14-2386, 14-2387, 14-2388
IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARILYN RAE BASKIN, *et al.*,
Plaintiffs/Appellees,

v.

PENNY BOGAN, in her official
capacity as Boone County Clerk, *et al.*
Defendants/Appellants

On Appeal from the United States District Court
For the Southern District of Indiana
The Honorable Richard L. Young, Judge
Nos. 1:14-cv-355-RLY-TAB,
1:14-cv-404-RLY-TAB, and 1:14-cv-406-RLY-MJD

AMICUS BRIEF OF COLORADO, ALABAMA, ALASKA, ARIZONA, IDAHO, LOUISIANA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, AND UTAH IN SUPPORT OF APPEALLANTS

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INTERESTS OF *AMICI* STATES

The amici States file this brief in support of the Defendants/Appellants, including the Attorney General of Indiana, as a matter of right pursuant to Fed. R. App. P. 29(a).

An overwhelming majority of the States limit marriage to the union of one man and one woman, consistent with the historical definition of marriage. As the Supreme Court affirmed in *United States v. Windsor*, "[b]y history and tradition the definition and regulation of marriage … [is] within the authority and realm of the separate States." 133 S. Ct. 2675, 2689–90 (2013). This affirmation of state power to define marriage was hardly new. Indeed, the Court has long recognized that authority over the institution of marriage lies with the States. *See, e.g.*, *Sosna v. Iowa*, 419 U.S. 393, 404 (1975) ("The State … has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created.…") (quoting *Pennoyer v. Neff*, 95 U.S. 714, 734–35 (1877)).

This case calls into question the *amici* States' prerogative to define marriage. The Plaintiffs arguments threaten this important state power. Indeed, far from being a hypothetical interest, each *amici* State itself faces an active court challenge to its authority to define marriage as one-man and one-woman.

In addition to supporting the definition of marriage as one man and one woman, the State power to define marriage extends to other definitional limits, including minimum marriage age, proscribed familial status, and even a default form of marriage under the common law. *See infra*, p.11–12 (table summarizing State marriage limitations). States have had, and continue to have, diverse regulations of marriage, including limits on which people can

enter into marriage. The lower court's decision calls into question the constitutionality of the important state power to regulate domestic relations.

SUMMARY OF THE ARGUMENT

Regardless of someone's personal beliefs regarding whether same-sex marriage should be permitted as a matter of policy, doing so is not the role of the judicial branch. *See Schuette v. Coalition to Defend Affirmative Action,* No. 12-682, slip op. at 16-17 (2014) (Kennedy, J.) (noting that the democratic process is "impeded, not advanced by court decrees based on the proposition that the public cannot have the requisite repose to discuss certain issues.") The moral, political, and social issues surrounding this case are profound and profoundly important. However, they are distinct from the purely *legal* principles that this court can address.

Those legal principles lead to the conclusion that the recognition and acceptance of same-sex marriage cannot be forced upon a State by a judge, but will require convincing fellow citizens of the justness of the cause in the proper forum for this dispute – homes, families, coffee shops, schools, churches, towns, legislatures, and campaigns. The *Windsor* decision radically and necessarily affirms the authority of Indiana and the *amici* States to maintain marriage definitions consistent with the history and tradition of marriage. Quite the opposite of the conclusions drawn by the court below, the *Windsor* decision bolstered the primacy of this fundamental state power.

The only question before the court is whether a rational person can believe that redefining marriage, so as to belittle it to no more than a status symbol or a congratulatory certificate, could damage the institution's longstanding and undisputed role in helping to encourage opposite-sex couples to stay together

to raise the children they create? Yes, it is eminently reasonable for States to be cautious when redefining marriage.

The *amici* States all regulate marriage in their own specific way, with some limits being commonly adopted and others diverging from state-to-state and even changing over time. In the broader context, there have always been, and will continue to be, definitional limits as part of State requirements for marriage. How a State defines marriage, including the important decision of whether or when to change marriage as a gendered institution, should continue to be debated and decided by each State. Upholding the decision below, however, would permanently undermine the States' authority to govern marriage, including longstanding State limits on marriage that reach far beyond the specific limit at issue here.

ARGUMENT

I. *United States v. Windsor* fully supports the States' authority to define marriage as the union of one man and one woman.

The Plaintiffs and the court below rely upon one precedent above all others – *United State v. Windsor*. *See* Short App. at 13-15 (citing *Windsor* and lower court cases following it). Certainly in *Windsor* the Supreme Court had the opportunity to declare either that sexual orientation is a suspect classification, or same-sex marriage is a fundamental right, or both; but it flatly did not. At most, *Windsor* re-affirmed the States' sovereign power to define and regulate marriage.

First and foremost, it would be a mistake to apply *Windsor* to State definitions of marriage. Justice Kennedy's majority opinion expressly so held:

> This *opinion and its holding* are confined to those *lawful* marriages.

133 S.Ct. at 2696 (emphasis added). The "lawful" marriages referred to are, without a doubt, the marriages "made lawful by the State," when "the State, by its marriage laws" extended marriage to same-sex couples. *Id.* at 2696, 2697. Because Indiana has not made the legislative choice that New York made in *Windsor*, the *holding* and *opinion* in *Windsor* simply do not apply. Chief Justice Roberts in dissent amplified this inescapable conclusion:

> I think it more important to point out that [the majority's] analysis leads no further. The Court does not have before it, and the logic of its opinion does not decide, the distinct question whether the States, in the exercise of their 'historic and essential authority to define the martial relation,' *ante* at__, 186 L. Ed. 2d, at 826, may continue to utilize the traditional definition of marriage.
>
> The majority goes out of its way to this explicit in the penultimate sentence of its opinion.

Id. at 2696 (Roberts, C.J., dissenting). The majority in *Windsor* expressed no disagreement with the dissent on this point. In fact, the other two opinions in *Windsor* also affirm this crucial limitation. *Id.* at 2709 (Scalia, J., dissenting) ("State and lower federal courts should take the Court at its word and distinguish away."); *id.* at 2720 (Alito, J., dissenting) ("To the extent that the Court takes the position that the question of same-sex marriage should be resolved primarily at the state level, I wholeheartedly agree."). Thus, regardless of what the court below held here, or what other recent federal court decisions have held, *Windsor* does not invalidate State marriage definitions. This resolves the matter.

