IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14061-AA

JAMES DOMER BRENNER, *et al., Plaintiffs-Appellees,*
v.
JOHN ARMSTRONG, *et al., Defendants-Appellants.*
_____/

No. 14-14066-AA

SLOAN GRIMSLEY, *et al., Plaintiffs-Appellees,*
v.
JOHN ARMSTRONG, *et al., Defendants-Appellants.*
_____/

Appeals from the U.S. District Court, Northern District, Florida

AMENDED
AMICUS CURIAE BRIEF OF GORDON WAYNE WATTS, SUPPORTING PETITION OF DEFENDANT, JOHN ARMSTRONG, RE: FLORIDA LAW, BUT SUPPORTIVE OF SOME ELEMENTS OF PLAINTIFFS' PETITION

The name, office address, and telephone number of counsel*[*]*
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U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Brenner, et al v. Armstrong, et al, Appeal No: 14-14061-AA
Grimsley, et al v. Armstrong, et al, Appeal No: 14-14066-AA

Amicus, Gordon Wayne Watts, pursuant to 11th Cir. R. 26.1-1, hereby certifies that the following is a list of trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party those who have an interest in the outcome of this case and/or appeal:

16 Scholars of Federalism and Judicial Restraint

64 Scholars of the Institution of Marriage

Abudu, Nancy

Alvare, Helen M.

American Civil Liberties Union of Florida, Inc., The

American Civil Liberties Union Foundation, Inc.

American Civil Liberties Union Foundation of Florida, Inc., The

Albu, Joyce

Alliance Defending Freedom

Anderson, Ryan T.

Andrade, Carlos

American College of Pediatrics

Andrade, Carlos

Armstrong, Dr. John H.

Ausley & McMullen, P.A.

Babione, Byron Jeffords

Bazzell, Harold

Becket Fund for Religious Liberty

Bledsoe, Jacobson, Schmidt, Wright & Wilkinson

Bledsoe, Schmidt & Wilkinson, P.A.

Bondi, Pamela Jo

Boyle, David

Bradley, Gerard V.

Brenner, James Domer

Church of Jesus Christ of Latter-day Saints

Citro, C. Anthony

Clark & Sauer, LLC

Cohen, Lloyd

Collier, Bob

Concerned Women for America

Cooper, Leslie

Crampton, Stephen M.

Del Hierro, Juan

DeMaggio, Bryan E.

Dewart, Deborah Jane

Duncan, William C.

Dushku, Alexander

Emmanuel, Stephen C.

Esbeck, Carl H.

Esseks, James D.

Ethics & Religious Liberty Commission of the Southern Baptist Convention

Farr, Thomas F.

Fitschen, Steven W.

Fitzgerald, John

Florida Conference of Catholic Bishops, Inc.

Florida Family Action, Inc.

Franck, Matthew J.

Gantt, Thomas, Jr.

George, Robert P.

Gibbs, David C. III

Girgis, Sherif

Goldberg, Arlene

Goldberg, Suzanne B.

Goldwasser, Carol (deceased)

Goodman, James J., Jr.

Goodman, Jeff

Graessle, Jonathan W.

Grimsley, Sloan

Gunnarson, R. Shawn

Hankin, Eric

Harmer, John L.

Hinkle, Hon. Robert L.

Hueso, Denise

Humlie, Sarah

Hunziker, Chuck

Jacobson, Samuel S.

Jacobson Wright & Sussman, P.A.

Jeff Goodman, PA

Jones, Charles Dean

Kachergus, Matthew R.

Kayanan, Maria

Knippenberg, Joseph M.

Liberty Counsel, Inc.

Liberty Counsel Action, Inc.

Liberty, Life, and Law Foundation

Lopez, Robert Oscar

Loukonen, Rachel Spring

Loupo, Robert

Lutheran Church-Missouri Synod

Marriage Law Foundation

McAlister, Mary E.

McHugh, Dr. Paul

Mihet, Horatio G.

