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“AMORPHOUS FEDERALISM” AND THE SUPREME COURT’S MARRIAGE CASES

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This Article addresses the U.S. Supreme Court’s decisions in *Hollingsworth v. Perry* and *United States v. Windsor*, the two cases in the October 2012 Term that took up issues of marriage rights of same-sex couples. After Part I of the Article provides a brief Introduction, Part II examines the Supreme Court’s opinion in *Perry*. It summarizes the litigation; teases out divergent views of the relevance of federalism for the Court’s standing ruling in the case; identifies the problematic constitutional underpinnings of the *Perry* dissenters’ views of federal court standing, which rely on an unjustified constitutional privileging of initiative lawmaking; and explains why *Perry* is likely to have but limited impact on the Supreme Court’s Article III standing doctrine. Part III then summarizes the *Windsor* litigation; defends what should have been the self-evident conclusion—though denied by Justice Scalia in his dissent—that the majority opinion is based on equal protection (even if it perhaps also rests on substantive due process protection of “liberty”) and in so doing unpacks its treatment of federalism—

something Scalia derided as “amorphous”—to show how the majority’s treatment of states’ predominant historical role in marriage regulation fits within an evidentiary framework the Court used to help establish the impropriety of the purpose of the Defense of Marriage Act; and explores some potential ramifications of the *Windsor* decision for challenges to state refusals to recognize same-sex couples’ marriages from other states and to state refusals to allow same-sex couples to marry within their territory.

FAILING TO KEEP “EASY CASES EASY”: *FLORIDA V. JARDINES* REFUSES TO RECONCILE INCONSISTENCIES IN FOURTH AMENDMENT PRIVACY LAW BY INSTEAD FOCUSING ON PHYSICAL TRESPASS

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This Article analyzes *Florida v. Jardines*, in which the Supreme Court ruled that a canine sniff of a home from the front porch was a Fourth Amendment search. In reaching this ruling, the Court employed the property-rights definition of a search newly recovered the prior term in *United States v. Jones* instead of applying the reasonable expectation of privacy test created in *Katz v. United States*. This work examines the concerns created by *Jardines*’s ruling. This Article asserts that *Jardines* refused to resolve a potentially troubling incongruity between *Kyllo v. United States*, precedent that exalted the privacy of the home, and *United States v. Place*, a case that deemed a canine sniff to be a Fourth Amendment nonentity. Further, *Jardines* grafted onto its property-rights test an undefined and complicated implied license analysis. Finally, *Jardines* intensified the subjectivity of *Jones*’s property-rights rule by injecting a “purpose” inquiry into its new implied license analysis. The Court’s failure to consider the conflicts between *Kyllo* and *Place*, its creation of a new implied license rule, and its infusion of subjectivity into the Fourth Amendment could confuse the police and courts burdened with applying *Jardines*’s ruling.

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Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) individuals often identify their sexual orientation during their formative school years. During this time, they make important decisions about whether they will come out, to whom, and under what circumstances. However, some school officials have taken matters into their own hands, disclosing information about a student’s sexual orientation to parents or family members without the student’s permission, and without considering the student’s well-being and potential consequences at home. This Note explores a student’s constitutional right to privacy in their sexual orientation. It begins by examining the unique problems LGBTQ youth encounter while developing and pursuing their sexual orientation, and the potential dangers of being out at school among peers and at home with potentially rejecting parents. It then traces the Supreme Court’s development of the constitutional right to privacy. Although the Supreme Court has not addressed privacy as it relates to unwanted disclosures of sexual orientation, recent lower court decisions suggest that minors and students have a privacy right in information about their sexual orientation. As this privacy right emerges, schools need to take the initiative to prevent unwanted disclosures. This Note concludes by addressing some common scenarios in which an unwanted disclosure could take place, and providing suggestions to implement changes in school policies, procedures, and training.

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Recognizing the limitations and restraints posed on socially conscious for-profit organizations, several states have begun to develop a legislative model that blends attributes of traditional for-profit and not-for-profit entities into “hybrid” organizations. Chief among these states is California, which has emerged as a leader of this new social enterprise reform. California is the only state to allow a business to incorporate as a Benefit Corporation or a Flexible Purpose Corporation. Additionally, the state legislature has proposed a third type of hybrid entity—the Low-Profit Limited Liability Company. By addressing the limitations of the traditional corporate structure, California’s new hybrid entities afford directors, founders, and officers not only with increased legal protection, but also promote confidence to pursue social and environmental causes. This Article explains why California is the preferred choice for social enterprises and how an influx of social enterprises could benefit the state.