No. 14-8744

In The Supreme Court of the United States

In re: Gordon Wayne Watts, Petitioner

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

The United States Supreme Court

SUPPLEMENTAL BRIEF

Gordon Wayne Watts
821 Alicia Road
Lakeland, FL 33801-2113
Phone: (863) 688-9880

Date: Friday, 13 March 2015

QUESTION(S) PRESENTED

(Original Questions presented in petition on docket)

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

(Supplemental Questions addressed in this Supplemental Brief)

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

LIST OF PARTIES

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

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

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

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

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

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

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

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

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

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

TABLE OF CONTENTS

INDEX TO THE APPENDICES

TABLE OF AUTHORITIES CITED

Cases **Page Number**

Statutes and Rules

Other

JURISDICTION

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 1st, 5th, 9th, and 14th Amendments of the U.S. Constitution are involved, and the Statutory (or regulatory) provision of RULE 20 of This Honourable court is involved and under review in this petition. Also, Common Law, as cited in *1 Bouv. Inst., n.601*, is involved:

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

STATEMENT OF THE CASE

Petitioner, Gordon Wayne Watts (hereinafter: 'Petitioner'), who has recently successfully filed *Amicus Curiae* briefs in several U.S. 11th Cir. 'Gay Marriage' cases, and who once almost won in state court as Theresa 'Terri' Schiavo's "next friend," doing better than Jeb Bush or Terri's own blood family, attempted to file an *amicus* brief in This Court *pro se* –due to inability to hire a lawyer to file, but was unable, as outlined in greater detail in the 'Statement of the Case' section of the petition in the case *sub judice. [For the sake of brevity – The Statement of Case/Facts in Petitioner's* Habeas *petition, which is on docket in case #: 14-8744, is incorporated by reference herein as if fully set forth herein.]*

In response to this problem, Petitioner, in the case at bar, submitted O+10 of the *In Forma Pauperis* motion, which apparently has been granted, O+10 of the Petition for the Extraordinary Writ of *Habeas Corpus* to test an alleged deprivation of liberty/redress regarding submission of a proposed brief, and O+O+40 (i.e., 2 originals and 40 copies, for 42 copies in total) of the proposed $6^1/_8$- by x $9^1/_4$-inch booklet format *amicus* briefs. (APX-A) This Court received said documents on Monday, 09 March 2015, as reflected by This Court's online docket: http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/14-8744.htm

Petitioner, once finished, trusted The Court to review the documents in question and yield an equitable and fair decision; however, on Wednesday, 11 March 2015 (APX-B), two days later, Petitioner received in the mail (APX-C), from This Court, 41 of the 42 copies of the proposed *Amicus* (APX-D), with a letter from the clerk's office (APX-E), apparently keeping one signed original, which worried Petitioner, due to the fact that Justices would be asked to make a decision without all the facts –or the ability to review proposed brief. That Wednesday, Petitioner spoke by phone with assistant clerk, Jake Travers, asking why proposed briefs were returned, and Mr. Travers informed him that Court would not file or accept $6^1/_8$- by x $9^1/_4$-inch booklet format *amicus*

briefs from persons who are not members of This Court's bar, pointing out, rather, that This Court's rules stipulated that proper protocol for adding additional information would be a supplemental brief, as proscribed in Rule 15.8 of This Court.

In response, Petitioner is now filing the instant “Supplemental Brief” in the case at bar, in an attempt to follow the proper protocol to bring to the attention of The Court relevant matter that he feels is not already being brought to its attention by the parties listed on page (b) of the instant brief, in order to be of considerable help to the Court, as Rule 37.1 outlines.

Notice of one Scrivener's Error:

This error was not seen when initially submitting this *Habeas* Petition, and is only now being caught, thus a correction is added to this Supplemental Brief:

On page 8 of the petition in this case, brief states: **“**I made updates and am still slightly under the 9,000-word limit, even when counting total words, and not just those “not excluded.”**”**

However, this was in reference to the February 2015 revision of proposed ***Amicus Curiae* brief of Gordon Wayne Watts.** The March 2015 revision, which is what was submitted this last time, has **10,043** total words, as the Word Processor counts, and when excluding the parts excluded by Rule 33.1(d), namely: the questions presented, etc. (as stated in Certificate of Compliance), then the total word-count drops to **8,932**, just under the **9,000-word** limit imposed upon *Amici* of this type.

