No. 12-307

In the Supreme Court of the United States

UNITED STATES OF AMERICA, Petitioner

v.

EDITH SCHLAIN WINDSOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE ANTI-DEFAMATION LEAGUE, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE; BEND THE ARC: A JEWISH PARTNERSHIP FOR JUSTICE, CENTRAL CONFERENCE OF AMERICAN RABBIS, CONGREGATION BEIT SIMCHAT TORAH, HADASSAH, HINDU AMERICAN FOUNDATION, INTERFAITH ALLIANCE FOUNDATION, JAPANESE AMERICAN CITIZENS LEAGUE, JEWISH SOCIAL POLICY ACTION NETWORK, KESHET, LUTHERANS CONCERNED/NORTH AMERICA, METROPOLITAN COMMUNITY CHURCH, NATIONAL COUNCIL OF JEWISH WOMEN, NEHIRIM, PEOPLE FOR THE AMERICAN WAY FOUNDATION'S AFRICAN AMERICAN MINISTERS' LEADERSHIP COUNCIL, RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE, SIKH AMERICAN LEGAL DEFENSE AND EDUCATION FUND, T'RUAH: RABBIS FOR HUMAN RIGHTS-NORTH AMERICA, WOMEN OF REFORM JUDAISM, AND WOMEN'S LEAGUE FOR CONSERVATIVE JUDAISM AS AMICI CURIAE IN SUPPORT OF RESPONDENT EDITH WINDSOR ON THE MERITS QUESTION

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INTEREST OF AMICI[1]

Amici curiae are a diverse group of religious and cultural organizations that advocate for religious freedom, tolerance, and equality. Amici have a strong interest in this case due to their commitment to religious liberty, civil rights, and equal protection of law. Identity and Interest statements of particular amici curiae can be found in the appendix to this brief.

SUMMARY OF ARGUMENT

Amici support respondent Edith Windsor's challenge to the constitutionality of Section 3 of the Defense of Marriage Act ("DOMA"), and contend it violates not only the Fifth Amendment's guarantee of Equal Protection, but also the Establishment Clause of the First Amendment. The court of appeals' decision assures full federal recognition of civil marriages, while allowing religious groups the freedom to choose how to define marriage for themselves. Many religious traditions, including those practiced by many of the undersigned amici, attribute religious significance to the institution. See *Turner* v. *Safley*, 482 U.S. 78, 96 (1987) ("[M]any religions recognize marriage as having spiritual significance."). But religious views differ regarding what marriages qualify to be solemnized. Pursuant

[1]The United States of America and Bi-Partisan Legal Advisory Group have issued letters consenting to the filing of amicus briefs in this case and have separately consented to the filing of this brief. Respondent Edith Schlain Windsor has consented to the filing of this brief in a letter that has been filed with the Clerk of Court. Pursuant to Rule 37.6, amici state that no counsel for any party authored this brief in whole or in part, and no person or entity other than the amici or their counsel made a monetary contribution to the preparation or submission of this brief.

to the First Amendment, in order to guard religious liberty for all, those religious understandings cannot define marriage recognition under civil law.

In the past, Congress and the federal courts have deferred to state-based civil schemes for marriage recognition. Those state laws have, in turn, been subject to the First Amendment's prohibition against denying individuals the right to marry simply because such marriages would offend the tenets of a particular religious group. Cf. *Loving* v. *Virginia*, 388 U.S. 1 (1967) (rejecting religious justification for law restricting right of individuals of different races to marry). In DOMA, Congress departed from this longstanding deference to state law and, for the first time, incorporated into federal law a single religious definition of marriage—a definition inconsistent with the faith beliefs of many religious groups, including many of the undersigned amici, that embrace an inclusive view of marriage. Congress had no legitimate secular purpose in adopting that interpretation. Rather, the legislative history confirms that Members of Congress were specifically motivated to tie the federal definition of marriage to a particular understanding that those Members believed to be the better interpretation of one religious tradition. Section 3 of DOMA is therefore unconstitutional under the Establishment Clause.

Similarly, DOMA's failure to further any legitimate government interest also renders it unconstitutional under the Fifth Amendment guarantee of Equal Protection. Under a line of cases decided by this Court, including most significantly *Lawrence* v. *Texas*, 539 U.S. 558 (2003), moral condemnation of an identifiable group is never a legitimate government interest. While

amici recognize the role that religious and moral beliefs have in shaping the public policy views of citizens and legislators, those beliefs, standing alone and directed toward the disparagement of a single identifiable group, cannot survive even the lowest level of constitutional review. This principle, articulated in the due process context by *Lawrence*, similarly applies to cases brought under the Fifth Amendment Equal Protection guarantee like this challenge to DOMA.

Some opposing amici have suggested that protecting religious liberty is a legitimate government interest that could sustain DOMA under the rational basis test. But those amici fail to explain how a ruling invalidating Section 3 of DOMA would interfere with religious liberty in any way. The case at bar concerns whether an individual legally married under state law should receive equal protection under federal tax law. The types of concerns raised by amici are simply not implicated here. While protecting religious liberty may at times be a legitimate government interest, what these amici actually urge is that the government enact a particular religious view of marriage to the exclusion of other views. The government has no legitimate interest in enacting legislation that merely adopts a particular version of Judeo-Christian religious morality. Far from being a legitimate government interest, using the law to promote such an interest would violate both the Establishment Clause and Fifth Amendment Equal Protection guarantee.

ARGUMENT

The Establishment Clause's secular purpose doctrine and the Fifth Amendment Equal Protection guar-

antee speak with one voice against legislative resort to moral and religious condemnation of identifiable groups. Under both doctrines, the government must be able to set forth a legitimate, secular purpose that falls within its prescribed powers. These doctrines are cut from the same cloth and analysis under one can inform the other.

This Court has long implicitly acknowledged the connection between religious justifications and the Equal Protection guarantee. The Court's decision overturning Virginia's law forbidding marriage between persons of different races is illustrative. In *Loving* v. *Virginia*, the Court dismissed the Virginia trial judge's proffered religious-based rationale, which cited God's hand in creating different races, recognizing instead that "[t]here is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification." 388 U.S. 1, 11 (1967). Ultimately, the Court recognized that the anti-miscegenation law served no secular purpose, and was based on nothing more than racial discrimination—even if disguised as a moral or religious belief.

