

SCOTUS Amicus Brief Annotations – U.S. v. Windsor

As of 3/1/13, Prepared by Gay & Lesbian Advocates & Defenders (Boston, MA), Amici Coordinators

I. Amici Briefs on the Jurisdictional Questions:

1. Former DOJ Officials

Brief for *Amici Curiae* Former Senior Justice Department Officials and Former Counsels to the President in Support of Jurisdiction

- **Firm:** Wilmer Cutler Pickering Hale & Dorr (MA)
- **Amici:** Former Senior Justice Department Officials and Former Counsels to the President in Support of Jurisdiction: Gregory B. Craig, Counsel to the President 2009 -2010; Drew S. Days III Solicitor General 1993 – 1996; Arthur B. Culvahouse, Jr., Counsel to the President 1987 – 1989; Walter E. Dellinger III, Acting Solicitor General 1996 – 1997 and Assistant Attorney General for the Office of Legal Counsel 1993 – 1996; Charles Fried, Solicitor 1985 – 1989; Dawn E. Johnsen Acting Assistant Attorney General for the Office of Legal Counsel 1997 – 1998; Douglas W. Kmiec, Assistant Attorney General for the Office of Legal Counsel 1988 – 1989; Daniel Levin Acting Assistant Attorney General for the Office of Legal Counsel 2004 – 2005; Randolph D. Moss Assistant Attorney General for the Office of Legal Counsel 2000 - 2001 and as Acting Assistant Attorney General for the Office of Legal Counsel 1998 – 2000; Beth Nolan, Counsel to the President 1999 – 2001; Bernard W. Nussbaum Counsel to the President 1993 – 1994; John M. Quinn, Counsel to the President 1995 – 1996; Seth P. Waxman, Solicitor General 1997 and 2001.
- **Description:** The decision to enforce a statute while declining to argue in its defense is a measured approach that respects both the presumption of validity accorded to Acts of Congress and the Judiciary's role as the arbiter of constitutionality. Where the Executive continues to enforce a statute, this Court possesses jurisdiction to review its constitutionality, whether or not the Executive argues in its favor and whether or not a lower court has struck it down.

2. State Equality Groups

Brief of the Empire State Pride Agenda, Equality California, Equal Rights Washington, One Iowa, Equality Maryland, MassEquality, New Hampshire Freedom to Marry Coalition, and EqualityMaine as *Amici Curiae* on the Jurisdictional Questions in Support of Petitioner and Respondent Edith Windsor

- **Firm:** Cravath, Swaine & Moore
- **Amici:** Empire State Pride Agenda, Equality California, Equal Rights Washington, One Iowa, Equality Maryland, MassEquality, New Hampshire Freedom to Marry Coalition, EqualityMaine
- **Description:** Deferring resolution of DOMA's constitutionality to the lower courts would perpetuate the substantial inequalities and harms DOMA causes in the daily lives of tens of thousands of couples. Even if the Executive Branch were to cease enforcing DOMA, the law would continue to cause great harm to thousands of individuals, and compel costly litigation.

3. Honorable John K. Olson

Brief of *Amicus Curiae* the Honorable John K. Olson in Support of Respondent Addressing Jurisdiction

- **Firm:** Dechert
- **Amici:** The Honorable John K. Olson (U.S. Bankruptcy Judge)
- **Description:** The Executive Branch's agreement with the Court below that DOMA is unconstitutional does not deprive this Court of jurisdiction. This brief also argues that BLAG has standing.

4. Law Professors

Brief of Constitutional Law Scholars as *Amici Curiae* in Support of Petitioner (Jurisdictional Questions)

- **Firm:** Andrew Pincus & Charles Rothfeld of Mayer Brown (DC), Jeffrey A. Meyer, Yale Law School, Supreme Court Clinic
- **Amici:** Rebecca L. Brown, Thomas W. Merrill, David A. Strauss & Amy Wax
- **Description:** These scholars do not all agree with the President's decision not to defend DOMA's constitutionality or on the correct resolution of that constitutional question. However, each of the amici agree that where, as here, the President has directed the Executive Branch to continue to abide by a challenged statute in the absence of a contrary court order, the President's view that the statute is unconstitutional does not affect this Court's jurisdiction to address the merits of the constitutional question. The key is continued enforcement, and not, as the Court-appointed Amica argues, that there is no longer any case or controversy to obtain a ruling from a higher court where, as here, the United States is sued and agrees with the plaintiff that the statute is invalid, and the trial court so rules.

II. Amici Briefs on the Merits Questions

A. Issues in the DOMA Litigation

5. Family Law Professors and AAML – Marital and Family Status Established by States

Brief on the Merits of *Amici Curiae* Family Law Professors in Support of Respondent Edith Schlain Windsor

- **Firm:** O'Melveny & Myers
- **Amici:** Judith Areen, Katharine K. Baker, Katharine T. Bartlett, Grace Ganz Blumberg, Kathryn Webb Bradley, June Carbone, Barbara Cox, John Culhane, Karen Czapanskiy, Anne C. Dailey, Jennifer A. Drobac, Maxine Eichner, Ann Laquer Estin, Ira Mark Ellman, Willard H. Pedrick, Zanita E. Fenton, Leslie Harris, Carol Sanger, Mark Strasser, Jennifer B. Wriggins, American Academy of Matrimonial Lawyers
- **Description:** The "core" aspect of family law left to the states includes "declarations of status, e.g. marriage, annulment, divorce, custody and paternity." Congress has never refused to defer to state determinations of family status. DOMA does not respect federalism or tradition; it disrupts them.

