

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Case Nos. 14-14061-AA, 14-14066-AA

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JAMES DOMER BRENNER, et al.,

SLOAN GRIMSLEY, et al.,

*Plaintiffs-Appellees,*

*Plaintiffs-Appellees,*

v.

v.

JOHN ARMSTRONG, et al.,

JOHN ARMSTRONG, et al.,

*Defendants-Appellants.*

*Defendants-Appellants.*

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Appeals from the United States District Court for the Northern District of Florida

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**BRIEF FOR *AMICI CURIAE* EPISCOPAL BISHOP OF SOUTHEAST FLORIDA; GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST; MORMONS FOR EQUALITY; RECONSTRUCTIONIST RABBINICAL ASSOCIATION; RECONSTRUCTIONIST RABBINICAL COLLEGE AND JEWISH RECONSTRUCTIONIST COMMUNITIES; UNION FOR REFORM JUDAISM; UNITARIAN UNIVERSALIST ASSOCIATION; AFFIRMATION; COVENANT NETWORK OF PRESBYTERIANS; FRIENDS FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER CONCERNS; METHODIST FEDERATION FOR SOCIAL ACTION; MORE LIGHT PRESBYTERIANS; MUSLIMS FOR PROGRESSIVE VALUES; PARITY; RECONCILING MINISTRIES NETWORK; RECONCILING WORKS; LUTHERANS FOR FULL PARTICIPATION; RELIGIOUS INSTITUTE, INC.; AND 201 FLORIDA FAITH LEADERS AND COMMUNITIES IN SUPPORT OF PLAINTIFFS-APPELLEES AND SUPPORTING AFFIRMANCE**

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**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

*Amici curiae* Episcopal Bishop of Southeast Florida; General Synod of the United Church of Christ; Mormons for Equality; Reconstructionist Rabbinical Association; Reconstructionist Rabbinical College and Jewish Reconstructionist Communities; Union for Reform Judaism; Unitarian Universalist Association; Affirmation; Covenant Network of Presbyterians; Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns; Methodist Federation for Social Action; More Light Presbyterians; Muslims for Progressive Values; Parity; Reconciling Ministries Network; Reconciling Works: Lutherans for Full Participation; Religious Institute, Inc.; and 201 Florida Faith Leaders and Communities, pursuant to Eleventh Circuit Rule 26.1-1, certify that the following persons and entities have an interest in the outcome of this case and/or appeal:

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Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the undersigned states that none of the organizations that join this brief issues stock or has a parent corporation that issues stock.

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**STATEMENT PURSUANT TO FED. R. APP. P. 29(a) & 29(c)(5)**

Pursuant to Rules 29(a) & 29(c)(5) of the Federal Rules of Appellate Procedure, the undersigned states that all parties have consented to the filing of this *amici curiae* brief: the parties filed with the Clerk of the Court a Joint Notice of Consent to Filing of Briefs by *Amici Curiae*. The undersigned further states that no counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no persons or entities other than the *amici curiae* joining this brief, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

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## **INTERESTS OF *AMICI CURIAE***

*Amici curiae* (“*Amici*”) represent a broad range of religious stakeholders who support equal treatment for same-sex couples with respect to civil marriage. While *Amici* come from faiths that have approached issues affecting lesbian and gay people and their families in different ways over the years, they are united in the belief that, in our diverse and pluralistic society, particular religious views or definitions of marriage should not be permitted to influence which couples’ marriages the state recognizes or permits. Such rights must be determined by religiously neutral principles of equal protection under the law.

The individual interests of each of the *Amici* are listed in Addendum A to this brief.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Over a century and a half ago, Alexis de Tocqueville reflected on the central role of religion in the birth of the English colonies in America and its “peculiar power” in the cultural life of the United States, while simultaneously observing the necessary corollary that lies at the heart of religious freedom: “In America religion has, if one may put it so, defined its own limits. There the structure of religious life has remained entirely distinct from the political organization. It has therefore

been easy to change ancient laws without shaking the foundations of ancient beliefs.”<sup>1</sup>

Tocqueville’s reflection bears directly on the case before this Court. By historical and legal tradition, American pluralism extends to religion and its expression. *Amici* here embrace and embody that pluralism and bear witness to the diversity of religious viewpoints on marriage across various faiths and denominations. While Appellants passingly assert that “[t]here are ample non-religious justifications for Florida’s traditional definition of marriage,” certain *amicus curiae* organizations urge reversal based, in part, on amorphous concerns about religious freedom, and imply the existence of a near-universal belief with respect to marriage within and across religions.<sup>2</sup> In contrast, *Amici* here bear witness to the diversity of religious viewpoints on marriage, and submit that the

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<sup>1</sup> Alexis de Tocqueville, *Democracy in America*, Vol. II, Part 1, Ch. 1, at 432 (J.P. Mayer ed. (1969), George Lawrence trans. (1966), First Harper Perennial Modern Classics (2006)) (paragraph break omitted).

<sup>2</sup> See Joint Initial Br. of All Appellants at 35 (Nov. 14, 2014) (Nos. 14-14061-AA, 14-14066-AA) (rejecting *Brenner* plaintiffs’ Establishment Clause challenge to Florida’s marriage laws); *Amicus Curiae* Br. of North Carolina Values Coalition and Liberty, Life, and Law Foundation In Support Of Defendants-Appellants at 20 (Nov. 20, 2014) (No. 14-14061) (describing “court-ordered marriage redefinition” as an “ominous development jeopardiz[ing] core freedoms of self-governance, thought, speech, and religion”); Br. of *Amicus Curiae* Florida Family Action, Inc. In Support Of Defendants-Appellants at 11 (Nov. 21, 2014) (Nos. 14-14061-AA, 14-14066-AA) (invoking, in support of reversal, “*universal support of man-woman marriage*” on the part of “billions of people in every . . . major religion worldwide”) (emphasis added).

judgment below should be affirmed as consistent with fundamental principles of equal protection and religious freedom.

The American religious panorama embraces a multitude of theological perspectives on lesbian and gay people and same-sex relationships. A vast range of religious perspectives affirms the inherent dignity of lesbian and gay people, their relationships, and their families.<sup>3</sup> This affirmation reflects the deeply rooted belief, common to many faiths, in the essential worth of all individuals and, more particularly, the growing respect accorded within theological traditions to same-sex couples. Thus, some faiths celebrate same-sex couples' marriages identically to those of different-sex couples. Others solemnize same-sex relationships in ways other than marriage.

