15-274

IN THE

Supreme Court of the United States

WHOLE WOMAN'S HEALTH; AUSTIN WOMEN'S HEALTH CENTER; KILLEEN WOMEN'S HEALTH CENTER; NOVA HEALTH SYSTEMS

(*Caption continued on inside cover*)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* NATIONAL CENTER FOR LESBIAN RIGHTS, GAY AND LESBIAN ADVOCATES AND DEFENDERS, EQUAL JUSTICE SOCIETY, NATIONAL BLACK JUSTICE COALITION, FAMILY EQUALITY COUNCIL, HUMAN RIGHTS CAMPAIGN, NATIONAL LGBTQ TASK FORCE, GLMA: HEALTH PROFESSIONALS ADVANCING LGBT EQUALITY, EQUALITY FEDERATION, SEXUALITY INFORMATION AND EDUCATION COUNCIL OF THE UNITED STATES, IMMIGRATION EQUALITY, NATIONAL HEALTH LAW PROGRAM, THE MOVEMENT ADVANCEMENT PROJECT, AND BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM IN SUPPORT OF PETITIONERS, URGING REVERSAL

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d/b/a Reproductive Services; Sherwood C. Lynn, Jr., M.D.; Pamela J. Richter, D.O.; and Lendol L. Davis, M.D., on behalf of themselves and their patients,

Petitioners,

—v.—

Kirk Cole, M.D., Commissioner of the Texas Department of State Health Services; Mari Robinson, Executive Director of the Texas Medical Board, in their official capacities,

Respondents.

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are the National Center for Lesbian Rights, Gay and Lesbian Advocates and Defenders, Equal Justice Society, National Black Justice Coalition, Family Equality Council, Human Rights Campaign, National LGBTQ Task Force, GLMA: Health Professionals Advancing LGBT Equality, Equality Federation, Sexuality Information and Education Council of the United States, Immigration Equality, National Health Law Program, Movement Advancement Project, and Bay Area Lawyers for Individual Freedom. *Amici* have substantial expertise related to governmental invocations of spurious scientific and health-related rationales to justify infringing upon the constitutionally protected liberties of vulnerable groups, including lesbian, gay, bisexual, and transgender (LGBT) people, people of color, women, and people with disabilities. Their expertise bears directly on the issues before the Court. Descriptions of individual *Amici* are set out in the Appendix.

SUMMARY OF ARGUMENT

The Constitution protects fundamental liberty interests that are essential to ordered liberty and belong to every person. Our history, however, is replete with attempts to exclude individuals and

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution to the preparation or submission of this brief. All parties have consented in writing to the filing of this brief.

groups from the full protection of those liberties, often based on health and safety-related rationales that lacked a substantial basis in science. Discrimination against African Americans and other historically excluded racial and ethnic minorities was grounded in pseudo-science well into the twentieth century. Similarly, LGBT people have been subjected to exclusion and discrimination on the basis of scientifically unsupported health-based rationales and just now are beginning to experience full protection of their liberties. Courts have played a vital role in subjecting these repressive laws to meaningful review and thereby advancing core constitutional values. However, when courts have abdicated that role and simply deferred to unsubstantiated public health and scientific claims, the principles of equal dignity and freedom have been compromised.

Great injury has resulted when liberty and rights are denied or trammeled by laws based on empirically indefensible rationales. For decades, governments in America used pseudo-science to justify oppressive statutes outlawing interracial marriage, restricting the freedom of women, and subjecting people with psychiatric and intellectual disabilities to forced sterilization. Until relatively recently, public entities have imposed with impunity draconian restrictions on the liberties of LGBT people, including criminal penalties on same-sex intimacy, blanket deportation policies, public employment bans, child custody prohibitions, and marriage bans. In each instance, unsupported public health claims and baseless sociological assertions were invoked to defend the denial of fundamental liberties.

In this case, the State of Texas has imposed arbitrary and unnecessary regulations on abortion providers, enacting measures that will result in the closure of most abortion clinics in the state and that will undermine, rather than advance, women's health. In defense of its restrictive policies, the State has cited public health concerns that lack a basis in scientifically valid evidence. Here again, this Court should not defer to the State's mere invocation of asserted health justifications. Rather, the Court should draw on the best traditions of our judicial history by meaningfully scrutinizing the State's asserted rationales for imposing such significant and harmful restrictions on the fundamental right to reproductive autonomy.

ARGUMENT

I. COURTS ARE CRITICAL GATEKEEPERS IN CAREFULLY ASSESSING THE VALIDITY OF ASSERTED RATIONALES FOR LAWS THAT RESTRICT CONSTITUTIONAL LIBERTIES.

When fundamental constitutional liberties are at stake, courts serve the vital function of carefully evaluating the asserted justifications for laws limiting such personal freedoms. That responsibility is just as strong, and the required scrutiny just as searching, when the government's justification for a restriction on liberty is based on an asserted interest in advancing public health or safety. Facially, such health-related objectives may be "perfectly legitimate," *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 643 (1974), but when a law restricts fundamental constitutional

rights, this Court has emphasized the need to carefully scrutinize the scientific basis for the restriction to determine "whether the rules sweep too broadly." *Id.* at 644 (holding that a public school policy requiring female teachers to take mandatory unpaid maternity leave in the final four or five months of pregnancy could not be justified based on an interest in keeping physically unfit teachers out of the classroom, on the ground that the policy "applies even when the medical evidence as to an individual woman's physical status might be wholly to the contrary"); *see also United States v. Virginia*, 518 U.S. 515, 549 (1996) (rejecting argument that Virginia Military Institute's males-only admission policy was justified based on different "learning and developmental needs" and "psychological and sociological differences" between men and women).

In this case, the State of Texas has imposed significant restrictions on women's ability to access abortion, requiring abortion providers to have admitting privileges at a hospital within 30 miles of the location where an abortion is performed and requiring abortion facilities to qualify as "ambulatory surgical centers." The restrictions are couched as public health measures, and the State has claimed that the requirements "raise the standard of care for all abortion patients" and "will improve the health and safety of women." Brief in Opposition to Petition for Writ of Certiorari at 2, *Whole Woman's Health v. Cole*, No. 15-274. However, mainstream professional medical and public health organizations have strongly opposed the requirements as medically and scientifically unwarranted. For example, contrary to the State's

claims, the American Public Health Association (APHA) has concluded that the law "jeopardizes the public health in Texas by imposing legislative constraints on access to safe and legal abortion with no public health or medical basis." Brief for the APHA as Amicus Curiae in Support of Petition for Certiorari at 4, *Whole Woman's Health v. Cole*, No. 15-274. The APHA has determined that far from advancing women's health, the restrictions have "create[d] a severe, immediate, and concrete risk to public health." *Id.* at 5.

