No. 14-5297

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

VALERIA TANCO, ET AL.,
Appellees,
v.
WILLIAM HASLAM, ET AL.,
Appellants.

On Appeal from the United States District Court
for the Middle District of Tennessee
The Honorable Aleta Arthur Trauger
District Court Case No. 3:13-cv-01159

BRIEF OF *AMICI CURIAE* HISTORIANS OF ANTIGAY DISCRIMINATION IN SUPPORT OF PLAINTIFFS-APPELLEES

CATHERINE E. STETSON
Counsel of Record
ERICA KNIEVEL SONGER
MARY HELEN WIMBERLY
MADELINE H. GITOMER*
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5491
cate.stetson@hoganlovells.com

Counsel for Amici Curiae

June 16, 2014

*Not admitted in D.C.; supervised by members of the firm

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

No. 14-5297

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

VALERIA TANCO, ET AL.,
Appellees,
v.
WILLIAM HASLAM, ET AL.,
Appellants.

On Appeal from the United States District Court
for the Middle District of Tennessee
The Honorable Aleta Arthur Trauger
District Court Case No. 3:13-cv-01159

BRIEF OF *AMICI CURIAE* HISTORIANS OF ANTIGAY DISCRIMINATION IN SUPPORT OF PLAINTIFFS-APPELLEES

STATEMENT OF INTEREST[1]

Amici are professors and scholars who teach and write about history and are knowledgeable about the history of discrimination faced by lesbians and gay men in the United States. Various of the amici have taught, conducted research, and published in the fields of the history of sexuality; and the history of discrimination based on sexuality, race, and gender. A summary of the qualifications and affiliations of the individual amici is provided in the Addendum to this brief.

[1] All parties have consented to the filing of this amici brief. No person other than the amici or their counsel authored this brief or contributed money intended for the funding of this brief.

Amici file this brief solely as individuals and not on behalf of the institutions with which they are affiliated.

INTRODUCTION AND SUMMARY OF ARGUMENT

In answering the question presented in this case, the Court will consider, among other things, whether "[a]s a historical matter" a particular class of persons "ha[s] been subjected to discrimination." *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987) (citation omitted). Amici offer this Brief as historians to inform the Court that gay and lesbian people have been subject to widespread and significant discrimination and hostility in the United States.

Sexual intimacy between people of the same sex has been condemned by "powerful voices" for centuries. *Lawrence v. Texas*, 539 U.S. 558, 571 (2003). In twentieth century America, discrimination against gay people reached remarkable proportions. In the first half of the century, for example, the State of New York prohibited theaters from staging plays with lesbian or gay characters, many states prohibited bars and restaurants from serving gay people, and the federal government banned gay people from employment. State officials and the press fostered frightening stereotypes of homosexuals as child molesters. Until the 1960s, all states outlawed sexual intimacy between men. Although gay men and lesbians saw their situation begin to improve in the 1970s, their limited gains precipitated a powerful opposition movement that led to referendum campaigns to

repeal or prohibit civil rights protections based on sexual orientation. In the 1980s, the early press coverage of AIDS reinforced the view that homosexuals were diseased and threatened other Americans. Mothers who identified as lesbian often lost custody of their children. And for much of the twentieth century, many municipalities launched police campaigns to suppress gay meeting places. These policies worked to create and reinforce the belief that gay men and lesbians comprised an inferior class of people to be shunned by other Americans.

State laws discriminating against gay men and lesbians remain on the books. Some states have enacted statutes that create obstacles to adoption by same-sex couples. And despite social and legal progress in the past thirty years, gay men and lesbians continue to live with the legacy of anti-gay laws and hostility. Since marriage emerged as the new flashpoint in debates over gay civil rights, opponents of marriage equality have deployed enduring anti-gay stereotypes to great effect. The approval of laws and constitutional amendments limiting marriage to one man and one woman in a total of forty-one states demonstrates the continuing influence of anti-gay hostility and the persistence of ideas about the inequality of gay people and their relationships. No other group in American history has been confronted with as many referenda designed to take away its rights.

ARGUMENT

I. GAY AND LESBIAN PEOPLE HAVE BEEN SUBJECT TO WIDESPREAD AND SIGNIFICANT DISCRIMINATION IN THE UNITED STATES.

A. The Historical Roots of Discrimination Against Gay People

The first American laws against sex between men were rooted in early settlers' understanding of ancient Judeo-Christian prohibitions against sodomy and "unnatural acts." Some Puritan New England colonies quoted scripture in their laws, while the southern and middle colonies generally drew on the secular laws against "buggery" enacted by the English Reformation Parliament of 1533. William Eskridge, Jr., *Law and the Construction of the Closet: American Regulation of Same-Sex Intimacy, 1880-1946*, 82 IOWA L. REV. 1007, 1012-13 (1997). Puritan clergy condemned the "unnatural uncleanness . . . when men with men commit filthiness, and women with women," but "sodomy" and "buggery" were not equivalent to today's "homosexual conduct," and colonial laws penalized many other forms of non-procreative sexual behavior. Richard Godbeer, *"The Cry of Sodom": Discourse, Intercourse, and Desire in Colonial New England*, 52 WILLIAM & MARY Q. 259, 264-265 (1995).

B. Modern American History: 1890-1940

Most historians now agree that the concept of the homosexual and the heterosexual as distinct categories of people emerged only in the late nineteenth

century. JONATHAN NED KATZ, THE INVENTION OF HETEROSEXUALITY 10 (1995). The growth of American cities in the same period permitted homosexuals to develop an extensive collective life—to which some Americans responded with fascination and sympathy, and many others with dread. Prosecutions for sodomy and related offenses increased dramatically in the late nineteenth century, and the policing of gay life escalated in the early twentieth century. *See* GEORGE CHAUNCEY, GAY NEW YORK: GENDER, URBAN CULTURE, AND THE MAKING OF THE GAY MALE WORLD, 1890-1940, at 132-141, 147, 256, 271-273 (1994).