Supplements to "REASONS FOR GRANTING THE WRIT (ARGUMENT)"

Petitioner, who almost won in court as Terri Schiavo's next friend, and who participated vigorously *pro se* as an *amicus* in other 'Gay Marriage' cases before the 11th Circuit, may not be a lawyer, but he is no village idiot when it comes to law.

After Petitioner, Watts, reviewed numerous briefs on "both sides" of the issue, he saw that none of them offered a solution that would "work for all," and so he crafted a well-argued brief (APX-D) that gives a solution to both the 'traditional marriage' advocates (who wish to keep the definition of marriage as 1 man and 1 woman), and also showed how solutions to 'Gay Rights' advocates were enacted in the past without changing the definition of marriage.

To that end, he included 2 originals + 40 copies of his proposed *Amicus Curiae* brief in his petition seeking leave to file in spite of RULE 37.1, which, he argued, places an unconstitutional restriction on access to the courts to poor people, who can't afford a lawyer permitted to file *amici* briefs. **However, it never crossed his mind that The Court would return some of the documents.** *Every since the very beginning of time*, it is well-established case-law (or Common Law, as the case may be) that any time a litigant seeks permission to file a brief that would normally not otherwise be permitted, the motion is filed with the brief—and as one document. (For example, RULE 37.2(b), of This Court, states: "The motion, prepared as required by Rule 33.1 **and as one document with the brief sought to be filed**, shall be submitted within the time allowed...") Even though the "rules" prohibit the brief in question from being "filed," it nonetheless is "tendered for review" by This Court. (APX-D) *And, the reasons are obvious:* **The Justices are not Psychic.**

That argument may sound a bit 'simplistic,' but, in fact, Due Process demands that Judges and Justices have all the facts in order to make an informed decision. (Even though

this court's Justices are no doubt very intelligent, and have pure motives and a willing heart, nonetheless, they are not psychic: they, like all human judges, need facts in order to render an informed decision—to make just, fair, and accurate judgment.

To that end, Petitioner is including, in the proper protocol – and according to The Rules of This Court – a scanned image of the brief in question: See Appendix-D.

Some might say that petitioner is trying to 'get around' the rules, but that begs the question, and assumes that the rule being challenged is, in fact, equitable and constitutional. *But: what if it is not?* What if, at the end of the day, The Justices look at the *amicus* brief in question and say: “you know, this might be helpful to our understanding of the case,” but the ruling was already entered? Oops... too late!

The justices may look at the briefs and say “we don't want to hear from *pro se* litigants unless they're arguing their own cases,” or, perhaps, the Justices may say: “That Watts brief makes no sense, and should not be granted leave.”

But, even if This Noble Court rules against Petitioner, all this is asked are 2 things: (1) Actually read the petition and get the facts; and, (2) even if a decision is rendered that does not favour grant of the petition, Petitioner makes a reasonable request for an explanation: a “why” to explain the “what.”

Was the 'Watts' Amicus *repetitive and unhelpful? If so, why?*

Is Petitioner's proposed Amicus *not a good solution both “both sides?” (If so, why* not?*)*

Even if Petitioner's *Amicus* brief is helpful to This Court, would it set “bad precedent” to “open the door” to 'unprofessional' non-lawyers that would not be helpful to This Court? (If so, that begs the question: if it's such a 'bad' idea, then why do so many other courts countenance *pro se amici?*) **“Things that make you go: 'hmm...'.”**

CONCLUSION

When we look into the rules, we see that RULE 15.8 clearly states:

> **"Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs** … 8. Any party may file **a supplemental brief** at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule.**" [Editor's note: *Habeas* petitions are treated, under RULE 20, the same way as cert petitions.]**

