Case No. 12-17668

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BEVERLY SEVCIK, et al.,

Plaintiffs-Appellants,

v.

GOVERNOR BRIAN SANDOVAL, et al.,

Defendants-Appellees,

and

COALITION FOR THE PROTECTION OF MARRIAGE,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court
For the District of Nevada
Case No. 2:12-CV-00578-RCJ-PAL
The Honorable Robert C. Jones, District Judge

MOTION OF DEFENDANT-APPELLEE COALITION FOR THE PROTECTION OF MARRIAGE FOR LEAVE TO FILE SUPPLEMENTAL ANSWERING BRIEF

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Appellee Coalition for the Protection of Marriage ("Coalition") moves this Court for leave to file the Supplemental Answering Brief attached hereto. That brief addresses two developments since the filing of the Coalition's Answering Brief on January 21, 2014: (1) entry of the panel decision in *SmithKline Beecham Corp. v. Abbott Labs.*, 2014 WL 211807 (9th Cir. Jan. 21, 2014);[1] and (2) the actions of the Governor and Clerk/Recorder Glover (collectively "State Defendants") in withdrawing their respective Answering Briefs. *See* Dkt. Nos. 142, 149, 171, and 174.

SmithKline addresses the issue of "heightened scrutiny" in the context of Fourteenth Amendment claims of sexual orientation. This appeal addresses that same issue, which was the subject of substantial portions of the Plaintiffs-Appellants' ("Plaintiffs") Opening Brief and the Coalition's Answering Brief. It is quite certain that Plaintiffs' Reply Brief, due February 24, 2014, will address *SmithKline* in detail relative to that important issue. The Supplemental Answering Brief does the same, thereby assuring that both sides in this case have an opportunity to express their views in writing on this new Ninth Circuit decision.

[1] The panel decision is still subject to en banc and Supreme Court review, but because of the exigencies of the briefing schedule governing the parties in this appeal, we address that panel decision now in the Brief, without waiving the Coalition's position that the decision is not binding because no mandate has issued.

The State Defendants' withdrawal of their respective Answering Briefs leaves the Coalition as the only appellee actively defending the Nevada marriage laws challenged by the Plaintiffs. That development raises a new question whether this Court still has Article III jurisdiction to resolve this appeal on the merits, a question that the Supplemental Answering Brief examines and then answers in the affirmative.

The Supplemental Answering Brief consists of less than 3,100 words.

* * * * * * * * *

The motion for leave to file is based on these grounds:

1. *SmithKline* will undoubtedly be a subject of analysis in the panel's decision. Moreover, the panel will have the benefit of the Plaintiffs' analysis of that new decision through their Reply Brief. Although the Coalition already filed a Notice of Authority alerting the panel to *SmithKline*, Dkt. No. 136, pursuant to Ninth Circuit Rule 28-6, that notice was limited to less than 350 words, an amount far too few to allow any adequate legal analysis. Fairness prescribes that the Coalition have, as the Plaintiffs will have, an adequate opportunity to provide in written form to the panel its own analysis of this important and clearly relevant new case. But for an order allowing the filing of the Supplemental Answering Brief, the Coalition's opportunity would be restricted to its Notice of Authority and

some unknown but probably small portion of its oral argument time—and those, even taken together, fall far short of a fair and adequate opportunity to be heard.

2. The filing of the Supplemental Answering Brief at this time will ***not*** delay the briefing schedule or the oral argument or the final resolution of this case here. That is because Plaintiffs' counsel, now in possession of the Supplemental Answering Brief, have time and opportunity to respond to it adequately in their Reply Brief due February 24th. ***Not*** filing the Supplemental Answering Brief now will create a risk of delay; that is because the panel, at oral argument or thereafter, may conclude that it needs the benefit of the Coalition's written analysis of *SmithKline* and its applicability to this case and consequently order such a filing, after some adequate period of time. We believe we are not alone in this analysis regarding risk of delay. Here is Plaintiffs' position on our motion for leave to file, as transmitted by their counsel Tara Borelli to the Coalition's counsel Monte Stewart on February 12, 2014: "On the condition that Intervenor's request does not affect the expedition of argument ordered by the Court on February 12, 2014, ECF No. 174, Plaintiffs-Appellants do not oppose the request."[2]

3. This Court's subject matter jurisdiction under Article III is always subject to review, even by this Court *sua sponte*. *See, e.g.*, *City of Los Angeles v.*

[2] Counsel for the State Defendants, who are no longer taking an active role in this case, did not respond to our request for their position on this motion.

