

Appeal Number: 14-14061-AA ; 14-14066-AA

IN THE

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

In the Case of,

John Armstrong, et al. V. James Domer Brenner, et al.

Case 4:14-cv-00197-RH-CAS

AND

In the Case of,

John Armstrong et al. V. Sloan Grimsley et al.

Case 4:14-cv-00138-RH-CAS

**MOTION OF CLARE ANTHONY CITRO PRIVITE CITIZEN  
FOR LEAVE TO FILE AMICUS CURIE BRIEF**

Comes now Mr. C. Anthony Citro to file this motion  
pursuant to FRAP 29 for leave to file an amicus curie brief  
in support of the Petitioners in the above-styled case  
presently before this Honorable Court for oral argument.

For the record Mr. C. Anthony Citro has never requested consent  
to the filing of an amicus curie brief from any of the parties to this case

1 Mr. C. Anthony Citro requests to present an amicus curiae brief to this Honorable  
2 Court in this case because he believes that the Courts Order from the court below is a writ  
3 in error, for the most valuable reason being a misapplication and misappropriation of the  
4 14<sup>th</sup> Amendment in its findings and its rulings for the Plaintiffs/Respondents in this case.  
5 And that the 10<sup>th</sup> Amendment seems to be ignored along with other grounds as stated in the  
6 brief.

7 As a private citizen I believe it is my duty to my community and my State to address  
8 this important issue whose outcome will affect all of us in Florida, on the grounds of our 1<sup>st</sup>  
9 Amendment constitutional rights to Redress of Grievances.

10 It is the intention of this brief to allow this Honorable Court to better understand the  
11 interests of the government and the citizens of this state by illuminating case law and  
12 historical facts surrounding the issues in this case whereas this Honorable Court can arrive  
13 at a more balanced analysis of the issues in this case.

14 Wherefore, Mr. C. Anthony Citro respectfully requests that his motion for leave to  
15 file an amicus curiae brief be granted.

16 Respectfully Submitted,

17 *Mr. C. Anthony Citro*

Mr. C. Anthony Citro

10-25-2014

254 SW 7<sup>th</sup> St

19 Dania, Florida 33004

20 (954) 918-7582



**From: Mr. C. Anthony Citro**

**254 S.W. 7<sup>th</sup> St. Dania, Florida 33004**

**10-24-2014**

**To: United States Court of Appeals**

**Eleventh Circuit**

**Office of the Clerk**

**56 Forsyth Street, N.W.**

**Atlanta, Georgia 30303**

**Dear Your Honors,**

I am a concerned citizen and I have been following the cases of John H. Armstrong et. el. v. James Domer Brenner et. al. and John H. Armstrong et. al. v. Sloan Grimsley et. al. Appeal Numbers 14-14061-AA ; 14-14066-AA. I understand that your Honorable Court has consolidated these two cases for your review. I believe that these rulings are a Writ in Error and a misinterpretation and a misapplication of the 14<sup>th</sup> Amendment. I believe that Florida's Constitution and Florida's Statutes are Constitutional and lawful under the United States Constitution and that it would be in the best service to our state if this Honorable Court upholds our laws. I am from this state I went to school here and I have worked as an electrician since I was 22 years old. My standing in the outcome is very real. I have been befriended by members of the class that the Plaintiffs/Respondents in the instant cases claim to represent. In the name of dignity I choose not to burden this Honorable Court with the details of what happened except for this one fact. When I was assaulted one of them asked me how I had a right to know any of them as a "friend" and not be a "member of their class" at the same time. When I tried to explain to them what I thought was wrong, I was told that they couldn't care less about my 4<sup>th</sup>, 5<sup>th</sup>, or 14<sup>th</sup> Amendment Rights or any other Rights I thought I may have They Just wanted to "get me" and that's all that mattered to them. They later called what they did "Right of Passage" as if it were written in the Constitution. After that experience I will never believe that class of people ever again. In the instant case the way I see it is this; even it these Plaintiffs/Respondents were the most honest impeccable respectable citizens whose only vice is sodomy, if the Courts let them get married they'll be holding the courthouse doors open for the very people that attacked me and everyone just like them to get a marriage license and get married like they're respectable people. I don't know any of the names of any of the Plaintiffs/Respondents in these two cases, but as for those people that attacked me they placed such an evil burden and hardship on my life, that I just cannot hold back and remain silent on this issue. I have every reason to believe that if this class of people were allowed to get married that the ones that attacked me would certainly come back and make more like trouble for me again. Who would be able to stop them? And that's my standing in the outcome of this case.

Mr. C. Anthony Citro

*Mr. C. Anthony Citro*  
10-25-2014

Letter to the Court

**U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Armstrong vs. Domer Appeal No. 14-14061-AA

Armstrong vs. Grimsley Appeal No. 14-14066-AA

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ACLU Foundation

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Collier, Bob

Albu, Joyce

Cooper, Leslie

Andrade, Carlos

Del Hierro, Juan

Armstrong, Dr. John H.

Domer Brenner, James

Bazzel, Harold

Fitzgerald, John

Bondi, Pamela Jo

Florida, General Public

Citro, C. Anthony

Gantt, Thomas Jr.

Goodman, James J. Jr.

Russ, Ozzie

Goodman, Jeff P.A.

Save Foundation, Inc.

Grimsley, Sloan

Schlairet, Stephen

Hankin, Eric

Stevenson, Benjamin James

Hinkle, Robert L.

Tanenbaum, Adam S.

Hueso, Denise

Tilley, Daniel B.

Humlie, Sarah

Ulvert, Christian

Hunziker, Chuck

Winsor, Allen

Jacobson, Samuel Esq.

Jones, Charles D.

Kayanan, Maria

Loupo, Robert

Milstein, Richard

Myers, Lindsay

Newson, Sandra

Nichols, Craig J.

Rosenthal, Stephen F.