There indeed was an "intervening matter not available at the time of the party's last filing," namely Clerk, Cynthia Rapp (APX-E), for whatever reason, returning proposed brief, in contradiction to both Due Process and long-standing Common Law, thus depriving Justices of ability to make an informed decision. Thus, a supplemental brief is in order. Petitioner's brief, here, "shall be restricted to new matter," and not get off topic**:** Here's the "supplemental" information to help This Court get the facts it needs**:** *See the Appendices.* Moreover, said *amicus* is front-page news of Petitioner's namesake blog, highly ranked in search engines, due to the fact that he almost won in court for Terri Schiavo –all by himself.

Here's the 'supplemental' information This Court needs to understand this matter fully.

Respectfully submitted, **Date: Friday, 13 March 2015**

Gordon Wayne Watts, *Amicus Curiae**
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s/ _____

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

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

No. 14-8744

IN THE
SUPREME COURT OF THE UNITED STATES

In re: Gordon Wayne Watts — PETITIONER

PROOF (CERTIFICATE) OF SERVICE

I, Gordon wayne Watts, do swear or declare that on this date, FRIDAY, the 13th day of March 2015, as required by Supreme Court Rule 29, I have served the enclosed SUPPLEMENTAL BRIEF on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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

• Alphonse A. Gerhardstein, Counsel of Record for James Obergefell, et al., c/o: Gerhardstein & Branch Co. LPA, 432 Walnut St., Suite 400, Cincinnati, OH 45202, (513) 621-9100, AGerhardstein@GBLfirm.com

• Eric E. Murphy, Counsel of Record for Richard Hodges, Director, Ohio Department of Health, et al., c/o: State Solicitor, Office of the Attorney General, 30 East Broad Street, 17th Fl., Columbus, OH 43215-3428, (614) 466-8980, Eric.Murphy@OhioAttorneyGeneral.gov

• Douglas Hallward-Driemeier, Counsel of Record, Valeria Tanco, et al., c/o: Ropes & Gray LLP, 700 12th Street, N.W., Suite 900, Washington, DC 20005, (202) 508-4776, Douglas.Hallward-Driemeier@RopesGray.com

• Joseph F. Whalen, Counsel of Record, Associate Solicitor General, Office of the Attorney General, 425 Fifth Avenue North, Nashville, TN 37243, (615) 741-3499, Joe.Whalen@ag.tn.gov

• Carole M. Stanyar, Counsel of Record, for April DeBoer, et al., 221 N. Main Street, Suite 300, Ann Arbor, MI 48104, (313) 819-3953, CStanyar@wowway.com

• Aaron D. Lindstrom, Counsel of Record, Solicitor General, Michigan Department of Attorney General, P.O. Box 30212, Lansing, MI 48909, (517) 373-1124, LindstromA@Michigan.gov

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

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

Furthermore, I hereby certify that, contemporaneous to my service by FedEx 3rd-party commercial carrier and/or USPS, I am also serving all parties, ***and all known amici*****,** by email—and possibly also the court, if it is permitted protocol.

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

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

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

Pursuant to Rule 33.1(h), I am hereby certifying that my proposed *amicus* brief (a scanned image of which is in the appendices and also posted online on my namesake blog, listed immediately above), which I am asking for leave to be filed, complies with the word limitations of This Court: It has **10,043** "total" words, according to the program that I used to create it, Open Office, version 3.1.0, OOO310m11 (build:9399), Copyright 2000-2009 Sun Microsystems Inc. **This is not under the 9,000-word limit imposed by Rule 33.1(g).** However, when I exclude the parts excluded by Rule 33.1(d), namely: the questions presented, the list of parties in the cover page and the corporate disclosure statement, the table of contents, the table of cited authorities, the listing of counsel at the end of the document and the cover page, and the appendix, then the total word-count drops to **8,932**, just under **the 9,000-word limit** imposed upon Amici of this type. Therefore, my proposed *Amicus Curiae* brief (which is dated Sunday 01 march 2014) is in compliance with applicable Rules of This Court.

