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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CATHERINA PARETO and KARLA ARGUELLO; JUAN CARLOS RODRIGUEZ and DAVID PRICE; VANESSA ALENIER and MELANIE ALENIER; TODD DELMAY and JEFFREY DELMAY; SUMMER GREENE and PAMELA FAERBER; DON PRICE JOHNSTON and JORGE DIAZ; and EQUALITY FLORIDA INSTITUTE, INC.,

Plaintiffs,

v.

HARVEY RUVIN, as Clerk of the Courts of Miami-Dade County, Florida, in his official capacity,

Defendant.
_____ /

CASE NO. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action brought by six same-sex couples residing in Florida who wish to join in marriage in their home state, but who were denied marriage licenses by the Office of the Clerk of the Courts in Miami-Dade County under Florida laws that exclude same-sex couples from marriage. The plaintiff couples, as well as Plaintiff Equality Florida Institute, Inc., allege that Florida's categorical exclusion of all same-sex couples from marriage deny same-sex couples, including the plaintiff couples, and their families the fundamental rights, dignity, and equality guaranteed to all persons by the United States Constitution.

2. In this action, Plaintiffs challenge the constitutionality of the Florida laws that exclude same-sex couples from marriage. *See* Art. I, § 27, Fla. Const.; Fla. Stat. §§ 741.04,

741.212. Florida's refusal to permit same-sex couples to marry violates multiple guarantees of the Constitution of the United States. This Court should so declare and issue a mandatory injunction requiring Defendant to issue marriage licenses to each of the plaintiff couples.

3. Plaintiffs Catherina Pareto and Karla Arguello; Juan Carlos Rodriguez and David Price; Vanessa and Melanie Alenier; Todd and Jeff Delmay; Summer Greene and Pamela Faerber; and Don Price Johnston and Jorge Diaz, are unmarried same-sex couples in committed relationships who desire to marry. Each couple wishes to publicly declare their love and commitment before their family, friends, and community; to join their lives together by entering into a legally binding commitment to one another; and to share in the protections and security that marriage provides.

4. The plaintiff couples are residents of Florida who are active and contributing members of society, with diverse backgrounds, educations, and professions. Four of the couples are raising children together. Each has made a life-long commitment to one another and are spouses in every sense, except that Florida law will not allow them to marry.

5. The situations faced by these couples are similar to those faced by many other same-sex couples in Florida who are denied the basic rights, privileges, and protections of marriage for themselves and their children. The plaintiff couples and many other same-sex couples wish to celebrate their commitment to one another and protect their children and families through marriage.

6. Multiple Florida laws, however, exclude same-sex couples from marriage. Under the Florida Constitution, "marriage is the legal union of only one man and one woman as husband and wife, [and] no other legal union that is treated as marriage or the substantial

equivalent thereof shall be valid or recognized." Art. I, § 27, Fla. Const. Florida statutory provisions also exclude same-sex couples from marriage. *See* Fla. Stat. §§ 741.04, 741.212.

7. Florida's exclusion of same-sex couples from marriage adversely affects the plaintiff couples and other Florida same-sex couples in significant ways. It undermines the ability of same-sex couples to achieve their life goals and dreams, disadvantages them financially, and denies them "dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). Further, they and their children are stigmatized and relegated to a second-class status by being barred from marriage. Florida's exclusion of same-sex couples from marriage "tells those couples and all the world that their [relationships] are unworthy" of recognition. *Id*. at 2694. By singling out same-sex couples and their families and excluding them from any type of marital protection, Florida's laws excluding same-sex couples from marriage also "humiliate[] the . . . children now being raised by same-sex couples" and "make[] it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id*.

8. In addition to stigmatizing a portion of Florida's population as second-class citizens, Florida's prohibition on marriage by same-sex couples deprives those couples of critically important rights and responsibilities that married couples rely upon to secure their marriage commitment and safeguard their families. By way of example, and without limitation, same-sex partners are denied:

a. The right to be supported financially during marriage, enforced by criminal penalties for non-support. *Killian v. Lawson*, 387 So. 2d 960, 962 (Fla. 1980); Fla. Stat. §§ 61.09, 856.04.

b. The right to be a presumed parent to a child born to a spouse during marriage. *Florida Dep't of Revenue v. Cummings*, 930 So. 2d 604, 607 (Fla. 2006); Fla. Stat §§ 742.091, 742.11(a).

