NO. 12-307

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

EDITH SCHLAIN WINDSOR,

and

BIPARTISAN LEGAL ADVISORY GROUP OF THE UNITED STATES HOUSE OF REPRESENTATIVES,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

AMICUS CURIAE BRIEF OF MANHATTAN DECLARATION IN SUPPORT OF RESPONDENT BIPARTISAN LEGAL ADVISORY GROUP ADDRESSING THE MERITS AND SUPPORTING REVERSAL

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QUESTION PRESENTED

Whether Section 3 of the Defense of Marriage Act, 1 U.S.C. § 7, violates the equal protection component of the Due Process Clause of the Fifth Amendment.

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INTEREST OF AMICUS[1]

Manhattan Declaration Inc. is a not-for-profit corporation based in Virginia and qualified as tax-exempt under the Internal Revenue Code, 26 U.S.C.A. § 501(c)(3).

Manhattan Declaration Inc. was founded in 2009 by Charles Colson, Timothy George, and Robert George with the input and support of over 100 Catholic, Orthodox, and Evangelical leaders. Its purposes are to reflect and uphold Christian values respecting life, marriage and family, and religious liberty. The signers and supporters of Manhattan Declaration Inc. regard these values as foundational to the survival of American society.

On November 20, 2009, the Manhattan Declaration Inc. released a document called: "Manhattan Declaration: A Call of Christian Conscience." This document was drafted primarily by: Robert George, McCormick Professor of Jurisprudence, Princeton University; Timothy George, Professor, Beeson Divinity School, Samford University; and Chuck Colson, Founder, the Chuck Colson Center for Christian Worldview and Prison Fellowship Ministries.

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[1] The parties have consented to the filing of this brief and that consent is on file with the Clerk of the Court. As required by Rule 37.6, *Amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than the *Amicus* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

As of the filing of this amicus curiae brief, 535,037 people of faith have signed the Manhattan Declaration. These persons include Orthodox, Catholic, and Evangelical Christians.

Manhattan Declaration Inc. files this brief because this case presents the question of whether marriage will continue to be defined as a male-female relationship or instead be redefined at a constitutional level in a genderless manner to include relationships between or among persons of the same sex.

The signers and supporters of the Manhattan Declaration consider the male-female nature of marriage to be an essential Christian teaching and to be critical to the health and survival of American marriages and families.

The Manhattan Declaration Inc. believes it has the right and duty to provide input from the Christian perspective into the important public policy debate over the meaning and future of marriage and the family.

SUMMARY OF THE ARGUMENT

The United States Congress, with strong majorities in both Houses, enacted the Defense of Marriage Act ("DOMA") in 1996, defining marriage for federal purposes as "only a legal union between one man and one woman as husband and wife."[2] The

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[2] 1 U.S.C. § 7.

primary governmental interest advanced for the law was "defending and nurturing the institution of traditional, heterosexual marriage."[3]

Marriage is a foundational institution universally known and accepted, without regard to the accidents of time and place, as a male-female coupling. It has been given formal or legal recognition in nearly every culture throughout history because it encourages and supports responsible procreation and childrearing. Because marriage as it has always been understood redounds to the health and well-being of societies in general, it should be preserved without alteration, and from a federal perspective DOMA does just that.

The teaching of history and the facts relative to the ongoing national marriage debate confirm that efforts to preserve marriage, like the one represented by Amicus in its document entitled *Manhattan Declaration: A Call of Christian Conscience*, find their origin in sincere belief and sound public policy considerations, rather than animus, as many proponents of same-sex marriage have argued.

Notwithstanding the pure intentions of those who seek to preserve marriage, it has become increasingly difficult for people of faith to live lives of integrity and service in the public square where same-sex marriage has been adopted. Put simply, redefining marriage imperils religious liberty and

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[3] H.R. Rep. No. 104-664, at 12 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2905, 2916.

oftentimes requires that freedom of conscience be sacrificed to the newly regnant orthodoxy. This verifiable trend will only become more pronounced if same-sex marriage is effectively constitutionalized.

