NO. 12-23

IN THE

Supreme Court of the United States

JANICE K. BREWER, in her official capacity as Governor of the State of Arizona; SCOTT SMITH, in his official capacity as Director of the Arizona Department of Administration; KATHY PECKARDT, in her official capacity as Assistant Director of Human Resources for the Arizona Department of Administration,

Petitioners,

v.

JOSEPH R. DIAZ; KEITH B. HUMPHREY; BEVERLY SECKINGER; STEPHEN RUSSELL; DEANNA PFLEGER; CARRIE SPERLING; LESLIE KEMP; COREY SEEMILLER,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF CENTER FOR ARIZONA POLICY IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Center for Arizona Policy (the "Center") is a nonprofit, public policy, legal organization dedicated to promoting and defending marriage and the family as fundamental to civil society. To advance its goals, the Center supports social policies and laws that promote, strengthen, and preserve marriage. One example of the many marriage-promoting measures that the Center has supported is Ariz. Rev. Stat. § 38-651(O) ("Section O")—the law at issue in this case—which establishes that the State of Arizona will distribute benefits to spouses of state employees but not to their unmarried partners. In light of the Center's general involvement in marriage-promoting legislation and its particular involvement in Section O's enactment, the Center has a heightened interest in the outcome of this case.

The Center previously filed two *amicus curiae* briefs in this case, one in support of Petitioners' appellate brief filed with the three-judge panel of the United States Court of Appeals for the Ninth Circuit, and the other in support of Petitioners' petition for rehearing en banc.

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[1] As required by Rule 37 of the Rules of this Court, *amicus curiae* notified counsel of record for all parties of its intention to file this brief at least 10 days before the due date. In response, the parties all have consented to the filing of this brief. *Amicus curiae* also represents that no counsel for a party authored this brief in whole or in part, that no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The Ninth Circuit in this case concluded that Section O, which affords benefits to married spouses of state employees but not to any unmarried partner of those employees, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This unprecedented decision has staggering and widespread implications not only for government-benefits laws throughout the nation, but for all laws that favor—or define—marriage as the union of one man and one woman. In addition to the reasons expressed in the Petition for Writ of Certiorari and Judge O'Scannlain's dissent from the court of appeals' order denying en banc review, this Court should grant the writ for the following four reasons.

First, rather than scrutinizing Section O's statutory classification, which distinguished between married spouses and all unmarried partners, the Ninth Circuit analyzed only Section O's impact on state employees' unmarried same-sex partners—a subgroup of the statutory class. Focusing its analysis on this subgroup without any evidence that the Arizona Legislature harbored an "invidious" intent to discriminate against that group conflicts with this Court's decisions in *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979), *Harris v. McRae*, 448 U.S. 297 (1980), and *Schweiker v. Wilson*, 450 U.S. 221 (1981).

Second, the decision below incorrectly held that Section O does not satisfy rational-basis review, summarily rejected the State's interests in

promoting marriage and saving costs, and effectively indicted the employment-benefits schemes of most States. *See* App. 12a-14a. This rational-basis analysis, however, cannot be squared with this Court's well-established precedent applying that deferential standard. *See, e.g.*, *Johnson v. Robison*, 415 U.S. 361, 383 (1974); *Califano v. Boles*, 443 U.S. 282, 289 (1979); *Schweiker*, 450 U.S. at 238.

Third, the Ninth Circuit relied on this Court's decision in *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), and claimed that this case embodies "a more compelling scenario" of the unlawful discrimination found there. App. 11a-12a. Yet the court of appeals distorted *Moreno*'s facts and analysis, and thus the decision below conflicts with this Court's decision in that case.

Fourth, the Ninth Circuit condemned as irrational "the considered views of Arizona's voters and all others who wish to promote traditional marriage through the law." App. 67a (O'Scannlain, J, dissenting from order denying rehearing en banc). This conclusion not only "clashes with Supreme Court precedent . . . and with decisions of other federal and state appellate courts," *id.*; it presents a legal question of exceeding importance that should be definitively settled by this Court.

For these reasons, the Center respectfully requests that the Court grant review in this case.

ARGUMENT

I. The Ninth Circuit's Analytical Focus on a Subgroup of Section O's Statutory Class Conflicts with *Personnel Administrator of Massachusetts v. Feeney* and Other Decisions of this Court.

