SUPREME COURT OF THE UNITED STATES

No. 10-1111

Bobby Bronner and Chester Comerford, Petitioners

v.

The State of Olympus and the United States, Respondents

On Writ of Certiorari to the
Seventeenth Circuit Court of Appeals

ORDER OF THE COURT ON SUBMISSION

Having duly considered the written briefs of counsel for the parties and the Records of the Seventeenth Court of Appeals, this court finds that the resolution of this case rests upon interpretation of statutory and constitutional materials.

IT IS THEREFORE ORDERED that counsel appear before this court to present oral argument on the following issues:

1) Whether the United States government, in enacting the Affordable Health Care Act (AHCA) exceeded its constitutional powers under the Commerce Clause granted by Article I, Section 8 of the United States Constitution.

AND

2) Whether Section I of the Fourteenth Amendment to the United States Constitution forbids the states to refuse to legally recognize the validity of marriages involving persons of the same sex.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTEENTH CIRCUIT

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No. 09-110584

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The State of Olympus and the United States, Petitioners-Appellants

v.

Bobby Bronner and Chester Comerford, Respondent-Appellees

Argued January 14, 2010
Decided May 1, 2010
Rehearing Denied May 15, 2010

Appeal from the United States District Court for the Central District of Olympus, Judge Sharon Lewis, presiding. (OL No. 22-32-38-44-45).

Before Chief Judge Sally Foster and Amy Fernandez, Amanda Goodall, Katie Kruger Kimberly Marceau, Circuit Judges.

Opinion of the Court filed by Circuit Chief Judge Foster.

Dissenting opinion filed by Circuit Judge Fernandez

Case Note:

Please note that the respondent represents two separate clients in this hypothetical scenario. The attorneys for this side will represent the interests of the federal government in defending the commerce clause issue and will represent the State of Olympus on the equal protection issue. Due to the involvement of the petitioners in both issues, these challenges were joined in a single legal challenge.

It should be further noted that two Full Faith and Credit (FFC) cases were included amongst with the marriage issue in order to allow for greater inclusion from students whose deeply held beliefs may have otherwise precluded their participation. However, the inclusion of these cases was not meant to change the basic problem itself but only to allow some alternative theory. The FFC is not one of the issues on which the Court granted cert. It is not intended to be a major part of the case itself.

OPINION OF THE COURT

Foster, S., Chief Judge:

Appellees Bobby Bronner and Chester Comerford ("Bronner" and "Comerford") moved to assert the legal validity of their marriage under the Fourteenth Amendment to the U.S. Constitution and that the individual mandate of the Affordable Health Care Act of 2010 (AHCA) exceeded congressional authority under the Commerce Clause (U.S. Const. Art. I, Sec 8, Cl. 3). The Federal District Court for the Central District of Olympus, Judge Sharon Lewis presiding, accepted both petitions. The United States and the State of Olympus appealed. As the issues were inextricably intertwined, the issues were joined. For the reasons stated below, sitting *en banc*, we REVERSE the decisions of the lower court.

I

BACKGROUND

The following facts were agreed to by both parties.

On November 18, 2003, the Supreme Judicial Court of the Commonwealth of Massachusetts ruled that the equal protection guarantee of the Massachusetts Constitution forbade the State to refuse to recognize the legal legitimacy of same sex marriages.[1] The ruling gave the state legislature 180 days to bring all relevant state codes and rules and regulations into accordance with its holding. The Legislature complied with that court's command. In doing so, it provided that the first same sex marriage licenses and services could occur at 12:01 AM on May 17, 2004. In keeping with past practices, the legislature stipulated that any person could obtain a marriage regardless of residency so long as they paid a $50 fee for a marriage license. On the morning of May 17, 2004, at 12:03 AM, Chester Comerford and Bobby Bronner, both age twenty-one and in good health, were married in a civil service performed by Massachusetts Justice of the Peace (JP) Carmine Pettitte. The Justice of the Peace's office was open for marriage licenses under state law. Bronner and Comerford settled in a two bedroom townhouse they rented in Boston. Chester Comerford managed a jazz cabaret known as *The Foot of Pride.* He earned $50,000 annually. His job included health care benefits.

Bobby Bronner was employed as a factory manager by *DeNolf Industries.* Bronner earned $45,000 annually. *DeNolf Industries,* which produced a visual enhancement device known as the CYCLOPS-237, was owned and operated by William DeNolf. *DeNolf Industries* employed 45 persons; over half of whom were younger than 30 years of age. Unmarried, with no children,

[1] *Goodridge v. Dept. of Public Health 440 Mass. 309, 798 N.E.2d 941 (2003).*

DeNolf did not have health insurance for himself nor did he provide health care for his company's employees. Instead, DeNolf who enjoyed a reputation for paying his employees better than the prevailing wage for comparable work in the state, arranged for a cousin who was a physician to offer annual checkups to his employees at no cost to the employees. On more than one occasion, DeNolf had personally paid for the hospital bills of employees who had been hurt on the job. He did so because it was "the right thing to do" and not because of any law.

Under Massachusetts law, Bronner was covered under Comerford's health plan. Shortly after their marriage, *DeNolf Industries* announced that it was moving its operations to the State of Olympus. It did so chiefly because Olympus, which enjoyed a reputation as a pro-business state, had a lower tax rate (both corporate and income). In addition, DeNolf was an Olympus native. Like most states, Olympus does not recognize same sex marriages. While it defined marriage as being "a civil contract between two parties who are of opposite sex," Olympus law prior to 2008 did not expressly forbid the recognition of same sex marriage. Subsequent to the Massachusetts Supreme Court's decision in *Goodridge v. Dept. of Public Health 440 Mass. 309, 798 N.E.2d 941 (2003)* recognizing same sex marriage, Olympus voters adopted Proposition 225 which amended the State's marriage laws to establish that "All marriages between persons of the same sex are declared to be contrary to the public policy of this state and are hereby void." Proposition 225 further established that Olympus did not recognize either same sex marriage from other jurisdictions or any license intended to be the equivalent of a marriage for persons of the opposite sex.[2] Olympus law dating to the State's creation forbade marriage between persons related by blood, as well as bigamy and polygamy.[3] It also forbade homosexuals from adopting children. In a number of areas, Olympus routinely recognizes the acts and licenses of other states both legislatively and judicially. These recognitions include reciprocal rights regarding the practice of law, the enforcement of restraining orders and injunctions, the validity of divorce decrees, execution of arrest warrants, and the general recognition of traditional marriages from other states. Bronner and Comerford initially resisted moving to Olympus. In lieu of moving, Bronner commuted two hours by train five days a week. Shortly after the relocation, in the midst of an economic downturn, *The Foot of Pride* went out of business and Comerford lost his job. By the middle of 2008, Bronner and Comerford, their savings dwindling, relocated to Olympus. Comerford found work as an independent contractor designing web pages. He earned $45,000 in 2009 but like Bronner did not earn health care benefits.