Fortunately, despite the real dangers posed by the effort to redefine marriage, there is no warrant under the Constitution, the natural law, or the reality of lived experience to find that DOMA is constitutionally infirm. Because Congress had not only rational but compelling bases to enact DOMA, the decision of the lower courts should be reversed, and marriage preserved as the union of one man and one woman.

ARGUMENT

I. Marriage Is the Foundational Unit of Society, and There Are Numerous Rational and Compelling Reasons to Preserve Its Universally Constitutive Male-Female Character.

Vast human experience confirms that marriage is the original and most important institution for sustaining the health, education, and welfare of all persons in a society. Where marriage is honored, and where there is a flourishing marriage culture, everyone benefits—the spouses themselves, their children, the communities and societies in which they live. Where the marriage culture begins to erode,

> *social pathologies of every sort quickly manifest themselves.*[4]

Christians believe that marriage is an institution ordained by God from the creation of the world, an institution which predates the state and provides the foundation upon which all other human institutions rest. Marriage, through the conjugal union of one man and one woman, is uniquely and primarily directed towards the procreation and nurturing of children, through which spouses are granted the privilege of taking part in the creative act of God Himself.

> Marriage is what one man and one woman establish when, forsaking all others and pledging lifelong commitment, they found a sharing of life at every level of being—the biological, the emotional, the dispositional, the rational, the spiritual—on a commitment that is sealed, completed and actualized by loving sexual intercourse in which the spouses become one flesh, not in some merely metaphorical sense, but by fulfilling together the behavioral conditions of procreation.[5]

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[4] Robert George et al., *Manhattan Declaration: A Call of Christian Conscience*, at 4 (Nov. 20, 2009), http://manhattandeclaration.org/#2.
[5] *Id.* at 6.

While it is true that Holy Scripture and Christian tradition provide Christians more than sufficient warrant to steadfastly resist any attempt to redefine marriage to include same-sex couples, it is equally true that the natural law, the nature of the human person, public-policy considerations, and common sense also provide ample reason to preserve marriage as it has always been understood.

This explains why the Christian definition of marriage is, in many relevant respects, essentially the same definition that has been known and accepted throughout history, irrespective of culture, geography, or religion. Although certain procedures or incidents of marriage have varied across time and space, its constitutive male-female nature has been its defining, and until very recently, unquestioned characteristic.[6] Put simply, marriage as the union of one man and one woman is a universal phenomenon of human society without equal, for good and numerous reasons.

Marriage has universally been given formal or legal recognition because in so doing, societies encourage and support responsible procreation and childrearing, which inevitably strengthens families and redounds to the benefit of those societies in

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[6] *See* Peter Lubin & Dwight Duncan, *Follow the Footnote or The Advocate as Historian of Same-Sex Marriage*, 47 Cath. U. L. Rev. 1271, 1324 (1998) (critiquing attempts by scholars to establish historical precedents for same-sex marriage, and concluding that the affirmation of marriage as an opposite-sex union is pervasive across diverse cultures even outside the Western tradition).

general.[7] This concept, although expressed in secular terms, is remarkably similar to the Christian belief that through marriage man and woman cooperate conjugally in the creative act of God Himself. But regardless of whether the concept is expressed in a secular or religious vocabulary, it is undeniable that this is a normative arrangement that has been embraced throughout history[8] and continues to be

[7] *See* Robert P. George, Sherif Girgis & Ryan T. Anderson, *What is Marriage?*, 34 Harv. J.L. & Pub. Pol'y 245, 286-87 (2011) ("Almost every culture in every time and place has had some institution that resembles what we know as marriage. But imagine that human beings reproduced asexually and that human offspring were self-sufficient. In that case, would *any* culture have developed an institution anything like what we know as marriage? It seems clear that the answer is no.").

