

Case No. 14-5297

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**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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VALERIA TANCO and SOPHIE JESTY;  
IJPE DeKOW and THOMAS KOSTURA; and  
JOHNO ESPEJO and MATTHEW MANSELL,  
*Plaintiffs-Appellees,*

v.

WILLIAM EDWARD “BILL” HASLAM,  
in his official capacity as the Governor of the State of Tennessee;  
LARRY MARTIN, in his official capacity as the Commissioner of the  
Department of Finance and Administration; and  
ROBERT COOPER, in his official capacity as  
Attorney General & Reporter of the State of Tennessee,  
*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the Middle District of Tennessee, Nashville Division  
Case No. 3:13-cv-01159 (The Honorable Aleta A. Trauger)

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**BRIEF OF *AMICUS CURIAE* PARENTS, FAMILIES AND FRIENDS OF  
LESBIANS AND GAYS, INC.  
IN SUPPORT OF PLAINTIFFS-APPELLEES  
AND SUPPORTING AFFIRMANCE**

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

# Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 14-5297

Case Name: Tanco, et al. v. Haslam, et al.

Name of counsel: Andrew J. Davis, Folger Levin LLP

Pursuant to 6th Cir. R. 26.1, Parents, Families and Friends of Lesbians and Gays, Inc.  
*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

### CERTIFICATE OF SERVICE

I certify that on June 16, 2014 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Andrew J. Davis  
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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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## INTERESTS OF *AMICUS CURIAE*

Parents, Families & Friends of Lesbians & Gays, Inc. (“PFLAG”) respectfully submits this *amicus curiae* brief in support of Plaintiffs-Appellees in the *DeBoer* (Michigan), *Tanco* (Tennessee), *Bourke* (Kentucky) and *Henry* (Ohio) actions.<sup>1</sup>

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 Michigan, Tennessee, Kentucky and Ohio, PFLAG has 41 chapters and more than 20,000 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

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<sup>1</sup> PFLAG is filing an identical *amicus* brief in each of the four actions. This brief is submitted with the consent of all parties in the *DeBoer*, *Henry*, and *Tanco* actions. (The parties in *DeBoer* and *Henry* have filed blanket consents to the submission of *amicus* briefs; in *Tanco*, Appellees filed a blanket consent, while counsel for Appellants advised counsel for PFLAG, via email, of their consent to the brief. In *Bourke*, Appellees have filed a blanket consent to the filing of *amicus* briefs, while counsel for Defendant-Appellant has advised that Defendant-Appellant would neither consent nor object to the filing of *amicus* briefs. Accordingly, concurrently herewith, PFLAG is filing a motion for leave to file an *amicus* brief in the *Bourke* appeal. 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.

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 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, e.g.*, Brief of Michigan Appellants (“Michigan Aplt. Br.”), 50.

### **SUMMARY OF ARGUMENT**

PFLAG submits that the judgments of the District Courts should be affirmed. This 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 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, their family members, and friends, 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 bans on same-sex couples marrying is most directly felt by the couples themselves. But the family members and friends 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. STATE LAW 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, the States of Michigan, Tennessee, Kentucky, and Ohio have imposed legal disabilities on people who are gay or lesbian, and demeaned their committed relationships. The laws of these states 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, friends, and 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 people who love them.

#### **A. Story of Colette Roberts**

Jim and I married in 1958, 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. 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.

### **B. Story of Kathy Halbrooks**

I am a 30-year resident of Nashville, Tennessee, an employee of the Metropolitan Government of Nashville and Davidson County, and President of PFLAG’s Nashville Chapter.

I am a straight, 62-year-old woman who was born and raised in rural Alabama. While I grew up in the Civil Rights era and saw news reports regarding the Civil Rights movement, those events might as well have happened in a different world. I was shielded from such struggles and ignorant of social issues until I decided to go back to college at the age of 35. And it was only when I was in my mid-50s that I became aware of how differently members of the LGBT community are treated by society and the law, such as the laws denying same-sex couples the right to marry. What is remarkable to me about this differential treatment is that it so profoundly affects LGBT individuals and their families, yet those effects are so deeply personal as to be almost invisible.

A close friend of mine – I will call her Joan – has been in a committed, same-sex relationship with Mary for almost 20 years. (“Joan” and “Mary” are not their real names.) In every way, Joan and Mary are an ordinary couple: they own a home together, they shop for food at a local store, and they share a mutual love of physical fitness. But at work, Joan does not feel comfortable leaving out pictures of Mary, whom she married in another state last year. When a colleague asks about her weekend, she does not feel comfortable answering freely and openly.

In recent years, Joan and Mary both had to deal with their mothers’ illnesses. Just a few days ago, Mary lost her mother. But Joan will not be afforded bereavement leave that is available to other married employees to support her wife, and to grieve the loss of a woman who has been an important part of her own life for almost 20 years.

