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Attorneys on behalf of Oregon United for
Marriage and Oregon Says I do

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

DEANNA L. GEIGER and JANINE M.
NELSON, ROBERT DUEHMIG and
WILLIAM GRIESAR,

Case No. 6:13-cv-01834-MC
(Lead Case)

Plaintiffs,

v.

JOHN KITZHABER, in his official
capacity as Governor of Oregon, ELLEN
ROSENBLUM, in her official capacity as
Attorney General of Oregon, JENNIFER
WOODWARD, in her official capacity as
State Registrar, Center for Health
Statistics, Oregon Health Authority, and
RANDY WALRUFF, in his official
capacity as Multnomah County Assessor,

Defendants.

**OREGON SAYS I DO AND
OREGON UNITED FOR
MARRIAGE'S UNCONTESTED
MOTION FOR LEAVE TO FILE
AMICI CURIAE MEMORANDUM IN
SUPPORT OF PLAINTIFFS'
MOTIONS FOR SUMMARY
JUDGMENT AND AMICI CURIAE
MEMORANDUM**

PAUL RUMMELL and BENJAMIN
WEST; LISA CHICKADONZ and
CHRISTINE TANNER; BASIC RIGHTS
EDUCATION FUND,

Case No. 6:13-cv-02256-MC

Plaintiffs,

v.

JOHN KITZHABER, in his official
capacity as Governor of Oregon; ELLEN
ROSENBLUM, in her official capacity as
Attorney General of Oregon; JENNIFER
WOODWARD, in her official capacity as
State Registrar, Center for Health
Statistics, Oregon Health Authority, and
RANDY WALRUFF, in his official
capacity as Multnomah County Assessor,

Defendants.

Oregon United for Marriage and Oregon Says I Do respectfully request that the Court grant leave to file the attached *amici curiae* memorandum in support of Plaintiffs' Motions for Summary Judgment ("Plaintiffs' Motions").

Local Rule 7.1 Certification

Prior to filing this motion, Counsel for Oregon United for Marriage and Oregon Says I Do conferred with counsel for Plaintiffs and Defendants. All have consented to the organizations appearing as *amici curiae*.

Movants' Interest and the Relevance of an *Amici Curiae* Memorandum

Oregon United for Marriage and Oregon Says I Do are the Oregon statewide organizations working to qualify and pass Oregon Initiative Petition No. 8 (2014), the Freedom to Marry and Religious Protection Initiative (the "Initiative"). The Initiative would overturn Oregon's constitutional same-sex marriage ban. If the Initiative qualifies for the ballot and is approved by the voters, same-sex couples in Oregon would be granted the right to marry. However, if the Court grants Plaintiffs' Motions in the near future, the Initiative may become unnecessary. Oregon Says I Do and Oregon United for Marriage seek leave to appear as *amici curiae* to set forth how the timing of the Court's decision impacts the campaign and all Oregonians.

Movants' Interest: Oregon Says I Do is a Petition Committee under Or. Rev. Stat. § 260.005(17) and Or. Rev. Stat. § 260.118. Oregon Says I Do is in the process of collecting signatures to qualify the Initiative for the November 2014 ballot. Oregon United for Marriage is a non-profit organization, organized under 26 U.S.C. § 501(c)(4), and registered with the Oregon

Secretary of State. Oregon United for Marriage is comprised of a broad coalition of individuals and entities, including: business, labor, progressive, and nonpartisan organizations; communities of color; people of faith; current and former elected officials; students; business and community leaders; and, members of various political parties. If the Initiative qualifies for the ballot, Oregon United for Marriage will form a political committee to fund and run the political campaign in support of the Initiative. Declaration of Mike Marshall in Support of Oregon Says I Do and Oregon United for Marriage's Motion for Leave to Appear as *Amici Curie* in Support of Plaintiffs' Motions for Summary Judgment and *Amici Curiae* Memorandum at ¶ 3.

