No. 17-547

In the Supreme Court of the United States

RIMS BARBER, ET AL., PETITIONERS

v.

PHIL BRYANT, GOVERNOR OF MISSISSIPPI, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR GLBTQ LEGAL ADVOCATES & DEFENDERS (GLAD) AND NATIONAL CENTER FOR LESBIAN RIGHTS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Through litigation, public policy advocacy, and education, GLBTQ Legal Advocates & Defenders (GLAD) works to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. GLAD has litigated widely in both state and federal courts regarding marriage, the

[1] Counsel for each party was informed at least 10 days prior to this brief's due date of amici curiae's intention to file this brief. Petitioners have filed blanket consent to the filing of amicus curiae briefs, and respondents have consented to the filing of this amicus curiae brief. No counsel for any party authored this brief in whole or in part, and no person or entity, other than amici curiae or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

federal Defense of Marriage Act, and marriage recognition, as well as equal treatment for lesbian, gay, bisexual, and transgender (LGBT) persons like all others.

The National Center for Lesbian Rights (NCLR) is a national legal advocacy organization for LGBT persons. NCLR has litigated cases representing same-sex couples seeking both the freedom to marry and equal recognition of their marriages in states across the country, including married same-sex couples from Tennessee in *Obergefell* v. *Hodges*, 135 S. Ct. 2584 (2015). NCLR has also represented transgender children, parents, and individuals seeking equal protection and recognition in a variety of employment, family law, school, asylum, and health care cases.

SUMMARY OF THE ARGUMENT

The legacy of the Equal Protection Clause, and this Court's long history of applying it, is that discriminatory class-based legislation is unconstitutional. This Court has made clear in *Romer*, *Lawrence*, *Windsor*, and *Obergefell* that LGBT persons must be accorded the same liberty and dignity the Constitution guarantees to all. These rights, long sought and finally won, are imperiled by recent legislation in Mississippi that specifically targets LGBT persons.

Mississippi's House Bill 1523, codified at Miss. Code. Ann. § 11-62-1 *et seq.* (HB 1523), is class legislation that seeks to relegate LGBT persons to the second-class status from which they have only recently begun to escape. The statute revives forms of discrimination this Court has said must be left behind, and sets LGBT persons apart as a group of persons unworthy of the State government's protection whenever those who injure them assert that they were acting pursuant to certain State-

approved moral or religious beliefs. In so doing, HB 1523 inflicts serious harms upon LGBT Mississippians.

HB 1523's proponents defend the statute as necessary to protect certain preferred moral and religious views. But these justifications neither change the statute's discriminatory character nor render it constitutional. HB 1523 is one of a series of thinly-veiled assaults on the Court's decisions regarding LGBT rights, which seek to sap the spirit of these decisions and undermine the constitutionally-promised equality of citizenship they acknowledge and enforce.

The Court must reject these efforts. The injuries caused by HB 1523 are sufficient to provide petitioners standing to challenge HB 1523 here, and the Court must grant petitioners certiorari to make clear to divergent Circuits that individuals subjected to harm by discriminatory class legislation like HB 1523 may bring suit to remedy the harm done to them: the denial of full and equal participation in society they are guaranteed by the Constitution.

ARGUMENT

I. Discriminatory Class Legislation That Deprives LGBT Persons' Liberty Or Dignity Is Unconstitutional

Our Nation's history is unfortunately replete with attempts by the majority to enact laws that prevent minority groups from enjoying the liberty and dignity the Constitution guarantees to all. The Equal Protection Clause of the Fourteenth Amendment was adopted in the early years of Reconstruction to combat such discrimination, and to ensure that our majoritarian system does not result in the creation of political underclasses.

See *Plyler* v. *Doe*, 457 U.S. 202, 213 (1982) ("The Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation.").

Our history also demonstrates that this Court will protect groups marginalized by discriminatory class legislation. LGBT persons comprise a minority group that has only recently been recognized as equally worthy of constitutional protection. Over the past twenty years, the Court has struck down legislative efforts to deprive LGBT persons of the liberty and dignity that the majority generally takes for granted.

