No. 14-8744

In The
Supreme Court of the United States

In re: Gordon Wayne Watts, Petitioner

On petition for The Extraordinary Writ of *Habeas Corpus* (per Rule 20.2) to

The United States Supreme Court

PETITION FOR REHEARING

Gordon Wayne Watts
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Phone: (863) 688-9880

Date: Thursday, 02 April 2015

QUESTION(S) PRESENTED

(Questions presented in the instant "Petition for Rehearing")

1) **Whether a Rehearing (reconsideration) of Petitioner's "Petition for The Extraordinary Writ of *Habeas Corpus* (per Rule 20.2)" would be in aid the Appellate Jurisdiction of This Court**
2) **Whether the Petition for The Extraordinary Writ of *Habeas Corpus* should be granted**

(Original Questions presented in petition on docket)

1) **Whether Due Process is implicated when an indigent *pro se* litigant who can not afford an attorney barred in This Court, as RULE 37 requires, wishes to have access to Redress This Court regarding participation as an *Amicus Curiae***
2) **Whether Equal Protection is implicated when other, otherwise equally-situated litigants gain access to This Court to file 'Friend of the Court' briefs, as compared to an indigent *pro se* litigant who can not afford an attorney barred in This Court, as RULE 37 requires**
3) **Whether case law, Common Law, and U.S. Constitutional Provision exists to support a basis for *Habeas Corpus* to issue to test this particular deprivation of liberty, namely lack of Due Process to access the courts, and Unequal Protection of indigent *pro se* litigants who wish to be a 'Friend of the Court' and participate in the Democratic Process of 1st Amendment Redress**

(Supplemental Questions addressed in the Supplemental Brief)

1) **Whether the Justices would need access to proposed *amicus* brief in order to make an informed decision on the matter in the case at bar**
2) **Whether *pro se* *amici* can potentially be helpful to the Appellate Jurisdiction of This Honourable Court**

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in The Court whose judgment is the subject of this petition (This Honourable Court) is as follows:

Gordon Wayne Watts, Petitioner, in the case at bar: “In Re; Gordon Wayne Watts,” “Petition for the Extraordinary Writ of *Habeas Corpus*, per RULE 20.2,” in Case #: 14-8744

James Obergefell, et al., Petitioners, in Case #: 14-556

Richard Hodges, Dir., Ohio Department of Health, et al., Respondents, in Case #: 14-556

Valeria Tanco, et al., Petitioners, in Case #: 14-562

Bill Haslam, Governor of Tennessee, et al., Respondents, in Case #: 14-562

April DeBoer, et al., Petitioners, in Case #: 14-571

Rick Snyder, Governor of Michigan, et al., Respondents, in Case #: 14-571

Gregory Bourke, et al., Petitioners, in Case #: 14-574

Steve Beshear, Governor of Kentucky, et al., Respondents, in Case #: 14-574

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JURISDICTION

This case is an Original Jurisdiction petition, authorised by RULE 20.4 of This Court, Procedure on a Petition for an Extraordinary Writ of *Habeas Corpus.*

The jurisdiction of This Court is invoked under 28 U. S. C. §§ 2241 and 2242.

The jurisdiction of This Court is further invoked under RULE 44 of This Court, re: Rehearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 1st, 5th, 9th, and 14th Amendments of the U.S. Constitution are involved, and the Statutory (or regulatory) provisions of RULE 20 (Extraordinary Writs) and RULE 37.1 (Limitations on who may file an *Amicus Curiae* brief) of This Honourable court is involved and under review in this petition. Also, Common Law, as cited in *1 Bouv. Inst., n.601*, is involved:

“A l'impossible nul n'est tenu.” (No one is bound to do what is impossible.) or possibly: “The Law does not require that which is impossible.” *1 Bouv. Inst. n. 601.*

Notice of one *“de minimus”* Scrivener's Error

In the 'Statement of the Case' of Petitioner's “2nd SUPPLEMENTAL BRIEF,” it was erroneously stated that all 42 of the $6^{1}/_{8}$- by x $9^{1}/_{4}$-inch 'booklet' format *Amicus Curiae* briefs were returned by the clerk. In fact, only 41 were returned, with 1 unaccounted-for.

STATEMENT OF THE CASE

Petitioner, Gordon Watts, who nearly won in court as Terri Schiavo's next friend in 2005 (doing better than both Jeb Bush and Schiavo's own family), and, more recently, was permitted by the U.S. 11th Circuit Court of Appeals to submit *Amicus* briefs in 4 'Gay Marriage' cases (*Brenner*, *Grimsley*, *Searcy*, & *Strawser*, cited *herein*), filed a Petition for the Extraordinary Writ of *Habeas Corpus*, in the above-styled case, and cited (in said petition) case-law showing that *Habeas* will issue to test the Unconstitutional Deprivation of certain liberties regarding R.37.1 limitations on submission of an *Amicus*. When clerk returned 41 of the 42 copies (APX-A) of the proposed $6^{1}/_{8}$- by x $9^{1}/_{4}$-inch 'booklet' format *Amicus Curiae* brief, which was "sought to be filed" and "submitted within the time allowed," Petitioner, by this time, experiencing "extreme financial hardship" due to Court Costs (service, printing, etc.), submitted O+10 of a Supplemental Brief in 8½- by 11-inch 'letter' format, under the *In Forma Pauperis* guidelines, which had a scanned image, in APX-D, of said brief (see e.g., APX-B of this petition for rehearing, *infra*, for a current copy), in order that Justices may have relevant facts at hand, and thereby be able to make an informed decision.

In support of this, Petitioner cited RULE 15.8, holding the clerk's "unexpected" return of the 41 booklet-format *Amicus* briefs as "intervening matter not available at the time of the party's last filing." Subsequently, Petitioner discovered newly-published testimonial of a woman raised by 2 lesbian parents, which Petitioner would have included in his original *Amicus Curiae* Appendix, had it been available at the time, and therefore filed a 2nd Supplemental Brief.

On March 30, 2015, The Court denied the Petition for The Extraordinary Writ of *Habeas Corpus*, but did not issue an opinion, explaining what the deficiencies alleged were.

After much review and consideration, and after consulting a number of friends and lawyers who asserted that his proposed *Amicus Curiae* (APX-A, B) brief was of good quality, Petitioner made a decision to request a rehearing –and concurrently ask The Court for an explanation of it's decision. **To that end, Petitioner is filing a timely Petition for Rehearing.**

ARGUMENT

Rule 44.2 requires that Petitions for Rehearing "be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented." The arguments that follow fall into one of these categories:

I. Petitioner has standing to intervene on grounds not previously presented

In the "Interest of the *Amicus Curiae*" section of the proposed brief (Appendix-A and B, *infra*), Petitioner gave several examples of how the definition of marriage even affects heterosexual citizens in 'financial' ways (marriage penalties, etc.), but not previously presented was Watts' other 'interest': He is 'trapped' in this country, forced to endure hate, discontent, & argument resulting from preventable disagreement over these *national* issues. Though Watts isn't a 'named' party, the heated national debate creates a vitriolic atmosphere **that fails to touch no one.** Thus, Fed.R.Civ.P. 24(a) entitles a Watts to intervene to protect his interest, since the existing parties don't adequately represent that interest insofar as they leave out many key points Watts raises in his *Amicus Curiae* brief.

Standing to intervene is stronger than standing to submit an *amicus*, and, thus, would guarantee a right to participate even in the absence of consent from the parties. Since, in *DeBoer*, both petitioners and respondents have filed blanket letters of consent to *amici* in support of either or neither party, Watts' weak (albeit definite) right to intervene just "got stronger," but he chooses, politely, to merely seek leave to submit an *Amicus* brief.

II. Petitioner, who, *inter alia*, nearly won in court as 'Next Friend' of Terri Schiavo, would possibly add to the discussion unique insight

(A) Re: Schiavo: Petitioner, Gordon Wayne Watts, lost a 4-3 split decision as 'next friend' of Terri Schiavo, doing better even than Jeb Bush (who lost 7-0 before the same panel). Contrary to some claims, Watts' loss was on the "merits," not on "technical issues," since his 2nd brief got past the clerk (who rules on technical issues) and was reviewed by all 7 Justices before The Florida

Supreme Court (who review matters on the merits). (Albeit, that review was not as high a standard that would have resulted had the rehearing been granted, but a review on the merits nonetheless.)

Mr. Watts, *all by himself,* did better than <u>all</u> other participants on his side—<u>combined</u>:

- *<u>In Re: GORDON WAYNE WATTS (as next friend of THERESA MARIE 'TERRI' SCHIAVO)</u>*, No. SC03-2420 (Fla. Feb.23, 2005), denied 4-3 on rehearing. (Watts got 42.7% of his panel) http://www.floridasupremecourt.org/clerk/dispositions/2005/2/03-2420reh.pdf
- *<u>In Re: JEB BUSH, GOVERNOR OF FLORIDA, ET AL. v. MICHAEL SCHIAVO, GUARDIAN: THERESA SCHIAVO</u>*, No. SC04-925 (Fla. Oct.21, 2004), denied 7-0 on rehearing. (Bush got 0.0% of his panel before the same court) http://www.floridasupremecourt.org/clerk/dispositions/2004/10/04-925reh.pdf
- *<u>Schiavo ex rel. Schindler v. Schiavo ex rel. Schiavo</u>*, 403 F.3d 1223, 2005 WL 648897 (11th Cir. Mar.23, 2005), denied 2-1 on appeal. (Terri Schiavo's own blood family only got 33.3% of their panel on the Federal Appeals level) http://media.ca11.uscourts.gov/opinions/pub/files/200511556.pdf

<u>(B) Re: 11th Cir.:</u> Watts was permitted to submit *Amicus Curiae* briefs in all 4 'Gay Marriage' cases recently heard before the U.S. 11th Circuit Court of Appeals, and, in fact, his briefs are the most recent merit's briefs on docket in all 4 cases: *<u>Brenner</u>*, *<u>Grimsley</u>*, *<u>Searcy</u>*, and *<u>Strawser</u>*. All other *pro se* litigants were routinely denied participation at both the CCA and the District Court. This would imply that Watts might know something about 'Gay Marriage' case and statutory law.

