

No. 75934-1

SUPREME COURT OF THE STATE OF WASHINGTON

HEATHER ANDERSEN and LESLIE CHRISTIAN, et al., Respondents,

v.

KING COUNTY, et al., Appellants,

Appeal from the Superior Court of King County  
The Honorable William L. Downing

CELIA CASTLE and BRENDA BAUER et al., Respondents,

v.

STATE OF WASHINGTON, Appellant,

Appeal from the Superior Court of Thurston County  
The Honorable Richard D. Hicks

**BRIEF OF *AMICI CURIAE* MULTIFAITH WORKS,  
RELIGIOUS COALITION FOR EQUALITY,  
AND WASHINGTON FAITH COMMUNITIES**

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## I. INTRODUCTION

*Amici curiae* support the right of all committed couples to marry, regardless of gender. *Amici* encourage this Court to consider the constitutionality of Washington's Defense of Marriage Act ("DOMA"), RCW 26.04.010 & 020(1)(c), in light of the diverse religious faiths practiced across the State of Washington and the associated freedoms and protections guaranteed by the Washington State Constitution.

*Amici curiae* represent a wide variety of religious faiths, traditions, and other religious organizations throughout the State of Washington. As multi-faith organizations, *amici* counter the arguments raised by Appellants/Intervenors and urge recognition of the following principles in this Court's analysis of DOMA: (1) no one religious group or organization speaks for all people of faith and, as such, one conception of "moral and religious" grounds should not summarily be accepted and codified over another; (2) many diverse religious groups support the right of marriage for all committed couples; and (3) the free exercise of religion is not constrained, but enhanced, by recognizing the civil right of same-gender couples to marry.

*Amici* urge the court to reiterate the fundamental distinction between civil marriage sanctioned by the State, and the religious rites of matrimony governed by an individual faith's practice. Our state's

constitutional hallmarks of fairness and justice require equal rights of access - without regard to gender or sexual orientation – to civil marriage. The rulings of Judges Downing and Hicks recognized this distinction and should be affirmed.

## II. FACTUAL BACKGROUND

Respondents include eight same-gender couples who applied for, and were denied, marriage licenses from King County, Washington, and eleven same-gender couples who applied for, and were denied, marriage licenses from Thurston County, Washington. Respondents sought relief on the basis that DOMA violates the State Equal Rights Amendment and Washington State Constitution's privileged and immunities, due process, and right to privacy protections. Judge Downing in King County and Judge Hicks in Thurston County granted Respondents' motions for summary judgment concluding DOMA violates the privileges and immunities clause of Article 1, § 12 of the Washington Constitution.

*Amici* support the right of committed couples to marry, regardless of gender. *Amici* are two multi-faith organizations: Multifaith Works, the organizer of the Multifaith Alliance of Reconciling Communities, and the Religious Coalition for Equality. *Amici* also include the following Washington State congregations:

- All Pilgrims Christian Church, United Church of Christ and Disciples of Christ;
- Seattle First Baptist Church;
- Bet Alef Meditative Synagogue of Bellevue;
- Temple Beth Am;
- Bethany United Church of Christ;
- Temple Beth Or;
- Broadview Community United Church of Christ;
- Central Lutheran Church of the Holy Trinity;
- Community Church of Joy;
- Olympia Friends Meeting;
- Olympia Unitarian Universalist Congregation;
- Pullman-Moscow Friends Meeting;
- Tacoma Friends Monthly Meeting;
- Rainbow Cathedral Metropolitan Community Church;
- University Friends Meeting;
- Walla Walla Friends Meeting;
- Wallingford United Methodist Church; and
- West Seattle Unitarian Universalist Fellowship.

Multifaith Works is an inter-faith, not-for-profit organization which works to build a “community of compassion” across lines of religion and spirituality, particularly in service of people living with AIDS. One

program within Multifaith Works is the Multifaith Alliance of Reconciling Congregations (MARC), which endeavors to educate and support clergy and laypeople from multiple traditions regarding human dignity and sexuality, particularly with respect to homophobia and religious intolerance of homosexual people. Multifaith Works seeks to support the dignity and equal rights of all people, include the right of same-sex couples to marry.