Section O draws a familiar and unremarkable distinction: it grants benefits to the legal spouses of state employees, but not to any unmarried partners of those employees. The statutory class at issue, then, is legal spouses versus unmarried partners. Despite this unambiguous statutory classification, the decision below focused its analysis exclusively on Section O's impact on unmarried same-sex partners of state employees. By thus premising its equal-protection analysis, the Ninth Circuit's decision conflicts with a host of this Court's cases.

"The proper classification for purposes of equal protection analysis . . . begin[s] with the statutory classification itself." *Califano v. Boles*, 443 U.S. 282, 293-94 (1979). To look beyond the statutory classification and scrutinize a subgroup within the statutory class, a court must first determine that the Legislature created the statutory classification with an "invidious" intent to discriminate against that particular subgroup, because "purposeful discrimination"—not disparate impact—"is the condition that offends the Constitution." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 274 (1979) (quotation marks omitted). Absent this showing of purposeful discrimination, "uneven effects upon

particular groups within a class are ordinarily of no constitutional concern." *Id.* at 272.

This prerequisite finding of intent to discriminate against a subclass is demanded by a wealth of this Court's precedent, of which *Feeney* is a preeminent example. There, the challenged statute created a state employment preference for military veterans, and thus the statutory classification at issue was veteran status. *Id.* at 262. The plaintiff in that case, like Plaintiffs here, sought to look beyond the statutory classification, claiming that the challenged statute "discriminate[d] against women in violation of the Equal Protection Clause." *Id.* at 259. The *Feeney* Court, however, refused to analyze the facially sex-neutral law as discriminating against the subclass of women unless the plaintiff first showed "purposeful discrimination" against that group. *Id.* at 274. Finding no evidence of legislative intent to discriminate against women—even though the law "operate[d] overwhelmingly to the advantage of males," *id.* at 259, and admittedly had a "severe" adverse impact on women, *id.* at 271—the Court upheld the challenged law because the statutory "distinction between veterans and nonveterans" was "legitimate." *Id.* at 277-78. *Feeney* thus teaches that courts engaging in equal-protection analysis must not focus on a subgroup of the larger disfavored class absent evidence of a purposeful and invidious intent to discriminate against that subgroup in particular.

Likewise, this Court in *Harris v. McRae*, 448 U.S. 297 (1980)—when considering an equal-protection challenge to a statute that withheld funding for "medically necessary abortions"—

disagreed with the lower court's focus on a subclass (teenage women) of the larger class of women affected by the law. *Id.* at 323 n.26. Stressing that the challenged law was "facially neutral as to age," the *Harris* Court refused to strike down the statute because "no evidence" indicated that the Legislature "selected or reaffirmed [its] particular course of action . . . 'because of' . . . its adverse effects upon [teenage women]." *Id.*

Similarly, this Court in *Schweiker v. Wilson*, 450 U.S. 221 (1981)—while assessing an equal-protection challenge to a statute that withheld supplemental-security-income benefits from disabled and aged persons in most public institutions—refused to analyze the case as involving discrimination against a subclass (mentally impaired individuals) of the broader group of disabled and aged persons disadvantaged by the law, because the "statute d[id] not classify directly on the basis of mental health," *id.* at 231, and because the plaintiffs "failed to produce any evidence that the intent of Congress was to classify on the basis of mental health." *Id.* at 233-34; *see also Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 484-85 (1982) ("[W]hen *facially neutral legislation* is subjected to equal protection attack, *an inquiry into intent is necessary*.") (emphasis added).

The decision below conflicts with all these cases—*Feeney*, *Harris*, and *Schweiker*—because, without even considering whether the Arizona Legislature enacted Section O for the purpose of targeting state employees with unmarried same-sex

partners, the Ninth Circuit focused its equal-protection analysis exclusively on that subgroup.

Rather than considering whether Section O was motivated by a discriminatory purpose, the Ninth Circuit considered only Section O's impact. *See* App. 10a-14a. But the court of appeals' disparate-impact analysis conflicts with *Feeney* in at least three ways.