Appeal Number: 14-14061-AA ; 14-14066-AA

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

In the Case of,

**John Armstrong, et al. V. James Domer Brenner, et al.**

Case 4:14-cv-00197-RH-CAS

\_\_\_\_\_  
AND  
\_\_\_\_\_

In the Case of,

**John Armstrong et al. V. Sloan Grimsley et al.**

Case 4:14-cv-00138-RH-CAS

**Amicus Curiae on the side of the Petitioners in support of REVERSAL of the ORDER of  
the COURT BELOW**

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

Mr. C. Anthony Citro  
254 S.W. 7<sup>th</sup> St.  
Dania, Florida 33004  
(954) 918-7582

**Table of Contents for Citro Amicus curiae; Armstrong et. al. v. Domer et. al.**

**Title Page ..... 1**

**List of Case Citations.**

Dred Scott v. Sanford 60 U.S. 393 (1856) ..... 5  
Loving v. Virginia 388 U.S 1 ..... 4  
Maynard v. Hill - [125 U.S. 190, 205](1888). ..... 3  
Minor v. Happersett 88 U.S. 162 (1874) ..... 9  
Reynolds v. U. S. 98 US 145..... 3  
Slaughter-house cases 83 U.S. 36 (1872)..... 6

**Articles Cited**

A Brief History of the ERA from 1923 to Present. by Nichola Weiss, Jazmin Martinez,  
Heidi Jones & Mary Grace Baldo. .... 12  
Florida4Marriage.org., Tampa Bay Times article written by Joni James published 2-12-  
2005 ..... 2  
Historical Analysis of the Meaning of the 14th Amendment's First Section. By P.A.  
Madison ..... 5  
James Madison [speaks about the] 10th-amendment ..... 2  
SPARTA: AN EXPERIMENT IN STATE-FOSTERED HOMOSEXUALITY. By Stanley  
J Pacion ..... 13  
The Father of the 14th Amendment. By GERARD N. MAGLIOCCA ..... 4  
The History Behind the Equal Rights Amendment. by Roberta W. Francis ..... 12  
The Papers of Thomas Jefferson. Edited by Julian P. Boyd et al. Princeton: Princeton  
University Press, 1950--. (1778 Papers 2:492—504) ..... 9  
What The Founding Fathers Believed About Homosexuality. By Tim Brown ..... 7

1 Appeal Number: 14-14061-AA ; 14-14066-AA

2 **UNITED STATES COURT OF APPEALS for the ELEVENTH CIRCUIT**

3 In the Case of,

4 The State of Florida; Dr. John H. Armstrong, Secretary of the Florida Department of Health and  
5 Florida Surgeon General; and Craig J. Nichols, Secretary of the Florida Department of  
6 Management Services; and Harold Bazzel, Clerk of Court and Comptroller for Washington  
7 County, Florida et al.

8 PETITIONERS,

9 V.

10 James Domer Brenner and Charles D. Jones; Stephen Schlairet and Ozzie Russ et al.

11 RESPONDENTS

12 Case 4:14-cv-00197-RH-CAS

13 AND

14 In the Case of,

15 The State of Florida; Dr. John H. Armstrong, Secretary of the Florida Department of Health and  
16 Florida Surgeon General; and Craig J. Nichols, Secretary of the Florida Department of  
17 Management Services; et al.

18 PETITIONERS,

19 V.

20 Sloan Grimsley and Joyce Albu; Bob Collier and Chuck Hunziker; Lindsay Myers and Sarah  
21 Humlie; Robert Loupo and John Fitzgerald; Denise Hueso and Sandra Newson; Juan Del Hierro  
22 and Thomas Gantt, Jr.; Christian Ulvert and Carlos Andrade; Richard Milstein and Eric Hankin;  
23 and Save Foundation, Inc.,

24 RESPONDENTS

25 Case 4:14-cv-00138-RH-CAS

26 **Amicus Curiae on the side of the Petitioners**



1 Comes now Mr. C. Anthony Citro whom respectfully submits to this honorable court,  
2 *amicus curiae on the side of the petitioner* for the reasons stated as follows;

3 1. The respondents stated in their amended complaint the 14<sup>th</sup> Amendment due process  
4 clause and equal protection clause and the 4<sup>th</sup> and 5<sup>th</sup> Amendment, and the Preamble of the  
5 Constitution of the United States of America, was violated when they were denied marriage  
6 licenses, medical benefits, retirement benefits, property benefits, and related legal issues,  
7 based on the State of Florida's, State Constitutional and Statutory ban on Same Sex  
8 Marriage. Article I, § 27 of the Florida Constitution, § 741.212 and § 741.04(1) Fla. Statutes.

9 2. In response; the Courts Order is a Writ in Error. Nowhere in the United States Constitution  
10 is there any guarantee that same sex couples can get married. The fact is getting married is  
11 not a god given right, or a constitutional right, or constitutional guarantee. The truth is getting  
12 married is no more your right than getting a drivers license.

13 3. I submit to this honorable court that the closest thing here to constitutional is the States  
14 Rights Amendment. Amendment 10 states; The powers not delegated to the United States by  
15 the Constitution, not prohibited by it to the States, are reserved to the States respectively, or  
16 to the people. I submit to this Honorable Court, Florida has complied with this Amendment.

17 4. According to the Tampa Bay Times in an article written by Joni James published  
18 2-12-2005 a group named Florida4Marriage.org. (John Stemberger chairman), filed a petition  
19 with the State Elections Division (Secretary of State 2-9-2005) "seek[ing] to amend the state  
20 Constitution (in 2006) to define marriage as a union between "only one man and one woman"  
21 and provides that no other kind of marriage or legal union is equivalent to marriage."

22 And in compliance with Florida law on November 4<sup>th</sup> 2008 this Amendment appeared on  
23 the ballot and the People voted 61.9% in favor of this Amendment.

24 This is a qualified case of a right reserved to the states or to the people, being picked up by  
25 the people and lawfully channeled through the state and enacted into Florida law.