Fulfilling its vital gatekeeping role, the district court in this case heard testimony from nineteen witnesses and concluded that the "great weight of the evidence" demonstrates that abortion in Texas is already very safe and that the challenged restrictions fail to protect the health or safety of Texas women. *Whole Woman's Health v. Lakey*, 46 F. Supp. 3d 673, 684 (W.D. Tex. 2014). The district court further concluded that the State's professed concerns about the safety of abortion in Texas were "largely unfounded and … without a reliable basis." *Id*. The Fifth Circuit reversed the district court on the grounds that the district court should have deferred to the State's asserted rationales and accepted them at face value, without assessing their validity. *Whole Woman's Health v. Cole*, 790 F.3d 563, 587 (5th Cir.). Characterizing the public health value of the restrictions as a matter of "medical uncertainty" based on the State's mere assertion of health-related justifications, the Fifth Circuit chastised the district for failing to defer to the legislature's "wide discretion." *Id.* at 585. Similarly, the State of Texas now urges this Court to hold that even where fundamental liberties are at stake, courts should not scrutinize the validity

of the state's health-related justifications but rather should limit their inquiry to whether "any conceivable rationale [for the law] exists." *Id.* at 587 (internal quotations omitted); Brief in Opposition to Petition for Writ of Certiorari at 15-16, *Whole Woman's Health v. Cole*, No. 15-274.

The *amici* who present this brief speak from experience about how individuals and groups—women, people of color, people with disabilities, and LGBT people—have suffered impermissible deprivations of liberty under such deferential judicial review of purportedly "scientific" rationales for oppressive laws.

Some of the most regrettable moments in our legal history have resulted when courts failed to examine and reject empirically indefensible claims asserted to justify infringing upon the protected liberties of disfavored or vulnerable groups. Courts have identified "conceivable rationale[s]" for anti-miscegenation laws, laws barring women from certain professions, forced sterilization of those deemed genetically "unfit," and criminalization of same-sex intimacy, even as those policies defied the established science and medical knowledge of their time. Only by undertaking a meaningful examination of the State's asserted public health rationales in this case can the Court give due weight to women's liberty and dignity and properly assess the validity of the State's restriction on access to a fundamental right.

II. THE REPEATED INVOCATION OF SCIENTIFICALLY UNSUPPORTED HEALTH AND SAFETY RATIONALES TO JUSTIFY LAWS THAT INFRINGED UPON THE PROTECTED LIBERTIES OF VULNERABLE GROUPS IN THE PAST UNDERSCORES THE NEED FOR MEANINGFUL JUDICIAL SCRUTINY OF TEXAS' RATIONALES IN THIS CASE.

A. Anti-Miscegenation Statutes Were Long Upheld on the Basis of Deference to States' Pseudo-Scientific Justifications.

Opponents of interracial marriage employed spurious science and unsupported public health rationales to justify prohibitions on marrying across racial and ethnic lines. For decades, courts across the country accepted such justifications of anti-miscegenation statutes without subjecting them to meaningful review, resulting in a string of shameful court decisions upholding anti-miscegenation laws on the force of patently erroneous biological and sociological claims. For example, in the late nineteenth century, an unnamed white woman was prosecuted in Missouri "for having intermarried with Dennis Jackson, a person having more than one-eighth part of negro blood." *State v. Jackson*, 80 Mo. 175, 175 (1883). The Missouri court deferred to the broad and "unquestionable" power of the state's political branches to regulate marriages within their jurisdiction. *Id.* at 178. The court took notice of the "well authenticated fact that if the issue of a black man and a white woman, and a white man and a black woman, intermarry, they cannot

possibly have any progeny....” *Id.* at 179. Citing no evidence for this remarkable assertion, the court concluded that “such a fact sufficiently justifies those laws which forbid the intermarriage of blacks and whites.” *Id.*

In many cases, eugenic ideology supplied a veneer of empiricism for social projects rooted in white supremacy. Eugenic theory counseled that miscegenation posed a biological threat by working harm to the bloodline and contaminating the white race. *See* Paul A. Lombardo, *Medicine, Eugenics, and the Supreme Court: From Coercive Sterilization to Reproductive Freedom*, 13 J. Contemp. Health L. & Pol’y 1, 20-23 (1996). Many courts accepted this pseudo-scientific ideology, repeatedly upholding exclusionary laws on the basis of proponents’ spurious arguments about the “deteriorat[ion of] the Caucasian blood,” *Bowlin v. Commonwealth*, 65 Ky. 5, 9 (1867), and the “corruption of races,” *State v. Gibson*, 36 Ind. 389, 404 (1871).

In the mid-nineteenth century, the Supreme Court of Georgia upheld a statute “forever prohibit[ing] the marriage relation between the two races, and declar[ing] all such marriages *null* and *void*.” *Scott v. State*, 39 Ga. 321, 323 (1869) (emphasis in original). Citing no evidence, the court found: “The amalgamation of the races is not only unnatural, but is always productive of deplorable results. Our daily observation shows us, that the offspring of these unnatural connections are generally sickly and effeminate, and that they are inferior in physical development and strength, to the full-blood of either race.” *Id.* The court then concluded that Georgia’s anti-miscegenation law was “necessary and proper.” *Id.*

Similar eugenics-based rationales were offered in support of racial segregation laws. In *Berea Coll. v. Kentucky*, 211 U.S. 45, 58 (1908), the Court rejected a challenge brought by Kentucky's only racially integrated college to a state law mandating racial segregation in all schools in the state. Although not directly addressed in the Court's opinion, Kentucky's defense of the law relied extensively on rationales derived from the spurious field of so-called "anthropometrics"—the study of the physical characteristics of the races—including arguments about the presumed mental capacities of white and African-American students based on measurements of brain size. *See* Herbert Hovenkamp, *Social Science and Segregation before* Brown, 1985 Duke L.J. 624, 629-37.