6. Family and Child Welfare Professors - Responsible Procreation

Brief of *Amici Curiae* Ann Alstott, Susan Appleton, Carlos Ball, Elizabeth Bartholet, Brian Bix, Cynthia Bowman, Penelope Bryan, Emily Buss, Naomi Cahn, Mary Anne Case, Marion Crain, Peggy Cooper Davis, Nancy Dowd, Linda Elrod, Martha Ertman, Martha Albertson Fineman, Deborah Forman, Joanna Grossman, Joan Heifetz Hollinger, Lisa Ikemoto, Melanie Jacobs, Courtney Joslin, Herma Hill Kay, Laura T. Kessler, Suzanne Kim, Charles Kindregan, Kristine S. Knaplund, Holnig Lau, Margaret M. Mahoney, Maya Manian, Nancy G. Maxwell, Linda McClain, David D. Meyer, Anthony Miller, Martha L. Minow, Mellisa E. Murray, Douglas Nejaime, Dorothy E. Roberts, Ruthann Robson, Kermit Roosevelt, Laura A. Rosenbury, Shelley Saxer, Julie Shapiro, Katharine Silbaugh, Cynthia Starnes, Edward Stein, Michael S. Wald, Rhonda Wasserman, Deborah Widiss, Wendy Webster Williams, and Barbara Bennett Woodhouse, Addressing the Merits and in Support of Respondents

- **Firm:** Sullivan & Cromwell; Kendall Brill & Klieger; Joan Heifetz Hollinger of UC Berkeley School of Law; Courtney Joslin of UC Davis School of Law; Katharine Silbaugh of Boston University School of Law

- **Amici:** 51 professors of family and child welfare
- **Description:** The federal government's interest in supporting marital families has never been conditioned on a couple's ability or willingness to procreate. There is no legal basis for the assertion that federal law favors biological parentage over adoption, and DOMA only hinders rather than furthers any federal interest in child welfare by denying hundreds of important rights and protections to a class of married parents and, by extension, their children.

7. American Historical Association and 23 Historians - History of Marriage

Brief of *Amici Curiae* American Historical Association and Historians ISO Affirmance of the Judgment Below

- **Firm:** Pierce Atwood
- **Amici:** The American Historical Association, Peter W. Bardaglio, Norma Basch, George Chauncey, Stephanie Coontz, Nancy F. Cott, Toby L. Ditz, Ariela Dubler, Laura F. Edwards, Estelle B. Freedman, Sarah Barringer Gordon, Michael Grossberg, Hendrik Hartog, Ellen Herman, Martha Hodes, Linda K. Kerber, Alice Kessler-Harris, Elaine Tyler May, Steven Mintz, Elizabeth H. Pleck, Carole Shammas, Mary L. Shanley, Amy Dru Stanley, Barbara Young Welke
- **Description:** Continuity and change characterize the history of marriage in the U.S. states have had several purposes for and interests in civil marriage. Before DOMA, the federal government accepted variant state definitions of marriage. The federal government has taken action over marriage only where state authority is absent.

8. Former Cabinet Secretaries, Commissioners, and Other Senior Administrative Agency Officials - Ad. Law

Brief of *Amici Curiae* Dr. Donna E. Shalala, Dr. Louis W. Sullivan, Togo D. West, Jr., Kenneth S. Apfel, Sheldon S. Cohen, Jamie S. Gorelick, Michael J. Graetz, Dr. John J. Hamre, Benjamin W. Heineman Jr., Kathryn O. Higgins, Rudolph F. DeLeon, Constance Berry Newman, and Harriet S. Rabb

- **Firms:** Arnold & Porter, Foley Hoag
- **Amici:** Dr. Donna E. Shalala, former Secretary of Health and Human Services; Dr. Louis W. Sullivan, former Secretary of Health and Human Services; Togo D. West, Jr., former Secretary of Veterans Affairs; Kenneth S. Apfel, former Commissioner of the Social Security Administration; Sheldon S. Cohen, former Commissioner of the IRS; Jamie S. Gorelick, former General Counsel of the Department of Defense; Dr. John J. Hamre, former Deputy Secretary of Defense; Benjamin W. Heineman Jr., former Assistant Secretary for Planning and Evaluation in the Department of Health, Education and Welfare; Kathryn O. Higgins, former Deputy Secretary of Labor; Rudolph F. deLeon, former Deputy Secretary of Defense; Constance Berry Newman, former Director of the Office of Personnel Management; Harriet S. Rabb, former General Counsel of HHS, Michael J. Graetz, former Assistant to the Secretary and Special Counsel at U.S. Treasury
- **Description:** Federal agencies have never applied a uniform definition of marriage and have long accommodated substantial variation in state marriage law. Furthermore, there are other agency eligibility determinations that are far more burdensome than applying state marriage laws.

9. American Psychological Association

Brief of the American Psychological Association, The American Academy Of Pediatrics, The American Medical Association, The American Psychiatric Association, The American Psychoanalytic Association, The California Medical Association, The National Association Of Social Workers and its New York City And State Chapters, and The New York State Psychological Association as *Amici Curiae* on the Merits in Support of Affirmance

- **Firm:** Goodwin Proctor

- **Amici:** American Psychological Association, American Academy of Pediatrics, American Medical Association, American Psychiatric Association, American Psychoanalytic Association, California Medical Association, National Association of Social Workers and its New York City and State Chapters, New York State Psychological Association
- **Description:** The claim that legal recognition of marriage for same-sex couples undermines the institution of marriage and harms their children is inconsistent with the scientific evidence. That evidence supports the conclusion that homosexuality is a normal expression of human sexuality that is not chosen; that gay and lesbian people form stable, committed relationships that are equivalent to heterosexual relationships in essential respects; and that same-sex couples are no less fit than heterosexual parents to raise children and their children are no less psychologically healthy and well-adjusted than children of opposite sex parents.

