

Nos. 14-2386, 14-2387, and 14-2388

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

MARILYN BASKIN, *et al.*,
Plaintiffs-Appellees

v.

PENNY BOGAN, *et al.*,
Defendants-Appellants.

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

**BRIEF OF *AMICUS CURIAE* CONCERNED WOMEN FOR AMERICA
IN SUPPORT OF DEFENDANTS-APPELLANTS URGING REVERSAL**

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court Nos.: 14-2386, 14-2387, and 14-2388

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INTEREST OF *AMICUS CURIAE*

Concerned Women for America (“CWA”) is the largest public policy women’s organization in the United States, with 500,000 members from all 50 states. Through our grassroots organization, CWA encourages policies that strengthen families and advocates the traditional virtues that are central to America’s cultural health and welfare.

CWA actively promotes legislation, education, and policymaking consistent with its philosophy. Its members are people whose voices are often overlooked—average, middle-class American women whose views are not represented by the powerful or the elite. CWA is profoundly committed to the rights of individual citizens and organizations to exercise the freedoms of speech, organization, and assembly protected by the First Amendment.

The Brief is filed with the consent of all parties.

STATEMENT OF COMPLIANCE WITH FED. R. APP. P. 29(c)

No party’s counsel authored this Brief in whole or in part; no party or party’s counsel contributed money intended to fund preparing or submitting the Brief; and no person other than *Amicus Curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting the Brief.

SUMMARY OF THE ARGUMENT

In assessing the level correct level of scrutiny to be applied in this matter, the court below correctly applied rational basis scrutiny, following the precedents of this Court.

Heightened scrutiny is inappropriate because homosexuals do not constitute either a suspect class or a quasi-suspect class. This is so, in part, because they have achieved direct political power, acquired important allies, and raised significant funds. Furthermore, they are supported by labor unions, corporate America, media and religious communities, and have public opinion moving in their favor.

ARGUMENT

I. This Court Should Apply Rational Basis Scrutiny To Appellees' Equal Protection Claim.

This Court has held that classifications based on sexual orientation are subject to rational scrutiny. *Schroeder v. Hamilton Sch. Dist.*, 282 F.3d 946, 950-51 (7th Cir. 2002) (“Homosexuals are not entitled to any heightened protection under the Constitution.”).

The Appellees will likely reiterate their argument that, since *Bowers v. Hardwick*, 478 U.S. 186 (1986), which was relied on in *Schroeder*, has been overruled by *Lawrence v. Texas*, 539 U.S. 558 (2003), *Schroeder* no longer applies. See *Baskin v. Bogan*, Nos. 1:14-cv-00355, 1:14-cv-00404, 1:14-cv-00406, 2014 WL 2884868 at *11 (S.D. Ind., June 25, 2014). However, as the district court noted, *Romer v. Evans*, 517 U.S. 620 (1996), which was also relied on in *Schroeder*, is still valid. *Baskin*, 2014 WL 2884868 at *11. Therefore, “if the law of [this] circuit is to be changed, it is appropriate that such action be taken by the court sitting en banc.” *United States v. Rosciano*, 499 F.2d 173, 176 (7th Cir. 1974). Thus, in the absence of any departure by the Supreme Court from *Romer*, this Court need not – indeed, cannot—consider whether the appellees’ equal protection claim is subject to

heightened scrutiny.

However, should this Court disagree, it would need to consider whether homosexuals are politically powerless. Therefore, the next Section of this Brief will address that issue.

II. Homosexuals Are Not Politically Powerless.

A. *Political Powerlessness is a Key Factor in Identifying Protected Classes.*

When identifying a suspect or quasi-suspect class, courts must consider four factors: whether the group has historically been discriminated against, whether the group has immutable characteristics, whether the group has characteristics that relate to its ability to contribute to society, and whether the group is politically powerless. *See, e.g., Windsor v. United States*, 699 F.3d 169, 181 (2d Cir. 2012) (quoting *Bowen v. Gilliard*, 483 U.S. 587, 602, (1987) and *City of Cleburne v. Cleburne Living Ctr., Inc.* 473 U.S. 432, 440–41 (1985)). Until *Windsor*, every federal appellate court to have considered whether sexual orientation classifications were subject to heightened scrutiny refused to find so.¹

In *Windsor*, the Second Circuit claimed that homosexuals are politically powerless, and that political powerlessness is “not strictly necessary ... to identify a

¹ *See Mass. v. Dep’t of Health & Human Servs.*, 682 F.3d 1, 9-10 (1st Cir.2012); *Johnson v. Johnson*, 385 F.3d 503, 532 (5th Cir. 2004); *Citizens for Equal Prot. v. Bruning*, 455 F.3d 859, 866-67 (8th Cir. 2006); *High Tech Gays v. Defense Indus. Sec. Clearance Office*, 895 F.2d 563, 573-74 (9th Cir. 1990) *overruled by SmithKline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471 (9th Cir. 2014), *rehearing denied* No. 11–17357, 11–17373, 2014 WL 2862588 at *1 (9th Cir. June 24, 2014); *Lofton v. Sec’y of Dep’t of Children & Family Servs.*, 358 F.3d 804, 818 & n.16 (11th Cir. 2004) (citing decisions from the Fourth, Fifth, Sixth, Ninth, Tenth, D.C., Federal Circuits and this Court).

suspect class,” *Windsor*, 699 F.3d at 181, 185, relying on Justice Marshall’s partly concurring and partly dissenting opinion in *Cleburne*. *See, id* at 185. However, the *Cleburne* majority focused on political powerlessness, noting that legislative responses, both nationally and at the state level to the mentally retarded demonstrated that there was no need for the judiciary to interfere with the lawmakers. 473 U.S. at 443.

Suspect-class designation is reserved for groups that have been “relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Plyler v. Doe*, 457 U.S. 202, 216 n.14 (1982) (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)).

Indeed, the Court’s preference for rational basis scrutiny may be a result of its “revulsion” at interfering with the political process “to protect interests that have more than enough power to protect themselves in the legislative halls.” *Dandridge v. Williams*, 397 U.S. 471, 520 (1970) (Marshall, J., dissenting) (describing why the Court has often used rational basis scrutiny). “[T]he Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.” *Cleburne*, 473 U.S. at 440. Thus, “judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.” *Vance v. Bradley*, 440 U.S. 93, 97 (1979).

