Ellen Lawrence *et al*.,

*Petitioners,*

*v.*

County of Columbiana,

*Respondent.*

In July 2015, following the Supreme Court's decision in *Obergefell v*. *Hodges*, Ellen Lawrence married her lesbian partner, Portia Blanca. While the couple had previously enjoyed legal domestic partner status pursuant to Columbiana's statute granting civil union status to gay and lesbian couples, they were dissatisfied with their "second class citizen status" and were outspoken advocates of gay marriage. As one of the first lesbian couples to be married in Columbiana, Ms. Lawrence explained the importance of their decision to marry: "Government cannot choose whom one decides to love, and it should not choose whom one decides to marry."

In December 2020 after three years of blissful marriage, Ellen and Portia were attending a Christmas gala on their weekly Friday night date. Bob Bowers, one of Columbiana's most eligible bachelors struck up a conversation with them. Both were immediately smitten. As Ellen described it to their friends: "Lightning struck. Portia and I felt an instant attraction, but it was more than that. We knew instantly that Bob was a true soul mate—to both of us. Portia and I love each other madly, but there was an energy with Bob that we had not felt before." Almost immediately, the three began a consensual sexual relationship and within one month, Bob had moved in with Ellen and Portia.

In September 2021, Ellen, Portia and Bob decided that they should formalize their relationship. Ellen and Portia individually petitioned the County Clerk for Columbiana County for a marriage license. Each listed Bob as their intended spouse.

Citing Columbiana state law outlawing bigamy and polygamy, the County Clerk of Rowan County (where the three reside) refused to issue a marriage license. Columbiana Code Ann. § 48-3-101 states:

> (1) *A person is guilty of bigamy and/or polygamy when, knowing he or she has a husband or wife or knowing the other person has a husband or wife, the person purports to marry another person.*

The crime of bigamy or polygamy is punishable by a fine of up to $1000 and no more than 1 year in jail.

Additionally, the Columbiana Constitution defines marriage as the union of one man and one woman. (The Columbiana Constitution has not been amended since the decision in *Obergefell v. Hodges*.)

Ellen, Portia and Bob challenged Columbiana's ban on plural marriages. Arguing that the statute violated their rights under the Fourteenth Amendment, each of the three filed individual suits in federal district court for the District of Columbiana. The three cases were consolidated for hearing. The State moved to dismiss the case on the grounds that the complaints failed to state a claim upon which relief could be granted. The State also moved for summary judgment.

The district court granted the State's motion to dismiss. It began by noting the importance of marriage in a person's life and recognized that the logic of *Obergefell* supported a constitutional right to marriage—of both heterosexual and homosexual couples. However, the court rejected the contention that the logic of *Obergefell* required constitutional protection of plural marriage. It noted that in *Obergefell* and other cases, the Supreme Court had indicated that marriage was the coming together of <u>two</u> people." Lawrence, *et al*. appealed.

On appeal, the Thirteenth Circuit upheld the lower court's ruling. The Court declined to extend the logic of *Obergefell* finding that prohibitions on plural marriage have a long-standing history and that plural marriage is not deeply ingrained in the concept of "ordered liberty." The court cited a Tenth Circuit holding, *Bronson v. Swensen*:

> Plaintiff/Appellants refer to the dissent of Justice Scalia in *Lawrence v. Texas*, and of Chief Justice Roberts in *Obergefell*, which call into question state laws against bigamy, among other statutes that are based upon moral choices. *Id*. at 590, 123 S.Ct. 2472. That is likely to be true. But the Tenth Circuit and Supreme Court precedents . . . remain controlling law for this Court. The same is true for the Thirteenth Circuit. No court has yet determined that there is a constitutional right to plural marriages and we decline to do so in this case.

Petitioners filed a *writ of certiorari* with the U.S. Supreme Court and the Court has granted the petition. The Court will review the following question:

> In light of the Court's holding in *Obergefell*, may Columbiana prohibit plural marriages by means of a neutral law that applies to all persons – without exception - subject to its jurisdiction?