

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO**

**MASTERPIECE CAKESHOP  
INCORPORATED, a Colorado  
corporation; and  
JACK PHILLIPS,  
Plaintiffs,**

**Intervening Plaintiffs  
GRACE HARLEY, Special Forces Of  
Liberty, SGM JOHN GUNTER JR.,  
Special Forces Of Liberty, 1LT  
CHRIS SEVIER ESQ., De Facto  
Attorney Generals, WHITNEY  
KOHL, Special Forces Of Liberty**

**V.**

**AUBREY ELENIS, Director of the  
Colorado Civil Rights Division, in her  
official and individual capacities;  
ANTHONY ARAGON, as member of  
the Colorado Civil Rights  
Commission, in his official capacity;  
MIGUEL “MICHAEL” RENE  
ELIAS, as member of the Colorado  
Civil Rights Commission, in his  
official capacity;  
CAROL FABRIZIO, as member of  
the Colorado Civil Rights  
Commission, in her official capacity;  
CHARLES GARCIA, as member of  
the Colorado Civil Rights  
Commission, in his official capacity;  
RITA LEWIS, as member of the  
Colorado Civil Rights Commission, in  
her official capacity;  
JESSICA POCOCK, as member of**

**Case No:  
1:18-cv-02074-WYD-STV**

<p><b>the Colorado Civil Rights Commission, in her official capacity; CYNTHIA H. COFFMAN, Colorado Attorney General, in her official capacity; and JOHN HICKENLOOPER, Colorado Governor, in his official capacity, Defendants.</b></p>		
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**MOTION FOR LEAVE TO FILE AND PERMIT AMERICAN FAMILY ASSOCIATION AND WW BRIDAL TO APPEAR AMICUS CURIAE IN SUPPORT OF THE PLAINTIFFS**

NOW COMES, WW Bridal and the American Family Association of PA, by and through Counsel, respectfully seeking leave to file *Amicus Curiae*. The attached brief supports the Plaintiffs' causes of action but for reasons that are asserted by the Intervening Plaintiffs. If Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) are unconstitutional and unenforceable against the Plaintiffs, then so are similar proposed statutes in Pennsylvania that put WW Bridal out of business. The *amicus* has an interest in the outcome of this case, since the *amicus*' profession has been damaged by the threat of enforcement of statutes that are just like Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) in Pennsylvania. See the Declaration of Boucher and the attached timeline of events that put a Mother and her daughters out of business for sticking to their Christian faith, while refusing to convert to the religious moral relativism promoted by the Defendants.

*Amicus* appears to address whether marriage policies must be based on the historic norm as the First Amendment Establishment Clause requires or based on the total equality norm as the Fourteenth Amendment's Equal Protection and Substantive Due Process Clauses require. If gay marriage policies are unconstitutional so are Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev.

Stat. § 24-34-303(1)(b)(I)-(III). The fact of the matter is that any state or federal policy that endorses LGBTQ ideology or treats it as anything other than religious in nature is unconstitutional for failing the prongs of the *Lemon* Test. Alliance Defending Freedom’s approach to this case is to float a bunch of emotional appeals that say one thing “poor Jack.” It is an emotionally exploitative strategy that is crafted to raise donations. There is nothing wrong with that. But Jack Phillips is not the only victim of statutes like Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III). The story of WW Bridal is far more severe. The Attorney who would represent WW Bridal in Federal District Court, Chris Sevier, cannot even do so because the Tennessee commission targeted him for the same reasons that the Colorado Civil Rights Commission targeted Jack Phillips - he refuses to respect and condone Secular Humanist ideology.

Admittedly, it is a long standing jurisprudence that “a plaintiff is the master of his own complaint.” Normally, the *amicus* would wait until a party had filed a motion for summary judgment before filing a brief. However, this brief is timely under the totality of the circumstances because the *amicus*’ brief encourages the Plaintiffs to amend their complaint pursuant to FRCP 15 to assert a cause of action against the Defendants that Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) violates the First Amendment Establishment Clause for failing the prongs of the *Lemon* Test.<sup>1</sup> The *Amicus* should be granted

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<sup>1</sup>What Is The Lemon Test?

<https://soundcloud.com/user-450634204/what-is-the-lemon-test>

To pass muster under the Establishment Clause, a practice must satisfy the *Lemon* test, pursuant to which it must: (1) have a valid secular purpose; (2) not have the effect of advancing, endorsing, or inhibiting religion; and (3) not foster excessive entanglement with religion. *Id.* at 592 (citing *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). It is important to understand that government action “violates the Establishment Clause if it fails to satisfy any of these prongs.” *Edwards*, 482 U.S. 578 at 583; *Agostini v. Felton*, 521 U.S. 203, 218 (1997). In view of the

leave to file because the brief explains how Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev.

Stat. § 24-34-303(1)(b)(I)-(III) fails prong one of *Lemon* in its making.<sup>2</sup> The *Amicus* should be

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testimony of ex-gays, medical professionals, and ministers, gay marriage policy, sexual orientation discrimination statutes, transgender bathroom ordinances, and conversion therapy bans violate all three prongs of the *Lemon* test by a landslide in their making and in their enforcement. It is not a close call. There are millions of taxpayers who believe that all forms of parody marriage are immoral. They also believe that to enable acts of immorality is itself an act of immorality. It is coercive for the tax dollars of non-observers of Secular Humanism to be used to endorse parody marriages that do not involve one man and one woman because it makes them feel culpable of condoning immorality. When a person is legally married they are entitled to what is called a “constellation of benefits” that flows from the general fund. These taxpayers in this State have standing to enjoin the State from making or enforcing parody marriage policy, sexual orientation discrimination statutes, transgender bathroom ordinances, and conversion therapy bans because the policies themselves are (1) a non-secular sham that (2) have the effect of creating an indefensible legal weapon against non-observers of the religion of Secular Humanism, while (3) serving to excessively entangle the government with the religion of Secular Humanism. Policies that promote parody marriages do not accomplish their intended purposes and are based on a series of unproven faith-based assumptions and naked assertions that are implicitly religious and inseparable from the Secular Humanism.

<sup>2</sup> How Does Gay Marriage Policy, Colo. Rev. Stat. § 24-34-601(2)(a), and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) Fail Prong One Of The Lemon Test?

<https://soundcloud.com/user-450634204/how-does-gay-marriage-policy-fail-prong-one-of-the-lemon-test>

The State’s enforcement of gay marriage policy and the State’s enforcement or perspective enforcement of sexual orientation discrimination statutes, transgender bathroom ordinances, or conversion therapy bans violate prong one of *Lemon* because those policies are not “secular” and because they are the ultimate “sham” for purposes of the Establishment Clause, since they have an underlying primary religious objective. At the core of the “Establishment Clause is the requirement that a government justify in secular terms its purpose for engaging in activities which may appear to endorse the beliefs of a particular religion.” *ACLU v. Rabun Cnty. Chamber of Commerce, Inc.*, 698 F.2d 1098, 1111 (11th Cir. 1983). This secular purpose must be the “pre-eminent” and “primary” force driving the government’s action, and “has to be genuine, not a sham, and not merely secondary to a religious objective.” *McCreary Cnty, Ky. v. ACLU of Ky.*, 545 U.S. 844 (2005). There are at least seven reasons why legally recognized gay marriage violates prong one of *Lemon* provided in motions for summary judgment and *amicus* briefs posted under the tab called “Law for Attorney Generals.” First, in the wake of *Obergefell* there has not been a land rush on gay marriage. The raw numbers tell the tale. Prior to the *Obergefell* decision two years ago, the 7.9 percent of gays who were married would have amounted to 154,000 married gay couples. Two years later, this had grown to 10.2 percent or 198,000 married couples. Second, gay marriage policies are a total sham because while there has not been a land rush on gay marriage, there has been a land rush on Christian persecution. Third, while there has not been a land rush on gay marriage, there has been a land rush by Secular Humanists to

allowed to file a belief because it provides evidence that Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) fails prong II of *Lemon* for creating an indefensible legal weapon against all non-observers of the religion of Secular Humanism, not just the Plaintiffs.<sup>3</sup> It is obvious to everyone that Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat.

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infiltrate elementary schools with the purpose of indoctrinating minors to the Secular Humanism ideology on sex, faith, morality, marriage, and truth. Fourth, the fact that majority in *Obergefell* pretended that gay rights were civil rights like race-based civil rights are, when race-based civil rights are actually based on immutability, shows that gay marriage policy and all other pro-gay policies are sham. Fifth, the fact that in the wake of *Obergefell* self-identified homosexuals continue to protest ex-gay conventions because the testimony of ex-gays causes the legal basis behind the fake gay civil rights plight to implode shows that the government's endorsement of LGBTQ ideology is a sham. Sixth, the fact that parody marriages have never been a part of American history and tradition and that gay marriage was basically illegal until *Lawrence v. Texas*, 539 U.S. 558 (2003) recently overturned *Bowers v. Hardwick*, 478 U.S. 186 (1986), and yet the Court pretended otherwise by monkeying with the Fourteenth amendment's Substantive Due Process Clause shows that gay marriage policy is a sham. The purpose of the government's decision to entangle itself with the LGBTQ church was to promote tolerance and equality for a pretend people group, and because the "stated purpose [of the government's entanglement with the LGBTQ church has] not [been] actually furthered...then that purpose [must be] disregarded as being insincere or a sham." *Church of Scientology v. City of Clearwater*, 2 F.3d 1514, 1527 (11th Cir. 1993).

<sup>3</sup> How Does Gay Marriage Policy, Colo. Rev. Stat. § 24-34-601(2)(a), and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) Fail Prong Two Of The Lemon Test

<https://soundcloud.com/user-450634204/how-does-gay-marriage-policy-fail-prong-two-of-the-lemon-test>

Under this second prong of the *Lemon* test, courts ask, "irrespective of the . . . stated purpose, whether [the state action] . . . has the primary effect of conveying a message that the [government] is advancing or inhibiting religion." *Indiana Civil Liberties Union v. O'Bannon*, 259 F.3d 766, 771 (7th Cir. 2001). The "effect prong asks whether, irrespective of government's actual purpose," *Wallace v. Jaffree*, 472 U.S. 38, 56 n.42 (1985), the "symbolic union of church and state...is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices." *School Dist. v. Ball*, 473 U.S. 373, 390 (1985); see also *Larkin v. Grendel's Den*, 459 U.S. 116, 126-27 (1982)(even the "mere appearance" of religious endorsement is prohibited).

In the wake of the *Obergefell* and *Windsor* putsch, there has not been a land rush on gay marriage, but there has been a land rush by Secular Humanists to persecute Christians for refusing to endorse a religious worldview that non-observers of Secular Humanism believe is self-evidently immoral, obscene, and subversive to human flourishing. While "gay marriage" is "fake marriage," the government's endorsement of homosexual orthodoxy has led to the "very real" persecution of Christians. The unconstitutional codification of the fake gay civil rights

§ 24-34-303(1)(b)(I)-(III) offend prong two of Lemon but Alliance Defending Freedom because they have the same financial incentive that the ACLU has for not acknowledging that fact. The *amicus* does not care about money. The *amicus* only cares about the same thing that this Honorable Court should - justice and strengthening the rule of law. The *amicus* should be granted leave because the brief provides arguments for how the enforcement of gay marriage policy, Colo. Rev. Stat. § 24-34-601(2)(a), and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) violate prong III of *Lemon* for excessively entangling the government of Secular Humanism.<sup>4</sup> The Court

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movement amount to an indefensible “legal weapon that no [Christian or non-observer of Secular Humanism] can obtain.” *City of Boerne v. Flores*, 521 U.S. 507 (1997). A “gay marriage license” issued by the state amounts to a government issued “license to oppress.” That is the effect of the government's unconstitutional entanglement with the religion of Secular Humanism. It is an evil that the Establishment Clause does not allow. The CADA statute that Jack Phillips was sued under violated the Establishment Clause in its making (it took state action to create it) and in its enforcement for failing prong two of Lemon. Alliance Defending Freedom refused to make that argument because they are more interested in defending donations and persecution is good for their business model.

<sup>4</sup> [How Does Gay Marriage Policy, Colo. Rev. Stat. § 24-34-601\(2\)\(a\), and Colo. Rev. Stat. § 24-34-303\(1\)\(b\)\(I\)-\(III\), Fail Prong Three Of Lemon?](https://soundcloud.com/user-450634204/how-does-gay-marriage-policy-fail-prong-three-of-lemon)

<https://soundcloud.com/user-450634204/how-does-gay-marriage-policy-fail-prong-three-of-lemon>

The State's enforcement of gay marriage policy or its potential enforcement of transgender bathroom policies, conversion therapy bans, or sexual orientation discrimination statutes excessive entangles the government with the religion of Secular Humanism because it enshrines one narrow and exclusive version postmodern western individualistic moral relativism, i.e. Secular Humanism, as the irrefutable supreme national religion. *In re Young*, 141 F.3d 854 (8th Cir 1998); *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 349 (2d Cir. 2007). In the wake of the *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) and *United States v. Windsor*, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013) judicial putsch, there has not been a land rush on gay marriage, but there has been a land rush by Secular Humanists to infiltrate elementary schools with the purpose of indoctrinating minors to a worldview on marriage, morality, and sex that is questionably real, moral, decent, and non-secular. The Supreme Court has emphasized that there are “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools,” *Lee v. Weisman*, 505 U.S. 577, 592 (1992). The Federal courts have thus “been particularly vigilant in monitoring compliance with the Establishment Clause” in the public-school context, see *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). The legislature has a duty under Article VI to be vigilant as well to keep Secular Humanists from indoctrinating minors to Secular Humanist's religious worldview. The

“can take judicial notice of legislative facts.” *Landell v. Sorrell*, 382 S3d. 91 (2nd Cir. 2004);;  
*Lebron v. Secretary of Florida*, 772 F3d 1352 (11th Cir 2014);; Brand v. Motley, 526 F3d 921  
 (6th Cir. 2008). Leave to file should be granted because the *amicus* is working with the Special  
 Forces of Liberty and De Facto Attorney Generals to compel the Colorado House and Senate  
 introduce an act to be entitled the Marriage And Constitution Restoration Act in a manner that  
 will better enable the red states and the federal Congress to pass the same the bill in a way that  
 will cause Colo. Rev. Stat. § 24-34-601(2)(a), Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III), and  
 gay marriage policy to be done away with for good.<sup>5</sup> In the scheme of things, these proceedings

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government's endorsement of gay marriage policy has had the effect of entitling Secular  
 Humanists to impose their religious beliefs on minors in public schools in a manner that  
 demonstrates that gay marriage policy and sexual orientation statutes are religious shams that  
 violate the Establishment Clause. Because tax dollars are flowing from the general fund to  
 finance the distribution of a constellation of benefits to self-identified homosexuals who legally  
 marry and because there are hundreds of thousands of taxpayers in every state who do not want  
 to play a role in enabling parody marriages, the enforcement of gay marriage policy fails prong  
 three of the Lemon Test for excessively entangling the government with the religion of Secular  
 Humanism and therefore violates the First Amendment Establishment Clause.

#### What Is Religion Really?

<https://soundcloud.com/user-450634204/what-is-religion-really>

All “religion” amounts to is a a set of answers to the greater questions, like “why are we here”  
 and “what should humans be doing.” “Religion” is, therefore, a set of unproven truth claims and  
 naked assertions that can only be taken on faith. The Establishment Clause was never designed to  
 single out “institutionalized religions,” like Christianity and Judaism, which tends to parallel  
 transcultural self-evident truth that serves as the master narrative of the Constitution itself. The  
 Establishment Clause also was designed - if not more so - to prohibit the government from  
 legally codifying the truth claims floated by “non-institutionalized religions” as well, to include  
 the truth claims asserted by the religion of postmodern western moral relativism and expressive  
 individualism. Currently, “secularism” is having a full blown crisis because “secularism” is a  
 “religion” in most respects that only pretends to be neutral.

<https://soundcloud.com/user-450634204/the-marriage-and-constitution-restoration-act-summary-overview>

#### Does the Marriage And Constitution Restoration Act single out gay marriage?

<https://soundcloud.com/user-450634204/does-the-marriage-and-constitution-restoration-act-single-out-gay-marriage>

There are some bills that single out the LGBTQ community or gay marriage. But this is not one  
 of them. This act does not single out self-identified homosexuals or gay marriage. This act bars

are just a formality. But because the Judiciary played a huge role in creating this LGBTQ/transgender nightmare that has damaged the public's health, this Court should get out ahead of the issues and side with the Plaintiffs by providing them with relief that does not just impact them, but the entire nation. The governments entanglement with the LGBTQ church is a ticking time bomb that is going to implode despite the temper tantrums that LGBTQ activists and dishonest Democrats put on.

The fact of the matter is that continued attempts to arbitrarily limit marriage to two people in an effort to sneak around the Establishment Clause will no long fly. Attempts to arbitrarily limit marriage to two people has always been a non-secular sham that is without merit and is just an excuse for Democrats to entangle the government with the ideology floated by the largest denomination within the church of Secular Humanism.<sup>6</sup> With Justice Kennedy stepping

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the State from endorsing, recognizing, respecting, or favoring any form of marriage that does not involve one man and one woman. This act acknowledges that all citizens can have wedding ceremonies of all kinds and live as married people do. It is simply the case that the government is prohibited from being in the parody marriage business.

<sup>6</sup> [Why Can't The States Limit Marriage To Two Consenting People?](https://soundcloud.com/user-450634204/why-cant-the-state-limit-marriage-to-two-consenting-people)

*<https://soundcloud.com/user-450634204/why-cant-the-state-limit-marriage-to-two-consenting-people>*

The Establishment Clause of the First Amendment of the United States Constitution prohibits all of the States from limiting marriage to two consenting adults. It is an arbitrary law state consideration that is undone by the holding in Obergefell and the Fourteenth Amendment if Obergefell was not a sham. Since the Supreme Court pretended that marriage is an “existing right,” “individual right,” and “fundamental right” based on a “personal choice” for self-identified homosexuals under the Fourteenth Amendment, then it follows that marriage must be an “existing right,” “individual right,” and “fundamental right” based on a personal choice for self-identified polygamists, zoophiles, and objectophiles as well under the Fourteenth Amendment. *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (fundamental right); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 63940 (1974) (personal choice); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (existing right/individual right); *Lawrence v. Texas*, 539 U.S. 558 (2003) (intimate choice). Otherwise, gay marriage plight is just a sham that is really barred by the Establishment Clause. The bottom line is that the Secular Humanists on the court are guilty of monkeying with the Fourteenth Amendment in a manner that makes Secular Humanists judges an internalized threat to American Democracy. The attempt by the blue states to limit marriage to two people is

down in the wake of *Masterpiece Cakeshop v. the Colorado Civil Rights Commission*, 584 U. S.

\_\_\_\_ (2018), it is game over when it comes to the continuation of what the Honorable Justice

Scalia correctly called an “egotistic....putsch” that constitutes a “threat to American

Democracy.”<sup>7</sup> The Plaintiffs should amend the complaint and include an Establishment Clause

claim because the Supreme Court has already recognized that Secular Humanism is a religion.<sup>8</sup>

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merely another arbitrary marriage ban that violates the Fourteenth Amendment, if the Obergefell decision was valid. But it was not. The First Amendment has exclusive jurisdiction in informing the states how to respond to all marriage requests that do not involve one man and one woman and how to respond to self-asserted sex-based identity narratives that are questionably real, moral, and decent.