PROOF (CERTIFICATE) OF COMPLIANCE (this Supplemental Brief)

The page-limit for extraordinary writs on 8½" x 11" format are 15 pages for a Supplemental Brief, such as this one, per Rule 33.2(b). Since the Exclusions in Rule 33.1(d) apply ("The word limits do not include the questions presented, the list of parties and the corporate disclosure statement, the table of contents, the table of cited authorities, the listing of counsel at the end of the document, **or any appendix.**"), therefore, I do not need to count the appendix below, and thus this brief is far under the 15-page upper limit imposed on Supplemental Briefs of this type.

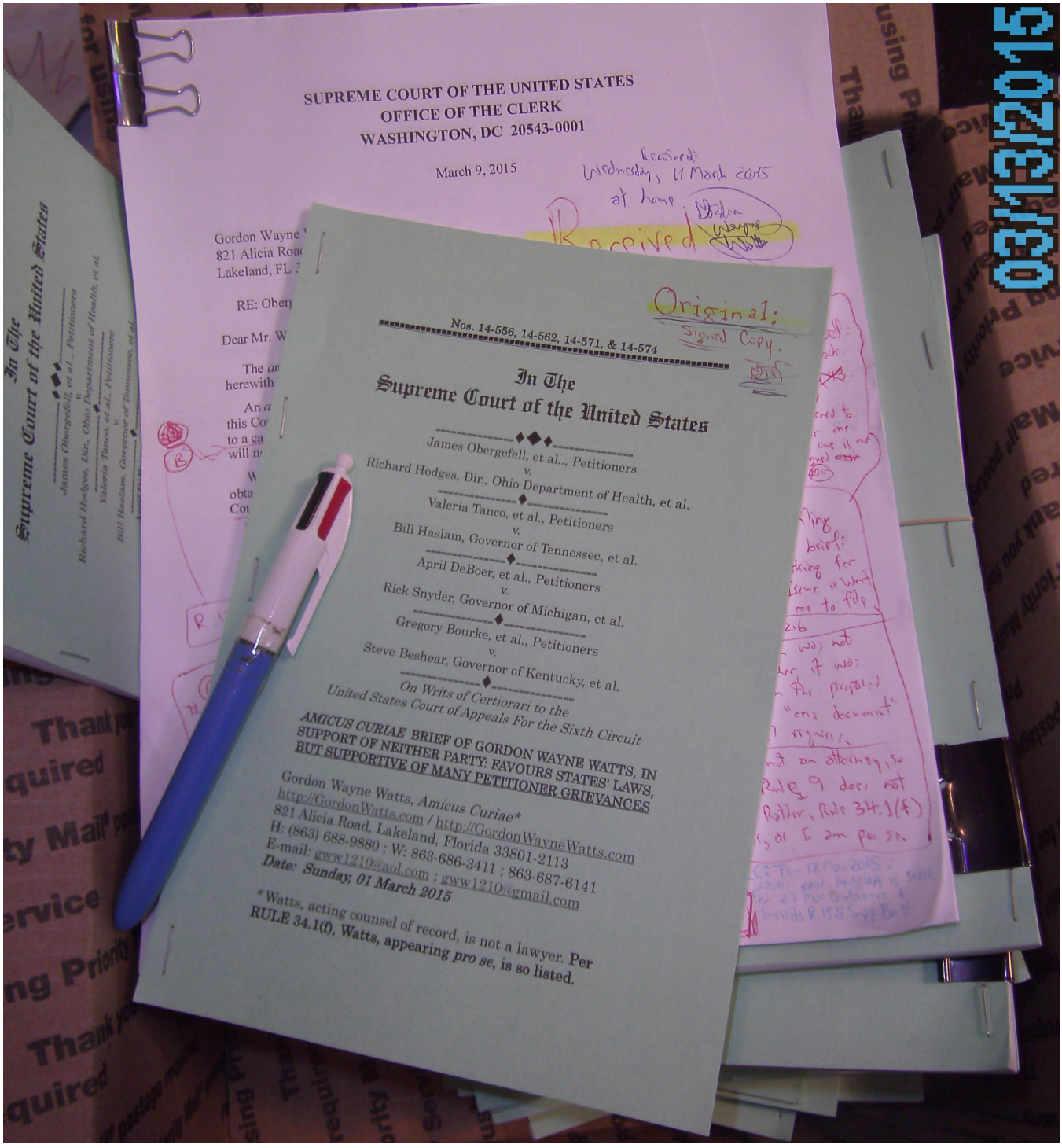
I declare under penalty of perjury that the foregoing (including my both Certificate of Service and both Certificates of Compliance, above) is true and correct.

