IN THE DISTRICT COURT OF LARAMIE COUNTY, WYOMING
FIRST JUDICIAL DISTRICT

Cora Emma-Terese Sacah Courage and Wyoma Kay Proffit; Carl Oleson and Rob Johnston; Anne Marie Guzzo and Bonnie Robinson; Ivan Williams and Charles Killion; and Wyoming Equality, Plaintiffs, v. State of Wyoming; Matthew H. Mead, in his official capacity as the Governor of Wyoming; Dean Fausset, in his official capacity as Director of the Wyoming Department of Administration and Information; Dave Urquidez, in his official capacity as Administrator of the State of Wyoming Human Resources Division; and Debra K. Lathrop, in her official capacity as Laramie County Clerk, Defendants.	)	Civil Action No. 182-262 FILED JUL 01 2014 SANDY LANDERS CLERK OF THE DISTRICT COURT

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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Plaintiffs file this Motion for Summary Judgment pursuant to Wyoming Rule of Civil Procedure 56. There are no genuine issues of material fact as to Plaintiffs' claims that Defendants' failure to treat same-sex couples and opposite-sex couples equally for purposes of marriage violates the Wyoming Constitution and Wyoming statute. Plaintiffs are entitled to summary judgment as a matter of law and a declaration that Defendants must treat same-sex couples and opposite-sex couples equally for purposes of marriage.

INTRODUCTION

Wyoming has long recognized that marriage is "an institution more basic in our civilization than any other," *In re Fray*, 721 P.2d 1054, 1057 (Wyo. 1986), and that the Wyoming Constitution guarantees its citizens the right to marry. *See Ward Terry & Co. v. Hensen*, 297 P.2d 213, 215 (Wyo. 1956) ("Civil rights mentioned in the constitution include the rights of property, marriage, protection by the laws, freedom of contracts, trial by jury, etc."). The Plaintiffs[1] in this case, like couples throughout the state, are committed partners who love each other and love living in Wyoming. They built their lives in this state, and invested time and energy into their homes, their communities, their churches, and their families. They wish to express their love and commitment to the world, and to have their relationships accorded the same dignity, respect, and security as the relationships of other married couples in Wyoming. But Wyoming denies the Plaintiffs the legal stability and substantial protections, as well as the obligations, that flow from civil marriage because the Plaintiffs are same-sex couples.

By refusing to permit same-sex couples to marry, and refusing to recognize the valid marriages of same-sex couples who are already married, Wyoming unjustifiably deprives same-

[1] Plaintiff Wyoming Equality represents the interests of Wyoming's lesbian, gay, bisexual, and transgender ("LGBT") citizens who wish to marry and intend to apply for marriage licenses, or ask the state to recognize their marriages lawfully entered into in other jurisdictions. *See* Aff. of Jeran Artery on behalf of Plaintiff Wyoming Equality (Ex. 1).

sex couples of fundamental rights related to marriage, family, and privacy, and discriminates against same-sex couples based on their gender and sexual orientation. The Wyoming Constitution prohibits the state from proscribing access to fundamental rights, including the rights associated with marriage, family, and privacy, in the absence of a compelling justification. Wyo. Const. art. 1 § 6. The Wyoming Constitution also forbids the state from discriminating against classes of persons on the basis of "race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction." Wyo. Const. art. 1 §§ 2, 3. As recognized by the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), the principal purpose of laws or policies that treat same-sex couples differently from opposite-sex couples with regard to marriage "is to identify a subset of state-sanctioned marriages and make them unequal." *Id.* at 2694. Such a purpose does not pass muster under the Wyoming Constitution. Indeed, Wyoming's discrimination against same-sex couples lacks even a rational connection to any legitimate governmental objective and therefore cannot satisfy the requirements of due process and equal protection under any standard of review.

Moreover, with regard to Plaintiffs Courage and Proffit, and Oleson and Johnston (collectively the "Married Plaintiffs"), Wyoming statute expressly provides that "[a]ll marriage contracts which are valid by the laws of the country in which contracted are valid in this state." Wyo. Stat. § 20-1-111. Plaintiffs Cora Courage and Nonie Proffit were legally married in Iowa in 2009. Plaintiffs Carl Oleson and Rob Johnston were legally married in Canada in 2010. Under its own statute, Wyoming must recognize these marriages as valid. But, because Cora and Nonie are both women, and Carl and Rob are both men, Wyoming treats the fact of their marriages as fiction. Despite a clear statutory mandate, the State of Wyoming and its actors,

Defendants Mead, Fausset, and Urquidez (the "Wyoming Defendants"), refuse to honor the marriages of same-sex spouses that were validly entered in other jurisdictions. The Wyoming Defendants' position has no basis in law.[2]

In sum, the Wyoming Constitution forbids the state from making class-based distinctions that have no legitimate purpose other than to "demean the ability or social status of the affected class." *See A v. X, Y, & Z*, 641 P.2d 1222, 1224–25 (Wyo. 1982). Wyoming's discrimination against same-sex couples serves no other purpose. This Court should so declare and issue an injunction requiring the defendants to issue marriage licenses to same-sex couples who are otherwise qualified to marry, and to recognize the existing marriages of same-sex couples that were validly entered into in other jurisdictions.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiffs Cora Courage and Nonie Proffit

1. Plaintiffs Cora Courage and Wyoma "Nonie" Proffit have been in a loving and committed relationship for ten years and were legally married to one another in Iowa on December 4, 2009. Courage Aff. (Ex. 3) ¶ 2; Proffit Aff. (Ex. 4) ¶ 15; Courage/Proffit Marriage License (Ex. 5).