<sup>7</sup> What Was The Real Implication Of The Masterpiece Cakeshop Decision?

<https://soundcloud.com/user-450634204/what-was-the-real-implication-of-the-masterpiece-cakeshop-decision>

The 7 to 2 decision in *Masterpiece Cakeshop v. the Colorado Civil Rights Commission*, 584 U. S. \_\_\_\_ (2018) shows that the decisions in *Obergefell* and *Windsor* were a political ploy and an unprincipled misapplication of the Fourteenth and Fifth Amendments. There is no such thing as "partial civil rights movements." If the “gay civil rights movement” was an actual a “civil rights movement,” then Jack Phillips should have been required to defy his religious beliefs and bake the cake for the self-identified homosexual couple. Secular Humanists on the Supreme Court have been behaving like children who have been caught in a lie because they have been exposed for having monkeyed with the Fourteenth Amendment by misapplying it to create law that entangles the government with Secular Humanism. Imagine if after the race-based civil rights movement of the 1960s, blacks could still be barred from military service or they still could be required to ride on the back of the bus. Discrimination on the basis for color is an evil that cuts across aspects of society because unlike sexual orientation it really is based on immutability and genetics. The gay civil rights movement is about Secular Humanists entangling the government with their private code to ratify a moral superiority complex that is dangerous, desensitizing, depersonalizing, dehumanizing, and destructive and most importantly non-secular. The fake gay civil rights movement is an effort by devout moral relativists to use government to explain away the natural feelings of shame and inadequacy that come from engaging in forms of sex that violate the givenness of our nature and the truth about the way things are and the way we are. Instead of trying to make all sides happy, the Federal Court judges should have just done their job by enforcing the Constitution as it was written and not as how devout Secular Humanists wished that it was.

<sup>8</sup> What Is The Religion Of Secular Humanism?

<https://soundcloud.com/user-450634204/what-is-the-religion-of-secular-humanism>

Ex-gays, medical professionals, and licensed ministers have provided testimony under oath in support of this bill that sexual orientation has nothing to do with immutability or the Fourteenth Amendment, but rather, sexual orientation is a religious orthodoxy that is inseparably linked to

the religion of Secular Humanism. The United States Supreme Court (and most of the Federal Courts of appeals) have held that Secular Humanism is religion for purposes of the Establishment Clause. See the Supreme Court decisions in *Torcaso v. Watkins*, 367 U.S. 488 (1961) and *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). ( “Among religions in this country, which do not teach what would generally be considered a belief in the existence of God, are Buddhism, Toaism, Ethical Culture, Secular Humanism, and others.” See Also *Washington Ethical Society v. District of Columbia*, 101 U.S. App. D.C. 371, 249 F. 2d 127 (1957); 2 *Encyclopaedia of the Social Sciences*, 293; J.Archer, *Faiths MenLive By* 120—138, 254—313 (2d ed. revised by Purinton 1958); Stokes & P feffer, *supra*, n.3 ,at 560. *Welsh v. U.S.*, 1970398 U.S. 333 (U.S. Cal. June 15);; *Wells v. City and Cnty. of Denver*, 257 F.3d 1132 (2001)). There is hardly anything “secular” about the religion of “Secular Humanism.” The first amendment was never just designed to single out institutionalized religions to keep the government from respecting its doctrine. The Establishment Clause was designed, if not more so, to prevent moral relativists from using government to enshrine their Secular Humanist dogma. In *Real Alternatives*, the Seventh Circuit Court of Appeals stated: “w e detect a difference in the “philosophical views” espoused by [the litigants], and the “secular moral system[s]...equivalent to religion except for non-belief in God” that Judge Easterbrook describes in *Center for Inquiry*, 758 F.3d at 873. There, the Seventh Circuit references organized groups of people who subscribe to belief systems such as Atheism, Shintoism, Janism, Buddhism, and secular humanism, all of which “are situated similarly to religions in everything except belief in a deity.” *Id.* at 872. “These systems are organized, full, and provide a comprehensive code by which individuals may guide their daily activities.” Instead having across or the ten commandments, the LGBTQ church has the gay pride flag and their own commandments,such as if you disagree with LGBTQ ideology you are a bigot worth marginalizing. The unproven naked truth claims evangelized by the LGBTQ church such as (1) there is a gay gene, that (2) people can be born in the wrong body, that (3) same-sex sexual activity checks out with the human design, that (4) same-sex buggery is not immoral, and that (5) people come out of the closet are baptized gay consists of a series of unproven faith based assumptions that are implicitly religious and take a huge amount of faith to believe are even plausible. Here is a video on Secular Humanism is a religion.

<https://www.youtube.com/watch?v=TeSM7cbXSEI>;

[What Is The Problem With The ACLU And The Freedom From Religion Foundation?](https://soundcloud.com/user-450634204/what-is-the-problem-with-the-aclu-and-the-freedom-from-religion-foundation)

<https://soundcloud.com/user-450634204/what-is-the-problem-with-the-aclu-and-the-freedom-from-religion-foundation>

The ACLU and Freedom From Religion Foundation are constantly pushing to entangle the government with the religion of Secular Humanism that they ardently subscribe to. Both of these organizations are too intellectually blind and dishonest to see or admit that they have been working for decades to entangle the government with their religion - establishing Secular Humanism as the national supreme religion. The problem for the ACLU and the Freedom From Religion Foundation is that the Supreme Court and just about every Circuit Court has held that Atheism is a religion. *Wells v. City and Cnty. of Denver*, 257 F.3d 1132 (2001). The reason why in *Van Orden v. Perry*, 545 U.S. 677 (2005), Justice Breyer in his concurrence stated that "the Establishment Clause does not compel the government to purge from the public sphere all that in any way partakes of the religious" because "[s]uch absolutism is not only inconsistent with our national traditions, but would also tend to promote the kind of social conflict the Establishment

The legislatures are recognizing it as well through legislative instruments authored by the Special Forces Of Liberty created directly out of a series of federal actions.

Leave should be granted because this brief seeks to demonstrate that sexual orientation has nothing to do with genetics, science, immutability, the Fourteenth Amendment, Equal Protection, or Substantive Due Process. The Defendants desire to live in a persistent state of denial creates a tab that taxpayers like Jack Phillips should not be required to pay. Leave should be granted because the *amicus* is defending the integrity of the race-based civil rights movement lead by Pastor Martin Luther King Jr, which the political and Constitutional malpractice of the Defendants threatens.<sup>9</sup> From a medical standpoint, race is based on genetics and immutability. Sexual orientation is not. Leave should be granted because when the Defendants suggest “love is love,” it does not mean what the public thinks.<sup>10</sup> This brief ties in with the briefs filed by the

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Clause seeks to avoid" was because western postmodern moral relativism is a religion whose faith-based dogmatic unproven truth claims cannot be respected through government recognition.

<sup>9</sup> Anyone who compares the "gay civil rights plight" to the "race-based civil rights plight," whereas the race-based civil rights plight was actually based on immutability, only to not really mean it, has engaged in acts of fraud and racial animus in-kind that manages to be emotionally, intellectually, sexually, and racially exploitative. To oppose the government's unconstitutional endorsement of homosexual ideology is to defend the civil rights movement lead by Pastor Martin Luther King Jr. To embrace the fake gay rights movement is deeply offensive to people of color who were required at one point to walk to school, drink from the colored water fountain, and undergo mistreatment for characteristics that are without question based on genetics and immutability, not emotional faith-based beliefs. If a government official supports the government's endorsement of gay rights, they are refusing to think logically and can be accused of bigotry in-kind. Legislators support this act support the rule of law and the supremacy of the United States Constitution. Those who oppose this act that balances the Free Exercise Clause with the Establishment Clause are on the wrong side of history and reality. While there are thousands of ex-gays, there is no such thing as an “ex-black person.” Help us safeguard and restore the integrity of the civil rights movement lead by Dr. Martin Luther King Jr. by standing behind the Marriage And Constitution Restoration Act.

<sup>10</sup> [What Does Love Is Love Really Mean?](https://soundcloud.com/user-450634204/what-does-love-is-love-really-mean)

<https://soundcloud.com/user-450634204/what-does-love-is-love-really-mean>

When people say that "love is love" what they really mean is that they are perfectly ok with

National Alliance of Black Pastors, the Center for Garden State Families, and Doctors Defending Reparative Therapy, all of which make different points of law and point to different undisputed facts that will help the Court find the law, as Article III requires. It is important that this brief be in the record because it is the position of *Amicus* that for any government official to falsely equate the gay plight to the race based civil rights movement lead by Pastor Martin Luther King is an act of intellectual dishonesty that amounts to racism in kind in a manner that manages to be sexually, intellectually, emotionally, and racially exploitative. It is true that black lives matter and that all lives matter, and it matters that the race-based civil rights movement not be exploited by people who are really just advocates for perversion, the erosion of community standards of decency, and the governments entanglement with a religion that has been the catalyst for most of the evil since the inception of humanity.<sup>11</sup> *Amicus* has a vested interest in defending the integrity

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government assets being used to crush anyone who believes that homosexuality is immoral or subversive to human flourishing. Such a position is categorically "unloving." It is more accurate to say that "love without truth is shallow sentimentality." One thing that the fake gay civil rights movement has managed to prove is that people who are "intolerant" of "intolerant people" are "intolerant;" people who are "judgmental" against "judgmental people" are "judgmental;" people who are "dogmatic" about not being "dogmatic" are themselves "dogmatic." As Justice Kennedy stated in *Masterpiece Cakeshop*, "tolerance has to cut both ways."

<sup>11</sup> Do gay people exist or do only self-identified gay people exist?

<https://soundcloud.com/user-450634204/do-gay-people-exist>

There is no such thing as "homosexuals." There are only some people who "self-identify" as "homosexual" for at least some period of time. While people have the right under the Free Exercise clause to form self-asserted sex-based identity narratives, the Establishment Clause prohibits the government from respecting and recognizing identify narratives that are questionably real, moral, and decent. Sex-based identity narratives are semi-religious in nature. While there are no such thing as "ex-blacks," there are thousands of ex-gays. The First Amendment in balancing the Free Exercise Clause and the Establishment Clause has exclusive jurisdiction in resolving the question as to which marriages the States can recognize and how the States must respond to self-asserted sex-based identify narratives that are questionably real, moral, and have a tendency to erode community standards of decency. It is intellectually, racially, sexually, and emotionally dishonest for Secular Humanists advocate the unprincipled ploy that the Fourteenth Amendment has anything to do with answering how the States must legally define marriage.

of the race-based civil rights movement and in defending ex-gays who have converted to a new identity narrative from being socially marginalized and violently oppressed by intolerant brainwashed Secular Humanists, who do not even believe in objective right and wrong.

Comparing the dilemmas of same-sex couples to the centuries of discrimination faced by Black Americans is a deceptive distortion of our country's culture and history. The disgraces in our nation's history pertaining to the civil rights of Black Americans are unmatched. No other class of individuals, including individuals who are same-sex, objectophilic, or polygamously attracted, have ever been enslaved, or lawfully viewed not as human, but as property.<sup>12</sup> Self-identified homosexuals, polygamists, transgenders, zoophiles and objectofile have never lawfully been forced to attend different schools, walk on separate public sidewalks, sit at the back of the bus, drink out of separate drinking fountains, denied their right to assemble, or denied their voting rights. *Id.* The legal history of these disparate classifications, i.e., immutable racial discrimination and same-sex attraction, is incongruent. Yet, some devout Moral Relativists in office have mistakenly understated this incongruence to manufacture and mandate the ill-conceived and apparently limitless concept of "marriage equality."

This brief, in-part, focuses on how *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) was a sham because the Supreme Court lacked subject matter jurisdiction to impose gay marriage just as the Defendants cannot impose Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III). This brief makes the case that the Fourteenth and Fifth Amendment Due Process and Equal Protection Clauses have nothing to do with how the states are permitted to

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<sup>12</sup> See, e.g., Stacy Swimp, *LGBT Comparison of Marriage Redefinition to Historical Black Civil Rights Struggles is Dishonest and Manufactured* (March 7, 2014), (<http://stacyswimp.net/2014/03/07/lgbt-comparison-of-marriage-redefinition-to-historical-Black-civil-rights-struggles-is-dishonest-and-manufactured>).

define marriage and react to self-asserted sex-based identity narratives that are questionably real, moral, decent, and have the tendency to erode community standards of decency. It follows that if gay marriage policy is unconstitutional and unenforceable under the Establishment Clause under the “historic norm,” then so are Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) on the same Constitutional prescription. A State has no responsibility to promote any person’s sexual proclivities, whether heterosexual, homosexual, or otherwise—and certainly is not required to accept that one’s sexual conduct preference is the same as an immutable characteristic like race. The Supreme Court in *Obergefell* should have upheld the State’s marriage bans because the underlying legal basis for the marriage bans was the First Amendment Establishment Clause. Plus the states have a compelling interest to uphold community standards of decency as the marriage bans and as Jack Phillips has done at great expense to himself.<sup>13</sup> If the Attorney General actually understood her job, she would know that all forms of parody marriage erode community standards of decency and affront the obscenity

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<sup>13</sup> [What Was The Real Purpose Behind The Original Gay Marriage Bans?](https://soundcloud.com/user-450634204/what-was-the-real-purpose-behind-the-original-gay-marriage-bans)

<https://soundcloud.com/user-450634204/what-was-the-real-purpose-behind-the-original-gay-marriage-bans>

The original legal basis behind State’s bans on parody marriages rested on the notion that parody marriages erode community standards of decency. The State’s Constitution and the Supreme Court of the United States has made it clear that the States have a compelling interest to uphold community standards of decency. *Paris Adult Theatre I v. Slaton*, 413 US 49 (1973). Courts have held that “any school boy knows that a homosexual act is immoral, indecent, lewd, and obscene. Adult persons are even more conscious that this is true.” *Schlegel v. United States*, 416 F. 2d 1372, 1378 (Ct. Cl. 1969). The Supreme Court has long since held that “to simply adjust the definition of obscenity to social realities has always failed to be persuasive before the Courts of the United States.” *Ginsberg v. New York*, 390 U.S. 629, 639–40, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968), *Mishkin v. State of New York*, 383 U.S. 502, 509, 86 S. Ct. 958, 16 L. Ed. 2d 56 (1966), and *Bookcase, Inc. v. Broderick*, 18 N.Y.2d 71, 271 N.Y.S.2d 947, 951, 218 N.E.2d 668, 671 (1966). Community standards do not evolve but groups of people can become desensitized to objective immorality. While that is a state law argument, what is without question is that all parody marriage policies and sexual orientation discrimination states fail all three prongs of the Lemon test and violate the Establishment Clause in their making and in their enforcement.

codes which she is charged to enforce. So does the enforcement of Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) because of “sexula orientation” discrimination. The fact that the Defendants do not know that homosexual and transgenderism are obscene, immoral, and non-secular demonstrates that they lack the character fitness to be in office and are a danger to the public’s safety, health, and welfare. By rejecting the transgenders and self-identified homosexuals’ requests imposed on Masterpiece Cake shop, the *amicus* believes that the Plaintiffs are fulfilling a narrowly tailored compelling state interest. Anyone with a semblance of common sense can see that. But the hallmark of the Colorado Civil Rights Commission is that it is intellectually blind because it has allowed itself to unwisely become brainwashed through a subscription to the unexamined assumption of the superiority of our cultural moment. By allowing the *amicus* to file it might illuminate the truth and help the blind see so that human flourishing can be advanced in a meaningful way in the formation of a more perfect union. Here is the truth - there is no such thing as “gay people.” There are only some people who self-identify as gay for some period of time. Thousands of those people realize that they have been duped, having only conformed to society’s messages only to discover a great truth allows them to be set free from the lies floated by the LGBTQ community that the Defendants promote for self-serving reasons.

“Although there is no formal rule governing the filing of *amicus curiae* briefs, district courts possess the inherent authority to grant or refuse leave to *amicus* parties.” *Georgia Aquarium, Inc. v. Pritzker*, 135 F.Supp.3d 1280 (N.D.Ga.2015). “A district court exercises wide discretion in deciding whether to grant or deny leave to file an *amicus* brief.” *United States v. Board of County Commissioners of the County of Otero*, 184 F.Supp.3d 1097 (D.N.M. 2015).

See also: Brief of an *Amicus Curiae* FRAP Rule 29;; Pleadings Allowed; Form of Motions and Other Papers FRCP Rule 7. *Amicus* should be granted leave because this case has the potential to strike down all sexual orientation statutes like Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) that exist in other states as the United States First Amendment Establishment Clause requires based on arguments that the *amicus* and the Special Forces Of Liberty have been making before a litany of legislative bodies. While self-identified homosexuals force homosexual orthodoxy on the whole of America, it will be the testimony of ex-gays who were transformed by the same God that Jack Phillips worships that will completely end the governments entanglement with LGBTQ ideology - which does tend to cultivate mental illness. Furthermore, leave should be granted because the *amicus* is providing the Constitutional basis for *Obergefell* to be overruled. *Obergefell* and the enforcement of Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) against the Plaintiffs were based on emotion - nothing more. Due to their profuse refusal to think logically, the Defendants seem incapable of understanding that emotional appeals do not allow government actors to usurp the Establishment Clause.<sup>14</sup> Perhaps this brief, which seeks to safeguard the integrity of the

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<sup>14</sup> [Do Emotional Appeals Or Sincerity Of Belief Allow The Government To Usurp The Establishment Clause?](https://soundcloud.com/user-450634204/do-emotional-appeals-or-sincerity-of-belief-allow-the-government-to-usurp-the-establishment-clause)

<https://soundcloud.com/user-450634204/do-emotional-appeals-or-sincerity-of-belief-allow-the-government-to-usurp-the-establishment-clause>

Emotional appeals do not allow the government to usurp the Establishment Clause. When President Obama came into office, he emphasized that he wanted to appoint Judges to the Court who would demonstrate empathy. The entire basis for the Supreme Court in *Obergefell* to force the government to respect gay marriage policy was predicated on a series of emotional appeals and naked assertions that were implicitly religious in nature. Justices, like Ginsburg and Sotomayor, were moved by the the stories of self-identified homosexuals who were dropped off in the middle of nowhere by taxi cab drivers, denied medical treatment, and assaulted, simply because they identified as homosexual. While those stories are tragic, they do not justify the Supreme Court's decision to misuse the Fourteenth Amendment in a manner in which it was never designed. There are other forms of relief already in place for victims who were wronged

race-based civil rights plight lead by Pastor Martin Luther King might help the Defendants awaken to transcultural reality about the way things are and the way we are.