c. The right to make medical decisions for an ill or incapacitated spouse without an advance health care directive. Fla. Stat. § 765.401.

d. The right to spousal insurance coverage and benefits, when spousal benefits are otherwise available.

e. A host of federal rights and responsibilities that pertain to married couples, including but not limited to, those related to Social Security, Medicare, Medicaid, the Family Medical Leave Act, and the Veteran's Administration.

f. The right to a court-ordered equitable distribution of property upon the dissolution of the marriage. Fla. Stat. § 61.075.

g. The right to receive certain workers' compensation benefits for a deceased spouse who has died as a result of a work-related accident. Fla. Stat. § 440.16.

h. The right to inherit a share of the estate of a spouse who dies without a will. Fla. Stat. § 732.102.

i. The right to receive an elective share of the estate of a spouse who died with a will. Fla. Stat. § 732.201.

j. The right to priority in appointment as the personal representative of the estate of a spouse who dies without a will. Fla. Stat. § 733.301.

k. The privilege not to have a spouse testify in a court proceeding about confidential communications made during the marriage. Fla. Stat. § 90.504.

l. The right of spouses of military personnel to be eligible to participate in the state's employment advocacy and assistance program for military spouses. Fla. Stat. § 445.055.

9. In the not so distant past, the majority of states, including Florida, had laws prohibiting marriage between people of different races. Until 1967, the Constitution and laws of Florida barred marriages between white and black persons. *See* former Art. 16, § 24, Fla. Const.; former Fla. Stat. § 741.11 (repealed by Fla. Laws 1969, ch. 69-195, § 1). The Supreme Court of the United States held such exclusions from marriage to be unconstitutional in *Loving v. Virginia*, 388 U.S. 1, 12 (1967), declaring: "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." *See also Van Hook v. Blanton*, 206 So.2d 210 (Fla. 1968) (granting writ of mandamus declaring Florida anti-miscegenation laws invalid in light of *Loving*).

10. Our courts and society have discarded, one by one, marriage laws that violated the mandate of equality guaranteed by the Constitution, such as anti-miscegenation laws and laws that denied married women legal independence. History has taught that the legitimacy and vitality of marriage do not depend on upholding discriminatory marriage laws. On the contrary, eliminating these remaining unconstitutional barriers to marriage further enhances the institution and society. Same-sex couples are now free to marry and have been doing so in large numbers in seventeen states and the District of Columbia, and the institution of marriage continues to thrive.

11. Marriage contributes to the happiness, security, and peace of mind of countless couples and their families, and to the stability and wellbeing of society. Florida, like other states, encourages and regulates marriage through hundreds of laws that provide benefits to, and impose obligations on, married couples. Florida in turn enjoys the well-established benefits that marriage

brings: stable, supportive families that contribute to both the social and economic well-being of Florida. "There can be no doubt that the institution of marriage is the foundation of the familial and social structure of our Nation . . . ." *Posner v. Posner*, 233 So. 2d 381, 384 (Fla. 1970). Marriage means many things, including "cohabitation, the founding of a home, affections, and companionship," and is premised on the reality that "we depend on each other during the changing vicissitudes of life." *Orr v. State*, 176 So. 510, 514 (Fla. 1937).

12. When Florida withholds a marriage license from a same-sex couple, Florida circumscribes individuals' basic life choices, classifies persons in a manner that denies them the public recognition and myriad benefits of marriage, prevents couples from making a legally binding commitment to one another and from being treated by the government and by others as a family rather than as unrelated individuals, and harms society by burdening committed families and preventing couples from being able to fully protect and assume responsibility for one another and their children.

13. Florida's exclusion of same-sex couples from marriage violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Florida's exclusion deprives same-sex couples of their fundamental right to marry; infringes upon their constitutionally protected interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association; and deprives them of equal protection of the laws.

14. The Florida laws and the actions by the Defendant Clerk that this action challenges cannot survive any level of constitutional scrutiny because they do not rationally further any legitimate government interest, but serve only to injure and humiliate same-sex couples and their families. Moreover, the challenged laws and Defendant's actions are subject to

heightened constitutional scrutiny because they burden fundamental constitutional rights and discriminate on the basis of sex and sexual orientation.

15. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983 and Fla. Stat. § 26.012(2)(c) for declaratory and injunctive relief against Defendant. Specifically, Plaintiffs seek: (a) a declaration that Florida's laws and the Defendant's actions preventing same-sex couples from marrying violate the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and (b) a permanent mandatory injunction preventing Defendant from denying the plaintiff couples the right to marry and requiring Defendant to issue marriage licenses to the plaintiff couples.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this equitable action pursuant to Fla. Stat. § 26.012(2)(c).