Thus, the Second Circuit was doubly wrong: political powerlessness *is* a required factor in determining classifications, and homosexuals are not politically powerless.

Since *Windsor*, both the Ninth and Tenth Circuits have applied strict scrutiny to

sexual orientation classifications without addressing the issue of political powerlessness. See *Kitchen v. Herbert*, No. 13-4178, 2014 WL 2868044 at *1 (10th Cir. June 25, 2014); *SmithKline*, 740 F.3d at 481. Acknowledging that, because of its precedents, it was precluded from applying heightened scrutiny without a change in Supreme Court precedent, the Ninth Circuit examined *United States v. Windsor*, 133 S. Ct. 2675 (2013), even though that opinion made no mention of the level of scrutiny it applied. *SmithKline*, 740 F.3d at 480. The Ninth Circuit nonetheless interpreted *Windsor* as requiring an analysis under heightened scrutiny. *Id.* at 484.² In doing so, that court “plainly misread *Windsor*, abandoned [its] own precedent, and disregarded [its] own procedures for departing from settled constitutional doctrine.” *SmithKline Beecham Corp. v. Abbott Laboratories*, Nos. 11–17357, 11–17373, 2014 WL 2862588 (9th Cir. June 24, 2014) (O’Scannlain, J, dissenting from denial of *en banc* rehearing).

Similarly, the Tenth Circuit in *Kitchen v. Herbert* was precluded from applying heightened scrutiny to classifications based on sexual orientation by its own precedent. *Kitchen*, 2014 WL 2868044 at *36 (Kelly, J., dissenting). However, while the Ninth Circuit at least explained how it thought *Windsor* allowed it to depart from its prior precedent, the Tenth Circuit did not. It did survey Supreme Court jurisprudence and it did cite *Windsor* for other propositions, *id.* at *8-21, but it

² In interpreting *Windsor*, the Ninth Circuit used a three part test: whether *Windsor* considered the possible post-hoc rationalizations for the law, which are required under rational basis review; whether *Windsor* required a “legitimate state interest” to “justify” the harm that the law would inflict; and whether the cases relied on by *Windsor* had applied heightened scrutiny. *Id.* at 480.

never identified *Windsor* or any other case as authority for changing the level of scrutiny required by its precedent; it simply applied strict scrutiny to the Equal Protection claim, *id.* at 21, even though in the Tenth Circuit only a court sitting *en banc* has the authority to overrule precedent. *Rezaq v. Nalley*, 677 F.3d 1001, 1012 n.5 (10th Cir. 2012).

The flawed analysis used by Second, Ninth, and Tenth Circuits should not be followed by this Court.

B. A Group is Politically Powerless When it Cannot “Attract the Attention of Lawmakers.”

Homosexuals are politically successful. Even the Second Circuit acknowledged this: “[t]he question is not whether homosexuals have achieved political successes over the years; they clearly have. The question is whether they have the strength to politically protect themselves from wrongful discrimination.” *Windsor*, 699 F.3d at 184. While there is some truth in this, it must be remembered that political success is one of the defining indicators of political power. *Sevcik v. Sandoval*, 911 F. Supp. 2d 996, 1009 (D. Nev. 2012). The Second Circuit’s answer to this was an *ipse dixit*: it simply declared that the clear successes were insufficient.

Yet, that position was rejected in *Cleburne*: “Any minority can be said to be powerless to assert direct control over the legislature, but if that were a criterion for higher level scrutiny by the courts, much economic and social legislation would now be suspect.” 473 U.S. at 445. Rather, a class must be politically powerless “in the sense that they have *no ability to attract the attention of the lawmakers.*” *Id.* (emphasis added).

But the Second Circuit insisted that political success can coexist with political powerlessness, noting that women had achieved some political success when the Supreme Court applied heightened scrutiny to sex-based classifications. *Windsor*, 699 F.3d at 184 (citing *Frontiero v Richardson*, 411 U.S. 677, 685 (1973)). Admittedly, in *Frontiero*, “the position of women in America has improved markedly in recent decades.” 411 U.S. at 686. However, women still “face[d] pervasive, although at times more subtle, discrimination ... in the political arena.” *Id.* Because of a historical attitude of misguided paternalism, women continued to lack political power, despite some gains:

It is true, of course, that *when viewed in the abstract*, women do not constitute a small and powerless minority. Nevertheless, in part because of past discrimination, women are vastly underrepresented in this Nation’s decisionmaking councils. There has never been a female President, nor a female member of this Court. Not a single woman presently sits in the United States Senate, and only 14 women hold seats in the House of Representatives. And, as appellants point out, this underrepresentation is present throughout all levels of our State and Federal Government.

Id. at 686 n.17 (emphasis added). The fact that half the population had little representation in political decision-making bodies suggested a serious democratic malfunction, notwithstanding some important political victories.

Presently, homosexuals lack absolute numbers for political power “when viewed in the abstract.” *Id.* But every minority group lacks political power “in the abstract” by the mere fact that they are a minority group. While homosexuals are a minority

group, their “political voice” greatly outweighs their numbers.³ Indeed, it is remarkable that such a minority has dominated so much of the attention of America’s lawmakers.

The relevant consideration is not the raw numbers of homosexual elected officials, but the ability of homosexuals “to attract the attention of the lawmakers,” *Cleburne*, 473 U.S. at 445, *including* heterosexual lawmakers. As this Court has observed, even if homosexuals are underrepresented in decision-making bodies (with fewer open homosexuals in those bodies than there are in the general population⁴), “[s]upport for homosexuals is, of course, not limited to other homosexuals.” *Ben-Shalom v. Marsh*, 881 F.2d 454, 466 n.9 (7th Cir. 1989). Homosexuals have attracted attention and substantial support for their interests.

This Court, along with the Ninth Circuit, has recognized the “growing political power” of homosexuals and refused to apply strict scrutiny. *Id.* at 466; *High Tech Gays* 895 F.2d 563 at 574.⁵ Both acknowledged the Supreme Court’s critical language so recently ignored by the Second Circuit: “[i]t cannot be said

³ In 2013, a National Health Interview Survey estimates that only 1.6% of adults have identified themselves as homosexual. Brian D. Ward, James M. Dahlhamer, Adena M. Galinsky, & Sarah S. Joestl, *Sexual Orientation and Health Among U.S. Adults: National Health Interview Survey, 2013*, National Health Statistics Reports (July 15, 2014), *available at* <http://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

⁴ The Second Circuit acknowledged that it could not in fact say whether homosexuals are underrepresented, but went on to hypothesize that there would be more gays and lesbians in public office if not for “hostility” toward them. *Windsor*, 699 F.3d at 184, 185. While that is possible, such an unsupported presumption cannot form the basis for heightened scrutiny.

