No. 14-124

In the Supreme Court of the United States

GARY R. HERBERT, GOVERNOR OF UTAH, ET AL.,
Petitioners,

v.

DEREK KITCHEN, ET AL.,
Respondents.

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

BRIEF FOR THE NATIONAL COALITION OF BLACK PASTORS AND CHRISTIAN LEADERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

WILLIAM R. WAGNER
JOHN S. KANE
5600 W. MOUNT HOPE HWY
Lansing, MI 48917

RICHARD THOMPSON
Counsel of Record
ERIN ELIZABETH MERSINO
THOMAS MORE LAW CENTER
24 Frank Lloyd Wright Dr.
P.O. Box 393
Ann Arbor, MI 48106
(734) 930-7145
rthompson@thomasmore.org
emersino@thomasmore.org

Counsel for *Amici Curiae*

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

This case challenges a State's authority for its citizens to define the meaning of marriage for themselves. Article I, § 29 of the Utah Constitution defines marriage as consisting of "only the legal union between a man and a woman." This case challenges whether the federal courts can redefine marriage, overruling a State's duly enacted and adopted referendum passed by the majority of a State's voters, and impose a new, federalized definition for marriage that one can "marry" any "person of their choice." App. 9a.

The ultimate question before the Court is whether it is lawful to redefine marriage and whether abstention from redefining marriage necessarily denies homosexual individuals a "fundamental right" to marry any person they choose.

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STATEMENT OF IDENTITY AND INTERESTS OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, *Amici Curiae* the National Coalition of Black Pastors and Christian Leaders respectfully submit this brief requesting that the Court uphold the State of Utah's definition of marriage, Article I, § 29, as constitutional.[1]

Amici previously were involved in the submission of an amicus brief in support of the State of Michigan to uphold the constitutionality of the State's ability to define marriage as being between one man and one woman. That case is currently pending before the United States Sixth Circuit Court of Appeals. *DeBoer v. Synder*, No. 14-1341 (6th Cir.).

Amici National Coalition of Black Pastors and Christian Leaders is a group under the leadership of Minister Stacy Swimp, Bishop Ira Combs, Jr., Bishop Samuel Smith, Pastor Emery Moss, Jr., Evangelist Janet Boynes, and Pastor Danny Holliday. *Amici* represent the interests of over 25,000 Ministries/Churches which include over 3 million laity in the United States.

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[1] Petitioners and Respondents have granted blanket consent for the filing of amicus curiae briefs in this matter. Pursuant to Rule 37(a), Amici gave 10 day notice of their intent to file this amicus curiae brief to all counsel. *Amici* further state that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici*, their members, or their counsel made a monetary contribution to its preparation or submission.

Amici devote their lives to America's time-honored family values, morality, and the Christian faith. *Amici* head their pastoral communities, preach, and spread the good news of God's love. As pastors, *amici* are considered to be shepherds who guide their church communities and their local bodies of believers in accordance with the Bible, which defines both the role and responsibilities of the pastor and the role and responsibilities of the members of their church community. *Amici* believe that the Bible defines what constitutes sound doctrine, not the culture, gender, or personality. *Amici* bear the responsibility to oppose unsound doctrines and to oppose practices that are harmful to the following of God's teachings as outlined in the Bible. Therefore, Amici have a vested interest in a State being able to define marriage to secure the sanctity of the traditional family, as it is defined by God in the Bible.

The issue of marriage redefinition reached the national stage with pending cases involving the marriage laws of Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming, and Puerto Rico. The undersigned *Amici* hold a strong interest in the protection of marriage nationally and therefore hold a strong interest in seeing the Tenth Circuit decision reversed. *Amici* oppose any idea, law, rule or suggestion that is contrary to the teachings of the Bible. Hence, when a federal court strikes down a duly enacted State law that protects the inviolability of

marriage and the family, *Amici* have the preeminent responsibility of standing against such a decision and leading the community to do so as well.