Hostile Medical and Religious Views Encouraged the Escalation of Anti-Gay Policing. Hostility to homosexuals was at times motivated by uneasiness about the dramatic changes underway in gender roles at the turn of the last century. In this era—indeed until 1973—homosexuality was classified as a disease, defect, or disorder. Many physicians initially argued that the homosexual (or "sexual invert") was characterized as much by his or her violation of conventional gender roles as by sexual interests. Numerous doctors identified suffragists, women entering the professions, and other women challenging the limits placed on their sex as victims of a medical disorder. *See George Chauncey, From Sexual Inversion to Homosexuality: Medicine and the Changing Conceptualization of Female Deviance*, 58-59 SALMAGUNDI 114, 119-121, 124, 139-141 (1982-1983). Doctors for decades continued to identify homosexuality per se as a "disease,"

"mental defect," "disorder," or "degeneration." Such medical pronouncements provided "a powerful source of legitimation to anti-homosexual sentiment, much as medical science had previously legitimized widely held (and subsequently discarded) beliefs about male superiority and white racial superiority." GEORGE CHAUNCEY, WHY MARRIAGE? THE HISTORY SHAPING TODAY'S DEBATE OVER GAY EQUALITY 17 (2004).

Religiously inspired hostility to homosexuality also inspired an escalation in anti-gay policing. In the late nineteenth century, native-born Protestants organized "anti-vice" societies to suppress what they regarded as the sexual immorality and social disorder of the nation's burgeoning Catholic and Jewish immigrant neighborhoods—including the growing visibility of homosexuality. In New York City in the 1910s and 1920s, for instance, the Society for the Suppression of Vice (also known as the Comstock Society) worked closely with the police to arrest several hundred men for homosexual conduct. In Massachusetts, the Watch and Ward Society, established as the New England Society for the Suppression of Vice, conducted surveillance on virtually all the popular gay bars and gathering places of the time. *See* PAUL BOYER, URBAN MASSES AND MORAL ORDER IN AMERICA, 1820-1920, at 207 (1978); CHAUNCEY, GAY NEW YORK 137-141, 146-147, 249-250; JOHN D'EMILIO & ESTELLE B. FREEDMAN, INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA 150-153 (2d ed. 1997); THE HISTORY

PROJECT, IMPROPER BOSTONIANS: LESBIAN AND GAY HISTORY FROM THE PURITANS TO PLAYLAND 121-122 (1998).

Police Harassment. Responding to pressure from Protestant moral reform organizations, police forces began using misdemeanor charges—disorderly conduct, vagrancy, lewdness, loitering, and the like—to harass homosexuals and keep them from meeting in public. CHAUNCEY, WHY MARRIAGE? 10. In 1923, the New York State Legislature specified that a man's "frequent[ing] or loiter[ing] about any public place soliciting men for the purpose of committing a crime against nature or other lewdness" was a form of disorderly conduct. Many more men were arrested and prosecuted under this charge than for sodomy; in the next forty years, there were more than 50,000 arrests on this charge in New York City alone. CHAUNCEY, GAY NEW YORK 172; George Chauncey, *A Gay World, Vibrant and Forgotten*, N.Y. TIMES, June 26, 1994, at E17. The earliest gay activists also fell victim to police harassment. In 1924, for example, Chicago police raided the home of the founder of the nation's earliest known gay political group and seized the group's files. JONATHAN NED KATZ, GAY AMERICAN HISTORY: LESBIANS AND GAY MEN IN THE U.S.A. 385, 388-391 (1976).

Censorship. The growing visibility of lesbian and gay life in the early twentieth century precipitated censorship campaigns designed to curtail gay people's freedom of speech and the freedom of all Americans to discuss gay

issues. New York State passed a "padlock law" forbidding theaters from staging plays with gay or lesbian characters. ANDREA FRIEDMAN, PRURIENT INTERESTS: GENDER, DEMOCRACY, AND OBSCENITY IN NEW YORK CITY, 1909-1945, at 108-116 (2000). Boston's Mayor banned "The Children's Hour," a play dealing with lesbianism, because it "showed moral perversion, the unnatural appetite of two women for each other." THE HISTORY PROJECT, IMPROPER BOSTONIANS 121-122.

Censorship also spread to the movies. A movement led by religious leaders threatened Hollywood studios with boycotts and restrictive federal legislation if they did not begin censoring their films. This prompted the studios to establish a production code that, beginning in 1934, prohibited the inclusion of gay or lesbian characters or even the "inference" of "sex perversion" in Hollywood films. This code remained in effect for some thirty years, effectively prohibiting cinematic discussion of homosexuality for more than a generation. CHAUNCEY, GAY NEW YORK 353 & n.57. *See generally* GREGORY D. BLACK, THE CATHOLIC CRUSADE AGAINST THE MOVIES, 1940-1975 (1997); VITO RUSSO, THE CELLULOID CLOSET: HOMOSEXUALITY IN THE MOVIES (1991).

Constraints on Freedom of Association. New regulations began to curtail gay people's freedom of association at the same time they were pushed off stage and screen. The New York State Liquor Authority, for instance, issued regulations shortly after Prohibition's repeal in 1933 prohibiting bars, restaurants, cabarets,

and other establishments with liquor licenses from serving or employing homosexuals or allowing them to congregate on their premises. When courts rejected the Authority's argument that the mere presence of homosexuals made an establishment "disorderly," the Authority began using evidence of unconventional gender behavior or homosexual solicitation to establish a bar's "disorderly" character, closing hundreds of bars on this basis in the next thirty years. CHAUNCEY, GAY NEW YORK 335-349. Similar regulations and laws were enacted elsewhere. In the 1950s, for example, California's Alcoholic Beverage Control Board ruled that acts of touching, women wearing mannish attire, and men with limp wrists, high-pitched voices, and/or tight clothing were evidence of a bar's "dubious character" and grounds for closing it. NAN ALAMILLA BOYD, WIDE-OPEN TOWN: A HISTORY OF QUEER SAN FRANCISCO TO 1965, at 136-137 (2003).

C. World War II and Its Aftermath

Many gay men and lesbians served honorably in the Armed Forces in the first half of the twentieth century. *See* ALLAN BERUBE, COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR TWO 3 (1990). But government discrimination against gay men and lesbians dramatically increased during the Second World War and postwar years.

Discrimination in the Military. During World War II, the Armed Forces decided for the first time to exclude gay people as a class from military service.

Officials put in place new screening mechanisms designed to identify homosexuals during the induction process. Military authorities also collaborated with local police to monitor gay bars near bases; servicemen caught in these establishments risked discharge. BERUBE, COMING OUT UNDER FIRE 2, 8-18, 121-126, 143-148, 260-262; BOYD, WIDE-OPEN TOWN 113-117. In the Women's Army Corps, formal and informal investigations led to the discharge of suspected lesbians during and after the war. LEISA D. MEYER, CREATING GI JANE: SEXUALITY AND POWER IN THE WOMEN'S ARMY CORPS DURING WORLD WAR II 169-178 (1996).