⁵ As mentioned previously, the Ninth Circuit has changed its position on this matter; however, in *SmithKline*, it did not address the issue of political power; it merely held the *Windsor* required heightened scrutiny. Therefore, its finding that homosexuals are not politically powerless still merits consideration.

[homosexuals] ‘have no ability to attract the attention of lawmakers.’” *E.g.*, *Ben-Shalom*, 881 F.2d at 466 (quoting *Cleburne*, 473 U.S. at 445). The Ninth Circuit noted that, as legislatures were continually addressing homosexual issues, homosexuals were capable of attracting the attention of lawmakers. *High Tech Gays*, 895 F.2d at 574. In the years since these decisions, the political power of homosexuals has only grown.

For example, in 2006, Washington’s Supreme Court noted that sexual orientation had been added to Washington’s nondiscrimination law and that “several state statutes and municipal codes provide protection against discrimination based on sexual orientation and also provide economic benefit for [same-sex] couples.” *Andersen v. King County*, 138 P.3d 963, 974 (Wash. 2006) (*en banc*). Additionally, “a number of openly gay candidates were elected to national, state, and local offices in 2004.” *Id.* That court logically concluded that, in light of such accomplishments, homosexuals were exercising “increasing political power.” *Id.* at 974-75.

In 2007, Maryland’s highest court agreed that, while homosexuals have suffered some unequal treatment, they possess political power, as anti-discrimination advocacy for homosexuals in Maryland was meeting with growing success in both the legislative and executive branches of government. *Conaway v. Deane*, 932 A.2d 571, 611 (Md. 2007).

Both Maryland and Washington have now extended, by popular vote, marriage

rights to same-sex couples.⁶ As these examples demonstrate, in light of the increasing political power possessed by homosexuals, it would make little sense to now find that they are politically powerless.

C. Homosexuals Have Attracted the Attention of Lawmakers Both Nationally and in Indiana.

1. Public support and legal protection in Indiana.

The political power of homosexuals in Indiana can be measured in numerous ways. Recent polls show that 58% of Indianans opposed amending the state constitution to ban homosexual marriage. Zack Ford, *POLL: Indiana Voters Oppose Using Constitution to Ban Same-Sex Marriage*, Think Progress (Nov. 14, 2013) <http://thinkprogress.org/lgbt/2013/11/14/2945721/poll-indiana-voters-oppose-using-constitution-ban-sex-marriage/>. In 2012, a survey conducted in Indiana demonstrated that Indiana residents are split on the issue of homosexual marriage, with 45% surveyed supporting marriage equality and 45% opposing it.⁷

Public support has translated into legal protection. Indiana repealed its sodomy law in 1977,⁸ nearly thirty years before the Supreme Court held sodomy laws to be unconstitutional. *See Lawrence v. Texas*, 539 U.S. 558, 564, 571 (2003). Furthermore, in Indiana second-parent adoption is an option for same-sex couples; and

⁶ Edith Honan, *Maryland, Maine, Washington Approve Gay Marriage*, Reuters (November 7, 2012), available at <http://www.reuters.com/article/2012/11/07/us-usa-campaign-gaymarriage-idUSBRE8A60MG20121107>.

⁷ *Poll Finds Indiana Residents Split on Gay Marriage*, Post-Tribune (Dec. 15, 2012), <http://posttrib.suntimes.com/news/17011789-418/poll-finds-indiana-residents-split-on-gay-marriage.html#.U7GQHRZCd6w>.

⁸ *Indiana Sodomy Law*, Human Rights Campaign, <http://www.hrc.org/laws-and-legislation/entry/indiana-sodomy-law> (last visited July 1, 2014).

same-sex couples can jointly petition to adopt, a privilege not enjoyed by homosexuals in nineteen other states.⁹

Presently, numerous municipalities and counties prohibit discrimination based on sexual orientation, including Bloomington, Fort Wayne, Lafayette, Michigan City, Terre Haute, Tippecanoe County and West Lafayette.¹⁰ The cities of Indianapolis, Evansville, and Bloomington also have ordinances prohibiting employment and housing discrimination based on sexual orientation. *The Current State of Indiana Equality*, Indiana Equality Action, <http://www.indianaequalityaction.org/get-informed/the-current-state-of-indiana-equality/> (last visited June 30, 2014).

Homosexuals have also experienced legislative victories in Indiana. Earlier this year, for example, the Indiana Senate decided that a constitutional ban on same-sex marriage would not appear on the ballot at least 2016, if it appears at all.¹¹ Megan Robertson, campaign director for Freedom Indiana, a coalition of opponents of the amendment, said of the decision, “[i]t’s a big victory for us [i]t’s kind of a resounding win because they couldn’t even bring [the original language] up for a

⁹ *Parenting Laws: Second Parent or Stepparent Adoption*, Human Rights Campaign, available at http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/second_parent_adoption_6-10-2014.pdf (last updated June 10, 2014); *Parenting Laws: Joint Adoption*, Human Rights Campaign, available at http://hrc-assets.s3-website-us-east-1.amazonaws.com//files/assets/resources/joint_adoption_6-10-2014.pdf (last updated June 10, 2014).

¹⁰ *Employment Law Alert*, Hall Render Killian Heath & Lyman (Feb. 9, 2006) available at http://www.hallrender.com/library/articles/59/HLA_Indiana_swl.pdf.

¹¹ Barb Berggoetz & Tony Cook, *Same-Sex Marriage Ban Won’t Be On November Ballot*, Indystar (Feb. 14, 2014), <http://www.indystar.com/story/news/politics/2014/02/13/hjr-3-last-minute-maneuver-could-spare-2nd-sentence-/5455299/>.

vote.”¹²

Clearly, homosexuals in Indiana have caught the attention of lawmakers.