[8] *See, e.g.*, *Why Marriage Matters* 15 (W. Bradford Wilcox et al., eds., 2d ed. 2005) ("As a virtually universal human idea, marriage is about regulating the reproduction of children, families, and society."); James Q. Wilson, *The Marriage Problem* 41 (2002) ("Marriage is a socially arranged solution for the problem of getting people to stay together and care for children that the mere desire for children, and the sex that makes children possible, does not solve."); Gladys Robina Quale, *A History of Marriage Systems* 2 (1988) ("Through marriage, children can be assured of being born to both a man and a woman who will care for them as they mature."); Bronislaw Malinowski, *Sex, Culture, and Myth* 11 (1962) ("the institution of marriage is primarily determined by the needs of the offspring, by the dependence of the children upon their parents"); Joel Prentiss Bishop, *Commentaries on the Law of Marriage & Divorce* § 16 (6th ed. 1881) ("If the husband is under obligation to support his wife, so likewise is he to support his children. . . . The relation of parent and child, equally with that of husband and wife, from which the former relation proceeds, is a civil status").

overwhelmingly affirmed today.[9] Numerous courts, including this one, have also concluded that marriage is an institution of exceeding social importance, and that responsible procreation and childrearing are central to its very reason for being.[10]

Respondent Windsor seeks to require the federal government to accept each state's redefinition of a foundational institution, but she pays little heed to the potential consequences of her endeavor. In a very real sense, she is, in the words of one particularly trenchant observer of American politics and culture, "striking at restraints without considering what they preserve."[11] This cavalier project threatens to transform marriage from an organic institution marked primarily by unitive creation and the promotion of life and generational continuity to a manufactured institution marked

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[9] "[S]ince 1998, voters in thirty states have approved state constitutional amendments defining marriage, taking the strongest legal step available to them in protecting marriage against governmental redefinition." Joshua Baker & William C. Duncan, *As Goes DOMA . . . Defending DOMA and the State Marriage Measures*, 24 Regent U.L. Rev. 1, 2-3 (2011-12).

[10] *See Maynard v. Hill*, 125 U.S. 190, 211 (1888) ("[Marriage] is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress"); *Skinner v. State of Okl.*, 316 U.S. 535, 541 (1942) ("Marriage and procreation are fundamental to the very existence and survival of the race."); *Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 867 (8th Cir. 2006); *Conaway v. Deane*, 401 Md. 219, 317 (2007); *Hernandez v. Robles*, 855 N.E.2d 1, 7 (N.Y. 2006).

[11] Richard M. Weaver, *Visions of Order: The Cultural Crisis of Our Time*, 50 (ISI Books 1995).

primarily by the satisfaction to be provided by adult romance.[12] In this way the new marriage regime, should it come to fruition, would inevitably opt for the private over the common good, with predictably deleterious consequences for children and society at large.[13] But that redefinition and its consequences need not come to pass, because this Court has more

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[12] *See* Roger Scruton, *The Moral Birds and Bees*, National Review (Sep. 15, 2003) ("Marriage is ceasing to be a sacrificial union of lovers, in which future generations have a stake, and becoming a transitory agreement between people living now."); *see also* Margaret Somerville, *What About the Children?*, *in* Divorcing Marriage: Unveiling the Dangers in Canada's New Social Experiment (Daniel Cere & Douglas Farrow, eds., 2004) ("[A]ccepting same-sex marriage necessarily means accepting that the societal institution of marriage is intended primarily for the benefit of the partners to the marriage, and only secondarily for the children born into it. And it means abolishing the norm that children—whatever their sexual orientation later proves to be—have a prima facie right to know and be reared within their own biological family by their mother and father. Carefully restricted, governed, and justified exceptions to this norm, such as adoption, are essential. But abolishing the norm would have a far-reaching impact.").

[13] *See* Witherspoon Institute, *Marriage and the Public Good: Ten Principles* 18-19 (2008), *available at* http://www.winst.org/family_marriage_and_democracy/WI_Marriage.pdf. (predicting that "[same-sex] marriage would undermine the idea that children need both a mother and a father, further weakening the societal norm that men should take responsibility for the children they beget"); Mark Regnerus, *How Different are the Adult Children of Parents who have Same-Sex Relationships? Findings from the New Family Structures Study*, 41 Soc. Sci. Research 752 (2012) (finding that children raised by parents in same-sex relationships fared worse than children raised by married biological parents in a wide range of significant outcomes).

than ample justification, given the very nature of marriage itself, to uphold DOMA as constitutional.