<u>(C) Re: News coverage:</u> He also did extensive news coverage of *each and every* 'merits' brief in the *<u>Brenner</u>* and *<u>Grimsley</u>* cases, on his blog**;** this forced him to study up on the issue *even more.* **All this would suggest Watts might <u>add something</u> to the review of this matter.** In the spirit of honesty, it should be noted that these “substantial grounds” *were* previously presented**;** however, in light of the obvious denial of Due Process, obvious on its face, and the imminent qualifications Watts had to offer insight to This Court, the denial of the request for an explanation in the event the court said 'no' certainly qualifies as “intervening circumstances of a substantial or controlling effect,” insofar as it was substantial and controlling intervening circumstance. Moreover, since both The Justices and all the clerks seem forthright, sincere, and quite normal, the denial coupled with the refusal to offer an explanation seems unexplainable and perplexing. In

the absence of an explanation from the court about why Watts could not submit a simple Amicus brief, like he did at the CCA, putting together a petition for rehearing became a perplexing puzzle, so This Court is asked, respectfully, to put themselves in Watts' place, and ask: “How would I feel?” if I didn't even 'have a clue' as to what was wrong with either my petition or my proposed *Amicus* brief? The only explanation that seemed reasonable was that the clerks and Justices had to 'share' briefs. Therefore, while it is not required of '*In Forma Pauperis'* petitioners to submit anything beyond O+10, considering the gravity of the issues at stake, Petitioner will make an exception to this rule, since it is allowed and not prohibited**:** he is submitting O+O+40, to aid the appellate jurisdiction of This Court, and make your jobs easier—even though this will drive him much farther into Credit Card debt. *(But this is justified by the logic**:** 'The needs of the many outweigh the needs of the few—or the one.')*

(D) In *DC v. Heller*, 554 U.S. 570 (2008), the argument was: “If even a Federal Police Officer –who carries a gun in federal office buildings –can't posses a gun at home, then *who*, among 'civilian' (non-police) citizens *can?*” We all know how that ended**:** Your Court held this *nonsense* law a clear violation of the 2nd Amendment. Likewise, the argument could be (and is) made that**:** “If even the guy who almost won as Terri Schiavo's 'Next Friend' can't be allowed to file an *Amicus*, then *who*, among *pro se* (non-lawyer) litigants, can?” This, then, is a clear indicator that Rule 37.1, likewise, violates the 1st, 5th, 9th, & 14th Amendments (Due Process, Redress, etc.) Just as you can't say “you must be a cop” to own a gun or get a “concealed carry” permit, likewise, you can't say “you must be a lawyer barred in our court” to file an *amicus*. Moreover, besides Due Process issues, you have Equal Protection problems as well**:** The only difference between Watts and other litigants is they “can buy access” to This Court**:** Watts, *in forma pauperis*, can not afford the $50,000.oo that one lawyer demanded**:** In *DeBoer*, since blanket consent exists, their briefs are automatically accepted, but Watts' simple brief is not. **Does This Court support a rule (R.37.1) that, in effect, says: “Money can buy access to The Court?”** Would it not be better to

modify the rule to be consistent with other courts—and, of course, with Constitutional Protections on Redress, Due Process, Equal Protection, etc.? (And, also, not so embarrassing to This Court?)

By now, no doubt, the *silent cries* of all the lawyers getting served these pleadings is**:** "For crying out loud**:** just let the guy file his brief, OK?" – Which begs the question**:** Could this court not request a response from the parties on both sides, so that their cries are silent no more? ("In the absence of extraordinary circumstances, the Court will not grant a petition for rehearing without first requesting a response." R.44.3) But, extraordinary circumstances *do* exist, which would suggest granting the petition for rehearing—and the *Habeas*, tentatively docketing Watts' *amicus*, and then, concurrently, asking for a response from the parties on that head—directing them to address both Watts' *amicus* in particular, **and** R.37.1, in general, as well. (Both are distinct, but important, questions of law and fact.)

(E) New Points: Petitioner's proposed *Amicus Curiae* (in the Appendices, *infra*) brings up points that are not being addressed either by the parties or by the numerous other *Amici* filing in this case. Here are but a few examples: While polygamy has been bandied about here of late, it has not properly been used as an Equal Protection argument, just a good (but weaker) 'slippery slope' argument in the few places it's found. Furthermore, while it was mentioned in other courts below, no one seems to have mentioned that Inferiour Federal Courts don't even have jurisdiction to address 'Gay Marriage.' Moreover, besides missing "traditional marriage" arguments, none of the briefs on docket show many clear examples of how we have successfully addressed 'Gay Rights' concerns in the past—without changing the definition of marriage. (But Watts' *amicus* does.) Both petitioners and respondents (indeed This Court and the nation) would benefit from perusing Watts' *amicus*, below, in the Appendices, implying Watts' petition be granted:

> **Rule 37. Brief for an *Amicus Curiae***
> 1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court.

III. What our Constitutional Forefathers say about oppressing the poor:

Petitioner is **not only** too poor to pay what lawyers demand (one lawyer said she'd file an *Amicus* for $50,000.oo–not a penny less), **moreover,** he isn't "connected" to the "in crowd." **Lastly,** since his proposed *Amicus* "takes hard shots" at both sides (Petitioners and Respondents), it's next to impossible to find attorneys willing to alienate political friends on "this" or "that" side. Constitutional Forefathers (contemporary and ancient) agree that poor citizens shouldn't be denied justice**:**

> "Justice is indiscriminately due to all, **without regard to numbers, wealth, or rank.**" (**Chief Justice of the U.S. Supreme Court John Jay**, *Georgia v. Brailsford*, 3 U.S. 1 (1794)) Source: http://www.courts.state.ny.us/history/legal-history-new-york/history-new-york-courts.html
>
> "[T]he mass of mankind has not been born with saddles on their backs, **nor a favored few booted and spurred,** ready to ride them legitimately, by the grace of [G]od." (**Thomas Jefferson** to Roger Weightman) Source: http://www.loc.gov/exhibits/jefferson/214.html
>
> **"Truth** will ultimately prevail where there is pains taken to bring it to light." (**George Washington,** letter to Charles M. Thruston, Aug. 10, 1794) Source: http://www.notable-quotes.com/w/washington_george.html
>
> "**If thou seest the oppression of the poor**, and violent perverting of judgment and justice in a province, marvel not at the matter: for he that is higher than the highest regardeth; and there be higher than they." (**King Solomon**) Source: Ecclesiastes 5:8 (KJV), Holy Bible
>
> "I'm not one that believes that affirmative action should be based on one's skin color or one's gender, I think it should be done based on one's need, **because I think if you are from a poor white community, I think that poor white kid needs a scholarship just as badly as a poor black kid." (J.C. Watts,** former U.S. Representative for Oklahoma's 4th Congressional District) Source; http://www.BrainyQuote.com/quotes/quotes/j/jcwatts465474.html

As Washington has said, truth ultimately prevails, even if Petitioner isn't one of wealth, favor, rank, or power. We must heed the words of Justice John Jay, Thomas Jefferson & other Founding Fathers throughout history**:** we mustn't deny Court Access, simply because Petitioner is unable to "buy access" with an attorney barred in This Court**:** Due Process demands access, and Equal Protection demands that, if his *Amicus* is "in compliance," it should be treated 'Equally' as those of other, *richer,* litigants.

IV. What The Justices, in your own words, have said about transparency:

"I just think its part of the job of the justice to explain his or her vote in the case. That I think the process is an open process in the sense that this is one institution that explains in a public way what it decides and what it does and I think that when there's difference within the Court on how a case should be decided. It's appropriate for those who disagree to explain why they thought the other side had the better of the argument." **("Interview With Justice John Paul Stevens,"** from the series: "JUSTICES IN THEIR OWN WORDS" http://supremecourt.c-span.org/Video/JusticeOwnWords/SC_Jus_Stevens.aspx JUSTICE JOHN PAUL STEVENS, June 24, 2009, Location: Justice Stevens' Chambers, Host: Brian Lamb, C-SPAN, © National Cable Satellite Corporation, d/b/a C-SPAN, page 23 of 26 http://supremecourt.c-span.org/assets/pdf/JPStevens.pdf **)**

"Now, the key to that document [the U.S. Constitution] is the judges in those opinions are giving their real reasons – not some made up reasons – they're giving their real reasons as to why they think the law is the way they've written.

It's very different from Congress because Congress isn't supposed to tell you why the statute is on the book. The statute just tells you what to do. But of course there's an inside story because it doesn't tell you why Congress decided to have you do it, but these documents [the justices' written opinions] tell you why the judge came to the conclusion. And the up shot is the inside story of the court is there isn't one. Not much of one." **("Interview With Associate Justice Stephen Breyer,"** from the series: "JUSTICES IN THEIR OWN WORDS" http://supremecourt.c-span.org/Video/JusticeOwnWords/SC_Jus_Breyer.aspx (JUSTICE STEPHEN BREYER, June 17, 2009, Location: Justice Breyer's Chambers, Host: Brian Lamb, C-SPAN, © National Cable Satellite Corporation, d/b/a C-SPAN, pages 27—28) http://supremecourt.c-span.org/assets/pdf/SBreyer.pdf **)**

"...Jefferson's beautiful preamble, explaining that we [Justices and other governmental official] owed a decent respect for the opinions of humankind and that we owed an explanation, an answer." (page 4)

"...the reason we write [opinions], as I explained, is to explain the reason for what we did...Well, we write [our opinions] for a different time dimension than that. It's not just the results. It's what the principle is. And the press does a very good job of reporting what we do." (page 19)

"I am upset sometimes when I see an editorial and it's obvious they haven't read the opinion and they don't understand...And to just write an editorial which indicates that you've made up your mind without reading what we wrote is to me quite silly." (page 19) **("Interview With Associate Justice Anthony Kennedy,"** from the series: "JUSTICES IN THEIR OWN WORDS" http://supremecourt.c-span.org/Video/JusticeOwnWords/SC_Jus_Kennedy.aspx (JUSTICE ANTHONY KENNEDY, June 25, 2009, Location: West Conference Room, Host: Susan Swain, C-SPAN, © National Cable Satellite Corporation, d/b/a C-SPAN, pages 4 and 19) http://supremecourt.c-span.org/assets/pdf/AKennedy.pdf **)**

This Court can't issue an opinion on all the matter that comes before it**; yet,** your *own* words assert that a grievous denial, as done Watts, deserves an explanation.

Just as Justice Kennedy did not like it when editorials were written by editors who clearly did not read the court's reasoning, likewise, “we” don't like it when This Court makes a decision (“we” = not only affecting Watts, but also the nation) when it is obvious that the arguments and reasoning were not read, an incorrect decision entered (even if by mistake, which seems to be the likely case), and then, to rub salt into the wound, no explanation given.

But, good faith is assumed**:** Even The Justices are human, and subject to err.

(And, even in the rare chance Watts can 'get' a lawyer during the review of these proceedings, This Court should *still* take up the R.37.1 problem**:** In the (rare) event Watts got a lawyer, the deprivation of liberties would be moot, but could be reviewed under “capable of repetition, but evading review” standards that allow review of “moot” cases—and, thus This Court could *(and should)* still give an explanation, as it has promised, above.)

V. *Res ipsa loquitur:* “The thing speaks for itself” (the best argument)

The best argument is quite simple: The 'main' argument that petitioner, Watts' brief can be as helpful (as others who “have money” to 'get a lawyer') is quite a simple matter**:** All one has to do is take a look at the brief in question**.**

It is in the Appendices below – “The thing speaks for itself”

CONCLUSION

Granting the writ will (#1) be in aid of the Court's appellate jurisdiction (due to helpful information in proposed *amicus*), (#2) be appropriate (since "Exceptional Circumstances," e.g., national divide/discord on "Gay Marriage" warrant exercise of the Court's discretionary power), and (#3) be the *only* solution (adequate relief can't be obtained in any other form or from any other court, since deprivation of liberty emanates from a Rule of This Court, R.37.1).