Faiths embracing same-sex couples – both theologically and with respect to the distinct issue of equality under civil law – participate in the mainstream of American religious observance. They include Mainline Protestant denominations such as the United Church of Christ and the Episcopal Church; the Unitarian Universalist Church; portions of the Religious Society of Friends (Quakers); and Judaism's Reform, Reconstructionist, and Conservative movements. Millions of

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<sup>3</sup> One *amicus* supporting Appellants admits that “many religious organizations officially embrac[e] homosexuality and same-sex partnership.” Br. *Amicus Curiae* Of Concerned Women for America In Support of Defendants-Appellants at 26-27 (Nov. 21, 2014) (Nos. 14-14061-AA, 14-14066-AA) (citation omitted).

religious individuals from other faiths also embrace and celebrate same-sex couples, including members of many other Mainline and Evangelical Protestant denominations, Roman Catholics, Mormons, Orthodox Jews, and Muslims. This grand mosaic includes Floridians, many of whom – of diverse faiths – today celebrate and embrace equal rights for same-sex couples and their families. *Amici* who are Florida faith leaders are a testament to this growing embrace of equality within mainstream religions in the state.

Eliminating discrimination in civil marriage will not impinge upon religious doctrine or practice. All religions would remain free – as they are today with thirty-three states and the District of Columbia permitting same-sex couples to marry – to define *religious* marriage any way they choose. Nor would affirmance interfere with religious institutions’ or individuals’ constitutionally protected speech or activities. The “religious liberty” concerns invoked by certain *amici* supporting reversal<sup>4</sup> relate to conflicts that already can and sometimes do arise under public accommodation laws whenever religiously affiliated organizations

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<sup>4</sup> *See, e.g., Amicus Curiae* Br. of The Becket Fund for Religious Liberty In Support of Defendants-Appellants at 2-3 (Nov. 21, 2014) (No. 14-14061) (arguing “that concerns about the potential conflict between same-sex marriage and religious liberty are both rational and well-founded in fact” and that courts’ “impos[ition of] same-sex marriage by judicial decree will automatically trigger civil liability for religious people and institutions, and will expose them to significant government penalties”).

operate in commercial or governmental spheres. Courts know how to respond if civil rights law enforcement infringes First Amendment rights.

Certain *amici* supporting reversal have argued that permitting civil marriages of same-sex couples would gut a longstanding definition of marriage informed by “religious doctrines.”<sup>5</sup> But crediting such arguments would both enshrine a particular religious belief in the law – itself prohibited under the Establishment Clause – and implicitly privilege religious viewpoints that oppose marriage equality over those that favor it. The religious beliefs of certain individuals or faith groups prevalent in any one state cannot be permitted to determine the applicability of fundamental constitutional principles that are national in scope.

For these and other reasons, civil recognition of same-sex relationships, including through lawful marriage, is fundamentally consistent with the religious pluralism woven into the fabric of American law, culture, and society. Affirmance in this case would not “take sides” with one religious view against another or constitute an attack on religion. Nor would it signal a judicial imprimatur on changing social mores. Rather, affirmance would recognize the creative tension inherent in religions’ interface with our pluralistic, changing society while

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<sup>5</sup> See, e.g., Br. of U.S. Conference of Catholic Bishops, *et al.* as *Amici Curiae* in Support of Defendants-Appellants at 4 (Nov. 21, 2014) (Nos. 14-14061-AA, 14-14066-AA).

confirming that all, regardless of faith, are entitled to equal protection under the law.

## ARGUMENT

The American religious landscape is vast and diverse.<sup>6</sup> Religious adherents differ on contentious issues, and religious bodies have themselves evolved and disagreed over time – on marriage as well as other civil rights and social issues.<sup>7</sup>

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<sup>6</sup> According to one national survey, more than 90% of Americans believe in God or a universal spirit and more than 80% have some formal religious affiliation. U.S. Religious Landscape Survey, Pew Forum on Religion & Public Life, *Religious Beliefs and Practices: Diverse and Politically Relevant* (June 2008), at 5, 8, available at <http://religions.pewforum.org/pdf/report2-religious-landscape-study-full.pdf>. Religious affiliations and viewpoints also are diverse:

- i. While over 75% of religiously affiliated Americans are Christian, this group is comprised of: Protestants, including Evangelical (26.3%), Mainline (18.1%), and Historically Black (6.9%) churches; Roman Catholics (23.9%); Mormons (1.7%); Jehovah's Witnesses (0.7%); Orthodox (0.6%); and Others (0.3%).
- ii. Other religiously affiliated Americans are diverse as well, comprised of Jews (1.7%), Buddhists (0.7%), Muslims (0.6%), Hindus (0.4%), and other faiths (approximately 1.5%).
- iii. Yet other sizeable blocks of the American public are unaffiliated, whether agnostic (2.4%), atheist (1.6%), or nothing in particular (12.1%).

*Id.* at 217. In Florida, 26% of the population identified as Catholic, 25% as Evangelical Protestant, 15% as Mainline Protestant, 8% as Historically Black Protestant, 3% as Jewish and 16% as Unaffiliated. U.S. Religious Landscape Survey, Pew Forum on Religion & Public Life, *Religious Affiliation: Diverse and Dynamic* at 98 (February 2008), available at <http://religions.pewforum.org/pdf/report-religious-landscape-study-full.pdf>.

<sup>7</sup> See Michael Perry, *Religion in Politics*, 29 U.C. Davis L. Rev. 729, 772 n.94 (1996) (chronicling shifts in religions' views on usury, the dissolubility of

In view of that history and the wide range of modern religious thought on same-sex unions, it would be a mistake to elevate any one view on marriage above all others as the “Christian” or “religious” view. Indeed, it would be constitutionally inappropriate, because civil marriage is a secular institution, *see Maynard v. Hill*, 125 U.S. 190, 210 (1888), and the Constitution bars the government from favoring certain religious views over others, *see Larson v. Valente*, 456 U.S. 228, 244 (1982). Religious freedom means that all voices may contribute to our national conversation, but particular religious perspectives on marriage cannot be permitted to control the civil definition of marriage for all.

**I. A Wide Cross-Section Of American Religious Traditions Recognizes The Dignity Of Lesbian And Gay People And Their Relationships**

With time, and across traditions, religious Americans have affirmed that the dignity of lesbian and gay people logically and theologically follows from the premise that all persons have inherent dignity. In some traditions, this affirmation has affected religious practice – *e.g.*, in clergy ordination. In others, it has led to various forms of religious affirmation of same-sex unions. All of this confirms

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marriages, and slavery, and noting that “[i]n each case one can see the displacement of a principle or principles that had been taken as dispositive”). As one example, the American Baptist Church once believed that churches and other institutions should be segregated on the basis of race, but later revised that view. *See Pamela Smoot, Race Relations: How Do Baptists Treat Their Brothers and Sisters?*, in *History Speaks To Hard Questions Baptists Ask* (2009), available at <http://www.baptisthistory.org/smootracerelations.pdf>.

that no one “religious” view of even the rite of marriage predominates in America, putting aside the separate question of whether there is a common religious viewpoint on access to civil marriage.