Why an *amici curiae* memorandum is desirable and relevant: An *amici curiae* memorandum is desirable and relevant because Oregon United for Marriage and Oregon Says I Do can demonstrate to the Court that the timing of the Court's ruling on Plaintiffs' Motions will determine whether the Initiative will go before the voters. If a ruling providing same-sex couples the right to marry comes soon enough – before May 23, 2014 – then Oregon Says I Do will not submit signatures to the Oregon Secretary of State to qualify the Initiative for the November 2014 ballot, and Oregon United for Marriage will not proceed with the subsequent political campaign. However, if a ruling is delayed, then the Initiative campaign may go forward.

Oregon United for Marriage and Oregon Says I Do file herewith their proposed *amici curiae* memorandum in support of Plaintiffs' Motions for Summary Judgment.

AMICI CURIAE MEMORANDUM

I. INTRODUCTION

The date the Court issues its decision on Plaintiffs’ pending summary judgment motions (“Plaintiffs’ Motions”) may determine whether the Oregon electorate is asked to vote to amend Oregon’s Constitution. Oregon is one of 29 states with a constitutional provision that prohibits same-sex marriage.¹ Oregon United for Marriage and Oregon Says I Do (collectively “Oregon United for Marriage”) are leading the campaign in support of Oregon Initiative Petition No. 8 (2014), the Freedom to Marry and Religious Protection Initiative (the “Initiative”). The Initiative would eliminate Oregon’s constitutional same-sex marriage ban and provide full rights and responsibilities of civil marriage to same-sex couples.² A timely decision from the Court could render the Initiative unnecessary and spare all Oregonians the cost, expense and emotional strain of a difficult election fight.

Oregon United for Marriage’s goal is to obtain marriage equality for all Oregonians by the most expeditious means possible. In February 2013, when the campaign kicked off its efforts to qualify the Initiative for the ballot, it was unclear whether discriminatory marriage prohibitions such as Oregon’s could survive challenge under the United States Constitution. A statewide initiative appeared to be the most efficient and effective way to obtain marriage

¹That prohibition is found in Article XV, section 5(a) of the Oregon Constitution. Article XV, section 5(a) was added to the Oregon Constitution by Initiative Petition, Measure 36, in the 2004 General Election.

²A copy of the Initiative is attached to the Declaration of Steven C. Berman in Support of Oregon Says I Do and Oregon United for Marriage’s Motion for Leave to File *Amici Curiae* Memorandum in Support of Plaintiffs’ Motion for Summary Judgment and *Amici Curiae* Memorandum (“Berman Dec.”) as Exhibit 1.

equality in Oregon. However, in the past year, a series of federal court decisions has clarified that Oregon's same-sex marriage ban cannot survive federal constitutional scrutiny.

Accordingly, an election on whether to allow same-sex marriage in Oregon may be unnecessary.

The campaign to qualify and pass the Initiative will be difficult and expensive, and the outcome of an election is uncertain. Lesbian, gay, bisexual and transgender ("LGBT") individuals and their families' basic civil liberties are at stake. The emotional toll of an election would be immeasurable. Oregon taxpayers will incur significant costs associated with conducting the election. No one gains from a potentially unnecessary election on a fundamental human right.

The timeline for the Initiative campaign is tight. Under Oregon law, signatures to qualify the Initiative may be submitted to the Secretary of State by May 23, 2014, and all signatures must be submitted to the Secretary of State by July 3, 2014. Once qualification signatures are submitted, the Initiative cannot be withdrawn, even if the Court subsequently determines that Oregon's same-sex marriage ban is unconstitutional.

The Court has the power to spare Oregonians the anxiety, conflict, uncertainty and costs of an election on marriage equality. The federal courts have long been the guardians of civil rights in this country, and this case is no exception. The Court can grant marriage equality sooner than Oregonians can achieve it through the Initiative. If the Court grants Plaintiffs' Motions in advance of the legal deadlines for submitting signatures, the campaign will be able to withdraw the Initiative. The Court can provide Plaintiffs the legal relief to which they are entitled, and spare the LGBT community, its allies, and Oregon the tremendous monetary and emotional costs inherent to a civil rights ballot initiative campaign.