Second, *Windsor* found that DOMA violated due process protections by taking away what New York State, within its sovereign power, had the authority to give. *See id*. at 2694–95 (noting that "DOMA's principal effect is to

identify a subset of state-sanctioned marriages and make them unequal."). Quite unlike this case, *Windsor* involved a federal imposition on the state's power to define marriage that was unique, novel, and altered protections previously afforded by the State. Other than superficially being a sexual orientation case, the analysis in *Windsor* differs completely from what a ruling in these Plaintiffs' favor would require. Specifically, the *Windsor* decision turned on the following points:

(1) The federal government's "intrusion on state power";

(2) DOMA's nullification of legal recognition, benefits, and status that the people of New York State's "deliberative process that enabled its citizens to discuss and weigh arguments for and against same-sex marriage" whereby "New York acted to enlarge the definition of marriage"; and

(3) The government's unprecedented overreach in stripping away rights and protections was of "unusual character".

See id. at 2693–94. This analysis patently does not apply to a State's sovereign authority to define marriage by its traditional form. This extended analysis would have been unnecessary if sexual orientation was a suspect classification, requiring heightened scrutiny, or if same-sex marriage were a fundamental right, requiring strict scrutiny.

Likewise, the government interest asserted on behalf of the United States in *Windsor* contrasts starkly with the State interest asserted by Indiana and the *amici* States on behalf of State marriage definitions. As an indirect or secondary regulator of marriage and domestic relations law, the federal government simply lacks the historic connection to defining the government institution of marriage and dealing directly with the consequences of opposite-sex couples procreating. It is the States, not the federal government, which have traditionally regulated domestic relations. *Windsor*, 133 S.Ct. at 2691

("The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the '[p]rotection of offspring, property, interest, and the enforcement of marital responsibilities.' ") (quoting *Williams v. North Carolina*, 317 U.S. 287, (1942)). The States' interest in marriage is qualitatively and quantitatively different from the purported federal interests found lacking in *Windsor*.

Windsor is the best that the Plaintiffs have to go on – but it provides no basis for the court to invalidate State marriage laws. To be sure, since *Windsor,* several courts, like the court below here, have overlooked these aspects of the decision and incorrectly applied it to invalidate State marriage laws. The *Windsor* decision, however, flatly limits its holding and opinion to those States that have extended marriage laws to same-sex couples; by definition not Indiana. Indiana's marriage laws must be upheld even if this court believes the Supreme Court *itself* may extend the *Windsor* decision to State marriage laws. That day has not yet come and may never come. *See Rodriguez v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) (instructing lower courts to leave overruling Supreme Court decisions to the Supreme Court).

II. The fundamental right to marry does not extend to marrying anyone one chooses.

The facile proposition that the Supreme Court has found a fundamental right to marry, and Indiana's marriage laws place a limit on marriage, so thus it is unconstitutional, does not withstand scrutiny. There are three problems with the expansive fundamental right to marriage argument urged by Plaintiffs and adopted by the court below.

A. This court cannot ignore *Washington v. Glucksberg* – the fundamental right to marriage is bound by history and tradition and requires a careful description.

The Supreme Court's limitation on the substantive due process claim for a fundamental right as articulated in *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) squarely applies to the Plaintiffs' claim. By misconstruing the right to marry as limitless, the court below failed to follow the *Glucksberg* requirements when it held that Indiana's marriage laws violate the Due Process clause. Short App. At 15-19. The court below wrongly dismisses the precedent in a short paragraph, arguing that it does not govern the plaintiffs' claim. Rather, the court below looked to *Loving v.* Virginia, a case that came decades before Glucksberg, which simply cannot support a broad, fundamental right to same-sex marriage. *See* infra p.9-10 discussing *Loving* and *Baker v. Nelson*.

In fact, this court must apply the carefully prescribed – and binding – *Glucksberg* tests that demand this court uphold Indiana's marriage laws. A substantive due process claim, as made by Plaintiffs in this case, must be (1) "objectively, deeply rooted in this Nation's history and tradition," and (2) the right must be carefully described. *Glucksberg*, 521 U.S. at 720–21. The claimed fundamental right to same-sex marriage is neither. The Nation's history and tradition limit even the most sacrosanct fundament rights, including the right to marry. And the Plaintiffs' virtually limitless theory of a fundamental right to marriage is the diametric opposite of a carefully described right.

Until very recently, neither history nor tradition, codified or in practice, recognized marriage as anything other than a union between a man and a woman. As *Windsor* noted, no state recognized same-sex marriage until 11 years ago. 133 S.Ct. at 2714. Thus, "marriage between a man and a woman no

doubt had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization." *Id*. at 2689.

Regarding the careful description, like the plaintiffs in *Glucksberg*, who asserted a protected liberty interest in the right to physician-assisted suicide, Plaintiffs' asserted fundamental right to same-sex marriage rests on a sweeping presumption that the Due Process Clause protects all manifestations of self-sovereignty, including all basic and intimate exercises of personal autonomy. The Supreme Court, however, has rejected such sweeping pronouncements of the Due Process Clause's scope. *See Glucksberg*, 521 U.S. at 727–28 (stating, "[t]hat many rights and liberties protected by the Due Process Clause sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected.").

Thus, because of its novelty, the right to marry someone of the same sex is not a liberty interest "so rooted in the traditions and conscience of our people as to be ranked as fundamental[.]" *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

B. *Loving v. Virginia* does not support Plaintiffs' claim to a right to same-sex marriage; it belies it.

Contrary to Plaintiffs' assertions, *Loving v. Virginia* does not open the door to same-sex marriage; rather, it re-affirms that marriage is a circumscribed, traditional institution "subject to the State's police power." 388 U.S. 1, 7 (1967); *see also* Short App. at 17-18 (relying on *Loving*). *Loving*, rather like *Lawrence*, concerned a criminal indictment brought against an interracial couple who were lawfully married in the District of Columbia and were criminally prosecuted upon moving to Virginia. The Virginia "Racial Integrity

Act" sought to (and in this case did) punish *purely private* behavior: "cohabitating as man and wife" by "any white person and any colored person." *Id*. at 4. The bulk of the Court's opinion is focused on the straightforward proposition that this facial racial classification violates the Equal Protection Clause. *Id*. at 7–12. Since sexual orientation is not a suspect classification, this dispositive aspect of *Loving* is of no use to Plaintiffs.