**A. The Inherent Dignity Of Lesbian And Gay Individuals Informs The Theology Of Numerous Religious Believers And Bodies**

Nearly three decades ago, the United Church of Christ, with 1.1 million members today, adopted a policy of membership nondiscrimination with regard to sexual orientation.<sup>8</sup> In 1989, the 45th General Assembly for the Union of Reform Judaism, which represents 1.3 million Reform Jews, resolved to “urge [its] member congregations to welcome gay and lesbian Jews to membership, as singles, couples, and families” and to “embark upon a movement-wide program of heightened awareness and education to achieve the fuller acceptance of gay and lesbian Jews in our midst.”<sup>9</sup> Many other faiths similarly embrace the foundational

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<sup>8</sup> General Synod of the United Church of Christ, *Resolution: Calling on United Church of Christ Congregations to Declare Themselves Open and Affirming*, at \*1 (July 2, 1985), available at <http://www.ucccoalition.org/about/history/ucc-actions/> (last visited Dec. 16, 2014) (citing Romans 12:4 for proposition that “Christians . . . are many members, but . . . one body in Christ” and encouraging congregations to adopt “a Covenant of Openness and Affirmation” with lesbian and gay members of the faith).

<sup>9</sup> Resolution, Union of Reform Judaism, 60th General Assembly, *Gay And Lesbian Jews* (Nov. 1989), available at [http://urj.org/about/union/governance/reso/?syspage=article&item\\_id=2065](http://urj.org/about/union/governance/reso/?syspage=article&item_id=2065) (last visited Dec. 16, 2014). Cf. Central Conference of American Rabbis, *Report of the Ad Hoc Committee on Homosexuality and the Rabbinate of the Central Conference of American Rabbis*

theological belief in the dignity of lesbian and gay Americans *as persons*. The Episcopal Church,<sup>10</sup> the United Methodist Church,<sup>11</sup> the Evangelical Lutheran Church in America,<sup>12</sup> the Presbyterian Church (U.S.A.),<sup>13</sup> the Unitarian Universalist Church,<sup>14</sup> Reconstructionist Judaism,<sup>15</sup> and myriad others in Florida and nationwide adhere to this basic tenet.

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*Annual Convention*, at 262 (1990), available at [http://borngay.procon.org/sourcefiles/CCAR\\_Homosexuality.pdf](http://borngay.procon.org/sourcefiles/CCAR_Homosexuality.pdf) (“all Jews are religiously equal regardless of their sexual orientation”).

<sup>10</sup> Resolution 2006-A167, 75th General Convention of The Episcopal Church (2006), available at [http://www.episcopalarchives.org/cgi-bin/acts/acts\\_resolution-complete.pl?resolution=2006-A167](http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2006-A167) (last visited Dec. 16, 2014).

<sup>11</sup> United Methodist Church, *Social Principles & Creed*, available at <http://www.umc.org/what-we-believe/the-social-community> (last visited Dec. 16, 2014).

<sup>12</sup> Evangelical Lutheran Church in America, *Human Sexuality*, available at <http://www.elca.org/Faith/Faith-and-Society/Social-Statements/Human-Sexuality> (last visited Dec. 16, 2014).

<sup>13</sup> Theological Task Force on Peace, Unity and Purity of the Church, Final Report as approved by the 217th General Assembly of the Presbyterian Church (U.S.A.), *A Season of Discernment*, at 20 (2006), available at <http://apps.pcusa.org/peaceunitypurity/finalreport/final-report-revised-english.pdf>.

<sup>14</sup> Business Resolution, General Assembly of the Unitarian Universalist Association, *Confronting Sexual Orientation and Gender Identity Discrimination* (2010), available at <http://www.uua.org/statements/statements/169267.shtml> (last visited Dec. 16, 2014).

<sup>15</sup> Rabbi Shawn I. Zevit, *JRF Homosexuality Report and Inclusion of GLBTQ Persons*, available at <http://archive.is/3a6x> (last visited Dec. 16, 2014) (citation omitted).

Indeed, religious individuals have demonstrated an increasingly positive view of lesbian and gay Americans. According to a Public Religion Research Institute study, *the majority of Americans from most major religious groups have positive moral and theological views of gay and lesbian people, including 62% of Roman Catholics, 63% of white Mainline Protestants, and 69% of non-Christian, religiously affiliated Americans.*<sup>16</sup>

Meanwhile, 57% of white Mainline Protestants and 50% of American Roman Catholics support the ordination of gay and lesbian clergy.<sup>17</sup> Unsurprisingly, therefore, some denominations – both Christian and Jewish – long have permitted openly lesbian and gay clergy.<sup>18</sup> Others more recently have amended their practices to admit openly lesbian and gay people to various forms of

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<sup>16</sup> Public Religion Research Institute, *Generations at Odds: The Millennial Generation and the Future of Gay and Lesbian Rights*, at 18-20 (Aug. 29, 2011), available at <http://publicreligion.org/site/wp-content/uploads/2011/09/PRRI-Report-on-Millennials-Religion-Gay-and-Lesbian-Issues-Survey.pdf>.

<sup>17</sup> *Id.* at 20.

<sup>18</sup> The Unitarian Universalist Church called its first openly gay minister to serve as leader for a congregation in 1979. See Unitarian Universalist Association, *Unitarian Universalist LGBT History Timeline*, available at <http://www.uua.org/lgbtq/history/20962.shtml> (last visited Dec. 17, 2014). The seminary for Reconstructionist Jews began accepting gay and lesbian applicants in 1984. See Zevit, *supra* note 15. The Central Conference of American Rabbis endorsed the view in 1990 that “all rabbis, regardless of sexual orientation, be accorded the opportunity to fulfill the sacred vocation that they have chosen.” Central Conference of American Rabbis, *supra* note 9, at 261. The Episcopal Church ordained its first openly gay priest in 1977. See Mireya Navarro, *Openly Gay Priest Ordained in Jersey*, N.Y. Times, Dec. 17, 1989.

ministry.<sup>19</sup> Whether it be the ordination of lesbian and gay clergy, the express welcome to lesbian and gay congregants and their families, or the affirmation that lesbian and gay individuals possess the same inherent dignity as any other person, the American religious landscape includes same-sex couples and their families, and affirms their role in both faith communities and civil society at large.

