

**IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
2018: No. 99**

**IN THE MATTER OF AN APPLICATION UNDER  
SECTION 15 OF THE BERMUDA CONSTITUTION 1968**

**AND IN THE MATTER OF THE DOMESTIC PARTNERSHIP ACT 2018**

**BETWEEN:**

**OUTBERMUDA**

**First Plaintiff**

**-and-**

**MARTYELLEN CLAUDIA LOUISE JACKSON**

**Second Plaintiff**

**-v-**

**THE ATTORNEY GENERAL**

**Defendant**

---

**FIRST AFFIDAVIT OF ADRIAN HARTNETT-BEASLEY**

---

I, Adrian Hartnett-Beasley, of 27 Clarendon Road, Hamilton Parish, in the Islands of Bermuda, MAKE OATH and SAY as follows:

1. I am Deputy Chairperson of OUTBermuda, a company limited by guaranty and registered as a charitable organization in Bermuda. I make this affidavit on behalf of OUTBermuda and have been authorized by its Board to do so.
2. The facts set out herein are true. Where information was provided to me by others, the facts are true to the best of my information and belief.
3. True copies of certain documents are now shown to me marked Exhibit "AHB-1". References made herein to tab numbers are to the tabs in that exhibit.
4. OUTBermuda originally began as the Bermuda Bred Company, which was formed by a group of gay and lesbian Bermudians in part for the purpose of seeking to have immigration rights extended to their non-Bermudian partners. Those efforts were

successful, as on the 27 November 2015 the Supreme Court of Bermuda ruled that certain of Bermuda's immigration laws had to be applied in a manner that did not discriminate against lesbian and gay people and their partners.

5. On 22 March 2016, OUTBermuda became a registered charity, so we could continue addressing issues affecting Bermuda's LGBTQ community. To date our financial resources remain limited, and our Board of Directors and appointed Officers manage the work of the charity on a purely volunteer basis.
6. OUTBermuda promotes and supports the wellbeing, health, dignity, security, safety and protection of the LGBTQ community in Bermuda by providing educational resources on issues of diversity, inclusiveness, awareness and acceptance regarding LGBTQ people. We seek generally to advance human rights, conflict resolution and the promotion of equality and diversity relating to the LGBTQ community in Bermuda.
7. OUTBermuda directly engages with Bermuda's LGBTQ community and its allies to understand the needs and priorities of Bermuda LGBTQ people. As part of that effort, on 28 January 2017 OUTBermuda hosted a full day of community consultation. OUTBermuda also hosted public consultation on the introduction of the Domestic Partnership Act and we believe the community, while not opposed to having access to domestic partnerships, continues to desire the right to get married. Indeed no LGBTQ person that we have dialogued with believes (based on religion, faith or worldview) that they should have an impediment that precludes them from marrying. Further all such persons have expressed that removing the right to marry takes away a fundamental choice for how couples and families are able to organize their lives and precludes them from living in a way that actualizes their beliefs in this regard.
8. From the work OUTBermuda has undertaken to understand the needs of Bermuda's LGBTQ community, we know that the issues currently facing the LGBTQ community in Bermuda are as diverse as the community itself. Workplace inclusiveness, bullying in schools, discrimination, unequal treatment under the law, public ridicule and fear of physical violence are but a few of the areas in which LGBTQ people face adversity.
9. OUTBermuda considers marriage equality to be an important (but not the only) issue affecting LGBTQ Bermudians. As a result, we were relieved when, on 5 May 2017, Justice Charles-Etta Simmons ruled in the matter of *Godwin and DeRoche v AG* that, through the operation of the Human Rights Act 1981, same-sex marriage was lawful in Bermuda.
10. Since that ruling, at least eight same-sex couples have been married in Bermuda, and several Bermudians have held same-sex marriages in other jurisdictions. We also understand that a similar number have been married on Bermuda-registered cruise ships. Those marriages have reflected both the diversity of the LGBTQ community

and that of Bermuda itself, as they included black couples, white couples, mixed-race couples, and mixed-nationality couples. They have also reflected Bermuda's religious diversity, as some of those ceremonies were conducted by religious ministers supportive of same-sex marriage and of the LGBTQ community in general.

11. A Bill has now been approved by Parliament, and assented to by the Governor, that will take effect as the Domestic Partnership Act 2018 ("**the DPA**") on 1 June 2018. On that date, the DPA will revoke the right to any further same-sex marriages, and grant the right to same-sex civil unions instead (which the Act calls "domestic partnerships").
12. Prior to the passing of the DPA, OUTBermuda had engaged constructively with the Government in response to its consultation on domestic partnerships. This was because, as much as we were against the proposed replacement of same-sex marriage with domestic partnerships, we recognized there was a risk of an even worse outcome if Junior Minister Furbert followed through on his threat to re-introduce his Private Member's Bill. That Bill ("**the Furbert Bill**") would exclude marriage from the operation of the Human Rights Act, thereby revoking same-sex marriage (purportedly rendering void marriages past, present, and future), but without replacing it with any form of recognition for same-sex couples at all. This was no idle threat, as Mr Furbert had tabled an identical Bill one year earlier, prior to same-sex marriage having been made lawful. That Bill had passed the House but narrowly failed in the Senate one year earlier, and was now able to be reintroduced. During the consultation for the DPA, Government informed us that were the Furbert Bill to be reintroduced it would likely pass. That would mean all progress towards marriage equality would be completely lost. As such, OUTBermuda found itself between the proverbial rock and hard place, and, in an effort to avoid the draconian effects of the Furbert Bill, offered suggestions to make the DPA as LGBTQ-friendly as possible.
13. That said, and as OUTBermuda made clear in our formal written submission in response to the consultation, our good faith efforts to engage with the Ministry of Home Affairs during the consultation process on the DPA should in no way be viewed as our approving the spirit of the legislation. Indeed our written submission expressly stated that OUTBermuda would continue to support community led efforts to work towards marriage equality. Now that marriage equality has finally been achieved, we do not approve of the removal of marital rights from the LGBTQ community. As long as the community continues to need a voice and allies, we will work towards marriage equality, just as we advocate for all issues that affect Bermuda's LGBTQ people.
14. In late January, OUTBermuda met with Government representatives to discuss the DPA, specifically the international recognition of domestic partnerships and how OUTBermuda could partner with the Government on educational campaigns relating to diversity and inclusion. As in our written submission we requested that the

Government give assurances as to how domestic partnerships were to be treated outside Bermuda. The issue was left with those representatives and we have not yet received clarity that we are able to relay to the LGBTQ community.