The Religious Coalition for Equality is an interfaith association of lay person and clergy committed to a twofold purpose: to educate Washington State citizens about and the advocate for marriage equality for all couples and the civil rights of all. Under the auspices of the Religious Coalition for Equality, 227 individual religious leaders from around the state who have joined in signing a “Statement of Faith-Based Support for Same-Sex Marriage.” The Statement explains, in pertinent part:

We, the undersigned religious leaders of faith-based agencies, communities and congregations in the Greater Puget Sound region, join together to speak with one voice as we advocate for equal, civil and legal rights for all couples in the State of Washington. Just as religious leaders before us have spoken to end slavery, and ensure equal rights to all persons regardless of gender or race, so we oppose any legislation that discriminates in particular, limiting the civil rights of any couple to marry or join in union.

Love is a universal constant spoken of in all religions. To restrict the right of any couple to express their vows of love

and form families through marriages or unions is an unconscionable violation of religious freedom. We believe the government should never act to impose the beliefs of some religions upon others.

\* \* \*

We must speak out. We have participated or officiated in unions and marriages of same sex couples, some of us for many years, and have been profoundly moved by the sincere desire for tradition and stability within these families. We have seen how these unions have benefited and built community.

Marriage in our society is under attack, but not by same sex couples. It is undermined instead by spousal and child abuse, the trivialization of commitment, the breakdown of social support systems and the denial of legal recognition of the unions of same sex couples.

We speak for many in our communities who believe that the continued denial of the rights (rites) of marriage and union to same sex couples is a national shame. Our nation claims to stand for freedom and equality for all. We urge you to join us and advance that great tradition.

### III. ARGUMENT

#### **A. A Wide Variety of Religious Groups and Traditions Support the Civil Right of Same-Gender Couples to Marry.**

Preserving the historically restrictive notion of marriage as a union only between a man and a woman would be a fundamentally flawed basis for upholding DOMA. This is particularly true where this antiquated notion has been rejected by a growing number of religious traditions and

people of faith and is not rationally related to any legitimate government purpose, let alone a compelling state interest.

In its passage of DOMA, the Washington State Legislature found that matters relating to marriage are reserved to the sovereign states and should be determined by the people within each individual state, and not by the people or courts of another state. See ESHB 1130 (C 1 L 98, summary). In interjecting itself into the issue, however, the Legislature mistakenly found that the State of Washington has a “compelling interest in reaffirming and protecting its historical commitment to the institution of marriage as a union between a man and a woman as husband and wife.”

Id.<sup>1</sup> This “historical commitment,” however, is a faulty premise where so

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<sup>1</sup> That this “historical commitment” was really an attempt to codify traditional religious limitations on the access to marriage is clear from contemporaneous comments by legislators. Senator Val Stevens explained that the ban codifies her view of God’s intentions:

It’s God’s choice and we ought to honor that. I don’t think we should minimize the sacredness of that union. It’s for a man and a woman. Not two people. It’s not about love. It’s about responsibility to the children.

See Seattle Time, Local News: House Passes Ban on Gay Marriages – Backers Say Bill Defends God’s Choice, (February 5, 1998), *available at* <http://archives.seattletimes.nwsource.com/cgi-bin/texis.cgi/web/vortex/browse?c=0&browsedate=02%2F05%2F1998> (last visited January 21, 2005).

Rep. John Koster explained the relationship between DOMA and the preservation of his view of the divine imperative:

many disagree, both religious and secular, and therefore, fails to establish a “compelling interest.”

As Judge Downing properly recognized in granting summary judgment for Respondents, “it is clear that Americans have differing views as to what morality requires in the definition of marriage. It is not for our secular government to choose between religions and take moral or religious sides in such a debate.” CP 891.

Religious definitions of marriage vary. Some are very restrictive, rejecting interfaith marriages or re-marriages after divorce.<sup>2</sup> On the other

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Who are we to redefine what God has ordained and established? ... Who are we to say, God, you're wrong? To redefine what God has defined as a relationship and say what's normal, quite frankly. Whether you agree with the Bible or not, find me an authority higher than God.”

Id.

<sup>2</sup> See, e.g., Leadership Council of Conservative Judaism, Statement on Inter-marriage (March 7, 1995), *available at* <http://www.uscj.org/intmar/statement.html> (last visited January 25, 2005) (“Rabbis and cantors affiliated with the Conservative Movement may not officiate at the marriage of a Jew to a non-Jew, may not co-officiate with any other clergy, and may not officiate or be present at a purely civil ceremony.”)

