

Case Nos. 13-4178, 14-5003, 14-5006

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

DEREK KITCHEN, individually, et al.
Plaintiffs-Appellees,

v.

GARY R. HERBERT, in his official
capacity as Governor of Utah, and SEAN D.
REYES, in his official capacity as Attorney
General of Utah

Defendants-Appellants,

and

SHERRIE SWENSON, as Salt Lake County
Clerk,

Defendant.

Appeal from The United States
District Court for the District of Utah
Case No. 2:13-CV-00217-RJS

The Honorable Robert J. Shelby
Presiding

MARY BISHOP, SHARON BALDWIN,
SUSAN G. BARTON, and GAY E.
PHILLIPS,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *ex. rel.*,
ERIC H. HOLDER, JR., in his official
capacity as Attorney General of the United
States of America; and SALLY
HOWE-SMITH, in her official capacity as
Court Clerk for Tulsa County, State of
Oklahoma,

Defendants.

Appeal from The United States
District Court for the Northern
District of Oklahoma
Case No. 04-CV-848-TCK-TLW

The Honorable Terence C. Kern
Presiding

**BRIEF OF AMICUS CURIAE PARENTS, FAMILIES AND FRIENDS
OF LESBIANS AND GAYS, INC.
IN SUPPORT OF PLAINTIFFS-APPELLEES AND
PLAINTIFFS-APPELLEES/CROSS-APPELLANTS**

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CORPORATE DISCLOSURE

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned states that *amicus curiae*, Parents, Families and Friends of Lesbians and Gays, Inc., is not a corporation that issues stock or has a parent corporation that issues stock.

Dated: March 4, 2014

FOLGER LEVIN LLP

/s/ Andrew J. Davis

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INTERESTS OF *AMICUS CURIAE*¹

Parents, Families & Friends of Lesbians & Gays, Inc. (“PFLAG”) respectfully submits this *amicus curiae* brief in support of Plaintiffs in both the Oklahoma and Utah actions.

PFLAG is a national, nonprofit organization that promotes the health, well-being, and civil rights of lesbian, gay, bisexual and transgender (“LGBT”) persons, as well as their families and friends. Nationwide, PFLAG has more than 200,000 members and supporters, with approximately 350 affiliates. In Oklahoma and Utah, PFLAG has nine chapters and more than 7,000 members.

PFLAG was founded in 1973 by mothers and fathers of gay and lesbian children. The impetus for PFLAG’s founding was the act of one mother, Jeanne Manford. Ms. Manford took the then-unusual step of publicly supporting her gay son by participating in a gay rights march, holding a handmade sign reading “Parents of Gays Unite in Support for our Children.” Ms. Manford’s role in founding PFLAG was recognized in 2013 when she posthumously received the nation’s second-highest civilian honor, the Presidential Citizens Medal.

In the 40 years since its founding, PFLAG has provided support services to LGBT individuals, their families, and friends to assist in coping with discrimination and hostility. PFLAG has further engaged in education and advocacy efforts, through which

¹ This brief is submitted with the consent of the parties, who have filed blanket consents to the submission of *amicus* briefs. Counsel represents that this brief was not authored in whole or in part by counsel for any party, and no person or entity other than PFLAG and its counsel has made any monetary contribution to the preparation and submission of this brief.

it seeks to create a society in which all citizens enjoy full civil and legal equality. Today, PFLAG's members are predominantly heterosexual parents, children, grandparents, siblings and friends of LGBT individuals who desire that their family members enjoy the same right to marry as opposite-sex couples.

PFLAG has a strong interest in ensuring the right of same-sex couples to marry, and its members are uniquely positioned to address and rebut certain arguments made by Appellants. In particular, PFLAG's members have first-hand knowledge of how restrictions on same-sex marriage have negatively impacted not only same-sex couples themselves, but also their family members. Further, having witnessed committed same-sex relationships and marriages, PFLAG members can rebut Appellants' argument that same-sex marriage poses risks to opposite-sex marriage and children. *See* Brief of Utah Appellants ("Utah Aplt. Br."), 75.