26 5. Our Fourth President James Madison, credited for writing the Tenth Amendment said;  
27 "The powers delegated by the proposed Constitution to the federal government are few  
28 and defined. Those which are to remain in the State governments are numerous and  
29 indefinite. The former will be exercised principally on external objects, as war, peace,  
30 negotiation and foreign commerce. ... The powers reserved to the several States will  
31 extend to all the objects which in the ordinary course of affairs, concern the lives and  
32 liberties, and properties of the people, and the internal order, improvement and prosperity  
33 of the State."

— James Madison 10th-amendment, government  
[https://www.goodreads.com/author/quotes/63859.James\\_Madison](https://www.goodreads.com/author/quotes/63859.James_Madison)

6. The State of Florida is a Sovereign State whose government has a right to exist, and whose Legislature enacts our laws governing Public Policy

7. The government has the right to enforce its own laws and its Officials and Officers have a Sworn and Fiduciary Duty to uphold the law and carry out the Public Policies of this State

8. In *Maynard v. Hill* [125 U.S. 190, 205](1888) The High Court has held:

“Marriage, as *creating the most important relation in life*, as having more to do with the *morals and civilization of a people than any other institution*, has always been subject to the control of the legislature. That body prescribes the age at which parties may contract to marry, the procedure or form essential to constitute marriage, the duties and obligations it creates, its effects upon the property rights of both, present and prospective, and the acts which may constitute grounds for its dissolution.” emphasis added.

“As such, it is not so much the result of private agreement as of public ordination. In every enlightened government it is pre-eminently the basis of civil institutions, and *thus an object of the deepest public concern*. In this light, marriage is more than a contract. It is not a mere matter of pecuniary consideration. It is a great public institution, giving character to our whole civil polity.” emphases added.

9. In another case concerning the legislative rights of Congress and the Legislator of the Territory of Utah to pass marriage laws against the practice of polygamy in Reynolds v. U. S. [98 U.S. 145, 153] (1878)

MR.CHIEF JUSTICE WAITE delivered the opinion of the court;

[98 U.S. 145, 164] “Polygamy has always been odious among the northern and western nations of Europe,[ ]. At common law, the second marriage was always void (2 Kent, Com. 79), and from the earliest history of England polygamy has been treated as an offence against society... By the statute of James I. (c. 11), [ ] the penalty was death. [ ], it was [ ] re-enacted, [ ], in all the colonies...[ ]. In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. emphasis added.

1 [98 U.S. 145, 167] The passage complained of (in the Trial Court) is as follows:

2 I think it not improper, in the discharge of your duties in this case, that you should  
3 consider what are to be the consequences to the innocent victims of this delusion. As this  
4 contest goes on, they multiply, and there are pure-minded women and there are innocent  
5 children,-innocent in a sense even beyond the degree of the innocence of childhood itself.  
6 These are to be the sufferers; and [ ], *just so do these victims multiply and spread*  
7 *themselves over the land.*' emphasis added.

8 [98 U.S. 145, 168] Upon a careful consideration of the whole case, we are satisfied  
9 that no error was committed by the court below. Judgment affirmed.

10 10. Clearly the High Court has opened the door for the Congress and the States to pass laws  
11 concerning, marriage.

12 11. In their amended complaint the respondents cited *Loving v. Virginia* 388 U.S. 1(No.395)  
13 MR. CHIEF JUSTICE WARREN delivered the opinion of the Court,

14 [ ], "Penalties for miscegenation *arose as an incident to slavery*, [ ]." emphasis added.

15 "[T]he clear and central purpose of the Fourteenth Amendment was to eliminate all  
16 official state sources of *invidious racial discrimination* in the States. *Slaughter-House*  
17 *Cases*, 16 Wall. 36, 71 (1873);" emphasis added.

18 "The court also reasoned that marriage has traditionally been subject to state regulation  
19 without federal intervention, and, consequently, *the regulation of marriage* should be left  
20 to *exclusive state control by the Tenth Amendment*." emphasis added.

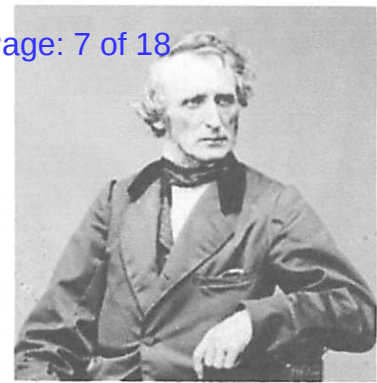
21 "[T]he state court is no doubt correct in asserting that marriage is a social relation subject  
22 to the State's police power, *Maynard v. Hill*, 125 U.S. 190 (1888),"

23 But there's nothing here that describes the Respondents in this case. . They clearly choose  
24 their sexual orientation. They did not inherit it.

25 12. In their amended complaint to the lower court the respondents made many references to  
26 the 14<sup>th</sup> Amendment and how it applies to them. To shed more light on the issue I have  
27 included some excerpts from an article By GERARD N. MAGLIOCCA Dated September 17,  
28 2013 called

### 29 **The Father of the 14th Amendment**

30 John Bingham was among the first group of Republicans elected to the House of  
31 Representatives. [H]e established himself as one of the leading congressional voices  
32 against slavery. [He served his first term in Congress] from 1861 to 1863. [ ]. [About that  
33 time] He told Treasury Secretary Salmon P. Chase that the "limitations of the  
34 Constitution upon the States in favor of the personal liberty of all of the citizens of [the]  
35 Republic black & white [are] soon to become a great question before the people." Three



John Bingham

1 years later, he was back in the House. . . Once there,  
 2 [h]e took the lead in framing the 14th Amendment of  
 3 the Constitution, and he authored its guarantee that no  
 4 state shall “deny to any person within its jurisdiction  
 5 the equal protection of the laws.” . . . In a series of  
 6 speeches [ ], Bingham laid out his view that the  
 7 Constitution was “based upon the equality of the  
 8 human race. Its primal object must be to protect each  
 9 human being within its jurisdiction in the free and full enjoyment of his natural rights.  
 10 [ ]” [ ].

