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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(9)

TO: Honorable Chairman Jean Monestime and Members, Board of County Commissioners

DATE: May 5, 2015

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Resolution expressing intent of the Board to (1) support marriage equality consistent with certain judicial rulings holding that same sex couples cannot be constitutionally denied the right to marry, (2) support recognition by the State of Florida of same sex marriages entered into in other jurisdictions, and (3) encourage Florida's Attorney General to withdraw or expedite all present and future appeals of these rulings

Resolution No. R-426-15

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson and Co-Sponsors Commissioner Sally A. Heyman and Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: May 5, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(9)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

2

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(9)
5-5-15

RESOLUTION NO. R-426-15

RESOLUTION EXPRESSING INTENT OF THE BOARD TO (1) SUPPORT MARRIAGE EQUALITY CONSISTENT WITH CERTAIN JUDICIAL RULINGS HOLDING THAT SAME SEX COUPLES CANNOT BE CONSTITUTIONALLY DENIED THE RIGHT TO MARRY, (2) SUPPORT RECOGNITION BY THE STATE OF FLORIDA OF SAME SEX MARRIAGES ENTERED INTO IN OTHER JURISDICTIONS, AND (3) ENCOURAGE FLORIDA'S ATTORNEY GENERAL TO WITHDRAW OR EXPEDITE ALL PRESENT AND FUTURE APPEALS OF THESE RULINGS; AND DIRECTING THE COUNTY ATTORNEY'S OFFICE, ON BEHALF OF MIAMI-DADE COUNTY, TO SEEK LEAVE TO APPEAR AS AN AMICUS CURIAE IN AMICI CURIAE BRIEFS JOINTLY FILED BY CERTAIN COUNTIES, CITIES AND A VILLAGE IN STATE OF FLORIDA V. PARETO, ET AL. AND RUVIN, STATE OF FLORIDA V. HUNTSMAN, ET AL. AND HEAVILIN, BRENNER, ET AL. V. ARMSTRONG, ET AL., GRIMSLEY, ET AL. V. ARMSTRONG, ET AL., SHAW V. SHAW, AND DOUSSET V. FLORIDA ATLANTIC UNIVERSITY IN SUPPORT OF SAME SEX MARRIAGE

WHEREAS, Miami-Dade County ("County"), through the enactment of the Miami-Dade Human Rights Ordinance, codified at Chapter 11A of the Code of Miami-Dade County, has demonstrated a long history of opposing discrimination in employment, family leave, public accommodations, credit and financing practices, and housing accommodations because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence and stalking, or source of income; and

WHEREAS, in 2008, the Florida electorate voted to amend the Florida Constitution to exclude same-sex couples from marriage and prohibited same-sex couples from attaining any form of legal family status; and

WHEREAS, notwithstanding this constitutional amendment, the County established a domestic partnership registry to permit same sex couples residing in Miami-Dade County to register their relationships with the County; and

WHEREAS, the County also permits County employees, who are parties to a registered domestic partnership relationship, to elect to select insurance coverage for his or her domestic partner or their children in the same manner as an employee may elect coverage for a spouse or unmarried dependent child; and

WHEREAS, County employees, who register their domestic partnership, are entitled to all forms of leave provided by the County, including sick, annual, funeral, and family leave to care for his or her domestic partner or the children or parents of the domestic partner, as applicable; and

WHEREAS, the denial of equal marital rights is nothing less than an unacceptable form of discrimination against lesbian, gay, bisexual and transgender Americans; and

WHEREAS, such forms of discrimination has a negative impact on the County, which promotes itself as a diverse and inclusive community; and

WHEREAS, on June 26, 2013, the United States Supreme Court ("Supreme Court"), in *United States v. Windsor*, struck down on equal protection grounds the key part of the federal Defense of Marriage Act that denied legally married same-sex couples the same federal benefits provided to heterosexual couples; and

WHEREAS, since the Supreme Court's decision, numerous state courts in Florida and around the country have declared bans on same sex marriage unconstitutional, including but not limited to the 11th Judicial Circuit for Miami-Dade County in the matter of *Pareto, et al. v. Ruvin*, the 16th Judicial Circuit for Monroe County in the matter of *Huntsman, et al.. v. Heavilin*,

and the 17th Judicial Circuit of Broward County in the matter of *In Re Marriage of Brassner and Lade*; however, two state courts in Florida have yet to rule on the constitutionality of Florida's ban on same sex marriage, including but not limited to the Second District Court of Appeal in the matter of *Mariama Monique Changamire Shaw v. Keiba Lynn Shaw*, and the Fourth District Court of Appeal in the matter of *Gildas Dousset v. Florida Atlantic University* (collectively "State Cases"); and

WHEREAS, the United States District Court for the Northern District of Florida in *Brenner, et al. v. Armstrong, et al.* and *Grimsley, et al. v. Armstrong, et. al.* ("Federal Cases") also declared Florida's ban on same sex marriage unconstitutional; and

WHEREAS, although several courts found Florida's ban unconstitutional, the judges stayed the effect of their rulings either indefinitely or in the case of the Federal Cases until January 5, 2015 to give the State the opportunity file its appeals; and

WHEREAS, the State sought to extend the stay in the Federal Cases beyond January 5, 2015; and

WHEREAS, both the United States Court of Appeals for the Eleventh Circuit and the Supreme Court denied the State's request to extend the stay; and

WHEREAS, on January 5, 2015, Judge Sarah Zabel in *Pareto, et al. v. Ruvin* lifted the stay, thus allowing the clerk in Miami-Dade County to issue marriage licenses to same sex couples before the rest of the State; and

WHEREAS, upon the expiration of the stay in the Federal Cases, on January 6, 2015, clerks around the State began issuing marriage licenses to same sex couples and performing weddings; and

WHEREAS, on January 16, 2015, the Supreme Court decided that it would hear four (4) cases in which same sex marriage bans were not found unconstitutional by the United States Court of Appeals for the Sixth Circuit, which covers Tennessee, Kentucky, Ohio and Michigan; and

WHEREAS, notwithstanding the Supreme Court's decision to hear these cases and the fact that same sex couples are now permitted to marry in Florida, appeals remain pending in Florida's Second, Third, and Fourth District Courts of Appeal and the United States Court of Appeals for the Eleventh Circuit; and

WHEREAS, Alachua County, Broward County, Orange County, Palm Beach County, City of Tampa, City of Orlando, City of St. Petersburg, City of Gainesville, City of West Palm Beach, City of Miami Beach, City of Coconut Creek, City of Hallandale Beach, City of Key West, City of Wilton Manors, City of South Miami and Village of Biscayne Park have jointly filed *amici curiae* briefs, copies of which are attached hereto as Exhibits "A", "B", and "C" and incorporated herein by reference, in support of same sex marriage in three (3) of the State Cases, i.e. *State of Florida v. Pareto, et al. and Ruvin* and *State of Florida v. Huntsman, et al. and Heavilin*, which are consolidated and pending in Florida's Third District Court of Appeal; *Mariama Monique Changamire Shaw v. Keiba Lynn Shaw*, which is pending in Florida's Second District Court of Appeal; and *Gildas Dousset v. Florida Atlantic University*, which is pending in Florida's Fourth District Court of Appeal; and

WHEREAS, Alachua County, Broward County, Orange County, Palm Beach County, City of Tampa, City of Orlando, City of St. Petersburg, City of Gainesville, City of West Palm Beach, City of Miami Beach, City of Coconut Creek, City of Hallandale Beach, City of Key West, City of Wilton Manors, City of South Miami and Village of Biscayne Park have also

jointly filed an *amici curiae* brief, a copy of which is attached hereto as Exhibit "D" and incorporated herein by reference, in support of same sex marriage in the Federal Cases; and

WHEREAS, the County has been requested to join as an *amicus curiae* in the above-referenced appeals; and

WHEREAS, this Board wishes to express its intent to (1) support marriage equality consistent with recent judicial rulings, (2) support recognition of same sex marriages entered into in other jurisdictions, and (3) encourage Florida's Attorney General to withdraw or expedite all present and future appeals to ensure that the effects of the judicial rulings are not unduly delayed; and

WHEREAS, this Board has reviewed the four (4) *amici curiae* briefs and agrees with the arguments set forth therein; and

WHEREAS, the Board desires to join Alachua County, Broward County, Orange County, Palm Beach County, City of Tampa, City of Orlando, City of St. Petersburg, City of Gainesville, City of West Palm Beach, City of Miami Beach, City of Coconut Creek, City of Hallandale Beach, City of Key West, City of Wilton Manors, City of South Miami and Village of Biscayne Park as an *amicus curiae* in the above-referenced State Cases and Federal Cases,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Incorporates and approves the foregoing recitals as if fully set forth herein.

Section 2. Expresses its intent to (1) support marriage equality consistent with the above-referenced judicial rulings, (2) support recognition by the State of Florida of same sex marriages entered into in other jurisdictions, and (3) encourage the Florida's Attorney General to

withdraw or expedite all present and future appeals to ensure that the effects of the judicial rulings are not unduly delayed.

Section 3. Directs the Clerk of the Board to transmit a copy of this Resolution to Florida's Attorney General and the Chair and Members of the Miami-Dade County State Legislative Delegation.

Section 4. Directs the County Attorney's Office to seek leave to appear as *amicus curiae*, on behalf of the County, in the *amici curiae* briefs, attached hereto as Exhibits "A", "B", "C", and "D" and incorporated herein by reference, jointly filed by Alachua County, Broward County, Orange County, Palm Beach County, City of Tampa, City of Orlando, City of St. Petersburg, City of Gainesville, City of West Palm Beach, City of Miami Beach, City of Coconut Creek, City of Hallandale Beach, City of Key West, City of Wilton Manors, City of South Miami and Village of Biscayne Park in support of same sex marriage in *State of Florida v. Pareto, et. al. and Ruvin* and *State of Florida v. Huntsman, et. al. and Heavilin*; *Mariama Monique Changamire Shaw v. Keiba Lynn Shaw; Gildas Dousset v. Florida Atlantic University; and Brenner, et al. v. Armstrong, et al.*, and *Grimsley, et al. v. Armstrong, et al.*

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson and the Co-Sponsors are Commissioner Sally A. Heyman and Commissioner Barbara J Jordan. It was offered by Commissioner **Audrey M. Edmonson**, who moved its adoption. The motion was seconded by Commissioner **Barbara J. Jordan** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman			**nay**
Esteban L. Bovo, Jr., Vice Chairman			**nay**
Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**nay**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**	Xavier L. Suarez	**nay**
Juan C. Zapata	**nay**		

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of May, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Terrence A. Smith

E-Copy Received Dec 29, 2014 5:19 PM

EXHIBIT A

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NOS. 3D14-1816 & 3D14-1783

STATE OF FLORIDA, *Appellant/Intervenor-Defendant*, v. CATHERINA PARETO, *et al.*, *Appellees/Plaintiffs*, and HARVEY RUVIN, as Clerk of the Courts of Miami-Dade County, Florida, *Appellee/Defendant*.	STATE OF FLORIDA, *Appellant/Intervenor-Defendant*, v. AARON HUNTSMAN, *et al.*, *Appellees/Plaintiffs*, and AMY HEAVILIN, as Clerk of the Courts of Monroe County, Florida, *Appellee/Defendant*.

On Appeal from the Eleventh and the Sixteenth Judicial Circuits of Florida

BRIEF OF *AMICI CURIAE* ALACHUA COUNTY, BROWARD COUNTY, ORANGE COUNTY, PALM BEACH COUNTY, CITY OF TAMPA, CITY OF ORLANDO, CITY OF ST. PETERSBURG, CITY OF GAINESVILLE, CITY OF WEST PALM BEACH, CITY OF MIAMI BEACH, CITY OF COCONUT CREEK, CITY OF HALLANDALE BEACH, CITY OF KEY WEST, CITY OF WILTON MANORS, CITY OF SOUTH MIAMI & VILLAGE OF BISCAYNE PARK IN SUPPORT OF APPELLEES/PLAINTIFFS

RAUL J. AGUILA, CITY ATTORNEY
CITY OF MIAMI BEACH
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

ROBERT F. ROSENWALD, JR.
Florida Bar No. 0190039
NICHOLAS E. KALLERGIS
Florida Bar No. 0105278

Counsel for Amici Curiae

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici are a broad cross-section of Florida county and city governments that have individually resolved that marriage discrimination against lesbian, gay, bisexual, and transgender ("LGBT") people is inimical to our citizens' health and welfare, is detrimental to our efficiency and effectiveness as employers, and denies our taxpayers hard-earned tourism revenue at a time when we can least afford it. We write to aid the Court by setting forth the very real harm wrought by marriage inequality upon our citizens and upon our very legitimacy as governing bodies. We have thoughtfully and deliberately arrived at this position. We have prohibited discrimination in employment, housing, and public accommodations against lesbians and gay men within our jurisdictions. We have created boards and committees to hear complaints of unlawful discrimination, including discrimination against LGBT people, so that the promise of nondiscrimination is made real for our residents and visitors. We have established domestic partnership registries in an attempt to provide whatever substitute we can to our same-sex couples who are denied the stability and recognition that come automatically with civil marriage in Florida. We provide benefits to the domestic partners of our employees so that these families can rely upon health insurance and leave policies that otherwise would be denied them. Some of us require that our contractors provide equal benefits to domestic partner couples and some of us pay the extra

federal income tax levied upon unmarried same-sex couples that married straight couples do not have to pay when purchasing group health insurance. We take these steps because it is the right thing to do. But we also recognize that the continuing viability of our democracy and our society depends upon a well-justified belief by our people that we govern based upon the transparent and fair application of laws that apply to all equally.

Amici are comprised of the following Florida governmental entities:

Alachua County prohibits discrimination based on a number of factors, including sexual orientation and gender identity. Alachua County defines sexual orientation and gender identity as protected statuses and prohibits discrimination based on a protected status against an individual in employment, housing, or public accommodations.[1] The County also prohibits displays or written communications designed to designate a person as unwelcome, objectionable, or unacceptable due to that person's protected status.[2] In 2013, Alachua County established a Human Rights Board to review individual complaints of discrimination and to assist in preventing discrimination throughout the County.[3] Though Alachua County does not maintain its own domestic partner registry, it recognizes domestic partnerships and state or municipal domestic partner registries. The Alachua County Board of

[1] Alachua County Code § 111.25 (employment); § 111.40 (housing); § 111.60 (public accommodations).
[2] Alachua County Code § 111.06.
[3] Alachua County Code §§ 111.10-13.

County Commissioners voted on November 18, 2014, to submit this *amicus curiae* brief.

Broward County has been at the forefront of promoting equality for LGBT individuals and has a long history of support for the rights of same-sex couples. As early as 1999, Broward provided domestic partner employment benefits to its employees[4] and required that County contractors provide benefits to domestic partners,[5] both on the same basis as they provide benefits to employees' spouses. More broadly, Broward prohibits discrimination based upon sexual orientation in employment, public accommodations, and real estate transactions, including lending,[6] and has created a Human Rights Board to enforce these provisions.[7] The Broward County Board of County Commissioners passed a resolution in support of marriage equality on August 12, 2014.

Orange County prohibits discrimination against LGBT individuals in employment, housing, and public accommodations.[8] Orange County maintains a comprehensive Health, Education, and Life Protections ("HELP") Ordinance and

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[4] *See* Broward County Code, ch. 16½, art. VIII.
[5] Broward County Code § 16½-157.
[6] *See* Broward County Code §§ 16½-33 to -33.1 (employment); §§ 16½-34 to -34.1 (public accommodations); §§ 16½-35 to -35.6 (real estate).
[7] Broward County Code §§ 16½-21 to -23.
[8] Orange County Code § 22-28 (employment); § 22-42 (public accommodations); § 22-52 (housing).

Domestic Partnership Registry.[9] The Orange County Board of County Commissioners voted to submit this brief on October 14, 2014.

Palm Beach County maintains a domestic partnership registry, provides employment benefits to the domestic partners of its employees, and maintains a tax equity policy for employees who obtain such benefits for their domestic partners.[10] Palm Beach County prohibits discrimination against LGBT individuals in employment, housing, and public accommodations.[11] Palm Beach County charges its Equal Employment Board with hearing and investigating complaints of discrimination.[12] The Palm Beach County Board of County Commissioners voted on December 2, 2014, to submit this *amicus curiae* brief.

The City of Coconut Creek ("Coconut Creek") prohibits discrimination and harassment in the workplace based on sexual orientation.[13] Coconut Creek provides equal benefits for and extends medical, wellness-related, and educational opportunities to the domestic partners of its employees.[14] The Coconut Creek City

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[9] Orange County Code §§ 22-71 to -79.

[10] Palm Beach County Code § 2-6; Palm Beach County, *Domestic Partner Tax Equity Policy*, PPM No. CW-P-082.

[11] Palm Beach County Code § 2-312 (employment); § 15-57 (public accommodations); § 15-58 (housing).

[12] Palm Beach County Code §§ 2-281 to -288.

[13] City of Coconut Creek, *Respectful Workplace Policy* (Administrative Order No. HR-02).

[14] E-mail from Terrill Pyburn, City Attorney, City of Coconut Creek, to Robert F. Rosenwald, Jr., First Asst. City Att'y, Miami Beach, Fla., and Nick Kallergis, Asst.

Code includes "partner registered under the Broward County Domestic Partnership Ordinance" in its definition of "immediate family," which allows employees to take leave to care for a domestic partner.[15] The Coconut Creek City Commission voted on January 23, 2014, to support legislation that provides for marriage equality.

The City of Gainesville ("Gainesville") prohibits discrimination against LGBT individuals in employment, housing, and public accommodations.[16] Gainesville maintains a domestic partner registry.[17] The Gainesville City Commission voted on October 20, 2014, to submit this *amicus curiae* brief.

The City of Hallandale Beach ("Hallandale Beach") boasts policies that "[set] forth its intolerance for discrimination relating to same-sex partnerships."[18] Hallandale Beach maintains a tax equity policy for its employees in domestic partnerships.[19] Certain Hallandale Beach city contractors must provide equal benefits to the domestic partners of their employees.[20] The Hallandale Beach City Commission voted on November 19, 2014, to submit this *amicus curiae* brief.

City Att'y, Miami Beach, Fla., (Dec. 4, 2014, 19:11:00 EST) (on file with recipient).

[15] Coconut Creek City Code §§ 21-1.1, -10.6, and -25.6.

[16] Gainesville City Code § 8-48 (employment); §§ 8-88 to -93 (housing); § 8-67 (public accommodations).

[17] Gainesville City Code §§ 2-610 to -613.

[18] City of Hallandale Beach Resolution No. 2014-140.

[19] *Id.*

[20] Hallandale Beach City Code § 23-3.

The City of Key West ("Key West") maintains a domestic partnership registry, and provides equal benefits to the domestic partners of its employees.[21] Key West city contractors must provide the domestic partners of their employees with equal benefits.[22] The Key West City Commission voted on November 5, 2014, to submit this *amicus curiae* brief.