2. Cora and Nonie live together on a ranch near Evanston, Wyoming. Courage Aff. ¶ 2; Proffit Aff. ¶ 2.

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[2] Governor Matt Mead publicly has agreed that "gay marriage . . . is a reality in other states. . . . And those married couples will move to Wyoming. They are moving to Wyoming, and one of the hallmarks and strengths of Wyoming is our judicial system. And we need to make sure in Wyoming that those married gay couples know they have access to the courts, and then with that goes your dying spouse is on the deathbed and will you have access to say goodbye? Those types of things." Laura Hancock, *Wyoming Governor: Marriage is Between Man, Woman; Gays Married Out of State Need Recognition in State Courts*, Casper Star-Tribune (April 21, 2014), http://trib.com/news/state-and-regional/govt-and-politics/wyoming-governor-marriage-is-between-man-woman/article_45b604e7-9ea5-5920-b5ec-4374f885cbca.html (attached as Ex. 2).

3. Cora and Nonie each have children from prior relationships. Courage Aff. ¶¶ 14, 19–20; Proffit Aff. ¶¶ 8–10.

4. Since September of 2013, Cora has been the Clinical Director of the Wyoming State Hospital and an employee of the State of Wyoming. Courage Aff. at ¶¶ 2, 26.

5. As an employee of the State of Wyoming, Cora was informed that she may elect to have her spouse covered by the group insurance plan that the state provides. Courage Aff. ¶ 26; *see also* Wyo. Stat. §§ 9-3-203(a)(iii); 9-3-209(a).

6. On September 13, 2013, Cora submitted an application to have her spouse, Nonie, covered by the group insurance plan. Courage Aff. ¶ 26; September 18, 2013 letter to Cora Courage from Kathy Simpson (Ex 6).

7. On or about September 19, 2013, Cora received a letter from Kathy Simpson, a Human Resource Specialist with the Wyoming Department of Administration and Information Human Resources Division, stating: "We are in receipt of your application dated September 13, 2013. We are unable to add Wyoma Proffit to your health and dental coverage. Wyoma does not qualify as a dependent as defined by the State of Wyoming. I have enrolled your dependent life coverage; however, be aware that if Wyoma is your intended dependent, she would not be eligible." September 18, 2013 letter to Cora Courage from Kathy Simpson.

8. Ms. Simpson informed Cora that Nonie did not qualify as a dependent because the Wyoming Human Resources Division only recognized marriages that were consistent with the statutory definition of marriage as between a man and a woman. Courage Aff. ¶ 26. Ms. Simpson denied Cora's application to add Nonie as a dependent because both Cora and Nonie were women and therefore Nonie did not qualify as an eligible dependent.

9. Cora is a Major in the Army Reserves. Accordingly, she was able to provide health insurance coverage for Nonie through the TRICARE health program offered by the Army Reserves. Courage Aff. ¶¶ 25–26.

10. The health insurance provided by Cora's state employer would benefit Cora and Nonie in three significant ways: (1) state-provided health care would be enormously beneficial to Nonie because the closest TRICARE provider is several hours away, making it very difficult to access covered care; (2) Nonie would receive a more comprehensive set of benefits if she were a beneficiary of Cora's state-provided health insurance; and (3) the additional premium cost for an added dependent under the state plan is less than the additional premium cost for adding Nonie as a dependent under TRICARE. Courage Aff. ¶ 26. But because the Wyoming Defendants do not recognize Cora and Nonie's marriage, Nonie receives health insurance that is costlier and less comprehensive than the Wyoming state insurance plan in which she otherwise could enroll.

Plaintiffs Carl Oleson and Rob Johnston

11. Plaintiffs Carl Oleson and Rob Johnston have been in a loving and committed relationship for sixteen years and were legally married to one another in Canada on July 16, 2010. Oleson Aff. (Ex. 7) ¶¶ 2, 12; Johnston Aff. (Ex. 8) ¶¶ 1, 9, 19; Oleson/Johnston Marriage License (Ex. 9).

12. Carl and Rob live together in Casper, Wyoming. Oleson Aff. ¶ 2; Johnston Aff. ¶ 2.

13. After ten years working for the Wyoming Department of Health, Rob retired in January 2013. Johnston Aff. ¶ 12, 20.

14. While he was an employee of the State of Wyoming, Rob could elect to have his spouse covered by the group insurance plan that the state provides. Wyo. Stat. §§ 9-3-203(a)(iii); 9-3-209(a).

