

IN THE SUPREME COURT OF THE STATE OF MONTANA
Cause No. DA 11-0451

JAN DONALDSON and MARY ANNE GUGGENHEIM, MARY LESLIE
and STACEY HAUGLAND, GARY STALLINGS and RICK WAGNER,
KELLIE GIBSON and DENISE BOETTCHER, JOHN MICHAEL
LONG and RICHARD PARKER, and NANCY OWENS and MJ
WILLIAMS,

Plaintiffs and Appellants,

vs.

STATE OF MONTANA,

Defendant and Appellee.

JHG
BA emailed
City Council
Calendared

On Appeal from Montana First Judicial District Court,
Lewis and Clark County – Cause No. BDV-2010-702
Hon. Jeffrey M. Sherlock

BRIEF OF AMICI CURIAE “MONTANA RELIGIOUS LEADERS”

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1 **INTERESTS OF AMICI**

2 Amici are Montana clergy from numerous faiths and traditions—including
3 Episcopalian, Lutheran, Methodist, Presbyterian, and Jewish—who serve
4 communities across the state. Although amici hold different perspectives on gay
5 marriage, they are unified in the belief that Montana’s gay and lesbian couples,
6 including the six loving and committed couples that brought this case, should be
7 granted access to the same benefits and obligations that the State provides to
8 married, heterosexual couples.

9 Amici support Plaintiffs’ appeal because they believe that like all
10 Montanans, gay and lesbian Montanans deserve to be treated with dignity and
11 afforded equal rights and protections under the law. Amici believe that committed
12 and loving relationships build the foundation for healthy families and strong
13 communities. Life-long gay and lesbian couples, no less than heterosexual married
14 couples, make an inestimable contribution to the stability and vitality of our
15 families, congregations and communities. Their relationships and their families
16 should be recognized and protected by the State of Montana.

17 Amici also support Plaintiffs’ appeal because how the state treats its
18 citizens—especially vulnerable minorities who have historically suffered
19 discrimination—and what our constitution’s guarantees of dignity, privacy and
20 equal protection mean are questions that affect us all. Amici are proud of our

1 state's jurisprudential tradition of interpreting our equal protection guarantee more
2 broadly than the federal equal protection guarantee and of our unique constitutional
3 rights to dignity, privacy and the pursuit of safety, health and happiness. Amici
4 therefore believe that although the Montana Constitution prohibits gay and lesbian
5 couples from marrying, it must be read such that gay and lesbian couples are
6 treated equally to heterosexual couples in all other respects.

7 SUMMARY OF ARGUMENT

8 Gay and lesbian Montanans in life-long, committed relationships are
9 currently denied the benefits and obligations afforded to heterosexual married
10 couples. Although gay and lesbian couples have the same kind of commitment and
11 create the same kinds of families as heterosexual couples, they cannot marry (nor
12 do they seek to marry in this case) and the state does not provide them with
13 alternative access to the benefits and obligations it provides to married couples.
14 The state's failure to recognize gay and lesbian relationships causes harm to
15 Plaintiff couples because it leaves them vulnerable to being treated as legal
16 strangers during times of illness, emergency, or death. When the state refuses to
17 recognize or protect gay and lesbian couples, it also demeans the loving, devoted,
18 and life-sustaining relationships of these couples, thereby causing Plaintiffs
19 additional stigmatic and dignitary harm.

1 By failing to provide gay and lesbian Montanans with any of the benefits
2 and obligations afforded to heterosexual Montanans through marriage, the state
3 discriminates against Plaintiffs based on their sexual orientation and violates
4 Plaintiffs' fundamental rights to privacy, dignity and the pursuit of safety, health
5 and happiness. The state has not offered—and could not offer—any legitimate
6 government interest in its discriminatory treatment, much less a compelling
7 government interest. Montana's constitutional amendment barring marriage for
8 gay and lesbian couples is no excuse: Plaintiffs are not seeking the right to marry
9 in Montana. As clergy, amici are intimately familiar with marriage as a unique and
10 special status, conferred for the most part during religious ceremony. Amici do not
11 all support marriage for gay and lesbian couples, and they are clear that the
12 benefits and obligations Plaintiffs are seeking here are not marriage.