The City of Miami Beach ("Miami Beach") is a hub of tourism and diversity for people from the United States and around the world. Miami Beach prohibits discrimination against LGBT people and has established a Human Rights Committee to hear charges of discrimination.[23] Miami Beach has established a domestic partner registry and provides employment benefits to domestic partners of employees and their children, mandates that Miami Beach's contractors provide these benefits to their employees, and Miami Beach reimburses (or "grosses up") our employees who pay extra federal income tax for domestic partner health

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[21] Key West City Code §§ 38-291 to -296 (domestic partner registry); § 38-295 (domestic partner benefits).

[22] Key West City Code § 2-799.

[23] *See* Miami Beach City Code § 62-33 (declaring the City's policy against discrimination); §§ 62-34 to -37 (creating the Miami Beach Human Rights Committee); §§ 62-86 to -91 (prohibiting discrimination in employment, public accommodations, housing, and public services, as well as prohibiting retaliatory discrimination, coercion of discriminatory practices, and interference, obstruction, or prevention of compliance with the Miami Beach Human Rights Ordinance).

insurance benefits.[24] Miami Beach's Mayor and Commission voted unanimously on June 11, 2014, to submit this *amicus curiae* brief.

The City of Orlando ("Orlando") broadly prohibits discrimination in employment, housing, public accommodations, and lending, in its City Code.[25] Orlando's Chapter 57 Review Board is charged, among other things, with protecting the civil rights of its LGBT citizens and hearing complaints of discrimination.[26] Orlando prohibits discrimination against city employees, and includes sexual orientation and gender identity as protected classes in its anti-harassment policy.[27] Orlando also maintains a domestic partner registry and protects the rights of domestic partners with regard to healthcare visitation and decisions, funeral and burial decisions, correctional facility visitation, mandatory notification of family members, preneed guardian designation, and education.[28] Orlando has offered health benefits to its employees' same-sex domestic partners

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[24] Miami Beach City Code §§ 62-161 to -164 (domestic partnership registry); § 62-128(c) (equal benefits for domestic partners); § 2-373 (equal benefits for domestic partners of city contractors); § 62-128(d) (grossing up ordinance).
[25] Orlando City Code § 57.14 (employment); §§ 57.48-78 (housing); § 57.08 (public accommodations); § 57.09 (lending).
[26] Orlando City Code §§ 57.01-14.5.
[27] City of Orlando, *Employment & Recruitment, in Policies and Procedures* § 808.2; *Harassment, in Policies and Procedures* § 808.26.
[28] Orlando City Code §§ 57.80-86.

since 2009.[29] Orlando's Mayor and Council voted on June 23, 2014, to submit this amicus curiae brief.

The City of South Miami ("South Miami") expressly recognizes domestic partnerships registered in Miami-Dade County, and guarantees health care facility visitation rights to domestic partners of patients.[30] Discrimination based on sexual orientation is prohibited in city employment.[31] South Miami provides equal benefits to the domestic partners of its employees.[32] South Miami created a Community Relations Board to, among other things, "foster mutual understanding, tolerance, and respect among . . . [people of different] sexual orientations . . . ."[33] The South Miami City Commission voted unanimously on December 2, 2014, to submit this *amicus curiae* brief.

The City of St. Petersburg ("St. Petersburg") enacted a Domestic Partnership Registry Ordinance in 2012.[34] In its Equal Employment Opportunity & Affirmative Action Plan, St. Petersburg prohibits discrimination in "recruitment, examination, training, promotion, retention, or any other personnel action because

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[29] Email from Amy Iennaco, Chief Asst. City Att'y, Orlando, Fla., to Robert F. Rosenwald, Jr., Senior Asst. City Att'y, Miami Beach, Fla. (June 20, 2014, 13:03:00 EST) (on file with recipient).
[30] South Miami City Code §§ 19-2, -6.
[31] South Miami City Code § 16A-34.
[32] South Miami City Code § 19-5.
[33] South Miami City Code § 16A-34.
[34] St. Petersburg City Code §§ 15-31 to -37.

of . . . sexual orientation."[35] St. Petersburg provides a comprehensive procedure for filing complaints of discrimination with the city's Human Resources Department.[36] St. Petersburg prohibits discrimination in the city's housing assistance program.[37] St. Petersburg has a Mayoral LGBT Liaison and Police LGBT Liaison.[38] Lastly, St. Petersburg encourages vendors and contractors to adopt anti-discrimination policies and to provide workplaces free of sexual orientation discrimination in terms and conditions of employment, including benefits.[39] St. Petersburg's Mayor and City Council voted on September 4, 2014, to submit this *amicus curiae* brief.

The City of Tampa ("Tampa"), through its Mayor Bob Buckhorn and with the concurrence of the Tampa City Council, has authorized the Tampa City Attorney to join in the submission of this brief and describe the efforts by Tampa to assure equality among its citizens. Tampa's Human Rights Ordinance prohibits discrimination in employment, public accommodations, and housing.[40] Tampa maintains a domestic partnership registry and provides health benefits to the

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[35] City of St. Petersburg, *Equal Employment Opportunity and Affirmative Action Plan, in City of St. Petersburg Administrative Policy* No. 010501.

[36] City of St. Petersburg, *Internal Complaints Related to Discrimination, Harassment, or Other Inappropriate Behavior, in Rules and Regulations of the Personnel Management System* §§ 10-1 to -4.

[37] St. Petersburg City Code § 17.5-23.

[38] City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014).

[39] *Id.*

[40] Tampa City Code § 12-26 (employment); § 12-64 (public accommodations); and §§ 12-81 to -85 (housing).

domestic partners of its employees.[41] Tampa created a Human Rights Board to hear and initiate complaints of discrimination under Tampa's Human Rights Ordinance, and granted the board the power to review determinations of reasonable cause by the city's administration.[42] Tampa also boasts comprehensive protections for LGBT individuals in its personnel rules: Tampa's Equal Opportunity Policy requires equal treatment of all persons and equal opportunity in employment, and prohibits discrimination, inappropriate behavior, or harassment based on sexual orientation.[43] Lastly, Tampa requires its employees to provide services to the public without regard to the person's sexual orientation.[44]

The City of West Palm Beach ("West Palm Beach") prohibits discrimination against LGBT individuals in employment, housing, and public accommodations.[45] West Palm Beach prohibits sexual orientation discrimination in its procurement.[46] West Palm Beach maintains a domestic partnership registry,[47]

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[41] Tampa City Code §§ 12-120 to -127 (domestic partnership registry); City of Tampa, *Group Health Insurance*, *in City of Tampa Personnel Manual* § B22.1 (equal benefits for domestic partners of city employees).
[42] Tampa City Code § 12-5.
[43] City of Tampa, *Equal Opportunity*, *in City of Tampa Personnel Manual* § B1.1A; City of Tampa, *Discriminatory Conduct*, *in City of Tampa Personnel Manual* § B1.2.
[44] *Id.*
[45] West Palm Beach City Code § 42-35 (employment); § 42-37 (public accommodations); § 42-39 (housing).
[46] West Palm Beach City Code § 66-9.
[47] West Palm Beach City Code §§ 42-47 to -50.

provides benefits to the domestic partners of its employees,[48] and requires that its contractors provide equal benefits to the domestic partners of their employees.[49] West Palm Beach passed a tax equity policy for domestic partner health insurance benefits.[50] The West Palm Beach City Commission voted on November 24, 2014, to submit this *amicus curiae* brief.

The City of Wilton Manors ("Wilton Manors") maintains a domestic partnership registry, provides equal benefits to the domestic partners of its city employees, and maintains a tax equity policy for employees who obtain City benefits for their domestic partners.[51] Likewise, covered city contractors in Wilton Manors must provide equal benefits to the domestic partners of their employees.[52] City vendors and contractors are prohibited from discriminating against any person based on sexual orientation or marital status. Wilton Manors allows city employees to take military caregiver leave if a domestic partner of an employee requires care due to an injury or illness suffered while on active military duty.[53] Health insurance continuation coverage is guaranteed to the children and domestic partners of city employees if they lose coverage because of the death of the

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[48] West Palm Beach City Code § 62-81.
[49] West Palm Beach Ordinance No. 4526-14.
[50] West Palm Beach City Code § 62-66.
[51] Wilton Manors City Code §§ 13.5-41 to -46; City of Wilton Manors Resolution No. 2013-0069.
[52] Wilton Manors City Code § 2-268(v).
[53] City of Wilton Manors, *The Federal Family and Medical Leave Act – FMLA Policy, in Personnel and Safety Rules and Regulations, Civil Service Rules* § 10-9.

employee, the employee's termination, divorce, or legal separation of the employee, the employee's entitlement to Medicare benefits, or a dependent's loss of designation as a "dependent child" under the city's health plan.[54] The Mayor and City Commission of Wilton Manors voted on August 12, 2014, to submit this *amicus curiae* brief.

The Village of Biscayne Park ("Biscayne Park") prohibits discrimination based on sexual orientation in its Village Charter.[55] Biscayne Park maintains a domestic partnership registry[56] and provides equal benefits to the domestic partners of its employees.[57] The Mayor and Village Council voted unanimously on July 1, 2014, to "support equal access to legal marriage for same-sex couples" and to oppose "laws and constitutional amendments that deny equal access to legal marriage for same-sex couples."[58]

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[54] *Id.*
[55] Biscayne Park Village Charter § 7.07.
[56] Biscayne Park Village Code § 2-47.
[57] Biscayne Park Village Code § 2-48.
[58] Village of Biscayne Park Resolution No. 2014-45.

SUMMARY OF ARGUMENT

Amici have prepared this brief at the request of our elected City and County Boards, Commissions, and Councils. Unable to obtain the legal recognition of the State, our citizens have looked to us, as local governments, to advocate on their behalf and to request that the Court strike down Florida's ban on same-sex marriage as unconstitutional under the U.S. Constitution.

We reject the state's contention that any legitimate governmental interest is served by denying marriage equality to Florida's gay and lesbian couples. To the contrary, the ban impedes and interferes with many of our real governmental interests. Florida's prohibition on marriage for gay and lesbian couples impedes our ability to fulfill our core mission of providing for the health and welfare of our residents, thereby eroding the very legitimacy of our governments. The marriage ban interferes with the administration of our business as employers. Lastly, the marriage ban denies our taxpayers tourism revenue.

ARGUMENT

I. Marriage Inequality Harms Our Residents, Impedes Our Effectiveness, and Erodes Our Legitimacy.

We are resolved that there is no greater threat to our sacred mission to protect the health and welfare of our citizens than the existence of invidious discrimination. As the Miami Beach City Code makes clear,

> In the city, with its cosmopolitan population consisting of people of every race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age, some of them who are disabled as defined under section 62-31 hereof, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of prejudice against one another and antagonistic to each other because of differences of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, or disability. The city finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free, democratic society.[59]

The societal harm that comes from discrimination reaches its apex when institutionalized as laws that serve no purpose other than to harm one segment of the population; discrimination is never more harmful than when the government itself discriminates. Attorney General Eric Holder recounted his own experience with state-sponsored racial discrimination as he announced that the federal government would no longer treat gay couples as less than equal to straight couples: "[A]lthough the vestiges of state-sanctioned discrimination affected many aspects of our lives – and continue to reverberate across the country even today – thanks to *Brown* and those who made it possible, your generation will never know a world in which 'separate but equal' was the law of the land."[60]

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[59] Miami Beach City Code § 62-33.

[60] Eric Holder, U.S. Attorney General, Attorney General Holder's Remarks at the Morgan State University Commencement Ceremony (May 19, 2014) (citing *Brown v. Bd. of Educ.*, 347 U.S. 483, 74 S. Ct. 686 (1954)).

Florida's state-sanctioned discrimination compromises the health and welfare of our society and of our gay and lesbian citizens.

A. Marriage Inequality Needlessly Brings Legal and Financial Hardship to Families.

In the country's seminal decision on same-sex marriage, Massachusetts' highest court recognized that the denial of marriage rights to gays and lesbians is the purest form of institutionalized discrimination:

> The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason . . . . The absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual.[61]

The United States Supreme Court recently reaffirmed this rationale. In *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013), the Court stated, "The avowed purpose and practical effect of the law here in question [the Defense of Marriage Act] are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages . . . ."

Florida's ban on same-sex marriage, the plainest form of discrimination,[62] has a tremendous negative impact on the health and well-being of gay and lesbian

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[61] *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 968 (Mass. 2003).

[62] *In re Marriage Cases*, 183 P.3d 384, 402 (Cal. 2008) ("Retaining the designation of marriage exclusively for opposite-sex couples and providing only a separate and

couples and their children.[63] Florida denies these families the "aggregate of moral and social support [that] enables married people to more effectively negotiate the ordinary and extraordinary challenges that occur in social life, through the provision of a set of recurring advantages."[64]

The benefits of civil marriage include "spousal benefits, such as social security and public pensions; income tax benefits; inheritance, insurance, and survivorship rights including estate tax benefits, health insurance in spouses' group plans; the right to sue for wrongful death of a spouse; and power to make medical decisions on behalf of a spouse."[65] "More than 60 percent of insured Americans received health care through their own employer or that of their spouse or other

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distinct designation for same-sex couples may well have the effect of perpetuating a more general premise – now emphatically rejected by this state – that gay individuals and same-sex couples are in some respects 'second-class citizens' who may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite-sex couples.").

[63] Gay and Lesbian Medical Association, Same-Sex Marriage and Health 3 (2008). A survey of 34,000 lesbian, gay, and bisexual individuals conducted in 2001 and 2002, and again in 2004 and 2005 after 14 states adopted constitutional bans on same-sex marriage, found "empirical evidence of the negative health effects of discriminatory policies relative to marriage equality." In the second study, "participants reported significantly higher rates of psychiatric disorders, with increases of 36% for any mood disorder, 248% for generalized anxiety disorder, 42% for alcohol use disorder, and 36% for psychiatric comorbidity." William C. Buffie, *Public Health Implications of Same-Sex Marriage*, 101 Am. J. Pub. Health 986, 987 (2011).

[64] Gilbert Herdt & Robert Kertzner, *I do, but I can't: The impact of marriage denial on the mental health and sexual citizenship of lesbians and gay men in the United States*, 3 Sexuality Res. & Soc. Pol'y J. NSRC 33, 38 (2006).

[65] *Id.* (citing Virginia Rutter & Pepper Schwartz, *The Gender of Sexuality: Exploring Sexual Possibilities* (2006)).

family member."[66] Currently, same-sex couples are barred from "the full range of legal, economic, social, and mental health benefits provided by marriage. Legal recognition short of marriage is not transportable across state lines and subjects lesbians and gay men to the vicissitudes of local law and law enforcement."[67]

A stark illustration of this devastating harm can be found right here at home: In February 2007, Janice Langbehn, her long term partner Lisa Pond, and their three adopted children were in Miami to take a cruise. Pond suffered a brain aneurysm and was admitted to Jackson Memorial Hospital. The hospital, after telling Langbehn that she was "in an anti-gay city and state," refused to allow Langbehn and the couples' children to be with Pond, despite having received a durable power of attorney and advance directive. Pond died alone without her family present.[68]

While the dignity of marriage would empower couples like Janice Langbehn and Lisa Pond to make end-of-life decisions, the protective power of marriage might have served their children even more. Marriage equality would concretely

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[66] Gay and Lesbian Medical Association, *supra* note 63, at 6 (citing Herdt & Kertzner, *supra* note 64; M.V. Lee Badgett, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?*, 1 Sexuality Res. & Soc. Pol'y 1, 8 (2004)).

[67] *Id.*

[68] *Id.* at 10 (citing Janice Langbehn, Address at Family Equality Council Media Awards (October 13. 2007), *available at* http://webcache.googleusercontent.com /search?q=cache:-H3ot9UnNykJ:thelpkids.wordpress.com/keynote-speeches/+& cd=3&hl=en&ct= clnk&gl=us).

promote the health and well-being of the many Florida children currently raised by gay and lesbian couples.[69] Marriage inequality undermines the stability of families raised by gay or lesbian couples, and "perpetua[tes] false claims about [their] parental fitness."[70] On the other hand, the legal recognition of a same-sex relationship "can increase the ability of adult couples to provide and care for one another and fosters a nurturing and secure environment for their children."[71]

Children of Florida's same-sex couples are currently denied rights and privileges enjoyed by children of legally married couples, like "survivorship rights and protections, recognition of parental rights and responsibilities, tax and other financial advantages, and legal protections to partners and children during the dissolution of relationships."[72] These rights are basic benefits of civil marriage, and should be extended to same-sex couples who wish to marry. Instead, children of same-sex parents suffer economic, legal, and familial insecurity.[73] Without the legal protections of civil marriage, "same gender couples' death, disability, and

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[69] *Id.* at 7 (citing C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility, in Infertility in the modern world: Biosocial perspectives* 238 (G. Bentley and N. Mascie-Taylor, eds., 2000)).

[70] *Id.* (citing Herdt & Kertzner, *supra* note 64).

[71] *Id.* (citing James Pawelski, et al., Special Article, *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-Being of Children*, 118 Pediatrics 349 (2006), *available at* http://pediatrics.aappublications.org/content/118/1/349.full.pdf+html).

[72] *Id.*

[73] *Id.*

divorce disputes are relegated to civil courts, which apply contract or business law, but not family law, such that children's concerns are ignored."[74]

Society's ability to care for another group of its most vulnerable citizens is compromised by Florida's same-sex marriage ban: the elderly. The American Psychiatric Association recognizes the effect of marriage discrimination on aging:

> As the population ages, the denial of legal recognition of civil marriage has consequences for increasing numbers of older adults in same-sex relationships who face age-related health and financial concerns. Excluding these adults from civil marriage protections of survivorship and inheritance rights, financial benefits, and legal recognition as a couple in healthcare settings increases the psychological burden associated with aging.[75]

Marriage provides a socially and legally recognized "context for individuals to realize their capacities for love, care, and self-transcendence."[76] Marriage also "provides social legitimacy to the intimate bonds of adults and is required for the recognition of full adulthood across many cultures."[77] The denial of marriage equality reverberates from cradle to grave.

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[74] *Id.* (citing Katherine A. O'Hanlan, *Health Policy Considerations for Our Sexual Minority Patients*, 107 Obstetrics & Gynecology 709 (2006)).
[75] *Id.* at 9 (citing Position Statement, American Psychiatric Association, Support of Legal Recognition of Same-Sex Civil Marriage (2005)).
[76] *Id.* at 5 (citing Herdt & Kertzner, *supra* note 64; Erik H. Erikson, *Identity and the Life Cycle* (1959)).
[77] *Id.* (citing Linda Waite & Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (2000); Margaret Mead, *What is Happening to the American Family?*, 1 Pastoral Psychology 40 (1950)).