Even where litigants directly challenged the principles of eugenic "science," courts frequently refused to exercise reasoned judgment in evaluating the states' asserted justifications. A federal court in Georgia stated that it would "not discuss the argument of defendants' counsel to the effect that the intermarriages of whites and blacks do not constitute an evil or an injury against which the state should protect itself." *State v. Tutty*, 41 F. 753, 762 (C.C.S.D. Ga. 1890). The court concluded—as the State of Texas urges with respect to the law at issue here—that such determinations fall exclusively "within the range of legislative duty," and that courts lack "the right or power to interfere." *Id.* at 762-63.

As late as 1955, the Supreme Court of Appeals of Virginia invoked the principles of eugenic pseudo-science in rejecting a challenge to the state's anti-miscegenation statute. An interracial couple, Han Say Naim and Ruby Elaine Naim, had

married in a neighboring state and returned to Virginia as husband and wife. *Naim v. Naim*, 197 Va. 80, 81 (1955). The court upheld the state's anti-miscegenation law against a constitutional challenge, finding that the state could regulate marriage in "the interest of the public health, morals, and welfare." *Id.* at 89. The court deferred to the state's judgment that prevention of the "corruption of blood" and the creation of "a mongrel breed of citizens" constituted legitimate public health goals. *Id.* at 89-90. This Court refused to review the Virginia court's decision, dismissing the appeal on the grounds that it was "devoid of a properly presented federal question." *Naim v. Naim*, 350 U.S. 985 (1956). It took eleven years before this Court reviewed Virginia's anti-miscegenation law and unanimously declared it unconstitutional. *Loving v. Virginia*, 388 U.S. 1 (1967).

A deep vein of paternalism courses through cases such as *Naim*, which rely on spurious science to deny individual liberty and rights. In *Naim,* the Virginia court denied the liberty of African Americans (and others) to make their own marriage decisions and simultaneously credited the proposition that that the denial of that liberty "[m]anifestly" advances "the peace and happiness of the colored race." 197 Va. at 84 (citing *Green v. State*, 58 Ala. 190, 195 (1877)). The notion that denying individual freedoms *benefits* the individuals who lose their liberty is recurrent in American legal history. *See*, *e.g.*, *State v. Jackson*, 80 Mo. at 176 (crediting the state's desire to "preserve the purity of the African blood" by "prohibiting intermarriages between whites and blacks"). Similarly, in this case, the State of Texas

claims that its abortion restrictions advance women's interests despite their manifest impact of eliminating safe and legal health care options and denying many women the right to make their own choices about their bodies and their destinies.

The California Supreme Court was the first to expose and squarely reject the specious public health and sociological arguments offered to justify anti-miscegenation laws. In a case still recognized for its thoughtful consideration of the empirical and moral arguments surrounding interracial marriage, the California Supreme Court rejected the pseudo-scientific justifications offered in defense of the state's anti-miscegenation statute. *Perez v. Lippold*, 32 Cal. 2d 711 (1948). The court found that "the categorical statement that non-Caucasians are inherently physically inferior is without scientific proof" and that environmental factors instead caused divergent sociological outcomes among Americans of different races. *Id.* at 722-23. The court rejected the language of "contaminat[ion]" advanced by proponents of the law and declined to credit the state's "blanket condemnation of the mental ability" of non-Caucasians. *Id.* at 722, 724. The court recognized the existence of reliable scientific evidence demonstrating that "the progeny of marriages between persons of different races are not inferior to both parents." *Id.* at 720. A concurring opinion did not mince words in rejecting the respondents' hollow resorts to public health in defense of the statute, holding that the law "cannot be considered vitally detrimental to the public health, welfare and morals," but rather represented a tool of "ignorance, prejudice and intolerance." *Id.* at 735 (Carter, J., concurring).

The court concluded that the anti-miscegenation statute "arbitrarily and unreasonably discriminat[ed] against certain racial groups" and could not withstand constitutional scrutiny. *Id.* at 732. The decision stands as a model of reasoned analysis in the face of a pseudo-scientific assault on our constitutional values.

Decades later, in *Loving,* the state of Virginia advanced familiar eugenic arguments in support of its anti-miscegenation statute, citing "authority for the conclusion that the crossing of the primary races leads gradually to retrogression and to eventual extinction of the resultant type unless it is fortified by reunion with the parent stock." Brief of Appellee, *Loving v. Virginia*, 388 U.S. 1 (1967) (No. 395), 1967 WL 93641, at *42. The state also urged the Court not to trouble itself with "conflicting scientific opinion upon the effects of interracial marriage, and the desirability of preventing such alliances, from the physical, biological, genetic, anthropological, cultural, psychological and sociological point of view." *Id.* at *41. Virginia asserted, as Texas does now, that it needed only to invoke some modicum of medical and scientific uncertainty, unsupported by substantial evidence, in order to justify its oppressive measures. Controversies about the scientific or medical value of a law, the State asserted, "are properly addressable to the legislature." *Id.*

This Court appropriately declined to abdicate its essential gatekeeping role in evaluating Virginia's statute. Instead, the Court subjected the statute to rigorous analysis, concluding that the law constituted no more than a series of "measures designed to maintain White Supremacy." *Loving*,

388 U.S. at 11. In soaring language that vindicates our most fundamental constitutional values, the Court held that "[u]nder our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State." *Id.* at 12.

Here, too, the Court has an obligation to fulfill its constitutional mandate by refusing to blindly defer to state policies that infringe upon basic human liberties. The Court must subject the justifications supplied by the State of Texas to meaningful review.

B. Unsupported Scientific Rationales Have Also Been Used To Justify Sex-Based Restrictions on Educational and Career Opportunities for Women.

Unsupported scientific and medical justifications have also been cited in support of laws that imposed gender-based restrictions on women's freedom to pursue educational and career opportunities of their choosing. As with race-based restrictions, the Court has subjected such rationales to more careful scrutiny over time and, in recent years, has invalidated laws that limit women's ability to pursue an education or earn a living based on asserted governmental interests in protecting women's health or recognizing purportedly "real" differences between the sexes. Frequently, such restrictions lacked a substantial basis in science, and instead served only to preserve and reinforce antiquated notions of "a wide difference in the respective spheres and destinies of man and woman." *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring) (upholding exclusion of women from the practice of law).

Laws imposing restrictions on women's freedom to work were once upheld based on specious assumptions about the unique capabilities and health and safety needs of women. In *Goesaert v. Cleary*, 335 U.S. 464 (1948), for example, this Court upheld a Michigan law that forbade a woman from becoming a licensed bartender unless she was the wife or daughter of the male owner of a licensed liquor establishment. The Court refused to subject the law to meaningful review, holding that the case involved "one of those rare instances where to state the question is in effect to answer it." *Id.* at 465. The Court declined to scrutinize the rationale that "bartending by women may, in the allowable legislative judgment, give rise to moral and social problems" and further deferred to State's presumed judgment "that the oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid without such protecting oversight." *Id.* at 466.