13 Amici therefore ask this Court to reverse the judgment of the district court
14 and rule in favor of Plaintiffs.

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1 **ARGUMENT**

2 **I. Montana’s Differential Treatment of Gay and Lesbian Couples Denies**
3 **Plaintiffs Equal Protection Under the Law.**

4 **A. Plaintiff Couples Are Similarly Situated to Heterosexual Couples**
5 **Who Marry in Montana.**

6 Plaintiffs are like heterosexual couples who marry in all relevant respects.

7 Like heterosexual married couples and many gay and lesbian couples in Montana,

8 Plaintiffs are all in committed, loving, life-long relationships. All six Plaintiff

9 couples have made lives together, raising children and sharing homes, families,

10 friends and finances. Together, they have been involved in their communities,

11 churches and schools. Together, they have endured sickness, death of close

12 family, and other forms of hardship. Each Plaintiff couple plans to live together as

13 intimate and committed partners for the rest of their lives. And each Plaintiff

14 couple would choose to enter into a legally recognized relationship—such as a

15 registered domestic partnership—if it were available in Montana.¹

16 Each individual Plaintiff submitted an affidavit in support of Plaintiffs’

17 Motion for Summary Judgment. Their testimony exemplifies how Plaintiffs try to

18 live their lives like all other families and couples, including their commitment to

19 ¹ See Affidavits of Denise Boettcher at ¶ 7; Jan Donaldson at ¶ 6; Kellie Gibson at
20 ¶ 8; Mary Anne Guggenheim at ¶ 7; Stacy Haugland at ¶ 3; Mary Leslie at ¶ 3;
John Michael Long at ¶ 6; Nancy Owens at ¶ 6; Richard Parker at ¶ 4; Gary
Stallings at ¶ 8; Rick Wagner at ¶ 5; and MJ Williams at ¶ 6, all filed in support of
Plaintiffs’ Motion for Summary Judgment.

1 one another and their families—both in times of joy and in times of hardship.

2 Some examples include:

- 3 ➤ Jan Donaldson and Mary Anne Guggenheim, together over 27 years,
4 raising four children and loving and supporting five grandchildren,
5 including one who died at birth.²
- 6 ➤ Mary Leslie and Stacy Haugland, together over 12 years, holding a
7 commitment ceremony in Bozeman in 2003 for over two hundred
8 friends and family members and then treasuring a framed document
9 signed by all the guests.³
- 10 ➤ Gary Stallings and Rick Wagner, together over 21 years, nursing each
11 other through AIDS and a life-threatening spinal condition.⁴
- 12 ➤ Kellie Gibson and Denise Boettcher, together over 11 years, jointly
13 adopting Kellie’s five year old nephew last year, after his parents lost
14 their struggles with drug addiction.⁵

17
18 ² Donaldson Aff. ¶ 4; Guggenheim Aff. ¶¶ 4-6.

19 ³ Haugland Aff. ¶ 3; Leslie Aff. ¶ 3.

20 ⁴ Stallings Aff. ¶¶ 4-6; Wagner Aff. ¶¶ 4, 6.

⁵ Boettcher Aff. ¶¶ 4-5; Gibson Aff. ¶¶ 4, 6.

1 ➤ Mike Long and Rich Parker, together over 8 years, taking turns
2 waiting for their son, a high school football and track star, to get
3 home.⁶

4 ➤ Nancy Owens and MJ Williams, together over 18 years, creating an
5 artist community together.⁷

6 Other than being in relationships with same-sex partners, Plaintiffs are no
7 different than any group of loving, committed Montana couples.⁸

8 **B. Plaintiff Couples Are Harmed by the State's Failure to Recognize**
9 **Their Relationships and Extend to Them the Benefits and**
 Obligations Provided to Heterosexual, Married Couples.

10 The state's failure to recognize gay and lesbian relationships and families
11 causes Plaintiffs and other gay and lesbian couples in Montana great harm.

12 Married couples and their families are recognized and respected by the State of
13 Montana as family units, through numerous statutes that extend benefits or impose
14 obligations. Some of these statutory benefits and obligations include:

15
16 ⁶ Long Aff. ¶¶ 4-5; Parker Aff. ¶ 3.