SUMMARY OF THE ARGUMENT

The State of Utah's Constitution does not serve a discriminatory purpose. Article 1, § 29, of Utah's constitution, retains the State's marriage definition and was approved by almost a 2-1 margin (nearly 66% of the State's voters). Pet. at 7.

The State of Utah denies no one the right to marry. Every man in the State of Utah is allowed to marry. Every woman in the State of Utah is allowed to marry. Article 1, § 29, to the State's constitution simply codifies the long-standing definition of marriage as being between a man and a woman. It is the right of each State's voters to do so. *United States v. Windsor*, 133 S. Ct. 2675, 2691 (2013) (stating that "regulation of domestic relations" is "an area that has long been regarded as a virtually exclusive province of the States") (*quoting Sosna v. Iowa*, 419 U.S. 393, 404 (1975)).[2]

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[2] Recently, the European Court on Human Rights ruled that no right to so-called homosexual marriage exists under the European Convention on Human Rights. *See Europe stands strong for traditional definition of marriage: U.S. Supreme Court should also allow states to choose*, Washington Times Editorial, Sept. 1, 2104, http://www.washingtontimes.com/news/2014/sep/1/europe-stands-strong-for-traditional-definition-of/. The Court held that no fundamental right existed to so-called homosexual marriage. The Court noted that, similar to the United States, no consensus exists that marriage should be redefined across the European States. Further, the Court ruled that the European Convention on Human

As Christian pastors, *Amici* know that all human beings have inherent value because God created every person in His image. Thus, it is *Amici*'s position that the government should never classify or discriminate against another human being, based upon who they are. *Amici* do not condone discriminatory actions toward any person and hold no animus toward anyone.

A person's sexuality and sexual preferences, however, are *not* their state of being, or even an immutable aspect of who they are, as race is. The truth of the matter is that it is merely activity in which they engage. And for *Amici*, truth matters.

A State has no responsibility to promote any person's sexual proclivities, whether heterosexual, homosexual, or otherwise—and certainly is not required to accept that one's sexual conduct preference is the same as an immutable characteristic like race. Government may not regulate people based on who they are, but it may regulate their conduct, including sexual conduct.

This brief addresses two reasons why this Court should hear this case. First, the Tenth Circuit misapplied the reasoning behind the landmark case of *Loving v. Virginia* in rejecting the government's argument that the State can define marriage truthfully. The Tenth Circuit extended the reasoning of *Loving v. Virginia* and its progeny to hold that it is now a fundamental right for a person to marry any other

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Rights did not require individual States to recognize so-called homosexual marriage, and each European State had the freedom to define marriage for itself.

person of their choice. App. 135a, 140a. Second, the Circuit Court erred by concluding that Utah's Constitution treated men and women unequally and did not pass constitutional review. App. 152a-164a. The Tenth Circuit rejected Petitioners' arguments based in morality. In doing so, the Circuit Court essentially replaced its opinion on the issue of so-called same-sex marriage with the rightful convictions of Utah's voters and the morality upon which our nation was built. This act is judicial overreach, aggrandizes limited federal jurisdiction, and diminishes the constitutionally granted power of the States. Due to the important federal issues raised in this case and the necessity for reversal of the Circuit Court's decision, the Court should grant this petition.

ARGUMENT

I. *LOVING v. VIRGINIA* DOES NOT PROHIBIT STATES FROM ENACTING LAWS THAT PREVENT MARRIAGE REDEFINITION.

The Equal Protection Clause holds special significance for Black Americans. The text of the Fourteenth Amendment guarantees that "no state shall ... deny to any person within its jurisdiction equal protection of the laws," and this text must be viewed in the context of its history. U.S. Const., amend. XIV, § 1. When the Equal Protection Clause became law in 1868, many Black Americans were recently emancipated slaves. Four years later in 1872, the Supreme Court suggested that white supremacist discrimination was "the evil [the Civil War Amendments] were designed to remedy," *Slaughter-House Cases*, 83 U.S. 36, 72 (1873) ("We do not say that no one else but the negro can

share in [their] protection, but ... in any fair and just construction of any section or phrase of these [Civil War] amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy."); *Strauder v. West Virginia*, 100 U.S. 303, 306 (1880) ("the colored race for whose protection the [Fourteenth] Amendment was primarily designed"). It then took nearly a century after the end of the Civil War for the Supreme Court to enforce a modicum of what we now know as substantive equality. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