Executed on **Friday, 13 March 2015.**

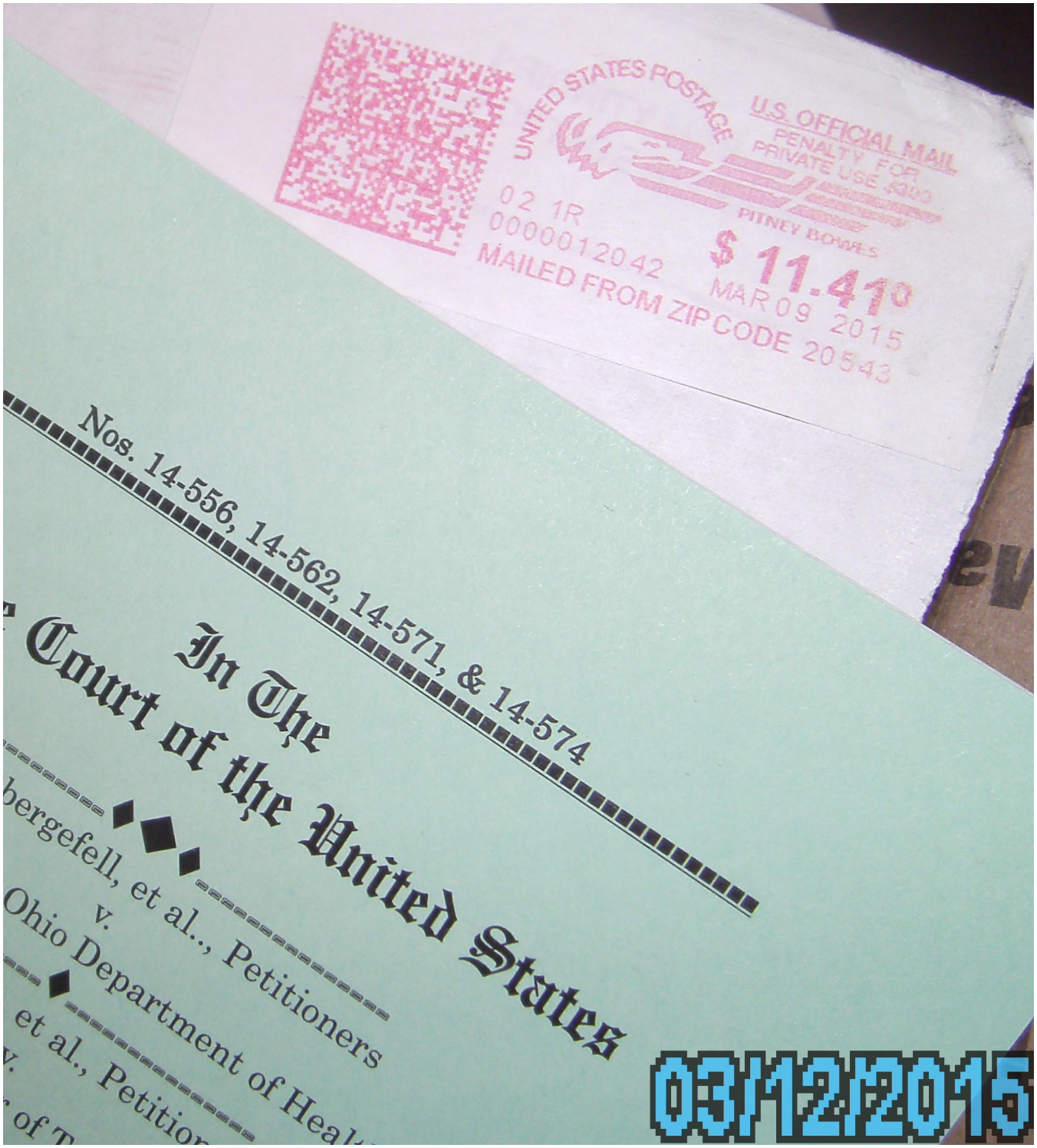
_____
(Signature)