In 2010, Congress enacted, and President Barack Obama signed into law, the Affordable Health Care Act (AHCA) of 2010. The legislative history included in the Congressional Report on the law cited the congressional power to regulate interstate commerce.[4] That same history cited numerous studies documenting the effect that sick and uninsured workers have on the national

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[2] For the full text of the proposition see APPENDIX 1 located at the end of this opinion.

[3] "A marriage is prohibited and void between a person and his or her ancestor, descendant, brother, sister, uncle, aunt, niece, nephew, or first cousin. Nor shall any man or woman who is legally married purport to marry or marry a person other than his spouse in this state, or any other state or foreign country."

[4] Article I, Section 8 of the Constitution.

economy and fiscal health of the nation as well as the impact on the nation's health system and health care costs that results from allowing those who are at the lowest health risk to opt out of health care coverage.[5] In light of these findings, the law mandated that all Americans obtain health insurance.[6] For those whose employer did not provide health insurance the law either covered them by expanding Medicaid to ensure coverage for those making up to 150% of the 2009 Federal Poverty Level (FPL) or it mandated that they obtain private health insurance.[7] In order to ensure full compliance, individuals earning in excess of the FPL who failed to obtain such insurance would be fined a percentage of their taxable income. The penalty established by the law was 2.5% of family income beyond the filing limit ($8,950 for single filers and $17,900 for joint filers in 2008) for anyone who did not comply with the individual mandate. The law also established a Health Insurance Exchange (HIE).[8] The penalty was further capped at the premium cost of the basic option available through the exchange. The new law encouraged, but it did not require, that all businesses procure health care benefits for their employees. For instance, companies that employ fewer than fifty persons, while encouraged to provide health care for their employees, were exempt from having to provide insurance for their employees. Thus, *DeNolf Industries* was exempt from the requirement to offer benefits.

Because both Bronner and Comerford earned in excess of 150% of the FPL they did not qualify for Medicaid. Nor, did they qualify for any subsidies. When they approached William DeNolf and requested that he procure health care for his employees, DeNolf refused saying that "no one (other than a bank loaning him money) could tell him to insure anything." In fact, according to evidence introduced at trial, other than car insurance which is required by law, DeNolf had never had an insurance policy for anything other than what was required by his bank for his mortgage or for loans that covered business expenses.

Left to purchase private insurance on their own, Bronner and Comerford attempted to purchase a family policy from several private companies but were refused each time because Olympus did

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[5] Premiums reflect the average cost of health care across the risk pool. People who are young and/or healthy are less likely to purchase health care than those who are older and/or less healthy. If only persons who are at health risk purchase health insurance, costs and premiums rise because services and care are not spread among as great a population as when younger/healthier persons purchase coverage. Thus, including persons who are at less risk in the health pool tends to reduce costs and premiums because costs are spread out among more people.

[6] For a full list of congressional findings included in the Affordable Health Care Act of 2010 see APPENDIX 2 located at the end of this opinion.

[7] The 2009 Federal Poverty Line (FPL) for the contiguous states for a family of one was $10,830. Single persons living in the contiguous states making up to 150% of the 2009 FPL would earn $16, 245. Source: US Department of Health and Human Services.

[8] The Health Insurance Exchange is a national market for health insurance. All participating insurance companies would offer a standard benefits package. Customers would then choose their plan and company. The HIE would be regulated and monitored by the Federal Government which would determine what the standard package would contain. Prices and doctors available would be determined by the insurance companies, not the government.

not recognize the validity of their marriage. Outraged that they were not considered a family under the new law, and thus unable to qualify for a family plan, Bronner and Comerford retained legal counsel and filed suit in federal district court. All insurance companies authorized to sell health insurance in Olympus are in fact headquartered in other states and all such companies operate in multiple states.

Bronner and Comerford challenged the refusal of Olympus to recognize their marriage. They contended that since they were required to purchase insurance and since healthy married persons are charged lower premiums than healthy single persons, those who wish to enter into same sex marriages are denied equal protection of the law in violation of the Fourteenth Amendment. Bronner and Comerford also challenged the constitutionality of the Affordable Health Care Act (AHCA) of 2010 claiming that the individual mandate was beyond the power of Congress in its ability to regulate interstate commerce. Their contention was that since the individual mandate essentially regulates the refusal to engage in commerce rather than commercial activity itself, it was beyond the reach of the federal government.

Judge Sharon Lewis of the Federal District Court for Central District of Olympus ruled in favor of Bronner and Comerford holding the individual mandate provision of the Affordable Health Care Act to be unconstitutional. The Court also held that the State of Olympus lacked a reasonable basis for banning same sex marriage. The United States and the State of Olympus appealed.

All issues raised in this case are legal--there are no material factual disputes. Accordingly, we review all questions *de novo.*

II

COMMERCE CLAUSE ANALYSIS

The Commerce Clause question before the court today is one of first impression. Most Commerce Clause questions ask whether a specific activity or class of activities is sufficiently commercial or sufficiently connected to interstate commerce to fall within the jurisdiction of Congress. Never before has Congress sought to use its regulatory powers under Article I of the United State Constitution to require people to engage in commerce as it has done with the Affordable Health Care Act (AHCA)

While novel, the question before this court today is whether Congress has exceeded its constitutional grant of authority in the instant case. We hold that it has not. The Supreme Court has consistently held that the congressional power to regulate interstate commerce is broad. A review of Supreme Court doctrine reveals that the dividing line between acceptable and impermissible uses of the commerce power is drawn at the line where the activity being regulated has a sufficient impact on interstate commerce. *Perez v. United States*, 402 U.S. 146 (1971). Congress has concluded that the number of uninsured Americans is of such profound

national and economic importance that it warrants the legislation at bar. Our task in performing this endeavor is not to pass on the wisdom invoked by supporters of the Affordable Health Care Act (AHCA). Rather, our task is to examine the law's constitutionality in accordance with the Constitution and the precedent of this circuit as well as that of the Supreme Court. The standard for such an inquiry is to ask whether the Congress acted to achieve a legitimate objective and whether it did so in a rational manner. *Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241 (1964). Applying this analysis to the law we conclude that the law fits within the constitutional parameters of the commerce power.