17. Venue is proper in this judicial circuit and county pursuant to Fla. Stat. § 47.011 because this cause of action accrued in this county and the Defendant resides in this county.

PARTIES

A. The Plaintiffs

18. Plaintiffs Catherina Pareto and Karla Arguello have been in a committed relationship for fourteen years. Catherina owns and operates a financial planning firm. Karla is a stay-at-home mother to their fifteen-month-old son. The couple adopted their son in July 2013, and they are raising him together. They meet all of Florida's qualifications for the issuance of a marriage license, except that they are of the same sex. On January 17, 2014, the couple appeared in person at the Office of the Clerk of the Courts in Miami-Dade County to apply for a marriage license. Defendant, in his official capacity and through his authorized deputy, refused their

marriage license application because they are a same-sex couple. They wish to marry in the State of Florida, and they and their child have been harmed by Florida's refusal to allow them to do so.

19. Plaintiffs Juan Carlos Rodriguez and David Price have been in a committed relationship for nearly eighteen years. Juan Carlos is a physician, and David manages Juan Carlos's medical practice. The couple has twins who are three years old. They meet all of Florida's qualifications for the issuance of a marriage license, except that they are of the same sex. On January 17, 2014, the couple appeared in person at the Office of the Clerk of the Courts in Miami-Dade County to apply for a marriage license. Defendant, in his official capacity and through his authorized deputy, refused their marriage license application because they are a same-sex couple. They wish to marry in the State of Florida, and they and their children have been harmed by Florida's refusal to allow them to do so.

20. Plaintiffs Vanessa and Melanie Alenier have been in a committed relationship for eight years. Vanessa is the assistant general manager of a national trade show and special event service provider and Melanie is an insurance agent. The couple adopted their son in August 2010, and they are raising him together. They meet all of Florida's qualifications for the issuance of a marriage license, except that they are of the same sex. On January 17, 2014, the couple appeared in person at the Office of the Clerk of the Courts in Miami-Dade County to apply for a marriage license. Defendant, in his official capacity and through his authorized deputy, refused their marriage license application because they are a same-sex couple. They wish to marry in the State of Florida, and they and their child have been harmed by Florida's refusal to allow them to do so.

21. Plaintiffs Todd and Jeff Delmay have been in a committed relationship for eleven years. Todd and Jeff own a business together that specializes in hotel reservations for large events. The couple adopted their son in May 2010 and is raising him together as his parents. They meet all of Florida's qualifications for the issuance of a marriage license, except that they are of the same sex. On January 17, 2014, the couple appeared in person at the Office of the Clerk of the Courts in Miami-Dade County to apply for a marriage license. Defendant, in his official capacity and through his authorized deputy, refused their marriage license application because they are a same-sex couple. They wish to marry in the State of Florida, and they and their child have been harmed by Florida's refusal to allow them to do so.

22. Plaintiffs Summer Greene and Pamela Faerber have been in a committed relationship for twenty-five years. Summer is a real estate agent. Pamela is a portrait artist. Together they raised Pam's teenage daughter from a previous marriage and currently have two grandchildren. They meet all of Florida's qualifications for the issuance of a marriage license, except that they are of the same sex. On January 17, 2014, the couple appeared in person at the Office of the Clerk of the Courts in Miami-Dade County to apply for a marriage license. Defendant, in his official capacity and through his authorized deputy, refused their marriage license application because they are a same-sex couple. They wish to marry in the State of Florida, and they and their family have been harmed by Florida's refusal to allow them to do so.

23. Plaintiffs Don Price Johnston and Jorge Diaz have been in a committed relationship for one year and recently got engaged. Don is an office manager at a law firm, and Jorge is a paralegal. They meet all of Florida's qualifications for the issuance of a marriage license, except that they are of the same sex. On January 17, 2014, the couple appeared in person at the Office of the Clerk of the Courts in Miami-Dade County to apply for a marriage license.

Defendant, in his official capacity and through his authorized deputy, refused their marriage license application because they are a same-sex couple. They wish to marry in the State of Florida and have been harmed by Florida's refusal to allow them to do so.