In other cases, and especially in recent times, this Court has carefully scrutinized laws that, in the name of health and safety, excluded women from opportunities that remained open to men. In *LaFleur,* 414 U.S. at 647-48, this Court struck down a rule requiring pregnant public school teachers to take mandatory unpaid maternity leave beginning no later than the end of the fourth or fifth month of pregnancy. The school district argued that the rule was justified in part by "the necessity of keeping physically unfit teachers out of the classroom." *Id.* at 643. In evaluating the "plethora of conflicting medical testimony," the Court observed that "[w]hile the medical experts in these cases differed on many points, they

unanimously agreed on one—the ability of any particular pregnant woman to continue at work past any fixed time in her pregnancy is very much an individual matter." *Id.* at 644-45. Because the maternity leave policy did not allow for medical determinations as to whether a particular teacher's health would be jeopardized by continuing to teach past the fourth or fifth month of pregnancy, the Court held that the restriction violated the Due Process by "employ[ing] irrebuttable presumptions that unduly penalize a female teacher for deciding to bear a child." *Id.* at 648. Such a restriction on the constitutionally protected liberty to bear children could not be justified because it applied "even when the medical evidence as to an individual woman's physical status might be wholly to the contrary." *Id.* at 644. *Cf. Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 198 (1991) (holding that employer policy barring fertile women, but not fertile men, from jobs involving potential lead exposure based on concerns about health impact on children violated Title VII of the Civil Rights Act of 1964, where the Court evaluated medical evidence and determined that it failed to support the policy's gender-based distinction).

In *United States v. Virginia,* the Court struck down Virginia Military Institute's males-only admission policy. 518 U.S. at 558. The State attempted to justify VMI's single-sex admissions rule in part by asserting that the rule was "'justified pedagogically,' based on 'important differences between men and women in learning and developmental needs,' 'psychological and sociological differences' Virginia describe[d] as

'real' and 'not stereotypes.'" *Id.* at 549 (quoting Brief for Respondents at 28). The Court held that even if such differences exist between men and women as groups, they could not justify a rule prohibiting all women, regardless of their individual capabilities and needs, from attending VMI: "[G]eneralizations about 'the way women are,' estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description." *Id.* at 550 (emphasis in original). In short, the Court carefully examined the State's asserted scientific justifications and determined that the single-sex admission policy did not significantly advance the purported objective of serving the differing educational needs of men and women.

In sum, as with racial restrictions, this Court in recent times has rejected scientific or health-related justifications for gender-based restrictions when careful review demonstrates that the restriction at issue does not sufficiently advance the State's asserted objective.

C. Until Recently, All Levels of Government in this Country Relied on Empirically Indefensible Social Science and Public Health Claims to Justify Forced Sterilization, Involuntary Institutionalization, and the Denial of Custody and Marriage Rights to Gay, Lesbian, Bisexual and Transgender People.

LGBT people have long borne the brunt of social policies justified by spurious social science and public health claims. States and municipalities

have drawn on pseudo-scientific sources to justify deprivations of the greatest magnitude directed at LGBT people and others deemed to have deviant or nonconforming sexual identities and practices. Prior to this Court's recent decisions striking down so-called "sodomy" laws and state and federal marriage bans, courts across the country repeatedly upheld homophobic laws at the local, state, and federal levels based on claims that lacked empirical credibility.

1. Courts Across the Country Routinely Upheld Draconian Measures Against LGBT People And Others Based on Unsupported Public Health and Scientific Justifications.

In the early twentieth century, champions of eugenic pseudo-science promoted forced sterilization of the "socially inadequate" as a means to improve society. They sought to cleanse the nation's gene pool of "the feebleminded, the insane, the criminalistic, the epileptic, … the blind, the deaf, [and] the deformed," among others. Lombardo, 13 J. Contemp. Health L. & Pol'y at 3. Proponents of eugenic ideology pursued their social program in the courts "in large measure by portraying their legal program as a public health initiative." *Id.* at 4.

The embrace of eugenics by many states notoriously led to the forced sterilization of Carrie Buck, a young woman in the custody of the Virginia State Colony for Epileptics and Feeble Minded. *Buck v. Bell*, 274 U.S. 200, 205 (1927). In a case subsequently cited at the Nuremberg trials

in defense of Nazi sterilization practices, the Court affirmed a state statute that provided for the forced sterilization of so-called "mental defectives," proclaiming that "experience has shown that heredity plays an important part in the transmission of insanity, imbecility, etc." *Id*. at 205-06; *see also* Michael G. Silver, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of A Shameful Era in United States History*, 72 Geo. Wash. L. Rev. 862, 871 (2004). The Court held, in haunting language, that the state properly possessed the authority to undertake forced sterilizations "in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring, or let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind." *Id*. at 207.

Many of the same eugenics-driven laws that propelled the forced sterilization of so-called "mental defectives" like Carrie Buck also authorized the sterilization, forced commitment, and criminal prosecution of LGBT people. In 1935, for example, the Governor of Alabama sought judicial guidance regarding the constitutionality of a law authorizing the involuntary sterilization of certain individuals. The act provided for the sterilization of individuals in mental hospitals who were deemed to be "afflicted with mental disease which may have been inherited or which ... is likely to be transmitted to descendants, such as the various grades of mental deficiency, those suffering from perversions, [and] constitutional psychopathic personalities." *In re Opinion of the Justices*, 230 Ala. 543, 544 (1935). Included in the

broad scope of the act was "any sexual pervert, Sadist, homosexualist, Masochist, [or] Sodomist." *Id.* While the court advised the governor that the law failed to provide constitutionally sufficient procedural protections, the court stated in no uncertain terms that "[w]e do not doubt the police power of the state to provide for the sterilization of the subjects enumerated in the bill when the proper method is prescribed for the ascertainment or adjudication of their status...." *Id.* at 547.

