

**Case Nos. 12-17668, 12-16995, and 12-16998**

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

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**BEVERLY SEVCIK, et al.,** *Plaintiffs-Appellants,*

v.

**BRIAN SANDOVAL, et al.,** *Defendants-Appellees,* and  
**COALITION FOR THE PROTECTION OF MARRIAGE,** *Intervenor-  
Defendant-Appellee.*

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*On Appeal from the United States District Court for the District of Nevada  
Case No. 2:12-CV-00578-RCJ-PAL, The Hon. Robert C. Jones, District Judge.*

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**NATASHA N. JACKSON, et al.,** *Plaintiffs-Appellants,*

v.

**NEIL S. ABERCROMBIE,** Governor, State of Hawaii, *Defendant-Appellant,*  
**LORETTA J. FUDDY,** Director, Department of Health, State of Hawaii,  
*Defendant-Appellee,* and  
**HAWAII FAMILY FORUM,** *Intervenor-Defendant-Appellee.*

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*On Appeal from the United States District Court for the District of Hawaii  
Case No. 1:11-cv-00734-ACK-KSC, The Hon. Alan C. Kay, Sr., District Judge.\**

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**AMICI CURIAE BRIEF OF BAY AREA LAWYERS FOR INDIVIDUAL  
FREEDOM (“BALIF”), ET AL., IN SUPPORT OF APPELLANTS**

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\* Pursuant to Order, Dkt. 12, this brief is being jointly submitted in both of the captioned cases.

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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 bans on same-sex marriage in Nevada and Hawaii (“the Marriage Bans”) betray these longstanding values. They exclude a class of people—gay men and lesbians—from the venerated institution of marriage, relegating them instead to the inherently unequal and legalistic apparatus of domestic partnership or civil union.

This brief explains the harm inflicted on gay men and lesbians as a result of the Marriage Bans’ pernicious classification. Because the Marriage Bans exclude them from marriage, gay men and lesbians and their families are stigmatized, deprived of benefits 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 mechanisms of domestic partnership or civil union. *Amici* urge this Court to reverse the district courts' conclusions and find that the Marriage Bans disadvantage gays and lesbians without any legitimate justification. *Sevcik v. Sandoval*, 911 F. Supp. 2d 996 (D. Nev. 2012); *Jackson v. Abercrombie*, 884 F. Supp. 2d 1065 (D. Haw. 2012).

## 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.” *E.g.*, *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).<sup>2</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.

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<sup>2</sup> Plaintiffs-Appellants, Sevcik and Jackson, and Defendant-Appellant, Governor Abercrombie, amply demonstrate, and *amici* agree, that the Marriage Bans should be subject to heightened scrutiny. However, as this brief explains, the Marriage Bans’ failure to advance a legitimate governmental purpose causes them to fail under even the most deferential standard of review.

A law that classifies persons for no reason other than to confer disfavored legal status fails even rational basis review because it serves no legitimate governmental purpose. *See Romer*, 517 U.S. at 633-35. As the Supreme Court repeatedly has explained, “[i]f the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.” *Id.* at 634-35 (quoting *Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). Accordingly, in *Romer*, the Supreme Court struck down a Colorado constitutional amendment that prohibited governmental protection of gay and lesbian individuals. *Id.* at 636. 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 Bans inflict 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 BANS ESTABLISH AN UNEQUAL, TWO-TIERED REGIME AND HARM GAY AND LESBIAN INDIVIDUALS AND THEIR CHILDREN**

The Marriage Bans' overt discrimination against same-sex couples in Nevada and Hawaii establishes a two-tiered regime in which same-sex couples hold second-class status. As explained below, the availability of domestic partnership or civil unions— separate, plainly inferior options—does not cure the Marriage Bans' constitutional deficiency. By excluding same-sex couples from marriage, the Marriage Bans cause severe, actual harm to gay and lesbian individuals and their families.

