

**PENNSYLVANIA BAR ASSOCIATION  
GLBT RIGHTS COMMITTEE AND FAMILY LAW SECTION  
RESOLUTION IN SUPPORT OF SAME SEX MARRIAGE IN PENNSYLVANIA**

WHEREAS, the United States Supreme Court has declared that “[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967); and

WHEREAS, the United States Supreme Court has further declared that “[c]hoices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as ‘of basic importance in our society,’ rights sheltered by the Fourteenth Amendment against the State’s unwarranted usurpation, disregard, or disrespect.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996); and

WHEREAS, on June 26, 2013, the United States Supreme Court declared Section 3 of the Defense of Marriage Act (DOMA) that defines marriage for all federal statutes and federal regulations as “a legal union between one man and one woman” and the term “spouse” as referring “only to a person of the opposite sex” unconstitutional. *United States v. Windsor*, 133 S. Ct. 2675, 570 U.S. 12, 186 L. Ed. 2d 808 (2013); and

WHEREAS, following the decision in *Windsor* federal agencies, including the Departments of Homeland Security, Justice, Treasury, Labor, Defense, and Veterans Affairs; as well as, the Social Security Administration and the Office of Personnel Management, began offering federal rights and benefits to same sex spouses, and

WHEREAS, The Pennsylvania Constitution provides that all [individuals] have “certain inherent and inalienable rights” including the right to enjoy and defend life, liberty and the pursuit of happiness and expressly prohibits the Commonwealth or any of its political subdivision from interfering with the enjoyment or exercising of these basic civil rights. (Article 1, Section 1 and Section 26); and

WHEREAS, the Commonwealth has no constitutional prohibition against same sex marriage and all attempts to pass such a prohibition have been unsuccessful; and

WHEREAS, the Pennsylvania Bar Association has previously taken a position against any proposed constitutional amendment that would prohibit same sex marriage; and

WHEREAS, the Philadelphia Bar Association, through its Board of Governors, passed Resolution Supporting Marriage Equality in the Commonwealth of Pennsylvania on January 27, 2014; and

WHEREAS, the proposed legislation on same sex marriage would not compel any religious organization to perform a same sex marriage; and

WHEREAS, statutory provisions of the Pennsylvania Marriage Laws, 23 Pa C.S. §§ 1102 and 1704 deny same sex couples residing in Pennsylvania the basic civil right to marry and declares “void” any same sex marriage legally entered into in another state; and

WHEREAS, Pennsylvania statutorily bans same-sex marriage as well as the recognition of same-sex marriages performed outside the Commonwealth, which statute is similar to the statute deemed to be unconstitutional in *Windsor*. 23 Pa.C.S.A. § 1704; and

WHEREAS, numerous lawsuits have been filed seeking to have Pennsylvania’s statutory ban on same-sex marriage to be declared unconstitutional, including but not necessarily limited to *Whitewood v. Wolf*, *Palladino v. Corbett*, *Commonwealth of Pennsylvania Department of Health v. Hanes*, *Ballen v. Corbett* and *Baus v. Gibbs*; and

WHEREAS, the Supreme Court concluded in *Windsor* that, “DOMA's principal effect is to identify a subset of state-sanctioned marriages and make them unequal.”

WHEREAS, by definition, the Pennsylvania Marriage Act creates a similar subset of “second tier marriages” in Pennsylvania; and

WHEREAS, this discriminatory definition unjustly harms same sex spouses and their families who reside in Pennsylvania by denying them access to a broad range of state rights, privileges, economic advantages and legal protections that are enjoyed by married heterosexual couples; and

WHEREAS, legally recognized civil unions and domestic partnerships in Pennsylvania are not affected by the *Windsor* decision. Consequently, the expanding of the rights and privileges provided by these unions at the State level will not provide true marriage equality for same sex couples;

WHEREAS, same sex spouses are denied certain federal benefits if they reside in or move to Pennsylvania, where their marriage is deemed to be void; and

WHEREAS, there are currently 17 states and the District of Columbia that recognize the legitimacy of same sex marriages including all states in the Northeastern Region except Pennsylvania; and

WHEREAS, a majority of Pennsylvanians support the legalization of same sex marriage; and

WHEREAS, the Commonwealth's failure to recognize same sex marriages places Pennsylvania at a significant economic, social and political disadvantage when trying to attract and retain LGBT friendly businesses and employees; and

WHEREAS, all businesses currently operating in Pennsylvania are subject to increased legal and administrative costs when trying to fairly and legally apply conflicting state and federal mandates regarding same sex spouses, domestic partners and civil unions; and

THEREFORE, BE IT RESOLVED, that the Pennsylvania Bar Association (PBA) is committed to protecting and promoting the civil rights of all LGBT individuals living or working in Pennsylvania, currently or in the future; and

NOW THEREFORE BE IT FURTHER RESOLVED, that the PBA endorses full marriage equality for all same sex couples, spouses and their families residing in the Commonwealth of Pennsylvania; and

NOW THEREFORE BE IT FURTHER RESOLVED, that the PBA hereby endorses legislation, such as Senate Bill 719 and House Bill 1686 of 2013-2014 that would afford same sex couples the freedom to be married within the Commonwealth; and

NOW THEREFORE BE IT FURTHER RESOLVED, that the PBA authorizes its president and officers to communicate the content of this resolution to the Pennsylvania General Assembly, the Bar's membership, to the press, the general public, and to whomsoever it deems appropriate.

Respectfully Submitted,

Leo L. Dunn, Chair  
PBA GLBT Rights Committee  
Dan J. Clifford, Chair  
Family Law Section  
March 26, 2014

*\*Approved by the Board of Governors on May 14, 2014*  
*\*\*Approved by the House of Delegates on May 16, 2014*