Instead, Plaintiffs must rely on the Supreme Court's statement that Virginia's law also violates the Due Process Clause because marriage is a fundamental civil right. The Due Process analysis in *Loving* consists of just one paragraph:

> Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival. To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State.

Loving, 388 U.S. at 12 (citations omitted). This analysis simply recognizes that race cannot be a basis for infringing on the fundamental right to marriage. *Loving* cannot be transformed into a general statement that States may not place *any* limits on who an individual may want to marry. The distinctions between *Loving* and this case are plentiful:

- *Loving* sought to ban private marriages.
- *Loving* involved criminal penalties.
- *Loving* was a racial classification.
- *Loving* was a law that fell outside the traditional definition of marriage.

Indeed, just five years after *Loving*, the United States Supreme Court rejected a same-sex couple's attempt to invoke *Loving* to support same-sex marriage. *Baker v. Nelson*, 409 U.S. 810 (1972).

Indiana's marriage laws do not punish, banish from society, or criminalize same-sex couples who choose to marry. Finally, unlike anti-miscegenation laws, Indiana's marriage laws were not borne of hatred, animus, or white supremacy; rather, they stem from the traditional view that marriage is linked to procreation and biological kinship.

C. The right to marry is not a boundary-less right to marry whomever one may desire.

No one is free to marry whomever they want. Indiana and other states place a wide range of limits on who can marry whom no matter their feelings for one another. Under state law, various people cannot marry each other, no matter their love and commitment. All 50 states currently prohibit people from marrying based on number (polygamy and polyandry) and degree of family relationship (consanguinity and incest). Conversely, the States have divergent rules for marriage based on gender, some forms of familial relation, and marriage without celebration. The following table illustrates the great diversity in marriage laws and which groups of people are prohibited from being married:

Marriage Laws by State				
State	**Same-Sex Marriage**	**Minimum Marriage Age**	**Common-Law Marriage**	**First Cousin Marriage**
Alabama	No	16	Yes	Yes
Alaska	No	16	No	Yes
Arizona	No	16	No	Yes**
Arkansas	No	16 (F), 17 (M)	No	No
California	Yes	No age limit*	No	Yes
Colorado	No	16	Yes	Yes
Connecticut	Yes	16	No	Yes

Delaware	Yes	18	Yes	No
District of Columbia	Yes	18	No	Yes
Florida	No	16	No	Yes
Georgia	No	16	No	Yes
Hawaii	Yes	15	No	Yes
Idaho	No	16	No	No
Illinois	Yes	16	No	Yes**
Indiana	No	17	No	Yes**
Iowa	Yes	16	Yes	No
Kansas	No	16	Yes	No
Kentucky	No	16	No	No
Louisiana	No	18	No	No
Maine	Yes	16	No	Yes**
Maryland	Yes	16	No	Yes
Massachusetts	Yes	12 (F); 14 (M)	No	Yes
Michigan	No	16	No	No
Minnesota	Yes	16	No	No
Mississippi	No	15(F); 17(M)	No	No
Missouri	No	15	No	No
Montana	No	16	Yes	No
Nebraska	No	17	No	No
Nevada	No	16	No	No
New Hampshire	Yes	13 (F), 14 (M)	Yes	No
New Jersey	Yes	16	No	Yes
New Mexico	Yes	16	No	Yes
New York	Yes	16	No	Yes
North Carolina	No	14	No	Yes
North Dakota	No	16	No	No
Ohio	No	16 (F), 18 (M)	No	No
Oklahoma	No	16	Yes	No
Oregon	Yes	17	No	No
Pennsylvania	Yes	16	No	No
Rhode Island	Yes	16	No	Yes
South Carolina	No	16	Yes	Yes
South Dakota	No	16	No	No
Tennessee	No	16	No	Yes
Texas	No	16	Yes	Yes
Utah	No	15	Yes	Yes**
Vermont	Yes	16	No	Yes
Virginia	No	16	No	Yes
Washington	Yes	17	No	No
West Virginia	No	16	No	No
Wisconsin	No	16	No	Yes**
Wyoming	No	16	No	No

*Judicial and/or parental consent required
**Allowing first-cousin marriage only under certain circumstances.
(State marriage law sources cited the appendix at pages 23–26 of this brief.)

When taken together, the States' marriage laws exhibit a surprising diversity. In fact, there are 25 different variations on state definitional limits on marriage, with no more than eight states adopting the same set of limits. Yet, Plaintiffs' argument for a fundamental right to marry anyone an individual chooses would instantly call into question the diverse regulation of marriage among the States. Marriage, in Plaintiffs' view, is about the level of love and commitment between the spouses, not about procreation or children. If so for these Plaintiffs, why not for loving committed spouses in a polygamous or polyamorous relationship? Why not for loving and committed minors or even close relatives? These existing limits on marriage other than the opposite-sex requirement have not been seriously scrutinized by courts under the strict scrutiny review that Plaintiffs claim applies to the right to marry anyone of one's choosing. The States should remain free to regulate the institution of marriage for these individuals who may express love for one another.

III. State marriage laws satisfy rational basis review.

The same rational basis standard of review applies under the fundamental rights claim as the Equal Protection claim. *Glucksberg*, 521 U.S. at 728; *see also Heller v. Doe*, 509 U.S. 312, 319 (1993). Rational basis is "the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause." *City of Dallas v. Stanglin*, 490 U.S. 19, 26 (1989). Particularly when state laws are being judged, as here, rational basis is a "paradigm of judicial restraint" where courts should not "judge the wisdom, fairness, or logic of legislative choices." *FCC v. Beach Commc'ns*, 508 U.S. 307, 313 (1993); *see also* LAURENCE H. TRIBE, THE INVISIBLE CONSTITUTION 208 (2008) (stating, "the principle that

carefully considered constitutional interpretations issued by the organs of government should not be revisited absent circumstances more compelling than a mere change in the identity of the individuals who authored the interpretations in question.").