### **A. The Legalistic Designation of Domestic Partnership Is Patently Inferior to the Revered Institution of Marriage**

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

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

The unequal separation wrought by the Marriage Bans is blatant and pernicious. The resulting regime welcomes different-sex couples into the revered institution of marriage while shunting same-sex couples into the newly-minted, legalistic apparatus of “domestic partnership” or “civil union.” *See Nev. Rev. Stat. § 122A; Haw. Rev. Stat. § 572B.* As the record in these cases makes clear, domestic partnership is different from and inferior to marriage. The availability of domestic partnership thus does not remedy the harm caused by exclusion from marriage, but rather provides a square peg for a round hole. As in *Sweatt*, “[i]t is difficult to believe that one who had a free choice” between domestic partnership and marriage “would consider the question close.” *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 is 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 between two people—and implies a return promise by society to respect that commitment. *See Turner v. Safley*, 482 U.S. 78, 95 (1987) (recognizing that marriage is an “expression[] of emotional support and public commitment”). The institution is “a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family.” *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 954 (Mass. 2003). The right to marry, accordingly, “has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men [and women].” *Loving*, 388 U.S. at 12; *see also Perez v. Lippold*, 198 P.2d 17, 18-19 (Cal. 1948) (“Marriage is . . .

something more than a civil contract subject to regulation by the state; it is a fundamental right of free men.”). The enormous personal and social significance of marriage is, indeed, a core premise of the decisions below. *See, e.g., Jackson*, 884 F. Supp. 2d at 1108 (explaining that “the title ‘marriage’ has social benefits and cultural meaning”).

As a result of the special significance of marriage in society, the institution has a critical “signaling” role, apart from the specific legal obligations it entails. Elizabeth S. Scott, *Social Norms and the Legal Regulation of Marriage*, 86 Va. L. Rev. 1901, 1917 (2000). The designation of marriage affects both how the two individuals in a married couple behave toward one another and how society behaves toward them.

First, married people understand how they are supposed to behave toward one another: they are to be emotionally and financially supportive, honest, and faithful. *See* Sevcik ER 273-74 (declaration of psychologist Letitia Peplau, Ph.D.). 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. *See* Sevcik ER 316 (Peplau declaration) (“The security of marriage often enables spouses to adopt a long-term perspective, putting off immediate rewards to build a future life together and encouraging mutual sacrifice.”).

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 legal and social status. *See* Sevcik ER 281 (Cott declaration) (noting that excluding same-sex couples from marriage “mark[s] some citizens as unfit to join the national family because of their choice of loved one”). Spouses are immediately seen as family members. *See* Sevcik ER 218 (declaration of plaintiff Mikyla Miller) (getting married in California helped Miller's family understand her relationship with her wife, Katrina “Katie” Miller; despite participating in Mikyla and Katie's commitment ceremony, it was not until after Mikyla and Katie got married that Mikyla's family “started referring to [Katie] as family”); *Id.* at 217-18 (“The significance of our marriage was apparent in many ways, especially with respect to my family's treatment of Katie.”). 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* Sevcik ER 210 (declaration of plaintiff Greg Flamer) (“I therefore carry a letter with me, drafted by an attorney, explaining that Fletcher and I are in a domestic partnership and that both of us are legal parents . . . I have never heard of a married couple needing to do the same with respect to explaining their marriage or documenting legal ties to their own children.”); *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—marriage is “the ‘happy ending,’ . . . reflected in and perpetuated through law, custom, literature, and even folk tales.” Sevcik ER 264 (Cott declaration); *id.* at 180 (declaration of Plaintiff Beverly Sevcik) (“Mary is the love of my life, and I long for the day that I can marry her and call her my wife.”).

## **2. Domestic Partnership and Civil Unions Are Legalistic Mechanisms That Lack the Significance, Stability, and Meaning 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 that married couples enjoy.

First, the legal categories of domestic partnership and civil unions are novel and unstable. These categories were invented recently,<sup>3</sup> and their meaning is ever-shifting. Even the name of the category varies from state to state. *Compare* Nev. Rev. Stat. § 122A (“domestic partnership”) *with* Haw. Rev. Stat. § 572B (“civil union”). In Hawaii, both the names and legal contours of the second-tier protections for same sex couples have continued to shift in ways that perpetuate confusion and signify inferior status for same-sex couples.<sup>4</sup> Domestic partnership first began in California as a term used in local ordinances that conferred few legal benefits. It is now one of several labels available in different states to registered same-sex couples who are prohibited from marrying. Nevada modeled its domestic partnership statute on California’s revised domestic partnership statute,

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<sup>3</sup> The City of West Hollywood enacted the first domestic partnership ordinance in the mid-1980s.