Starting with *NLRB v. Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937), the Supreme Court has taken a very expansive view of the congressional power to regulate commerce among the several states. In *Wickard v. Filburn*, 317 U.S. 111 (1942), for example, the Court went so far as to hold that "even if activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time be defined as "direct" or "indirect." Similarly, in *Perez v. United States*, 402 U.S. 146 (1971), the Court held that dealing with the national effects of local criminal activity could fall within the power of Congress.

The task before us is to determine if and when activities that indirectly affect interstate commerce also affect interstate commerce enough to invite federal regulation. Certainly, no one would argue that the more than forty million Americans presently without insurance, regardless of whether that insurance is purchased at the state or local level, do not have a substantial economic impact on all commerce. Consequently, the actions of the Government are more than appropriate.

Critics of decisions such as *NLRB* and *Wickard* have warned that the assumption of an expansive view of congressional power to regulate interstate power would forever alter the balance of federalism and destroy the rights of property in this country. Such fears have been unfounded. A decision here in favor of the Government will not erode the balance of power in our federal system. In fact, it will do quite the opposite. A decision for the Government ensures that Congress can intervene to address social problems that are of profound national and economic importance to the nation. Such a decision will also reaffirm congressional authority to regulate morality. The Court recognized congressional regulation of morality as a legitimate justification for the regulation of commercial activity that was challenged in *Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241 (1964). In that case, the Court held that Congress may use the Commerce Clause to fight racial discrimination within states and localities. The political branches of the national government have found that the nation has a moral obligation to cover the uninsured. They have the authority to make such judgments and it is not for this Court to set aside such political determinations unless they are plainly irrational.

Proponents of a broad federal commerce power suffered setbacks in *United States v. Lopez*, 514 U.S. 549 (1995) and *U.S. v. Morrison*, 529 U.S. 598 (2000). As these cases noted, there are three broad categories of activity that Congress may regulate under its commerce power. First,

Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce. *Perez, supra, at 150.* In both *Lopez* and *Morrison*, the Supreme Court struck down federal laws when the government was unable to show a direct and substantial effect on interstate commerce. The Court found that these cases involved only criminal statutes that had nothing to do with "commerce" or any sort of economic enterprise, however broadly those terms are defined. More importantly, for the case at hand, the Court held that neither law was "an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Lopez, supra.* Thus, the laws in those cases could not be sustained under the Court's cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce. The case at bar is quite different. The Affordable Health Care Act (AHCA) is a regulatory scheme which seeks to lower national health care costs by widening the insurance pool and spreading the risks. By bringing more healthy people into the pool, risk will decrease and thus premiums will correspondingly go down. This regulatory scheme would certainly be undercut (and has been undercut in the present system) if states alone are allowed to regulate. In this sense, the facts of the present case approximate those of *Wickard* where the Court affirmed congressional limits on how much wheat farmers receiving federal subsidies could grow for their own personal use because of the *likely affect* on the nation's wheat prices. Health care is a national problem which demands a national solution. Health care is also a national economic issue which requires congressional regulation.

Contrast the results in *Lopez* and *Morrison* with the most recent Commerce Clause decision in *Gonzales v. Raich,* 545 U.S. 1 (2005). There, the Court upheld federal regulations of marijuana and overturned state laws in the process, in part because these laws were part of a larger regulatory scheme. This was true even though there was no legal commercial market for the marijuana and even though the drug was never bought, sold, or moved across state lines. Because the law in that case was a statute that directly regulated economic, commercial activity it fell on the permissible side of the line.

The dissent contends that even though a regulatory scheme, the Affordable Health Care Act does not regulate any commercial activity since those that do not purchase insurance are simply doing nothing. They contend there must be some actual activity for regulation to exist. However, this is not the case. When uninsured people get sick, they rely on their families for financial support, go to emergency rooms, thus passing the costs on to others, or purchase over-the-counter remedies. They substitute these activities for paying premiums to health insurance companies. All these activities are economic, and they have a substantial and cumulative effect on interstate commerce. Moreover, like people who substitute homegrown marijuana or wheat for purchased crops, the cumulative effect of uninsured people's behavior undermines Congress's regulation which in this case is the regulation of the health care industry. Because Congress believes that national health care reform cannot succeed unless all people are brought into national risk pools,

it can regulate the activities of the uninsured through the individual mandate in order to make its general regulation of health insurance effective. The law is a rational response to a legitimate concern on the part of the Congress that is well within its purview to regulate. Because the law is valid, and Bronner and Comerford can be required to purchase health care for themselves or pay a fine, we turn now to whether Olympus denies them any right when it refuses to recognize their Massachusetts marriage license. Such recognition would ultimately spare the men from higher insurance premiums – a benefit only enjoyed by persons in Olympus who are married to persons of the opposite sex.

III

FOURTEENTH AMENDMENT ANALYSIS

In order to answer the question regarding the constitutionality of same sex marriage, we must start with first principles. For any law or policy to be unconstitutional on a federal level, said law or policy would have to directly address or impact something specifically covered by the U.S. Constitution. Same sex marriage cannot be held to violate the U.S. Constitution for the simple fact that the Constitution says absolutely nothing about it. Nor is there any mention of same sex marriage in any of the records associated with either the Constitutional Convention or any of the ratifying conventions, nor with the legislative histories or ratifying conventions associated with any of the twenty-seven amendments to the Constitution.

