

In The
United States Court of Appeals
For The Fourth Circuit

**TIMOTHY B. BOSTIC; TONY C. LONDON;
CAROL SCHALL; MARY TOWNLEY,**

Plaintiffs – Appellees,

**CHRISTY BERGHOFF, on behalf of themselves and all
others similarly situated; JOANNE HARRIS, on behalf of themselves
and all others similarly situated; JESSICA DUFF, on behalf of
themselves and all others similarly situated; VICTORIA KIDD, on
behalf of themselves and all others similarly situated,**

Intervenors,

v.

**GEORGE E. SCHAEFER, III, in his official capacity as the
Clerk of Court for Norfolk Circuit Court; JANET M. RAINEY,
in her official capacity as State Registrar of Vital Records,**

Defendants – Appellants,

MICHÈLE MCQUIGG,

Intervenor/Defendant – Appellant,

and

**ROBERT F. MCDONNELL, in his official capacity as
Governor of Virginia; KENNETH T. CUCCINELLI, II, in his
official capacity as Attorney General of Virginia,**

Defendants,

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA AT NORFOLK**

**BRIEF OF EQUALITY NC AND SOUTH CAROLINA EQUALITY
COALITION AS *AMICI CURIAE* IN SUPPORT OF APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Equality NC and South Carolina Equality Coalition are nonprofit organizations. Neither organization issues stock and neither organization has a parent corporation.

/s/ Mark Kleinschmidt
Mark Kleinschmidt
Counsel for the Amicus
April 18, 2014

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	5
A. History of North Carolina’s discriminatory ban on same-sex marriage.....	5
B. History of South Carolina’s discriminatory ban on same-sex marriage.....	7
C. State bans on same-sex marriage harm children and parents	7
D. Same-sex marriage bans disproportionately burden military service members.....	12
CONCLUSION.....	17
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF FILING AND SERVICE	

TABLE OF AUTHORITIES

Page(s)

CASES

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STATUTES

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INTEREST OF *AMICI CURIAE*¹

This brief is submitted with the consent of all parties pursuant to Federal Rule of Appellate Procedure 29(a) and the Joint Notice of Consent to File Brief of *Amicus Curiae*.

Equality NC (“ENC”) is North Carolina’s largest non-profit organization advocating for the rights of lesbian, gay, bisexual and transgender (“LGBT”) individuals, with over 100,000 members and supporters. Originally founded in 1979 as the North Carolina Human Rights Fund, Equality NC is arguably the oldest state-wide LGBT equality organization in the United States.² Through the course of its advocacy, ENC has worked with a number of North Carolina’s LGBT families and is in a unique position to witness the harm of state bans on marriage equality on same-sex couples and their children.

In this capacity ENC seeks to advocate on behalf of LGBT persons serving in the military. ENC is well-suited to this role since “North Carolina is home to a number of growing and strategically important military installations, representing

¹ Pursuant to Federal Rule of Appellate Procedure 29(c)(5), *amici* certify that no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than the amicus curiae or its counsel contributed money that was intended to fund, prepare, or submit this brief.

² Renee Perry, et al., *2011 State of the States Report*, Equality Federation Institute (2011), available at <http://equalityfederation.org/sites/default/files/downloads/SoS2011-final.pdf>.

every branch of the service. Fort Bragg, home of the Airborne and Special Operations Forces, will become the largest Army installation in the world after the BRAC process.”³

South Carolina Equality Coalition (“SC Equality”) was established in 2002 as a statewide non-partisan coalition of local and state social, religious and, political LGBT organizations and allies with a mission to secure civil and human rights for lesbian, gay, bisexual and transgender South Carolinians. SC Equality is actively involved in legislative efforts to update South Carolina’s laws to protect LGBT people from employment discrimination, update South Carolina’s sex education laws, and expand Medicaid in South Carolina. South Carolina has a significant military footprint and is home to eight major military installations,⁴ including Fort Jackson, which trains fifty percent of the Army’s Basic Combat Training load yearly.

ENC and SC Equality (together the “Equality Groups”) have a strong interest in the Court’s decision in this case. The Virginia statute and constitutional

³Thrive in North Carolina Military Factsheet, North Carolina Department of Commerce, *available at* http://uncserves.northcarolina.edu/uploads/files/MilitaryFactsheet_Thrive_NC_Commerce_2011.pdf (last visited Apr. 14, 2014).