**B. A Vast Spectrum Of American Faith Groups And Religious Observers Affirms Same-Sex Couples' Relationships In A Multitude Of Ways, Including By Celebrating And Solemnizing Their Marriages**

Many faiths also more specifically accord doctrinal and theological affirmation to the loving, committed *relationships* that same-sex couples have elected to enter – unsurprisingly, in ways as diverse as America's religious

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<sup>19</sup> See, e.g., Presbyterian Church (U.S.A.), *Presbyterian Church (U.S.A.) Approves Change In Ordination Standard* (May 10, 2011), available at <http://www.pcusa.org/news/2011/5/10/presbyterian-church-us-approves-change-ordination/> (last visited Dec. 17, 2014) (reporting that new language in church's Book of Orders effectively would open ordained ministry to persons in same-gender relationships); Amy Stone, *Out and Ordained, New York's Jewish Theological Seminary Graduates its First Openly Lesbian Rabbi*, *Lilith* (2011), available at <http://lilith.org/articles/out-and-ordained/> (last visited Dec. 17, 2014) (indicating that Conservative Jewish movement welcomed gay and lesbian rabbinical and cantorial students to Jewish Theological Seminary in 2007); Bishop Mark S. Hanson, *Message to Rostered Leaders* (Aug. 22, 2009), available at <http://stmarklutheran.wordpress.com/2009/08/22/now-tolerance-and-equality-next-domination> (last visited Dec. 17, 2014) (citation omitted); Sarah Pulliam Bailey, *ELCA Lutherans Elect First Openly Gay Bishop* (June 3, 2013), available at <http://www.religionnews.com/2013/06/03/elca-lutherans-elect-first-openly-gay-bishop/> (last visited Dec. 17, 2014).

families. Most recently, the General Assembly of the Presbyterian Church (U.S.A.) – the largest U.S. Presbyterian denomination – approved a recommendation permitting pastors to officiate at same-sex weddings<sup>20</sup> and recommended that the Church’s 171 presbyteries ratify a change to the Book of Order indicating that “marriage involves a unique commitment between two people.”<sup>21</sup> The Evangelical Lutheran Church in America has described the manner in which same-sex unions are, and are expected to be, like different-sex unions in several constitutive dimensions: “[T]he neighbor and community are best served when same-gender relationships are lived out with lifelong and monogamous commitments that are held to the same rigorous standards, sexual ethics, and status

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<sup>20</sup> *Press Release – Presbyterian Church (U.S.A.) General Assembly Approves Recommendation Giving Pastors Discretion to Perform Same-Gender Marriage Ceremonies*, Presbyterian Church (U.S.A.), June 20, 2014, available at <http://www.pcusa.org/news/2014/6/20/press-release-presbyterian-church-us-general-assem/> (deciding that pastors would be able “to participate in any such marriage they believe the Holy Spirit calls them to perform.”) (last visited Dec. 17, 2014).

<sup>21</sup> *Id.* This measure was approved by a vote of 71% of the General Assembly. Laurie Goodstein, *Presbyterians Vote to Allow Same-Sex Marriages*, N.Y. Times, June 19, 2014, available at [http://www.nytimes.com/2014/06/20/us/presbyterians-vote-to-change-definition-of-marriage-to-two-people.html?\\_r=0](http://www.nytimes.com/2014/06/20/us/presbyterians-vote-to-change-definition-of-marriage-to-two-people.html?_r=0) (last visited Dec. 17, 2014).

as heterosexual marriage. [We] surround such couples and their lifelong commitments with prayer to live in ways that glorify God . . . .”<sup>22</sup>

Support for same-sex relationships in religious doctrine and practice likewise has informed a diverse array of formal marriage rituals. The United Church of Christ promulgated a new Order for Marriage – a template for marriage ceremonies – that could be used in any marriage ceremony regardless of gender.<sup>23</sup> The Unitarian Universalist Association began celebrating the unions of same-sex couples as it would any other consenting adult couple’s union in 1979 and formally affirmed this practice in 1984.<sup>24</sup> The Conservative, Reform, and Reconstructionist Jewish movements allow their rabbis to perform religious wedding ceremonies for

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<sup>22</sup> See, e.g., 11th Churchwide Assembly, Evangelical Lutheran Church in America, *Human Sexuality: Gift and Trust* at 20 (Aug. 19, 2009), available at <http://www.elca.org/Faith/Faith-and-Society/Social-Statements/Human-Sexuality> (last visited Dec. 17, 2014).

<sup>23</sup> United Church of Christ, *Order for Marriage, An Inclusive Version*, available at [http://www.ucc.org/worship/pdfs/323\\_346i\\_order-for-marriage-inclusive.pdf](http://www.ucc.org/worship/pdfs/323_346i_order-for-marriage-inclusive.pdf).

<sup>24</sup> See LGBTQ Ministries Multicultural Growth and Witness, *LGBT History & Facts for Unitarian Universalists* (Oct. 2012), available at <https://www.uua.org/documents/lgbtq/history.pdf>; Resolution of Immediate Witness, General Assembly of the Unitarian Universalist Association, *Support of the Right to Marry for Same-Sex Couples* (1996), available at <https://www.uua.org/statements/statements/14251.shtml> (last visited Dec. 17, 2014); Unitarian Universalist Association, *Unitarian Universalist LGBTQ: History & Facts*, available at <http://www.uua.org/lgbtq/history/185789.shtml> (last visited Dec. 17, 2014).

same-sex couples.<sup>25</sup> The Episcopal Church acknowledged in 2000 that its membership includes same-sex couples living in “lifelong committed relationships . . . characterized by fidelity, monogamy, mutual affection and respect, careful, honest communication and the holy love which enables those in such relationships to see in each other the image of God,” and in 2012 approved a provisional liturgy for the blessing of same-sex unions that may be used with the permission of the local bishop.<sup>26</sup> And some faiths that do not celebrate or solemnize marriages of same-sex couples per se accord recognition to them in various other ways.<sup>27</sup>

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<sup>25</sup> See, e.g., E. Dorff, D. Nevins, & A. Reisner, *Rituals and Documents of Marriage and Divorce for Same-Sex Couples*, Rabbinical Assembly (Spring 2012), available at <http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/same-sex-marriage-and-divorce-appendix.pdf> (endorsing Conservative rabbis’ right to solemnize marriages of same-sex couples and memorializing 13-0 vote by Rabbinical Assembly’s Committee on Jewish Law and Standards to approve endorsement); *id.* at 6 (“The Rabbinical Assembly maintains standards of rabbinic practice regarding marriage, and we shall apply the same standards to same-sex couples.”); Resolution, 111th Convention of the Central Conference for American Rabbis, *Resolution On Same Gender Officiation* (Mar. 2000), available at <http://ccarnet.org/rabbis-speak/resolutions/2000/same-gender-officiation/> (last visited Dec. 17, 2014) (Reform movement); See Reconstructionist Rabbinical Association, *et al.*, *Reconstructionist Movement Endorses Civil Marriage for Same-Sex Couples*, available at <http://www.rrc.edu/news-media/news/reconstructionist-movement-endorses-civil-marriage-same-sex-couples> (last visited Dec. 17, 2014) (noting that in series of resolutions beginning in 1993 Reconstructionist movement affirmed holiness of commitments made by same-sex couples).

<sup>26</sup> See Resolution 2000-D039, the 73rd General Convention of the Episcopal Church (2000), available at [http://www.episcopalarchives.org/cgi-bin/acts/acts\\_resolution-complete.pl?resolution=2000-D039](http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2000-D039); (last visited Dec. 17, 2014);

In short, even limited to the sphere of *religious* marriage, organized religion in the United States exhibits a tremendous diversity of views and practices regarding same-sex unions.