B. Marriage Inequality Wreaks Psychological Harm Upon Families and Children.

In addition to legal and financial disadvantages, marriage discrimination wreaks psychological harm on family members of gay and lesbian couples. Gay and lesbian couples "face unusual and specific stressors due to the absence of social and legal rights and duties that define same-sex couplehood."[78] The American Psychiatric Association has recognized that "same-sex couples . . . experience several kinds of state-sanctioned discrimination that can adversely affect the stability of their relationships and their mental health."[79]

Hundreds of studies of straight couples have established that "married individuals have better mental health, more emotional support, less psychological distress, and lower rates of psychiatric disorders than unmarried individuals."[80] Marriage equality "may confer additional benefits because of the protective effects of relationships in countering discrimination and sexual prejudice."[81]

Married individuals report more emotional support and are more likely to have a close confidant than the unmarried.[82] Emotional support is directly associated with health and well-being and provides protection against the negative

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[78] Herdt & Kertzner, *supra* note 64, at 40.
[79] Gay and Lesbian Medical Association, *supra* note 63, at 3 (citing American Psychiatric Association, *supra* note 75).
[80] Herdt & Kertzner, *supra* note 64, at 35.
[81] Gay and Lesbian Medical Association, *supra* note 63, at 6.
[82] *Id.*

health consequences of stress.[83]

Many Americans relate their well-being to marriage,[84] which is widely perceived to bestow a variety of resources and benefits.[85] Married individuals report less economic strain and higher incomes than the unmarried.[86] For Americans who enjoy legal access to it, "marriage is uniquely associated with tangible and intangible benefits that are linked to and support psychological health."[87] In sum, the denial of marriage to lesbians and gay men is harmful to the health and welfare of our residents and is harmful to society at large.

II. As Large Employers, State-Sponsored Marriage Discrimination Costs Us Money, Adds Needless Bureaucracy, and Compromises Employee Morale, All Resulting in a Less Efficient and Effective Government.

Our business is to provide world-class service to our residents and visitors. We employ large and diverse workforces, which perform functions ranging from that of City Manager to summer recreation counselors – everything needed to run

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[83] *Id.* (citing Herdt & Kertzner, *supra* not 64; Peggy Thoits, *Stress, Coping, and Social Support Processes: Where Are We? What Next?*, J. Health & Soc. Behav. (Special Issue) 53 (1995)).

[84] *Id.* (citing Richard Kim & Lisa Duggin, *Beyond Gay Marriage,* The Nation, June 29, 2005, http://www.thenation.com/article/beyond-gay-marriage).

[85] *Id.* (citing Waite & Gallagher, *supra* note 77).

[86] *Id.* (citing Herdt & Kertzner, *supra* note 64; Catherine E. Ross, et al., *The Impact of the Family on Health: The Decade in Review*, 52 J. Marriage & Fam. 1059 (1990); Waite & Gallagher, *supra* note 77; Cathleen Zick & Ken Smith, *Marital Transitions, Poverty, and Gender Differences in Mortality*, 53 J. Marriage & Fam. 327 (1991)).

[87] Herdt & Kertzner, *supra* note 64, at 36.

multi-faceted governmental organizations. It is only by our ability to attract and retain top-tier talent that we can live up to our promise. Orlando said it this way:

> The City of Orlando community has a population which is richly diverse. The effective provision of governmental services within such a diverse community requires the services of an equally diverse employee population. The City of Orlando is, therefore, committed to providing an employee workforce which, in all positions and at all levels, fairly reflects the community it serves. The City encourages all segments of its population to become involved with, and seek employment in, City government. To achieve this goal, it is the policy of the City of Orlando, binding on all officials and employees, to offer equal employment opportunity to all persons regardless of race, color, religion, sex, national origin, age, sexual orientation, or disability. The City will further take whatever steps are necessary to ensure that all employment practices, including, but not limited to, compensation, benefits, layoffs, promotions, training, terminations, hiring, and recruitment, are administered in a manner that provides full and fair opportunity to all persons.[88]

The Williams Institute at the University of California at Los Angeles School of Law recently reviewed 36 research studies and found that working in an LGBT-supportive workplace climate resulted in "greater job commitment, improved workplace relationships, increased job satisfaction, improved health outcomes, and increased productivity" among LGBT employees.[89]

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[88] City of Orlando, *Harassment, in Policies and Procedures* § 808.26.

[89] M.V. Lee Badgett, Laura E. Durso, Angeliki Kastanis, & Christy Mallory, *The Business Impact of LGBT-Supportive Workplace Policies* 1, Williams Institute (2013) (*hereinafter* "Williams Institute"), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf.

A. We Work Hard to Provide a Nondiscriminatory Workplace.

In Florida, all 12 public universities in the state prohibit discrimination based on sexual orientation and nine prohibit discrimination based on gender identity. There are at least 28 localities that prohibit discrimination based on sexual orientation against their own government employees. Twenty localities also prohibit discrimination based on gender identity.[90]

A 2011 study found that 68 local governments in the United States require that their contractors have LGBT-supportive affirmative action policies, or policies granting same-sex domestic partners equal benefits.[91] We prohibit discrimination based upon sexual orientation and gender identity by covered employers doing business in our jurisdictions.[92] We also encourage or require our covered contractors to provide domestic partner benefits on equal footing with those offered to married couples.[93]

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[90] Email from Christy Mallory, Senior Counsel, Williams Institute, to Robert F. Rosenwald, Jr., Senior Asst. City Att'y, Miami Beach, Fla. (June 13, 2014, 12:36 EST) (on file with recipient).

[91] Williams Institute, *supra* note 89, at 21.

[92] Alachua County Code § 111.25; Broward County Code §§ 16½-33 to -33.1; Orange County Code § 22-28; Palm Beach County Code § 2-312; Miami Beach City Code § 62-86; Gainesville City Code § 8-48; Orlando City Code § 57.14; Tampa City Code § 12-26; West Palm Beach City Code § 42-35.

[93] Broward County Code § 16½-157; Hallandale Beach City Code § 23-3; Key West City Code § 2-799; Miami Beach City Code § 2-373(b); City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014); West Palm Beach Ordinance No. 4526-14; Wilton Manors City Code § 2-268(v).

B. Marriage Inequality Presents Unique Challenges.

Marriage discrimination by the state presents its own unique challenges for us to address. Although we attempt to lessen the harmful effects on our employees, these efforts impose significant administrative burdens. While we provide near-equivalents to some of the benefits afforded to legally married couples, we are unable to erase the stain of inequality.

1. The Marriage Ban Imposes Significant Administrative Burdens.

To alleviate the disparities in available benefits between gay and straight employee families, we provide comprehensive workarounds in an attempt to approximate marriage equality for our employees. First, we have enacted domestic partner registries that the public can use to register families for local recognition.[94] Second, we provide benefits to registered domestic partners of city employees.[95]

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[94] Broward County Code, ch. 16½, art. VIII; Orange County Code §§ 22-71 to -79; Palm Beach County Code § 2-6; Gainesville City Code §§ 2-610 to -613; Key West City Code §§ 38-291 to -296; Miami Beach City Code §§ 62-161 to -164; Orlando City Code §§ 57.80-86; St. Petersburg City Code §§ 15-31 to -37; Tampa City Code §§ 12-120 to -127; West Palm Beach City Code §§ 42-47 to -50; Wilton Manors City Code §§ 13.5-41 to -46; Biscayne Park Village Code § 2-47.

[95] Broward County Code, ch. 16½, art. VIII; Orange County Code §§ 22-71 to -79; Miami Beach City Code § 78-34; Palm Beach County, *Domestic Partner Tax Equity Policy*, PPM No. CW-P-082; Email from Terrill Pyburn, *supra* note 14; Key West City Code § 38-295; Email from Amy Iennaco, *supra* note 29; South Miami City Code § 19-5; City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014); City of Tampa, *Group Health Insurance*, *in City of Tampa Personnel Manual* § B22.1; West Palm Beach City Code § 62-81; Wilton Manors City Code § 13.5-45; Biscayne Park Village Code § 2-48.

Finally, we reimburse our employees for the additional federal income tax liability that domestic partners – but not legally married couples – incur when receiving benefits ("grossing up").[96]

Grossing up is a costly and complex process. To illustrate, a married employee who, through an employer, obtains health insurance for a spouse does not pay federal income tax on the value of the insurance obtained, but only if the employee's spouse is legally recognized. Many employers attempt to address taxability differences by reimbursing the employee to offset the tax impact of imputed healthcare benefits. Grossing up offsets the inequity created by Florida's discriminatory marriage law, but it imposes a pecuniary cost beyond the direct cost of paying for employee benefits.

The U.S. Office of Personnel Management, in a study of grossing up, noted that this approach "raises costs considerably . . . . Under a grossing up policy, a $1,000 net cash award would actually cost the agency $1,713.80."[97] The New York Times estimates that grossing up for an employee who incurred between $1,200

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[96] Palm Beach County, *Domestic Partner Tax Equity Policy*, PPM No. CW-P-082; City of Hallandale Beach Resolution No. 2014-140; Miami Beach City Code § 62-128(d); West Palm Beach City Code § 62-66; City of Wilton Manors Resolution No. 2013-0069.

[97] U.S. Office of Pers. Mgmt., *Grossing Up Awards: Why and Why Not*, http://www.opm.gov/policy-data-oversight/performance-management/performance-management-cycle/rewarding/grossing-up-awards/ (using the following withholding rates: federal income tax, 28 percent; Medicare tax, 1.45 percent; Social Security tax, 6.2 percent; state income tax, 6 percent).

and $1,500 in extra taxes costs the employer between $2,000 and $2,500.[98]

Grossing up is also quite complicated. Tax rates, timing, and the taxation of the gross up amount itself all come into play. We must retain experts who craft the policies and structure systems that can record gross-up amounts, as well as educate human resources, benefits, and payroll administrators.

2. Our Best Efforts Still Impose Stigma and Confusion Among Employees.

Our workarounds – as well-intentioned and beneficial as they are – still perpetuate a stigma by according different treatment to those employees who were married out-of-state to a same-sex spouse or are barred from marriage by Florida law, as opposed to those who are legally married to a different-sex spouse. Rightly or wrongly, our employees see us as the enforcement mechanism for a discriminatory regime. Employee morale and productivity suffer as a result.

III. Marriage Inequality Denies Our Taxpayers Hard-Earned Tourism Revenue.

Our local economies, like those of most of Florida, are heavily dependent upon domestic and international tourism. As the state's number one industry, tourism was responsible for welcoming 94.3 million visitors in 2013 who spent $76.1 billion, generating 23 percent of the state's sales tax revenue and employing

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[98] Tara Siegel Bernard, *A Progress Report on Gay Employee Health Benefits*, N.Y. Times, Dec. 5, 2012, http://bucks.blogs.nytimes.com/2010/12/14/a-progress-report-on-gay-employee-health-benefits/.

nearly 1.1 million Floridians.[99] Miami Beach's tropical weather, thriving arts scene, multicultural populace, and booming nightlife drew a diverse international crowd of 5,293,722 tourists to the city in the last counted year. Tourism brings in more than $8 billion dollars annually and makes up a large percentage of Miami Beach's annual budget.[100] The South Florida region is also a favorite tourist destination for lesbians and gay men. Broward and Miami-Dade counties draw an estimated 2.15 million LGBT visitors a year who spend nearly $3 billion.[101]

The Williams Institute has determined that Florida would see an economic boost as same-sex couples plan their weddings, and as their out-of-state guests purchase goods and services in the state, in the first three years following the state's recognition of same-sex marriage. The authors of this study based their findings on information regarding marriage spending by same-sex couples in other states, along with wedding expenditure and tourism data from the State of Florida, to estimate the economic stimulus from the state's recognition of marriage equality. The study indicates that the total spending on wedding arrangements and tourism by same-sex couples and their guests would be approximately $182.2

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[99] Visit Florida, *About VISIT FLORIDA*, http://www.visitflorida.com/en-us/about-visit-florida.html (last visited Oct. 9, 2014).

[100] Tourism, Culture, and Economic Development Department, City of Miami Beach, Miami Beach Economic Indicators (2012), *available at* http://miamibeachfl.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=65252.

[101] Hannah Sampson, *Miami-Beach, Fort Lauderdale Offer Two New Options for Gay Tourists*, Miami Herald, Jan. 10, 2011, http://www.miamiherald.com/2011/01/10/2009627/miami-beach-fort-lauderdale-feature.html.

million over three years, with a positive impact of $116.6 million in the first year alone. The total added economic activity over three years would generate about $12.1 million in tax revenue for state and local governments. Finally, marriage spending would directly account for the creation of up to 2,600 jobs in Florida.[102]

We spend significant public funds to attract tourists. Institutional discrimination that makes Florida a less attractive place to visit is directly contrary to the interests of our taxpayers and to society at large.

CONCLUSION

Fair and transparent government is the cornerstone of our society. Florida's same-sex marriage ban compromises our ability to fulfill that promise. In addition to violating notions of constitutional government and basic fairness, the state's marriage ban keeps us from doing our job. The Court should affirm the orders of the Eleventh and Sixteenth Judicial Circuits of Florida, declaring Florida's statutory and constitutional bans on same-sex marriage unconstitutional.[103]

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[102] E.G. Fitzgerald, Christy Mallory & M.V. Lee Badgett, Estimating the Economic Boost of Marriage for Same-Sex Couples in Florida, Williams Inst. (2014).

[103] Broward and Palm Beach Counties join in the brief filed by *Amici Curiae* solely for the purpose of asking the Court to provide the relief requested and requesting it to take judicial notice of the Counties' ordinances granting equal benefits to same-sex couples and other domestic partners as heterosexual married couples.

Respectfully Submitted,

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I HEREBY CERTIFY that this brief is submitted in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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Dated December 29, 2014

Filing # 19281439 Electronically Filed 10/10/2014 06:57:23 PM

EXHIBIT B

IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO. 2D14-2384
L.T. Case No.: 14-DR-0666

MARIAMA MONIQUE CHANGAMIRE SHAW,
Appellant-Petitioner,

v.

KEIBA LYNN SHAW,
Appellee-Respondent.

ON APPEAL FROM THE CIRCUIT COURT
OF THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA

BRIEF OF *AMICI CURIAE*

CITY OF TAMPA, CITY OF ST. PETERSBURG, CITY OF ORLANDO, CITY OF MIAMI BEACH, CITY OF WILTON MANORS, VILLAGE OF BISCAYNE PARK, AND BROWARD COUNTY

IN SUPPORT OF RECOGNITION OF THE PARTIES' MARRIAGE

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici are a broad cross-section of Florida county and city governments that have individually resolved that marriage discrimination against lesbian, gay, bisexual, and transgender ("LGBT") people is inimical to our citizens' health and welfare, is detrimental to our efficiency and effectiveness as employers, and denies our taxpayers hard-earned tourism revenue at a time when we can least afford it. We write to aid the Court by setting forth the very real harm wrought by marriage inequality upon our citizens and upon our very legitimacy as governing bodies. We have thoughtfully and deliberately arrived at this position. We have prohibited discrimination in employment, housing, and public accommodations against lesbians and gay men within our jurisdictions. We have created boards or committees to hear complaints of unlawful discrimination, including discrimination against LGBT people, so that the promise of nondiscrimination is made real for our residents and visitors. We have established domestic partnership registries in an attempt to provide whatever substitute we can to our same-sex couples who are denied the stability and recognition that come automatically with civil marriage in Florida. We provide benefits to the domestic partners of our employees so that these families can rely upon health insurance and leave policies that otherwise would be denied them. Some of us require that our contractors provide equal benefits to domestic partner couples and at least one of us pays the

extra federal income tax levied upon unmarried same-sex couples that married straight couples do not have to pay when purchasing group health insurance. We take these steps because it is the right thing to do. But we also recognize that the continuing viability of our democracy and our society depends upon a well-justified belief by our people that we govern based upon the transparent and fair application of laws that apply to all equally.

Amici are comprised of the following Florida governmental entities:

The City of Tampa ("Tampa"), through its Mayor Bob Buckhorn and with the concurrence of the Tampa City Council, has authorized the Tampa City Attorney to join in the submission of this brief and describe the efforts by Tampa to assure equality among its citizens. Tampa's Human Rights Ordinance prohibits discrimination in employment, public accommodations, and housing.[1] Tampa maintains a domestic partnership registry and provides health benefits to the domestic partners of its employees.[2] Tampa created a Human Rights Board to hear and initiate complaints of discrimination under Tampa's Human Rights Ordinance, and granted the board the power to review determinations of reasonable cause by the city's administration.[3] Tampa also boasts comprehensive protections for LGBT individuals in its personnel rules: Tampa's Equal Opportunity Policy requires equal treatment of all persons and equal opportunity in employment, and prohibits discrimination, inappropriate behavior, or harassment based on sexual orientation.[4] Lastly, Tampa requires its employees to provide services to the public without regard to the person's sexual orientation.[5]

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[1] Tampa City Code § 12-26 (employment); § 12-64 (public accommodations); and 12-81 to -85 (housing).

[2] Tampa City Code §§ 12-120 to -127 (domestic partnership registry); City of Tampa, *Group Health Insurance, in City of Tampa Personnel Manual* § B22.1 (equal benefits for domestic partners of city employees).

[3] Tampa City Code § 12-5.

[4] City of Tampa, *Equal Opportunity, in City of Tampa Personnel Manual* § B1.1A; *Discriminatory Conduct, in City of Tampa Personnel Manual* § B1.2.

[5] *Id.*

The City of St. Petersburg ("St. Petersburg") enacted a Domestic Partnership Registry Ordinance in 2012.[6] In its Equal Employment Opportunity & Affirmative Action Plan, St. Petersburg prohibits discrimination in "recruitment, examination, training, promotion, retention, or any other personnel action because of . . . sexual orientation."[7] St. Petersburg provides a comprehensive procedure for filing complaints of discrimination with the city's Human Resources Department.[8] St. Petersburg prohibits discrimination in the city's housing assistance program.[9] St. Petersburg has a Mayoral LGBT Liaison and Police LGBT Liaison.[10] Lastly, St. Petersburg encourages vendors and contractors to adopt anti-discrimination policies and to provide workplaces free of sexual orientation discrimination in terms and conditions of employment, including benefits.[11] St. Petersburg's Mayor and City Council voted on September 4, 2014, to submit this *amicus curiae* brief.

The City of Orlando ("Orlando") broadly prohibits discrimination in employment, housing, public accommodations, and lending, in its City Code.[12] Orlando's Chapter 57 Review Board is charged, among other things, with protecting the civil rights of its LGBT citizens and hearing complaints of discrimination.[13] Orlando prohibits discrimination against city employees, and includes sexual orientation and gender identity as protected classes in its anti-harassment policy.[14] Orlando also maintains a domestic partner registry and protects the rights of domestic partners with regard to healthcare visitation and decisions, funeral and burial decisions, correctional facility visitation, mandatory notification of family members, preneed guardian designation, and education.[15] Orlando has offered health benefits to its employees' same-sex domestic partners

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[6] St. Petersburg City Code §§ 15-31 to -37.

[7] City of St. Petersburg, *Equal Employment Opportunity and Affirmative Action Plan, in City of St. Petersburg Administrative Policy* No. 010501.

[8] City of St. Petersburg, *Internal Complaints Related to Discrimination, Harassment, or Other Inappropriate Behavior, in Rules and Regulations of the Personnel Management System* §§ 10-1 to -4.

[9] St. Petersburg City Code § 17.5-23.

[10] City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014).

[11] *Id.*

[12] Orlando City Code § 57.14 (employment); §§ 57.48-78 (housing); § 57.08 (public accommodations); § 57.09 (lending).