Comparing the dilemmas of same-sex couples to the centuries of discrimination faced by Black Americans is a distortion of our country's cultural and legal history. The disgraces and unspeakable privations in our nation's history pertaining to the civil rights of Black Americans are unmatched. No other class of individuals, including individuals who are same-sex attracted, have ever been enslaved, or lawfully viewed not as human, but as property. *See*, *e.g.*, Stacy Swimp, *LGBT Comparison of Marriage Redefinition to Historical Black Civil Rights Struggles is Dishonest and Manufactured*, (March 7, 2014), (http://stacyswimp.net/2014/03/07/lgbt-comparison-of-marriage-redefinition-to-historical-Black-civil-rights-struggles-is-dishonest-and-manufactured). Same-sex attracted individuals have never lawfully been forced to attend different schools, walk on separate public sidewalks, sit at the back of the bus, drink out of separate drinking fountains, denied their right to assemble, or denied their voting rights. *Id*. The legal history of these disparate classifications, *i.e.*, immutable racial discrimination and same-sex

attraction, is incongruent. Yet, courts have mistakenly drawn upon this incongruence as the basis for what they now deem "marriage equality."

The Hawaii Supreme Court first ruled that a State's failure to agree with so-called "same-sex marriage" violated the State's Equal Rights Amendment. *Baehr v. Lewin*, 74 Haw. 530 (Haw. 1993). This marked the first time a court used the Supreme Court's decision in *Loving v. Virginia,* 388 U.S. 1 (1967), to blur the line of a suspect class (race) and a non-suspect class (sexual preference) in Equal Protection Clause analysis.

To understand why this analysis is incorrect, it is essential to understand the holding in *Loving v. Virginia*—that a State's statutory scheme to prevent marriage between a man and a woman on the basis of racial classifications violated the Equal Protection Clause. *Id*. at 11. The plaintiffs in *Loving* were two Virginia residents, a black woman and a white man. *Id*. at 3. The plaintiffs legally married in Washington, D.C. and returned to Virginia. *Id*. The State of Virginia, however, considered interracial marriage a criminal offense. *Id*. The plaintiffs were charged and pleaded guilty to violating the State's ban on interracial marriage and were sentenced to a year in jail, a sentence suspended for a period of twenty-five (25) years if the plaintiffs left the State. *Id*. In a landmark decision, the Supreme Court struck down Virginia's ban on interracial marriage on both equal protection and due process grounds. In doing so, the Supreme Court held:

> At the very least, the Equal Protection Clause demands that *racial classifications . . . be subjected to the "most rigid scrutiny,"* . . . and, if

> they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible state objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate. . . . There is patently no legitimate overriding purpose independent of invidious discrimination which justifies this classification. . . . We have consistently denied the constitutionality of measures which restrict the rights of citizens on account of race.

Id. at 10-12 (emphasis added).

Loving was clearly a case about *racial discrimination*. The *Baehr* Court improperly expanded *Loving* by plucking from its dicta that: "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free [people]." *Baehr*, 74 Haw. at 562-63 (quoting *Loving*, 388 U.S. at 12). This statement is followed in *Loving*, however, by the critical qualification that this fundamental freedom is not to be denied "on so unsupportable a basis as [] racial classifications," which the *Baehr* court failed to acknowledge. *Loving,* 388 U.S. at 12.