II. The Effort to Preserve Marriage as It Has Been Universally Understood Throughout History Is Grounded in Sincere Belief and Sound Public Policy Considerations, and Not in Animus as Respondent Argues.

No one has a civil right to have a non-marital relationship treated as a marriage. Marriage is an objective reality—a covenantal union of husband and wife—that it is the duty of the law to recognize and support for the sake of justice and the common good. If it fails to do so, genuine social harms follow.[14]

Perhaps sensitive to the reality of lived experience, numerous courts, including a justice of this Court, have recognized that preferencing marriage as the normative societal arrangement does not originate in animus.[15] Indeed, the ubiquity of the

[14] *Manhattan Declaration, supra* note 4, at 6.

[15] *See Lawrence v. Texas*, 539 U.S. 558, 585 (2003) (O'Connor, J concurring) (noting that "other reasons exist to promote the institution of marriage beyond mere moral disapproval of an excluded group"); *Massachusetts v. U.S. Dep't of Health and Human Servs.*, 682 F.3d 1, 16 (1st Cir 2012) ("[W]e do not rely upon the charge that DOMA's hidden but dominant purpose was hostility to homosexuality"); *Sevcik v. Sandoval*, No. 2:12-cv-00578-FCJ-PAL, 2012 WL 5989662, at *21 (D. Nev. Nov. 26, 2012) (holding that "the maintenance of the traditional institution of civil marriage as between one man and one woman" did not originate in animus against homosexuals); *In re Kandu*, 315 B.R. 123, 147-48 (Bankr. W.D. Wash. 2004) (finding DOMA explicable by legitimate interests not tainted by animus); *Hernandez*, 855 N.E.2d at 8 (noting that "[t]he idea

institution, present in "virtually every corner of the globe," would seem to belie the notion that defenders of marriage are animated merely by animus, because if that were the case "the practice would not be universal."[16] Rather, it is axiomatic that "[i]f a custom is important to a society's survival, it 'will be routinely rediscovered by every culture, without need of either genetic descent or cultural transmission of the particulars.'"[17] Marriage is one of those organic institutions that, whether viewed as divine in origin or not, obviously serves a deep human need or purpose.

Notwithstanding this seeming truism, Respondent Windsor and other advocates of same-sex marriage have consistently pursued a public relations and litigation strategy that seeks to portray Christians and other defenders of marriage as motivated by little more than rank bigotry or irrational animus.[18] These accusations, however, are simply not sustainable as a matter of human experience or fact.

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that same-sex marriage is even possible is a relatively new one," and refusing to ascribe to a preference for the traditional arrangement animus or bigotry).

[16] George W. Dent, *"How Does Same Sex Marriage Threaten You?,"* 59 Rutgers L. Rev. 233, 246 (2007).

[17] *Id.* (quoting Daniel C. Dennett, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* 487 (1995)).

[18] *See* Brief of Plaintiff-Appellee, *Windsor v. U.S.*, No. 12-2335-cv(L) (2d Cir. Aug. 31, 2012), ECF No. 239 (alleging that DOMA promotes "disapproval of gay men and lesbians" and arguing that the law represents an unconstitutional attempt to "harm a politically unpopular group." (quoting *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973))).

As to experience, it is simply inconceivable that for millennia people of apparent good will and otherwise perceptive moral faculties have eagerly embraced in marriage an institution whose core was, if Respondent Windsor is to be taken at her word, infected by animus. Although patently untrue on its face, the charge is nevertheless particularly scurrilous with respect to the Christian faithful, over a half-million of whom signed the Manhattan Declaration, who view marriage as a divine institution, and whose fellow believers have throughout the course of history, many at the cost of their very lives, made profound contributions to the human family.