15. While he was an employee of the State of Wyoming, Rob approached his supervisor about adding Carl as his dependent. Oleson Aff. ¶ 13; Johnston Aff. ¶¶ 13, 16, 22.

16. Rob was informed by his supervisor that, because Carl was a man, he was not a qualified dependent of Rob and could not be added to Rob's state-provided health insurance. Oleson Aff. ¶ 13; Johnston Aff. ¶¶ 13, 22. As a result, Rob did not submit an application to elect to have Carl covered by Rob's state-provided insurance. Instead, Carl went without health insurance.

17. Upon retirement in January 2013, Rob was entitled to a pension with benefits that would pass to a surviving spouse upon Rob's death. Oleson Aff ¶ 14; Johnston Aff. ¶ 20.

18. When filling out the pension benefit form, Rob inquired of Human Resources personnel whether Carl could be named as Rob's beneficiary. Rob was informed that Carl was not legally Rob's spouse under Wyoming law so he probably would not be eligible to be listed as a beneficiary. Nonetheless, Human Resources personnel allowed Rob to list Carl with the caveat that there was no guarantee that Carl ever would receive the benefits described. Human Resources personnel warned Rob that he should not assume that the benefits would be granted, and that he was a "test case." Oleson Aff ¶ 14; Johnston Aff. ¶ 20.

19. Because the Wyoming Defendants do not recognize Rob and Carl's marriage, Carl does not know if he will receive the pension benefits to which he is entitled as Rob's spouse. Rob and Carl suffer significant anxiety over this issue. Oleson Aff. ¶¶ 14–16; Johnston Aff. ¶ 20.

Plaintiffs Anne Marie Guzzo and Bonnie Robinson

20. Plaintiffs Anne Marie Guzzo and Bonnie Robinson applied for a marriage license at the office of Defendant Lathrop, the Laramie County Clerk, on March 3, 2014. Stipulations of

Fact between Plaintiffs and Defendant Debra K. Lathrop ("County Stip.") ¶ 8 (filed on June 20, 2014, and attached hereto as Ex. 10).

21. But for their status as a same-sex couple, Anne and Bonnie were qualified to receive a marriage license from Defendant Lathrop. County Stip. ¶¶ 13–14.

22. Defendant Lathrop did not issue a marriage license to Anne and Bonnie because of their status as a same-sex couple. County Stip. ¶¶ 12–14.

23. Defendant Lathrop would have issued a marriage license to Anne and Bonnie if they were an opposite-sex couple. County Stip. ¶¶ 12–14.

Plaintiffs Ivan Williams and Chuck Killion

24. Plaintiffs Ivan Williams and Chuck Killion applied for a marriage license at the office of Defendant Lathrop, the Laramie County Clerk, on March 3, 2014. County Stip. ¶ 8.

25. But for their status as a same-sex couple, Ivan and Chuck were qualified to receive a marriage license from Defendant Lathrop. County Stip. ¶¶ 13–14.

26. Defendant Lathrop did not issue a marriage license to Ivan and Chuck because of their status as a same-sex couple. County Stip. ¶¶ 12–14.

27. Defendant Lathrop would have issued a marriage license to Ivan and Chuck if they were an opposite-sex couple. County Stip. ¶¶ 12–14.

LEGAL STANDARD

A motion for summary judgment seeking declaratory relief is subject to the same legal standard as any other motion for summary judgment. *Coffinberry v. Bd. of Cnty. Comm'rs of Cnty. of Hot Springs*, 2008 WY 110, ¶ 3, 192 P.3d 978, 979–80 (Wyo. 2008). Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wyo.

R. Civ. P. 56(c). "A material fact is one which, if proved, would have the effect of establishing or refuting an essential element of the cause of action or defense asserted by the parties." *Creel v. L & L, Inc.*, 2012 WY 124, ¶ 14, 287 P.3d 729, 734 (Wyo. 2012). There is no issue of material fact in this case, and Plaintiffs are entitled to summary judgment on all of their claims.

ARGUMENT

I. Plaintiffs Suffer Significant Harm Because Wyoming Prevents Them from Enjoying the Benefits and Responsibilities of Marriage

Being deprived of the protections given to legal spouses under Wyoming law harms the Plaintiffs in immediate and concrete ways. Under Wyoming law, a couple who enters into a marriage is provided with hundreds[3] of statutory and common law rights, duties, and benefits that protect the couple. For instance, each spouse has the right to make medical decisions for the other spouse without an advance health care directive. Wyo. Stat. § 35-22-406. Each spouse has a mutual obligation of support to the other and an equal interest in all property acquired during the marriage, and the right to a court-ordered equitable distribution of property in the event of dissolution of the marriage. *Id.* §§ 20-3-101; 20-2-114. Married spouses receive benefits in the event of the death of a spouse, including the right to inherit without testamentary disposition. *Id.* §§ 2-4-101; 2-5-101; 2-7-723. Married spouses are entitled to be the presumed parents of one another's children, and to file a joint adoption petition together. *Id.* §§ 1-22-104; 20-1-113. Of particular import to the Plaintiff couples in this case—all of whom include at least one spouse who is or was an employee of the State of Wyoming—the spouse of a Wyoming state employee