Moreover, *Habeas* is proper here**:** "Potentially, any deprivation of personally liberty can be tested by *habeas corpus*, and for that reason it is often called the Great Writ." (*The Operation and Jurisdiction of the Florida Supreme Court*, Gerald Kogan and Robert Craig Waters, 18 Nova L. Rev. 1151, at 608. (Fla. 1994); Accord: *State ex rel. Deeb v. Fabisinski*, 111 Fla. 454, 461, 152 So. 207, 209 (Fla. 1933) Emphasis added). "The alleged harm must be actual or imminent, not 'conjectural' or 'hypothetical.'" *Whitmore v. Arkansas*, 495 U.S. 149, at 155, 110 S.Ct. At 1723. The alleged harm of inability to file an *amicus* in time-sensitive cases, one with blanket consent from both sides for *amici* filers supporting either/neither party, is indeed "actual [and] imminent, not 'conjectural' or 'hypothetical.'" [See e.g., http://www.floridasupremecourt.org/pub_info/documents/juris.html for a link to *The Operation and Jurisdiction of the Florida Supreme Court*, Gerald Kogan and Robert Craig Waters, 18 Nova L. Rev. 1151, at 608 (Fla. 1994)] Since this may not be intuitive, imagine this**:** I'm "in a prison" of the Court's making—unable to "venture out" to experiences freedom to file an *amicus* brief *pro se*, as are others who are rich & can afford attorneys. Thus, to help both petitioner and also the nation, the proper response is to promptly vacate the order denying Watts' *amicus* (a short-term solution) and then grant rehearing to review long-term solutions. Perhaps "The Gordon Rule" would suffice**:** any prospective *Amicus Curiae* to This Court, who isn't an attorney admitted to This Court's bar, could be required to **meet *or exceed*** the level of excellence demonstrated in filings of Petitioner, Gordon Wayne Watts, *pro se*, in the case at bar.

'Redefining marriage would lead society into to “uncharted waters,” Kennedy said, and (mixing metaphors) potentially over a “cliff.” ' (“Watching Kennedy: The Court’s Swing Voter Offers Clues to a Gay-Marriage Ruling,” By Michael Crowley, *TIME*, March 27, 2013)

http://swampland.time.com/2013/03/27/watching-kennedy-the-courts-swing-voter-offers-clues-to-a-gay-marriage-ruling/ *[Translation: without a 'limiting definition,' what's to stop polygamy, incest, or even Mr. Chris Sevier from marrying his computer!]*

Before we *jump off that cliff*, it might be a good idea to “take a look” at the Watts *Amicus...* Moreover**:** since This Honourable Court surely does not intend to allow a Rule to stand –Rule 37.1, which, in essence, says “Money can buy access to This Court” –we are sure that This Court will *speedily* answer the following prayer in The Affirmative**:**

Therefore, Petitioner respectfully prays This Court:

((#1)) for good cause, to **issue “all writs necessary”** to aid your jurisdiction—including, of course, the Writ of *Habeas Corpus* to test the R.37.1 deprivation of his rights—thus putting Watts' *amicus* brief on docket (and considering his 'Gay Marriage' solutions) pending review in point #2**:**

((#2)) to ask for a response from parties on *both* sides**:** what objections *(if any)* would they have to review of Rule 37.1, which is at the *epicentre* of this petition?

((#3)) enter a ruling, one way or the other (preferably in favour of this petition), offering clarification “to explain his or her vote in the case,” as Justice John Paul Stevens has said.

Respectfully submitted, **Date: Thursday, 02 April 2015**

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s/ _____

Gordon W. Watts, PRO SE / PRO PER, *in persona propia*

* Watts, acting counsel of record, is not a lawyer. Per RULE 34.1(f), Watts, appearing *pro se*, is listed.

CERTIFICATE OF COUNSEL (or of a party unrepresented by counsel)**

Pursuant to RULE 44.2 of This Court, and as acting counsel of record for the petitioner (myself), a party who is unrepresented by counsel, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2**:**

- I certify that I am acting in good faith**:** I am trying to hammer out a compromise for "warring parties" on both sides, ***and this, even at a high financial cost to myself.***
- I certify that this petition for rehearing is not presented for delay**:** In fact, I am trying to "speed up" things so that, in the eventual grant of my request for leave to proceed *pro se* to submit an *Amicus Curiae* brief, I may meet the "regular" time deadlines in the cases for which I am asking for leave to file.
- I certify that this petition is restricted to the grounds specified in Rule 44.2**,** as evidenced by what is contained within the "four corners" of the instant brief.
- The page-limits for Petitions for Rehearing are not explicitly stated in Rule 44, but brevity is implied by the rules ("The petition shall state its grounds briefly..." RULE 44.1), and, as such, the petition proper is well-within any similar page limits. However, as was done with one supplemental brief, an Appendix containing scanned images of the proposed brief, is included, so that The Justices may be able to make an informed decision—in order to comply with the last part of the rule: ("The petition shall state its grounds briefly and distinctly..." RULE 44.1).

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s/ _____ **Date: Thursday, 02 April 2015**

Gordon W. Watts, PRO SE / PRO PER, *in persona propia*

** Watts, acting counsel of record, is not a lawyer. Per RULE 34.1(f), Watts, appearing *pro se*, is listed.

No. 14-8744

IN THE
SUPREME COURT OF THE UNITED STATES

In re: Gordon Wayne Watts — PETITIONER

PROOF (CERTIFICATE) OF SERVICE

I, Gordon Wayne Watts, do swear or declare that on this date, Thursday, the 2nd day of April 2015, as required by Supreme Court Rule 29, I have served the enclosed **Petition For Rehearing** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

• Supreme Court of the United States, 1 First Street, N.E., Washington, DC 20543, ATTN: Clerk of the Court, (202) 479-3011, MeritsBriefs@SupremeCourt.gov

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• Daniel J. Canon, Counsel of Record, Gregory Bourke, et al., c/o: Clay Daniel Walton Adams, PLC, 101 Meidinger Tower, 462 South 4th Street, Louisville, KY 40202, (502) 561-2005 x216, Dan@JusticeKY.com

• Leigh Gross Latherow, Counsel of Record, Steve Beshear, Governor of Kentucky, c/o: VanAntwerp, Monge, Jones, Edwards & McCann, LLP, P.O. Box 1111, Ashland, KY 41105, (606) 329-2929, LLatherow@vmje.com

Furthermore, I hereby certify that, contemporaneous to my service by FedEx 3rd-party

commercial carrier and/or USPS, I am also serving all parties, **and all known *amici*,** by email—and possibly also the court, if it is permitted protocol.

Also, I hereby certify that, in addition to the foregoing and in addition to any availability of my brief that The Court may make available for download, I am also making available both this supplemental brief –and all other documents in this case for open-source (free) download, as soon as practically possible on the front-page news of *The Register*, whose links are as follows:

http://www.GordonWatts.com
and:
http://www.GordonWayneWatts.com

as well as the following websites:

"Controversial U.S. Supreme Court rule is challenged in court" (PRWEB) March 25, 2015
http://www.prweb.com/releases/2015/03/prweb12608018.htm

“Novel Compromise Pitched to U.S. Supreme Court in High-Profile Gay Marriage cases” (PRWEB) March 25, 2015
http://www.prweb.com/releases/2015/03/prweb12608035.htm

PROOF (CERTIFICATE) OF COMPLIANCE (proposed *Amicus*)

Pursuant to Rule 33.1(h), I am hereby certifying that my proposed *amicus* brief (a scanned image of which is in the appendices, below, and also posted online on my namesake blog, listed immediately above), which I am asking for leave to be filed, complies with the word limitations of This Court: It has **11,244** “total” words, according to the program that I used to create it, Open Office, version 3.1.0, OOO310m11 (build:9399), Copyright 2000-2009 Sun Microsystems Inc. **This is not under the 9,000-word limit imposed by Rule 33.1(g).** However, when I exclude the parts excluded by Rule 33.1(d), namely: the questions presented, the list of parties in the cover page and the corporate disclosure statement, the table of contents, the table of cited authorities, the listing of counsel at the end of the document and the cover page, and the appendix, then the total word-count drops to exactly **9,000** which is right at **the 9,000-word limit** imposed upon *Amici* of this type. Therefore, my proposed *Amicus Curiae* brief (which is dated Wednesday, 01 April 2015) is in compliance with applicable Rules of This Court.

I declare under penalty of perjury that the foregoing (including my both Certificate of Service and all Certificates of Compliance, above) is true and correct.

Executed on **Thursday, 02 April 2015**.