Same sex marriage is an issue that does not act for or against, anything that is explicitly stated in, or even implied in, the United States Constitution. Put simply, in our constitutional system, the balance of power in such instances is clear. The Tenth Amendment states explicitly that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The concept of federalism is one of the cornerstones of the American system of government. At the time of the ratification of the Constitution, the great fear of many was that the federal government would grow over time and become too powerful, thus undermining the rights of states. As history has proven, these fears were not unfounded. Today's federal government would far exceed anything the Framers of our great Constitution could have ever envisioned (and would be quite frightful to many of them). To assuage these fears, a Bill of Rights was adopted upon ratification. The purpose of these additions was to carve out areas into which the federal government could not transgress. The Tenth Amendment specifically was added to ensure that powers that traditionally belonged to the states could not be invaded by the national government. Undoubtedly, one of these traditional state powers involved sanctioning marriage. Thus, wherever the line is between what a state power is and what is federal, marriage would by necessity fall on the state side. Further, to understand the meaning of various constitutional provisions, it is common for courts to look to

the history associated with the provision(s) in question and ask what the Framers intended or in the alternative what did those who ratified the document understand the divisions to be. The concept of same sex marriage would have been completely alien to anyone involved with the original framing of the Constitution. Thus, to contend that the Constitution protects such a right would require such a great stretch of the imagination that respondent in essence asks us to engage in the type of willful suspension of disbelief associated with staged productions. This is asking too much and, as a matter of course, we decline to suspend reality. The Constitution draws its meanings from its text, the intention of its authors, and the traditions and practices that are customary. It does not draw its meaning from what judges desire it to mean, nor are its true meanings or the history associated with it to be ignored or cast aside when it is convenient or efficient. In light of these convictions, we first examine the intentions of the authors of the Constitution, in particular the Framers of the Fourteenth Amendment.

The Fourteenth Amendment was added to the Constitution following the Civil War. As the only Amendment to the U.S. Constitution that directly addresses state powers, the Fourteenth Amendment says in part that:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

However, from the earliest interpretations of its meaning, this guarantee has been held to retain important separations between federal and state responsibilities. In taking a narrow view of how this separation had been changed, the Supreme Court in *The Slaughter-House Cases*, 83 U.S. 36 (1873) took special note of the first section of the Fourteenth Amendment which drew a distinction between U.S. citizenship and state citizenship. In the process, the Court held that "there is a citizenship of the United States, and a citizenship of a State, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual." Since the plain language of the Amendment spoke only to the "privileges and immunities of citizens of the United States" it naturally follows that this Amendment could not have been intended as protection against a state government's encroachment upon the rights its citizens possess as a result of their state citizenship. While the Court declined to spell out what specifically are the privileges and immunities of U.S. citizenship, it did provide examples.

> It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, "to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States." And quoting from the language of Chief Justice Taney in another case, it is said "that for all the great purposes for which the Federal government was established, we are one people with one common country, we are all citizens of the United States."

> Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State.

All of the examples listed above share at least two common characteristics. First, each entails some federal involvement. Second, each was among the reasons for the creation of a central government. It is beyond dispute that the federal government has no involvement in sanctioning marriage of any kind and also that none of the great purposes upon which the federal government was created would include the right to same sex marriage. On the contrary, marriage is and has always been traditionally a state matter. In fact, it is one of state creation and because it requires the people's seal of approval the people can withhold that approval unless some fundamental right is denied.

The Slaughter-House Cases makes clear that the main purpose of the Fourteenth Amendment was to protect the freed slaves and their descendants. Subsequent extensions to include other groups such as women or aliens have been noble causes that have become established components of our social, cultural, and legal landscape. However, such additions have had widespread national support that developed over many years that culminated in congressional actions supporting such causes. Such is lacking from this controversy. To date, only a handful of states recognize same sex marriage. Every state which has put the question on the ballot has rejected same sex marriage. Federal law expressly rejects such recognition or status. If change is to come in this area, it should come through the will of the people and/or their elected representatives. It is not, however, for this Court to add additional classes deserving of Fourteenth Amendment protection where legislators and the voters in so many states and at the national level have declined to do so.

Any reliance on the Full Faith and Credit clause is misplaced and consequently of no help to the petitioners. *Pacific Employers Insurance v. Industrial Accident Commission,* 306 U.S. 493 (1939) established that "full faith and credit does not . . . enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it." This concept is often referred to as a public policy exception. It allows a state to refuse to give credit to the decrees of another state if such decree would violate the public policy interests of the home state. The marriage at issue here would clearly go against the public policy interests of Olympus and thus need not be recognized.

Further, reliance by the dissent on precedent addressing state recognition of marriage and the protection of homosexual rights such as *Loving v. Virginia,* 388 U.S. 1 (1967) or *Lawrence v. Texas,* 539 U.S. 558 (2003) is misplaced for several reasons. First, the facts of the instant case are distinguishable from these because no criminal statute is at issue. The Court found that

criminalizing the Loving's marriage and subjecting them to prison time was a violation of the equal protection clause. The Court invalidated Lawrence's criminal conviction holding that "the State cannot demean a homosexual person's existence or control their destiny by making their private sexual conduct a crime." Olympus, however, has not made any action of Bronner or Comerford a crime. The respondents are free to live their lives together, to share a common residence, to engage in sexual relations, and to have a family.[9] Olympus is not regulating or criminalizing any private conduct and has not prevented them from doing anything. Instead, the state has merely withheld its blessing from this type of union.

States, traditionally, have placed many restrictions on who one can legally marry. Justice Stewart, concurring in *Zablocki v. Redhail*, 434 U.S. 374 (1978) explained that "a State may not only significantly interfere with decisions to enter into the marital relationship but may in many circumstances absolutely prohibit it. Surely, for example, a State may legitimately say that no one can marry his or her sibling, that no one can marry who is not at least 14 years old, that no one can marry without first passing an examination for venereal disease, or that no one can marry who has a living husband or wife." None of these restrictions poses an equal protection problem and neither does the will of the people in this case. *Lawrence* specifically states that its holding applies only to criminalizing sexual relations and does not extend to the requirement that the government approve of such actions stating that it "does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter." Thus, *Lawrence* does not compel us to extend its holding in the present case. In fact, quite the opposite is true. Cognizant of *Lawrence's* lack of applicability to family related concerns of the state, other federal courts have upheld bans on same sex marriage. See, for example, *Wilson v, Ake*, 354 F. Supp. 2d 1298 (U.S. Dist., M. D. Fla. 2005).