⁴ Lu Wang, et al., *The Economic Impact of the Military Community in South Carolina*, South Carolina Department of Commerce (Nov. 2012), *available at* http://sccommerce.com/sites/default/files/document_directory/the_economic_impact_of_the_military_community_in_south_carolina.pdf.

amendment challenged here are essentially indistinguishable from North Carolina and South Carolina's statutes and constitutional amendments in their effect and purpose of banning marriage equality. The Equality Groups have a strong interest in the Court's decision, which addresses issues identical or similar to those present in ongoing litigation in North Carolina and South Carolina.⁵ ENC and SC Equality believe that the Court can benefit from their unique insight on how marriage bans affect individuals and couples, particularly with respect to children in military families throughout the Fourth Circuit, including North Carolina and South Carolina. Therefore, the Equality Groups appear as *amici curiae*, urging the Court to affirm the judgment of the District Court for the Eastern District of Virginia.

SUMMARY OF THE ARGUMENT

In this case, the Court will decide whether Virginia's statutory and constitutional ban on same-sex marriage violates the United States Constitution. The underlying issue is not specific to Virginia – whether a state may deny same-sex couples the right to marry, or may refuse to recognize a valid out-of-state

⁵ Michael Gordon, *Court Challenge Could Topple NC Same-Sex Marriage Ban*, Charlotte Observer, Apr. 04, 2014, available at <http://www.charlotteobserver.com/2014/04/04/4818445/court-challenge-could-topple-nc.html> (“‘Potentially, the court could narrowly apply their decision to Virginia, but it's hard to see how they would do that,’ said Maxine Eichner, a specialist in sexuality and the law at UNC School of Law.”).

same-sex marriage. This Court's decision will likely impact LGBT individuals and couples in every state in the Fourth Circuit.⁶

The Equality Groups will argue that same-sex marriage bans harm the spouses and children of same-sex couples, a concern the Supreme Court weighed heavily in *Windsor*.⁷ Using Census data, the Williams institute counted 18,309 self-identified same-sex couples in North Carolina alone, 3,380 of whom are raising children.⁸ In South Carolina, there were 7,214 self-identified same-sex couples, 1,360 of whom are raising children.⁹

The Equality Groups will also argue that these marriage bans especially burden military service members who often have no choice over where they will be stationed. Though the military leadership has taken great strides in respecting all marriages, some federally-granted benefits consider the "state of residence" in determining whether a service member or spouse is eligible. In other cases,

⁶ *Id.*

⁷ *United States v. Windsor*, 133 S. Ct. 2675, 2694 ("Differentiation demeans the couple . . . and it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.").

⁸ Gary Gates and Abigail Cooke, *North Carolina Census Snapshot: 2010*, The Williams Institute, available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_North-Carolina_v2.pdf.

⁹ Gary Gates and Abigail Cooke, *South Carolina Census Snapshot: 2010*, The Williams Institute, available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census2010Snapshot_South-Carolina_v2.pdf.

military service members and their spouses lose rights and protections as soon as they leave the base. These state law rights include the ability to make medical decisions for a spouse in the hospital, the ability to inherit as next-of-kin, the ability to adopt the children of their spouse, and the right to make funeral decisions for a deceased spouse.

ARGUMENT

A. History of North Carolina's discriminatory ban on same-sex marriage.

North Carolina currently has both a statute and a constitutional amendment banning same-sex marriage.¹⁰ The North Carolina statute is brief, stating “marriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina.”¹¹ The statute was passed in 1995 in the wake of the Hawaii Supreme Court's decision in *Baehr v. Lewin*¹² which called into question that state's same-sex marriage ban. In similar fashion, in light of *Baehr*, Congress passed the Defense of Marriage Act (“DOMA”).

Despite the existence of a statutory provision, North Carolina passed a constitutional amendment (Amendment One) banning marriage equality in May

¹⁰ N.C. Gen. Stat. § 51-1.2 (1996); N.C. Const. Art. XIV, § 6.

¹¹ N.C. Gen. Stat. § 51-1.2.

¹² *Baehr v. Lewin*, 74 Haw. 530, 852 P.2d 44 (1993).