In 1996, the Court struck down an amendment to the Colorado Constitution that sought to prevent State actors from protecting gay, lesbian, and bisexual persons from discrimination on the basis of their sexual orientation. *Romer* v. *Evans*, 517 U.S. 620 (1996). Seven years later, the Court struck down a Texas law criminalizing same-sex intimacy, finding that to hold otherwise would be "demean[ing to] the lives of homosexual persons." *Lawrence* v. *Texas*, 539 U.S. 558, 575 (2003). The Court next invalidated the federal Defense of Marriage Act (DOMA) in 2013, holding that the federal government could not deny the legal status of same-sex couples married under State law, whose "relationship[s had been] deemed by the State worthy of dignity in the community equal with all other marriages." *United States* v. *Windsor*, 133 S. Ct. 2675, 2692 (2013). And most recently, the Court found that the Constitution's fundamental right to marry extends equally to same-sex couples under the Due Process and Equal Protection Clauses. *Obergefell* v. *Hodges*, 135 S. Ct. 2584, 2602, 2604 (2015) (noting that "laws excluding same-sex couples from the marriage

right impose stigma and injury of the kind prohibited by our basic charter").

Since *Obergefell*, the Court has continued to enforce the requirement of equality recognized by these decisions. In *V.L.* v. *E.L.*, the Court required the Alabama Supreme Court to grant full faith and credit to a Georgia court judgment making a woman the legal parent of the children she had adopted and raised with her same-sex partner since the children's births. 136 S. Ct. 1017, 1022 (2016). And earlier this year, in *Pavan* v. *Smith*, the Court held that Arkansas must provide married same-sex parents the same protections it provides to other married parents on an equal basis. 137 S. Ct. 2075, 2078 (2017) (affirming State may not deny married same-sex couples access to the "constellation of benefits that the Stat[e] ha[s] linked to marriage" (quoting *Obergefell*, 135 S. Ct. at 2601)).

Together, these decisions have firmly established the fundamental principle that LGBT persons must be treated as equals under the law, and that laws seeking to exclude them from full participation in society run afoul of the Constitution.

II. HB 1523 Is Class Legislation That Unconstitutionally Discriminates Against LGBT Persons

But the Court's rulings have not stopped the efforts of groups who would have LGBT persons remain second-class citizens. At every step, these groups have gone back to the drawing board, attempting to devise more creative means to implement anti-LGBT discrimination and return to the prior unbalanced status quo.

A. HB 1523 Seeks To Abolish Constitutional Protections For LGBT Persons Set Forth In *Romer*

HB 1523, which was introduced in the legislative session immediately following *Obergefell*, seeks to erode this Court's decisions and enshrine anti-LGBT discrimination into Mississippi law.

HB 1523 grants special legal protections to those who harbor three "sincerely held religious beliefs or moral convictions," described as follows:

> (a) Marriage is or should be recognized as the union of one man and one woman;
>
> (b) Sexual relations are properly reserved to such a marriage; and
>
> (c) Male (man) or female (woman) refer to an individual's immutable biological sex as objectively determined by anatomy and genetics at time of birth.

HB 1523 (§ 11-62-3) (the "Section 2 Beliefs").

HB 1523 provides that no Mississippi State actor—including any political subdivisions of the State, any individuals acting under color of State law, and, importantly, State courts—may not "[i]mpose * * * [any] penalty or injunction" against persons who assert that they acted pursuant to a Section 2 Belief. HB 1523 (§§ 11-62-5, 11-62-7, 11-62-9). In so doing, HB 1523 facilitates and immunizes discrimination against LGBT Mississippians[2] in a range of activities, from celebrating

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[2] HB 1523 technically also discriminates against unmarried persons who engage in consensual, adult sexual intimacy, including non-LGBT unmarried persons. HB 1523 (§ 11-62-3(b)). But the fact

marriages, *id.* (§ 11-62-5(1)(a), (5), and (8)), to forming a family, *id.* (§ 11-62-5(2)-(3)), to medical care and counseling, *id.* (§ 11-62-5(4)).

This is impermissible class legislation, as this Court's decision in *Romer* makes plain. In *Romer*, at issue was an amendment to the Colorado Constitution passed by statewide referendum in 1992 (Amendment 2) that sought to "prohibit[] all legislative, executive or judicial action at any level of state or local government designed to protect the named class," which included gay, lesbian, and bisexual persons. 517 U.S. at 624. Amendment 2 also "operate[d] to repeal and forbid all laws or policies providing specific protection for gays or lesbians from discrimination by every level of Colorado government." *Id.* at 629. Like petitioners here, the plaintiffs in *Romer* filed suit because "[t]hey alleged that enforcement of Amendment 2 would subject them to immediate and substantial *risk of discrimination* on the basis of their sexual orientation." *Id.* at 625 (emphasis added).