15. A civil action has now been commenced against the DPA, by a Bermudian member of the LGBTQ community, Mr Rod Ferguson, who left the Island seeking a more tolerant environment in the USA. We at OUTBermuda have decided that, like Mr Ferguson, we too should take action to oppose the DPA, as we believe the revocation of same-sex marriage to be not only unjust and regressive but also unconstitutional.
16. OUTBermuda believes that the DPA provisions revoking same-sex marriage (“**the revocation provisions**”) do more than simply take away same-sex marriage. They create a legal impediment designed to limit the scope of a legally recognized relationship in a manner that accords with a specific religious view, for a specific religious purpose. That view and purpose are not embraced by all people in Bermuda who identify as being religious or who ascribe to a particular faith. Indeed that view and purpose are inconsistent with the beliefs of those people in Bermuda who are not religious, or who have no particular faith.
17. The belief in question is best expressed by the local religious lobby group Preserve Marriage Bermuda (“**PMB**”). That belief, as PMB says numerous times on their website, is that marriage is exclusively “a special union ordained by God between a man and a woman” [TAB 5, pp.1, 2, and 4].
18. By enacting the revocation provisions in the DPA, the Bermuda Government has enacted that religious belief into law. It has done so for religious reasons only, and for no plausible secular reasons.
19. Further, it has done so not to protect the religious freedom of those holding that belief (as their religious freedom is not under threat), but simply to revoke rights from those holding differing beliefs.
20. In doing so, Government has used the force of the state to impose a sectarian religious belief on everyone, whether they share that belief or not. Not only is that religious belief not universally-held across all people in Bermuda, it is not even universally-held across all religious people in Bermuda. As such, the Bermuda Government is actively siding against and declaring invalid any differing religious beliefs, actively siding with one religious group against other religious groups, and actively siding with one religious group against the non-religious.
21. Furthermore, the revocation provisions in the DPA impose religious standards on civil marriage. While religious groups are free to apply their own religious standards to religious marriage, they are not free to apply them to civil marriage as well. When civil marriage is redefined on purely religious terms, it ceases to be secular and becomes

just another form of religious marriage—one without an expressly-religious ceremony, but a religious marriage nonetheless. This undermines the secular purpose of civil marriage, which is to be religiously-neutral so as to accommodate persons from a wide variety of faiths and beliefs (including atheists, agnostics, and the religiously unconcerned). It is impossible for civil marriage to perform that expansive, religiously-neutral role if it is forced to conform to a narrow, religiously-sectarian belief. It is therefore inherently wrong for the inclusive, secular institution of civil marriage to be hijacked by a religious group and co-opted for its own exclusionary religious purposes.

22. In light of the above, OUIBermuda believe that the provisions of the DPA revoking same-sex marriage violate freedom of conscience and religion and are unconstitutional. (It should be noted, however, that we are not challenging or claiming as unconstitutional those parts of the DPA that do not revoke same-sex marriage, such as the provisions that create domestic partnerships.)

### **The history of the Domestic Partnership Act 2018**

23. Anyone looking at the history of the DPA will be perfectly aware of the religious background of its provisions revoking same-sex marriage. That history includes Mr Wayne Furbert's proposed amendment to the Human Rights Act in 2013 (which was not adopted), his identical amendment tabled in 2016 ("The Furbert Bill", which passed the House but failed in the Senate), and his threat to re-table that Bill in 2017 (which led to Minister Walton Brown tabling the DPA). The motivation and purpose of those amendments was to impose a religious view of marriage on everyone in Bermuda, regardless of whether they held that belief or not. That motivation and purpose are identical to those of the revocation provisions of the DPA, as the evidence amply demonstrates.

### *The Human Rights Amendment Act 2013*

24. From the start, Mr Furbert has been abundantly clear that his proposed amendments to the Human Rights Act served a purely religious purpose.
25. In 2013, Parliament debated the Human Rights Amendment Act 2013. That Act was intended, inter alia, to add "sexual orientation" to the list of characteristics protected under the Human Rights Act 1981. During that debate, Mr Furbert tabled an amendment exempting the Matrimonial Causes Act 1974 from the Human Rights Act, to ensure same-sex marriages remained void. That amendment was voted down and not adopted.
26. During those debates, Mr Furbert opined at length about why Christians, such as himself, should not readily support the expansion of rights for homosexuals [TAB 1, pp.1371 to 1375].

27. He said, for example, that the Christian church is “the moral fibre of this community,” has a “large political power base”, and has a “responsibility” to pressure Government into upholding religious principles—just as church leaders did when they protested the decriminalization of gay sexual relations in the mid-1990s, under the Stubbs Bill [TAB 1, p.1372].

28. He also said that his views on gay rights could be understood simply by looking at his religious upbringing [TAB 1, pp.1371 to 1372]:

“Mr. Speaker, you may recall, and those who are at least of our older generation [recall], that we went to church morning, noon, and night, particularly, in the black community. [In] Hamilton Parish we went to church morning, noon, and night. So there were teachings about our faith, teachings about some of the principles and the morals that have guided some of our views for a long period of time. I am a product of that group. I am a product of that group.

My grandfather was Bishop Russell Furbert. And I am proud to know that he was my bishop and grandfather. My pastor was Bishop Norris N. Dickenson. My mother-in-law, Charlotte Robertson, was evangelist. So you understand where I stand and my views.” (emphasis added)

29. He blamed the growing acceptance of gay rights on insufficient religious teaching, saying of his younger constituents’ indifference to homosexuality [TAB 1, p.1372]:

“The younger generation in Hamilton Parish does not care. They just say, *Do whatever you want.* In other words, they have not been taught . . . and they do not go to Sunday school like they used to, Mr Speaker. The change has taken place.”

30. And he made further religious comments, such as:

“We grew up in a predominant[ly] Christian community.” [TAB 1, p.1371]

“So time has changed and time will continue to change. But my foundation and my principles that I have stood on all my life have not changed. In other words, my Christian principles that I grew up with and particularly in Hamilton Parish . . . particularly in Hamilton Parish . . . and everyone in this Honourable House knows that Hamilton Parish is considered the Bible Belt.” [TAB 1, p.1372]

“...the Bible has always been the principle which we were guided by.” [TAB 1, p.1373]

31. Mr Furbert’s religion-based view was supported by other MPs during the discussion. See, for instance, Mr Michael Weeks [TAB 1, p.1354]:

“But I must say, Mr. Speaker, this issue is not just a cut-and-dry human rights issue, as some of us would have the country believe. Our country’s origins, Mr. Speaker, date back to 1609. And it is widely believed that those first settlers, when they came to Bermuda, had a basic respect for prayer and respect for the Almighty that gave a foundation of the forming of our country. So many in Bermuda now, Mr. Speaker, consider it irresponsible of this Government to show disregard for thousands of persons who have been brought up based on these traditional values. The Government must accept, Mr. Speaker, that this amendment puts to the test the core values that I and thousands of other families in Bermuda hold dear in the foundation of our family and our community...

...there are those within my party, our party, who do not support the amendment [to add sexual orientation discrimination to the Human Rights Act] and feel that this amendment impedes on the rights of many of those who follow their religious belief.

... We feel that this amendment, Mr. Speaker, is designed to cater specifically to a minority position, forces persons who follow Biblical or religious teachings to go against their principles. It is our contention that, in fact, the rights of those trying to uphold widely accepted moral teachings, Mr. Speaker, are being significantly marginalised.

I subscribe to the school of thought, Mr. Speaker, professed by the Christian faith as raised in my household and my community. These teachings, Mr. Speaker, I pass on to my children as I was raised in them. And these teachings also, Mr. Speaker, as I am now a proud grandfather, I too am passing on these Christian teachings and principles to my lovely grandchild. So in my opinion, Mr. Speaker, this amendment runs afoul of the principles of many in this country.

... So, the first point I would make, given the very strong faith-based persons on our 22-square-mile Island, is that there are so many who are not in support of this amendment. And, Mr. Speaker, is that so wrong? Is that so wrong, Mr. Speaker, that we not support it? Are we discriminated against because we stand for heterosexualism? Is that so wrong, Mr. Speaker, to believe that God created a man for a woman and vice versa? This is so wrong, Mr. Speaker?” (emphasis added)

32. Indeed, the entire debate, which was ostensibly about granting protection from sexual orientation discrimination, was replete with references to religion. What Minister ET (Bob) Richards said was indeed true: “There has been a lot of talk about religion here today” [TAB 1, p.1394].

