-winning-marriage>.

willing to say that, why should the common person out on the street, in the schools, the teacher, students, recognize that family as being the same?

So the State of New Jersey sent me a very clear message that . . . my . . . family was second rate. And it was really, really difficult for me. . . . I really needed someone to affirm me, and unfortunately the state failed me in that.⁸²

The general public's lack of understanding of what a domestic partnership or civil union is can lead to potentially disastrous consequences. Gina Pastino and Naomi Cohen of Montclair, New Jersey have a New Jersey state civil union, but are denied the freedom to marry by state law. When Gina was admitted to the emergency room because she was at risk for a potentially fatal cardiac arrhythmia, having a civil union proved inadequate to getting Naomi proper access to her during the crisis. Gina said:

I gave them all of my relative information, including the fact that . . . Naomi and I are civil union partners. . . . By the time that Naomi arrived at the hospital, I was in a state where I really couldn't talk to her. . . . So, [Naomi] asked the attending emergency

⁸² New Jersey Civil Union Review Commission, *The Legal, Medical, Economic & Social Consequences of New Jersey's Civil Union Law* (Dec. 10, 2008), at 17*f.*, available at <http://www.nj.gov/oag/dcr/downloads/CURC-Final-Report-.pdf>.

room physician to tell her what was happening with me. . . . And he said, “who are you?” And she had to explain to him what civil unions were. And he wasn’t, you know, quite sure at first. He was reluctant to give my information.⁸³

I want to be able to say “This is my wife” and for everyone to understand what that means.⁸⁴

This problem is exacerbated when couples in domestic partnerships or civil unions travel outside their home states. Pet. App. 242a-243a. Thom Watson explained:

While Jeff and I are registered domestic partners here in California, back in Virginia where nearly all my family live we have no more legal relationship to each other than we do to a random person on the street, and we’re prohibited from having any more legal relationship than that. Whenever we go to visit my family – for my nephews’ graduations, for Christmas, for my mom’s upcoming 70th birthday – for Jeff and me it’s as much an occasion of stress and worry as it is of anticipation and joy. Should something happen to me while we’re there, my mother, with

⁸³ *Id.* at 1*f.*

⁸⁴ Robert Schwaneberg, *Report: Civil Union Law Fails to Achieve Goal of Equality*, THE SUNDAY STAR-LEDGER (Feb. 17, 2008), available at http://blog.nj.com/ledgerarchives/2008/02/report_civil_union_law_fails_t.html.

whom I haven't lived in over 30 years, would have more rights to make medical and legal decisions on my behalf than would Jeff, my life partner – my husband in all senses of the word, except legal reality.⁸⁵

Jeff and Thom “look forward to the day when we'll have the same freedom to marry and the same legal recognition of our love and commitment” as heterosexual couples currently enjoy. “As the son of immigrants, I grew up very aware of the search for a better life,” said Jeff. “My parents left the Philippines knowing there would be difficult changes ahead, but that their lives could change for the better. My mother's favorite saying is, ‘As I breathe, I hope.’ My hope is that I'll soon be able to marry the man I love, here in California.”⁸⁶

At trial, the plaintiffs evoked similar sentiments. Sandy Stier described her “wonderfully romantic relationship” with Kris Perry that “grew and blossomed very beautifully” into a family and “life together.” J.A. 381. “We have a loving, committed relationship. We are not business partners. We are not social partners. We are not glorified roommates. . . . We want to be married.” J.A. 389. And Paul Katami said, “[W]hen you find someone who is not only your best friend but your best advocate and supporter in life, it's a natural

⁸⁵ *A Conversation with Jeff Tabaco and Thom Watson, supra* note 66.

⁸⁶ *Ibid.*

next step . . . to want to be married to that person.” J.A. 340. Jeff Zarrillo, in turn, described Paul as “the love of my life. . . . I would be with him in sickness and in health, for richer, for poorer, death do us part, just like vows. I would do anything for him. And I want nothing more than to marry him.” J.A. 333.



CONCLUSION

For Sandy and Kris, Paul and Jeff, Helen and Lia, John and Richard, Diana and MaryAnn, Jeff and Thom, and millions of lesbian and gay Americans this case is neither abstract nor theoretical; it will have a direct and profound impact on their lives.

This case is ultimately about our common humanity – our common instinct to love and to have kin – and what should be our common freedom under the United States Constitution to marry the person we love. If lesbian and gay people are not allowed to marry, an entire class of Americans are excluded from pursuing their dreams and denied their right under the Constitution to make this most important decision about their lives. Lesbian and gay Americans are left feeling less than fully American and are isolated from the national community. The nation suffers from this exclusion as well.

The Court should act now and affirm that the Fifth and Fourteenth Amendments to our Constitution guarantee the freedom to marry for all

Americans – regardless of who they are or whom they love.

Respectfully submitted,

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