10. American Sociological Association

Brief of *Amicus Curiae* American Sociological Association in Support of Respondent Kristin M. Perry and Respondent Edith Schlain Windsor

- **Firm:** Cleary Gottlieb Stein & Hamilton (NY)
- **Amici:** American Sociological Association
- **Description:** The claim that same-sex parents produce less positive child outcomes than opposite-sex parents—either because such families lack both a male and female parent or because both parents are not the biological parents of their children—contradicts abundant social science research. The clear and consistent consensus in the social science profession is that across a wide range of indicators, children fare just as well when they are raised by same-sex parents when compared to children raised by opposite-sex parents.

11. Federalism Scholars

Brief of Federalism Scholars as *Amici Curiae* in Support of Respondent Windsor

- **Firm:** Robbins, Russell, Englert, Orseck, Untereiner & Sauber
- **Amici:** Ernie Young (Duke Law School) and others
- **Description:** DOMA is an unprecedented federal intrusion into one of the clearest areas of traditional state authority—that is, marital and family relations. Section 3 of DOMA undermines federalism protection by restricting “marriage” for purposes of federal law to different-sex unions. This restriction favors the view of the majority of States that reject same-sex marriage and forces a substantial minority of States to defy state law recognizing same-sex marriages whenever they implement or interact with federal programs touching marital relations.

12. Members of Congress

Brief of 172 Members of the U.S. House of Representatives and 40 U.S. Senators as *Amici Curiae* in Support of Respondent Edith Schlain Windsor, Urging Affirmance on the Merits

- **Firm:** House Judiciary Minority Counsel Heather Sawyer, Mayer Brown
- **Amici:** 212 Members of Congress
- **Description:** While fear and distrust of families different from amici’s may explain why DOMA passed by comfortable majorities in 1996, it does not excuse the need for a constitutionally permissible justification for this law. DOMA lacks the required rational connection to a legitimate federal interest, and the harm that DOMA causes gay and lesbian couples, their families, and the states that now marry them is very real today.

13. States – Federalism

Brief on the Merits for the States of New York, Massachusetts, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, and Washington, and the District Of Columbia, as *Amici Curiae* in Support of Respondent

- **Firm:** New York Atty Gen'l and Solicitor General, Massachusetts Attorney General
- **Amici:** 15 states and DC: New York, Massachusetts, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District Of Columbia
- **Description:** Section 3 of DOMA violates equal protection and impermissibly intrudes on the authority of the states to regulate marriage and family relationships.

14. CREW

Brief of *Amicus Curiae* of Citizens for Responsibility and Ethics in Washington on the Merits in Support of Respondent Edith Schlain Windsor

- **Firm:** Alan B. Morrison of George Washington University Law School, Citizens for Responsibility and Ethics in Washington (CREW)
- **Amici:** CREW
- **Description:** DOMA's differential treatment of the same-sex marriage of plaintiff Windsor and her deceased spouse, and other similarly situated married couples, undermines important protections in federal laws in three areas: conflicts of interest, federal income taxation, and bankruptcy. Plaintiff seeks not only the federal protections and benefits that stem from recognition of their marriages, but also demonstrate her willingness to share the same burdens and obligations imposed by federal law on other married couples.

B. Particular Perspectives on DOMA's Effects

15. Religious Support for Marriage

Brief of *Amici Curiae* Bishops of the Episcopal Church; Jewish Theological Seminary of America; Manhattan Conference of the Metropolitan New York Synod of the Evangelical Lutheran Church in America; The Rabbinical Assembly; The Reconstructionist Rabbinical Association ("RRA"); Reconstructionist Rabbinical College ("RRC"); The Union for Reform Judaism; Unitarian Universalist Association; United Church of Christ; The United Synagogue of Conservative Judaism ("USCJ"); Affirmation (of the United Methodist community); Covenant Network of Presbyterians; Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns ("FLGBTQC"); Methodist Federation for Social Action; More Light Presbyterians; Presbyterian Welcome; Reconciling Ministries Network; ReconcilingWorks: Lutherans For Full Participation; Religious Institute, Inc. in Support of Affirmance of the Judgment Below

- **Firm:** Kramer Levin
- **Amici:** 29 Bishops of the Episcopal Church; Jewish Theological Seminary of America; Manhattan Conference of the Metropolitan New York Synod of the Evangelical Lutheran Church in America; The Rabbinical Assembly; The Reconstructionist Rabbinical Association ("RRA"); Reconstructionist Rabbinical College ("RRC"); The Union for Reform Judaism; Unitarian Universalist Association; United Church of Christ; The United Synagogue of Conservative Judaism ("USCJ"); Affirmation (of the United Methodist community); Covenant Network of Presbyterians; Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns ("FLGBTQC"); Methodist Federation for Social Action; More Light Presbyterians; Presbyterian

Welcome; Reconciling Ministries Network; ReconcilingWorks: Lutherans For Full Participation; Religious Institute, Inc.

- **Description:** The American religious panorama embraces a multitude of theological perspectives on lesbian and gay personhood and same-sex relationships. A vast range of religious perspectives affirm the inherent dignity of lesbian and gay people, their relationships, and their families. In contrast to those amicus curiae religious organizations urging reversal, who would presume to declare a monolithic Christian belief with respect to marriage, Amici here bear witness to the diversity of religious viewpoints on marriage both within Christianity and across other faiths.