Throughout the first half of the twentieth century, state statutes looked upon LGBT people as sexual psychopaths "whose social deviance appeared to elude traditional regulatory mechanisms." Susan R. Schmeiser, *The Ungovernable Citizen: Psychopathy, Sexuality, and the Rise of Medico-Legal Reasoning*, 20 Yale J.L. & Human. 163, 166 (2008); *see also* William N. Eskridge, Jr., *Laws and the Construction of the Closet: American Regulation of Same-Sex Intimacy, 1880-1946*, 82 Iowa L. Rev. 1007, 1059 (1997). Similarly, federal immigration and naturalization laws contained "psychopathic personality" provisions that were used to exclude LGBT people from this country on public health grounds. *See* Marc Stein, *Boutilier and the U.S. Supreme Court's Sexual Revolution*, 23 Law & Hist. Rev. 491, 508 (2005).

In response to this perceived threat to public health, states enacted draconian laws providing for the sterilization, involuntary commitment, forced treatment, and deportation of individuals deemed to be sexual deviants. A 1942 decision of the Michigan Supreme Court upheld the involuntary institutionalization of an adult male alleged to have "committed in private ... an act of gross indecency with another male person." *People*

v. Chapman, 301 Mich. 584, 593 (1942). In affirming the lower court decision, the court accepted the conflation of gay identity and pedophilia by two psychiatrists who had examined the petitioner and concluded that he "must be considered a distinct sexual menace and a source of serious concern in a free community not only because of his homosexual practices but also his psychosexual deviation is very likely to assume a much more ominous manifestation, that of pedophilia (the use of children as sexual objects)." *Id.* The court upheld the petitioner's involuntary institutionalization because "[t]here is little likelihood that his desire for sexual gratification by abnormal methods can be overcome soon and further activity of a similar nature may be expected if he is allowed freedom of access in a free community." *Id.*

The Michigan court conceded that the forced institutionalization statute was "not perfect." *Id.* at 607 (citation omitted). It was, however, "expressive of a state policy apparently based on the growing belief that, due to the alarming increase in the number of degenerates, criminals, feeble-minded and insane, our race is facing the greatest peril of all time." *Id.* Disinclined to assess the veracity of that "peril," the court simply concluded that "it is our duty to sustain the policy which the state has adopted." *Id.*

Two decades later, this Court endorsed the baseless and homophobic notion that LGBT people pose a threat to public health in affirming a deportation order against Clive Michael Boutilier, a Canadian man who confessed to "shar[ing] an apartment with a man with whom he had had homosexual relations." *Boutilier v. Immigration &*

Naturalization Serv., 387 U.S. 118, 120 (1967). Based on Mr. Boutilier's account of his sexual history, the Public Health Service determined that he was "afflicted with a ... psychopathic personality." *Id.* at 120. Deportation proceedings were instituted pursuant to a provision of the Immigration and Nationality Act excluding immigrants deemed to be "feeble-minded," "insane," or "afflicted with psychopathic personality." Brief for Respondent at 20-21, *Boutilier v. Immigration & Naturalization Serv.*, 387 U.S. 118 (1967) (No. 440), 1967 WL 113946, at *21. On appeal, the government defended the validity of the deportation proceedings by citing legislative history stating that the provision excluding individuals "afflicted with psychopathic personality or a mental defect ... is sufficiently broad to provide for the exclusion of homosexuals and sex perverts." *Id.* at *22. Despite the submission of statements from "an extraordinary collection of scientific experts, including Sigmund Freud, Alfred Kinsey, and Margaret Mead, who claimed that homosexuality was not, per se, a sign of psychopathology," the Court adopted the government's position and affirmed the deportation of Mr. Boutilier on the sole basis of his sexual orientation. Stein, 23 Law & Hist. Rev. at 511; *Boutilier*, 387 U.S. at 125. Only the dissent offered any resistance to the notion that "homosexual" persons were properly classified as psychopaths. *See id.* at 128 (Douglas, J., dissenting) (disputing that homosexuality is necessarily a form of psychopathy and calling for individualized assessments).

Even as the specter of sexual psychopathology began to fade, state legislatures continued to cast LGBT persons as posing a grave threat to public

health and safety. State legislatures enacted laws banning "homosexuals" from public employment, on the theory that allowing LGBT people to participate in the workforce would threaten the welfare and safety of society. Courts repeatedly deferred to state enactments of public employment bans, particularly in the area of education, in which states and localities frequently asserted that LGBT teachers would prey upon children or "convert" them into sexual deviants.

In *Sarac v. State Board of Education*, 249 Cal. App. 2d 58, 63 (1967), an appellate court upheld the revocation of a gay teacher's professional credential on the grounds that "[h]omosexual behavior has long been contrary and abhorrent to the social mores and moral standards of the people of California as it has been since antiquity to those of many other peoples." *Id.* Invoking the conflation of gay identity and pedophilia and observing the teacher's "necessarily close association with children in the discharge of his professional duties as a teacher," the court deferred to the state's asserted interest in protecting children. *Id.* at 63-64. In reaching that conclusion, the court failed to cite, observe, or demand any evidence that rates of pedophilia were higher among LGBT persons than among heterosexual persons, or that the particular teacher in question had any history of pedophilia. The court concluded that the revocation of the petitioner's teaching credential raised no "constitutional questions whatsoever." *Id.* at 64; *see also Gaylord v. Tacoma Sch. Dist. No. 10*, 88 Wash. 2d 286, 297 (1977) (upholding the termination of a gay high school teacher and citing with alarm the "danger of encouraging ...

approval and ... imitation" of homosexuality among students).

Courts continued to regard being gay, lesbian, or bisexual as dangerous and socially deviant long after "homosexuality" was removed from the Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1973. *See* Ryan Goodman, *Beyond the Enforcement Principle: Sodomy Laws, Social Norms, and Social Panoptics*, 89 Cal. L. Rev. 643, 725 (2001). That year, the American Psychiatric Association formally declared that being gay, lesbian, or bisexual "does not constitute a psychiatric disorder" and "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Brief of the American Psychiatric Association et al. as Amicus Curiae, *Romer v. Evans*, 517 U.S. 620 (1996) (No. 94-1039), 1995 WL 17008445, at *3. Despite the growing scientific consensus that being gay, lesbian, or bisexual is not an illness or a disorder that can or should be changed, states continued to enact oppressive and punitive statutes directed at LGBT people. Time and again, the courts dispensed with a critical assessment of the evidence cited by the states, instead endorsing sources that lacked any indicia of scientific methodology or credibility.