[13] Orlando City Code §§ 57.01-14.5.

[14] City of Orlando, *Employment & Recruitment, in Policies and Procedures* § 808.2; *Harassment, in Policies and Procedures* § 808.26.

[15] Orlando City Code § 57.80-86.

since 2009.[16] Orlando's Mayor and Council voted on June 23, 2014, to submit this amicus curiae brief.

The City of Miami Beach ("Miami Beach") is a hub of tourism and diversity for people from the United States and around the world. Miami Beach prohibits discrimination against LGBT people and has established a Human Rights Committee to hear charges of discrimination.[17] Miami Beach has established a domestic partner registry and provides employment benefits to domestic partners of employees and their children, mandates that Miami Beach's contractors provide these benefits to their employees, and Miami Beach reimburses ("grossing up") our employees who pay extra income federal income tax for domestic partner health insurance benefits. [18] Miami Beach's Mayor and Commission voted unanimously on June 11, 2014, to submit this *amicus curiae* brief.

The City of Wilton Manors ("Wilton Manors") maintains a domestic partnership registry and provides equal benefits to the domestic partners of its city employees.[19] Likewise, covered city contractors in Wilton Manors must provide equal benefits to the domestic partners of their employees.[20] City vendors and contractors are prohibited from discriminating against any person based on sexual orientation or marital status. Wilton Manors allows city employees to take military caregiver leave if a domestic partner of an employee requires care due to an injury or illness suffered while on active military duty.[21] Health insurance continuation coverage is guaranteed to the children and domestic partners of city employees if

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[16] Email from Amy Iennaco, Chief Asst. City Att'y, Orlando, Fla., to Robert F. Rosenwald, Jr., Senior Asst. City Att'y, Miami Beach, Fla. (June 20, 2014, 13:03:00 EST) (on file with recipient).

[17] *See* Miami Beach City Code § 62-33 (declaring the City's policy against discrimination); §§ 62-34 to -37 (creating the Miami Beach Human Rights Committee); §§ 62-86 to -91 (prohibiting discrimination in employment, public accommodations, housing, and public services, as well as prohibiting retaliatory discrimination, coercion of discriminatory practices, and interference, obstruction, or prevention of compliance with the Miami Beach Human Rights Ordinance).

[18] Miami Beach City Code §§ 62-161 to -164 (domestic partnership registry); § 62-128(c) (equal benefits for domestic partners); § 2-373 (equal benefits for domestic partners of city contractors); § 62-128(d) (grossing up ordinance).

[19] Wilton Manors City Code §§ 13.5-41 to -46.

[20] Wilton Manors City Code § 2-268(v).

[21] City of Wilton Manors, *The Federal Family and Medical Leave Act – FMLA Policy, in Personnel and Safety Rules and Regulations, Civil Service Rules* § 10-9.

they lose coverage because of the death of the employee, the employee's termination, divorce or legal separation of the employee, the employee's entitlement to Medicare benefits, or a dependent's loss of designation as a "dependent child" under the city's health plan.[22] The Mayor and City Commission of Wilton Manors voted on August 12, 2014, to submit this *amicus curiae* brief.

The Village of Biscayne Park ("Biscayne Park") prohibits discrimination based on sexual orientation, under its Village Charter.[23] Biscayne Park maintains a domestic partnership registry,[24] and provides equal benefits to the domestic partners of its village employees.[25] The Mayor and Village Council voted unanimously on July 1, 2014, to "support equal access to legal marriage for same-sex couples" and to oppose "laws and constitutional amendments that deny equal access to legal marriage for same-sex couples."[26]

Broward County has been at the forefront of promoting equality for LGBT individuals and has a long history of support for the rights of same-sex couples. As early as 1999, Broward provided domestic partner employment benefits to its employees[27] and required that County contractors provide benefits to domestic partners,[28] both on the same basis as they provide benefits to employees' spouses. More broadly, Broward prohibits discrimination based upon sexual orientation in employment, public accommodations, and real estate transactions, including lending,[29] and has created a Human Rights Board to enforce these provisions.[30] The Broward County Board of County Commissioners passed a resolution in support of marriage equality on August 12, 2014.

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[22] *Id.*

[23] Biscayne Park Village Charter § 7.07.

[24] Biscayne Park Village Code § 2-47.

[25] Biscayne Park Village Code § 2-48.

[26] Village of Biscayne Park Resolution No. 2014-45.

[27] *See* Broward County Code, ch. 16½, art. VIII.

[28] Broward County Code § 16½-157.

[29] *See* Broward County Code §§ 16½-33 to -33.1 (employment); §§ 16½-34 to -34.1 (public accommodations); §§ 16½-35 to -35.6 (real estate).

[30] Broward County Code §§ 16½-21 to -23.

SUMMARY OF ARGUMENT

Florida's prohibition on marriage for gay and lesbian couples impedes our ability to fulfill our core mission of providing for the health and welfare of our residents, thereby eroding the very legitimacy of our governments; interferes with the administration of our business as employers; and denies our taxpayers tourism revenue.

ARGUMENT

I. Marriage Inequality Harms Our Residents, Impedes Our Effectiveness, and Erodes Our Legitimacy.

We are resolved that there is no greater threat to our sacred mission to protect the health and welfare of our citizens than the existence of invidious discrimination. As the Miami Beach Code makes clear,

> In the city, with its cosmopolitan population consisting of people of every race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age, some of them who are disabled as defined under section 62-31 hereof, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of prejudice against one another and antagonistic to each other because of differences of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, or disability. The city finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free, democratic society.[31]

The societal harm that comes from discrimination reaches its apex when

[31] Miami Beach City Code § 62-33.

institutionalized as laws that serve no purpose other than to harm one segment of the population; discrimination is never more harmful than when the government itself discriminates. Attorney General Eric Holder recounted his own experience with state-sponsored racial discrimination as he announced that the federal government would no longer treat gay couples as less than equal to straight couples: "[A]lthough the vestiges of state-sanctioned discrimination affected many aspects of our lives – and continue to reverberate across the country even today – thanks to *Brown* and those who made it possible, your generation will never know a world in which 'separate but equal' was the law of the land."[32]

Florida's state-sanctioned discrimination compromises the health and welfare of our society and of our gay and lesbian citizens.

A. Marriage Inequality Brings Legal and Financial Harm to Families.

In the country's seminal decision on same-sex marriage, Massachusetts' highest court recognized that the denial of marriage rights to gays and lesbians is the purest form of institutionalized discrimination:

> The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason.... The absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or

[32] Eric Holder, U.S. Attorney General, Attorney General Holder's Remarks at the Morgan State University Commencement Ceremony (May 19, 2014) (citing *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)).

> general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual.[33]

The United States Supreme Court recently reaffirmed this rationale. In *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013), the Court stated, "The avowed purpose and practical effect of the law here in question [the Defense of Marriage Act] are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages...."

Florida's ban on same-sex marriage, the plainest form of discrimination,[34] has a tremendous negative impact on the health and well-being of gay and lesbian couples and their children.[35] Florida denies these families the "aggregate of moral and social support [that] enables married people to more effectively negotiate the

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[33] *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 968 (Mass. 2003).

[34] *In re Marriage Cases*, 183 P.3d 384, 402 (Cal. 2008) ("Retaining the designation of marriage exclusively for opposite-sex couples and providing only a separate and distinct designation for same-sex couples may well have the effect of perpetuating a more general premise – now emphatically rejected by this state – that gay individuals and same-sex couples are in some respects 'second-class citizens' who may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite-sex couples.").

[35] Gay and Lesbian Medical Association, Same-Sex Marriage and Health 3 (2008). A survey of 34,000 lesbian, gay, and bisexual individuals conducted in 2001 and 2002, and again in 2004 and 2005 after 14 states adopted constitutional bans on same-sex marriage, found "empirical evidence of the negative health effects of discriminatory policies relative to marriage equality." In the second study, "participants reported significantly higher rates of psychiatric disorders, with increases of 36% for any mood disorder, 248% for generalized anxiety disorder, 42% for alcohol use disorder, and 36% for psychiatric comorbidity." William C. Buffie, *Public Health Implications of Same-Sex Marriage*, 101 Am. J. Pub. Health 986, 987 (2011).

ordinary and extraordinary challenges that occur in social life, through the provision of a set of recurring advantages."[36]

The benefits of civil marriage include "spousal benefits, such as social security and public pensions; income tax benefits; inheritance, insurance, and survivorship rights including estate tax benefits, health insurance in spouses' group plans; the right to sue for wrongful death of a spouse; and power to make medical decisions on behalf of a spouse."[37] "More than 60 percent of insured Americans received health care through their own employer or that of their spouse or other family member."[38] Currently, same-sex couples are barred from "the full range of legal, economic, social, and mental health benefits provided by marriage. Legal recognition short of marriage is not transportable across state lines and subjects lesbians and gay men to the vicissitudes of local law and law enforcement."[39]

A stark illustration of this devastating harm can be found right here at home: In February 2007, Janice Langbehn, her long term partner Lisa Pond, and their three adopted children were in Miami to take a cruise. Pond suffered a brain

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[36] Gilbert Herdt & Robert Kertzner, *I do, but I can't: The impact of marriage denial on the mental health and sexual citizenship of lesbians and gay men in the United States*, 3 Sexuality Res. & Soc. Pol'y J. NSRC 33, 38 (2006).
[37] *Id.* (citing Virginia Rutter & Pepper Schwartz, *The Gender of Sexuality: Exploring Sexual Possibilities* (2006)).
[38] Gay and Lesbian Medical Association, *supra* note 35, at 6 (citing Herdt & Kertzner, *supra* note 36; M.V. Lee Badgett, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?*, 1 Sexuality Res. & Soc. Pol'y 1, 8 (2004)).
[39] *Id.*

aneurysm and was admitted to Jackson Memorial Hospital. The hospital, after telling Langbehn that she was "in an anti-gay city and state," refused to allow Langbehn and the couples' children to be with Pond, despite having received a durable power of attorney and advance directive. Pond died alone without her family present.[40]

While the dignity of marriage would empower couples like Janice Langbehn and Lisa Pond to make end-of-life decisions, the protective power of marriage might have served their children even more. Marriage equality would concretely promote the health and well-being of the many Florida children currently raised by gay and lesbian couples.[41] Marriage inequality undermines the stability of families raised by gay or lesbian couples, and "perpetua[tes] false claims about [their] parental fitness."[42] On the other hand, the legal recognition of a same-sex relationship "can increase the ability of adult couples to provide and care for one another and fosters a nurturing and secure environment for their children."[43]

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[40] *Id.* at 10 (citing Janice Langbehn, Address at Family Equality Council Media Awards (October 13. 2007), *available at* http://webcache.googleusercontent.com/search?q=cache:-H3ot9UnNykJ:thelpkids.wordpress.com/keynote-speeches/+&cd=3&hl=en&ct=clnk&gl=us).

[41] *Id.* at 7 (citing C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility, in Infertility in the modern world: Biosocial perspectives* 238 (G. Bentley and N. Mascie-Taylor, eds., 2000)).

[42] *Id.* (citing Herdt & Kertzner, *supra* note 36).

[43] *Id.* (citing James Pawelski, et al., Special Article, *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-Being of Children,*

Children of Florida same-sex couples are currently denied rights and privileges enjoyed by children of legally married couples, like "survivorship rights and protections, recognition of parental rights and responsibilities, tax and other financial advantages, and legal protections to partners and children during the dissolution of relationships."[44] These rights are basic benefits of civil marriage, and should be extended to same-sex couples who wish to marry. Instead, children of same-sex parents suffer economic, legal, and familial insecurity.[45] Without the legal protections of civil marriage, "same gender couples' death, disability, and divorce disputes are relegated to civil courts, which apply contract or business law, but not family law, such that children's concerns are ignored."[46]

Society's ability to care for another group of its most vulnerable citizens is compromised by Florida's same-sex marriage ban: the elderly. The American Psychiatric Association recognizes the effect of marriage discrimination on aging:

> As the population ages, the denial of legal recognition of civil marriage has consequences for increasing numbers of older adults in same-sex relationships who face age-related health and financial concerns. Excluding these adults from civil marriage protections of survivorship and inheritance rights, financial benefits, and legal recognition as a couple in healthcare settings increases the

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118 Pediatrics 349 (2006), *available at* http://pediatrics.aappublications.org/content/118/1/349.full.pdf+html).

[44] *Id.*

[45] *Id.*

[46] *Id.* (citing Katherine A. O'Hanlan, *Health Policy Considerations for Our Sexual Minority Patients*, 107 Obstetrics & Gynecology 709 (2006)).

psychological burden associated with aging.[47]

Marriage provides a socially and legally recognized "context for individuals to realize their capacities for love, care, and self-transcendence."[48] Marriage also "provides social legitimacy to the intimate bonds of adults and is required for the recognition of full adulthood across many cultures."[49] The denial of marriage equality reverberates from cradle to grave.

B. Marriage Inequality Brings Psychological Harm.

In addition to legal and financial disadvantages, marriage discrimination wreaks psychological harm on family members of gay and lesbian couples. Gay and lesbian couples "face unusual and specific stressors due to the absence of social and legal rights and duties that define same-sex couplehood."[50] The American Psychiatric Association has recognized that "same-sex couples ... experience several kinds of state-sanctioned discrimination that can adversely affect the stability of their relationships and their mental health."[51]

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[47] *Id.* at 9 (citing Position Statement, American Psychiatric Association, Support of Legal Recognition of Same-Sex Civil Marriage (2005)).
[48] *Id.* at 5 (citing Herdt & Kertzner, *supra* note 36; Erik H. Erikson, *Identity and the Life Cycle* (1959)).
[49] *Id.* (citing Linda Waite & Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (2000); Margaret Mead, *What is Happening to the American Family?*, 1 Pastoral Psychology 40 (1950)).
[50] Herdt & Kertzner, *supra* note 36, at 40.
[51] Gay and Lesbian Medical Association, *supra* note 35, at 3 (citing American Psychiatric Association, *supra* note 47).

Hundreds of studies of straight couples have established that "married individuals have better mental health, more emotional support, less psychological distress, and lower rates of psychiatric disorders than unmarried individuals."[52] Marriage equality "may confer additional benefits because of the protective effects of relationships in countering discrimination and sexual prejudice."[53]

Married individuals report more emotional support and are more likely to have a close confidant than the unmarried.[54] Emotional support is directly associated with health and well-being and provides protection against the negative health consequences of stress.[55]

Many Americans relate their well-being to marriage,[56] which is widely perceived to bestow a variety of resources and benefits.[57] Married individuals report less economic strain and higher incomes than the unmarried.[58] For Americans who enjoy legal access to it, "marriage is uniquely associated with

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[52] Herdt & Kertzner, *supra* note 36, at 35.
[53] Gay and Lesbian Medical Association, *supra* note 35, at 6.
[54] *Id.*
[55] *Id.* (citing Herdt & Kertzner, *supra* note 36; Peggy Thoits, *Stress, Coping, and Social Support Processes: Where Are We? What Next?*, J. Health & Soc. Behav. (Special Issue) 53 (1995)).
[56] *Id.* (citing Richard Kim & Lisa Duggin, *Beyond Gay Marriage*, The Nation, June 29, 2005, http://www.thenation.com/article/beyond-gay-marriage).
[57] *Id.* (citing Waite & Gallagher, *supra* note 49).
[58] *Id.* (citing Herdt & Kertzner, *supra* note 36; Catherine E. Ross, et al., *The Impact of the Family on Health: The Decade in Review*, 52 J. Marriage & Fam. 1059 (1990); Waite & Gallagher, *supra* note 49; Cathleen Zick & Ken Smith, *Marital Transitions, Poverty, and Gender Differences in Mortality*, 53 J. Marriage & Fam. 327 (1991)).

tangible and intangible benefits that are linked to and support psychological health."[59] In sum, the denial of marriage to lesbians and gay men is harmful to the health and welfare of our residents and is harmful to society at large.

II. Marriage Inequality Harms Us As Employers.

Our business is to provide world-class service to our residents and visitors. We employ large and diverse workforces, which perform functions ranging from that of City Manager to summer recreation counselors – everything needed to run multi-faceted organizations. It is only by our ability to attract and retain top-tier talent that we can live up to our promise. Orlando said it this way:

> The City of Orlando community has a population which is richly diverse. The effective provision of governmental services within such a diverse community requires the services of an equally diverse employee population. The City of Orlando is, therefore, committed to providing an employee workforce which, in all positions and at all levels, fairly reflects the community it serves. The City encourages all segments of its population to become involved with, and seek employment in, City government. To achieve this goal, it is the policy of the City of Orlando, binding on all officials and employees, to offer equal employment opportunity to all persons regardless of race, color, religion, sex, national origin, age, sexual orientation, or disability. The City will further take whatever steps are necessary to ensure that all employment practices, including, but not limited to, compensation, benefits, layoffs, promotions, training, terminations, hiring, and recruitment, are administered in a manner that provides full and fair opportunity to all persons.[60]

The Williams Institute at the University of California at Los Angeles School

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[59] Herdt & Kertzner, *supra* note 36 at 36.

[60] City of Orlando, *Harassment, in Policies and Procedures* § 808.26.

of Law recently reviewed 36 research studies and found that working in an LGBT-supportive workplace climate resulted in "greater job commitment, improved workplace relationships, increased job satisfaction, improved health outcomes, and increased productivity" among LGBT employees.[61]

A. We Work Hard to Provide a Nondiscriminatory Workplace.

In Florida, all 12 public universities in the state prohibit discrimination based on sexual orientation and nine prohibit discrimination based on gender identity. There are at least 28 localities that prohibit discrimination based on sexual orientation against their own government employees. Twenty localities also prohibit discrimination based on gender identity.[62]

A 2011 study found that 68 local governments in the United States require that their contractors have LGBT-supportive affirmative action policies, or policies granting same-sex domestic partners equal benefits.[63] We prohibit discrimination based upon sexual orientation and gender identity by covered employers doing

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[61] M.V. Lee Badgett, Laura E. Durso, Angeliki Kastanis, & Christy Mallory, *The Business Impact of LGBT-Supportive Workplace Policies* 1, Williams Institute (2013) (*hereinafter* "Williams Institute"), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf.

[62] Email from Christy Mallory, Senior Counsel, Williams Institute, to Robert F. Rosenwald, Jr., Senior Asst. City Att'y, Miami Beach, Fla. (June 13, 2014, 12:36 EST) (on file with recipient).

[63] Williams Institute, *supra* note 61, at 21.

business in our jurisdictions.[64] We also encourage or require our covered contractors to provide domestic partner benefits on equal footing with those offered to married couples.[65]

B. Marriage Inequality Presents Unique Challenges.

Marriage discrimination by the state presents its own unique challenges for us to address. Although we attempt to lessen burdens on our employees, these efforts impose significant administrative burdens. While we provide near-equivalents to some of the benefits afforded to legally married couples, we are unable to erase the stain of inequality.

1. The Marriage Ban Imposes Significant Administrative Burdens.

To alleviate the disparities in available benefits between gay and straight employee families, we provide comprehensive workarounds in an attempt to approximate marriage equality for our employees. First, we have all enacted a domestic partner registry that the public can use to register families for local recognition.[66] Second, we all provide benefits to registered domestic partners of

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[64] Tampa City Code § 12-26; Orlando City Code § 57.14; Miami Beach City Code § 62-86; Broward County Code §§ 16½-33 to -33.1.