2012.¹³ Amendment One went a step further than the statute, not only banning marriages between persons of the same gender, but also any other similar form of relationship recognition by stating that “[m]arriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State.”¹⁴

The pernicious effect of Amendment One was emphasized by Minority Leader Martin Nesbitt during the floor debate in North Carolina Senate on whether to allow the ballot measure to proceed when he said,

...the very idea that we just pull these people up and decide ... we’re going to just put you at the bottom of the barrel and declare you inadequate and not entitled to the protections the rest of the people in this country have, is obscene and what it does, every time we do that, and we find ... another crowd we want to step on so we can feel superior, it brings out the very worst of us ... and people become people that you don’t recognize anymore. Surely we are better than this.¹⁵

Both North Carolina’s statutory and constitutional prohibitions against same-sex marriage are currently in place today.

¹³ Rachel Weiner, *North Carolina Passes Gay Marriage Ban Amendment One*, Washington Post, May 8, 2012, available at http://www.washingtonpost.com/blogs/the-fix/post/north-carolina-passes-gay-marriage-ban-amendment-one/2012/05/08/gIQAHYpfBU_blog.html.

¹⁴ N.C. Const. Art. XIV, § 6.

¹⁵ *Senate debates marriage amendment*, WRAL.com (Sep. 13, 2011), <http://www.wral.com/news/state/nccapitol/video/10121957/>.

B. History of South Carolina’s discriminatory ban on same-sex marriage.

South Carolina also has a statute and a constitutional amendment banning same-sex marriage.¹⁶ The statute, which was passed in 1996, states that “a marriage between persons of the same sex is void *ab initio* and against the public policy of the State.”¹⁷

In 2006, South Carolina voters passed a constitutional amendment providing that “marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State. . . This State and its political subdivisions shall not recognize or give effect to a legal status, right or claim created by another jurisdiction respecting any other domestic union, however denominated.” This amendment not only bans marriages between persons of the same gender, but also bans any other similar form of relationship recognition.¹⁸ South Carolina’s statutory and constitutional bans are also currently in place today.

C. State bans on same-sex marriage harm children and parents.

Bans on marriage equality, like those enacted in Virginia, North Carolina and South Carolina, harm the children of same-sex parents by interfering with the formation of a legally-recognized family unit. In North Carolina, both joint and

¹⁶ S.C. Code Ann. § 20-1-15 (1996); S.C. Const. Art. XVII, § 15.

¹⁷ S.C. Code Ann. § 20-1-15.

¹⁸ S.C. Const. Art. XVII, § 15.

second-parent adoptions are prohibited for unmarried individuals without terminating the first parent's rights.¹⁹ Consequently, these adoptions are unavailable for unmarried couples, and the statutory and constitutional ban on marriage equality means that they are categorically unavailable to same-sex couples.

Ashley Broadway-Mack and Army Lt. Col. Heather Mack's story demonstrates the inequities in laws banning marriage equality. They have been a couple for more than 15 years. Ashley and Heather met on the soccer fields of Columbus State University in Columbus, Georgia. They played on the same soccer team. After Heather attained the rank of Lt. Colonel and received orders to Fort Lee, Va., Ashley moved with her. The couple moved often and Ashley found teaching jobs wherever Heather was stationed, including Texas, Korea and Kansas.²⁰ Ashley was an exceptional teacher, receiving two Teacher of the Year awards, one in Columbus, Georgia in 2000 and another in 2008 in El Paso, Texas.²¹ Ashley cared for their young son, Carson, when Heather was sent to

¹⁹ See, e.g., *Boseman v. Jarrell*, 364 N.C. 537, 704 S.E.2d 494 (2010) (holding that, under North Carolina law, second-parent and joint adoptions are void *ab initio* because trial court lacks statutory jurisdiction to grant them).

²⁰ Michelle Butzgy, *Military Spouses of the Year Honored*, WWW.ARMY.MIL, The Official Home Page of the United States Army (Feb. 25, 2013), available at http://www.army.mil/article/97165/Military_spouses_of_the_year_honored/.

²¹ Butzgy, *supra* note 20.