The Supreme Court in *Loving* never contemplated, much less addressed, "same-sex marriage." However, in *Baehr*, the court assumed, without reasoned explanation, that because *racial* discrimination is morally wrong and unconstitutional, that it necessarily follows that a State cannot recognize the historical, moral, and Biblical value that marriage should be between a man and a woman. *Baehr*, 74 Haw. at 572. Loving actually affirmed that the foundational

institution of marriage is the union of a man and woman, and it is so regardless of their race. It did not hold, as *Baehr* erroneously surmised, that marriage is the union of two (or more) people regardless of their gender, co-sanguinity, or any other factor. As the *Baehr* dissent correctly pointed out, "*Loving* is simply not authority for the plurality's proposition that the civil right to marriage must be accorded to same sex couples." *Id.* at 588 (Heen, J., dissenting).

There are critical differences between race and sexual preference classifications. Race is a suspect class, and racial discrimination triggers strict scrutiny review. In order for a law to survive strict scrutiny under the Equal Protection Clause, the State interest involved must be more than important—it must be *compelling*. *Loving*, 388 U.S. at 11. And the law itself must be *necessary* in order to achieve the objective. *Id*. If any less discriminatory means of achieving the goal exists, the law will fall. *Id*. As a practical matter, it is rare for a law to survive strict scrutiny review.

The Tenth Circuit seems to erroneously hold that Utah's constitutional provision protecting marriage fails any level of scrutiny. App. 50a. One's sexual preference, however, triggers mere rational basis review, not strict scrutiny. App. 152a–164a. A court undertaking rational basis review can ask no more than whether "there is some rational relationship between disparity of treatment and some legitimate governmental purpose." *Central State Univ. v. American Assoc. of University Professors*, 526 U.S. 124, 128 (1999), *citing Heller v. Doe*, 509 U.S. 312, 319-321 (1993). Although the lower court claimed to follow rational basis review, it clearly misapplied this test to

overturn Utah's Constitution. The Tenth Circuit failed to conduct a legitimate rational basis review and assumed without justification that the Utah's Constitution did not meet any level of scrutiny.

The Tenth Circuit summarily determined that since a fundamental right was implicated, Utah's constitution did not pass legal scrutiny. The Court misapprehended *Loving's* holding regarding the fundamental right to marriage. App. 29-30a. The court was right in the sense that *Loving* affirmed the fundamental constitutional right of a *man and woman to marry* because "[m]arriage [between a man and a woman] is . . . fundamental to our very existence and survival." *Skinner v. State of Oklahoma*, 316 U.S. 535, 541, (1942) (pertaining to the importance of procreation); *Maynard v. Hill*, 125 U.S. 190 (1888) (signifying "the relation of husband and wife, deriving both its rights and duties from a source higher than any contract of which the parties are capable."). But then the Court irrationally, and unconstitutionally, extended *Loving* and its progeny to create a new federal right of "'the freedom of choice to marry'" without any qualification whatsoever, and to thus destroy the very meaning of "marriage". App. 30a (quoting *Loving* v. *Virginia*, 388 U.S. 1 (1967)).

Loving emphasized the importance of marriage to all Americans, in the true sense of the word. It did not pave the way for the destruction of that vital institution. So-called "marriage equality" rests on the false premise that all individuals should be allowed to "marry" (actually, to redefine "marriage" to fit their desires) because the right to marry is the fundamental right of all. But *Loving* and its progeny do not hold that

if prohibited conduct is defined by reference to a proclivity, then that prohibition violates the Equal Protection Clause. *See* S. Girgis, R.P. George, & R.T. Anderson, What is Marriage? 34 Harv. J. L & Pub. Pol'y, 245, 249 (2011) (hereafter, "What is Marriage") ("antimiscegegenation was about whom to allow to marry, not what marriage was essentially about; and sex, unlike race, is rationally related to the latter question"). Thus, when viewed in the light of truth, it is clear that the lawsuit in the instant case is not about civil rights. It is, rather, about political activists seeking to use judicial power to bypass the will of the people -- in order to judicially force civil acceptance of homosexual behavior.