State marriage laws must be given a "strong presumption of validity." *Heller*, 509 U.S. at 320. Indeed, the law must be upheld "so long as there is a *plausible* policy reason for the classification." *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992) (emphasis added). The rational basis for the law may be based on "speculation unsupported by evidence or empirical data." *Beach*, 508 U.S. at 315. "Even if [a] classification … is to some extent both underinclusive and overinclusive, … and hence the line drawn [is] imperfect, it is nevertheless the rule that … Perfection is by no means required." *Vance v. Bradley*, 440 U.S. 93, 108–09 (1979) (quotation and citation omitted). Specifically for state marriage laws, "rational basis review must be particularly deferential." *Citizens for Equal Protection v. Bruning,* 455 F.3d 859, 867 (8th Cir. 2006).

A. Traditional marriage definitions seek to encourage social institutions that help avoid the social problems of children being born and raised without both parents around to raise them.

Does the state have a rational interest in "promoting an optimal social structure for educating, socializing, and preparing its future citizens to become productive participants in civil society"? *Lofton v. Sec'y of the Dep't of Children & Family Servs.*, 358 F.3d 804, 819 (11th Cir. 2004). Yes, the interest is not merely reasonable, but vital. Children are the future citizens that States aim to protect and promote through the institution of marriage.

Marriage finds its historical basis in the procreative ability inherent in sexual relations between men and women. Put another way, it addresses the

inevitable result of man-woman relationships: children. Traditional marriage serves the States' important government interest in discouraging the creation of children in relationships outside the optimal environment for children to be born and raised. Children who do not grow up to reach their full potential as productive citizens burden society.

In reality, children are beget by opposite-sex relationships and those children are in need of being raised and nurtured to an age of independence. The risk that children will be fatherless if society does not encourage fathers to stick around and parent their offspring is real and significant. To be sure, in many particular instances, these propositions do not hold – there are exceptions to the rule. If this were strict scrutiny, those exceptions would arguably make the law impermissibly over- or under-inclusive. But this is not strict scrutiny; the state is entitled to adopt laws that are not perfectly tailored to solve the entirety of a problem. *See, e.g.*, *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483 (1955).

For example, many credible authorities have placed blame on the liberalization of divorce laws in the mid-20th Century as a negative influence on the institution of marriage and cause of harm to society. WITHERSPOON INSTITUTE, MARRIAGE AND THE PUBLIC GOOD 3 (2008).[1] That fundamental changes to the government institution of marriage through divorce laws came to have negative consequences speaks loudly of the care and attention given by

[1] "[I]n the last forty years, marriage and family have come under increasing pressure from the modern state, the modern economy, and modern culture. Family law in all fifty states … has facilitated unilateral divorce, so that marriages can be easily and effectively terminated at the will of either party. [listing other factors] Taken together, marriage is losing its preeminent status as the social institution that directs and organizes reproduction, childrearing, and adult life."

States that desire to proceed with caution before adopting changes to marriage.

The traditional institution of marriage, built around trying to channel opposite-sex couples into lasting not fleeting relationships, furthers the State interests in children being born and then supported. This is enough "[u]nder rational-basis review, where a group possesses distinguishing characteristics relevant to interests the State has authority to implement, a State's decision to act on the basis of those differences does not give rise to a constitutional violation." *Bd. of Trustees v. Garrett*, 531 U.S. 356, 366–67 (2001) (quotation marks omitted).

The central problem States face is, again, that *opposite-sex* couples are apt to create children, and left to their own devices they are not always as committed to long-term parenting as society needs. The fact that there are so many children needing adoption attests to societal need for a strong marriage institution. Traditional marriage fights the instinct to create children without remaining committed to their upbringing. This problem is not caused by same-sex couples, at least not to any significant extent, and States thus need not extend this part of its solution to them.

Accordingly, the gendered institution of marriage encourages a child-centric view of marriage. Conversely, Plaintiffs' view of marriage is adult-centric. To constitutionally reengineer marriage on the basis of perceived slights to the emotional state of adults will endorse an overly adult-centric view of marriage and displace the child-centric view of marriage. Adult centric marriage, i.e. marriage based on emotion, also communicates that marriages are discardable, based on nothing more than the emotional whims of the parties to the marriage. The more temporary marriage becomes, the less marriage serves the State.

Consider what this Court must declare, as a matter of constitutional law, to find Indiana's laws unconstitutional: the desire to "steer procreation into marriage"[2] is irrational. The court would be saying it is not even plausible that marriage is related to producing and raising children. Such a message, constitutionalizing marriage as an institution primarily about adult love and commitment, not children, will undermine the role of marriage as a prophylactic for inevitable sexual relations between opposite-sex couples that are naturally capable of producing children.

To be clear, the *amici* States readily admit that the prospect of same-sex marriage is not the first, and perhaps not the greatest, threat to the child-centric view of marriage. That there may be other factors that contribute to the diminishment of the institution of marriage calls for careful consideration before the States change these laws. Satisfying rational basis review does not require the States to win a debate about what is the best or most-appealing law regarding marriage. The States need only show that people of sound mind can plausibly take one side in the debate. This is a low bar.

B. States have many other valid interests in marriage.

States have other sound reasons to support the traditional institution of marriage, any of which is sufficient to sustain its definition of marriage under the Equal Protection or Due Process Clauses. The value of gender diversity in parenting, even if debated by some, is a well-supported reason to encourage parenting by a mother and father. *Bowen v. Gilliard*, 483 U.S. 587, 614 (1987).

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[2] This state interest was found sufficient to uphold Nebraska's traditional marriage definition in *Citizens for Equal Protection v. Bruning*. 455 F.3d 859, 867 (2006). None of the post-*Windsor* marriage cases, including the majority opinion in the Tenth Circuit's 2-1 decision in *Kitchen v. Herbert*, --- F.3d ---, slip op. (10th Cir. June 25, 2014) have disagreed with or cited this analysis.

(Brennan, J., dissenting) (acknowledging that "children have a fundamental interest in sustaining a relationship with their mother" and "a fundamental interest … in sustaining a relationship with their father" because, among other reasons, "the optimal situation for the child is to have both an involved mother and an involved father" (alterations omitted)); JAMES Q. WILSON, THE MARRIAGE PROBLEM 169 (2002) ("The weight of scientific evidence seems clearly to support the view that fathers matter.")