_____
(Signature)

INDEX TO THE APPENDICES

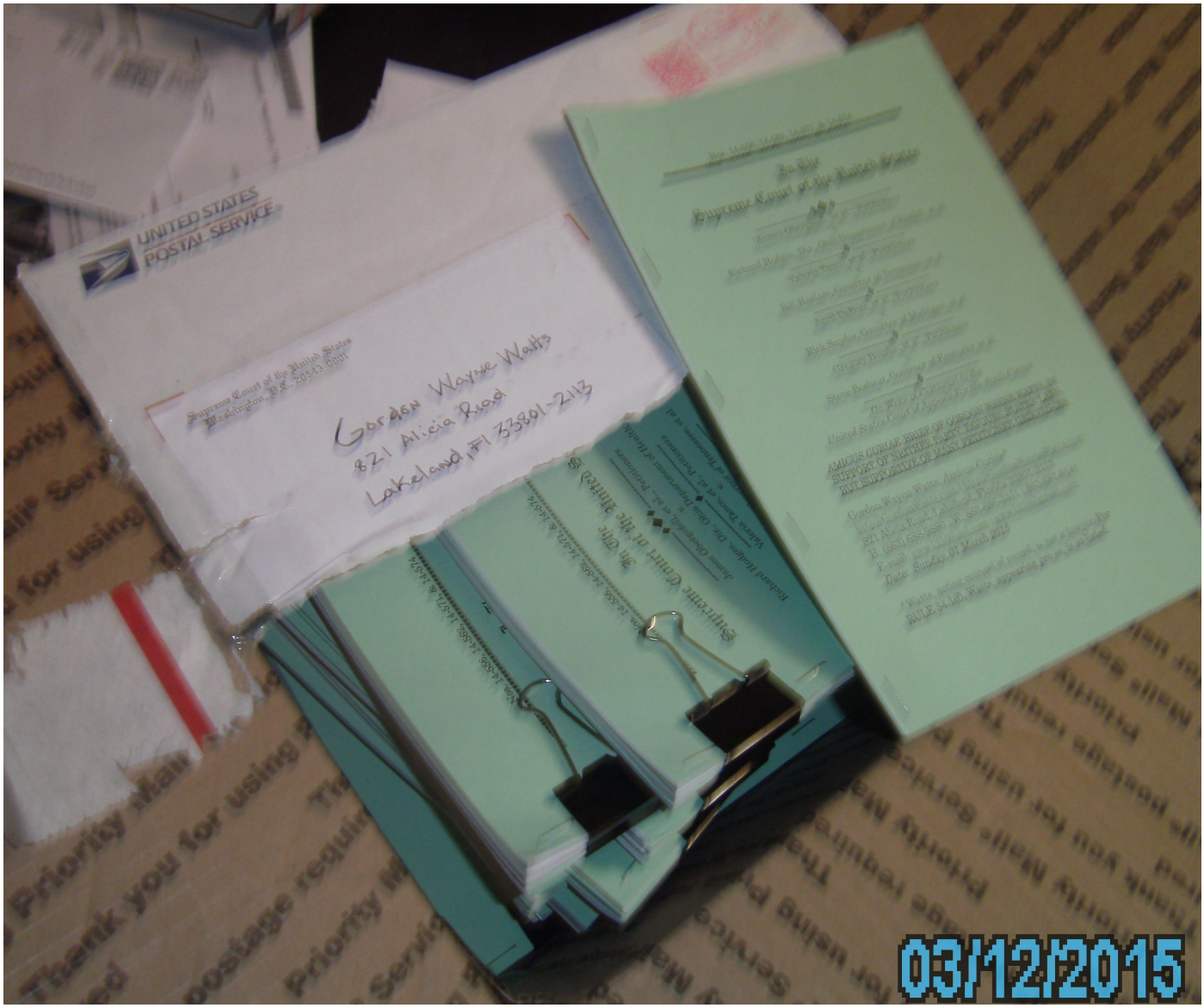
Instrument **Docket/Tab#**

Photograph of a booklet-format brief of the proposed *Amicus Curiae* brief in question—printed at a high financial cost to petitioner, now proceeding *In Forma Pauperis*
– Appendix: A –

Scanned image of the current proposed *Amicus Curiae* brief, of which caption is indicative that it falls within the bottom-side time-window, **due to delays in getting approval** during the top-side time-frame **– Appendix: B –**

– Appendix: A –

Photograph of a booklet-format brief of the proposed *Amicus Curiae* brief in question—printed at a high financial cost to petitioner, now proceeding *In Forma Pauperis*



– **Appendix: B** – Scanned image of the current proposed *Amicus Curiae* brief, of which caption is indicative that it falls within the bottom-side time-window, **due to delays in getting approval** during the top-side time-frame

Original

Nos. 14-556, 14-562, 14-571, & 14-574

In The
Supreme Court of the United States

James Obergefell, et al.., Petitioners
v.
Richard Hodges, Dir., Ohio Department of Health, et al.

Valeria Tanco, et al., Petitioners
v.
Bill Haslam, Governor of Tennessee, et al.

April DeBoer, et al., Petitioners
v.
Rick Snyder, Governor of Michigan, et al.

Gregory Bourke, et al., Petitioners
v.
Steve Beshear, Governor of Kentucky, et al.

On Writs of Certiorari to the
United States Court of Appeals For the Sixth Circuit

AMICUS CURIAE BRIEF OF GORDON WAYNE WATTS, IN SUPPORT OF RESPONDENTS / APPELLEES

Gordon Wayne Watts, *Amicus Curiae**
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Date: Wednesday, 01 April 2015

*Watts, acting counsel of record, is not a lawyer. **Per RULE 34.1(f), Watts, appearing *pro se*, is so listed.**

(Notes: This is a house (personal) copy — Printed on white paper — for "demo" purposes only — I dont have Green 'Amicus' paper at home.

Questions Presented

1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?

2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

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Interest of the *Amicus*[1] *Curiae*

Although I'm not a lawyer, I nearly won in court on behalf of Terri Schiavo –all by myself– losing a bitter 4-3 split decision, getting 42.7% of my panel, doing better than either Jeb Bush (0.0% and lost 7-0, before same panel) or Schiavo's blood family (lost 2-1 in Federal Court, getting merely 33.3% of their panel in Federal Court).

Additionally, while other *pro se* litigants were routinely denied, I was able to file as *Amicus* in both *Brenner* and *Grimsley*, two recent Fla 'Gay Marriage' cases (see Table of Citations), and my merit's brief is on docket as the most recent item to verify these claims.

Moreover, as the legal reporter for *The Register*, I reviewed (and did coverage on) every single merit's brief in those cases: www.GordonWatts.com/DOCKET-GayMarriageCase.html and: www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

Thus, I can assure you that this "*amicus curiae* brief [will] brings to the attention of the Court relevant matter not already brought to its attention by the parties [and will therefore] be of considerable help to the Court." [Rule 37.1]

[1]Appellants & appellees filed blanket letters of consent to *amici* briefs in support of either or neither party in *DeBoer*. No counsel for any party authored this brief in whole or part, nor did anyone make any monetary contribution intended to subsidise/fund preparation/submission of this brief. I, Gordon Wayne Watts, alone, both wrote & funded it. I'm an individual, not a corporation, & thus neither issue stock nor have a parent corporation or any publicly held corporations that own 10 percent or more of stock of that nonexistent parent corporation.

Interest of the Amicus Curiae (continued)

(I) I wish to be a peacemaker & help warring parties come to consensus agreeable to all, without any having to compromise its values, *if possible.* (II) Secondly, as a heterosexual (straight) person, who may one day marry, I'm negatively impacted by ramifications of the "definition of marriage": There are numerous "Marriage Penalties": for example, married people who collect disability, retirement, or Social Security, have benefits reduced due to the status of being 'married' even if their financial status didn't change. This is discriminatory, and a violation of Equal Protection, since an arbitrary standard penalises a person for no compelling reason. The "marriage penalty," as used in this context, refers not only to higher taxes required from some married couples that wouldn't be required by two otherwise identical single people with exactly the same income, but also to a loss of certain financial benefits, such as those listed *supra.* (III) Additionally, there exist some (albeit weak) legal justification to grant a motion to intervene: Fed.R.Civ.P. 24(a) entitles a person to intervene as of right if the person "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest." The financial interests lost by the "Marriage Penalty" satisfy this standard; however, this amicus brief should suffice to grant due process, making moot such intervention, & making it unlikely such a motion would (or should) be granted.

Interest of the Amicus Curiae (continued)

(IV) Watts has another 'interest': He's 'trapped' in this country, forced to endure hate, discontent, & argument resulting from preventable disagreement over these national issues. Though Watts isn't a 'named' party, the heated national debate creates a vitriolic atmosphere **that fails to touch no one.**

Thus, Fed.R.Civ.P. 24(a) entitles a Watts to intervene to protect his interest, since the existing parties don't adequately represent that interest insofar as they leave out many key points Watts raises.

MOTION for LEAVE to file Amicus

As noted in the footnote in the leading verbiage of the Interests of the *Amicus*, *supra*, both parties have granted blanket consent for *amici* in support of either/neither party in *DeBoer*; however, in the other 3 cases consolidated and under review in the case at bar, the Petitioners have withheld consent for leave to file an *amicus* brief by prospective *Amicus Curiae*, Gordon Wayne Watts. This is partly due to the fact that *Amicus*, a *pro se* litigant, didn't request consent: he was tied-up seeking leave of This Court to proceed *pro se* to file an *amicus*, and thus it would've been moot (thus a waste of time) to seek consent from The Parties without first having considered whether This Court would grant leave to file an amicus in spite of RULE 37's prohibition against pro se *amici*. However, now that a motion for leave to waive RULE 37 is being "file together with that document," i.e., the proposed *Amicus*, as RULE 20 requires ("If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document..." RULE 39.2, as authorised by RULE 20.2, which reads: "...except that a petitioner proceeding *in forma pauperis* under Rule 39..."), prospective *Amicus* now seeks consent concurrent with the following motion for leave to file:

Certification of Request for Consent: I hereby certify that both via this statement as well as in separate communication, I have and am seeking consent of the remaining 3 Petitioners, e.g., *James Obergefell,*

et al., Valeria Tanco, et al., and Gregory Bourke, et al., Petitioners. **I respectfully ask your your consent to file the instant *Amicus* brief in the consolidated case at bar, with these 2 disclaimers:** (-1-) Even if you grant consent, there is no guarantee that I'll be able to file, either by eventually retaining an attorney barred in This Court, or by obtaining Leave of This Court to proceed *pro se* for the purpose of filing an *amicus*. (-2-) Conversely, even if you deny consent, I already have blanket consent in *DeBoer, et al.,* from both petitioners and respondents; and, moreover, The Court may still grant me leave to proceed *pro se* to file the instant *amicus* in the consolidated cases *sub judice.*

Motion for Leave to file an Amicus

In a concurrent Petition for the Extraordinary Writ of *Habeas Corpus*, being filed concurrently, This Court is being shown case-law which documents that *Habeas* will issue to test the illegal or unconstitutional deprivation of **Due Process** regarding my inability to file an *amicus pro se,* simply because I am unable to afford an attorney, concurrent with the requisite implication on **Equal Protection** (whereby I'm not Equally Protected as those rich litigants who can afford such an attorney).

Nonetheless, even if This Court grants me leave to proceed *pro se* with this brief, I'll still be in the same position as an actual attorney, who wishes to file a proposed *Amicus* in a case where only 1 side has granted consent. Given the gravity of the issues considered, and the potential for Amicus, Gordon

Wayne Watts, to offer unique perspective on the issues, I therefore move This Court for leave to file, even as then-judge Samuel Alito held: "an *amicus* who makes a strong but responsible presentation in support of a party can truly serve as the court's friend." *Neonatology Assocs., PA, v. Comm'r,* 293 F.3d 128, 131 (3d Cir. 2002)

RULE 37.2 (b) reads: "When a party to a case before the Court for oral argument has withheld consent, a motion for leave to file an *amicus curiae* brief may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest." [Emphasis added for clarity]

RESPONSE:

As 3 parties have withheld consent, this invokes RULE 37.2(b), and I am thereby preparing The Motion, here, as one document, as the rule requires, within the time allotted, and have identified both the parties withholding consent (thus far: they may, subsequently grant consent), as well as the nature of This Movant's interest (in the Interests of the *Amicus Curiae, supra*).

Respectfully: **I therefore Move This Court for leave to file this *Amicus*.**

Argument

I. Polygamy has more legal precedent than gay marriage, implicating equal protection

Polygamy is currently illegal according to Federal Law: The Morrill Anti-Bigamy Act, signed into law on July 8, 1862 by President Abraham Lincoln, is still the "Law of the Land," and has not been overturned. However: While polygamy has been "bandied about" in other cases, it has not been properly used as an Equal Protection argument. For example, Justice Antonin Scalia, in his dissent, compared same-sex marriage with polygamy, in claiming that "the Constitution neither requires nor forbids our society to approve" either. (*Lawrence v. Texas*, 539 U. S. 558, 599 (2003) (SCALIA, J., dissenting) But he did not specifically ask why Gay Marriage is legal if the other, more-accepted norm (polygamy), is not! Also, one brief, recently stated:

> "Clerk McQuigg nevertheless argues that the Fourth Circuit's decision "creat[es] a boundless fundamental right to marry" that will require States to "recogniz[e] as marriages many close relationships that they currently exclude (such as polygamous, polyamorous, and incestuous relationships)." Pet. 14–15. But while the government has no legitimate interest in prohibiting marriage between individuals of the same sex,

> there are weighty government interests underlying these other restrictions, including preventing the birth of genetically compromised children produced through incestuous relationships and ameliorating the risk of spousal and child abuse that courts have found is often associated with polygamous relationships." (RESPONSE BRIEF OF TIMOTHY B. BOSTIC ET AL., *Michèle B. McQuigg v. Timothy B. Bostic, et al.*, No. 14-251, U.S.Sup.Ct., brief authored by DAVID BOIES, Theodore Olson, et al., brief, page 18)

While I do accept polygamy is something that should be outlawed, I do not for one second accept that it has "more" child abuse, and further find the comparison to incest (with its inherent genetic issues) to be a bad (and insulting) comparison.