## **II. Recognizing The Necessary Distinction Between Civil And Religious Marriage, A Growing Number Of Faiths Support Civil Marriage Equality**

More than a century ago, the Supreme Court held that “marriage is often termed . . . a civil contract . . . and does not require any religious ceremony for its solemnization.” *Maynard*, 125 U.S. at 210. *Amici* are therefore mindful that their own theological perspectives on marriage are distinct from the civil law on

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Resolution 2012-A049, the 77th General Convention of the Episcopal Church (2012), *available at* <http://www.generalconvention.org/old/gc/resolutions> (last visited Dec. 17, 2014).

<sup>27</sup> For example, the Evangelical Lutheran Church in America’s (“ELCA”) 2009 Churchwide Assembly resolved by a vote of 619 to 402 to “commit itself to finding ways to allow congregations that choose to do so to recognize, support and hold publicly accountable lifelong, monogamous, same-gender relationships.” Hanson, *supra* note 19. Following that action, more than 300 ELCA congregations have performed blessings over same-sex couples’ unions, while many more have adopted other policies and practices affirming same-sex couples’ relationships. *See* ReconcilingWorks, *RIC Congregations List*, *available at* <http://www.reconcilingworks.org/ric/ric-congregations-list> (last visited Dec. 17, 2014).

The Mormon Church, too, announced that “the Church does not object to rights for same-sex couples regarding hospitalization and medical care, fair housing and employment rights, or probate rights.” The Church of Jesus Christ of Latter-day Saints, *Church Responds to Same-Sex Marriage Votes* (Nov. 5, 2008), *available at* <http://www.mormonnewsroom.org/article/church-responds-to-same-sex-marriage-votes> (last visited Dec. 17, 2014).

marriage. Recognizing that civil and religious marriage necessarily are two different things, and further undercutting any claim that religion speaks with one voice on marriage, many religions – including those represented by *Amici* here – have distinct positions supporting equal *civil* marriage rights for same-sex couples.

Two Christian denominations that trace their history directly to the Puritans of New England support civil marriage for gay and lesbian couples.<sup>28</sup> Eighteen years ago, in 1996, the Unitarian Universalist Association formally resolved to support equal civil marriage rights.<sup>29</sup> In 2004, the Association further affirmed that “Civil Marriage is a Civil Right” and opposed any amendment of the United States Constitution to bar same-sex couples from marrying.<sup>30</sup> The following year, in 2005, the United Church of Christ “affirm[ed] equal marriage rights for couples regardless of gender and declar[ed] that the government should not interfere with couples

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<sup>28</sup> See generally Mark W. Harris, *Unitarian Universalist Origins: Our Historic Faith* (Oct. 2002), available at <http://www.uua.org/beliefs/history/151249.shtml> (last visited Sept. 12, 2014); United Church of Christ, *Short Course in the History of the United Church of Christ*, available at <http://www.ucc.org/about-us/short-course/shortcourse.pdf>.

<sup>29</sup> Resolution of Immediate Witness, General Assembly of the Unitarian Universalist Association, *Support of the Right to Marry for Same-Sex Couples* (1996), available at <https://www.uua.org/statements/statements/14251.shtml> (last visited Dec. 18, 2014).

<sup>30</sup> General Assembly of the Unitarian Universalist Association, *Oppose Federal Marriage Amendment* (2004), available at <http://www.uua.org/statements/statements/13433.shtml> (last visited Dec. 17, 2014).

regardless of gender who choose to marry and share fully and equally in the rights, responsibilities and commitment of legally recognized marriage.”<sup>31</sup>

In addition, the Reform,<sup>32</sup> Reconstructionist,<sup>33</sup> and Conservative<sup>34</sup> movements of Judaism all support equal civil marriage rights for same-sex couples, as does the American Friends Service Committee of the Religious Society of Friends (Quakers).<sup>35</sup> Locally, sixteen years ago the Tallahassee Monthly

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<sup>31</sup> Resolution, General Synod of the United Church of Christ, *In Support of Equal Marriage Rights for All* (July 4, 2005), available at <http://www.ucc.org/assets/pdfs/in-support-of-equal-marriage-rights-for-all-with-background.pdf>.

<sup>32</sup> In 1996, the Central Conference of American Rabbis (“CCAR”) resolved to “support the right of gay and lesbian couples to share fully and equally in the rights of civil marriage.” Resolution, 107th Convention of the Central Conference of American Rabbis, *Resolution On Gay and Lesbian Marriage* (Mar. 1996), available at <http://ccarnet.org/rabbis-speak/resolutions/1996/on-gay-and-lesbian-marriage-1996/> (last visited Dec. 18, 2014).

<sup>33</sup> The Jewish Reconstructionist movement adopted a resolution in favor of full civil marriage equality for same-sex couples. See Reconstructionist Rabbinical Association, *et al.*, *Reconstructionist Movement Endorses Civil Marriage for Same-Sex Couples* (Apr. 2004), *supra* note 25.

<sup>34</sup> The Rabbinical Assembly – representing Conservative Judaism – resolved in 2011 to “support the extension of civil rights and privileges granted to married persons to same sex couples,” and as early as 1990, had resolved to “work for full and equal civil rights for gays and lesbians in our national life.” Resolution, Rabbinical Assembly, *Resolution In Support Of Equal Rights And Inclusion For Gay, Lesbian, Bisexual, And Transgender (GLBT) Persons* (2011), available at <http://www.rabbinicalassembly.org/story/resolution-support-equal-rights-and-inclusion-gay-lesbian-bisexual-and-transgender-glb-person> (last visited Dec. 17, 2014).

<sup>35</sup> In 2004, the Executive Committee of the American Friends Service Committee Board of Directors, acting at the direction of the full board, approved a “minute”

Meeting of the Religious Society of Friends affirmed – as have approximately 250 other Quaker meetings around the country – the “traditional Friends’ practice of supporting committed relationships through the ceremony of marriage,” and “encourage[d] all Friends who wish to express their commitment to each other to make a formal request to Meeting for a committee on Clearness for Marriage regardless of sexual orientation.”<sup>36</sup> Nearly 4,000 clergy from numerous faiths have endorsed an open letter by the Religious Institute, Inc. calling for marriage equality.<sup>37</sup> *Amici* also note that the very church founded by the Pilgrims who sailed on the Mayflower in 1620 – First Parish in Plymouth, now a Unitarian Universalist congregation – has issued a proclamation invoking its historical pursuit of religious freedom, recounting its long history of openness to lesbian and

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setting forth its “support for equal civil marriage rights for lesbian, gay, bisexual, and transgender people.” See American Friends Service Committee, *AFSC Board Statement on Equal Marriage* (2004), available at <http://afsc.org/sites/afsc.civicactions.net/files/documents/AFSC%20Board%20Minute.pdf>.

<sup>36</sup> Tallahassee Monthly Meeting of the Religious Society of Friends, *Minute* (1998), available at Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns, *Collected Marriage Minutes*, <http://flgbtqc.quaker.org/minutes.html#tallahassee> (last visited Dec. 17, 2014).