2. *The national political power of homosexuals.*

Homosexuals enjoy political power on a national scale. Currently, 71% of homosexuals live in states with hate crime laws covering sexual orientation.¹³ Twenty-one states, the District of Columbia,¹⁴ and numerous cities and counties prohibit employment discrimination based on sexual orientation.¹⁵ As of the so-called Proposition 8 trial, twenty-two states and the District of Columbia were providing domestic partnership benefits for state employees. Trial Tr. at 2479:20-23 (testimony of Miller), *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. 09-CV-2292). And at least twenty states and the District of Columbia now offer same-sex marriage, domestic partnerships or civil unions.¹⁶

The Human Rights Campaign, with its million-plus members, remarked concerning the 112th Congress:

With allies in the U.S. Senate, the Judiciary Committee held a hearing on the Respect for Marriage Act (RMA)—which would repeal the outrageously named Defense of Marriage Act, or DOMA. The legislation

¹² *Id.* (third alteration in original).

¹³ *Hate Crime Laws*, Movement Advancement Project (2014), http://www.lgbtmap.org/equality-maps/hate_crime_laws.

¹⁴ *Employment Non-Discrimination Act*, Human Rights Campaign, <http://www.hrc.org/laws-and-legislation/federal-legislation/employment-non-discrimination-act> (last updated June 2, 2014).

¹⁵ *The State of the Workplace*, Human Rights Campaign, 3-4 (2009) available at http://www.hrc.org/files/assets/resources/HRC_Foundation_State_of_the_Workplace_2007-2008.pdf (collecting state and municipal data as of 2008).

¹⁶ *Defining Marriage: State Defense of Marriage Laws and Same-Sex Marriage*, Nat'l Conference of State Legislatures (May 20, 2014), <http://www.ncsl.org/research/human-services/same-sex-marriage-overview.aspx#1>.

was passed out of committee for the first time ever, thanks to the leadership of Chairman Patrick Leahy (D-Vt.) and the bill's lead sponsor, Sen. Dianne Feinstein (D-Calif.). There was also a successful hearing and markup of the Domestic Partnership Benefits and Obligations Act (DPBO)—led by Sens. Joe Lieberman (I-Conn.) and Susan Collins (R-Maine)—the bill to bring the federal government in line with a majority of major U.S. employers in offering health benefits to the domestic partners of federal workers. Historically, the Senate confirmed three openly gay federal judges—breaking down a barrier that was only pierced once before in our nation's history. And the inclusive Employment Non-Discrimination Act (ENDA) got a Senate Committee hearing where, for the first time, a transgender witness testified in its favor, thanks to Chairman Tom Harkin (D-Iowa).¹⁷

Additionally, federal “hate crimes” legislation imposes a minimum sentence on perpetrators of violent crimes “involving actual or perceived ... sexual orientation [or] gender identity.” 18 U.S.C. § 249(2). Furthermore, over the last two decades, Congress has spent billions on AIDS treatment, research, and prevention, in part because of successful lobbying by LGBT constituents and their allies.¹⁸ Furthermore, in 2010, both houses of Congress supported the successful repeal of “Don't Ask, Don't Tell.” *Don't Ask, Don't Tell Repeal Act of 2010*, Human Rights Campaign, <http://www.hrc.org/resources/entry/dont-ask-dont-tell-repeal-act-of-2010> (Last updated Sept. 20, 2011).

All of these achievements were enacted since this Court held that homosexuals were not politically powerless.

¹⁷ *Congressional Scorecard: Measuring Support for Equality in the 112th Congress*, Human Rights Campaign, 2, available at http://www.hrc.org/files/assets/resources/112thCongressionalScorecard_2012.pdf (last visited July 18, 2014).

¹⁸ Judith A. Johnson, Cong. Research Serv., RL30731, *AIDS Funding for Federal Government Programs: FY1981-FY2009* (2008) (reporting a dramatic increase in AIDS funding, with \$6 billion in discretionary funds in 2008).

D. Homosexuals Have Powerful Political Allies Both Nationally and in Indiana.

Although previously implied, it is worth noting the significance of ally-building by homosexuals. According to the Human Rights Campaign, 2012 was an especially significant election cycle for homosexuals, notably with the re-election of Barack Obama, “the most pro-equality president ever,” as “Ally-in-Chief”; the election the first openly homosexual politician to the Senate, Tammy Baldwin; and the election of a record number of openly homosexual members and allies to Congress.¹⁹

1. Allies in Indiana.

Homosexuals in Indiana also have powerful allies. In 2011, Zach Adamson became the first openly gay person elected to the Indianapolis City Council. Denis Dison, *Indianapolis Gets Its First Gay City Council Member*, Victory (Nov. 8, 2011), <https://www.victoryfund.org/our-story/gay-politics-blog/indianapolis-gets-its-first-gay-city-council-member>. In 2013, Senator Joe Donnelly reversed his position on same-sex marriage, stating that he had “concluded that the right thing to do is to support marriage equality for all.”²⁰

In response to HJR-3, which would have prohibited same-sex marriage in the state constitution, numerous mayors expressed opposition, including Greg Ballard (Indianapolis), Tom Henry (Fort Wayne), and Mark Kruzan (Bloomington). *Mayors for Freedom*, Freedom Indiana, <http://www.freedomindiana.org/mayors/> (last visited

¹⁹ 2013 *Human Rights Campaign Annual Report*, Human Rights Campaign, 4, available at http://www.hrc.org/files/assets/resources/HRC_2013_ANNUAL_FINAL.pdf (last visited June 26, 2014).

²⁰ Eric Brander & Norman Cox, *Indiana Sen. Joe Donnelly Reverses Gay Marriage Stance To Support Marriage Equality*, theINDYchannel (April 5, 2013), <http://www.theindychannel.com/news/politics/indiana-sen-joe-donnelly-reverses-gay-marriage-stance-to-support-marriage-equality>.

June 30, 2014).

Homosexual support in Indiana has gone beyond politics. For example, numerous members on the Indianapolis Colts football team have made statements in support of homosexuals.²¹

Numerous businesses in Indiana, including Angie's List, CSO Architects, EnviroForensics, First State Bank of Porter, Fort Wayne Metals, Health & Hospital Corporation, Liechty Media, and Upland Brewing Company have also supported homosexuals by opposing HJR-3. *Employers for Freedom*, Freedom Indiana, <http://www.freedomindiana.org/employers/> (last visited June 30, 2014). A number of colleges and universities, have also opposed the amendment, including Indiana University, DePauw University, Wabash College, Ball State University, Butler University, University of Evansville, University of Indianapolis, and Indiana State University. *Colleges and Universities for Freedom*, Freedom Indiana, <http://www.freedomindiana.org/colleges/> (last visited June 30, 2014).