11 [http://opinionator.blogs.nytimes.com/2013/09/17/the-father-of-the-14th-amendment/?\\_php=true&\\_type=blogs&\\_r=0](http://opinionator.blogs.nytimes.com/2013/09/17/the-father-of-the-14th-amendment/?_php=true&_type=blogs&_r=0)

12 13. Here is another article about John Bingham,  
 13 **Historical Analysis of the Meaning of the 14th Amendment's First Section**

14 By P.A. Madison Last updated on August 2, 2010

15 [ ] Bingham again appears to have removed all doubt to exactly what the  
 16 privileges and immunities would encompass during the debates for the adoption  
 17 of the Fourteenth Amendment when he said on February 28, 1866:

18 *“[ ]. The amendment is exactly in the language of the Constitution; that is to say,*  
 19 *it secures to the citizens of each of the States all the privileges and immunities of*  
 20 *citizens of the several States. It is not to transfer the laws of one State to another*  
 21 *State at all. It is to secure to the citizens of each State all the privileges and*  
 22 *immunities of citizens of the United States in the several States. If the State*  
 23 *laws do not interfere, those immunities follow under the Constitution.”<sup>19</sup>*

24 Notice Bingham makes clear immunities of citizens of the United States do not  
 25 shield them against the laws of a State. Following the same construction along  
 26 the lines of Joseph Story in his Commentaries in that *the phrase only applied to*  
 27 *personal rights in which an out-of-state citizen would be entitled under like*  
 28 *circumstances under State law for its own resident citizens.*

29 [http://www.federalistblog.us/mt/articles/14th\\_dummy\\_guide.htm](http://www.federalistblog.us/mt/articles/14th_dummy_guide.htm)

30 14. Dred Scott v. Sandford 60 U.S. 393 (1856)

31 566\*566 . Whether the decision of the Circuit Court on a plea to the jurisdiction be against the plaintiff, or  
 32 against the defendant, the losing party may have any alleged error in law, in ruling such a plea, examined in  
 33 this court on a writ of error

34 428\*428 The correction of one error in the court below does not deprive the appellate court of the power of  
 35 examining further into the record, and correcting any other material errors which may have been committed  
 36 by the inferior court [ ].

37 583\*583 To what citizens the elective franchise shall be confided, is a question to be determined by each  
 38 State, in accordance with its own views of the necessities or expedencies of its condition. What civil rights  
 39 shall be enjoyed by its citizens, and whether all shall enjoy the same, or how they may be gained or lost, are  
 40 to be determined in the same way.

41 410\*410 [ ] Yet the men who framed this declaration were great men. [ ]. They perfectly understood the  
 42 meaning of the language they used, and how it would be understood by others emphasis added.

43 410\*410 The brief preamble sets forth by whom it was formed, for what purposes, and for whose benefit and  
 44 protection. It declares [ ] its great object is [ ] to secure the blessings of liberty to themselves and their  
 45 posterity

1 426\*426 If any of its provisions are deemed unjust, [ ] it may be amended; but while it remains unaltered, it  
2 must be construed now as it was understood at the time of its adoption. It [ ] speaks not only in the same  
3 words, but with the same meaning and intent with which it spoke when it came from the hands of its framers,  
4 [ ]. Any other rule of construction would abrogate the judicial character of this court, and make it the mere  
5 reflex of the popular opinion or passion of the day. This court was not created by the Constitution for such  
6 purposes. Higher and graver trusts have been confided to it, and it must not falter in the path of duty.  
7 emphasis added.

8 15. Here is the first major case decided by the high court addressing the 14<sup>th</sup>  
9 Amendment after it was ratified. The Slaughter-house cases 83 U.S. 36 (1872)

10 On , April 14th, 1873, Mr. Justice MILLER, now delivered the opinion of the court.

11 [83 U.S. 36, 72] [...]. But what we do say, and what we wish to be understood is, that in  
12 any fair and just construction of any section or phrase of these amendments [13<sup>th</sup>, 14<sup>th</sup>,  
13 15<sup>th</sup>.], it is necessary to look to the purpose which we have said was the pervading spirit  
14 of them all, the evil which they were designed to remedy, and the process of continued  
15 addition to the Constitution, until that purpose was supposed to be accomplished, as far as  
16 constitutional law can accomplish it.

17  
18 [83 U.S. 36, 74] The language is, 'No State shall make or enforce any law which shall  
19 abridge the privileges or immunities of citizens of the United States.' *It is a little*  
20 *remarkable, if this clause was intended as a protection to the citizen of a State against the*  
21 *legislative power of his own State,* [ ]. emphasis added.

22  
23 [83 U.S. 36, 75] [ ]. The first and the leading case on the subject is that of Corfield v.  
24 Coryell, decided by Mr. Justice Washington in the Circuit Court for the District of  
25 Pennsylvania in 1823.<sup>22</sup> 'The inquiry,' he says, 'is, what are the privileges and immunities  
26 of citizens of the several States? [ ] They may all, [ ], be comprehended under the  
27 following general heads: protection by the government, with the right to acquire and  
28 possess property of every kind, and to pursue and obtain happiness and safety, *subject,*  
29 *nevertheless, to such restraints as the government may prescribe for the general good of*  
30 *the whole.'* emphasis added.

31  
32 [83 U.S. 36, 77] The constitutional provision there alluded to did not create those  
33 rights, which it called privileges and immunities of citizens of the States. It threw  
34 around them in that clause no security for the citizen of the State in which they  
35 were claimed or exercised. *Nor did it profess to control the power of the State*  
36 *governments over the rights of its own citizens.* emphasis added.

37  
38 [ ] Its sole purpose was to declare to the several States, that whatever those rights, as you  
39 grant or establish them to your own citizens, *or as you limit or qualify, or impose*  
40 *restrictions on their exercise,* the same, neither more nor less, shall be the measure of the  
41 rights of citizens of other States within your jurisdiction. emphasis added.