It is important to note that the concept of marriage has long and deep historical roots. Any review of history will simply reveal what our review of the Supreme Court's decisions make plain. As a legal concept, marriage has always been considered based upon the traditional definition of a union between one man and one woman. This is a case of such a fundamental character and would require change of such a sweeping magnitude that if such a change is to occur, it must happen through the normal democratic process. It would be wholly inappropriate for the court to usurp the role of the people's elected representatives on such a fundamental issue.

A ruling that compels the states to recognize same sex marriage will unleash sweeping changes in the American legal landscape and subject the courts to a renewed round of public scorn and disapproval. At a time of increasing public dissatisfaction and disillusionment with public bodies avoiding such a torrent of public condemnation is advisable. Consider, for instance, the effect that such a ruling would have on the nation's adoption laws. At the present, only about 20% of the states allow adoption by gay and lesbians without any restrictions. Approximately 40% have laws that are unclear. The remaining states, about 40%, which include states in this circuit, either forbid all gay and lesbian adoption, forbid gay and lesbian couples to adopt, while allowing single gays or lesbians to adopt, or leave decisions about allowing gay and lesbian

[9] Olympus law forbids gay adoption but allows homosexuals to be biological parents.

adoption to local governments (some of which allow it and some of which do not). If we hold that states must recognize same sex marriage we must surely hold that they must recognize gay and lesbian adoption. We do not need a ruling that raises so much doubt or reaches so far so fast. Changes of this magnitude and scope need to come with greater public involvement and are better served if they come from the bottom up in a democratic process that is transparent and open to all. That is how democracies work and flourish.

Second, homosexuals are not a suspect class. As Justice Scalia made clear in his dissent in *Romer v. Evans, 517 U.S. 620 (1996)*, unlike race and national origin, homosexuals are not a group of citizens in need of special protection from the majoritarian political process. The fact that laws have been enacted to protect homosexuals demonstrates the impact they can have as a group within the political system. Further, they share none of the immutable characteristics of traditionally disadvantaged groups such as women or racial minorities.

Third, there is also no fundamental right to marriage. Justice Powell, concurring in *Zablocki* explained that marriage analysis:

> must start from the recognition of domestic relations as "an area that has long been regarded as a virtually exclusive province of the States." *Sosna v. Iowa, 419 U.S. 393, 404 (1975)*. The marriage relation traditionally has been subject to regulation, initially by the ecclesiastical authorities, and later by the secular state. As early as *Pennoyer v. Neff, 95 U.S. 714, 734 -735 (1878),* this Court noted that a State "has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved." The State, representing the collective expression of moral aspirations, has an undeniable interest in ensuring that its rules of domestic relations reflect the widely held values of its people.

Finally, the state used a means that was rationally related to a legitimate interest. The Supreme Court has described the elements of rational basis review in *Heller v. Doe* 509 U.S. 312 (1993) holding that:

> Rational-basis review . . . is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. A classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. Such a classification cannot be found unconstitutional if there is a rational relationship between the challenged government action and some legitimate governmental purpose. . . . A classification must be upheld . . .if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.

The government, moreover, has no obligation to produce evidence to sustain the rationality of a statutory classification. A legislative choice is not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data. The burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it, whether or not the basis has a foundation in the record. Simply put, courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. The above process holds true "even if the law seems unwise or works to the disadvantage of a particular group, or if the rationale for it seems

tenuous." *Romer*. Olympus has concluded that a marriage between one man and one woman is the optimum family structure and will produce more stable marriages. As the success of Proposition 225 shows, this view reflects the widely held views of the people.

Additionally, the State offers certain financial considerations which support limiting the exact marriages that it must solemnize. These include, but are not limited to, administrative burdens associated with additional requests for marriage licenses and divorce orders not to mention additional applications to adopt or serve as foster families and lost tax revenues as well as public expenses associated with expanding benefits such as health care or spousal death payments that would come with recognizing same sex marriages. The increased cost of health benefits is a major consideration for the state of Olympus. While no one knows for sure how many same-sex couples would in fact seek legal recognition for a marriage, even a conservative estimate would likely add hundreds if not thousands of newly recognized spouses to be covered by state benefit plans.
In 2009 alone, Olympus spent 26% of its annual budget on benefit related costs. When pension obligations are factored in, this number accounts for nearly 40% of the overall state budget. Thus, expanding the definition of marriage has significant costs to the state. These may or may not be morally valid financial concerns. But it is not for us to judge whether the money saved is enough or if the policy is the right thing to do. It is enough that these considerations exist and that they are valid, rational concerns for the State to possess in mind. Finally, the state has proffered that a main motivation was to ensure that Olympus marriages will be recognized in other jurisdictions. Respect for federalism, as well as democracy, allows states, and the people, to make these types of moral choices. Whether we, as individuals or as voters, would agree is beside the point. As we cannot say this view is entirely irrational, great deference is due the state. As such, absent a clear command or intention on the part of the Framers of the amended Constitution, we must stay our hand and affirm Proposition 225.

Accordingly, the decision of the lower court is reversed.

Dissenting Opinion

Judge Amy Fernandez, dissenting:

COMMERCE CLAUSE ANALYSIS

The majority is correct that the congressional commerce power has been interpreted quite broadly over the years. This power has extended to things that were neither interstate nor commerce. However, this court today, for the first time, holds that the power of Congress to regulate commerce among the several states extends so far as to include no activity at all. If the act of doing nothing on the part of a consumer, a conscious decision to not engage in a regulated market, can be regulated by Congress then we have reached a point where this is truly a power without end and distinctions between interstate and intrastate truly have no significant meaning.

