Nos. 14-556, 14-562, 14-571, & 14-574

In The
Supreme Court of the United States

James Obergefell, et al.., Petitioners
v.
Richard Hodges, Dir., Ohio Department of Health, et al.

Valeria Tanco, et al., Petitioners
v.
Bill Haslam, Governor of Tennessee, et al.

April DeBoer, et al., Petitioners
v.
Rick Snyder, Governor of Michigan, et al.

Gregory Bourke, et al., Petitioners
v.
Steve Beshear, Governor of Kentucky, et al.

On Writs of Certiorari to the
United States Court of Appeals For the Sixth Circuit

AMICUS CURIAE BRIEF OF GORDON WAYNE WATTS, IN SUPPORT OF NEITHER PARTY: FAVOURS STATES' LAWS, BUT SUPPORTIVE OF MANY PETITIONER GRIEVANCES

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Questions Presented

1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?

2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

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Interest of the *Amicus*[1] *Curiae*

Although I'm not a lawyer, I nearly won in court on behalf of Terri Schiavo –all by myself– losing a bitter 4-3 split decision, getting 42.7% of my panel, doing better than either Jeb Bush (0.0% and lost 7-0, before same panel) or Schiavo's blood family (lost 2-1 in Federal Court, getting merely 33.3% of their panel in Federal Court).

Additionally, while other *pro se* litigants were routinely denied, I was able to file as *Amicus* in both *Brenner* and *Grimsley*, two recent Fla 'Gay Marriage' cases (see Table of Citations), and my merit's brief is on docket as the most recent item to verify these claims.

Moreover, as the legal reporter for *The Register*, I reviewed (and did coverage on) every single merit's brief in those cases: www.GordonWatts.com/DOCKET-GayMarriageCase.html and: www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

Thus, I can assure you that this "*amicus curiae* brief [will] brings to the attention of the Court relevant matter not already brought to its attention by the parties [and will therefore] be of considerable help to the Court." [Rule 37.1]

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[1]Appellants & appellees filed blanket letters of consent to *amici* briefs in support of either or neither party in *DeBoer*. No counsel for any party authored this brief in whole or part, nor did anyone make any monetary contribution intended to subsidise/fund preparation/submission of this brief. I, Gordon Wayne Watts, alone, both wrote & funded it. I'm an individual, not a corporation, & thus neither issue stock nor have a parent corporation or any publicly held corporations that own 10 percent or more of stock of that nonexistent parent corporation.

Argument

I. Polygamy has more legal precedent than gay marriage, implicating equal protection

Polygamy is currently illegal according to Federal Law: The Morrill Anti-Bigamy Act, signed into law on July 8, 1862 by President Abraham Lincoln, is still the "Law of the Land," and has not been overturned. However: While polygamy has been "bandied about" in other cases, it has not been properly used as an Equal Protection argument. For example, Justice Antonin Scalia, in his dissent, compared same-sex marriage with polygamy, in claiming that "the Constitution neither requires nor forbids our society to approve" either. (*Lawrence v. Texas*, 539 U. S. 558, 599 (2003) (SCALIA, J., dissenting) But he did not specifically ask why Gay Marriage is legal if the other, more-accepted norm (polygamy), is not! Also, one brief, recently stated:

> "Clerk McQuigg nevertheless argues that the Fourth Circuit's decision "creat[es] a boundless fundamental right to marry" that will require States to "recogniz[e] as marriages many close relationships that they currently exclude (such as polygamous, polyamorous, and incestuous relationships)." Pet. 14–15. But while the government has no legitimate interest in prohibiting marriage between individuals of the same sex,

> there are weighty government interests underlying these other restrictions, including preventing the birth of genetically compromised children produced through incestuous relationships and ameliorating the risk of spousal and child abuse that courts have found is often associated with polygamous relationships." (RESPONSE BRIEF OF TIMOTHY B. BOSTIC ET AL., *Michèle B. McQuigg v. Timothy B. Bostic, et al.*, No. 14-251, U.S.Sup.Ct., brief authored by DAVID BOIES, Theodore Olson, et al., brief, page 18)

While I do accept polygamy is something that should be outlawed, I do not for one second accept that it has "more" child abuse, and further find the comparison to incest (with its inherent genetic issues) to be a bad (and insulting) comparison.

Likewise, Atty. David Boyle, in his jurisdictional brief, in *DeBoer*, makes a similar comment "that small-group polygamy is a rough equivalent of gay marriage." (brief at page 5). This is a good 'Slippery Slope' argument, but his legal analysis only puts polygamy on <u>equal</u> ground with Gay Marriage, and this, while close, is still incorrect; the correct descriptor is 'less,' not 'equal.'

Polygamy has a rich historical precedent, dating back to "Bible days," of ancient Israel. Even putting aside religious books (the Bible), we see many far-east nations have practiced polygamy in both ancient times –as well as modern times:

Recently, in America, Mormons (formally: The Church of Jesus Christ of Latter-day Saints) practiced plural marriages. Even at present, many Muslim and African countries accept polygamous marriages. However, the little history relating to gay marriages is generally negative (Sodom and Gomorrah in religious writings of Jews and Christians; as well as stoning & the death penalty among many modern-day Muslim and African nations). Even in America, we have never had a history of polygamist unions being acceptable –or legal.