42  
43 [83 U.S. 36, 81] We doubt very much whether any action of a State not directed by way  
44 of discrimination against the negroes as a class, or on account of their race, will ever be  
45 held to come within the purview of this provision. *It is so clearly a provision for that race*  
46 *and that emergency, that a strong case would be necessary for its application to any*  
47 *other.* [ ]. emphasis added

1 [ ] [83 U.S. 36, 83] The judgments of the Supreme Court of Louisiana in these cases are  
2 **AFFIRMED.** .

3 16. The respondents said in their amended complaint that Florida's laws are unfairly directed  
4 at them and that they are not constitutionally sound law. For some historical background, I  
5 submit the following;

6 In an article called **What The Founding Fathers Believed About Homosexuality** [Tim Brown](#)  
7 [March 28, 2013](#)

8 Under the British common law, the term sodomy was used to identify same-sex  
9 relations and was a capital crime. Understand that the founders referenced Sir William  
10 Blackstone's Commentaries on the Laws of England extensively [ ].

11 Blackstone's commentaries were the premiere legal source used by the Founding Fathers  
12 in America [...]. In Blackstone's Book the Fourth.: of Public Wrongs in his book titled *Of*  
13 *Offences against the Persons of Individuals*, Chapter Fifteen, he writes the following on  
14 pages 215-216 (emphasis added):

15 *IV. WHAT has been here observed..., which ought to be the more clear in proportion as*  
16 *the crime is the more detestable, may be applied to another offence, of a still deeper*  
17 *malignity; the infamous crime against nature, committed either with man or beast....*  
18 *But it is an offence of so dark a nature...that the accusation should be clearly made*  
19 *out....*

20 *I WILL not act so disagreeable part, to my readers as well as myself, as to dwell any*  
21 *longer upon a subject, the very mention of which is a disgrace to human nature. It will*  
22 *be more eligible to imitate in this respect the delicacy of our English law, which treats it,*  
23 *in it's very indictments, as a crime not fit to be named; peccatum illud horribile, inter*  
24 *christianos non nominandum ["that horrible sin not to be named among Christians"—*  
25 *DM]. A taciturnity observed likewise by the edict of Constantius and Constans: ubi scelus*  
26 *est id, quod non proficit fcire, jubemus infurgere leges, armari jura gladio ultore, ut*  
27 *exquifitis poenis fubdantur infames, qui funt, vel qui futuri funt, rei ["When that crime is*  
28 *found, which is not profitable to know, we order the law to bring forth, to provide justice*  
29 *by force of arms with an avenging sword, that the infamous men be subjected to the due*  
30 *punishment, those who are found, or those who future will be found, in the deed"—DM].*  
31 *Which leads me to add a word concerning its punishment.*

32 *THIS the voice of nature and of reason, and the express law of God, determine to be*  
33 *capital. Of which we have a signal instance, long before the Jewish dispensation, by the*  
34 *destruction of two cities by fire from heaven: so that this is an universal, not merely a*  
35 *provincial, precept. And our ancient law in some degree imitated this punishment, by*  
36 *commanding such miscreants to be burnt to death; though Fleta*  
37 *says they should be buried alive: either of which punishments was indifferently used for*

1 *this crime among the ancient Goths. But now the general punishment of all felonies is the*  
2 *fame, namely, by hanging: and this offence (being in the times of popery only subject to*  
3 *ecclesiastical censures) was made single felony by the statute 25 Hen. VIII. c. 6. and*  
4 *felony without benefit of clergy by statute 5 Eliz. c. 17. And the rule of law herein is, that,*  
5 *if both are arrived at years of discretion, agentes et confentientes pari poena plectantur*

6 Most Americans are [ ] unaware that [ ] George Washington, who [was] this country's  
7 first "Commander-in-Chief" approved the dismissal from the service at Valley Forge in  
8 1778 of Lt. Frederick Gotthold Enslin. [ ] According to the orders, which are held at the  
9 Library of Congress, Enslin was "attempting to commit sodomy" with another soldier.  
10 Under the title of "[Head Quarters, V. Forge, Saturday, March 14, 1778](#)" there is the  
11 following entry:

12 *At a General Court Martial whereof Colo. Tupper was President (10th March 1778)*  
13 *Lieutt. Enslin of Colo. Malcom's Regiment tried for attempting to commit sodomy, with*  
14 *John Monhort a soldier; Secondly, For Perjury in swearing to false Accounts, found*  
15 *guilty of the charges exhibited against him, being breaches of 5th. Article 18th. Section of*  
16 *the Articles of War and do sentence him to be dismiss'd the service with Infamy. His*  
17 *Excellency the Commander in Chief approves the sentence and with Abhorrence and*  
18 *Detestation of such Infamous Crimes orders Lieutt. Enslin to be drummed out of Camp*  
19 *tomorrow morning by all the Drummers and Fifers in the Army never to return; The*  
20 *Drummers and Fifers to attend on the Grand Parade at Guard mounting for that*  
21 *Purpose.*

22 Note that our first President viewed "sodomy" or homosexual relations with  
23 "Abhorrence and Detestation

24 . In all thirteen colonies homosexuality was treated as a criminal offense and eventually  
25 that [grew to encompass \[all\] of the fifty states](#). By the way, that fell under "equal  
26 treatment under the law."

27 The law was based upon Leviticus 20:13:

28 *"If a man also lie with mankind, as he lieth with a woman, both of them have committed*  
29 *an abomination: they shall surely be put to death."*

30 This verse was "adopted into legislation and enforced by the colonies of Massachusetts,  
31 New Hampshire, New York, New Jersey, Pennsylvania and Connecticut.

