

No. 14-574

IN THE
Supreme Court of the United States

TIMOTHY LOVE, ET AL.
GREGORY BOURKE, ET AL.,

Petitioners,

v.

STEVE BESHEAR, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF KENTUCKY

Respondent.

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

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Petitioners and the Commonwealth of Kentucky agree that the Court should promptly resolve the exceptionally important constitutional questions presented in this case: whether a state violates due process and equal protection by excluding same-sex couples from marriage or refusing recognition of their marriages performed in other jurisdictions. The consensus among the parties here about the importance of Supreme Court review is shared by both the states and same-sex couples who have filed eleven of the twelve separate petitions for certiorari on this issue this Term. Departing from that consensus, respondents in *Tanco v. Haslam*, No. 14-562, argue that the conflict among the circuits can persist and certiorari should be denied. This argument is profoundly misguided. For petitioners here – and for lesbian and gay couples and families across both the Sixth Circuit and the country – the harm and confusion that the circuit split has caused calls out for immediate review.

1. The circuit split forces same-sex couples in the Sixth Circuit – unlike such couples in more than thirty other states – to live indefinitely without the security and protections that marriage provides. In the coming days and months, children will be born without the security of two legal parents; partners and spouses will confront illness and death without legal certainty for their closest relationships; and gays and lesbians who are married will be transferred by employers – ranging from the military to marketing firms – into states within the Sixth Circuit that will refuse to recognize their marriages and insist they are “single.” These tangible harms

and the indignities that flow from them grow more consequential with each passing day. Indeed, any further delay, no matter how slight, in resolving the circuit split would result in further profound harm. See Brief of *Amici Curiae* COLAGE, Equality Federation, Family Equality Council, Freedom to Marry, and PFLAG.

Furthermore, the circuit split creates peculiar fluctuations in status for those who work and travel across state lines. To provide just one example: the metropolitan area of Louisville, Kentucky encompasses a swath of southern Indiana – a state that permits same-sex couples to marry, see *Baskin v. Bogan*, 766 F.3d 648 (7th Cir.), *cert. denied*, 135 S. Ct. 316 (2014). Thus, a person can wake up married in Indiana, and then go to work in Kentucky where the Commonwealth insists that she is single. The Kentucky employer must discern her status in order to administer employee benefits, tax withholding, and myriad other laws and office policies. If, on the way home from work, the person is in an accident, her spouse's ability to visit her in the hospital will depend on where along the interstate she was injured or to which local hospital she is taken. To subject individuals to such an unpredictable and arbitrary application of the law is intolerable.

2. There is no reason to wait to resolve the circuit split. This case provides a factually vivid and legally comprehensive vehicle for resolving the constitutionality of banning and refusing to recognize marriage for same-sex couples. Petitioners have suffered a wide array of harms imposed by Kentucky's marriage bans and have brought both marriage license and marriage recognition claims,

which have been (and promise to be) vigorously litigated on both sides.

For instance, Petitioners Timothy Love and Larry Ysunza have been together for thirty-five years. Yet the law of Kentucky still treats them as strangers. When Tim needed heart surgery last year, the surgery had to be delayed so the couple could draft legal paperwork to ensure that Larry could make decisions for Tim if anything happened that left him unable to make those decisions for himself. Pet. App. 100a. As they proceed into their fourth decade together, they face the uncertainty of how the law will treat them in retirement, in end-of-life planning, and as they navigate the ups and downs that life may bring.

For Petitioners Randell (Randy) Johnson, Paul Campion, and their four children, the Commonwealth's refusal to recognize their marriage is a constant reminder of their family's second-class status. Each of the couple's four children has only one legal parent because Kentucky reserves step-parent adoptions for married couples. The family worries about what would happen if Paul or Randy became sick and the other could not take advantage of the Family Medical Leave Act to care for his spouse and their children. Pet. App 131a-32a. On top of that anxiety, the prospect of illness or death raises concerns for Randy and Paul over inheritance taxes, hospital visitation rights, child custody and a host of other concerns. Telling Kentucky to respect Randy and Paul's marriage would redress these harms. In a very real sense, they cannot wait.

The petitioner couples, in short, are "being burdened, by reason of government decree, in visible

and public ways,” *United States v. Windsor*, 131 S. Ct. 2675, 2694 (2013), as well as private ways, at each stage of life. Without the intervention of this Court, they will continue to suffer indefinitely. For their sake, as well as others across the Nation, this Court should promptly resolve they have a right to be married.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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