[65] City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014); Miami Beach City Code § 2-373(b); Wilton Manors City Code § 2-268(v); Broward County Code § 16½-157.

[66] Tampa City Code §§ 12-120 to -127; St. Petersburg City Code §§ 15-31 to -37; Orlando City Code §§ 57.80-86; Miami Beach City Code §§ 62-161 to -164;

city employees.[67] Finally, Miami Beach reimburses employees for the additional federal income tax liability that domestic partners – but not legally married couples – incur when receiving benefits ("grossing up").[68]

Grossing up is a costly and complex process. To illustrate, a married employee who, through an employer, obtains health insurance for a spouse does not pay federal income tax on the value of the insurance obtained, but only if the employee's spouse is legally recognized. Many employers attempt to address taxability differences by reimbursing the employee to offset the tax impact of imputed healthcare benefits. Grossing up offsets the inequity created by Florida's discriminatory marriage law, but it imposes a pecuniary cost beyond the direct cost of paying for employee benefits.

The U.S. Office of Personnel Management, in a study of grossing up, noted that this approach "raises costs considerably.... Under a grossing up policy, a $1,000 net cash award would actually cost the agency $1,713.80."[69] The New York

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Wilton Manors City Code §§ 13.5-41 to -46; Biscayne Park Village Code § 2-47; Broward County Code, ch. 16½, art. VIII.

[67] City of Tampa, *Group Health Insurance*, *in City of Tampa Personnel Manual* § B22.1; City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014); Email from Amy Iennaco, *supra* note 16; Miami Beach City Code § 78-34; Wilton Manors City Code § 13.5-45; Biscayne Park Village Code § 2-48; Broward County Code, ch. 16½, art. VIII.

[68] Miami Beach City Code § 62-128(d).

[69] U.S. Office of Pers. Mgmt., *Grossing Up Awards: Why and Why Not*, http://www.opm.gov/policy-data-oversight/performance-management/performance-management-cycle/rewarding/grossing-up-awards/ (using the following

Times estimates that grossing up for an employee who incurred between $1,200 and $1,500 in extra taxes costs the employer between $2,000 and $2,500.[70]

Grossing up is also quite complicated. Tax rates, timing, and the taxation of the gross up amount itself all come into play. We must retain experts who craft the policies and structure systems that can record gross-up amounts, as well as educate human resources, benefits, and payroll administrators.

2. Our Best Efforts Still Impose Stigma and Confusion Among Employees.

Our workarounds – as well-intentioned and beneficial as they are – still perpetuate a stigma by according different treatment to those employees who were married out-of-state to a same-sex spouse or are barred from marriage by Florida law, as opposed to those who are legally married to a different-sex spouse. Rightly or wrongly, our employees see us as the enforcement mechanism for a discriminatory regime. Employee morale and productivity suffer as a result.

III. Marriage Inequality Denies Our Taxpayers Hard-Earned Tourism Revenue.

Our local economies, like those of most of Florida, are heavily dependent upon domestic and international tourism. As the state's number one industry,

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withholding rates: federal income tax, 28 percent; Medicare tax, 1.45 percent; Social Security tax, 6.2 percent; state income tax, 6 percent).

[70] Tara Siegel Bernard, *A Progress Report on Gay Employee Health Benefits*, N.Y. Times, Dec. 5, 2012, http://bucks.blogs.nytimes.com/2010/12/14/a-progress-report-on-gay-employee-health-benefits/.

tourism was responsible for welcoming 94.3 million visitors in 2013 who spent $76.1 billion, generating 23 percent of the state's sales tax revenue and employing nearly 1.1 million Floridians.[71] Miami Beach's tropical weather, thriving arts scene, multicultural populace, and booming nightlife drew a diverse international crowd of 5,293,722 tourists to the city in the last counted year. Tourism brings in more than $8 billion dollars annually and makes up a large percentage of Miami Beach's annual budget.[72] The South Florida region is also a favorite tourist destination for lesbians and gay men. Broward and Miami-Dade counties draw an estimated 2.15 million LGBT visitors a year who spend nearly $3 billion.[73]

The Williams Institute has determined that Florida would see an economic boost as same-sex couples plan their weddings, and as their out-of-state guests purchase goods and services in the state, in the first three years following the state's recognition of same-sex marriage. The authors of this study based their findings on information regarding marriage spending by same-sex couples in other states, along with wedding expenditure and tourism data from the State of Florida,

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[71] Visit Florida, *About VISIT FLORIDA*, http://www.visitflorida.com/en-us/about-visit-florida.html (last visited Oct. 9, 2014).

[72] Tourism, Culture, and Economic Development Department, City of Miami Beach, Miami Beach Economic Indicators (2012), *available at* http://miamibeachfl.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=65252.

[73] Hannah Sampson, *Miami-Beach, Fort Lauderdale Offer Two New Options for Gay Tourists*, Miami Herald, Jan. 10, 2011, http://www.miamiherald.com/2011/01/10/2009627/miami-beach-fort-lauderdale-feature.html.

to estimate the economic stimulus from the state's recognition of marriage equality. The study indicates that the total spending on wedding arrangements and tourism by same-sex couples and their guests would be approximately $182.2 million over three years, with a positive impact of $116.6 million in the first year alone. The total added economic activity over three years would generate about $12.1 million in tax revenue for state and local governments. Finally, marriage spending would directly account for the creation of up to 2,600 jobs in Florida.[74]

We spend significant public funds to attract tourists. Institutional discrimination that makes Florida a less attractive place to visit is directly contrary to the interests of our taxpayers and to society at large.

CONCLUSION

Fair and transparent government is the cornerstone of our society. Florida's same-sex marriage ban compromises our ability to fulfill that promise. In addition to violating notions of constitutional government and basic fairness, the state's marriage ban keeps us from doing our job. The Court should recognize the marriage of Mariama Monique Changamire Shaw and Keiba Lynn Shaw, and the decision of the Circuit Court should be reversed.[75]

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[74] E.G. Fitzgerald, Christy Mallory & M.V. Lee Badgett, Estimating the Economic Boost of Marriage for Same-Sex Couples in Florida, Williams Inst. (2014).

[75] Broward joins in the brief filed by *Amici Curiae* solely for the purpose of asking the Court to provide the relief requested and requesting it to take judicial notice of

Respectfully Submitted,

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the County's ordinance granting equal benefits to same-sex couples and other domestic partners as heterosexual married couples.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court through the Florida Courts eFiling Portal to be served this 10th of October, 2014, on counsel of record listed below:

s/Robert F. Rosenwald
ROBERT F. ROSENWALD, JR.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is submitted in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

s/Robert F. Rosenwald, Jr.
ROBERT F. ROSENWALD, JR.

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EXHIBIT C

IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO. 4D14-480

GILDAS DOUSSET,

Appellant-Petitioner,

v.

FLORIDA ATLANTIC UNIVERSITY,

Appellee-Respondent.

ON APPEAL FROM A FINAL DECISION OF
FLORIDA ATLANTIC UNIVERSITY

BRIEF OF *AMICI CURIAE* CITY OF MIAMI BEACH AND CITY OF ORLANDO IN SUPPORT OF APPELLANT GILDAS DOUSSET

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The City of Miami Beach ("Miami Beach") and the City of Orlando ("Orlando") (collectively, the "Cities") are Florida municipal corporations, organized and operating under the laws of the State of Florida. The Cities have long been hubs of tourism and diversity for people from the United States and around the world.

The Cities' Mayors and Commissioners have resolved that marriage discrimination against lesbian, gay, bisexual, and transgender ("LGBT") individuals is inimical to their citizens' health and welfare, is detrimental to their efficiency and effectiveness as employers, and costs hard-earned tourism revenue.

Miami Beach's Mayor and Commission voted unanimously on June 11, 2014, and Orlando's Mayor and Council voted on June 23, 2014, to submit this brief to aid the Court by setting forth the very real harm of marriage inequality to Florida's cities.

SUMMARY OF ARGUMENT

Florida's prohibition on marriage for gay and lesbian couples is detrimental to the health and welfare of the Cities' residents; interferes with the administration of the Cities' business as employers; and denies the Cities tourism revenue.

ARGUMENT

I. Marriage Inequality Harms the Cities' Citizens.

The Mayors and Commissioners of the Cities have resolved that there is no greater threat to their sacred mission to protect the health and welfare of their citizens than the existence of invidious discrimination. As the Miami Beach Code makes clear,

> In the city, with its cosmopolitan population consisting of people of every race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age, some of them who are disabled as defined under section 62-31 hereof, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of prejudice against one another and antagonistic to each other because of differences of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, or disability. The city finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free, democratic society.[1]

As the Cities have recognized, the social harm that comes from discrimination reaches its apex when institutionalized as laws that serve no purpose other than to harm one segment of the population. Discrimination is never more harmful than when the government itself discriminates. Attorney General Eric Holder recounted his own experience with state-sponsored racial discrimination as he announced that the federal government would no longer treat gay couples as

[1] Miami Beach City Code § 62-33; *see also* Orlando City Code §§ 57.01-14.5 (banning discrimination in employment, housing, and public accommodations).

less than equal to straight couples: "[A]lthough the vestiges of state-sanctioned discrimination affected many aspects of our lives – and continue to reverberate across the country even today – thanks to *Brown* and those who made it possible, your generation will never know a world in which 'separate but equal' was the law of the land."[2]

Florida's state-sanctioned discrimination compromises the health and welfare of our society and of our gay and lesbian citizens.

A. Marriage Inequality Brings Legal and Financial Harm to Families.

In the country's seminal decision on same-sex marriage, Massachusetts' highest court recognized that the denial of marriage rights to gays and lesbians is the purest form of institutionalized discrimination:

> The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason.... The absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual.[3]

The United States Supreme Court recently reaffirmed this rationale. In *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013), the Court stated, "The

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[2] Eric Holder, U.S. Attorney General, Attorney General Holder's Remarks at the Morgan State University Commencement Ceremony (May 19, 2014) (citing *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)).

[3] *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 968 (Mass. 2003).

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avowed purpose and practical effect of the law here in question [the Defense of Marriage Act] are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages...."

Florida's ban on same-sex marriage, the plainest form of discrimination,[4] has a tremendous negative impact on the health and well-being of gay and lesbian couples and their children.[5] Florida denies these families the "aggregate of moral and social support [that] enables married people to more effectively negotiate the ordinary and extraordinary challenges that occur in social life, through the provision of a set of recurring advantages."[6]

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[4] Gay and Lesbian Medical Association, *Same-Sex Marriage and Health* 3 (2008) (citing *In re Marriage Cases*, 183 P.3d 384, 402 (Cal. 2008) ("Retaining the designation of marriage exclusively for opposite-sex couples and providing only a separate and distinct designation for same-sex couples may well have the effect of perpetuating a more general premise – now emphatically rejected by this state – that gay individuals and same-sex couples are in some respects 'second-class citizens' who may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite-sex couples.").

[5] A survey of 34,000 lesbian, gay, and bisexual individuals conducted in 2001 and 2002, and again in 2004 and 2005 after 14 states adopted constitutional bans on same-sex marriage, found "empirical evidence of the negative health effects of discriminatory policies relative to marriage equality." In the second study, "participants reported significantly higher rates of psychiatric disorders, with increases of 36% for any mood disorder, 248% for generalized anxiety disorder, 42% for alcohol use disorder, and 36% for psychiatric comorbidity." William C. Buffie, *Public Health Implications of Same-Sex Marriage*, 101 Am. J. Pub. Health 986, 987 (2011).

[6] Gilbert Herdt & Robert Kertzner, *I do, but I can't: The impact of marriage denial on the mental health and sexual citizenship of lesbians and gay men in the United States*, 3 Sexuality Res. & Soc. Pol'y J. NSRC 33, 38 (2006).

The benefits of civil marriage include "spousal benefits, such as social security and public pensions; income tax benefits; inheritance, insurance, and survivorship rights including estate tax benefits, health insurance in spouses' group plans; the right to sue for wrongful death of a spouse; and power to make medical decisions on behalf of a spouse."[7] "More than 60 percent of insured Americans received health care through their own employer or that of their spouse or other family member."[8] Currently, same-sex couples are barred from "the full range of legal, economic, social, and mental health benefits provided by marriage. Legal recognition short of marriage is not transportable across state lines and subjects lesbians and gay men to the vicissitudes of local law and law enforcement."[9]

A stark illustration of this devastating harm can be found right here at home: In February 2007, Janice Langbehn, her long term partner Lisa Pond, and their three adopted children were in Miami to take a cruise. Pond suffered a brain aneurysm and was admitted to Jackson Memorial Hospital. The hospital, after telling Langbehn that she was "in an anti-gay city and state," refused to allow Langbehn and the couples' children to be with Pond, despite having received a

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[7] *Id.* (citing Virginia Rutter & Pepper Schwartz, *The Gender of Sexuality: Exploring Sexual Possibilities* (2006)).

[8] Gay and Lesbian Medical Association, *supra* note 4, at 6 (citing Herdt & Kertzner, *supra* note 6; M.V. Lee Badgett, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?*, 1 Sexuality Res. & Soc. Pol'y 1, 8 (2004)).

[9] *Id.*

durable power of attorney and advance directive. Pond died alone without her family present.[10]

While the dignity of marriage would empower couples like Janice Langbehn and Lisa Pond to make end-of-life decisions, the protective power of marriage might have served their children even more. Marriage equality would concretely promote the health and well-being of the many Florida children currently raised by gay and lesbian couples.[11] Marriage inequality undermines the stability of families raised by gay or lesbian couples, and "perpetua[tes] false claims about [their] parental fitness."[12] On the other hand, the legal recognition of a same-sex relationship "can increase the ability of adult couples to provide and care for one another and fosters a nurturing and secure environment for their children."[13]

Children of Florida same-sex couples are currently denied rights and privileges enjoyed by children of legally married couples, like "survivorship rights

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[10] *Id.* at 10 (citing Janice Langbehn, Address at Family Equality Council Media Awards (October 13. 2007), *available at* http://webcache.googleusercontent.com/search?q=cache:-H3ot9UnNykJ:thelpkids.wordpress.com/keynote-speeches/+&cd=3&hl=en&ct=clnk&gl=us).

[11] *Id.* at 7 (citing C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility, in Infertility in the modern world: Biosocial perspectives* 238 (G. Bentley and N. Mascie-Taylor, eds., 2000)).

[12] *Id.* (citing Herdt & Kertzner, *supra* note 6).

[13] *Id.* (citing James Pawelski, et al., Special Article, *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-Being of Children*, 118 Pediatrics 349 (2006), *available at* http://pediatrics.aappublications.org/content/118/1/349.full.pdf+html).

and protections, recognition of parental rights and responsibilities, tax and other financial advantages, and legal protections to partners and children during the dissolution of relationships."[14] These rights are basic benefits of civil marriage, and should be extended to same-sex couples who wish to marry. Instead, children of same-sex parents suffer economic, legal, and familial insecurity.[15] Without the legal protections of civil marriage, "same gender couples' death, disability, and divorce disputes are relegated to civil courts, which apply contract or business law, but not family law, such that children's concerns are ignored."[16]

Society's ability to care for another group of its most vulnerable citizens is compromised by Florida's same-sex marriage ban: the elderly. The American Psychiatric Association recognizes the effect of marriage discrimination on aging:

> As the population ages, the denial of legal recognition of civil marriage has consequences for increasing numbers of older adults in same-sex relationships who face age-related health and financial concerns. Excluding these adults from civil marriage protections of survivorship and inheritance rights, financial benefits, and legal recognition as a couple in healthcare settings increases the psychological burden associated with aging.[17]

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[14] *Id.*

[15] *Id.*

[16] *Id.* (citing Katherine A. O'Hanlan, *Health Policy Considerations for Our Sexual Minority Patients*, 107 Obstetrics & Gynecology 709 (2006)).

[17] *Id.* at 9 (citing Position Statement, American Psychiatric Association, Support of Legal Recognition of Same-Sex Civil Marriage (2005)).

Marriage provides a socially and legally recognized "context for individuals to realize their capacities for love, care, and self-transcendence."[18] Marriage also "provides social legitimacy to the intimate bonds of adults and is required for the recognition of full adulthood across many cultures."[19] The denial of marriage equality reverberates from cradle to grave.

B. Marriage Inequality Brings Psychological Harm.

In addition to legal and financial disadvantages, marriage discrimination wreaks great psychological harm on family members of gay and lesbian couples. Gay and lesbian couples "face unusual and specific stressors due to the absence of social and legal rights and duties that define same-sex couplehood."[20] The American Psychiatric Association has recognized that "same-sex couples ... experience several kinds of state-sanctioned discrimination that can adversely affect the stability of their relationships and their mental health."[21]

Hundreds of studies of straight couples have established that "married individuals have better mental health, more emotional support, less psychological

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[18] *Id.* at 5 (citing Herdt & Kertzner, *supra* note 6; Erik H. Erikson, *Identity and the Life Cycle* (1959)).

[19] *Id.* (citing Linda Waite & Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (2000); Margaret Mead, *What is Happening to the American Family?*, 1 Pastoral Psychology 40 (1950)).

[20] Herdt & Kertzner, *supra* note 6, at 40.

[21] Gay and Lesbian Medical Association, *supra* note 4, at 3 (citing American Psychiatric Association, *supra* note 17).

distress, and lower rates of psychiatric disorders than unmarried individuals."[22] Marriage equality for gay couples "may confer additional benefits because of the protective effects of relationships in countering discrimination and sexual prejudice."[23]

Married individuals report more emotional support and are more likely to have a close confidant than the unmarried.[24] Emotional support is directly associated with health and well-being and provides protection against the negative health consequences of stress.[25]

Many Americans relate their well-being to marriage,[26] which is widely perceived to bestow a variety of resources and benefits.[27] Married individuals report less economic strain and higher incomes than the unmarried.[28] For Americans who enjoy legal access to it, "marriage is uniquely associated with tangible and intangible benefits that are linked to and support psychological

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[22] Herdt & Kertzner, *supra* note 6, at 35.
[23] Gay and Lesbian Medical Association, *supra* note 4, at 6.
[24] *Id.*
[25] *Id.* (citing Herdt & Kertzner, *supra* note 6; Peggy Thoits, *Stress, Coping, and Social Support Processes: Where Are We? What Next?*, J. Health & Soc. Behav. (Special Issue) 53 (1995)).
[26] *Id.* (citing Richard Kim & Lisa Duggin, *Beyond Gay Marriage*, The Nation, June 29, 2005, http://www.thenation.com/article/beyond-gay-marriage).
[27] *Id.* (citing Waite & Gallagher, *supra* note 19).
[28] *Id.* (citing Herdt & Kertzner, *supra* note 6; Catherine E. Ross, et al., *The Impact of the Family on Health: The Decade in Review*, 52 J. Marriage & Fam. 1059 (1990); Waite & Gallagher, *supra* note 19; Cathleen Zick & Ken Smith, *Marital Transitions, Poverty, and Gender Differences in Mortality*, 53 J. Marriage & Fam. 327 (1991)).

health."[29] In sum, the denial of marriage to lesbians and gay men is harmful to the health and welfare of the residents of the Cities and is harmful to society at large.