The AHCA's mandate requiring all individuals to purchase health insurance is most certainly an unprecedented form of federal action. The federal government has never required people to buy any good or service as a condition of lawful residence in the United States. The individual mandate imposes a requirement on citizens simply as living members of society. Worse, this law requires people to purchase one specific service (over all others) that would be not only mandated but also heavily regulated by the federal government. Our national government is, by design, one of limited powers. The Constitution is very clear on this point. Article I begins by assigning to Congress "all legislative powers herein granted." This exemplifies the concept that federal power is limited to only those powers granted in the Constitution while leaving many legislative powers not specifically listed remains beyond the authority of Congress. The Necessary and Proper Clause in Article I section 8 expands congressional power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." However, this clause also speaks to the use of the powers specifically vested by the Constitution. The intentions of the Framers as articulated through these limitations should begin our inquiry. Simply put, nowhere in the Constitution is Congress given the power to mandate that an individual enter into a contract or purchase any good or service. Since these concepts are not expressed anywhere in Article I and cannot possibly be necessary for carrying out any expressed power, the Affordable Health Care Act (AHCA) must be unconstitutional.

Since the New Deal period, the Supreme Court has consistently applied the following test to determine whether a federal statute is within the commerce power of Congress. At this point in time, it is undisputed that Congress may regulate three categories of activity pursuant to the commerce power. These categories were first summarized in *Perez v. United States* 402 U.S. 146 (1971), and have been repeatedly reaffirmed (see *Lopez*, *Morrison*, and *Gonzales*). This standard holds that Congress may regulate:

> First, the use of channels of interstate or foreign commerce which Congress deems are being misused, as, for example, the shipment of stolen goods or of persons who have been kidnapped. Second, protection of the instrumentalities of interstate commerce, as, for example, the destruction of an aircraft or persons or things in commerce, as, for example, thefts from interstate shipments. Third, those activities affecting commerce.

The individual mandate required by the Affordable Health Care Act (AHCA) is neither a channel nor instrumentality of interstate commerce. Thus, if it is to survive, it must be justified as an activity substantially affecting commerce. *Wickard* makes clear that the activity in question is to considered in the aggregate. Thus, before looking at what substantial affects may exist, the key question to be answered is what activity is being regulated. This is where the logic of the majority falls apart. It is beyond dispute that the health care industry or the insurance industry engages in business that substantially affects interstate commerce. However, the law in question does not regulate anything in either industry. To the contrary, the individual mandate imposed by the Affordable Health Care Act (AHCA) does not regulate or prohibit any economic activity

associated with providing or administering health insurance. Nor does it regulate any economic activity associated with providing health care, whether by doctors, hospitals, the pharmaceutical industry, or any other entity. The key flaw in this law is that the individual mandate does not regulate or prohibit any activity of any kind, whether economic or not. The only thing regulated by the law is inactivity. There simply is no way that the Framers, men who believed in the sanctity of individualism, private property, and limited government, would have intended for Congress to be able to regulate inactivity of this nature under the guise of regulating commercial activity. To paraphrase an old expression, the Framers did not hide elephants in mouseholes.

To illustrate the proper line further, it is instructive to compare Supreme Court decisions which have upheld laws under the Commerce Clause against those that have been struck down. Perhaps the two broadest interpretations of the commerce power came in *Wickard* and *Raich*. In the *Wickard* case, Filburn had grown wheat beyond his allotment in violation of the Agricultural Adjustment Act, a law designed to artificially inflate wheat prices by reducing demand. Filburn argued that since the wheat was for his own personal consumption, it would never be bought, sold, or leave his farm. Thus, it could not be considered interstate commerce. The Court, however, disagreed. Holding that "even if activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce." The Court reached this conclusion because the class of activities being regulated, namely wheat production, taken in the aggregate, would have substantial affects stating that "an individual's contribution to the demand for goods moving in interstate commerce may be trivial by itself is not enough to remove him from the scope of Federal regulation where his contribution taken together with that of many others similarly situated, is far from trivial."

In *Gonzalez v. Raich (2005)*, the Court upheld the federal Controlled Substances Act against two individuals who had grown marijuana for medical purposes. Once again, this crop was never to be bought or sold. Nonetheless, the Court reached this conclusion because the class of activities being regulated (namely marijuana production), taken in the aggregate, could have had a substantial affect on the supply that would reach the illicit markets and thus could frustrate federal law enforcement efforts. The *Raich* Court recognized many similarities with *Filburn*:

> Like the farmer in *Wickard*, respondents are cultivating, for home consumption, a fungible commodity for which there is an established, albeit illegal, interstate market. Just as the Agricultural Adjustment Act was designed "to control the volume [of wheat] moving in interstate and foreign commerce in order to avoid surpluses . . ." and consequently control the market price, a primary purpose of the CSA is to control the supply and demand of controlled substances in both lawful and unlawful drug markets. In *Wickard*, we had no difficulty concluding that Congress had a rational basis for believing that, when viewed in the aggregate, leaving home-consumed wheat outside the regulatory scheme would have a substantial influence on price and market conditions. Here too, Congress had a rational basis for concluding that leaving home-consumed marijuana outside federal control would similarly affect price and market conditions.

While each case allows for a very expansive federal power, the instant case is easily distinguishable. As a wheat grower such as Filburn or a marijuana grower such as Raich, each

was a willing and knowing member of that class being regulated. Each made a conscious choice to participate in their respective activities. Unlike Filburn and Raich, Bronner and Comerford have not engaged in a commercial activity. Instead, they have consciously chosen to refrain from engaging in economic activity altogether. To analogize these cases, it would have required the government to punish Filburn for refusing to grow wheat or Raich for not cultivating marijuana. Either scenario would seem improbable on its face much as is the current controversy. The majority, by finding that the authority to regulate interstate commerce includes the power to regulate not only voluntary activity that is commercial or even related, but also inactivity that is intentionally designed to avoid entry into any market, in effect removes any and all boundaries to Congress's commerce power. Simply put, if today's decision stands, Congress can now mandate anything under the guise of regulating interstate commerce.

To uphold the constitutionality of the Affordable Health Care Act (AHCA) under the authority of *Filburn* and *Raich*, the Court would have to reason that a decision not to enter into a contract to purchase insurance is an economic activity that, in the aggregate, would substantially affect interstate commerce. However, such a conclusion would stretch logic to its breaking point. As the Court held in *Lopez*:

> To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, cf. *Gibbons* v. *Ogden, supra*, at 195, and that there never will be a distinction between what is truly national and what is truly local, cf. *Jones & Laughlin Steel, supra*, at 30. This we are unwilling to do.