Likewise, Atty. David Boyle, in his jurisdictional brief, in *DeBoer*, makes a similar comment "that small-group polygamy is a rough equivalent of gay marriage." (brief at page 5). This is a good 'Slippery Slope' argument, but his legal analysis only puts polygamy on <u>equal</u> ground with Gay Marriage, and this, while close, is still incorrect; the correct descriptor is 'less,' not 'equal.'

Polygamy has a rich historical precedent, dating back to "Bible days," of ancient Israel. Even putting aside religious books (the Bible), we see many far-east nations have practiced polygamy in both ancient times –as well as modern times:

Recently, in America, Mormons (formally: The Church of Jesus Christ of Latter-day Saints) practiced plural marriages. Even at present, many Muslim and African countries accept polygamous marriages. However, the little history relating to gay marriages is generally negative (Sodom and Gomorrah in religious writings of Jews and Christians; as well as stoning & the death penalty among many modern-day Muslim and African nations). Even in America, we have never had a history of polygamist unions being acceptable –or legal.

The statement that Gay Marriage has much <u>less</u> historical precedent is not meant to be insulting to gays: It is what it is.

In fact, some religious and historical precedent would hold that polygamy (like divorce) was "permitted" for the hardness of mankind's heart (evil weakness to his lower carnal nature and base desires), but was not lawful in the "original" game plan:

> "He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so." [Matthew 19:7, Holy Bible, KJV]

> "2 And Pharisees came up and in order to test him asked, "Is it lawful for a man to divorce his wife?" 3 He answered them, "What did Moses command you?" 4 They said, "Moses allowed a man to write a certificate of divorce and to send

her away." 5 And Jesus said to them, "Because of your hardness of heart he wrote you this commandment. 6 But from the beginning of creation, 'God made them male and female.'" [Matt. 10:2-6, Holy Bible, ESV]

"Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh." [Genesis 2:24, Holy Bible, KJV]

Moreover, well-known passages, such as Genesis, chapter 19; I Corinthians 6:9; and, I Timothy 1:10, in the Christian Holy Bible, discuss homosexual unions only in negative light. These passages are quoted for historical precedent, not to advance any particular religion, especially since this amicus brief cites Muslim sources which say the same:

"Why does Islam forbid lesbianism and homosexuality?" http://IslamQA.info/en/10050

"Islam is clear in its prohibition of homosexual acts." Homosexuality in Islam: What does Islam say about homosexuality http://islam.about.com/od/islamsays/a/homosexuality.htm

"According to a pamphlet produced by Al-Fatiha, there is a consensus among

Islamic scholars that all humans are naturally heterosexual. 5 Homosexuality is seen by scholars to be a sinful and perverted deviation from the norm. All Islamic schools of thought and jurisprudence consider gay acts to be unlawful. They differ in terms of penalty" – Islam and Homosexuality http://www.MissionIslam.com/knowledge/homosexuality.htm

Even putting aside the "religious" views of homosexuality and the requisite historical precedent, nonetheless, the legal precedent is clear: Plural Marriages are illegal –and have been for ages.

Atty. Boyle was "close, but no cigar": Same-sex unions are less legal than plural marriage, not equally legal.

The implications of this are astounding – and This Court has only four (4) options, none of which are pleasant, but here they are:

(1) Since Gay Marriage has less historical precedent than Polygamy (not more), and the latter is illegal, then one solution would be to make Gay Marriage even more illegal –and prevent it – by Federal Law (read: The Supremacy Clause) – from any state in the union: This option (both are illegal) would satisfy Equal Protection (but probably not satisfy Gay Rights advocates).

(2) Since Gay Marriage has less historical precedent than Polygamy (not more), and the latter

is illegal, then an "alternate" solution would be to make both types of unions LEGAL: This option (both are legal) would satisfy Equal Protection (but probably not pass the "straight face" test with the American Public!).

(3) Since Gay Marriage has less historical precedent than Polygamy (not more), and the latter is illegal, then allowing Gay Marriage while denying Polygamy would be a clear and present violation of Federal Equal Protection. Now that I've "let the cat out the bag" and "spilled the beans" on the disparate treatment constituting a valid Equal Protection violation, you can expect that picking option #3, here, would alienate hoards of practicing polygamists nation-wide, and they would use your ruling as "a hammer" to achieve legal polygamy –and bring a bad name to This Noble Court for an imprudent ruling.

(4) The 4th and last option would be to allow Polygamy while denying Gay Marriage. This option would not violate Equal Protection (since rational grounds could be used to differentiate between the 2 types of marriage), but I don't think anyone would accept that option 4, here, would be tenable.

The conclusion to Argument I, here, is unpleasant, but the best of 4 difficult options is clearly the first option: Of the three options that don't violate Equal Protection (all of them except the 3rd), Option (#1) is the "least painful" one.

II. Prejudice Against Homosexuals is Wrong:

The arguments of the "PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW," authored by Atty. Daniel Boaz Tilley, of the ACLU, in the *Grimsley* case, are incorporated by reference herein as if fully set forth herein. However, let me highlight just a few to recap, as it bears repeating:

(1) Sloan Grimsley is a firefighter, who is in a homosexual relationship with Joyce Albu. What if Sloan is killed in the line of duty? Well, if Albu were a man, then Grimsley's insurance policy would cover her. But it does not. While this amicus brief frowns upon "Gay Marriage" recognition, this writer realises the dishonour involved in Grimsley paying into an insurance policy –with "equal" dollars as those in "traditional" marriage –but having her dollars devalued: Grimsley can NOT gain the same "value" from her work-related life insurance as those similarly-situated firefighters who are in heterosexual (straight) marriages. While this writer opposes such lifestyles, he can not accept what amounts to (and legally constitutes) a violation of Equal Protection –and probably of Contract Law: The Contract may have been misleading, and it definitely is "unequal" in its protection of citizens' rights to be treated equally. [Clearly, you can see where I am going with this: The Life Insurance policy should depend only on the monies paid in (and not on 'homosexual,' 'married,' or 'single' status), and should allow Grimsley to appoint anyone as a

beneficiary –say, a Grandmother –a neighbor, even a group people: This would allow her Life Insurance policy to be unimpeded, and thus prevent any claims that the Fla. Marriage Law discriminates.]

(2) What about people who want visitation rights in a hospital? Shouldn't their rights to visit be predicated solely on whether or not they pose a threat to the patient? If I, Gordon Wayne Watts, can visit a total stranger at a local hospital, why should a "Gay Person" be jerked around? ANSWER: A gay person should be denied visitation ONLY if he/she poses some sort of danger –or, if for example, the patient (or the guardian of said patient, with legal authority) wishes no visitation –the same standard that applies to the general public (most of whom are straight).

(3) A legal memorandum, titled "ISSUES TO CONSIDER WHEN COUNSELING SAME-SEX COUPLES," by George D. Karibjanian, Boca Raton, Florida and Jeffrey R. Dollinger, Gainesville, Florida, points out that other rights, such as ownership of real property in Florida by a married same-sex couple as tenants in common, as joint tenants with right of survivorship, or Tenants By The Entirety are affected based on the "status" of one's marriage (whether it is legally recognised by State Law or not).

(4) Arlene Goldberg's "same sex marriage" wife, Carol Goldwasser (married under NY laws) could not be recognised as Carol's surviving spouse on her death certificate. I was moved by this loss; however, this example is different than the preceding three: As much as I sympathise with Goldberg, she

did not actually lose anything (any more than were I, for example, to be married without the blessings of State Recognition: indeed, many societies have marriage as a separate function without government involvement at all!).

(5) One other point bears addressing: There must be a distinction made between "Gay Orientation" and "Gay Lifestyle": When one is "gay," that might mean 2 different things. On the one hand, a person has little or no choice over whether they are "gay" or not (in orientation, that is, preference). – Orientation is not totally genetically-controlled, since we see identical twins with different orientations, and many reports of straight people becoming gay – or gay people becoming straight. In fact, this writer, while having always been straight, has noticed his "orientation" change regarding what things are attractive in women. So, while "sexual orientation" is not totally genetic, it is safe to say that no one, knowing the discrimination in society, "chooses to be gay": Indeed, it should seem obvious that no one would purposely choose to "be gay." So, while a 'gay lifestyle' may, indeed, be harmful, in like manner as adultery, polygamy, or even –say –overeating, we must NOT be hateful towards others because they are "struggling" with something: For, we all are human, and have weaknesses, and want help –or at least, patience and understanding –and kind and respectful treatment. While we can't "totally" legislate morality, we must legislate it as much as possible (outlawing murder, for example), and even when laws are "silent" on an issue, we must still strive to show love and courtesy towards all others

—as we would like shown—but remembering that everyone is different, and some people need more understanding or room in certain weak areas than others—but each of us is 'weak' in different areas. [Since homosexuality is not totally genetic, of course, it would not be "discrete" nor "immutable," and thus not a suspect class under *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976), and thus not subject to heightened scrutiny—for this –and other –reasons.]

III. Prejudice Against Heterosexuals Wrong:

As argued *inter alia*, the "Marriage Penalty" penalises straight people, based solely on marital "status," in things such as disability, retirement, and even higher taxes required from some married couples that would not be required by two otherwise identical single people with exactly the same income. This, too, is wrong. I would add this, however: If 'Gay Marriage' becomes legal in America, then homosexuals would be victims of the self-same "Marriage Penalties" described in this brief—and that is unjust, morally wrong, and (as it applies to law) certainly unconstitutional –and thus to be avoided. However, one more things needs to be considered: When people encounter a penalty for being married, some will live together, but refuse to get married, in order to avoid the reduction in benefits, disability, etc. Others, however, might get married simply to obtain "spousal survivor-ship" benefits, and not because they love one another. **Lest This Court think I am making this up, I will testify that,** I, Amicus, Gordon Wayne Watts, know of one such friend who "lives in sin" with his girlfriend,

according to his religion, and refuses to get married to her, simply because his disability will 'go down' if he gets married. He has told me this, and I believe it.