Leave should be granted because “Stare Decisis” does not keep *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) from being overruled for the reasons that the *amicus* and the Special Forces Of Liberty have been asserting at legislative hearings on the Marriage And Constitution Restoration Act and in the Courts’ records all across the United States. While the Judiciary has been attempting to circle the wagons to defend an unprincipled ploy for reasons that are immature, the legislative branch is not having it. The *Obergefell* and *Windsor* decisions were calculated shams that has caused real suffering - see the declaration of Lisa Bouch from WW Bridal and Pastor Penkoski.<sup>15</sup> The Supreme Court found that “questions which merely lurk in the

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by taxi drivers, hospitals, and assailants. In *Holloman v. Harland*, 370 F.3 1252 (11th Cir. 2004), an elementary school teacher required her students to have a moment of silent to start the day. She had really good emotional and pragmatic reasons for doing so. Yet, the Eleventh Circuit found that the moment of silence had a primary religious purpose. The effect of the *Holloman* decision was that emotional appeals do not allow government actors to usurp the Establishment Clause. The *Windsor* and *Obergefell* Courts allowed emotional and pragmatic appeals to override the Establishment Clause by pretending that self-identified gay people were a class of people for purposes of the Fourteenth Amendment. Yet, the truth is that self-identified gay people are a part of a denominational sect within the over all religion of Secular Humanism. While there are no such thing as ex-blacks, ex-whites, ex-asians, and ex-hispanics, there are thousands of ex-gays, whose testimony voids the Federal Courts of Subject Matter and Personal Jurisdiction under claims brought by self-identified homosexuals under the Fourteenth and Fifth Amendments. The government cannot respect or recognize the LGBTQ dogma through creating or enforcing policies because the ideology is based on a series of unproven faith-based assumptions and naked assertions that are implicitly religious in nature.

<sup>15</sup> [Why Can't The States Limit Marriage To Two Consenting People?](https://soundcloud.com/user-450634204/why-cant-the-state-limit-marriage-to-two-consenting-people)

<https://soundcloud.com/user-450634204/why-cant-the-state-limit-marriage-to-two-consenting-people>

The Establishment Clause of the First Amendment of the United States Constitution prohibits all of the States from limiting marriage to two consenting adults. It is an arbitrary law state consideration that is undone by the holding in *Obergefell* and the Fourteenth Amendment if *Obergefell* was not a sham. Since the Supreme Court pretended that marriage is an “existing right,” “individual right,” and “fundamental right” based on a “personal choice” for self-identified homosexuals under the Fourteenth Amendment, then it follows that marriage must

record, neither brought to attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.” *Cooper Industries, Inc. v. Aviall Services, Inc.* 543 U.S. 157 (2004). The Establishment Clause claims were “lurking” in the record but undecided in *Obergefell*. “[Stare Decisis] is at its weakest when [the courts] interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions.” *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 63, 116 S.Ct. 1114, 1127, 134 L.Ed.2d 252 (1996); *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 94, 56 S.Ct. 720, 744, 80 L.Ed. 1033 (1936) (Stone and Cardozo, JJ., concurring in result) (“The doctrine of stare decisis ... has only a limited application in the field of constitutional law”). The *amicus* is asking the Honorable District Court in this case to re-interpret the Constitution correctly and to provide relief that Plaintiffs is asking for and then some.<sup>16</sup> Judges and

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be an “existing right,” “individual right,” and “fundamental right” based on a personal choice for self-identified polygamists, zoophiles, and objectophiles as well under the Fourteenth Amendment. *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (fundamental right); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639 (1974) (personal choice); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (existing right/individual right); *Lawrence v. Texas*, 539 U.S. 558 (2003) (intimate choice). Otherwise, gay marriage plight is just a sham that is really barred by the Establishment Clause. The bottom line is that the Secular Humanists on the court are guilty of monkeying with the Fourteenth Amendment in a manner that makes Secular Humanists judges an internalized threat to American Democracy. The attempt by the blue states to limit marriage to two people is merely another arbitrary marriage ban that violates the Fourteenth Amendment, if the *Obergefell* decision was valid. But it was not. The First Amendment has exclusive jurisdiction in informing the states how to respond to all marriage requests that do not involve one man and one woman and how to respond to self-asserted sex-based identity narratives that are questionably real, moral, and decent.

<sup>16</sup> By allowing the *Amicus* filer to submit its brief it can allow to this Honorable Court and the Defendants to do its job under the Article 6 of the United States Constitution which reads: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all

politicians in the other branches are human. They make mistakes. *Amicus*'s brief may help the Court relegate *Obergefell* to the line of overruled Supreme Court cases that were decided incorrectly.<sup>17</sup> None of us are perfect, but we can change course and do what is right. That is the

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executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution.

<sup>17</sup> *Swift v. Tyson*, 41 U.S. 1 (1842), overruled by *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938). *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138 (1896) held that "equal but separate" segregated facilities were constitutionally permissible. Overruled by *Brown v. Board of Education of Topeka, Shawnee County, Kan.*, 347 U.S. 483, 495, 74 S.Ct. 686, 692 (1954) ("Separate educational facilities are inherently unequal."). *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539 (1905) held that a state statute could not invalidate employer-employee contracts that required more than 60 hours/week of work. Overruled in part by *Day-Brite Lighting Inc. v. State of Mo.*, 342 U.S. 421, 72 S.Ct. 405 (1952); and *Ferguson v. Skrupa*, 372 U.S. 726, 83 S.Ct. 1028 (1963). *Coppage v. State of Kansas*, 236 U.S. 1, 35 S.Ct. 240 (1915) held invalid a state statute that forbade employers to condition employment on a promise not to join a labor union. Overruled in part by *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 61 S.Ct. 845 (1941). *Adkins v. Children's Hospital of the District of Columbia*, 261 U.S. 525, 43 S.Ct. 394 (1923) invalidated minimum wage statutes. Overruled in part by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S.Ct. 578 (1937). *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 52 S.Ct. 443 (1932), overruled in part by *Helvering v. Bankline Oil Co.*, 303 U.S. 362, 58 S.Ct. 616 (1938) and *Helvering v. Mountain Producers Corporation*, 303 U.S. 376, 58 S.Ct. 623 (1938). *Minersville School District v. Gobitis*, 310 U.S. 586, 60 S.Ct. 1010 (1940) held that a public school could expel pupils who refused to salute the flag because they were Jehovah's Witnesses. Overruled by *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178 (1943). cases overruled after 1 Jan 1960: *Minturn v. Maynard*, 58 U.S. 477 (1854) held that an agent was barred from suing a principal under admiralty law. Overruled by *Exxon Corp. v. Central Gulf Lines, Inc.*, 500 U.S. 603, 111 S.Ct. 2071 (1991). *Low v. Austin*, 80 U.S. 29 (1871), overruled by *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 96 S.Ct. 535 (1976). *Pennyroy v. Neff*, 95 U.S. 714 (1878), overruled in part by *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569 (1977). *Kring v. State of Missouri*, 107 U.S. 221 (1883), overruled by *Collins v. Youngblood*, 497 U.S. 37, 110 S.Ct. 2715 (1990). *The Harrisburg*, 119 U.S. 199, 7 S.Ct. 140 (1886) held that federal maritime law did not recognize a cause of action for wrongful death. Overruled by *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772 (1970). See also *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996). *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 15 S.Ct. 673 (1895), overruled by *South Carolina v. Baker*, 485 U.S. 505, 108 S.Ct. 1355 (1988). *Geer v. State of Connecticut*, 161 U.S. 519, 16 S.Ct. 600 (1896), overruled by *Hughes v. Oklahoma*, 441 U.S. 322, 99 S.Ct. 1727 (1979). *Thompson v. State of Utah*, 170 U.S. 343, 18 S.Ct. 620 (1898), overruled by *Collins v. Youngblood*, 497 U.S. 37, 110 S.Ct. 2715 (1990). *Pope v. Williams*, 193 U.S. 621, 24 S.Ct. 573 (1904), overruled by *Dunn v. Blumstein*, 405 U.S. 330, 337, n. 7, 92 S.Ct. 995, 1000 (1972) ("To the extent that dicta in that opinion are inconsistent with the test we apply or the result we reach today, those dicta are rejected."). *Evans v. Gore*, 253 U.S. 245, 40 S.Ct.

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550 (1920). Overruled by *U.S. v. Hatter*, 532 U.S. 557, 121 S.Ct. 1782 (2001). *Quaker City Cab Co. v. Commonwealth of Pennsylvania*, 277 U.S. 389, 48 S.Ct. 553 (1928), abrogated by *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365, 93 S.Ct. 1001, 1006 (1973) (“*Quaker City Cab Co. v. Pennsylvania* is only a relic of a bygone era. We cannot follow it and stay within the narrow confines of judicial review, which is an important part of our constitutional tradition.”). *Olmstead v. U.S.*, 277 U.S. 438, 48 S.Ct. 564 (1928) held that telephone wiretaps are not forbidden by the Fourth Amendment. Overruled by *Berger v. State of N.Y.*, 388 U.S. 41, 64, 87 S.Ct. 1873, 1886 (1967) (Douglas, J., concurring) (“I join the opinion of the Court because at long last it overrules sub silentio *Olmstead v. United States*, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944, and its offspring and brings wiretapping and other electronic eavesdropping fully within the purview of the Fourth Amendment.”) and by *Katz v. U.S.*, 389 U.S. 347, 362, n. \*, 88 S.Ct. 507, 517 (1967) (Harlan, J., concurring) (“... today's decision must be recognized as overruling *Olmstead v. United States*, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944, which essentially rested on the ground that conversations were not subject to the protection of the Fourth Amendment.”). *Louis K. Liggett Co. v. Baldridge*, 278 U.S. 105, 49 S.Ct. 57 (1928), overruled by *North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 94 S.Ct. 407 (1973). *Sinclair v. U.S.*, 279 U.S. 263, 49 S.Ct. 268 (1929), overruled by *U.S. v. Gaudin*, 515 U.S. 506, 115 S.Ct. 2310 (1995). *Enelow v. New York Life Ins. Co.*, 293 U.S. 379, 55 S.Ct. 310 (1935), overruled by *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 108 S.Ct. 1133 (1988). *Aero Mayflower Transit Co. v. Georgia Public Service Commission*, 295 U.S. 285, 55 S.Ct. 709, (1935), overruled by *American Trucking Associations, Inc. v. Scheiner*, 483 U.S. 266, 107 S.Ct. 2829 (1987). See also *American Trucking Associations, Inc. v. Smith*, 496 U.S. 167, 110 S.Ct. 2323 (1990). *Triplett v. Lowell*, 297 U.S. 638, 56 S.Ct. 645 (1936), overruled in part by *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 91 S.Ct. 1434 (1971). *Puget Sound Stevedoring Co. v. Tax Com'n of State of Washington*, 302 U.S. 90, 58 S.Ct. 72 (1937), overruled by *Department of Revenue of State of Washington v. Association of Washington Stevedoring Companies*, 435 U.S. 734, 98 S.Ct. 1388 (1978). *Moore v. Illinois Central Railroad Co.*, 312 U.S. 630, 61 S.Ct. 754 (1941), overruled in part by *Andrews v. Louisville & Nashville Railroad Co.*, 406 U.S. 320, 92 S.Ct. 1562 (1972). *Valentine v. Chrestensen*, 316 U.S. 52, 62 S.Ct. 920 (1942) held commercial speech had no First Amendment protection. Overruled by *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 96 S.Ct. 1817 (1976). *Ettelson v. Metropolitan Life Ins. Co.*, 317 U.S. 188, 63 S.Ct. 163 (1942), overruled by *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 108 S.Ct. 1133 (1988). *Ford Motor Co. v. Department of Treasury of State of Indiana*, 323 U.S. 459, 65 S.Ct. 347 (1945), overruled by *Lapides v. Board of Regents of University System of Georgia*, 535 U.S. 613, 122 S.Ct. 1640 (2002). *House v. Mayo*, 324 U.S. 42, 65 S.Ct. 517 (1945) held that the U.S. Supreme Court lacks jurisdiction to review denials of certificates of probable cause. Overruled by *Hohn v. U.S.*, 524 U.S. 236, 118 S.Ct. 1969 (1998). *Commissioner of Internal Revenue v. Wilcox*, 327 U.S. 404, 66 S.Ct. 546 (1946) held that embezzled money was not taxable as income. Overruled in part by *James v. U.S.*, 366 U.S. 213, 81 S.Ct. 1052 (1961). *Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422, 67 S.Ct. 815 (1947), overruled by *Department of Revenue of State of Washington v. Association of Washington Stevedoring Companies*, 435 U.S. 734, 98 S.Ct. 1388 (1978). *Goesaert v. Cleary*, 335 U.S. 464, 69 S.Ct. 198 (1948), disapproved of by *Craig v. Boren*,

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429 U.S. 190, 210, n. 23 (1976) (“Insofar as *Goesaert v. Cleary*, 335 U.S. 464, 69 S.Ct. 198, 93 L.Ed. 163 (1948), may be inconsistent, that decision is disapproved.”). *International Union, U. A. W., A. F. of L., Local 232 v. Wisconsin Employment Relations Board*, 336 U.S. 245, 69 S.Ct. 516 (1949), overruled by *Lodge 76, Intern. Ass'n of Machinists and Aerospace Workers, AFL-CIO v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 96 S.Ct. 2548 (1976). *Bryan v. U.S.*, 338 U.S. 552, 70 S.Ct. 317 (1950), overruled by *Burks v. U.S.*, 437 U.S. 1, 98 S.Ct. 2141 (1978). *Spector Motor Service v. O'Connor*, 340 U.S. 602, 71 S.Ct. 508 (1951), overruled by *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S.Ct. 1076 (1977). *Wilko v. Swan*, 346 U.S. 427, 74 S.Ct. 182 (1953) held that the Securities Act prohibited arbitration of disputes. Overruled by *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 109 S.Ct. 1917 (1989). *U.S. v. Bramblett*, 348 U.S. 503, 75 S.Ct. 504 (1955), overruled by *Hubbard v. U.S.*, 514 U.S. 695, 715, 115 S.Ct. 1754, 1765 (1995). *Yates v. U. S.*, 354 U.S. 298, 77 S.Ct. 1064 (1957), overruled by *Burks v. U.S.*, 437 U.S. 1, 98 S.Ct. 2141 (1978). *Morey v. Doud*, 354 U.S. 457, 77 S.Ct. 1344 (1957), overruled by *City of New Orleans v. Dukes*, 427 U.S. 297, 96 S.Ct. 2513 (1976). *Roth v. U.S.*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1309 (1957) and *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413, 418, 86 S.Ct. 975, 977 (1966) (plurality opinion) held speech was unprotected obscenity if “the material is utterly without redeeming social value.” Abrogated by *Miller v. California*, 413 U.S. 15, 24, 93 S.Ct. 2607, 2615 (1973) (third criteria in Roth changed to: “do not have serious literary, artistic, political, or scientific value.”). *Forman v. U.S.*, 361 U.S. 416, 80 S.Ct. 481 (1960), overruled by *Burks v. U.S.*, 437 U.S. 1, 98 S.Ct. 2141 (1978). *Jones v. U.S.*, 362 U.S. 257, 80 S.Ct. 725 (1960), overruled by *U. S. v. Salvucci*, 448 U.S. 83, 100 S.Ct. 2547 (1980). *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473 (1961) held local governments were immune from litigation under 42 U.S.C. § 1983. Overruled by *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018 (1978). *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745 (1963), overruled by *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112 S.Ct. 1715 (1992). *Parden v. Terminal Railway of Alabama State Docks Dept.*, 377 U.S. 184, 84 S.Ct. 1207 (1964) held that state-operated railroad could not plead sovereign immunity. Overruled by *Welch v. Texas Dept. of Highways and Public Transportation*, 483 U.S. 468, 107 S.Ct. 2941 (1987) and *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 119 S.Ct. 2219 (1999). *General Motors Corp. v. Washington*, 377 U.S. 436, 84 S.Ct. 1564 (1964), overruled by *Tyler Pipe Industries, Inc. v. Washington State Dept. of Revenue*, 483 U.S. 232, 107 S.Ct. 2810 (1987). *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509 (1964), overruled by *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983). *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824 (1965), overruled by *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986). See also *Allen v. Hardy*, 478 U.S. 255, 106 S.Ct. 2878 (1986) (per curiam). *Joseph E. Seagram & Sons, Inc. v. Hostetter*, 384 U.S. 35, 86 S.Ct. 1254 (1966), abrogated by *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 109 S.Ct. 2491 (1989). *Albrecht v. Herald Co.*, 390 U.S. 145, 88 S.Ct. 869 (1968) held that vertical price fixing was a per se violation of antitrust statutes. Overruled by *State Oil Co. v. Khan*, 522 U.S. 3, 118 S.Ct. 275 (1997). *Maryland v. Wirtz*, 392 U.S. 183, 88 S.Ct. 2017 (1968), overruled by *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465 (1976). (Usery was later overruled.) *U. S. v. Arnold, Schwinn & Co.*, 388 U.S. 365, 87 S.Ct. 1856 (1967), overruled by *Continental Television, Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 97 S.Ct. 2549 (1977). *Desist v. U.S.*, 394 U.S. 244, 89 S.Ct. 1030 (1969), disapproved of by *Griffith v.*

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point of the brief. The Amicus, like the Defendants, are flawed humans, but they left behind the lies of the LGBTQ church, converting to a new identity narrative that accords with their self-evident design.

The Court should grant leave to file because while in the wake of *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), there has been no landrush on gay marriage, there has been a landrush on the LGBTQ church to infiltrate elementary schools with the intent of indoctrinating minors to a worldview on sex that is questionably legal, moral, and obscene and clearly non-secular. The Supreme Court has emphasized that there are “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools,” *Lee v. Weisman*, 505 U.S. 577, 592 (1992), and the federal courts have thus “been particularly vigilant in monitoring compliance with the Establishment Clause” in the public-school context, see *Edwards v. Aguillard*, 482 U.S. 578-583 (1987). These “heightened concerns” should compel this Honorable Court to grant leave for *Amicusto* file so that children can be better safeguarded.

By granting leave, the Court will be in a better position to make the correct decision that might restore Constitutional integrity and the Court’s inherent authority. The *Amicus* does not want the government telling people who have been seduced into buying into the LGBTQ ideology that they cannot leave it behind. They can. They can transformed and redeemed, and set free - just like Dr. Tara King was. The Democrats have alienated everyone through their brain dead power grab approach predicated on a series of imperialistic power plays. It is time that the

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*Constructors, Inc. v. Pena*, 515 U.S. 200, 115 S.Ct. 2097 (1995), which applied strict scrutiny standard to all racial classifications. *Walton v. Arizona*, 497 U.S. 639, 110 S.Ct. 3047 (1990) held that a judge alone could impose the death penalty. Overruled by *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428 (2002), which held that a jury must recommend the death penalty.