History confirms that Christians have, precisely because of their faith: defended innocent life; tended to the sick and dying during plagues; preserved the Bible and the art and literature of Western culture; extirpated slavery; tended to the poor and imprisoned; challenged the divine right of kings, fought to establish the rule of law and the balance of governmental powers, thereby making democracy possible; toiled in the women's suffrage movement; led the civil rights movement; fought to end human trafficking and sexual slavery; and brought compassionate care to AIDS sufferers in Africa.[19] While not denying that each of us is a sinner who has fallen short of God's plan for our lives, this litany of verifiable contributions should dispel the notion that the Christian faithful have

[19] *Manhattan Declaration, supra* note 4, at 1.

been unknowingly participating in marriage as a way of subjugating their fellow man.

The facts on the ground also dispel the notion that defenders of marriage are seeking merely to deprive proponents of same-sex marriage of their rights and privileges under the law. While it is true that the majority of states have preserved marriage as it has been universally understood, despite the ongoing national debate as to the propriety of same-sex marriage, many have also provided broad accommodations to same-sex couples through legal statuses such as civil unions and domestic partnerships.[20] Judging from the breadth of these accommodations, it should be evident that defenders of marriage are not interested in discrimination but rather in preserving marriage as the objective reality it has always been—for the good of the societal interests it has always served. Indeed, religious convictions, prevailing mores, social practices, political aims, attachments, and allegiances continue to sustain a broad and deep commitment to traditional marriage, as evinced by the laws of 39 States defining marriage as the union of a man and a woman.[21]

If marriage is permitted to be redefined by judicial fiat, however, it will not have merely evolved to become more inclusive, as Respondent Windsor

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[20] *See Defining Marriage: Defense of Marriage Acts and Same-Sex Marriage Laws*, National Conference of State Legislatures (Nov. 2012), http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx.

[21] *Id.*

benignly would have it—it will have been replaced by another institution entirely, one that cannot deliver the unique goods traditional marriage now does, goods which include a "child's right to know and be brought up by his or her biological parents," a child-rearing mode which correlates with "optimal outcomes deemed crucial for a child's—and hence society's—well being.[22]

Proponents of same-sex marriage cannot help but admit that redefinition will radically disrupt society—in fact, some seem to revel in the prospect, going so far as to predict that once "same-sex marriage becomes legal, that venerable institution will ever after stand for sexual choice, for cutting the link between sex and diapers."[23] But the

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[22] *See* Monte Neil Stewart, *Genderless Marriage, Institutional Realities, and Judicial Elision*, 1 Duke Journal of Constitutional Law & Public Policy, 1, 16, 18 (2006) (outlining the goods provided by man-woman marriage and illustrating why same-sex, or "genderless," marriage, cannot function as a substitute).

[23] E.J. Graff, *Retying the Knot*, *in* Same-Sex Marriage: Pro and Con: A Reader, 135-136 (Andrew Sullivan ed., 1st ed., Vintage Books 1997); *see also* Judith Stacy, *Gay and Lesbian Families: Queer Like Us*, *in* All Our Families: New Policies for a New Century, 117, 128-129 (Mary Ann Mason et al., eds., Oxford U. Press 1998) (predicting that "[l]egitimizing gay marriage would promote a democratic, pluralist expansion of the meaning, practice, and politics of family life in the United States," where people "might dare to question the dyadic limitations of Western marriage and seek some of the benefits of extended family life through small group marriages arranged to share resources, nurturance, and labor"); Michelangelo Signorile, *Bridal Wave*, Out Magazine 161 (Dec.–Jan. 1994) (stating that gays and lesbians should "demand the right to marry not as a way of

replacement of marriage as an organic institution with an ad hoc substitute will have profoundly disruptive consequences for not only children, spouses, and families, but also for American society more broadly, especially with respect to religious freedom.

III. Redefining Marriage Imperils Religious Freedom, Inhibits People of Faith from Living Out Their Lives in the Public Square, and Creates a Culture Where Christian Believers Are Ostracized and Themselves Targeted for Discrimination.

It is ironic that those who today assert . . . a right to [same-sex marriage] . . . are very often in the vanguard of those who would trample upon the freedom of others to express their religious and moral commitments . . . to the dignity of marriage as the conjugal union of husband and wife.[24]

Religious freedom is our first, most cherished liberty, and its guarantee is threatened today by the redefinition of marriage. Such redefinition in practice would bring a new orthodoxy that circumscribes the ability of the Christian faithful to put their beliefs into practice. Examples of Christians unable to live integrated lives of work, faith, and service as a result of overzealous attempts to redefine marriage are many, but a few should suffice to reveal the pernicious threat that the

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adhering to society's moral codes but rather to debunk a myth and radically alter an archaic institution").