[3] Moreover, once a couple is married in Wyoming, they are entitled to hundreds of additional benefits under federal law, which combined with the Wyoming benefits provide a safety net for those couples and their families. *See Windsor v. United States*, 699 F.3d 169 (2d Cir. 2012), *aff'd on other grounds,* 133 S. Ct. at 2683 (noting that the General Accounting Office reported in 2004 that there were more than 1,000 references in federal law to marriage).

is entitled to be added as a dependent for purposes of state-provided life, health, accident, and hospitalization insurance. *Id.* § 9-3-209.

Plaintiffs' attached Affidavits describe many of the burdens they have faced because Wyoming prevents them from marrying and refuses to recognize their valid marriages from other jurisdictions. Some of the harms are financial, including being required to pay more for health insurance and education than they would have had to pay if Wyoming treated their relationships as equal to opposite-sex couples and being required to pay thousands of dollars to create documents that do not provide nearly the same benefits that a married couple would automatically receive. Other harms are more fundamental and go to the heart of why state law protects the marital relationship, including a spouse being denied the right to make medical decisions for her sick partner and another spouse being denied the peace of mind of knowing that her partner would be protected if she died while on military duty. These couples need the security of having a legally protected and legally binding relationship that enables the spouses to join their lives together in a way that is respected by the state and that protects them not only in everyday life but in times of illness, crisis, injury, or death.

Furthermore, Plaintiffs suffer harms to their dignity both as individuals and as couples because Wyoming's treatment of them subjects them to the daily stigma of being treated as inferior to other families and, for those raising children or planning to raise children, of knowing that Wyoming law teaches their children that their family is unworthy of recognition and respect. The Supreme Court has expressly held that the stigma and humiliation inflicted by non-recognition of one's relationship are cognizable harms of constitutional dimension. *See Windsor*, 133 S. Ct. at 2694–96. Indeed, the harm at issue in this case concerns the intentional imposition

of a categorical stigma upon an entire group of families with respect to one of our society's most central, highly esteemed, and deeply personal institutions.

II. The Wyoming Constitution Requires the State to Permit Otherwise-Qualified Same-Sex Couples to Marry (Claims One and Three).

Wyoming's refusal to allow same-sex couples to marry violates the Wyoming Constitution by depriving those couples of the fundamental right to marry and by discriminating against them based upon their sex and their sexual orientation. Such discrimination excludes the couples from what, for many, is life's most important relationship, leaving them with no way to assume "the duties and responsibilities that are an essential part of married life and that they . . . would be honored to accept." *Windsor*, 133 S. Ct. at 2695. Wyoming's treatment of the plaintiff couples as legal strangers to one another demeans their deepest relationships and stigmatizes them by relegating their families to second class. *See id.* at 2694–96. These harms violate the most basic principles of due process and equal protection enshrined in the Wyoming Constitution.

A. The Wyoming Constitution provides robust protection from discrimination that exceeds even that of the United States Constitution.

The Wyoming Constitution declares: "In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal." Wyo. Const. art. 1 § 2. The spirit of the Constitution is "to give all persons equal opportunities in conducting their business and the equal protection of the law." *Pirie v. Kamps*, 229 P.2d 927, 932 (Wyo. 1951). When the state, by its actions, "goes beyond what is reasonable by way of interfering with private rights, it offends against the general equality clause of the Constitution; it offends against the spirit of the whole instrument." *State v. City of Sheridan*, 170 P. 1, 4 (Wyo. 1918). It is within the bounds of this "general spirit of the Constitution" that this Court must conduct its analysis. *Witzenburger v. State ex rel. Wyo. Cmty. Dev. Auth.*, 575 P.2d 1100, 1129 (Wyo. 1978).

"[T]he Wyoming Constitution is construed to protect people against legal discrimination more robustly than does the federal constitution." *See, e.g., Johnson v. State Hearing Examiner's Office*, 838 P.2d 158, 165 (Wyo. 1992). Nonetheless, where the federal constitution is more protective of a right than is the Wyoming Constitution, the Wyoming Constitution mandates that "this court is constitutionally obligated to apply the less restrictive (more protective) federal interpretation." *Dworkin v. L.F.P., Inc.*, 839 P.2d 903, 913 (Wyo. 1992); *see also* Wyo. Const. art. 1, § 37 ("[T]he constitution of the United States is the supreme law of the land."); *Doe v. Burk*, 513 P.2d 643, 644 (Wyo. 1973).

B. The United States Constitution protects same-sex couples from being treated differently from opposite-sex couples with regard to marriage.

