IN THE SUPREME COURT OF THE STATE OF OREGON

MARY LI and REBECCA KENNEDY; STEPHEN KNOX, M.D., and ERIC WARSHAW, M.D.; KELLY BURKE and DOLORES DOYLE; DONNA POTTER and PAMELA MOEN; DOMINICK VETRI and DOUGLAS DeWITT; SALLY SHEKLOW and ENID LEFTON; IRENE FARRERA and NINA KORICAN; WALTER FRANKEL and CURTIS KIEFER; JULIE WILLIAMS and COLEEN BELISLE; BASIC RIGHTS OREGON; AND AMERICAN CIVIL LIBERTIES UNION OF OREGON,

Plaintiffs-Respondents, Cross-Appellants,

and

MULTNOMAH COUNTY,

Intervenor-Plaintiff-Respondent, Cross-Appellant,

v.

STATE OF OREGON; THEODORE KULONGOSKI, in his official capacity as Governor of the State of Oregon; HARDY MYERS, in his official capacity as Attorney General of the State of Oregon; GARY WEEKS, in his official capacity as Director of the Department of Human Services of the State of Oregon; and JENNIFER WOODWARD, in her official capacity as State Registrar of the State of Oregon,

Defendants-Appellants, Cross-Respondents,

and

DEFENSE OF MARRIAGE COALITION, CECIL MICHAEL THOMAS, NANCY JO THOMAS, DAN MATES, and DICK JORDAN OSBORNE,

Intervenors-Defendants-Appellants, Cross-Respondents.

Supreme Court
No. S51612

Court of Apeals
No. A124877

Multnomah County
Circuit Court
No. 0403-03057

BRIEF OF *AMICI CURIAE* AMERICAN FRIENDS SERVICE COMMITTEE, NATIONAL COALITION OF AMERICAN NUNS, UNITARIAN UNIVERSALIST ASSOCIATION, ALLIANCE OF BAPTISTS, JOAN L. BECK, DANIEL E.H. BRYANT, BARBARA CARNEGIE CAMPBELL, KAREN CROOCH, TIM CRUMP, DAVID DORNACK, JAN FAIRCHILD, MAURICE HARRIS, MARCIA HAUER, DAVID ISAIAH HEDELMAN, JEANNE KNEPPER, HECTOR LOPEZ, LYNNE SMOUSE LOPEZ, KAREN McCLINTOCK, CASEY MOFFETT-CHANEY, ELIZABETH OETTINGER, PENNY SENGER PARSONS, CHRISTINE RILEY, EMANUAL ROSE, KIM ROSEN, EUGENE ROSS, GLENNA T. SHEPHERD, ANTHONY C. THURSTON, TARA WILKINS, DANA WORSNOP, and JUDITH YOUNGMAN

October 14, 2004

BRIEF OF *AMICI CURIAE* AMERICAN FRIENDS SERVICE COMMITTEE, ET AL

Appeal from the Judgment of the Multnomah County Circuit Court
Honorable Frank Bearden, Judge

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INTEREST OF *AMICI CURIAE*

The *Amici* joining this brief are local, state, and national religious leaders and organizations with an interest in helping to clarify the distinction between civil and religious marriage. The *amici* offer special expertise in the area of religious marriage, but do not wish to press upon the court any particular religious view with respect to marriage or any opinion as to whether communities of faith should bless or decline to bless gay and lesbian marriages. Opinions on that issue are varied and evolving within the communities represented by these *amici.* Rather, *amici* wish to make two distinct points about religious freedom and autonomy. First, this court's application of Article I, section 20 of the Oregon Constitution to Oregon's marriage statute will not have any impact on the right of religious communities to determine for themselves which unions to recognize or which marriage ceremonies to perform. Second, the Oregon and Federal Constitutions prohibit any attempt by the State of Oregon to compel a religious community to give effect to a state-issued marriage license by playing host to a marriage ceremony or otherwise honoring a marriage validated and recognized by the State.

Because many *amici* have joined in a single brief, the interests of some individual and organizational amici are stated more fully in the Appendix to this brief. The national *amici* joining this brief are:

The American Friends Service Committee, a national organization founded by Quakers in 1917.

The National Coalition of American Nuns, an organization of approximately 500 Roman Catholic Nuns across the United States.

The Unitarian Universalist Association, a religious association of more than 1,000 congregations in the United States, including 20 in Oregon.

The Alliance of Baptists, an ecumenically-oriented association of individuals and some 120 congregations with an aggregate membership of more than 60,000 persons.

The *amici* joining this brief from around the State of Oregon are:

Joan L. Beck, Minister, Bethlehem Lutheran Church, Portland, Oregon

The Reverend Dr. Daniel E. H. Bryant, Christian Church (Disciples of Christ), Eugene, Oregon

The Reverend Barbara Carnegie Campbell, St. Mark Presbyterian Church, Portland, Oregon

The Reverend Karen Crooch, Pastor, Morningside United Methodist Church, Salem, Oregon

Tim Crump, Clerk, Multnomah Monthly Meeting of the Religious Society of Friends, Portland, Oregon

The Reverend David Dornack, Senior Pastor, Rose City Park Presbyterian Church, Portland, Oregon

Jan Fairchild, Pastor, Springfield Church of the Brethren, Springfield, Oregon

Rabbi Maurice Harris, Temple Beth Israel, Eugene, Oregon

The Reverend Marcia Hauer, United Methodist Church, Portland, Oregon

David Isaiah Hedelman, Minister, Congregational United Church of Christ, Klamath Falls, Oregon

The Reverend Dr. Jeanne Knepper, Pastor, University Park United Methodist Church, Portland, Oregon

The Reverend Dr. Hector Lopez, Conference Minister, Central Pacific Conference of the United Church of Christ

The Reverend Lynne Smouse Lopez, Ainsworth United Church of Christ, Portland, Oregon

The Reverend Dr. Karen McClintock, United Methodist Clergy, Psychologist at Samaritan Counseling Center of Southern Oregon

The Reverend Casey Moffett-Chaney, Senior Pastor, Portland Center for Spiritual Growth

Elizabeth Oettinger, Minister, United Church of Christ, Corvallis, Oregon

Peggy Senger Parsons, Pastor, Freedom Friends Church, Salem, Oregon

The Reverend Christine Riley, Unitarian Universalist Minister, Roseburg, Oregon

Rabbi Emanuel Rose, Senior Rabbi, Congregation Beth Israel, Portland, Oregon

Rabbi Kim Rosen, Associate Rabbi, Congregation Beth Israel, Portland, Oregon

The Reverend Eugene Ross, Conference Minister, Central Pacific Conference of the United Church of Christ

Rev. Glenna T. Shepherd, pastor, Metropolitan Community Church of Portland, Oregon.