First, *Feeney* declared that a law's impact is only a "starting point" or "working tool" in the analysis, 442 U.S. at 274, 279 n.25; it is not a substitute for demonstrating "purposeful discrimination." *Id.* at 274. Thus, Section O's impact alone, like the impact of the veteran-preference law challenged in *Feeney*, is insufficient to establish purposeful discrimination against state employees with same-sex partners because (1) that "impact is essentially an unavoidable consequence of a legislative policy"—confining government employment benefits to spouses of state employees—"that has in itself always been deemed to be legitimate," and (2) none of "the statutory history" or "available evidence" suggests an intent to discriminate against state employees with unmarried same-sex partners. *Id.* at 279 n.25.

Second, the decision below paradoxically found an invidious intent to discriminate against state employees with unmarried same-sex partners even though the vast majority of state employees disadvantaged by Section O are those with

unmarried opposite-sex partners.[2] This finding conflicts with *Feeney*'s conclusion, regarding the sex-neutral veteran preference challenged there, that "[t]oo many men are affected by [the challenged law] to permit the inference that the statute is but a pretext for preferring men over women." 442 U.S. at 275.

Third, since Section O on its face does not discriminate against state employees with same-sex partners, the Ninth Circuit looked to—and implicitly denounced—Arizona's unchallenged (and already affirmed) laws defining marriage as the union of a man and a woman. *See* App. 12a; *Standhardt v. Superior Court*, 77 P.3d 451, 453 (Ariz. Ct. App. 2003) (rejecting an equal-protection challenge under the United States Constitution to Arizona's marriage laws). But *Feeney* expressly denounced this sort of effort to reach beyond the challenged statute and attack a different government policy or law. *See* 442 U.S. at 278 ("The enlistment policies of the Armed Services may well [discriminate] on the basis of sex. But the history of discrimination against women in the military is not on trial in this case.") (citations omitted).

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[2] "Approximately 800 of the 140,000 participating State employees receive benefits for a qualifying domestic partner. A small fraction of those 800 employees receive benefits for a same-sex domestic partner." App. 20a.

II. The Ninth Circuit's Conclusion that Section O Does Not Rationally Further a Legitimate Government Interest Conflicts with Myriad Decisions of this Court.

A statute satisfies rational-basis review so long as it is rationally related to any conceivable and legitimate government interest. *Heller v. Doe*, 509 U.S. 312, 320 (1993). The decision below incorrectly held that Section O does not satisfy this exceedingly deferential standard, perfunctorily rejected the only two state interests it considered—promoting marriage and cost savings—and effectively condemned as irrational the employment-benefits schemes of the majority of States. *See* App. 12a-14a; *see also* Cert. Pet. 20 n.7 (noting that most States' employment-benefits schemes are similar to Section O). This conclusion, as discussed below, conflicts with this Court's precedent.

The Ninth Circuit's fundamental error of focusing on a subgroup of Section O's statutory class, which we discussed in the prior section, *see supra* at Section (I), permeates and thus taints the entirety of its rational-basis review. Instead of erroneously focusing on the distinction between state employees with opposite-sex partners and state employees with same-sex partners, the decision below should have analyzed Section O's statutory distinction between state employees with married spouses and state employees with unmarried partners (regardless of their sex). Viewed in this light, Section O readily satisfies rational-basis review because, as explained below, Section O is rationally related to the legitimate government interests of (1) promoting

marriage and (2) saving costs in a reasonable, non-invidious manner by affording benefits to legal spouses (who state employees have a legal obligation to support) but not to unmarried partners (who state employees do not have a legal obligation to support).[3]

First, the State unquestionably has a legitimate interest in promoting the institution of marriage. *See Maynard v. Hill*, 125 U.S. 190, 211 (1888) (describing marriage as "the foundation of the family and of society"). That interest includes (1) promoting marriage by encouraging citizens to enter marital unions and (2) promoting marriage as a unique domestic relationship. Section O plainly promotes marriage in the sense that it encourages citizens to get married—specifically, it incentivizes marriage for unmarried state employees; this is particularly (but not exclusively) true for those cohabiting with an unmarried opposite-sex partner. The record shows that, of the approximately 800 state employees receiving benefits for an unmarried partner before Section O's enactment, the vast majority obtained benefits for an opposite-sex partner. *See* App. 20a. In all these instances, Section O plainly furthers (or is at least rationally related to

[3] The Ninth Circuit remarked that the State on appeal did not "seriously advance[]" these government interests. App. 14a. Even if that were true, Section O must be upheld, as the court of appeals correctly suggested, if there are "any additional interests" (even unasserted interests) that the law "might further." *Id.*; *see also Heller*, 509 U.S. at 320 (noting that a law may be invalidated under rational-basis review only if the challenger "negat[es] every conceivable basis which might support it") (quotation marks and citation omitted).

furthering) the State's interest in promoting marriage.