*The Human Rights Amendment Act 2016 (“The Furbert Bill”)*

33. In 2016, Mr Furbert tabled a Private Members Bill called “the Human Rights Amendment Act 2016” (“**the Furbert Bill**”). It is important to note that this was not a Government Bill but a Private Members Bill, brought exclusively for religious purposes. Like his proposed amendment in 2013, that Bill sought to exempt certain provisions in the Matrimonial Causes Act 1974 from the Human Rights Act, to ensure same-sex marriages were void. The 2016 Furbert Bill was essentially identical to Mr Furbert’s attempted amendment in 2013.

34. During the Second Reading of the Bill, Mr Furbert again made clear that his opposition to gay rights and his religious views were one and the same [TAB 2, p.1047]:

“I already told you how one lady in 2007 called me at her house, said, ‘Wayne, I’m not voting for you.’ I said, ‘Why?’ She said, ‘Because I heard you are going to be supporting this sexual orientation Bill.’ I said, ‘Oh, yeah?’ I said, ‘Well, my grandpa was Bishop Russell Furbert. My pastor was Bishop Norris Dickenson. And my mother-in-law was Charlotte Robinson—evangelist Charlotte Robinson.’ She said, ‘Wayne, I’ll be at the polls,’ because she knew exactly what that meant.” (emphasis added)

35. Three months later, during Committee on the Bill, Mr Furbert referred to the same-sex marriage referendum. He noted that the more religious a constituency was, the more it voted against same-sex marriage [TAB 3, p.2432]:

“[T]he people spoke. And let me say, we have all said that Hamilton Parish was the Bible Belt, they spoke the loudest.” (emphasis added)

36. On 13 July 2016, after the Furbert Bill passed the House, Mr Furbert was interviewed by Jeremy Deacon of the Bernews website. In that interview, Mr Furbert unequivocally stated that his motivation for the Bill was a religious one [see minute 3:17 of podcast at <http://bernews.com/2016/07/podcast-mp-furbert-on-same-sex-marriage-bill/>]:

“JEREMY DEACON: From your point of view, what is a personal—and when I say “personal”, probably a religious conviction, or had you been consulting more widely that that?

WAYNE FURBERT: Well, I strongly support it. I must admit this comes from a religious perspective. I grew up in the church, still attend church, and so it was my personal conviction that marriage should be defined between a male and female. . . .

WF: . . . But it’s clear at the end of the day, what we wanted to do is ensure that marriage shall be enshrined.

JD: But it's more from a religious perspective, from your point of view?

WF: Oh yeah, oh yeah. It is, it is. I'll never hide from that. That's what I personally believe." (emphasis added)

37. Ten minutes later, Mr Deacon referred to a local lawyer's assertion that religion-based legislation is unconstitutional. Instead of denying that the Bill was religion-based, or offering secular reasons for the Bill, Mr Furbert was lost for words [see minute 13:03 of that same podcast]:

"JD: It's interesting talking about the legal process. Tim Marshall, a lawyer, was quoted—and I'll just read this very quickly, he said, "There's a very strong argument that the type of legislation the government passed offends the freedom of conscience and religion provision of the Constitution, because it is imposing a law that is quite clearly based on a religious view."

WF: That's, that's, that's, that's his position.

JD: Why I wanted to ask you in particular about whether this was a religious point, whether this was a religious issue for you—

WF: [Pause] It's not about, it's not about that. It's about, um, the whole idea of, um—that's just his opinion."

38. Based on his comments both in Hansard and in one-on-one interviews, Mr Furbert acknowledges that the Furbert Bill was based on a religious belief about marriage, and that the purpose of the Bill was to enact that belief into law.
39. The Furbert Bill failed to pass the Senate in July 2016. As per Parliamentary rules, Mr Furbert then had to wait twelve months before re-tabling it.

*The Domestic Partnership Act 2018 ("the DPA")*

40. In May 2017, same-sex marriage was recognized as lawful in the Supreme Court ruling in *Godwin and DeRoche*. In response, Mr Furbert announced he would retable his Bill in July 2017, once the mandatory waiting period of twelve months had elapsed. He was prevented from doing so by the dissolution of Parliament after the announcement of a general election, but vowed to reintroduce the Bill once Parliament reconvened.
41. When Parliament reconvened, Minister of Home Affairs Walton Brown introduced the Domestic Partnership Bill 2017 (which later became the Domestic Partnership Act 2018). Like the Furbert Bill, the Domestic Partnership Bill 2017 ("**the DPA**"), would

revoke the right to same-sex marriage. However, unlike the Furbert Bill, it would offer the right to legally-recognized civil unions (“domestic partnerships”).

42. On 9 November 2017, at a public forum, Minister Brown gave the “*one simple reason*” why he had tabled the Bill [TAB 6]:

“The Bill will alter what is the status quo with respect to same-sex marriage. The Bill will remove that and in place provide for a raft of legal benefits for same-sex couples. ...

It is being done for one simple reason: the status quo, which allows for same-sex marriage, is embraced by one segment of the community; it is not embraced by the other.” (emphasis added)

43. As Minister Brown explained, the segment of the community that did not embrace same-sex marriage was comprised of the supporters of the religiously-motivated Furbert Bill [TAB 6]:

“...we have a set of circumstances in which one Member [Wayne Furbert], representing a majority of Members in Parliament, is intent or has been intent on proposing a Private Member’s Bill which would outlaw same-sex marriage. Not a party Bill, not a government Bill—a Private Member’s Bill.

If that Bill is tabled or would be tabled, it would command the support of a majority of Members of Parliament because the majority of the Members of Parliament do not support same-sex marriage. If that Bill was to pass, same-sex couples would have no legal protections whatsoever.”

44. As Minister Brown made clear, the Furbert Bill would revoke same-sex marriage but provide no alternative legal recognition. This made the Domestic Partnership Act, which at least provided domestic partnerships, the lesser of two evils (from an LGBTQ perspective). Minister Brown was therefore bringing the Domestic Partnership Bill to prevent the passing of a re-tabled Private Member’s Bill from Minister Furbert, by *granting the supporters of the Furbert Bill what they wanted—the revocation of same-sex marriage*—but with additional provisions adding at least some protections for same-sex couples.

45. Nevertheless, it is indisputable that the Furbert Bill and the revocation provisions of the DPA (including but not limited to ss.48(2) and 53), are the same at their core. Both revoke same-sex marriage for purely religious reasons, and enact into law the religious belief that marriage is exclusively “a special union ordained by God between a man and a woman” [TAB 5, pp.1, 2, and 4]. The only difference is the Furbert Bill ignores the resulting collateral damage, while the DPA tries to mitigate it. But both revoke same-sex marriage in the same manner, on the basis of the same religious belief, and for the same religious purpose. The DPA (or parts of it), despite the protections it

offers, is clearly intended to enact a religious prohibition into law to satisfy the religiously-motivated promoters of the Furbert Bill. The DPA's revocation provisions and the Furbert Bill are the same legislative provisions, enacted for the same religious purpose.

46. Minister Brown himself made this clear during the Second Reading of the Domestic Partnership Bill. He began [TAB 4, p.881]:

“Why are we here, Mr Speaker? We are here because we have a fundamental divide in our community. We have a quite legitimate argument being advanced for LGBT rights. We have, at the same time, Mr Speaker, a significant percentage of this population which is fundamentally opposed to same-sex marriage.” (emphasis added)

47. When describing the basis of this fundamental opposition to marriage equality, Minister Brown stated [TAB 4, p.883]:

“Here is the fundamental problem with fundamentalism, Mr Speaker. First of all, it all emanates from a Christian mind-set” (emphasis added)

48. Clearly, Minister Brown believed that the opposition to marriage equality “all emanates from a Christian mind-set” and was wholly religious.