The idea that LGBT people represent a unique and potent threat to youth also extended into the private sphere, leading to laws prohibiting LGBT people from adopting children and to widespread court decisions denying custody to LGBT parents. Appellate courts frequently upheld these discriminatory policies without undertaking a reasoned analysis of the justifications supplied by the states as a veneer for the laws' homophobic purposes. For example, in *Lofton v. Secretary of Department*

of Children and Family Services, the Eleventh Circuit upheld a Florida state law banning adoption by any "homosexual" person. 358 F.3d 804, 806 (11th Cir. 2004). The court acknowledged the "social science research and the opinion of mental health professionals and child welfare organizations ... that there is no child welfare basis for excluding homosexuals from adopting." *Id*. at 824. Nonetheless, the court held that the state need not base its policy on evidence, finding the presumed superiority of opposite-sex parents "to be one of those 'unprovable assumptions' that nevertheless can provide a legitimate basis for legislative action." *Id*. at 819-20 (citation omitted); *see also id*. at 825 ("[W]e must credit any conceivable rational reason that the legislature might have for choosing not to alter its statutory scheme in response to this recent social science research.").

In *Ex Parte J.M.F.*, 730 So. 2d 1190 (Ala. 1998), the Alabama Supreme Court upheld a decision to remove custody from a child's mother solely on the grounds that she was a lesbian. In so doing, the court acknowledged that a "number of scientific studies as to the effect of child-rearing by homosexual couples ... suggest[] that a homosexual couple with good parenting skills is just as likely to successfully rear a child as is a heterosexual couple." *Id*. at 1195. The court nonetheless held that it was reasonable for the trial court to have deferred to the conclusion of a single report by a law professor who had long advocated against marriage and parenting by same-sex couples. *Id*. at 1196; *see also* Carlos A. Ball and Janice Farrell Pea, *Warring with Wardle: Morality, Social Science, and Gay and Lesbian Parents*, 1998 U. Ill. L. Rev. 253, 338 (1998).

In some cases, courts deemed even rank speculation sufficient to support the removal of children from the custody of their LGBT parents. For example, a Kentucky appeals court relied on the admitted speculation of a psychologist to reverse a lower court's decision that had allowed a lesbian mother to retain custody of her child. *S v. S*, 608 S.W.2d 64, 66 (Ky. Ct. App. 1980). The court credited the psychologist's contention that despite the absence of any actual data on the issue, "it [was] reasonable to suggest that [the child] may have difficulties in achieving a fulfilling heterosexual identity of her own in the future." *Id.*; *see also Ward v. Ward*, 742 So. 2d 250, 252-54 (Fla. Dist. Ct. App. 1996) (concluding that child's "problematic behavior," such as wearing men's cologne, demonstrated that she was being harmed by living with lesbian mother and awarding custody to the father, who had been convicted of murdering his first wife).

2. Courts Increasingly Repudiate Unsupported Claims in Assessing Laws That Restrict the Fundamental Liberties of LGBT People.

In contrast to this history of deference to prejudice and stereotypes, courts in recent years have subjected governmental justifications for infringing upon the liberty of LGBT people to meaningful review. This Court, in particular, has robustly upheld the constitutional liberties of LGBT people by declining to accept the empirical fallacies on which past cases have relied.

In *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court declined to defer to the state's asserted

justifications for restricting the liberty of LGBT people. In overturning *Bowers v. Hardwick*, 478 U.S. 186 (1986), and striking down a Texas statute criminalizing same-sex intimacy, the Court repudiated its past failure to question the premises on which *Bowers* had relied. The Court critiqued "the historical grounds relied upon in *Bowers*" as "more complex than the majority opinion and the concurring opinion [in *Bowers*] ... indicate." *Id.* at 571. In a powerful vindication of the courts' gatekeeping responsibility, the Court lamented its past failure to "take account of other authorities pointing in an opposite direction" from those cited in *Bowers*. *See id.* at 572. The decision represents not only a watershed defense of constitutional liberty, but also a commanding call upon courts to employ greater rigor in analyzing laws that abridge the fundamental freedoms of historically disfavored groups. *See also Romer v. Evans*, 517 U.S. 620, 635 (1996) (striking down state constitutional amendment prohibiting state and local anti-discrimination protections for LGBT people because "[t]he breadth of the amendment is so far removed from [the] particular justifications that we find it impossible to credit them").

More recently, this Court squarely confronted the unsupported social science rationales advanced to support federal and state laws excluding same-sex couples from the freedom to marry. In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the Court affirmed the Second Circuit's judgment that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional. In defense of DOMA, Respondent Bipartisan Legal Advisory Group of the U.S. House of Representatives (BLAG) made a litany of social science and public health claims

about the protection of children, asserting that "a child's biological mother and father are the child's natural and most suitable guardians and caregivers." Respondent's Brief on the Merits, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12-307), 2013 WL 267026, at *47. In a familiar pattern, BLAG also defended the law on the basis of asserted scientific uncertainty, arguing that there was "ample room for a wide range of rational predictions about the likely effects" of recognizing the marriages of same-sex couples, and that such uncertainty counseled against judicial involvement. *Id*. at *42. In *Windsor*, as in this case, professional public health and sociological associations weighed in strongly and unequivocally: "[T]he claim that same-sex parents produce less positive child outcomes than opposite-sex parents ... contradicts abundant social science research." Brief for the American Sociological Association (ASA) as Amicus Curiae, *United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12-307), 2013 WL 4737188, at *3. Citing "nationally representative, credible, and methodologically sound social science studies," the ASA concluded that "the overwhelming scientific evidence shows clearly that same-sex couples are equally capable of generating positive child outcomes." *Id*. at *4, *6. The ASA took BLAG's unsupported social science claims head on, observing that the respondent "rel[ied] on studies analyzing, inter alia, stepparents, single parents, and adoptive parents—none of which address same-sex parents or their children—in order to make speculative statements about the wellbeing of children of same-sex parents" and concluding that "[s]uch inappropriate, methodologically baseless comparisons provide no factual support" for BLAG's contentions. *Id*. at *22. This Court credited the

professional organizations and the social science consensus regarding same-sex parenting, finding not only that the federal government's refusal to recognize the marriages of same-sex couples "impose[s] a disadvantage, a separate status, and so a stigma" on same-sex relationships, but also that it "humiliates tens of thousands of children now being raised by same-sex couples" and "makes it … more difficult for [them] to understand the integrity and closeness of their own family." *Windsor*, 133 S. Ct. at 2693-94.