[24] *Manhattan Declaration, supra* note 4, at 7.

adoption of same-sex marriage poses to religious liberty.

Religious organizations with sincere convictions about marriage have become disqualified from placing needy and neglected children in foster and adoptive homes if those organizations, due to their religious convictions, decline to place children with married same-sex couples, notwithstanding the fact that other foster and adoption agencies are willing and able to place children with those couples. The District of Columbia, for example, first enacted a law permitting same-sex marriage in December 2009. Catholic Charities reported that shortly thereafter D.C. government officials informed them that they

> no longer would be allowed to continue to provide foster care and publicly-funded adoption programs in the District of Columbia. This is because under the new law, the agency would be required to place children with same-sex married couples and to license the couples as adoptive and foster care families.[25]

Thus, as a result of the D.C. law redefining marriage, which took effect in March 2010, Catholic Charities

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[25] Archdiocese of Washington, *Same-Sex Marriage Legislation and the Implications for Catholic Charities* 1 (Mar. 1, 2010), *available at* http://site.adw.org/pdfs/10Marr_CathChar%20 Impact_0301.pdf. (letter from the Archdiocese of Washington discussing this situation).

was forced to close its foster-care and adoption programs.[26]

Religious parents who object to public schools teaching their young elementary school students about same-sex marriage and its asserted equivalence to marriage between one man and one woman have been denied the right to require that they be given an opportunity to exempt their children from exposure to materials teaching these lessons. For instance, less than a year after Massachusetts began issuing marriage licenses to same-sex couples, two sets of parents sued the Lexington, Massachusetts school district, challenging under the free exercise clause the district's refusal to provide prior notice and an opportunity to exempt their children from exposure to materials that celebrated and legitimized same-sex marriage, a violation of the families' sincerely-held religious beliefs.[27] The First

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[26] *See Same-Sex 'Marriage' Law Forces D.C. Catholic Charities to Close Adoption Program*, Catholic News Agency, Feb. 17, 2010, *available at* http://www.catholicnewsagency.com/news/same-sex_marriage_law_forces_d.c._catholic_charities_to_close_adoption_program/ ("Although Catholic Charities has an 80-year legacy of high quality service to the vulnerable in our nation's capital, the D.C. Government informed Catholic Charities that the agency would be ineligible to serve as a foster care provider due to the impending D.C. same-sex marriage law"); Julia Duin, *Catholics End D.C. Foster-Care Program*, Washington Times, Feb. 18, 2010, *available at* http://www.washingtontimes.com/news/2010/feb/18/dc-gay-marriage-law-archdiocese-end-foster-care/ ("The Archdiocese of Washington's decision to drop its foster care program is the first casualty of the District of Columbia's pending same-sex marriage law").

[27] *Parker v. Hurley*, 514 F.3d 87, 90 (1st Cir. 2008).

Circuit rejected the parents' claim, holding that even though "the school's choice of books for young students has . . . deeply offended [their] sincerely held religious beliefs," they were "not entitled to a federal judicial remedy under the U.S. Constitution."[28] Indeed, because "Massachusetts [had] recognized gay marriage under its state constitution," the court concluded that "it [was] entirely rational for its schools to educate their students regarding that recognition."[29]

Citizens with sincere religious convictions regarding marriage have been forced to resign from public offices that administer marriage licenses or otherwise address the issue of marriage. The New York Legislature first enacted a law permitting same-sex marriage in June 2011, but before that law went into effect, at least two municipal clerks were forced to resign their positions because of their religious convictions against facilitating same-sex marriages.[30] Additionally, following the redefinition

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[28] *Id.* at 107.

[29] *Id.* at 95.