<sup>37</sup> Religious Institute, Inc., *List of Endorsers* (Jan. 10, 2012), available at <http://religiousinstitute.org/list-of-endorsers> (last visited Sept. 12, 2014); Religious Institute, Inc., *Religious Declaration on Sexual Morality, Justice, and Healing* (Jan. 2010), available at <http://religiousinstitute.org/religious-declaration-on-sexual-morality-justice-and-healing/> (last visited Dec. 17, 2014).

gay congregants, and calling for full civil marriage equality for same-sex couples.<sup>38</sup> Given its historical pedigree, the First Parish proclamation underscores the resonance of today's marriage equality debate with the nation's founding ideal of liberty.

In 2006, the Episcopal Church likewise called on federal, state, and local governments to provide same-sex couples protections equivalent to those “enjoyed by non-gay married couples” and “oppose[d] any state or federal constitutional amendment that prohibits same-sex civil marriage or civil unions,” a stance growing out of its “historical support of gay and lesbian persons as children of God and entitled to full civil rights.”<sup>39</sup> A decade ago, the United Methodist Church called for the “equal protection before the law” of couples and families who have “shared material resources, pensions, guardian relationships, mutual powers of attorney, and other such lawful claims.”<sup>40</sup> In line with the advocacy of these faith

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<sup>38</sup> See Resolution, First Parish Church in Plymouth, *Resolution Demanding That All Persons, Regardless Of Sexual Orientation Or Gender Identification, Receive Equal Treatment Under The United States Constitution And The Laws Of The Land* (Feb. 2013), available at <http://firstparishplymouthuu.org/wp/wp-content/uploads/2014/07/Equal-treatment-lgbti-brief.pdf>.

<sup>39</sup> Resolution 2006-A095, the 75th General Convention of The Episcopal Church, available at [http://www.episcopalarchives.org/cgi-bin/acts/acts\\_resolution-complete.pl?resolution=2006-A095](http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2006-A095) (last visited Dec. 17, 2014).

<sup>40</sup> United Methodist Church, *Equal Rights Regardless of Sexual Orientation*, The Book of Discipline of The United Methodist Church (2004), <http://master.umc.org/interior.asp?mid=1753> (last visited Dec. 17, 2014).

groups, 62% of *all* white mainline Protestants today favor allowing same-sex couple to marry civilly.<sup>41</sup>

Even within faiths officially opposed to civil marriage equality – a position their leaders remain free to express – many adherents (in some cases, a majority) nonetheless have come to support same-sex couples’ right to civil marriages. The Roman Catholic Church hierarchy is strongly opposed to both civil and religious marriage for same-sex couples,<sup>42</sup> yet Catholic teaching joins other mainstream religions in affirming the fundamental human dignity of lesbian and gay individuals and calling for an end to “any forms of injustice, oppression, or violence against them.”<sup>43</sup> Consistent with the latter teachings, many individual

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<sup>41</sup> Public Religion Research Institute, *A Shifting Landscape: A Decade of Change in American Attitudes about Same-sex Marriage and LGBT Issues* (Feb. 26, 2014), at 10, available at [http://publicreligion.org/research/2014/02/2014.lgbt\\_survey/](http://publicreligion.org/research/2014/02/2014.lgbt_survey/) (last visited Dec. 17, 2014).

<sup>42</sup> United States Conference of Catholic Bishops, *Between Man And Woman: Questions And Answers About Marriage And Same-Sex Unions* (2003), available at <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/promotion-and-defense-of-marriage/questions-and-answers-about-marriage-and-same-sex-unions.cfm> (last visited Dec. 17, 2014). See generally Br. of U.S. Conference of Catholic Bishops, *supra* note 5.

<sup>43</sup> See, e.g., Statement, Bishops’ Committee on Marriage and Family, *Always Our Children: A Pastoral Message To Parents Of Homosexual Children And Suggestions For Pastoral Ministers* (1997), available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/homosexuality/always-our-children.cfm> (last visited Dec. 17, 2014) (observing that “respect for the God-given dignity of all persons means the recognition of human rights and responsibilities,” such that

American Catholics have come to favor marriage equality: polling conducted by the Public Religion Research Institute in 2013 showed that 57% of Catholics support marriage for same-sex couples,<sup>44</sup> whereas just three years before, only 46% of Catholics had favored equal marriage rights while 42% were opposed.<sup>45</sup> There are American Muslims, too, who believe that their religious faith is not contravened when the government affords marriage rights to same-sex couples.<sup>46</sup> In fact, in a March 2014 survey, 59% of *all* adults nationwide, including 62% of White non-evangelical Protestants, 70% of White Catholics, and 81% of people who claim no religion, voiced support for marriage equality.<sup>47</sup> More locally, a

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“the fundamental human rights of homosexual persons must be defended and . . . all of us must strive to eliminate any forms of injustice, oppression, or violence against them.”).

<sup>44</sup> Public Religion Research Institute, *supra* note 41, at 10.

<sup>45</sup> Pew Forum on Religion and Public Life, *Religion and Attitudes Toward Same-Sex Marriage* (Feb. 7, 2012), available at <http://www.pewforum.org/Gay-Marriage-and-Homosexuality/Religion-and-Attitudes-Toward-Same-Sex-Marriage> (last visited Dec. 17, 2014) (citing comparative data from Aug.-Sept. 2010 and Oct. 2011).

<sup>46</sup> See, e.g., Press Release, Muslims for Progressive Values, *Muslims for Progressive Values Applauds President Obama’s Support of Marriage Equality* (May 9, 2012), available at <http://prlog.org/11871240-muslims-for-progressive-values-applauds-president-obamas-support-of-marriage-equality.html> (last visited Dec. 17, 2014) (applauding *Windsor* and *Perry* decisions for marriage equality).

<sup>47</sup> *Gay issues find increasing acceptance*, Wash. Post, Mar. 6, 2014, available at [http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2014/03/05/National-Politics/Polling/release\\_301.xml](http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2014/03/05/National-Politics/Polling/release_301.xml).

clear majority of people in religiously diverse Florida now support marriage equality for same-sex couples.<sup>48</sup>

While individual liberties should not be subject to public opinion polls, the preceding surveys make clear that American religious thought and practice embrace a rich diversity. No one view speaks for “religion” – even if, contrary to the Establishment Clause, it were appropriate to give weight to religious views in the application of the Constitution’s secular promise of equal protection.

### **III. Permitting Same-Sex Couples To Marry Civilly (Or Recognizing Such Marriages Lawfully Performed) Will Not Impinge Upon Religious Beliefs, Practices, Or Operations, But Rather Will Prevent One Set Of Religious Beliefs From Being Imposed Through Civil Law**

Affirming civil marriage rights for same-sex couples will not threaten the First Amendment freedom of all religious communities to decide which unions are and are not consistent with their religious beliefs. Nor will affirmance here unduly burden religious persons and institutions in the pursuit of their public and business activities. To the contrary, reversal predicated on religious grounds, including the notion that Florida may (under any standard of review) deny equal protection to

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<sup>48</sup> See Steve Rothaus, *Report: About 57 percent of Floridians now support marriage equality for same-sex couples*, Miami Herald, Feb. 27, 2014 (citing Public Religion Research Institute polling ), available at <http://miamiherald.typepad.com/gaysouthflorida/2014/02/report-about-57-percent-of-floridians-now-support-marriage-equality-for-same-sex-couples.html> (last visited Dec. 17, 2014).

one sub-group in order to preserve the “religious liberty” of those who wish to discriminate against them, would improperly favor one set of religious views (*e.g.*, rejecting civil marriage equality) against other religious views (*e.g.*, like those of *Amici* here, favoring equal treatment under law for same-sex couples).