The Court's recent decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), similarly repudiates erroneous, outdated, and irrelevant rationales for denying same-sex couples the right to marry. There, this Court "exercised reasoned judgment" in identifying the human liberty interests at stake in marriage bans and evaluating the countervailing arguments. *Id.* at 2598. The Court credited the scientific consensus that "sexual orientation is both a normal expression of human sexuality and immutable" and the social science demonstrating that marriage "affords the permanency and stability important to children's best interests." *Id.* at 2596, 2600. With respect to the respondents' sociological prediction that allowing same-sex couples to marry would "lead[] to fewer opposite-sex marriages," the Court determined that the respondents simply "have not shown a foundation for the conclusion that allowing same-sex marriage will cause the harmful outcomes they describe." *Id.* at 2606-07. Like *Lawrence* and *Windsor*, *Obergefell* advances our respect for fundamental individual liberties and also models the appropriate and essential role of the courts in critically examining public health and sociological

justifications offered to support abridgements of personal freedom.

In recent times, courts increasingly have played their rightful role in guarding against the use of pseudo-science to harm historically vulnerable groups. They have refused to permit states and other public entities to use a mere assertion of scientific uncertainty, unsupported by substantial evidence, as carte blanche to abridge core individual liberties. Courts have demanded that lawmakers base laws on more than bias and paternalism. These decisions draw on the best traditions of our legal history.

D. These Historical Examples Illustrate the Vital Importance of Scrutinizing the State's Asserted Public Health Rationales in This Case.

This Court has recognized that the right to reproductive autonomy is fundamental and plays an essential role in securing women's ability to participate as equal members of our society. In order to fulfill its critical constitutional function of safeguarding fundamental liberties, this Court must reaffirm its precedents requiring courts to subject health-based rationales for regulating abortion providers to meaningful review. Statutes burdening rights so fundamental as a woman's decisional autonomy over whether to bear a child demand more than a toothless form of judicial review.

As this Court held in *Roe v. Wade*, 410 U.S. 113 (1973), and has affirmed in subsequent cases, the Fourteenth Amendment protects a woman's fundamental right to reproductive autonomy,

including the right to determine whether to carry a pregnancy to term. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992); *Gonzales v. Carhart*, 550 U.S. 124 (2007). In affirming that fundamental right, *Casey* explained that the freedom to make this intensely personal decision is central to women's liberty and dignity as equal persons and citizens: "Her suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and culture. The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society." 505 U.S. at 852. Similarly, in *Carhart*, the Court held that a law is invalid "if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." 550 U.S. at 146 (quoting *Casey*, 505 U.S. at 878).

Consistent with the importance of this fundamental right, this Court has required careful evaluation of laws that regulate abortion, regardless of whether the state seeks to justify the laws based on an asserted interest in protecting potential life or in protecting the health and safety of women seeking abortion. When reviewing such regulations, the Court has sought to ensure that they do not enforce paternalistic or otherwise impermissible gender-stereotypical understandings of women's capacities or societal roles. For example, in *Casey*, the Court rejected a spousal notice requirement on the grounds that the law reflected "a view of marriage consonant with the common-law status of married women but repugnant

to our present understanding of marriage and of the nature of the rights secured by the Constitution." 505 U.S. at 898. Moreover, as the Court noted in *Carhart*, "[t]he Court retains an independent constitutional duty to review factual findings where constitutional rights are at stake." 550 U.S. at 165.

With respect to abortion regulations that rest on an asserted interest in women's health, like those at issue in this case, the Court has held that courts must carefully scrutinize such laws to ensure that they actually serve health-related goals and do not simply obstruct women's access to abortion. "As with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion." *Casey*, 505 U.S. at 878. However, "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on that right." *Id*. Under this standard, courts must examine both a law's purpose and effect. To be constitutional, a regulation enacted for the asserted purpose of protecting women's health must actually do so. In contrast, a restriction enacted for the asserted purpose of protecting women's health is invalid if it is not supported by evidence of necessity or "serve[s] no purpose other than to make abortions more difficult." *Id*. at 901.

Appellate courts that have carefully reviewed health-justified restrictions similar to those at issue here, which single out abortion providers and subject them to burdensome regulations that are not imposed on providers who perform comparable medical procedures, have concluded that they do not further legitimate health-related

goals and undermine, rather than protect, women's health. Both the Seventh and Ninth Circuits have examined ostensibly health-related regulations that apply only to abortion providers and concluded that the laws in question lack a valid medical or scientific basis and actually undermine, rather than advance, women's health. *See Planned Parenthood Az. v. Humble*, 753 F.3d 905, 916 (9th Cir. 2014) ("Plaintiffs have introduced uncontroverted evidence that the Arizona law [requiring an outdated protocol for the administration of a medication used to perform abortion early in pregnancy] substantially burdens women's access to abortion services, and Arizona has introduced no evidence that the law advances in any way its interest in women's health."); *Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908, 921 (7th Cir. 2015) (concluding the purpose of Wisconsin's admitting privileges law was not to protect women's health, but rather "to discourage abortions by making it more difficult for women to obtain them").

In contrast, the Fifth Circuit's refusal to meaningfully examine the state's health-based rationales for the burdensome restrictions at issue in this case contravenes this Court's precedent and abdicates the judicial responsibility to subject health-based rationales to careful scrutiny, including a careful examination of whether such rationales are supported by medical and scientific evidence and actually further their stated goals of protecting health and safety. In this case, the district court undertook just such a careful review and determined—consistent with the findings of other courts that have carefully examined similar laws—that the Texas measures

at issue in this case do not have a sound medical basis and do not actually further women's health. *Whole Woman's Health v. Lakey*, 46 F. Supp. 3d 673 (W.D. Texas 2014).

CONCLUSION

Consistent with this Court's longstanding approach to reviewing restrictions on fundamental constitutional rights, and informed by our nation's unfortunate history of relying on spurious scientific and health-based rationales to justify oppressive measures that impermissibly curtailed the fundamental liberties of disfavored groups, the Court should reverse the judgment of the Fifth Circuit and reaffirm that state laws that impose health-justified restrictions on abortion providers require careful review.

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APPENDIX

LIST OF *AMICI*

National Center for Lesbian Rights

National Center for Lesbian Rights (NCLR) is a national legal nonprofit organization founded in 1977 and committed to advancing the rights of lesbian, gay, bisexual, and transgender (LGBT) people and their families through litigation, public policy advocacy, and public education. NCLR represented six plaintiffs in the 2015 cases before this Court that resulted in the recognition of marriage equality for same-sex couples. NCLR is cognizant of the dangers inherent in allowing health-related justifications that do not have substantial scientific support—such as those advanced in opposition to marriage equality—to be used to undermine the fundamental rights of disfavored groups. NCLR is dedicated to ensuring the rights of all people to reproductive and bodily autonomy, as well as access to essential reproductive health care services.