Kuwait.²² Now the couple lives in North Carolina where Lt. Col. Heather Mack is stationed out of Ft. Bragg.²³ The couple was legally married in Washington, DC in November 2012.²⁴ Broadway-Mack was voted “Fort Bragg Spouse of the Year” in 2013 and has finally received full membership in the Association of Bragg Officers’ Spouses.²⁵

Lt. Col. Mack recently gave birth to the couple’s second child, a baby girl. While the military has changed its policy towards same-sex relationships, North Carolina and many other states still treat Broadway-Mack as a legal stranger to her two children.²⁶ The circumstances surrounding the birth of their first child, Carson, illustrate the harrowing situation both parents and child are placed in when state law prohibits legal recognition of the family. While living in Texas, Lt. Col.

²² David Zucchini, *Gay Military Spouses Continue to Face Hurdles*, L.A. Times, Jan. 11, 2013, available at <http://articles.latimes.com/2013/jan/11/nation/la-na-gay-military-spouses-20130112>.

²³ Ashley Broadway, *Wife of Female Army Officer, Can Join Fort Bragg Spouses’ Club*, Huffington Post (Jan. 26, 2013), http://www.huffingtonpost.com/2013/01/26/ashley-broadway-wife-of-f_n_2557762.html.

²⁴ Zucchini, supra note 23.

²⁵ This change in position came about two months after the group refused to accept Broadway’s application. See Matt Knight, *Fort Bragg spouses club reverses course, says lesbian Army wife can be ‘full member’*, WTKR, Jan. 26, 2013, available at <http://wtkr.com/2013/01/26/fort-bragg-spouses-club-reverses-course-says-lesbian-army-wife-can-be-full-member/>.

²⁶ Chris Sgro, *Columnist: Military Voices in a Marriage Spring*, The Fayetteville Observer, April 12, 2014, available at: http://www.fayobserver.com/opinion/news_columns/article_970a2572-2d4a-574e-b19c-d268f463e614.html.

Heather Mack gave birth to Carson in a military hospital. After an emergency C-section, Heather was transferred to an Intensive Care Unit and her son was rushed to a nearby civilian hospital and placed in neonatal intensive care.²⁷ Had Lt. Col. Mack not survived the ordeal, their child would have been left without a legal parent and Broadway-Mack would have had no parental rights over the care of their son. In fact, after leaving Heather's side in the military hospital, Ashley's right to visit Carson in the civilian neonatal intensive care unit was initially challenged by hospital officials who questioned her right to visit her son.²⁸

Because North Carolina refuses to recognize her marriage and provides no other way to establish a parental connection with her children, Broadway-Mack lacks the rights and privileges granted to all other parents. Once she steps off the military base and into Cumberland County, North Carolina, Broadway-Mack can no longer direct the education of her children or make decisions regarding their care. Most alarming, if something should happen to Lt. Col. Mack, Broadway-Mack could lose custody of the children. This situation leaves the family vulnerable whenever Lt. Col. Mack goes abroad to areas of danger and conflict –

²⁷ Adam Polaski, *Military couple Ashley and Heather: How DOMA disrespects our family*, Freedom to Marry (Jan. 14, 2013), available at <http://www.freedomtomarry.org/blog/entry/military-couple-ashley-and-heather-how-doma-disrespects-our-family>.

²⁸ *Id.* Ashley was eventually allowed to visit and treated with respect.

which is a pressing and real possibility given her service in our armed forces.²⁹

Indeed, the Chairman of the Joint Chiefs of Staff recently explained what has been understood by the military for decades, saying “what holds us together as a force is that we trust each other. . . and just as important . . . is that your family you’ve left behind will be cared for . . . that bond of trust absolutely has to exist among our ranks in peace and in war.”³⁰

Because of North Carolina’s discriminatory laws, Lt. Col. Mack and Broadway-Mack’s children lose the stability of having two legal parents. This harm is aggravated in the context of a military family when a parent’s life is put at risk in service to her country. Additionally, these service members’ children see their family treated as “second-tier,” which makes it “more difficult for the[m] to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.”³¹

Even when families are able to engage in the often expensive and time-consuming process of drafting agreements which give them some of these rights, their families are still not fully protected. In fact, prior to the events in Texas, the

²⁹ Sgro, *supra* note 26.

³⁰ Terri Moon Cronk, *Dempsey Addresses TAPS Honor Guard Gala*, American Forces Press Service, Department of Defense, Mar. 28, 2014, *available at* <http://www.defense.gov/News/NewsArticle.aspx?ID=121925> (quoting Army Gen. Martin E. Dempsey, Chairman of the Joint Chiefs of Staff).