See also Catechism of the Catholic Church – Part Two, Section Two, Chapter 3, Article 7 - The Sacrament of Matrimony, *available at* <http://www.vatican.va/archive/catechism/p2s2c3a7.htm> (last visited January 25, 2005) (“1650 ... In fidelity to the words of Jesus Christ – whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery’ [Mk10:11-12] the Church maintains that a new union cannot be recognized as valid, if the first marriage was. If the divorced are

hand, many other faith-based organizations in Washington have more expansive views of marriage.

*Amici* represent a wide variety of faith communities, houses of worship, and individual clergy from across the religious spectrum who support civil marriage for same-gender couples or perform weddings or unions for same-gender couples in their congregations. Their views regarding equality for same-gender couples are also reflected at the national level in many of faiths, traditions, and denominations represented in the “Statement of Faith-Based Support for Same-Sex Marriage.”

The Alliance of Baptists, for example, “supports the rights of all citizens to full marriage equality, and ... affirm[s] anew that the Alliance will ‘create places of refuge and renewal for those who are ignored by the church.’”<sup>3</sup> The Unitarian Universalists, with more than 1,000 congregations across the country, and the 1.3 million-member United

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remarried civilly, they find themselves in a situation that objectively contravenes God’s law.”)

<sup>3</sup> Alliance of Baptists Statement on Same Sex Marriage (April 17, 2004), available at <http://www.allianceofbaptists.org/sssm-2004.htm> (last visited January 25, 2005). The Alliance of Baptists is an alliance of individuals and churches “dedicated to the preservation of historic Baptist principles, freedoms, and traditions.”

Church of Christ,<sup>4</sup> expressly provide that clergy and congregations may celebrate religious unions of same-gender couples.<sup>5</sup>

Similarly, the Reform Jewish movement, the largest Jewish movement in North America with more than 900 congregations and 1.5 million people, supports the rights of same-gender couples to obtain civil marriages and perform wedding ceremonies within their faith traditions.<sup>6</sup>

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<sup>4</sup> That these two traditions would take this view is particularly noteworthy because each trace their history directly back to the Puritans of New England. Harris, *Unitarian Universalist Origins: Our Historic Faith*, (October 2002), *available at* [www.uua.org/info/origins.html](http://www.uua.org/info/origins.html) (last visited January 8, 2005); United Church of Christ, *About the UCC*, *available at* <http://www.ucc.org/aboutus/shortcourse/> (last visited January 25, 2005).

<sup>5</sup> In 1996, the Unitarian Universalist Association's Board of Trustees adopted a resolution in support of same-gender marriage. See *History of Unitarian Universalist Involvement in and Support of Bisexual, Gay, Lesbian and Transgender Issues* (1996), *available at* <http://www.uua.org/obgltc/resource/history.html> (last visited January 25, 2005). Leaders of the United Church of Christ (UCC), with 6,000 local congregations in the United States and Puerto Rico, have consistently and again recently affirmed the importance of "equal rights for all couples who seek to have their relationships recognized by the State." See *United Church of Christ Leaders Denounce Federal Marriage Amendment; Call For Action and Dialogue on Marriage* (April 28, 2004), *available at* <http://www.ucc.org/news/u042804.htm> (last visited January 25, 2005).

<sup>6</sup> The Union for Reform Judaism (formerly the Union of American Hebrew Congregations) has consistently affirmed its commitment to welcoming gay and lesbian couples in its congregations, and in 1993 expanded that support with a resolution supporting full equality under the law, including legal recognition of same gender relationships. *UAHC 1977 Biennial Convention, Civil Marriage for Gay and Lesbian Jewish Couples* (1977), *available at* <http://uahc.org/dallas/areso/civilmar.html> (last visited January 25, 2005). Within the Reform movement, by far the

The American Friends Service Committee (“AFSC”) and many individual Quaker institutions have also long supported civil marriage rights for same-gender couples.<sup>7</sup>

Finally, the Universal Fellowship of Metropolitan Community Churches (“UFMCC”) has specifically ministered to the needs of the gay, lesbian, bisexual and transgender Christian communities since its inception in 1968. UFMCC allows its members to obtain, and authorized clergy to perform, holy unions or the Rite of Holy Matrimony for same-gender couples.<sup>8</sup> UFMCC acknowledges the separation of the religious

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largest association is the Central Conference of American Rabbis (CCAR). The rabbis pointed out that civil marriage was a question of civil law, completely distinct from rabbinic officiating at such marriages. “Report to the CCAR Convention, June, 1998” Ad Hoc Committee on Human Sexuality, *available at* <http://ccarnet.org/hs.html> (last visited January 23, 2005).