Gay and Lesbian Advocates and Defenders

Gay and Lesbian Advocates and Defenders (GLAD) works in New England and nationally to eradicate discrimination against LGBT people and people with HIV/AIDS from all communities, through litigation, public policy advocacy, and education. GLAD has participated in this Court, as well as other federal and state courts, as counsel or amici to address equal protection and due process issues.

Equal Justice Society

The Equal Justice Society (EJS) is transforming the nation's consciousness on race through law, social science, and the arts. A national legal organization focused on restoring constitutional safeguards against discrimination, EJS's goal is to help achieve a society where race is no longer a barrier to opportunity. Specifically, EJS is working to fully restore the constitutional protections of the Fourteenth Amendment and the Equal Protection Clause, which guarantees all citizens receive equal treatment under the law. EJS uses a three-pronged approach to accomplish these goals, combining legal advocacy, outreach and coalition building, and education through effective messaging and communication strategies. EJS's legal strategy aims to broaden conceptions of present-day discrimination to include unconscious and structural bias by using cognitive science, structural analysis, and real-life experience.

National Black Justice Coalition

The National Black Justice Coalition (NBJC) is a nonprofit, civil rights organization dedicated to the empowerment of black lesbian, gay, bisexual and transgender people and their families. NBJC envisions a world where all people are fully-empowered to participate safely, openly and honestly—in family, faith and community—regardless of race, class, gender identity or sexual orientation. NBJC advocates through its vast network of affiliates and members nationwide working to expand equality in our nation, including elected officials, clergy and media that

focus on black communities. Black people have historically suffered from discrimination, including many forms of discrimination justified by appeals to spurious "scientific" and eugenic rationales, and have turned to the courts for redress. NBJC has a strong interest in ensuring that courts faithfully perform their role of safeguarding individual liberties and equality by subjecting laws that restrict fundamental constitutional rights based on purportedly "scientific" rationales to careful review.

Family Equality Council

Family Equality Council, founded in 1979, is a national nonprofit, nonpartisan organization working on behalf of the 3 million parents who are lesbian, gay, bisexual, transgender and queer (LGBTQ) and their 6 million children across the country. Family Equality Council works to achieve social and legal equality for LGBTQ families by providing direct support, educating the American public, and advancing policy reform that ensures full recognition and protection for all families under the law at the federal, state and local levels. Family Equality Council is especially concerned with the ability of families—particularly women—to access safe, affordable, and competent reproductive health services, including abortions.

Human Rights Campaign

Human Rights Campaign (HRC), the largest national lesbian, gay, bisexual and transgender political organization, envisions an America where LGBT people are ensured of their basic equal

rights, and can be open, honest and safe at home, at work and in the community. Among those basic rights is freedom from discrimination and access to equal opportunity.

National LGBTQ Task Force

Since 1973, the National LGBTQ Task Force has worked to build power, take action, and create change to achieve freedom and justice for (LGBTQ) people and their families. As a progressive social justice organization, the Task Force works toward a society that values and respects the diversity of human expression and identity and achieves equity for all.

GLMA: Health Professionals Advancing LGBT Equality

GLMA: Health Professionals Advancing LGBT Equality (GLMA) is the largest and oldest association of LGBT healthcare and health professionals. GLMA's mission is to ensure equality in healthcare for LGBT individuals and healthcare professionals, using the medical and health expertise of GLMA members in public policy and advocacy, professional education, patient education and referrals, and the promotion of research. GLMA (formerly known as the Gay & Lesbian Medical Association) was founded in 1981 in part as a response to the call to advocate for policy and services to address the growing health crisis that would become the HIV/AIDS epidemic. Since then, GLMA's mission has broadened to address the full range of health concerns and issues affecting LGBT people, including by ensuring that sound science and

research informs health policy and practices for the LGBT community.

Equality Federation

Equality Federation is the strategic partner to state-based equality organizations advocating on behalf of LGBTQ people. Since 1997, we have worked throughout the country with our member organizations to make legislative and policy advances on critical issues including marriage, nondiscrimination, safe schools, and healthy communities.

Sexuality Information and Education Council of the United States

The Sexuality Information and Education Council of the United States (SIECUS) was founded in 1964 to provide education and information about sexuality and sexual and reproductive health. SIECUS affirms that sexuality is a fundamental part of being human, one that is worthy of dignity and respect. SIECUS advocates for the right of all people to accurate information, comprehensive education about sexuality, and access to sexual health services.

Immigration Equality

Immigration Equality is the nation's largest legal service provider for LGBT and HIV-positive immigrants. Each year, the organization provides legal advice to nearly 5,000 individuals and families, maintains an active docket of more than 550 immigration cases, and regularly appears in federal circuit courts as counsel or amicus curiae. Immigration Equality has focused on family recognition and health issues since its founding in

1994, with an emphasis on equal treatment for same-sex couples and ending discrimination against immigrants living with HIV.

National Health Law Program

Founded in 1969, the National Health Law Program (NHeLP) protects and advances the health rights of low-income and underserved individuals. NHeLP advocates, educates, and litigates at the federal and state levels to further its mission of improving access and overcoming barriers to quality health care, including sexual and reproductive health care. NHeLP seeks to ensure that affordable, quality health care is provided in accordance with evidence-based standards of care.

Movement Advancement Project

The Movement Advancement Project (MAP), founded in 2006, is an independent think tank that provides rigorous research, insight, and analysis that help speed equality for LGBT people. MAP focuses its work in three areas: policy and issues analysis, LGBT movement overviews, and providing effective messaging about the most important issues facing LGBT people.

Bay Area Lawyers for Individual Freedom

Bay Area Lawyers for Individual Freedom (BALIF) is a bar association of more than 600 LGBT members of the San Francisco Bay Area legal community. As the nation's oldest and largest LGBT bar association, BALIF promotes the professional interests of its members and the legal interests of the LGBT community at large.

To accomplish this mission, BALIF actively participates in public policy debates concerning the rights of LGBT individuals. BALIF frequently appears as *amicus curiae* in cases, like this one, in which it can provide valuable perspective and argument on matters of broad public importance.