The statement that Gay Marriage has much <u>less</u> historical precedent is not meant to be insulting to gays: It is what it is.

In fact, some religious and historical precedent would hold that polygamy (like divorce) was "permitted" for the hardness of mankind's heart (evil weakness to his lower carnal nature and base desires), but was not lawful in the "original" game plan:

> "He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so." [Matthew 19:7, Holy Bible, KJV]

> "2 And Pharisees came up and in order to test him asked, "Is it lawful for a man to divorce his wife?" 3 He answered them, "What did Moses command you?" 4 They said, "Moses allowed a man to write a certificate of divorce and to send

> her away." 5 And Jesus said to them, "Because of your hardness of heart he wrote you this commandment. 6 But from the beginning of creation, 'God made them male and female.'" [Matt. 10:2-6, Holy Bible, ESV]
>
> "Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh." [Genesis 2:24, Holy Bible, KJV]

Moreover, well-known passages, such as Genesis, chapter 19; I Corinthians 6:9; and, I Timothy 1:10, in the Christian Holy Bible, discuss homosexual unions only in negative light. These passages are quoted for historical precedent, not to advance any particular religion, especially since this amicus brief cites Muslim sources which say the same:

> "Why does Islam forbid lesbianism and homosexuality?"
> http://IslamQA.info/en/10050
>
> "Islam is clear in its prohibition of homosexual acts." Homosexuality in Islam: What does Islam say about homosexuality
> http://islam.about.com/od/islamsays/a/homosexuality.htm
>
> "According to a pamphlet produced by Al-Fatiha, there is a consensus among

> Islamic scholars that all humans are naturally heterosexual. 5 Homosexuality is seen by scholars to be a sinful and perverted deviation from the norm. All Islamic schools of thought and jurisprudence consider gay acts to be unlawful. They differ in terms of penalty" – Islam and Homosexuality http://www.MissionIslam.com/knowledge/homosexuality.htm

Even putting aside the "religious" views of homosexuality and the requisite historical precedent, nonetheless, the legal precedent is clear: Plural Marriages are illegal –and have been for ages.

Atty. Boyle was "close, but no cigar": Same-sex unions are <u>less</u> legal than plural marriage, not <u>equally</u> legal.

The implications of this are astounding – and This Court has only four (4) options, none of which are pleasant, but here they are:

(1) Since Gay Marriage has less historical precedent than Polygamy (not more), and the latter is illegal, then one solution would be to make Gay Marriage even more illegal –and prevent it – by Federal Law (read: The Supremacy Clause) – from any state in the union: This option (both are illegal) would satisfy Equal Protection (but probably not satisfy Gay Rights advocates).

(2) Since Gay Marriage has less historical precedent than Polygamy (not more), and the latter

is illegal, then an "alternate" solution would be to make both types of unions LEGAL: This option (both are legal) would satisfy Equal Protection (but probably not pass the "straight face" test with the American Public!).

(3) Since Gay Marriage has less historical precedent than Polygamy (not more), and the latter is illegal, then allowing Gay Marriage while denying Polygamy would be a clear and present violation of Federal Equal Protection. Now that I've "let the cat out the bag" and "spilled the beans" on the disparate treatment constituting a valid Equal Protection violation, you can expect that picking option #3, here, would alienate hoards of practicing polygamists nation-wide, and they would use your ruling as "a hammer" to achieve legal polygamy –and bring a bad name to This Noble Court for an imprudent ruling.

(4) The 4th and last option would be to allow Polygamy while denying Gay Marriage. This option would not violate Equal Protection (since rational grounds could be used to differentiate between the 2 types of marriage), but I don't think anyone would accept that option 4, here, would be tenable.

The conclusion to Argument I, here, is unpleasant, but the best of 4 difficult options is clearly the first option: Of the three options that don't violate Equal Protection (all of them except the 3rd), Option (#1) is the "least painful" one.

II. PREJUDICE IS WRONG

((A)) Prejudice against homosexuals (gays) is wrong: The arguments of the "PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW," authored by Atty. Daniel Boaz Tilley, of the ACLU, in the *Grimsley* case, are incorporated by reference herein as if fully set forth herein. However, let me highlight just a few to recap, as it bears repeating:

(1) Sloan Grimsley is a firefighter, who is in a homosexual relationship with Joyce Albu. What if Sloan is killed in the line of duty? Well, if Albu were a man, then Grimsley's insurance policy would cover her. But it does not. While this amicus brief frowns upon "Gay Marriage" recognition, this writer realises the dishonour involved in Grimsley paying into an insurance policy –with "equal" dollars as those in "traditional" marriage –but having her dollars devalued: Grimsley can NOT gain the same "value" from her work-related life insurance as those similarly-situated firefighters who are in heterosexual (straight) marriages. While this writer opposes such lifestyles, he can not accept what amounts to (and legally constitutes) a violation of Equal Protection –and probably of Contract Law: The Contract may have been misleading, and it definitely is "unequal" in its protection of citizens' rights to be treated equally. [Clearly, you can see where I am going with this: The Life Insurance policy should depend only on the monies paid in (and not on 'homosexual,' 'married,' or 'single' status), and should allow Grimsley to appoint anyone as a

beneficiary –say, a Grandmother –a neighbor, even a group people: This would allow her Life Insurance policy to be unimpeded, and thus prevent any claims that the Fla. Marriage Law discriminates.]