The District Court's decision in *Perry* v. *Schwarzenegger*, which is currently before this Court on a separate writ of certiorari, further illustrates the overlap between these doctrines. Drawing upon both the First and Fourteenth Amendments, the court observed the distinction in constitutional law between "secular" and "moral or religious" state interests. *Perry* v. *Schwarzenegger*, 704 F. Supp. 2d 921, 930-931 (N.D. Cal. 2010) (citing *Lawrence*, 539 U.S. at 571 for the Fourteenth Amendment proposition and *Everson* v. *Board of Ed. Of Ewing Tp.*, 330 U.S. 1, 15 (1947), for

the Establishment Clause proposition), aff'd 671 F.3d 1052 (9th Cir.), pet. for cert. granted, 133 S. Ct. 786 (2012). The court recognized that the State had no legitimate "interest in enforcing private moral or religious beliefs without an accompanying secular purpose." *Ibid.* The evidence presented in *Perry* established that "moral and religious views form[ed] the only basis for a belief that same-sex couples are different from opposite-sex couples." *Id.* at 1001. Acknowledging the lack of a secular purpose, the *Perry* court ultimately concluded that the only conceivable basis for Proposition 8 was a "private moral view that same-sex couples are inferior." *Id.* at 1003. Such private moral disapproval of a group is not a legitimate government interest. *Ibid.*

While the substantive issues of Edith Windsor's case were argued below under the Equal Protection guarantee of the Fifth Amendment, the Establishment Clause supports a similar outcome. The Court's moral-justifications doctrine under the Equal Protection Clause reflects similar concerns to those under the Establishment Clause when legislation is motivated by a particular religious doctrine. Thus, DOMA's failings under the Establishment Clause underscore and inform its failings under the rational basis test.

I. Religious Definitions Of Marriage Vary, Including With Respect To Marriage For Gay And Lesbian Couples

Different religious groups have different views on marriage. In most religious communities, there is disagreement among individual congregations—and, within congregations, disagreement among individual parishioners—about how to approach marriage. This diversi-

ty of belief is not new. Even within unified religious groups, restrictions on religious marriage have changed over time. Under our constitutional scheme, these groups have a fundamental right to adopt and modify the requirements for marriage within their own religious communities. But they do not have the right to impose their particular religious view onto the institution of civil marriage.

Many religious groups have at times recognized the benefit inherent in ensuring that their own rules on marriage are distinct from those embodied in civil law, because it provides them with autonomy to determine which marriages to solemnize and under what circumstances. See, *e.g.*, Southern Baptist Convention, *Position Statement on the Separation of Church and State*, http://www.sbc.net/aboutus/pschurch.asp (last visited Feb. 10, 2013) ("We stand for a free church in a free state. Neither one should control the affairs of the other."); Joseph F. Smith et al., *Presentation of the First Presidency to the April 1896 Conference of the Church of Jesus Christ of Latter Day Saints*, *reprinted in* U.S. Congress, *Testimony of Important Witnesses as Given in the Proceedings Before the Committee on Privileges and Elections of the United States Senate in the Matter of the Protest Against the Right of Hon. Reed Smoot, A Senator from the State of Utah, to Hold His Seat* 106 (1905) ("[T]here has not been, nor is there, the remotest desire on our part, or on the part of our coreligionists, to do anything looking to a union of church and state."). *Cf. Illinois ex rel. McCollum* v. *Bd. of Educ.*, 333 U.S. 203, 212 (1948) ("[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere."). A review of

practices surrounding interfaith, interracial, and post-divorce remarriage demonstrates this important distinction.

Interfaith Marriage: Some churches historically have prohibited (and some continue to prohibit) interfaith marriage, while others accept it. For example, the Roman Catholic Church's *Code of Canon Law* proscribed interfaith marriage for most of the twentieth century. Michael G. Lawler, *Marriage and the Catholic Church: Disputed Questions* 118-119 (2002) ("The church everywhere most severely prohibits the marriage between two baptized persons, one of whom is Catholic, and the other of whom belongs to a heretical or schismatic sect.") (quoting 1917 Code C.1060). Although this restriction was relaxed in 1983, modern Catholic doctrine still requires the Church's "express permission" to marry a Christian who is not Catholic and the Church's "express dispensation" for a Catholic to marry a non-Christian. 1983 Code C.1086, 1124; Roman Catholic Church, *Catechism of the Catholic Church* 1635 (1995 ed.). Similarly, Orthodox and Conservative Jewish traditions both tend to proscribe interfaith marriage, see David S. Ariel, *What Do Jews Believe?: The Spiritual Foundations of Judaism* 129 (1996), as do many interpretations of Islamic law, see, *e.g.*, *Bandari* v. *INS*, 227 F.3d 1160, 1163-1164 (9th Cir. 2000) (Iran's official interpretation of Islamic law forbids interfaith marriage and dating).

Despite these religious traditions prohibiting or limiting interfaith marriage, American civil law has not prohibited or limited marriage to couples of the same faith, or any faith at all, and doing so would be patently unconstitutional. See *Epperson* v. *Arkansas*, 393 U.S. 97, 104 (1968) ("The First Amendment mandates gov-

ernmental neutrality between religion and religion, and between religion and nonreligion."); *cf. Bandari*, 227 F.3d at 1168 ("[P]ersecution aimed at stamping out an interfaith marriage is without question persecution on account of religion.") (citation and internal quotation marks omitted).

Interracial Marriage: As with interfaith marriage, religious institutions in the past have differed markedly in their treatment of interracial relationships. For example, some fundamentalist churches previously condemned interracial marriage. See *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 580-581 (1983) (fundamentalist Christian university believed that "the Bible forbids interracial dating and marriage").

In the past, the Church of Jesus Christ of Latter-day Saints ("LDS Church") discouraged interracial marriage. See *Interracial Marriage Discouraged*, Church News, June 17, 1978, at 2 ("Now, the brethren feel that it is not the wisest thing to cross racial lines in dating and marrying.") (quoting President Spencer W. Kimball in a 1965 address to students at Brigham Young University). Additionally, in the context of its policy on excluding African-Americans from the priesthood, the LDS Church expressly recognized that its position on treatment of African-Americans was "wholly within the category of religion," applying only to those who joined the church, with "no bearing upon matters of civil rights." The First Presidency, *Statement on the Status of Blacks*, Dec. 15, *1969*, *reproduced in* Appendix, *Neither White Nor Black: Mormon Scholars Confront the Race Issue in a Universal Church* (Lester E. Bush, Jr. & Armand L. Mauss eds., 1984). In other words, such religious views regarding interracial marriage may not dictate the terms of civil marriage.

Marriage Following Divorce: Finally, the Catholic Church does not recognize marriages of those who have divorced and remarried, viewing those marriages as "objectively contraven[ing] God's law." *Catechism of the Catholic Church* 1650, 2384. However, civil law has not reflected this position, and passing such a law would interfere with the fundamental right to marry. See *Boddie* v. *Connecticut*, 401 U.S. 371, 376 (1971).

* * *

In all three instances discussed above, individual religious groups have adopted particular rules relating to marriage, yet those rules have not been allowed to dictate the confines of civil marriage law.