Despite these barriers to service, many gay men and lesbians served heroically in the military during the War. But the Veterans Administration denied G.I. Bill benefits to soldiers undesirably discharged for being homosexual. These gay veterans thus were denied the educational, housing, and readjustment allowances provided to millions of their peers. *See* MARGOT CANADAY, THE STRAIGHT STATE: SEXUALITY AND CITIZENSHIP IN TWENTIETH-CENTURY AMERICA 140-141, 146-147 (2009).

Discrimination in the Federal Government. The persecution of gay men and lesbians dramatically increased at every level of government after the War. In 1950, following Senator Joseph McCarthy's denunciation of the employment of gay people in the State Department, a Senate subcommittee conducted a special investigation into "the employment of homosexuals and other sex perverts in

government." S. REP. NO. 81-241, at 1 (1950). The subcommittee recommended excluding gay men and lesbians from all federal employment. To support this recommendation, the subcommittee stated that "those who engage in overt acts of perversion lack the emotional stability of normal persons," that homosexuals "constitute security risks," and that "[t]hese perverts will frequently attempt to entice normal individuals to engage in perverted practices." *Id.* at 3, 4.

The Senate investigation was only one part of a massive post-war anti-homosexual campaign launched by the federal government. Between January 1, 1947, and August 1, 1950, "approximately 1,700 applicants for Federal positions were denied employment because they had a record of homosexuality or other sex perversion," and from 1947 through 1950 over 400 federal employees resigned or were dismissed for the same reasons. *Id.* at 9, 20. In 1953, President Eisenhower issued an executive order banning gay men and lesbians from civilian and military employment and requiring federal contractors to ferret out and discharge their homosexual employees or risk losing their contracts. Exec. Order No. 10,450, 3 C.F.R. 936 (1949-1953); JOHN D'EMILIO, SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY, 1940-1970, at 44, 46-47 (1981). At the height of the McCarthy era, the State Department discharged more homosexuals than communists. DAVID K. JOHNSON, THE LAVENDER SCARE:

THE COLD WAR PERSECUTION OF GAYS AND LESBIANS IN THE FEDERAL GOVERNMENT 76 (2004).

State and Local Discrimination. Many state and local governments also sought to ferret out and fire their gay employees; countless state employees, teachers, hospital workers, and others lost their jobs as a result. *Id.* at 7. Between 1957 and 1963 the Florida Legislative Investigation Committee interrogated hundreds of suspected gay men and lesbians throughout the state, leading to the dismissal of dozens of faculty and staff at the University of Florida and the University of South Florida. Pressure from the Committee also lead to the ouster of over one hundred public school teachers in the state. KAREN L. GRAVES, AND THEY WERE WONDERFUL TEACHERS: FLORIDA'S PURGE OF GAY AND LESBIAN TEACHERS 6, 10-12, 58-67 (2009); *see also* STACY BRAUKMAN, COMMUNISTS AND PERVERTS UNDER THE PALMS: THE JOHNS COMMITTEE IN FLORIDA, 1956-1965, at 130 (2012).

The policing of gay life sharply escalated across the country in the 1950s and 1960s. Police departments from Seattle and Dallas to New Orleans and Baltimore stepped up raids on bars and private parties attended by gay men and lesbians, and police made thousands of arrests for "disorderly conduct." By 1950, Philadelphia had a six-man "morals squad" arresting some 200 gay men a month. In the District of Columbia alone, there were more than a thousand arrests every

year. Police raids on gay bars were so common that some bars posted signs announcing "We Do Not Serve Homosexuals." John D'Emilio, *The Homosexual Menace: The Politics of Sexuality in Cold War America*, *in* PASSION AND POWER: SEXUALITY IN HISTORY 226, 231 (Kathy Peiss *et al.*, eds. 1989); D'EMILIO, SEXUAL POLITICS, SEXUAL COMMUNITIES 182-84, 208; CHAUNCEY, WHY MARRIAGE? 7-8, 10-11.

Demonization and Censorship. A series of police and press campaigns in the 1940s and 1950s fomented demonic stereotypes of homosexuals as child molesters intent on recruiting the young into their way of life. *See* Estelle Freedman, *"Uncontrolled Desires": The Response to the Sexual Psychopath, 1920-1960*, 74 J. AM. HIST. 83, 92 (1987); *see also* George Chauncey, *The Postwar Sex Crime Panic*, *in* TRUE STORIES FROM THE AMERICAN PAST 172 (William Graebner ed., 1993). A Special Assistant Attorney General of California claimed in 1949, for example, that "[t]he sex pervert, in his more innocuous form, is too frequently regarded as merely a queer individual who never hurts anyone but himself. All too often we lose sight of the fact that the homosexual is an inveterate seducer of the young of both sexes, and is ever seeking for younger victims." Chauncey, *The Postwar Sex Crime Panic* 170-171. Vicious stereotypes of homosexuals as child molesters fostered by such campaigns continue even today to

stoke public fears about gay teachers and parents. CHAUNCEY, WHY MARRIAGE? 150-151.

Censorship, government-sanctioned discrimination, and the fear of both made it difficult for gay people to organize and speak on their own behalf. In 1954, Los Angeles postal officials banned an issue of the first gay political magazine, *One*, from the mail. D'EMILIO, SEXUAL POLITICS, SEXUAL COMMUNITIES 115. Although the ban was overturned by the Supreme Court in 1958, *One, Inc. v. Oleson*, 355 U.S. 371 (1958), police in some cities warned newsstands not to carry the magazine. A few weeks after the Mattachine Society—the largest gay-rights organization in the 1950s—held a national convention in Denver and staged its first press conference, police raided the homes of three of its organizers; one lost his job and was jailed. D'EMILIO, SEXUAL POLITICS, SEXUAL COMMUNITIES 119-121.