The Very Reverend Anthony C. Thurston, Interim Rector, St. John's Episcopal Church, Milwaukie, Oregon

The Reverend Tara Wilkins, Director, Community of Welcoming Congregations

The Reverend Dana Worsnop, Atkinson Memorial Unitarian Universalist Church, Oregon City, Oregon

The Reverend Judith Youngman, Pastor, Zion United Church of Christ, Gresham, Oregon

STATEMENT OF THE CASE

Amici adopt Plaintiffs' Statement of the Case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The court's ruling in this case can and will have no effect on the right of religious communities to decide which unions they are willing to recognize or bless. That point is so straightforward, and so fundamental to our constitutional order, that it should go without saying. Unfortunately, much of the public discourse regarding marriage for same-sex couples has reflected a serious misunderstanding of the relationship between civil and religious marriage, and the constitutional line that inalterably divides them. *Amici* submit this brief to clarify the historical and religious principles that protect the integrity of the religious blessing of marriage – and will continue to do so regardless of any decision this court might issue.

The history is clear: civil and religious marriage are distinct institutions, and always have been. Since the enactment of Oregon's first marriage statute in 1854, civil marriage has been a largely contractual institution, created by and subject to the control of the state, and directed at secular purposes. Religious marriage, in contrast, is spiritual in nature and available on terms set by the faith tradition that blesses it.

Any rights and responsibilities it confers are enforceable—if at all—through the religious community's own structures of authority.

The state has respected the distinction between civil and religious marriage throughout Oregon's history. To the knowledge of *amici*, the state has never attempted to regulate the content of a religious marriage ceremony. Nor has it tried to dictate to faith communities the persons to whom, or the conditions under which, they *must* offer religious marriages or divorces.

Nor could the state control religious practice in such a manner. It is perhaps an understatement that the proper relationship between church and state frequently presents complex and difficult issues. But the bedrock principle that controls here is perfectly clear: the state has *no* authority to compel an unwilling religious leader or community to perform a religious ritual or grant a religious blessing. Accordingly, a holding by this Court that the state may not withhold the legal status and accompanying rights and responsibilities of civil marriage from same-sex couples while at the same time granting them to different-sex couples would have no impact on the ability of faith communities to decide for themselves what unions they are, and are not, willing to bless.

* * *

This brief has two parts. Part I begins by describing certain analytical distinctions between civil and religious marriage. It then traces the history of civil marriage in Oregon, demonstrating that this institution has always been secular in character and that the state has consistently respected the right of faith communities to

determine for themselves which persons may receive the religious blessing of marriage, the terms on which the blessing will be conferred, and how (as well as whether) the resulting spiritual unions may be dissolved. Part II discusses three reasons why a ruling in Plaintiffs' favor would not and could not affect faith communities' autonomy regarding religious marriage: this lawsuit is based upon a constitutional provision that applies only to "state actors," not private entities; experience in jurisdictions that recognize civil marriage for same-sex couples demonstrates that no one would seriously attempt to use state power to force unwilling religious officials or faith communities to marry such couples; and finally, even if someone made such an attempt, it would fail, because any such use of state power would be blatantly unconstitutional.

ARGUMENT

I. CIVIL AND RELIGIOUS MARRIAGE ARE SEPARATE INSTITUTIONS.

A. Civil and Religious Marriage Are Analytically Distinct.

Any suggestion that a decision in favor of Plaintiffs will undermine the sanctity of religious marriage necessarily rests on a false equation of two very different concepts: civil marriage, to which Plaintiffs ask this court to award them equal access; and religious marriage, to which they do not. Nothing in Plaintiffs' claim regarding the state institution of civil marriage has any bearing on marriages

performed and sanctioned by religious communities. Civil and religious marriage are entirely distinct concepts, springing from different sources of authority and aspiring to different ultimate purposes.

Civil marriage in Oregon is a wholly secular institution: it is a relationship created by, and subject to the control of, the state. *See* ORS 106.010 (setting forth requirements for civil marriage, and declaring "[m]arriage is a civil contract * * * ."). To be sure, certain features of civil marriage may have their *origins* in practices developed within certain religious traditions. *See, e.g.*, Mary Becker, *Family Law in the Secular State and Restrictions on Same-Sex Marriage: Two are Better than One*, 2001 U Ill L Rev 1, 29 (2001) (listing features of American civil marriage that have roots in Roman Canon law, such as the notion that "[m]arriage should begin with some sort of recognition of the union by an official," and that "[a] marriage is indissoluble except by a court, through either annulment or divorce"). In the context of modern civil marriage, however, those practices have been secularized through incorporation into civil law, and are part of the legal requirements for civil marriage only because they are mandated by statute. *See* ORS 106.010; *see also Loving v. Virginia*, 388 US 1, 7 (1969) (civil marriage "is a social relation subject to the State's police power").

The modern justifications for civil marriage are also resolutely secular in nature. In *Hawley v. Hawley*, 101 Or 649, 199 P589 (1921), for example, this court stated that the institution of civil marriage was in "the very highest public interest" because "[m]arriage [is] the source of population, of education, of domestic felicity."

101 Or 649, 653, 199 P 589, 590 (1921) (quoting *Westfall v. Westfall*, 100 Or 224, 197 P 271, 276 (1921)). Similarly, in *Guinn v. Guinn*, the court linked marriage with "the integrity of the family," which it in turn termed "basic to our American civilization." 188 Or 554, 561-562, 217 P2d 248, 252 (1950); *see also* Defs' Mem in Supp of Mot for Summ J 1:2-5 ("Marriage in the legal sense is a civil contract that carries with it secular benefits and protections defined in a wide variety of statutes.").[1]

Religious marriage, in contrast, is an institution ordained under the auspices of a particular faith tradition. The requirements for religious marriage are subject to the control not of the state, but rather of the authority structures native to the religion that blesses the marriage. *See, e.g.*, Leadership Council of Conservative Judaism, *Statement on Intermarriage*, Standards (1995), *available at* http://www.uscj.org/intmar/statement.html (describing restrictions on Conservative marriage). And though religious marriage may have certain intermediate social objectives, it is ultimately divine in orientation. *See, e.g.*, James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* 51 (1987) (Hebrew Scriptures see