49. This view is entirely consistent with the Parliamentary comments made by Mr Brown one year earlier while in Opposition, during the 2016 debate over the Furbert Bill (which he had forcefully opposed, calling it “offensive,” “retrograde,” and “an inhibitor to the further progression of rights” [TAB 3, pp.2439 and 2440]).

50. Speaking on the Furbert Bill, Mr Brown warned against passing legislation that was “rooted in” and “determined by” sectarian religious belief [TAB 2, p.1032]:

“I know people get very sensitive when it comes to religion because we like to assert ourselves as a profoundly Christian society. We have a census coming up. The census might measure . . . no, the census does not check on religion, does it? The last census showed that about 20 per cent of people were not believers. It would be interesting to see what a proper census as opposed to this one would show later on.

Let us take for example the argument that we are a Christian society. I respect everyone's belief, everyone's faith. In a democracy that is exactly what we should do. We should respect everyone's faith whether you are Christian, whether you are Buddhist, Muslim, or a non-believer. We should respect that in a democracy.

But how do you articulate a piece of legislation that is rooted in your faith? Do you really want to have legislation determined by one's religious beliefs? Some may find this almost a sacrilegious comment, but think about it, Mr. Speaker. How many denominations do we have in Christianity? Any Christian here care to tell me? More than five, more than six. So which interpretation of Christianity shall we apply when passing laws? Should it be the Catholic Church? Should it be the Anglican Church? Should it be the AME Church? So when you invoke your religious faith—which I respect everyone's right to have—it leads to an inherent challenge with legislation.

That has a multitude of implications, Mr. Speaker. So I would advise that we cannot anchor our arguments around a particular interpretation of any faith because there are differences within faith.” (emphasis added)

51. He made nearly identical statements during the Second Reading of the DPA. Referring to the religious basis for limiting the scope of marriage he stated [TAB 4, p.883]:

“You cannot base policy—and this may come as a challenge for some—but you cannot base policy, you cannot base sound policy on a particular interpretation of religion. Yes, we may be largely a Christian society, but we are not only Christians here. And our Constitution says we should respect religious beliefs, even those who have no belief. It is embedded in our Constitution. So you cannot just articulate a view that because a particular religious interpretation argues something that requires . . . that it is valid. It cannot be, Mr. Speaker, because if you say you should adopt a Christian interpretation, well, which version of Christianity should you embrace? It is Catholicism, it is AME, is it Seventh-day Adventist, which one? They all have nuances, they all have different views. (emphasis added)

52. He added that although opposition to same-sex marriage was based on religious belief, not all religious persons shared that particular belief [TAB 4, p.883]:

“And to those in the fundamentalist camp I say to you, during my canvassing in the last election everyone knew what my position was on it, and at one household, which happened to be a parsonage—and for those who would like to look at it as if the black community is fundamentally against same-sex rights, it happened to be a black household, because there are people who keep count of that—the family said to me, Mr. Brown, this household supports same-sex marriage . . . in a parsonage. So let us not paint everybody with a broad brush. There are nuances; there are opportunities for us to listen and to learn. Fundamentalism sitting on an ideological precipice gets us nowhere. We should engage each other to try to find a way to move forward.”

53. It should be noted that, in an effort to downplay the religious nature of the DPA's revocation provisions, Minister Brown at times attempted to frame his Bill as non-religious. See the following, for example [TAB 4, p.888]:

**“Mrs. Patricia J. Gordon-Pamplin:** When people feel as though they are left out, when people feel as though they are second to, or less than, and it is being done under the cloak of what the religious principles will dictate and, therefore, they are completely—

**Hon. Walton Brown:** Point of order.

**The Deputy Speaker:** What is your point of order, Minister?

**Hon. Walton Brown:** It is a very important one, Mr. Deputy Speaker.

**The Deputy Speaker:** Yes?

#### POINT OF ORDER

*[Misleading]*

**Hon. Walton Brown:** The Honourable Member is misleading the House. This Bill has not been brought forward because of the dictates from any church.

**The Deputy Speaker:** Just . . . let us be careful with the comments, Member.

**Mrs. Patricia J. Gordon-Pamplin:** Mr. Deputy Speaker, I never said that the Bill was brought about . . . I said that the attitude that is expressed in the environment, in the community, which is where you are getting a lot of the pushback coming predominantly from people who have those basic Christian faith and tenets and wish to—I said almost dogmatically, I was very precise about that—to put those thoughts on others. And that is what I said.”

54. Given that Minister Brown accused Mrs. Gordon-Pamplin of making a claim that she had not made, it is evident he was looking for an opportunity to say the DPA was not religious-based. This would make sense, as he knew that he was caught in a contradiction: one year earlier, he had criticized the Furbert Bill for being religiously-motivated; now, he was advocating for his own Bill that—with respect to ss.48(2) and 53 and the other provisions revoking same-sex marriage—was identical to the Furbert Bill.

55. It is clear that Minister Brown's efforts to downplay the religious purpose and effect of the DPA fly in the face of his earlier comments about the Furbert Bill (and the facts). His description of the Furbert Bill as religious and contrary to the constitutional right of religious freedom, indisputably apply to the DPA's revocation provisions as

well. Those provisions have the same purpose and effect as the Furbert Bill—and intentionally so, as they exist only to satisfy the demands of the Furbert Bill’s supporters. Those supporters wanted their religious belief against same-sex marriage to be enacted into law, and the DPA has done exactly that, on their behalf.

56. If Minister Brown had wanted to claim that same-sex marriage was being revoked for secular reasons, he could have used that opportunity to do so. He did not. Again, this is consistent with his comments about the Furbert Bill in 2016. At that time, he struck down supposed secular arguments against same-sex marriage, noting that the “research” behind those arguments was typically biased, partisan, and unscientific [TAB 2, pp.1033]:

“My honourable friend [MP Furbert] pointed to some research; I prefer to go with research coming out of universities, first of all, Mr. Speaker. University research tends to be a lot more objective than institute research because most of the institutes have an ideological bias. This institute was funded by the far right, this institute was funded by the far left, and lo and behold the policies seem to align with the views of the far right or the views of the far left. Your academic institutions are more likely to be more objective. Not exclusively, but more likely.

Most of the academic research shows there is no fundamental difference whatsoever among children who are raised by same-sex couples, the ability to lead full and productive lives in society. So we have these images created, we have this fear-mongering that has permeated our society but there is no evidence. There is no evidence to support the hysterical comments and the fear that we see all too often.”

57. There is little doubt that the religious motivation of the Furbert Bill was part-and-parcel of the DPA’s revocation provisions. Further, that those DPA provisions, like the Furbert Bill, have no plausible secular basis. As Minister Brown himself noted, the DPA’s revocation provisions are indistinguishable from the Furbert Bill, and accomplish the same goal [TAB 4, p.921]:

“This Bill [the DPA] will accomplish what a Private Member’s Bill [the Furbert Bill] would have accomplished . . .”

58. Further, whilst Minister Brown says that the DPA was brought to avoid the Furbert Bill passing, in reality the Governor of Bermuda would not have assented to the Furbert Bill. This is because the requirements of our Constitution would have obliged him to not give it his assent (on the grounds that the Furbert Bill was inconsistent with Her Majesty’s international obligations, retroactively took away crystallized rights, and was unconstitutional on other grounds). I believe that the Government wanted to avoid the embarrassment of seeing a Bill which had been approved by Parliament,

rejected by the Governor. However regardless of whether or not the Furbert Bill would have ever become good law, it had a singular religious purpose, and when it was incorporated into the DPA, those parts of the DPA (only) had a singular religious purpose. Minister Brown's discussion of a compromise does not make the religious purpose any less. The religious purpose remains identical.