Further, there is disagreement among religious groups and religious people in their approaches to same-sex marriage. Many faith groups, such as the Catholic and Mormon churches, oppose equal marriage as part of their official doctrine. See, *e.g.*, The Congregation for the Doctrine of the Faith, *Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons* (2003); First Presidency an Council of the Twelve Apostles of the Church of Jesus Christ of Latter-Day Saints, *The Family: A Proclamation to the World* (1995). But other faiths openly welcome same-sex couples into marriage, including many of the undersigned amici.[2] The United

[2] The fact that some religious groups welcome marriage between same-sex couples does not demonstrate that gay and lesbian individuals have "political power" as that term is used in the context of heightened scrutiny. See *Kerrigan* v. *Comm'r of Pub. Health*, 957A.2d 407, 439-454 (Conn. 2008), for full treatment of this issue. In any case, many religious groups historically have been—and apparently continue to be—strong opponents of equal marriage rights for same-sex couples.

Church of Christ officially supports same-sex marriage, as do the Unitarian Universalist Association, Conservative Judaism, Reconstructionist Judaism, and Reform Judaism. Shaila Dewan, *United Church of Christ Backs Same-Sex Marriage*, N.Y. Times, July 5, 2005; Unitarian Universalist Association, *Freedom to Marry, For All People*, http://archive.uua.org/news/2004/freedomtomarry/index.html (2004) (last visited Feb. 26, 2013); Rabbi Elliot Dorff et al., *Rituals and Documents of Marriage and Divorce for Same-Sex Couples* (Spring 2012); Jewish Reconstructionist Movement, *JRF Homosexuality Report and Inclusion of GLBTQ Persons*, http://archive.jewishrecon.org/node/1742?ref=jrf (last visited Feb. 26, 2013); General Assembly Union of American Hebrew Congregations, *Civil Marriage for Gay and Lesbian Jewish Couples* (Nov. 2, 1997), http://urj.org//about/union/governance/reso//?syspage=article&item_id=2000 (last visited Feb. 26, 2013). In other faiths, individual congregations have been allowed to decide for themselves whether to bless marriages between same-sex couples. Last year, the National Cathedral in Washington, D.C., an Episcopal cathedral, endorsed such marriages. Laurie Goodstein, *Washington National Cathedral Announced It Will Hold Same-Sex Weddings*, N.Y. Times, Jan. 9, 2013, at A-12 (also noting that the Episcopalian National Convention had authorized an official liturgy for blessing same-sex unions). Further, even in faiths where there is no official recognition of marriage between same-sex couples, many members are able to maintain their faith while supporting equal marriage. *See* Robert P. Jones, Public Religion Research Institute, *Religious Americans' Perspectives on Same-Sex Marriage* (June 30, 2012) (finding that 63 percent of religious non-

Christians, 56 percent of white Catholics, 53 percent of Hispanic Catholics, and 52 percent of white mainline Protestants favored allowing gay and lesbian couples to marry).

While some religious institutions may have a history of defining marriage as between a man and a woman, that tradition is separate from, and cannot be allowed to dictate, civil law. The legal definition of civil marriage is not tied to particular religious traditions, but instead reflects changes in contemporary understandings of marriage. A religious group cannot be forced to open its doors or its sacraments to those who disagree with its traditions, but neither can the government restrict access to civil marriage to align with any particular religious beliefs.

II. DOMA Violates The Establishment Clause Because It Was Enacted With A Religious Purpose

Religious belief can play an important role in the formation of some people's public policy preferences. But that role must be tempered by principles of religious liberty, as "political division along religious lines was one of the principal evils against which the First Amendment was intended to protect." *Comm. for Pub. Educ. & Religious Liberty* v. *Nyquist*, 413 U.S. 756, 796 (1973) (quoting *Lemon* v. *Kurtzman*, 403 U.S. 602, 622 (1971)). DOMA runs afoul of these longstanding Establishment Clause principles because it has a religious purpose—to write one particular religious understanding of marriage into federal law—without a primary secular purpose, and this understanding is directly at odds with the position taken by other religious traditions.

A. The Establishment Clause Prohibits Laws The Purpose Or Primary Effect Of Which Is To Aid One Religious View Over Others Or Favor A Particular Religious Viewpoint

Since this country's founding, the concept of religious liberty has, at a minimum, included the equal treatment of all faiths without discrimination or preference. See *Larson* v. *Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). As this Court explained in *Larson*:

> Madison's vision—freedom for all religion being guaranteed by free competition between religions—naturally assumed that every denomination would be equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference. Free exercise thus can be guaranteed only when legislators—and voters—are required to accord to their own religions the very same treatment given to small, new, or unpopular denominations.

Id. at 245; see also Arlin M. Adams & Charles J. Emmerich, *A Heritage of Religious Liberty*, 137 U. Pa. L. Rev. 1559, 1636 (1989) ("The * * * proposition, that government may not prefer one religion over any other, receives overwhelming support in the American tradition of church and state.").

"[I]n * * * light of its history and the evils it was designed forever to suppress," the Court has consistently given the Establishment Clause "broad meaning."

Everson v. *Board of Ed. Of Ewing Tp.*, 330 U.S. 1, 14-15 (1947). The Court has invalidated laws that aid one religion. *Id.* at 15-16 ("Neither a state nor the Federal Government can * * * pass laws which aid one religion, aid all religions, or prefer one religion over another."). It has also rejected any law that has the purpose or primary effect of advancing certain religious denominations over others. See *Edwards* v. *Aguillard*, 482 U.S. 578 (1987) (holding that law requiring teaching of creationism was unconstitutional because it lacked a secular purpose); *Larson*, 456 U.S. at 244. In *Lemon* v. *Kurtzman*, the Court distilled these principles into a test that remains instructive: a law must have a secular purpose; its primary effect cannot be to advance or inhibit religion; and it must not result in excessive government entanglement in religion. 403 U.S. 602, 622 (1971).

This Court has discussed at length the requirement that a statute have a secular purpose, noting that "the secular purpose required has to be genuine, not a sham, and not merely secondary to a religious objective." *McCreary Cnty.* v. *ACLU of Ky.*, 545 U.S. 844, 864 (2005), cert. denied 131 S. Ct. 1474 (2011). Furthermore, under the Establishment Clause, the relevant question is whether Congress *at the time legislation was passed* was acting with a proper purpose. See *Edwards*, 482 U.S. at 594-595. In *McCreary*, the Court emphasized that this test has "bite," such that legislation will not survive scrutiny under the Establishment Clause simply because "some secular purpose" is constructed after the fact. 545 U.S. at 865 & n.13. In examining congressional purpose, courts look to a variety of sources, including legislative history, statements on the record, and testimony given by supporters. *Edwards*, 482 U.S. at 587, 591-592.