24. Plaintiff Equality Florida Institute, Inc., is the state's largest civil rights organization dedicated to securing full equality for Florida's lesbian, gay, bisexual, and transgender (LGBT) community. The organization has many members throughout the state. Since its inception, the organization has represented the interests of LGBT Floridians through public education, coalition-building, advocacy, and grassroots organizing. Equality Florida Institute also coordinates public education campaigns and events for policymakers, LGBT people, and the public at large on issues affecting the LGBT community. Equality Florida Institute's members include many same-sex couples throughout Florida, including residents of Miami-Dade County who wish to marry and intend to apply for marriage licenses from Defendant if the Florida laws prohibiting same-sex couples from marrying are declared unconstitutional as a result of this action. Equality Florida Institute brings this action in an associational capacity on behalf of its members who desire to marry in Florida but are prevented from doing so by enforcement of Florida laws excluding same-sex couples from marriage.

B. The Defendant

25. Defendant Harvey Ruvin is the Clerk of the Courts for Miami-Dade County. In his official capacity, Defendant is responsible for issuing and recording marriage licenses within Miami-Dade County. Defendant is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint. Defendant's official residence is in Miami, within Miami-Dade County. He is sued in his official capacity.

26. Defendant, in carrying out his duty to determine the qualifications of applicants for marriage licenses and to issue marriage licenses only to couples who satisfy Florida's statutory and constitutional requirements for marriage, is responsible for enforcing Florida's laws barring same-sex couples from marriage. Defendant, and those subject to his supervision and control, have caused the harms alleged and will continue to injure Plaintiffs if not enjoined. Accordingly, the relief requested is sought against Defendant, as well as all persons under his supervision and control, including his deputies, employees, and agents.

GENERAL ALLEGATIONS

Florida's Laws Barring Same-Sex Couples from Marriage

27. In 1977, the Florida legislature amended Fla. Stat. § 741.04 to expressly limit the issuance of marriage licenses to opposite-sex couples. Section 741.04 states in relevant part:

> No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, providing the social security numbers or any other available identification numbers of each party, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; and unless *one party is a male and the other party is a female*. (Emphasis added.)

28. In 1997, in response to the possibility that some states might permit same-sex couples to marry, the Florida legislature enacted Fla. Stat. §741.212 to again prohibit marriages between same-sex couples. That statute provides:

> (1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign,

> or any other place or location, are not recognized for any purpose in this state.
>
> (2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.
>
> (3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

29. In 2008, Florida amended its Constitution to include a provision excluding same-sex couples from marriage. Article I, Section 27 of the Florida Constitution provides:

> Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

Plaintiffs' Exclusion from Marriage by Defendant Pursuant to Florida Laws

30. The plaintiff couples are residents of Florida who experience the same joys and challenges of family life as their neighbors, co-workers, and other community members who may marry freely and whose legal marriages are respected under Florida law. They are productive, contributing citizens who support their families and nurture their children, but who must do so without the same legal shelter, dignity, and respect afforded by Florida to other families through access to the universally celebrated status of marriage. Florida's exclusion of same-sex couples from marriage, and Defendant's enforcement of that exclusion, subject Plaintiffs and their families to an inferior "second class" status in relation to the rest of the community. These laws deprive them and their children of equal dignity, security, and legal protections afforded to other Florida families.

31. Each of the plaintiff couples applied for marriage licenses in Miami-Dade County, Florida on January 17, 2014. Defendant, in his official capacity and through his authorized agent, refused their marriage license applications because they are same-sex couples. All conditions precedent to this action have occurred or been waived.

COUNT ONE

VOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (Brought Pursuant to 42 U.SC. § 1983)

32. Plaintiffs incorporate by reference and re-allege all of the preceding paragraphs of this complaint as though fully set forth herein.

33. Plaintiffs state this cause of action against Defendant in his official capacity for purposes of seeking declaratory and injunctive relief.

34. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, § 1.

35. Article I, Section 27 of the Florida Constitution, Fla. Stat. §§741.04 and 741.212, and all other sources of state law that preclude marriage for same-sex couples violate the due process guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs.

36. The right to marry the unique person of one's choice without undue government restriction is one of the fundamental rights protected by the Due Process Clause of the Fourteenth Amendment. Defendant's actions to enforce the marriage ban directly and impermissibly infringe upon same-sex couples' choice of whom to marry, interfering with a core, life-altering, and intimate personal choice.