The "marriage equality" slogan is self-defeating, because it is a standard-less standard that renders "marriage" equally meaningless for all. *See id.* at 269-75 (discussing that the logic of Plaintiffs' position demands "equal marriage rights" for bigamists, polygamists, and virtually any other arrangement individuals might want to create). Although the lower court cited *Loving* for the proposition that States cannot discriminate in violation of the Equal Protection Clause, all States *routinely* require certain qualifications to obtain a marriage license and disallow certain individuals who do not meet those qualifications. States discriminate against first cousins, for example, by not allowing them to marry. States discriminate against bigamists, polygamists, pedophiles, sibling couples, parent-child couples, and polyamorists in the licensing of marriage, and it is within the States' right to do so. *See, e.g.*, Barbara Bradley Hagerty, *Some Muslims in U.S. Quietly Engage in Polygamy*, National Public Radio: *All Things*

Considered, May 27, 2008 (discussing the illegality of polygamy in all fifty States); *Lesbian 'thropleʼ proves Scalia right on slippery slopes*, Washington Times Editorial, Apr. 25, 2104, http://www.washingtontimes.com/news/2014/apr/25/editorial-throuple-in-paradise/ (lesbian threesome claim to have married).

Under the Tenth Circuit's reasoning, however, such restrictions would no longer be valid. The Tenth Circuit discarded the limits on marriage that have always existed under Utah law and, acting as a super-legislature, replaced the traditional and rational definition of marriage with one that has no discernible limits.[3]

It is clearly within a State's right to define marriage between a man and a woman when that licensing

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[3] Following the Tenth Circuit's holding in the instant case, a federal district court in the Central District of Utah found that a fundamental right existed for "choosing to cohabit and maintain romantic and spiritual relationships, even if those relationships are termed plural marriage." *Brown v. Herbert*, Case No. 2:11-cv-0652-CW (C.D. of Utah Aug. 27, 2104); *see* Memorandum Op., Dkt. 78 at *35 (Dec. 13, 2103), (internal quotations and citations omitted). While the district court was careful not to legalize polygamy in its entirety, the court eroded Utah's Anti-Bigamy Statute, Utah Code Ann. § 76-7-101(1) on other grounds. The district court did, however, draw the distinction between the treatment of civil rights and the treatment of marital decisions. *Id*. at * 20-21 ("Such an assessment arising from derisive societal views about race and ethnic origin prevalent in the United States at that time has no place in discourse about . . . due process, equal protection or any other constitutional guarantee or right in the genuinely and intentionally racially and religiously pluralistic society that has been strengthened by the Supreme Court's twentieth-century rights jurisprudence.")

restriction passes rational basis review. The Court should review the issue of so-called homosexual marriage not under an implicit or even explicit heightened review, but as any other law that does not involve a suspect class. *Loving* does not require a higher standard, a higher standard was only employed on the basis that the class dealt with race, a suspect class. *Loving* counsels a different outcome in the instant case: the protection of Utah citizens' fundamental right of marriage as truthfully defined. The fact that American media or other factions erroneously characterize the traditional meaning of "marriage" as being on par with the civil rights deprivations of Black Americans does not make it so. The law treats racial classifications as wholly distinct from sexual preference classifications. And here, such different classifications necessarily yield different outcomes. The Tenth Circuit's fundamental-rights analysis misapplied existing law and heightened sexual preference to the same level of immutable classes, such as race. App. 50a. That conclusion is wrong, and void of factual, historical, and legal support and necessitates review by this Court.