D. The Gay Rights Movement and Its Opponents in the 1960s, 1970s, and 1980s

Gay people received more support in some parts of the country in the 1960s and 1970s, but the pace of change varied enormously. In 1966, New York's Mayor Lindsay put an end to the widespread police entrapment of gay New Yorkers. *Id.* at 206-207. New York and California state court rulings finally curtailed the policing of gay bars in the 1960s, although in other parts of the country the police continued to raid gay bars well into the 1970s. CHAUNCEY,

WHY MARRIAGE? 36. Forty municipalities passed laws protecting gay people from certain forms of discrimination in the 1970s, and another forty did so in the 1980s. *Id.* at 45; WAYNE VAN DER MEIDE, NATIONAL GAY & LESBIAN TASKFORCE, LEGISLATING EQUALITY: A REVIEW OF LAWS AFFECTING GAY, LESBIAN, BISEXUAL, AND TRANSGENDERED PEOPLE IN THE UNITED STATES (2000). The Hollywood studios became free to make films with gay characters in the early 1960s—but few did so. *See* CHAUNCEY, WHY MARRIAGE? 52-53; LARRY GROSS, UP FROM INVISIBILITY: LESBIANS, GAY MEN, AND THE MEDIA IN AMERICA 60-61 (2001). The American Psychiatric Association voted to remove homosexuality from its list of mental disorders in 1973—although dissident psychoanalysts continued to contest that opinion. American Psychiatric Ass'n, *Position Statement on Homosexuality and Civil Rights* (Dec. 15, 1973), *reprinted in* 131 AM. J. PSYCHIATRY 497, 497 (1974). In the 1970s, seven mainline Protestant denominations affirmed that homosexuals should enjoy equal protection under criminal and civil law. But those denominations accounted for only about ten percent of the American population; at the same time, leaders of Catholic and evangelical Protestant faith traditions, who had five times as many adherents, stepped up their opposition to gay civil rights. CHAUNCEY, WHY MARRIAGE? 37, 40; *see* THE PEW FORUM ON RELIGION & PUBLIC LIFE, U.S. RELIGIOUS LANDSCAPE SURVEY (2008).

As the gay movement grew stronger in the late 1960s and 1970s, so, too, did its opponents. Beginning in the late 1970s, the initial success of the gay movement in securing local gay-rights legislation provoked a sharp reaction. The anti-gay-rights campaign of this era was effectively launched in 1977, when the prominent Baptist singer Anita Bryant led a campaign to "Save Our Children" by repealing newly enacted civil-rights protections for gay men and lesbians in Dade County, Florida. The "Save Our Children" campaign warned about the influence openly gay teachers might have on young students and relied heavily on the stereotype of the homosexual as child molester. DUDLEY CLENDINEN & ADAM NAGOURNEY, OUT FOR GOOD: THE STRUGGLE TO BUILD A GAY RIGHTS MOVEMENT IN AMERICA 291-299, 303-304 (1999). Bryant's campaign succeeded, and her victory prompted other groups to start similar campaigns. In the next three years, local laws extending civil rights protections to gay men and lesbians were repealed in more than a half-dozen bitterly fought referenda. Gay-rights supporters won only two referenda. CHAUNCEY, WHY MARRIAGE? 39.

The "Save Our Children" campaign had other far-reaching effects. The day after the Dade County vote, Florida's governor signed into law a ban on adoption by gay men and lesbians—the first such statewide prohibition. FLA. STAT. ANN. § 63.042 (West 2001). Similarly, in 1985 the Massachusetts Department of Social Services removed two boys from their foster care placement with a gay male

couple and implemented a policy of preferred placement in "traditional family settings." Philip W. Johnston, *Policy Statement on Foster Care* (May 24, 1985), *reprinted in* BOSTON GLOBE, May 25, 1985, at 24; Kenneth J. Cooper, *Placement of Foster Children with Gay Couple Is Revoked*, BOSTON GLOBE, May 9, 1985, at 1. Massachusetts' discriminatory policy was amended in 1990 as part of an effort to settle pending litigation. *See* Patti Doten, *They Want a Chance to Care; Gay Couple Still Hurts from Decision That Took Away Their Foster Children*, BOSTON GLOBE, Sept. 27, 1990. The Florida ban remained in effect until 2010. *See Fla. Dep't of Children & Families v. Adoption of X.X.G.*, 45 So. 3d 79, 81 (Fla. Ct. App. 2010).

Across the country, the unfounded fear that homosexuals posed a threat to children *itself* threatened children being raised by gay men and lesbians. In a growing number of child-custody battles, courts took custody away from mothers and fathers whose estranged husbands and wives used their former spouses' gay identities against them. *See* Julie Shapiro, *Custody and Conduct: How the Law Fails Lesbian and Gay Parents and Their Children*, 71 IND. L.J. 623, 660-664 (1996); *see also* DANIEL WINUNWE RIVERS, RADICAL RELATIONS: LESBIAN MOTHERS, GAY FATHERS, AND THEIR CHILDREN IN THE UNITED STATES SINCE WORLD WAR II 53-79 (2013). Some courts confronting such disputes articulated a "per se" rule denying all custody and visitation claims made by gay and lesbian

parents, holding as a matter of law that homosexuality was inherently inconsistent with parenthood. Karla J. Starr, *Adoption by Homosexuals: A Look at Differing State Court Opinions*, 40 ARIZ. L. REV. 1497, 1501-03 (1998).

E. The Persistence of Anti-Gay Discrimination from the 1990s to the Present

Inequality Under State Law. The spread of AIDS and the debate over gay rights led to increasing national polarization over homosexuality in the 1980s and 1990s. The media's initial sensationalist coverage of AIDS frequently depicted homosexuals as bearers of a deadly disease threatening others. *See, e.g.*, JOHN-MANUEL ANDRIOTE, VICTORY DEFERRED: HOW AIDS CHANGED GAY LIFE IN AMERICA 65-71 (1999); STEVEN EPSTEIN, IMPURE SCIENCE: AIDS, ACTIVISM, AND THE POLITICS OF KNOWLEDGE 52 (1996). Cities and states that had passed gay-rights laws found those laws under attack from an increasingly well-organized and well-funded opposition. Between 1974 and 2009, anti-gay activists introduced and campaigned for more than 100 anti-gay rights referenda across the country. Brad Sears et al., *Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment*, THE WILLIAMS INST., Sept. 2009, at 13-1.