This is unfair. As long as I have known Joan and Mary, I have been aware of how devoted they are to each other. They steadfastly support each other in sickness and in health (as most marriage vows state), but the laws of Tennessee refuse to recognize their union. I am acutely aware that as a straight woman, if I were to meet a man tomorrow and get married, I could add him to my insurance and get bereavement leave. No one would question my right to get married, even though I am now well past child-bearing age, regardless of whether I had known him for two days or two years.

As someone who herself is not in a successful, committed relationship, couples like Joan and Mary give me hope. It is wonderful to see Joan and Mary, and many other same-sex couples like them, with positive relationships. There is no reason to treat Joan and Mary's committed relationship differently than that of a straight couple.

### **C. 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, one deeply affected by my faith. I am a "Cradle Catholic," and my faith shapes how I attempt to live my life. Every time I go to Mass, I find something in it that calls me to my best self, my deepest self. 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. 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.

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.

#### **D. Story of Andrew Northrop**

I grew up in the Port Huron area of Michigan. I received an undergraduate degree in social work from Saginaw Valley State University, and received my Master’s degree in Clinical Social Work from Michigan State University this past May. Despite my ties to Michigan, I had long planned to leave the state after finishing my education. As a gay man, I believed that I had a better chance of finding happiness and a life-long companion in a region of the country that was more open to LGBT individuals.

My plan to leave Michigan changed, however, when I met Adam Gardner, who is now my fiancé. Adam is a native of Lansing and a school teacher. Within months of getting to know Adam, I realized that I wanted to spend the rest of my

life with him. Adam allows me to be vulnerable without feeling ashamed. I allow him to see my true self. Early on in our relationship, I realized that I was comfortable holding his hand in public, something that I'm not normally willing to do. It was a powerful moment and I recognized that I was not scared with Adam, and felt fully supported and protected with him.

In 2013, I decided that I wanted to marry Adam. At the time, same-sex marriage was not legal in Michigan or most other states. Nonetheless, I picked out a ring, and made plans to propose to him while we vacationed in Arizona. In the late afternoon, on the red rocks outside of Sedona, I pulled out the ring and told Adam, "I know it's not legal, but I'm tired of waiting to ask you to spend the rest of your life with me. Will you marry me?" Thankfully, he said yes.

Although we were now engaged, we had no legal right to get married. While we were happy with the United States Supreme Court's rulings in the *Windsor* and *Hollingsworth* cases, we were also a bit disappointed that the rulings did not directly clear the way for our marriage. In March, when the District Court for the Eastern District of Michigan issued its ruling prohibiting bans on same-sex marriage, we immediately called our county clerk to see if she would begin issuing marriage licenses to same-sex couples. Unfortunately, she told us that the answer was "no" – and then the stay was granted.

We have decided that, regardless of whether same-sex marriage is recognized in Michigan, we will go forward with our wedding on August 8 in Freeland, Michigan. Our wedding ceremony will give us an opportunity to share our commitment with about 170 friends and family members. My mother passed away when I was 15, but my father and both of Adam's parents will participate in the service. Having these family members and friends witness and affirm our promise to support, encourage and love each other is very important to me and Adam. Adam and I also plan to travel to Illinois shortly before the service to obtain a marriage license and ensure that our marriage and family is recognized, at least under federal law.

Our commitment to each other cannot be diminished by a law or a court ruling. But we still want the validation and stability that comes from having our marriage recognized by the State of Michigan. Without full legal recognition under State laws, our union will still be deemed second-class, and somehow "less than" the union between two people of the opposite sex. We plan to have children together, and we want our kids to know that our relationship is a marriage, equal in dignity to relationships between opposite-sex couples. We have the right to know that our State values us as individuals and as a family, and treats us as equal under the law.

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

Even under a rational basis analysis,<sup>2</sup> 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.*, Michigan Aplt. Br. at 52) 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 these states are imposing, since all four states freely permit marriages between opposite-sex couples who are unable or unwilling to procreate.

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<sup>2</sup> PFLAG respectfully submits that the challenged laws are subject to heightened scrutiny, but will confine its discussion to responding to arguments regarding application of rational basis review.

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

#### **A. Story of Tom and Jan Harry**

**Tom**: I was born and raised in Cincinnati, Ohio. I attended the Boston University School of Theology, where Jan and I met. We married in 1971, and have lived and served in Ohio ever since. We are both pastors in the United Methodist Church. For the past 11 years, we have served two churches together as co-pastors.

**Jan**: We have two children, our daughter Sonya and our son Chris. Both children are married, but Sonya's marriage is not recognized under the laws of Ohio.