Courts tell the truth, and the truth is that the Democrats are going to have to stop pushing identity politics. The government is going to have to get out of the parody marriage business, and the government is not going to be allowed to enforce sexual orientation discrimination statutes that have hurt Jack Phillips and put people like Lisa Bouch from WW Bridal out of business. It is time to put the Colorado Civil Rights Commission's efforts to entangle the government with Secular Humanism through coercive targeting of Christians out of business for good. While gay marriage is "fake marriage," the persecution of Christians by dishonest government officials like WW Bridal is very real. This Court needs to put a stop to it. Justice Kennedy saw it. This is why he stepped down. It was his way of apologizing. There are no such thing as partial civil rights movements. Leave should be granted.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document and attached exhibits were mailed with adequate postage to the Defendants and Plaintiffs in this actions on August 27, 2018 to James A. Campbell ALLIANCE DEFENDING FREEDOM 15100 N. 90th Street Scottsdale, AZ 85260; JESSICA POCOCK, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; ANTHONY ARAGON, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; AUBREY ELENIS, Director Colorado; Civil Rights Commission 1560 Broadway Denver, CO 80202; MIGUEL "MICHAEL" RENE ELIAS, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; CAROL FABRIZIO, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; CHARLES GARCIA, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; RITA LEWIS, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; CYNTHIA H. COFFMAN Colorado Attorney General Office of the Attorney General Ralph L. Carr Judicial Building 1300 N. Broadway, 10th Floor Denver, CO 80203; JOHN HICKENLOOPER Colorado Governor Office of the Governor 136 State Capitol Building Denver, CO 80203

/s/Anna C. Little, Esq./

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO**

**MASTERPIECE CAKESHOP  
INCORPORATED, a Colorado  
corporation; and  
JACK PHILLIPS,  
Plaintiffs,**

**Intervening Plaintiffs  
GRACE HARLEY, Special Forces Of  
Liberty, SGM JOHN GUNTER JR.,  
Special Forces Of Liberty, 1LT  
CHRIS SEVIER ESQ., De Facto  
Attorney Generals, WHITNEY  
KOHL, Special Forces Of Liberty**

**V.**

**AUBREY ELENIS, Director of the  
Colorado Civil Rights Division, in her  
official and individual capacities;  
ANTHONY ARAGON, as member of  
the Colorado Civil Rights  
Commission, in his official capacity;  
MIGUEL “MICHAEL” RENE  
ELIAS, as member of the Colorado  
Civil Rights Commission, in his  
official capacity;  
CAROL FABRIZIO, as member of  
the Colorado Civil Rights  
Commission, in her official capacity;  
CHARLES GARCIA, as member of  
the Colorado Civil Rights  
Commission, in his official capacity;  
RITA LEWIS, as member of the  
Colorado Civil Rights Commission, in  
her official capacity;  
JESSICA POCOCK, as member of**

**Case No:  
1:18-cv-02074-WYD-STV**

<p><b>the Colorado Civil Rights Commission, in her official capacity; CYNTHIA H. COFFMAN, Colorado Attorney General, in her official capacity; and JOHN HICKENLOOPER, Colorado Governor, in his official capacity, Defendants.</b></p>		
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**BRIEF OF AMICUS CURIAE AMERICAN FAMILY ASSOCIATION AND WW BRIDAL**  
**IN SUPPORT OF THE PLAINTIFFS**

marriageconstitutionrestorationact.com - <https://youtu.be/VhFM-Hg7298>

**QUESTIONS PRESENTED**

- (1) Have the Defendants actions violated the Plaintiffs’ Free Exercise and Free Speech rights under the First Amendment and Equal Protection and Due Process Rights under the Fourteenth Amendment by enforcing Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III)?
  
- (2) Does the State’s enforcement of Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) violate the three prongs of *Lemon* test under the Establishment Clause for (1) lacking a secular purposes, for (2) creating an indefensible legal weapon against non-observers, and for (3) fostering the government’s excessive entanglement with the religion of postmodern western moral relativism and expressive individualism - i.e. Secular Humanism and does the Plaintiffs have the standing as injured taxpayers to enjoin the Defendants from enforcing Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) under taxpayer standing doctrines?
  
- (3) Which of these three theories does the Constitution allow the States to used as the basis in legally defining marriage: “historical norm,” “consent norm,” or the “total-equality norm”?
  
- (4) Has the “consent norm” theory of marriage, which was the basis for the current legal definition of marriage imposed by the Supreme Court in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), merely created a marriage ban that is also in violation of the Fourteenth Amendment Substantive Due Process Clause in the face of a demand by self-identified polygamists and objectophiles for right to have their parody marriage legally recognize on the same legal basis that gay marriage is legally recognized?

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*Amicus*, WW Bridal, was threatened out of business out of business because its employees did not want to use their creative services to endorse and promote LGBTQ orthodoxy for the same reasons that Jack Phillips did not want to either. Attached is a declaration of Lisa Boucher, one of the co-owners, and the timeline of events that details how ruthless LGBTQ activists working with Secular Humanist Democrats in office intimidated their bridal shop into closing its doors after being in business for decades.

*Amicus*, American Family Association of PA, <http://afaofpa.org/>, has an interest in the outcome of this case. As taxpayers, *Amicus* also has standing to enjoin the Defendants under the Establishment Clause for creating and enforcing policies that entangle the government with the religion of Secular Humanism. *Amicus* encourages Christians, through education, to become involved in pro-family issues in their community, state and the nation. This is some of what has been going on in the Commonwealth and the nation. *Amicus* is the state affiliate of the Tupelo, MS-based American Family Association. Statement of Purpose:

1.) To make a positive difference in our community by standing up for traditional Judeo-Christian values. 2.) To encourage the faith community to break the silence on controversial issues and be a voice for pro-family values. 3.) To provide leadership in defending the Biblical ethic of decency. 4.) To educate the public on the negative effects of pornography and violence in the media. 5.) To do what we can to encourage, promote and defend families. 6.) To protect children from those who would seek to commercialize or propagandize them.

*Amicus* dedicates a lot of time and resources on uncovering and exposing the homosexual agenda. <http://afaofpa.org/archives/category/homosexual-agenda/>. While *Amicus* loves all people, it opposes ideology that is mask for immorality and is subversive to human flourishing. There is no doubt that gay marriage policy and sexual orientation ideology is inseparably linked to the religion of Secular Humanism.

## SUMMARY OF ARGUMENT

Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) and gay marriage policies fail all three prongs of the Lemon Test and violate the Establishment Clause. All three branches should abandon *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) and uphold the Marriage And Constitution Restoration Act as it passes at the 2019 legislative session. The three branches of government have no duty to defend an unprincipled ploy, they have an obligation to honor Article VI and uphold the Establishment Clause. There are four findings that all three branches of government on the State and Federal level must make. First, the three branches of government on the State and Federal government have a duty under Article VI of the United States Constitution to only enforce policies that do not violate the United States Constitution. Second, in view of the First Amendment Freedom of Expression Clause of the United States Constitution any person living in any State can cultivate any self-asserted sex-based identity narrative or self-asserted sexual orientation, have parody weddings, and live as married people do. Third, in view of the First Amendment Establishment Clause of the United States Constitution the state and Federal government are prohibited from enforcing, respecting, endorsing, or recognizing any marriage policy that does not involve a man and a woman, any sexual orientation discrimination statutes, any transgender policies, any conversion therapy bans, any policy to change genders because such policies are non-secular shams that cultivate indefensible legal weapons against non-observers of the religion of Secular Humanism and have the effect of excessively entangling the government with the religion of Secular Humanism.<sup>1</sup>

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<sup>1</sup> *Amicus* agrees with the United States Supreme Court in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) that the Constitution is not silent as to how all 50 states must legally define marriage. The dissent in *Obergefell* was dead wrong in suggesting that the individual States should be allowed to decide how to legally define marriage. The Constitution supersedes State law under the

(That is, the policies fail the three prongs of the Lemon Test and violate the Establishment Clause. This includes Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III), and the Plaintiffs should prevail.) Fourth, the Federal and State government can continue to respect, recognize, endorse, and enforce policies involving a man and a woman because the policies are natural, neutral, non-controversial, and secular in nature. Those policies accomplish their intended purpose. Man-woman marriage policies do not erode community standards of decency, and they do not put religion over non-religion. No one is willing to go to jail or lose their business in protest because county clerks and probate judges are issuing man-woman marriage licenses. But the same cannot be said when it comes to the issuance of marriage licenses that endorse the various forms of parody marriage.

If the gay marriage policies that Colorado is enforcing are unconstitutional under the Establishment Clause - and they are - it follows that Colo. Rev. Stat. § 24-34-601(2)(a) and Colo.

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doctrine of preemption. However, the majority in *Obergefell* was dead wrong in pretending that the Fourteenth Amendment answered the question. It does not. The Fourteenth Amendment has nothing to do with marriage matters. The First Amendment provides the answer as to how all 50 states must legally define marriage and how the government must react to self-asserted sex-based identity narratives that are questionably moral. The “Bright Line Rule” strikes the perfect balance between the Establishment Clause and the Freedom Of Expression Clause. On the one hand, under the Freedom of Expression Clause in view of the Bright Line Rule, any self-identified homosexual, transgender, zoophile, polygamist, and objectophile can have a wedding ceremony. For example, a man can have a wedding ceremony where he marries another man, and the man can sincerely believe that the other man is his wife. On the other hand, under the Bright Line Rule in view of the Establishment Clause, neither the State nor the Federal government are permitted to legally recognize, respect, endorse, promote, or encourage any form of marriage marriage because doing so violates the Establishment Clause for failing all three prongs of *Lemon* Test. Currently, the State’s policy to legally recognize, respect, and endorse gay marriage is a non-secular sham that constitutes an indefensible legal weapon against non-observers and that causes the Government to become excessively entangled with the religion of Secular Humanism. The Supreme Court has already found that Secular Humanism is a religion for the purposes of the Establishment Clause. *Torcaso v. Watkins*, 367 U.S. 488 (1961);; *Edwards v. Aguillard*, 482 U.S. 578 (1987). The government’s decision to legally respect gay marriage puts “religion over non-religion” and is Constitutionally impermissible.

Rev. Stat. § 24-34-303(1)(b)(I)-(III) are unconstitutional as well. Yet, prior to engaging that Constitutional analysis, marriage must *first* be defined with reference to a theory extrinsic to the Constitution. *Amicus* offers three theories with which to define marriage—one referring to “historical practice,” the “consent narrative,” and the “total-equality” practice. In view of the holding in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), Fourteenth Amendment, and the First Amendment, there are really only two theories to consider - the “historical” norm or the “total-equality” norm. These options are binary. The historical practice is the correct approach because it underscores the fact that man-woman marriage is secular and that all parody marriages are not for purposes of the Establishment Clause. The evidence shows that all parody forms of marriage are based on a series of unproven faith based assumptions that are the very least implicitly religious and that all parody marriages are, therefore, barred from the government’s respect and endorsement under the Establishment Clause. The self-identified homosexual petitioners in *Obergefell* argued that a marriage is the legal recognition of a committed union between consenting adults.<sup>2</sup> Refusal to recognize that union, they contended, subjects them to discrimination and denies to them substantial rights. The State Respondents in *Obergefell* argued that a marriage is and has always been a union between man and woman and that the LGBTQ church seeks the legal equivalent of a null set. *Id.* The Attorney Generals did not defend the Marriage bans by using the Establishment Clause because they could not see the argument. Now that has changed.

There was one other significant point that divided the parties. The State Respondents simply wanted the sovereign right to define marriage, relying on whatever theory their citizens

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<sup>2</sup> 135 S.Ct. 2584 1-29.

have determined to be appropriate. The self-identified homosexual petitioners, in contrast, asked the Supreme Court to mandate, pursuant to the Fourteenth Amendment, that all States define marriage with reference to the mutual consent of adults. Because the Secular Humanist Justices in the *Obergefell* majority unwisely adopted the “consent” theory, the pending cases before Federal Courts now poses considerable problems for existing state statutes and precedent of this Court and others, even beyond the context of same-sex marriage. Specifically, several hundred state statutes that prohibit polygamous, person-object, person-animal, adult-minor, and incestuous marriages are either invalid currently or are constitutionally suspect, if *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) is not overruled for being an intellectually dishonest political power-play and religious sham barred by a straightforward application of the Establishment Clause. A decision nearly 150 years old, *Reynolds v. United States*, 98 U.S. (8 Otto.) 145 (1878), and its many progeny, is currently called into doubt, if the Establishment Clause is not enforced to overrule *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). Since the Secular Humanists on the bench in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015) decided that marriage is a fundamental right based on the self-asserted sex-based identity narrative of self-identified homosexuals under the Fourteenth Amendment’s Equal Protection and Substantive Due Process Clauses, then very obviously marriage must be a fundamental right based on the self-asserted sex-based identity narratives of self-identified polygamists and objectophiles under the same Constitutional reasoning. “[I]f the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare. . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” *Romer v. Evans*, 517 U.S. 620, 635 (1996). Either all individuals in a suspect class must be given civil rights or the alleged

civil rights movement sham. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 96 S. Ct. 2574, 49 L. Ed. 2d 493 (1976).<sup>3</sup> The government's decision to endorse the gay civil rights movement is a sham and an evil that the Establishment Clause will not allow. Accordingly, so is the enforcement of Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III).

### ARGUMENT

It must be preliminarily determined what forms of marriage are secular and what forms are not. Before determining if any State requirements for marriage satisfies the Fourteenth Amendment as to self-identified homosexuals, polygamists, and objectophiles, it is necessary to answer the predicate question: what is marriage, how do we know, and can the government legally respect, endorse, and recognize man-woman marriage without running afoul of the Establishment Clause? *See* Sherif Girgis, *et al.*, *What is Marriage?*, 34 HARV. J.L. & PUB. POL'Y 245, 251 (2010) (“[B]efore we can conclude that some marriage policy violates [a] moral or constitutional principle, we have to determine what marriage actually is.”). In part, the *Amicus*'s objective is to shed some light on that predicate question and its impact on the constitutional analysis, by pointing out to the judicial, legislative, and executive branches that the only form of secular marriage permitted by the Constitution is man-woman marriage, which falls under the historical norm. In other words, *Amicus* asserts that man-woman policy is secular in

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<sup>3</sup> Dr. Martin Luther King Jr. stated that "true peace is not merely the absence of tension; it is the presence of justice." The current legal definition of marriage manages to be Unconstitutional under the First Amendment for being overinclusive or under the Fourteenth Amendment for being underinclusive. Either way, the current marriage policies are utterly unconstitutional.

nature, which means that the State and Federal government can legally recognize a marriage between a marriage between a man and a woman without violating the Establishment Clause.<sup>4</sup>

Under the Constitution, and at the very most, the States can legally recognize, respect, and endorse marriage between one man and one woman because it does not promote a religion and it does not “favor” or “endorse” the religion of Secular Humanism over “non-religion.” *Lee v. Weissman*, 505 U.S. 577, 627, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992)(citing *County of Allegheny v. ACLU*, 492 U.S. 573, 589-94, 109 S.Ct. 3086, 106 L. Ed. 2d 472 (1989)(Just as government officials may not favor or endorse one religion over others, so too officials “may not favor or endorse religion generally over non-religion.”). The same cannot be said of party marriage policy. The State and Federal government cannot legally respect, endorse, or recognize polygamy and objectophile marriage, just as it cannot respect, endorse, or recognize gay marriage, because doing so only further entangles the government with the religion of Secular Humanism. So, even if a liberal state wants to save gay marriage by giving marriage rights to self-identified objectophiles and polygamists, it cannot, since doing so would merely constitute a deeper violation of the Establishment Clause by further entangling the government with the religion of Secular Humanism. Likewise, even if the Colorado Civil Rights commission wanted to save Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) by allowing self-identified polygamists and objectophiles to be protected under it as well, it cannot

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<sup>4</sup> Some prominent conservatives, like Ben Shapiro or Senator Rand Paul, have vigorously argued that the government should completely stay out of the marriage business altogether. They are self-identified libertarians who believe that government manages to mess up everything it touches. However, this libertarian approach regarding man-woman marriage is far too shallow, reductionistic, whimsical, and simplistic to have anything to do with reality. There are countless reasons for why the State and Federal government have a compelling interest to recognize, respect, and even strengthen marriages between one man and one woman.

because such state action would only further entangle the government with the religion of Secular Humanism.

### **I. What Is Marriage And Can The Government Legally Respect, Recognize, And Endorse Actual Marriage Between A Man And A Woman Without The Establishment Clause**

A question presented in this case is not just whether all parody marriages are barred from legal recognition but whether man-woman marriage is as well. That is, there is a question that is implicitly raised by this controversy that needs to be answered: if gay marriage policy is unconstitutional under the Establishment Clause is traditional marriage policy unconstitutional as well? The answer is no - traditional marriage policy is “secular” in nature and does not fail the *Lemon* Test in view of the “historical norm” theory. Defining the word “marriage” is not tricky, just as it is not tricky to define the sky as “blue” or that water is wet. No reasonable observer would dispute the fact that the dictionary is a secular text, not a religious doctrine. Behind the determination of a proper definition of marriage lies all of the social and political questions that animate in this case. For example, Black’s Law Dictionary defines marriage as “[t]he legal union of a couple as husband and wife.”<sup>5</sup> That was indeed the unquestioned legal definition of marriage until recent years. But that legal definition begs the question: Why? The answer is because marriage between one man and one woman is fact-based marriage predicated on self-evident truth. No reasonable observer questions whether or not man-woman marriage is real, moral, decent, and a catalyst for human flourishing. It always has been.<sup>6</sup> Man-woman

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<sup>5</sup> Black’s Law Dictionary, Marriage, 992 (8th ed. 2004).

<sup>6</sup> No one in this State has ever gone to jail or has been willing to lose their business in protest because the County officials are issuing marriage licenses to man-woman couples or because the Governor and Attorney General are overseeing the distribution of a “constellation of benefits” to married husbands and wives. Any recent attempts to rewrite the definition of marriage should be treated no differently than a form of modern day book burning. (<https://www.youtube.com/watch?v=bGHZOJIC6eo>). The attempts of self-serving Secular

marriage policy is natural, neutral, and non-controversial. Man-woman marriage is secular because it actually accomplishes its intended goals. Race-based public accommodation statutes are secular because race is based on self-evident genetics. Sexual orientation public accommodation statutes are religious shams that create an indefensible legal weapon against people who have the common sense to believe in absolute truth.

It could be argued that another way to resolve the problem of how the government should legally define marriage is to momentarily put aside the question of determining a *definition* and instead look for a broad neutral *theory* of marriage that can guide attempts to define marriage. Doing so should enable us to set aside the social, ethical, and political questions that complicate the ultimate question presented in this controversy. Moreover, proceeding without such a theory would render any definition of marriage completely malleable, making it impossible to determine if the States have adopted the wrong definition in the wake of *Obergefell*. See also *Holder v. Hall*, 512 U.S. 874, 881 (1994) (holding that, in the absence of an “objective and workable standard for choosing a reasonable benchmark,” it is impossible to consider the propriety of certain state actions). Up until now, there have been only two theories of how to define marriage, at least when the theories are stated as broadly as possible. And those theories,

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Humanists to rewrite the definition of marriage proves that gay marriage policy it is a non-secular sham. First of all, attempts to rewrite the definition of marriage will not work and it will not garner respect for self-identified homosexuals, but it will show that Secular Humanists are attempting to use our government to justify a course of sex-based conduct that erodes community standards of decency, endangers the public’s health, and is self-evidently immoral for the same reason that rape-by trick is. No one has to tell anyone that murder is wrong. Every reasonable person knows it. So it goes with homosexual, polygamous, zoophilic, objectophilic, and pediphilic practices. Such sexual lifestyles do fail to check out with the human design and are in discord with the truth about the way things are and the way we are as humans. On balance, the fact that the secular dictionary defines marriage between one man and one woman shows that man-woman policy is secular in nature and that parody marriage policies are non-secular shams underscored by ulterior political motives that are built on bad intent and a truth phobia.

in turn, necessitate distinct definitions: the “historical norm” theory and the “consent norm” if *Obergefell* is good law. But there is a third theory, the “total-equality norm,” that must replace and override the “consent norm.” The “total-equality norm” suggests that if access to state sponsored marriage really is a civil right based on the self-asserted sex-based identity narrative of self-identified homosexuals, then state sponsored marriage must be a civil right based on the self-asserted sex-based identity narratives for self-identified polygamists, zoophiles, and objectophiles as well. Either State sanctioned parody marriage is a civil right for everyone or it is no right at all. Legally respected parody marriages of any kind is just a ploy and a political power play. (See the *Amici* Brief of the National Alliance Of Black Pastors.) Very obviously parody marriage policies are a ploy and a political power play that erode fundamental rights that are real and violate the Establishment Clause. That is the argument that Jack Phillips should be making.