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that HB 1523 discriminates against another class of Mississippians neither changes the fact that its primary motivation and effect is discrimination against LGBT Mississippians, nor renders it constitutional. See *Hunter* v. *Underwood*, 471 U.S. 222, 231 (1985) ("[A]n additional purpose to discriminate against poor whites would not render nugatory the purpose to discriminate against all blacks * * *.").

Indeed, the Court has held that discrimination against unmarried persons is also unconstitutional under both the Equal Protection Clause, see *Eisenstadt* v. *Baird*, 405 U.S. 438, 453 (1972) ("[W]hatever the rights of the individual * * * may be, the rights must be the same for the unmarried and the married alike."), and the Due Process Clause's right to liberty as articulated in *Lawrence*, 539 U.S. at 578-579.

HB 1523 is remarkably similar to Amendment 2 in its effect. Like Amendment 2, HB 1523 prohibits any action by State or local government to keep individuals from discriminating against LGBT persons, so long as the discriminating individual asserts a Section 2 Belief as a justification for their actions. HB 1523 also specifically preempts any other laws or policies that might conflict with its provisions, accomplishing Amendment 2's aim of repealing all existing antidiscrimination provisions for the targeted class. HB 1523 (§ 11-62-15(3)). In effect, then, HB 1523 prevents State actors from protecting the same class as Amendment 2—plus unmarried heterosexual couples and transgender persons—from discrimination.[3]

In striking down Amendment 2, the *Romer* Court noted that "disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence," and that where the legislation at issue "has the peculiar property of imposing a broad and undifferentiated disability on a single named

[3] Any argument that HB 1523 does not seek to discriminate against LGBT persons must fail. LGBT persons disproportionately engage in the conduct relevant to the Section 2 Beliefs—marrying a person of the same sex, engaging in sexual intimacy outside of a heterosexual marriage, and identifying with a gender different from sex assigned at birth—relative to the non-LGBT population. As the Court said in 1993, where targeted conduct is engaged in "exclusively or predominantly by a particular class of people, an intent to disfavor that class can readily be presumed." See *Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993) ("A tax on wearing yarmulkes is a tax on Jews."); see also *Christian Legal Soc'y* v. *Martinez*, 561 U.S. 661, 689 (2010) (no distinction between status and conduct, where conduct closely correlated with sexual orientation).

group, [it is] an exceptional and * * * invalid form of legislation." 517 U.S. at 632-633. Since HB 1523 imposes a sweeping disability upon LGBT persons, it must be struck down as invalid as well.

B. HB 1523 Causes Myriad Harms To LGBT Persons

The injuries caused by HB 1523 are multifaceted and far-reaching.

For example, HB 1523 immediately extinguishes LGBT persons' rights under existing antidiscrimination ordinances and policies whenever the discriminating individual asserts a Section 2 Belief. Prior to HB 1523, the City of Jackson—Mississippi's capital and most populous city—affirmatively protected LGBT residents and visitors by ordinance from discrimination on the basis of sexual orientation and gender identity. See Jackson Mun. Code § 86-226. LGBT persons were also protected by antidiscrimination policies in certain public school districts and universities in the State, as well as by antidiscrimination policies that state-run healthcare providers had in place. HB 1523 gutted the protections these ordinances and policies provided by rendering a Section 2 Belief an absolute defense to any legal action alleging LGBT discrimination by "[a]ny private party * * * suing under or enforcing a law, ordinance, rule or regulation of the state or political subdivision of the state," HB 1523 (§§ 11-62-7, 11-62-9, 11-62-17(2)(d)) and by expressly setting forth that HB 1523 "applies to, and in cases of conflict supersedes, any ordinance, rule, regulation, order, opinion, decision, practice or other exercise of the state government's authority that impinges upon the free exercise of religious beliefs and moral convictions protected by this act," *id.* (§ 11-62-15(3)).

HB 1523 also permits any adoption or foster care organization having an undefined religious affiliation to prevent LGBT persons from accessing the organization's adoption or foster care services, or related services. HB 1523 (§ 11-62-5(2)); see also *id.* (§ 11-62-17(4)) (defining "religious organization" as any "religious * * * entity," whether or not it is affiliated with a "church or other house of worship"). HB 1523 thus severely inhibits LGBT persons and couples' abilities to start families, given the State's reliance upon religiously-affiliated organizations to provide foster care[4] and adoption[5] services.