(2) What about people who want visitation rights in a hospital? Shouldn't their rights to visit be predicated solely on whether or not they pose a threat to the patient? If I, Gordon Wayne Watts, can visit a total stranger at a local hospital, why should a "Gay Person" be jerked around? ANSWER: A gay person should be denied visitation ONLY if he/she poses some sort of danger –or, if for example, the patient (or the guardian of said patient, with legal authority) wishes no visitation –the same standard that applies to the general public (most of whom are straight).

(3) A legal memorandum, titled "ISSUES TO CONSIDER WHEN COUNSELING SAME-SEX COUPLES," by George D. Karibjanian, Boca Raton, Florida and Jeffrey R. Dollinger, Gainesville, Florida, points out that other rights, such as ownership of real property in Florida by a married same-sex couple as tenants in common, as joint tenants with right of survivorship, or Tenants By The Entirety are affected based on the "status" of one's marriage (whether it is legally recognised by State Law or not).

(4) Arlene Goldberg's "same sex marriage" wife, Carol Goldwasser (married under NY laws) could not be recognised as Carol's surviving spouse on her death certificate. I was moved by this loss; however, this example is different than the preceding three: As much as I sympathise with Goldberg, she

did not actually lose anything (any more than were I, for example, to be married without the blessings of State Recognition: indeed, many societies have marriage as a separate function without government involvement at all!).

(5) One other point bears addressing: There must be a distinction made between "Gay Orientation" and "Gay Lifestyle": When one is "gay," that might mean 2 different things. On the one hand, a person has little or no choice over whether they are "gay" or not (in orientation, that is, preference). – Orientation is not totally genetically-controlled, since we see identical twins with different orientations, and many reports of straight people becoming gay – or gay people becoming straight. In fact, this writer, while having always been straight, has noticed his "orientation" change regarding what things are attractive in women. So, while "sexual orientation" is not totally genetic, it is safe to say that no one, knowing the discrimination in society, "chooses to be gay": Indeed, it should seem obvious that no one would purposely choose to "be gay." So, while a 'gay lifestyle' may, indeed, be harmful, in like manner as adultery, polygamy, or even –say –overeating, we must NOT be hateful towards others because they are "struggling" with something: For, we all are human, and have weaknesses, and want help –or at least, patience and understanding –and kind and respectful treatment. While we can't "totally" legislate morality, we must legislate it as much as possible (outlawing murder, for example), and even when laws are "silent" on an issue, we must still strive to show love and courtesy towards all others

—as we would like shown—but remembering that everyone is different, and some people need more understanding or room in certain weak areas than others—but each of us is 'weak' in different areas. [Since homosexuality is not totally genetic, of course, it would not be "discrete" nor "immutable," and thus not a suspect class under *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976), and thus not subject to heightened scrutiny—for this –and other –reasons.]

((B)) Prejudice against heterosexuals (straight people) is wrong: As argued *inter alia*, the "Marriage Penalty" penalises straight people, based solely on marital "status," in things such as disability, retirement, and even higher taxes required from some married couples that would not be required by two otherwise identical single people with exactly the same income. This, too, is wrong. I would add this, however: If 'Gay Marriage' becomes legal in America, then homosexuals would be victims of the self-same "Marriage Penalties" described in this brief—and that is unjust, morally wrong, and (as it applies to law) certainly unconstitutional –and thus to be avoided. However, one more things needs to be considered: When people encounter a penalty for being married, some will live together, but refuse to get married, in order to avoid the reduction in benefits, disability, etc. Others, however, might get married simply to obtain "spousal survivor-ship" benefits, and not because they love one another. **Lest This Court think I am making this up, I will testify that,** I, Amicus, Gordon Wayne Watts, know of one such friend who "lives in sin" with his girlfriend,

according to his religion, and refuses to get married to her, simply because his disability will 'go down' if he gets married. He has told me this, and I believe it.

Thus, the interference in the "Free Will" choices for people to get married, divorced, or abstain, have "interference in the Free Market," by the use of tax dollars. This causes bad marriages (or prevents good ones), *and also* wastes tax dollars to do so! (The claims that 'tax dollars' are used to 'promote' "traditional marriage," while well-meaning, actually accomplish just the opposite! However, if the State Laws of all four states in the U.S. 6th Circuit are upheld, establishing the definition of marriage as solely "1 man and 1 woman," this will be a safer (& cost less tax dollars) way to promote marriage, with its diverse benefits of gender-diversity, procreation, 2-parent teamwork, etc.)