Amici curiae recognize the burdens that this case and their request for speedy resolution place on the Court. The legal issues are demanding and extremely important. Civil liberties and fundamental human rights merit serious judicial contemplation and review. Fortunately, recent federal court decisions offer meaningful guidance, plaintiffs' counsel filed detailed memoranda in support of their motions, and defendants also have filed detailed memoranda in which they agree that Oregon's same-sex marriage ban and related statutes are unconstitutional. Oregon United for Marriage believes that those factors provide the Court the necessary information to reach a well-reasoned but swift determination that Oregon's constitutional same-sex marriage prohibition and statutes that exclude same-sex couples from marriage violate the Constitution of the United States.

II. STATEMENT OF CONSENT OF THE PARTIES

Counsel for Plaintiffs and Defendants have each given their consent for Oregon United for Marriage to appear in this case as *amici curiae*.

III. STATEMENT OF AUTHORSHIP

This brief was authored by Steven C. Berman and Nadine A. Gartner, counsel for Oregon United for Marriage. No party or other person provided money that was intended to fund the preparation or submission of this brief.

IV. STATEMENT OF INTEREST

Oregon United for Marriage is a broad coalition of individuals and organizations working to win the freedom to marry for same-sex couples in Oregon. Oregon United for Marriage believes that marriage and family are about love and commitment, working together, bettering the community, raising children, and growing old together. Oregon United for Marriage further

believes that allowing marriage licenses for same-sex couples strengthens families and strengthens Oregon. Declaration of Mike Marshall in Support of Oregon Says I Do and Oregon United for Marriage’s Motion for Leave to Appear as *Amici Curiae* in Support of Plaintiffs’ Motions for Summary Judgment and *Amici Curiae* Memorandum (“Marshall Dec.”) at ¶ 4.

The Court’s ruling on Plaintiffs’ Motions directly impacts Oregon United for Marriage and its campaign in support of the Initiative. If the Court grants Plaintiffs’ Motions and same-sex couples have immediate access to civil marriage, the Initiative will become unnecessary. However, once the campaign submits the signatures required to qualify the Initiative for the November 4, 2014 general election, the Initiative will appear on the ballot, regardless of the Court’s ruling on Plaintiffs’ Motions. In other words, after signatures are submitted, the campaign loses the ability to withdraw the Initiative and will have to pursue the campaign no matter what the Court decides. Marshall Dec. at ¶ 5.

V. ARGUMENT

A. Oregonians Should Not Face Further Delay in Obtaining Marriage Equality.

Marriage is a basic human right that should not be denied to anyone. “The right to marry is of fundamental importance for all individuals.” *Zablocki v. Redhall*, 434 U.S. 374, 384 (1978). That right encompasses the freedom to marry the partner of one’s choosing. *See generally Loving v. Virginia*, 388 U.S. 1, 12 (1967) (anti-miscegenation laws violate due process). The Supreme Court has recognized that marriage involves one of “the most intimate and personal choices a person may make in a lifetime.” *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (internal quotation marks omitted; citation omitted). The right to marry is “central to personal dignity and autonomy . . . central to the liberty protected by the Fourteenth

Amendment.” *Id.* (internal quotation marks omitted; citation omitted). “Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.” *Id.* In its last term, the Supreme Court held that restricting the federal definition of marriage to only heterosexual unions was unconstitutional and invalidated the Defense of Marriage Act. *United States v. Windsor*, ___ U.S. ___, 133 S. Ct. 2675 (2013). District courts around the country subsequently have declared unconstitutional same-sex marriage prohibitions and have enjoined states from continuing to apply those prohibitions.³

As is set forth in Plaintiffs’ Motions, Oregonians in same-sex relationships cannot legally marry in Oregon. Oregon United for Marriage came into existence to pursue the Initiative to remedy that injustice. However, the Initiative (if it qualifies) would not be voted on until November 2014, and the outcome of the election is uncertain. The Court has the authority to deliver justice much more swiftly and without the uncertainty inherent in an election. By granting Plaintiffs’ Motions, the Court can end the current discrimination against same-sex couples immediately. *See Lee v. Orr*, 2014 WL 683680 at *2 (N.D. Ill. Feb. 21, 2014) (“[t]here