Encouraging adequate reproduction for society to support itself also supports the institution of marriage being aimed at naturally procreative couples. Lynn Wardle, "*Multiply and Replenish*": *Considering Same-Sex Marriage in Light of State Interests in Marital Procreation*, 24 HARV. J.L. & PUB. POL'Y 771, 782–83 (2001). Promoting stability and responsibility in marriages between mothers and fathers for is the sake of their children. *Hernandez v. Robles*, 855 N.E.2d 1, 7 (N.Y. 2006) ("[T]he Legislature could rationally decide that, for the welfare of children, it is more important to promote stability, and to avoid instability, in opposite-sex than in same-sex relationships … It could find that an important function of marriage is to create more stability and performance in the relationships that cause children to be born.")

Allowing the democratic process to play out respects the democratic form of government that our founding fathers intended and entrusted to the people in our U.S. Constitution. *See Schuette*, slip op. at 16–17 (stating, "[i]t is demeaning to the democratic process to presume that the voters are not capable of deciding [sensitive issues] on decent and rational grounds," and, therefore, "[t]he process of public disclosure and political debate should not be foreclosed[.]").

C. The People of Indiana are not irrational in wishing to proceed with caution when fundamentally reforming a public institution.

Courts inherently recognize that "the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable." *Planned Parenthood v. Casey*, 505 U.S. 833, 854 (1992) (citing Powell, *Stare Decisis and Judicial Restraint*, 1991 JOURNAL OF SUPREME COURT HISTORY 13, 16). But precedent is not only a judicial concept – society itself has an interest in avoiding suddenly reversing policies that have stood for decades. *Cf. id.* at 855 (noting institutional damage that could be done if prior rules are undone without clear, undeniable proof that the rule is unworkable or completely unfounded by new factual understandings); *see also Mitchell v. W.T. Grant*, 416 U.S. 600, 636 (1974) (Stewart, J., dissenting) ("A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court, and to the system of law which it is our abiding mission to serve.").

Society no less than the judiciary has a significant interest in making policy step-by-step rather than in large leaps. The public institution of marriage has long been recognized as one of the most important in society. *E.g. Williams v. North Carolina*, 317 U.S. at 303 ("the marriage relation [is] an institution more basic in our civilization than any other"); *Maynard v. Hill*, 125 U.S. 190, 211 (1888) (marriage "is the foundation of the family and of society, without which there would be neither civilization nor progress.") The people of Indiana are therefore rationally justified in proceeding with caution when considering changes to such a fundamental institution. As Justice O'Connor recognized,

"preserving the traditional institution of marriage" is itself a "legitimate state interest." *Lawrence v. Texas*, 539 U.S. 558, 585 (2003) (O'Connor, J., concurring).

It is rational to be concerned that such fundamental changes to the nature of marriage are risky and could bring untold negative consequences in the future. *See Lewis v. Harris*, 908 A.2d 196, 222 (N.J. 2006) ("To alter that meaning [union of a man and a woman] would render a profound change in the public consciousness of a social institution of ancient origin.") People on all sides of this divisive debate about the meaning of marriage recognize the profound nature of change being proposed. *See* Monte Neil Stewart, *Marriage Facts*, 31 J.L. & PUB. POL'Y 313, 324 (2008) ("well-informed observers of marriage regardless of their sexual, political, or theoretical orientations uniformly acknowledge the magnitude of the differences between the two possible institutions of marriage.")

Whether redefining marriage is good or bad is a matter of much debate. Many eminent scholars have expressed rational concern with redefining marriage. WITHERSPOON INSTITUTE, MARRIAGE AND THE PUBLIC GOOD, 18–19 ("Same-sex marriage would further undercut the idea that procreation is intrinsically connected to marriage. It would undermine the idea that children need both a mother and a father, further weakening the societal norm that men should take responsibility for the children they beget."); S. GIRGIS, R. ANDERSON, & R. GEORGE, WHAT IS MARRIAGE? MAN AND WOMAN: A DEFENSE 31 (2012) (if "marriage is understood as … An essentially emotional union that has no principled connection to organic bodily union and the bearing and rearing of children … then marital norms, especially the norms of permanence, monogamy, and fidelity, will make less sense.").

The cautious approach to redefining marriage is particularly appropriate given the novelty of same-sex marriage and thus the lack of data and real world experience from jurisdictions that have adopted the same-sex marriage model. It was only 2004 – *barely a decade ago* – that Massachusetts became the first state to recognize same-sex marriage. Given the universally recognized importance of marriage, this recent innovation can rightly be treated with caution and, at a minimum, given time to play out before States cast a final judgment.

No doubt there is an important debate going on in society about marriage. There is no need to resolve it here. Observation of the laboratories of democracy may well convince Indiana's citizens to one day, perhaps soon, alter the institution of marriage. *Cf. New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Until that day, the citizens are exercising their right to be prudent and careful when changing societal building blocks as ubiquitous as marriage.

D. Recent court decisions ruling state marriage laws have not disproven the constitutionality of traditional marriage definitions.

That some lower courts have recently ruled one way proves little. The parade of recent lower court cases represents merely one side of the debate. Short App at 14. A more balanced view would credit the other judges who have opined otherwise, upholding the traditional institution of marriage. The Eighth Circuit, state courts, and numerous Supreme Court Justices have so held. *See Bruning*, 455 F.3d at 866-68;[3] *Jackson v. Abercrombie,* 844 F. Supp.

[3] Of note, not a single court decision striking down a state marriage law post-*Windsor* had distinguished, or even cited, the only then on-point, Federal Court of

2d 1065, 1107–11 (D. Haw. 2012); *Hernandez,* 855 N.E. 2d at 7; *Baker v. Nelson,* 181 N.W.2d 185 (Minn. 1971); *Lawrence,* 539 U.S. at 585 (O'Connor, J., concurring) (describing "preserving the traditional institution of marriage" as a "legitimate state interest"); *Windsor,* 133 S.Ct. at 2716 (Alito, J., dissenting) ("At present, no one – including social scientists, philosophers, and historians – can predict with any certainty what the long-term ramifications of widespread acceptance of same-sex marriage will be. And judges are certainly not equipped to make such an assessment.").