<sup>4</sup> In 1997, Hawaii’s legislature passed the Reciprocal Beneficiaries Act, which allowed any two individuals who were prohibited from marrying (“such as a widowed mother and her unmarried son”) to obtain about 60 of the rights associated with marriage. *See* Haw. Rev. Stat. § 572C-2; *see also id.* at § 572C-6 (“Unless otherwise expressly provided by law, reciprocal beneficiaries shall not have the same rights and obligations under the law that are conferred through marriage . . .”). Over a decade later, in 2011, “[a]fter several failed attempts,” the legislature passed a civil unions law. *Jackson*, 884 F. Supp. 2d at 1076. That law gives the two members of a civil union all the legal rights given to married couples, except the title of “marriage.” *See* Haw. Rev. Stat. § 572B.

which provides that domestic partners must receive the same legal entitlements as married couples. In Hawaii, the civil union statute is intended to serve the same purpose, but using an entirely different name. These different and inconsistent labels further obscure the legal rights and responsibilities of same sex couples. *See Jackson*, 884 F. Supp. 2d. at 1077; *Sevcik*, 911 F. Supp. 2d at 1001.

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. As one plaintiff put it: “When Karen proposed to me, her question was ‘Will you marry me?’ not ‘[W]ill you be in a joint state-sanctioned relationship on a secondary level with me?’” *Sevcik* ER 201 (declaration of Plaintiff Karen Goody). 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. According to plaintiff Sara Geiger, “[i]n stark contrast to what most people envision when they think about their wedding day, you can notarize your domestic partnership form at a shipping outlet like PostNet.” *Sevcik* ER 243 (declaration of plaintiff Sara Geiger). The record

demonstrates that the complex emotions 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. *See id. at 192* (declaration of plaintiff Theodore Small) (“We decided not to invite family and friends because it could not begin to approximate a wedding, and we want to have a *real* celebration with them on the day that we can finally get married. Our domestic partnership registration, on the other hand, was a sterile process devoid of any celebration.”). 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. *See id. at 238* (declaration of plaintiff Farrell Cafferata-Jenkins) (describing her inability to accurately use the word “wedding” as “a painful reminder—in the midst of what should have been a joyful occasion—that we were not equal to other couples and could not use the same vocabulary to express our love and commitment to one another”).

These reminders continue throughout the relationship. Even the simple act of referring to one’s “partner” can be wrought with embarrassment and misunderstanding: 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 their professional, athletic, or law partners. *See* Sevcik ER 206 (declaration of plaintiff Karen Vibe) (“Oftentimes, when I introduce Karen as ‘my partner,’ I get a puzzled look and end up having to explain that we are in a romantic relationship and not a business relationship.”); *id.* at 225 (Newberry declaration) (“When we filled out the domestic partnership paperwork . . . [t]he notary asked us what kind of business we were opening up.”). Subsequently, same-sex couples must often explain the intricacies of state family law to friends and potentially hostile strangers alike.

Such ambiguities, and the resulting risk of differential treatment, would be less likely if same-sex couples could accurately refer to themselves as “married” and as husband or wife, a vocabulary that is universally understood. *See* N.J. Civ. Union Rev. Comm’n, *The Legal, Medical, Economic and Social Consequences of New Jersey’s Civil Union Law 2*, 16 (2008), available at <http://www.nj.gov/lps/dcr/downloads/CURC-Final-Report-.pdf> (“New Jersey Commission Report”).

In sum, marriage has a unique status in American society. No party in *Sevcik* or *Jackson* disputes that marriage means far more than inheritance rights, powers of attorney, or community property. It is, instead, “the definitive expression of love, commitment, and family.” Sevcik ER 264 (Cott declaration). Domestic partnership is a patently inferior alternative. Simply put: “[N]o other

means of recognizing a freely-chosen intimate relationship has the same meaning, status, significance, and benefits as marriage.” Sevcik ER 281 (Cott declaration).

**B. Excluding Same-Sex Couples From the Institution of Marriage Causes Tangible Legal and Economic Harm**

Many states and municipalities afford domestic partners fewer rights than are offered to married couples. In Nevada, domestic partners receive some, but not all, of the rights and responsibilities afforded to married couples. For example, employers are not required technically to provide health care benefits for domestic partners of their employees. Nev. Rev. Stat. § 122A.210(1). The fact that domestic partnership in Nevada is also open to different-sex couples confirms that it provides a different set of rights from those afforded by marriage. Nev. Rev. Stat. § 122A.100. Similarly, Maine, which adopted a same-sex marriage provision by popular vote in November 2012, advises citizens to “remember that a registered domestic partnership is NOT the same as a marriage and does not entitle partners to rights other than those for which the registry was intended,” namely “rights of inheritance, as well as the rights to make decisions regarding disposal of their deceased partner’s remains.”<sup>5</sup> In New York City, domestic partners may enjoy, *inter alia*, visitation rights and city health benefits, but “[l]awfully married