17 ⁷ Owens Aff. ¶¶ 3-4; Williams Aff. ¶¶ 3-4.

18 ⁸ This assessment is supported by social science research, which recognizes that on
19 all the factors that are known to predict stability and instability in couple
20 relationships the committed, intimate relationships of gay and lesbian couples are
 the same as the relationships of heterosexual married couples. *See* Affidavit of
 Dr. Leticia Peplau, filed in support of Plaintiffs' Motion for Summary Judgment.

- 1 ➤ The financial safety net provided to spouses under tax laws, including
2 the right to file jointly to reduce tax liability or to take a spousal
3 exemption for a non-working spouse if filing separately.⁹
- 4 ➤ Family health insurance coverage, including continuation of coverage
5 provided to spouses of deceased public employees.¹⁰
- 6 ➤ Sick leave to tend to sick family members or to attend a family
7 member's funeral.¹¹
- 8 ➤ The automatic right to make health care decisions for a spouse when
9 the spouse cannot, including the right to withhold or withdraw life-
10 sustaining procedures.¹²
- 11 ➤ The automatic right to make burial decisions and other decisions
12 concerning the disposition and handling of remains of deceased
13 spouses.¹³
- 14 ➤ Benefits that accrue upon the death of a spouse, such as intestacy
15 rights permitting the surviving spouse to inherit automatically from

17 ⁹ Compl. ¶ 58c.

18 ¹⁰ Compl. ¶ 58d.

19 ¹¹ Compl. ¶ 58e.

20 ¹² Compl. ¶ 58g.

¹³ Compl. ¶ 58h.

1 the deceased spouse's estate and the ability to receive worker's
2 compensation death benefits.¹⁴

3 Heterosexual couples access these benefits and obligations by committing to
4 one another through marriage. Most heterosexual couples are not aware of the
5 extent of the benefits and obligations that the state affords their union, but they
6 know that in entering into the commitment of marriage, they are entering into a
7 public commitment to take care of each other in good times and bad, in sickness
8 and in health. They assume, correctly, that the state will respect their commitment
9 in all the times when couples and families are most vulnerable—when one spouse
10 dies suddenly and without a will or when one spouse suddenly falls sick and
11 emergency medical measures must be taken.

12 Gay and lesbian couples make the same emotional commitment to one
13 another, but because they cannot marry, the law treats them as legal strangers.
14 Although gay and lesbian couples can with effort, expense and careful planning
15 contract with one another for some of the benefits and obligations automatically
16 afforded married couples, such contracting is burdensome and even with contracts,
17 gay and lesbian couples can never be sure that their relationships will be respected
18 where and when it matters the most—in times of crisis, in hospitals, in morgues.

19
20 ¹⁴ Compl. ¶ 58a.

1 All the Plaintiff couples have taken steps to try to protect their
2 relationships—for example, preparing health care directives that name the other
3 partner—but they all worry that such documents will not be enough. And that
4 worry has been borne out: Mary Anne had named Jan in a health care directive
5 when she had hip replacement surgery a year ago, but a doctor’s assistant
6 nonetheless refused to speak with Jan, saying he did not have the appropriate
7 release to talk to Jan about Mary Anne.¹⁵ Now, Mary Anne and Jan bring copies of
8 their health care directives wherever they go, never knowing when they may have
9 to prove to someone that they are not legal strangers.¹⁶

10 The state’s failure to recognize gay and lesbian relationships and families
11 also contributes to the stigma suffered by gay and lesbian people in Montana.
12 Many other states provide some sort of recognition for gay and lesbian couples—in
13 the forms of domestic partnerships or civil unions.¹⁷ Montana for some, limited
14 purposes recognizes domestic partners (for state employment benefits, for
15 example), but in most areas it does not. This sends the signal to all Montanans that

16 ¹⁵ Donaldson Aff. ¶ 7.

17 ¹⁶ Guggenheim Aff. ¶ 8.

18 ¹⁷ Six states (Connecticut, Iowa, Massachusetts, New Hampshire, New York and
19 Vermont) and the District of Columbia allow gay and lesbian couples to marry;
20 twelve additional states have domestic partnerships or civil unions or some other
form of relationship recognition for gay and lesbian couples (California, Colorado,
Delaware, Hawaii, Illinois, Maine, Nevada, New Jersey, Oregon, Washington, and
Wisconsin).