B. DOMA Was Enacted With A Religious Purpose Based On A Particular Religious Understanding Of Marriage

With DOMA, Congress made no secret of its intentions: DOMA's legislative history is replete with religious sentiments. As this Court explained in *McCreary*, examination of the purpose of a statute "is a staple of statutory interpretation that makes up the daily fare of every appellate court in the country." 545 U.S. at 861. The Court further explained that employing traditional tools of statutory interpretation such as legislative history allows a court to determine legislative purpose without resort to any "judicial psychoanalysis of a drafter's heart of hearts." *Id.* at 862.

The House Judiciary Committee Report on DOMA underscores the statute's religious underpinnings. The Report stated that "[c]ivil laws that permit only heterosexual marriage reflect and honor a collective moral judgment about human sexuality. This judgment entails both moral disapproval of homosexuality, and a moral conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality." Defense of Marriage Act, H.R. Rep. 104-664, at 15-16, *reprinted in* 1996 U.S.C.C.A.N 2905 (1996) (footnote omitted).

In addition, numerous members of Congress noted that an express purpose of DOMA was to incorporate their interpretation of Judeo-Christian religious beliefs about marriage into civil law. See 142 Cong. Rec. S10,109 (daily ed. Sept. 10, 1996) ("One only has to turn to the Old Testament and read the word of God to understand how eternal is the true definition of marriage.") (statement of Sen. Byrd); *Defense of Marriage*

Act: Hearing on H.R. 3396 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 104th Cong. 33 (1996) ("House Hearing") ("Traditional heterosexual marriage * * * has been the preferred alternative by every religious tradition in recorded history.") (statement of Rep. Sensenbrenner); 142 Cong. Rec. H7442 (daily ed. July 11, 1996) ("[M]arriage is a covenant established by God.") (statement of Rep. Hutchinson); *id.* at H7446 (daily ed. July 11, 1996) ("[T]he institution of marriage is not a creation of the State. * * * [Rather] [i]t has been sanctified by all the great monotheistic religions and, in particular, by the Judeo-Christian religion which is the underpinning of our culture.") (statement of Rep. Talent); 142 Cong. Rec. H10113 (daily ed. Sept. 10, 1996) ("The definition of marriage is not created by politicians and judges * * *. It is rooted in our history, in our laws and our deepest moral and religious convictions, and in our nature as human beings.") (statement of Sen. Coats).

One DOMA sponsor admitted that DOMA was enacted based on "God's principles" and a rejection of "humanistic principles":

> We as legislators and leaders for the country are in the midst of a chaos, an attack upon God's principles. God laid down that one man and one woman is a legal union. That is marriage, known for thousands of years. That God-given principle is under attack. It is under attack. There are those in our society that try to shift us away from a society based on religious principles to humanistic principles; that the human being can do whatever they want, as long as it feels good and does not hurt others.

> When one State wants to move towards the recognition of same-sex marriages, it is wrong. * * * We as a Federal Government have a responsibility to act, and we will act.

142 Cong. Rec. H7486 (daily ed. July 12, 1996) (statement of Rep. Buyer). Religious witnesses also testified before Congress on both sides of the debate. House Hearing, *supra*, at 211 (testimony of Rabbi Saperstein); *id.* at 216-217 (testimony of Jay Alan Sekulow); see also *Edwards*, 482 U.S. at 591-592 (use of religious experts in support of legislation indicated that purpose was religious). Indeed, the comments of these witnesses and their Congressional supporters reflect the very sort of "political division along religious lines [that] was one of the principal evils against which the First Amendment was intended to protect." *Lemon*, 403 U.S. at 622.

Measured at the time of enactment, DOMA also had no effect *except* to express the religious preference of the members of Congress who proffered these religious justifications for the law. Indeed, at the time of enactment, no state permitted marriages between same-sex couples. DOMA's only effect was to put the federal government on record supporting a particular religious understanding of marriage. In the religious sphere, even among adherents of Christianity, there was at the time (and continues to be) considerable debate about how religion should treat marriage between same-sex couples. With DOMA, Congress's primary purpose was to take sides in this religious debate. See 142 Cong. Rec. S10,100-10,102 (daily ed. Sept. 10, 1996) ("[T]he Unitarian Universalist Association now affirms the growing practice of some of its ministers of conducting services of union of gay and lesbian couples and urges member societies to support their ministers in

this practice. The Society of Friends leaves all issues to congregational decision and thousands of same-sex marriages have been sanctified in Quaker ceremonies since the 1970's. Other denominations are still studying the issue. The validity of same-sex marriage has been debated at the national level by the Presbyterian, Episcopal, Lutheran and Methodist churches. So why not debate it here * * *[?]) (statement of Sen. Byrd). DOMA was thus the quintessential government "endorsement" of religion—a misuse of government power solely to promote a religious view. But even after states began to recognize marriage equality, DOMA's principle purpose was to put the federal government's imprimatur on a particular religious understanding of marriage.

Amici note that many laws that have support in particular religious traditions could nonetheless be constitutional, even if some lawmakers were to cite their religion as a motivation for passing the law, if they have a primarily secular purpose. See *McGowan* v. *Maryland*, 366 U.S. 420, 444-45 (1961) (upholding a mandatory Sunday closing law for most businesses despite substantial religious connections because the "purpose and motivation" of the law was primarily secular—"to provide a uniform day of rest for all citizens"). But two characteristics of DOMA distinguish it from other laws where religion is a factor. For one, most such laws do not have a comparable volume of religious- and morality-based rhetoric in the legislative record. Second, in most cases, a secular purpose also exists for a law such that the primary effect of the law is not to advance a particular religious viewpoint. For example, the beliefs of many religious adherents, including many Muslims, Mormons, and Methodists, require that they abstain

from alcohol. And various laws restricting the sale and consumption of alcohol exist throughout the United States. See, *e.g.*, Ky. Rev. Stat. § 242.185 (Kentucky law permitting dry counties); 23 U.S.C. 158 (National Minimum Drinking Age Act of 1984). In some cases, religious and moral understanding may have played a part in the decisions of some lawmakers to pass such laws. But unlike DOMA, most alcohol laws have legitimate, secular purposes—preventing driving deaths, for example, or protecting children from addiction—and their primary effect is to advance these government interests, not advance religion. Conversely, as discussed in greater detail below, DOMA advances no legitimate government interest and thus also lacks a secular purpose. See Section III, *infra*.

Until the enactment of DOMA, the federal government had never sought to define civil marriage, leaving the matter to the states. But with DOMA, in a stark departure from past practice, Congress for the first time imposed its own definition onto marriage. The impetus for this unprecedented move was Congress' desire to establish as law a particular religious understanding of marriage. Members of Congress freely invoked Judeo-Christian values and tradition to justify their support of the law. Further, the law lacked any separate, rational, secular purpose. Under such circumstances, DOMA is unconstitutional under the Establishment Clause.

