

CATHERINA PARETO, <i>et al.</i> ,)	CASE NO. 2014-1661-CA-01
)	
Plaintiffs,)	
)	
v.)	
)	
HARVEY RUVIN, as Clerk of Courts of Miami-)	
Dade County, Florida, in his official capacity,)	
)	
Defendant.)	
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)	

The City of Miami Beach (“Miami Beach”) and City of Orlando (“Orlando”) (collectively, the “Cities”) respectfully move this Honorable Court for leave to file a brief as *amici curiae* in support of Plaintiffs in this case and for leave to present brief oral argument at the hearing on Plaintiffs’ Motion for Summary Judgment on July 2, 2014. In support of this motion, the Cities state as follows:

- (1) The Cities are Florida municipal corporations, organized and operating under the laws of the State of Florida.
- (2) The Cities' Mayors and Commissioners have resolved that discrimination against lesbian, gay, bisexual, and transgender ("LGBT") individuals is inimical to their citizens' health and welfare, detrimental to their efficiency and effectiveness as employers, and costs the Cities hard-earned tourism

revenue. Therefore, the Cities have a powerful interest and unique voice as to the issues before the Court.

- (3) In its June 3, 2014 Order, the Court directed that parties wishing to file *amicus curiae* briefs in support of the plaintiffs do so by June 10, 2014.
- (4) The Cities were unable to comply by this deadline because their respective governing bodies were required to vote at publicly noticed meetings to submit an *amicus curiae* brief in this case. To that end, the Miami Beach City Commission voted on June 11, 2014 at its regularly scheduled meeting, and the City of Orlando Council voted on June 23, 2014 at its regularly scheduled meeting, to submit the proposed brief to aid the Court by setting forth the very real harm to Florida cities of marriage inequality.
- (5) The Cities respectfully request that the Court grant them leave to tardily submit the proposed brief.
- (6) The proposed brief is attached as Exhibit A.
- (7) The Cities also request that they be permitted to make brief oral argument at the hearing on Plaintiffs' Motion for Summary Judgment on July 2, 2014.

WHEREFORE, the Cities respectfully request leave of Court to file a brief in support of the Plaintiffs as *amici curiae*. The Cities additionally request leave of the Court to briefly present oral argument at the hearing on Plaintiffs' Motion for Summary Judgment, which is set for July 2, 2014.

Respectfully Submitted,

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

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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 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 (2014); *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

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).

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 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

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

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

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

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 effect 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

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

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

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, and 20 that 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

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 other 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

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

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

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

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 recognition locally.⁴⁷ Second, the Cities provide benefits to registered domestic partners of city employees.⁴⁸ Finally, Miami Beach reimburses the employee 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

<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.

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.

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

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. The Court should enter judgment in Plaintiffs' favor.

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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CERTIFICATE OF SERVICE

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

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