<sup>7</sup> The Executive Committee of the AFSC Board of Directors, acting at the direction of the full board, approved a statement supporting marriage equality in January 2004. “It is our belief that government sanction should be applied equally. All couples should be granted civil union licenses or all should be granted marriage licenses.” Minute on Civil Marriage (January 9-10, 2004), *available at* <http://www.afsc.org/build-peace/equal-marriage.htm> (last visited January 25, 2005).

<sup>8</sup> Bylaws of the Universal Fellowship of Metropolitan Community Churches, Article III, Section C pertaining to rites of the Church, effective July 2003, *available at* <http://www.mcccchurch.org/> (last visited January 25, 2005) “The RITE OF HOLY UNION/RITE OF HOLY MATRIMONY is the spiritual joining of two persons in a manner fitting and proper by a duly-authorized clergy or Interim Pastoral Leader of the church. After both persons have been counseled and apprised of their

rite of marriage from civil marriage and supports the ability of same-gender couples to obtain civil marriage licenses.

In sum, while people of various religious perspectives disagree on the issue of same-gender marriage, there is ample support on both sides of the issue. It is not then within the purview of the Legislature or this Court to judge the respective validity of each religious community's beliefs. Instead, consistent with the traditions of their faith, our citizens themselves should remain free to celebrate, honor, and marry those that they see fit under the right guaranteed for free exercise of religion under the Washington Constitution.<sup>9</sup>

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responsibilities one toward the other, this rite of conferring God's blessing may be performed." *Available at* <http://www.mcchurch.org/mediaroom/2004/freetomarry/index.html>.

<sup>9</sup> WA Const. Art. 1, § 11, provides in pertinent part: "Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state."

Our state constitutional guarantee of religious freedom is noteworthy because it has been interpreted to provide broader protection for free exercise of religion than its federal counterpart while simultaneously providing a greater separation of church and state. Utter & Spitzer, *THE WASHINGTON STATE CONSTITUTION, A REFERENCE GUIDE*, 25 (Greenwood Press 2002).

**B. The Ability to Marry Whom One Chooses Warrants the Utmost Respect and Deference from the State.**

*Amici* believe the intimate personal relations of committed couples and the sanctity of their families deserve the highest respect and protection from the State of Washington. *Amici* strive to nurture these goals in their own ministries and therefore, keenly appreciate that “[a]t the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.” Lawrence v. Texas, 539 U.S. 558, 574 123 S.Ct. 2472, 156 L.Ed2d 508 (2003). To that end, this Court should reiterate “that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause....” Cleveland Bd of Ed v. LaFleur, 414 U.S. 632, 639-40, 94 S.Ct 791, 39 L.Ed.2d 52 (1974); WA Const Art 1, § 3 (“No person shall be deprived of life, liberty, or property, without due process of law”).

In the exercise of this personal choice, *amici* recognize the right to choose one’s spouse “resides with the individual.” See Loving v. Virginia, 388 U.S. 1, 12, 87 S.Ct 1817, 18 L.Ed.2d 1010 (1967) (freedom to marry embraces the choice to select a partner across racial lines); Goodridge v. Department of Health, 440 Mass. 309, 327-28, 798 N.E.2d

941 (2003) (“The right to marry means little if it does not include the right to marry the person of one’s choice...”). The exclusion of same-gender couples from eligibility for civil marriage unreasonably infringes upon this fundamental aspect of personal autonomy and is closely akin to the freedom to observe and practice one’s faith.

**C. Civil Marriage for Same-Gender Couples Would Have No Impact on the Free Exercise of Religion.**

As supporters of marriage equality, *amici* believe the “moral” grounds advanced here, and “religious” grounds advanced in the superior court, by Appellants/Intervenors in support of DOMA raise serious concerns. In fact, the free exercise of religion would in no way be impaired by the recognition of civil marriage between couples of the same gender. The autonomy of religious institutions to determine their own guidelines for religious weddings would remain undisturbed, but the rights and obligations of the legal institution of civil marriage should be available for those who choose to enter into it.

Judge Downing correctly noted that “[i]n our pluralistic society, in which church and state are kept scrupulously separate, the moral views of the majority can never provide the sole basis for legislation.” CP 890. As such, the injection of “morality” into the law under the guise of historical values is improper.