With such allies in Indiana, homosexuals clearly do not lack political power.

2. *Allies across the nation.*

Homosexuals also have powerful federal allies. The President, the Vice President, and the nation's oldest and largest civil rights organization, the NAACP, openly support same-sex marriage;²² *Newsweek* proclaimed that President Obama is

²¹ 62 *Active NFL Players Who Have Made Statements in Support of Gays*, Outsports (Sept. 4, 2013), <http://www.outsports.com/2013/9/4/4692986/nfl-players-gay-supportive-list-andrew-luck-rgIII-reggie-wayne-charles-woodson>.

²² Matt Compton, *President Obama Supports Same-Sex Marriage*, The White House Blog (May 9, 2012, 6:12 PM EDT), <http://www.whitehouse.gov/blog/2012/05/09/pres>

America's "First Gay President";²³ a CNN analysis has shown that President Obama's gay "bundlers" (high dollar political contributors) out-contributed the President's Hollywood bundlers;²⁴ and President Obama recently proclaimed June as Lesbian, Gay, Bisexual, and Transgender Pride Month for the sixth year in a row.²⁵

Portions of the June 2013 proclamation are instructive:

This year, we celebrate LGBT Pride Month at a moment of great hope and progress, recognizing that more needs to be done. Support for LGBT equality is growing, led by a generation which understands that, in the words of Dr. Martin Luther King, Jr., "injustice anywhere is a threat to justice everywhere." In the past year, for the first time, voters in multiple States affirmed marriage equality for same-sex couples. State and local governments have taken important steps to provide much-needed protections for transgender Americans.²⁶

The President also noted his administration's accomplishments:

ident-obama-supports-same-sex-marriage; Press Release, Office of the Press Sec'y, Press Briefing by Press Secretary Jay Carney, 5/7/12, *available at* <http://www.whitehouse.gov/the-press-office/2012/05/07/press-briefing-press-secretary-jay-carney-5712>; *NAACP Passes Resolution in Support of Marriage Equality*, NAACP, <http://www.naACP.org/news/entry/naACP-passes-resolution-in-support-of-marriage-equality> (last visited June 26, 2014).

²³ Dylan Byers, *Newsweek Cover: 'The First Gay President,'* (May 13, 2012), <http://www.politico.com/blogs/media/2012/05/newsweek-cover-the-first-gay-president-123283.html>.

²⁴ Jen Christensen, *LGBT Donors Back President Obama, Big Time*, CNN Politics (June 6, 2012, 9:43 AM EDT), http://www.cnn.com/2012/06/05/politics/lgbt-obama-donors/index.html?hpt=hp_c1. CNN only counted contributions from openly gay bundlers. They were able to identify that one in sixteen bundlers are gay, but noted that other media outlets have calculated the figure to be one in six or one in five. *Id.* Thus, the real contribution figures for gay bundlers would be much greater.

²⁵ *Obama Issues Proclamation Declaring June LGBT Pride Month*, ELIXHER, (June 25, 2014), <http://elixher.com/obama-issues-proclamation-declaring-june-lgbt-pride-month/#sthash.dZHPGovC.dpuf>.

²⁶ Proclamation No.8989, 78 Fed. Reg.at 33,957 (May 31, 2013).

My Administration is a proud partner in the journey toward LGBT equality. We extended hate crimes protections to include attacks based on sexual orientation or gender identity and repealed “Don’t Ask, Don’t Tell.” We lifted the HIV entry ban and ensured hospital visitation rights for LGBT patients [W]e have investigated and addressed pervasive bullying faced by LGBT students, prohibited discrimination based on sexual orientation and gender identity in Federal housing, and extended benefits for same-sex domestic partners I signed a reauthorization of the Violence Against Women Act (VAWA) that prohibits discrimination on the basis of sexual orientation or gender identity in the implementation of any VAWA-funded program. And because LGBT rights are human rights, my Administration is implementing the first-ever Federal strategy to advance equality for LGBT people around the world.²⁷

While the President stated that more can be done, his attitude does not support the conclusion that homosexuals “have *no* ability to attract the attention of the lawmakers,” *Cleburne* 473 U.S. at 445 (emphasis added). His words are congratulatory and optimistic—as they must be in light of his accomplishments.

For example, the President’s Administration stopped defending the Defense of Marriage Act (DOMA),²⁸ and filed briefs in *Windsor* arguing that DOMA is unconstitutional. Brief of Petitioner, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12-307), *available at* 2013 WL 683048. During his first term, President Obama appointed more homosexuals than any previous president.²⁹ He has also appeared twice as the keynote speaker at the National Dinner for The Human Rights Cam-

²⁷ *Id.*

²⁸ *Letter from Eric Holder, Att’y Gen’l, to the Hon. John A. Boehner, Speaker of the House, On Litigation Involving the Defense of Marriage Act*, Dep’t of Justice (Feb. 23, 2011), <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>.

²⁹ Sam Hananel, *Obama Has Appointed Most U.S. Gay Officials*, *The Washington Post* (October 26, 2010) *available at* <http://www.washingtontimes.com/news/2010/oct/26/obama-has-appointed-most-us-gay-officials/?page=all>.

paign,³⁰ which has been attended by Former President Bill Clinton, former Vice President Al Gore,³¹ and former Speaker Nancy Pelosi.³²

Homosexuals gained even more support the day this brief was filed when President Obama signed an executive order barring federal contractors from discriminating on the basis of sexual orientation.³³

President Obama has also advocated for homosexuals internationally, naming three gay athletes to the U.S. Winter Olympics delegation after laws were passed banning adoption by homosexual couples and homosexual “propaganda.”³⁴ Additionally, for the first time since the Summer 2000 Olympics neither the President, Vice President, First Lady nor a former president attended the opening ceremony.³⁵ Furthermore, in September 2013, President Obama met with leaders of social activist groups in Russia, including those from the homosexual community, and expressed his support for their efforts and his offense at the new Russian laws. *Obama Meets with Russian Gay Rights Advocates*, CNN Politics (Sept. 6, 2013),

³⁰ See, e. g., *Past Dinners*, Human Rights Campaign, <http://www.hrcnationaldinner.org/pages/past-dinners#.U6mRiRZCfw4> (last visited June 26, 2014).