The United States Supreme Court long has defined marriage as a fundamental right. *See, e.g., Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 847–48 (1992) (finding marriage "to be an aspect of liberty protected against state interference"); *Zablocki v. Redhail*, 434 U.S. 374, 383–86 (1978) (defining marriage as a right of liberty); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("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 Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639–40 (1974); *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965). For many people, marriage is "the most important relation in life." *Zablocki*, 434 U.S. at 384. It "is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred." *Griswold*, 381 U.S. at 486.

In *Lawrence v. Texas*, the United States Supreme Court held that lesbian and gay individuals have the same protected liberty and privacy interests in their intimate personal relationships as heterosexuals. 539 U.S. 558, 578 (2003). The Court explained that decisions about marriage and relationships "involv[e] the most intimate and personal choices a person may

make in a lifetime, choices central to personal dignity and autonomy," and that "[p]ersons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do." *Id.* at 574.

In *Windsor*, the Court reaffirmed the "equal dignity" of same-sex couples' relationships in the context of federal recognition of marriages, noting that the right to intimacy recognized in *Lawrence* "can form 'but one element in a personal bond that is more enduring.'" 133 S. Ct. at 2692–93 (quoting *Lawrence*, 539 U.S. at 567). *Windsor* makes clear that same-sex couples are no different from opposite-sex couples with respect to "the inner attributes of marriage that form the core justifications for why the Constitution protects this fundamental human right." *Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1200 (D. Utah 2013); *see also Bostic v. Rainey*, 970 F. Supp. 2d 456, 473 (E.D. Va. 2014) ("Gay and lesbian individuals share the same capacity as heterosexual individuals to form, preserve and celebrate loving, intimate and lasting relationships. Such relationships are created through the exercise of sacred, personal choices—choices, like the choices made by every other citizen, that must be free from unwarranted government interference.").

Windsor holds that a law or policy that treats same-sex couples differently from opposite-sex couples with regard to marriage must be subjected to heightened judicial scrutiny that carefully considers the law's effects and the state's justification for the effect its policy has on same-sex couples. *See Windsor*, 133 S. Ct. at 2693 (applying "careful consideration" to a law treating same-sex couples unequally). In *Windsor*, the Supreme Court held that a federal statute—like the Wyoming statute at issue in this case—that excludes same-sex couples from the benefits of marriage violated "basic due process and equal protection principles" because it treated a particular group unequally, and was supported by no legitimate purposes sufficient to

overcome its discriminatory effect. *Id.* at 2693–96. *Windsor* further held that, whatever the purpose behind the government's differing treatment of same-sex couples, the discriminatory effect of such a policy "interfere[s] with the equal dignity of same-sex marriages" and burdens same-sex couples' lives "in visible and public ways . . . from the mundane to the profound." *Id.*

In *Kitchen v. Herbert*, the United States Court of Appeals for the Tenth Circuit applied *Windsor* to a state law that denied same-sex couples the right to marry or have their marriages recognized. The court held "that the Fourteenth Amendment protects the fundamental right to marry, establish a family, raise children, and enjoy the full protection of a state's marital laws. A state may not deny the issuance of a marriage license to two persons, or refuse to recognize their marriage, based solely upon the sex of the persons in the marriage union." *Id.*, No. 13-4178, __ F.3d __, 2014 WL 2868044, at *1 (10th Cir. June 25, 2014). Similarly, in the twelve months since *Windsor*, every other court to evaluate state laws or policies that treat same-sex couples differently from opposite-sex couples for purposes of marriage has found them unconstitutional under either the federal or state constitutions. *See Baskin v. Bogan*, No. 1:14-cv-00355-RLY-TAB, __ F. Supp. 2d __, 2014 WL 2884868, at *15 (S.D. Ind. June 25, 2014); *Wolf v. Walker*, No. 14-cv-64-bbc, __ F. Supp. 2d __, 2014 WL 2558444, at *42–43 (W.D. Wis. June 6, 2014); *Whitewood v. Wolf*, No. 1:13-cv-1861, __ F. Supp. 2d __, 2014 WL 2058105, at *16 (M.D. Pa. May 20, 2014); *Geiger v. Kitzhaber*, Nos. 6:13-cv-01834-MC, 6:13-cv-02256-MC, __ F. Supp. 2d __, 2014 WL 2054264, at *16 (D. Or. May 19, 2014); *Latta v. Otter*, No. 1:13-cv-00482-CWD, __ F. Supp. 2d __, 2014 WL 1909999, at *29 (D. Idaho May 13, 2014); *Wright v. Arkansas*, No: 60 CV-13-2662, slip op. at 13 (Ark. Cir. Ct. May 9, 2014) (attached hereto as Ex. 11); *Henry v. Himes*, No. 1:14-cv-129, __ F. Supp. 2d __, 2014 WL 1418395, at * 18 (S.D. Ohio Apr. 14, 2014); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 775 (E.D. Mich. Mar. 21, 2014); *Tanco*