32 Here are just [ ] [3] [of the states](#) and the punishments they executed for sodomy.

33 *That the detestable and abominable vice of buggery [sodomy] . . . shall be from*  
34 *henceforth adjudged felony . . . and that every person being thereof convicted by verdict,*  
35 *confession, or outlawry [unlawful flight to avoid prosecution], shall be hanged by the*  
36 *neck until he or she shall be dead. NEW YORK*

1 *[T]he detestable and abominable vice of buggery [sodomy] . . . be from henceforth*  
2 *adjudged felony . . . and that the offenders being hereof convicted by verdict, confession,*  
3 *or outlawry [ ], shall suffer such pains of death and losses and penalties of their goods.*  
4 **SOUTH CAROLINA**

5 *That if any man lieth with mankind as he lieth with a woman, they both shall suffer death.*  
6 **VERMONT**

7 <http://freedomoutpost.com> 3-7-2014

8  
9 In another article is an excerpt from a bill that Thomas Jefferson submitted to the Virginia  
10 Legislature about 1794;

11 "Whosoever shall be guilty of Rape, Polygamy, or Sodomy with man or woman shall  
12 be punished, if a man, by castration, if a woman, by cutting thro' the cartilage of her  
13 nose a hole of one half inch diameter at the least. [ ]."

14 *The Papers of Thomas Jefferson.* Edited by Julian P. Boyd et al. Princeton: Princeton University Press, 1950-- (1778  
15 *Papers 2:492–504)*

16 <http://press-pubs.uchicago.edu/founders/documents/amendVills10.html>

17 This bill was passed over for another bill calling for the death penalty

18 17. In another case that I think is on point with the instant case addresses women's suffrage. In  
19 this case Mrs. Minor sued a public official, Happersett under the color of the 14<sup>th</sup> Amendment  
20 to allow women to vote.

21  
22 **MINOR v. HAPPERSETT**  
23 **SUPREME COURT OF THE UNITED STATES**  
24 **88 U.S. 162; 21 Wall. 162**  
25 **OCTOBER, 1874, Term**

26 [ ] ERROR to the Supreme Court of Missouri; the case being thus:

27 The fourteenth amendment to the Constitution of the United States, in its first section,  
28 thus ordains;

29 "All persons born or naturalized in the United States, and subject to the jurisdiction  
30 thereof, are citizens of the United States, and of the State wherein they reside. No State  
31 shall make or enforce any law, which shall abridge the privileges or immunities of  
32 citizens of the United States. Nor shall any State deprive any person of life, liberty, or  
33 property, without due process of law; nor deny to any person within its jurisdiction, the  
34 equal protection of the laws."

35 And the constitution of the State of Missouri thus ordains:

36 "Every male citizen of the United States shall be entitled to vote."

37 Under a statute of the State all persons wishing to vote at any election, must previously  
38 have been registered in the manner pointed out by the statute, this being a condition  
39 precedent to the exercise of the elective franchise.

40 In this state of things, on the 15th of October, 1872 [ ], Mrs. Virginia Minor, a *native*  
41 *born, free, white citizen of the United States, and of the State of Missouri, over the age of*



1 *twenty-one years [ ], applied to one Happersett, the registrar of voters, to register her as a*  
2 *lawful voter, which he refused to do, assigning for cause that she was not a "male citizen*  
3 *of the United States," but a woman. She thereupon sued him in one of the inferior State*  
4 *courts of Missouri, for wilfully refusing to place her name upon the list of registered*  
5 *voters, by which refusal she was deprived of her right to vote. emphasis added.*

6 The registrar demurred. [ ]. Mrs. Minor now brought the case here on error.

7 **CHIEF JUSTICE WAITE delivered the opinion of the court.**

8 The question is presented in this case, whether, *since the adoption of the fourteenth*  
9 *amendment, a woman, who is a citizen of the United States and of the State of Missouri,*  
10 *is a voter in that State, notwithstanding the provision of the constitution and laws of the*  
11 *State, which confine the right of suffrage to men alone [ ].*

12 It is *contended* that the provisions of the constitution and laws of the State of Missouri  
13 which confine the right of suffrage and registration therefor to men, are in violation of the  
14 Constitution of the United States, and therefore void. The argument is, that as a woman,  
15 [ ], *she has the right of suffrage as one of the privileges and immunities of her citizenship,*  
16 *which the State cannot by its laws or constitution abridge. emphasis added.*

17 [ ] The amendment prohibited the State, of which she is a citizen, from abridging any of  
18 her privileges and immunities as a citizen of the United States; but *it did not confer*  
19 *citizenship on her. [ ]. emphasis added.*

20 **If the right of suffrage is one of the necessary privileges of a citizen of the United**  
21 **States, then the constitution and laws of Missouri confining it to men are in violation**  
22 **of the Constitution of the United States, as amended, and consequently void. [ ]**

23 The Constitution does not define the privileges and immunities of citizens. [ ].

24 [ ] The [14<sup>th</sup>] amendment did not add to the privileges and immunities of a citizen. *It*  
25 *simply furnished an additional guaranty for the protection of such as he already had, [ ]*  
26 *but it operates for this purpose, if at all, through the States and the State laws, and not*  
27 *directly upon the citizen. emphasis added.*

28 [ ] In this condition of the law in respect to suffrage [ ], the framers of the Constitution  
29 would not have left it to implication. *So important a change in the condition of*  
30 *citizenship as it actually existed, if intended, would have been expressly declared.*  
31 *emphasis added.*

32 [ ] Women and children are, as we have seen, "persons." [ ], but if they were necessarily  
33 voters because of their citizenship [ ], why inflict the penalty for the exclusion of males  
34 alone? *Clearly, no such form of words would have been selected to express the idea here*  
35 *indicated if suffrage was the absolute right of all citizens. emphasis added.*

36 And still again, after the adoption of the fourteenth amendment, it was deemed necessary  
37 to adopt a fifteenth, as follows: "The right of citizens of the United States to vote shall  
38 not be denied or abridged by the United States, or by any State, on account of race, color,  
39 or previous condition of servitude." [ ]. Nothing is more evident than that the greater must  
40 include the less, *and if all were already protected why go through with the form of*  
41 *amending the Constitution to protect a part? emphasis added.*

1 It is true that the United States guarantees to every State a republican form of  
 2 government. It is also true that no State can pass a bill of attainder, and that no person can  
 3 be deprived of life, liberty, or property without due process of law. All these several  
 4 provisions of the Constitution must be construed in connection with the other parts of the  
 5 instrument, and in the light of the surrounding circumstances.