Anti-gay-rights activists frequently fomented public fear of gay people by deploying vicious stereotypes of homosexuals as perverts threatening the nation's children and moral character. Two videos screened in churches and on cable television in the early 1990s, "The Gay Agenda" and "Gay Rights, Special Rights,"

juxtaposed discussions of pedophilia with images of gay teachers and gay parents marching with their children in Gay Pride parades. This message was reinforced by mass mailings and door-to-door distribution of anti-gay pamphlets, all of which fostered a climate of hostility and fear. CHAUNCEY, WHY MARRIAGE? 47; JOHN GALLAGHER & CHRIS BULL, PERFECT ENEMIES: THE RELIGIOUS RIGHT, THE GAY MOVEMENT, AND THE POLITICS OF THE 1990S, at 26, 46, 52, 115, 171, 266 (1996).

In 1992, Colorado voters passed Amendment Two, which amended the state constitution to prohibit any municipality or government unit from enacting anti-gay-discrimination ordinances or policies. The Supreme Court struck down the amendment for violating the Equal Protection Clause, explaining that the amendment unconstitutionally "classifie[d] homosexuals not to further a proper legislative end but to make them unequal to everyone else"—a "denial of equal protection of the laws in the most literal sense." *Romer v. Evans*, 517 U.S. 620, 633, 635-636 (1996). As the Supreme Court put it, "laws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected." *Id.* at 634.

A number of states now have extended basic antidiscrimination protections to gay men and lesbians. But more than half the states lack any statutory protection against such discrimination in employment, housing, or public accommodations, and nineteen have no statutory or administrative protection

against such discrimination in state government employment. HUMAN RIGHTS CAMPAIGN, STATEWIDE EMPLOYMENT LAWS & POLICIES (Jan. 15, 2014);[2] HUMAN RIGHTS CAMPAIGN, STATEWIDE HOUSING LAWS & POLICIES (June 19, 2013);[3] *LGBT-Inclusive Public Accommodations Laws*, HUMAN RIGHTS CAMPAIGN (Mar. 7, 2014).[4]

Discrimination in the Federal Government and the Military. Although the outright ban on hiring gay federal employees ended in 1975, federal agencies remained free for over two decades after that to discriminate against gay people in employment. D'EMILIO & FREEDMAN, INTIMATE MATTERS 324. It was not until 1998 that President Clinton issued an executive order forbidding such discrimination. *See* Exec. Order No. 13,087, 63 Fed. Reg. 30,097 (May 28, 1998). Discrimination against gay people remained solidly entrenched in the military until very recently. More than 13,000 service members were discharged during the "Don't Ask, Don't Tell" era. The law's repeal in 2011 did not restore their careers, nor those of the 19,000 other active-duty service members discharged since 1980 on the basis of their sexual orientation. *See* DEPARTMENT OF DEF., REPORT OF THE

---

[2] http://s3.amazonaws.com/hrc-assets//files/assets/resources/employment_laws_1-2014.pdf.

[3] http://s3.amazonaws.com/hrc-assets//files/assets/resources/housing_laws_062013.pdf.

[4] http://s3.amazonaws.com/hrc-assets//files/assets/resources/public-accomodations_3_2014.pdf.

COMPREHENSIVE REVIEW OF THE ISSUES ASSOCIATED WITH A REPEAL OF "DON'T ASK, DON'T TELL" 23 (2010).[5] Federal law continues to leave gay men and lesbians exposed to anti-gay discrimination in schools, employment, housing, and public accommodations.

Public Awareness and Targeted Violence. Starting in the 1990s, the visibility of gay people on television and in movies significantly increased. GROSS, UP FROM INVISIBILITY 156-183. The urgency of the AIDS crisis and the relative openness of the 1990s also prompted many more Americans to "come out" to their families, friends, and colleagues. In 1985, only a quarter of Americans reported that an acquaintance had told them they were gay; more than half believed they did not know anyone gay. Fifteen years later, three-quarters reported that they knew someone openly gay—a shift that led many heterosexuals to become more supportive of gay people. But a significant majority of Americans still expressed moral disapproval of homosexuality. KARLYN H. BOWMAN & ADAM FOSTER, AMERICAN ENTER. INST., ATTITUDES ABOUT HOMOSEXUALITY AND GAY MARRIAGE 2, 4, 17-18 (2008).[6]

Some expressed that view violently. The FBI documented more than a thousand hate crimes based on perceived sexual orientation every year from 1996

[5] http://www.defense.gov/home/features/2010/0610_dadt/DADTReport_FINAL_20101130(secure-hires).pdf.

[6] http://www.aei.org/files/2008/06/03/20080603-Homosexuality.pdf.

to 2012, the most recent year for which this data is available. *See Uniform Crime Reports, Hate Crime Statistics*, FBI.[7] In 1997, a lesbian nightclub in Atlanta was bombed by a man who called homosexuality "aberrant sexual behavior." *Rudolph Reveals Motives*, CNN (Apr. 19, 2005).[8] The following year, Matthew Shepard, a gay Wyoming college student, was tied to a fence, beaten with a pistol, and abandoned. He died a few days later from his injuries. James Brooke, *Gay Man Dies From Attack, Fanning Outrage and Debate*, N.Y. TIMES, Oct. 13, 1998. Ten years later, Larry King, an openly gay 15-year-old student in Oxnard, California, was shot and killed at school by a fellow student. Rebecca Cathcart, *Boy's Killing, Labeled a Hate Crime, Stuns a Town*, N.Y. TIMES, Feb. 23, 2008.

The most vulnerable victims of discrimination are youth. A 2001 national study found that gay and lesbian youths were more than twice as likely to attempt suicide and more likely to suffer from depression and alcohol abuse than their heterosexual peers. Stephen T. Russell & Kara Joyner, *Adolescent Sexual Orientation and Suicide Risk*, 91 AM. J. PUB. HEALTH 1276, 1278 (2001). A 2012 survey of homeless youth providers discovered that almost 40 percent of all homeless youth identify as lesbian, gay, bisexual, or transgender. Laura E. Durso

---

[7] http://www.fbi.gov/about-us/cjis/ucr/ucr#cius_hatecrime (last visited June 16, 2014).

[8] http://articles.cnn.com/2005-04-13/justice/eric.rudolph_1_emily-lyons-pipe-bomb-attack-eric-robert-rudolph?_s=PM:LAW.

& Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless*, THE WILLIAMS INST. (2012).[9] And according to a national 2011 study, 63.5 percent of LGBT students felt unsafe at school because of their sexual orientation. A stunning 81.9 percent of LGBT students reported verbal harassment, 38.3 percent reported physical harassment, and 18.3 percent were physically assaulted because of their sexual orientation. JOSEPH G. KOSCIW ET AL., GAY, LESBIAN & STRAIGHT EDUCATION NETWORK, THE 2011 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS xiv-xv (2012).[10]

Continued Condemnation of Homosexuality. Although the American Psychiatric Association removed homosexuality from its list of mental disorders in 1973, dissident psychiatrists and psychologists established the National Association for Research & Therapy of Homosexuality (NARTH) in 1992. Disagreeing with prevailing professional opinion, NARTH continues to disseminate materials claiming a scientific basis for believing that homosexuality is a psychological disorder and a "potentially deadly lifestyle," and that

---

[9] http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf.

[10] http://glsen.org/sites/default/files/2011%20National%20School%20Climate%20Survey%20Full%20Report.pdf.

homosexuals can be "healed." *About NARTH*, NARTH.[11] Police harassment of gay men and lesbians and their meeting places is not as common as it once was—but it still occurs. In 2009, for example, there were highly publicized police raids of gay bars in Atlanta, Georgia, and Fort Worth, Texas, where one patron was critically injured. *See* Bill Rankin, *Employees to Fight Charges in Gay Bar Raid*, ATLANTA J.-CONST., Nov. 4, 2009; P.J. Huffstutter, *Police Raid at Gay Club in Texas Stirs Ugly Memories*, L.A. TIMES, July 6, 2009.

Discrimination in Parenting and Family Life. Increasing numbers of gay men and lesbians revealed their homosexuality to their families, friends, neighbors, and co-workers in the 1990s. *See* BOWMAN & FOSTER, ATTITUDES ABOUT HOMOSEXUALITY 16-17. But parents who came out to their family members took a serious risk, since many states did not provide equal parenting rights to gay people. This was particularly dangerous in custody cases, where courts had to evaluate the "fitness" of each parent when making decisions on custody or visitation rights. *See* Shapiro, *Custody and Conduct*, 71 IND. L.J. at 628, 659. A 1996 national study of custody cases revealed that many were decided against the gay parent due to the presiding judge's prejudice against homosexuality. Courts were especially disapproving of gay parents who were honest with their children about their sexual orientation. *Id.* at 660-664.

[11] http://narth.com (last visited June 16, 2014).

In a widely publicized case, for example, a Virginia trial court granted a grandmother's petition to take a lesbian's two-year-old son away from her because, as the trial court judge explained, the mother's "conduct is illegal . . . in the Commonwealth of Virginia." *Bottoms v. Bottoms*, 457 S.E.2d 102, 109 (Va. 1995) (Keenan, J., dissenting). The trial judge declared "that it is the opinion of this Court that [the mother's] conduct is immoral" and "renders her an unfit parent." *Id.* Virginia's Supreme Court upheld the trial court's decision, concluding that the mother's lesbianism would subject her child to social condemnation and disturb the child's relationships with peers. *Id.* at 107-109. This reasoning harkens back to prior courts' removals of children from the homes of divorced white mothers who married or lived with black men—before the Supreme Court ruled the practice unconstitutional. *See Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

Other courts have offered religious justifications for discriminatory custody rulings. As recently as 2002, when the Supreme Court of Alabama reversed the Alabama Court of Civil Appeals' decision to grant a lesbian mother custody of her children, the Chief Justice of the Supreme Court of Alabama said this in his concurring opinion:

> Homosexuality is strongly condemned in the common law because it violates both natural and revealed law. . . . The law of the Old Testament enforced this distinction between the genders by stating that "[i]f a man lies with a male as he lies with a woman, both of them have committed an abomination." *Leviticus* 20:13 (King James). . . . The common law designates homosexuality as an inherent evil, and if

> a person openly engages in such a practice, that fact alone would render him or her an unfit parent. [*Ex parte H.H.*, 830 So. 2d 21, 33, 35 (Ala. 2002).]

Prominent "traditional family values" group Focus on the Family continues to staunchly oppose adoption by same-sex couples as "threaten[ing] the adoption arena and children's best interests," asserting that such adoptions "deny God's design for the family." *Cause for Concern (Adoption)*, FOCUS ON THE FAMILY (2009).[12]

Marriage. Gay men and lesbians are still prohibited from marrying in the majority of states.

The marriage issue first reached the national stage in 1993, when Hawaii's Supreme Court ruled that the state's ban on marriages between same-sex couples presumptively violated the state's equal rights amendment and remanded the case. *Baehr v. Lewin*, 852 P.2d 44, 67-68 (Haw. 1993). By 1996, when a second trial began in the lower court, the prospect of gay couples winning the right to marry had galvanized considerable opposition. CHAUNCEY, WHY MARRIAGE? 125-126. Ultimately, while the litigation was pending, Hawaii amended its constitution to give the legislature the authority to limit marriage to different-sex couples, *see* HAWAII CONST. art. I, § 23, which it did. The Hawaii Supreme Court then

[12] http://www.focusonthefamily.com/socialissues/social-issues/adoption/cause-for-concern.aspx.

dismissed the case as moot. *Baehr v. Miike*, Civ. No. 20371, 1999 Haw. LEXIS 391, at *1, 6, 8 (Haw. Dec. 9, 1999) (taking notice of constitutional amendment).

Under pressure from organizations proclaiming support for "traditional family values," and in the throes of an election year, the Senate passed the Defense of Marriage Act (DOMA) on the day the Hawaii trial began. Pub. L. No. 104-199, 110 Stat. 2419 (1996); CHAUNCEY, WHY MARRIAGE? 125-126. DOMA provided a federal definition of marriage as the union of one man and one woman, and declared that no state needs to give "full faith and credit" to "same-sex marriages" licensed in another state. DOMA also denied tax, social security, pension, immigration, and other federal benefits to such married couples. 1 U.S.C. § 7, *invalidated in part by United States v. Windsor*, 570 U.S. __, 133 S.Ct. 2675 (2013). Fourteen states passed state-level prohibitions of same-sex marriage recognition the same year DOMA passed, and another nine passed similar statutes the following year. AMERICAN BAR ASS'N, AN ANALYSIS OF THE LAW REGARDING SAME-SEX MARRIAGE, CIVIL UNIONS, AND DOMESTIC PARTNERSHIPS 33-36 (2005).[13] In 2004, when Massachusetts became the first state to permit gay couples to marry, thirteen states passed constitutional amendments banning such marriages. (Twelve of those states already had enacted statutory same-sex marriage prohibitions.) *Statewide Votes on Same-Sex Marriage, 1998-Present*, NATIONAL

[13] http://www.americanbar.org/content/dam/aba/migrated/family/reports/WhitePaper.authcheckdam.pdf.