Are these jurists so misguided and mal-reasoned that we should deny their analysis the dignity of being part of this debate about the role of government marriage in modern society? Plaintiffs are, in essence, asking this court to ignore half of the debate and declare a victory by default. The echo-chamber of cases coming after *Windsor* all share the same flaw of misreading the Supreme Court's *Windsor* opinion and, often, engaging in taking sides in the moral and social debate about marriage that has little to do with the relevant constitutional claims. Reading one is akin to reading them all. The rational basis for the traditional, gendered institution of marriage easily complies with the U.S. Constitution.

CONCLUSION

This is a case that tempts everyone involved to conflate the law with their moral beliefs and personal opinions. Courts are experienced with setting aside such influences in similarly controversial situations, even where matters of life and death are at stake. *See, e.g.*, *Baze v. Rees*, 553 U.S. 35, 87 (2008) (Stevens, J., concurring) (despite concluding that the death penalty should be

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Appeals decision, *Bruning*, which easily upheld Nebraska's traditional definition of marriage.

unconstitutional, concurring in its imposition because the Court has held otherwise); *Planned Parenthood*, 505 U.S. at 850 ("Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code.").

Plaintiffs and their advocates, both legal and political, are entitled to advocate for a change in the definition of marriage and argue that the current regulation is unfair, or even immoral. States need not disprove those assertions to prevail. Not everything that is wrong, not everything that is unfair, not everything that is immoral, even, is unconstitutional. Some problems the constitution leaves to the citizens to resolve through persuasion and discussion rather than litigation.

This is one of those cases.

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APPENDIX: STATE MARRIAGE DEFINITIONS

States Recognizing Gendered Marriage Only		States Recognizing Non-Gendered Marriage	
State	**Citation**	**State**	**Citation**
Alabama	ALA. CODE §30-1-19 (2014)	California	CAL. FAM. CODE §308 (Deering 2014)
Alaska	ALASKA STAT. §25.05.013 (2014)	Connecticut	CONN. GEN. STAT. §46B-28A (2014)
Arizona	ARIZ. REV. STAT. ANN. §25-101 (2014)	Delaware	DEL. CODE ANN. tit. 13 §§101A, 129 (2014)
Arkansas	ARK. CODE. ANN. §9-11-109 (2014)	District of Columbia	D.C. CODE §46-401 (2014)
Colorado	COLO. REV. STAT. §14-2-104 (2014)	Hawaii	HAW. REV. STAT. ANN. §572-1 (2014)
Florida	FLA. STAT. §741.04 (2014)	Illinois	750 ILL. COMP. STAT. ANN. 5/201 (2014)
Georgia	GA. CODE. ANN. §19-3-3.1 (2014)	Iowa	*Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)
Idaho	IDAHO CODE ANN. §32-209 (2014)	Maine	ME. REV. STAT. tit. 19-A, §650-A (2014)
Indiana	IND. CODE ANN. § 31-11-1-1(2014)	Maryland	MD. CODE ANN., FAM. LAW §2-201 (2014)
Kansas	KAN. STAT. ANN. §23-2501 (2014)	Massachusetts	MASS. GEN. LAWS ch. 207, §19 (2014); *Goodridge v. Dept. of Pub. Health*, 798 N.E.2d 941 (Mass. 2003)
Kentucky	KY. REV. STAT. ANN. § 402.020 (2013)	Minnesota	MINN. STAT. §517.01 (2014)
Louisiana	LA. CIV. CODE. ANN. art. 89 (2013)	New Hampshire	N. H. REV. STAT. ANN. §457:1-a (2014)
Michigan	MICH. COMP. LAWS SERV. §551.1 (2014)	New Jersey	*Garden State Equity v. Dow*, 79 A.3d 479 (N.J. Super. Ct. App. Div. 2013)
Mississippi	MISS. CODE ANN. §93-1-1 (2014)	New Mexico	N.M. STAT. ANN. §40-1-4 (2014)
Missouri	MO. REV. STAT. §451.022 (2014)	New York	N.Y. DOM. REL. LAW §10-a (Consol. 2014)
Montana	MONT. CODE ANN. §40-1-401 (2014)	Oregon	*Geiger v. Kitzhaber*, No. 6:13-cv-01834-MC (D. OR. May 19, 2014), *motion for stay denied*, No. 14-35427 (9th Cir. May 19, 2014)
Nebraska	NEB. CONST. art. 1 §29	Pennsylvania	*Whitewood v. Wolf*, No. 1:13-cv-1861 (M.D. PA. May 20,

			2014)
Nevada	NEV. CONST. art. 1 §21	Rhode Island	R.I. GEN LAWS §15-1-1 (2013)
North Carolina	N.C. GEN. STAT. §51-1 (2014)	Vermont	VT. STAT. ANN. tit. 15, §8 (2013)
North Dakota	N.D. CENT. CODE §14-03-01 (2013)	Washington	WASH. CODE ANN. §26.040.010 (2013)
Ohio	OHIO REV. CODE. ANN. §3101.01 (2014)		
Oklahoma	OKLA. STAT. tit. 43, §3.1 (2013)		
South Carolina	S.C. CODE ANN. §20-1-15 (2013)		
South Dakota	S.D. CODIFIED LAWS §25-1-1 (2014)		
Tennessee	TENN. CODE ANN. §36-3-113 (2014)		
Texas	TEX. FAM. CODE. ANN. §2.001 (2014)		
Utah	UTAH CODE ANN. § 30-1-2 (2014)		
Virginia	VA. CODE ANN. §20-45.2 (2014)		
West Virginia	W. VA. CODE ANN. §48-2-603 (2014)		
Wisconsin	WIS. STAT. §765.01(2014)		
Wyoming	WYO. STAT. ANN. §20-1-101 (2014)		