1 the state does not value or respect the relationships of gay and lesbian Montanans,
2 which in turn perpetuates the significant social stigma that gay and lesbian
3 Montanans continue to suffer.¹⁸

4 **C. The State Has No Legitimate Government Interest in its**
5 **Differential Treatment of Gay and Lesbian Couples and its**
6 **Treatment of Them Is Therefore Unconstitutional.**

7 Article II, Section 4 of the Montana Constitution provides that “[n]o person
8 shall be denied the equal protection of the laws.” Like the equal protection clause
9 in the U.S. Constitution, Montana’s equal protection clause guarantees “a
10 fundamental principle of fairness: that the law must treat similarly-situated
11 individuals in a similar manner.” *McDermott v. Mont. Dept. of Corrections*, 2001
12 MT 134, ¶ 30, 305 Mont. 462, 29 P.3d 992. But as this Court has long and proudly
13 recognized: “Article II, Section 4, of the Montana Constitution provides even more
14 individual protection than the Equal Protection Clause in the Fourteenth
15 Amendment of the United States Constitution.” *Snetsinger v. Montana University*
16 *System*, 2004 MT 390, ¶ 15, 325 Mont. 148, 104 P.3d 445 (citing *Cottrill v. Cottrill*
17 *Sodding Serv.* 229 Mont. 40, 42, 744 P.2d 895 (1987)).

18 Here, even though gay and lesbian couples are similarly situated to
19 heterosexual couples who marry, the state is treating them differently: it extends

20 ¹⁸ This assessment is also supported by social science research, which shows that
official state recognition of gay and lesbian relationships reduces social stigma
against gay and lesbian people. Peplau Aff. ¶¶ 27, 29.

1 relationship recognition and benefits and obligations to heterosexual couples
2 through marriage, but it fails to do anything comparable for gay and lesbian
3 couples who cannot marry. This differential treatment is based solely on the
4 sexual orientation of gay and lesbian couples. Just as Article VIII, section 7 of
5 Montana's Constitution explicitly discriminates in marriage between heterosexual
6 and gay and lesbian couples, so providing benefits and obligations just to married
7 couples also necessarily discriminates based on sexual orientation.

8 Arguing that the classification is not between gay and straight people, but
9 between spouses and non-spouses is like arguing that a classification
10 discriminating against pregnant people is not a classification between men and
11 woman, but between pregnant people and non-pregnant people. This Court has
12 already rejected that type of straw man rationale. *See Bankers Life & Cas. Co. v.*
13 *Peterson*, 263 Mont. 156, 160-62, 866 P.2d 241 (1993) (“[p]regnancy is a
14 condition unique to women, and the ability to become pregnant is a primary
15 characteristic of the female sex. Thus, any classification which relies on
16 pregnancy as the determinative criterion is a distinction based on sex . . . By
17 definition, [placing pregnancy in a class by itself] discriminates on account of sex;
18 for it is the capacity to become pregnant which primarily differentiates the female
19 from the male.”) (quoting *Mountain States Telephone v. Comm’r of Labor*, 187
20 Mont. 22, 608 P.2d 1047 (1980)).

1 Once the Court has determined that gay and lesbian couples are similarly
2 situated to heterosexual couples who marry, it should then apply a heightened level
3 of scrutiny to the state’s differential treatment based on sexual orientation.

4 Heightened scrutiny is warranted if the state’s differential treatment is based on
5 suspect class. *See Snetsinger*, ¶ 17. Without going into detail in this brief, amici
6 agree with Plaintiffs that gay and lesbian people should be recognized as a suspect
7 class, inasmuch as they, as a group, have been “subjected to a history of purposeful
8 unequal treatment, or relegated to such a position of political powerlessness, as to
9 command extraordinary protection from the majoritarian political process.” *Matter*
10 *of S.L.M.*, 287 Mont. 23, 33, 951 P.2d 1365 (1997) (citing *San Antonio*
11 *Independent School Dist. v. Rodriguez*, 411 U.S. 1, 28, 93 S. Ct. 1278 (1973)); *see*
12 *also Snetsinger*, ¶ 86 (Nelson, J. concurring) (“gays and lesbians constitute a
13 suspect class under conventional equal protection analysis. Unequal treatment
14 based on sexual orientation denies the person equal treatment, equal justice, and
15 equal protection under the law.”). Under a heightened scrutiny analysis, the state
16 would have to prove that it had a compelling state interest in its differential
17 treatment of gay and lesbian couples.