Judge Hicks likewise reasoned:

For the government this is not a moral issue. It is a legal issue. . . . The conscience of a community is not the same as the morality of any particular class. . . . Conscience makes us one people. What fails strict scrutiny here is a government approved civil contract for one class of the community not given to another class of the community.

CP 129.

The trial courts thus both found that the invocation of “traditional values” as a basis for upholding DOMA is nothing more than an appeal to eliminate diversity. This has been expressly rejected by the United States Supreme Court. See Moore v. City of E. Cleveland, 431 U.S. 494, 506, 97 S. Ct. 1932, 52 L.Ed.2d 531 (1977) (plurality opinion) (striking down a housing ordinance that limited occupancy of a unit to a narrowly defined family).

Justice O’Connor similarly reasoned in her concurrence in Lawrence v. Texas, 539 U.S. 558, 156 L.Ed.2d 508, 123 S. Ct. 2472 (2003), that the State of Texas’ attempt to justify its law against homosexual intimacy by arguing that the “statute satisfies rational basis review because it furthers the legitimate governmental interest of the promotion of morality” plainly failed.

Moral disapproval of this group, like a bare desire to harm the group, is an interest that is

insufficient to satisfy rational basis review under the Equal Protection Clause . . . . Indeed, we have never held that moral disapproval, without any other asserted state interest, is a sufficient rationale under the Equal Protection Clause to justify a law that discriminates among groups of persons.

Lawrence v. Texas, 123 S. Ct. at 2486 (Justice O'Connor, concurring) (internal citations omitted).<sup>10</sup>

This Court has likewise recognized the limited role individual concepts of "morality" have in ensuring the law is applied justly, especially in midst of such passionately held but divergent points of view as these.

We, as Justices, are bound to uphold and enforce this law *absent a constitutional prohibition*. We must not superimpose personal morality nor utilize strained interpretations of the law to sidestep this difficult issue.

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<sup>10</sup> Justice O'Connor went on to explain:

Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause because legal classifications must not be "drawn for the purpose of disadvantaging the group burdened by the law." . . . Texas' invocation of moral disapproval as a legitimate state interest proves nothing more than Texas' desire to criminalize homosexual sodomy. But the Equal Protection Clause prevents a State from creating "a classification of persons undertaken for its own sake."

Id. (internal citations omitted).

State v. Campbell, 103 Wn.2d 1, 34, 691 P.2d 929 (1984) (emphasis added). Where, as here, serious constitutional questions are presented regarding the limitations placed on the ability of our state's citizens to partake of the fundamental right of marriage, one notion of personal or religious morality should not summarily guide the Court's analysis.

The Court's ultimate role is to ensure the constitutional protections of all individuals and groups. In a case such as this, involving review of the constitutionality of legislation, the judiciary is the proper arbiter. See Philip A. Talmadge, Understanding the Limits of Power: Judicial Restraint in General Jurisdiction Court Systems, 22 Seattle U. L. Rev. 695, 710 (1999) ("the imperative to decide disputes needs to be tempered by due consideration of the judiciary's role as one of the three coordinate branches of state government."). It is the "constitution, and only the constitution, through which the people may speak for themselves." See Justice Richard B. Sanders, "Original Consent," Washington State Bar News 41, 43 (Feb. 1998).<sup>11</sup> As such, the principles of free exercise of

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<sup>11</sup> "This precedent subverts the constitution, as effectively as any alien force, in the form of rules of construction and presumptions. These essentially say the government is presumed to be right when it is really wrong; that it is strong, when by the constitutional text it is clearly weak; that no person's right has been violated when in truth his right has been taken; that an unconstitutional statute is nevertheless enforced unless proven to be so beyond a reasonable doubt; or that some alleged preposterous fact exists by virtue of legislative declaration or judicial

religion and equal protection must be fully affirmed by this Court's decision. Providing for the civil right of same-gender couples to marry will do just that.

#### IV. CONCLUSION

The issue before this Court is a civil, not a religious or moral issue. Communities of faith must retain their freedom to develop their own views on religious solemnization of marriage. This does not, however, mean that the views of some religions and faiths, notwithstanding their historical predominance, can or should be used to deny same-gender couples the legal rights and responsibilities granted to and imposed upon married couples by the State.

DATED this 7<sup>th</sup> day of February 2005.

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whimsy, when any school child can tell you, 'The emperor has no clothes.'" Id.