Milstein, Richard

Myers, Lindsay

Nagel, Robert

National Association of Evangelicals

Newson, Sandra

Nicgorski, Walter

Nichols, Craig J.

NORTH CAROLINA VALUES COALITION AND LIBERTY, LIFE, AND LAW FOUNDATION

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Podhurst Orseck, P.A.

Presser, Stephen B.

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Rosenthal, Stephen F.

Rossum, Ralph A.

Russ, Ozzie

Sauer, Dean John

Save Foundation, Inc.

Schaerr, Gene C.

Schaff, Jon D

Schlairet, Stephen

Schlueter, Nathan

Scott, Rick

Sevier, Chris

Shah, Timothy Samuel

Shatz, Benjamin Gross

Sheppard, White, Kachergus and DeMaggio, P.A.

Sheppard, William J.

Smith, Hannah

Smith, Michael Francis

Smith, Steven

Snell, R.J.

Snider, Kevin Trent

Stampelos, Hon. Charles A.

Staver, Anita L.

Staver, Mathew D.

Stevenson, Benjamin James

Tanenbaum, Adam Scott

Tilley, Daniel Boaz

Trent, Edward Howard

Ulvert, Christian

U.S. Conference of Catholic Bishops

Watson, Bradley C.S.

Watts, Gordon Wayne

Brenner, et al v. Armstrong, et al, Appeal No: 14-14061-AA
Grimsley, et al v. Armstrong, et al, Appeal No: 14-14066-AA

Weaver, George Marvin

White, Elizabeth Louise

Winsor, Allen C.

Amicus, Gordon Wayne Watts, is an individual, not a corporation, and accordingly does not does not issue any stock and does not have any parent corporations or any publicly held corporations that own 10 percent or more of stock of that nonexistent parent corporation.

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STATEMENT OF JURISDICTION

In accordance with Rule 29. Brief of an Amicus Curiae, (a) When Permitted, I hereby certify the following: I, Gordon Wayne Watts, state that I have consulted with lead attorneys for both parties, seeking consent to filing of this amicus brief, and I state that all (both) parties have consented to its filing.

ADDITIONAL REASONS WHY AN AMICUS BRIEF IS DESIRABLE

Regarding **Rule 29(b)(2), the reason why an amicus brief is desirable:** Besides the strong legal arguments contained within the "four corners" of the instant brief in the case at bar, there exists one last reason why this brief is desirable: The amicus in this case, Gordon Wayne Watts, nearly won in court for Theresa "Terri" Schiavo –single-handedly, eventually losing 4-3 before the Florida Supreme Court, doing even better than a sitting governor –or Terri's own blood family – this would imply that he knows something about law, and might possibly be an expert:

- *In Re: Gordon Wayne Watts (as next friend of Theresa Marie 'Terri' Schiavo)*, No. SC03-2420 (Fla. Feb.23, 2003), denied 4-3 on rehearing. (Watts got 42.7% of his panel) http://www.floridasupremecourt.org/clerk/dispositions/2005/2/03-2420reh.pdf
- *In Re: Jeb Bush, Governor of Florida, et al. v. Michael Schiavo, Guardian: Theresa Schiavo*, No. SC04-925 (Fla. Oct.21, 2004), denied 7-0 on rehearing. (Bush got 0.0% of his panel before the same court) http://www.floridasupremecourt.org/clerk/dispositions/2004/10/04-925reh.pdf

- *Schiavo ex rel. Schindler v. Schiavo ex rel. Schiavo*, 403 F.3d 1223, 2005 WL 648897 (11th Cir. Mar.23, 2005), denied 2-1 on appeal. (Terri Schiavo's own blood family only got 33.3% of their panel on the Federal Appeals level) http://media.ca11.uscourts.gov/opinions/pub/files/200511556.pdf
- Selected filings and research from Watts' official website:
- http://GordonWatts.com/TerriSupremeCourt.pdf
- http://GordonWatts.com/Student-Loan-Abuse_Brief.pdf
- http://GordonWayneWatts.com/TerriSupremeCourt.pdf
- http://GordonWayneWatts.com/Student-Loan-Abuse_Brief.pdf
- Selected amicus filings by Watts, posted at the Fla. Sup. Ct. archives: http://www.FloridaSupremeCourt.org/pub_info/summaries/briefs/04/04-925/index.html