Growing up, Sonya always dreamt of getting married and having two kids. She wanted the whole wedding package: a beautiful white dress, a tiered wedding cake, and a big party with her family and friends. A family friend promised to make a fancy wedding cake for her when the big day came.

**Tom**: Sonya came out to us as an adult. At the time, she was living at home, having completed her Master's degree and saving money to pay off her educational debts. Jan and I remember the day a little differently than Sonya – we do not recall having a hard time with her news that she is gay, but what Sonya recalls of our reaction is different than what we remember (or have chosen to remember). If we had a hard time in the moment, I think Sonya will agree we came to acceptance quickly.

**Jan**: What I mainly recall about her coming out is my fear for our daughter. Sonya was just embarking on her career in social services. It was 2000 – our society was even less accepting of lesbians and gays then – and I worried that as a lesbian, Sonya would encounter barriers, even hostility, in her chosen field. There was also her dream of marriage and children – I feared that dream had gone down the tubes.

But Sonya proved us wrong. By 2002, she was in a committed relationship with Alison, and they wanted to affirm their commitment in a ceremony before family and friends. So we put up two big tents in our yard, and Sonya made two beautiful white dresses, one each for herself and Alison. They had a covenant ceremony, adapting the vows that Tom and I had used at our wedding to make them uniquely theirs.

**Tom**: A colleague of Alison's – who was a retired Catholic priest – led the ceremony, in which not only they, but their friends, spoke. While we were deeply saddened that we could not perform the ceremony as clergy (our Church does not recognize same-sex marriage), it was meaningful for all of us that their ceremony was grounded in their faith. I have always believed that marriage includes God. While the two people make the marriage, there is a sacredness in marriage that transcends them. Sonya and Alison are women of faith, who believe in the sacredness of their commitment. Their ceremony reflected that sacredness.

**Jan**: Over 100 family and friends came together to celebrate their commitment. Several gay couples we knew said at the time, “we wish we had lived in a time when we could have done that.” Our family friend even made the tiered wedding cake as she had promised Sonya many years ago.

It wasn't all rosy, of course – when some of our neighbors learned the reason for the two big tents in our yard, they said they would go away to avoid exposing their children to the event. But several other neighbors came to us, sharing stories of their brother, their aunt, or another family member who is gay.

**Tom**: Sonya and Alison are now parents to two boys, fulfilling Sonya's childhood dream of being a mom.

We are fortunate to live just three blocks away from our grandchildren. Having witnessed their journey as parents, we can say, without hesitation, that

Sonya and Alison are conscientious and nurturing parents. They volunteer at school, ride bikes and play sports with their kids, and have made thoughtful decisions to select the right schools, as well as to foster the boys' strong connection with their Church. They are doing a beautiful, but also very *ordinary*, job as parents, in the sense that what they do for their children is no different than what any other couple, same-sex or opposite-sex, would want to do for their children.

**Jan:** Unfortunately, Ohio's laws fail to recognize Sonya and Alison as a married couple, despite the fact that in October 2013, they were legally married in New York State. Sonya and Alison have had to incur costs that straight, married couples do not have to incur. For example, they had to go to court to make sure that Alison would have equal parental rights and responsibilities as Sonya, and they have incurred greater tax burdens because their union is not recognized under the law.

These financial issues directly impact Sonya, Alison, and our grandchildren on a daily basis. Every dollar they have to spend to ensure legal rights for Alison as a parent puts them behind financially. This is unequal and unfair.

Unequal treatment of Sonya and Alison's marriage under the law continues to legitimize discrimination against them and their children. We want our grandchildren to be treated as typically delightful children, like all the others in their school or neighborhood. While we understand that it will take time for



schools, recreation programs, and the society at large to speak of “parents,” and not of “mom and dad,” we firmly believe that legal recognition of Sonya and Alison’s relationship will help raise awareness, and with it, acceptance.

### **B. Story of Rita Miller**

I live in Fisherville, Kentucky and have two adult children. Like many parents of gays and lesbians, I support marriage equality for the most intensely personal and yet most ordinary of reasons: I want my daughter, Tonya, to be able to express a life-long commitment to her partner, Annette, and to have that commitment recognized by the State. Equally important, as a grandmother, I want Tonya and Annette’s two children to know that the State recognizes their household as a true “family” – a designation that is uniquely conferred in our society by the institution of marriage.

Tonya and Annette met in Kentucky in 1999, and have been in a committed relationship ever since. Over the past six years, they have adopted two children. Even before they had children, it was evident that Annette and Tonya were deeply committed to each other. But raising children has a way of highlighting what makes a relationship special. In Annette and Tonya’s case, I am impressed by the way they communicate with each other to navigate the joys and challenges of parenting. They recognize the give and take, the support, and the good humor that is necessary to sustain a committed relationship. My

grandchildren are lucky to have parents who are modeling, through their everyday life, how good relationships work. Above all, Annette and Tonya are amazing parents who emphasize the importance of family, education and discipline. I'm particularly struck by their dinnertime routine: almost every night, the four of them sit down together. One by one, they each describe the best part of the day. It is a simple yet powerful way of connecting with each other as a family.