Minimum Marriage Age by State, Ascending from Youngest to Oldest					
State	**Min. Age**	**Citation**	**State**	**Min. Age**	**Citation**
California	N/A	CAL. FAM. CODE §302 (Deering 2014)	New Jersey	16	N.J. REV. STAT. §37:1-6 (2014)
Massachusetts	12 (F); 14 (M)	MASS. GEN. LAWS ch. 207, §7 (2014)	New Mexico	16	N.M. STAT. ANN. §40-1-6 (2014)
New Hampshire	13 (F); 14 (M)	N. H. REV. STAT. ANN. §457:4 (2014)	New York	16	N.Y. DOM. REL. LAW §15 (Consol. 2014)
New York	14	N.Y. DOM. REL. LAW §15-a (Consol. 2014)	North Carolina	16	N.C. GEN. STAT. §51-3 (2014)
Hawaii	15	HAW. REV. STAT. ANN. §572-1	North Dakota	16	N.D. CENT. CODE §14-03-02 (2013)

		(2014)			
Missouri	15	MO. REV. STAT. §451.090 (2014)	Oklahoma	16	OKLA. STAT. tit. 43, §3 (2013)
Mississippi	15 (F); 17 (M)	MISS. CODE ANN. §93-1-5 (2014)	Pennsylvania	16	23 PA. CONS. STAT. §1304 (2014)
Utah	16	UTAH CODE ANN. § 30-1-9 (2014)	Rhode Island	16	R.I. GEN LAWS §15-2-11 (2013)
Alabama	16	ALA. CODE §30-1-4 (2014)	South Carolina	16	S.C. CODE ANN. §20-1-100 (2013)
Alaska	16	ALASKA STAT. §25.05.021 (2014)	South Dakota	16	S.D. CODIFIED LAWS §25-1-9 (2014)
Arizona	16	ARIZ. REV. STAT. ANN. §25-102 (2014)	Tennessee	16	TENN. CODE ANN. §36-3-105 (2014)
Colorado	16	COLO. REV. STAT. §14-2-106 (2014)	Texas	16	TEX. FAM. CODE. ANN. §2.102 (2014)
Connecticut	16	CONN. GEN. STAT. §46B-30A (2014)	Vermont	16	VT. STAT. ANN. tit. 15, §513 (2013)
Florida	16	FLA. STAT. §741.0405 (2014)	Virginia	16	VA. CODE ANN. §20-48 (2014)
Georgia	16	GA. CODE. ANN. §19-3-2 (2014)	Wisconsin	16	WIS. STAT. § 765.02 (2014)
Idaho	16	IDAHO CODE ANN. §32-202 (2014)	Wyoming	16	WYO. STAT. ANN. §20-1-102 (2014)
Illinois	16	750 ILL. COMP. STAT. ANN. 5/203 (2014)	Arkansas	16 (F); 17 (M)	ARK. CODE. ANN. §9-11-102 (2014)
Iowa	16	IOWA CODE §595.2 (2014)	Indiana	17	IND. CODE ANN. § 31-11-1-5(2014)
Kansas	16	KAN. STAT. ANN. §23-2505 (2014)	Nebraska	17	NEB. REV. STAT. ANN. §42-102 (2013)
Kentucky	16	KY. REV. STAT. ANN. § 402.020 (2013)	Oregon	17	OR. REV. STAT. §106.010 (2013)
Maine	16	ME. REV. STAT. tit. 19-A, §652 (2014)	Washington	17	WASH. CODE ANN. §26.04.010 (2013)
Maryland	16	MD. CODE ANN., FAM. LAW §2-301 (2014)	Ohio	16 (F); 18 (M)	OHIO REV. CODE. ANN. §3101.01 (2014)
Michigan	16	MICH. COMP. LAWS SERV. §551.51 (2014)	Delaware	18	DEL. CODE ANN. tit. 13 §123 (2014)
Minnesota	16	MINN. STAT. §517.02 (2014)	District of Columbia	18	D.C. CODE §101 (2014)
Montana	16	MONT. CODE ANN. §40-1-213 (2014)	Louisiana	18	LA. CIV. CODE ANN. art. 93 (2013)

Nevada	16	NEV. REV. STAT. ANN. §122.020 (2014)	West Virginia	16	W. VA. CODE ANN. §48-2-301 (2014)

States *Permitting* Common-Law Marriage		**States *Prohibiting* Common-Law Marriage**	
State	**Citation**	**State**	**Citation**
Alabama	*White v. White*, 142 So. 524 (Ala. 1932)	Arizona	ARIZ. REV. STAT. ANN. §25-111-12 (2014)
Colorado	COLO. REV. STAT. §14-2-109.5 (2014)	Arkansas	ARK. CODE. ANN. §9-11-201 (2014)
District of Columbia	*Mesa v. United States*, 874 A.28 79 (D.C. 2005)	California	CAL. FAM. CODE §350 (Deering 2014)
Iowa	IOWA CODE §595.1A (2014)	Connecticut	CONN. GEN. STAT. §46B-24 (2014)
Kansas	KAN. STAT. ANN. §23-2502 (2014); KAN. STAT. ANN. §23-2714 (2014)	Delaware	*Owens v. Bentley*, 14 A.2d 391 (DE 1940); *but see*, DEL. CODE ANN. tit. 13 §126 (2014)
Montana	MONT. CODE ANN. §40-1-403 (2014)	Florida	FLA. STAT. §741.211 (2014)
New Hampshire	N. H. REV. STAT. ANN. §457:39 (2014)	Georgia	GA. CODE. ANN. §19-3-1.1 (2014)
South Carolina	S.C. CODE ANN. §20-1-360 (2013)	Hawaii	HAW. REV. STAT. ANN. §572-1 (2014); Hawaii. Op. Att'y Gen. No. 73-5 (1973)
Texas	TEX. FAM. CODE. ANN. §2.401-02 (2014)	Idaho	IDAHO CODE ANN. §32-201 (2014)
Utah	UTAH CODE ANN. § 30-1-4.5 (2014)	Illinois	750 ILL. COMP. STAT. ANN. 5/214 (2014)
		Indiana	IND. CODE ANN. § 31-11-8-5(2014)
		Kentucky	*Adm'r v. Brown*, 215 S.W.2d 871 (Ky. 1948)
		Louisiana	LA. CIV. CODE ANN. art. 86 (2013)
		Maine	*Pierce v. Secretary of U.S. Dep't of Health*, 254 A.2d 46 (Me. 1969)
		Maryland	MD. CODE ANN., FAM. LAW §2-401 (2014); see also Henderson v. Henderson, 87 A.2d 403 (1952)
		Massachusetts	MASS. GEN. LAWS ch. 207, §47 (2014)
		Michigan	MICH. COMP. LAWS SERV.