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<sup>5</sup> See Me. Dep’t of Health and Human Servs., *Instructions and Information for Declaration of Domestic Partnership 2* (2011), available at <http://www.maine.gov/dhhs/mecdc/public-health-systems/data-research/vital-records/documents/pdf-files/dompartinst.pdf>.

individuals, including individuals in same-sex marriages, are entitled to more New York State rights and benefits than those registered as domestic partners.”<sup>6</sup>

Even where domestic partners receive many of the same state-conferred legal rights and responsibilities as married couples, exclusion from the institution of marriage causes actual economic and legal harm to same-sex couples. *See generally* Sevcik ER 351 (Badgett declaration) (“The Amendment [banning same-sex marriage] imposes substantial economic harms on same-sex couples residing in Nevada and their children.”). 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 362 (explaining “that people with same-sex unmarried partners are much more likely to be uninsured than are married people”). Many same-sex couples eschew domestic partnerships due to their lesser status. *See id.* at 351-52. Those couples are denied even the limited economic and legal benefits that accrue to that designation.

More generally, marriage confers numerous economic benefits that stem from the unique commitment it represents. Domestic partnership does not confer comparable economic benefits. *See* Sevcik ER 359-62 (Badgett declaration). For

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<sup>6</sup> *See* Office of the City Clerk, City of N.Y., Domestic Partnership Registration, available at [http://www.cityclerk.nyc.gov/html/marriage/domestic\\_partnership\\_reg.shtml#discclaimer](http://www.cityclerk.nyc.gov/html/marriage/domestic_partnership_reg.shtml#discclaimer) (listing rights of marriage that do not attach to domestic partnerships).



example, marriage fosters greater specialization of labor, which can increase a couple's income and the time available for family. *Id. at* 363. Marriage also tends to reduce a couple's transaction costs: as a married couple's economic fortunes change, the commitment and stability inherent in marriage permit them to avoid "renegotiat[ing] the terms of the legal relationship" between them. *Id. at* 364. Furthermore, married individuals may enjoy greater employment-related economic gains, whereas same-sex couples who cannot marry face discrimination that may adversely affect their work performance and related economic rewards. *See id. at* 365-66. Though difficult to quantify, these economic benefits of marriage are well-known and acknowledged in the field of economics. *See id. at* 363-66.

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

The Marriage Bans cause real harm to same-sex couples and their 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 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. Moreover, the exclusion of same-sex couples from marriage harms their children.

**1. Restricting Same-Sex Couples to Domestic Partnerships Stigmatizes Same-Sex Relationships**

It demeans and stigmatizes same-sex couples to bar them from the valued institution of marriage. The two-tiered regime effected by the Marriage Bans sends an unmistakable, government-backed message that same-sex relationships are less worthy than different-sex relationships. This official disapproval, and the concomitant stigma, are damaging: gay and lesbian individuals suffer “minority stress” that harms their physical and emotional well-being, and face increased discrimination.

**(a) Excluding Same-Sex Couples from Marriage Expresses Government Disapproval of Same-Sex Relationships**

The two-tiered regime that the Marriage Bans establish conveys official disapproval of same-sex relationships. As the California Supreme Court explained:

[T]he statutory provisions that continue to limit access to [marriage] exclusively to opposite-sex couples—while providing only a novel, alternative institution for same-sex couples—likely will be viewed as an official statement that the family relationship of same-sex couples is not of comparable stature or equal dignity to the family relationship of opposite-sex couples.

*In re Marriage Cases*, 183 P.3d 384, 452 (Cal. 2008). To that end, the Court reasoned:

[T]here is a very significant risk that retaining a distinction in nomenclature with regard to this most fundamental of relationships whereby the term ‘marriage’ is denied only to same-sex couples inevitably will cause the new parallel institution that has been made available to those couples to be viewed as of a lesser stature than marriage and, in effect, as a mark of second-class citizenship.

*Id.*, 183 P.3d at 445; *see also 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 record in these cases reinforces the role of the Marriage Bans as expressions of government disapproval of same-sex relationships. *See Sevcik* ER 319-20 (Peplau declaration) (“By prohibiting same-sex couples from marrying, Nevada law both reflects and perpetuates stigma against lesbians, gay men, and same-sex couples . . . Nevada law signals that in the eyes of the state, the committed relationships of same-sex couples are inferior to different-sex relationships and that partners in same-sex relationships are less deserving of social recognition and government protection.”).