SUMMARY OF ARGUMENT

PFLAG submits that the judgments of the District Court for the Northern District of Oklahoma and the District of Utah should be affirmed. This *amicus curiae* brief will offer the perspectives of PFLAG's members on two of the issues raised in these appeals:

1. PFLAG offers personal stories of its members demonstrating that prohibiting committed same-sex couples in Utah and Oklahoma from marrying relegates their relationships to an inferior status, recognized as demeaning by the couples, their families and the wider community. Their stories illustrate both the profound importance

of marriage for these committed couples and their family members, and the harm flowing from this discriminatory exclusion from participation in a married family life.

2. PFLAG offers personal stories showing there is no risk to the marriages of opposite-sex couples or children merely because same-sex couples also commit to marriage. As heterosexual family members of people who are gay or lesbian, PFLAG's members are uniquely situated: they can offer first-hand accounts of how observing same-sex couples in committed relationships and marriages has reaffirmed, rather than harmed, their views on the importance of the institution.

* * *

The harm resulting from the state bans on same-sex couples marrying is most directly felt by the same-sex couples themselves. But the family members of same-sex couples are profoundly affected as well, and would be deeply and adversely affected if the judgments below were to be reversed. Prohibitions on same-sex marriage tell family members of people who are gay or lesbian that their children, grandchildren and siblings are inferior and that their families are not entitled to equal dignity under the law. As such, these laws cannot be reconciled with the Constitution's guarantees of due process and equal protection.

ARGUMENT

I. THE UTAH AND OKLAHOMA PROHIBITIONS ON SAME-SEX COUPLES MARRYING DISCRIMINATE AGAINST AND HARM PEOPLE WHO ARE GAY OR LESBIAN BY RELEGATING THEIR RELATIONSHIPS TO AN INFERIOR STATUS.

By excluding same-sex couples from marriage, Oklahoma and Utah have imposed legal disabilities on people who are gay or lesbian, and demeaned their committed relationships. Utah's Amendment 3 and Oklahoma's Constitutional Amendment preclude same-sex couples from participating in what the Supreme Court has described as "the most important relation in life" (*Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (citation omitted)), and one that is "essential to the orderly pursuit of happiness by free men." *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

"[A] bare . . . desire to harm a politically unpopular group cannot constitute a *legitimate* government interest." *Romer v. Evans*, 517 U.S. 620, 634 (1996) (citation and internal quotation marks omitted). Classifications of people who are gay or lesbian that do not "further a proper legislative end" but act "to make them unequal to everyone else" are thus unconstitutional. *Id.* at 635. The Supreme Court has recognized that laws with the "principal purpose and the necessary effect" of "demean[ing]" same-sex couples cannot survive due process and equal protection challenges. *United States v. Windsor*, 133 S. Ct. 2675, 2695-96 (2013).

PFLAG's members have experienced and observed the stigmatizing and demeaning effects of marriage prohibitions on their children and other family members. Without being able to describe their relationships as "marriages," same-sex couples cannot fully convey the nature and importance of their life-long commitment. *See*

Windsor, 133 S. Ct. at 31 (non-recognition of same-sex marriage makes it difficult for family members “to understand the integrity and closeness of their own family”).

PFLAG asks the court to consider the following stories from its members, which underscore the ways in which denying same-sex couples the right to marry harms and dishonors the couples and the families who love them.

A. Story of Leslie Bohon-Bothwell and David Bohon

Leslie: I am a 61-year-old mother of three sons. My husband and I live in Norman, Oklahoma, where we raised our blended family of five sons. My youngest son, Brian, is gay.

David: I am Brian’s oldest brother, and now live in Texas after having served in the U.S. Army from 2004 to 2010. I did two tours of duty in Iraq. Growing up in Norman, my brothers and I heard and saw a lot of anti-gay sentiment. People did not want to deal with gay people or even acknowledge that gay people existed. Brian grew up in this atmosphere. For a period in his teens, Brian had an incredibly difficult time; he even tried to “pray the gay away,” begging and pleading with God to change him.

Leslie: Brian came out to me in 2000 at the age of 17. We were alone in the house, and Brian said he needed to talk to me. He hemmed and hawed for a while, clearly finding it difficult to speak. I finally asked him to just say what was on his mind, and he said: “I’m gay.” The first question he then asked was: “Do you still love me?” It broke my heart that Brian feared my rejection, even though he knew that I had continued to love and accept my younger brother, who is gay.