v. Haslam, No. 3:13-cv-01159, __ F. Supp. 2d __ , 2014 WL 997525, at **6, 9 (M.D. Tenn. Mar. 14, 2014); *De Leon v. Perry*, 975 F. Supp. 2d 632, 665–66 (W.D. Tex. Feb. 26, 2014); *Lee v. Orr*, 2014 WL 683680, at *2 (N.D. Ill. Feb. 21, 2014); *Bostic*, 970 F. Supp. 2d at 483–84; *Bourke v. Beshar*, No. 3:13-CV-750-H, __ F. Supp. 2d __ , 2014 WL 556729, at *1 (W.D. Ky. Feb. 12, 2014); *Bishop v. Holder*, 962 F. Supp. 2d 1252, 1296 (N.D. Okla. Jan. 14, 2014); *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968, 997–98 (S.D. Ohio Dec. 23, 2013); *Gray v. Orr*, No. 13 C 8449, __ F. Supp. 2d __, 2013 WL 635518, at *6 (N.D. Ill. Dec. 5, 2013); *Griego v. Oliver*, 316 P.3d 865, 888–89 (N.M. 2013); *Garden State Equality v. Dow*, 82 A.3d 336, 369 (N.J. Super. Ct. Law Div. 2013).

C. Wyoming's refusal to allow same-sex couples to marry violates the due process guarantees of the Wyoming Constitution.

Plaintiffs Anne Marie Guzzo and Bonnie Robinson, and Ivan Williams and Chuck Killion (collectively the "Unmarried Plaintiffs"), have demonstrated their commitment to one another, built stable families together, and contributed to their communities, and they yearn to participate in the deeply valued and cherished institution of marriage. They seek to be treated as equal, respected, and participating members of society who—like other Wyoming citizens who fall in love and want to be committed to one another—are able to marry the person of their choice and have that marriage respected by the state. Like the United States Supreme Court, the Wyoming Supreme Court has long recognized that the right to marry is a fundamental right protected by due process. *See In re Fray*, 721 P.2d at 1057; *Hensen*, 297 P.2d at 215; *cf. Hede v. Gilstrap*, 2005 WY 24, ¶ 35, 107 P.3d 158, 173 (Wyo. 2005) (recognizing that "freedom of personal choice in matters of marriage" is a fundamental right protected by due process); *Michael v. Hertzler*, 900 P.2d 1144, 1147 (Wyo. 1995) ("The right to associate with one's family is a fundamental constitutional right"); *DS v. Dep't of Pub. Assistance & Soc. Servs.*, 607 P.2d

911, 918 (Wyo. 1980). Excluding the Unmarried Plaintiffs from marriage wrongly undermines the core constitutional values and principles that underlie the fundamental right to marry.

The fundamental right to marry applies to same-sex couples with the same force as to opposite-sex couples. *See Kitchen*, 2014 WL 2868044, at *18–19 ("But we cannot conclude that the fundamental liberty interest in this case is limited to the right to marry a person of the opposite sex. As we have discussed, the Supreme Court has traditionally described the right to marry in broad terms independent of the persons exercising it."). The Unmarried Plaintiffs are not asking this Court to recognize a new fundamental right to "same-sex marriage"—they seek only to have the same "freedom of personal choice in matters of marriage and family life" that is guaranteed for others. *LaFleur*, 414 U.S. at 639; *see also Kitchen*, 2014 WL 2868044 at *32 (holding "those who wish to marry a person of the same sex are entitled to exercise the same fundamental right as is recognized for persons who wish to marry a person of the opposite sex"); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 993 (N.D. Cal. 2010) (same). Courts consistently have refused to narrow the scope of the marriage rights sought by the Plaintiffs here "by reframing a plaintiff's asserted right to marry as a more limited right that is about the [same-sex] characteristics of the couple seeking marriage." *Henry*, 2014 WL 1418395, at *7 (discussing *Loving*, 388 U.S. at 12; *Zablocki*, 434 U.S. at 383–86); *see also Kitchen*, 2014 WL 2868044, at *18–19; *Baehr v. Lewin*, 852 P.2d 44, 63 (Haw. 1993) (comparing the argument that there is no right to "same-sex marriage" to Virginia's argument in *Loving* that there is no right to "opposite-race marriage" and finding the argument "tautological and circular"). "Simply put, fundamental rights are fundamental rights. They are not defined in terms of who is entitled to exercise them." *Kitchen*, 2014 WL 2868044 at *19.