II. COURTS SHOULD NOT SUPPLANT THIS NATION'S TRADITIONAL MORALITY WITH THEIR OWN MORAL RELATIVISM

The Tenth Circuit purported to eschew consideration of morality when assessing the constitutionality of Utah's definition of marriage. App. at 74a. The Tenth Circuit then replaced the morality of the Judeo-Christian tradition on which our country was founded with the trendy, relativist morality of

political correctness.[4] It rejected our Founders' judgment—which we have inherited and which we share—and just replaced it with its own.[5]

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[4] Like any lawgiver, the lower court cannot avoid the application of morality. *See, e.g.*, Senator Barack Obama, Keynote Address to Sojourners at the 'Call to Renewal' Conference (June 28, 2006) ("Our law is by definition a codification of morality, much of it grounded in Judeo-Christian tradition."). Unlike a good lawgiver, however, the Tenth Circuit was not forthright in exposing and explaining the morality it employed. If it believes we are endowed by our Creator with certain inalienable rights, then let the court explicitly argue that the Creator endowed us with the right to "marry" a person of the same sex. If the Tenth Circuit believes we are not so endowed, but make up our own rights, it should also explain why it gets to make them up for us.

[5] *See, e.g.*, What is Marriage, *supra*, at 286 ("there is no truly neutral marriage policy"); Dent, G.W., Jr., Straight is Better: Why Law and Society May Justly Prefer Heterosexuality, 15 Tex. Rev. L. & Pol. 359 (2011) ("Sensible scholars acknowledge that moral neutrality is not only undesirable but impossible."). Robert Reilly more fully explains this disingenuous displacement of morality and tradition:

> The legal protection of heterosexual relations between a husband and wife involves a public judgment on the nature and purpose of sex. That judgment teaches that the proper exercise of sex is within the marital bond because both the procreative and unitive purposes of sex are best fulfilled within it. The family alone is capable of providing the necessary stability for the profound relationship that sexual union both symbolizes and cements and for the welfare of the children who issue from it.
>
> The legitimization of homosexual relations changes that judgment and the teaching that emanates from it. What is disguised under the rubric of legal neutrality toward an individual's choice of sexual behavior—"equality and freedom for everyone"—is, in fact, a demotion of marriage

Amici understand better than many that "tradition" alone cannot justify a law, no matter how hoary its pedigree. But *Amici* do not argue Utah's Constitution should remain unmolested by the federal judiciary merely because it upholds long-standing tradition. Contrary to the Tenth Circuit's facile analysis, mere "tradition" is not the reason Utah's marriage definition is constitutional. The *reason*s for the tradition are the reasons that Utah's law is constitutional. The reasons for the tradition are entirely rational. *See*, *e.g.*, *Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8th Cir. 2006) (promotion of traditional family structure as sound social foundation is rational); What is Marriage, *supra*, at 248-259 (discussing fundamental nature of marriage as a public good and revisionists' failure to justify replacing it with their relativist surrogate); M. Gallagher, Why Marriage Matters: The Case for Normal Marriage, available at http://marriagedebate.com/pdf/SenateSept42003.pdf (discussing research demonstrating benefits of traditional family structure); Straight is Better, *supra* at 359, 371-75 (the biological family is universally recognized as a unique social unit worthy of special encouragement and protection). The people of the State of Utah have not violated the United States Constitution by merely codifying the traditional

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> from something seen as good in itself and for society to just one of the available sexual alternatives. In other words, this neutrality is not at all neutral; it teaches and promotes indifference, where once there was an endorsement.

Reilly, Robert R., Making Gay Okay: How Rationalizing Homosexual Behavior is Changing Everything, 13 (Ignatius Press, 2014).

definition of "marriage." If anything, it is the Tenth Circuit that has arguably violated an oath to uphold the Constitution by re-writing it in direct defiance of the very rules that it admits govern the exercise of its limited authority.

