

Case No. 13-4178

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DEREK KITCHEN, et al., *Plaintiffs-Appellees*,

v.

GARY R. HERBERT, in his official capacity as Governor of Utah, and
SEAN D. REYES, in his official capacity as Attorney General of Utah,
Defendants-Appellants, and

SHERRIE SWENSON, as Salt Lake County Clerk, *Defendant*.

On Appeal from the United States District Court for the District of Utah,
The Hon. Robert J. Shelby presiding, Case No. 2:13-CV-00217 RJS

**APPENDIX TO BRIEF OF *AMICI CURIAE* ANTI-DEFAMATION
LEAGUE · AMERICANS UNITED FOR SEPARATION OF CHURCH AND
STATE · BEND THE ARC: A JEWISH PARTNERSHIP FOR JUSTICE ·
CENTRAL CONFERENCE OF AMERICAN RABBIS · HADASSAH, THE
WOMEN'S ZIONIST ORGANIZATION OF AMERICA · THE HINDU
AMERICAN FOUNDATION · INTERFAITH ALLIANCE FOUNDATION ·
THE INTERFAITH ALLIANCE OF COLORADO · THE JAPANESE
AMERICAN CITIZENS LEAGUE · JEWISH SOCIAL POLICY ACTION
NETWORK · KESHET · METROPOLITAN COMMUNITY CHURCHES ·
MORE LIGHT PRESBYTERIANS · THE NATIONAL COUNCIL OF
JEWISH WOMEN · NEHIRIM · PEOPLE FOR THE AMERICAN WAY
FOUNDATION · PRESBYTERIAN WELCOME · RECONCILINGWORKS:
LUTHERANS FOR FULL PARTICIPATION · RELIGIOUS INSTITUTE,
INC. · SIKH AMERICAN LEGAL DEFENSE AND EDUCATION
FUND · SOCIETY FOR HUMANISTIC JUDAISM · SOUTH ASIAN
AMERICANS LEADING TOGETHER · T'RUAH: THE RABBINIC CALL
FOR HUMAN RIGHTS · WOMEN OF REFORM JUDAISM · AND
WOMEN'S LEAGUE FOR CONSERVATIVE JUDAISM ·
IN SUPPORT OF APPELLEES AND SUPPORTING AFFIRMANCE**

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APPENDIX

Amicus curiae 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, including *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 132 S. Ct. 694 (2012); *Christian Legal Society 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); and *Romer v. Evans*, 517 U.S. 620 (1996). 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*—if embraced by this Court—would invite state-sanctioned prejudice of the strain that ADL has long fought.

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. *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), 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), 2004 WL 2945402 (supporting religious accommodations for prisoners). Consistently 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 parties. 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.

Amicus curiae Bend the Arc: A Jewish Partnership for Justice, is a national organization inspired by Jewish values and the steadfast belief that Jewish Americans, regardless of religious or institutional affiliations, are compelled to create justice and opportunity for Americans.

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.

Amicus curiae Central Conference of American Rabbis (CCAR), whose membership includes more than 2000 Reform rabbis, and the Women of Reform Judaism that 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.

Amicus curiae Hindu American Foundation (HAF) is an advocacy organization for the Hindu American community. The Foundation educates the public about Hinduism, speaks out about issues affecting Hindus worldwide, and builds bridges with institutions and individuals whose work aligns with HAF's objectives. HAF focuses on human and civil rights, public policy, media, academia, and interfaith relations. Through its

advocacy efforts, HAF seeks to cultivate leaders and empower future generations of Hindu Americans.

Since its inception, the Hindu American Foundation has made legal advocacy one of its main areas of focus. From issues of religious accommodation, religious discrimination, and hate crimes to defending fundamental constitutional rights of free exercise and the separation of church and state, HAF has educated Americans at large and the courts about various aspects of Hinduism and issues impacting the Hindu American community, either as a party to the case or an *amicus curiae*.

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 perspective 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.

Amicus curiae Interfaith Alliance of Colorado (TIA-CO) promotes social justice, religious freedom, and interfaith understanding by educating, organizing, and equipping people of faith and goodwill for advocacy, dialogue, and celebration. Founded in 1998, the Interfaith Alliance of Colorado has 24 congregational partners and more than 1,200 individual members across the state from 19 faith traditions, as well as those without a faith tradition. TIA-CO is committed to championing individual rights, promoting policies that protect both religion and democracy, and uniting diverse voices to challenge extremism.