**A. Affirmance Would Not Interfere With The Exercise Of Religious Freedoms, Including The Freedom To Set Parameters For Religiously Sanctioned Marriage That May Differ From Those Established Under Civil Law**

Any purported concern that marriage equality for same-sex couples would interfere with religious practice in Florida is wholly illusory. However civil authorities define marriage, existing constitutional principles protect the autonomy of various religious entities to define *religious* marriages to comport with their respective tenets. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 709 (2012) (affirming principle that certain “matter[s are] ‘strictly ecclesiastical,’” meaning they are “the church’s alone” (citation omitted)). In this manner, religion and the state each respect the other’s own proper realm. *See generally McCollum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948) (“[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.”).

This tradition of respect for religious autonomy has, indeed, permitted various religions to define religious marriage in ways that would be unenforceable

under civil law – declining to sanctify or even recognize, for example, marriages between persons of different faiths and races, or successive marriage following divorce. Conservative Judaism, for example, prohibits interfaith marriages,<sup>49</sup> as did the Roman Catholic Church’s Code of Canon Law for much of the twentieth century.<sup>50</sup> The Mormon Church discouraged interracial marriage well after the Supreme Court’s ruling in *Loving v. Virginia*, 388 U.S. 1 (1967), that the Constitution requires states to allow interracial civil marriages.<sup>51</sup> And the Roman Catholic Church teaches that “[t]he remarriage of persons divorced from a living, lawful spouse is not permitted by God’s law as taught by Christ,”<sup>52</sup> and Roman Catholic priests “cannot recognize the union of people who are civilly divorced and remarried,”<sup>53</sup> even though states do.

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<sup>49</sup> Leadership Council on Conservative Judaism, *Conservative View on Intermarriage* (Mar. 7, 1995), available at <http://www.mazorguide.com/living/Denominations/conservative-intermarriage.htm> (last visited Dec. 17, 2014).

<sup>50</sup> Michael G. Lawler, *Interchurch Marriages: Theological and Pastoral Reflections*, in *Marriage in the Catholic Tradition: Scripture, Tradition, and Experience*, Ch. 22, at 222 (Todd A. Salzman, et al., eds. 2004).

<sup>51</sup> See *Interracial Marriage Discouraged*, The Deseret News, June 17, 1978, at 4 (“Now, the brethren feel that it is not the wisest thing to cross racial lines in dating and marrying.” (quoting President Spencer W. Kimball in a 1965 address to students at Brigham Young University)).

<sup>52</sup> United States Conference Of Catholic Bishops, *United States Catholic Catechism For Adults* ¶ 290 (2006).

<sup>53</sup> United States Conference Of Catholic Bishops, *Compendium – Catechism Of The Catholic Church* ¶ 349 (2006).

The existence and persistence of such differences demonstrate that affirmance here would not burden religious liberty. Were Florida to recognize and permit the civil marriages of same-sex couples – as they do for interfaith couples, interracial couples, and couples re-marrying after divorce – religions that disapprove of such unions would remain free to define *religious* marriage however they wish. All faith groups could continue to withhold spiritual blessing from any marriages and indeed bar those entering into them from being congregants at all, just as they are now free to do so on grounds of faith, race, prior marital status, or any other characteristic deemed religiously significant.

*Amici* urging reversal fail to explain how their *religious* practice would be burdened by according other people equal civil marriage rights. Leaving aside the public accommodation law issues addressed *infra* in Point III(B), *amici* express a generalized concern that opponents of equal marriage rights will somehow be prevented from expressing their religious conscience on such matters. *See, e.g.,* Br. of North Carolina Values Coalition, *supra* note 2 at 26 (arguing that “redefining marriage” would constitute “judicial intrusion on thought and speech” that “encroaches heavily on religion – a right that, unlike even traditional marriage, the Constitution explicitly guarantees.”).

But the Free Exercise Clause does not protect religious actors from reactions to their expressed views. There is no protected constitutional right not to be

considered – correctly or incorrectly – a “discriminator.” It is no accident that the Free Exercise Clause shares an amendment with the Free Speech Clause, because robust enforcement of *all* constitutional guarantees best ensures equal access for all voices to discourse in the public square. *See* William P. Marshall, *Solving the Free Exercise Dilemma: Free Exercise as Expression*, 67 Minn. L. Rev. 545, 546-47 (1983) (arguing free exercise of religion bears directly on free speech, both having their proper public dimension, with Religion Clauses, together, offering “unitary protection for individual liberty”).

Eliminating Florida’s unconstitutional and unequal treatment of same-sex couples under civil law would not change, mandate, control, or interfere with any parties’ religious practices. The religious freedoms embodied in the Constitution guarantee that diverse religious traditions and beliefs, including the sole right to define who can marry *religiously*, will flourish regardless of changes in civil marriage laws.

**B. Civil Marriage Of Same-Sex Couples Does Not Unconstitutionally Burden Religious Organizations’ Ability To Operate And Govern Their Own Religious Affairs**

Some *amici* supporting reversal nonetheless suggest that allowing the civil marriages of same-sex couples will curtail religious organizations’ ability to operate their own affairs and serve their communities. For example, *amici* North Carolina Values Foundation and Liberty, Life, and Law Foundation devote the

final pages of their brief to arguing that “[o]ur judicial system seems to be allergic to religious expression or influence in the public square” and “brush[es] aside the convictions of – and challenges faced by – religious organizations and citizens.” Br. of North Carolina Values Coalition, *supra* note 2 at 26, 28. They proceed to argue that “[a]nti-discrimination mandates have already spawned a multitude of legal actions,[] and that threat will escalate exponentially unless the political process is allowed to operate so that exemptions can be carved out to respect rights of conscience.” *Id.* at 26 & n.7 (characterizing *Elane Photography v. Willock*, 309 P.3d 53 (N.M. 2013), *cert. denied*, 134 S. Ct. 1787 (Apr. 7, 2014), as involving a “Christian photographer subjected to draconian financial penalties for refusing to photograph a same-sex commitment ceremony”).