One last things needs to be addressed, here: Some have said that in adoption, gays are discriminated against. While this amicus is against "gay adoption bans" (many gays make fine parents in many cases!), it would be legally-inconsistent to fail to promote "1-man, 1-woman" marriage: Single persons, for example, can adopt, but they are disfavoured, in comparison to "traditional marriage" families, and so, telling gays couples (or even polygamist families with plural marriages) that they, too, are disfavoured, is not inconsistent with how we treat singles, which we do for a "compelling state interest," and thus not genuine discrimination. So, it is indeed not a false claim to assert that "straight" nuclear families (e.g., 1 man and 1 woman) experience discrimination when gay unions are put

on the same level in this regard: Indeed, see "DECLARATION OF LOREN MARKS, PH.D.," page 20, in *Searcy, et al. v. Strange*, No. 11:14-cv-208-CG-M (S.D.,Ala. 2015), where a small, but statistically-significant, group of children were compared, and all things being equal, married couples had the best development from objective teacher reports (and not biased parental reporting), and next, singles, and lastly, homosexual rearing. In fact, many studies have been done on child-rearing, and it is this author's recollection that most (but not all) support those findings of Dr. Marks, which begs the question of diversity. To see some of these studies, both pro and con, see the many *Amici Curium* briefs in *Brenner v. Armstrong* or *Grimsley v. Armstrong*, recent Gay Marriage cases in thr 11th Circuit..

Even though this *amicus* is a 'conservative,' I admit that the 'liberals' are correct to assert and promote "diversity": Racial diversity (Blacks, Whites, Hispanics, and Asians), and gender-diversity (men and women) in the workplace. How, then, is it wrong to promote "gender-diversity" in the family? While this is merely a liberal cliché, nonetheless, I mention it to show that it is a *true* cliché: Dr. Marks' research is "right on mark" with its implicit claims that gender diversity is beneficial, and thus the State has an interest in promoting it, as shown by peer-reviewed scientific research. **Therefore, this is a sound legal argument which I am including in my brief, as it is often overlooked.**

The conclusion to this sub-argument is plain: While, in some matters, gays and straights must be treated equally (for example, ability to name anyone

as a beneficiary in a life-insurance policy, and not just an "opposite sex" spouse!), in other areas, there are compelling states' interests to perhaps differentiate slightly. This is alluded or hinted at in Boyle's brief (pp.19-20ff, and *passim*), where he discusses different levels of "scrutiny," in differing situations, but here, I "flesh it out" for clarity, as to why, exactly, it is a sound legal standard.

III. A SOLUTION: SEPARATING THE TREATMENT (E.G., MISTREATMENT) OF PERSONS FROM THE MARRIAGE STATUS, AND, INSTEAD, LINK 2 SIMILAR MARITAL STATII (GAY UNIONS AND POLYGAMY) FOR A MORE ACCURATE ASSESSMENT.

That title was a bit long, but needed such to be descriptive—First, here's the problem: We are linking "status" with "treatment," and either way, society loses: If, on the one hand, you legalise gay marriage, then this "turns Equal Protection on its head," and makes polygamy de facto legal: why not have polygamy legal, if something even LESS accepted is legal? (This outcome is bad.) On the other hand, if This Honourable Court upholds the 6th Circuit's decision and definition of marriage (which I favour doing), then we might have gays (and straights—in some cases) being mistreated –and become "2nd-class" citizens. (This is also bad.)

Now, here's the (obvious) solution: Why not "remove" the link between "status" and "treatment," and, instead, create a "link" between Polygamy and Gay Marriage? Since Gay Marriage has even less

historical and legal precedent, then, in ALL scenarios, it must be accorded LESS protection, lest we run afoul of Equal Protection. But, as we see above, this would only subject Gay Marriage violators to the same penalties as those who practice polygamy, and we have not rejected that, now have we? No! America still frowns upon—and prosecutes those who practice polygamy –our "fellow-straight" people, and yet no one makes outcry, and with good reason: it is morally and legally sound logic.

IV. Application of: *Baker, Romer, Lawrence, Lofton, and Windsor*

Many briefs (defendants, plaintiffs, and amici) have discussed these cases, so it would be remiss of me to fail to address their application, in summary:

Baker v. Nelson, 409 U.S. 810, 93 S. Ct. 37 (1972) was decided when the case came to the Supreme Court through mandatory appellate review (not certiorari); therefore, its dismissal constituted a decision on the merits and established *Baker* as precedent. Though the extent of its precedential effect has been subject to debate (and ignored by several US appellate circuits), it remains binding case law on the point of Gay Marriage: only the U.S. Supreme Court may overrule its own decisions.

There are commonly "doctrinal development" arguments made to argue that *Baker* was *de facto* overturned, [e.g., "[I]f the Court has branded a question as unsubstantial, it remains so except when doctrinal developments indicate otherwise[.]" *Hicks*

v. Miranda, 422 U.S. 332, 344 (1975)], but is this really the case?

Some proponents of the 'doctrinal development' arguments for overturning *Baker* cite to such as *Lawrence v. Texas*, 539 U.S. 558 (2003), which criminalised sodomy. They sometimes claim that *Lawrence* removed any impediment to recognising that "Sexual Orientation" classifications warrant "Heightened Scrutiny," and sometimes claim that the *Lofton v. Secretary of Department of Children & Family Services*, 358 F.3d 804 (11th Cir. 2004) holding was in reliance on out-of-circuit cases that based their holdings on *Bowers v. Hardwick*, 478 U.S. 186 (1986), and thus incompatible with intervening contrary decisions of the Supreme Court and should not be followed.