III. DOMA Violates Equal Protection Under The Fifth Amendment Because It Was Motivated By Moral Disapproval of Gay and Lesbian People Without Any Legitimate Government Purpose

Religion plays an important role in the lives of many Americans, and many lawmakers are undoubtedly guided in their legislative decision-making by personal religious and moral beliefs. But under a line of cases including this Court's decision in *Lawrence* v. *Texas*, 539 U.S. 558 (2003), a law must be rationally related to a legitimate government interest beyond the desire to disadvantage a group on the basis of moral disapproval.[3] DOMA lacks such other interest. The law is therefore unconstitutional under the Equal Protection guarantee of the Fifth Amendment.[4]

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[3] The majority opinion in *Lawrence* acknowledged the Equal Protection Clause theory as "a tenable argument," but grounded its decision in principles of due process in order to eliminate any question as to the continuing validity of *Bowers* v. *Hardwick*, 478 U.S. 186 (1986). See *Lawrence*, 539 U.S. at 574-575. In its due process analysis, the Court spoke not only of a protected liberty interest in the conduct prohibited by the Texas law—consensual sexual relations—but also of the Court's concern with laws that "demean[]" gay people and "stigma[tize]" a group that deserves "respect." *Id.* at 571-575; see also Nan D. Hunter, *Living with Lawrence*, 88 Minn. L. Rev. 1103, 1124 (2004).

[4] Amici support the Solicitor General's position, with which the Respondent agrees, that DOMA should be scrutinized under a heightened level of review. *See* Br. for the United States on the Merits Question 18-36. However, this brief analyzes the issue under rational basis review to show that DOMA cannot withstand even the lowest level of constitutional review, much less heightened scrutiny.

A. Moral Disapproval Of A Particular Group Does Not Constitute A Legitimate Governmental Interest To Enact Legislation

The Court has held that "the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice." *Lawrence*, 539 U.S. at 577 (quoting *Bowers* v. *Hardwick*, 478 U.S. 186, 216 (1986) (Stevens, J., dissenting)) (internal quotation marks omitted). As Justice O'Connor observed in her *Lawrence* concurrence, "[m]oral disapproval of [a particular group], like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause." *Id.* at 582. Justice O'Connor further observed that the Court had "never held that moral disapproval, without any other asserted state interest, is a sufficient rationale under the Equal Protection Clause to justify a law that discriminates among groups of persons." *Ibid.*

Lawrence is consistent with a series of cases in which the Court invalidated laws reflecting a "bare * * * desire to harm a politically unpopular group." See *Romer* v. *Evans*, 517 U.S. 620, 634-635 (1996) (alteration in original) (citation omitted); *United States Dep't of Agric.* v. *Moreno*, 413 U.S. 528, 534 (1973); see also *Perry* v. *Brown*, 671 F.3d 1052, 1094 (9th Cir. 2012) ("Enacting a rule into law based solely on the disapproval of a group, however, 'is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit'" (quoting *Romer*, 517 U.S. at 635)). In these cases, the Court properly stripped away the rationales proffered in support of such laws to uncover the fact that "animus," "negative attitudes," "unease," "fear," "bias," or "unpopular[ity]"

actually motivated the legislative action at issue. *E.g.*, *Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (holding that "irrational prejudice" against mentally disabled is not a legitimate interest); *Moreno*, 413 U.S. at 534 (invalidating restriction on households receiving food stamps based on unpopularity of "hippies"); *Romer*, 517 U.S. at 634 (finding that law targeting gay and lesbian individuals "raise[d] the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected").

In *Moreno*, the Court struck down a federal law excluding from the food stamp program "any household containing an individual who is unrelated to any other member of the household." 413 U.S. at 529. The Court first determined that the stated purpose of the law—"to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households," *id.* at 533 (citation omitted)—was not furthered by the challenged provision. Looking for other possible rationales, the Court found, based primarily on statements in the congressional record suggesting that the law was animated by dislike of "hippies" and "hippie communes," that the law's true purpose was to harm these groups. *Id.* at 534. The Court found this purpose unconstitutional, holding that "if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest." *Ibid.* (citation omitted).

Underlying the decisions in *Moreno* and its progeny is an awareness by this Court that allowing condemnation of a politically unpopular group to constitute a legitimate government interest would effectively evis-

cerate the Fourteenth Amendment Equal Protection Clause and Fifth Amendment Equal Protection guarantee:

> [T]here is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected.

Ry. Express Agency, Inc. v. *New York*, 336 U.S. 106, 112 (1949) (Jackson, J., concurring). This risk is hardly theoretical: Some of the most notable violations of equal protection were justified by moral condemnation of a group. See *Loving* v. *Virginia*, 388 U.S. 1, 3 (1967) (trial judge justified 25-year sentence of married mixed race couple by invoking God's separation of the races). In such circumstances, this Court has consistently rejected moral condemnation as a government interest.

B. DOMA Was Enacted To Express Moral Disapproval Of Gay And Lesbian People

In a recent letter to Congress expressing the Executive Branch's belief that DOMA is unconstitutional, Attorney General Eric Holder wrote, "[t]he [Congressional Record underlying DOMA] contains numerous expressions reflecting moral disapproval of gay and lesbian people and their intimate and family relationships—precisely the kind of stereotype-based thinking

and animus the Equal Protection Clause is designed to guard against." Letter from Eric Holder, Attorney General, to John Boehner, Speaker, U.S. House of Representatives (Feb. 23, 2011). Amici agree with Attorney General Holder.

As discussed above, the Congressional Record for DOMA is filled with references to religion. Other statements sound remarkably similar, but use the language of moral condemnation. See H.R. Rep. No. 104-664, at 15-16; 142 Cong. Rec. H7444 (daily ed. July 11, 1996) ("[N]o society * * * has lived through the transition to homosexuality and the perversion which it lives and what it brought forth.") (statement of Rep. Coburn); *id.* at S10068 (daily ed. Sept. 9, 1996) ("[DOMA] will safeguard the sacred institutions of marriage and the family from those who seek to destroy them and who are willing to tear apart America's moral fabric in the process.") (statement of Sen. Helms); *id.* at H7444 (daily ed. July 11, 1996) ("The real debate is about homosexuality and whether or not we sanction homosexuality in this country. * * * What [constituents] believe * * * is that homosexuality is immoral, that it is based on perversion, that it is based on lust.") (statement of Rep. Coburn).

If these statements were not sufficient to demonstrate that moral disapprobation of gay and lesbian people was the motivating force for DOMA, the House Report provides further proof. It states expressly that DOMA was enacted to "[u]phold[] traditional notions of morality." H.R. Rep. No. 104-664, at 15. Tellingly, Defendant-Intervenor Bipartisan Legal Advisory Group ("BLAG") never once mentions Congress' moral disapproval rationale in 76 pages of briefing. This rationale—recorded in the House Report—was the true

purpose of the law and the only one that makes sense once other purported government interests are shown to bear no rational relationship to DOMA. The Congressional Record is rife with references to religion and moral condemnation, statements that make clear that the "traditional notions of morality" they were trying to protect were those of a particular form of Judeo-Christian religious interpretation. The after-the-fact purported rationales for DOMA offered by BLAG cannot hide this truth.