II. Marriage Inequality Harms The Cities As Employers.

The business of the Cities is to provide world-class service to their residents and visitors. Miami Beach employs nearly 2,000 people in hundreds of different positions throughout the city's various departments. The widely diverse workforce performs functions ranging from that of City Manager to summer recreation counselors – everything needed to run a multi-faceted city. It is only through the Cities' ability to attract and retain top-tier talent that they can live up to their promise. Orlando said it this way:

> The City of Orlando community has a population which is richly diverse. The effective provision of governmental services within such a diverse community requires the services of an equally diverse employee population. The City of Orlando is, therefore, committed to providing an employee workforce which, in all positions and at all levels, fairly reflects the community it serves. The City encourages all segments of its population to become involved with, and seek employment in, City government. To achieve this goal, it is the policy of the City of Orlando, binding on all officials and employees, to offer equal employment opportunity to all persons regardless of race, color, religion, sex, national origin, age, sexual orientation, or disability. The City will further take whatever steps are necessary to ensure that all employment practices, including, but not limited to, compensation, benefits, layoffs, promotions, training, terminations, hiring, and recruitment, are administered in a manner that provides full and fair opportunity to all persons.[30]

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[29] Herdt & Kertzner, *supra* note 6 at 36.

[30] City of Orlando, *Harassment, in Policies and Procedures* § 808.26.

The Williams Institute at the University of California at Los Angeles School of Law recently reviewed 36 research studies and found that working in an LGBT-supportive workplace climate resulted in "greater job commitment, improved workplace relationships, increased job satisfaction, improved health outcomes, and increased productivity" among LGBT employees.[31]

In Florida, all 12 public universities in the state prohibit discrimination based on sexual orientation and nine prohibit discrimination based on gender identity. There are at least 28 localities that prohibit discrimination based on sexual orientation against their own government employees. Twenty localities also prohibit discrimination based on gender identity.[32]

A 2011 study found that 68 local governments in the United States require that their contractors have LGBT-supportive affirmative action policies, or policies granting same-sex domestic partners equal benefits.[33] The Miami Beach Human Rights Ordinance prohibits discrimination based upon sexual orientation and

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[31] M.V. Lee Badgett, Laura E. Durso, Angeliki Kastanis, & Christy Mallory, *The Business Impact of LGBT-Supportive Workplace Policies* 1, Williams Institute (2013) (*hereinafter* "Williams Institute"), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf.

[32] Email from Christy Mallory, Senior Counsel, Williams Institute, to Robert F. Rosenwald, Jr., Senior Asst. City Att'y, Miami Beach, Fla. (June 13, 2014, 12:36 EST) (on file with recipient).

[33] Williams Institute, *supra* note 31, at 21.

gender identity by all covered employers doing business in the City.[34] Miami Beach's Equal Benefits Ordinance requires covered city contractors to provide domestic partner benefits on equal footing with those offered to married couples.[35] Likewise, Orlando prohibits employment discrimination based on sexual orientation.[36]

A. The Cities Recruit and Retain Top Talent Through Equitable And Competitive Benefits Packages.

The Cities must be able recruit and retain the best talent.[37] Discrimination on any basis impairs their ability to compete for the best employees. Employee benefits are critical to an employer's effort to compete for talent, because the quality of benefits directly contributes to recruitment and employee loyalty.[38] In 2012, 86 percent of full-time American workers in private industry had access to medical benefits through their employer, and 74 percent to an employer-provided retirement plan.[39] Benefits packages – especially health-care and retirement

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[34] Miami Beach City Code § 62-33 (2014).
[35] Miami Beach City Code § 2-373(b) (2014).
[36] Orlando City Code § 57.14 (2014).
[37] "[T]he skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003).
[38] MetLife, *10th Annual Study of Employee Benefit Trends* 20 (2012), *available at* http://www.metlife.com/assets/institutional/services/insights-and-tools/ebts/ml-10-Annual-EBTS.pdf.
[39] U.S. Bureau of Labor Statistics, Economic News Release, *Employee Benefits in the United States—March 2013* (July 17, 2013), *available at* http://www.bls.gov/news.release/ebs2.nr0.htm.

benefits – can add 30 percent or more of additional compensation value on top of an employee's salary. In a 2011 Harvard Business Review Analytic Services survey of human resource leaders, 60 percent of respondents stated that an attractive benefits package was "very important" in recruiting and retaining quality employees.[40]

In 2006, 89 percent of LGBT respondents said it was important that they work for a company with a written nondiscrimination policy that includes sexual orientation, and 91 percent said equal benefits were crucial.[41] It is through these plans that the Cities as employers can foster a positive employer/employee relationship and retain satisfied and engaged workers, who in turn are more productive and perform better across a variety of metrics than their less-satisfied colleagues.[42]

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[40] Paula Andruss, *How to Attract—And Retain—Staff When You Can't Pay Big Bucks*, Entrepreneur Magazine, June 27, 2012, http://www.entrepreneur.com/article/223516 (compared with thirty-eight percent who believed that only high base salary was "very important"); *see also id.* (citing MetLife, *supra* note 38).

[41] Out & Equal, *Majority of Americans: Companies Not Government Should Decide Benefits Offered to Same-Sex Employees, Fifth Annual Out & Equal/Harris Interactive/Witeck Combs Communications Survey* 1 (May 22, 2006), http://outandequal.org/documents/2006_Workplace_Survey052306.pdf.

[42] MetLife, *supra* note 38, at 20; *see generally* Andruss, *supra* note 40; Max Messmer, *Four Keys to Improved Staff Retention*, Strategic Fin. (Oct. 2006), available at http://www.imanet.org/PDFs/Public/SF/2006_10/10careers.pdf; C. Matthew Schulz, *Recruiting and retaining the best and brightest talent,* Los Angeles Daily J., Dec. 26, 2013.

Nearly 44 percent of Americans live in a jurisdiction that celebrates or recognizes marriages between people of the same sex.[43] LGBT-friendly policies offer the Cities a competitive advantage in employee recruitment and retention.[44] However, in Florida, one of 33 states that enforce marriage discrimination, the Cities operate at a disadvantage when looking to hire qualified, talented personnel. Married gay and lesbian job candidates may be reluctant to pursue job opportunities in Florida, where their pre-existing marriages will not be recognized, and where they can expect to lose access to certain previously-enjoyed state level benefits. Single gay men and lesbians may decide that the option of a future legally recognized marriage is enough to justify passing up employment opportunities in Florida. Meanwhile, straight individuals may decide that a state hostile to marriage equality is not a state in which they want to live and work.

B. The Cities Cannot Mitigate All of the Negative Effects of Marriage Discrimination.

By prohibiting same-sex couples from marrying, Florida hampers the Cities' ability to attract and retain the most qualified workforce. Although the Cities attempt to lessen the burden of marriage discrimination on their employees, these efforts impose significant administrative burdens. While Miami Beach is able to

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[43] Freedom to Marry, *States*, http://www.freedomtomarry.org/states/ (last visited June 13, 2014).

[44] *See* Janell Blazovich, Kirsten Cook, Janet Huston, & William Strawser, *Do Gay-friendly Corporate Policies Enhance Firm Performance?* 35-36 (Apr. 29, 2013), *available at* http://www.west-info.eu/files/gayfriendly1.pdf.

provide near-equivalents to some of the benefits afforded to legally married couples, it cannot entirely ameliorate the state's differential treatment of employees based on their sexual orientation.

1. The Marriage Ban Imposes Significant Burdens on Cities' Administration.

In an attempt to alleviate the disparities and frustrations of discriminatory benefit systems and many other benefit-related matters, municipalities and businesses often incur the cost and administrative burden of "workarounds." Workarounds are employer-created benefit structures that attempt to compensate for the unavailability of a recognized relationship status, and provide benefits for those whose unrecognized relationships make them legal strangers to each other in the eyes of the state.

For example, a married employee who, through an employer, obtains health insurance for a spouse does not pay federal income tax on the value of the insurance obtained, but only if the employee's spouse is legally recognized. Many employers attempt to address taxability differences by reimbursing the employee to offset the tax impact of imputed health-care benefits (commonly called "grossing up").[45] These and other workarounds offset the competitive disadvantage of doing

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[45] *See generally* Movement Advancement Project, Center for American Progress, & Human Rights Campaign, *A Broken Bargain: Discrimination, Fewer Benefits and More Taxes for LGBT Workers (Full Report)* 72-93 (2013) (*hereinafter* "*Broken Bargain*"), *available at*

business in a marriage discrimination state, but they also impose a cost on the employer beyond the direct cost of paying for employee benefits.[46]

The Cities provide comprehensive workarounds in an attempt to approximate marriage equality for municipal employees. First, the Cities have both enacted a domestic partner registry that the public can use to register families for local recognition.[47] Second, the Cities provide benefits to registered domestic partners of city employees.[48] Finally, Miami Beach reimburses employees for the additional federal income tax liability that domestic partners – but not legally married couples – incur when receiving benefits ("grossing up").[49]

The U.S. Office of Personnel Management, in a study of grossing up, noted that this approach "raises costs considerably.... Under a grossing up policy, a

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http://outandequal.org/documents/brokenbargain/a-broken-bargain-full-report.pdf; *see also* Human Rights Campaign, *Domestic Partner Benefits: Grossing Up to Offset Imputed Income Tax* (hereinafter "*Grossing Up*"), http://www.hrc.org/resources/entry/domestic-partner-benefits-grossing-up-to-offset-imputed-income-tax; *see also* Tara Siegel Bernard, *A Progress Report on Gay Employee Health Benefits*, N.Y. Times, Dec. 5, 2012, *available at* http://bucks.blogs.nytimes.com/2010/12/14/a-progress-report-on-gay-employee-health-benefits/.

[46] U.S. Office of Pers. Mgmt., *Grossing Up Awards: Why and Why Not*, http://www.opm.gov/policy-data-oversight/performance-management/performance-management-cycle/rewarding/grossing-up-awards/ (last visited June 13, 2014).

[47] Miami Beach City Code §§ 62-161 to -164 (2014); Orlando City Code §§ 57.80-86 (2014).

[48] Miami Beach City Code § 78-34 (2014); Email from Amy Iennaco, Chief Asst. City Att'y, Orlando, Fla., to Robert F. Rosenwald, Jr., Senior Asst. City Att'y, Miami Beach, Fla. (June 20, 2014, 13:03:00 EST) (on file with recipient).

[49] Miami Beach City Code § 62-128(d) (2014).

$1,000 net cash award would actually cost the agency $1,713.80."[50] The New York Times estimates that grossing up for an employee who incurred between $1,200 and $1,500 in extra taxes costs the employer between $2,000 and $2,500.[51]

Grossing up is a complicated process for employers, requiring careful consideration of, *inter alia*, the appropriate tax rates, timing, coverage for dependents or the children of a partner, and determinations of whether marriage is requisite.[52] In short, workarounds impose administrative burdens, sometimes requiring Miami Beach to retain experts who craft the policies and structure systems that can record gross-up amounts, as well as educate human resources, benefits, and payroll administrators. However enlightened and necessary, such voluntary policies still perpetuate a stigma by according different treatment to those employees who were married out-of-state to a same-sex spouse or barred from marriage by Florida law, as opposed to those who are legally married to a different-sex spouse. Unhelpful distinctions are inimical to teamwork, employer morale, and thus the success of our entire organizations.

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[50] U.S. Office of Pers. Mgmt., *supra* note 46 (using the following withholding rates: federal income tax, 28 percent; Medicare tax, 1.45 percent; Social Security tax, 6.2 percent; state income tax, 6 percent).

[51] Siegel Bernard, *supra* note 45.

[52] For an overview of the complexities in structuring a gross-up program, *see, e.g.*, Todd A. Solomon & Brett R. Johnson, *Walking Employees Through the Regulatory Maze Surrounding Same-Sex Domestic Partner Benefits,* Probate & Property 14 (March/April 2012), http://www.americanbar.org/content/dam/aba/publications/probate_property_magazine/v26/02/2012_aba_rpte_pp_v26_2_mar_apr_solomon_johnson.authcheckdam.pdf.

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2. Discriminatory Marriage Laws Sow Confusion Among City Employees, Negatively Impacting Morale.

The Cities' compliance with Florida's discriminatory marriage regime adds difficulties of another kind: Gay and lesbian employees who struggle to navigate the conflicting legal regimes typically seek clarification from the Cities' human resources departments. In order to provide these employees with solutions, our benefits administrators effectively become amateur constitutional scholars who risk giving uncertain advice. Even the most knowledgeable human resources professional may provide a gay or lesbian employee with general advice that the employee might not legally benefit from. The wrong answer may lead to harsh tax and financial consequences for the employee, and the further erosion of the employee's morale. The administrative burden on the Cities to update their policies and systems to keep up with the rapidly changing legal landscape, and to then create equitable policies and benefits, is significant. A gay or lesbian employee who is less versed in this complex framework ultimately suffers the consequences, significantly compromising employee job satisfaction, morale, and performance.

III. Marriage Inequality Denies the Cities Hard-Earned Tourism Revenue.

The economies of Miami Beach and Orlando, like those of most Florida municipalities, are heavily dependent upon domestic and international tourism. Miami Beach's tropical weather, thriving arts scene, multicultural populace, and booming nightlife drew a diverse international crowd of 5,293,722 tourists to the

city in the last counted year. Tourism brings in more than $8 billion dollars annually and makes up a large percentage of Miami Beach's annual budget.[53] The South Florida region is also a favorite tourist destination for lesbians and gay men. Broward and Miami-Dade counties draw an estimated 2.15 million LGBT visitors a year who spend nearly $3 billion.[54]

The Williams Institute has determined that Florida would see an economic boost as same-sex couples plan their weddings, and as their out-of-state guests purchase goods and services in the state, in the first three years following the state's recognition of same-sex marriage. The authors of this study based their findings on information regarding marriage spending by same-sex couples in other states, along with wedding expenditure and tourism data from the State of Florida, to estimate the economic stimulus from the state's recognition of marriage equality. The study indicates that the total spending on wedding arrangements and tourism by same-sex couples and their guests would be approximately $182.2 million over three years, with a positive impact of $116.6 million in the first year alone. The total added economic activity over three years would generate about

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[53] Tourism, Culture, and Economic Development Department, City of Miami Beach, Miami Beach Economic Indicators (2012), *available at* http://miamibeachfl.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=65252.

[54] Hannah Sampson, *Miami-Beach, Fort Lauderdale Offer Two New Options for Gay Tourists*, Miami Herald, Jan. 10, 2011, http://www.miamiherald.com/2011/01/10/2009627/miami-beach-fort-lauderdale-feature.html.

$12.1 million in tax revenue for state and local governments. Finally, marriage spending would directly account for the creation of up to 2,600 jobs in Florida.[55]

The Cities spend significant public funds to attract tourists. Institutional discrimination that makes Florida a less attractive place to visit is directly contrary to the interests of the Cities' taxpayers and to society at large.

CONCLUSION

Fair and transparent government is the cornerstone of our society. Florida's same-sex marriage ban compromises our ability to fulfill that promise. In addition to violating notions of constitutional government and basic fairness, the state's marriage ban keeps the Cities from doing their job. Appellant Gildas Dousset's marriage should be recognized and the decision of Appellee Florida Atlantic University should be reversed.

---

[55] E.G. Fitzgerald, Christy Mallory & M.V. Lee Badgett, Estimating the Economic Boost of Marriage for Same-Sex Couples in Florida, Williams Inst. (forthcoming 2014).

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I HEREBY CERTIFY that a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court through the Florida Courts eFiling Portal to be served this 23rd day of June, 2014, on counsel of record listed below and on the Attorney General via email as listed below:

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I HEREBY CERTIFY that this brief is submitted in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

s/Robert F. Rosenwald, Jr.
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Case Nos. 14-14061-AA and 14-14066-AA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JAMES BRENNER, *et al.*,	SLOAN GRIMSLEY, *et al.*,
Plaintiffs-Appellees,	*Plaintiffs-Appellees*,
v.	v.
JOHN ARMSTRONG, *et al.*,	JOHN ARMSTRONG, *et al.*,
Defendants-Appellants.	*Defendants-Appellants*.

On Appeal from the U.S. District Court for the Northern District of Florida

BRIEF OF *AMICI CURIAE* ALACHUA COUNTY, BROWARD COUNTY, ORANGE COUNTY, PALM BEACH COUNTY, CITY OF TAMPA, CITY OF ORLANDO, CITY OF ST. PETERSBURG, CITY OF GAINESVILLE, CITY OF WEST PALM BEACH, CITY OF MIAMI BEACH, CITY OF COCONUT CREEK, CITY OF HALLANDALE BEACH, CITY OF KEY WEST, CITY OF WILTON MANORS, CITY OF SOUTH MIAMI, AND VILLAGE OF BISCAYNE PARK IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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Pursuant to Fed. R. App. P. 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, *Amici Curiae* state that they are political subdivisions and municipal corporations organized and existing under the laws of the State of Florida. As governmental entities, we do not have any parent corporation.

s/Robert F. Rosenwald, Jr.
ROBERT F. ROSENWALD, JR.

Dated December 23, 2014

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici are a broad cross-section of Florida county and city governments that have individually resolved that marriage discrimination against lesbian, gay, bisexual, and transgender ("LGBT") people is inimical to our citizens' health and welfare, is detrimental to our efficiency and effectiveness as employers, and denies our taxpayers hard-earned tourism revenue at a time when we can least afford it. We write to aid the Court by setting forth the very real harm wrought by marriage inequality upon our citizens and upon our very legitimacy as governing bodies. We have thoughtfully and deliberately arrived at this position. We have prohibited discrimination in employment, housing, and public accommodations against lesbians and gay men within our jurisdictions. We have created boards and committees to hear complaints of unlawful discrimination, including discrimination against LGBT people, so that the promise of nondiscrimination is made real for our residents and visitors. We have established domestic partnership registries in an attempt to provide whatever substitute we can to our same-sex couples who are denied the stability and recognition that come automatically with civil marriage in Florida. We provide benefits to the domestic partners of our employees so that these families can rely upon health insurance and leave policies that otherwise would be denied them. Some of us require that our contractors provide equal benefits to domestic partner couples and some of us pay the extra

federal income tax levied upon unmarried same-sex couples that married straight couples do not have to pay when purchasing group health insurance. We take these steps because it is the right thing to do. But we also recognize that the continuing viability of our democracy and our society depends upon a well-justified belief by our people that we govern based upon the transparent and fair application of laws that apply to all equally.

