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D'Arcy Kemnitz, Executive Director and
Award Nominations Committee
National LGBT Bar Association
1301 K Street, NW, Suite 1100 East Tower
Washington, DC 20005

**Re: Recommendation of Professor Douglas NeJaime
For "Best LGBT Lawyers Under 40" Award**

Dear D'Arcy and Committee Members:

I write in support of the nomination of Professor Douglas NeJaime for the "Best LGBT Lawyers Under 40" award. I have come to know Doug well over a course of many years – since he was a junior litigation associate at Irell & Manella and we consulted in connection with his terrific work on amicus briefs in the marriage equality cases in California and Washington, in which I was co-counsel for plaintiffs. Our paths crossed frequently thereafter while he was a Law Teaching Fellow at the Williams Institute at UCLA School of Law, where he was intensifying his research focus on "cause lawyering" within the LGBT movement. During his time there, he partnered with leading experts in this discipline to ensure the rigor of his methods. The case study of the California marriage litigation that he undertook during this period, for example, is thorough, insightful, and frequently cited. It immediately became a respected, important contribution. And then, since beginning his teaching career at Loyola, his varied research projects in the field of LGBT law and his planning role in multiple conferences have kept us in close touch.

In my view, Doug continues to stand out as among the best of a generation of impressive openly LGBT attorneys making significant contributions to our profession and our movement. His commitment to LGBT equality is longstanding and profound, and he has excelled consistently in highly competitive environments both as a skilled lawyer and as a versatile, prodigiously productive young scholar. Perhaps even more impressive, he is influential in key academic conversations within our movement to a degree that would be notable even if he had decades more experience. Through keen perception, exhaustive primary research, and persuasive engagement with fellow scholars, Doug has brought greater accuracy

and a more productive exchange of ideas to the rapidly evolving field of LGBT law. His students, his academic colleagues, and those of us doing impact litigation and policy advocacy to advance the field all have been receiving the benefits.

Measures of how distinguished Doug already is in his field include the fact that Loyola granted him tenure so quickly, that national media seek him out so frequently for comment, that he is invited so often to speak at leading academic conferences, and that his peers constantly request his feedback on their work. To me, Doug's contributions stand out because they are relevant, insightful, and sometimes even prescient. One example is his sex discrimination briefing in the marriage cases, which he drew on for an article entitled *Exposing Sex Stereotypes in Recent Same-Sex Marriage Jurisprudence*, published in the HARVARD JOURNAL OF LAW & GENDER in 2007. It long has been among our challenges to show ever more effectively that sexual orientation discrimination is a form of sex discrimination. Since Doug's excellent treatment of the issue, many more senior scholars have explored the theme and Judge Walker applied it in his decision in *Perry v. Schwarzenegger*. 704 F. Supp. 2d 921, 958-59, 973, 975-76, 996-97 (N.D. Cal. 2010) (finding California's Proposition 8 unconstitutional).

Another recent example grapples with the urgently topical problem of antigay political and religious groups using religious freedom arguments to justify discrimination, especially in opposing same-sex couples' hopes to marry. In *Marriage Inequality: Same-Sex Relationships, Religious Exemptions and the Production of Sexual Orientation Discrimination*, published last year in the CALIFORNIA LAW REVIEW, Doug gives an exhaustive exploration of contexts in which these precise claims have been made when marriage was nowhere on the horizon. The article belies claims that the concerns about marriage are unique; rather, the objection is to same-sex relationships (whether legal protections are available or not), and it boils down to an objection to lesbian, gay and bisexual people. Due to the care and clarity with which this study was done, I cite it frequently (and appreciatively) in my work against improperly broad religious liberty claims used as tools of discrimination.

Doug's work also stands out because he has taken on and disproved an accepted thesis about cause lawyering within the LGBT movement. Central in both public and academic discussion has been the notion that it was premature to launch marriage litigation in Hawaii in the early 1990s and foolish of movement lawyers to continue in other states because it caused backlash that impeded other, more sensible options. With leading social-movements scholar Scott Cummings, Doug tested that thesis with an exhaustive study of the marriage litigation and related work in California. See *Lawyering for Marriage Equality*, 57 UCLA L. REV. 1235 (2010). Doug followed that case study with a series of articles further exploring how LGBT movement lawyers have used a mix of impact cases and other work to catalyze

discussion about same-sex couples and their families and to make steady progress despite often hostile courts, legislatures, and voters. *See, e.g., Winning Through Losing*, 96 IOWA LAW REVIEW 941 (2011); *The Legal Mobilization Dilemma*, 61 EMORY LAW JOURNAL 663 (2012); *Framing (In)Equality for Same-Sex Couples*, UCLA LAW REVIEW DISCOURSE (2013). With rigorous research and an engaging style, these and others of Doug's projects explore the much more complex reality that has been our legal and political movement. His studies provide far more accurate windows for scholars, students, courts, and policymakers who want to understand how we really got this far this fast, and to see the real strengths and limits of the available choices.

Looking beyond his choice of subjects, I see Doug's commitment to our movement as well as to top scholarship in the collegial relationships he builds with scholars with whom he disagrees. Like any movement, ours thrives when lawyers and scholars with a shared interest in law reform and progressive change challenge each other to find better answers, while strengthening productive relationships. Doug's thoughtful, constructive contributions are obvious and impressive in this regard.

His commitment is obvious as well in his dedication to preparing the next generation of lawyers who think critically about how cause lawyering can succeed, and also can have unintended effects. He teaches that the role requires complex strategies, flexibility, and a multi-disciplinary approach. That is true, and if only a few of his students enter this field, we all will be well served.

I believe Doug deserves your award because he is unafraid to challenge misguided orthodoxies and is consistently effective in doing so. He is a gifted, dedicated teacher of both students and the public. He devotes his time and talents to important, sometimes contentious questions and makes the conversation more productive. In his relatively brief years as a scholar, he has produced a remarkable body of scholarship and shows no signs of slowing down. He is educating, changing people's minds, and helping others – including many of this movement's fulltime lawyers – to do more of the same. And to think he's not yet forty!

Thank you for your kind consideration of this nomination.

Very truly yours,



Jennifer C. Pizer
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Director, Law and Policy Project