The government disapproval expressed through the Marriage Bans is exacerbated by the clear animus behind the measures. As was true of Section 3 of the federal Defense of Marriage Act, the Marriage Bans’ “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. Indeed, the express purpose of the Hawaii prohibition on marriage for same-sex couples was to divest gay and lesbian individuals of a constitutional right, thereby imposing on them a unique disability: Hawaii’s constitutional ban on marriage for same-sex couples, proposed in 1997, came in direct response to a 1996 Hawaii court decision finding a constitutional right of same-sex couples to marry. *See Baehr v. Miike*, CIV. 91-1394, 1996 WL 694235 (Haw. Cir. Ct. Dec. 3, 1996). In Nevada, the district court also confirmed that the bare “intent behind the law is to prevent homosexuals from marrying.” *Sevcik*, 911 F. Supp. 2d at 1005 (suggesting that there may have been an intent to maintain notions of “heterosexual superiority or ‘heteronormativity’ by relegating (mainly) homosexual legal unions to a lesser status”).

Furthermore, the campaigns organized to promote the Marriage Bans stoked fear and anti-gay prejudice. *See e.g.*, Kristin D. Shotwell, *The State Marriage Cases: Implications for Hawai’i’s Marriage Equality Debate in the Post-Lawrence and Romer Era*, 31 U. Haw. L. Rev. 653, 656 (2009) (describing the “rancorous debate” over Hawaii’s Marriage Ban, with proponents “calling homosexuality a ‘moral infection’ that ‘pollutes the flesh,’” and describing same-sex parents as “‘promoters of a moral aberration’ whose goal was to destroy the traditional family”). Plaintiff Mary Baranovich testified about the similarly vituperative campaign in Nevada: “I remember hearing the degrading campaign messages on

the radio and television and seeing them on billboards ... [it] was extremely hurtful and disparaging.” Sevcik ER 187.

The Marriage Bans’ 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 (1954) (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”); Sevcik ER 319 (Peplau declaration) (discussing stigmatizing effects of discriminatory laws). In the same way, the dual system created by the Marriage Bans imposes “structural stigma” on gay and lesbian individuals: it sends the message that “a same-sex couple possesses an ‘undesired differentness’ and is inherently less deserving of society’s full recognition.” Jackson CR 93:102 (declaration of psychologist Gregory Herek).

**(b) The Stigma Created by the Marriage Bans Causes Emotional and Physical Harm**

The stigma resulting from the Marriage Bans' 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).

The record reveals the prevalence of each form of minority stress. Individuals experience "prejudice events" daily. Even filling out a form in a doctor's office can become a source of stress. As plaintiff Karen Vibe noted, forms that ask for an individual's relationship status often require domestic partners to modify the wording by crossing out the existing text and writing in their status. *See* Sevcik ER 206-07 (declaration of plaintiff Karen Vibe). This becomes a source of shame: after having her modified form rejected, plaintiff Adele Newberry "had to point out that I would be required to perjure myself on the form if I was not able to modify it. The entire process was demoralizing." *Id.* at 230. Similarly, expectations of rejection are a constant issue for gay and lesbian individuals; the resulting exhaustion often leads gay and lesbian individuals to conceal their identity. *See id.* at 205 (plaintiff Vibe kept her sexual orientation a secret because she knew her family and community did not approve; when she did

come out publicly, her parents disowned her). Plaintiffs' declarations demonstrate that such repeated experiences often cause gay and lesbian individuals to internalize homophobia. *See id.* at 210 (Flamer declaration) (describing feeling “‘less than’ other people and that our relationship is somehow less valuable than other relationships”).

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). Effects include “an increased risk of psychological problems, especially those like anxiety and depression that are most closely linked to stress,” as well as more subtle diminishment of well-being. Sevcik ER 312 (Peplau declaration). Internalized homophobia, for example, can lead to lowered self-esteem, anxiety, substance abuse, and depression. Gregory M. Herek et al., *Correlates of Internalized Homophobia in a Community Sample of Lesbians and Gay Men*, 2 J. Gay Lesbian Med. Assoc. 17 (1997). “And the recent spate of suicides among LGBT youth has highlighted the personal consequences of the ostracism and demonization of gay men and lesbians in American society.” Sevcik ER 422 (Chauncey declaration).

(c) **The Stigma Created by the Marriage Bans Perpetuates Discrimination Against Gay Men and Lesbians**

By making sexual orientation a legally salient characteristic, the Marriage Bans also encourage and provide 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. For example, a woman whose partner was admitted to the emergency room with a potentially fatal cardiac arrhythmia was temporarily prevented from getting information about her partner's condition because the doctor was unfamiliar with civil unions. *See* New Jersey Commission Report at 1; *see also id.* at 14-15 (providing additional examples). Furthermore, employers may be less understanding of an employee's need to take leave to care for a domestic partner. *Id.* at 21 (testimony explaining that Massachusetts' marriage equality law has had the effect that, "without the term 'civil union' or 'domestic partner' to hide behind, if [employers] don't give equal benefits to employees in same-sex marriages, these employers would have to come forth with the real excuse for discrimination"). 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.