³*See, e.g., Tanco v. Haslam*, 2014 WL 997525 (M.D. Tenn. Mar. 14, 2014) (enjoining Tennessee from enforcing any law that bars recognition of the plaintiffs’ same-sex marriages); *De Leon v. Perry*, 2014 WL 715741 (W.D. Tex. Feb. 26, 2014) (enjoining enforcement of Texas’ ban on same-sex marriage); *Lee v. Orr*, 2014 WL 683680 (N.D. Ill. Feb. 21, 2014) (granting summary judgment in favor of the plaintiffs and declaring that Illinois’s ban on same-sex marriage violates the Equal Protection Clause); *Bostic v. Rainey*, 2014 WL 561978 (E.D. Va. Feb. 13, 2014) (finding Virginia’s law barring same-sex marriage or prohibiting Virginia’s recognition of lawful same-sex marriages from other jurisdictions unconstitutional and enjoining Virginia from enforcing such laws); *Bishop v. United States ex rel. Holder*, 962 F. Supp. 2d 1252 (N.D. Okla. 2014) (declaring that Oklahoma’s constitutional amendment barring same-sex marriage violates the Equal Protection Clause and permanently enjoining enforcement of that law); *Kitchen v. Herbert*, 961 F. Supp. 2d 1181 (Utah 2013) (declaring Utah’s constitutional amendment barring same-sex marriage unconstitutional because it denies the plaintiffs their rights to due process and equal protection, and enjoining the state from enforcing that law).

is no reason to delay further when . . . committed gay and lesbian couples have already suffered from the denial of their fundamental right to marry”). There is no reason that Plaintiffs and all other Oregonians in committed same-sex relationships should continue to be denied the right to marry or be asked to wait until after an election in November.

B. Oregon Law Requires the Campaign to Decide Whether to Proceed with the Initiative in the Near Future.

Oregon United for Marriage must submit signatures to qualify the Initiative no later than July 3, 2014 and, ideally, by May 23, 2014. An initiative petition cannot be withdrawn after the total number of signatures necessary to qualify for the ballot has been submitted to the Secretary of State. Or. Rev. Stat. § 250.029(2). *See also* Oregon Secretary of State, *2014 State Initiative and Referendum Manual* at 13 (so providing);⁴ Or. Admin. R. 165-014-0005(1) (designating the *2014 State Initiative and Referendum Manual* “as the procedures and forms to be used for the state initiative and referendum process”). In other words, once the signatures are submitted, there is no way to stop the process from continuing. If the Secretary of State determines that a sufficient number of valid signatures have been submitted, the Initiative will appear on the ballot.

Putting an initiative on a statewide ballot is a long and arduous process. Voter initiated measures may only appear on the ballots for general elections, which occur in November of even numbered years. Or. Const. art. IV, § 1(4)(c). An initiative to amend the Oregon Constitution must be signed by a number of qualified voters equal to at least eight percent of the total number of votes cast in the last gubernatorial election. Or. Const. art. IV, § 1(2)(c). For the 2014 election cycle, 116,284 signatures are required. *2014 State Initiative and Referendum Manual* at

⁴The *2014 State Initiative and Referendum Manual* is available on line at sos.oregon.gov/elections/documents/stateIR.pdf.

5. Signatures must be submitted at least four months prior to the election. Or. Const. art. IV, §§ 1(2)(e), 1(4)(a). For the 2014 cycle, the signature submission deadline is July 3, 2014. If signatures are submitted more than 165 days before the election at which a proposed initiative is to be voted on, the Secretary of State will conduct an early review of the signatures; “if the secretary determines that insufficient signatures have been submitted, but the deadline for filing signatures on the petition has not passed, the petitioners may submit additional signatures.” Or. Rev. Stat. § 250.105(4). May 23, 2014 is 165 days before the November 4, 2014 election and, accordingly, the deadline for early submission to determine whether Oregon United for Marriage has collected a sufficient number of signatures to qualify the Initiative for the November 4, 2014 ballot.