A. Historical Norm

The first theory, which *Amicus* refers to as the “historical norm,” defines marriage by looking to the manner in which it has always been defined. There is no political or religious motive behind the history motive. The historic approach defines marriage based on empirical, dispassionate, and self-evident observation, which is unlike the approach of Secular Humanists which can only be described as emotionalism that is allergic to logic reasoning. History does offer a normative answer as to whether the matter is secular or not because there is no political or ulterior agenda.<sup>7</sup> The historical norm has the benefit of being tested by time and accepted by

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<sup>7</sup> The historical norm is considerably different from the “conjugal view” of marriage articulated by Robert George, *et al.*, as *amici curiae* in *Hollingsworth v. Perry* and *United States v. Windsor*, Nos. 12-144, 12-307. The “conjugal view” is rooted in natural law and philosophy and advances

thousands of cultures and billions of people over the course of many thousands of years.<sup>8</sup> When history yields a virtually unanimous answer to a question over a long period of time, its normative appeal is heightened in resolving whether the matter is secular or non-secular in nature. In this case, the history is both unanimous and quite long, and screams that actual marriage policy is secular and that all forms of parody marriage policy are not.<sup>9</sup> Members of the Judicial, Legislative, and Executive branch who refuse to admit that lack of character fitness to serve in office.

As Judge Sutton put it in his decision for the Sixth Circuit, the tradition on how to define marriage “is measured in millennia, not centuries or decades.” *Obergefell* Pet. App. 14a (“Pet. App.”). In other words, Judge Sutton was saying that man-woman marriage is secular and that the drive for the government to respect the most popular form of parody marriage is a dangerous ploy to entangle the government with the religion of Secular Humanism. The drive for Secular Humanists, who are guided by feelings, not logic reasoning, amounts to their attempt to

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a decidedly normative approach to marriage. As *Amicus* explains *infra*, it is just *one* justification for the historical norm, not a competitor with it.

<sup>8</sup> Parody marriage is so unthinkable that the Establishment Clause anticipated it because the framers were wise enough to know that postmodern moral relativism and Secular Humanism are religion that should not be established as the National religion any more than Islam, Judaism, or Christianity should be. Just because many of the devout believers in postmodern moral relativism and Secular Humanism are too intellectually blind to see that their entire worldview is based on a series of unproven faith-based assumptions and is therefore a religion, does not mean that Secular Humanism is not a religion. It is, and the Supreme Court agrees. *Torcaso v. Watkins*, 367 U.S. 488 (1961); *Edwards v. Aguillard*, 482 U.S. 578 (1987).

<sup>9</sup> In the wake of *Obergefell*, there has not been the promised land rush on gay marriage. The evidence shows that parody marriages are a critique on absolute truth and other religions. A critique on religions are always a new religion. Gay marriage policy is more than just a critique on Christianity, Islam, and Judaism. Gay marriage policy is a critique on the self-evident truth that the Constitution and the Bill Of Rights are based on. More than that, gay marriage policy is the direct result of Secular Humanists on the bench monkeying with the Fourteenth Amendment in a manner that is so immensely arrogant that Justice Roberts was justified in saying “just who do we think we are.?” *Obergefell* at 3 (Roberts Dissenting)

imperialistically come out on top in their sophistication and in their jadedness by having their private moral code be used as the supreme basis for law for the whole of the United States. The net effect of the endorsement of Secular Humanism has led to the cultivation of moral superiority complexes cultivated by Secular Humanists that naturally lead to the marginalization and even violent oppression of anyone who dares to think that their beliefs are invalid.<sup>10</sup> To support the government endorsement of gay marriage is an act of sedition really. The scary thing is that the Democrat Defendants know it. Christian persecution continues to be on the rise throughout America as a direct consequence of the refusal to admit that gay marriage policy and sexual orientation statutes, like Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III), are non-secular shams for purposes of the First Amendment Establishment Clause.

*B. Consent Norm Advocated By The LGBTQ Church Creates An Arbitrary Marriage Ban That Is Invalidated Under The Fourteenth Amendment By The Holding In Obergefell*

The *Amicus* refers to the second broad theory of marriage as the “consent norm” that the self-identified homosexual Petitioners in *Obergefell* implicitly relied on as the basis for their request for relief. *Id.* 1-29. If the government arrogantly continues to enforce gay marriage policy only, it will be advocating the consent theory of marriage. The *Obergefell* petitioners implicitly argued that the States’ legal definition of marriage should be somewhat expanded under the arbitrary “consent norm.” The “consent norm” defines marriage solely with reference

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<sup>10</sup> Our government is not a church. It is not a redeemer, and the government cannot allow jaded Secular Humanists in office to monkey with the Fourteenth Amendment in the off chance that Secular Humanists feel less ashamed about a belief system and lifestyle that is self-evident in opposition to community standards of decency, common sense, self-evident truth, and human flourishing. Even if the government were to endorse the religion Secular Humanism, Secular Humanists would remain unsatisfied because they are looking for salvation and affirmation in the wrong place.

to the consent of willing adult partners. Using this norm, any adults who wish to marry may do so. Without really saying it, the self-identified homosexual litigants in *Obergefell* hinted that they have adopted—and were advancing—this theory of marriage. *Id.* However, there is an impossible dilemma that has resulted. Several courts to include the Supreme Court in *Obergefell* defined marriage as an “individual right,” an “existing right,” and a “fundamental right” based on a “personal choice” and “autonomous choice” under the Equal Protection and Substantive Due Process Clause of the Fourteenth Amendment.<sup>11</sup> Therefore, it is impossible for the Secular Humanists in office to now turn around and say that self-identified polygamists and objectophiles do not have the “fundamental,” “individual,” and “existing” right based on their “personal choice” and “autonomous choice” to marry multiple people or an object in accordance with their own sex-based identity narratives. Either every form of marriage warrants legal recognition or none do. An honest application of the Equal Protection and Substantive Due Process Clauses would be for the government to provide self-identified homosexuals, polygamists, and zoophiles with the same benefits and treatment under the law. This is true whether it means that all parody marriages receive the government’s endorsement or that none of them do.<sup>12</sup> It is that simple, and the fact of the matter is that none should.

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<sup>11</sup> *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (fundamental right); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974) (personal choice); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (existing right/individual right); *Lawrence v. Texas*, 539 U.S. 558 (2003) (intimate choice)

<sup>12</sup> The reason why the government cannot legally recognize polygamy and objectophile marriage is that it would only further entangle the government with the religion of Secular Humanism in further violation of the Establishment Clause. While that might be an easy pill to swallow. The blue states and the Democrats are going to have to get used to the idea that no state can legally recognize gay marriage going forward. The sooner this stops, the greater the chance that their will not be civil war and violent revolts.

However, the LGBTQ church and homosexual lobby have a major flaw in their “consent norm” in view of Substantive Due Process. “Substantive Due Process” means the lack of “procedural substance” as Justice Scalia correctly once said before his mysterious death during the Obama administration. That is, “Substantive Due Process” has been interpreted to mean that if the court finds a certain right to be so fundamental under the Fourteenth Amendment that it therefore must be a right, and then therefore it is under the Substantive Due Process. Once a matter is declared to be a right under Substantive Due Process then no amount of existing procedure cultivated by the State or Federal Government can keep an individual from acquiring that right. The *Obergefell* Court found that parody marriage is a civil right under Substantive Due Process. *Id.* 1-29. In applying the holding in *Obergefell*, a State’s procedural marriage requirement that requires consent of “two people” is just another arbitrary marriage ban as the procedural requirement that marriage be limited to a union between one man and one woman. In order to shoehorn gay marriage into a legal reality, the self-identified homosexuals caused one marriage ban to be overturned and created another in step with a pattern of irrational lunacy. However, the ultimate legal basis for the marriage bans that limited marriage to one man and one woman is the Establishment Clause. Whether any liberal or conservative likes it or not, the Establishment Clause is the national marriage ban and Article VI requires all three branches to obey it. While citizens are certainly permitted to self-identify as a homosexual, a transgender, a wizard, a chicken sandwich, the government cannot respect self-asserted sex-based identity narratives as if they were part of an immutable reality.

If the Fourteenth Amendment is the Constitutional mechanism that is to force the States to legally define marriage in a uniform manner, then Substantive Due Process invalidates the

“consent requirements” for being nothing more than just another arbitrary marriage ban that stands in the way of self-identified polygamists, zoophiles, and objectophiles from enjoying all of the benefits that come from acquiring a marriage license from the State that self-identified homosexuals are currently permitted to exploit.

When held up against the “unquenchable fire” of Substantive Due Process under the doctrine of preemption, the “two person consent” requirement must be counsel just as States’ prior procedural requirements that marriage licenses only be issued to man-woman couples was demolished by the *Obergefell* Court. *Id.* 1-29. If that is not true, then gay marriage policy is nothing more than a non-secular sham that violates the Establishment Clause under the prongs of *Lemon* - which it does.<sup>13</sup> If the self-identified polygamists and objectophiles are not permitted to use the Fourteenth Amendment to acquire a State issued marriage license and the “constellation of benefits” that come with State endorsed marriage, then gay marriage policy is nothing but a non-secular sham demolished by the First Amendment Establishment Clause.<sup>14</sup> Any reasonable observer would have to admit that all self-asserted sex-based identity narratives that do not automatically check out with the human design are implicitly religious, and while any citizen has the fundamental right under the Freedom Of Expression Clause to believe these identity

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<sup>13</sup> To pass muster under the Establishment Clause, a practice must satisfy the *Lemon* test, pursuant to which it must: (1) have a valid secular purpose; (2) not have the effect of advancing, endorsing, or inhibiting religion; and (3) not foster excessive entanglement with religion. *Id.* at 592 (citing *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). *Edwards*, 482 U.S. at 583;; *Agostini v. Felton*, 521 U.S. 203, 218 (1997). Government action is prohibited if it fails one prong.

<sup>14</sup> At the core of the “Establishment Clause is the requirement that a government justify in secular terms its purpose for engaging in activities which may appear to endorse the beliefs of a particular religion.” *ACLU v. Rabun Cnty. Chamber of Commerce, Inc.*, 698 F.2d 1098, 1111 (11th Cir. 1983). This secular purpose must be the “pre-eminent” and “primary” force driving the government’s action, and “has to be genuine, not a sham, and not merely secondary to a religious objective.” *McCreary Cnty, Ky. v. ACLU of Ky.*, 545 U.S. 844, 844 - 864 (2005)

narratives are real. the Establishment Clause strictly prohibits the Federal and State government from legally endorsing identity narratives that fail to automatically checkout with the human design at the dismay of many Secular Humanist Democrats.<sup>15</sup>

Before it is possible to intelligently consider the application of the Fourteenth or First Amendments in this case in defining marriage, it is necessary to first decide whether the “historical norm,” “the consent norm,” or, “total-equality norm” is mandated by the Fourteenth Amendment. Without first reaching that question, it seems impossible to ask, for example, whether Ohio’s constitution, which provides: Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. OHIO CONST. art. XV, § 11, violates the Fourteenth Amendment. If we continue to operate under the consent norm, the answer is fairly simple:

if marriage is simply a union between consenting adults, and this state has decided that two consenting adults may not get married solely on the basis that they share the same sex, this is discrimination.

However, the “consent norm” is nothing more than another state imposed arbitrary marriage ban that is just as unconstitutional under the Fourteenth Amendment as the restriction that marriage

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<sup>15</sup> It is an act of Constitutional, judicial, and political malpractice for a government official to misuse the Fourteenth Amendment which has had the effect of cultivating an entitlement syndrome of moral superiority that has lead to the systematic persecution of Christians, when the First Amendment at all times has had exclusive jurisdiction over answering the question as to how the States must legally define marriage. While it took more than 50 years for *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) to overturn *Plessy v. Ferguson*, 163 U.S. 537 (1896), it will take no more than a few years the Court and the legislature to overrule *Obergefell*. It is never too late for the judiciary to turn back, admit the truth, and get it right. Cases are not tried in a vacuum. The public can see through Judicial dishonesty. “The legitimacy of the courts ultimately rests upon the respect accorded to its judgments.” *Obergefell*, at 19 (Roberts Dissenting) quoting *Republican Party of Minn. v. White*, 536 U.S. 765, 793 (2002) (KENNEDY, J., concurring).

be limited to a man and a woman as discussed above. If we operate under the “total-equality” norm, the answer is fairly simple:

if marriage is simply a right for all individuals based on their self-asserted sex-based identity narrative, and this State has decided that only two consenting adults may get married, this is discrimination.

Conversely, if we operate under the historical norm, the answer to the question above is evident. As *Amicus* will show *infra*, marriage has for “millennia, not centuries or decades” been “defined by relationships between men and women.” *Obergefell* Pet. App. 14a. Accordingly, all of the States’ original formal adoption and enforcement of that historical definition cannot be a denial of self-identified homosexuals,’ polygamists,’ zoophiles,’ and objectophiles’ right to marry for the simple reason that, under the historical norm, self-identified homosexuals, polygamists, zoophiles, and objectophiles are asking for something—the recognition of non-secular parody marriage — have always been considered to erode community standards of decency. (This is not to say that the self-identified homosexuals, zoophiles, objectophiles, and polygamists have suffered no harm. Many of them have. But there are other legal remedies available for that harm that does not involve asking the Government to imperialistically hijack the Fourteenth Amendment and disobey the Establishment Clause even more by further establishing Secular Humanism/postmodern western moral relativism as the National Supreme Religion. If the government does not obey the Establishment Clause and disentangle itself with the LGBTQ church, the consequences could be catastrophic.

C. Historic Norm Shows That Man-Woman Marriage Is Secular In Nature - Which Means That The States Can Legally Recognize That Form If They Want To

It almost goes without saying that any marriage policy that endorses any form of parody marriage is sham that fails *Lemon*. Yet, *Amicus* is not only concerned as to whether the Court

must conjure the character and integrity to obey Article VI to force aspect of government to disentangle from the LGBTQ church, *Amicus* is also concerned with as to whether man-woman marriage policy will recklessly get rolled up in that argument and invalidated under the Establishment Clause as well. Perhaps in retaliation for undoing the government’s wrongful endorsement of gay marriage, a zealous Secular Humanist could argue that man-woman marriage policy fails the *Lemon* test too. However, the evidence shows that the Establishment Clause permits the States to continue to legally respect, recognize, and endorse man-woman marriage if they want to because that it is the only neutral, natural, non-controversial, and secular form as discussed in a prior section.<sup>16</sup> The “historical norm” theory of how marriage should be defined is direct evidence that man-woman marriage policy is secular in nature. Accordingly, man-woman marriage is not unconstitutional under the Establishment Clause. The historic norm is not an explanation of how the norm, or the history that underlies it, came to be. Rather, it uses the consensus of the past to inform how all 50 States ought to approach and define marriage today; *Amicus* does not suggest that history, no matter how unjust, ought to be codified *simply* because it is ancient.<sup>17</sup> The historical norm is informed by millennia of thought about what marriage should be, why law regulates marriage, and how law ought to deal with it. *Amicus* considers some of these topics *infra*. For now, the point is this: under the historical norm, a man

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<sup>16</sup> Traditional marriage arose out of the “the nature of things” and did not arise out of a desire to acquire political power and to use government as a tool to shove the irresponsible gospel of Moral Relativism down the throats of our citizens. (Roberts dissent page 5). See G. Quale, *A History of Marriage Systems* 2 (1988); cf. M. Cicero, *De Officiis* 57 (W. Miller transl. 1913). *Obergefell* at 5 (Roberts Dissent). Roberts in his dissent in *Obergefell* also stated: “In his first American dictionary, Noah Webster defined marriage as “the legal union of a man and woman for life,” which served the purposes of “preventing the promiscuous intercourse of the sexes, . . . promoting domestic felicity, and . . . securing the maintenance and education of children.” 1 *An American Dictionary of the English Language* (1828). *Id.*

<sup>17</sup> As it happens, the historical view of marriage has significant normative appeal. *See infra*.

who wishes to *marry* another man in a State with the government’s endorsement is not being denied the right to marry. Rather, he is being told that he seeks something that is incompatible with secular marriage and the Establishment Clause prohibits the government from respecting any form of parody marriage equally.<sup>18</sup> In this sense, this man is no different than a man who seeks to marry two women, like the self-identified polygamists. *See generally Reynolds*, 98 U.S. 145 (upholding a statute banning bigamy).

Operating within this framework, asking States to license or recognize a marriage between two men, two woman, a person and an object, a person and an animal, and more than two people is much like asking them to hold a party to the terms of an oral “contract” that is within the statute of frauds or to a written “contract” that lacked consideration. In either case, the agreement is not recognized by State law. Failing to enforce the agreement is not discrimination. It is the result of a conclusion by the government, perhaps in response to hundreds of years of history and broad consensus, that such agreements are not contracts. The party seeking enforcement of the agreement has not been denied a right. Instead, he is demanding that the State disregard the essence of the contractual relationship and the manner in which “contract” is defined. Yet, far more important than that is the fact, a man who asks the State to permit him to marry a man, multiple people, an animal, or an object is asking the government to endorse a belief system that is predicated on a series of unproven faith based

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<sup>18</sup> For this reason, the self-identified homosexual Petitioners’ reliance on *Loving v. Virginia*, 388 U.S. 1 (1967), was completely misplaced. Girgis, *et al.*, *supra*, at 248-49 (“[T]he analogy fails: antimiscegenation was about whom to allow to marry, not what marriage was essentially about.”). *Loving* involved a marriage that the State of Virginia *criminalized* on the ground that the various races should not be “mix[ed].” *See Loving*, 388 U.S. at 2. Virginia did not ever deny that the criminal defendants were married—if it had, it could not have maintained their conviction. *Id.* at 4-6.

assumptions that are questionably real, indecent and semi-religious. Establishment Clause prohibits the States from respecting, sponsoring, and endorsing any form of parody marriage because policies that honor these unions are not secular. Yet, while it is true that “parody marriages” are more likely than not “fake marriages” that does not mean that any individual cannot conduct a parody wedding ceremony and live as actual married couples do. The Free Exercise Clause permits that.<sup>19</sup>

Furthermore, working under the historical norm, a man who seeks to legally *marry* his male lover, his object of his affection, his two wives, or his pet goldfish is asking the States to disregard the essence of marriage, as the States have defined it based on a secular legal standard that does not favor or endorse religion over non-religion.<sup>20</sup> Even worse, the man is asking the State to disobey the Establishment Clause of the United States Constitution. Under the Freedom Of Expression Clause, a man certainly has the legal right to love his male lover, his object of affection, his two wives, or his pet and to live with his preferred spouse or spouses as people who are actually married do, *Lawrence v. Texas*, 539 U.S. 558 (2003), but the State and Federal government have to stay away from endorsing parody marriages and from enforcing statutes like Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III). The Establishment Clause states: “[The government] shall make no law respecting an establishment of religion.” U.S. CONST. amend. I. The Establishment Clause applies to the states through the

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<sup>19</sup> As Winston Churchill once said, “where there is a lot of free speech there is a lot of stupid speech.” Accordingly, citizens have the right to have parody wedding ceremonies, they just cannot have the government’s endorsement.