CONFERENCE OF STATE LEGISLATURES;[14] AMERICAN BAR ASS'N, AN ANALYSIS OF THE LAW 33-36. In many states where same-sex marriage became legal, public backlash followed shortly thereafter. In 2009, for example, a unanimous Iowa Supreme Court struck down the exclusion of qualified same-sex couples from civil marriage. *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009). In response, national organizations opposed to same-sex marriage, such as the National Organization for Marriage and the American Family Association, campaigned to remove three of the judges who had joined that decision. The campaign was successful; all three were ousted from the bench the following year. A.G. Sulzberger, *Ouster of Iowa Judges Sends Signal to Bench*, N.Y. TIMES, Nov. 3, 2010.

California provides a good example of the contentious nature of state-level marriage debates. In 2000, California voters passed Proposition 22, providing that "[o]nly marriage between a man and a woman is valid or recognized in California." *In re Marriage Cases*, 183 P.3d 384, 409 (Cal. 2008). In February 2004, the City of San Francisco began issuing marriage licenses to same-sex couples. *Id.* at 402. The California Supreme Court ordered the city to stop doing so the following month, and it later nullified the marriages that had been performed. *Id*. at 403.

[14] http://www.ncsl.org/legislatures-elections/elections/same-sex-marriage-on-the-ballot.aspx#3 (last visited June 16, 2014).

In May 2008, the California Supreme Court held that same-sex couples had the right to marry under the state constitution's equal protection clause. *Id*. at 433-434, 451-453. Six months later, on November 4, 2008, California voters approved Proposition 8, adding to the California Constitution the provision "Only marriage between a man and a woman is valid or recognized in California." CAL. CONST. ART. I, § 7.5, *invalidated by Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), *aff'd sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *vacated and remanded sub nom. Hollingsworth v. Perry*, 570 U.S. __, 133 S. Ct. 2652 (2013).

Proponents of Proposition 8 drew heavily on the historic demonization of gay people as threats to children to win support for the measure.[15] Key talking points in the Proposition 8 voter pamphlet echoed Anita Bryant's campaign to "Save Our Children" from homosexual influence: "[The proposition] *protects our children* from being taught in public schools that 'same-sex marriage' is the same as traditional marriage." CALIFORNIA SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION ON NOV. 4, 2008, PROP 8, at

[15] The parallels between the Proposition 8 campaign and the 1992 campaign in support of Amendment 2—the amendment at issue in *Romer*—are noteworthy. Proponents of Colorado's Amendment 2, like the proponents of California's Proposition 8, warned of potential harm to children in the absence of the amendment and addressed the risk of "[h]omosexual indoctrination in the schools." COLORADO FOR FAMILY VALUES, EQUAL RIGHTS—NOT SPECIAL RIGHTS! 2 (1992).

56 (2008).[16] Some public statements supporting Proposition 8's passage overtly asserted the immorality or perversion of gay people.

The law remained in place until 2013, when the Supreme Court's decision in *Hollingsworth v. Perry*, 570 U.S. __ (2013), effectively reinstated the opinion of the district court that Proposition 8 was unconstitutional.

The approval of Proposition 8, along with similar laws and constitutional amendments in forty-one other states, indicates the enduring influence of anti-gay hostility and the persistence of ideas about the inequality of gay people and their relationships. These state constitutional amendments serve as a firewall against changes in public opinion; such amendments make it very difficult for gay couples to obtain the right to marry even if public opinion continues to shift in their favor.

II. HISTORY PLAYS A CRITICAL ROLE IN THE COURT'S EQUAL-PROTECTION ANALYSIS.

The Supreme Court gives great weight to the presence of historical discrimination against an identifiable group in evaluating the constitutionality of a challenged law—regardless of the level of scrutiny ultimately applied.[17] *See*

---

[16] http://vig.cdn.sos.ca.gov/2008/general/argu-rebut/pdf/prop8-a-and-r.pdf.

[17] History also helps determine whether a particular statute or constitutional amendment is based on animus toward the affected class. The Supreme Court has, in the past, taken a particularly hard look at such laws and amendments. *See, e.g.*, *Romer*, 517 U.S. at 632 ("[T]he amendment seems inexplicable by anything but animus toward the class it affects."); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (holding unconstitutional an ordinance that "appears to us to rest on an irrational prejudice against the mentally retarded"); *Department of*

Hernandez v. Texas, 347 U.S. 475, 477-480 (1954) (relying in part on historical segregation to determine that Mexican-Americans constituted a distinct class denied equal protection); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985); *id.* at 454 (Stevens, J., concurring); *id.* at 461-464, 473 (Marshall, J., concurring in the judgment in part and dissenting in part).

In *Loving v. Virginia*, 388 U.S. 1 (1967), for instance, the Supreme Court observed that anti-miscegenation laws "arose as an incident to slavery"; the Court ultimately held that "restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause." *Id.* at 10; *see also, e.g.*, *Oyama v. California*, 332 U.S. 633, 650-663 (1948) (Murphy, J., concurring) (detailing the history of discrimination against Japanese-Americans in an equal-protection analysis).

The Supreme Court similarly has evaluated government action differentiating between men and women through the lens of the "Nation['s] long and unfortunate history of sex discrimination." *United States v. Virginia*, 518 U.S. 515, 531-532 (1996) (citation omitted); *see also Frontiero v. Richardson*, 411 U.S. 677, 685 (1973) (plurality opinion) (acknowledging that "the position of women in America has improved markedly in recent decades," but observing that

---

Agric. v. Moreno, 413 U.S. 528, 534 (1973) (holding unconstitutional a statutory provision "intended to prevent so called 'hippies' and 'hippie communes' from participating in the food stamp program" (citation omitted)).