INDEX TO THE APPENDICES

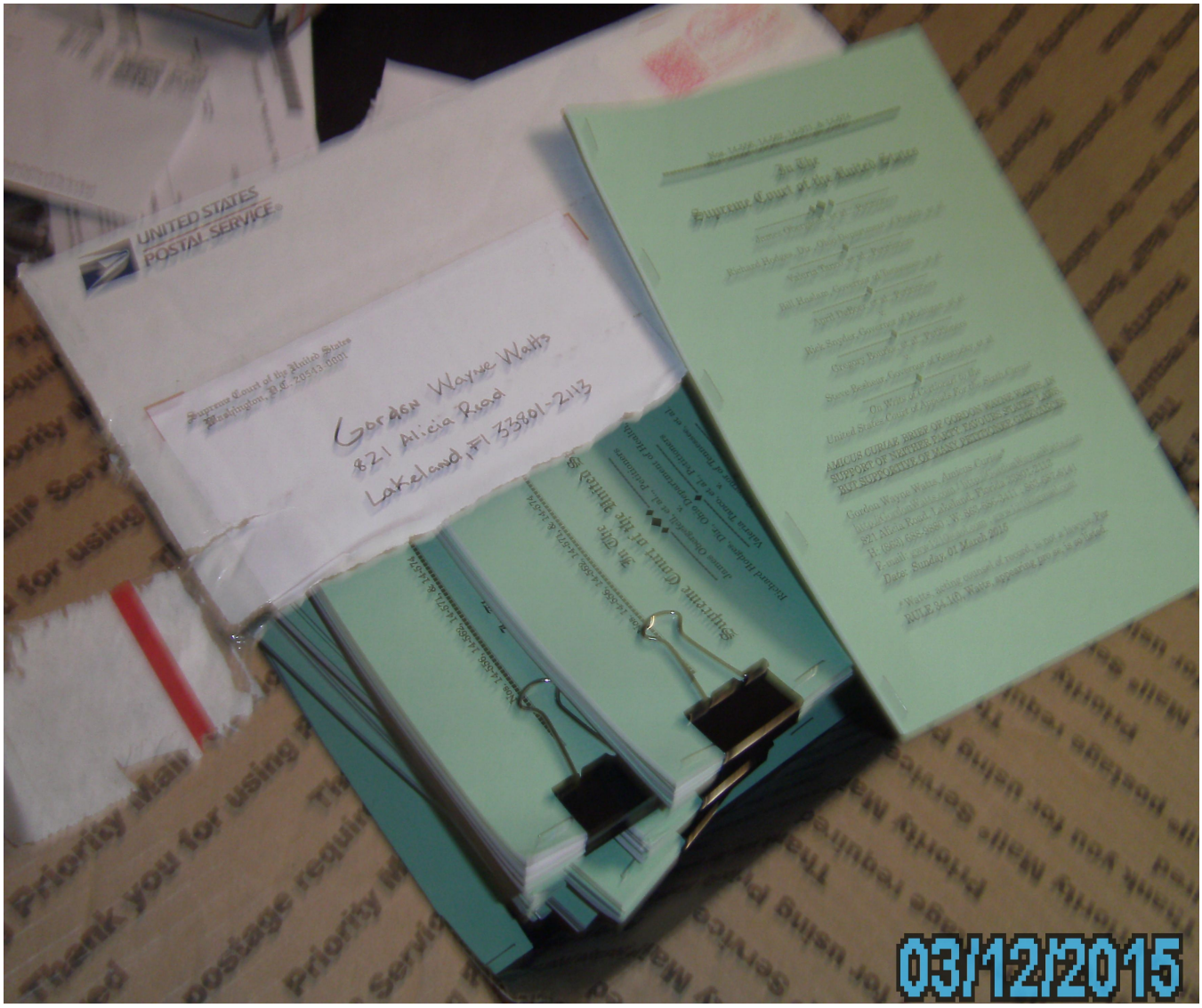
Appendix: A – Photo of *Amicus* Brief for which leave is being sought