[30] Laura L. Fotusky, Barker Town Clerk, submitted her resignation on July 11, 2011. *See New York Town Clerk Quits Over Opposition to Gay Marriage*, Fox News, July 12, 2011, *available at* http://www.foxnews.com/politics/2011/07/12/new-york-town-clerk-quits-over-gay-marriage-opposition/ ("Laura Fotusky submitted a letter of resignation to the town board . . . , saying her religious beliefs prevent her from signing a marriage certificate for a gay couple, as she'd be required to do as a municipal clerk."); Dan Wiessner, *New York Town Clerk Quits Over Gay Marriage Licenses*, Reuters, July 12, 2011, *available at* http://www.reuters.com/article/2011/07/12/us-gaymarriage-newyork-resignation-idUSTRE76B7BJ20110712. Around that

of marriage in Canada, "some marriage commissioners in Saskatchewan . . . refuse[d] to solemnize same-sex marriages on the basis that they could not provide services in this regard without acting in violation of their personal religious beliefs. Their position gave rise to various legal proceedings . . . ."[31] When ruling on those proceedings, the Court of Appeal for Saskatchewan rejected a proposal to "allow every commissioner . . . to decline to solemnize a marriage if doing so would be contrary to his or her religious beliefs."[32] That court held that the suggested religious accommodation, "if enacted, would violate the equality rights of gay and lesbian individuals."[33] Thus, marriage commissioners whose sincere religious beliefs prevented them from solemnizing same-sex marriages were forced to give up their positions.

Religious organizations with sincere religious convictions about marriage have been forced in some jurisdictions to stop providing health-care benefits to the spouses of their employees because of their religious convictions against recognizing or providing marital benefits based on same-sex marriage.

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time, Ruth Sheldon, Granby Town Clerk, also resigned rather than compromise her religious beliefs. *See* Jen Doll, *Ruth Sheldon, Town Clerk, Will Also Resign Instead of Performing Gay Marriages*, The Village Voice, July 18, 2011, *available at* http://blogs.villagevoice.com/runninscared/2011/07/ruth_sheldon_gay_marriage.php.

[31] *In re Matter of Marriage Commissioners Appointed under the Marriage Act, 1995, SS 1995, c. M-4.1*, 2011 SKCA 3, at 1 (Can.).

[32] *Id.*

[33] *Id.* at 2.

Between the enactment and effective date of the District of Columbia's law permitting same-sex marriage, the Archdiocese of Washington, D.C. made the following announcement:

> Catholic Charities will continue to honor the health coverage current employees have as of March 1, 2010. After that, all new employees, and any existing employees who want to change their health coverage, will be covered under a new benefits package. The new plan will provide the same level of coverage for employees and their dependents, with one exception: spouses cannot be covered. This change is the direct result of not receiving an adequate exemption for religious organizations in the same-sex marriage legislation.[34]

Similarly, less than a year after New York redefined marriage, a Catholic-hospital employee who married a person of the same sex filed suit against her employer, claiming that the Catholic organization must recognize her marriage and provide benefits to her same-sex spouse.[35] The federal district court has yet to rule in the case.

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[34] Archdiocese of Washington, *supra* note 25, at 2.

[35] *See* Sharon Otterman, *Employee Sues for Benefits to Cover Same-Sex Spouse*, N.Y. Times, June 19, 2012, *available at* http://www.nytimes.com/2012/06/20/nyregion/st-josephs-medical-center-sued-over-benefits-by-same-sex-couple.html?_r=0.

This crisis of religious liberty, documented in the most cursory of fashions above, would multiply should this Court strike down DOMA and thus effectively declare as irrational the views on marriage of the more than half million signatories of the Manhattan Declaration—not to mention the countless other Christians who share their religious convictions.

CONCLUSION

Amicus submits that there is simply no principled justification for this Court to find that DOMA is constitutionally infirm. Whether as a matter of constitutional jurisprudence, natural law, or the reality of lived experience, it is beyond cavil that Congress had, and continues to have, rational and even compelling reasons to preserve male-female marriage, among all the other various and sundry possible alternatives, as the institution most likely to redound to the benefit of American society.

For the foregoing reasons, Amicus respectfully requests that the Court reverse the decision of the court below.

Respectfully submitted,

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