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[1] It is true that Oregon permits religious officials to perform the solemnization ceremony that is necessary to create a civil marriage. *See* ORS 106.120(2) (c) and (d). As explained below, however, the participation of a religious official is not required, and such participation does not absolve a marrying couple of meeting the requirements of civil marriage set forth by the legislature. *See infra* pp 9-16. In any event, the state's decision to permit religious officials to help couples fulfill one of the statutory requirements for a civil marriage does nothing to alter the institution's fundamentally secular character. *See* ORS 106.041 (marriage license "*authorize[s]*" a particular "person, organization or congregation to join together as husband and wife the persons named in the license" (emphasis added)); ORS 106.170 (person solemnizing a marriage must file a report of the marriage with the county clerk, stating that he or she, "*by authority of a marriage license*," did "join in wedlock" the couple, "with their mutual assent, in the presence of" certain witnesses" (emphasis added)).

marriage as "an institution that served both the social purpose of continuing the family line and the religious destiny of perpetuating God's chosen people."); Catechism of the Catholic Church ¶ 1601, *available at* http://www.vatican.va/archive/ENG0015/__P51.HTM ("The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring; this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament."); *Marriage is Part of God's Plan*, Church of Jesus Christ of Latter-Day Saints, Official Website, *available at* http://www.mormon.org/learn/0,8672,1452-1,00.html ("Marriage between a man and a woman has been an integral part of God's plan from the beginning.").

B. The History of Civil Marriage in Oregon Confirms the Independence of Civil and Religious Marriage.

The history of civil marriage in Oregon confirms the distinction set forth above: from its inception, civil marriage has been a secular, contractual institution, separate and distinct from the divinely-oriented institution of religious marriage. At the same time, this history also reveals that the state has never attempted to limit the ability of faith communities to impose conditions on religious marriage that are far more restrictive than those established by the state for creating or dissolving civil marriages.

As has been noted, certain basic features of civil marriage have their origins in practices developed under religious law. *See* Becker, *Family Law*, 2001 U Ill L Rev

at 29. From the outset, however, the legislature declared its intention to make civil marriage a firmly secular relationship. Oregon's first marriage statute—enacted in 1854—plainly announced "[t]hat marriage, so far as its validity in law is concerned, is a *civil contract*." An Act Relating to Marriage and Divorce, ch I, § 1, *in Statutes of Oregon* p 536 (1855) (emphasis added). In keeping with that declaration, the 1854 law declared that "no particular form" of ceremony was required to solemnize a marriage (*id.* at § 6), made clear that participation of a religious official was not required (*see id.* at § 4 ("Marriages may be solemnized by any justice of the peace[,] * * * by any judge of a court of record, and by ministers of the gospel or such other person as may be authorized by any church.")), and even stated that, under some circumstances, no ceremony was needed at all (*see id.* at § 17 (granting legal recognition to all "[m]arriages contracted with the consent of the parties when the residence of the parties is remote from any person duly authorized to solemnize such marriage")).

At the same time as the 1854 marriage law disclaimed any religious significance of—or need for religious participation in—civil marriage, it also limited the sorts of relationships the state was willing to sanction and prescribed the steps a couple had to take to gain legal recognition of their marriage. Through these restrictions and requirements, the state made clear its intent to retain control over how and between whom a civil marriage contract could be created, and not merely to borrow the standards adopted by various religious groups for deciding when and how their members could receive the blessing of marriage, or recognize marriages

performed within particular religions as valid for civil purposes as well. *See Maynard v. Hill*, 125 US 190, 212 (1888) (civil marriage is "regulated and controlled by the sovereign power of the state"). Thus, for example, the 1854 legislation required parental consent for marriages by men under 21 and women under the age of 18 (ch I, § 5); ruled out any marriage by men under the age of 18 and women under the age of 15 (*id.* at § 2); and barred further marriages by persons with a living spouse and of couples "who are nearer of kin than first cousins (*id.* at § 3). To create a legal marital relationship normally required the attendance of "at least two witnesses present, besides the person performing the ceremony" (*id.* at § 6); the issuance of a certificate recording the names and residences of the parties, the time and place of the marriage, and the names and addresses of the witnesses (*id.* at § 7); and the filing of a record with, and the payment of a fee to, the recorder of deeds in the county where the marriage occurred (*id.* at § 8). *See also id.* at §§ 16, 18 (exceptions for marriages contracted by couples living in remote areas and "marriages solemnized among the people called 'Friends' or 'Quakers'").

Finally, the 1854 legislation also created a state-controlled process for voiding or terminating a marital contract and established the circumstances under which such abrogation could be obtained. Certain marriages were declared "absolutely void, without any decree of divorce, or other legal proceeding" (*see* ch II, § 1 (marriages between relatives and those where one of the parties was already married)), whereas others were made voidable under certain circumstances and upon petition to a court (*see id.* at §§ 2, 3 (marriages procured without consent, marriages by underage

persons)). The Act declared that "[d]ivorce from the bonds of matrimony may be obtained by complaint, under oath, to [one of the relevant] District Court[s]" and it established the permissible bases for obtaining such a decree. (*Id.* at § 5 (impotence, unforgiven adultery, willful desertion, conviction of a felony or other infamous crime, "[h]abitual or gross drunkenness," "[h]arsh and cruel treatment, or personal indignities," and "[v]oluntary neglect of the husband to provide the wife with a home and the common necessities of life").) As it had when setting standards governing the creation of a civil marital relationship, the legislature also made clear that it—and not any religious entity or borrowed religious text—would make the decisions about when and how such contracts, once entered into, would be terminated. Indeed, because "parties besides the contracting parties are interested in the marriage," the state was deemed "a necessary party in a divorce suit." *Nelson v. Stewart*, 110 Or 408, 415, 223 P 727, 730 (1924).

The institution of civil marriage has, of course, undergone great changes since 1854. By 1941, Oregon had radically reconfigured the common-law rules governing the legal rights and responsibilities of marital parties, by eliminating "[a]ll laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as existing as to the husband" and conferred upon wives "all civil rights belonging to the husband." ORS 108.010. Years before the United States Supreme Court held that states may not refuse to recognize marriages between persons of different races, *see Loving v. Virginia*, 388 US 1 (1969), the legislature enacted a statute granting legal recognition to such unions. *See* ORS 106.210; *see also*

Crawford v. Karr, 242 Or 259, 262, 409 P2d 330, 331 (1965) (describing repeal of anti-miscegenation legislation and enactment of ORS 106.210). And in 1971, Oregon followed a nationwide trend of moving to regime of no-fault divorce based on irreconcilable differences. *See* ORS 107.025; *see also Dunn v. Dunn*, 13 Or App. 497, 499-501, 511 P2d 427, 428 (1973) (describing enactment of Oregon's no-fault divorce law).