C. DOMA Is Not Rationally Related To The Governmental Interest Of Defending Religious Liberty Or Any Other Legitimate Governmental Interest

There is no legitimate governmental interest that would justify the federal government's refusal to recognize the marriages of same-sex couples under applicable state law. See *Windsor* v. *United States*, 833 F. Supp. 2d 394, 402 (S.D.N.Y. 2012) (finding Section 3 of DOMA unconstitutional "under the rational basis test"). Numerous governmental interests have been proposed for DOMA, in this case and others, and amici will not review all of them here.[5] But what remains

[5] The recent decision of the United States District Court for the District of Connecticut in *Pedersen* v. *Office of Personnel Management*, No. 3:10-cv-1750, 2012 WL 3113883 (July 31, 2012), is illustrative: it dispenses with many of the purported interests set forth for DOMA and state-level bans on marriage between same-sex couples. See *id.* at *37-*48. The *Pederson* court examined five purported rationales for DOMA: "(1) To employ caution in the face of a proposed redefinition of the centuries-old definition of marriage; (2) To protect the public fisc; (3) To maintain consistency and uniformity with regard to eligibility for federal benefits; (4) To avoid creating a social understanding of bearing, begetting, and rearing children separate from marriage; and (5) To recognize an

once they are rejected is clear: a bare desire by Congress to express its moral condemnation of gay and lesbian people.

Amicus curiae Becket Fund has asserted that DOMA is rationally related to a legitimate government interest in protecting religious liberty. Br. of Amicus Curiae Becket Fund for Religious Liberty 28-30 ("Becket Fund"). While protecting religious liberty could in some circumstances be a legitimate government interest, DOMA is not rationally related to furthering that interest. Indeed, it is telling that the Becket Fund ignores the fact that millions of people of faith and numerous faith groups actually *support* equal marriage rights for same-sex couples. *See* Section I, *supra*. Like Congress, the Becket Fund does not seek religious *liberty*, which would mean equal liberty for all religious viewpoints, but governmental adoption of Becket Fund's own religious perspective. In DOMA, Congress did not attempt to make space for religious liberty, nor could DOMA be justified in hindsight as being rationally related to such an interest. Rather, Congress simply enshrined into law one religious view of marriage, to the exclusion of all others. As a result, the government interest Becket Fund calls "religious liberty" is, in reality, just another way of describing Congress' unconstitutional use of DOMA to endorse a particular understanding of Judeo-Christian morality. *See* Section II, *supra*.

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institution designed to ensure that children have parents of both sexes." *Id.* at *37. The court found that "such objectives bear no rational relationship to Section 3 of DOMA as a legislative scheme, [and] no conceivable rational basis exists for the provision." *Id.* at *48.

Becket Fund and several other amici in support of Petitioner also argue that a ruling overturning DOMA would have a "catastrophic" effect on religious liberty, causing "wide-ranging church-state conflict" that "threatens to upset [the country's] history of [religious liberty] accommodation" and designate religious people as "enemies of equality." See Br. of Amici Curiae Chaplain Alliance for Religious Liberty et al. ("Chaplain Alliance"); Becket Fund; Br. of Amici Curiae Liberty, Life and Law Foundation et al.; Br. of Amici Curiae Robert P. George et al. But Congress does not *avoid* religious conflict by adopting one religious view of marriage as defining the right of secular, civil marriage. Individual religions remain free to define marriage as they see fit, but those religions cannot ask Congress to enshrine their religious preferences as binding law in order to free them from the discomfort of acknowledging the discriminatory character of those religious views.

These amici also claim that if DOMA is overturned, those who wish to discriminate against gay and lesbian people "will immediately be vulnerable to lawsuits under anti-discrimination laws." Becket Fund at 9. This argument is nonsensical. As Becket Fund acknowledges, discrimination against gay and lesbian people is already illegal in many states, and it will continue to be illegal in those states if this Court overturns DOMA. Neither DOMA's enactment nor overturning DOMA alters the marital status of individuals under state law. Becket Fund provides no explanation as to how nondiscrimination laws would be affected by DOMA, and it cannot do so.

The First Amendment's Free Exercise Clause and freedom of association guarantees already ensure that

religious groups will retain their religious liberty. According to well-established precedent, people of religious conscience may worship as they please and adopt eligibility criteria for membership in their private and religious associations. See, *e.g.*, *Boy Scouts of America* v. *Dale*, 530 U.S. 640 (2000). Certain amici warn against the "power of this Court's perceived approval or disapproval" to "marginalize and stigmatize" those who hold discriminatory religious views against gay and lesbian people. Becket Fund 10 n. 11; Br. of Amici Curiae Robert P. George et al. 31. But this Court's job is to interpret the Constitution, not sway public opinion.

Edith Windsor comes before the Court because she has been deprived of $363,000 in estate taxes because certain Members of Congress believed that the better interpretation of Judeo-Christian religious tradition called for moral and religious condemnation of Edith Windsor's marriage. If there is any interest in religious liberty at stake in this case it is not that of the Becket Fund, but the liberty of Edith Windsor to love and to marry another person consistent with the dictates of her own moral and religious compass.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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March 2013

APPENDIX

AMICI CURIAE STATEMENTS OF INTEREST

Anti-Defamation League

ADL was founded in 1913 to combat anti-Semitism and other forms of discrimination, to advance goodwill and mutual understanding among Americans of all creeds and races, and to secure justice and fair treatment to all. Today, ADL is one of the world's leading civil and human rights organizations combating anti-Semitism and all types of prejudice, discriminatory treatment and hate. As part of its commitment to protecting the civil rights of all persons, ADL has filed amicus briefs in numerous cases urging the unconstitutionality or illegality of discriminatory practices or laws.[*]

ADL has a substantial interest in this case. At issue are core questions about equality and constitutional rights. And the justifications offered by Petitioners and their *amici* to support DOMA—if embraced by this Court—would invite state-sanctioned prejudice of the strain that ADL has long fought.

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[*] See, *e.g.*, *Hosanna-Tabor Evangelical Lutheran Church and School* v. *E.E.O.C.*, 132 S. Ct. 694 (2012); *Christian Legal Soc.* v. *Martinez*, 130 S. Ct. 2971 (2010); *Lawrence* v. *Texas*, 539 U.S. 558 (2003); *Zelman* v. *Simmons-Harris*, 536 U.S. 639 (2002); *Alexander* v. *Sandoval*, 532 U.S. 275 (2001); *Boy Scouts of America* v. *Dale*, 530 US 640 (2000): *Mitchell* v. *Helms*, 530 U.S. 793 (2000); *Romer* v. *Evans*, 517 U.S. 620 (1996).