Very good point! However, we must ask two questions: First, did *Lawrence* really demand use of heightened scrutiny, or, instead, was it merely a rejection of the ban on certain behaviour (sodomy, in this case)? Secondly, even if some justices in *Lawrence* personally relied on this, as Obiter Dictum, and not as a formal holding, is heightened scrutiny actually necessary as an absolute truth? ANSWER: *Bowers* held, first, that criminal prohibitions of homosexual sodomy are not subject to heightened scrutiny because they do not implicate a "fundamental right" under the Due Process Clause, 478 U.S., at 191-194. Noting that "[p]roscriptions_against that conduct have ancient roots," id., at 192, that "[s]odomy was a criminal offense at common law and was forbidden by the laws of the original 13 States when they ratified the Bill of Rights," ibid., and that

many States had retained their bans on sodomy, id., at 193, *Bowers* concluded that a right to engage in homosexual sodomy was not "'deeply rooted in this Nation's history and tradition,'" id., at 192. The U.S. Supreme Court, in *Lawrence* did not overrule this holding: Not once does it describe homosexual sodomy as a "fundamental right" or a "fundamental liberty interest," nor does it subject the Texas statute to "strict" scrutiny much less to "heightened" scrutiny! Nonetheless, some scrutiny is necessary due to the lingering prejudice that exists in both law and society against homosexuals. Thus, *Lofton* is still good case-law: a state's limitation of marriage to male-female unions must be subject only to deferential rational-basis review.

Nonetheless, I will conclude with one final statement on the "scrutiny wars," which are waged by lawyers on both sides of this argument: Lawyers for both sides have repeatedly bragged that their arguments are "sound," no matter WHICH level of scrutiny be applied, and thus dared The Courts to apply ANY level of scrutiny to test their arguments.

This amicus agrees with their claim on this head: While the 'Doctrine of Scrutiny' is certainly a useful guide, in the end, it matters not how much light This Court shines on all our arguments, and so "heightened scrutiny" is acceptable, and, in light of the national debate on 'Gay Marriage,' perhaps "even more scrutiny" should be given to both this case and the cases in the other U.S. Circuits, for example, the *Brenner* & *Grimsley* cases, where the 11th Circuit is still 'reviewing' these Florida Gay Marriage cases. (*Brenner* and *Grimsley* should be reviewed *en banc*, I

think, decided upon, one way or the other, and then granted Certiorari for This Court's review, and consolidated with these instant grants in the case at bar.)

In *Romer v. Evans*, 517 U.S. 620 (1996), at 648 Justice Antonin Scalia, in his dissent, said: "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." This would seem to contradict my claims that the instant brief (by Amicus, Gordon W. Watts) was the first to use "Polygamy vs. Gay Marriage" as a formal "Equal Protection" argument; however, reading Justice Scalia's comments in the context of this holding, we see that *Romer* merely addresses denial of certain rights to gays: it did not address the legal definition of marriage, a similar, but legally distinct, question of law. Thus, Scalia's comments, while legally-correct, were merely obiter dictum: comments on the definition of marriage, and not on treatment issues.

Romer set the stage for *Lawrence v. Texas*, 539 U.S. 558 (2003), which dealt with another treatment issue: private sexual conduct (sodomy, in this case) – again, not the legal definition of marriage (which is under review in the case at bar).

In Lofton v. Sec. of the Dept. of Children and Family Services, 358 F.3d 804 (11th Cir. 2004), *inter alia*, the 11th Circuit declined to treat homosexuals as a suspect class, and then, subsequently declined the Plaintiffs petition for rehearing *en banc*.

The key point of *U.S. v. Windsor*, 133 S.Ct. 2675 (2013), was not that it struck down DOMA (the The Defense of Marriage Act), nor the obiter dictum

that "differentiation [in marital status] demeans the couple" in question. The only key point in the *Windsor* holding that applies to the case at bar is that The U.S. Supreme Court upheld "States' Rights" for NY to define marriage as it sees fit; if anything, this supports citizens' initiatives & legislative acts to define marriage as the elected majority see fit, as has happened in four 6th Cir. states and Florida (where an almost 62% supermajority voted for its passage).

V. Correcting common errors of 'Traditional Marriage' advocates

In my amicus before the consolidated 11th Cir. Cases, *Brenner* and *Grimsley*, I supported the appellant's bid to defend Florida's Laws (and addition to the State Constitution by citizen initiative) defining marriage as 1-man & 1-woman, but I was honest enough to "take them to task" for a few slips of legal logic, and as many other advocates make similar arguments, it will be instructive to This Court to be ready when you see them:

On page 7 of the "JOINT INITIAL BRIEF OF ALL APPELLANTS" (*Brenner v. Armstrong*, 14-14061, and *Grimsley v. Armstrong*, 11th Cir. 2014, perfected, brief of appellants at page 7), the State of Florida states that: "In fact, the Supreme Court's most recent decision regarding same-sex marriage, *United States v. Windsor*, is fully consistent with the principle that federalism allows States to define marriage."