Thus, the interference in the "Free Will" choices for people to get married, divorced, or abstain, have "interference in the Free Market," by the use of tax dollars. This causes bad marriages (or prevents good ones), *and also* wastes tax dollars to do so! (The claims that 'tax dollars' are used to 'promote' "traditional marriage," while well-meaning, actually accomplish just the opposite! However, if the State Laws of all four states in the U.S. 6th Circuit are upheld, establishing the definition of marriage as solely "1 man and 1 woman," this will be a safer (& cost less tax dollars) way to promote marriage, with its diverse benefits of gender-diversity, procreation, 2-parent teamwork, etc.)

One last things needs to be addressed, here: Some have said that in adoption, gays are discriminated against. While this amicus is against "gay adoption bans" (many gays make fine parents in many cases!), it would be legally-inconsistent to fail to promote "1-man, 1-woman" marriage: Single persons, for example, can adopt, but they are disfavoured, in comparison to "traditional marriage" families, and so, telling gays couples (or even polygamist families with plural marriages) that they, too, are disfavoured, is not inconsistent with how we treat singles, which we do for a "compelling state interest," and thus not genuine discrimination. So, it is indeed not a false claim to assert that "straight" nuclear families (e.g., 1 man and 1 woman) experience discrimination when gay unions are put

on the same level in this regard: Indeed, see "DECLARATION OF LOREN MARKS, PH.D.," page 20, in *Searcy, et al. v. Strange*, No. 11:14-cv-208-CG-M (S.D.,Ala. 2015), where a small, but statistically-significant, group of children were compared, and all things being equal, married couples had the best development from objective teacher reports (and not biased parental reporting), and next, singles, and lastly, homosexual rearing. In fact, many studies have been done on child-rearing, and it is this author's recollection that most (but not all) support those findings of Dr. Marks, which begs the question of diversity. To see some of these studies, both pro and con, see the many *Amici Curium* briefs in *Brenner v. Armstrong* or *Grimsley v. Armstrong*, recent Gay Marriage cases in the 11th Circuit.

Even though this *amicus* is a 'conservative,' I admit that the 'liberals' are correct to assert and promote "diversity": Racial diversity (Blacks, Whites, Hispanics, and Asians), and gender-diversity (men and women) in the workplace. How, then, is it wrong to promote "gender-diversity" in the family? While this is merely a liberal cliché, nonetheless, I mention it to show that it is a *true* cliché: Dr. Marks' research is "right on mark" with its implicit claims that gender diversity is beneficial, and thus the State has an interest in promoting it, as shown by peer-reviewed scientific research–*and testimonial* (see e.g., APPENDIX-A and B, *infra*). **Therefore, this is a sound legal argument which I am including in my brief, as it is often overlooked.**

The conclusion to this sub-argument is plain: While, in some matters, gays and straights must be treated equally (for example, ability to name anyone

as a beneficiary in a life-insurance policy, and not just an "opposite sex" spouse!), in other areas, there are compelling states' interests to perhaps differentiate slightly. This is alluded or hinted at in Boyle's brief (pp.19-20ff, and *passim*), where he discusses different levels of "scrutiny," in differing situations, but here, I "flesh it out" for clarity, as to why, exactly, it is a sound legal standard.

IV. A SOLUTION: SEPARATING THE TREATMENT (E.G., MISTREATMENT) OF PERSONS FROM THE MARRIAGE STATUS, AND, INSTEAD, LINK 2 SIMILAR MARITAL STATII (GAY UNIONS AND POLYGAMY) FOR A MORE ACCURATE ASSESSMENT.

That title was a bit long, but needed such to be descriptive—First, here's the problem: We are linking "status" with "treatment," and either way, society loses: If, on the one hand, you legalise gay marriage, then this "turns Equal Protection on its head," and makes polygamy de facto legal: why not have polygamy legal, if something even LESS accepted is legal? (This outcome is bad.) On the other hand, if This Honourable Court upholds the 6th Circuit's decision and definition of marriage (which I favour doing), then we might have gays (and straights—in some cases) being mistreated –and become "2nd-class" citizens. (This is also bad.)

Now, here's the (obvious) solution: Why not "remove" the link between "status" and "treatment," and, instead, create a "link" between Polygamy and Gay Marriage? Since Gay Marriage has even less

historical and legal precedent, then, in ALL scenarios, it must be accorded LESS protection, lest we run afoul of Equal Protection. But, as we see above, this would only subject Gay Marriage violators to the same penalties as those who practice polygamy, and we have not rejected that, now have we? No! America still frowns upon—and prosecutes those who practice polygamy –our "fellow-straight" people, and yet no one makes outcry, and with good reason: it is morally and legally sound logic.

V. Application of: *Baker*, *Bowers*, *Hicks*, *Romer*, *Lawrence*, *Lofton*, and *Windsor*

Many briefs (defendants, plaintiffs, and amici) have discussed these cases, so it would be remiss of me to fail to address their application, in summary:

Baker v. Nelson, 409 U.S. 810, 93 S. Ct. 37 (1972) was decided when the case came to the Supreme Court through mandatory appellate review (not certiorari); therefore, its dismissal constituted a decision on the merits and established *Baker* as precedent. Though the extent of its precedential effect has been subject to debate (and ignored by several US appellate circuits), it remains binding case law on the point of Gay Marriage: only the U.S. Supreme Court may overrule its own decisions.

There are commonly "doctrinal development" arguments made to argue that *Baker* was *de facto* overturned, [e.g., "[I]f the Court has branded a question as unsubstantial, it remains so except when doctrinal developments indicate otherwise[.]" *Hicks*

v. Miranda, 422 U.S. 332, 344 (1975)], but is this really the case?

Some proponents of the 'doctrinal development' arguments for overturning *Baker* cite to such as *Lawrence v. Texas*, 539 U.S. 558 (2003), which criminalised sodomy. They sometimes claim that *Lawrence* removed any impediment to recognising that "Sexual Orientation" classifications warrant "Heightened Scrutiny," and sometimes claim that the *Lofton v. Secretary of Department of Children & Family Services*, 358 F.3d 804 (11th Cir. 2004) holding was in reliance on out-of-circuit cases that based their holdings on *Bowers v. Hardwick*, 478 U.S. 186 (1986), and thus incompatible with intervening contrary decisions of the Supreme Court and should not be followed.

Very good point! However, we must ask two questions: First, did *Lawrence* really demand use of heightened scrutiny, or, instead, was it merely a rejection of the ban on certain behaviour (sodomy, in this case)? Secondly, even if some justices in *Lawrence* personally relied on this, as Obiter Dictum, and not as a formal holding, is heightened scrutiny actually necessary as an absolute truth? ANSWER: *Bowers* held, first, that criminal prohibitions of homosexual sodomy are not subject to heightened scrutiny because they do not implicate a "fundamental right" under the Due Process Clause, 478 U.S., at 191-194. Noting that "[p]roscriptions against that conduct have ancient roots," id., at 192, that "[s]odomy was a criminal offense at common law and was forbidden by the laws of the original 13 States when they ratified the Bill of Rights," ibid., and that

many States had retained their bans on sodomy, id., at 193, *Bowers* concluded that a right to engage in homosexual sodomy was not "'deeply rooted in this Nation's history and tradition,'" id., at 192. The U.S. Supreme Court, in *Lawrence* did not overrule this holding: Not once does it describe homosexual sodomy as a "fundamental right" or a "fundamental liberty interest," nor does it subject the Texas statute to "strict" scrutiny much less to "heightened" scrutiny! Nonetheless, some scrutiny is necessary due to the lingering prejudice that exists in both law and society against homosexuals. Thus, *Lofton* is still good case-law: a state's limitation of marriage to male-female unions must be subject only to deferential rational-basis review.

Nonetheless, I will conclude with one final statement on the "scrutiny wars," which are waged by lawyers on both sides of this argument: Lawyers for both sides have repeatedly bragged that their arguments are "sound," no matter WHICH level of scrutiny be applied, and thus dared The Courts to apply ANY level of scrutiny to test their arguments.

This amicus agrees with their claim on this head: While the 'Doctrine of Scrutiny' is certainly a useful guide, in the end, it matters not how much light This Court shines on all our arguments, and so "heightened scrutiny" is acceptable, and, in light of the national debate on 'Gay Marriage,' perhaps "even more scrutiny" should be given to both this case and the cases in the other U.S. Circuits, for example, the *Brenner* & *Grimsley* cases, where the 11th Circuit is still 'reviewing' these Florida Gay Marriage cases. (*Brenner* and *Grimsley* should be reviewed *en banc*, I

think, decided upon, one way or the other, and then granted Certiorari for This Court's review, and consolidated with these instant grants in the case at bar.)

In *Romer v. Evans*, 517 U.S. 620 (1996), at 648 Justice Antonin Scalia, in his dissent, said: "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." This would seem to contradict my claims that the instant brief (by Amicus, Gordon W. Watts) was the first to use "Polygamy vs. Gay Marriage" as a formal "Equal Protection" argument; however, reading Justice Scalia's comments in the context of this holding, we see that *Romer* merely addresses denial of certain rights to gays: it did not address the legal definition of marriage, a similar, but legally distinct, question of law. Thus, Scalia's comments, while legally-correct, were merely obiter dictum: comments on the definition of marriage, and not on treatment issues.

Romer set the stage for *Lawrence v. Texas*, 539 U.S. 558 (2003), which dealt with another treatment issue: private sexual conduct (sodomy, in this case) – again, not the legal definition of marriage (which is under review in the case at bar).

In Lofton v. Sec. of the Dept. of Children and Family Services, 358 F.3d 804 (11th Cir. 2004), *inter alia*, the 11th Circuit declined to treat homosexuals as a suspect class, and then, subsequently declined the Plaintiffs petition for rehearing *en banc*.

The key point of *U.S. v. Windsor*, 133 S.Ct. 2675 (2013), was not that it struck down DOMA (the The Defense of Marriage Act), nor the obiter dictum

that "differentiation [in marital status] demeans the couple" in question. The only key point in the *Windsor* holding that applies to the case at bar is that The U.S. Supreme Court upheld "States' Rights" for NY to define marriage as it sees fit; if anything, this supports citizens' initiatives & legislative acts to define marriage as the elected majority see fit, as has happened in four 6th Cir. states and Florida (where an almost 62% supermajority voted for its passage).

VI. Common errors of Traditional Marriage advocates

In my amicus before the consolidated 11th Cir. Cases, *Brenner* and *Grimsley*, I supported the appellant's bid to defend Florida's Laws (and addition to the State Constitution by citizen initiative) defining marriage as 1-man & 1-woman, but I was honest enough to "take them to task" for a few slips of legal logic, and as many other advocates make similar arguments, it will be instructive to This Court to be ready when you see them:

On page 7 of the "JOINT INITIAL BRIEF OF ALL APPELLANTS" (*Brenner v. Armstrong*, 14-14061, and *Grimsley v. Armstrong*, 11th Cir. 2014, perfected, brief of appellants at page 7), the State of Florida states that: "In fact, the Supreme Court's most recent decision regarding same-sex marriage, *United States v. Windsor*, is fully consistent with the principle that federalism allows States to define marriage."