<sup>20</sup> Just as government officials may not favor or endorse one religion over others, so too officials “may not favor or endorse religion generally over non-religion.” *Lee v. Weissman*, 505 U.S. 577, 627, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992)(Souter, Justice, concurring)(citing *County of Allegheny v. ACLU*, 492 U.S. 573, 589-94, 109 S.Ct. 3086, 106 L.Ed.2d 472 (1989)).

Fourteenth Amendment. The State and Federal government cannot legally endorse any form of parody *marriage* and they certainly cannot force anyone to respect it either. Allowing a constellation of benefits flow from the coffers of the States' general funds at the expense of millions of taxpayers, who by no means want the government to entangle itself with the religion of Secular Humanism is an evil that the Establishment Clause prohibits. There are millions of Americans who believe that all forms of parody marriage are deeply immoral. They also believe that to enable immutability is itself an act of immorality. Therefore, it follows that for the State to appropriate tax dollars in the endorsement of parody marriages is a coercive act because it causes the non-observers of Secular Humanism to violate their conscience by simply paying taxes. It is an evil that the Establishment Clause does not allow. These Americans do not want a penny to flow from the general fund to ratify the religion of Secular Humanism because they sincerely believe as Pastor Martin Luther King Jr and Dietrich Bonhoeffer that to enable immorality is itself an act of immorality. Secular Humanists and the LGBTQ church are permitted to play pretend on their own time, but not on the taxpayer's dollar as the result of the State's reckless endorsement. It is that line of reasoning that should cause Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) to be struck down.

## **II. There are three competing robust theories of marriage**

### *A. The "historical norm": The word marriage has always been described a union between man and woman*

1. When the *Windsor* court said that "[M]arriage between a man and a woman...had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization" what the court was really saying without realizing it was that man-woman marriage was secular for purposes of the Establishment Clause and that

all forms of parody marriage that are non-secular and are barred from legal recognition by the Establishment Clause. *Windsor*, 133 S.Ct. at 2689 (2013); *see also Baker v. Nelson*, 291 Minn. 310, 191 N.W.2d 185, 186 (1971) (“The institution of marriage as a union of man and woman...is as old as the book of Genesis.”). Indeed, as far as *Amicus* is aware, no civilization in recorded history, until our day, has treated a committed relationship between two people of the same sex as the equivalent of a relationship between people of different sexes. Nor have they treated a committed relationship between three people as the equivalent of a relationship between two people of the opposite sex. Nor have they treated a committed relationship between a man and blow up doll as the equivalent of a relationship between a husband and a wife. Even civilizations that accepted or even celebrated homosexual relations—ancient Rome, for example<sup>21</sup> — saw *marriages* between men as deviant and refused to give such marriages legal recognition. CRAIG A. WILLIAMS, *ROMAN HOMOSEXUALITY* 279-80 (2d ed. 2009). Homosexual unions may have taken place in Rome, but such marriages were, by traditional Roman standards, anomalous in view of the fundamental nature of *matrimonium*, a hierarchical institution that was aimed at creating legitimate offspring as well as a route for the transmission of property (*patrimonium*) and that required the participation of a woman as subordinate partner.

In traditional Roman terms, *a marriage between two fully gendered “men” was inconceivable*; if two males were joined together, one of them had to be “the woman.” *Id.* at 286 (paragraph break and emphasis added) (Latin words italicized in original); *contra Tanco* Pet. Br. 51 (claiming, erroneously, that non-recognition of same-sex marriage was invented circa 1970). From a Constitutional Establishment Clause stand point, Gay marriage must remain

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<sup>21</sup> *See, e.g.*, Wikipedia, Homosexuality in Ancient Rome, [http://en.wikipedia.org/wiki/Homosexuality\\_in\\_ancient\\_Rome](http://en.wikipedia.org/wiki/Homosexuality_in_ancient_Rome) (last accessed Mar. 12, 2015).

inconceivable now as it was in ancient Rome because “any school boy knows that a homosexual act is immoral, indecent, lewd, and obscene. Adult persons are even more conscious that this is true.” *Schlegel v. United States*, 416 F. 2d 1372, 1378 (Ct.Cl.1969). As it was in Roman courts, so it is with the United States Courts that “to simply adjust the definition of obscenity to social realities has always failed to be persuasive before the Courts of the United States.”<sup>22</sup> And even historical exceptions to the man-woman definition of marriage did not allow for same-sex marriage. Cultures that permitted polygamy nonetheless defined marriage as several heterosexual unions. *Girgis, et al., supra*, at 247 n.3. As a matter of Constitutional integrity, the States’ laws cannot be rewritten merely because a particular religious group cultivates a lot of clout and support from the infantile media. The change would flagrantly violate the Constitution and cultivate the secondary harmful effect of promoting persecution of Christians, while eroding community standards of decency and normalizing false permission giving beliefs about sex that are destructive, dehumanizing, desensitizing, depersonalizing, and damaging from every angle. So again, it follows that to support the government’s endorsement of LGBTQ ideology is an act of sedition. This means that Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) never should have been enforced to begin with.

As just about every Circuit has noted, “[t]he traditional definition of marriage goes back thousands of years and spans almost every society in history.” *Obergefell* Pet. App. 53a. It is particularly telling that not one of the Petitioners in *Obergefell* cited to a single historical example in which a society embraced as “marriage” a union of two people of the same sex, a

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<sup>22</sup> *Ginsberg v. New York*, 390 U.S. 629, 639–40, 88 S.Ct. 1274, 20 L. Ed. 2d 195 (1968), *Mishkin v. State of New York*, 383 U.S. 502, 509, 86 S. Ct. 958, 16 L. Ed. 2d 56 (1966), and *Bookcase, Inc. v. Broderick*, 18 N.Y.2d 71, 271 N.Y.S.2d 947, 951, 218 N.E.2d 668, 671 (1966).

union between more than two people regardless of the sex, a union between a person and an object, or a union between a person and an animal because all such unions are prospectively “removed from reality.”<sup>23</sup> To the contrary: the Secular Humanists on the *Obergefell* Court rebuked thousands of years of history, thought, debate, and reflection as reflecting nothing but animus in defending a legal imposition that they know entangles the government with the religion of Secular Humanism and has proven to be a complete and total disaster. It is why Justice Kennedy stepped down in the wake of the decision in *Masterpiece Cakeshop v. the Colorado Civil Rights Commission*, 584 U. S. \_\_\_\_ (2018).<sup>24</sup> “Pride” is a serious problem for functional Democracies. Justice Kennedy stepping down was his way of apologizing to Jack Phillips and the nature. But that gester does not go far enough. Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) and all statutes like it must be struck down.

2. Just because the major Western religions have taken a very clear stance on the definition of marriage does not make man-woman marriage policy non-secular, like all parody forms of marriage policy are. The stance of just about every institutionalized religion on marriage does not make man-woman marriage non-secular due to the fact that their definition of marriage is based on self-evident neutral fact-based truth and not on a series of unproven faith based assumptions that were more likely than not crafted to justify immotsl sexual conduct that

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<sup>23</sup> In response to a former Judge Advocate General’s attempts to intervene in the same-sex marriage case, *Brenner Scott*, the pro-gay activist Judge Hinkle found that man-object marriage was “removed from reality.” *Brenner v. Scott*, 2014 WL 1652418 (2014). What Judge Hinkle was really saying was that all forms of parody marriage take a huge amount of faith to believe that they are even real, plausible, and moral and that they are all, therefore, non-secular. *Id.*

<sup>24</sup> There is not one example of any society anywhere embracing same-sex unions as marriages. Very likely, there is not one for the same reasons that there are no societies anywhere that have embraced person-object and person-animal either.

naturally produces feelings of guilt and inadequacy. The second chapter of Genesis, upon discussing the creation of the first man and first woman, immediately declares that “a *man* should leave his father and mother and cling to his *wife* and they shall become one flesh.”<sup>25</sup> It later describes homosexual activity as an “abomination”<sup>26</sup> and expressly defines marriage as the union between man and woman.<sup>27</sup> Jews (operating under this definition provided by the Pentateuch) have always attached civil legal significance to this heterosexual definition of marriage; marriage, under Jewish Law, was never and is not simply a “religious obligation,” distinct from a designation of “civil status.” *Contra* Pet. App. 94a (Daughtrey, *J.*, dissenting).<sup>28</sup>

Throughout the ages, at least up until our day, the Jewish position is that the *civil* institution of marriage is possible only between a man and a woman and that it is simply not possible for self-identified homosexuals to marry any more than it is possible for a man to marry

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<sup>25</sup> Genesis 2:24 (translation by attorney) (emphasis added). The New Testament repeats virtually identical language at Mark 10:6-8, which is traditionally recited by Christians at wedding ceremonies. See First Things, Evangelicals and Catholics Together, *The Two Shall Become One Flesh: Reclaiming Marriage*, <http://www.firstthings.com/article/2015/03/the-two-shall-become-one-flesh-reclaiming-marriage>-2 (Mar. 2015); see also Matthew 19:4-9.

<sup>26</sup> Leviticus 18:22. The Hebrew word is *to'evah*, which might be better translated as “disgusting” or “abhorrent.”

<sup>27</sup> Deuteronomy 24:1 (“When a man marries a woman...” (translation by attorney; some substitute “If” for “When,” but the latter is truer to the meaning of the text)) (Maimonides derives from this phrase a Biblical commandment to marry. MAIMONIDES, MISHNE TORAH, FAMILY LAW 1:1-2.). Aside from defining marriage, the verse’s specific references to gender seem superfluous; if this phrase were not intended as definitional, it would have served no apparent purpose as the remainder of the verse discusses divorce, not marriage.

<sup>28</sup> Marriage under Jewish Law forms the basis for numerous other doctrines, including those related to the following *civil* obligations or restrictions imposed by Jewish Law: financial support for children, divorce, conjugal obligations that a husband has to his wife, various religious opportunities and commandments that are contingent upon familial relationships (especially regarding female relatives of a *kohen*), the acquisition of property, and evidentiary standards in civil proceedings.

a squirrel or a teapot.<sup>29</sup> While it is “possible” for a man to have sex with a consenting child, a man, an animal, or an object that “possibility” does not make such sex unions actual marriage. This is because it is self-evident that such sexual practices are obscene, immoral, and subversive to human flourishing because they fail to check out with the way things are and the way we are. Likewise, the legal basis for Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) is either removed from reality or faith-based, which makes the policies unenforceable.

The Christians, like the Jews, maintained the same position that it is impossible for a man to marry anything beyond a member of the opposite-sex. Among others, Augustine, writing in circa 400 C.E., was plainly in agreement.<sup>30</sup> As far as *Amicus* is aware, there was not any dissent on this issue among the Church’s early leaders, despite the fact that they disagreed with each other about several other significant issues related to sex and marriage.<sup>31</sup> And the modern Catholic Church maintains in the Catholic Code of Canon Law that “[t]he matrimonial covenant” is the means “by which a man and a woman establish between themselves a partnership.”<sup>32</sup> This position, limiting marriage to heterosexual unions, is quoted and affirmed verbatim in the

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<sup>29</sup> The Talmud records a statement made circa 300 C.E. in which non-Jewish civilization (*i.e.*, the masses, rather than individuals) is praised for not formally recognizing marriages between men for civil monetary purposes (referring to *ketubah*). TALMUD BAVLI, CHULLIN 92 a-b (translation by attorney). Rabbi Shlomo Yitzchaki (“*Rashi*”), explains in circa 1100 C.E. that although homosexual intercourse among non-Jews was not uncommon, the non-Jews did not “make light of this [Biblical prohibition]” to the extent of legally recognizing homosexual unions as marriages. *Rashi, ad loc.* (translation by attorney).

<sup>30</sup> See generally, St. Augustine, *Of the Good of Marriage*, available at <http://www.newadvent.org/fathers/1309.htm> (2009).

<sup>31</sup> See, e.g., Wikipedia, Marriage (Catholic Church), Church Fathers, [http://en.wikipedia.org/wiki/Marriage\\_\(Catholic\\_Church\)#Church\\_Fathers](http://en.wikipedia.org/wiki/Marriage_(Catholic_Church)#Church_Fathers) (last accessed Mar. 13, 2015).

<sup>32</sup> CIC can. 1055 § 1, available at [http://www.vatican.va/archive/ENG1104/\\_\\_\\_P3V.HTM](http://www.vatican.va/archive/ENG1104/___P3V.HTM) (last accessed Mar. 13, 2015).

Catechism of the Catholic Church.<sup>33</sup> Similarly, Protestant and Evangelical groups, at least until our day, have maintained this position. For example, the Southern Baptist Convention, in its summary statement of faith, declares that “[m]arriage is the uniting of one man and one woman in covenant commitment for a lifetime.”<sup>34</sup> *See also generally* CHRISTOPHER ASH, MARRIAGE: SEX IN THE SERVICE OF G[ ]D (2005).

Islam likewise maintained this position.<sup>35</sup> The Qur’an expressly describes marriage as the union between a man and one or more (up to four) women. Qur’an 4:3, 20-25. Modern Islamic teaching is generally unchanged.<sup>36</sup> Not all of these sources subscribed to a monogamistic definition of marriage. But none of them “would allow marriages between people of the same sex, [people and objects, or people and animals].”<sup>37</sup> The idea that marriage should be between a man and woman is not a religious concept nor is it a political power play. It is a fact-based concept that is predicated on self-evident neutral truth that when embraced, promotes human flourishing, not sedition. Man-woman marriage policy is, therefore, secular from a legal perspective. Just because the major world religions refer to marriage as a union between a man

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<sup>33</sup> CCC § 1601, available at [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p2s2c3a7.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c3a7.htm) (last accessed Mar. 13, 2015).

<sup>34</sup> Southern Baptist Convention, The Baptist Faith and Message, <http://www.sbc.net/bfm2000/bfm2000.asp> (last accessed Mar. 29, 2015).

<sup>35</sup> *See, e.g.*, Mission Islam, *Islam and Homosexuality*, <http://www.missionislam.com/knowledge/homosexuality.htm> (last accessed Mar. 29, 2015); WikiIslam, *Islam and Homosexuality*, [http://wikiislam.net/wiki/Islam\\_and\\_Homosexuality](http://wikiislam.net/wiki/Islam_and_Homosexuality) (last accessed Mar. 29, 2015).

<sup>36</sup> DANIEL OTTOSSON, ILGA, STATE-SPONSORED HOMOPHOBIA 5, 12, 16, 21-23, 28, 32, 34, 37, 39 (2009), available at <http://www.webcitation.org/6LLkhFR75>; *see also* Faris Malik, *Queer Sexuality and Identity in the Qur’an and Hadith*, <http://www.well.com/user/aquarius/Qurannotes.htm> (last accessed Mar. 29, 2015).

<sup>37</sup> Robert R. Cargill, *et al.*, Op-Ed., *Iowa View: 1 Man, 1 Woman isn’t the Bible’s Only Marriage View*, DES MOINES REGISTER, June 3, 2013 (biblical scholars arguing that the texts could not be used to support monogamistic definition of marriage, but admitting that they do indicate a heterosexual definition of marriage).

and a woman does not make man-woman marriage non-secular for purposes of the Establishment Clause. This is because man-woman marriage policy only coincidentally parael principles of institutionalized religions without making any one religion the national supreme religion.

3. The Supreme Court has long deferred to historical understanding as indicative or informative of legal rights. The Supreme Court has used writings by Hamilton, Madison, and Story to conclude that the Supremacy Clause does not create a right of action. *Armstrong v. Exceptional Child Center, Inc.*, 2015 WL 1419423 at \*3 (Mar. 31, 2015). This was hardly an aberration. James Madison’s name appears in 246 of this Court’s decisions, 226 of which were published in 1950 or later. Thomas Jefferson likewise appears often—in 243 decisions, 183 of which are dated 1950 or later. And Joseph Story’s *Commentaries on the Constitution of the United States* appears in 152 decisions, 110 of which are dated 1950 or later. Nearly all of those citations are positive and intended to lend support to a legal argument by demonstrating historical support. The Court regularly uses the historical record to assign meaning to constitutional provisions. Chief Justice Marshall did so in no less a precedent than *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819):

The principle now contested was introduced at a very early period of our history, has been recognised by many successive legislatures, and has been acted upon by the judicial department...as a law of undoubted obligation.... The power now contested was exercised by the first congress elected under the present constitution. The bill for incorporating the Bank of the United States did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability.... It would require no ordinary share of intrepidity, to assert that a measure adopted under these circumstances, was a bold and plain usurpation, to which the constitution gave no countenance. *Id.* at 401-02.

The Supreme Court employed this principle in interpreting two separate Clauses of the Constitution: 1) the Establishment Clause, *Town of Greece, N.Y. v. Galloway*, 134 S.Ct. 1811, 1818-20, 1823-24 (2014); *id.* at 1825 (op. of Kennedy, *J.*), and 2) the Recess Appointments Clause, *N.L.R.B. v. Noel Canning*, 134 S.Ct. 2550, 2559-60, 2562-64, 2570-71, 2577 (2014) (concluding that the Court’s holding is “reinforced by centuries of history, which we are hesitant to disturb”). In the past ten years—aside from its holdings in *Armstrong*, *Town of Greece*, and *Noel Canning*—the Court has used history to help define, among other provisions, 1) the Religion Clauses, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S.Ct. 694, 702-04 (2012) (unanimous); 2) the Direct Tax Clause, *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S.Ct. 2566, 2598-99 (2012); 3) the Executive’s removal power, *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010); 4) the Necessary and Proper Clause, *United States v. Comstock*, 560 U.S. 126, 137-43 (2010); 5) the Speech Clause of the First Amendment, *Nevada Comm’n on Ethics v. Carrigan*, 131 S.Ct. 2343, 2347- 49 (2011); and 6) the Second Amendment, *District of Columbia v. Heller*, 554 U.S. 570, 592-619 (2008). And, of particular note, it used history to define the proper role of the States with regard to domestic relations in *Windsor*, 133 S.Ct. 2675. This consistent reference to historical practice affirms that “the longstanding ‘practice of the government’ can inform our determination of ‘what the law is.’” *Noel Canning*, 134 S.Ct. at 2560 (internal citations omitted) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), and *McCulloch*, 17 U.S. at 401)). The bottomline is this, the State’s use of history to define marriage between one man and one woman shows that the policy that respects, endorses, and recognizes man-woman marriage is secular in nature, and, therefore, does not violate of the Establishment Clause. The evidence shows that the recent attempts by the

Democratic party and the LGBTQ church to expand the legal definition of marriage to self-identified homosexuals is nothing more than an imperialistic political power play that servers as a religious sham that the Establishment Clause will not allow.