The decision below, however, rejected the State's interest in promoting marriage because it focused only on same-sex couples and, by doing so, concluded that "the denial of benefits to same-sex domestic partners cannot promote marriage, since such partners are ineligible to marry." App. 13a-14a. But this analysis, as discussed above, conflicts with all this Court's decisions that require equal-protection analysis to focus on the statutory classification rather than a subgroup of that class. *See supra* at Section (I). Furthermore, by requiring the State to show that "the denial of benefits to same-sex domestic partners . . . promote[s] marriage," App. 13a-14a, the Ninth Circuit's analysis conflicts with this Court's rational-basis decisions like *Johnson v. Robison*, 415 U.S. 361, 383 (1974). Rational-basis review does not require the State to demonstrate that excluding a particular subgroup necessarily advances the government interest; it is enough to show that "the inclusion of one group promotes a legitimate governmental purpose, and the addition of other groups would not." *Id.* Section O thus easily satisfies rational-basis review because granting employment benefits to spouses promotes marriage while granting those same benefits to unmarried partners (regardless of their sex) would not.[4]

[4] The decision below also perceived too narrowly the State's interest in promoting marriage: it considered only the interest in encouraging citizens to enter marital unions; it did not assess the State's interest in promoting marriage as a unique domestic relationship. Section O furthers this interest by restoring to legal spouses (as opposed to unmarried partners)

Second, the State of Arizona surely has a legitimate interest in conserving public funds and "preserving the fiscal integrity of its programs," *see Graham v. Richardson*, 403 U.S. 365, 374 (1971), particularly in light of its considerable budget crisis. *See* Cert. Pet. 4-5 (discussing the State's $1.6 billion budget crisis). The Legislature addressed that crisis through a budget-reconciliation bill that included Section O. That particular provision rationally decreases the State's costs because—while continuing to give benefits to spouses, who state employees have a legal obligation to support, *see* Ariz. Rev. Stat. § 13-3611—Section O discontinues benefits to unmarried partners, who state employees are not legally obligated to support. That, without question, is a reasonable decision, unimpeachable under rational-basis review.

The Ninth Circuit's rejection of this state interest conflicts with this Court's decision in *Califano*. There, the Court upheld Congress's decision to grant social-security benefits to a former spouse who was raising a deceased parent's child but not to a former unmarried partner who was raising the deceased's child. *See* 443 U.S. at 288-96. The

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the traditionally marital-based benefits afforded to employees' dependents. Providing these benefits to persons in domestic relationships that are not valid marriages (regardless of the persons' sex) treats marital and non-marital relationships alike, blurs the line between marital and non-marital relationships, and obscures the uniqueness of marriage. It is thus rational for the State to conclude that affording these benefits based on state employees' non-marital domestic relationships (regardless of the employees' or the partners' sex) will undermine the State's interest in promoting marriage as a unique domestic relationship and social institution.

Califano Court rejected an equal-protection challenge to this benefits scheme because of the "obvious logic," based in part on the legal obligation to "support" one's spouse, undergirding Congress's disparate treatment of the decedent's former spouse and his former unmarried partner. *See id.* at 289. The decision below, in contrast, ignores the obvious distinction between legal spouses (who state employees have a legal obligation to support) and unmarried partners (who state employees do not have a legal obligation to support), and it impugns the Legislature's decision to rationally distinguish between the two.

In dismissing the cost-savings rationale, the decision below also conflicts with this Court's ruling in *Schweiker*. In that case, this Court affirmed that the judiciary must afford a "strong presumption of constitutionality to legislation conferring monetary benefits," like Section O does, because the Legislature "should have discretion in deciding how to expend necessarily limited resources" and because distributing those benefits "inevitably involves the kind of line-drawing that will leave some comparably needy person outside the favored circle." *Schweiker*, 450 U.S. at 238 (quotation marks and citation omitted). Rather than affording this strong presumption of constitutionality to Section O, as *Schweiker* requires, the Ninth Circuit erroneously endorsed and applied a "more searching" form of rational-basis review in condemning that law. *See*

App. 7a. The Ninth Circuit's rational-basis analysis thus conflicts with the decisions of this Court.[5]

III. The Ninth Circuit's Decision Conflicts with *United States Department of Agriculture v. Moreno*.

The Ninth Circuit's rational-basis analysis relied heavily on its conclusion that this case is "a more compelling" but analogous example of the unlawful discrimination struck down in *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973). App. 11a-12a. Yet the decision below, as explained herein, grossly distorts and thus conflicts with this Court's decision in *Moreno*.