But I came to realize that I, too, had internalized societal prejudices. I realized that I had treated certain of Brian's friends, whom I suspected as being gay, differently from his other friends. Brian had seen that, and was afraid I would disapprove. But being gay is not a choice. Why would anyone "choose" to risk being ostracized by their families, their friends, their communities?

David: I served in the Army during a time when there was a lot of discussion about "Don't Ask, Don't Tell," before that policy was eventually repealed. I served proudly with many gay men and women who were, without exception, among the most honorable and dedicated of the men and women with whom I had the honor of serving.

I remember coming-home ceremonies, where I and other straight soldiers could freely hug and kiss our spouses, girlfriends, or boyfriends whom we had not seen for many months or even years. The gay soldiers, on the other hand, could only sit meekly next to their "roommate" or "friend," afraid to touch and show their joy in their reunion. The profound unfairness of that moment will always be with me: these men and women had fought on foreign soil, defending basic American freedoms, all the while being denied many of those freedoms themselves. Yet here they were, being forced to repress their freedom to express their love and commitment to one another. That's one of the reasons I believe in marriage equality.

Leslie: I want Brian to have the right to get married. Marriage allows two people to announce their commitment to their families, friends, and community. Marriage is an affirmation of the couple's promise to support each other through the ups and downs of a lifetime together. I want all of my sons to be able to marry, and have their union

recognized under the law. Brian's love is love - no different from my husband's, or David's, love. To deny Brian the freedom to marry under the law dishonors him, by defining him by a single characteristic that he did not choose.

B. Story of Kristy Clark

My husband, Paul, and I live in Bountiful, Utah and have been married for 38 years. We have five children and eleven grandchildren, all of whom live within 10 miles of our home. As a mother, all I ever wanted for my children was for them to be happy. For my third child, Weston, who is gay, one of my concerns was that his happiness would be incomplete or limited because he would never be able to marry or have children.

Fortunately, Weston has been able to find a life-long companion, Brandon, and have children. Weston and Brandon met in 2000, and currently live in Salt Lake City with their three-year-old son and two-month-old daughter. I see the work they put into communicating with and supporting each other; the way they complement and love each other. I am particularly impressed by what dedicated parents they are and how they have structured their lives around their children. Weston and Brandon are both active in the lives of their children, volunteering at pre-school, coaching the soccer team, making their children's needs and development the focus of their lives.

Despite their decade-long commitment to each other and the kids that they are raising together, Weston and Brandon were not legally permitted to get married or recognized as a family by the State of Utah. This lack of legal acceptance was painful for me. Much as we may not want to worry about what others think of us, a sense that we

are not accepted by others acts as a burr in the saddle, a constant pain or sting, an impediment to the happiness I want for my children.

So it was with great joy that, on December 20, 2013, I learned that Amendment 3 had been struck down and same-sex marriages were being performed. Because a stay might be granted at any moment, Weston and Brandon told us that they were heading to the County Clerk's office to get married, and asked us to join them. It had been a difficult day for me – that morning I had received radiation treatment for a brain tumor. But, of course, my husband and I drove down to the clerk's office, so that we could witness and celebrate Weston and Brandon's wedding. It was an amazing scene: so much excitement, so many committed couples who finally had a chance to have their relationships recognized by the state.

Weston and Brandon were married at around 5:00 p.m. that day, surrounded by family members, many friends, and hundreds of exuberant strangers. The most important witness was their three-year-old son, whom Weston held in his arms as he and Brandon exchanged their vows. I am so grateful that my grandchildren can grow up knowing that society recognizes their dads' commitment to each other as a marriage.

As we watched Brandon and Weston exchange their vows, my husband whispered to me, "Look at Weston's eyes. I've never seen him so happy." A little burr – a little impediment to his happiness – was being removed. A mother cannot ask for anything more than to see that look in her son's eyes.

C. Story of Judi Wiles

I am a seventy-three-year-old mother of three wonderful daughters. Thirty years ago, when my youngest daughter Stephanie was about sixteen, one of her friends called to tell me that Stephanie was a lesbian. I did not want to believe it – but when I called my middle daughter Michelle, she confirmed it and told me that she, too, was a lesbian. In a single day, I thought my world had come apart. I spent the next few months in a state of depression, trying to understand what I had done wrong. Hadn't I raised them all the same way? How could two of my daughters be gay? I was heartbroken, and I blamed myself: how could this have happened to me, to my family?