Oregon United for Marriage and its volunteers have undertaken extensive efforts to collect signatures for the Initiative. Signature collection for the Initiative began in earnest in July 2013, after the ballot title for the Initiative was approved by the Oregon Supreme Court. The campaign has used paid signature collectors, but the vast majority of signatures obtained to date have been collected by volunteers. Marshall Dec. at ¶ 7. In order to conserve financial and volunteer resources, the campaign has paused signature collection efforts pending the outcome of the Court’s ruling on Plaintiffs’ Motions. However, if the court rules against Plaintiffs or does not rule swiftly, then the campaign immediately will need to resume signature collection efforts. Specifically, the campaign will need to organize and sort the signatures it has obtained to prepare those collected signatures for submission. Oregon United for Marriage estimates it could take two to three weeks to prepare the signatures for submission. Marshall Dec. at ¶ 8.

Oregon United for Marriage cannot make an informed decision about how to proceed until the Court rules. Oregon United for Marriage does not want to pursue the Initiative if a court ruling renders a political campaign unnecessary. But, Oregon United for Marriage will not squander its work to date if the Court does not issue a timely ruling or an election is otherwise necessary. Marshall Dec. at ¶ 13.

The May 23, 2014 initial submission deadline is significant for the campaign. Some of the signatories may have moved residences since signing the petition and not re-registered to vote, potentially disqualifying their signatures. The campaign intends to use the Secretary of State's early screening process to review the signatures and cure possible deficiencies. If the campaign files signatures on May 23, 2014, the Secretary of State will process the signatures within a couple of weeks. This means that, by mid-June, the campaign will know whether it has sufficient valid signatures for the Initiative to qualify; if it does not, then the campaign will have additional time, through July 3, 2014, to obtain additional signatures. Marshall Dec. at ¶¶ 9-10.

Oregon United for Marriage does not intend to pursue the Initiative if the Court grants Plaintiffs' Motions and same-sex couples are able to legally marry in Oregon before the filing deadline passes. Marshall Dec. at ¶ 13. If the Court timely grants Plaintiffs' Motions, the campaign will be unnecessary. The financial and emotional costs associated with an election can be avoided.

C. An Initiative Campaign Will Be Expensive for Oregonians and Oregon Businesses.

Running a statewide campaign is costly in terms of money and labor. Oregon United for Marriage has been preparing for those expenses for months by raising funds and recruiting

volunteers. To date, more than 4,000 volunteers have worked on behalf of Oregon United for Marriage, and Oregon United for Marriage has over 10,500 donors. Marshall Dec. at ¶ 14.

Oregon United for Marriage has raised over \$2 million in support of the Initiative, and it will need to raise an additional \$10 million to run a successful campaign through November. Marshall Dec. at ¶ 15. Those funds have come from individuals, families and businesses. Oregonians are digging deeply into their personal finances in order to donate to the campaign. Money that could be spent on one's health care or a child's college tuition is instead being spent to protect that person's or family's legal rights.

Additionally, businesses across Oregon have donated and pledged hundreds of thousands of dollars in support of the Initiative. Those businesses represent all sectors of Oregon's economy and range from neighborhood shops to Fortune 500 companies. Marshall Dec. at ¶ 16. Oregon's business leaders recognize that marriage for same-sex couples would put Oregon businesses in the strongest, most competitive position to attract, recruit and retain the best and brightest employees, and to keep talent in the state. Eliminating the taint of discriminatory policies will help employers hire and retain the most qualified pool of employees and will encourage business to relocate to Oregon. Oregon business will benefit from speedy resolution of Plaintiffs' Motions.

D. A Ballot Initiative Costs the State and Taxpayers.

A statewide election on an Initiative has significant costs for the State of Oregon. The State, through the Office of the Secretary of State's Elections Division, administers elections, and prints and distributes voters' pamphlets. The Secretary of State does not maintain detailed information on the expenses associated with an election on a statewide initiative petition.

However, distributing voters' pamphlets and ballots to over 2 million registered voters, and subsequently tallying their votes, is not inexpensive.