Moreno presented an equal-protection challenge to a federal law that granted food stamps to eligible households composed of all related persons but withheld those benefits from eligible households containing any unrelated persons. 413 U.S. at 534.

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[5] The Ninth Circuit rejected the cost-savings interest because, by confining its inquiry to the "actual amount of benefits the state paid for same-sex partners," it perceived as "minimal" Section O's cost savings. App. 10a. But this reasoning ignores that Section O excludes all unmarried partners (not just same-sex partners) from obtaining benefits, so it is improper and prejudicial to focus only on a fraction of the likely cost savings. The State spent over $4 million for domestic-partner claims in Plan Year 2008-2009, and it was estimated to spend nearly $5.5 million for those claims the following year. App. 48a-49a. These are not small sums. Hence, even after accounting for the unknown number of domestic-partner recipients who will get married and thus shift to spousal coverage after Section O takes effect, the Legislature could reasonably believe that Section O, if the State is ever allowed to enforce it, will significantly conserve public funds.

The Court rejected the government's argument that the "challenged classification should [] be upheld as rationally related to the clearly legitimate governmental interest in minimizing fraud in the administration of the food stamp program," *id.* at 535, concluding that, in light of that asserted interest, the classification between related and unrelated households was "wholly without any rational basis." *Id.* at 538.

The Ninth Circuit emphasized the following two facts from *Moreno* in its effort to portray that case as analogous to this one. First, the *Moreno* Court found "that the legislation was aimed at groups that were unpopular," namely, "hippies" and "hippie communes." App. 11a. Second, *Moreno* rejected the asserted government interest of preventing fraud because, among other reasons, the law "would allow the hippies, with means, who were allegedly abusing the program, to rearrange their housing status to retain eligibility, while excluding those who were financially unable to do so." App. 12a. But neither of these facts supports—and, in fact, both of them belie—the Ninth Circuit's reliance on *Moreno*.

First, *Moreno*'s discussion of a purposeful intent to discriminate does not apply here. There, the Court found that "[t]he legislative history . . . indicate[d] that [the challenged law] was intended to prevent socalled 'hippies' and 'hippie communes' from participating in the food stamp program." 413 U.S. at 534. Here, however, the Ninth Circuit cited no legislative history—or any other evidence, for that matter—indicating that the Arizona Legislature enacted Section O for the purpose of discriminating

against unmarried same-sex partners of state employees. Without evidence of purposeful discrimination (which was present in *Moreno* but is absent here), the court of appeals had no basis to analyze Section O as a discriminatory measure against state employees with same-sex partners.

Second, the Ninth Circuit misapprehended the significance to the *Moreno* Court of the hippies' ability to alter their status and retain their benefits. *Moreno* did not find that this apparent loophole rendered the law irrational *per se*, or that one group's ability to escape the rule's adverse effects demonstrated a legislative intent to discriminate against other groups. On the contrary, that fact demonstrated the irrationality of the government's asserted interest in preventing fraud: simply put, that the hippies (the alleged fraud-promoting group) could rearrange their living conditions to keep their benefits under the challenged law (in other words, retain their benefits through manipulation) tangibly demonstrated that the statutory classification did not further the government's supposed interest in preventing fraud. In stark contrast, however, the purportedly analogous fact here—an unmarried opposite-sex couple's ability to get married and keep their benefits—does not undercut the asserted state interest in Section O; it does just the opposite. After all, when state employees marry to retain their partners' benefits, they directly further the state interest in promoting marriage, thereby demonstrating that Section O's classification is rationally related to this asserted state interest. Quite plainly, then, *Moreno* does not support—and,

in fact, undermines—the Ninth Circuit's ruling. The decision below thus conflicts with *Moreno*.

IV. The Ninth Circuit's Implicit Finding That Laws Benefiting or Preserving Traditional Marriage Serve No Conceivable Purpose Presents an Exceedingly Important Question.