16. Anti-Defamation League

Brief of *Amici Curiae* Religious and Cultural Advocacy Organizations

- **Firm:** Ropes & Gray, Anti-Defamation League
- **Amici:** Anti-Defamation League, Americans United for Separation of Church and State, Bend the Arc – A Jewish Partnership for Justice, The Central Conference of American Rabbis and the Women of Reform Judaism, Congregation Beit Simchat Torah (CBST), Hadassah – The Women’s Zionist Organization of America, The Hindu American Foundation, The Interfaith Alliance Foundation, The Japanese American Citizens League, Jewish Social Policy Action Network (JSPAN), Keshet, Lutherans Concerned/North America, Metropolitan Community Church, The National Council of Jewish Women, Nehirim, People for the American Way Foundation’s African American Ministers Leadership Council, The Religious Coalition for Reproductive Choice, The Sikh American Legal Defense and Education Fund, T’ruah: Rabbis for Human Rights-North America, Women’s League for Conservative Judaism
- **Description:** Civil and religious marriage are distinct, as the Constitution requires. DOMA favors one form of religious marriage over another without a secular purpose.

17. Business

Brief of 278 Employers and Organizations Representing Employers as *Amici Curiae* in Support of Respondent Edith Schlain Windsor (Merits Brief)

- **Firm:** Bingham McCutchen
- **Amici:** 278 business, professional, and municipal employers, and professional, trade, and civic organizations representing employers
- **Description:** DOMA requires that employers treat one employee spouse differently from another, when each is married, and each marriage is equally lawful. The burden of DOMA’s dual regime is keenly felt by organizations that conduct operations or do business in jurisdictions that authorize or recognize marriage between two people of the same sex.

18. The Partnership for New York City

Brief of *Amicus Curiae* the Partnership for New York City in Support of Respondent Windsor and Affirmance of the Second Circuit

- **Firm:** Wachtell Lipton Rosen & Katz (NY)
- **Amici:** Partnership for New York City
- **Description:** New York City’s business leaders urged the passage of marriage equality because they wanted to be located in a state where the legal environment matched their business values and interests, including their interest in recruiting a workforce that is diverse and from a labor pool that contains the greatest available business talent. DOMA’s creation of a federal definition of marriage must be carefully reviewed because it imposes substantial burdens on the New York

business community, and it harms families of couples who have committed themselves to each other.

19. Labor

Brief *Amicus Curiae* of the American Federation of Labor and Congress of Industrial Organizations, Change to Win, and National Education Association in Support of Respondent

- **Firm:** Service Employees International Union (SEIU), American Federation of Government Employees (AFGE)
- **Amici:** AFL-CIO, Change to Win, and National Education Association
- **Description:** DOMA inflict tangible economic injuries to married gay and lesbian workers and consequently their families. DOMA's effects reverberate through the American workforce because employment benefits, together with state and federal programs for working people, form the safety net upon which working families rely for retirement and in the event of illness, injury, disability, or death.

20. Former U.S. Military Officials

Brief of Radm. Thomas Atkin, Maj. Gen. Roosevelt Barfield, Coit D. Blacker, Gen. Wesley K. Clark, Richard Clarke, William Cohen, Comm. Beth Coye, Sen. Russell D. Feingold, Brig. Gen. Evelyn "Pat" Foote, Lt. Robert G. Gard Jr., Radm. John Hutson, Brig. Gen. David R. Irvine, Lt. Arlen D. Jameson, Brig. Gen. John H. Johns, Lt. Claudia Kennedy, Brig. Gen. Keith H Kerr, Asst. Sec. of Def. Lawrence J. Korb, Maj. Gen. Dennis Laich, Rep. Patrick J. Murphy, Lt. Charles Otstott, Hon. William J. Perry, Ph.D., Sen. Charles S. Robb, Vice Adm. Joseph Sestak, Vice Adm. Jack Shanahan, Dr. Anne-Marie Slaughter, Rear Adm. Alan M. Steinman, Lt. James M. Thompson, Col. Lawrence Wilkerson, Hon. Douglas B. Wilson, Iraq and Afghanistan Veterans of America, Service Women's Action Network as *Amici Curiae* in Support of Respondent Windsor on the Merits

- **Firm:** Sidley Austin
- **Amici:** Radm. Thomas Atkin, Maj. Gen. Roosevelt Barfield, Coit D. Blacker, Gen. Wesley K. Clark, Richard Clarke, William Cohen, Comm. Beth Coye, Sen. Russell D. Feingold, Brig. Gen. Evelyn "Pat" Foote, Lt. Robert G. Gard Jr, Radm. John Hutson, Brig. Gen. David R. Irvine, Lt. Arlen D. Jameson, Brig. Gen. John H. Johns, Lt. Claudia Kennedy, Brig. Gen. Keith H Kerr, Asst. Sec. of Def. Lawrence J. Korb, Maj. Gen. Dennis Laich, Rep. Patrick J. Murphy, Lt. Charles Otstott, Hon. William J. Perry, Ph.D., Sen. Charles S. Robb, Vice Adm. Joseph Sestak, Vice Adm. Jack Shanahan, Dr. Anne-Marie Slaughter, Rear Adm. Alan M. Steinman, Lt. James M. Thompson, Col. Lawrence Wilkerson, Hon. Douglas B. Wilson, Iraq and Afghanistan Veterans of America, Service Women's Action Network
- **Description:** By requiring the military to discriminate against certain servicemembers, DOMA undermines national security and is contrary to the military's core values.