I was born and raised in Utah, by a Mormon mother and a Presbyterian father. I had a normal childhood, and was baptized in the Mormon Church around the age of 8. Growing up, I did not know anyone who was gay, and until I found out about Michelle and Stephanie, I had no reason to question the church's teachings – or society's attitudes – about gays and lesbians.

When my husband (my daughters' step-father) learned that Michelle and Stephanie were gay, he said that they were not welcome in our home because to welcome them would “condone their sinful behavior.” When I finally got the courage to confide in my brother, he was so repulsed by my announcement that he forbade my daughters from being around his little girls for fear that my girls' sexual orientation might rub off on his daughters. When my parents (my daughters' grandparents) found out, they would not allow Michelle or Stephanie to kiss them for fear that they would get AIDS.

My oldest daughter and her husband are active in the Mormon Church. They believe her sisters were born “that way,” but should not act on it. In their eyes, Michelle and Stephanie are living a life of sin. This is very painful for Michelle and Stephanie, and they no longer have a relationship with their oldest sister.

I quickly realized that while others might be able to turn their backs on my girls, I couldn't. I love them – I am their mother. My husband and I eventually divorced, and my relationship with my brother ended soon after he learned that my daughters were gay. My relationship with my parents was never the same. I spend alternate holidays with my daughters, because my family has been torn apart.

But refusing to turn away from my daughters is not the same as accepting them, and it took me a long time before I could fully accept that they are gay. In order to make sense of my daughters' sexual orientation, in order to understand “why” and “how” this could have happened, I did a lot of reading. I read many things, including medical literature and stories of other gays and lesbians. I joined a support group of Christian ladies with gay children. I met the friends of my daughters, and through them, I grew to recognize that people who are gay and lesbian are just people, no different from me, my straight daughter, or any other straight men or women I know. Gay men and women go to work, raise children, care for their parents, and support their friends. They feel pain, they cry, they laugh, and they want happiness and fulfillment in their relationships.

Stephanie and her partner Korbi are raising a 7-year-old girl, Mary, in Utah. (“Mary” is not her real name.) Mary is Korbi's grandchild but Korbi and Stephanie are parents to Mary in every sense of that word: they not only provide for Mary, but give her

every opportunity, through quality schools, dance lessons, and sports activities, to explore and learn about the world. Most of all, they provide a safe place and a feeling of belonging for Mary in their home. Mary is well-adjusted, excels in school, and loves her parents very much. When I see the three of them as a family, I see nothing different than what I see in my oldest daughter's family: here are two parents who love each other and their child. They are committed to each other and to their child. They are willing to weather the ups and downs of a long-term relationship, not only with each other but with their child. I see the joy their family brings to them. They want, and I want for them, the chance to stand before their family and friends and make that commitment in marriage.

When Judge Shelby issued the decision making it possible for same-sex couples to marry, Mary was so excited, she said to Korbi and Stephanie, "Finally, you can get married!" They got their marriage license and planned to marry within the week, when my middle daughter would be back in town. Unfortunately, the wedding never happened because the stay was granted.

I hope that the courts will once again permit same-sex couples to marry in Utah, so that Stephanie and Korbi and all other gay couples in Utah can finally formalize their union before the law, their families and friends.

D. Story of Colette Roberts

Jim and I married in 1958, at a time when inter-racial marriage was still banned in more than 16 states. I am the product of a mixed-race marriage – my heritage includes a bit of everything, including East Indian, French, African-American – and my family

accepted my relationship with Jim from the start. Jim's ancestry is a little bit British, a little bit Swiss. His mom objected at first but eventually accepted our marriage. We were lucky in that way – we did not face too many problems, although I do remember one of Jim's college classmates saying: "It's bad enough that you're marrying her. Just don't have any kids." Needless to say, we ignored his advice and I am so glad we did.

We have four children. Jim's job had us moving around quite a bit when they were kids. Each time we moved, we would look for good school districts and ended up in predominantly white neighborhoods. I know it was sometimes difficult for the kids to have us as parents. They were taunted and teased. I reminded them many times that "ignorance is loud and prejudice is strong," but that they should hold their heads high because this is who they are. And all four of them have grown up to be confident and successful individuals.