59. So in looking at the history of the Furbert Bill and those parts of the DPA which reflect it (including, but not limited to, ss.48(2) and 53), it is an incontrovertible fact that they have an entirely religious purpose. No one has ever seriously suggested otherwise—although no doubt, some people will now like to pretend that the purpose in all of this was secular, and not the enactment of a religious belief into law to satisfy the view of a particular religious group.

### **Preserve Marriage Bermuda**

60. During the 2016 debate, Mr Furbert referred to a petition in favour of his proposed amendment. He stated, “We have 9,000 signatures on a petition that people signed—9,000—which reflects the prevailing community interest” [TAB 2, p.1027]. That petition was created by “Preserve Marriage in Bermuda” (“PMB”), and until recently was found on the homepage on PMB's website.
61. The supporters of PMB clearly represent the “segment of the community that does not embrace same-sex marriage” that Minister Brown referred to above. Their opposition to same-sex marriage is motivated wholly by religious belief. This is made clear in the very first line of the abovementioned petition [TAB 5, p.1]:
- “We agree that marriage in Bermuda should remain defined and upheld as a special union ordained by God between a man and a woman.” (emphasis added)
62. In other words, everyone who signed that petition—allegedly 9273 of them at the time of writing—expressly and unambiguously agreed that their opposition to same-sex marriage was founded on a specific religious belief.
63. This should come as no surprise. The opposition to same-sex marriage in Bermuda has been wholly religious, and not in any way secular. Since 2015, that opposition has been coordinated by PMB, a religious lobby created to oppose same-sex marriage for religious reasons, and led by a group of pastors. PMB have opposed same-sex marriage through petitions, demonstrations, court interventions (both advocating for the referendum in 2016, and opposing same-sex marriage in *Godwin and DeRoche* in 2017), and extensive lobbying of Members of Parliament. Its political efforts have been extensive.
64. Despite their savvy and strategic use of secular-appearing promotional materials, there can be no doubt that PMB is a religious organization. There can also be no doubt that

PMB has a singular goal: that all marriages—both religious and civil—be defined on their particular religious terms.

65. PMB repeatedly state on their website ([www.preservemarriage.bm](http://www.preservemarriage.bm)), that marriage—both religious and civil—must be defined by a specific religious standard. For example, the page titled “Our Position” states, in language similar to that on their petition [TAB 5, p.2]:

“We believe that marriage should remain as a special union ordained by God between a man and a woman because of its impact on society.” (emphasis added)

66. Likewise, the “Snap Shot Overview” states [TAB 5, p.4]:

**“What is Preserve Marriage Bermuda?”**

...We exist to provide knowledge, direction, and action to the over 8,000 residents of Bermuda that have signed the petition for marriage to remain defined and upheld as a special union ordained by God between a man and a woman.” (emphasis added)

67. On the page titled, “A United Message from the Faith Community about Gay Marriage in Bermuda,” PMB offers religious arguments against same-sex marriage, which are in fact religious arguments against homosexuality in general [TAB 5, p.7]. That page describes homosexuality as unnatural, sinful, and akin to a variety of criminal and antisocial acts. It also asserts that only God can define marriage, stating [TAB 5, p.7]:

“As the Creator of marriage and family, we believe He has the authority to say how it works best.” (emphasis added)

68. Notably, that page claims to represent “a united message from the faith community,” but neglects to reflect the position of any Christian individuals or groups that are LGBTQ-affirming, or people or groups of other faiths outside of Christianity. It also neglects to identify those local pastors and churches who, unlike PMB, do not oppose homosexuality or marriage equality, who have been wholly supportive of the LGBTQ community. Some churches have permitted homosexual priests for many years, and their doctrine permits them to perform same-sex marriages. So clearly, while PMB is wholly religious, it does not represent the religious as a whole. It represents a particular segment of the religious community, cannot claim to speak for all persons of faith, and cannot dictate what other persons of faith should or shouldn’t believe.

69. Recently, PMB have claimed to represent not only the “faith community” but also the “non-faith community.” These claims fall apart under the slightest scrutiny, as they did at a PMB press conference on 4 February 2016 [see minute 17:30 of video at

<http://bernews.com/2016/02/preserve-marriage-to-hold-demonstration/>. After PMB claimed to represent persons of “faith and non-faith,” a reporter asked, “Are there any people here then today who are of the non-faith community?” To even their own amusement, PMB were unable to produce a single person of non-faith from the over 25 PMB members assembled there. But when asked about the religious makeup of the organization [at minute 18:10], then-spokesman Pastor Simons replied there were at least 80 pastors in PMB and a “great cross-section of almost every religious denomination.”

70. The above is part of PMB’s ongoing efforts to appear secular, to avoid having their motivations (correctly) labelled as religious. These efforts involve strict message discipline. This is on clear display at PMB press conferences, where a series of pastors and church members read from scripts that make conspicuously little reference to religion. It is also on display at PMB demonstrations, where mass-produced signs are distributed that, again, are conspicuously free from religious references. It is also on display in PMB’s slickly-designed promotional materials and newspaper ads, which employ the same secular-sounding talking points used across the USA by all religious opponents of same-sex marriage [TAB 5, pp.3-6]. Those promotional materials refer to purportedly scientific studies providing secular arguments against same-sex marriage [TAB 5, pp.4]. Notably, those studies are only ever cited by religious opponents of same-sex marriage, are funded by religiously-affiliated organizations seeking secular cover for their opposition to same-sex marriage, and have been definitively debunked by the scientific community. Take, for instance, the New Family Structures Study by Mark Regnerus, cited by PMB under the heading “Why Marriage Matters?” [TAB 5, pp.4]. That study has been definitively debunked by the scientific community [TAB 7, p.1], including the American Sociological Association [TAB 7, p.4]. Nevertheless, it continues to be cited by same-sex marriage opponents, including PMB [TAB 7, p.8].
71. That same message discipline was on full display when, in the Parliamentary debate over the Furbert Bill on 2 March 2016, Mr Furbert spoke on the supposed secular dangers of same-sex marriage. His speech was an almost verbatim recital of PMB’s promotional materials. He stated [TAB 2, p.1027]:

“Redefining marriage leads to an avalanche of enormous cultural changes that infiltrates various areas of society. Look us at a few, Mr. Speaker, in the United States, particularly. The State Education Board is being pressured to include gay, lesbian, bi-sexual and transgender sex education in the curriculum. Additionally, it will challenge other family units such as polygamy, multiple lovers, multiple parenting, allowing judges—these are now things the judges are looking at.

The school administration holds ‘Gender Bender Day’ where boys in the school have the right to dress like girls and girls in schools have the right to

dress like boys. Christian Charities in Massachusetts, Illinois, and Washington, DC, were forced to stop providing adoption and foster care service because they want to place children with married moms. A Boston father was arrested after objections to a homosexual curriculum in his six-year-old son's kindergarten class."

72. Compare with the final page of PMB's "Snap Shot" materials [TAB 5, p.6]:

"Redefining marriage leads to an avalanche of enormous cultural change that infiltrates various areas of society. Here are some examples of the cultural changes that our neighbor, the United States, is dealing with after they redefined marriage on June 26, 2015.