County of Kern, 581 F.3d 841, 844–45 (9th Cir. 2009). The State Defendants' decision to no longer defend Nevada's marriage laws challenged by the Plaintiffs in this case may be deemed an event requiring reconsideration of this Court's jurisdiction to resolve this case on the merits. Some public comments since that event have suggested as much. Accordingly, the Supplemental Answering Brief carefully analyzes the issue before concluding that this Court's jurisdiction remains unimpaired. Again with an eye at avoiding delay, it is better for the panel to have that analysis now rather than in a post-oral argument brief that it may deem necessary to request of the parties.

* * * * * * * * * * *

In light of all the foregoing, the Coalition respectfully requests that this Court enter an order granting leave to file the Supplemental Answering Brief.

Dated: February 13, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 13, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Monte N. Stewart

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INTRODUCTION[1]

This Supplemental Answering Brief addresses two developments since the filing of the Coalition's Answering Brief on January 21, 2014: (1) entry of the panel decision in *SmithKline Beecham Corp. v. Abbott Labs.*, 2014 WL 211807 (9th Cir. Jan. 21, 2014);[2] and (2) the actions of the Governor and Clerk/Recorder Glover (collectively "State Defendants") in withdrawing their respective Answering Briefs. *See* Dkt. Nos. 142, 149, 171, and 174.

The first development gives rise to two related questions. One, does the "heightened scrutiny" spoken of in *SmithKline* apply in this case? Two, if so, do Nevada's Marriage Laws withstand that scrutiny? As we show below, the answer to the first question is "no," but, in any event, the answer to the second question is "yes."

One question arises from the second development. Does this case remain an Article III "case or controversy" in this Court despite the withdrawal of the State Defendants' Answering Briefs? As we show below, the answer to that question is "yes."

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[1] This Supplemental Answering Brief uses the same capitalized short-hand words and phrases used in the Coalition's Answering Brief.

[2] The panel decision is still subject to en banc and Supreme Court review, but because of the exigencies of the briefing schedule governing the parties in this appeal, we address that panel decision now, without waiving the Coalition's position that the decision is not binding because no mandate has issued.

ARGUMENT

I. *SMITHKLINE* "HEIGHTENED SCRUTINY" DOES NOT APPLY TO THIS CASE BECAUSE OF THE ABSENCE OF ANIMUS.

Before turning to *SmithKline* itself, we give a brief review of the law as established by the United States Supreme Court before that decision. The Supreme Court has articulated and applied to constitutional equality claims three distinct and different standards of review, or levels of judicial scrutiny. One is called "intermediate scrutiny" and applies to classifications made on account of sex or legitimacy. *See, e.g., United States v. Virginia*, 518 U.S. 515 (1996). Plaintiffs' Opening Brief at pages 49–62 addresses intermediate scrutiny at length, including the four-part test for applying it to a classification not previously accorded that level of scrutiny, such as sexual orientation. That test focuses primarily on immutability, relative political power, history of discrimination, and ability to contribute to society. *See* Plaintiffs' Opening Br. at 49–62. Another is called "strict scrutiny" and applies to classifications made on account of race, alienage, or ancestry or impinging on a fundamental right. *See, e.g., Grutter* v. *Bollinger*, 539 U.S. 306 (2003); *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). All other classifications are subjected to what is called "rational basis review," a standard described in the Coalition's Opening Brief at pages 24–25. *See, e.g., Heller v. Doe*, 509 U.S. 312 (1993); *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307 (1993).

The Supreme Court has never articulated and applied to equality claims any standard of review other than those three distinct ones.

In *SmithKline*, the panel addressed a situation where, in a trial involving private parties, the lawyer for one party peremptorily struck a prospective juror because he was gay. This sexual orientation discrimination, the panel held, was intentional and targeted. *See* 2014 WL 211807, at *4 ("counsel engaged in intentional discrimination when he exercised the strike"); *id.* at *5 ("strike of Juror B was impermissibly made on the basis of his sexual orientation"). The panel then noted, however, that the Supreme Court had stated that "[p]arties may . . . exercise their peremptory challenges to remove from the venire any group or class of individuals normally subject to 'rational basis' review." *Id*.