Nina, our second eldest, is lesbian. Nina never said anything to us about her sexual orientation when she was in high school. She went away to college and during one Christmas break, I found a love note that she had written to another young woman in the trash can. Shortly after finding the note, I said to Nina, "Your dad and I know that you are gay." I told her how much we loved her and asked her why she had not said anything. Nina started crying. She said she had met so many young people who had been rejected by their families because of their sexual orientation, and that although she knew we loved her, she was scared that we, too, would reject her. It just broke my heart that any child of ours could be so scared that we might reject her.

Did I worry about Nina once she came out? Of course. I worried that she would experience discrimination, that she would have a tough time, simply for being who she is. Would she find someone to love, who loved her? Would she be able to marry, to have that security that Jim and I have enjoyed, that her brother and sisters can enjoy without question?

For the last nine years, Nina has been in a committed relationship with Michele. So the laws against same-sex marriages impact me and my family on a personal level. The sole purpose of such laws is to prevent gay and lesbian couples from marrying. But the word “marriage” is very important in our society. If Jim and I were told that we could not use that word to describe our union, that we have to use some other word to describe our relationship because the word “marriage” was not available for inter-racial couples, that, to me, would mean that our relationship did not have the respect of our society. And laws against same-sex marriage tell my daughter, and all other gay and lesbian sons and daughters, just that: that they do not have the respect of our society.

It wasn't that long ago that Jim and I would have been barred from marrying. The reasons why people wanted to outlaw inter-racial marriage then very much resemble the reasons why people want to ban same-sex marriage now: it is because both kinds of marriages are seen as somehow not “right” or “natural.” But it is unthinkable today to imagine a law that says inter-racial couples may not marry.

People say to me all the time that race is different because people cannot choose their race. But that's just it: Nina did not choose to be gay; she can no more choose to be straight than I can choose to be white.

II. SAME-SEX COUPLES JOINING IN MARRIAGE NEITHER POSE RISKS TO THE INSTITUTION OF MARRIAGE NOR THREATEN CHILDREN.

Even under a rational basis analysis,² government action that discriminates against a discrete class of individuals cannot survive an equal protection challenge unless the classification “bears a rational relation to some legitimate end.” *Romer*, 517 U.S. at 631.

PFLAG believes that Appellants’ reliance on supposed risks to the institution of marriage or the commitment of heterosexual parents to their children (*see, e.g.*, Utah Aplt. Br. at 2) is entirely misplaced. This specious claim ignores the many children who are currently being raised by same-sex couples, who as the Supreme Court has observed, are being “humiliate[d]” by non-recognition of same-sex marriage, making it “even more difficult for children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.” *Windsor*, 133 S. Ct. at 2694. This contention also ignores the double standard Oklahoma and Utah are imposing, since both states freely permit marriages between opposite-sex couples who are unable or unwilling to procreate.

PFLAG offers the Court the unique perspectives of its members, the very demographic group for which the states profess concern: heterosexual family members and close friends of same-sex couples who have witnessed the commitments made by same-sex couples. As the following stories illustrate, observing same-sex couples in

² PFLAG agrees with Plaintiffs that the Oklahoma and Utah laws are subject to heightened scrutiny. However, PFLAG will confine its discussion to responding to arguments regarding application of rational basis review.

committed relationships and marriages brings joy and security to their heterosexual family members, and reaffirms the importance of the institution.

A. Story of Janice Marcus and Allison Black

Janice Marcus: I live in Salt Lake City with my husband of 30 years, Jim. I have two sons and two step-sons. All four of our children are married. Thomas, my youngest son, is gay, and was married in New York last year to Josh Black.

Allison Black: Janice's son, Thomas, married my son, Josh. My husband and I live in Ogden, Utah and have been married for 32 years. We have four children, and two of them – Josh and Jordan – are gay. This case is particularly personal to me: while Josh was able to marry Thomas in his home state of New York, I want Jordan, who lives in Utah, to have the same right.

Janice: Thomas came out to me when he was 18. I had long suspected that he was gay, as had some of his classmates, who bullied him for years. As a result, I experienced a sense of relief when Thomas confirmed that he was gay, feeling that I could now provide better support. But I still felt some sorrow. I knew that his life would involve situations that would be difficult simply because he is gay. I knew that, unlike other mothers, I would never be able to witness his wedding. While I continued to love him, I was surprised by the sadness I felt, much of which related to my fear that he would never have a family of his own.