18 Nonetheless, the state’s differential treatment of gay and lesbian couples
19 fails even the lowest level of constitutional scrutiny—rational basis review. Under
20 rational basis review, the state must show only that “the objective of the statute

1 was legitimate and bears a rational relationship to the classification used by the
2 Legislature.” *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 19, 302 Mont.
3 518, 15 P.3d 877. The state has not made—and could not make—such a showing
4 here. For the reasons set forth below, Montana’s constitutional amendment
5 limiting marriage to a man and a woman is not a reason to deny gay and lesbian
6 couples access to the benefits and obligations provided to heterosexual, married
7 couples. Nor is there any other legitimate reason that could be invoked by the state
8 to defend its unequal treatment of its gay and lesbian citizens.

9 Montana’s statutory structure that protects only heterosexual, married
10 couples reflects historical prejudice and antipathy towards gay and lesbian people.
11 There is no reason that the state treats gay and lesbian couples differently from
12 heterosexual, married couples other than it has traditionally done so and the
13 tradition was based on fear and lack of understanding of gay and lesbian people, as
14 well as outright hostility. But tradition alone is not a legitimate government
15 interest, as the U.S. Supreme Court explained in finding unconstitutional laws
16 criminalizing same-sex sexual conduct. *See Lawrence v. Texas*, 539 U.S. 558, 577,
17 123 S. Ct. 2472 (2003) (“[T]hat the governing majority in a State has traditionally
18 viewed a particular practice as immoral is not a sufficient reason for upholding a
19 law prohibiting the practice”) A state also has no legitimate interest in
20 treating a group differently just to treat them differently—in other words, in

1 denying gay and lesbian couples statutory benefits and obligations just because
2 they are gay and lesbian couples. *See Romer v. Evans*, 517 U.S. 620, 633-56, 116
3 S.Ct. 1620 (1996) (“We must conclude that Amendment 2 classifies homosexuals
4 not to further a proper legislative intent but to make them unequal to everyone else.
5 This Colorado cannot do.”); *see also id.* at 633 (citing *U.S. Dept. of Agric. v.*
6 *Moreno*, 413 U.S. 528, 534, 93 S.Ct. 2821 (1973) (“If the constitutional conception
7 of ‘equal protection of the laws’ means anything, it must at the very least mean that
8 a bare ... desire to harm a politically unpopular group cannot constitute a
9 *legitimate* government interest.”) (emphasis in original).

10 Because the state does not have any legitimate interest in failing to recognize
11 gay and lesbian relationships and in denying gay and lesbian couples statutory
12 benefits and obligations, the state is violating Plaintiffs’ right to equal protection.

13 **II. Denying Gay and Lesbian Couples Statutory Benefits and Obligations**
14 **Violates Their Fundamental Rights to Dignity, Privacy, and the Pursuit**
of Safety, Health and Happiness.

15 Montana’s Constitution uniquely includes in its declaration of fundamental
16 rights the rights to dignity, privacy and the pursuit of safety, health and happiness.
17 Article II, section 3 provides that “[a]ll persons are born free and have certain
18 inalienable rights. They include . . . the rights of pursuing life’s basic necessities,
19 enjoying and defending their lives and liberties, acquiring possessing and
20 protecting property, and seeking their safety, health and happiness in all lawful

1 ways.” Article II, section 4 provides that “the dignity of the human being in
2 inviolable,” and section 10 provides that “the right of individual privacy is
3 essential to the well-being of a free society and shall not be infringed without the
4 showing of a compelling state interest.”