³¹ *HRC National Dinner Silent Auction*, Human Rights Campaign, available at <http://hrc-assets.s3-website-us-east-1.amazonaws.com/national-dinner/images/general/SilentAuction-2014.pdf> (last visited July 18, 2014).

³² John Arvosis, *A Word About Nancy Pelosi’s Speech at the Gay Rights Dinner Last Night*, AmericaBlog (Oct. 7, 2007 7:19 PM), <http://americablog.com/2007/10/a-word-about-nancy-pelosis-speech-at-the-gay-rights-dinner-last-night.html>.

³³ Jeff Mason, *Obama to Sign Order Monday Barring Federal Discrimination Against Gays*, Reuters (July 18, 2014), <http://news.yahoo.com/obama-sign-order-monday-barring-federal-discrimination-against-193922721.html>.

³⁴ Jennifer Bendery, *Obama Jabs Putin, Picks Openly Gay Delegates For Winter Olympics In Russia*, Huffington Post (Dec.17, 2013), available at http://www.huffingtonpost.com/2013/12/17/obama-putin-olympics-gay-delegates_n_4462283.html.

³⁵ *Id.*

<http://www.cnn.com/2013/09/06/politics/russia-obama/>.

The national Democratic Party vigorously supports homosexual rights; its 2012 platform declared: “[N]o one should face discrimination on the basis of ... sexual orientation, [or] gender identity.”³⁶ The Democratic Party also announced support for “marriage equality ... for same-sex couples” and opposed state and constitutional amendments limiting marriage to opposite-sex couples.³⁷

These allies deliver a significant support for their homosexual constituents. Forty-nine of fifty-one Democratic United States Senators serving in the 112th Congress, and 227 Democratic and Republican Senators and Representatives total, received a score of between 70% and 100% for support of Human Rights Campaign issues on the Human Rights Campaign’s *Congressional Scorecard*.³⁸

E. The Homosexual Community is Well Financed By a Broad Range of Contributors and Resources.

Another measure of political power is the financial picture. Homosexuals have garnered significant financial support to achieve their victories.

1. Homosexual political interests have demonstrated deep pockets.

“Few questions are as important to an understanding of American democracy as the relationship between economic power and political influence.” Lester M. Salamon & John J. Siegfried, *Economic Power and Political Influence: The Impact*

³⁶ *Moving America Forward: 2012 Democratic National Platform*, Democratic Nat’l Convention Comm., available at http://www.presidency.ucsb.edu/papers_pdf/101962.pdf (last visited June 26, 2014).

³⁷ *Id.*

³⁸ *See throughout, Congressional Scorecard*, available at http://www.hrc.org/files/assets/resources/112thCongressionalScorecard_2012.pdf (last visited July 18, 2014).

of *Industry Structure on Public Policy*, 71 Am. Pol. Sci. Rev. 1026 (1977). This truism is easily demonstrated by considering the amount of money raided by the Human Rights Campaign: nearly \$53.8 million (a record high) in 2013 and \$45.6 million in 2012.³⁹

During the battle over California's Proposition 8, the "No on 8" campaign raised \$43 million, outspending their opponents by \$3 million. Trial Tr. at 504:23-505:15 (testimony of Segura), *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. 09-CV-2292). Although the "No on 8" campaign did not prevail, opponents of Proposition 8 clearly possessed sufficient resources.

In 2007, National Public Radio reported that "[a] new force is emerging in American politics: wealthy, gay political donors who target state level races." Austin Jenkins, *Wealthy Gay Donors a New Force in Politics*, NPR, (June 26, 2007), <http://www.npr.org/templates/story/story.php?storyId=11433268>. In that report, NPR described an organized effort to finance candidates who support homosexual causes. *Id.*

Similarly, a 2008 Time Magazine article discussed a group of homosexual donors known as "the Cabinet." "Among gay activists, the Cabinet is revered as a kind of secret gay Super Friends, a homosexual justice league that can quietly swoop in wherever anti-gay candidates are threatening and finance victories for the good guys." John Cloud, *The Gay Mafia That's Redefining Liberal Politics*, Time, (Oct. 31, 2008) <http://www.time.com/time/politics/article/0,8599,1854884-1,00.html> (de-

³⁹ 2013 Human Rights Campaign Annual Report, 21, 22 (last visited June 26, 2014).

scribing the “intriguing development [in the 2008 elections]: anti-gay conservatives had suffered considerably”).

This influence extends to presidential politics. In the 2012 Presidential campaign, twenty-one prominent homosexual individuals and couples raised at least \$7.4 million for the President’s reelection.⁴⁰

2. Influential labor unions support homosexual causes.

Political power is not *simply* a matter of money, but also of leveraging influence. In this regard, many of the most influential unions actively support the homosexual cause.

The National Education Association (NEA) regularly advocates on behalf of homosexuals, including for same-sex marriage recognition. *Focus on Tomorrow: What Matters Most in 2008 and Beyond, Voters and the Issues*, Nat’l Educ. Ass’n at 9-10 (2008), available at <http://www.nea.org/assets/docs/HE/votingfocus08.pdf>. NEA support of homosexual causes influences its 3.2 million members, and lends political muscle to Washington.

The American Federation of State, County and Municipal Employees (AFSCME), with 1.6 million members, has resolved to dedicate time and resources to advancing state and federal legislation to ensure that same-sex couples receive the same treatment as traditional couples.⁴¹ In sum, homosexuals are allied with

⁴⁰ See Melanie Mason, Matea Gold & Joseph Tanfani *Gay Political Donors Move From Margins to Mainstream*, LA Times (May 13, 2012) available at <http://articles.latimes.com/2012/may/13/nation/la-na-gay-donors-20120513>.

⁴¹ *Marriage Equality*, AFSCME Res. 13, 40th Int’l Convention (2012), available at <http://www.afscme.org/members/conventions/resolutions-and-amendments/2012/>

some of the most powerful grassroots and lobbying organizations in the country.

3. *Corporate America backs homosexual causes.*

It is well established that “[t]he business community ... is one of the most important sources of interest group activity.” Wendy L. Hansen & Neil J. Mitchell, *Disaggregating and Explaining Corporate Political Activity: Domestic and Foreign Corporations in National Politics*, 94 Am. Pol. Sci. Rev. 891 (2000). Homosexuals enjoy broad support from Corporate America.