Thus, the determinative question was whether sexual orientation discrimination was subject to rational basis review or "heightened scrutiny," a phrase always before referencing intermediate or strict scrutiny or both. *See, e.g.*, *Ahlmeyer v. Nevada Sys. of Higher Educ*., 555 F.3d 1051, 1059 (9th Cir. 2009) ("Where claims of discrimination based on race or sex are entitled to heightened scrutiny, age discrimination claims under the Constitution are subject to rational basis scrutiny."). The *SmithKline* panel noted that, based on prior Ninth Circuit law, "we are bound here to apply rational basis review to the equal protection

claim in the absence of a . . . change in the law by the Supreme Court or an en banc court." 2014 WL 211807, at *5. There clearly having been no change by an en banc court, the panel turned "to the Supreme Court's most recent case on the relationship between equal protection and classifications based on sexual orientation: *United States v. Windsor*, ___ U.S. ___, 133 S. Ct. 2675, 186 L.Ed.2d 808 (2013)," *id.*, and concluded that *Windsor* compelled application of "heightened scrutiny" to sexual orientation discrimination even though "*Windsor*, of course, did not expressly announce the level of scrutiny it applied to the equal protection claim at issue in that case," *id.* at *6.

The *SmithKline* panel thus contemplated a new form of "heightened scrutiny" for classifications based on sexual orientation—one neither intermediate scrutiny nor strict scrutiny. *SmithKline* nowhere described its "heightened scrutiny" as intermediate scrutiny and, more telling, did not engage the Supreme Court's four-part test for identifying a new suspect class. It did not address immutability or current political power—the very inquiries that Plaintiffs' Opening Brief here argues at length a court must make under settled law on the way to a responsible application of intermediate scrutiny. Nor is it plausible to argue that *SmithKline* "heightened scrutiny" is strict scrutiny; the panel decision never intimated such a position.

The "heightened scrutiny" announced in *SmithKline* is a new constitutional standard, one not articulated in any Fourteenth Amendment decision of the Supreme Court.

SmithKline purports to ground this newly minted standard of "heightened scrutiny" in *Windsor*. *Windsor* therefore must be both the animating spirit and the limiting principle of *SmithKline* "heightened scrutiny."

Windsor struck down DOMA because it reflected, the Court held, a bare desire to harm a disfavored minority. *See* Coalition Answering Br. at 69–72, 82–83, 99–101. In this regard, *Windsor* was actually the third in a series of Supreme Court equal protection decisions taking that approach, the first being *Moreno*[3] and the second being *Romer*.[4] In taking this approach, *Windsor* indeed looked carefully for animus, applying rigorously two steps: an inquiry into how unusual the challenged government action was and an inquiry into the proffered "benign" motives for that action. The Supreme Court's view in the *Moreno-Romer-Windsor* trilogy is that the more unusual the action and the less plausible the government's proffered reasons for the challenged classification, the more likely that the classification should be explained as nothing more than sheer animus against an unpopular group. *See* Coalition's Answering Br. at 82–83. *Windsor* thus has real

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[3] *Dep't of Agric. v. Moreno*, 413 U.S. 528 (1973).

[4] *Romer v. Evans*, 517 U.S. 620 (1996).

boundaries and a not unlimited scope; it applies to equality claims where there is some basis for believing that the challenged state action is solely the product of animus, of a bare desire to harm a disfavored group.

SmithKline adheres to this approach. It concludes that the lawyer's peremptory challenge of the gay juror was intentional, 2014 WL 211807, at *4 ("counsel engaged in intentional discrimination when he exercised the strike"); that the strike was made exactly because the juror was gay, that is, the lawyer targeted the juror because he was a gay man, *id.* at *5 ("strike of Juror B was impermissibly made on the basis of his sexual orientation"); and that the "benign" reasons later proffered (one at the trial and others on appeal) to justify that strike were not credible, *id.* at *4. Accordingly, the panel concluded that the government-sanctioned peremptory challenge—just like the challenged state actions in *Moreno*, *Romer*, and *Windsor*—was the result of constitutionally impermissible animus. On that basis, the panel held that its case was subject to the "heightened scrutiny" that it perceived in *Windsor*.