Amici are comprised of the following Florida governmental entities:

Alachua County prohibits discrimination based on a number of factors, including sexual orientation and gender identity. Alachua County defines sexual orientation and gender identity as protected statuses and prohibits discrimination based on a protected status against an individual in employment, housing, or public accommodations.[1] The County also prohibits displays or written communications designed to designate a person as unwelcome, objectionable, or unacceptable due to that person's protected status.[2] In 2013, Alachua County established a Human Rights Board to review individual complaints of discrimination and to assist in preventing discrimination throughout the County.[3] Though Alachua County does not maintain its own domestic partner registry, it recognizes domestic partnerships and state or municipal domestic partner registries. The Alachua County Board of

[1] Alachua County Code § 111.25 (employment); § 111.40 (housing); § 111.60 (public accommodations).
[2] Alachua County Code § 111.06.
[3] Alachua County Code §§ 111.10-13.

County Commissioners voted on November 18, 2014, to submit this *amicus curiae* brief.

Broward County has been at the forefront of promoting equality for LGBT individuals and has a long history of support for the rights of same-sex couples. As early as 1999, Broward provided domestic partner employment benefits to its employees[4] and required that County contractors provide benefits to domestic partners,[5] both on the same basis as they provide benefits to employees' spouses. More broadly, Broward prohibits discrimination based upon sexual orientation in employment, public accommodations, and real estate transactions, including lending,[6] and has created a Human Rights Board to enforce these provisions.[7] The Broward County Board of County Commissioners passed a resolution in support of marriage equality on August 12, 2014.

Orange County prohibits discrimination against LGBT individuals in employment, housing, and public accommodations.[8] Orange County maintains a comprehensive Health, Education, and Life Protections ("HELP") Ordinance and

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[4] *See* Broward County Code, ch. 16½, art. VIII.
[5] Broward County Code § 16½-157.
[6] *See* Broward County Code §§ 16½-33 to -33.1 (employment); §§ 16½-34 to -34.1 (public accommodations); §§ 16½-35 to -35.6 (real estate).
[7] Broward County Code §§ 16½-21 to -23.
[8] Orange County Code § 22-28 (employment); § 22-42 (public accommodations); § 22-52 (housing).

Domestic Partnership Registry.[9] The Orange County Board of County Commissioners voted to submit this brief on October 14, 2014.

Palm Beach County maintains a domestic partnership registry, provides employment benefits to the domestic partners of its employees, and maintains a tax equity policy for employees who obtain such benefits for their domestic partners.[10] Palm Beach County prohibits discrimination against LGBT individuals in employment, housing, and public accommodations.[11] Palm Beach County charges its Equal Employment Board with hearing and investigating complaints of discrimination.[12] The Palm Beach County Board of County Commissioners voted on December 2, 2014, to submit this *amicus curiae* brief.

The City of Coconut Creek ("Coconut Creek") prohibits discrimination and harassment in the workplace based on sexual orientation.[13] Coconut Creek provides equal benefits for and extends medical, wellness-related, and educational opportunities to the domestic partners of its employees.[14] The Coconut Creek City

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[9] Orange County Code §§ 22-71 to -79.

[10] Palm Beach County Code § 2-6; Palm Beach County, *Domestic Partner Tax Equity Policy*, PPM No. CW-P-082.

[11] Palm Beach County Code § 2-312 (employment); § 15-57 (public accommodations); § 15-58 (housing).

[12] Palm Beach County Code §§ 2-281 to -288.

[13] City of Coconut Creek, *Respectful Workplace Policy* (Administrative Order No. HR-02).

[14] E-mail from Terrill Pyburn, City Attorney, City of Coconut Creek, to Robert F. Rosenwald, Jr., First Asst. City Att'y, Miami Beach, Fla., and Nick Kallergis, Asst.

Code includes "partner registered under the Broward County Domestic Partnership Ordinance" in its definition of "immediate family," which allows employees to take leave to care for a domestic partner.[15] The Coconut Creek City Commission voted on January 23, 2014, to support legislation that provides for marriage equality.

The City of Gainesville ("Gainesville") prohibits discrimination against LGBT individuals in employment, housing, and public accommodations.[16] Gainesville maintains a domestic partner registry.[17] The Gainesville City Commission voted on October 20, 2014, to submit this *amicus curiae* brief.

The City of Hallandale Beach ("Hallandale Beach") boasts policies that "[set] forth its intolerance for discrimination relating to same-sex partnerships."[18] Hallandale Beach maintains a tax equity policy for its employees in domestic partnerships.[19] Certain Hallandale Beach city contractors must provide equal benefits to the domestic partners of their employees.[20] The Hallandale Beach City Commission voted on November 19, 2014, to submit this *amicus curiae* brief.

City Att'y, Miami Beach, Fla., (Dec. 4, 2014, 19:11:00 EST) (on file with recipient).

[15] Coconut Creek City Code §§ 21-1.1, -10.6, and -25.6.

[16] Gainesville City Code § 8-48 (employment); §§ 8-88 to -93 (housing); § 8-67 (public accommodations).

[17] Gainesville City Code §§ 2-610 to -613.

[18] City of Hallandale Beach Resolution No. 2014-140.

[19] *Id.*

[20] Hallandale Beach City Code § 23-3.

The City of Key West ("Key West") maintains a domestic partnership registry, and provides equal benefits to the domestic partners of its employees.[21] Key West city contractors must provide the domestic partners of their employees with equal benefits.[22] The Key West City Commission voted on November 5, 2014, to submit this *amicus curiae* brief.

The City of Miami Beach ("Miami Beach") is a hub of tourism and diversity for people from the United States and around the world. Miami Beach prohibits discrimination against LGBT people and has established a Human Rights Committee to hear charges of discrimination.[23] Miami Beach has established a domestic partner registry and provides employment benefits to domestic partners of employees and their children, mandates that Miami Beach's contractors provide these benefits to their employees, and Miami Beach reimburses (or "grosses up") our employees who pay extra federal income tax for domestic partner health

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[21] Key West City Code §§ 38-291 to -296 (domestic partner registry); § 38-295 (domestic partner benefits).

[22] Key West City Code § 2-799.

[23] *See* Miami Beach City Code § 62-33 (declaring the City's policy against discrimination); §§ 62-34 to -37 (creating the Miami Beach Human Rights Committee); §§ 62-86 to -91 (prohibiting discrimination in employment, public accommodations, housing, and public services, as well as prohibiting retaliatory discrimination, coercion of discriminatory practices, and interference, obstruction, or prevention of compliance with the Miami Beach Human Rights Ordinance).

insurance benefits. [24] Miami Beach's Mayor and Commission voted unanimously on June 11, 2014, to submit this *amicus curiae* brief.

The City of Orlando ("Orlando") broadly prohibits discrimination in employment, housing, public accommodations, and lending, in its City Code.[25] Orlando's Chapter 57 Review Board is charged, among other things, with protecting the civil rights of its LGBT citizens and hearing complaints of discrimination.[26] Orlando prohibits discrimination against city employees, and includes sexual orientation and gender identity as protected classes in its anti-harassment policy.[27] Orlando also maintains a domestic partner registry and protects the rights of domestic partners with regard to healthcare visitation and decisions, funeral and burial decisions, correctional facility visitation, mandatory notification of family members, preneed guardian designation, and education.[28] Orlando has offered health benefits to its employees' same-sex domestic partners

[24] Miami Beach City Code §§ 62-161 to -164 (domestic partnership registry); § 62-128(c) (equal benefits for domestic partners); § 2-373 (equal benefits for domestic partners of city contractors); § 62-128(d) (grossing up ordinance).
[25] Orlando City Code § 57.14 (employment); §§ 57.48-78 (housing); § 57.08 (public accommodations); § 57.09 (lending).
[26] Orlando City Code §§ 57.01-14.5.
[27] City of Orlando, *Employment & Recruitment, in Policies and Procedures* § 808.2; *Harassment, in Policies and Procedures* § 808.26.
[28] Orlando City Code §§ 57.80-86.

since 2009.[29] Orlando's Mayor and Council voted on June 23, 2014, to submit this amicus curiae brief.

The City of South Miami ("South Miami") expressly recognizes domestic partnerships registered in Miami-Dade County, and guarantees health care facility visitation rights to domestic partners of patients.[30] Discrimination based on sexual orientation is prohibited in city employment.[31] South Miami provides equal benefits to the domestic partners of its employees.[32] South Miami created a Community Relations Board to, among other things, "foster mutual understanding, tolerance, and respect among . . . [people of different] sexual orientations . . . ."[33] The South Miami City Commission voted unanimously on December 2, 2014, to submit this *amicus curiae* brief.

The City of St. Petersburg ("St. Petersburg") enacted a Domestic Partnership Registry Ordinance in 2012.[34] In its Equal Employment Opportunity & Affirmative Action Plan, St. Petersburg prohibits discrimination in "recruitment, examination, training, promotion, retention, or any other personnel action because

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[29] Email from Amy Iennaco, Chief Asst. City Att'y, Orlando, Fla., to Robert F. Rosenwald, Jr., Senior Asst. City Att'y, Miami Beach, Fla. (June 20, 2014, 13:03:00 EST) (on file with recipient).
[30] South Miami City Code §§ 19-2, -6.
[31] South Miami City Code § 16A-34.
[32] South Miami City Code § 19-5.
[33] South Miami City Code § 16A-34.
[34] St. Petersburg City Code §§ 15-31 to -37.

of . . . sexual orientation."[35] St. Petersburg provides a comprehensive procedure for filing complaints of discrimination with the city's Human Resources Department.[36] St. Petersburg prohibits discrimination in the city's housing assistance program.[37] St. Petersburg has a Mayoral LGBT Liaison and Police LGBT Liaison.[38] Lastly, St. Petersburg encourages vendors and contractors to adopt anti-discrimination policies and to provide workplaces free of sexual orientation discrimination in terms and conditions of employment, including benefits.[39] St. Petersburg's Mayor and City Council voted on September 4, 2014, to submit this *amicus curiae* brief.

The City of Tampa ("Tampa"), through its Mayor Bob Buckhorn and with the concurrence of the Tampa City Council, has authorized the Tampa City Attorney to join in the submission of this brief and describe the efforts by Tampa to assure equality among its citizens. Tampa's Human Rights Ordinance prohibits discrimination in employment, public accommodations, and housing.[40] Tampa maintains a domestic partnership registry and provides health benefits to the

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[35] City of St. Petersburg, *Equal Employment Opportunity and Affirmative Action Plan, in City of St. Petersburg Administrative Policy* No. 010501.

[36] City of St. Petersburg, *Internal Complaints Related to Discrimination, Harassment, or Other Inappropriate Behavior, in Rules and Regulations of the Personnel Management System* §§ 10-1 to -4.

[37] St. Petersburg City Code § 17.5-23.

[38] City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014).

[39] *Id.*

[40] Tampa City Code § 12-26 (employment); § 12-64 (public accommodations); and §§ 12-81 to -85 (housing).

domestic partners of its employees.[41] Tampa created a Human Rights Board to hear and initiate complaints of discrimination under Tampa's Human Rights Ordinance, and granted the board the power to review determinations of reasonable cause by the city's administration.[42] Tampa also boasts comprehensive protections for LGBT individuals in its personnel rules: Tampa's Equal Opportunity Policy requires equal treatment of all persons and equal opportunity in employment, and prohibits discrimination, inappropriate behavior, or harassment based on sexual orientation.[43] Lastly, Tampa requires its employees to provide services to the public without regard to the person's sexual orientation.[44]

The City of West Palm Beach ("West Palm Beach") prohibits discrimination against LGBT individuals in employment, housing, and public accommodations.[45] West Palm Beach prohibits sexual orientation discrimination in its procurement.[46] West Palm Beach maintains a domestic partnership registry,[47]

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[41] Tampa City Code §§ 12-120 to -127 (domestic partnership registry); City of Tampa, *Group Health Insurance*, *in City of Tampa Personnel Manual* § B22.1 (equal benefits for domestic partners of city employees).
[42] Tampa City Code § 12-5.
[43] City of Tampa, *Equal Opportunity*, *in City of Tampa Personnel Manual* § B1.1A; City of Tampa, *Discriminatory Conduct*, *in City of Tampa Personnel Manual* § B1.2.
[44] *Id.*
[45] West Palm Beach City Code § 42-35 (employment); § 42-37 (public accommodations); § 42-39 (housing).
[46] West Palm Beach City Code § 66-9.
[47] West Palm Beach City Code §§ 42-47 to -50.

provides benefits to the domestic partners of its employees,[48] and requires that its contractors provide equal benefits to the domestic partners of their employees.[49] West Palm Beach passed a tax equity policy for domestic partner health insurance benefits.[50] The West Palm Beach City Commission voted on November 24, 2014, to submit this *amicus curiae* brief.

The City of Wilton Manors ("Wilton Manors") maintains a domestic partnership registry, provides equal benefits to the domestic partners of its city employees, and maintains a tax equity policy for employees who obtain City benefits for their domestic partners.[51] Likewise, covered city contractors in Wilton Manors must provide equal benefits to the domestic partners of their employees.[52] City vendors and contractors are prohibited from discriminating against any person based on sexual orientation or marital status. Wilton Manors allows city employees to take military caregiver leave if a domestic partner of an employee requires care due to an injury or illness suffered while on active military duty.[53] Health insurance continuation coverage is guaranteed to the children and domestic partners of city employees if they lose coverage because of the death of the

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[48] West Palm Beach City Code § 62-81.
[49] West Palm Beach Ordinance No. 4526-14.
[50] West Palm Beach City Code § 62-66.
[51] Wilton Manors City Code §§ 13.5-41 to -46; City of Wilton Manors Resolution No. 2013-0069.
[52] Wilton Manors City Code § 2-268(v).
[53] City of Wilton Manors, *The Federal Family and Medical Leave Act – FMLA Policy, in Personnel and Safety Rules and Regulations, Civil Service Rules* § 10-9.

employee, the employee's termination, divorce, or legal separation of the employee, the employee's entitlement to Medicare benefits, or a dependent's loss of designation as a "dependent child" under the city's health plan.[54] The Mayor and City Commission of Wilton Manors voted on August 12, 2014, to submit this *amicus curiae* brief.

The Village of Biscayne Park ("Biscayne Park") prohibits discrimination based on sexual orientation in its Village Charter.[55] Biscayne Park maintains a domestic partnership registry[56] and provides equal benefits to the domestic partners of its employees.[57] The Mayor and Village Council voted unanimously on July 1, 2014, to "support equal access to legal marriage for same-sex couples" and to oppose "laws and constitutional amendments that deny equal access to legal marriage for same-sex couples."[58]

STATEMENT OF COMPLIANCE WITH RULE 29(c)(5)

No party's counsel authored this Brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the Brief; and no person – other than counsel for *Amici Curiae* – contributed money that was intended to fund preparing or submitting this brief.

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[54] *Id.*
[55] Biscayne Park Village Charter § 7.07.
[56] Biscayne Park Village Code § 2-47.
[57] Biscayne Park Village Code § 2-48.
[58] Village of Biscayne Park Resolution No. 2014-45.

STATEMENT OF THE ISSUE

The issue in this case is whether there is any constitutionally cognizable interest advanced by Florida's denial of civil marriage to its gay and lesbian citizens. We write to refute the State of Florida's assertion that there is any such interest, and to advise the Court that our legitimate governmental interests are advanced by marriage equality.

SUMMARY OF ARGUMENT

Amici have prepared this brief at the request of our elected City and County Boards, Commissions, and Councils. Unable to obtain the legal recognition of the State, our citizens have looked to us, as local governments, to advocate on their behalf and to request that the Court strike down Florida's ban on same-sex marriage as unconstitutional under the U.S. Constitution.

We reject the state's contention that any legitimate governmental interest is served by denying marriage equality to Florida's gay and lesbian couples. To the contrary, the ban impedes and interferes with many of our real governmental interests. Florida's prohibition on marriage for gay and lesbian couples impedes our ability to fulfill our core mission of providing for the health and welfare of our residents, thereby eroding the very legitimacy of our governments. The marriage ban interferes with the administration of our business as employers. Lastly, the marriage ban denies our taxpayers tourism revenue.

ARGUMENT

I. Marriage Inequality Harms Our Residents, Impedes Our Effectiveness, and Erodes Our Legitimacy.

We are resolved that there is no greater threat to our sacred mission to protect the health and welfare of our citizens than the existence of invidious discrimination. As the Miami Beach City Code makes clear,

> In the city, with its cosmopolitan population consisting of people of every race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age, some of them who are disabled as defined under section 62-31 hereof, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of prejudice against one another and antagonistic to each other because of differences of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, or disability. The city finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free, democratic society.[59]

The societal harm that comes from discrimination reaches its apex when institutionalized as laws that serve no purpose other than to harm one segment of the population; discrimination is never more harmful than when the government itself discriminates. Attorney General Eric Holder recounted his own experience with state-sponsored racial discrimination as he announced that the federal government would no longer treat gay couples as less than equal to straight couples: "[A]lthough the vestiges of state-sanctioned discrimination affected many

[59] Miami Beach City Code § 62-33.

aspects of our lives – and continue to reverberate across the country even today – thanks to *Brown* and those who made it possible, your generation will never know a world in which 'separate but equal' was the law of the land."[60]

Florida's state-sanctioned discrimination compromises the health and welfare of our society and of our gay and lesbian citizens.

A. Marriage Inequality Needlessly Brings Legal and Financial Hardship to Families.

In the country's seminal decision on same-sex marriage, Massachusetts' highest court recognized that the denial of marriage rights to gays and lesbians is the purest form of institutionalized discrimination:

> The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason . . . . The absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual.[61]

The United States Supreme Court recently reaffirmed this rationale. In *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013), the Court stated, "The avowed purpose and practical effect of the law here in question [the Defense of

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[60] Eric Holder, U.S. Attorney General, Attorney General Holder's Remarks at the Morgan State University Commencement Ceremony (May 19, 2014) (citing *Brown v. Bd. of Educ.*, 347 U.S. 483, 74 S. Ct. 686 (1954)).

[61] *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 968 (Mass. 2003).

Marriage Act] are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages . . . ."

Florida's ban on same-sex marriage, the plainest form of discrimination,[62] has a tremendous negative impact on the health and well-being of gay and lesbian couples and their children.[63] Florida denies these families the "aggregate of moral and social support [that] enables married people to more effectively negotiate the ordinary and extraordinary challenges that occur in social life, through the provision of a set of recurring advantages."[64]

The benefits of civil marriage include "spousal benefits, such as social security and public pensions; income tax benefits; inheritance, insurance, and

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[62] *In re Marriage Cases*, 183 P.3d 384, 402 (Cal. 2008) ("Retaining the designation of marriage exclusively for opposite-sex couples and providing only a separate and distinct designation for same-sex couples may well have the effect of perpetuating a more general premise – now emphatically rejected by this state – that gay individuals and same-sex couples are in some respects 'second-class citizens' who may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite-sex couples.").

[63] Gay and Lesbian Medical Association, Same-Sex Marriage and Health 3 (2008). A survey of 34,000 lesbian, gay, and bisexual individuals conducted in 2001 and 2002, and again in 2004 and 2005 after 14 states adopted constitutional bans on same-sex marriage, found "empirical evidence of the negative health effects of discriminatory policies relative to marriage equality." In the second study, "participants reported significantly higher rates of psychiatric disorders, with increases of 36% for any mood disorder, 248% for generalized anxiety disorder, 42% for alcohol use disorder, and 36% for psychiatric comorbidity." William C. Buffie, *Public Health Implications of Same-Sex Marriage*, 101 Am. J. Pub. Health 986, 987 (2011).