Allison: Josh also had a difficult childhood, marked by demeaning (and worse) behavior from other kids. He came out to me when he was 21. Like Janice, I was not

surprised, and told him that I would always love him. But one of my first thoughts was that my son would never be able to get married. My husband, Bruce, had a more difficult time when Josh came out, and for a couple of years, a wall grew between them. But then Bruce and I attended a pride parade (without Josh). At the parade, my husband carried a sign stating, “PROUD DAD.” When we sent Josh a photo of his dad with that sign, he immediately called his dad, and they had an emotional conversation. Since then, Bruce and Josh have rebuilt a wonderful relationship.

Janice: Thomas and Josh began dating in 2007 and eventually moved from Utah to New York. On June 28, 2011, I was sitting at my desk when Thomas called. I answered and heard his voice say, “Mom, New York just passed gay marriage!” At that point, I began to cry, and so did he. The only thing that would have made that moment any better was if he'd been with me.

Allison: Upon the approval of gay marriage in New York, Thomas and Josh did not jump into marriage but waited to make sure that their love was strong enough to make that commitment. Over the Christmas holiday in 2012, Josh and Thomas returned to Salt Lake City. Our families had dinner at a restaurant one night to celebrate Thomas’ birthday. At one point, Josh stood up to propose a birthday toast to Thomas, but got choked up and couldn’t continue. We were all puzzled, until Thomas stood up and said, “Our visit this year had an ulterior motive.” He and Josh then showed us the engagement rings they were wearing. The table exploded – Janice and I jumped across the table to give each other a hug and then raced to embrace our sons.

Janice: Last August, friends and family gathered in New York to witness Thomas and Josh exchange their vows. They held two ceremonies, one in a civil courthouse with family and a larger ceremony the following night. What I recall most about the exchange of vows in the courthouse are the tears. I recall Thomas and Josh holding hands, and my son reaching out to push Josh's glasses over his nose – they'd been slipping down because of his tears. I lack the words to express the sheer joy I experienced when my dream as a mother came true and my son was able to marry the love of his life and publicly affirm, before family and friends, his love for and commitment to Josh.

Allison: I've heard people say that recognition of my son's relationship as a marriage will somehow harm the institution of marriage or even children. How can anyone – a straight single person, a straight couple, a child – possibly be harmed by my son's decision to commit himself forever to the person he loves? In Josh and Thomas, I see two individuals who provide each other with support, care and laughter; who have voluntarily chosen to commit to each other, to stay together even when, as will happen, they encounter challenges and struggles in their relationship. Above all, I see that my son – who is now living far away from his original family in Utah – starting a new family with Thomas. How could his family possibly hurt anyone else?

B. Story of Mariette Sawchuk

“Mom, all I have ever wanted is to have a family and to have a marriage like yours and Dad's.” My son, Steve, spoke these words to me on the January day in 2000 when he and his twin brother, Mark, both came out to me and my husband, Alexander. While

it was affirming to hear that Steve viewed our marriage as something worth emulating, it was painful to wonder if my sons would ever be able to experience something similar.

Learning that my sons were gay led me on a long and difficult journey. I am a “Cradle Catholic,” and my faith shapes how I attempt to live my life. Before I knew that my sons were gay, I had never been supportive of LGBT rights. Society told me that gay people were different, promiscuous, even perverted. I spent years attempting to reconcile what my church was telling me with my own knowledge of my children as good, principled young men. I read theology and church doctrine, and consulted various Catholic organizations. Above all, I sought to inform my conscience through prayer, asking God to tell me if my experience of truth was somehow wrong.

Ultimately, I felt called not simply to love and support my sons – something that was never in question – but to help pursue equality for all LGBT persons. Central to that pursuit, in my view, is marriage equality.

One of the many ways in which my faith has informed my values is in my views on the importance of marriage. I believe that marriage is about more than love between two people; it is a path to holiness. The day-to-day process of supporting and loving my husband of 41 years – of caring, fighting, apologizing and forgiving – has led me to a deeper understanding of myself and my faith. I want my sons to have the opportunity to experience this holiness for themselves. And thankfully, they now do: Steve and Mark live in jurisdictions that have recently recognized same-sex marriage. But for many other same-sex couples, marriage is not an option.