E. Continued State Discrimination Adversely Impacts the LGBT Community and Particularly LGBT Youth.

Discriminatory state policies place members of Oregon's LGBT community at significant risk. "Recent research has shown that social policies negatively targeting gays and lesbians, including constitutional amendments banning same-sex marriage . . . are robust predictors of psychiatric morbidity among LGB adults." Mark L. Hatzenbuehler, Ph.D. and Katherine M. Keyes, Ph.D., *Inclusive Anti-bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth*, 53 J. Adolescent Health S21, S22 (2013) (footnotes omitted).⁵ Simply put, lesbian, gay and bisexual ("LGB") adults in states with same-sex marriage bans are more likely to suffer from mental illness than lesbian, gay and bisexual adults in states without such bans.

The impact of discriminatory marriage laws may be even more devastating on lesbian, gay and bisexual youth. According to a recent study, "the risk of suicide attempts was 20% higher among LGB youths living in communities characterized by lower support for gays and lesbians (*e.g.* counties with a lower density of same-sex couples and fewer schools with protective policies), compared with LGB youths living in more supportive communities." *Inclusive Anti-bullying Policies* at S24 (footnote omitted). In Oregon, suicide is the second leading cause of death for people aged 15-24 years old, and the attempted suicide rate of LGB youth is more than twice that of heterosexual youth. Oregon Health Authority, *Healthy People*

⁵A copy of Dr. Hatzenbuehler and Dr. Keyes' analysis is attached to the Berman Dec. as Exhibit 2.

2020: *Critical Indicators for Adolescents and Young Adults* (June 2012) at 1-2.⁶ In 2008, among eleventh graders in Oregon who attempted suicide once in the past year, about 2.5% identified as heterosexual whereas about 10% identified as lesbian, gay, or bisexual. *Id.* at 2. For those who attempted suicide two or more times, about 2% identified as heterosexual, about 22% identified as gay or lesbian, and about 12% identified as bisexual. *Id.*

There is a substantial “geographic variation” in the prevalence of suicide attempts by lesbian and gay adolescents. The more inclusive the setting, the less likely a lesbian or gay adolescent is to attempt suicide. In other words, suicide rates among lesbian and gay youth decrease in communities where inclusive measures are taken. *Inclusive Anti-bullying Policies*, at S24.⁷ When inclusive social policies are adopted, the potential for lesbian and gay youth suffering debilitating psychological harm is reduced. One simple, pragmatic way to lessen suicide attempts among lesbian and gay youth is to eliminate discriminatory laws.

Oregon’s same-sex marriage ban is a social policy that deprives Oregon’s LGBT community from the “status and dignity” that civil marriage confers. *Windsor*, 133 S. Ct. at 2689. *See also id.* at 2694 (“[r]esponsibilities, as well as rights, enhance the dignity and integrity of the person”); State Defendants’ Response to Motion for Summary Judgment [Dkt. #64] at 24-25 (discussing harm Oregon’s same-sex marriage ban causes children). There is a substantial risk that feelings of isolation and alienation experienced by LGBT individuals, and particularly

⁶A copy of the Oregon Health Authority’s report is attached to the Berman Dec. as Exhibit 3.

⁷For example, “[w]hereas 31% of lesbian and gay adolescents attempted suicide in counties where school districts were the least likely to adopt inclusive anti-bullying policies, only 17% attempted suicide in counties with the greatest proportion of school districts with inclusive policies.” *Inclusive Anti-bullying Policies*, at S24. Additionally, “peer victimization of all youth was also less likely to occur in counties with inclusive anti-bullying policies.” *Id.*

LGBT youth, are exacerbated by Oregon's constitutionally enshrined discriminatory marriage ban. For those individuals particularly at risk, time may be a life-determining factor. Enjoining Oregon's discriminatory policies may well prevent on-going mental harm to LGBT Oregonians.

F. Voting on a Group's Civil Rights Makes That Group Vulnerable and Divides Communities.

Vindicating civil rights at the ballot box comes with substantial social costs. If an election is the only way to obtain equal treatment under the law, then Oregon United for Marriage will so proceed. The LGBT community and its supporters will not sit idly by and allow this grave social injustice to continue indefinitely. The long-term harm that comes from ongoing discrimination is greater than the immediate harm that will occur during an election battle. However, the harm that will occur during an election battle is substantial, and the Court can prevent that harm by ruling swiftly on Plaintiffs' Motions.