Such discrimination has also been experienced by plaintiffs in the current cases. After she gave birth to her daughter, plaintiff Mikyla Miller had to undertake a "great deal of legwork" before the hospital records staff (in consultation with the hospital's legal department) would designate her domestic partner as a parent on the birth certificate, something "the hospital was obliged to

do.” Sevcik ER 218 (Miller declaration). Similarly, plaintiff Tara Newberry had to consult with a hospital social worker and leave the hospital shortly after the birth of her daughter to recover additional paperwork before she could be listed as a parent. *Id.* at 229-30 (Newberry declaration). In contrast to the institution of marriage, whose very label instantly conveys the nature of the relationship, domestic partnership requires a hospital legal department or social worker to determine the nature of the relationship it codifies and the rights it affords.

Moreover, by segregating gay men and lesbians, the Marriage Bans cause 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).

## 2. Excluding Same-Sex Couples from Marriage Harms Children

It is widely recognized that “the ban on same sex marriage is likely to have an especially deleterious effect on the children of same sex couples.” *Kerrigan*, 957 A.2d at 474. “A primary reason why many same sex couples wish to marry is so that their children can feel secure in knowing that their parents’ relationships are as valid and as valued as the marital relationships of their friends’ parents.” *Id.* A two-tiered regime, as in Nevada or Hawaii, “humiliates [many] children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.” *Windsor*, 133 S. Ct. at 2694. The specter of this humiliation in turn leads same-sex parents to fear sharing the second-class nature of their relationship with their children. *See* Sevcik ER 214 (declaration of plaintiff Fletcher Whitwell) (“One of the things that I dread, however, is the day when we will have to explain to our daughter why her parents are not married. I want her to understand that her family is as valuable and worthy of dignity as any other family in the community, but it will be difficult to reconcile that with the fact [that] the State has barred our family from marriage.”).

Barring same-sex couples from marrying harms their children. “Excluding same-sex couples from civil marriage” prevents their children “from enjoying the immeasurable advantages that flow from the assurance of a stable family structure

in which the children will be reared, educated, and socialized.” *Goodridge*, 798 N.E.2d at 964 (internal quotation and citation omitted). Whereas “[c]hildren who are raised by civilly married parents benefit from the legal status granted to their parents,” children of same-sex couples whose parents are not permitted to marry may suffer psychological harm. James G. Pawelski, et al., *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-being of Children*, 118 *Pediatrics* 349, 358, 361 (2006). As the President of the New Jersey Psychological Association attested, children of same-sex relationships whose parents are not permitted to marry must cope with stigma, lack of social support and acceptance, and teasing in school or from peers. New Jersey Commission Report at 16 (testimony of Judith Glassgold, Psy.D.); *id.* at 18-19 (summarizing views of youths that “[i]f the law says that someone is equal, people are going to recognize it,” but “if the law is not 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?”).

A corollary to these negative consequences is that children of same-sex couples would benefit if their parents were able to marry. *See* Jackson CR 93:259 (declaration of psychologist Michael Lamb) (“Many lesbians and gay men already are parents, and it is in the best interests of their children for their parents to have equal access to the state and federal protections and social legitimacy benefits

afforded through marriage.”). A study of married same-sex couples in Massachusetts found that almost all of the parents who were raising children agreed that, for a variety of reasons—from having a family that looks like other families to the ease of dealing with healthcare providers and teachers—their children were better off after marriage. *See* Christopher Ramos, et al., Williams Inst., *The Effects of Marriage Equality in Massachusetts: A Survey of the Experiences and Impact of Marriage on Same-Sex Couples 1* (2009), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Ramos-Goldberg-Badgett-MA-Effects-Marriage-Equality-May-2009.pdf>. Allowing same-sex couples to marry would allow them to devote additional resources to benefit their children, resources that currently must be expended to combat the discriminatory impact of domestic partnerships. *See* Sevcik ER 247 (declaration of plaintiff Megan Lanz) (“We also are frustrated that the state’s refusal to recognize our marriage means having to divert resources to have our child legally recognized as ours—different-sex spouses can put that money toward summer camp for their children or a college fund.”).