The key point here is that the "careful" examination of a law applied in *Windsor* applies only to laws whose only basis is animus—not to every classification implicating sexual orientation. Any other reading of *SmithKline* suggests that the panel used *Windsor* as a pretense for imposing "heightened

scrutiny" on all sexual orientation discrimination claims without *both* complying with the well-established test for invoking intermediate scrutiny and openly refusing to follow prior Ninth Circuit law applying rational basis review to claims of sexual orientation discrimination. *E.g.*, *High Tech Gays v. Def. Indus. Sec. Clearance Office*, 895 F.2d 563 (9th Cir. 1990).

Plaintiffs' causes of action do not raise a plausible claim of animus. Nevada's citizens have no more chosen to preserve the vital social institution of man-woman marriage out of animus towards gay men and lesbians than they have chosen to preserve the vital social institution of private property out of animus towards poor people.[5] Plaintiffs' Opening Brief contains no claim of animus in the *Moreno-Romer-Windsor* mold or, for that matter, otherwise.

Because Plaintiffs' causes of action do not raise a plausible claim of animus, *SmithKline* "heightened scrutiny" does not apply in this case.

II. EVEN IF *SMITHKLINE* "HEIGHTENED SCRUTINY" WERE TO BE APPLIED IN THIS CASE, NEVADA'S MARRIAGE LAWS FULLY WITHSTAND THAT SCRUTINY.

Even though *SmithKline* "heightened scrutiny" clearly does not apply in this case, Nevada's Marriage Laws can withstand such scrutiny. The Coalition's

[5] Regarding the connection between the institutional analyses of marriage and of private property, see Monte Neil Stewart, *Genderless Marriage, Institutional Realities, and Judicial Elision*, 1 Duke J. Const. L. & Pub. Pol'y 1, 7–15 (2006), and Monte Neil Stewart, *Judicial Redefinition of Marriage*, 21 Can. J. Fam. L. 11, 114–15 (2004).

Answering Brief shows how, applying *Windsor*'s analytical approach, the Marriage Laws cannot be characterized as flowing from impermissible animus. The Coalition's Answering Brief at 99–101 demonstrates both that the *usual* use of the law is to preserve the man-woman marriage institution and that the proffered purposes of the Marriage Laws—the "motives" for their enactment—are real, legitimate, and robustly supported, namely, preserving the multiple *important and legitimate* societal and governmental interests advanced by that institution and likely to be diminished and even lost by a genderless marriage regime. *See also* Coalition Answering Br. at 17–61.

As shown in the Coalition's Answering Brief, the Marriage Laws also fully satisfy the language in *SmithKline* against post-hoc rationalizations of prior state action. 2014 WL 211807, at *7 ("*Windsor* thus requires not that we conceive of hypothetical purposes, but that we scrutinize Congress's actual purposes.") *See* Coalition Answering Br. at 1–6, 17–61. Nevadans understood in 2000 and 2002 (the years of the general elections enacting the Marriage Amendment) that the man-woman marriage institution promoted the norms, practices, ideals, and benefit —while genderless marriage did just the opposite—of a child knowing and being raised by her own mother and father; of maximizing the number of children raised by parents who can at least give them the benefits of gender complementarity; and

of minimizing fatherlessness in the lives of children.[6] Certainly it has never been a secret that genderless marriage when enshrined in the law sends a socially and culturally powerful message that fathers are dispensable in the lives of their children—and mothers too, for that matter. It was known and understood in 2000 and 2002 that the gold standard for the well-being of children generally was a home headed by the married, biological parents.[7] It was partially known and understood in 2000 and 2002 that a genderless marriage regime would be inimical to the religious liberties of large numbers of our Nation's churches and peoples of faith,[8] an understanding unfortunately verified in multiple instances since as genderless marriage regimes have spread.[9] And without question the large bulk of our understanding of vital social institutions such as marriage—what constitutes them, how they provide social benefits, how they are changed, how they are destroyed—had already been provided by the social sciences, especially the "new

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[6] *See generally* David Popenoe, *Life Without Father: Compelling New Evidence That Fatherhood and Marriage Are Indispensable for the Good of Children & Society* (1996); David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem* (1995).