Additionally, HB 1523 allows religious organizations to discriminate against LGBT minors in State care, including those in the foster care system or awaiting adoption. By the plain text of the statute, an adoption or foster care agency operated by a religious organization can decline to place a minor in an adoptive setting based upon that minor's sexual orientation or gender identity, or can place LGBT minors with families that deny and

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[4] See Arielle Dreher, *Fostering Children on a Faith-based Fast Track*, Jackson Free Press (Sept. 21, 2016) (describing initiative by respondent Bryant to partner the Mississippi Department of Child Protective Services with a "faith-based nonprofit" to develop a program to provide expedited review for prospective foster parents who "attend an orientation developed and presented from a faith-based perspective" to address demands on foster care system).

[5] In effect, HB 1523 reinstates Mississippi's infamous adoption ban, which before it was struck down as unconstitutional prohibited same-sex couples from adopting children at all. See Miss. Code. Ann. § 93-17-3(5); *Campaign for S. Equality* v. *Miss. Dep't of Human Servs.*, 175 F. Supp. 3d 691, 709-710 (S.D. Miss. 2016) (holding that Mississippi's same-sex adoption ban violated the Equal Protection Clause, and enjoining the statute).

reject their sexual orientation or gender identity. HB 1523 thus embodies a continued attempt by the Mississippi legislature to discriminate against LGBT persons in some of the most intimate areas of their lives.

HB 1523 also inflicts significant dignitary and social harms upon LGBT persons. HB 1523 authorizes those who hold certain specified beliefs to discriminate against individuals who marry a person of the same sex, despite *Obergefell*'. The statute permits them to discriminate against persons who engage in intimacy outside of a marriage between a man and a woman, despite *Lawrence*.[6] And it permits them to disregard the gender identity of transgender persons, despite their protection under the Equal Protection Clause and federal sex discrimination laws. See, *e.g.*, *Whitaker* v. *Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (holding that Title IX prohibits discrimination against transgender students), petition for cert. pending, No. 17-301 (filed Aug. 25, 2017)); *Glenn* v. *Brumby*, 663 F.3d 1312, 1318 (11th Cir. 2011) ("All persons, whether transgender or not, are protected from discrimination on the basis of gender stereotype.").

This State-sponsored relegation of LGBT persons to second-class status creates a stigmatic harm that itself amounts to a denial of the equal protection of the laws.

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[6] Mississippi's sodomy statute was effectively abolished by *Lawrence* v. *Texas*, 539 U.S. 558 (2003), but there remain significant concerns about its continued enforcement and the collateral effects of past convictions. See Compl., *Doe* v. *Hood*, No. 3:16-cv-789 (S.D. Miss. Oct. 7, 2016) (alleging "Mississippi continues to enforce its criminal statute prohibiting sodomy" (citing Miss. Code. Ann. § 97-29-59)).

For example, HB 1523 permits government clerks to refuse to provide marriage licenses for same-sex couples. HB 1523 (§ 11-62-5(8)). That HB 1523 condones this affront to an LGBT couple deeply undermines the central promise of *Obergefell*: that the Constitution requires that LGBT persons be accorded "equal dignity in the eyes of the law." 135 S. Ct. at 2608. While *Obergefell* sought to remove the "instability and uncertainty" imposed upon LGBT persons and their families by the denial of equal recognition under state marriage laws, *id.* at 2607, HB 1523 forces LGBT persons back into a state of uncertainty and instability as to whether their marriages and other rights will be recognized—and whether the law truly treats them as equals. As the *Obergefell* Court recognized, these dignitary harms are constitutionally intolerable. *Id.* at 2608.

These harms to LGBT persons, to which the majority is not subjected, render HB 1523 unconstitutional under the Fourteenth Amendment and, as discussed *infra* pp. 17-18, suffice to confer standing on petitioners to challenge HB 1523 here.

III. HB 1523's Casting As Protective Of Moral And Religious Values Does Not Render the Statute Constitutional

HB 1523 remains invalid class legislation even if its proponents describe the law as protecting specific moral and religious beliefs. See HB 1523 (§ 11-62-1) (entitled "Protecting Freedom of Conscience from Government Discrimination Act"). As the Court recently cautioned: "Many who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises * * *. But when that sincere,

personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied." *Obergefell*, 135 S. Ct. at 2602. The question is not whether HB 1523's proponents have sincerely held religious beliefs and moral convictions, but whether these beliefs can justify invidious class legislation that causes LGBT persons harm.