## CONCLUSION

At odds with time-honored constitutional commands, the Marriage Bans create a separate and unequal regime for a disfavored class of individuals. By excluding same-sex couples from the hallowed institution of marriage, the

Marriage Bans inflict profound injury upon gay and lesbian individuals and their children. Because of the Marriage Bans, 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. There is no doubt that the Marriage Bans impose “immediate, continuing, and real injur[y]” on gay and lesbian individuals. *Romer*, 517 U.S. at 635. The patently separate-but-unequal regime effected by the Marriage Bans fails any level of judicial scrutiny.

Marital regulations have long been a way of “draw[ing] lines among the citizenry” and “defin[ing] what kinds of sexual relations and which families will be legitimate.” Nancy Cott, *Public Vows: A History of Marriage and the Nation* 4 (2000). Numerous racial and religious minorities have, at various times in history, faced restrictions on their privilege to marry. *See id.* 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. Continuing to exclude, demean, and stigmatize gay and lesbian individuals is inconsistent with that constitutional tradition. *Amici* urge this court to find that the Marriage Bans are unconstitutional.









## **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.

### **The Asian Pacific American Bar Association of Los Angeles County (“APABA-LA”)**

The Asian Pacific American Bar Association of Los Angeles County (“APABA-LA”) is a membership organization comprised of over 700 attorneys, judges and law students. Since its formation in 1998, APABA-LA has advocated on issues that impact the APA community and has demonstrated a commitment to civil rights, racial justice, and equal opportunity. APABA-LA has, and continues to, oppose initiatives designed to deprive immigrants, people of color, and other

minorities of their civil rights, including initiatives that discriminate based upon sexual orientation. APABA-LA strives to address all issues relevant to the equal treatment of those in the APA community.

**Asian Pacific Islander Equality – Los Angeles (“API Equality-LA”)**

API Equality-LA is a coalition of organizations and individuals who are committed to working in the Asian/Pacific Islander (“API”) community in the greater Los Angeles area for equal marriage rights and the recognition and fair treatment of LGBT families through community education and advocacy. API Equality-LA recognizes that the long history of discrimination against the API community, especially 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 California.

**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 of 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 initiated its hosting of a fellowship focusing on domestic violence in the API LGBTQ community.

**California Women Lawyers (“CWL”)**

California Women Lawyers (“CWL”) has represented the interests of more than 30,000 women in all facets of the legal profession since 1974. CWL’s mission includes advancing women’s interests, extending universal equal rights and eliminating bias. In pursuing its values of social justice and gender equality, CWL often joins amici briefs challenging discrimination by private and governmental entities, weighs in on proposed California and federal legislation, and implements programs fostering the appointment of women and other qualified candidates to the bench.

### **The Center (Nevada)**

The Gay and Lesbian Community Center of Southern Nevada, a community-based organization, supports and promotes activities directed at furthering the well-being, positive image, and human rights of the lesbian, gay, bisexual, transgender, and queer community, its allies, and low to moderate income residents in Southern Nevada.

### **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. Freedom to Marry works with partner organizations and individuals to win marriage in more states, solidify and diversify the majority for marriage, and challenge and end federal marriage discrimination. Freedom to Marry is based in New York, and has participated as amicus curiae in several marriage cases in the United States and abroad.

### **Gay and Lesbian Lawyers of Philadelphia (“GALLOP”)**

Gay and Lesbian Lawyers of Philadelphia (“GALLOP”) is a non-profit organization of more than 300 lesbian, gay, bisexual, and transgender (“LGBT”) member lawyers of the Philadelphia Area legal community. As the Philadelphia oldest organization of gay lawyers, GALLOP promotes the professional interests of its members and the legal interests of the LGBT community at large. To accomplish this mission, GALLOP actively participates in public policy debates concerning the rights of LGBT individuals and families. GALLOP has appeared as amicus curiae in cases previously, where it believes it can provide valuable perspective and argument that will inform court decisions on matters of broad public importance.

### **Georgia Benefits Counsel, Inc.**

Georgia Benefits Counsel, Inc. protects the sanctity of lesbian, gay, bisexual, and transgender relationships by educating the community about simple estate planning documents and connecting LGBT couples with lawyers who provide wills, financial powers of attorney, and advance directives for health care, all for the cost of a marriage license in the couple’s county of residence.