6 [ ] The guaranty necessarily implies a duty on the part of the States themselves to provide  
 7 such a government.[ ]. These governments the Constitution did not change. They were  
 8 accepted precisely as they were, and it is, therefore, to be presumed that they were such  
 9 as it was the duty of the States to provide. Thus we have unmistakable evidence of what  
 10 was republican in form, within the meaning of that term as employed in the Constitution.

11 [ ] The right of suffrage, when granted, will be protected. He who has it can only be  
 12 deprived of it by due process of law, *but in order to claim protection he must first show*  
 13 *that he has the right.* emphasis added.

14 But we have already sufficiently considered the proof found upon the inside of the  
 15 Constitution. That upon the outside is equally effective.

16 The Constitution was submitted to the States for adoption in 1787 [ ]. No new State has  
 17 ever been admitted to the Union which has conferred the right of suffrage upon women,  
 18 and *this has never been considered a valid objection to her admission.* On the contrary,  
 19 as is claimed in the argument, the right of suffrage was withdrawn from women as early  
 20 as 1807 in the State of New Jersey, *without any attempt to obtain the interference of the*  
 21 *United States to prevent it.* Since then the governments of the insurgent States have been  
 22 reorganized under a requirement that before their representatives could be admitted to  
 23 seats in Congress they must have adopted new constitutions, republican in form. *In no*  
 24 *one of these constitutions was suffrage conferred upon women [ ].* emphasis added.

25 [ ] *Certainly, if the courts can consider any question settled, this is one. [ ] Our province*  
 26 *is to decide what the law is, not to declare what it should be.* emphasis added.

27 *We have given this case the careful consideration its importance demands.* If the law is  
 28 wrong, it ought to be changed; but the power for that is not with us. *The arguments*  
 29 *addressed to us bearing upon such a view of the subject may perhaps be sufficient to*  
 30 *induce those having the power, to make the alteration, but they ought not to be permitted*  
 31 *to influence our judgment in determining the present rights of the parties now litigating*  
 32 *before us.* No argument as to woman's need of suffrage can be considered. *We can only*  
 33 *act upon her rights as they exist.* It is not for us to look at the hardship of withholding.  
 34 *Our duty is at an end if we find it is within the power of a State to withhold.* emphasis  
 35 added.

36 **Being unanimously of the opinion that the Constitution of the United States does not**  
 37 **confer the right of suffrage upon any one, and that the constitutions and laws of the**  
 38 **several States which commit that important trust to men alone are not necessarily**  
 39 **void, we affirm the judgment.**

40 <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/minorvhapp.html>

41 The women's suffrage movement started around 1848. The above ruling eventually led  
 42 up to the passage of the 19<sup>th</sup> Amendment, ratified 8-26-1920

1 But the main point of this ruling is that the 14<sup>th</sup> Amendment does not create any new  
2 rights for any citizen whose rights were not already in existence when it was ratified. The  
3 Respondents in the instant case could not have gotten married before the enactment of the  
4 14<sup>th</sup> Amendment. And I submit to this Honorable Court that we should agree with Chief  
5 Justice Waite's Decision.

6 18. The next important issue is the passage of the 19<sup>th</sup> Amendment, that legalized the  
7 women's vote. That led to the proposed Equal Rights Amendment that has never been  
8 ratified into law. For some background I have included some excerpts from two stories about  
9 the ERA;

10 **A Brief History of the ERA from 1923 to Present**

11 GROUP 1/WEEK 1 Research compiled by Nichola Weiss, Jazmin Martinez, Heidi Jones & Mary Grace Baldo

12 [On] July 20, 1923, three years after women won the right to vote, the head of the  
13 National Women's Party, Alice Paul [ ] author[ed] the Equal Rights Amendment [ ].

14 [...] The ERA passed in both houses of Congress in 1972; it then went to the country's  
15 fifty state legislatures for ratification [ ].

16 [...]When the deadline arrived in 1982 the ERA was still three states short of ratification.

17 [It wasn't ratified]

18 <http://erauniversity.com/blogs/a-brief-history-of-the-equal-rights-amendment/>

19 **The History Behind the Equal Rights Amendment**  
20 **by Roberta W. Francis, Chair, ERA Task Force National Council of Women's Organizations**  
21 [The ERA Amendment]

- 22 • Section 1. Equality of rights under the law shall not be denied or abridged by the  
23 United States or by any state on account of sex.
- 24 • Section 2. The Congress shall have the power to enforce, by appropriate  
25 legislation, the provisions of this article.
- 26 • Section 3. This amendment shall take effect two years after the date of  
27 ratification.

28 Arguments by ERA opponents such as Phyllis Schlafly [...] played on the same fears that  
29 had generated female opposition to woman suffrage. Anti-ERA organizers claimed that  
30 the ERA would deny woman's right to be supported by her husband, privacy rights would  
31 be overturned, women would be sent into combat, and abortion rights and *homosexual*  
32 *marriages would be upheld.* [...].

33 <http://www.equalrightsamendment.org/history.htm>

34 Alice Paul who helped pass the 19<sup>th</sup> Amendment, wrote the ERA in 1923. It wasn't until  
35 after 1972 before Anti-ERA organizers publicly claimed that the wording of the ERA could

1 be used to uphold homosexual marriages. Their campaign contributed to the fact that they  
2 could not ratify those last three states needed to ratify the ERA. I can't say if Alice Paul  
3 intended for the ERA to include Homosexual Marriage, but the sponsors have not made any  
4 revisions to the ERA that would address this issue. The real issue here is once the public  
5 became aware of the fact that the ERA could be used to legalize Homosexual Marriage, the  
6 voters just didn't vote for it. As a political issue this attempt to use the Federal Constitution  
7 to change the law in a way that would be favorable to the *respondents* just didn't work.