[64] Gilbert Herdt & Robert Kertzner, *I do, but I can't: The impact of marriage denial on the mental health and sexual citizenship of lesbians and gay men in the United States*, 3 Sexuality Res. & Soc. Pol'y J. NSRC 33, 38 (2006).

survivorship rights including estate tax benefits, health insurance in spouses' group plans; the right to sue for wrongful death of a spouse; and power to make medical decisions on behalf of a spouse."[65] "More than 60 percent of insured Americans received health care through their own employer or that of their spouse or other family member."[66] Currently, same-sex couples are barred from "the full range of legal, economic, social, and mental health benefits provided by marriage. Legal recognition short of marriage is not transportable across state lines and subjects lesbians and gay men to the vicissitudes of local law and law enforcement."[67]

A stark illustration of this devastating harm can be found right here at home: In February 2007, Janice Langbehn, her long term partner Lisa Pond, and their three adopted children were in Miami to take a cruise. Pond suffered a brain aneurysm and was admitted to Jackson Memorial Hospital. The hospital, after telling Langbehn that she was "in an anti-gay city and state," refused to allow Langbehn and the couples' children to be with Pond, despite having received a

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[65] *Id.* (citing Virginia Rutter & Pepper Schwartz, *The Gender of Sexuality: Exploring Sexual Possibilities* (2006)).

[66] Gay and Lesbian Medical Association, *supra* note 63, at 6 (citing Herdt & Kertzner, *supra* note 64; M.V. Lee Badgett, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?*, 1 Sexuality Res. & Soc. Pol'y 1, 8 (2004)).

[67] *Id.*

durable power of attorney and advance directive. Pond died alone without her family present.[68]

While the dignity of marriage would empower couples like Janice Langbehn and Lisa Pond to make end-of-life decisions, the protective power of marriage might have served their children even more. Marriage equality would concretely promote the health and well-being of the many Florida children currently raised by gay and lesbian couples.[69] Marriage inequality undermines the stability of families raised by gay or lesbian couples, and "perpetua[tes] false claims about [their] parental fitness."[70] On the other hand, the legal recognition of a same-sex relationship "can increase the ability of adult couples to provide and care for one another and fosters a nurturing and secure environment for their children."[71]

Children of Florida's same-sex couples are currently denied rights and privileges enjoyed by children of legally married couples, like "survivorship rights and protections, recognition of parental rights and responsibilities, tax and other

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[68] *Id.* at 10 (citing Janice Langbehn, Address at Family Equality Council Media Awards (October 13. 2007), *available at* http://webcache.googleusercontent.com /search?q=cache:-H3ot9UnNykJ:thelpkids.wordpress.com/keynote-speeches/+& cd=3&hl=en&ct= clnk&gl=us).

[69] *Id.* at 7 (citing C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility, in Infertility in the modern world: Biosocial perspectives* 238 (G. Bentley and N. Mascie-Taylor, eds., 2000)).

[70] *Id.* (citing Herdt & Kertzner, *supra* note 64).

[71] *Id.* (citing James Pawelski, et al., Special Article, *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-Being of Children*, 118 Pediatrics 349 (2006), *available at* http://pediatrics.aappublications.org/ content/118/1/349.full.pdf+html).

financial advantages, and legal protections to partners and children during the dissolution of relationships."[72] These rights are basic benefits of civil marriage, and should be extended to same-sex couples who wish to marry. Instead, children of same-sex parents suffer economic, legal, and familial insecurity.[73] Without the legal protections of civil marriage, "same gender couples' death, disability, and divorce disputes are relegated to civil courts, which apply contract or business law, but not family law, such that children's concerns are ignored."[74]

Society's ability to care for another group of its most vulnerable citizens is compromised by Florida's same-sex marriage ban: the elderly. The American Psychiatric Association recognizes the effect of marriage discrimination on aging:

> As the population ages, the denial of legal recognition of civil marriage has consequences for increasing numbers of older adults in same-sex relationships who face age-related health and financial concerns. Excluding these adults from civil marriage protections of survivorship and inheritance rights, financial benefits, and legal recognition as a couple in healthcare settings increases the psychological burden associated with aging.[75]

Marriage provides a socially and legally recognized "context for individuals

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[72] *Id.*

[73] *Id.*

[74] *Id.* (citing Katherine A. O'Hanlan, *Health Policy Considerations for Our Sexual Minority Patients*, 107 Obstetrics & Gynecology 709 (2006)).

[75] *Id.* at 9 (citing Position Statement, American Psychiatric Association, Support of Legal Recognition of Same-Sex Civil Marriage (2005)).

to realize their capacities for love, care, and self-transcendence."[76] Marriage also "provides social legitimacy to the intimate bonds of adults and is required for the recognition of full adulthood across many cultures."[77] The denial of marriage equality reverberates from cradle to grave.

B. Marriage Inequality Wreaks Psychological Harm Upon Families and Children.

In addition to legal and financial disadvantages, marriage discrimination wreaks psychological harm on family members of gay and lesbian couples. Gay and lesbian couples "face unusual and specific stressors due to the absence of social and legal rights and duties that define same-sex couplehood."[78] The American Psychiatric Association has recognized that "same-sex couples . . . experience several kinds of state-sanctioned discrimination that can adversely affect the stability of their relationships and their mental health."[79]

Hundreds of studies of straight couples have established that "married individuals have better mental health, more emotional support, less psychological

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[76] *Id.* at 5 (citing Herdt & Kertzner, *supra* note 64; Erik H. Erikson, *Identity and the Life Cycle* (1959)).

[77] *Id.* (citing Linda Waite & Maggie Gallagher, *The Case for Marriage: Why Married People are Happier, Healthier, and Better Off Financially* (2000); Margaret Mead, *What is Happening to the American Family?*, 1 Pastoral Psychology 40 (1950)).

[78] Herdt & Kertzner, *supra* note 64, at 40.

[79] Gay and Lesbian Medical Association, *supra* note 63, at 3 (citing American Psychiatric Association, *supra* note 75).

distress, and lower rates of psychiatric disorders than unmarried individuals."[80] Marriage equality "may confer additional benefits because of the protective effects of relationships in countering discrimination and sexual prejudice."[81]

Married individuals report more emotional support and are more likely to have a close confidant than the unmarried.[82] Emotional support is directly associated with health and well-being and provides protection against the negative health consequences of stress.[83]

Many Americans relate their well-being to marriage,[84] which is widely perceived to bestow a variety of resources and benefits.[85] Married individuals report less economic strain and higher incomes than the unmarried.[86] For Americans who enjoy legal access to it, "marriage is uniquely associated with tangible and intangible benefits that are linked to and support psychological

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[80] Herdt & Kertzner, *supra* note 64, at 35.
[81] Gay and Lesbian Medical Association, *supra* note 63, at 6.
[82] *Id.*
[83] *Id.* (citing Herdt & Kertzner, *supra* not 64; Peggy Thoits, *Stress, Coping, and Social Support Processes: Where Are We? What Next?*, J. Health & Soc. Behav. (Special Issue) 53 (1995)).
[84] *Id.* (citing Richard Kim & Lisa Duggin, *Beyond Gay Marriage*, The Nation, June 29, 2005, http://www.thenation.com/article/beyond-gay-marriage).
[85] *Id.* (citing Waite & Gallagher, *supra* note 77).
[86] *Id.* (citing Herdt & Kertzner, *supra* note 64; Catherine E. Ross, et al., *The Impact of the Family on Health: The Decade in Review*, 52 J. Marriage & Fam. 1059 (1990); Waite & Gallagher, *supra* note 77; Cathleen Zick & Ken Smith, *Marital Transitions, Poverty, and Gender Differences in Mortality*, 53 J. Marriage & Fam. 327 (1991)).

health."[87] In sum, the denial of marriage to lesbians and gay men is harmful to the health and welfare of our residents and is harmful to society at large.

II. As Large Employers, State-Sponsored Marriage Discrimination Costs Us Money, Adds Needless Bureaucracy, and Compromises Employee Morale, All Resulting in a Less Efficient and Effective Government.

Our business is to provide world-class service to our residents and visitors. We employ large and diverse workforces, which perform functions ranging from that of City Manager to summer recreation counselors -- everything needed to run multi-faceted governmental organizations. It is only by our ability to attract and retain top-tier talent that we can live up to our promise. Orlando said it this way:

> The City of Orlando community has a population which is richly diverse. The effective provision of governmental services within such a diverse community requires the services of an equally diverse employee population. The City of Orlando is, therefore, committed to providing an employee workforce which, in all positions and at all levels, fairly reflects the community it serves. The City encourages all segments of its population to become involved with, and seek employment in, City government. To achieve this goal, it is the policy of the City of Orlando, binding on all officials and employees, to offer equal employment opportunity to all persons regardless of race, color, religion, sex, national origin, age, sexual orientation, or disability. The City will further take whatever steps are necessary to ensure that all employment practices, including, but not limited to, compensation, benefits, layoffs, promotions, training, terminations, hiring, and recruitment, are administered in a manner that provides full and fair opportunity to all persons.[88]

The Williams Institute at the University of California at Los Angeles School

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[87] Herdt & Kertzner, *supra* note 64, at 36.

[88] City of Orlando, *Harassment*, *in Policies and Procedures* § 808.26.

of Law recently reviewed 36 research studies and found that working in an LGBT-supportive workplace climate resulted in "greater job commitment, improved workplace relationships, increased job satisfaction, improved health outcomes, and increased productivity" among LGBT employees.[89]

A. We Work Hard to Provide a Nondiscriminatory Workplace.

In Florida, all 12 public universities in the state prohibit discrimination based on sexual orientation and nine prohibit discrimination based on gender identity. There are at least 28 localities that prohibit discrimination based on sexual orientation against their own government employees. Twenty localities also prohibit discrimination based on gender identity.[90]

A 2011 study found that 68 local governments in the United States require that their contractors have LGBT-supportive affirmative action policies, or policies granting same-sex domestic partners equal benefits.[91] We prohibit discrimination based upon sexual orientation and gender identity by covered employers doing

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[89] M.V. Lee Badgett, Laura E. Durso, Angeliki Kastanis, & Christy Mallory, *The Business Impact of LGBT-Supportive Workplace Policies* 1, Williams Institute (2013) (*hereinafter* "Williams Institute"), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/Business-Impact-LGBT-Policies-Full-Report-May-2013.pdf.

[90] Email from Christy Mallory, Senior Counsel, Williams Institute, to Robert F. Rosenwald, Jr., Senior Asst. City Att'y, Miami Beach, Fla. (June 13, 2014, 12:36 EST) (on file with recipient).

[91] Williams Institute, *supra* note 89, at 21.

business in our jurisdictions.[92] We also encourage or require our covered contractors to provide domestic partner benefits on equal footing with those offered to married couples.[93]

B. Marriage Inequality Presents Unique Challenges.

Marriage discrimination by the state presents its own unique challenges for us to address. Although we attempt to lessen the harmful effects on our employees, these efforts impose significant administrative burdens. While we provide near-equivalents to some of the benefits afforded to legally married couples, we are unable to erase the stain of inequality.

1. The Marriage Ban Imposes Significant Administrative Burdens.

To alleviate the disparities in available benefits between gay and straight employee families, we provide comprehensive workarounds in an attempt to approximate marriage equality for our employees. First, we have enacted domestic partner registries that the public can use to register families for local recognition.[94]

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[92] Alachua County Code § 111.25; Broward County Code §§ 16½-33 to -33.1; Orange County Code § 22-28; Palm Beach County Code § 2-312; Miami Beach City Code § 62-86; Gainesville City Code § 8-48; Orlando City Code § 57.14; Tampa City Code § 12-26; West Palm Beach City Code § 42-35.

[93] Broward County Code § 16½-157; Hallandale Beach City Code § 23-3; Key West City Code § 2-799; Miami Beach City Code § 2-373(b); City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014); West Palm Beach Ordinance No. 4526-14; Wilton Manors City Code § 2-268(v).

[94] Broward County Code, ch. 16½, art. VIII; Orange County Code §§ 22-71 to -79; Palm Beach County Code § 2-6; Gainesville City Code §§ 2-610 to -613; Key

Second, we provide benefits to registered domestic partners of city employees.[95] Finally, we reimburse our employees for the additional federal income tax liability that domestic partners – but not legally married couples – incur when receiving benefits ("grossing up").[96]

Grossing up is a costly and complex process. To illustrate, a married employee who, through an employer, obtains health insurance for a spouse does not pay federal income tax on the value of the insurance obtained, but only if the employee's spouse is legally recognized. Many employers attempt to address taxability differences by reimbursing the employee to offset the tax impact of imputed healthcare benefits. Grossing up offsets the inequity created by Florida's discriminatory marriage law, but it imposes a pecuniary cost beyond the direct cost of paying for employee benefits.

West City Code §§ 38-291 to -296; Miami Beach City Code §§ 62-161 to -164; Orlando City Code §§ 57.80-86; St. Petersburg City Code §§ 15-31 to -37; Tampa City Code §§ 12-120 to -127; West Palm Beach City Code §§ 42-47 to -50; Wilton Manors City Code §§ 13.5-41 to -46; Biscayne Park Village Code § 2-47.

[95] Broward County Code, ch. 16½, art. VIII; Orange County Code §§ 22-71 to -79; Miami Beach City Code § 78-34; Palm Beach County, *Domestic Partner Tax Equity Policy*, PPM No. CW-P-082; Email from Terrill Pyburn, *supra* note 14; Key West City Code § 38-295; Email from Amy Iennaco, *supra* note 29; South Miami City Code § 19-5; City of St. Petersburg, Proclamation of Mayor Rick Kriseman (June 12, 2014); City of Tampa, *Group Health Insurance*, *in City of Tampa Personnel Manual* § B22.1; West Palm Beach City Code § 62-81; Wilton Manors City Code § 13.5-45; Biscayne Park Village Code § 2-48.

[96] Palm Beach County, *Domestic Partner Tax Equity Policy*, PPM No. CW-P-082; City of Hallandale Beach Resolution No. 2014-140; Miami Beach City Code § 62-128(d); West Palm Beach City Code § 62-66; City of Wilton Manors Resolution No. 2013-0069.

The U.S. Office of Personnel Management, in a study of grossing up, noted that this approach "raises costs considerably . . . . Under a grossing up policy, a $1,000 net cash award would actually cost the agency $1,713.80."[97] The New York Times estimates that grossing up for an employee who incurred between $1,200 and $1,500 in extra taxes costs the employer between $2,000 and $2,500.[98]

Grossing up is also quite complicated. Tax rates, timing, and the taxation of the gross up amount itself all come into play. We must retain experts who craft the policies and structure systems that can record gross-up amounts, as well as educate human resources, benefits, and payroll administrators.

2. Our Best Efforts Still Impose Stigma and Confusion Among Employees.

Our workarounds – as well-intentioned and beneficial as they are – still perpetuate a stigma by according different treatment to those employees who were married out-of-state to a same-sex spouse or are barred from marriage by Florida law, as opposed to those who are legally married to a different-sex spouse. Rightly

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[97] U.S. Office of Pers. Mgmt., *Grossing Up Awards: Why and Why Not*, http://www.opm.gov/policy-data-oversight/performance-management/performance-management-cycle/rewarding/grossing-up-awards/ (using the following withholding rates: federal income tax, 28 percent; Medicare tax, 1.45 percent; Social Security tax, 6.2 percent; state income tax, 6 percent).

[98] Tara Siegel Bernard, *A Progress Report on Gay Employee Health Benefits*, N.Y. Times, Dec. 5, 2012, http://bucks.blogs.nytimes.com/2010/12/14/a-progress-report-on-gay-employee-health-benefits/.

or wrongly, our employees see us as the enforcement mechanism for a discriminatory regime. Employee morale and productivity suffer as a result.

III. Marriage Inequality Denies Our Taxpayers Hard-Earned Tourism Revenue.

Our local economies, like those of most of Florida, are heavily dependent upon domestic and international tourism. As the state's number one industry, tourism was responsible for welcoming 94.3 million visitors in 2013 who spent $76.1 billion, generating 23 percent of the state's sales tax revenue and employing nearly 1.1 million Floridians.[99] Miami Beach's tropical weather, thriving arts scene, multicultural populace, and booming nightlife drew a diverse international crowd of 5,293,722 tourists to the city in the last counted year. Tourism brings in more than $8 billion dollars annually and makes up a large percentage of Miami Beach's annual budget.[100] The South Florida region is also a favorite tourist destination for lesbians and gay men. Broward and Miami-Dade counties draw an estimated 2.15 million LGBT visitors a year who spend nearly $3 billion.[101]

The Williams Institute has determined that Florida would see an economic

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[99] Visit Florida, *About VISIT FLORIDA*, http://www.visitflorida.com/en-us/about-visit-florida.html (last visited Oct. 9, 2014).

[100] Tourism, Culture, and Economic Development Department, City of Miami Beach, Miami Beach Economic Indicators (2012), *available at* http://miamibeachfl.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=65252.

[101] Hannah Sampson, *Miami-Beach, Fort Lauderdale Offer Two New Options for Gay Tourists*, Miami Herald, Jan. 10, 2011, http://www.miamiherald.com/2011/01/10/2009627/miami-beach-fort-lauderdale-feature.html.

boost as same-sex couples plan their weddings, and as their out-of-state guests purchase goods and services in the state, in the first three years following the state's recognition of same-sex marriage. The authors of this study based their findings on information regarding marriage spending by same-sex couples in other states, along with wedding expenditure and tourism data from the State of Florida, to estimate the economic stimulus from the state's recognition of marriage equality. The study indicates that the total spending on wedding arrangements and tourism by same-sex couples and their guests would be approximately $182.2 million over three years, with a positive impact of $116.6 million in the first year alone. The total added economic activity over three years would generate about $12.1 million in tax revenue for state and local governments. Finally, marriage spending would directly account for the creation of up to 2,600 jobs in Florida.[102]

We spend significant public funds to attract tourists. Institutional discrimination that makes Florida a less attractive place to visit is directly contrary to the interests of our taxpayers and to society at large.

CONCLUSION

Fair and transparent government is the cornerstone of our society. Florida's same-sex marriage ban compromises our ability to fulfill that promise. In addition to violating notions of constitutional government and basic fairness, the state's

[102] E.G. Fitzgerald, Christy Mallory & M.V. Lee Badgett, Estimating the Economic Boost of Marriage for Same-Sex Couples in Florida, Williams Inst. (2014).

marriage ban keeps us from doing our job. The Court should affirm the District Court's order declaring Florida's statutory and constitutional bans on same-sex marriage unconstitutional.[103]

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[103] Broward and Palm Beach Counties join in the brief filed by *Amici Curiae* solely for the purpose of asking the Court to provide the relief requested and requesting it to take judicial notice of the Counties' ordinances granting equal benefits to same-sex couples and other domestic partners as heterosexual married couples.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,808 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and 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 Microsoft Word in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2014, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Eleventh Circuit through the Court's CM/ECF System. Counsel for all parties will be served via the Court's CM/ECF System at the email addresses on file.

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