Amicus curiae 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.

Amicus curiae Jewish Social Policy Action Network (JSPAN) is a membership organization of American Jews dedicated to protecting the Constitutional liberties and civil rights of Jews, other minorities, and the vulnerable in our society. For most of the last two thousand years, whether they lived in Christian or Muslim societies, Jews were a small religious minority victimized by prejudice and lacking sufficient political power to protect their rights.^[1] During the Holocaust, not only Jews, but gays and lesbians,

^[1] Even in the United States, Jews have been subjected to various forms of discrimination—formally such as in the requirements to hold public office (*see, e.g.,* Hartogensis, *Denial Of Equal Rights To Religious Minorities And Non-Believers In The United States* (1930) 39 Yale L.J. 659), or informally such as through quotas in higher education, particularly medical and legal education (*see, e.g.,* Halperin, *The Jewish Problem in U.S. Medical Education: 1920-1955* (2001) 56 J. Hist. Med. & Allied Sci. 140; Nelson, *The Changing Meaning of Equality in Twentieth-Century Constitutional Law* (1995) 52 Wash. & Lee L.Rev. 3, 35).

Gypsies and others were targeted for persecution and death at the hands of the Nazis. Perhaps because of their shared history as victimized outsiders, Jews have been especially sensitive to the plight of the lesbian and gay community as a discrete and insular minority within American society and throughout much of the world. As one of many voices within the progressive Jewish community, JSPAN is committed to making marriage under civil law available to consenting couples without regard to their sexual orientation.

Amicus curiae Keshet is a national 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 cultivates 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.

Amicus curiae Metropolitan Community Churches (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.

Amicus curiae More Light Presbyterians represents lesbian, gay, bisexual, and transgender people in the life, ministry, and witness of the Presbyterian Church (U.S.A.) and in society.

Amicus curiae 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 principles 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.

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.

Amicus curiae People For the American Way Foundation (PFAWF), a nonpartisan citizens' organization established to promote and protect civil and constitutional rights, joins this brief on behalf of its members and activists in the state of Utah. 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 marry. PFAWF joins this brief in order to vindicate the constitutional right of same-sex couples to equal protection of the law.

Amicus curiae Presbyterian Welcome is a non-profit corporation organized under the laws of the State of New York and headquartered in New York City. It has no parent corporation and issues no stock.

Amicus curiae ReconcilingWorks: Lutherans For Full Participation organizes lesbian, gay, bisexual, and transgender individuals and their

allies within the Lutheran communion and its ecumenical and global partners.

Amicus curiae Religious Institute, Inc. is a multifaith organization whose thousands of supporters include clergy and other religious leaders from more than fifty faith traditions. The Religious Institute, Inc. partners with the leading mainstream and progressive religious institutions in the United States.

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.

Amicus curiae Society for Humanistic Judaism (SHJ) mobilizes people to celebrate Jewish identity and culture, consistent with Humanistic ethics and a nontheistic philosophy of life. Humanistic Jews believe each person has a responsibility for their own behavior, and for the state of the world, independent of any supernatural authority. The SHJ is concerned with protecting religious freedom for all, and especially for religious, ethnic, and cultural minorities such as Jews, and most especially for Humanistic Jews, who do not espouse a traditional religious belief. Humanistic Jews support the right and responsibility of adults to

choose their marriage partners. The Society for Humanistic Judaism supports the legal recognition of marriage and divorce between adults of the same sex, and affirms the value of marriage between any two committed adults with the sense of obligations, responsibilities, and consequences thereof.

Amicus curiae South Asian Americans Leading Together (SAALT) is a national non-profit organization whose mission is to elevate the voices and perspectives of South Asian individuals and organizations to build a more just and inclusive society in the United States. As an organization that is committed to importance of equality and civil rights, SAALT joins this brief in an effort to ensure that the Constitution is not violated and all individuals are treated equally, regardless of their sexual orientation, religious practice, or definition of marriage.

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 religious 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.

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.