Certainly, history is not dispositive in all cases but in the case of man-woman marriage policy, history shows that the union is the only secular form of marriage that the State and Federal government can legally endorse. “It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it.” *Walz v. Tax Comm’n of City of New York*, 397 U.S. 664, 678 (1970). But, as the Supreme Court made clear in the very next sentence in *Walz*, “an unbroken practice of [a given legal position], openly and by affirmative state action, not covertly or by state inaction, is not something to be lightly cast aside.” *Id.* That is certainly no less true with regard to the Fourteenth Amendment:

The Fourteenth Amendment, itself a historical product, did not destroy history for the States and substitute mechanical compartments of law all exactly alike. If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it[.]

*Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31 (1922) (Holmes, *J.*). History tells us a great deal about the meaning of Constitutional text and how to apply it. The truth is that the Fourteenth Amendment has absolutely nothing to do with informing the States as to how they should be legally required to define marriage.<sup>38</sup> Only the First Amendment does that. So, the individual

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<sup>38</sup> The Supreme Court has already weighed in and found that Secular Humanism is a religion for the purposes of the Establishment Clause. *Torcaso v. Watkins*, 367 U.S. 488 (1961). According to *Amicus* brief filed by Garden State Families and a host of sworn statements provided by former homosexuals, homosexuality has nothing to do with immutability and is a religious doctrine that comes directly out of the religion of Secular Humanism. According to medical experts in *Amicus* brief filed by the Dr. King’s *Amicus* and the sworn statements by Dr. Cretella and Dr. King, there is no proof that a gay gene exists so, therefore, homosexual dogma is

States do not get to define marriage in their own way. While States do not have to legally recognize any form of parody marriage, they would be unwise not to do so for the reasons set forth in the *Amicus* brief authored by the Ruth Institute.

When the history predates the constitutional text not by “two hundred years,” *id.*, but by over three *thousand* years, the presumption—that constitutional text that does not expressly displace an ancient historical understanding is deemed to be consistent with it—is vastly stronger. Here, several thousand years of recorded history make exceedingly clear that “marriage” describes a heterosexual union, not a homosexual, polygamous, or objectophilic union. Despite that background, the self-identified homosexuals in *Obergefell* argued that the Fourteenth Amendment, Constitutional text drafted in the mid-nineteenth century, has long been understood to be consistent with historical practice, *e.g.*, *Ex parte State ex rel. Alabama Policy Inst.*, 2015 WL 892752 at \*5-7 (Ala. Mar. 3, 2015) (*per curiam*); *Matter of Cooper*, 187 A.D.2d 128, 132-34, 592 N.Y.S.2d 797, 799-801 (N.Y. App. Div. 1993); *Singer v. Hara*, 11 Wash. App. 247, 260-64, 522 P.2d 1187, 1195-97 (1974); *Jones v. Hallahan*, 501 S.W.2d 588, 589 (Ky. Ct. App. 1973); *Baker*, 291 Minn. at 311- 13, 191 N.W.2d at 186; *see also Conaway v. Deane*, 401 Md. 219, 932 A.2d 571 (Md. 2007) (applying state constitutional law in comprehensive analysis), nevertheless voids that practice. They should be met with great skepticism.

Conversely, the wisdom of several thousand years should no longer be dismissed in the face of so much overwhelming evidence that gay marriage policy is nothing more than a religiously charged political power play that causes division, feeds entitlement syndrome, erodes community standards of decency, and cultivates persecution of non-observer, and undermines

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inherently religious in nature. Licensed Ministers have attested and confirmed that Secular Humanism is a religion and homosexual doctrine comes directly out of that religious worldview.

the Supremacy of the United States Constitution itself. While it is true that our ancestors adopted some laws and practices worthy of little regard, the fact remains that most of the norms (both legal and social) that govern our society come from our ancestors and the natural law that is woven into the fabric of the universe. Sure, in some instances we might have chosen different rules if we were starting from scratch today, but were that reason to discard the historical norms that govern our society, civil life would have no stability, no predictability, and much discord. Simply disregarding the collective wisdom received from our ancestors would be a fool's mistake. Indeed, such wisdom is the very foundation of the common law system because it reflects self-evident neutral morality.

4. Reliance on the historical norm does not rest on any particular normative argument. Rather, the historical norm posits that, in light of the exceptionally long historical practice regarding the definition of marriage, that historical definition should be presumed, regardless of how we might define it if we were creating marriage from scratch today. But the historical definition of marriage has considerable normative appeal as well. Assessing that normative appeal requires giving consideration to the discrete sources of this long history.

The Sixth Circuit and other Circuits have noted, government regulation of marriage—that is, committed heterosexual unions—was intended to facilitate the care of children. *Obergefell* Pet. App. 33a (“It does not take long to envision problems that might result from an absence of rules about how to handle the natural effects of male-female intercourse: children.”). While the self-identified homosexual litigants in *Bourke* derided this as a mere litigating position not to be taken “seriously,” *Bourke* Pet. Br. 16, this was indeed the Roman position some 2,000 years ago. “[M]atrimonium, [was] a hierarchical institution...aimed at creating legitimate offspring as well

as a route for the transmission of property[.]”. WILLIAMS, *supra*, at 286. Even if there were no longer a need for such rules regulating the care of children, the fact remains that our history and our tradition created those rules—and the corresponding distinction between heterosexual and homosexual unions—with good reason. It is built into the very definition of “marriage.”

Disturbing that definition should give us pause. This pause is enhanced by the fact that modifying the definition of marriage to appease the LGBTQ church violates the Establishment Clause for failing the prongs of *Lemon*. So does the enforcement of Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) against the Plaintiffs.

Biology offers yet another normative and secular basis for the historical record, which further shows that actual marriage policy is the only secular form that the Establishment Clause will allow. Men and women are built in a manner that, in their union, enables them to engage in productive (or potentially productive) conjugal relations. Two people of the same sex, a person and object, and a person and an animal cannot. That biological fact, whether orchestrated from on High or the result of millions of years of natural selection, tells us a great deal about the identities and differentiation of the sexes. Parody marriages and parody marriage policies are an insult to the different genders and to self-evident truth. Politics aside, parody marriages are an insult to people who are in an actual marriage because it asserts two things that are not equal as if they were. It is no mystery why our ancestors concluded that *only* sexual relationships responsive to those biological realities should be given the special legal status of marriage. At some point it is going to have to register to progressives that the United States is a Constitutional Republic governed by patriotic people and that to progress towards savagery is not “progress,” it is unwise. For the LGBTQ church to falsely equate their plight to the race-based civil rights

plight, whereas only the race-plight is actually based on immutably, is an act of fraud and racial animus in kind that is emotionally, intellectually, racially, and sexually exploitative. The Establishment Clause prohibits Secular Humanists from exploiting false equivalencies in the policy making process.

Finally, the historical record is also rooted self-evident morality that only parallels the beliefs of most institutionalized religions. While States have no authority to legislate the precepts of institutionalized religion, U.S. CONST. amend. I, the States are entitled—indeed, encouraged—to recognize and celebrate those roots if and only if the religion parallels neutral, natural, and non-controversial morality, which does not take faith to believe and only merely parallels institutionalized religious edits by coincidence. The fact that the Bible is the master narrative of the Constitution and the Bill Of Rights does not make Constitution and the Bill of Rights, themselves, unconstitutional.<sup>39</sup>

It is true that religion has been closely identified with our history and government. This is only true because it is impossible to get around the axiom that “without faith, there is no basis for morality, and without morality there is no basis for law.” It is the way it is. But it cannot be said with a straight face that all moral doctrines are equal or that all truth claims all of the time lead to human flourishing. It didn’t in the case with Hitler’s Nazi regime. It hasn’t in the case of endorsing gay marriage. Not all moral doctrines as a basis for law are equal. The set of truth claims behind parody marriage are unproven (if not disproven completely), whereas the truth claims behind man-woman marriage are proven. Man-woman policy accomplishes its legal

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<sup>39</sup> There must be a moral basis for law. The question is which set of moral doctrine must be used? The answer is certainly not the moral doctrine floated by the self-serving the LGBTQ Church.

purpose but gay marriage policy has been a complete failure that shows that Secular Humanists in office in office are unfit to serve because they objectively do not know the difference between right and wrong, real and fake, and secular and non-secular.

It is true that man is “homo-religioso.” Everyone worships something and carries with them a set of unproven truth claims into the public square. While a man can desensitize himself, a man cannot separate himself from the fact that he is a spiritual being. As said in *Engel v. Vitale*..., “The history of man is inseparable from the history of religion. And \* \* \* since the beginning of that history many people have devoutly believed that ‘More things are wrought by prayer than this world dreams of.’” In *Zorach v. Clauson*..., we gave specific recognition to the proposition that “(w)e are a religious people whose institutions presuppose a Supreme Being.” The fact that the Founding Fathers believed devotedly...is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 212-13 (1963). In fact, intentionally ignoring or deriding those roots would likely violate the First Amendment:

When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution *a requirement that the government show a callous indifference to religious groups*. That would be preferring those who believe in no religion over those who do believe.

*Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952) (emphasis added). Compelling States to ignore the religious roots of their citizens, institutions, and history would be a constitutional violation as it would reflect a federal animus against religion. *Larson v. Valente*, 456 U.S. 228, 254-55 (1982); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532-40

(1993). States have a significant interest in respecting and protecting the moral and religious beliefs of their citizens. That interest weighs against a State labeling its citizens as “bigots” for refusing to adopt a new definition—a new orthodoxy—of marriage. Yet self-identified homosexuals and legions of devout Secular Humanists urge essentially that avoiding such a display of animus against religion is a compelling governmental interest. *See Larson*, 456 U.S. at 253- 55. The bottomline is that the States’ decision to legally respect man-woman marriage does not promote a particular religion but it does promote common sense, freedom, and human flourishing. In sum, the States’ decision to honor the *Obergefell* decision has entangled the government with the religion of Secular Humanism and cultivated in the erosion of fundamental protected liberty interests and the rule of law itself.

5. The “historic norm,” when it comes to defining marriage, shows that man-woman marriage is the only legal form of marriage that the Establishment Clause will permit any of the States to legally recognize. This means that the clerk of San Francisco County can no longer issue marriage licenses to self-identified homosexuals no matter how its employees feel about the plausibility of gay marriage. *Amicus* has no doubt that in some cases self-identified homosexuals, polygamists, and zoophiles who wish to have their homosexual relationships be dubbed “marriage” genuinely love their proposed “spouse,” are committed to their “spouse,” and genuinely see themselves as being in a relationship like marriage as a continuing part of Secular Humanists in office to entangle the government with the religion of Secular Humanism. Yet, sincerity of belief does not justify the disregard of the Establishment Clause. Under the Freedom of Expression Clause, self-identified homosexuals, polygamists, zoophiles, and zoophiles warrant the right to have marriage ceremonies and fully believe that the marriage is

real in their own mind and in the mind of others who believe that it is possible. It is clear that at least some of self-identified homosexuals, polygamists, and objectophiles have suffered significant harm as a result of the application of the historical norm and the Establishment Clause by some States. For example, the Sixth Circuit references the inability of some in homosexual relationships to “visit a partner or partner’s child in the hospital.” *Obergefell* Pet. App. 16a. Surely, a homosexual partner in a committed relationship should not be denied that opportunity. Were it the historical norm that prevents hospital visitation, it would be cause for concern and for constitutional scrutiny.

But therein lies the rub. It is not the historical norm—the basis by which many States and Federal government defined *marriage*—that is the problem; the rules governing hospital visitation are the problem. A self-identified homosexual couple in a committed relationship that is denied hospital visitation rights might have a valid claim against the State or hospital on the ground that they have been improperly denied hospital visitation. Their claim should not be that the State has improperly defined marriage. Such a claimant might be entitled to a state-recognized civil union or an exception to the requirement of a documented marriage for the purposes of hospital visitation. This deprivation does not, however, entitle him or her to compel the State to redefine as “marriage” something that has never been marriage. There is nothing that can be said that justifies the misapplication of the Fourteenth Amendment and the disregard of the First Amendment Establishment Clause in resolving how the States must uniformly define marriage. The Supreme Court’s decision in *Obergefell* to force the States to legally recognize gay marriage has conclusively demonstrated that gay marriage policy in all 50 states is a non-secular sham that must immediately be done away with in a single instance - overnight. It

does not matter whether more Americans have cozied up to the idea of normalizing homosexual conduct, the evidence shows that gay marriage policy endorsed by the government violates the Establishment Clause under every single prong of the *Lemon* Test. All that is needed to force this Honorable Court enjoin the Defendants is a showing that the policy fails one prong of the *Lemon* Test.<sup>40</sup> The evidence shows that the making and the enforcement of gay marriage policy and sexual orientation statutes violates all three prongs of *Lemon* and is totally unconstitutional. Jack should win.

*B. The “Consent Norm:” Marriage Is The Result Of Adults Consenting To Form A Committed Familial Relationship Is An Arbitrary Procedural Consideration That Is Undone By Substantive Due Process If The Holding In Obergefell Is Valid*

In *Obergefell*, the *Tanco* petitioners declare that “[t]he...freedom to marry includes the freedom to choose whom to marry.” *Tanco* Pet. Br. 19. That statement briefly summarizes the positions of all of the petitioners in that case, who found offensive state laws that place restrictions on individual autonomy in marriage. Essentially, they argue that marriage is a choice made by individuals that results from love and reflects lasting commitments. *See Obergefell* Pet. Br. 3.<sup>41</sup> The petitioner’s position in *Obergefell* was that “marriage” is defined in the first instance with reference to individual consent. Though petitioners also appeared to incorporate “love” into their definition of marriage, it is difficult to believe that they wished to have their States, as a prerequisite to licensure or recognition of marriage, interview them and make

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<sup>40</sup> Government action “violates the Establishment Clause if it fails to satisfy *any* of these prongs.” *Edwards*, 482 U.S. at 583; *Agostini v. Felton*, 521 U.S. 203, 218 (1997)(Emphasis added)

<sup>41</sup> Oh really. If that was true they would have supported Plaintiff Sevier’s motion to intervene, since he is an individual who claimed that he was in love with an object that he wanted to marry. But the *Tanco* Petitioners adamantly opposed his intervention at the District Court, Court of Appeals, and Supreme Court level because they knew that gay marriage was a sham and that the entire lawsuit was focused on ulterior political motives.

findings as to the sincerity of their love. See Shannon Holzer, *Natural Law, Natural Rights, and Same-Sex Civil Marriage: Do Same-Sex Couples Have a Natural Right to be Married?*, 19 TEX. REV. L. & POL. 63, 74 (2014) (“[T]he concept of love...is non-essential to marriage. Many people are married who rarely, if ever, feel passion for their spouse.”). The fact of the matter is that the idea that “love is love” is just mindless circle reasoning. Love without truth is just shallow sentimentality. The fact of the matter is that if love was to be measured in degrees, where would the cut off be? In any event, defining marriage with reference to a subjective and dynamic emotional state (many couples marry despite not experiencing love and many remain married even after they stop loving each other) would create a wholly unenforceable legal regime. Emotion reasons, even seemingly good ones, do not justify the promulgation of policy that entangles the government with a religion and violates the Establishment Clause. See *Holloman v. Harland*, 370 F.3 1252 (11th Cir. 2004).

If marriage is defined with reference to mutual consent, State statutes or Constitutional provisions that limit licensure or recognition only to heterosexual couples and homosexual couples deprive polygamists and objectophiles that want to be in a recognized marriage of rights guaranteed to other individuals. This is discrimination. But it should be apparent that, notwithstanding the hundreds of pages of briefing presented by the petitioners in *Obergefell*, this is not a purely *constitutional* argument. It is an argument on the theory of marriage, motivated in the first instance by a rejection of the historical norm (all of the *Obergefell* petitioners rejected reliance on history, re-casting literally thousands of years of history as “discriminatory”) and adoption of a very different theory, the “consent norm.” The “consent norm” provides a robust theory of marriage in the sense that it has considerable theoretical appeal outside of the context

of same-sex marriage and is not (at least, not apparently) simply a litigating position. It is also extraordinarily simple and elegant: Adults who wish to form a loving committed relationship may do so, and that relationship is called “marriage.”

The *Obergefell* petitioners argued that they were deprived of the right to state recognition of their union, despite that it is not materially different from other unions recognized by their state as marriage. The petitioners in *Obergefell* were asking the States to treat the petitioners as married despite the fact that their union is incompatible with marriage. *Id.* 1-29. Those conflicting baseline assumptions animated that entire litigation and are revived here by the introduction of the Marriage And Constitution Restoration Act. The argument that the States respondents in *Obergefell* should have made, but did not, was that the Constitution prohibited the States from legally respecting, recognizing, and endorsing any form of parody marriage because doing so causes the government to excessively entangle itself with the religion of Secular Humanism in violation of the Establishment Clause. It is exactly the argument that the Plaintiffs should be making here. The Plaintiffs should assert a new cause of action claiming that Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) violate the Establishment Clause for excessively entangling the government with the religion of Secular Humanism. The State Respondents also failed to argue the original purpose behind the statutes that limited marriage to a man and a woman was because all forms of parody marriage equally erode community standards of decency, and the states have a compelling interest to uphold community standards of decency. That was the right argument. Likewise, the enforcement of Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) erodes community standards of decency. Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. §

24-34-303(1)(b)(I)-(III) are inconsistent with a compelling state interest that is real, not imaginary, like the idea that there are more than two genders. Now is the time for the judicial, legislative, and executive branches on the State and Federal level to turn back and get it right.

*C. While The Historical And Consent Norms Comprise The Court's Options In Obergefell The Historical And Total-Equality Norms Comprise The Government's Options At Present*

In *Obergefell*, the choice facing the decision-maker in selecting a theory of marriage was allegedly binary. The Supreme Court could have defined marriage under the “historical norm” or the “consent norm,” but there was a third option that was superior to and that supersedes the “consent norm.” The government decision-maker must now select between the “historical” or the “total-equality” norm, not the “consent norm” - creating the correct binary. There is no other option, and the answer is that the government must select the “historical norm” because that is what the Establishment Clause allows. An appeal to religion or natural law, for example, is simply an adoption of one of the normative sources that underlie the “historical norm” (both of those theories contribute significantly to the historical definition of marriage). Similarly, an appeal to the basic or essential rights of human beings— arguing that all human beings have an essential right to marry the person, persons, things, or animals that he or she loves—is little more than a restatement of the “total-equality norm.” Both the “historical norm” and the “total-equality norm” have variations and subsets, each with their own supporters and detractors. *Amicus* has articulated the options available to the decision-maker in the broadest possible manner.<sup>42</sup>

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<sup>42</sup> *Amicus* has articulated these theories as broadly as possible to give them the broadest appeal and make them as universal and neutral as possible. In so doing, an equivalence is inadvertently suggested between, for example, religious sources of history and historical sources that define marriage with reference to procreation. Obviously, many will reject this equivalence on normative grounds, opting instead for whatever subset of the historical norm that they find persuasive. *Amicus* takes no position on how to weight these various sources.