"throughout much of the 19th century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes"). The Supreme Court's previous gay-rights decisions also emphasize the historical record undergirding the analysis. The majority opinion in *Lawrence* devotes nearly a third of its pages to the history of anti-sodomy laws. *See Lawrence*, 539 U.S. at 567-573. The Court acknowledged that the majority in *Bowers v. Hardwick*, 478 U.S. 186 (1986), had erred in "rel[ying] upon" "historical premises [that] are not without doubt and, at the very least, are overstated." *Id.* at 571. After correcting this historical record, the Court concluded that *Bowers* was wrongly decided. *Id.*

CONCLUSION

As scholars devoted to the study of American history and culture, *amici* are not before the Court to advocate a particular legal doctrine. But they wish to advise the Court that the historical record is clear. Gay men and lesbians in the United States have been subjected to generations of widespread discrimination and demonization, and the legacy of that history continues today.

Respectfully submitted,

/s/ Catherine E. Stetson
CATHERINE E. STETSON
Counsel of Record
ERICA KNIEVEL SONGER
MARY HELEN WIMBERLY

MADELINE H. GITOMER*
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5491
cate.stetson@hoganlovells.com

June 16, 2014

*Not admitted in D.C.; supervised by members of the firm

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,977 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2003 in Times New Roman 14-point type.

/s/ Catherine E. Stetson
Catherine E. Stetson

CERTIFICATE OF SERVICE

I certify that on June 16, 2014, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Catherine E. Stetson
Catherine E. Stetson

ADDENDUM

- **Nan Alamilla Boyd** is a Professor of Women and Gender Studies at San Francisco State University. She is the author of *Wide Open Town: A History of Queer San Francisco to 1965* (University of California Press, 2003) and co-editor of *Bodies of Evidence: The Practice of Queer Oral History* (Oxford University Press, 2013).

- **Margot Canaday** is an Associate Professor of History at Princeton University. Her 2009 book, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton University Press), won the Organization of American Historians' Ellis Hawley Prize, the American Studies Association's Lora Romero Prize, and the American Society for Legal History's Cromwell Book Prize, among others.

- **George Chauncey** is the Samuel Knight Professor of History and American Studies at Yale University. He is the author of *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (Basic, 1994), which won the Organization of American Historians' Merle Curti Prize for the best book in social history and Frederick Jackson Turner Prize for the best first book in any field of history, as well as the *Los Angeles Times* Book Prize and Lambda Literary Award. He has also published *Why Marriage? The History Shaping Today's Debate over Gay Equality* (Basic, 2004) and co-edited three books and special journal issues. He is the recipient of fellowships from the John Simon Guggenheim Foundation, the National Humanities Center, the American Council of Learned Societies, the Rutgers Center for Historical Analysis, and the Center for Scholars and Writers at the New York Public Library.

- **John D'Emilio** is a Professor of History and Gender and Women's Studies at the University of Illinois at Chicago. He is the author or editor of more than half a dozen books, including *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States* (University of Chicago Press, 1983) and, with Estelle Freedman, *Intimate Matters: A History of Sexuality in America* (University of Chicago Press, 3d ed., 2012). He has been awarded fellowships from the Guggenheim Foundation and National Endowment for the Humanities, was a finalist for the National Book Award, won the Distinguished Service Award of the Organization of American Historians, and received a Lifetime Achievement Award from the Publishing Triangle.

- **Estelle B. Freedman** is the Edgar E. Robinson Professor in U.S. History at Stanford University, where she co-founded the Program in Feminist Studies.

She is a recipient of fellowships from the National Endowment for the Humanities, the American Council of Learned Societies, the Guggenheim Memorial Foundation, and the Center for Advanced Study in the Behavioral Sciences. Her books on the history of women, sexuality, and feminism include *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation* (Harvard University Press, 2013); *No Turning Back: The History of Feminism and the Future of Women* (Ballantine Books, 2002); *The Essential Feminist Reader* (Modern Library, 2007); *Feminism, Sexuality, and Politics* (University of North Carolina Press, 2006); two award-winning books on the history of women's prison reform; and (with John D'Emilio) *Intimate Matters: A History of Sexuality in America* (University of Chicago Press, 3d ed., 2012).

- **Richard Godbeer** is a Professor of History at the University of Miami. He is the author of five books, including *Sexual Revolution in Early America* (Johns Hopkins University Press, 2002) and *The Overflowing of Friendship: Love Between Men and the Creation of the American Republic* (Johns Hopkins University Press, 2009). He is the recipient of awards and fellowships from the American Historical Association, the National Endowment for the Humanities, the Mellon Foundation, and the Ford Foundation.

- **David K. Johnson** is an associate professor of History at the University of South Florida. He is the author of *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (University of Chicago Press, 2004), which won the Herbert Hoover Book Award, and co-editor of *The U.S. Since 1945: A Documentary Reader* (Blackwell Publishing Ltd., 2009). Johnson has held fellowships at the Smithsonian Institution, the Social Science Research Council, and the National Humanities Center.

- **Regina Kunzel** is the Doris Stevens Chair and Professor of History and Gender and Sexuality Studies at Princeton University. She is the author of *Criminal Intimacy: Prison and the Uneven History of Sexuality in America* (University of Chicago Press, 2008), which was awarded the American Historical Association's John Boswell Prize, the Modern Language Association's Alan Bray Memorial Book Award, the Foundation for the Scientific Study of Sexuality Bonnie and Vern L. Bullough Award, and the Lambda Literary Award.

- **Joanne Meyerowitz** is the Arthur Unobskey Professor of History and American Studies at Yale University. She is the author of *Women Adrift: Independent Wage Earners in Chicago, 1880-1930* (University of Chicago Press, 1988) and *How Sex Changed: A History of Transsexuality in the United*

States (Harvard University Press, 2002). From 1999 to 2004, she edited the *Journal of American History*, the leading scholarly journal in U.S. history. She has won fellowships from, among others, the American Council of Learned Societies, the John Simon Guggenheim Foundation, the National Humanities Center, and the Social Science Research Council.

- **Nayan Shah** is a Professor of American Studies and Ethnicity and History at the University of Southern California. He is the author of *Contagious Divides: Epidemics and Race in San Francisco's Chinatown* (University of California Press, 2001) and *Stranger Intimacy: Contesting Race, Sexuality and the Law in the North American West* (University of California Press, 2011), which won the Norris and Carol Hundley Prize of the American Historical Association, Pacific Coast Branch.

- **Michael S. Sherry** is the Richard W. Leopold Professor of History at Northwestern University. He won the Bancroft Prize for *The Rise of American Air Power: The Creation of Armageddon* (Yale University, 1987) and is also the author of three other books, including *Gay Artists in Modern American Culture: An Imagined Conspiracy* (University of North Carolina Press, 2007).