Contrasting the holdings referenced above with those in *Lopez* and *Morrison* is also instructive. In *Lopez*, the Court upheld a challenge to the Gun-Free School Zone Act, which regulated the mere possession of a gun within a thousand feet of a school. This was followed by *Morrison* which upheld a challenge to the federal Violence Against Women Act (2000). In each of these cases, the Court struck down each law holding that the class of activities regulated by the statute was noneconomic and, therefore, outside the reach of the commerce power of Congress. Even more significantly, this was true regardless of the affect these activities have on interstate commerce. Because the individual mandate contained in the Affordable Health Care Act (AHCA) reaches only the refusal to engage in economic activity, we could not uphold this exercise of congressional power without admitting that the Commerce Clause has no limits. As the Court has explicitly rejected this view in both *Lopez* and *Morrison*, today's decision is clearly unsupportable as a matter of precedent.

FOURTEENTH AMENDMENT ANALYSIS

Marriage is the foundation of our American society. It not only comes with the sacred trust of an intimate familial relationship but also affords many other benefits accorded by the states such as rights involving property, child rearing and raising, and the many issues surrounding issues of health, life, and death. Simply put, marriage is the rock upon which our social order rests. In fact, it would be accurate to state who one seeks to marry and to share his or her life with is a matter of personal privacy that rises to the level of being a fundamental right. While the type of marriage at issue here has only recently become a lightning rod in American politics, the institution of marriage has been one of the most sacred and cherished practices that form the basis of American society. In upholding the right for married persons to receive medical advice regarding contraception, Justice Douglas described marriage as:

> … a right of privacy older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Griswold alluded to "sacred precincts of the marital bedrooms" as protected as part of the right to privacy. While no single rationale for the origin of this right was articulated in *Griswold*, one explanation that has endured has been the Due Process Clause of the Fourteenth Amendment which the Court held applied freedoms found in the Constitution to the states. Not all of these freedoms appear in explicit terms in the Constitution itself. *Griswold* established that many of the majestic pronouncements found in the Constitution, most prominently in the Bill of Rights, suggest the existence of certain liberties that, while unenumerated, are no less fundamental than those which explicitly appear in the text itself. Among these is the implied freedom to be left alone. This is a broad freedom – one that provides ample constitutional cover to the notion before us today – the idea that the Constitution provides a liberty to marry a person of one's choice. This is not an unfettered liberty. States can limit this choice where their interests rise to a certain level. Thus, state bans on polygamy or incestuous marriages are undeniably constitutional. Our task today is to judge if a ban on same sex marriage unfairly trenches upon an implied liberty protected by the Constitution of the United States and made applicable to the states through the Fourteenth Amendment.

Our approach today need not focus solely on implied freedoms. The Court has also addressed discrimination in marital relationships under the Fourteenth Amendment's Equal Protection Clause. In *Loving v. Virginia* 388 U.S. 1 (1967), the Supreme Court struck down Virginia's antimiscegenation statutes holding that "marriage is one of the "basic civil rights of man," and that "under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State." 388 U.S. 1 (1967).

While the majority today focuses at length on the question of federalism, *Loving* unquestionably altered the degree to which marriage is exclusively a state issue. This direction was extended in *Zablocki v. Redhail*, 434 U.S. 374 (1978) which struck down a Wisconsin law prohibiting

individuals behind in their child support payments from getting married. Finding that restrictions on marriage require heightened scrutiny, the Court held that:

> … in evaluating a state's prohibition on the right to marry under the equal protection clause, U.S. Const. amend. XIV, the court must first determine what burden of justification the classification created thereby must meet, by looking to the nature of the classification and the individual interests affected. The right to marry is of fundamental importance, and where a classification significantly interferes with the exercise of that right, critical examination of the state interests advanced in support of the classification is required.

It is hard to dispute that homosexuals are a traditionally disadvantaged group. In addition to Olympus, forty-five states have a constitutional or statutory ban on gay marriage. To date, only five states and the District of Columbia grant same sex marriage licenses.[10] Further, every state that has placed the question before its voters has voted to enact these prohibitions. If ever there were a group that meets the requirements of a suspect class homosexuals are it.

Because marriage is a fundamental right and because we deal here with a suspect class, the Olympus Proposition 225 should be made to pass strict scrutiny to survive. To satisfy strict scrutiny, a law must be both narrowly or precisely tailored to and necessary for achieving a compelling interest. In our view, the State fails to satisfy this level of scrutiny.

At a minimum, if the Court chooses not to employ strict scrutiny, it should recognize that the classification at bar is sex based. Under Supreme Court case law, sex based classifications, "while not facially invidious, nonetheless give rise to recurring constitutional difficulties; in these limited circumstances we have sought the assurance that the classification reflects a reasoned judgment consistent with the ideal of equal protection by inquiring whether it may fairly be viewed as furthering a substantial interest of the State." *Plyler v. Doe, 457 U.S. 202 (1982).* This inquiry has been termed intermediate scrutiny and it "permits us to evaluate the rationality of the legislative judgment with reference to well-settled constitutional principles." *Ibid, Footnote 16.* Under this analysis, the state must present an important interest that is substantially related to achieving its objective. Examined in this light, the proposition is unconstitutional.

While the application of some form of heightened scrutiny, strict or intermediate, seems appropriate in this case, the respondents would prevail regardless of the standard of review used in this case as the state simply has no rational basis for upholding this law. The classification here is not very far removed from the Colorado constitutional amendment which was struck down in *Romer v. Evans*, 517 U.S. 620 (1996). In that case, Colorado withdrew from homosexuals, but no others, specific legal protection from the injuries caused by discrimination, and it forbid reinstatement of protective laws and policies. This type of distinction thus classified homosexuals not to further a proper legislative end but to make them unequal to everyone else. The same is true of the restrictions on marriage created by Proposition 225 in Olympus. Even

[10] These include Massachusetts, Connecticut, Iowa, Vermont and New Hampshire.

under the lowest level of review, the state must be able to articulate some rational basis for upholding a discriminatory law.

The most recent decision of this court to examine discrimination against homosexuals was *Lawrence v. Texas*, 539 U.S. 558 (2003). There, the Supreme Court struck down a Texas law which banned homosexual sodomy. However, in doing so, the Court made clear that "the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons." While both *Romer* and *Lawrence* applied only rational basis review, both laws were invalidated as lacking any rational relationship to the supposed state interest.