**III. The Consent Norm Is Just Another Arbitrary Marriage Ban That Poses Considerable Legal And Line-drawing Problems Because It Is Just A State Policy That Is Invalidated By Substantive Due Process Of The United States Constitution Under *Obergefell* If The Holding Is Valid**

The universality and apparent neutrality of the consent norm made it particularly attractive, until self-identified zoophiles, polygamists, and objectophiles started asking the courts to overrule it under the Fourteenth Amendment for being nothing more than another discriminatory arbitrary marriage ban. The consent norm facilitates state recognition of the unions of loving adult partners in a seemingly inclusive and non-discriminatory manner. But even the consent norm excludes some people from marrying—for example, mature teenagers (including after conceiving a child) and those adults who are not psychologically or physiologically capable of consent. Such limitations are necessary in any definition of marriage; to be meaningful, a definition will have criteria that exclude. *See* Girgis, *et al.*, *supra*, at 251 (“Any legal system that distinguishes marriage from other, non-marital forms of association, romantic or not, will justly exclude some kinds of union from recognition.”); *cf.* *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647-48 (2000) (noting the relationship between exclusion and expression). The alternative—no exclusions—is to say that any group of human beings (including infants) can marry, regardless of their ability to consent or even understand what they are doing.<sup>43</sup> Clearly, any reasonable definition of marriage will leave some people feeling left out. Those who have been left out can also use the Fourteenth Amendment to overrule State

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<sup>43</sup> Even then, some people would complain that the definition of marriage is discriminatorily narrow. *See* Holzer, *supra*, at 75 (“France granted a woman a marriage license to ‘marry’ her dead boyfriend. In 2006 a woman ‘married’ a dolphin.... In Germany a man ‘married’ his cat, in China a man ‘married’ himself, and in South Korea a man ‘married’ his pillow.”) (footnotes omitted).

authored procedural safeguards to acquire the same rights and benefits under the law afforded to self-identified homosexuals.

At very least, the consent norm applies with equal force to any competent adults who consent to marry, no matter their number or prior relation. Under the consent norm, committed consensual unions that are incestuous or involve more than two people<sup>44</sup> cannot be distinguished in a principled manner from committed homosexual unions. While the homosexual lobby and LGBTQ church would apparently be satisfied by a definition of marriage that restricts the consent norm to unions of only “two people,” such a restriction is no more or less arbitrary than one that defines marriage with reference to gender, which the self-identified homosexual Petitioners in *Obergefell* contended violated the Fourteenth Amendment.<sup>45</sup> The problem is that the laws of nearly every State prohibit both plural and incestuous marriages (often both criminally and civilly), *see* Appendix, such that the Supreme Court’s adoption of the consent norm has subjected many hundreds of state statutes and some of the Supreme Court’s own precedent to reconsideration and likely invalidation. This is all due to the fact that the Supreme Court was lying when it found that gay marriages was a civil right under the Fourteenth Amendment, just as the Colorado Civil Rights Commission has been lying in treating “gay issues” as if they were civil rights matters and not spiritual ones.

A. *Reynolds*, Which Upholds State Bans Of Bigamy, Is Inconsistent With The Consent Norm

The Supreme Court’s decision in *Reynolds* cannot be squared with the consent norm and will certainly be in tension the holding in *Obergefell*. Id. 1-29. *Reynolds* declared, relying on a

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<sup>44</sup> The word “polygamy,” while not demanding this definition, is often used to refer to a relationship between one man and many women. To include all unions involving more than two people, this brief uses the generic term “plural marriage.”

<sup>45</sup> *See* Br. of *Amici Curiae* Mae Kuykendall, *et al.*, in Support of Neither Party at 18-19 n.17.

long history of polygamy bans (noting in particular a statute passed circa 1600 C.E. that made polygamy a capital offense), that the First Amendment’s guarantee of “free exercise” of religion, U.S. CONST. amend. I, was never intended to include a right to engage in bigamy. *Reynolds*, 98 U.S. at 164- 66. It thus affirmed a criminal conviction for bigamy notwithstanding that the bigamy was practiced for religious reasons. *Id.* at 166-67; *see also* 169 (on rehearing) (clarifying that the sentence would be served with “hard labor”). Some of the reasoning in *Reynolds* is arguably inconsistent with some of the Court’s more recent cases. *See Brown v. Buhman*, 947 F. Supp. 2d 1170, 1181-89 (D. Utah 2013). But *Reynolds* remains good law and was cited favorably by the Supreme Court (albeit, for another point) just seven years ago. *Giles v. California*, 554 U.S. 353, 366-67 (2008); *see also Church of the Lukumi*, 508 U.S. at 535 (citing *Reynolds* in 1993 for the proposition that “a social harm may have been a legitimate concern of government for reasons quite apart from discrimination”). Unless the three branches are prepared to reconsider *Reynolds*, they should refrain from the continued mandatory adoption of the “consent norm.” The Fourteenth Amendment commands that the “total equality” norm be adopted in the event that the government wants to prevent that marriage has anything to do with that provision of the Constitution, when it never did.

*B. State Statutes That Prohibit And Criminalize Incestuous And Plural Marriages Are Inconsistent With The “Consent Norm” And Must Be Invalidated Under the “Total-Equality Norm” If The Court Is To Continue To Pretend That The Fourteenth Amendment Is The Actual Legal Basis Concerning How Marriage Should Be Defined*

If marriage is defined with reference to consent as the homosexual lobby pretended, then bans on incestuous and plural marriages are no less constitutionally suspect than bans on same-sex marriages. Without exception, the petitioners’ legal arguments in *Obergefell* apply

with the same force in this case brought by self-identified polygamists and an objectophile.<sup>46</sup> If government buys the “consent norm” narrative floated by the LGBTQ church, distinguishing *Obergefell* from this plural marriage should be a vexing challenge because either marriage is a civil right for all adult individuals or it is nothing more than a non-secular sham destroyed by a straightforward application. *Id.* 1-29.

Incest is only one small step further from same-sex marriage than is plural marriage. After all, what governmental interest justifies discrimination against those in incestuous relationships? If the answer is simply that incestuous relationships are more likely to produce genetically disabled children, there are numerous problems with that answer. First, it stigmatizes and demeans disabled children in the same way that, the self-identified homosexuals in *Obergefell* claimed that the traditional definition of marriage stigmatizes and “demean[s]” homosexuals and their children. *See Obergefell* Pet. Br. 4. Second, it makes no sense when applied to same-sex, infertile, and elderly couples. Third, the *Obergefell* Petitioners argued that marriage has little or nothing to do with procreation. *See, e.g., Obergefell* Pet. Br. 56. If so, that the union might yield disabled progeny is irrelevant. And fourth, if the prevention of marriages that are likely to yield disabled progeny were indeed a legitimate governmental interest, it would seem that the government should require all people to undergo genetic testing before receiving a marriage license. To the best of *Amicus*’s knowledge, no State has such a requirement.<sup>47</sup> This suggests that bans against incest are motivated *not* by a governmental interest in preventing

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<sup>46</sup> *Id.* 1-29. *See Sister Wives* case, *Brown v. Buhman*, a challenge to Utah’s criminalization of polygam before the Tenth Circuit, docketed as number 14-4117. The district court upheld Utah’s ban on polygamous *marriage* while striking as unconstitutional its ban on multiple cohabitation. *Brown*, 947 F.Supp.2d 1170.

<sup>47</sup> Many States did in the past, but premarital medical testing requirements were repealed decades ago.

genetic disease, but rather by interests rooted in history or moral disapproval—precisely the interests that the dishonest self-identified homosexual Petitioners in *Obergefell* claimed were invalid. It is a simple fact that a man has the same procreative potential with an object that a man has with a man. The fact that marriage has been framed as an individual right (to side-step the impossible problem of bi-sexuality) means that “consent” is irrelevant. But then again, the Fourteenth Amendment was always itself irrelevant when it comes to answering the question present, as to how the Federal and State government must legally define marriage, and the ends do not justify the means in pretending otherwise.

*C. Mandating That States License Or Recognize Same-Sex Marriages, But Not Requiring Them To License Or Recognize Plural Or Incestuous Marriages, Is Unprincipled And Inconsistent With The Fourteenth Amendment. The Establishment Clause Prohibits The Government From Recognizing Any Form Of Parody Marriage*

Given the lack of a principled distinction, under the consent norm, between same-sex marriage on the one hand and incestuous or plural marriages on the other, if this Court were to continue to mandate that the government recognize the former but not the latter, it will appear to be bowing to the considerable political power of the devout members of the Secular Humanist church. Contrast that power with people in plural or incestuous relationships, who are marginalized both socially and politically.<sup>48</sup> The effect of such a holding would be to turn any Constitutional right to marriage into little more than a privilege to be doled out according to political power and popularity. That would be an affront to the Fourteenth Amendment under any level of scrutiny. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440- 41 (1985)

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<sup>48</sup> If marriage law were to differentiate between homosexuals and those in plural and incestuous relationships, privileging one group over the other, fairness and the Fourteenth Amendment dictate that the privilege should go to the group less-likely to be the beneficiary of special privileges obtained via the political process.

(in identifying “suspect” and “quasi-suspect” classes, considering whether the group in question has sufficient political power to protect itself). Moreover, extending legal rights to some and denying them to others on a basis that is unprincipled and without logical foundation is an affront to the rule of law. In order to restore the Constitution, the rule of law, and the integrity of the Judiciary, the three branches must enjoin one another from legally recognizing any form of parody marriage as the Establishment Clause requires.<sup>49</sup> That is the only way to restore Constitutional order and even prevent escalation into sedition and civil war.

#### **IV. The Three Branches Should Find That The Government Can Only Legally Recognize, Respect, And Endorse Man-Woman Marriage Under The “Historic Norm”**

Logic and legal consistency dictate that the *Obergefell* court’s implicit elevation of the consent norm is now being followed by the invalidation of many state statutes that treat those who are in or want to be in incestuous, objectophile, and plural relationships differently from those in homosexual relationships. The Appendix to this brief offers this Court some of those statutes, citing and summarizing a sample of implicated statutes from the states of the Sixth Circuit. Every State has many similar statutes that are similarly under threat. Unless the judiciary is prepared to reconsider *Reynolds* and invalidate the kinds of statutes like the ones in the Appendix, along with literally one (possibly two or three) hundred other state statutes that 1) prohibit issuance of marriage licenses to proponents of incestuous, objectophile, and plural marriage, 2) decline state recognition of incestuous, objectophile, and plural marriages performed in other jurisdictions, and 3) criminalize (usually as felonies) incestuous and polygamous acts, regardless of consent, it should not continue to pretend that *Obergefell* is good

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<sup>49</sup> Perhaps it should be the case that the decision does not retroactively apply, but going forward, the State’s decision to issue marriage licenses and to distribute marriage benefits to self-identified homosexuals is completely unconstitutional.

law and that the Fourteenth Amendment has anything to do with telling the States or Federal government how to legally define marriage. There is no legal or constitutional doctrine that dictates the selection of either the “historical norm” or the “consent norm.” *See Windsor*, 133 S.Ct. at 2714 (Alito, *J.*, dissenting) (“Same-sex marriage presents a highly emotional and important question of public policy—but not a difficult question of constitutional law.”). Any preference for one over the other is inevitably driven by politics, culture, and philosophy, and the desire of Secular Humanists to use government to enshrine their self-serving religion as the national religion in order affirm their moral superiority complexes.

The self-identified homosexual petitioners in *Obergefell* demanded that the USSC choose, in the course of analyzing and applying the Constitution, the consent norm over the historical norm. *Id.* 1-29. Now in view of the Marriage and Constitution Restoration Act, the three branches are forced to decide whether to define marriage with reference to allowing all individuals to marry anything or anyone in any combination in step with their self-asserted sexual orientation or else with reference to thousands of years of history by enforcing the Establishment Clause. The obvious decision is that the government is required to end the charade created under President Obama’s dismissal leadership and force every aspect of government to disentangle itself with the LGBTQ church because that is what the Constitution requires. These means that all of the states will be prohibited from making or enforcing statutes like Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III). The individual values of the Secular Humanists in office should not decide the fate of marriage; the Constitution should in light of the evidence that the fake gay civil rights plight is a non-secular sham that marked by a refusal to think logically. *Cf. Hall*, 512 U.S. at 881. Because man-woman marriage policy is the

only secular form and because all parody marriage policies are all equally non-secular in nature, the three branches of government must find that the government's gay marriage endorsement policy is unconstitutional and so are statutes like Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III). Federal judges are not appointed to espouse or codify their political, cultural, religious, or philosophical preferences; they are appointed to apply the law and decide cases. *See* U.S. CONST. art. III, § 2. The same applies to the Defendants who have terrorized the Plaintiffs because they refuse to admit that Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) are non-secular.

Choosing between the “historical norm” and “total-equality” norm via litigation is not tricky for a court because the choice implicates the interests of every American that is married or considering marriage. Defining marriage, aside from its obvious legal implications, has a greatly symbolic role. The *Obergefell* petitioners understood that and describe the refusal of the Sixth Circuit to redefine marriage as “stigmatizing.” *Bourke* Pet. Br. 25-26. That argument, however, works equally well in the opposite direction for man-woman couples, since parody marriages are self-evidently an insult to actual marriage and an affront to the same self-evident morality that the United States Constitution itself was founded on. Redefining marriage with reference to the total-equality norm will, in the eyes of many, cheapen the institution of marriage, weaken its bonds, and undermine strongly held beliefs about family and conjugal relations. *Girgis, et al., supra*, at 260-65.<sup>50</sup> Thus any decision will be stigmatizing in some fashion to many Americans. And the impact of any decision will be felt acutely and personally, well beyond the walls of this Court.

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<sup>50</sup> At the heart of the religion of Secular Humanism is the desire to assault the plausibility of absolute truth without there is no freedom. Freedom comes from the truth.

## V. The Spider Webb Dilemma

Lon Fuller strongly warned against the use of litigation to resolve “polycentric” matters. His argument is intuitive: “The...fundamental point is that the forms of adjudication [(e.g., litigation)] cannot encompass and take into account the complex repercussions that may result from any change [in the legal framework in which the adjudicator operates].” Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, 394 (1978). He argued that any decision in a polycentric dispute does not simply resolve the dispute, it also changes the facts. Consider this analogy to a spider web:

A pull on one strand will distribute tensions [in] a complicated [manner] throughout the web as a whole. Doubling the...pull will...not simply double each of the resulting tensions but will rather create a different complicated pattern of tensions. This would certainly occur, for example, if the doubled pull caused one or more of the weaker strands to snap.  
*Id.* at 395

The more complicated the web, and the more that external interests in an adjudication are “significant and predominant,” the more it is appropriate for such a dispute to be resolved not by an adjudicator pulling on the web, but by a legislature or executive that can take the entirety of the web into account. *See id.* at 398, 404-05; *see also Kansas City S. Ry. Co. v. McNamara*, 817 F.2d 368, 377 (5th Cir. 1987). Here the Establishment Clause is the tool that the three branches can use to untangle the mess that Secular Humanists courts and legislative bodies have cultivated by their decision to pretend that the Fourteenth Amendment informed the State and Federal government how the Constitution requires marriage to be defined.

A pervasive social institution like marriage, which has existed for thousands of years across all societies and impacts nearly every living person, forms a very complicated web indeed. The *Obergefell* court’s dishonest decision to monkey with the Fourteenth Amendment to impose

gay marriage policy has created a complicated nightmare that does not just make the judiciary look unwise and untrustworthy. Secular Humanists on the Courts and in other positions of government appear as if they do not objectively know the difference between “right and wrong,” “real and fake,” and “secular and non-secular.” The facts is that they do no. Now that it is 2018, America deserves better than misguided government actors who refuse to interpret the Constitution as it is written. The Secular Humanist Judges in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), who were appointed by Democrats, thought it was moral to consider people of color so inhuman that they did not deserve to be treated like their fellow citizens who were allowed to vote. The Secular Humanist judges in *Dred* were blinded by the unexamined assumption of the superiority of their cultural moment and were objective wrong then as they were in *Obergefell*. The Secular Humanists on bench in the *Obergefell* majority were out of line to use the Fourteenth Amendment as a well spring for unchecked judicial policy making. Standing alone, parody marriages are objectively immoral, obscene, and subversive to human flourishing. Yet, whether or not that is true or not is not necessarily relevant. What is relevant is the fact that the State’s policy that recognizes and dignifies gay marriage violates the First Amendment Establishment Clause completely.

The Federal Judiciary is not the only one who deserves blame for this Constitutional disgraceful scenario. Several Secular Humanists in the state legislatures opened the door to this entangled mess. So did several jaded State courts chaired by devout Secular Humanists. See *Baehr v. Lewin*, 74 Haw. 530 (Haw. 1993). The legislatures knew or should have known that the passing of gay marriage policy and of statutes that treat sexual orientation as a civil rights matter, like Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III), were

unconstitutional under the Establishment Clause. The Supreme Court in *Obergefell* did not go out looking for a fight. The fight was brought to its doorstep by devout moral relativists who live to entangle the government with their religious worldview.<sup>51</sup> But the Supreme Court set up *Obergefell* by its dishonest decision in *Windsor*. But the five outspoken Secular Humanists on the bench should have resisted the temptation to misapply the Fourteenth Amendment and dismissed the case due to a lack of Subject Matter Jurisdiction. Yet, *Amicus* agrees with the *Obergefell* court in that the all 50 states need to have one uniform legal definition of marriage. Here is what that definition must be: the States can only legally recognize man-woman marriage. It goes deeper than that. The government totally and completely abandon sexual orientation discrimination statutes, conversion therapy bans, and the transgender bathroom push. Because all of those policies in their making and in their enforcement and government that have the effect of endorsing the religion of secular Humanism in a manner that is prohibited by the Establishment Clause.

## VI. CONCLUSION

Colo. Rev. Stat. § 24-34-601(2)(a) and Colo. Rev. Stat. § 24-34-303(1)(b)(I)-(III) violates the Establishment Clause in their making and in their enforcement. The Plaintiffs should prevail.

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<sup>51</sup> The truth is the Secular Humanists on the bench intentionally and maliciously invited the fake gay marriage civil rights case by colluding with the LGBTQ lobby in *Windsor*; they knew that *Windsor* was the launching pad for *Obergefell*. They also knew or should have known that in the wake of *Obergefell* there would be no land rush on gay marriage, but their would be a land rush on the LGBTQ church to infiltrate the elementary schools with the soul purpose to indoctrinate minors. They also knew or should have known that they setting up Christians to be systematically persecuted. They knew that they were misusing the Fourteenth Amendment in a manner that undermines its validity. There can be no sincere dispute that the Judges who were allowing self-identified homosexuals to misuse the Fourteenth Amendment were intentionally and maliciously engaging in acts of judicial, political, and Constitutional malpractice.

The Court should order the Defendants to defend the race-based civil rights movement and to stop threatening through their dishonest efforts to entangle the government with their religion.

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#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this document and attached exhibits were mailed with adequate postage to the Defendants and Plaintiffs in this actions on August 31, 2018 to James A. Campbell ALLIANCE DEFENDING FREEDOM 15100 N. 90th Street Scottsdale, AZ 85260; JESSICA POCOCK, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; ANTHONY ARAGON, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; AUBREY ELENIS, Director Colorado; Civil Rights Commission 1560 Broadway Denver, CO 80202; MIGUEL "MICHAEL" RENE ELIAS, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; CAROL FABRIZIO, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; CHARLES GARCIA, Member Colorado Civil Rights Commission 1560 Broadway Denver, CO 80202; RITA LEWIS, Member

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