### **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.

**Lambda Business & Professional Association, Inc. (“LBPA”)**

The Lambda Business & Professional Association, Inc. (LBPA), established in 1991, is a two hundred thirty member non-profit business organization for Lesbian, Gay, Bisexual, Transgender and gay-friendly business owners and



professionals and others in the Las Vegas, Nevada community. LBPA's goal is to provide an environment of success for the LGBT and gayfriendly business community through the exchange of ideas, information and resources, creating a sense of unity, pride and visibility for the LGBT business community and for LGBT people generally. In pursuit of LGBT equality and justice, including marriage equality, LBPA and its members work with and contribute volunteer time and financial support to a number of LGBT organizations in the Las Vegas area.

### **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.

**OGALLA: The LGBT Bar Association of Oregon**

OGALLA: The LGBT Bar Association of Oregon is a voluntary organization of legal practitioners – including attorneys, judges, paraprofessionals,

and educators – dedicated to the promotion of the fair and just treatment of all people under the law regardless of sexual orientation, gender identity or gender expression, to providing visibility for LGBT persons in the law, to educating the public, the legal profession and the courts about legal issues of particular concern to the LGBT community, to identifying and eliminating the causes and conditions of prejudice in society, and to promoting a spirit of unity, while valuing the diversity of our community.

**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.

**Pride Law Fund**

Pride Law Fund promotes the legal rights of the lesbian, gay, bisexual, and transgendered community, and people living with HIV and AIDS, by funding legal services and projects and by sponsoring education and outreach on topics of interest to the community. Pride Law Fund has assisted innovative academic

programs, supported the development and distribution of legal and educational materials, and financed independent and documentary film projects to educate the public. Pride Law Fund and the communities we support have a strong interest in securing the right of same-sex couples in California to marry.

**Progressive Leadership Alliance of Nevada (“PLAN”)**

PLAN is a statewide coalition of 30 organizational member groups including the largest labor unions in the state, LGBT, conservation and women’s groups, civil rights and Latino organizations, Native American Tribes, and anti-poverty advocacy groups. Founded in 1994, PLAN employs eight full-time staff in Reno and Las Vegas. Current programs include marriage equality, immigration reform, civic engagement, health care, mining tax reform, racial equity, tax fairness and youth organizing.

**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. In 2011, Public Counsel provided over \$88 million in free legal services. 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.

### **Queen's Bench Bar Association**

Queen's Bench Bar Association is a non-profit voluntary membership organization made up of judges, lawyers, and law students in the San Francisco Bay Area. Established in 1921, Queen's Bench is one of the oldest women's bar associations in the country. Queen's Bench seeks to advance the interests of women in law and society, and to serve the professional needs of women lawyers, judges, and law students. Queen's Bench has a strong and demonstrated interest in the preservation of the Constitutional right to equal protection of the laws.

### **Sacramento Lawyers for the Equality of Gays and Lesbians**

Sacramento Lawyers for the Equality of Gays and Lesbians 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.

**Santa Clara County Black Lawyers Association (“SCCBLA”)**

Santa Clara County Black Lawyers Association is an advocate for equal opportunity and justice for all citizens of the United States of America. The right to marry and choose one's spouse is a fundamental right that all citizens must be guaranteed without regard to race, gender, or sexual orientation.

**Stonewall Bar Association of Georgia, Inc.**

Stonewall Bar Association of Georgia, Inc. was established in 1995 as a coalition of attorneys, judges, law students, paralegals, and other legal professionals to utilize their expertise to support the rights of lesbian, gay, bisexual, and transgender people and oppose discrimination based on sexual orientation and gender identity. A voluntary bar association, consisting of almost 300 dues-paying members, SBA publishes an on-line directory of attorneys who are eager to serve gay, lesbian, bisexual and transgender clients. The organization also publishes a monthly newsletter that is emailed to approximately 800 legal

professionals, provides scholarships to law students, conducts continuing education for attorneys, and provides opportunities for networking with judges and other legal professionals. SBA has worked with other organizations to file amicus briefs in cases that impact our community in Georgia. Such briefs have been submitted in cases that overturned Georgia's sodomy law and secured the rights of local governments and private corporations to offer domestic partnership benefits to company employees and their life partners.

### **Stonewall Bar Association of Michigan**

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

### **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 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 (“TLC”)**

Transgender Law Center is the leading national legal organization dedicated to advancing the rights of transgender and gender nonconforming people. Since its founding in 2002, TLC has worked 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.

**Women Lawyers Association of Los Angeles (“WLALA”)**

Women Lawyers Association of Los Angeles (“WLALA”) is a nonprofit organization comprised primarily of attorneys and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA believes that lawyer groups have a special obligation to protect the core guarantees of our Constitution from unlawful abrogation when a majority of voters has attempted to deprive a minority of its constitutionally protected rights.