Throughout these and other changes, however, the state has retained for itself the power to decide which persons may obtain the status and benefits of civil marriage, and the manner in which such marital contracts may be created and dissolved. State law still deems marriage "a civil contact" (ORS 106.010), the minimum age for which is now 17 for both men and women (*id.*), with parental consent required for any party under 18 (ORS 106.060). Persons seeking to enter into a legally-recognized marriage must obtain a marriage license before any solemnization ceremony (ORS 106.041(1)), which requires them to complete a written application (ORS 106.041(3)), to pay the prescribed fee (ORS 106.045(1)), and, unless the requirement is waived, to wait three days (ORS 106.077). And, with a continuing exception for certain marriages deemed void as a matter of law (*see* ORS 107.005), parties to marital contract—whether voidable or valid—still require the involvement of a judicial officer to terminate their legal relationship. *See* ORS 107.036(4); ORS 107.115(1) and (2). *Cf.* H.A.R. Gibb, *Islam*, in *Encyclopedia of the World's Religions* 179 (R.C. Zaehner, ed. 1997) (noting that "several Koranic

passages" affirm the right of a Muslim man to divorce his wife "by mere declaration, without the intervention of any judicial authority").

At the same time as it has guarded its prerogative to define the contours of civil marriage, the state has recognized that communities of faith may impose far more restrictive standards on who may obtain the blessing of religious marriage, as well as how (or whether) that spiritual bond, once created, may be severed. To *amici*'s knowledge, the state has never attempted to dictate the content of a religious marriage ceremony. It has never tried to force religious leaders to preside over a marriage ceremony, or to force a place of worship to host one, even in situations where a faith community's reasons for refusing to bless or play host to a particular union would be clearly unconstitutional if adopted by the government.[2] Religious bodies remain free to require forms of pre-marital conduct not mandated by the state, including engagement ceremonies or counseling.[3] And—despite the "no-fault" divorce revolution that swept the country in the late 1960s and early 1970s, *see Dunn*, 13 Or

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[2] *See, e.g.,* Gibb, *Islam* at 179 (in traditional Islamic communities, a Muslim man may marry a Christian or Jewish woman, but a Muslim woman may only marry a Muslim man); Leadership Council of Conservative Judaism, *Statement on Intermarriage*, Standards (1995), *available at* http://www.uscj.org/ intmar/statement.html ("Rabbis and cantors affiliated with the Conservative Movement may not officiate at the marriage of a Jew to a non-Jew, may not co-officiate with any clergy, and may not officiate or be present at a purely civil ceremony."); http://www.mormon.org/learn/ 0,8672,1298-1,00.html (Church of Jesus Christ of Latter-Day Saints will not "seal" couples in its temples unless both "marriage partners [are] member[s] of the Church").

[3] *See, e.g*., Code of Canon Law, bk IV, pt I, tit VII, ch 1, Can. 1063(2), *available at* http://www.vatican.va/archive/ENG1104/__P3W.HTM (instructing priests to provide future spouses with "personal preparation to enter marriage, which disposes the spouses to the holiness and duties of their new state").

App at 499-501, 511 P2d at 428; ORS 107.025—Oregon has never purported to compel faith communities to permit religious divorce on a "no-fault" basis, or to grant religious recognition to the purely secular act of civil divorce. Instead, the terms on which religious divorce will be granted often have been and remain far more restrictive than those applied by the state under the "no-fault" regime. [4]

Just as the state has not tried to force faith communities to bless or terminate marital relationships against their will, it has also made no effort to stop them from conducting purely religious, non-legally binding celebrations of certain unions to which the state does not take legal cognizance. Indeed, several of the *amici* organizations perform religious marriage ceremonies for same-sex couples, notwithstanding the state's current refusal to give legal recognition to such relationships.[5] Nationwide, many other religious organizations do the same.[6] *See*

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[4] *See, e.g.,* A.L. Basham, *Hinduism*, in *Encyclopedia of the World's Religions* 241 (R.C. Zaehner, ed. 1997) ("Hindu marriage for the orthodox is completely indissoluble once the seven [prescribed] steps have been taken. The ceremony links the couple together in a bond which no power on earth can break * * * ."); Catechism of the Catholic Church ¶ 1614, *available at* http://www.vatican.va/archive/ENG0015/__P51.HTM ("The matrimonial union of man and woman is indissoluble"); Rabbi Joseph Telushkin, *Jewish Literacy* 686 (1991) ("According to Jewish law, a man or woman who has been married in a Jewish ceremony, but then has had a civil divorce, is still married.").

[5] *See,* Appendix at pp. 3a-5a.

[6] *See, e.g.,* Unitarian Universalist Society 1996 General Assembly Resolution and Immediate Witness in Support of the Right to Marry for Same- Sex Couples, *available at,* http://www.uua.org/programs/justice//sjsb/iw.pdf;

American Friends Service Committee Statement on Civil Marriage Rights, *available at* http://www.afsc.org/build-peace/equal-marriage.htm; Union of American Hebrew Congregations General Assembly Resolution adopted October 29-November 2, 1997, *available at* http:/www.uahc.org/dallas/areso/index.html; Central Conference of American Rabbis, Resolution on Gay and Lesbian Marriage adopted by the 107th Annual Convention of CCAR, March 1996, *available at,* http:/www.ccarnet.org/cgi-bin/resodisp.pl?file=gl&year=1996; Bylaws of the Universal Fellowship of

e.g., William N. Eskridge, Jr., *A History of Same-Sex Marriage*, 79 Va L Rev 1419, 1483 & n 236 (1993) ("[R]abbis, priests, and ministers have married literally thousands of [gay and lesbian] couples in religious services.").

None of this is remotely controversial. On the contrary, it is widely understood and accepted that the standards imposed by religious communities on the marriages they will bless and the dissolutions they will recognize may differ significantly from those applied by the civil state. It is no cause for confusion when a religious community refuses to bless a union of an adherent and a non-adherent, so that the couple is married in the eyes of the state but not in the eyes of a particular faith tradition, *see supra* n. 2 – nor, conversely, when a religious community refuses to recognize a state-sanctioned divorce, so that there is a marriage under religious law but not under civil law, *see supra* n. 4. The issue presented by this case is no different. Any divergence in the treatment of unions of same-sex couples by the state and by particular faith communities will fit comfortably into a long tradition under which religious and civil marriage peacefully coexist as separate and independent institutions.

Metropolitan Community Churches, Article III, Section C pertaining to Rites of the Church, Effective January 2003, *available at,* http://www.mccchurch.org/aboutmcc/BylawsJuly2203.pdf.