For example, the “No on 8” campaign contributors included many Fortune 500 corporations and their founders, such as PG&E, Apple, Lucas Films (and George Lucas), Levi Strauss, Williamson Capital, Google founders Sergey Brin and Larry Page, David Geffen and Jeffrey Katzenberg of Dreamworks Studios, and Bruce Bastian, co-founder of WordPerfect software. *Proposition 8: Who Gave in the Gay Marriage Battle?*, LA Times, <http://projects.latimes.com/prop8/> (last visited July 6, 2014) (Enter donor names, choose “oppose,” and add the results).

Corporate America also funds broader homosexual causes. The Human Rights Campaign is supported by numerous corporate benefactors: American Airlines, Bank of America, Citibank, Lexus, Diago, Coca Cola, Microsoft, Mitchell Gold & Bob Williams, Morgan Stanley, MetLife, Nationwide Insurance, Prudential, British Petroleum, Caesars Entertainment, Chevron, Harrah’s, MGM Resorts International, Nike, Shell, Chase, Cox Enterprises, PWC, Dell, Goldman Sachs, Google, IBM, Macy’s, Orbitz, Starbucks, and Tylenol PM. *National Corporate Partners*, Human

resolutions/marriage-equality.

Rights Campaign, <http://www.hrc.org/the-hrc-story/corporate-partners> (last visited June 24, 2014) (click on levels of partnerships).

Other homosexual groups also benefit from Corporate America's largess. The Gay, Lesbian, and Straight Education Network (GLSEN) is supported by America's most recognized corporate names.⁴² Lambda Legal, which pursues critical litigation to ensure civil equality for the LGBT community and those with HIV, boasts donations from the nation's top law firms and corporations.⁴³

But financial support, while important, it is just one aspect of corporate support. Hansen & Mitchell, *supra*, at 891. Prominent corporations have actively supported nondiscrimination legislation,⁴⁴ and influenced public policy through internal nondiscrimination policies. According to the Human Rights Campaign's *Corporate Equality Index 2014*, 99% of employers surveyed from the ranks of the Fortune 1000 and the American Lawyer's top 200 law firms had nondiscrimination policies based on sexual orientation. *Corporate Equality Index 2014: Rating American Workplaces*

⁴² In addition to many of those mentioned for the Human Rights Campaign and GMHC, GLSEN sponsors include ABC Television, UBS Investment Bank, Deutsche Bank, Eastman Kodak Co., MTV Networks, Pepsi, Sony Pictures Entertainment, Inc., Verizon Communications, and Warner Bros. Entertainment among very many others. *See Partners*, GLSEN, <http://www.glsen.org/support/partners> (last visited June 24, 2014).

⁴³ Law firms include Baker & McKenzie, Covington & Burling LLP, Gibson Dunn, Jenner & Block, Jones Day, Kirkland & Ellis LLP, Kramer Levin, Latham & Watkins, Mayer Brown, McDermott Will & Emery, O'Melveny & Myers LLP, Perkins Coie LLP, ReedSmith, Sheppard Mullin, Sidley Austin LLP, Skadden, Arps, Slate, Meagher & Flom LLP, and Wachtell, Lipton, Rosen & Katz. *National Sponsors*, Lambda Legal, <http://www.lambdalegal.org/about-us/sponsors> (last visited June 27, 2014).

⁴⁴ *See, e.g. Sponsors*, Equality Cal., <http://www.eqca.org/site/pp.asp?c=kuLRJ9MRKrH&b=4026491> (last visited June 24, 2014) (listing many major corporations supporting Equality California, including AT&T, Southwest Airlines, and State Farm).

on Lesbian, Gay, Bisexual, and Transgender Equality, Human Rights Campaign 20, available at <http://www.hrc.org/campaigns/corporate-equality-index> (click on Read the Report). The President of the Human Rights Campaign remarked how these businesses influence politics:

More than ever, fair-minded companies are guaranteeing fair treatment and compensation to millions of LGBT employees in all 50 states. But beyond these sound business practices of internal diversity and inclusion, these same companies are fighting for full legal equality in state legislatures, in the halls of Congress and before the U.S. Supreme Court.

Id. at 3.

These statistics further support the conclusion that homosexuals are not politically powerless.

F. Overwhelming Media Support of Homosexuals is Likely to Enhance Future Power for Their Community.

Both news and entertainment media also support homosexual causes. For example, GLAAD declares: “Leading the conversation. Shaping the media narrative. Changing the culture. That’s GLAAD at work.” *About GLAAD*, Gay & Lesbian Alliance Against Defamation (“GLAAD”), <http://www.glaad.org/about-glaad-0> (last visited June 27, 2014). And GLAAD touts its “expertise [in] News Media ... Entertainment Media ... Spanish-language and Latino media ... [and] Communications & Digital strategy.”

Id.

Numerous people have speculated that it was no coincidence that the Academy Award-winning film “Milk” was released in the critical week before the November 2008 election, providing publicity for homosexuals. *See, e.g.*, John Patterson, *Why*

Gus van Sant's Milk Is an Important Film, The Guardian, (Dec. 5, 2008), <http://www.guardian.co.uk/film/2008/dec/05/john-patterson-milk-gus-van-sant>.

Homosexuals were also supported at the 2014 Grammy Awards and the 2014 Oscars. The Grammys prominently featured Queen Latifah's officiating at a mass wedding of thirty-three opposite-sex and same-sex couples while the audience stood and applauded in approval, while lesbian actress Ellen DeGenerous hosted the Oscars.⁴⁵

America's news media also renders direct, concrete support for homosexuals. The 2005 Human Rights Campaign Annual Report stated that its organization has at least one quote in a newspaper every day. *2005 Annual Report*, Human Rights Campaign 19, available at <http://www.hrc.org/the-hrc-story/annual-reports> (click on 2005 Annual Report). In addition, during the November 2008 election, every major newspaper in California that took a position on Proposition 8, along with the New York Times, expressed a "vote No on 8" editorial opinion. Trial Tr. at 2456:25-2457:17, 2442:21-24 (testimony of Miller), *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. 09-CV-2292) ("I looked at the editorial endorsements of the 23 largest newspapers in California by circulation. And of those 23, 21 of the 23 endorsed a No On 8 position. Two of the—the remaining two out of the 23 did not take a position one way or the other [N]ational newspapers like the New York

⁴⁵ Michael Rothman, *Gay and Straight Couples Married Live During 2014 Grammy Awards*, ABC News (Jan. 26, 2014 11:30 PM), <http://abcnews.go.com/blags/entertainment/2014/01/gay-and-straight-couples-married-live-during-2014-grammy-awards/>; Ken Lombardi, *Ellen DeGeneres Brings Laughs To Oscars 2014*, CBS News (March 3, 2014, 12:28 AM), <http://www.cbsnews.com/news/oscars-2014-ellen-degeneres-kicks-off-86th-academy-awards/>.