³¹ *Windsor*, *supra* note 7.

Macks “hired an expensive private lawyer to arrange Heather’s medical directives and ensure that Ashley would be authorized to make decisions for Heather and for Carson.”³² However even these limited rights were initially questioned before Ashley was allowed to visit Carson. Making marriage available to these families would allow them access to joint and second-parent adoption, and would allow them to complete their families in the eyes of the law.

D. Same-sex marriage bans disproportionately burden military service members.

Though all LGBT spouses and their children suffer from same-sex marriage bans, military service members are particularly burdened.

State marriage bans often affect military spouses at a time when they need the most help – the loss of their husband or wife. The story of North Carolina couple Tracy Johnson and Donna Johnson highlights the inequality suffered by LGBT service members. Tracy described their relationship in an Op-Ed published in the Washington Post more than one year ago:

Donna and I met 6 1/2 years ago. Two proud Americans who wanted to serve our country, I was stationed at Fort Bragg and Donna soon joined the North Carolina National Guard. Before we knew it, we were deeply in love. People say that when you know, you know. Donna and I just knew.

We shared the same vision of life, love and happiness. We wanted to share life’s joys and adventures and sorrows. We intended to grow old

³² Polaski, supra note 27.

together. We couldn't imagine life without each other, so after "don't ask, don't tell" was repealed, we got married.³³

Tracy Johnson legally married National Guard Staff Sergeant Donna Johnson in Washington, DC on February 14, 2012. Eight months later, Donna was tragically killed by a suicide bomber while serving in Khost, Afghanistan.³⁴

To date, Tracy Johnson has not received death benefits from the Department of Veterans' Affairs. The Department has said only that her request was being reviewed, but pointed to a federal statute which requires it to consider the married couple's "state of residence" when disbursing benefits. In Johnson's case, that state is North Carolina.³⁵

In contrast, another military spouse, Karen Morgan, lost her wife Charlie Morgan in February 2013 – but since the Morgans lived in New Hampshire, where same-sex marriage is recognized, Karen has already begun to receive death benefits for losing Charlie.³⁶

³³ Tracy Johnson, *Defense of Marriage Act adds to gay military widows' grief*, Washington Post, Feb. 10, 2013, available at http://www.washingtonpost.com/opinions/defense-of-marriage-act-adds-to-gay-military-widows-grief/2013/02/10/a687ebfa-722b-11e2-8b8d-e0b59a1b8e2a_story.html.

³⁴ *In Loving Memory of A Wife, Daughter, and Fallen Soldier*, NPR, Feb. 16, 2013, <http://www.npr.org/2013/02/16/172135162/in-loving-memory-of-a-wife-daughter-and-fallen-soldier>.

³⁵ Jennifer Liberto, *Military widow still waits for death benefits*, CNN Money (Mar. 13, 2014), available at <http://money.cnn.com/2014/03/13/news/economy/same-sex-military-benefits/>.

³⁶ *Id.*

In addition to the long delay in receiving death benefits, Tracy Johnson's story has other features that demonstrate the harms of these types of bans on marriage equality. The Army's formal notification of Donna's death went to her Donna's mother, rather than Tracy. Similarly, the American flag covering Donna's coffin and even Donna's wedding ring were given to Donna's mother rather than her wife, though Donna's mother gave the ring to Tracy. In almost every respect she was treated as a stranger, rather than a spouse.³⁷ While many of the military's policies have changed after *Windsor*, North Carolina's laws impacting same-sex couples and service members have not, including those involving inheritance.³⁸ These include intestate succession (N.C.G.S. § 29-14 *et seq.*) and estate tax concerns.

Tracy Johnson's story highlights a glaring problem with state marriage bans: gay and lesbian military personnel, who often have no choice over where they will

³⁷ Bill Briggs, 'What's right is right': Widowed lesbian pushes for equal military benefits, NBC News, Feb. 4, 2013, available at http://usnews.nbcnews.com/_news/2013/02/04/16774806-whats-right-is-right-widowed-lesbian-pushes-for-equal-military-benefits?lite; but this was before the Supreme Court's decision in *Windsor*, supra note 7.