21. Outserve-SLDN

Brief of *Amicus Curiae* Outserve-SLDN Inc. on the Merits in Support of Respondents

- **Firm:** Chadbourne & Parke
- **Amici:** Outserve-Service Members Legal Defense Network (Outserve-SLDN)
- **Description:** DOMA prevents the military from providing invaluable financial benefits and family support services to certain service members' families because it prevents the military from recognizing marriages of same-sex couples and from acknowledging the same-sex spouse of a service member as a "spouse" in providing benefits.

22. Los Angeles County Bar Association

Brief of Los Angeles County Bar Association and Armed Forces Committee of the Los Angeles County Bar Association as *Amici Curiae* in Support of Respondent

- **Firm:** Law Offices of Torres & Brenner
- **Amici:** L.A. County Bar Ass'n, Armed Forces Committee of the Los Angeles County Bar Association
- **Description:** Mission effectiveness depends on equal benefits for military dependents, and under DOMA, same-sex spouses do not receive equal benefits.

23. SAGE

Brief of *Amici Curiae* Services and Advocacy for Gay, Lesbian, Bisexual and Transgender Elders (SAGE), the National Senior Citizens Law Center, The American Society on Aging, National Hispanic Council on Aging, Southeast Asia Resource Action Center, and the National Organization of Social Security Claimants' Representatives.

- **Firm:** Simpson Thatcher & Bartlett
- **Amici:** Services and Advocacy for Gay, Lesbian, Bisexual and Transgender Elders (SAGE), the National Senior Citizens Law Center, American Society on Aging, National Hispanic Council on Aging, Southeast Asia Resource Action Center, and the National Organization of Social Security Claimants' Representatives,
- **Description:** LGBT elders face unique challenges that are not shared by their heterosexual peers – including a greater risk of financial insecurity. Legally married LGBT elders are denied equal access to important federal benefits founded on the presumption of marriage that are intended to mitigate the threat of financial insecurity. Denial of federal marital benefits and protections heightens the threat of financial insecurity for legally married LGBT elders.

24. Williams Institute

Brief of Gary J. Gates as *Amicus Curiae* on the Merits in Support of Respondents

- **Firm:** Kirkland & Ellis
- **Amici:** Gary J. Gates
- **Description:** This brief presents and analyzes demographic and economic data available regarding LGBT adults and same-sex couples and their children in the United States. This brief analyzes data from the 2010 United States Census, the Census Bureau's American Community Survey, the General Social Survey, and data from the Gallup Daily Tracking Survey, which show that over 8 million American adults are LGBT; over 1.3 million adult Americans are members of nearly 650,000 same-sex couples; approximately 114,000 same-sex couples in the United States are married and over 108,000 are in civil unions or registered domestic partnerships; and almost one in five same-sex couples in the United States are raising children.

25. Family Equality Council et. al. - Child Perspective

Brief of Amici Curiae Family Equality Council; COLAGE; Our Family Coalition; Gay, Lesbian, and Straight Education Network; the Center on Children and Families; The Child Rights Project; and Sarah Gogin in Support of Respondents Perry, Stier, Katami, Zarrillo, City and County of San Francisco, and Edith Schlain Windsor, in her Capacity as Executor of the Estate of Thea Clara Spyer, Addressing the Merits and Supporting Affirmance

- **Firm:** Bryan Cave (DC)

- **Amici:** Family Equality Council, COLAGE, Our Family Coalition, Center on Children and Families at the University of Florida Fredric G. Levin College of Law, The Child Rights Project, Gay Lesbian & Straight Education Network (GLSEN), Sarah Gogin (child of two fathers)
- **Description:** As children of gay and lesbian families attest, their family relationships are “traditional” family relationships that are no less deserving of the marital protections afforded to families headed by opposite-sex couples.

26. U. Denver Law – Rights of Children

Title: Scholars of the Constitutional Rights of Children

- **Firm:** Catherine Smith, Associate Professor of Law, University of Denver Sturm College of Law; Tanya Washington, Professor of Law, Georgia State University School of Law; Susannah Pollvogt, Adjunct Faculty, University of Denver Sturm College of Law
- **Amici:** Catherine Smith, Associate Professor of Law, University of Denver Sturm College of Law; Tanya Washington, Professor of Law, Georgia State University School of Law; Susannah Pollvogt, Adjunct Faculty, University of Denver Sturm College of Law
- **Description:** DOMA harms the constitutional rights of children of same-sex couples, who are identically situated to children of different-sex couples in terms of their need for and entitlement to the types of family-supporting, governmental rights and benefits regulated by DOMA. DOMA imposes permanent class distinctions between these two groups of children by penalizing the children of same-sex couples merely because their parents are of the same sex.

27. American Bar Association

Brief of *Amicus Curiae* the American Bar Association

- **Firm:** Patterson Belknap Webb & Tyler (NY)
- **Amici:** American Bar Association
- **Description:** Lawyers play a crucial role in society by helping clients order their affairs, obtain personal and financial security, and ensure that their spouses and family members are cared for. Section 3 of DOMA, because it withholds from married gay and lesbian citizens scores of legal protections and benefits that our Nation bestows on every other person lawfully married under State law, impairs ABA members in their ability to fulfill their duties and effectively advocate for gay and lesbian clients.

28. Former Senators who Voted for DOMA

Brief for *Amici Curiae* Former Senators Bill Bradley, Tom Daschle, Christopher J. Dodd, and Alan K. Simpson on the Merits in Support of Respondent Windsor

- **Firm:** Goldstein & Russell
- **Amici:** Former Senators Bill Bradley, Tom Daschle, Christopher J. Dodd, and Alan K. Simpson
- **Description:** DOMA was premised largely on fear and speculation, with little independent consideration of its constitutionality. Developments since 1996 have eroded DOMA’s justifications. This Court should strike down DOMA.