Although I am not required by Rule 29(b) to address these points, I shall anyhow, to better aid This Court in its duty to judge this issue: **Rule 29(b)(1) the movant's interest:** I have two interests: First, I wish to be a peacemaker and help warring parties come to a consensus agreeable to all sides, without any side having to compromise its values, if possible; and, secondly, as a heterosexual (straight) person, who may one day marry, I am negatively impacted by certain ramifications of the definition of marriage: There are numerous "Marriage Penalties," such as, for example, a person who collects disability, retirement, or Social Security, would have their benefits reduced due to the status of being 'married' even if their financial status did not change. This seems discriminatory and a possible 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 the higher taxes required from some married couples that would not 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.* 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 interest lost by the "Marriage Penalty" for both income as well as certain retirement benefits satisfies this standard; however, this amicus brief should be sufficient to grant due process regarding redress of This Court, making moot such intervention, and making it unlikely such a motion would (or should) be granted.

Rule 29(b)(2), the reason why an amicus brief is desirable; and, why the matters asserted are relevant to the disposition of the case: This amicus curiae brief brings six (6) relevant matters to the attention of the Court that have <u>not</u> already been brought to its attention by the parties: (1) While polygamy has been "bandied about" in other cases, it has **<u>not</u>** been properly used as an Equal Protection argument; (2) Secondly, while Prejudice and mistreatment of gays has been properly addressed in prior briefs (such as, by the ACLU), the Prejudice

against heterosexual (straight) marriages, viz the 'Marriage Penalty,' has not been explored. (3) This amicus advances a legal analysis not heretofore mentioned: Separating the treatment (e.g., mistreatment) of persons from the marriage status, but, rather, linking 2 similar marital statii (gay unions and polygamy) for a more accurate assessment. (4) Correcting some errors in the appellant's brief, which reaches the correct conclusion, but not for all the correct reasons. (5) A summary of how key case law applies to the instant appeal. (6) Applying the legal analysis for a practical solution: Either of two (2) alternative proposed orders might solve the problem.

Therefore, this amicus can be of considerable help to the Court.

Relevance of the matters asserted: The legal arguments in this amicus are probably the strongest defenses for the Florida law in question. Also, even if we, “right-wing” Political and Moral 'Conservatives' oppose 'Gay Marriage,' we do understand that gays are being mistreated –and this needs to stop.

STATEMENT OF THE ISSUES

1. Whether Florida's definition of marriage is Constitutional
2. Whether the injunction against Fla law in the case at bar is justified
3. Whether other unions are Constitutional, in light of Equal Protection
4. Correcting related problems, even if not caused by Fla. Law

STATEMENT OF THE CASE / FACTS

In November 2008, Florida voters approved a State Constitutional amendment defining "marriage" as being solely between 1 man and 1 woman, adding Art. I, Sec. 27, of the Fla. Constitution, which authorised §741.212, Fla. Stats., defining marriage as the legal union of one man and one woman, precluding recognition of other types of unions. In the court below, 2 separate cases (*James Brenner v. John Armstrong* and *Sloan Grimsley v. John Armstrong*), which were consolidated, plaintiffs challenged the constitutionality of the state amendment and subsequent law. The district court granted a temporary injunction and enjoined defendants from enforcement of Florida's marriage provisions, on the theory that plaintiffs were likely to prevail on the merits. The court, however, dismissed the governor and attorney general from the suit as being 'redundant' official capacity defendants. See *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991) (approving the dismissal of official-capacity defendants whose presence was merely redundant to the naming of an institutional defendant). Defendants timely appealed the case *sub judice*, and filed their initial brief on 14 Nov 2014. Amicus Watts, after reviewing the record, felt that both parties left out critical legal analyses, and, in the course of conversations with several parties, suggesting a different legal tact, obtained consent from both parties to file an amicus, and timely filed said brief—and now (after finding key omissions and minor typos) is asking This Court to accept this Amended Brief, and extend time as necessary to do so.