This is not totally correct: Federalism (aka, 10th Amendment "States' Rights") only goes so far:

What if, for example, Florida wanted to legalise Polygamy? Would the Federal Government (Supremacy Clause) allow us to? God forbid, and certainly not! Above that, and also on page 7, defendants state: "Florida has long defined marriage as the union of one man and one woman." They implicate the **Doctrine of *Stare Decisis***, which is essentially the doctrine of precedent: Latin for "to stand by things decided." While this is a good metric to consider, it is not absolute: Think, for example, of when African Americans were told by the U.S. Supreme Court that they lacked the rights of a human: America's Highest Court held, by a overwhelming margin of a 7-2 split decision, that: "...that the negro might justly and lawfully be reduced to slavery for his benefit." -Chief Justice Roger B. Taney, writing for the Court. (*Dred Scott v. John F. Sanford*, 15 L.Ed. 691; 19 How. 393; 60 US 393 at 407. (December Term, 1856)).

Should America have "continued precedent," here? Of course not. Defendants were more accurate when they said on page 11, that: "States Have Nearly Exclusive Authority to Define and Regulate Marriage," and the keyword, there, is "nearly."

So, how long Florida has defined marriage –or how we have States' Rights –are both important, and relevant, issues to consider, but are not, by a long-shot, nearly as decisive as, for example, the Equal Protection argument advanced by this Amicus brief: Since we rightly reject Polygamy –and will probably continue to do so for the foreseeable future –then we must, perforce, reject Gay Marriage –and all its

ramifications. (But we must not do so with animus or hate –any more than we have shown towards polygamy advocates.) Indeed, This Court has held that "Polygamy has always been odious among the northern and western nations of Europe." (*Reynolds v. U.S.,* 98 U.S. at 164 (1878)). Yes, this is 'old' case law, but don't laugh: it hasn't been overturned: Thus, it's still good case law which held that the federal anti-bigamy statute didn't violate the First Amendment's free exercise clause, even in spite of the fact that plural marriage was part of religious practice of certain religions. So, Florida was, indeed, correct to assert that *Baker v. Nelson*, 409 U.S. 810, 93 S. Ct. 37 (1972), remains binding precedent –just not for their reasons stated (precedent or states' rights), but, rather, for the reasons this brief puts forth: namely, that same-sex marriage doesn't violate Due Process or Equal Protection under the Fourteenth Amendment since even polygamists can't mount a Constitutional challenge to a ban on polygamy; how much less can Gay Marriage advocates ever hope to succeed –in a fair court –that honours & respects Equal Protection viz. Polygamy vs. Gay Marriage?

VII. Common errors of Gay Marriage advocates

I occasionally hear reports that some states have a 'Gay Marriage' ban, and, if this is true, then This Court would be more appropriate in simply striking down such bans, as was done in a recent state court holding: *Fla. Dept. of Children and*

Families v. In re: Matter of Adoption of X.X.G. and N.R.G., Fla. 3d DCA, No. 3D08-3044, Opinion filed September 22, 2010, rather than changing the very definition of marriage.

However, 'Gay Marriage' advocates also commonly advance erroneous complaints. For example, in *Searcy, et al. v. Strange*, 14-10295, 11th Cir. 2015, the plaintiffs complain that **Ala. Code §26-10A-27 (1975)** is a problem ("Any person may adopt his or her spouse's child..."), but they miss (or purposely fail to admit) the obvious: **Ala. Code §26-10A-5(a) (1975)** (Who may adopt.) states: "Who may adopt. (a) **Any adult** person or husband and wife jointly who are adults may petition the court to adopt a minor." Furthermore, **§26-10A-5(a)(2) states:** "(2) No rule or regulation of the Department of Human Resources or any agency shall prevent an adoption **by a single person** solely because such person is single or shall prevent an adoption solely because such person is of a certain age." Since Alabama doesn't recognise Searcy and McKeand as legally-married, they're legally 'single,' and thus protected by this statute, and thus legally permitted to adopt. If, however, the judge denied adoption, then The Courts can enter a ruling affirming in part (their rights of adoption), reversing in part (the ruling of the court below that struck Ala. Code §30-1-19, the so-called "Marriage Protection Act") and remanding to the state court for orders consistent with this court, namely that This Court would issue an order of 'Show Cause' to the state court demanding to know by what legal standard it denied defendants

the right to adopt. Perhaps the state court was justified, but only if it found on independent grounds (such as the welfare of the child), but not if it found solely on the grounds that the couple was homosexual. Thus, This Honorable Court now has a solution to defendant's problem that does not violate Equal Protection viz. Polygamy. This solution should satisfy plaintiffs (who can get a "fair shake" in adoption) as well as defendants (who defined marriage as it has been defined for tens of thousands of years, in all societies, cultures, and countries, since the very beginning of time, and that, for compelling state interests in promoting traditional marriage). I do not pretend to have all the solutions, but I hope to get people focused on real solutions, not illusionary and Constitutionally-impossible ones.

Since there is an obvious solution to defendants' problem, then their complaints about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") are unfounded, and clearly used as a "straw man" argument to strike a good law: **RULE 3 of the Fed.R.Civ.P.**, clearly states that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue: no foul, no harm, is a legal standard.

Likewise, while the plaintiffs in *Strawser, et al. v. Strange*, 11th Cir. 2015, 15-10313 (which was consolidated with the *Searcy* case) have valid complaints, they too make the same 'straw man' attacks against a good law:

First, they complain (Brief, pp.1-2, 17) about

the ability to appoint one another the legal ability to make medical decisions, and that is a legitimate concern. The legal term, here, is "Power of Attorney" (POA) which, basically, is written authorisation to act on another's behalf in private affairs, business, or otherwise legally represent them in some legal matter—sometimes even against the wishes of the other. However, Alabama law already allows a non-family member to become a POA: See e.g., Alabama Code §26-1-2(4), (6) (1975), which reads:

> "(4) Subject to any limitation in the durable power of attorney, an attorney in fact may, for the purpose of making a health care decision, request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records, execute a release or other document required to obtain the information, and consent to the disclosure of the information."
>
> (6) No health care provider or any employee or agent thereof who in good faith and pursuant to reasonable medical standards follows the direction of a duly authorized attorney in fact shall, as a result thereof, be subject to criminal or civil liability..."

It, then, is quite clear: these sections taken *in pari materia* clearly give the POA the legal right to make medical decisions. If, however, the hospital is refusing to honour Alabama Law on this head, the

proper solution is to sue the hospital, but in any event, any complaint about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") is unfounded, and clearly used as a "straw man" argument to strike a good law: **RULE 3 of the Fed.R.Civ.P.**, clearly states that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue: no foul, no harm, is a legal standard.

Next, they complain (Brief, p.18) that the "right to receive social security benefits as a surviving spouse—hinge directly on the length of the marriage." This is a valid complaint, but the unconstitutional law in question is the Social Security Law, not the Alabama State Law. To put things in perspective, what if, for example, someone wanted to name his brother as a surviving recipient of Social Security? What if (as I would agree) that Equal Protection demands a right to do so? Then, should that *perforce* make it legal to marry your brother? God forbid, and certainly not! Again, I sympathise with the just and legitimate complaints of plaintiffs, but they make a Straw Man argument and attack the good law, whist leaving alone the bad one!

Then, they complain about the 'stigma' of inability to get married (Brief, p.18). I would agree that there is unfortunately some lingering prejudice against homosexuals (and this is wrong), but, leaving aside our human weakness, looking at the argument in question: What if, for example, a woman in UTAH (where polygamy was recently very common—and

still practiced by 'splinter' groups) felt 'stigma' for inability to be legally 'married' to a man –and his 5 other wives? While no one would condone or support making fun of this plural-marriage family, would this allow her to get 'legal' status for her polygamous relationship? Certainly not, and by this, we see this logic is "bad logic" and must, perforce, reject any conclusions on such premises.

Since I have provided several solutions to 'Gay Rights' advocates' problem, **I hope that my solutions are acceptable compromises to both sides,** to help my fellow-man (and woman) come to a truce –and reduce arguments and strife. – I hope to be helpful to the goodwill of several parties in getting a solution acceptable to all.

Additionally, there are many, many more unfair laws, which target both straights and gays and single adults. **So, prejudice exists in law against both straights and gays, but it is** not due to the Alabama Law defining marriage as 1-man and 1-woman, and thus an attack on that law is misplaced. **I add this paragraph solely to be respectful and courteous -and show plaintiffs that I am not prejudiced, and, indeed, most 'conservatives' are strongly opposed to gays to be mistreated in any form or fashion.**

VIII. PROPOSED ORDER

Above, I made compelling arguments about the problem and suggest a "general" solution, but I fail to specifically ask the court for a detailed order

that could carry out this general request, and, in order to be a good "friend" of the court, and show you things that others may have missed, it is my duty to be specific and detailed in my request for relief, so I shall now "finish the job" here. There are two (2) different ways that This Court might address the conflict before it:

The first would be to uphold the 'traditional' definition of marriage, which the 6th Circuit panel rightly found (thus satisfying the respondents), but also correct some deficiencies in law (thus satisfying the appellants). This could require This Court to "affirm in part; reverse in part; and remand for orders consistent with This Court's holding." This solution is tempting, since it fixes the problem "all at once." The only problem with this solution is that there are so many laws that depend on the definition of marriage, it might, as a practical matter, be impossible.

The second (and more practical) solution would simply be to uphold the 'traditional' definition of marriage as "1 man and 1 woman," but direct Appellants and their supporters to challenge 'bad' laws individually. Lest this august and solemn Court think I am making an unreasonable suggestion, let me illustrate but a few examples: In *Lawrence*, for example, a Texas law that was deemed 'bad' was struck down (by the Judicial branch) without perverting or altering the definition of "marriage" as '1 man and 1 woman.' Another example was when a State Appeals Court found that a Florida statute prohibiting adoption by homosexuals had "no rational basis" and thus violated their equal

protection rights. (*Fla. Dept. of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, Fla. 3d DCA, No. 3D08-3044, Opinion filed September 22, 2010) Again, FLORIDA'S 2008 definition of marriage was not perverted, struck, abrogated, or altered.

Likewise, it need not be perverted or struck here, as well: to do so would simply be trying to say a square is round, or that 1+1=3, when, by the definition, it does not –or that "a man" = "a woman," when this, also, is not true. Indeed, "The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both[.]" *Ballard v. United States*, 329 U.S. 187, 193, 67 S. Ct. 261, 264 (1946) (Douglas, J.). And, re that difference: "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Tigner v. Texas*, 310 U.S. 141, 147, 60 S. Ct. 879, 882 (1940) (Frankfurter, J.).