Appendix: B – March 09, 2015 Postmark on returned mail



Appendix: C – Box with 41 court briefs and letter from clerk, received, Wed. 11Mar 2015



Appendix: D – Scanned image of proposed *Amicus Curiae* brief of Gordon Wayne Watts

Original:
Signed Copy.

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

In The
Supreme Court of the United States

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

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

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

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

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

AMICUS CURIAE BRIEF OF GORDON WAYNE WATTS, IN SUPPORT OF NEITHER PARTY: FAVOURS STATES' LAWS, BUT SUPPORTIVE OF MANY PETITIONER GRIEVANCES

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Date: Sunday, 01 March 2015

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

Questions Presented

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

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

Table of Contents

Table of Citations / Authorities

Cases:

Constitutional Provisions:

State Statutes:

Briefs:

Other Materials:

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

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

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

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

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

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

Interest of the Amicus Curiae (continued)

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

MOTION for LEAVE to file Amicus

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

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

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

Motion for Leave to file an Amicus

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

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

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

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

RESPONSE:

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

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

Argument

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Correcting common errors of 'Traditional Marriage' advocates

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

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

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

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

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

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

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

VII. Correcting common errors of 'Gay Marriage' advocates

I occasionally hear reports that some states have a 'Gay Marriage' ban, and, if this is true, then This Court would be more appropriate in simply striking down such bans, as was done in a recent

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VIII. PROPOSED ORDER

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

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

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

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

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

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

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

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

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

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

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

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

<u>X. CONCLUSION</u>

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

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

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

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

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

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

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

Respectfully submitted,

s/ _____

Gordon Wayne Watts, *Amicus Curiae*: Friend of the Court /
Amicus *Curium* (friend of several courts: *plural*)

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

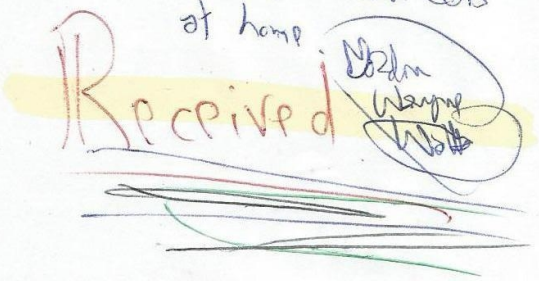
Dated: Sunday, 01 March 2015

Appendix: E – Letter from Assistant Clerk, Cynthia Rapp, dated March 9, 2015

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 9, 2015

Received:
Wednesday, 11 March 2015
at home



Gordon Wayne Watts
821 Alicia Road
Lakeland, FL 33801-2113

RE: Obergefell, et al., v. Hodges, et al.,

Dear Mr. Watts:

The *amicus* brief in the above-entitled case was received March 9, 2015 and is herewith returned for the following reason(s):

An *amicus curiae* brief may only be filed by an attorney admitted to practice before this Court as provided by Rule 5. See Rule 37.1 of the Rules of this Court. Only parties to a case may file *pro se* therefore motions for leave to file an *amicus curiae* brief *pro se* will not be filed. See Rule 9 of the Rules of this Court.

Written consent from all the parties is required to file an *amicus* brief. If you cannot obtain consent you must file a motion for leave to file an *amicus curiae* brief with the Court. See Rule 37 of the Rules of this Court.

Sincerely,
Scott S. Harris, Clerk
By:
Cynthia Rapp
(202) 479-3031

Enclosures