- State Education Boards are being pressured to include gay, lesbian, bisexual, and transgender sex education in their curriculum.
- Additional legal challenges for other family units such as polyamory (multiple lovers living as one family), polygamy, and multiple-parenting (allowing judges to legally recognize more than 2 parents per child).
- A school administration hosts "Gender-Bender Day" in which boys in the school have to dress like girls and girls in the school have to dress like boys.
- Christian charities in Massachusetts, Illinois, and Washington, D.C., were forced to stop providing adoption and foster care services because they wanted to place children with married moms and dads, in accordance with their religious and moral beliefs.
- ...
- A Boston father was arrested over objections to homosexual curriculum in his 6 year old son's kindergarten class."

73. Clearly, to create the impression that same-sex marriage posed secular dangers, Mr Furbert adopted PMB's secular-sounding talking points. This is not unexpected, as opponents of marriage equality regularly rely on those same debunked and hyperbolic claims, in an effort to make their religious opposition to same-sex marriage appear something other than religious.

74. Although carefully stage-managed, PMB's efforts at appearing secular are not credible. They are an obvious attempt to provide cover for PMB's true reason for opposing same-sex marriage, which is entirely based on religious belief.

75. Even overseas parties have correctly identified PMB as a religious organization. For example, a 2016 article by the US-based Baptist Press describes Preserve Marriage as "a multiethnic consortium of pastors and other Christian leaders" [TAB 8]. That article—"Bermuda pastors key in gay marriage referendum", for which various local pastors were interviewed—makes clear that PMB is a religious group, headed by

religious leaders, that uses religious means to oppose same-sex marriage for religious reasons:

“... Gary Simons, a nondenominational pastor who helped lead Preserve Marriage, the main group opposed to same-sex marriage, told Baptist Press the vote [the 2016 referendum] ‘sends a strong message to the government as well as to the community as to what the people want.’ ...

Simons, pastor of Comerstone Bible Fellowship in Hamilton, said increased unity among pastors is a byproduct of their joint stand for marriage. ‘Pastors have come together to get educated, to understand what this whole topic is about,’ Simons said. ‘At the same time, we would like to make our churches a safe place for those who are struggling sexually.’ We will ‘continue to show love but speak the truth in love.’

Among the campaign tactics of Preserve Marriage were praying, fasting, preaching, blogging, posting on social media, launching a petition and meeting with government officials.

Pastors helped bring in speakers from Europe and the U.S. throughout the campaign, Simons said, including Texas pastor Tony Evans and Ryan Anderson of The Heritage Foundation, a conservative American think tank. The nonprofit legal organization Alliance Defending Freedom assisted traditional marriage proponents as well.”

76. That extract also shows that PMB has received support not only from the local religious community, but also from heavily-funded religious groups from overseas.
77. The abovementioned Alliance Defending Freedom (“ADF”), for instance, is a Christian Right organization from the USA, which opposes not just same-sex marriage but homosexuality in general, and does so for religious reasons [TAB 9, p.1]. It is unsurprising that ADF would offer its assistance to Preserve Marriage, as one of ADF’s stated goals is to combat the spread of gay rights worldwide [TAB 9, p.1]. However, it is highly unfortunate that Preserve Marriage would accept their assistance, as the Southern Poverty Law Centre (one of the most highly-regarded human rights organization in the USA), lists ADF as an anti-LGBTQ hate-group [TAB 9, p.1-12].
78. PMB has also reportedly received assistance from another well-funded Christian Right lobby group from the USA: the National Organization for Marriage (“NOM”) [TAB 10, p.1]. NOM seeks to “halt the movement towards gay marriage worldwide” [TAB 10, p.24], and reportedly played a “significant behind-the-scenes role” in the recent overturning of same-sex marriage in Bermuda [TAB 10, p.1].

79. As with ADF, it is unfortunate that PMB would accept NOM's assistance. NOM sees its fight against marriage equality as a zero-sum religious battle, saying, "Gay marriage is the tip of the spear, the weapon that will be and is being used to marginalize and repress Christianity and the church [TAB 10, p.5]. Confidential internal memos from NOM, obtained by the Human Rights Campaign [TAB 10, p.6-25], reveal that NOM uses racially and ethnically divisive tactics to undermine gay rights not only in the USA but internationally. These tactics include heavily-funded campaigns to drive wedges between Hispanic populations and white populations, and between the gay community and black community [TAB 10, p.22]:

"CULTURAL STRATEGIES (\$5 MILLION)

*A) Internationalizing the Marriage Issue: A Pan-American Strategy*

...Will the process of assimilation to the dominant Anglo culture lead Hispanics to abandon transitional family values? We must interrupt this process of assimilation by making support for marriage a key badge of Latino identity—a symbol of resistance to inappropriate assimilation...

*C) Not a civil right project*

The strategic goal of this project is to drive a wedge between gays and blacks—two key Democratic constituencies. Find, equip, energize and connect African American spokespeople for marriage; develop a media campaign around their objections to gay marriage as a civil right; provoke the gay marriage base into responding by denouncing these spokesmen and women as bigots...

*E) Raising the Negatives on Homosexuality/ Interrupting the Race Analogy*

...we also need to accomplish a sophisticated cultural objective: interrupt the attempt to equate gay with black, and sexual orientation with race...

*F) Behind Enemy Lines, Document the Victims in Europe*

...Our goal is to problematize the oppression of Christians and other traditional faith communities in the European mind."

80. Such divisiveness is antithetical to OUTBermuda's desire for mutual tolerance and peaceful co-existence between all persons, regardless of sexual orientation, race, religious belief, and the like. We view it as extremely unfortunate that Preserve Marriage would choose to affiliate itself with a group such as NOM, whose tactics intend to undermine the diversity and pluralism required by modern democratic societies.

81. The evidence clearly shows that PMB is a local religious lobby, which has been assisted by even more powerful religious lobbies from the USA. The agenda of PMB, its local supporters, and the organizations that assist it, is a wholly religious one: to enact into law the religious belief that marriage is “a special union ordained by God between a man and a woman.” This is significant because Mr Furbert has conceded that he was effectively the instrument of PMB and the religious opposition to same-sex marriage, and that this was the motivation for his Bill.
82. Notably, there has been no visible opposition to same-sex marriage other than that offered by PMB and its supporters. It is clear that opposition to same-sex marriage in Bermuda has been wholly religious and not in any way secular.
83. It is therefore clear that the religiously-motivated PMB and its supporters are the constituency for whom the revocation provisions in the DPA, like the Furbert Bill, were directed. This further shows that the DPA is revoking same-sex marriage for purely religious reasons.

#### **Further points**

84. In the context of OUTBermuda acting as a public interest litigant, we feel an obligation to bring to the Court’s attention additional factors.
85. Take for example, the position of an atheist gay person who has a strongly held belief in marriage. It is easy to accept that someone who grew up in Bermuda can have conscientiously held belief in the concept or institution of marriage—i.e. the voluntary union for life of two people, to the exclusion of all others. They grew up always believing in marriage as an institution, not a domestic partnership. For such people a domestic partnership is a poor facsimile of marriage. It does not carry the same weight or gravitas. It is not even recognized overseas, in the way a same-sex marriage would be (see the expert evidence report of Professor Douglas NeJaime on this point). For such people, marriage itself is important and it rises to the level of a conscientiously held belief. A belief in marriage is one of the most important beliefs there can be. This is no idle matter as for some people, this goes to the core of who they are, whether they are heterosexual or homosexual.
86. This fact has been stated by none other than the American Psychological Association, the world’s largest organization of psychologists, who said in a statement in 2010 [TAB 11, p.1-2]:  

“Research has shown that marriage provides substantial psychological and physical health benefits due to the moral, economic and social support extended to married couples. Conversely, recent empirical evidence has illustrated the

harmful psychological effect of policies restricting marriage rights for same-sex couples.”