The Court has made clear that moral and religious objections to LGBT persons do not justify laws that single them out for disparate treatment. In *Romer*, the Court noted that "[t]he primary rationale the State offers for Amendment 2 is respect for other citizens' freedom of association, and in particular the liberties of landlords or employers *who have personal or religious objections to homosexuality*." 517 U.S. at 635 (emphasis added). In response to such justifications, the *Romer* Court said: "We cannot say that Amendment 2 is directed to any identifiable legitimate purpose or discrete objective," and that Amendment 2 "classifie[d] homosexuals not to further a proper legislative end but to make them unequal to everyone else." *Ibid.*; see also *Windsor*, 133 S. Ct. at 2693 ("The Constitution's guarantee of equality 'must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot' justify disparate treatment of that group." (quoting *Dep't of Agric.* v. *Moreno*, 413 U.S. 528, 534-535 (1973))); *Lawrence*, 539 U.S. at 582 (O'Connor, J., concurring in the judgment) ("Moral disapproval of [homosexuals], like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause."). HB 1523 similarly lacks a legitimate purpose, despite its proponents' efforts to

justify its enforcement with similar objections to LGBT persons, see Geoff Pender, *Lawmaker: State Could Stop Marriage Licenses Altogether*, The Clarion-Ledger (June 26, 2015) (reporting that Mississippi House Speaker stated that *Obergefell* "is in direct conflict with God's design for marriage as set forth in the Bible"). Accordingly, HB 1523 violates the Constitution.

The State denies that it enacted HB 1523 to foster or facilitate anti-LGBT discrimination, even though the statute facially targets LGBT persons. But the Court need not accept a legislature's denial of a discriminatory purpose at face value. The Court may consider the circumstances and context of a law's enactment, *Vill. of Arlington Heights* v. *Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) (noting that the "specific sequence of events leading up to the challenged decision [ ] may shed some light on the decisionmaker's purposes"), as well as the law's anticipated effect, see, *e.g.*, *Hunter* v. *Underwood*, 471 U.S. 222, 227-233 (1985) (rejecting race-neutral justification and concluding law was enacted with racial animus and would result in disenfranchisement of African-American citizens). Here, as the district court correctly found, HB 1523's purpose and effect are to allow widespread discrimination against, and harm to, LGBT persons through the preference of certain specific religious beliefs.[7] Pet. App. 81a, 85a (finding that HB 1523 was intended to put LGBT citizens "back in their place" after

[7] While not addressed herein, as set forth in the petition (at 13-18), amici believe HB 1523 violates the Establishment Clause in addition to the Equal Protection Clause. Amici also support the Campaign for Southern Equality and Reverend Doctor Susan Hrostowski's petition seeking review of the Fifth Circuit's decision on this basis. See Petition for Writ of Certiorari, *Campaign for Southern Equality* v. *Bryant*, No. 17-642 (filed Oct. 30, 2017).

the Court's decision in *Obergefell*: "Under the guise of providing additional protection for religious exercise, [HB 1523] creates a vehicle for state-sanctioned discrimination on the basis of sexual orientation and gender identity."). Such legislation is patently repugnant to the Fourteenth Amendment.

IV. The Fifth Circuit's Decision Conflicts With Both The Decisions Of Its Sister Circuits And This Court's Binding Precedent

Despite the many harms to LGBT persons caused by HB 1523, the Fifth Circuit held that petitioners do not have standing to bring their claims because "[t]he failure of the Barber plaintiffs to assert anything more than a general stigmatic injury dooms their claim to standing." Pet. App. 18a. The Fifth Circuit's decision was wrong, and this Court should grant certiorari to remedy the error.

A. The Fifth Circuit's Decision Conflicts With Those Of Its Sister Circuits

As a threshold matter, the Fifth Circuit's decision departs from the standing doctrine employed by other Circuits.

In *Hassan* v. *City of New York*, the Third Circuit recognized that the injury caused by the "indignity of being singled out [by one's government] for special burdens" constitutes "unequal treatment * * * long [ ] recognized as judicially cognizable * * * for standing purposes." 804 F.3d 277, 289 (2015) (quotation marks and citations omitted). Similarly, the Fourth Circuit has held that stigmatic injury is "sufficient to satisfy standing's injury requirement." *Bostic* v. *Schaefer*, 760 F.3d

352, 372 (finding that the Virginia Marriage Laws' denial of legal recognition for same-sex couples prevents them from "obtaining the emotional, social, and financial benefits that opposite-sex couples realize upon marriage," and causes same-sex couples stigmatic harm "sufficient to satisfy standing's injury requirement"), cert. denied, 135 S. Ct. 308 (2014).

