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Houston Law Review explores same-sex marriage in latest issue

Featured Yale Scholar Eskridge says constitution supports marriage equality claims

May 29, 2015 – While the U.S. Supreme Court weighs the constitutionality of same-sex marriage, a Yale law professor offers a clear-cut, “originalist” argument in favor of marriage equality in the current edition of the Houston Law Review.

William Eskridge Jr., the John A. Garver Professor of Jurisprudence at Yale, maintains the original meaning of the Equal Protection Clause of the 14th Amendment to the Constitution requires the state to support marriage equality for gay, bi-sexual and transgender people. The clause, he explains, was meant to prevent the state from arbitrarily singling out certain groups of people as a “caste” and treating them as second-class citizens.

Writers of the Equal Protection Clause certainly did not consider same-sex marriage as an issue or homosexuals as a “caste” when the 14th Amendment was drafted shortly after the Civil War, he says. But in the mid-20th Century, a wave of anti-homosexual terror swept the country, demonizing gays as a perverse and anti-family “caste,” and effectively excluding them from civil marriage. He likens the current furor over same-sex marriage to the earlier battles over anti-miscegenation laws that resulted in a landmark decision overturning bans on interracial marriage.

Public sentiment toward homosexuality has changed dramatically over the decades, but those who support laws against same-sex marriage would exclude that class of people from equal protection under the law in violation of the 14th Amendment, the professor argues. Eskridge says his article will prompt those on both sides of the marriage equality issue to think in terms of the 14th Amendment’s original meaning and challenge “originalists,” most of whom are

conservative and no friend of LGBT rights, to demonstrate the professed neutrality of their interpretation of the Constitution as it applies to same-sex marriage.

“The Houston Law Review is honored to have hosted and published the 19th Annual Frankel Lecture Issue on same-sex marriage,” said Editor-in-Chief Janna Mouret. “This Issue not only features the nation’s leading same-sex marriage scholars, including keynote speaker, professor Eskridge, but also provides a timely legal discussion at a critical juncture in American history.”

Eskridge’s Houston Law Review article, “Original Meaning and Marriage Equality,” is an expanded version of his presentation in the Frankel Lecture, sponsored by the Frankel Family Foundation and hosted by the Houston Law Review in October 2014. The comments of Professor Nan Hunter of the Georgetown University Law Center and Professor Jane Schacter of Stanford Law School are included in the Law Review.

The Houston Law Review ranks in the top 3.2 percent (51st) of more than 1,600 law journals, according to Washington & Lee University School of Law based on the number of citations to articles in the Review.

Eskridge’s article and the two commentaries are available at: houstonlawreview.org/.

University of Houston Law Center Media Contacts: Carrie Anna Criado, UH Law Center Executive Director of Communications and Marketing, 713-743-2184, cacriado@central.uh.edu; John T. Kling, UH Law Center Communications Manager, 713- 743-8298, jtkling@central.uh.edu; or Stephen B. Jablonski, Multimedia Specialist, 713-743- 1634, sbjablon@central.uh.edu.

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