II. A RULING IN PLAINTIFFS' FAVOR WOULD HAVE NO IMPACT UPON RELIGIOUS ORGANIZATIONS' ABILITY TO BLESS—OR NOT BLESS—UNIONS OF SAME-SEX COUPLES AS THEY DEEM APPROPRIATE.

As set forth above, civil and religious marriage are different, and have been throughout Oregon history. Nothing about this case threatens to change this state of affairs. Indeed, as the state itself recognizes in its brief, this case concerns "only . . . the secular and state-regulated aspects of marriage" and does not involve whether "any individual or religious group would be required to change in any way their practices in respect to their own recognition or solemnization of marriage." State Defs-Appellants' Opening Br 1 n1.

More specifically, for the reasons set forth below, a ruling that the *state* may not discriminate on the basis of sex and sexual orientation in deciding which couples are eligible for civil marriage would not—and could not—have any impact upon the ability of faith communities to decide for themselves which relationships they will bless and honor.

A. Article I, Section 20 of the Oregon Constitution Does Not Apply to Private Religious Organizations.

A ruling in Plaintiffs' favor would have no direct impact on religious organizations' ability to decide for themselves whether to bless or recognize unions between persons of the same sex. As a threshold matter, because no religious figure or community is a defendant in this case, the judgment in this case will have no direct application to such individuals or entities.

Even more importantly, the constitutional provision upon which Plaintiffs base their prayer for relief has no applicability to private religious actors. Plaintiffs request relief based solely on Article I, section 20 of the Oregon Constitution. *See, e.g.*, Pls' Mem of Law in Supp of Mot for Partial Summ J 1 ("Plaintiff couples seek a declaration that the failure of the State of Oregon to permit marriages of same-sex couples violates Article I, section 20."); Compl, Wherefore Clause, p 32. That provision declares that "[n]o law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens." Or Const, Art I, § 20.

Article I, section 20 applies only to "state action": as this court has explained, section 20 is triggered "[w]henever a person is denied some advantage to which he or she would be entitled but for a choice made *by a government authority*." *City of Salem v. Bruner*, 299 Or 262, 268-269, 702 P2d 70, 74 (1985) (emphasis added)); *see generally Shelley v. Kramer*, 334 US 1 (1948) ("[T]he action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful."). Accordingly, because communities of faith do not, in any sense, pass "law[s]" or otherwise exercise the sovereign power, construing Article I, section 20 as barring the state from withholding from same-sex couples the "privilege[s] and immunities" of civil marriage would have no impact upon private religious organizations. *Cf. State v. Tucker*, 330 Or 85, 89, 997 P2d 182, 184 (2000) (Article I, section 9—which like Article I, section 20, begins with the

words "No law shall"—"prohibits only state action that infringes on a citizen's constitutional rights"); *State v. Tanner*, 304 Or 312, 321, 745 P2d 757, 762 (1987) ("A section 9 privacy interest is an interest against the state; it is not an interest against private parties.").

The fact that a clergyperson may solemnize a marriage under the Oregon marriage statute does not alter this conclusion. That statute does not *require* religious leaders to solemnize civil marriages; it merely *permits* them to do so. *See* ORS 106.120(2) ("[m]arriages *may* be solemnized by * * * [r]eligious congregations or organizations * * * or * * * [a] clergyperson" (emphasis added)). Thus, even if this court were to decide that the state could not constitutionally withhold the rights and privileges of civil marriage from same-sex couples, clergypersons would be under no statutory obligation to perform wedding ceremonies for same-sex couples. And, as discussed below, *see* Part II.C *infra*, any attempt to write such an obligation into the statute would be unconstitutional.

B. There Is No Basis for Believing That a Ruling in Plaintiffs' Favor Would Be Used to Compel Religious Organizations to Bless the Unions of Same-Sex Couples.

As explained in the previous Section, a ruling in Plaintiffs' favor would have no direct impact on a religious community's autonomy to decide for itself upon which couples it will confer the blessing of religious marriage. In addition, there is no reason to believe that such a ruling would lead to any attempt to use the power of government to force unwilling religious communities to grant the blessing of religious marriage to same-sex couples.

First, Plaintiffs in this case have expressly disclaimed any intent to use the legal process to alter the definition of religious marriage. *See* Pls' Mem of Law in Supp of Mot for Partial Summ J 12 n 4 ("Plaintiff couples do not * * * seek to alter the definition of the term 'marriage' for religious purposes. They seek only to alter the definition of the term 'marriage' for civil purposes.").

Second, jurisdictions that have granted various forms of official recognition to relationships between persons of the same sex have uniformly respected the rights of faith communities to adopt and enforce their own standards for deciding which marriages to bless. Vermont, for example, has had a civil union statute since 2000. *See* Vt Stat Ann, tit 18, § 5160 *et seq* ; *see also Baker v. State*, 170 Vt 194, 744 A2d 864 (1999). But the Vermont act does not compel anyone to perform such a union, *cf.* Vt Stat Ann, tit 18, § 5164 (enumerating the "[p]ersons *authorized* to certify civil unions" (emphasis added)), and *amici* are unaware of any attempts to force an unwilling religious group to solemnize such a union. *See Baker*, 170 Vt at 243, 744 A2d at 898 (Johnson, J., concurring in part and dissenting in part) ("This case concerns the secular licensing of marriage.").

The same has been true in Massachusetts, which, on May 17, 2004, became the first state in the Union to authorize civil marriages for same-sex couples. *See* Yvonne Abraham & Rick Klein, *Free to Marry: Historic Date Arrives for Same-Sex Couples in Massachusetts*, Boston Globe, May 17, 2004, at A1. This development was spurred by two rulings by the Supreme Judicial Court of the Commonwealth, which, in turn, relied a variety of provisions of the Massachusetts Constitution. *See*

Goodridge v. Dep't of Pub. Health, 440 Mass 309, 316 & n 7, 798 NE2d 941, 950 & n 7 (2003) (plaintiffs relied upon Mass Const, Arts. 1, 2, 6, 7, 10, 12, 16 and pt II, cl 1, § 1, of art 4); *see also Opinion of the Justices to the Senate*, 440 Mass 1201, 802 NE2d 565 (2004). The Massachusetts court, however, held only that "*the Commonwealth* may [not] use its formidable regulatory power to bar same-sex couples *from civil marriage*," *Opinion of the Justices*, 440 Mass at 1203, 802 NE2d at 567 (quoting *Goodridge*, 440 Mass at 312-313, 798 NE2d at 948 (emphases added)), and indeed, it made clear that its ruling[s] "in no way limi[t] the rights of individuals to refuse to marry persons of the same sex for religious or any other reasons." *Goodridge*, 440 Mass at 337 n 29, 798 NE2d at 965 n 29.