ARGUMENT

Since the "Additional Reasons why an Amicus Brief is Desirable" already gave a 6-point "Summary of the Argument," then we don't need that, and, instead, can skip right to the 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. Stephen C. Emmanuel, Attorney for amicus, Florida Conference of Catholic Bishops, Inc., makes a similar comment in his brief in the case before the Circuit Court: "Given Plaintiffs' disdain for history, tradition, and culture as bases for limiting marriage to one man and one woman, on what legal basis would or could Plaintiffs oppose polygamists the right to the benefits of marriage?" (brief at page 19) Atty. Emmanuel makes the best statement yet, but his legal analysis only puts polygamy on **equal** ground with Gay Marriage, and this, while close, is still incorrect. 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 and 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 less 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:

8 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.' [Matthew 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]

Genesis, chapter 19; I Corinthians 6:9; and, I Timothy 1:10, in the Christian Holy Bible, discuss homosexual unions 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. Stephen C. Emmanuel 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 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

((A)) 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, 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), as Dr. McHugh argued in his amicus, and thus not subject to heightened scrutiny—for this *–and other* –reasons.]

((B)) Prejudice against heterosexuals (straight people) is wrong: As stated *supra,* 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 the 11th Circuit, 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.*

III. 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 we keep Florida's Gay Marriage law (and state constitutional provision) in place (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.

IV. CORRECTING SOME ERRORS IN THE APPELLANT'S BRIEF

I am supporting the appellant's brief, and this is not pleasant, but it is necessary. On page 7 of the defendant/appellant's brief, they state 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.) They are, however, 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 does not violate due process or equal protection under the Fourteenth Amendment since even polygamists can not 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 and respects Equal Protection *viz.* Polygamy vs. Gay Marriage?

V. Application of: *Baker*, *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.

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*, This Court 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 Florida's right to likewise define marriage is its many citizens have seen fit to vote into their State Constitution, by an almost 62% supermajority.

VI. PROPOSED ORDER

In my original Amicus brief, I made compelling arguments about the problem and suggested a “general” solution, but I **failed** to specifically ask the court for a detailed order that could carry out this general request, and, as the petitioner, it is my duty to be specific and detailed in my request for relief, so I shall now correct my “error or omission” here. **There are two (2) different ways** that This Court might address the conflict before it:

The first would be to uphold Florida's definition of marriage (thus satisfying the defendants), but also correct some deficiencies in law (thus satisfying the plaintiffs). This could require This Court to **“affirm in part; dissent 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 Florida's definition of marriage as "1 man and 1 woman," but direct Plaintiffs 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 found 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.

CONCLUSION

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 are differential treatment issues based solely on "marital status," they are not a result of the new Florida Law, but rather, independent and long-standing –and should be corrected as a separate issue, 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, Florida's Laws (and Constitutional Provisions) limiting "marriage" to be defined as "1 man and 1 woman" should be upheld on appeal –and the injunction in the lower tribunal dissolved: 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. Florida's definition of marriage 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 Florida's 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 this reasonable law: This court should reverse 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 Plaintiffs that unconstitutional laws may be challenged individually. The other circuits are split, and the public (strongly "pro-marriage") is also split on this issue: The nation all looks to the 11th Circuit to "get it right" for all sides, so let's do just that.