37. The Due Process Clause protects choices central to personal dignity, privacy, and autonomy, including each individual's fundamental liberty interests in family integrity and intimate association. Defendant's actions to enforce the marriage ban directly and impermissibly infringe upon same-sex couples' deeply intimate, personal, and private decisions regarding family life, and preclude them from obtaining full liberty, dignity, privacy, and security for themselves, their family, and their parent-child bonds.

38. As the Clerk of the Courts of Miami-Dade County, Defendant ensures compliance with Florida's exclusion of same-sex couples from marriage by refusing to issue marriage licenses to same-sex couples who apply for licenses in Miami-Dade County. That refusal violates same-sex couples' fundamental right to marry and fundamental interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association under the Fourteenth Amendment to the United States Constitution.

39. Florida's exclusion of same-sex couples from marriage violates the Due Process Clause because it is not rationally related to any legitimate governmental interest and thus cannot survive even rational basis review, much less the heightened level of scrutiny that applies to a deprivation of the fundamental right to marry and interference with fundamental interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

40. There is a bona fide adversity of interests between the Plaintiffs and the Defendant concerning these constitutional rights of Plaintiffs guaranteed by the Due Process Clause of the Fourteenth Amendment. The Defendant's denial of marriage licenses sought by Plaintiffs has created a doubt about Plaintiffs' rights that Plaintiffs are entitled to have removed through issuance of declaratory relief in this action.

COUNT TWO

VIOLATIONS OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (Brought Pursuant to 42 U.S.C. § 1983)

41. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 31 of this complaint as though fully set forth herein.

42. Plaintiffs state this cause of action against Defendant in his official capacity for purposes of seeking declaratory and injunctive relief.

43. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

44. Article I, section 27 of the Florida Constitution, Fla. Stat. §§ 741.04 and 741.212, and all other sources of state law that preclude marriage by same-sex couples violate the equal protection guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs. The conduct of defendants in enforcing these laws violates the right of same-sex couples to equal protection by discriminating impermissibly on the basis of sexual orientation and sex.

45. As the Clerk of the Courts of Miami-Dade County, Defendant ensures compliance with Florida's laws barring same-sex couples from marriage by refusing to issue marriage licenses to same-sex couples who apply for licenses in Miami-Dade County. That refusal violates the constitutional rights of same-sex couples to equal protection of the laws.

46. Florida's exclusion of same-sex couples from marriage, and Defendant's actions to enforce that exclusion, deny same-sex couples equal dignity and respect, and deprive their families of a critical safety net of rights and responsibilities. These laws brand same-sex couples and their children as second-class citizens through government-imposed stigma and foster

private bias and discrimination, by instructing all persons with whom same-sex couples interact, including their own children, that their relationships and families are less worthy than others. Florida's exclusion of same-sex couples from marriage and Defendant's actions reflect moral disapproval and animus toward same-sex couples. No legitimate purpose serves to overcome these laws' purpose and effect to disparage and demean same-sex couples and their children.

47. Same-sex couples such as the plaintiff couples are similar to opposite-sex couples in all of the characteristics relevant to marriage. Committed same-sex couples make the same commitments to one another that other couples make. They build their lives together, plan their futures together, and hope to spend their lives together, caring for one another just as opposite-sex couples do.

48. The plaintiff couples seek to marry for the same types of reasons, and to provide the same legal shelter to their families, as different-sex spouses.

49. Like many other couples, many same-sex couples are parents raising children together. Four of the plaintiff couples are raising children together, and a fifth has an adult child and grandchildren.

50. The plaintiff couples and their children are equally worthy of the tangible rights and responsibilities, as well as the respect, dignity, and legitimacy that access to marriage confers on opposite-sex couples and their children. The tangible benefits and societal esteem that marriage confers on families is just as important for the many children being raised by same-sex couples as such benefits and esteem are for children of opposite-sex couples.

A. Discrimination Based on Sexual Orientation

51. Florida's laws barring same-sex couples from marriage and the Clerk's actions in denying marriage licenses to same-sex couples target same-sex couples as a class by excluding

them from marriage or any other form of relationship recognition on the basis of sexual orientation.