The proponents of bans on same-sex marriage argue that same-sex marriage will damage opposite-sex marriages. I simply do not understand this argument. One of the images that I have of marriage is that of a fire in a fireplace. If it is a good marriage, others can warm themselves by the fire. I hope that Alexander and I have been able to share some of our warmth with others. But I know that we have been warmed, and our marriage strengthened, by the committed relationships and marriages of the same-sex couples we have known.

Just last year, Alexander and I served as witnesses at the wedding of one same-sex couple who have “warmed” us over the last 15 years, our friends Stuart and York. In 2002, Stuart and York were joined together in a commitment ceremony, attended by their family and friends. After the Supreme Court rulings last year, Stuart and York decided to get legally married. They asked me and Alexander to attend as witnesses.

I was not prepared for the overwhelming emotion of York and Stuart’s civil ceremony. After all, Stuart and York had considered themselves to be married for more than ten years, and the wedding was to take place in a courthouse with an unknown commissioner presiding. When the ceremony began, the commissioner asked Stuart and York if they wanted to exchange their own vows or the traditional vows; they replied “both.” In their own vows, York and Stuart reaffirmed the importance of faith, family, patience, commitment, and passion for life and each other – the five pillars of their marriage. These five pillars caused me to reflect on my own marriage. I was particularly struck by the importance of patience – of allowing time and space for your spouse to grow.

Stuart and York then exchanged the traditional wedding vows. But it took York three times to make it through the statement, “I, York, take you Stuart to be my lawfully wedded husband.” In his first two attempts, his voice broke and he choked up on the word “lawfully.” By the end of the ceremony, we were all crying – Stuart, York, the witnesses, even the commissioner. I think we were all moved by the importance of that one word: “lawfully.” While Stuart and York had been committed to each other for over a decade, society was now validating their relationship and recognizing it as equal in dignity to the marriage between me and Alexander.

Stuart and York have provided me with a model for the sense of commitment, generosity, patience, care, hospitality – the same sense of holiness – that I strive for in my own marriage. Society has nothing to gain, but a lot to lose, by refusing to recognize same-sex unions as marriages.

C. Story of Jenny Evans Martin

My partner, Jodi Martin, and I raised our daughter in Oklahoma before moving to Colorado in 2012. As lawyers in Oklahoma, we were not “out” professionally for fear we would lose our jobs. A year after we moved to Colorado, we were able to obtain a Civil Union License. While having a “civil union” carries with it certain legal benefits, Jodi and I want to get married. We want to be responsible for and held accountable to each other for all of our days. Marriage is the strongest commitment you can make in this country and we want to make that commitment.

Marriage equality is also important to the other member of our family: our 13-year-old daughter. Her feelings about why she believes Jodi and I should be allowed to marry are as follows:

“One of the things that I like to do with my best friend is to plan my parents’ wedding. My best friend and I make lists of people to invite to the wedding. We also talk about who the bridesmaids should be. But we don’t talk as much about where or when the wedding will take place. That is because I have two moms, and right now they are not allowed to get married in Oklahoma, the state where I was born and grew up, or in Colorado, the state I moved to two years ago.

I think it’s unfair that my parents can’t get married. I can see that they love each other just like my grandparents love each other and just like the straight parents of my friends. I see them hugging each other. I see their togetherness – the way they treat each other with respect, the way they work together as a team.

We are a true family. My two moms are great parents to me. They always tell me when they are proud of me. I know that I can go to them with any problem. They teach me great lessons about standing up for what you believe in, not giving up, but always being respectful of people who disagree with you.

My family is just like everyone else’s and my parents deserve the same rights as everyone else. Everyone should be able to marry the person that they love and the gender or race of that person should not matter. Knowing that my parents are not allowed to get married makes me feel like some people don’t believe that we are a real family. It feels lousy and hurts my feelings. But I’ll keep planning my parents’ wedding and looking forward to the day when they can get married.”

D. Story of Mike Neubecker

My wife Janice and I have been married for 42 years and have one child, our son Lee. Until Lee came out to me at the age of 19, I had no idea he was gay.

Lee's coming out definitely challenged me. I grew up in a conservative Catholic family, attended Catholic schools from K-12, and then was drafted into the Army where I served for 6 years. Along the way, I had absorbed many negative views about gay people. These negative views were not based on anyone I knew personally, but from the misinformation and stereotypes so prevalent in our culture.