Wyoming's policy of treating same-sex couples differently for purposes of marriage cannot survive the strict scrutiny analysis that governs when the state encroaches on a fundamental right. *See Reiter v. State*, 2001 WY 116, ¶ 7, 36 P.3d 586, 589 (Wyo. 2001) (explaining that Wyoming applies strict scrutiny to state actions that impair a fundamental right); *Kautza v. City of Cody*, 812 P.2d 143, 147 (Wyo. 1991) ("When a 'suspect class' or a 'fundamental right' is involved in the classification, we apply a strict scrutiny test."); *accord Kitchen*, 2014 WL 2868044, at *32 (applying strict scrutiny and holding that laws that treat same-sex couples differently for purposes of marriage "do not withstand constitutional scrutiny"). As explained below, this policy does not survive even the most lenient rational basis review, and certainly cannot survive strict scrutiny. Just as with a law that dictates who can marry whom based upon the race of the two people who desire to marry, permitting the government to make decisions about who is entitled to marry whom based on the gender of the two people who love one another would impose an intolerable burden on individual dignity and self-determination. *See Loving*, 388 U.S. at 12 ("Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State."); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 620 (1984) ("[T]he Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse."). Plaintiffs ask nothing more and nothing less than to have the State of Wyoming respect their relationships to the same degree, and in the same way, as other committed couples—through a legally recognized civil marriage that is allowed within the borders of (and that does not terminate upon entering) the "Equality State." Wyoming's Due Process guarantee protects that fundamental right.

D. Wyoming's refusal to allow same-sex couples to marry violates the equal protection guarantees of the Wyoming Constitution.

"Equality, which was forthrightly proclaimed in the Declaration of Independence . . . is emphatically, if not repeatedly, set forth in the Wyoming Constitution." *Johnson*, 838 P.2d at 164. For example, "the Wyoming Constitution requires that laws affecting rights and privileges shall be without distinction of race, color, sex, or *any circumstance or condition whatsoever other than individual incompetency.*" *Id.* at 165 (citing Wyo. Const. art. 1 § 3). Moreover, the equality guarantees of the Wyoming Constitution are to be read broadly in a manner that does not "deny or disparage other recognizable basic societal rights that could relate to equal protection," including the "right to associate with one's family" and "the right to privacy." *Id.* These "basic societal rights" are "illustrative rather than exhaustive." *Id.* "Considering the state constitution's particular call for equal protection, the call to recognize basic rights, and notion that these particular protections are merely illustrative," Wyoming courts frequently note that the Wyoming Constitution's equal protection guarantees are more protective than those of the federal constitution. *Id.* at 164.

Wyoming largely has adopted "the two-tiered scrutiny employed by the federal courts in analyzing . . . equal protection challenges." *Reiter*, at ¶ 20, 36 P.3d at 593 (citing *White v. State*, 784 P.2d 1313, 1315 (Wyo. 1989)). Accordingly, where a statute affects a fundamental interest[4] or creates an inherently suspect classification, the court must strictly scrutinize that statute to determine if it is necessary to achieve a compelling state interest. *Id.* Because Wyoming's discrimination against same-sex couples with respect to marriage creates class distinctions based

[4] Given that Wyoming's refusal to allow same-sex couples to marry implicates a fundamental right, *see supra* Part II.C, strict scrutiny applies regardless of the classification. *Mills v. Reynolds*, 837 P.2d 48, 53–54 (Wyo. 1992).

on the suspect classes of gender and sexual orientation, the Court must apply a heightened scrutiny analysis.

1. Wyoming's marriage ban for same-sex couples discriminates on the basis of gender.

Wyoming recognizes that the rights afforded by its Constitution should be administered without regard to the gender of the individual. *See* Wyo. Const. Art. VI § 1; *Hensen*, 297 P.2d at 215. Wyoming law makes it a crime to discriminate based on gender and forbids a government actor from depriving a citizen of the advantages and privileges afforded the public based on "any distinction, discrimination or restriction" related to gender. Wyo. Stat. §§ 6-9-101, 102. For the same reason that the miscegenation statute at issue in *Loving*—even though it treated all races similarly because persons of any race could marry other persons of that same race—discriminated on the basis of race, Wyoming's definition of marriage as "a civil contract between a male and a female person," Wyo. Stat. § 20-1-101 (the "Definition Statute"), on its face makes classifications[5] that discriminate based on gender.

Before *Loving*, while a black person was treated the same as a white person in that he or she could marry someone of his or her own race, miscegenation statutes discriminated based on race because only a white person (and not a black person) could marry a white person. *See Loving*, 388 U.S. at 8; *see also Powers v. Ohio*, 499 U.S. 400, 410 (1991) ("It is axiomatic that racial classifications do not become legitimate on the assumption that all persons suffer them in equal degree"). Similarly, in Wyoming, only a male can marry a female person. A female person, because of her gender, is denied that right. Because the availability of civil marriage

[5] A classification for purposes of an equal protection analysis can be established on the face of the statute or by the manner in which the statute is applied "in varying degrees to different identifiable classes of individuals." *State v. Laude*, 654 P.2d 1223, 1226 (Wyo. 1982). The Definition Statute, and Wyoming's practice of refusing to recognize marriages that are inconsistent with the Definition Statute, establishes a classification under both tests.

turns on the gender of the individuals who wish to marry, it is a gender-based classification. *See Kitchen*, 961 F. Supp. 2d at 1206 (holding that Utah's marriage ban "involves sex-based classifications because it prohibits a man from marrying another man, but does not prohibit that man from marrying a woman"); *see also Frontiero v. Richardson*, 411 U.S. 677, 688 (1973) (plurality) (finding a statute creates a gender-based classification when the "sole basis of the classification . . . is the sex of the individuals involved").