[7] *See, e.g.*, Institute for American Values, *Why Marriage Matters: Twenty-six Conclusions from the Social Sciences* (2002); Popenoe, *supra* note 6; Blankenhorn, *supra* note 6.

[8] *See, e.g.*, *Hellquist v. Owens*, 2002 Sask. Q.B. 506, *rev'd*, 2006 Sask. Ct. App. 41; *Trinity W. Univ. v. Coll. of Teachers*, [2001] 1 S.C.R. 772 (Can.); *Dale v. Boy Scouts*, 734 A.2d 1196 (N.J. 1999), *rev'd*, 530 U.S. 640 (2000).

[9] *See* Coalition Opening Br. at 51–56.

institutionalism."[10] So the robustly supported and compelling reasons for Nevada's Marriage Laws are not some post-hoc rationalization of the kind condemned in *SmithKline*.

Finally, even if *SmithKline* "heightened scrutiny" applies to *every* claim of sexual orientation discrimination, Nevada's Marriage Laws remain valid. The vital social interests at stake and protected by those laws are so legitimate, robustly supported, and compelling that they can withstand *any* level of judicial scrutiny. *E.g.*, Coalition Opening Br. at 3–4 ("In those additional public purposes and social benefits are found the valuable and compelling societal (and hence governmental) interests that sustain man-woman marriage against every constitutional attack regardless of the level of judicial scrutiny deployed."); *id*. at 97 ("we note again that Nevada's reasons for preserving the man-woman marriage institution are sufficiently good and powerful to sustain the Marriage Laws regardless of the level of scrutiny used.").

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[10] *See generally* Victor Nee, *Sources of the New Institutionalism*, *in* The New Institutionalism Sociology 1 (Mary C. Brinton & Victor Nee eds., 2001); Victor Nee & Paul Ingram, *Embeddedness and Beyond: Institutions, Exchange, and Social Structure*, *in* The New Institutionalism in Sociology 19 (Mary C. Brinton & Victor Nee eds., 1998); Eerik Lagerspetz, *On the Existence of Institutions*, *in* On the Nature of Social and Institutional Reality 70 (Eerik Lagerspetz et al. eds., 2001); Eerik Lagerspetz, *The Opposite Mirrors: An Essay on the Conventionalist Theory of Institutions* (1995).

III. ALTHOUGH THE STATE DEFENDANTS WITHDREW THEIR RESPECTIVE ANSWERING BRIEFS, THIS CASE REMAINS AN ARTICLE III "CASE OR CONTROVERSY" IN THIS COURT WITHOUT REGARD TO THE COALITION'S OWN STANDING.

Because of the continuing force and effect of the district court's judgment upholding Nevada's Marriage Laws and because the State Defendants and all state actors continue to enforce them, there remains an Article III "case or controversy" in this Court. That is so even though the State Defendants withdrew their respective Answering Briefs. That withdrawal was a decision not to further defend the Marriage Laws against the Plaintiffs' constitutional challenges. It was not a decision to treat those laws as no longer in force and effect and thereby allow same-sex couples now to marry in Nevada and have their foreign marriages recognized there, nor did it operate to end the State Defendants' status as parties to this action and therefore as subject to an adverse judgment.

Nor is this Court's Article III jurisdiction dependent on the Coalition's own Article III standing. The *McConnell* "piggyback" doctrine continues to apply because of the unquestioned standing of the State Defendants, who, as noted, continue as party defendants here. *See* Coalition Opening Br. at 15 n.15. Further, the Coalition's defense of Nevada's Marriage Laws is assuring and will continue "to assure that concrete adverseness which sharpens the presentation of issues upon

which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204 (1962).

