

March 17, 2015

The Honorable Scott Harris
Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington DC 20543

Re: *Obergefell v. Hodges* and *Henry v. Hodges*, No. 14-556; *Tanco v. Haslam*, No. 14-562; *DeBoer v. Snyder*, No. 14-571; *Bourke v. Beshear* and *Love v. Beshear*, No. 14-574

Dear Mr. Harris:

Petitioners in *Obergefell v. Hodges* and *Henry v. Hodges*, No. 14-556; *Tanco v. Haslam*, No. 14-562; *DeBoer v. Snyder*, No. 14-571; and *Bourke v. Beshear* and *Love v. Beshear*, No. 14-574, respectfully submit this letter in response to the Court's request for a joint proposal from Petitioners regarding oral argument in these consolidated cases.¹ As discussed further below, Petitioners request that argument be divided among two counsel for Petitioners and the Solicitor General on Question One and between two counsel for Petitioners on Question Two.

The Court has set argument for 90 minutes on the first question presented: "Does the Fourteenth Amendment require a State to license a marriage between two people of the same sex?" Petitioners request that their 45 minutes of argument be divided and allocated as follows: 15 minutes for Petitioners in *DeBoer v. Snyder*, No. 14-571; 15 minutes for Petitioners in *Bourke v. Beshear*, No. 14-574; and 15 minutes for the Solicitor General. The Solicitor General has requested 15 minutes to present oral argument as amicus curiae in support of Petitioners on Question One, and all Petitioners consent to that request.

The Court has set argument for 60 minutes on the second question presented: "Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?" The Solicitor General has not requested argument time on Question Two. Petitioners request that their 30 minutes of argument be divided and allocated as follows: 15 minutes for Petitioners in *Obergefell v. Hodges* and *Henry v. Hodges*, No. 14-556; and 15 minutes for Petitioners in *Tanco v. Haslam*, No. 14-562.

¹ Petitioners in *Obergefell* and *Henry* seek recognition of their marriages by the State of Ohio. Both cases are docketed under No. 14-556. Petitioners in *Tanco* seek recognition of their marriages by the State of Tennessee. Petitioners in *DeBoer* seek to marry in the State of Michigan. Petitioners in *Love* seek to marry in the Commonwealth of Kentucky. Petitioners in *Bourke* seek recognition of their marriages by Kentucky. Both the *Love* and *Bourke* cases are docketed under No. 14-574.

While divided argument is not typical, in appropriate circumstances this Court has granted counsel an opportunity to present divided argument. See, e.g., *Georgia v. Ashcroft*, 539 U.S. 461 (2003); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Schuette v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623 (2014); *Michigan v. Environmental Protection Agency*, No. 14-46 (2015). The issues presented in these cases are of similar import and likewise warrant divided argument.

These cases present questions of national importance. Thirteen states refuse to permit marriages between same-sex couples and likewise refuse to recognize marriages between same-sex couples that are celebrated in the thirty-seven states, District of Columbia, and numerous other jurisdictions where same-sex couples are permitted to marry. The four petitions (encompassing six cases) reflect the wide variety of circumstances in which refusal to marry and non-recognition arise, and the full spectrum of harms that are visited on same-sex couples and their families by the Respondents' refusal to grant marriage licenses to same-sex couples and by their non-recognition of married same-sex couples. These cases have been litigated separately in the courts below, including before the Sixth Circuit, which heard argument from counsel for Petitioners from each of the four states within the circuit. Because of their different procedural and factual circumstances, and the different ways in which Respondents have defended against the suits, Petitioners have emphasized different points in their briefing, even with respect to Question One, which is presented by two cases, and Question Two, which is presented by four cases.

As one example of these differences, in defense of Michigan's laws, the *DeBoer* Respondents have made arguments regarding the optimal environment for raising children. Those arguments have been rebutted in a trial that adduced extensive expert testimony, including testimony regarding the factors for healthy child development and the comparative outcomes of children raised by same-sex couples and children raised by heterosexual couples, the demographics of gay and lesbian couples and their children, and the foster care system and adoption.

Permitting divided argument will ensure that the Court has the benefit of a full and thorough presentation of all of the issues in these cases, including any questions the Court may have regarding the records developed in the individual cases. Allocating argument as proposed above would ensure that the Court has the benefit of hearing from each of the four Petitioner groups (covering all six cases). In light of the critical importance of the issues presented to Petitioners, and similarly situated couples across the Sixth Circuit, divided argument would also ensure greater representation of those individuals.

All Petitioners join in this request.

Respectfully submitted,

/s/

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/s/

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/s/

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cc: Office of the Solicitor General
Counsel of record for Respondents