IX. Inferior Federal Courts didn't even have jurisdiction to address 'Gay Marriage' dispute

On it's face, it would seem that the Supremacy Clause would allow a Federal District Court to 'strike down' any state law or state Constitutional provision, such as has been happening in the 'Gay Marriage' dispute, nationwide. *But, is this so?*

Doe v. Pryor, 344 F.3d. 1282, 1286 (11th Cir. 2003), held that: "The only federal court whose decisions bind state courts is the United States

Supreme Court." Their advisory opinion on this head evokes the Rooker-Feldman doctrine, which, in essence, holds that lower United States federal courts may not sit in direct review of state court decisions. This would give a strong support to Federalism, and 10th Amendment State's rights, that is, that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." Accord: *Arizonans for official English and Robert D. Park, Petitioners v. ARIZONA et al.*, 520 U.S. 43, at Syllabus 23, note 11, in which the U.S. Supreme Court held: "(Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law)." In other words, lower Federal Courts may not sit in appellate review of state court decisions; they may only address these issues through original jurisdiction (which, apparently, the plaintiffs allege, insofar as they claim that the' state laws in question are unconstitutional).

While this case law seems counter-intuitive, let me illustrate why this, if taken to its logical end, is not unreasonable: What if, for example, residents from 49 U.S. states appeared in one single Federal District Court (of the 50th state), demanding that their states' laws, recognising marriage one way or the other, should yield to the State Law of the 50th State, where the case is being heard, and demand The Court enter a ruling that the laws of these 49 states are unconstitutionally-restrictive, and ask The Court to exercise "Long Arm Jurisdiction" to enforce such an order <u>against</u> these 49 states? Well, what if, then, *another* U.S. District Court entered a ruling

just the opposite? Can you not see the mayhem and confusion that would surely ensue? (And, as it stands, the nation-wide 'patchwork' of Gay Marriage Laws has effectively made my prophecy, here, come true!) So, the case law that holds that the Supremacy Clause is restricted in this regard is 'good' case law: **Only the *your* Court may exercise jurisdiction in this regard,** and most other courts, while well-meaning and well-intentioned, have exceeded their authority.

<u>X. CONCLUSION</u>

This Court might be tempted to hold that "marriage" must include "Gay Marriage," in order to satisfy the just and legitimate complaints of mistreatment against homosexuals. While tempting, this approach is "throwing out the baby with the bathwater": for example, just because a few judges (or a few cops) are 'bad,' do we remove all judges (or cops) –and destroy The Judicial (or Executive) Branch? God forbid, and certainly not! Likewise, just because a 'few' laws discriminate against homosexuals, must we pervert and alter the very 'definition' of marriage? (Certainly not: this would require us to allow Polygamists to be considered 'married,' in order to satisfy Equal Protection, as discussed in the instant brief, and we all know that is untenable.)

While there is certainly mistreatment based solely on "marital status," it isn't a result of these state laws, but rather, independent and long-standing –and should be corrected as separate issues, but both polygamy and gay marriage should

remain illegal; and, indeed, if polygamy is illegal on a Federal Level (and it is), then how much more should Gay Marriage be illegal in all 50 states, according to Federal Law?

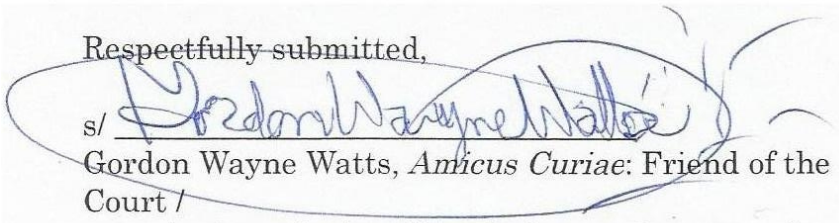
Therefore, the various Laws (and Constitutional Provisions) limiting "marriage" to be defined as "1 man and 1 woman" should be upheld on appeal: Gay Marriage proponents have even less legal ground on which to stand than do Polygamist Advocates, and thus their case has little chance of succeeding. The 6th Circuit panel's definition of marriage (which supports the laws and/or initiatives passed in no less than FOUR STATES, representing MANY citizens/voters, and thus representing the 'voice of the people') is Constitutional: Gay citizens are not overly impaired in their basic human rights: rights to travel, rights to peaceable assembly and associate with whomever they chose, Intimate Association –nor do these Laws violate the Establishment Clause: Just because a law "agrees with" religion –for example: Thou Shalt Not Kill, yet it is not necessarily a violation, here. Prejudice exists in law against both straights and gays, and it is wrong, but not due to these reasonable laws: This Court should uphold the Lower Tribunal's ruling on the definition of marriage and possibly correct a few errors in the current laws (as a example), –or (better yet) enter a ruling that directs Appellants and their supporters that unconstitutional laws may be challenged individually.

The circuits are split, and the public (strongly "pro-marriage") is also split on this issue: The nation all looks to This Honourable Court to "get it right" for all sides, so let's do just that. **Therefore, the certified questions should be answered as follows:**

1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex? ANSWER: No. ("[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620 (1996), at 648; well, *do they?*)

2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state? ANSWER: This question is moot in light of the fact that marriage between ***any*** **combination** (2 men; 2 women; plural marriages with, say 1 man and 3 women; or "3 men and a baby!" – or even Mr. Chris Sevier marrying his computer!) ***other than*** **"1 man & 1 woman" is hereby deemed not "lawfully licensed"** by the U.S. Constitution's Equal Protection standards, which recognise that polygamy's prohibition requires the prohibition of all other unions of Equal or Lesser legality.

Respectfully submitted,

s/ 
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* Watts, acting counsel of record, is not a lawyer. **Per RULE 34.1(f), Watts, appearing *pro se*, is so listed.**

Dated: Wednesday, 01 April 2015

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Instrument **Docket/Tab#**

– Appendix: A – Testimonial from TheBlaze, March, 19, 2015 news item, Source: http://www.TheBlaze.com/stories/2015/03/19/she-was-raised-by-lesbian-mothers-but-this-womans-open-letter-reveals-why-she-opposes-gay-marriage/

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She Was Raised by Lesbian Mothers. But This Woman's Open Letter Reveals Why She Now Opposes Gay Marriage.

Mar. 19, 2015 8:30am | Billy Hallowell

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A woman who was raised by two lesbian mothers has come forward to explain why she transformed from an activist in favor of gay marriage to an opponent of same-sex nuptials, saying the traditional family structure is the most successful and beneficial to children.

"My mom raised me with her same-sex partner back in the '80s and '90s. She and my dad were married for a little while. She knew she was gay before they got married, but things were different back then," Heather Barwick wrote in an open letter published in the Federalist. "She left him when I was 2 or 3 because she wanted a chance to be happy with someone she really loved: a woman."

Barwick said she lived with her mother and her partner in a "very liberal and open-minded area" and was treated well by both women. She said her father, by contrast, "wasn't a great guy."

– Appendix: B – "Dear Gay Community: Your Kids Are Hurting," The Federalist (Mar.17,2015), referenced by TheBlaze, *supra*, Source: http://TheFederalist.com/2015/03/17/dear-gay-community-your-kids-are-hurting/

"Dear Gay Community: Your Kids Are Hurting"

"I loved my mom's partner, but another mom could never have replaced the father I lost."

By Heather Barwick
March 17, 2015, The Federalist

Gay community, I am your daughter. My mom raised me with her same-sex partner back in the '80s and '90s. She and my dad were married for a little while. She knew she was gay before they got married, but things were different back then. That's how I got here. It was complicated as you can imagine. She left him when I was two or three because she wanted a chance to be happy with someone she really loved: a woman.

My dad wasn't a great guy, and after she left him he didn't bother coming around anymore.

Do you remember that book, "Heather Has Two Mommies"? That was my life. My mom, her partner, and I lived in a cozy little house in the 'burbs of a very liberal and open-minded area. Her partner treated me as if I was her own daughter. Along with my mom's partner, I also inherited her tight-knit community of gay and lesbian friends. Or maybe they inherited me?

Either way, I still feel like gay people are my people. I've learned so much from you. You taught me how to be brave, especially when it is hard. You taught me empathy. You taught me how to listen. And how to dance. You taught me not be afraid of things that are different. And you taught me how to stand up for myself, even if that means I stand alone.

I'm writing to you because I'm letting myself out of the closet: I don't support gay marriage. But it might not be for the reasons that you think.

Children Need a Mother and Father

It's not because you're gay. I love you, so much. It's because of the nature of the same-sex relationship itself.

Growing up, and even into my 20s, I supported and advocated for gay marriage. It's only with some time and distance from my childhood that I'm able to reflect on my experiences and recognize the long-term consequences that same-sex parenting had on me. And it's only now, as I watch my children loving and being loved by their father each day, that I can see the beauty and wisdom in traditional marriage and parenting.

Same-sex marriage and parenting withholds either a mother or father from a child while telling him or her that it doesn't matter. That it's all the same. But it's not. A lot of us, a lot of your kids, are hurting. My father's absence created a huge hole in me, and I ached every day for a dad. I loved my mom's partner, but another mom could never have replaced the father I lost.

I grew up surrounded by women who said they didn't need or want a man. Yet, as a little girl, I so desperately wanted a

daddy. It is a strange and confusing thing to walk around with this deep-down unquenchable ache for a father, for a man, in a community that says that men are unnecessary. There were times I felt so angry with my dad for not being there for me, and then times I felt angry with myself for even wanting a father to begin with. There are parts of me that still grieve over that loss today.

I'm not saying that you can't be good parents. You can. I had one of the best. I'm also not saying that being raised by straight parents means everything will turn out okay. We know there are so many different ways that the family unit can break down and cause kids to suffer: divorce, abandonment, infidelity, abuse, death, etc. But by and large, the best and most successful family structure is one in which kids are being raised by both their mother and father.

Why Can't Gay People's Kids Be Honest?

Gay marriage doesn't just redefine marriage, but also parenting. It promotes and normalizes a family structure that necessarily denies us something precious and foundational. It denies us something we need and long for, while at the same time tells us that we don't need what we naturally crave. That we will be okay. But we're not. We're hurting.

Kids of divorced parents are allowed to say, "Hey, mom and dad, I love you, but the divorce crushed me and has been so hard. It shattered my trust and made me feel like it was my fault. It is so hard living in two different houses." Kids of adoption are allowed to say, "Hey, adoptive parents, I love you. But this is really hard for me. I suffer because my relationship with my first parents was broken. I'm confused and I miss them even though I've never met them."

But children of same-sex parents haven't been given the same voice. It's not just me. There are so many of us. Many of us are too scared to speak up and tell you about our hurt and pain, because for whatever reason it feels like you're not listening. That you don't want to hear. If we say we are hurting because we were raised by same-sex parents, we are either ignored or labeled a hater.

This isn't about hate at all. I know you understand the pain of a label that doesn't fit and the pain of a label that is used to malign or silence you. And I know that you really have been hated and that you really have been hurt. I was there, at the marches, when they held up signs that said, "God hates fags" and "AIDS cures homosexuality." I cried and turned hot with anger right there in the street with you. But that's not me. That's not us.

I know this is a hard conversation. But we need to talk about it. If anyone can talk about hard things, it's us. You taught me that.

Heather Barwick was raised by her mother and her mother's same-sex partner. She is a former gay-marriage advocate turned children's rights activist. She is a wife and mother of four rambunctious kids.