As our tradition recognizes, some truths are self-evident. Among them are that men and women are different. In fact, it is clear from our very existence that men are made for women, and women for men. None of us would be here but for that truth. Another self-evident truth is that it is best for children to be raised by their parents whenever possible. There have been many theories to the contrary throughout history, but they have all proven vacuous at best. Public policy that recognizes and acts on these truths is not unfairly discriminatory. In fact, the only way to have sound public policy is to build on such truths.

In deciding to radically redefine "marriage," the Tenth Circuit rejected these truths. Utah voters were affirming a truth upon which our nation was founded and has flourished for over two hundred years: that the natural family is the optimal environment in which children should be raised. Human history, scientific observations of human biology, and our own experience, common sense and reason tell us that children come exclusively from opposite sex unions, and children benefit from being raised by their biological parents whenever possible. *See, e.g*. Straight Is Better, *supra* at 376, 378, 380-81; What is Marriage, *supra* at 258; M. Gallagher, (How) Does Marriage Protect Child Well-Being, in The Meaning of Marriage (R.P. George & J.B. Elshtain, eds.) (Scepter Publishers, Inc., 2010)

at 197-212 (*see especially* 208-12 regarding gender roles).

To *Amici* and to most Americans, this federalization and redefinition of marriage directly harms and threatens the sacred and foundational institution. There is no surer way to destroy an institution like marriage than to destroy its meaning.[6] If "marriage" means whatever one judge wants it to mean, it means nothing. If it has no fixed meaning, it is merely a vessel for a judge's will. It is used as a subterfuge for judicial legislation. And as Montesquieu observed: "There is no greater tyranny than that which is perpetrated under the shield of law and in the name of justice." Charles de Montesquieu, Montesquieu's Considerations on the Causes of the Grandeur and Decadence of the Romans, 279 (Jehu Baker trans., Tiberius 1882).

Here, the Tenth Circuit Court overstepped its authority and imposed *its* morality on the people of Utah, usurping their right to retain the traditional truthful meaning of marriage. As the Eight Circuit

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[6] Destroying marriage by destroying its meaning is the admitted goal of many "same-sex marriage" advocates. *See* , *e.g.,* What is Marriage, *supra*, at 277-78 (citing numerous gay activists and supporters who openly advocate the destruction of traditional concepts of marriage and family); Why Marriage Matters, *supra*; Gay Marriage is a Lie: Destruction of Marriage, Masha Gessen (http://www.youtube.com/watch?v=n9M0xcs2Vw4, last visited Sept. 3, 2014) (In the words of gay activist Masha Gessen …, "Gay marriage is a lie . . . Fighting for gay marriage generally involves lying about what we're going to do with marriage when we get there. It's a no-brainer that the institution of marriage should not exist.").

correctly held in *Citizens for Equal Protection v. Bruning*:

> In the nearly one hundred and fifty years since the Fourteenth Amendment was adopted, to our knowledge no Justice of the Supreme Court has suggested that a state statute or constitutional provision codifying the traditional definition of marriage violates the Equal Protection Clause or any other provision of the United States Constitution. Indeed, in *Baker v. Nelson*, 409 U.S. 810(1972), when faced with a Fourteenth Amendment challenge to a decision by the Supreme Court of Minnesota denying a marriage license to a same-sex couple, the United States Supreme Court dismissed "for want of a substantial federal question."

455 F.3d at 870. This Court should grant this petition and review the Tenth Circuit's decision to reshape the building block of our society.

CONCLUSION

This petition for a writ of certiorari should be granted, and the Court should reverse the decision of the U.S. Court of Appeals for the Tenth Circuit that unconstitutionally re-defines the voter-approved meaning of marriage.

Respectfully submitted,

RICHARD THOMPSON
Counsel of Record
ERIN ELIZABETH MERSINO
THOMAS MORE LAW CENTER
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
(734) 930-7145
rthompson@thomasmore.org
emersino@thomasmore.org

WILLIAM R. WAGNER
JOHN S. KANE
5600 W. Mount Hope Hwy.
Lansing, MI 48917

Counsel for Amici Curiae