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STURM COLLEGE OF LAW

Law professors file amicus brief to US Supreme Court on rights of children in same-sex marriage cases

University of Denver Sturm College of Law Professor Catherine Smith, Denver Law Clinical Fellow Lauren Fontana, Professor Tanya Washington of Georgia State University College of Law and Professor Susannah Pollvogt, Washburn University School of Law, filed an amicus brief in *Obergefell v. Hodges*, the same-sex marriage cases (four combined) out of the Sixth Circuit Court of Appeals. The United States Supreme Court will hear oral arguments on April 28.

“Supreme Court precedent establishes that the government may not punish children for matters beyond their control. Same-sex marriage bans and non-recognition laws (‘marriage bans’) do precisely this. The states argue that marriage is good for children, yet marriage bans categorically exclude an entire class of children – children of same-sex couples – from the legal, economic and social benefits of marriage.

Our amicus brief recounts a powerful body of equal protection jurisprudence that prohibits punishing children to reflect moral disapproval of parental conduct or to incentivize adult behavior. We then explain that marriage bans punish children of same-sex couples because they: 1) foreclose their central legal route to family formation; 2) categorically void their existing legal parent-child relationships incident to out-of-state marriages; 3) deny them economic rights and benefits; and 4) inflict psychological and stigmatic harm.

We argue that states cannot justify marriage bans as good for children and then exclude children of same-sex couples based on moral disapproval of their same-sex parents’ relationships or to incentivize opposite-sex couples to ‘procreate’ within the bounds of marriage. To do so, severs the connection between legal burdens and individual responsibility and creates a permanent class or caste distinction.”

The first paragraph of the brief:

"The Equal Protection Clause ‘is essentially a direction that all persons similarly situated should be treated alike.’ And yet state marriage bans and non-recognition bans patently violate this most fundamental understanding of the equal protection guarantee. The children of same-sex couples are *identically situated* to the children of opposite-sex couples in terms of their need for and entitlement to the family-supporting rights and benefits provided by the institution of marriage. By providing these benefits to one group of children while denying them to another, state marriage bans impose permanent class distinctions between these two groups of children, in essence penalizing the children of same-sex couples merely because their parents are of the same sex."

To read the brief in its entirety, please click [here](#).