5 These provisions are more than soaring and inspiring rhetoric; they serve as
6 the foundation for individual freedom in Montana. They are not ethereal goals, but
7 rather mandates that require respect for the individual and the individual’s most
8 intimate choices. As this Court has stated, “Montana’s Constitution, and especially
9 the Declaration of Rights, is not simply a cook book of disconnected and discrete
10 rules written with the vitality of an automobile insurance policy. Rather, our
11 Constitution, and in particular its Declaration of Rights, encompasses a cohesive
12 set of principles, carefully drafted and committed to an abstract ideal of just
13 government. It is a compact of overlapping and redundant rights and guarantees.”
14 *Armstrong v. State*, 1999 MT 261, ¶ 71, 296 Mont. 361, 989 P.2d 364; *see also*
15 *Snetsinger*, ¶¶ 71-87 (Nelson, J. concurring) (discussing Montana’s unique
16 constitutional provisions and their appropriate scope);

17 The *Armstrong* Court explained that the personal autonomy aspect of the
18 fundamental right to privacy “prohibits the government from dictating, approving
19 or condemning values, beliefs and matters ultimately involving individual
20 conscience, where opinions about the nature of such values and beliefs are

1 seriously divided.” *Armstrong*, ¶ 68; *see also Gryczan v. Montana*, 283 Mont. 433,
2 448, 942 P.2d 112 (1997). And the scope of the right is “as broad as are the State’s
3 ever innovative attempts to dictate in matters of conscience, to define individual
4 values, and to condemn those found to be socially repugnant or politically
5 unpopular.” *Armstrong*, ¶ 38. The Court further explained that the fundamental
6 right to dignity “demands that people have for themselves the moral right and
7 moral responsibility to confront the most fundamental questions about the meaning
8 and value of their own lives . . . [and answer] to their own consciences and
9 convictions,” and that the right of safety, health, and happiness also includes the
10 right “to make personal judgments affecting one’s own health and bodily integrity
11 without government interference.” *Id.* at ¶ 72.

12 All these overlapping rights are implicated here. Indeed, amici
13 wholeheartedly agree with Justice Nelson’s statement in his concurrence in
14 *Snetsinger* that “[t]o say, as the Montana Constitution does, that [t]he dignity of the
15 human being is inviolable is thus to assert that the intrinsic worth, the basis
16 humanity, of persons may not be violated.” *Snetsinger*, ¶ 75 (quoting Matthew O.
17 Clifford and Thomas P. Huff, *Some Thoughts on the Meaning and Scope of the*
18 *Montana Constitution’s “Dignity” Clause With Possible Applications*, 61
19 *Mont.L.Rev.* 301, 303 (2000)). And further, that “this statement strikes at the heart
20 of the issue before us. The intrinsic worth and basic humanity of gays and

1 lesbians—i.e., their human dignity—has not been recognized to date. Indeed, as
2 already demonstrated, this fundamental, core value is, in many instances, denied
3 gays and lesbians through laws and policies enacted by the government, as here.”

4 *Snetsinger*, ¶ 76

5 By failing to recognize gay and lesbian relationships and by denying gay and
6 lesbian couples the benefits and obligations it provides to heterosexual, married
7 couples, the state violates Plaintiffs’ fundamental rights. The state violates its core
8 obligation, described above, to respect the dignity of each of its citizens regardless
9 of their sexual orientation, and by favoring heterosexual unions in its provision of
10 benefits, the state unconstitutionally burdens Plaintiffs’ entering into relationships
11 with same-sex partners. As the California Supreme Court has concluded “the
12 substantive right of two adults who share a loving relationship to join together to
13 establish an officially recognized family of their own—and, if the couple chooses,
14 to raise children within that family—constitutes a vitally important attribute of the
15 fundamental interest in liberty and personal autonomy” *In re Marriage*
16 *Cases*, 43 Cal. 4th 757, 781 (Cal. 2008).

17 The violation of a fundamental right demands the application of strict
18 scrutiny, which would require the state to show a compelling state interest in its
19 differential treatment of gay and lesbian Montanans. *Gryczan*, 283 Mont. at 449.
20 As set forth above, the state has not—and cannot—make this showing.

1 **III. Montana’s Constitutional Amendment Barring Gay and Lesbian**
2 **Couples from Marrying Is Inapplicable.**

3 Montana’s constitutional amendment barring marriage for gay and lesbian
4 couples should in no way affect the analysis in this case. Article XIII, section 7 of
5 Montana’s Constitution provides that “[o]nly a marriage between one man and one
6 woman shall be valid or recognized as a marriage in this state.” On its face, the
7 amendment refers only to marriage—it says nothing about the provision of other
8 benefits and obligations to gay and lesbian couples. The state has argued,
9 however, that this bar must necessarily extend to the provision of benefits and
10 obligations traditionally associated with marriage. From the perspective of clergy
11 of numerous faith traditions, this is simply not the case.