29. Former CIA Intelligence Officer

Brief of Former Federal Intelligence Officer as *Amicus Curiae* in Support of Petitioner and Respondent

- **Firm:** Proskauer Rose
- **Amici:** Graham M. Segroves, former CIA Intelligence Officer
- **Description:** DOMA hampers the federal government’s ability to attract and retain personnel with skill sets essential to the defense of national security.

C. Equal Protection and Rational Basis Standard of Review

30. GLAD and Lambda Legal Defense & Education Fund - Rational Basis Review

Amicus Curiae Brief of Gay & Lesbian Advocates & Defenders and Lambda Legal Defense & Education Fund in Support of the United States and Edith Windsor Addressing the Merits and Supporting Affirmance

- **Firm:** Jenner & Block
- **Amici:** GLAD, Lambda Legal Defense & Education Fund
- **Description:** Although “rational basis” review affords the government significantly wider leeway to legislate in ways that incidentally advantage or disadvantage particular groups in pursuit of some genuine governmental goal, it remains a real and meaningful check on the majority’s use of law to bestow advantages on itself while excluding others. Recognizing that laws disadvantaging unpopular groups can suggest precisely such an improper objective, particularly where important personal interests are targeted, the Court has been cautious, even absent application of heightened review, of approving laws that so operate.

31. Nan Hunter and Suzanne Goldberg – Equal Protection

Brief of *Amici Curiae* Professors Nan D. Hunter, Suzanne B. Goldberg, Kathryn Abrams, Katherine M. Franke, Burt Neuborne, and Angela P. Harris Addressing the Merits in Support of Respondents

- **Firm:** Nan Hunter of Georgetown University Law Clinic, Suzanne Goldberg of Columbia Law School
- **Amici:** Constitutional law professors - Nan D. Hunter, Suzanne B. Goldberg, Kathryn Abrams, Katherine M. Franke, Burt Neuborne, Angela P. Harris
- **Description:** Multiple forms of invidious, but not traditionally suspect, classifications, including those based on sexual orientation, necessitate a more transparent statement of the Court’s existing equal protection jurisprudence.

32. Cato Institute and Constitutional Accountability Center – Equal Protection Principles

Brief of the Cato Institute and Constitutional Accountability Center as *Amici Curiae* in Support of Respondents

- **Firm:** Constitutional Accountability Center, Cato Institute
- **Amici:** Cato Institute, Constitutional Accountability Center
- **Description:** This Court has consistently ruled that the Constitution’s equal protection guarantee secures equal rights for all and forbids invidious discrimination. Under any standard of review, section 3 of DOMA violates the Fifth Amendment’s equal protection guarantee.

33. Institute for Justice – Rational Basis Review

Brief of *Amicus Curiae* Institute for Justice in Support of Respondent Edith S. Windsor

- **Firm:** Institute for Justice
- **Amici:** Institute for Justice
- **Description:** This Court does not need to resolve questions about “tiered scrutiny” in this case. Even in rational-basis cases, this Court routinely examines facts and rejects made-up justifications for government actions.

D. Equal Protection and Heightened Scrutiny

34. Leadership Conf. on Civil & Human Rights, Civil Rights Groups, Bar Ass'ns, Public Interest and Legal Service Orgs – Heightened Scrutiny

Brief of *Amici Curiae* The Leadership Conference on Civil and Human Rights and 53 Bar Associations, Public Interest and Legal Service Organizations

- **Firm:** Fulbright & Jaworski LLP, NCLR, LCCHR, McCarter & English
- **Amici:** The Leadership Conference on Civil and Human Rights and 53 bar associations and public interest and legal service organizations: 9to5, American Association of University Women, API Equality-Northern California, Asian American Institute, Asian American Justice Center, The Asian Pacific American Legal Center, Asian & Pacific Islander American Health Forum, Asian Law Caucus, Bar Association of San Francisco, Bay Area Lawyers for Individual Freedom, Boston Bar Association, Center for American Progress, Charles Houston Bar Association, Chinese for Affirmative Action, Connecticut Bar Association, Connecticut Women's Education and Legal Fund, Courage Campaign, Empire Justice Center, Equal Justice Society, Feminist Majority Foundation, Hispanic National Bar Association, Human Rights Campaign, Japanese American Citizens League, League of United Latin American Citizens, Legal Aid Society, Legal Services NYC, LGBT Bar Association of Greater New York, LGBT Community Center (NYC), Marriage Equality USA, Massachusetts Bar Association, Massachusetts LGBTQ Bar Association, Mattachine Society of Washington DC, Mexican American Legal Defense and Educational Fund, National Action Network, National Asian Pacific American Bar Association, National Black Justice Coalition, National Center for Lesbian Rights, National Council of La Raza, National Gay and Lesbian Task Force Foundation, National LGBT Bar Association, National Organization for Women Foundation, New York Legal Assistance Group, New York State Bar Association, OCA-Asian Pacific American Advocates, Permanent Commission on the Status of Women, Public Advocates Inc., Rainbow PUSH Coalition, Secular Women, Society of American Law Teachers, South Asian Bar Association of Connecticut, Southern Poverty Law Center, Transgender Law Center, Women's Bar Association of the State of New York.
- **Description:** The Court has never declined to accord heightened scrutiny to discrimination against groups, like gay people, that have experienced a history of purposeful discrimination. Heightened scrutiny is warranted to ensure that historical prejudice and antipathy are not masked by after-the-fact rationalizations.