But the types of disputes anticipated by these *amici* have more to do with existing civil rights laws barring discrimination based on sexual orientation, where such laws exist, than with any conflicts likely to arise based on marital status should this Court affirm the judgments below. The extent to which any religious institution or business is regulated as an employer or a public accommodation is determined by existing statutes and relevant, binding case law. Indeed, just two years ago the Supreme Court unanimously ruled that an employment discrimination claim by the former employee of a religious institution had to yield to the First Amendment right of the employer to determine who qualifies as a

minister under its *religious* understanding of that term. *Hosanna-Tabor Evangelical Lutheran Church & Sch.*, 132 S. Ct. at 707, 709. When religious institutions act in a more secular sphere, the balance between civil rights enforcement and First Amendment liberties may vary in particular cases. But such issues have nothing to do with the constitutional right to marry and, in any event, are not presented for decision here.

**C. While Amici Respect All Fellow Faiths, Including Those That Embrace Different Religious Views On Marriage, It Is Constitutionally Impermissible To Impose Religious Views Through Civil Law To Curtail Civil Marriage Rights Of Same-Sex Couples**

Since this nation’s founding, the concept of religious liberty has included the equal treatment of all faiths without discrimination or preference. *See Larson*, 456 U.S. at 244 (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”). Government action defining marriage rights on religious or quasi-religious grounds violates this principle by putting the force of law behind one set of religious views.

Several *amici* in this case urge reversal on avowedly religious grounds that would wreak havoc with the Establishment Clause. For example, *amici* Catholic Bishops, *et al.* explain that some Evangelical Christians’ opposition to allowing same-sex couples to marry is based on “a biblical view focused on uniting a man and woman in a divinely sanctioned companionship for the procreation and rearing

of children and the benefit of society.” Br. of U.S. Conference of Catholic Bishops, *supra* note 5, at 11. But it would be plainly improper to enshrine such religious views in civil law. “Courts are not arbiters of scriptural interpretation” and “should not undertake to dissect religious beliefs.” *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 715-16 (1981).

Certain *amici* favoring reversal insist that their doctrinal opposition to marriage for same-sex couples is fueled not by animus towards gay people but rather “[f]idelity to [r]eligious [b]eliefs” regarding “the personal, familial, and social virtues of traditional marriage.” See Br. of U.S. Conference of Catholic Bishops, *supra* note 5, at 9, 10. But it is not the dimension of animus that renders these justifications irrelevant and inadmissible to determine the permissible scope of civil marriage rights – it is the fact that these views are frankly religious. Any attempt to have the Court embrace specifically religious views or definitions of marriage must be rejected – among other reasons because that result would disfavor and disadvantage other religious believers, like *Amici* here, who do not embrace the arguments or conclusions of *amici* seeking reversal.

By affirming the judgments of the courts below without reference to religiously based arguments, and affirming the constitutional promise of equal treatment for different- and same-sex couples, this Court will ensure that civil law neither favors nor disfavors any particular religious viewpoint, and it will leave

individual faith communities free to determine for themselves whether or not to add religious sanction to particular unions.

### **CONCLUSION**

For the foregoing reasons, *Amici* respectfully submit that the Court should affirm the judgment of the court below that Florida's ban on marriages of same-sex couples is unconstitutional.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 29(b) & 32(a)**

- (1) This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) & 29(b) because this brief contains 6,918 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 2010 in 14-point Times New Roman font.

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2014 I electronically filed the foregoing with the court's CM/ECF system, which will send notification of such filing to the counsel for all parties in these cases.

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## **ADDENDUM A: STATEMENTS OF INTEREST OF AMICI CURIAE**

*Amicus curiae* The Rt. Rev. Leopold Frade is the third Episcopal Bishop of Southeast Florida, which comprises 77 congregations and some 33,000 communicants worshipping in English, Spanish, French, and French Creole, from Miami to Jensen Beach and Key West.

*Amicus curiae* General Synod of the United Church of Christ is the representative body of the this Protestant denomination of approximately 1.1 million members worshipping in approximately 5,100 local churches throughout the United States.

*Amicus curiae* Mormons for Equality is composed of countless individuals associated with the Mormon faith and tradition who work to further the cause of full legal equality for lesbian, gay, bisexual, and transgender individuals, including recognition of civil marriage rights for same-sex couples.

*Amicus curiae* Reconstructionist Rabbinical Association (“RRA”), established in 1974, is the professional association of Reconstructionist rabbis. Comprised of over 300 rabbis, the RRA represents the rabbinic voice within the Reconstructionist movement.

*Amicus curiae* Reconstructionist Rabbinical College and Jewish Reconstructionist Communities educates leaders, advances scholarship, and develops resources for contemporary Jewish life.

*Amicus curiae* Union for Reform Judaism, whose 900 congregations across North America include 1.3 million Reform Jews, is committed to ensuring equality for all of God's children, regardless of sexual orientation.

*Amicus curiae* Unitarian Universalist Association was founded in 1961 and has nurtured a heritage of providing a strong voice for social justice and liberal religion. Unitarian Universalism is a caring, open-minded faith community that traces its roots in North America back to the Pilgrims and the Puritans.

*Amicus curiae* Affirmation represents lesbian, gay, bisexual, transgender, and queer concerns and their supporters in the United Methodist Community.

*Amicus curiae* Covenant Network of Presbyterians, a broad-based, national group of clergy and lay leaders, seeks to support the mission and unity of the Presbyterian Church (U.S.A.), articulate and act on the church's historic, progressive vision, work for a fully inclusive church, and find ways to live out the graciously hospitable gospel by living together with all our fellow members in the Presbyterian Church (U.S.A.).

*Amicus curiae* Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns ("FLGBTQC") is a faith community within the Religious Society of Friends (Quakers). FLGBTQC deeply honors, affirms, and upholds that of God in all people.

*Amicus curiae* Methodist Federation for Social Action mobilizes clergy and laity within The United Methodist Church to take action on issues of peace, poverty, and people's rights within the church, the nation, and the world.

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

*Amicus curiae* Muslims for Progressive Values is guided by the following ten principles, each of which is rooted in Islam: collective identity, equality, separation of religious and state authorities, freedom of speech, universal human rights, gender equality, LGBTQ inclusion, critical analysis and interpretation, compassion, and diversity.

*Amicus curiae* Parity is a diverse community of countless individuals representing lesbian, gay, bisexual, and transgender people in the Presbyterian Church (U.S.A.), through education, advocacy, and relationship building.

*Amicus curiae* Reconciling Ministries Network serves lesbian, gay, bisexual, and transgender United Methodists and their allies to transform their world into the full expression of Christ's inclusive love. Reconciling Ministries Network envisions a vibrant Wesleyan movement that is biblically and theologically centered in the full inclusion of God's children.

*Amicus curiae* ReconcilingWorks: Lutherans For Full Participation embodies, inspires, advocates and organizes for the acceptance and full

participation of people of all sexual orientations and gender identities within the Lutheran communion, its ecumenical and global partners, and society at large.

*Amicus curiae* Religious Institute, Inc. is a multi-faith organization whose thousands of supporters include clergy and other religious leaders from more than 50 faith traditions. The Religious Institute partners with the leading mainstream and progressive religious institutions in the United States.

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