This is not totally correct: Federalism (aka, 10th Amendment "States' Rights") only goes so far:

What if, for example, Florida wanted to legalise Polygamy? Would the Federal Government (Supremacy Clause) allow us to? God forbid, and certainly not! Above that, and also on page 7, defendants state: "Florida has long defined marriage as the union of one man and one woman." They implicate the **Doctrine of *Stare Decisis***, which is essentially the doctrine of precedent: Latin for "to stand by things decided." While this is a good metric to consider, it is not absolute: Think, for example, of when African Americans were told by the U.S. Supreme Court that they lacked the rights of a human: America's Highest Court held, by a overwhelming margin of a 7-2 split decision, that:
"...that the negro might justly and lawfully be reduced to slavery for his benefit." -Chief Justice Roger B. Taney, writing for the Court. (*Dred Scott v. John F. Sanford*, 15 L.Ed. 691; 19 How. 393; 60 US 393 at 407. (December Term, 1856)).

Should America have "continued precedent," here? Of course not. Defendants were more accurate when they said on page 11, that: "States Have Nearly Exclusive Authority to Define and Regulate Marriage," and the keyword, there, is "nearly."

So, how long Florida has defined marriage –or how we have States' Rights –are both important, and relevant, issues to consider, but are not, by a long-shot, nearly as decisive as, for example, the Equal Protection argument advanced by this Amicus brief: Since we rightly reject Polygamy –and will probably continue to do so for the foreseeable future –then we must, perforce, reject Gay Marriage –and all its

ramifications. (But we must not do so with animus or hate –any more than we have shown towards polygamy advocates.) Indeed, This Court has held that "Polygamy has always been odious among the northern and western nations of Europe." (*Reynolds v. U.S.,* 98 U.S. at 164 (1878)). Yes, this is 'old' case law, but don't laugh: it hasn't been overturned: Thus, it's still good case law which held that the federal anti-bigamy statute didn't violate the First Amendment's free exercise clause, even in spite of the fact that plural marriage was part of religious practice of certain religions. So, Florida was, indeed, correct to assert that *Baker v. Nelson*, 409 U.S. 810, 93 S. Ct. 37 (1972), remains binding precedent –just not for their reasons stated (precedent or states' rights), but, rather, for the reasons this brief puts forth: namely, that same-sex marriage doesn't violate Due Process or Equal Protection under the Fourteenth Amendment since even polygamists can't mount a Constitutional challenge to a ban on polygamy; how much less can Gay Marriage advocates ever hope to succeed –in a fair court –that honours & respects Equal Protection viz. Polygamy vs. Gay Marriage?

VI. Correcting common errors of 'Gay Marriage' advocates

I occasionally hear reports that some states have a 'Gay Marriage' ban, and, if this is true, then This Court would be more appropriate in simply striking down such bans, as was done in a recent

state court holding: *Fla. Dept. of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, Fla. 3d DCA, No. 3D08-3044, Opinion filed September 22, 2010, rather than changing the very definition of marriage.

However, 'Gay Marriage' advocates also commonly advance erroneous complaints. For example, in *Searcy, et al. v. Strange*, 14-10295, 11th Cir. 2015, the plaintiffs complain that **Ala. Code §26-10A-27 (1975)** is a problem ("Any person may adopt his or her spouse's child..."), but they miss (or purposely fail to admit) the obvious**: Ala. Code §26-10A-5(a) (1975)** (Who may adopt.) states: "Who may adopt. (a) **Any adult** person or husband and wife jointly who are adults may petition the court to adopt a minor." Furthermore, **§26-10A-5(a)(2) states:** "(2) No rule or regulation of the Department of Human Resources or any agency shall prevent an adoption **by a single person** solely because such person is single or shall prevent an adoption solely because such person is of a certain age." Since Alabama doesn't recognise Searcy and McKeand as legally-married, they're legally 'single,' and thus protected by this statute, and thus legally permitted to adopt. If, however, the judge denied adoption, then The Courts can enter a ruling affirming in part (their rights of adoption), reversing in part (the ruling of the court below that struck Ala. Code §30-1-19, the so-called "Marriage Protection Act") and remanding to the state court for orders consistent with this court, namely that This Court would issue an order of 'Show Cause' to the state court demanding to know by what legal standard it denied defendants

the right to adopt. Perhaps the state court was justified, but only if it found on independent grounds (such as the welfare of the child), but not if it found solely on the grounds that the couple was homosexual. Thus, This Honorable Court now has a solution to defendant's problem that does not violate Equal Protection viz. Polygamy. This solution should satisfy plaintiffs (who can get a "fair shake" in adoption) as well as defendants (who defined marriage as it has been defined for tens of thousands of years, in all societies, cultures, and countries, since the very beginning of time, and that, for compelling state interests in promoting traditional marriage). I do not pretend to have all the solutions, but I hope to get people focused on real solutions, not illusionary and Constitutionally-impossible ones.

Since there is an obvious solution to defendants' problem, then their complaints about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") are unfounded, and clearly used as a "straw man" argument to strike a good law**: RULE 3 of the Fed.R.Civ.P.**, clearly states that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue**:** no foul, no harm, is a legal standard.