Americans United for Separation of Church and State

Amicus curiae Americans United for Separation of Church and State is a national, nonsectarian public-interest organization based in Washington, D.C. Its mission is twofold: (1) to advance the free-exercise rights of individuals and religious communities to worship as they see fit, and (2) to preserve the separation of church and state as a vital component of democratic government. Americans United was founded in 1947 and has more than 120,000 members and supporters across the country.

Americans United has long supported laws that reasonably accommodate religious practice.[†] Consistent with its support for the separation of church and state, however, Americans United opposes measures that exceed the bounds of permissible accommodation by imposing substantial harms on innocent third ties. That concern is especially salient when the purported accommodation results in government-sanctioned discrimination against a class of people that historically has been the target of religious and moral disapproval.

[†] See, *e.g.*, Brief for Americans United for Separation of Church and State et al., as Amici Curiae Supporting Respondents, *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006) (No. 04-1084), 2005 WL 2237539 (supporting exemption from federal drug laws for Native American religious practitioners); Brief for Americans United for Separation of Church and State and American Civil Liberties Union as Amici Curiae Supporting Petitioners, *Cutter* v. *Wilkinson*, 544 U.S. 709 (2005) (No. 03-9877), 2004 WL 2945402 (supporting religious accommodations for prisoners).

Bend the Arc – A Jewish Partnership for Justice

Amicus curiae Bend the Arc: A Jewish Partnership for Justice (Bend the Arc) is the nation's leading progressive Jewish voice empowering Jewish Americans to be advocates for the nation's most vulnerable. Bend the Arc mobilizes Jewish Americans beyond religious and institutional boundaries to create justice and opportunity for all, through bold leadership development, innovative civic engagement, and robust progressive advocacy.

The Central Conference of American Rabbis and the Women of Reform Judaism

Amicus curiae The Central Conference of American Rabbis (CCAR), whose membership includes more than 1,800 Reform rabbis, and the Women of Reform Judaism which represents more than 65,000 women in nearly 500 women's groups in North America and around the world, are committed to ensuring equality for all of God's children, regardless of sexual orientation.

As Jews, we are taught in the very beginning of the Torah that God created humans B'tselem Elohim, in the Divine Image, and therefore the diversity of creation represents the vastness of the Eternal (Genesis 1:27). We oppose discrimination against all individuals, including gays and lesbians, for the stamp of the Divine is present in each and every human being. Thus, we unequivocally support equal rights for all people, including the right to a civil marriage license. Furthermore, we whole-heartedly reject the notion that the state should discriminate against gays and lesbians with regard to civil marriage equality out of deference to religious tradition, as Reform Judaism celebrates the unions of loving same-sex couples and considers such

partnerships worthy of blessing through Jewish ritual.

Congregation Beit Simchat Torah (CBST)

Amicus curiae Congregation Beit Simchat Torah (CBST) was founded in 1973 is a vibrant spiritual community and a progressive voice within Judaism. CBST is the world's largest LGBT synagogue and attracts and welcomes gay men, lesbians, bisexuals, transgender, queer and straight individuals and families who share common values. Passionate, provocative, and deeply Jewish, CBST champions a Judaism that rejoices in diversity, denounces social injustice wherever it exists, and strives for human rights for all people locally, nationally and internationally. This case is of the upmost importance to Congregation Beit Simchat Torah which has fought fervently for Marriage Equality.

Hadassah – The Women's Zionist Organization of America

Amicus curiae Hadassah, The Women's Zionist Organization of America, founded in 1912, has over 330,000 Members, Associates and supporters nationwide. In addition to Hadassah's mission of initiating and supporting pace-setting health care, education and youth institutions in Israel, Hadassah has a proud history of protecting the rights of women and the Jewish community in the United States. Hadassah vigorously condemns discrimination of any kind and, as a pillar of the Jewish community, understands the dangers of bigotry. Hadassah strongly supports the constitutional guarantees of religious liberty and equal protection, and rejects discrimination on the basis of sexual orientation. Hadassah supports government action that

provides civil status to committed same-sex couples and their families equal to the civil status provided to the committed relationships of men and women and their families, with all associated legal rights and obligations, both federal and state.

The Hindu American Foundation

Amicus curiae The Hindu American Foundation ("HAF") is an advocacy group providing a progressive voice for over two million Hindu Americans. The Foundation interacts with and educates leaders in public policy, academia, and the media about Hinduism and issues concerning Hindus both domestically and internationally, including religious liberty; the portrayal of Hinduism; hate speech; hate crimes, and human rights. HAF has both litigated and participated as amicus curiae in numerous cases involving issues of separation of church and state as well as the right to free exercise and subscribes to the view that all religions and adherents thereof should be treated equally and with dignity by the state.

The Interfaith Alliance Foundation

Amicus curiae Interfaith Alliance Foundation celebrates religious freedom by championing individual rights, promoting policies that protect both religion and democracy, and uniting diverse voices to challenge extremism. Founded in 1994, Interfaith Alliance's members across the country belong to 75 different faith traditions as well as no faith tradition. Interfaith Alliance supports people who believe their religious freedoms have been violated as a vital part of its work promoting and protecting a pluralistic democracy and advocating for the proper boundaries between religion and government. Interfaith Alliance also seeks to shift the per-

spective on LGBT equality from that of problem to solution, from a scriptural argument to a religious freedom agreement, and to address the issue of equality as informed by our Constitution. Same-Gender Marriage and Religious Freedom: A Call to Quiet Conversations and Public Debates a paper by Interfaith Alliance President, Rev. Dr. C. Welton Gaddy, offers a diversity of ideas based on Interfaith Alliance's unique advocacy for religious freedom and interfaith exchange.

The Japanese American Citizens League

Amicus curiae The Japanese American Citizens League, founded in 1929, is the nation's largest and oldest Asian-American non-profit, non-partisan organization committed to upholding the civil rights of Americans of Japanese ancestry and others. It vigilantly strives to uphold the human and civil rights of all persons. Since its inception, JACL has opposed the denial of equal protection of the laws to minority groups. In 1967, JACL filed an amicus brief in Loving v. Virginia, urging the Supreme Court to strike down Virginia's anti-miscegenation laws, and contending that marriage is a basic civil right of all persons. In 1994, JACL became the first API non-gay national civil rights organization, after the American Civil Liberties Union, to support marriage equality for same-sex couples, affirming marriage as a fundamental human right that should not be barred to same-sex couples. JACL continues to work actively to safeguard the civil rights of all Americans.

Jewish Social Policy Action Network (JSPAN)

Amicus curiae The Jewish Social Policy Action Network ("JSPAN") is a membership organization of American Jews dedicated to protecting the Constitu-

tional liberties and civil rights of Jews, other minorities, and the weak in our society. It has filed numerous briefs in this Court and the lower federal courts seeking to uphold those liberties.