³⁸ Some of the military's policies have been changed in light of *Windsor* – for example, Secretary of Defense Chuck Hagel stated in December that all military spouses would be eligible to receive Department of Defense identification cards, regardless of sexual orientation. See, e.g., John Becker, *Obama Admin. Announces Progress on Military Benefits, College Loans*, The Bilerico Project (Dec. 13, 2013), available at http://www.bilerico.com/2013/12/obama_admin_announces_progress_on_military_benefit.php.

be stationed, find themselves at the mercy of discriminatory state laws which deprive them of equal treatment. When one's spouse dies serving our country and defending our freedoms, we have an even greater responsibility to treat that sacrifice, and the spouse left behind, with respect and equal treatment. It is fundamentally unjust that a military spouse loses rights when she is moved from a state which recognizes her marriage to one which does not.

As Tracy Johnson's story indicates, some benefits look to state law, and in states which ban same-sex marriage, this singles out LGBT service members for harm. In other cases, gay and lesbian military families suffer the same discrimination faced by civilians, made worse by the fact that they cannot pack up and move to a state which would treat them equally. These families may be treated equally while on base, only to lose rights the moment they step into North or South Carolina.

In North Carolina, spouses take advantage of "tenancy by the entirety," a status which allows both spouses to hold an equal and undivided interest in land. Neither spouse may sell or encumber the land without the express permission of the other.³⁹ If one spouse dies, the other spouse gains a full interest in the land, and it is exempt from creditors of one spouse – this allows the marital property to avoid probate, and protects the surviving spouse from battles over the estate. The only

³⁹ See N.C. Gen. Stat. § 39-13.6.

similar option for unmarried couples is a joint tenancy, which lacks some of the protections of a tenancy by the entirety.⁴⁰ Imagine a situation in which Tracy Johnson did not have a good relationship with her spouses' family or if there were any other number of issues complicating the estate. Ownership of the property from her marriage could have been at risk. If Tracy had been in an opposite-sex marriage, she could take advantage of tenancy by the entirety in North Carolina. But instead, Tracy and other same-sex spouses in North Carolina are categorically unable to receive creditor protection on marital real estate, and face hurdles in protecting their marital property.

State law provides myriad benefits to married couples when one dies. In addition to inheritance tax exemptions and the right to make funerary decisions, as mentioned above, these state benefits also include the right to sue for wrongful death and the ability to inherit property through intestate succession without a will.⁴¹

⁴⁰ *Same-sex marriages create new questions in property laws*, Washington Post, Jan. 4, 2013, available at http://www.washingtonpost.com/realestate/same-sex-marriages-create-new-questions-in-property-laws/2013/01/03/f867ced2-4b83-11e2-9a42-d1ce6d0ed278_story.html.

⁴¹ See N.C. Gen. Stat. § 28A-4-1 (surviving spouse has the first claim to be appointed personal representative of decedent's estate); N.C. Gen. Stat. § 28A-18-2 (provides a wrongful death cause of action to the personal representative). N.C. Gen. Stat. § 29-14 (describes surviving spouse's share of a decedent's property should he or she die intestate).

This situation highlights a broad problem – when there is a patchwork of relationship recognition, ranging from civil unions to domestic partnerships to marriage, same-sex couples may lose rights simply by crossing state lines. Thus, simply by being in North Carolina, Virginia, or South Carolina, same-sex spouses lose many of their marital rights. They cannot be tenants by the entirety, they may be treated as strangers when seeking to inherit property, and may be prevented from making funerary decisions for a deceased spouse.

CONCLUSION

This Court should affirm the District Court’s decision. State marriage bans, in Virginia and throughout this Circuit, violate our nation’s fundamental principles of fairness and equal treatment, and prevent the military from keeping its promise to service members and their families: that it will reward sacrifice by ensuring that military spouses and widows are taken care of in a soldier’s absence. To deny gay and lesbian people the freedom to marry is to deem them less worthy. And “who then is more worthy of the freedom to marry than those who fight for the freedom of all?”⁴²

⁴² Sgro, *supra* note 26.

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Respectfully submitted,

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Dated: April 18, 2014

/s/ Mark Kleinschmidt
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 18th day of April, 2014, I caused this Brief of Equality NC and South Carolina Equality Coalition as *Amici Curiae* in Support of Appellees to be filed electronically with the Clerk of the Court using the CM/ECF System, which will serve such filing electronically on all registered CM/ECF users.

Dated: April 18, 2014

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