Likewise, while the plaintiffs in *Strawser, et al. v. Strange*, 11th Cir. 2015, 15-10313 (which was consolidated with the *Searcy* case) have valid complaints, they too make the same 'straw man' attacks against a good law:

First, they complain (Brief, pp.1-2, 17) about

the ability to appoint one another the legal ability to make medical decisions, and that is a legitimate concern. The legal term, here, is "Power of Attorney" (POA) which, basically, is written authorisation to act on another's behalf in private affairs, business, or otherwise legally represent them in some legal matter—sometimes even against the wishes of the other. However, Alabama law already allows a non-family member to become a POA: See e.g., Alabama Code §26-1-2(4), (6) (1975), which reads:

> "(4) Subject to any limitation in the durable power of attorney, an attorney in fact may, for the purpose of making a health care decision, request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records, execute a release or other document required to obtain the information, and consent to the disclosure of the information."
>
> (6) No health care provider or any employee or agent thereof who in good faith and pursuant to reasonable medical standards follows the direction of a duly authorized attorney in fact shall, as a result thereof, be subject to criminal or civil liability..."

It, then, is quite clear**:** these sections taken *in pari materia* clearly give the POA the legal right to make medical decisions. If, however, the hospital is refusing to honour Alabama Law on this head, the

proper solution is to sue the hospital, but in any event, any complaint about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") is unfounded, and clearly used as a "straw man" argument to strike a good law**: RULE 3 of the Fed.R.Civ.P.**, clearly states that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue**:** no foul, no harm, is a legal standard.

Next, they complain (Brief, p.18) that the "right to receive social security benefits as a surviving spouse—hinge directly on the length of the marriage." This is a valid complaint, but the unconstitutional law in question is the Social Security Law, not the Alabama State Law. To put things in perspective, what if, for example, someone wanted to name his brother as a surviving recipient of Social Security? What if (as I would agree) that Equal Protection demands a right to do so? Then, should that *perforce* make it legal to marry your brother? God forbid, and certainly not! Again, I sympathise with the just and legitimate complaints of plaintiffs, but they make a Straw Man argument and attack the good law, whist leaving alone the bad one!

Then, they complain about the 'stigma' of inability to get married (Brief, p.18). I would agree that there is unfortunately some lingering prejudice against homosexuals (and this is wrong), but, leaving aside our human weakness, looking at the argument in question: What if, for example, a woman in UTAH (where polygamy was recently very common—and

still practiced by 'splinter' groups) felt 'stigma' for inability to be legally 'married' to a man –and his 5 other wives? While no one would condone or support making fun of this plural-marriage family, would this allow her to get 'legal' status for her polygamous relationship? Certainly not, and by this, we see this logic is "bad logic" and must, perforce, reject any conclusions on such premises.

Since I have provided several solutions to 'Gay Rights' advocates' problem, **I hope that my solutions are acceptable compromises to both sides,** to help my fellow-man (and woman) come to a truce –and reduce arguments and strife. – I hope to be helpful to the goodwill of several parties in getting a solution acceptable to all.

Additionally, there are many, many more unfair laws, which target both straights and gays and single adults. **So, prejudice exists in law against both straights and gays, but it is** not due to the Alabama Law defining marriage as 1-man and 1-woman, and thus an attack on that law is misplaced. **I add this paragraph solely to be respectful and courteous -and show plaintiffs that I am not prejudiced, and, indeed, most 'conservatives' are strongly opposed to gays to be mistreated in any form or fashion.**

VII. PROPOSED ORDER

Above, I made compelling arguments about the problem and suggest a "general" solution, but I fail to specifically ask the court for a detailed order

that could carry out this general request, and, in order to be a good "friend" of the court, and show you things that others may have missed, it is my duty to be specific and detailed in my request for relief, so I shall now "finish the job" here. There are two (2) different ways that This Court might address the conflict before it:

The first would be to uphold the 'traditional' definition of marriage, which the 6th Circuit panel rightly found (thus satisfying the respondents), but also correct some deficiencies in law (thus satisfying the appellants). This could require This Court to "affirm in part; reverse in part; and remand for orders consistent with This Court's holding." This solution is tempting, since it fixes the problem "all at once." The only problem with this solution is that there are so many laws that depend on the definition of marriage, it might, as a practical matter, be impossible.

The second (and more practical) solution would simply be to uphold the 'traditional' definition of marriage as "1 man and 1 woman," but direct Appellants and their supporters to challenge 'bad' laws individually. Lest this august and solemn Court think I am making an unreasonable suggestion, let me illustrate but a few examples: In *Lawrence*, for example, a Texas law that was deemed 'bad' was struck down (by the Judicial branch) without perverting or altering the definition of "marriage" as '1 man and 1 woman.' Another example was when a State Appeals Court found that a Florida statute prohibiting adoption by homosexuals had "no rational basis" and thus violated their equal

protection rights. (*Fla. Dept. of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, Fla. 3d DCA, No. 3D08-3044, Opinion filed September 22, 2010) Again, FLORIDA'S 2008 definition of marriage was not perverted, struck, abrogated, or altered.

Likewise, it need not be perverted or struck here, as well: to do so would simply be trying to say a square is round, or that 1+1=3, when, by the definition, it does not –or that "a man" = "a woman," when this, also, is not true. Indeed, "The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both[.]" *Ballard v. United States*, 329 U.S. 187, 193, 67 S. Ct. 261, 264 (1946) (Douglas, J.). And, re that difference: "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Tigner v. Texas*, 310 U.S. 141, 147, 60 S. Ct. 879, 882 (1940) (Frankfurter, J.).