35. Constitutional Law Scholars – Heightened Scrutiny

Brief of Constitutional Law Scholars Bruce Ackerman, Ash Bhagwat, Lee Bollinger, Erwin Chemerinsky, Michael C. Dorf, Lee Epstein, Barry Friedman, John C. Jeffries, Jr., Lawrence Lessig, William Marshall, Frank Michelman, Jane S. Schacter, Suzanna Sherry, Geoffrey R. Stone, David Strauss, Laurence Tribe, and William Van Alstyne as *Amici Curiae* Supporting Respondents Windsor and Perry

- **Firm:** Latham & Watkins
- **Amici:** Bruce Ackerman, Ash Bhagwat, Lee Bollinger, Erwin Chemerinsky, Michael C. Dorf, Lee Epstein, Barry Friedman, John C. Jeffries, Jr., Lawrence Lessig, William Marshall, Frank Michelman, Jane S. Schacter, Suzanna Sherry, Geoffrey R. Stone, David Strauss, Laurence Tribe, and William Van Alstyne
- **Description:** The Constitution requires heightened judicial scrutiny of laws that discriminate against gay men and lesbians.

36. NAACP Legal Defense Fund – Heightened Scrutiny

Brief of *Amicus Curiae* NAACP Legal Defense Fund, Inc.

- **Firm:** NAACP Legal Defense Fund
- **Amici:** NAACP Legal Defense Fund
- **Description:** The anti-subordination principle of heightened scrutiny should apply with the same force against laws that unquestionably subordinate gays and lesbians, including the Defense of Marriage Act (DOMA). The judiciary has a distinctive role to play in rooting out the pernicious stereotypes that motivate laws like DOMA.

37. Political Science Professors - Political Power – Heightened Scrutiny

Brief for Political Science Professors as *Amici Curiae* in Support of Respondent Windsor Addressing Political Powerlessness of Gay Men and Lesbians

- **Firm:** Covington & Burling
- **Amici:** Political Science Professors: John Aldrich, Duke, President-elect of the American Political Science Association; Jane Mansbridge, Harvard, current President of the APSA; Margaret Levi, University of Washington, former President of the APSA; Taeku Lee, Chair of Political Science, UC-Berkeley; Valerie Martinez-Ebers, Co-editor, American Political Science Review; Bruce Cain, Stanford University; Jan Leighley, American University, co-editor of the Journal of Politics; Rodney Hero, Berkeley; Shaun Bowler, Associate Dean of Humanities and Sciences, Dean for Social Sciences, UC-Riverside; Don Haider-Markel, U Kansas; C. Anthony Smith, UC-Irvine; Ken Sherrill, Hunter College; Gregory Lewis, School of Public Affairs at Georgia State University; David Lublin, American University; Michael McCann, University of Washington, President of Law and Society; and Cornell Clayton, Washington State, co-editor of Political Research Quarterly
- **Description:** A group's political power can be measured only by considering the group's ability to influence the political process, not by whether the group sometimes achieves the results it seeks. Gay men and lesbians are underrepresented in political office; they are ranked among the least popular minority groups in the country; groups opposing gay rights possess more resources than groups supporting gay rights, and they have few political allies.

38. Federal Elections Commission - Political Power – Heightened Scrutiny

Brief *Amici Curiae* of Former Federal Election Commission Officials Supporting Respondent Edith Schlain Windsor on the Merits

- **Firm:** Caplin & Drysdale
- **Amici:** Former FEC officials: Craig Engle, Kenneth A. Gross, Robert D. Lenhard, Lawrence M. Noble, Trevor Potter, Scott E. Thomas
- **Description:** DOMA, as applied to federal campaign finance laws, legally precludes individuals in same-sex marriages from political expression and association opportunities afforded to other married citizens. This inequality undermines any assertion that gays and lesbians are too politically powerful for DOMA to receive heightened scrutiny from this Court, since this inequality is embedded in the very rules that shape political involvement and speech.

39. Organization of American Historians and American Studies Ass'n - History of Discrimination Against Gay People – Heightened Scrutiny

Brief of the Organization of American Historians and the American Studies Association as *Amici Curiae* in Support of Respondent Edith Windsor

- **Firm:** Hogan Lovells (US)
- **Amici:** Organization of American Historians, The American Studies Association

- **Description:** The civil rights enjoyed by gay and lesbian people throughout the United States continue to be subject to the vicissitudes of public opinion in an ever-changing social, political, and cultural landscape. BLAG's arguments give impermissibly short shrift to the clear historical record of widespread, profound, and insidious discrimination faced by gay men and lesbians, only one manifestation of which is the denial of equal marriage rights.

40. Gay & Lesbian Medical Association - Immutability – Heightened Scrutiny

Brief of Amicus Curiae GLMA: Health Professionals Advancing LGBT Equality (Gay and Lesbian Medical Association) Concerning the Immutability of Sexual Orientation in Support of Affirmance on the Merits

- **Firm:** Sullivan & Worcester
- **Amici:** Gay and Lesbian Medical Association
- **Description:** Sexual orientation is an innate human characteristic that is treated unequally in the discrimination against same-sex marriage by DOMA which, accordingly, cannot survive any constitutional scrutiny that addresses immutability.