Members of the LGBT community and their families pay a high emotional price when their basic civil rights are up for debate. "While a referendum might seem like a democratic way to decide a highly controversial issue, experience with past referenda on gay issues in other states shows a clear and disturbing down side to the process of voting on a group's civil rights."

Glenda M. Russell, *The Dangers of a Same-Sex Marriage Referendum for Community and Individual Well-Being: A Summary of Research Findings*, 7 *The Policy Journal for the Institute for Gay and Lesbian Strategic Studies* 1, 1 (June 2004).⁸

Voting on a group's civil rights brings out the hostile and extreme rhetoric that has become commonplace in the political arena, and that rhetoric damages all participants in the

⁸A copy of Dr. Russell's article is attached to the Berman Dec. as Exhibit 4.

debate. “The net effect of such rhetoric is the dissemination of misinformation that revives old prejudices and reinforces divisions within communities.” *The Dangers of a Same-Sex Marriage Referendum* at 2 (citation omitted). Supporters of an LGBT rights initiative are negatively, and often hostilely, portrayed by opponents. *Id.* LGBT people are dehumanized. “LGBT people, in particular, are rendered as the ‘other’ – objectified, disenfranchised, and ultimately treated as non-persons.” *Id.* at 2 (citation omitted). Children of LGBT adults encounter ridicule at school. *Id.* at 3. The effects on individuals are long-lasting. Citizens “in Colorado report continuing alienation and isolation more than ten years after a 1992 referendum on gay issues in that state.” *Id.* at 3 (citation omitted). Statewide votes on LGBT rights also can negatively impact the greater community. “Elections that call into question the rights of LGBT people create sharp divisions in communities.” *Id.* at 1. “In places where LGBT rights have become the focus of political debate, once-friendly neighborhood networks were disrupted and fear and hostility became more commonplace in communities.” *Id.* (citation omitted). The rhetoric and divisiveness surrounding the vote in Oregon on Measure 36 in 2004 was not a fluke.⁹ If the court rules quickly on Plaintiffs’ Motions, Oregon can secure marriage equality without the hostility surrounding a statewide election.

LGBT individuals suffer long-lasting harm from discriminatory state policies. The ballot box is one way to eliminate those policies, although the ballot box is far from ideal. LGBT individuals, families, their allies and the community are negatively affected when marriage equality is put to a statewide vote. There are, of course, circumstances where an election is the

⁹See Memorandum in Support of Motion for Summary Judgment [Dkt. #44] at 7-9 (discussing campaign in support of Measure 36).

only means available to change social policy. In those circumstances, the shorter-term consequences of an election (with a positive outcome) outweigh the longer-term consequences of allowing discriminatory policies to continue unabated. Although Oregon United for Marriage is responsible for bringing the Initiative to the public, that ballot measure has always been a means to an end. When the effort behind the Initiative began, holding a public vote seemed to be the best route to marriage equality. However, that is not necessarily the case now, because of recent clarification in federal law following the Supreme Court's decision in *Windsor*. Oregon United for Marriage will proceed with an election, if necessary. However, the Court can eliminate Oregon's unconstitutional discriminatory same-sex marriage ban and spare Oregon the burdens of an election by acting swiftly on Plaintiffs' Motions.

G. This Court Is Best Suited to Grant Same-Sex Couples Access to Marriage.

A statewide campaign to win the right to marry for same-sex couples would come at a great cost to Oregon individuals, businesses, communities, and the State. Moreover, the outcome of the election is uncertain.

“One of the court's main responsibilities is to ensure that individuals are treated equally under the law. Equal treatment of all individuals under the law is not merely an aspiration – it is a constitutional mandate.”

De Leon v. Perry, 2014 WL 715741 at *27 (W.D. Tex. Feb. 26, 2014). *Amici curiae* respectfully submit that the Court is best-suited to ensure immediately that same-sex couples are treated equally under the law.

VI. CONCLUSION

For the reasons stated above, *amici curiae* respectfully request that the Court grant Plaintiffs' Motions as soon as practicable.

DATED this 1st day of April, 2014.

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By: /s/ Steven C. Berman

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