87. The APA reiterated this message in 2011, in its “Resolution on Marriage Equality for Same-Sex Couples.” That resolution made clear that, according to the scientific evidence, marriage is deeply meaningful to heterosexuals and homosexuals alike, and denying marriage to same-sex couples is detrimental to their mental wellbeing [TAB 11, p.4]:

“Whereas people benefit by sharing their lives with and receiving support from their family, friends, and other people who are important to them (Cohen & Wills, 1985);

Whereas a person’s sexual orientation defines the universe of persons with whom he or she is likely to find the satisfying and fulfilling romantic and intimate relationships that, for many individuals, comprise an essential component of personal identity (D’Augelli, 2000; Gonsiorek & Weinrich, 1991; Herek, 2001, 2006; Peplau & Garnets, 2000);

...Whereas many gay men and lesbians, like their heterosexual counterparts, desire to form stable, long-lasting, and committed intimate relationships and are successful in doing so (Gates, 2006; Henry J. Kaiser Family Foundation, 2001; Herek, Norton, Allen, & Sims 2010; Peplau & Fingerhut, 2007; Simmons & O’Connell, 2003);

...Whereas the consideration of policies to provide or deny same-sex couples full access to civil marriage and other legal forms of family formation in all branches of both the federal and state governments in the United States has frequently subjected the human rights of lesbian, gay, and bisexual people to public debate and resulted in wide variation among jurisdictions in access to these rights (Gates, Badgett, & Ho, 2008; Hatzenbuehler, Mclaughlin, Keyes, & Hasin, 2010; Herek, 2006; National Gay and Lesbian Task Force, 2010; Rostosky, Riggle, & Horne 2009; Russell, 2000);

...Whereas emerging evidence suggests that statewide campaigns to deny same-sex couples legal access to civil marriage are a significant source of stress to the lesbian, gay, and bisexual residents of those states and may have negative effects on their psychological wellbeing (Hatzenbuehler et al., 2010; Rostosky et al., 2009);

Whereas the denial of civil marriage, including the creation of legal statuses such as civil unions and domestic partnerships, stigmatizes same-sex relationships, perpetuates the stigma historically attached to homosexuality, and reinforces

90. Additionally, we wish to note that currently the following 26 countries permit same-sex marriage:

Countries that Allow Same Sex Marriage	
1	Argentina
2	Australia
3	Austria (not yet in legal effect)
4	Belgium
5	Brazil
6	Canada
7	Colombia
8	Denmark
9	Finland
10	France
11	Germany
12	Iceland
13	Ireland
14	Luxembourg
15	Malta
16	Mexico (not all regions)
17	Netherlands
18	New Zealand
19	Norway
20	Portugal
21	South Africa
22	Spain
23	Sweden
24	UK (England & Wales, Scotland)
25	USA
26	Uruguay

91. We submit that the countries which Bermuda has generally considered itself as closest to from a legal and human rights perspective (e.g. the UK, the USA, Canada) all permit same-sex marriage. Bermuda does not test its human rights standards by Russian standards. We never have. This point is made because many of the countries which are part of the Council of Europe, who appoint the judges of the European Court of Human Rights, such as Russia and Turkey, are notoriously homophobic [TAB 13]. Our norms are far closer to the group of countries listed above.

92. Finally, we wish to address the ongoing myth that a majority of Bermudians oppose same-sex marriage. This myth was given credence by false claims made about the referendum on same-sex marriage held on 23 June 2016. Only 46% of the total

prejudice against lesbian, gay, and bisexual people (Badgett, 2009; Herek, 2006; Hull, 2006);

...Therefore be it resolved that the American Psychological Association supports full marriage equality for same-sex couples;

Be it further resolved that the American Psychological Association reiterates its opposition to ballot measures, statutes, constitutional amendments, and other forms of discriminatory policy aimed at limiting lesbian, gay, and bisexual people's access to legal protections for their human rights, including such measures as those that deny same-sex couples the right to marry (Conger, 1975, APA 2007)...” (emphasis added)

Be it further resolved that the American Psychological Association calls on state governments to repeal all measures that deny same-sex couples the right to civil marriage and to enact laws to provide full marriage equality to same-sex couples;

Be it further resolved that the American Psychological Association calls on the federal government to extend full recognition to legally married same-sex couples, and to accord them all of the rights, benefits, and responsibilities that it provides to legally married different-sex couples;” (emphasis added)

88. The atheist in our example above has a conscientiously held belief in the idea of being married, just like that described by the APA. But for them, the idea of going to a church for a religious wedding or a church blessing, would conflict with their strongly held beliefs as an atheist. For them (and others) the effect of the DPA is to take away a crystalized right, namely the right to a civil marriage, and this hinders their conscientiously held beliefs (their belief in and right to marriage).
89. We also wish to note that there are significant differences between marriage in Bermuda and the rights associated with domestic partnerships under the DPA. By way of example:
- a) The age of consent for domestic partnerships is 18, however the age of consent for marriage is lower, namely 16 (with parental consent).
  - b) Adultery is a ground for a petition for divorce, but not for the dissolution of a domestic partnership under the DPA.
  - c) Same-sex marriages will be recognized overseas in all places that recognize same-sex marriages or civil unions. However domestic partnerships will not be recognized in some jurisdictions overseas which recognize same-sex marriage but not civil unions or domestic partnerships (see the expert opinion affidavit of Professor Douglas NeJaime).

electorate voted in that referendum. This means that the largest section of the community—the majority of Bermudians—did not even bother to vote on the issue of same-sex marriage at all. In fact, voter participation was so low that the referendum results were officially declared invalid. As such, those results cannot in any way be relied upon as a true reflection of public opinion.

93. Even if those results were accepted as valid (which they are not), of the 46% of the Bermudian electorate that voted, only 69% of them voted “no” to same-sex marriage. In other words, the persons who voted against same-sex marriage in that referendum represented less than 33% of the total Bermudian electorate. This means the other two-thirds of the population either supported same-sex marriage or did not oppose it. This myth that the referendum showed a majority of Bermudian voters are against same-sex marriage is simply untrue (despite being repeated by NOM in a blog post celebrating the revocation of same-sex marriage in Bermuda, ironically titled “They also lie” [TAB 10, p.27]). If the referendum showed anything, it was that a majority of Bermudian voters were so unconcerned by the issue of same-sex marriage that they could not even be bothered to vote either for or against it.
94. In any event, even if a majority of Bermudians were in favour of depriving a minority group of its human rights (which, in the case of same-sex marriage, they are not), it would be wholly inappropriate for Government to legislate on that basis, despite what same-sex marriage opponents suggest. In civilized societies, the majority does not get to pick and choose which of a minority’s human rights should and should not be protected. In fact, in a great many instances the oppressive views of the majority are exactly what minorities most need their human rights to be protected against.

### **Personal statement of faith**

95. In closing, I would like to emphasize that neither OUTBermuda nor myself are anti-religious, nor does our position in this matter reflect a desire to silence religious voices.
96. As stated earlier, OUTBermuda is a diverse group reflective of a wide variety of religious faiths, including non-faith. That diversity is why we do not believe that any one religious group is justified in taking away other people’s rights, solely on the basis of religious belief.
97. As stated by Minister Brown above, there is far too much religious diversity in Bermuda for any one belief to be given preference over others. This diversity is clearly reflected in the results of the 2010 Bermuda census, which showed that Bermuda is home to a wide variety of religious denominations—the largest being persons with no religion at all (which stood at 11,466 people in 2010, nearly 20% of the population, having grown from 14% in 2000) [TAB 12, p.15].