VIII. Inferior Federal Courts didn't even have jurisdiction to address 'Gay Marriage' dispute

On it's face, it would seem that the Supremacy Clause would allow a Federal District Court to 'strike down' any state law or state Constitutional provision, such as has been happening in the 'Gay Marriage' dispute, nationwide. *But, is this so?*

Doe v. Pryor, 344 F.3d. 1282, 1286 (11th Cir. 2003), held that: "The only federal court whose decisions bind state courts is the United States

Supreme Court." Their advisory opinion on this head evokes the Rooker-Feldman doctrine, which, in essence, holds that lower United States federal courts may not sit in direct review of state court decisions. This would give a strong support to Federalism, and 10th Amendment State's rights, that is, that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." Accord: *Arizonans for official English and Robert D. Park, Petitioners v. ARIZONA et al.*, 520 U.S. 43, at Syllabus 23, note 11, in which the U.S. Supreme Court held: "(Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law)." In other words, lower Federal Courts may not sit in appellate review of state court decisions; they may only address these issues through original jurisdiction (which, apparently, the plaintiffs allege, insofar as they claim that the' state laws in question are unconstitutional).

While this case law seems counter-intuitive, let me illustrate why this, if taken to its logical end, is not unreasonable: What if, for example, residents from 49 U.S. states appeared in one single Federal District Court (of the 50th state), demanding that their states' laws, recognising marriage one way or the other, should yield to the State Law of the 50th State, where the case is being heard, and demand The Court enter a ruling that the laws of these 49 states are unconstitutionally-restrictive, and ask The Court to exercise "Long Arm Jurisdiction" to enforce such an order against these 49 states? Well, what if, then, *another* U.S. District Court entered a ruling

just the opposite? Can you not see the mayhem and confusion that would surely ensue? (And, as it stands, the nation-wide 'patchwork' of Gay Marriage Laws has effectively made my prophecy, here, come true!) So, the case law that holds that the Supremacy Clause is restricted in this regard is 'good' case law: **Only the *your* Court may exercise jurisdiction in this regard,** and most other courts, while well-meaning and well-intentioned, have exceeded their authority.

IX. CONCLUSION

This Court might be tempted to hold that "marriage" must include "Gay Marriage," in order to satisfy the just and legitimate complaints of mistreatment against homosexuals. While tempting, this approach is "throwing out the baby with the bathwater": for example, just because a few judges (or a few cops) are 'bad,' do we remove all judges (or cops) –and destroy The Judicial (or Executive) Branch? God forbid, and certainly not! Likewise, just because a 'few' laws discriminate against homosexuals, must we pervert and alter the very 'definition' of marriage? (Certainly not: this would require us to allow Polygamists to be considered 'married,' in order to satisfy Equal Protection, as discussed in the instant brief, and we all know that is untenable.)

While there is certainly mistreatment based solely on "marital status," it isn't a result of these state laws, but rather, independent and long-standing –and should be corrected as separate issues, but both polygamy and gay marriage should

remain illegal**;** and, indeed, if polygamy is illegal on a Federal Level (and it is), then how much more should Gay Marriage be illegal in all 50 states, according to Federal Law?

Therefore, the various Laws (and Constitutional Provisions) limiting "marriage" to be defined as "1 man and 1 woman" should be upheld on appeal: Gay Marriage proponents have even less legal ground on which to stand than do Polygamist Advocates, and thus their case has little chance of succeeding. The 6th Circuit panel's definition of marriage (which supports the laws and/or initiatives passed in no less than FOUR STATES, representing MANY citizens/voters, and thus representing the 'voice of the people') is Constitutional: Gay citizens are not overly impaired in their basic human rights: rights to travel, rights to peaceable assembly and associate with whomever they chose, Intimate Association –nor do these Laws violate the Establishment Clause: Just because a law "agrees with" religion –for example: Thou Shalt Not Kill, yet it is not necessarily a violation, here. Prejudice exists in law against both straights and gays, and it is wrong, but not due to these reasonable laws: This Court should uphold the Lower Tribunal's ruling on the definition of marriage and possibly correct a few errors in the current laws (as a example), –or (better yet) enter a ruling that directs Appellants and their supporters that unconstitutional laws may be challenged individually.

The circuits are split, and the public (strongly "pro-marriage") is also split on this issue: The nation all looks to This Honourable Court to "get it right" for all sides, so let's do just that. **Therefore, the certified questions should be answered as follows:**

1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex? ANSWER: No. ("[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620 (1996), at 648; well, *do they?*)

2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state? ANSWER: This question is moot in light of the fact that marriage between any combination (2 men; 2 women; plural marriages with, say 1 man and 3 women; or "3 men and a baby!") other than "1 man & 1 woman" is hereby deemed not "lawfully licensed" by the U.S. Constitution's Equal Protection standards, which recognise that polygamy's prohibition requires the prohibition of all other unions of Equal or Lesser legality.

Respectfully submitted,

s/ _____
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* Watts, acting counsel of record, is not a lawyer. **Per RULE 34.1(f), Watts, appearing *pro se*, is so listed.**

Dated: Saturday, 14 February 2015