12 As clergy, amici are intimately familiar with marriage because the
13 celebration of marriage is a core function of clergy in every religion. Marriage in
14 amici’s religious traditions is a ceremony or a rite, like a bris or a christening or a
15 funeral, that marks and celebrates an important (if not central) transition in our
16 congregants’ lives. In getting married, heterosexual couples pledge themselves to
17 one another in the eyes of God, the community, and their families. Their unions
18 are then sanctified and elevated in all amici’s religious traditions.

19 As such, marriage is much more than just a legal status associated with a set
20 of statutory benefits and obligations. Several state courts to have addressed this

1 issue agree. *See, e.g., In re Marriage Cases*, 183 P.3d 384, 401, (Cal. 2008)
2 (noting the “familiar and highly favored” nature of marriage as compared to other
3 kinds of state-recognized relationships such as domestic partnerships); *Kerrigan v.*
4 *Comm’r of Pub. Health*, 957 A.2d 407, 418 (Conn. 2008) (“Although marriage and
5 civil unions do embody the same legal rights under our law, they are by no means
6 ‘equal.’ As we have explained, the former is an institution of transcendental
7 historical, cultural and social significance, whereas the latter most surely is
8 not.”).¹⁹

9 Article XIII, section 7 of Montana’s Constitution addresses only marriage,
10 and as such, it has no bearing on whether the state should extend the benefits and
11 obligations it provides to heterosexual, married couples to gay and lesbian couples.

12 CONCLUSION

13 “An individual’s capacity to establish a loving and long-term committed
14 relationship with another person and responsibly to care for and raise children does
15 not depend upon the individual’s sexual orientation, and ... an individual’s sexual

16
17 ¹⁹ *See also Strauss v. Horton*, 207 P.3d 48, 61 (Cal. 2009) (holding that
18 California’s constitutional amendment barring gay and lesbian couples from
19 marrying only applied to the “designation” of marriage, and concluding that “[b]y
20 clarifying this essential point, we by no means diminish or minimize the
significance that the official designation of ‘marriage’ holds for both the
proponents and opponents of Proposition 8; indeed, the importance of the marriage
designation was a vital factor in the majority opinion’s ultimate holding in the
Marriage Cases.”).

1 orientation—like a person's race or gender—does not constitute a legitimate basis
2 upon which to deny or withhold legal rights.” *In re Marriage Cases*, 43 Cal. 4th at
3 782. Plaintiff couples are in loving and committed long-term relationships. They
4 have formed the kinds of partnerships that nourish, strengthen and stabilize
5 congregations and communities. They cannot get married, but they deserve to
6 have their relationships and families recognized and protected by the state.

7 By its Constitution and tradition, Montana respects the freedom of our
8 individual citizens and promises them equal treatment and dignity and privacy.
9 The state breaks those promises by denying gay and lesbian couples access to the
10 benefits and obligations afforded to heterosexual couples. Amici therefore ask this
11 Court to reverse the judgment of the district court and rule in favor of Plaintiffs.

12
13 DATED this 18th day of November, 2011.

14 CONNELL LAW FIRM
15 Attorneys for Amici Montana Religious Leaders

16 Karen P. Kane

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2 **CERTIFICATE OF COMPLIANCE**

3 Pursuant to Rules 11 and 16 of the Montana Rules of Appellate Procedure, I
4 certify that this Motion is printed with a proportionately spaced Times New Roman
5 text typeface of 14 points; is double spaced; and the word count calculated by
6 Microsoft Office Word 2010, is not more than 4667 words, not averaging more
7 than 280 words per page, excluding certificate of service and certificate of
8 compliance.

9 DATED this 18th day of November, 2011.


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1 **CERTIFICATE OF SERVICE**

2 I certify under penalty of perjury that foregoing document was served upon
3 the following counsel by prepaid U.S. Mail on the 18th day of November, 2011:

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