Times have been important allies of gays in the LGBT rights movement.”)

G. Many Religious Groups Support Homosexual Causes.

Homosexuals are not without support in the religious arena. A recent compilation of religious groups’ official positions regarding same-sex marriage shows great diversity, with many religious organizations officially embracing homosexuality and same-sex partnership.⁴⁶

For example, many religious organizations supported the “No on 8” campaign in California. Rebecca Voelkel, *A Time to Build Up: Analysis of the No on Proposition 8 Campaign & Its Implications for Future Pro-LGBTQQA Religious Organizing*, Nat’l Gay & Lesbian Task Force (2009) available at http://www.thetaskforce.org/downloads/reports/reports/time_to_build_up_rev.pdf (Admitting groundbreaking support for same sex “marriage” by people of faith and identifying plans for outreach). In its November 2008 newsletter, the Unitarian Universalist Association urged congregants to support the campaign. Roger Jones, *Thanks to Friends of Fairness*, The Unigram 4 (Nov. 2008), available at <http://uuss.org/Unigram/Unigram2008-11.pdf>.

When same-sex marriage became legal in Massachusetts, several religious organizations encouraged their clergy to perform such weddings, and some churches chose to do so. George Chauncey, *Why Marriage? The History Shaping Today’s Debate over Gay Equality* 77-78 (2004).

⁴⁶ *Religious Groups’ Official Positions on Same-Sex Marriage*, Pew Research Religion & Pub. Life Project (Dec. 7, 2012), <http://www.pewforum.org/2012/12/07/religious-groups-official-positions-on-same-sex-marriage/>.

Most importantly, religious support for homosexuals exists in Indiana. The Episcopal Diocese of Indianapolis, the Indiana Conference of the United Methodist Church, and the Indiana-Kentucky Synod of the Evangelical Lutheran Church in America all opposed HJR-3. *Faith Groups for Freedom*, Freedom Indiana, <http://www.freedomindiana.org/faith/> (last visited July 7, 2014). The Christian Theological Seminary in Indianapolis, as well as a number of churches throughout the state, also expressed their opposition. *Id.* In response to the lower court's ruling, numerous churches in Indiana expressed their willingness to perform or host same-sex marriages. Abby Hamblin, *Some Indy Churches Ready To Perform Same-Sex Marriages*, IndyStar (June 27, 2014), <http://www.indystar.com/story/life/2014/06/25/indy-churches-ready-perform-sex-marriages/11376827/>. Finally, the University of Notre Dame recently launched a campaign to “reinforce message of inclusion wrapped in the wider message of the Catholic faith.”⁴⁷ Jack Swarbrick, the athletic director at Notre Dame, said of the campaign, “[b]ecause the university values LGBTQ students ... the university is committed to fostering an environment of welcome and mutual respect that is grounded in its Catholic mission.”⁴⁸

Within organizations that *officially* support only traditional marriage, many individual *members* who support same-sex marriage. For example, 52% of Catholics

⁴⁷ David Gibson, *Notre Dame Signals Welcome To Gay Athletes In New Campaign*, Religion News Service (May 8, 2014), <http://www.religionnews.com/2014/05/08/notre-dame-signals-welcome-gay-athletes-new-campaign/>.

⁴⁸ *Id.*

and 34% of Protestants support same-sex “marriage.”⁴⁹

H. Public Opinion is Trending in Favor of Homosexuals

In 1977, “only 56 percent of Americans supported gay rights legislation.” Chauncey, *Why Marriage?*, *supra*, at 54-55. By 1996, 84% of Americans supported gay rights legislation. *Id.* at 55. By 2002, a Gallup-Poll found that “even though forty-four percent of the people said homosexuality was an unacceptable ‘alternative lifestyle,’ eighty-six percent thought homosexuals should have ‘equal rights in terms of job opportunities.’” *Id. See also, id.* at 150-51 (describing the growing number of Americans who believe that homosexuals should be allowed to adopt).

This change is especially prevalent in the younger generations, where many have grown up knowing homosexuals and seeing them treated with respect. Chauncey, *Why Marriage?*, *supra* at 166; see also, Gregory M. Herek, *Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective*, *Am. Psychologist*, Sept. 2006 at 618 (describing changing attitudes among heterosexuals toward sexual minorities over the last two decades).

This shift was confirmed in May of 2012. According to a CNN/ORC International survey, 54% of Americans think same-sex marriages should be permitted and 60% of Americans know of a close friend or family member who is gay. Both numbers have increased by approximately 10 percentage points in two years.⁵⁰

⁴⁹ *Religion and Attitudes Toward Same-Sex Marriage*, Pew Research Religion & Pub. Life Project (Feb. 7, 2012), available at <http://www.pewforum.org/2012/02/07/religion-and-attitudes-toward-same-sex-marriage/>.

⁵⁰ *CNN/ORC Poll, 2*, available at <http://i2.cdn.turner.com/cnn/2012/images/06/06/rel5e.pdf> (last visited June 27, 2014).

As noted, a large number of Indianans support homosexual rights. Thus, there can be no real question of political powerlessness.

CONCLUSION

For these reasons, among others, this Court should reject heightened scrutiny and analyze the Equal Protection claim under rational basis review. Under rational basis review and for reasons explained by Appellants, this Court should reverse the judgment of the district court.

Respectfully submitted this 21th day of July, 2014,

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CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P.

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Dated: July 21, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2014, I electronically filed the attached Brief *Amicus Curiae* of Concerned Women for America in the case of *Baskin, et al., v. Bogan, et al*, Nos. 14-2386, 14-2387, 14-2388 with the clerk of the court by using the CM/ECF system. I further certify that all counsel of record are registered CM/ECF users and have been served via that system.

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