Dated: Saturday, 13 December 2014 – Respectfully submitted,

/x/ _____

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 29, Brief of an Amicus Curiae (c), Contents and Form, Fed.R.App.P., I hereby certify the following:

The instant amicus brief complies with Rule 32: see *infra.*

The cover identifies the party or parties supported and indicate whether the brief supports affirmance or reversal: This brief supports defendant, John Armstrong, regarding affirmance of the Florida Law in question, and on many other points, but supports some elements of the plaintiffs, including (but not limited to) fair and just treatment of all people, including homosexual citizens.

(1) I am not a corporation; (2) there is a table of contents with page references; (3) there is a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited; (4) there is a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; (5) Since the amicus curiae is not one listed in the first sentence of Rule 29(a), here is a statement that indicates whether: (A) a party's counsel authored the brief in whole or in part: **I, Gordon Wayne Watts, am the sole author;** (B) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief: **I, Gordon Wayne Watts, do not have counsel representing me in this brief;** and, (C) a person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person: **I, Gordon Wayne Watts, received no money from anyone for the preparation of this brief.** (6) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review: **there is such an argument and summary;** and, (7) a certificate of compliance, if required by Rule 32(a)(7): **See *infra* for said certificate:**

In accordance with Rule 32(a)(7), Length., Fed.R.App.P., I hereby certify the following:

Rules 32(a)(7)(A), Page limitation, 32(a)(7)(B) Type-volume limitation, and 32(a)(7)(C)(i) Certificate of compliance [e.g., "A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B)"] do not apply: **This brief is neither a principal nor reply brief.**

Regarding Rule 32(a)(7)(C)(ii), which states in succinct part that "Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i)," **I am hereby following this standard to be safe:**

Form 6. Certificate of Compliance With Rule 32(a)

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

*** this brief contains [state the number of] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or
[[[it contains no more than 14,000 words—5,508-words, to be exact; Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.]]]
or:
*** this brief uses a monospaced typeface and contains [state the number on lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). [Not applicable: I satisfied requirements by being under 14,000 words.]

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

*** this brief has been prepared in a proportionally spaced typeface using [state name and version of word processing program: OpenOffice version 3.1.0] in [state font size: 14, and name of type style: Times New Roman],
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/s/ _____
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Attorney for _____ _
Dated: _-'--____ _

Additionally, I state that, in accordance with Rule 29. Brief of an Amicus Curiae, (d) Length, this brief is no more than one-half the maximum length authorized by these rules for a party's principal brief, which I think is currently 50 pages, 41 of which were used [since This Court permitted appellant's principal brief to exceed the 30-pages limit imposed by Rule 28.1(e)(1)], thus allowing this amicus brief to be up to 25 pages, or at the least, 20½ pages.

In accordance with Rule 29. Brief of an Amicus Curiae, (e) Time for Filing, I hereby certify the following:

I timely filed the "original" amicus brief on 21 Nov 2014, within the 7-days after the appellant filed their brief of Friday, 14 Nov 2014. I am now filing this "Amended" brief out-of-time, this Saturday, 13 December 2014, with a timely "motion to file out of time brief," as The Clerk suggested to another tardy litigant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this Saturday, the 13th day of December, 2014, a true copy of the foregoing brief was filed to the following parties by ~~FedEx~~ USPS Next Day: US Courts of Appeals, Eleventh Circuit, 56 Forsyth Street, N.W., Atlanta, Georgia 30303, Phone: (404) 335-6100 [An original and 3 copies]

In accordance with Rule 25(c)(4), Manner of Service, "Service by mail or by commercial carrier is complete on mailing or delivery to the carrier," which I hereby certify that I am doing today, Saturday, the 13th day of December, 2014, to the following parties (below), by U.S. Postal Mail –and by Electronic Mail, when/where possible. Additionally, I hope to post a TRUE COPY of these filings on my Open Source online docket, for free download, at the following three (3) URL's, as soon as practically possible:

http://www.PRWeb.com/releases/2014/12/prweb12361433.htm
and:
http://www.GordonWatts.com/DOCKET-GayMarriageCase.html
and:
http://www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

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