When Lee first came out, I thought I had to choose between loving my son and my faith. I loved my son, so I was not willing to cast him aside. But my faith is also important to me, so I engaged in prayer, reading and study. It took some time but I came to realize that the most important lesson the Bible teaches is unconditional love. The Bible teaches us to love others and treat them as we ourselves would like to be treated, and I see no contradiction between that teaching and my love for Lee.

Opponents of same-sex marriage have said marriage should be reserved for opposite-sex couples, because permitting same-sex couples to marry will somehow pose risks to children, especially children in future generations. I could not disagree more with that statement. Anyone who knows my son, Lee, and his partner, David, would understand that their sexual orientation does not impact their ability to be good parents. The idea that they, as a couple or as a family, could pose a risk to anyone else's marriage or children, either now or in the future, makes no sense.

About 7 years ago, Lee and David adopted our grandchildren, Braiden and Michael, through the foster care system. Braiden, who is now eleven years old, wrote the following letter last year, in the hopes that it may help someone else understand her perspective. She wrote it on her own, with minor assistance from her teachers on spelling

and grammar. Her words convey, more eloquently than I ever could, why allowing her dads and other same-sex couples like them to marry will not pose any risks to children.

“Love is important! It doesn't matter who people love, as long as they are happy. Everyone should have the right to marry who he or she wants. You may not like two men being married, but for them, it's normal.

...

Before I lived with my two dads, my life was horrible. My old family never treated me well. They wouldn't stand up for me. If my foster sister fought with me, my old mom would just sit there and watch me get hurt, so I would have to fight back. Each time I was at foster home, the foster parents promised me they would keep me safe and treat my brother and I equally.

But they always broke their promise. I moved five times until my dad and daddy found me. They also promised that they would always love me and keep me safe and they would treat me equal to my brother. I was 4 when I met them. Now I am 10 and they have kept their promises. They do so much for me. They never hurt me or my brother. I feel so safe. I believe I can do anything with my two dads. Would there be any purpose to ban the marriage of two men or two women when they can treat children the same or even better than other couples. I hope that you will do the right thing and let anyone marry who they want to.”

Braiden and Michael continue to thrive under Lee and David's care. Both excel in school and are happy, well-adjusted children.

Lee and David recently added to their family, by obtaining legal custody of David's nephew, Cody, last summer. Cody is a senior in high school. Before joining Lee and David, Cody was labeled “trouble.” But since becoming part of their family, he has become a model student, receiving straight A's last semester and making the Dean's list. Cody has applied to four universities around the country and is anxiously awaiting

word on which school he will attend. Cody is active in his local church youth group, helping to organize the regional youth conference for their denomination. He also works part time after school to save up for his first car.

No one can tell me that Lee and David are lesser parents, or that they and their children are any less a “family,” just because Lee and David are both men. They have given structure, stability, and most of all, love, to their children, and all of them – and our society – are the better for it.

CONCLUSION

Permitting two committed individuals to commit their lives to each other in marriage can do no harm to the institution of marriage. Any contention otherwise is nothing more than irrational speculation. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 448 (1985) (“mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable . . . are not permissible bases” for differential treatment). Such speculation is also contrary to the evidence presented to the District Courts, the experience of jurisdictions that recognize same-sex marriage, and the experience of PFLAG’s members.

///

For the foregoing reasons, the decisions of the District Courts should be affirmed.

Dated: March 4, 2014

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CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,951 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface and spacing requirements of 10th Cir. R. 32(a) because this brief has been prepared in double-spaced, 13-point Times New Roman.

Dated: March 4, 2014

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 4, 2014, a true, correct, and complete copy of the foregoing Notice of Appearance and Certificate of Interested Parties was filed with the Court via the Court's ECF system. The undersigned certifies further that all participants in the appeal are represented by some counsel who are registered CM/ECF users and that service will be accomplished by the Appellate CM/ECF System.

/s/ Andrew J. Davis

Andrew J. Davis

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that:

- (1) all required privacy redactions have been made per 10th Cir. R. 25.5;
- (2) additional filed hard copies of the ECF submission are exact copies of those documents;

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Dated: March 4, 2014

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