I find it disheartening that society can embrace committed opposite-sex relationships and yet denigrate Tonya and Annette's relationship. And make no mistake, that is what the State's prohibition on same-sex marriage has done. By refusing to afford Tonya and Annette the right to get married, Kentucky is saying that their family is less worthy, less equal than other families. Annette and Tonya are just as committed to each other and to their children, and they should be afforded the right to get married.

### **C. Story of Maya Jaffe and Helen Leneman**

**Maya Jaffe**: I was born in 1979 in Los Angeles, but grew up in Maryland. I now live in London with my husband and infant daughter.

My mom and dad divorced when I was two years old. By the time I was about three, my mom, Sima Lieberman, was in a committed relationship with Helen, and they have been together ever since. I have no memory of my life without Helen, and she was a second mom to me from a very early age.

**Helen Leneman**: When I first moved in with Sima and Maya, I was the classic step-parent who had to win the acceptance of a young child: Maya did not like the fact that she now had to “share” Sima with me. We ultimately bonded over our mutual love of music: I was watching opera one evening on TV, and Maya became curious. She climbed into my lap to watch with me, and we spent many hours like that. I eventually gave Maya piano and voice lessons, and music cemented our relationship.

**Maya**: By the age of 10 or so, I felt that I had to be careful when talking about Helen. For instance, Helen worked as a bar mitzvah tutor at our synagogue. Helen was not “out” at the synagogue, because she wasn't sure how it would be received by the families of children she worked with. So she was my “Aunt Helen.”

Still, as a child and teen, I was blissfully unaware of the fact that Mom and Helen worried about practical matters, such as what would happen if something happened to my mom, or if something happened to me while my mom wasn't around. My mom is a conservation biologist, and her work required her to travel regularly. Helen, on the other hand, worked largely from home and was more the “stay-at-home” parent. What if I had been hospitalized during Mom's absence – would Helen have been allowed to visit me and make medical decisions for me? What if something had happened to Mom? Would I have been allowed to stay

with Helen? These are the things I never thought about, but which concerned them both.

**Helen**: Fortunately, we never had to deal with those “what if’s.” With fewer practical issues – in particular, issues around child-rearing – impacting our lives, marriage did not seem as important to us in recent years. Sima and I had often dismissed the importance of marriage, probably because marriage was out of our reach as a lesbian couple. But when same-sex marriage became legal in our state in 2013, we decided to do it. As we grow older, we felt that our relationship should be given the same protections under federal and State laws as any other committed relationship.

So I was completely thrown, on our wedding day, at the incredible emotion I felt. We had planned a May wedding, so that Maya and her husband could be there, as well as our other families and friends. There we were, after more than 30 years together as a couple, and it was the very first time in our journey that we could so publicly affirm our love for each other and have our union recognized, not just by those who love us, but by the State and country we live in. To be able to stand before our loved ones and affirm our love was overwhelming. Neither of us had expected that such a simple ceremony would mean so much.

**Maya:** I never doubted Mom and Helen's commitment to each other. But their wedding was nonetheless powerful because finally, after more than 30 years together, the government was legitimizing and recognizing their union.

Opponents of same-sex marriage argue that maintaining the institution of marriage for opposite-sex couples only is best for children. But my life experience directly contradicts that argument. I am a child of divorce, who ended up being raised by two moms. My two moms gave me a loving and stable home, in which I knew I would be accepted and loved no matter what. They taught me to respect and accept others, and to not judge. They gave me room to thrive and to achieve, and to develop my own identity.

I am better off today because of the loving home they provided. As I embark on my own parenting journey, my greatest hope is that my husband and I can provide the same loving, stable home to our child that Mom and Helen gave to me.

#### **D. Story of Mike Neubecker**

I was born and raised in Michigan. 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 six 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 seven years ago, Lee and David adopted our grandchildren, Braiden and Michael, through the foster care system. Braiden, who is now 11 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 was accepted at four out of five universities he applied to, and is looking forward to starting college in the Fall. 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: June 16, 2014

FOLGER LEVIN LLP

*/s/ Andrew J. Davis*

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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 6,966 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 Fed. R. App. P 32(a)(5) and 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Office Word 2007 in 14-point Times New Roman style.

Dated: June 16, 2014

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that on June 16, 2014, a true, correct, and complete copy of the foregoing 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.

Dated: June 16, 2014

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