JSPAN is vitally interested in this case because the issue is at the heart of the Jewish experience in America. For most of the last two thousand years, Jews lived primarily in countries in which the government was at one with the ruling Christian or Muslim class, and therefore treated Jews as less than equal citizens. In America, Jews were freed from this linkage and were able fully to be both Jews and Americans. As a consequence, American Jews have always shared a great concern when any groups are subjected to a civil disability because they do not read scripture with the same understanding as those who write the civil laws.

Keshet

Amicus curiae Keshet is a national grassroots organization that works for the full equality and inclusion of lesbian, gay, bisexual, and transgender (LGBT) Jews in Jewish life. Led and supported by LGBT Jews and straight allies, Keshet strives to cultivate the spirit and practice of inclusion in all parts of the Jewish community. Keshet is the only organization in the U.S. that works for LGBT inclusion in all facets of Jewish life – synagogues, Hebrew schools, day schools, youth groups, summer camps, social service organizations, and other communal agencies. Through training, community organizing, and resource development, we partner with clergy, educators, and volunteers to equip them with the tools and knowledge they need to be effective agents of change.

Lutherans Concerned/North America

Amicus curiae Lutherans Concerned/North America (d/b/a Reconciling Works: Lutherans for Full Participation), Founded in 1974, works at the intersection of oppressions to embody, inspire, advocate and organize for the acceptance and full participation of people of all sexual orientations and gender identities within the Lutheran communion and in society. Our ministry is compelled by the call of God in our lives to witness to the reconciling love of Jesus and to work for justice.

Metropolitan Community Church

Amicus curiae Metropolitan Community Church ("MCC") was founded in 1968 to combat the rejection of and discrimination against persons within religious life based upon their sexual orientation or gender identity. MCC has been at the vanguard of civil and human rights movements and addresses the important issues of racism, sexism, homophobia, ageism, and other forms of oppression. MCC is a movement that faithfully proclaims God's inclusive love for all people and proudly bears witness to the holy integration of spirituality and sexuality.

The National Council of Jewish Women

Amicus curiae The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "Laws and policies that provide equal rights for same-sex couples." Our princi-

ples state that "Religious liberty and the separation of religion and state are constitutional principles that must be protected and preserved in order to maintain our democratic society" and "discrimination on the basis of race, gender, national origin, ethnicity, religion, age, disability, marital status, sexual orientation, or gender identity must be eliminated." Consistent with our Principles and Resolutions, NCJW joins this brief.

Nehirim

Amicus curiae Nehirim is a national community of lesbian, gay, bisexual, and transgender (LGBT) Jews, partners, and allies. Nehirim's advocacy work centers on building a more just and inclusive world based on the teachings in the Jewish tradition.

People for the American Way Foundation's African American Ministers Leadership Council

Amicus curiae People for the American Way Foundation (PFAWF) on behalf of the African American Ministers Leadership Council, a nonpartisan citizens' organization established to promote and protect civil and constitutional rights, joins this brief on behalf of its program, the African American Ministers Leadership Council—a network comprised of 1100 African American ministers—and its Equal Justice Task Force. Founded in 1981 by a group of religious, civic, and educational leaders devoted to our nation's heritage of tolerance, pluralism, and liberty, PFAWF has been actively involved in litigation and other efforts nationwide to combat discrimination and promote equal rights, including efforts to protect and advance the civil rights of LGBT individuals. PFAWF regularly participates in civil rights litigation, and has supported litigation to secure the right of same-sex couples to mar-

ry. PFAWF joins this brief in order to vindicate the constitutional right of same-sex couples to equal protection of the law.

The Religious Coalition for Reproductive Choice

Amicus curiae the Religious Coalition for Reproductive Choice (RCRC), Founded in 1973, is dedicated to mobilizing the moral power of the faith community for reproductive justice through direct service, education, organizing and advocacy. For RCRC, reproductive justice means that all people and communities should have the social, spiritual, economic, and political means to experience the sacred gift of sexuality with health and wholeness.

The Sikh American Legal Defense and Education Fund

Amicus curiae the Sikh American Legal Defense and Education Fund (SALDEF) was founded in 1996 and is the oldest Sikh American civil rights and educational organization. We empower Sikh Americans through advocacy, education and media relations. SALDEF's mission is to protect the civil rights of Sikh Americans and ensure a fostering environment in the United States for future generations.

T'ruah: Rabbis for Human Rights-North America

Amicus curiae T'ruah: The Rabbinic Call for Human Rights is an organization led by rabbis from all denominations of Judaism that acts on the Jewish imperative to respect and protect the human rights of all people. Our commitment to human rights begins with the Torah's declaration that all people are created in the image of God (Genesis 1:26). Within the Jewish canon, this core belief leads to teachings that equate harming a

human being with diminishing the image of God. (See, for example, B'reishit Rabbah 34:14 and Mishnah Sanhedrin 6:5.)

People of faith are not of one mind opposing civil marriage equality, and many interpretations of religion, including ours, support equal marriage rights. Judaism insists on the equality of every person before the law. The Torah instructs judges, "You shall not judge unfairly; you shall show no partiality" (Deuteronomy 16:19). Jewish law has developed strict guidelines to ensure that courts function according to this principle.

The rights and protections afforded by civil marriage are legal and not religious in nature. The case at hand addresses tax obligations that may be incumbent on some couples married according to the laws of their state, but not on others. Jewish law accepts that "the law of the land is the law," and upholds the right of the government to impose taxes on its citizens. However, major Jewish legal authorities classify as "theft" a tax levied on one subgroup and not on another (Maimonides, Mishneh Torah, Laws of Theft 5:14; Shulchan Aruch, Hoshen Mishpat 369:8). We thus believe it is important to state that people of faith are not of one mind opposing civil marriage equality, and that many interpretations of religion actually support such equality.

The Universal Declaration of Human Rights similarly guarantees to every person equal rights, without "distinction of any kind," and specifies that "Men and women of full age * * * are entitled to equal rights as to marriage, during marriage and at its dissolution."

While each rabbi or religious community must retain the right to determine acceptable guidelines for reli-

gious marriage, the state has an obligation to guarantee to same-sex couples the legal rights and protections that accompany civil marriage. Doing otherwise constitutes a violation of human rights, as well as the Jewish and American legal imperatives for equal protection under the law.

Women's League for Conservative Judaism

Amicus curiae Women's League for Conservative Judaism (WLCJ) is the largest synagogue-based women's organization in the world. As an active arm of the Conservative/Masorti movement, we provide service to hundreds of affiliated women's groups in synagogues across North America and to thousands of women worldwide. WLCJ strongly supports full civil equality for gays and lesbians with all associated legal rights and obligations, both federal and state and rejects discrimination on the basis of sexual orientation.