			§551.2 (2014)
		Minnesota	MINN. STAT. §517.01 (2014); *In re estate of Kueber*, 390 N.W.2d 22 (Minn. Ct. App. 1986)
		Mississippi	MISS. CODE ANN. §93-1-13 (2014)
		Missouri	MO. REV. STAT. §451.040 (2014)
		Nebraska	NEB. REV. STAT. ANN. §42-101 (2013)
		Nevada	NEV. REV. STAT. ANN. §122.010 (2014)
		New Jersey	N.J. REV. STAT. §37:1-10 (2014)
		New Mexico	N.M. STAT. ANN. §40-1-10 (2014)
		New York	N.Y. DOM. REL. LAW §11 (Consol. 2014)
		North Carolina	N.C. GEN. STAT. §51-1 (2014)
		North Dakota	N.D. CENT. CODE §14-03-01 (2013); Schumacher v. Great N. Ry., 136 N.W. 85 (1912)
		Ohio	OHIO REV. CODE. ANN. §3101.01 (2014); *Cecchini v. Cecchini*, 2010 Ohio App. 533 (Ohio Ct. App. 2010)
		Oklahoma	OKLA. STAT. tit. 43, §1 (2013)
		Oregon	OR. REV. STAT. §106.041 (2013)
		Pennsylvania	23 PA. CONS. STAT. §1103 (2014)
		Rhode Island	R.I. GEN LAWS §15-2-1 (2013)
		South Dakota	S.D. CODIFIED LAWS §25-1-1 (2014)
		Tennessee	TENN. CODE ANN. §36-3-103 (2014)
		Utah	UTAH CODE ANN. § 30-1-1 (2014)
		Vermont	VT. STAT. ANN. tit. 15, §8 (2013)
		Virginia	VA. CODE ANN. §20-13 (2014)
		Washington	WASH. CODE ANN.

			§26.04.140 (2013)
		West Virginia	W. VA. CODE ANN. §48-2-101 (2014)
		Wisconsin	WIS. STAT. § 765.16 (2014)
		Wyoming	WYO. STAT. ANN. §20-1-103 (2014)

States *Permitting* First Cousin Marriage		**States *Prohibiting* First Cousin Marriage**	
State	**Citation**	**State**	**Citation**
Alabama	ALA. CODE §30-1-3 (2014)	Arkansas	ARK. CODE. ANN. §9-11-106 (2014)
Alaska	ALASKA STAT. §25.05.021 (2014)	Delaware	DEL. CODE ANN. tit. 13 §101A (2014)
Arizona**	ARIZ. REV. STAT. ANN. §25-101	Idaho	IDAHO CODE ANN. §32-206 (2014)
California	CAL. FAM. CODE §308 (Deering 2014)	Iowa	IOWA CODE §595.19 (2014)
Colorado	COLO. REV. STAT. §14-2-110 (2014)	Kansas	KAN. STAT. ANN. §23-2503 (2014)
Connecticut	CONN. GEN. STAT. §46B-21 (2014)	Kentucky	KY. REV. STAT. ANN. § 402.010 (2013)
District of Columbia	D.C. CODE §46-401.01 (2014)	Louisiana	LA. CIV. CODE ANN. art. 90 (2013)
Florida	FLA. STAT. §741.21 (2014)	Michigan	MICH. COMP. LAWS SERV. §551.3 (2014)
Georgia	GA. CODE. ANN. §19-3-3 (2014)	Minnesota	MINN. STAT. §517.03 (2014)
Hawaii	HAW. REV. STAT. ANN. §572-1 (2014)	Mississippi	MISS. CODE ANN. §93-1-1 (2014)
Illinois**	750 ILL. COMP. STAT. ANN. 5/212 (2014)	Missouri	MO. REV. STAT. §451.020 (2014)
Indiana**	IND. CODE ANN. § 31-11-1-2(2014)	Montana	MONT. CODE ANN. §40-1-401 (2014)
Maine**	ME. REV. STAT. tit. 19-A, §701 (2014)	Nebraska	NEB. REV. STAT. ANN. §42-103 (2013)
Maryland	MD. CODE ANN., FAM. LAW §2-202 (2014)	Nevada	NEV. REV. STAT. ANN. §125.290 (2014)
Massachusetts	MASS. GEN. LAWS ch. 207, §1 (2014)	New Hampshire	N. H. REV. STAT. ANN. §457:2 (2014)
New Jersey	N.J. REV. STAT. §37:1-1 (2014)	North Dakota	N.D. CENT. CODE §14-03-03 (2013)
New Mexico	N.M. STAT. ANN. §40-1-7 (2014)	Ohio	OHIO REV. CODE. ANN. §3101.01 (2014)
New York	N.Y. DOM. REL. LAW §5 (Consol. 2014)	Oklahoma	OKLA. STAT. tit. 43, §2 (2013)

North Carolina	N.C. GEN. STAT. §51-4 (2014)	Oregon	OR. REV. STAT. §106.020 (2013)
Rhode Island	R.I. GEN LAWS §15-1-2 (2013)	Pennsylvania	23 PA. CONS. STAT. §1304 (2014)
South Carolina	S.C. CODE ANN. §20-1-10 (2013)	South Dakota	S.D. CODIFIED LAWS §25-1-6 (2014)
Tennessee	TENN. CODE ANN. §36-3-101 (2014)	Washington	WASH. CODE ANN. §26.04.020 (2013)
Texas	TEX. FAM. CODE. ANN. §2.004 (2014)	West Virginia	W. VA. CODE ANN. §48-2-302 (2014)
Utah**	UTAH CODE ANN. § 30-1-1 (2014)	Wyoming	WYO. STAT. ANN. §20-2-101 (2014)
Vermont	VT. STAT. ANN. tit. 15, §1a (2013)		
Virginia	VA. CODE ANN. §20-38.1 (2014)		
Wisconsin**	WIS. STAT. § 765.03 (2014)		

*Judicial and/or parental consent required

**Allowing first-cousin marriage only under certain circumstances.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,118 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 12 pt. Century Schoolbook font.

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July 22, 2014

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system on July 22, 2014.

_____

s/ Michael Francisco
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Attorney for State of Colorado and other Amici States