The respect for religious autonomy manifest in Vermont and Massachusetts has also held true internationally. Civil marriages for same-sex couples are currently performed and recognized in Belgium, the Netherlands, and various provinces of Canada.[7] Denmark, Finland, France, Germany, Greenland, Iceland, Norway, and Sweden also accord significant legal recognition to same-sex unions.[8] As far as *amici* are aware, however, *none* of these countries requires unwilling religious officials to officiate at, or unwilling religious congregations to play host to, ceremonies creating

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[7] *See* Kees Waaldijk, *Others May Follow: The Introduction of Marriage, Quasi-Marriage, and Semi-Marriage for Same-Sex Couples in European Countries*, 38 New Eng L Rev 569, 572-584 (2004); Mark E. Wojcik, *The Wedding Bells Heard Around the World: Years From Now, Will We Wonder Why We Worried About Same-Sex Marriage?*, 24 N Ill U L Rev 589, 592-593 (2004).

[8] *See* Waaldijk, 38 New Eng L Rev at 585-588; Wojcik, 24 N Ill U L Rev at 607-612.

or blessing such partnerships.[9] Tellingly, a bill under consideration by the Canadian Government that would define "[m]arriage, for civil purposes, [a]s the lawful union of two persons to the exclusion of all others" also makes clear that "[n]othing in this Act affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs."[10]

None of that should be surprising. As discussed above, the boundary between civil and religious marriage comes with a long historical pedigree. There is no reason to believe that any effort to breach it will be forthcoming here.

C. Requiring Private Religious Organizations to Bless Unions of Same-Sex Couples Would Be Unconstitutional.

The distinction between civil and religious marriage is attributable in part to history and tradition, as discussed above. But it is also demanded by constitutional principle. Simply put, any use of governmental power to *force* religious communities

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[9] For the Netherlands, see Waaldijk, 38 New Eng L Rev at 572 ("All Dutch legislation regarding marriage—whether different-sex or same-sex marriage—purports to regulate the institution of marriage only in its civil capacity"). For Belgium, see *id.* at 581 ("By amending Article 143 of the Belgian Civil Code, the civil definition of marriage was changed * * * . Similar to the Netherlands, Belgium also has the same clear divide that exists between civil and religious marriage."). For Canada, see *EGALE Can., Inc. v. Canada (Attorney General)*, 13 BCLR4th 1, para 181 (2003) ("the issue before us concerns civil marriage only and the conclusion [to allow marriage for same-sex couples] does not displace the rights of religious groups to refuse to solemnize same-sex marriages that do not accord with their religious beliefs."); *Halpern v. Toronto (City)*, 172 OAC 276, at para 53 (2003) (similar).

[10] *Reference to the Supreme Court of Canada*, *available at* http://www.justice.gc.ca/en/news/nr/2003/doc_30946.html (quoting proposed bill); *see also* Fact Sheet, *Reference to the Supreme Court of Canada on Civil Marriage and the Legal Recognition of Same-sex Unions*, *available at* http://www.justice.gc.ca/en/news/fs/2004/doc_31110.html.

to bless the unions of same-sex couples—or any other unions the relevant faith tradition does not wish to honor—would be blatantly unconstitutional.

Both the state and federal constitutions protect religious freedom in ways that absolutely preclude the use of governmental authority to compel the performance of a religious ritual, including the blessing of religious marriage. The state constitution declares that "[a]ll men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own conscience," Art I, § 2, and that provides "[n]o law shall in any case whatever control the free exercise, and enjoyment of religious opinions, or interfere with the rights of conscience," Art I, § 3. "These provisions . . . are remarkable in the inclusiveness and adamancy with which rights of conscience are to be protected from government interference." *Meltebeke v. Bureau of Labor and Indus.*, 322 Or 132, 145, 903 P2d 351, 359 (1995); *see Cooper v. Eugene Sch. Dist. No. 4J*, 301 Or 358, 371, 723 P2d 298, 307 (1986) (State constitution's religion clauses "are more than a code. They are specifications of a larger vision of freedom for a diversity of religious beliefs and modes of worship and freedom from state-supported official faiths or modes of worship."); *Liggett v. Ladd*, 17 Or 89, 21 P 133 (1888) (stressing believers' "inherent" right "to believe and teach such doctrines as meet the approval of their consciences," which necessarily encompasses the ability "to . . . adopt creeds").

The federal constitution also guards religious liberty and autonomy. Its First Amendment forbids governmental conduct that "establish[s] religion" or "prohibit[s] the free exercise thereof. " These proscriptions apply to both the state and federal

governments, and to all their departments: legislative, executive, and judicial. *See*, *e.g.*, *Cantwell v. Connecticut*, 310 US 296 (1940) (Fourteenth Amendment "incorporates" Free Exercise Clause against the states); *Everson v. Bd. of Educ.*, 330 US 1 (1947) (Fourteenth Amendment also incorporates the Establishment Clause); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 US 696 (1976) (federal religion clauses apply to state court judicial decisions).

One bedrock principle underlies the various religion provisions of the state and federal constitutions: just as government may not use its authority to coerce conformity with religious doctrine in the secular world, it also may not require that religious doctrine conform to secular law or values. Put another way, religious organizations may "decide for themselves, free of state interference, matters * * * of faith and doctrine." *Kendroff v. St. Nicholas Cathedral of the Russ. Orthodox Church of N. Am.*, 344 US 94, 116 (1952); *see United States Nat'l Bank of Portland v. Snodgrass*, 202 Or 530, 538, 275 P2d 860 , 864 (1954) (members of a particular religion "are free to emphasize and teach what is believed by them"). Because determinations about who is eligible for a particular religious blessing lie "at the heart of [a faith community's] religious mission," *Bollard v. California Province of the Society of Jesus*, 196 F3d 940, 949 (9th Cir 1999), such choices reside far beyond the power of government to touch. *See id.* at 946 ("Some religious interests . . . are so strong that no compelling state interest justifies government intrusion into the ecclesiastical sphere").

It should be beyond dispute that a decision as to which unions a religion is willing to bless falls squarely within the "ecclesiastical sphere," protected from any state interference. Indeed, it appears that the question is, in fact, undisputed: the precept that the government may not compel an unwilling faith community to confer a religious blessing or perform a religious marriage ceremony is so universally understood that *amici* have been unable to locate a single judicial decision directly adjudicating the issue. To the extent the issue is mentioned in the case law, it is simply to confirm the state's utter lack of authority to require a religious leader or community to grant the religious blessing of marriage. *See Opinion of the Justices*, 440 Mass at 1207, 802 NE2d at 570 (advising Massachusetts Senate about constitutionality of bill that would have created regime of civil unions and stating that "the State may not interfere * * * with the decision of any religion to refuse to perform religious marriages of same-sex couples").