The lynchpin of the Ninth Circuit's analysis was Arizona's sovereign choice to define marriage as the union of one man and one woman. *See* App. 12a. The decision below thus "concluded—in a way that is veiled but unmistakable—that [laws] benefiting only traditional marriage serve no conceivable rational purpose." App. 66a (O'Scannlain, J, dissenting from order denying rehearing en banc). Consequently, that decision "threatens to dismantle constitutional, statutory, and administrative provisions in those states that wish to promote traditional marriage." App. 65a-66a.

That the Ninth Circuit's decision threatens laws favoring—or even defining—marriage as the union of one man and one woman is both logically inevitable and already demonstrated. To begin with, if it is irrational, as the decision below declared, for governments that define marriage as the union of one man and one woman to distribute employment benefits only to legal spouses of their employees, then logic dictates that it is also irrational to allocate countless other benefits on the basis of marriage or even, for that matter, to preserve the traditional definition of marriage. If there were any doubt on this point, recent history has erased it, for the Ninth

Circuit's decision has already been relied upon by two federal district courts that have recently struck down laws defining marriage as the union of one man and one woman. *See Dragovich v. U.S. Dep't of Treasury*, No. C 10-01564 CW, --- F. Supp. 2d ---, 2012 WL 1909603, at *11, 15, 17 (N.D. Cal. May 24, 2012) (invalidating the provision of the federal Defense of Marriage Act (DOMA) that defines marriage as "a legal union between one man and one woman"); *Golinski v. U.S. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 996-97 (N.D. Cal. 2012) (same).

The constitutionality of laws that benefit or define marriage is a legal question of utmost importance. As this Court has long recognized, marriage is a social institution that is "more basic in our civilization than any other," *Williams v. North Carolina*, 317 U.S. 287, 303 (1942), and that forms "the foundation of the family and of society." *Maynard*, 125 U.S. at 211. Determining whether the government may continue favoring and defining marriage as it always has is thus, without doubt, a question that demands this Court's attention.

The importance of this question is demonstrated most tangibly by the proliferation of pending cases raising this issue in federal courts. *See, e.g.*, *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012) (attacking California's marriage laws under the federal constitution); Mem. in Supp. of Pls.' Mot. Summ. J., *Jackson v. Abercrombie*, No. 1:11-cv-00734-ACK-KSC, ECF Doc. No. 65-1 (D. Haw. June 15, 2012) (attacking Hawaii's marriage laws under the federal constitution); Pls.' Mot. Summ. J. and Br. in Supp., *Bishop v. United States*, No. 04-cv-848-TCK-TLW,

ECF Doc. No. 197 (N.D. Okla. Sept. 28, 2011) (attacking Oklahoma's marriage laws and the federal DOMA under the federal constitution); *Massachusetts v. U.S. Dep't of Health & Human Servs.*, 682 F.3d 1 (1st Cir. 2012) (attacking federal DOMA under the federal constitution); *Pedersen v. Office of Pers. Mgmt.*, No. 3:10-cv-1750 (VLB) (D. Conn. July 31, 2012) (same); *Windsor v. United States*, 833 F. Supp. 2d 394 (S.D.N.Y. 2012) (same); *Dragovich*, 2012 WL 1909603 (same); *Golinski*, 824 F. Supp. 2d 968 (same).

Notably, at least two of those cases—*Massachusetts/Gill* from the First Circuit and *Perry* from the Ninth Circuit—have brought this issue to the doorsteps of this Court. *See* Pet. for a Writ of Cert., *BiPartisan Legal Advisory Group of the U.S. House of Representatives v. Gill*, No. 12-13 (June 29, 2012); Pet. for a Writ of Cert., *Hollingsworth v. Perry*, No. 12-144 (July 30, 2012). If the Court issues—or is inclined to issue—a writ of certiorari in either (or both) of those cases, it should also grant review here because of the similarity of issues and the need to maintain consistency in this important area of law. But regardless of how the Court rules on the petitions in those cases, it should grant the writ in this case to clarify whether States may enact laws favoring marriage between one man and one woman. *See* App. 68a (O'Scannlain, J, dissenting from order denying rehearing en banc) ("This case is in some ways even more breathtaking than our recent decision in *Perry v. Brown*").

CONCLUSION

For the foregoing reasons, the Center respectfully requests that the Court grant review in this case.

Respectfully submitted,

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