98. We agree with Minister Brown that, for the Bermuda Constitution to meet its secular, democratic, pluralistic goals, it must ensure that all legislation is religiously-neutral, so as to accommodate, and be seen as legitimate by, persons of all faiths (including non-faith). This applies not only to legislative Acts as a whole, but also to particular provisions of an Act.
99. Speaking now only for myself, I must add that I am not part of that growing denomination of persons of non-faith. I am—and have long been—a proud member of the “faith community.”
100. I like many other Bermudians, grew up saying my prayers and going to Sunday School, church youth groups and attending church related events. I played in the church orchestra and participated in Sunday School productions. As I grew older, I started reading the Bible lessons from the pulpit and started attending the Official Board meetings and charring committees. I have represented my Wesley Methodist Church (“**Wesley**”) at Maritime Conference and at General Council in Canada.
101. I distinctly remember in 1988 when Wesley, as part of the Synod of the Wesleyan Methodist Church of Bermuda (“**Synod**”), being affiliated with the United Church of Canada (“**UCC**”) participated in a denomination-wide vote relating to “gay” people. I was only nine and didn’t understand the complexities of what was being asked of us and certainly at that time didn’t fully comprehend the complexities of my own, or anyone else’s sexuality, but I felt Christian love and affirmation during those times from the adults around me. Wesley, along with most of the UCC voted in favour and the General Council subsequently declared that “all persons, regardless of sexual orientation, who profess their faith in Jesus Christ are welcome to be or become members of The United Church of Canada” and that “all members of the United Church are eligible to be considered for ordered ministry.” The denomination in Canada and in Bermuda split wide open and locally, five of the eight congregations eventually disassociated themselves with the Synod and the UCC. My faith was cemented into place during that time; what better way to ground an awkward and scared gay youth than to show that who he is as a person, is supported by his faith community, irrespective of what the Government, schools or others may have said.
102. In 2014 my now husband and I were blessed with an addition to our family, Grayson, who we formally adopted in Bermuda in 2016 and who was baptized at Wesley in November of that year. Grayson enjoys going to Sunday School with his cousins, and on the Sundays that he doesn’t come, I am routinely asked how he is doing and more sternly, “Why doesn’t he come more?” He is loved and supported by our church in his own right, the same way the three of us are as a family. Grayson is part of the sixth generation of our family that have attended Wesley, and the circle of people that care for him and want the best for him continues to grow.

103. Shane and I got engaged in June 2014 and decided to get married in 2015. At that time, marriage equality was not legal in Bermuda, but it was central to my belief system that if we could not be legally married in Bermuda, that we should have a Christian blessing here and we requested to have that blessing at Wesley. My parents, my brother, and my sister were all married in that sanctuary, so it felt natural and made sense for me to do so as well, despite the fact that the ceremony would not be legally-recognized. Following our official marriage in Manhattan on 21 August 2015 (by an officiant aptly named Angel), on 6 September, in front of God, our families and our friends, we exchanged our vows and our commitment to each other at the first same-sex blessing at Wesley. Interestingly, in the late 1940s, my maternal grandmother was not permitted to get married at Wesley because she was betrothed to a divorced Catholic (an event that would no longer occur, as our denomination no longer prevent divorcees from remarrying). While I fully understand and respect each denomination's ability and right to choose how it interprets what it thinks God wants for all of us, it's incongruous to me that my religious freedoms should be so heavily impacted by the views of other religious denominations.
104. While I truly believe my relationship with God is personal, having a church family like mine, and enjoying my interactions and involvement with them, with the support and love we have experienced as a family, has been of paramount importance to the man I am today. Shane and I are gay and we are Christian; we have each struggled at times to reconcile these aspects of our lives but I am glad to say that we have done so, we continue to be gay and we continue to be Christian—they are not mutually exclusive. After all, I believe we were all made in God's image, and He loves all of us and has instructed us to love each other as well.
105. In the premises and for all the reasons given above, I respectfully request that an order be made in the terms of the Originating Summons.

SWORN by the said  
 Adrian Hartnett-Beasley  
 In the City of Hamilton  
 In Bermuda  
 On the 6<sup>th</sup> day of April 2018

)  
 )  
 )  
 )  
 )  


Before me:

  
 Commissioner of Oaths

Laura E. Burns  
 Commissioner for Oaths  
 Canon's Court  
 22 Victoria Street  
 PO Box HM 1179  
 Hamilton HM EX  
 Bermuda  
 Date: 6 April 2018

IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
2018: No. 99

IN THE MATTER OF AN APPLICATION  
UNDER SECTION 15 OF  
THE BERMUDA CONSTITUTION 1968

AND IN THE MATTER OF THE DOMESTIC  
PARTNERSHIP ACT 2018

BETWEEN:

OUTBERMUDA

First Plaintiff

-and-

MARTYELLEN CLAUDIA LOUISE JACKSON

Second Plaintiff

-v-

THE ATTORNEY GENERAL

Defendant

---

FIRST AFFIDAVIT OF  
ADRIAN HARTNETT-BEASLEY

---



**aswlaw**

ASW Law Limited | Crawford House  
50 Cedar Avenue | Hamilton, HM11  
BERMUDA

Attorneys for the Plaintiffs  
RSAS/1760-001

IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
2018: No. 99

IN THE MATTER OF AN APPLICATION UNDER  
THE BERMUDA CONSTITUTION 1968

AND IN THE MATTER OF THE DOMESTIC PARTNERSHIP ACT 2018

BETWEEN:

OUTBERMUDA

First Plaintiff

-and-

MARYELLEN CLAUDIA LOUISE JACKSON

Second Plaintiff

-v-

THE ATTORNEY GENERAL

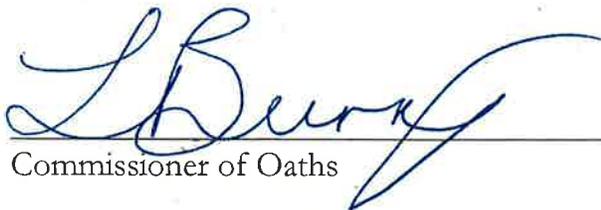
Defendant

---

EXHIBIT "AHB-1"

---

These are the documents referred to in the First Affidavit of Adrian Hartnett-Beasley sworn before me this <sup>6<sup>th</sup></sup> day of April 2018.

  
Commissioner of Oaths

Laura E. Burns  
Commissioner for Oaths  
Canon's Court  
22 Victoria Street  
PO Box HM 1179  
Hamilton HM EX  
Bermuda  
Date: 6 April 2018

IN THE SUPREME COURT OF BERMUDA  
CIVIL JURISDICTION  
2018: No. 99

IN THE MATTER OF AN APPLICATION  
UNDER SECTION 15 OF  
THE BERMUDA CONSTITUTION 1968

AND IN THE MATTER OF THE DOMESTIC  
PARTNERSHIP ACT 2018

BETWEEN:

OUTBERMUDA

First Plaintiff

-and-

MARTYELLEN CLAUDIA LOUISE JACKSON

Second Plaintiff

-v-

THE ATTORNEY GENERAL

Defendant

---

EXHIBIT "AHB-1"

---



**aswlaw**

ASW Law Limited | Crawford House  
50 Cedar Avenue | Hamilton, HM11  
BERMUDA

Attorneys for the Plaintiffs  
RSAS/1760-001