Reasoning by analogy leads to the same conclusion. One issue that actually has been disputed in the past is the degree to which a religious entity's selection of clergy falls within the zone of absolute church autonomy. But it is by now firmly established, under a doctrine known as the "ministerial exception," that clergy hiring and firing decisions are beyond the authority of the state to regulate – even where they otherwise might be deemed to violate federal antidiscrimination norms. *See*, *e.g.*, *McClure v. Salvation Army*, 460 F2d 553 (5th Cir 1972) (First Amendment forbids application of Title VII bar on sex discrimination to claim by minister against church); *EEOC v. Catholic Univ. of Am.*, 83 F3d 455 (DC Cir 1996) (same with

respect to claim of sex discrimination by professor at religious university); *cf. Bollard*, *supra* (recognizing "ministerial exception" but holding that it does not apply to claim of sexual harassment, as opposed to firing). [11] Because church decisions about clergy selection are likely to be informed by "ecclesiastical concern[s]," the courts have held, they are protected against both judicial inquiry and the imposition of secular state standards. *See*, *e.g.*, *McClure*, 460 F2d at 558-559 ("The relationship between an organized church and its ministers is its lifeblood [and] must necessarily be recognized as of prime ecclesiastical concern").

It follows *a fortiori* from these decisions that a religious community's choices regarding the blessing of marriage must be equally protected from governmental interference. Such choices are *by definition* a reflection of "ecclesiastical concerns" – indeed, they are often an articulation of religious doctrine. And if the constitutional principle of religious autonomy is strong enough to override our Nation's fundamental commitment to nondiscrimination in employment, then it must also be powerful enough to overcome any hypothetical state interest that might possibly be invoked to require an unwilling congregation to grant a religious blessing.

The law of church and state can be complex, and in some cases requires the drawing of careful lines.[12] This is not such a case. The issue presented here is open-

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[11] *See also Young v. N. Ill. Conf. of United Methodist Church*, 21 F3d 184 (7th Cir), *cert den*, 513 US 919 (1994); *Scharon v. St. Luke's Episcopal Presbyterian Hosps.,* 929 F2d 360 (8th Cir 1991); *Rayburn v. General Conf. of Seventh-Day Adventists*, 772 F2d 1164 (4th Cir 1985), *cert den*, 478 US 1020 (1986).

[12] For instance, the status of neutral laws that incidentally burden some religiously motivated conduct is a complicated and unsettled issue. *See Employment*

and-shut. Principles of religious liberty embodied in both the federal and state constitutions absolutely preclude any use of state power to compel a faith community to grant a religious blessing, including the blessing of religious marriage.

CONCLUSION

In Oregon, civil marriage and religious marriage are, and always have been, distinct institutions. That distinction is reinforced by constitutional guarantees of religious freedom that would affirmatively prohibit the state from attempting to force any religion to marry any couple against its will. Accordingly, the outcome of this case will not and cannot have any legal implications for the practice of religious marriage throughout Oregon, and a ruling in Plaintiffs' favor will not and could not

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Div. v. Smith, 494 US 872 (1990) (under federal Free Exercise Clause, criminal controlled substance law may be applied to prohibit use of peyote in religious ceremony); *id.* at 891 (O'Connor, J., concurring) (applying prior precedent that permitted incidental burdens on religious exercise only when justified by compelling governmental interest); *see also Church at 295 S. 18th St., St. Helens v. Employment Dept.*, 175 Or App 114, 126-128, 28 P3d 1185, 1192-93 (2001) (unclear whether *Smith* rule applies to "hybrid" claims where a Free Exercise claim is coupled with other constitutional rights). But none of those difficult issues are implicated here. It is perfectly well settled – and *Smith* reaffirmed – that a state may *never* "regulat[e] religious belief as such," or "compel affirmation of religious belief." *Smith*, 494 U.S. at 872. Accordingly, whatever the merit and scope of the *Smith* ruling, it does not suggest that a state could *command* a religious leader or faith community to bestow a religious blessing, including the bless of religious marriage.

force religious officials or groups to provide a religious blessing for any union of which they disapprove.

Dated October 14, 2004.

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APPENDIX

INTERESTS OF *AMICI*

The American Friends Service Committee is a Quaker organization committed to the principles of nonviolence and justice. It seeks in its work and its witness to draw on the transforming power of love, human and divine. We nurture the faith that conflicts can be resolved nonviolently, that enmity can be transformed into friendship, strife into cooperation, poverty into wellbeing, and injustice into dignity and participation.

* * *

Founded in 1969, the National Coalition of Nuns is an organization of approximately 500 Roman Catholic nuns across the United States. The organization is dedicated to studying, working and speaking out on issues of human rights and social justice.

* * *

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation and church and state, personal and religious freedom, and the right to privacy. Most relevant to the case at bar are the Association's resolutions in support of full equality for bisexual, gay, lesbian, and transgender people, including the right of same-sex couples to marry.

* * *

The Alliance of Baptists is an alliance of individuals and churches dedicated to the preservation of historic Baptist principles, freedoms, and traditions, and to the expression of its ministry and mission through cooperative relationships with other Baptist bodies and the larger Christian community.

* * *

Joan L. Beck, rostered ordained Minister of the Oregon Synod of the Evangelical Lutheran Church: In the past decade this community of faith has accepted the full membership of and benefited from the presence of a significant number of lesbian households, some with children. We also have welcomed a proportionally smaller number of gay men and single lesbian women. We have integrated these members along with every other member, so that all share the same opportunities to pray, study, serve, lead, give, encourage, worship, and invite people to follow Jesus.

* * *

The Reverend Barbara Carnegie Campbell, Pastor, St. Mark Presbyterian Church, Salem, Oregon: With all Presbyterians, I hold that God alone is Lord of the conscience, and with such a Lord, I have been led to understand that all humanity is created in God's image and that love is the greatest good and greatest gift. I believe marriage should be, above all else, about a commitment of love and support that two people make to each other. In my ministry, I have been blessed by the spirit and wisdom of gay and straight parishioners, and have worked to assure that all God's children are welcome at the table.

* * *

The Reverend Karen Crooch, Pastor, Morningside United Methodist Church, Salem, Oregon: The Morningside congregation has a membership of 420 persons. It is an intergenerational church with persons ranging in age from 6 weeks to 95 years of age. It is a congregation that welcomes and affirms persons of diverse age, race, gender, social status, and sexual orientation. Contemporary and traditional worship expressions are offered each week. The congregation is well educated with many active and retired educators. It provides an after-school drop-in center and a Parents night out program for families of the Morningside community. The congregation is involved in several social justice ministries in the community.