41. Survivors of Sexual Orientation Change Efforts (SOCE) – Heightened Scrutiny

Brief of *Amici Curiae* Survivors of Sexual Orientation Change Therapies in Support of Petitioner United States of America and Respondent Edith Schlain Windsor, Urging Affirmance

- **Firm:** Rosen Bien Galvin & Grunfeld (San Francisco)
- **Amici:** Ryan Kendall, Peter Drake, John Metzidis, Emily Kane and James Guay (SOCE survivors), Maris Ehlers (on behalf of Kirk Andrew Murphy, her brother, who committed suicide as a result of SOCE)
- **Description:** Sexual orientation should be recognized as a suspect classification under the equal protection component of the Due Process Clause of the Fifth Amendment because homosexuals as a class have long been subjected to discrimination based on an immutable characteristic that should not be the basis for unequal treatment.

42. Red States – Political Power – Heightened Scrutiny

Amicus Curiae Brief of Utah Pride Center, Campaign for Southern Equality, Equality Federation, and Twenty-Five State-Wide Equality Organizations From 22 States

- **Firm:** Ray Quinney & Nebecker (UT)
- **Amici:** Utah Pride Center, Campaign for Southern Equality (NC-based), Equality Federation, Equality Alabama; Arkansas Initiative for Marriage Equality; Equality Arizona; Equality Florida; Georgia Equality; Add the Words, Idaho; Indiana Equality Action; Kansas Equality Coalition; Kentucky Equality Federation; Forum for Equality Louisiana; Equality Michigan; Mississippi Safe Schools Coalition; Montana Human Rights Network; Equality North Carolina; Oklahomans for Equality; The Equality Network (Oklahoma); Equality Ohio; South Carolina Equality; Gender Benders (South Carolina); Tennessee Equality Project; Equality Texas; Equality Virginia; People of Faith for Equality in Virginia; Fair Wisconsin; and Wyoming Youth Proud.
- **Description:** While all gay Americans currently live under discriminatory federal law, fifty-five percent of gay Americans also now live under discriminatory state laws. DOMA amplifies discriminatory state laws. Gay citizens in Utah and many other states face daunting prospects of dismantling existing systems of *de jure* denigration. The Judiciary should embrace its responsibility as a co-equal branch of government and enforce the Constitution's guarantee of equal protection of the law for all, including gay Americans.

43. Nat'l Women's Law Center et. al. - Sex Discrimination/Gender Stereotypes

Brief of *Amici Curiae* National Women's Law Center, Williams Institute Scholars of Sexual Orientation and Gender Law, and Women's Law Groups

- **Firm:** Law Office of David Codell
- **Amici:** National Women's Law Center, California Women's Law Center, Equal Rights Advocates, Legal Momentum, Legal Voice, National Association of Women Lawyers, National Partnership for Women & Families, Southwest Women's Law Center, Women's Law Project, Williams Institute Scholars of Sexual Orientation and Gender Law including Nancy Polikoff, Vicki Schultz, Nan D. Hunter, Christine A. Littleton, Devon Carbado, Cheryl Harris, Seana Shiffrin, and Brad Sears.
- **Description:** Like laws that discriminate based on sex, laws that discriminate based on sexual orientation frequently are based on gender stereotypes. Because laws that discriminate based on sexual orientation are rooted in impermissible gender stereotypes, such laws should be subject to heightened scrutiny.

44. The Honorable John K. Olson, U.S. Bankruptcy Judge – – Heightened Scrutiny & History of Discrimination

Brief of *Amicus Curiae* the Honorable John K. Olson in Support of Respondent Addressing the Merits

- **Firm:** Dechert
- **Amici:** The Honorable John K. Olson (sitting BK Judge in FL)
- **Description:** Gay men and lesbians are a suspect or quasi-suspect class and thus DOMA should be subjected to intermediate scrutiny. Additionally, the history of discrimination against homosexuals is ancient, pervasive, violent, abusive, and ongoing.

E. Miscellaneous

45. American Humanist Ass'n

Brief *Amici Curiae* of the American Humanist Association and American Atheists, Inc., American Ethical Union, The Center For Inquiry, Military Association of Atheists and Freethinkers, Secular Coalition for America, Secular Student Alliance, and Society For Humanistic Judaism, in Support of Respondents Addressing the Merits

- **Firm:** Hileman & Williams (MD), Appignani Humanist Legal Center of the American Humanist Association
- **Amici:** American Humanist Association, American Atheists, Inc., American Ethical Union, The Center For Inquiry, Military Association of Atheists and Freethinkers, Secular Coalition for America, Secular Student Alliance, and Society For Humanistic Judaism
- **Description:** DOMA violates equal protection because it reflects and perpetuates prejudice towards a protected class and is not justified by any valid governmental interest. Striking down this discriminatory law does not in any way impair religious liberty.

46. American Jewish Committee

Brief *Amicus Curiae* of the American Jewish Committee in Support of the Individual Respondents on the Merits

- **Firm:** American Jewish Committee; Douglas Laycock, University of Virginia Law School
- **Amici:** American Jewish Committee
- **Description:** When the Court invalidates laws prohibiting same-sex civil marriage, it must take responsibility for the resulting religious liberty issues. Doctrinal tools are available to protect religious liberty with respect to marriage.

47. Center for Fair Administration of Taxes (CFAT)

Amicus Curiae Brief of the Center for Fair Administration of Taxes (CFAT) in Support of Respondents

- **Firm:** A. Lavar Taylor, Adjunct Professor of Law, Chapman University Law School; Director, Center for the Fair Administration of Taxes
- **Amici:** Center for Fair Administration of Taxes (CFAT)
- **Description:** Courts and the Internal Revenue Service have traditionally looked to state law in determining whether a valid marriage exists for federal tax purposes. DOMA creates horizontal inequity and harms tax compliance. Under DOMA same sex couples who are validly married under state law are deprived of benefits under the tax laws. Under DOMA the IRS is deprived of the ability to deal with abuses of the tax laws.