52. Laws that discriminate based on sexual orientation are subject to heightened equal protection scrutiny for numerous reasons, including the following.

a. Lesbians and gay men have suffered a long and painful history of discrimination in Florida and across the United States.

b. Sexual orientation bears no relation to an individual's ability to perform in or contribute to society. Instead, laws that discriminate based on sexual orientation are often based on misunderstanding, prejudice, animus, or gender-based stereotypes or expectations regarding the roles of men and women in relationships.

c. Sexual orientation is a core, defining trait that is so fundamental to one's identity and autonomy that a person may not legitimately be required to abandon or change it (even if that were possible) as a condition of equal treatment under the law.

d. Lesbian, gay, and bisexual persons are a discrete and insular minority, and strong ongoing prejudice against them continues to seriously curtail the political processes that might ordinarily be relied upon to protect them. In Florida, lesbian, gay, and bisexual persons lack any statutory protection against discrimination and can be openly and legally discriminated against in all arenas, including employment, public accommodations, and housing without recourse to any statutory remedy.

53. The exclusion of same-sex couples from marriage based on sexual orientation cannot survive heightened scrutiny under the Equal Protection Clause because the State of Florida cannot offer an exceedingly persuasive showing that the exclusion is substantially related to the achievement of any important governmental objective. Moreover, because the exclusion of same-sex couples from marriage does not serve any legitimate government interest, the exclusion violates the Equal Protection Clause even under rational basis review.

B. Discrimination Based on Sex

54. Florida's exclusion of same-sex couples from marriage and the Clerk's actions in denying marriage licenses to same-sex couples discriminate against Plaintiffs on the basis of sex, barring same-sex couples from marriage solely because each member of such couples wishes to marry a life partner of the same sex. The sex-based restriction is plain on the face of the Florida's laws, which restrict marriage to "one man and one woman as husband and wife." Art. I, § 27, Fla. Const.

55. For example, because of these sex-based classifications, Vanessa is precluded from marrying her devoted life partner because she is a woman and not a man; were Vanessa a man, she could marry Melanie. Likewise, Todd is unable to marry Jeff because he is a man rather than a woman. The same is true of each of the plaintiff couples.

56. Florida's exclusion of same-sex couples from marriage also serves the impermissible purpose of enforcing and perpetuating sex stereotypes and gender-based expectations by excluding such couples from marriage because they do not conform to sex-based stereotypes that women should be attracted to, form intimate relationships with, and marry men, not other women, and that men should be attracted to, form intimate relationships with, and marry women, not other men.

57. Given that there are no longer legal distinctions between the duties of husbands and wives under Florida law, there is no basis for the sex-based eligibility requirements for marriage.

58. The exclusion of same-sex couples from marriage based on their sex and the enforcement of gender-based stereotypes cannot survive the heightened scrutiny required for sex-based discrimination, nor is it rationally related to any legitimate governmental purpose.

C. Discrimination With Respect to Fundamental Rights and Liberty Interests Secured by the Due Process Clause

59. Florida's exclusion of same-sex couples from marriage discriminates against Plaintiffs with respect to the exercise of the fundamental right to marry the person of one's choice, and with respect to their liberty interests in personal autonomy, and family integrity, association and dignity. Such discrimination is subject to heightened scrutiny. Florida's exclusion of same-sex couples cannot survive such scrutiny, and indeed cannot survive even rational basis review.

D. Entitlement to Declaratory Relief

60. There is a bona fide adversity of interests between the Plaintiffs and the Defendant concerning Plaintiffs' rights, guaranteed by the Equal Protection Clause of the Fourteenth Amendment, not to be treated unequally with respect to the freedom to marry. The Defendant's denial of marriage licenses sought by Plaintiffs has created a doubt about Plaintiffs' rights that Plaintiffs are entitled to have removed through issuance of declaratory relief in this action.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that the provisions of and enforcement by Defendant of Florida's laws excluding same-sex couples from marriage, including Article I, Section 27 of the Florida Constitution, any portions of Fla. Stat. §§ 741.04 and 741.212 that preclude same-sex couples from marrying in Florida, and any other sources of state law that preclude same-sex couples from marrying violate Plaintiffs' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

B. Permanently enjoining enforcement by Defendant of Article I, Section 27 of the Florida Constitution, any portions of Fla. Stat. §§ 741.04 and 741.212 that preclude same-sex couples from marrying in Florida, and any other sources of state law that preclude same-sex couples from marrying;

C. Requiring Defendant to issue marriage licenses to Plaintiffs and to all otherwise qualified same-sex couples who apply for marriage licenses, subject to the same restrictions and limitations applicable to opposite-sex couples;

D. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

E. Granting such other and further relief as the Court deems just and proper.

F. The declaratory and injunctive relief requested in this action is sought against Defendant; against Defendant's officers, employees, and agents; and against all

persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

DATED: January 21, 2014

Respectfully submitted,

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