- 8 19. And as the last point in this writing I feel it is necessary to explore the effects on society if  
9 same sex marriage were made legal. To illustrate this I found this article about the Spartans  
10 of Ancient Greece. Here are some selected excerpts;

11 **SPARTA: AN EXPERIMENT IN STATE-FOSTERED HOMOSEXUALITY**

12 **Spartan militarism and the well-being of the state depended on sexual love**  
13 **between men. Stanley J Pacion**

14 *SPARTA.*This article represents an historical essay which was originally published in the medical journal,  
15 *Medical Aspects of Human Sexuality*, Volume IV, August 1970, pp.28-32. The journal is now defunct, and its  
16 availability is severely circumscribed [ ].

17 Lyncurgus, the legendary lawgiver and founder of Sparta, who lived somewhere  
18 between 700-630BC.

19 Constitutional law of ancient Sparta mandated homosexuality. The soldier-  
20 citizens were lovers. Sex and love were used to foster allegiance, man to man,  
21 so to foster, augment the fighting spirit.

22 . Yet in Plutarch's Sparta homosexuality formed the cornerstone of the  
23 commonwealth. Older men choose young male lovers. There was no real age of  
24 consent in ancient Sparta. Childhood innocence had no meaning in the warrior  
25 state. All aspects of the life cycle were subjoined to the aim of making soldiers fit  
26 for war and the preservation of the common weal. Its practice was such an  
27 integral part of Spartan life that Plutarch writes: "By the time they were come to  
28 this age (twelve years old) there was not any of the more hopeful boys who had  
29 not a lover to bear him company." Without a realization of the profound male love  
30 relations that animated it, no understanding of Spartan society is possible. Sparta  
31 was a homosexual state by law. As such Plutarch's account of its constitution  
32 represents a vital chapter in [...] history.

1 Like other institutions in Plutarch's Sparta, homosexuality had as its end the  
2 preservation of the state. Lycurgus believed that love ties between men who  
3 were comrades-in-arms increased allegiance to their ranks. In a word,  
4 homosexual love promoted battlefield determination -- lovers joined in the battle  
5 field side-by-side, the lawgiver felt, made for better soldiering -- and all the better  
6 fostered the love of state.

7 Spartan marriage law reflected this belief. As we shall see, infrequent  
8 heterosexual relations permitted by the state and the sharing of wives were  
9 intended to break down familial attachments. The Spartan male developed no  
10 sense of responsibility toward either wife or child. Duty was directed to the  
11 commonwealth, to all its wives and children alike. By permitting male  
12 companionship to be the only source of permanent sexual gratification, Lycurgus  
13 guaranteed that love would remain in the service of the state.

14 Beside the communal meal, barrack or company life provided other opportunity  
15 for securing intimate male friendship. Its effect on marriage indicated its force in  
16 shaping Spartan life. A feeling of dread characterized the martial arrangement.  
17 The young husband, Plutarch reports, visited his bride "in fear and shame, and  
18 with circumspection." The possibility of incurring the anger of jealous, tough  
19 barrack-lovers was more than sufficient reason for the caution and apprehension  
20 of the Spartan bridegroom. Institutionalized homosexuality created a life under  
21 continuous surveillance. A watchful and ever-present lover policed every action.  
22 The life of the Spartan male, therefore, was one of constant dilemma. Though  
23 encouraged into homosexuality from youth and conditioned to it by the  
24 institutions in which he lived, the law nonetheless required him to marry..." The  
25 need for children as well as the preservation of duty to the state inspired this  
26 contradictory legislation for Sparta. A frustrating, anxious, unfulfilled life was its  
27 product. Lycurgus may well have created the psychological source of the  
28 violence on which Spartan militarism rested.

29 [ ] Lycurgus' reason for imposing [ ] hardship on marriage was, again, the well-  
30 being of the commonwealth. Lycurgus viewed marriage as a delicate institution,

1 [ ] The whole idea of private relations, private property, was an anathema to the  
2 Spartan value system, and excluded under constitutional law.

3 .” Neither adultery nor adulterers existed in Plutarch’s Sparta, for the concept had  
4 no meaning. In a state whose very existence depends upon a high birth rate,  
5 fidelity was a sentiment of little consequence.

6 <http://stanley.pacion.googlepages.com/sexandhistory>

7 20. I think that this is an example of the way the Spartans ran things about *600 years*  
8 *before the birth of Jesus Christ*. I am not a historian but I believe that societies like the  
9 Spartans laid a very real foundation in the minds of our founding fathers when they framed  
10 our constitution. I was taught that the framers based all our laws on Magna Carta and Natural  
11 Law. To them The Spartans practiced the unnatural sex act of Sodomy and it was a crime  
12 against Natural Law. So for them it was as plain as day that the Constitutional protections  
13 they wrote did not automatically apply to those that practice Sodomy. That’s why it’s so hard  
14 to find anything written about it from their time. And later, when Congressman John  
15 Bingham authored the Equal Protection Clause and the Due Processes Clause to the 14<sup>th</sup>  
16 Amendment that the general consensus concerning Sodomy hadn’t changed.

17 21. I submit to this honorable court that if we allow this ‘experiment’ to continue, American  
18 Society will mirror Ancient Spartan Society within two or three generations. . And if in the  
19 future as a nation we come to agree that we did the wrong thing, it may be impossible to put  
20 it back. And this fact far outweighs any claim of Invidious Discrimination Raised by the  
21 respondents in their original and amended complaints.

22 22. Procedural issues. I do not believe that I know any of the respondents in this case myself. I  
23 do not have the means to check their backgrounds. I have written this entire document on the  
24 assumption that the State and the Courts have already done this.

25 23. And for the afore mentioned reasons and for any reason as this Honorable Court shall  
26 deem proper, I ask this Honorable Court to decide for the petitioners in the above styled  
27 cases.

28 Respectfully Submitted

29  
30 Mr. C. Anthony Citro  
31 Concerned Citizen

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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Armstrong vs. Damer Appeal No. 14-14061-AA  
14-14066-AA

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