On these points, the law is uniform across the circuits. Thus, in *Chao v. Russell P. Le Frois Builder, Inc.*, 291 F.3d 219, 225–26 (2d Cir. 2002), the Second Circuit addressed "at the outset whether this matter presents an Article III case or controversy over which we have appellate jurisdiction." It was necessary to do so because the appellee "refrained from employing counsel to represent it on appeal" and did not file an answering brief, although two amici curiae did submit briefs in support of the appellee. *Id.* After calling for briefing on its Article III jurisdiction, the Second Circuit concluded that it had jurisdiction:

> Le Frois's decision not to participate actively affects neither the adverse status of the parties nor the concrete nature of their controversy. Le Frois stands to lose more than $11,000 if we reverse; conversely, the Secretary stands to lose the right to impose that sanction if we affirm. Confronted with similar circumstances, other federal courts of appeals have sustained appellate jurisdiction. *See, e.g., Brennan v. OSHRC (Hanovia Lamp Div., Canred Precision Indus.)*, 502 F.2d 946, 948 (3d Cir. 1974); *Brennan v. OSHRC (Bill Echols Trucking Co.)*, 487 F.2d 230, 232 (5th Cir. 1973); *see also Casco Indemn. Co. v. R.I. Interlocal Risk Mgt. Trust*, 113 F.3d 2, 3–4 (1st Cir. 1997) (considering an appeal where only the appellant filed a brief and collecting cases finding this practice appropriate); *cf.* Fed. R. App. P. 31(c) (providing that the sole sanction for an appellee's failure to file an appellate brief is that "the appellee will not be heard at oral argument except by permission of the court").

Id.

Here, if this Court reverses, the State Defendants will have a mandatory and prohibitory injunction entered against them and will lose (out of State coffers) what will undoubtedly be a very large amount of money for the Plaintiffs' costs and fees. *See* 42 U.S.C. § 1988. Conversely, if this Court affirms, the Plaintiffs will be deprived of the relief and related benefits that they seek with their civil action.

These considerations are dispositive, as shown by the Supreme Court's standing decisions last Term, in *Windsor*[11] and *Hollingsworth*.[12] In *Windsor*, the Court held that it had jurisdiction even though the petitioner, the United States, had ceased to defend the challenged law, leaving defense to an intervenor group. Key to the Court's holding was its conclusion that in "this case the United States retains a stake sufficient to support Article III jurisdiction on appeal [to the Second Circuit] and in proceedings before this Court." 133 S. Ct. at 2686. That stake was the obligation to pay the plaintiff the refund she sought, as ordered by the district court's judgment. *Id.* The State Defendants' stake here is of the very same nature given their liability for Plaintiffs' fees and costs upon a reversal by this Court. The Supreme Court also said: "It would be a different case if the Executive had taken the further step of paying Windsor the refund to which she was entitled under the

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[11] *United States v. Windsor*, ___ U.S. ___, 133 S. Ct. 2675 (2013).
[12] *Hollingsworth v. Perry*, ___ U.S. ___, 133 S. Ct. 2652 (2013).

District Court's ruling." *Id.* It might be a different case here if the State Defendants' had already proceeded to ignore the Marriage Laws and issue marriage licenses to same-sex couples without waiting for an adverse ruling from this Court, but they have not done and will not do that, thus leaving themselves very much subject to a mandatory and a prohibitory injunction upon reversal here.

Hollingsworth clearly does not apply here because in that case the same-sex couple plaintiffs were the appellees, while the Plaintiffs here are the appellants. Plaintiffs cannot be deprived of appellate review of a judgment rejecting their claims and ruling for the State Defendants by the mere expedient of the State Defendants ending their defense of the challenged laws but continuing to enforce them. Because the State Defendants are still parties here, still enjoying the benefits of the district court's judgment (however much or little they may choose to say in its defense), and still enforcing the Marriage Laws, and because the Plaintiffs are still experiencing what they perceive and assert to be real and deeply felt detriments flowing from that judgment, this case before this Court is very much an Article III "case or controversy."

IV. THE COALITION HAS THREE ADEQUATE AND INDEPENDENT GROUNDS FOR ITS OWN ARTICLE III STANDING.

Because the law on the previous point is so clear and therefore because it seems assured that this Court will proceed to resolve this appeal on the merits, it is

not necessary to address further in this Court the Coalition's three adequate grounds for its own Article III standing independent of its status as proponent of the Marriage Amendment. For the sake of clarity and preservation of the issue, however, we note the fact of the Coalition's own standing. *See* Coalition Opening Br. at 15 n.15; *W. Watersheds Project v. Kraayenbrink*, 620 F.3d 1187, 1196–98 (9th Cir. 2010).

CONCLUSION

The Coalition respectfully urges this Court to hold Nevada's Marriage Laws constitutional and affirm the district court's judgment.

Dated: February 13, 2014

Respectfully submitted,

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