The Full Faith and Credit Clause of the U.S. Constitution should also compel Olympus to recognize the Bronner/Comerford marriage as it was legally granted in Massachusetts. In *Williams v. North Carolina*, 317 U.S. 287 (1942), the Supreme Court held that full faith and credit must be given a decree of divorce granted by the state where the marriage occurred even where the divorce was granted in another state for the purposes of evading the marrying state's requirements. There is no reason to expect that marriage should be treated differently than divorce where comity is concerned.

Our analysis need not focus exclusively on the issue of marriage as an isolated issue. Consider, for instance, that in *Shapiro v. Thompson*, 394 U.S. 618 (1969), the Supreme Court held that "The nature of the United States and its constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of the land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." It would be hard to argue that differing state laws which restrict the right to marry do not impose such a burden. By traveling from Massachusetts to Olympus, Bronner and Comerford are treated quite differently under the law. This fact, coupled with the foregoing rationale, dictates that the law is unconstitutional and should be reversed.

While homosexuals have not been successful in ending discrimination at the ballot box, the results in recent decisions of state courts have been more consistent with recent Supreme Court precedents. The highest court in Massachusetts (where the Bronner/Comerford marriage took place) came to the conclusion that bans on same-sex marriage violated the Constitution and traditions of the state. (See *Goodridge v. Dept. of Public Health 440 Mass. 309, 798 N.E.2d 941 (2003*.) The majority alludes to federalism and the notion that the Constitution leaves the issue of marriage to the states for all time. This is unfounded. No state can violate the United States Constitution to achieve any objective. Furthermore, the United States Government does not have a monopoly on wisdom, nor does it have an exclusive sense of what the people want or believe or how we have evolved as a society. Simply put, knowledge and awareness must flow up as well as down. Several states have held that the laws and traditions of their states have evolved to a new point in time – one that now solemnizes marriage between persons of the same sex. Such is akin to what happened in the history that led up to *Loving v. Virginia (1967)*. Our Constitution is a living document that is not, nor was it intended to be, static. Our charge is to ensure that it remain for the living and never become captive to the world of the past.

The explanations offered by the state include deference, cost, public morality, and the protection of traditional marriage. However, in *Shapiro*, the Supreme Court held that even if a state had a legitimate interest in treating some citizens differently from others, the classification imposed would still be impermissible where less drastic measures were available to protect a state's interest. In the end, we conclude that Proposition 225 advances no legitimate state interest. The only goal it accomplishes is to label gay and lesbian persons as different, inferior, unequal, and disfavored. Proposition 225 brands their relationships as not the same and less-approved than those enjoyed by opposite sex couples. Proposition 225 stigmatizes gays and lesbians, classifies them as outcasts, and causes unneeded pain, isolation and humiliation. It demonstrates a lack of respect for human dignity. Accordingly, it is unconstitutional and should be reversed.

APPENDIX 1

Proposition 225

The State of Olympus marriage code shall be amended as follows:

It is hereby declared to be the strong and longstanding public policy of this State that marriage shall be between one man and one woman. All marriages between persons of the same sex are declared to be contrary to the public policy of this state and are hereby void. Marriages between persons of the same sex entered into in any jurisdiction, or tribe, even if valid where entered into, whether within or outside the State of Olympus, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, or tribe, whether within or outside the State of Olympus, the United States, or any other jurisdiction, or tribe, either domestic or foreign, or any other place or location, shall not be recognized or given effect for any purpose in the State of Olympus.

This law shall take effect January 1, 2006.

APPENDIX 2

Findings Included in the Affordable Health Care Act (AHCA) of 2010

(a) FINDINGS.—Congress makes the following findings:

(1) IN GENERAL.—The individual responsibility requirement provided for in this section (in this subsection referred to as the ‘‘requirement’’) is commercial and economic in nature, and substantially affects interstate commerce, as a result of the effects described in paragraph (2).

(2) EFFECTS ON THE NATIONAL ECONOMY AND INTERSTATE COMMERCE.—The effects described in this paragraph are the following:

(A) The requirement regulates activity that is commercial and economic in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased.

(B) Health insurance and health care services are a significant part of the national economy. National health spending is projected to increase from$2. 5 trillion, or 17.6 percent of the economy, in 2009 to $4.7 trillion in 2019. Private health insurance spending is projected to be $854 trillion in 2009, and pays for medical supplies, drugs, and equipment that are shipped in interstate commerce. Since most health insurance is sold by national or regional health insurance companies, health insurance is sold in interstate commerce and claims payments flow through interstate commerce.

(C) The requirement, together with the other provisions of this Act, will add millions of new consumers to the health insurance market, increasing the supply of, and demand for, health care services. According to the Congressional Budget Office, the requirement will increase the number and share of Americans who are insured.

(D) The requirement achieves near-universal coverage by building upon and strengthening the private employer-based health insurance system, which covers 176,000,000 Americans nationwide. In Massachusetts, a similar requirement has strengthened private employer based coverage: despite the economic downturn, the number of workers offered employer-based coverage has actually increased.

(E) Half of all personal bankruptcies are caused in part by medical expenses. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will improve financial security for families.

(F) Under several pre-existing acts, as well as this Act, the Federal Government has a significant role in regulating health insurance which is in interstate commerce.

(G) Without the requirement created by this Act, many individuals would wait to purchase health insurance until they needed care. By significantly increasing health insurance coverage, the requirement, together with the other provisions of this Act, will minimize this adverse selection and broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums. The requirement is essential to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold.

(H) Administrative costs for private health insurance, which were $90 billion in 2006, are 26% to 30% of premiums in the current individual and small group markets. By significantly increasing health insurance coverage and the size of purchasing pools, which will increase economies of scale, the requirement, together with the other provisions of this Act, will significantly reduce administrative costs and lower health insurance premiums. The requirement is essential to creating effective health insurance markets that do not require underwriting and eliminate its associated administrative costs.

(I) The great majority of people living in the United States will require medical services provided by doctors, hospitals, or health clinics. This is especially true of persons as they age. Many of these health care consumers are uninsured. The number of these uninsured persons continues to rise each year. These uninsured consumers are a great drain on the nation's economy.

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