The Fifth Circuit's decision to the contrary also ignores its own precedents that a person experiencing government discrimination has standing to mount an Equal Protection challenge. See, *e.g.*, *Time Warner Cable, Inc.* v. *Hudson*, 667 F.3d 630, 636 (2012) ("When the government targets certain [individuals] for the exclusion of benefits bestowed on similar parties, *no further showing of suffering based on that unequal positioning is required* for purposes of standing." (emphasis added) (internal quotation marks omitted)), cert. denied, 567 U.S. 924 (2012); *Moore* v. *U.S. Dep't of Agric. on Behalf of Farmers Home Admin.*, 993 F.2d 1222, 1224 (1993) (The "badge of inequality and stigmatization conferred by racial discrimination is a cognizable harm in and of itself providing grounds for standing."); *Walker* v. *City of Mesquite*, 169 F.3d 973, 980 (1999) (classification of homeowners by race is "an injury in and of itself"), cert. denied, 528 U.S. 1131 (2000).

If the Court denies certiorari and the Fifth Circuit's decision remains law, the ability of LGBT persons to challenge laws intended to deny their rights will vary by jurisdiction (and be subject to further erosion by similar legislation elsewhere). The Court must provide the guidance necessary to ensure uniformity and consistency of standing jurisprudence throughout the federal system.

B. The Fifth Circuit Erred In Holding That Petitioners Lack Standing To Assert A Denial Of Equal Protection

The injuries inflicted upon LGBT persons by HB 1523 are "concrete, particularized, and actual or imminent," *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013), and readily support petitioners' standing to challenge the statute. As described *supra* pp. 9-12, HB 1523 subjects LGBT persons to unequal treatment in some of the most intimate and foundational aspects of their lives, from marriage to mental health care to parenting children. HB 1523 thus interferes with petitioners' lives in a "personal and individual way," *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992), stigmatizing petitioners as inferior members of their own communities. Compare *Smith* v. *City of Cleveland Heights*, 760 F.2d 720, 723 (6th Cir. 1985) (finding stigmatic injury sufficient to support standing where the challenged government action is "tailored expressly" to the plaintiff's place in "the very community in which he lives"), cert. denied, 474 U.S. 1056 (1986), with *Valley Forge Christian Coll.* v. *Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 487 (1982) (plaintiffs failed to allege personal impact of land transfer in another state). In so doing, HB 1523 imposes a government-sanctioned badge of inferiority on Mississippi's LGBT citizens, "solely because of their membership in a disfavored group." *Heckler* v. *Mathews*, 465 U.S. 728, 739-740 (1984).

These harms support standing. As the district court correctly held, LGBT persons are the object of HB 1523. Pet. App. 62a (finding that Mississippi enacted HB 1523 "in direct response to *Obergefell*," and that the law was "intended to benefit some citizens at the expense of

LGBT and unmarried citizens"). As this Court has held, when a plaintiff is the object of the challenged government action, "there is ordinarily little question that the action * * * has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan*, 504 U.S. at 561-562; see also *Ne. Fla. Chapter of the Associated Gen. Contracts of Am.* v. *City of Jacksonville*, 508 U.S. 656, 666 (1993) (holding that standing is established "[w]hen the government erects a barrier making it more difficult for members of one group to obtain a benefit than it is for members of another group").

The harms suffered by petitioners are directly traceable to the enactment of HB 1523, and only invalidation of the entire law will redress the injuries suffered by petitioners and their fellow LGBT Mississippians. *Cf. Smith*, 760 F.2d at 724 (finding redressability satisfied where enjoinment of discriminatory policy would "erase the source of [the plaintiff's] stigmatic injury"). Such a result is required here.

As the Court noted in *Obergefell*, "[o]utlaw to outcast may be a step forward, but it does not achieve the full promise of liberty." 135 S. Ct. at 2600. HB 1523 is a clear attempt to deprive LGBT Mississippians of this promise, and the Court should strike it down to ensure that LGBT Mississippians may enjoy the same liberty and dignity enjoyed by the rest of their fellow citizens.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari to resolve these important questions and ensure that the injuries HB 1523 inflicts upon LGBT persons cease.

Respectfully submitted.

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