* * *

Jan Fairchild, Pastor, Springfield Church of the Brethren, Springfield, Oregon: Springfield Church of the Brethren (SCOB) is a public welcoming and affirming congregation. SCOB is a member of Supportive Congregations Network, a network of Mennonite, General Conference Mennonite and Church of the Brethren congregations which welcome gay, lesbian, transgender and bisexual members into full membership. The church has participated in peace and social justice concerns in the community for 55 years. In the mid-1980s the church purchased a motel and converted it to emergency housing for the homeless. This project continues as part of ShelterCare, an agency that provides housing for people with chronic mental illness and for families who need emergency housing.

* * *

Rabbi Maurice Harris, Temple Beth Israel, Eugene, Oregon: I believe that decisions about the religious service of marriage should not be made by the government. I also agree that safeguarding religious freedom means that government should never force a clergy person to perform a particular wedding between consenting adults, nor should government prevent a clergy person from performing a particular wedding between consenting adults. Separation of church and state is a key building block of the greatness of our country. It must be protected.

* * *

The Reverend Marcia Hauer, University Park Methodist Church: The University Park Methodist Church is an ethnically diverse congregation and we openly welcome gay, lesbian, bisexual and transgendered persons. We believe that all people are entitled to the ministry of the church regardless of race, ethnicity, handicapping condition, or sexual orientation. We believe that marriage is at heart a civil matter and the work of the church in performing marriage ceremonies is to bless the unions of two committed people who are equal under the law.

* * *

David Isaiah Hedelman, Minister, Congregational United Church of Christ, Klamath Falls, Oregon: The Congregational United Church of Christ in Klamath Falls, Oregon is a community of Christians that constantly tries to live Jesus' Greatest Commandment, "Love your neighbor as yourself!" We interpret this to mean "all our neighbors," not just those who agree with us politically, religiously, or spiritually, but "all our neighbors." We believe that God is still speaking to all of his children, to all of our neighbors.

* * *

The Reverend Lynne Smouse López, Pastor, Ainsworth United Church of Christ: The Ainsworth United Church of Christ is a multiracial, multicultural, open and affirming congregation, and believes the state should not legislate issues of faith and faith practices. I support same-gendered marriages; I have been doing weddings for same-gendered couples for several years, and our congregation supports and celebrates these unions. We also believe that all couples should receive equal treatment, access and benefits through the laws of our state.

* * *

The Reverend Dr. Karen McClintock, United Methodist clergy, psychologist at Samaritan Counseling Center of Southern Oregon: My passion for the separation of church and state regarding marriage is based on the principle that civil marriage protects the needs of children in families with gay and lesbian parents. Children need the legal benefits that marriage provides, including healthcare, parents as legal guardians, and inheritance rights. Regardless of religious affiliation and belief, legal protections are needed for these children.

* * *

The Reverend Casey Moffett-Chaney, Senior Pastor, Portland Center for Spiritual Growth: Our congregation is 12 years old, and has had a typical membership of up to 100 parishioners, 75% of whom are gay or lesbian. Our spirituality is welcoming and inclusive, equally affirming of both gay

and straight committed relationships, which we refer to as marriages. We solemnize same-sex and opposite-sex marriages with equal consideration. In addition, our spirituality believes that there are as many paths to God as there are people, and we strongly oppose any attempt to repeal the separation of church and state. As such, we consider civil marriage a state sanctioned legality, and spiritual marriage an optional religious enhancement to that legality.

* * *

Elizabeth Oettinger, Minister, United Church of Christ, Corvallis, Oregon: I have been the Senior Pastor of First Congregational United Church of Christ in Corvallis for 12 years. In my church, we honor the sacred commitments and life partnerships of all people, gay and straight. I perform the right of marriage equally within both groups. For churches who, based on theology, do not wish to bless the unions of gay and lesbian persons, that is their business. But to deny the legal benefits and protection of marriage to same-sex couples is an issue of civil rights.

* * *

Peggy Senger Parsons, Pastor, Freedom Friends Church, Salem, Oregon: I have been a Quaker Minister for ten years and have been on the pastoral staff of four Friends Churches in the State of Oregon. Freedom Friends Church believes strongly in the blessing of both civil and religious marriage, but we also believe strongly in the separation of church and state. We have our own spiritual criteria for which marriage we would solemnize and take under our care. We do endorse the extension of civil marriage to the Gay and Lesbian community; we see this as a matter of social justice and equality, but the decision of the court concerning civil marriage will in no way affect the expression of our faith.

* * *

The Reverend Christine Riley, Unitarian Universalist Minister, Roseburg, Oregon: I am a native Oregonian and an Ordained Unitarian Universalist Minister, and currently a parish minister in Roseburg, Oregon. My ministry has included chaplaincy to U.S. Veterans, their families, and hospital staff, spiritual care for AIDS patients, their families and hospice staff, and parish ministry in both Oregon and Washington. As a person of faith I firmly believe in the wisdom of the separation of church and state. I urge that clarity of the distinction between civil marriage and the religious rite of marriage be upheld by the court. In this way, the freedom for each religious community or church to delineate, according to their own beliefs, which unions to endorse is best insured.

* * *

The Very Reverend Anthony C. Thurston, Interim Rector, St. John's Episcopal Church, Milwaukie, Oregon, formerly Dean of Trinity Episcopal Cathedral, Portland, Oregon: I am interested in the issues of equality and justice and believe that decisions relative to the religious service of marriage should not be a decision of the voting public or of the government.

* * *

The Reverend Tara L. Wilkins, Director, The Community of Welcoming Congregations: The Community of Welcoming Congregations (CWC) welcomes and affirms people of all sexual orientations. We are an interfaith association of spiritual and religious communities who affirm our theological variations and believe in the separation of civil and religious marriage.

* * *

The Reverend Dana Worsnop, Atkinson Memorial Church, Unitarian Universalist Association, Oregon City, Oregon: Founded in 1844, Atkinson Memorial has a long tradition as an independent-minded, liberal religious voice in Oregon. We have a current membership of 214 adults and 101 children. As Unitarian Universalists we affirm the inherent worth and dignity of every person as well as the right of conscience in both our religious and political lives. And we affirm the principle of the separation of church and state, which ensures religious freedom.

* * *

The Reverend Judith Youngman, Zion United Church of Christ, Gresham, Oregon: As a congregation, the Zion United Church of Christ strongly urges the court to uphold the separation of church and state by recognizing the distinction between religious rites and civil rights.

* * *