Wyoming's marriage policy also impermissibly seeks to enforce a gender-based stereotype that a woman should only marry a man, and that a man should only marry a woman. *See A v. X, Y, & Z*, 641 P.2d at 1224 (holding that classifications based upon gender require a particularly heightened level of scrutiny when they are based upon stereotypes that do not reflect legitimate differences between men and women). The Wyoming Supreme Court no longer tolerates laws that make gender-based distinctions when it comes to the rights and privileges of marriage. *See Weaver v. Mitchell*, 715 P.2d 1361, 1369 (Wyo. 1986) ("It would indeed be ironic if the 'Equality State' continued to" treat the sexes differently when it comes to the rights and privileges of marriage). The United States Supreme Court likewise holds that the government may not enforce gendered stereotypes about the roles that women and men should perform within the family. *See, e.g., Califano v. Westcott*, 443 U.S. 76, 89 (1979); *Orr v. Orr*, 440 U.S. 268, 283 (1979); *Stanton v. Stanton*, 421 U.S. 7, 14–15 (1975); *Reed v. Reed*, 404 U.S. 71, 76–77 (1971). Wyoming's differing treatment of same-sex couples must therefore withstand a heightened scrutiny analysis. *See A v. X, Y, & Z*, 641 P.2d at 1224; *see also United States v. Virginia*, 518 U.S. 515, 532–33 (1996).

2. Wyoming's marriage ban for same-sex couples discriminates on the basis of sexual orientation.

Wyoming's marriage ban for same-sex couples also classifies potential couples on the basis of their sexual orientation. By limiting marriage to "a male and a female person," Wyoming necessarily excludes marriage by a "male and a male person" or a "female and a female person." *See Griego v. Oliver*, 316 P.3d 865, 878–83 (N.M. 2013). Classifications based upon sexual orientation, like classifications based upon gender, discriminate against a suspect class and are evaluated under a heightened level of scrutiny.

When determining whether a particular classification involves a "suspect class" or "quasi-suspect class" for purposes of applying a heightened scrutiny analysis, the Wyoming Supreme Court will look to federal precedent and the precedent of other state courts. *See, e.g.*, *Hansen v. State*, 904 P.2d 811, 819 (Wyo. 1995) (relying on United States Supreme Court precedent); *Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 334 (Wyo. 1980) (relying on United States Supreme Court and California Supreme Court precedent); *see also Ellett v. State*, 883 P.2d 940, 945 (Wyo. 1994) (noting that under United States Supreme Court precedent heightened scrutiny will apply when a suspect or "quasi-suspect" classification is at issue); *Hoem v. State*, 756 P.2d 780, 784–85 (Wyo. 1988) (Thomas, J., concurring) (noting that heightened scrutiny applies to "quasi-suspect" classifications). The United States Supreme Court, in turn, applies several factors, any of which can lead to the conclusion that a class is suspect or quasi-suspect: (1) whether the class has been historically subjected to discrimination; (2) whether the class has a defining characteristic that frequently bears a relationship to the ability to perform or contribute to society; (3) whether the class exhibits obvious, immutable, or distinguishing characteristics that defines it as a discrete group; and (4) whether the class is a minority or politically powerless. *See Windsor v. United States*, 699 F.3d 169, 181–82 (2d Cir.

2012) (discussing United States Supreme Court cases), *aff'd on other grounds*, 133 S. Ct. 2675 (2013).

In the case of legislation that treats same-sex couples differently from opposite-sex couples, "all four factors justify heightened scrutiny: A) homosexuals as a group have historically endured persecution and discrimination; B) homosexuality has no relation to aptitude or ability to contribute to society; C) homosexuals are a discernible group with non-obvious distinguishing characteristics, especially in the subset of those who enter same-sex marriages; and D) the class remains a politically weakened minority." *Id.* at 181–82; *see also SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 483 (9th Cir. 2014) ("*Windsor* requires that when state action discriminates on the basis of sexual orientation, we must examine its actual purposes and carefully consider the resulting inequality to ensure that our most fundamental institutions neither send nor reinforce messages of stigma or second-class status. In short, *Windsor* requires heightened scrutiny."); *Obergefell*, 962 F. Supp. 2d at 991; *Pedersen v. Office of Personnel Mgmt.*, 881 F. Supp. 2d 294, 310–33 (D. Conn. 2012); *Golinski v. U.S. Office of Personnel Mgmt.*, 824 F. Supp. 2d 968, 985–90 (N.D. Cal. 2012); *In re Balas*, 449 B.R. 567, 573–75 (Bankr. C.D. Cal. 2011); *Perry*, 704 F. Supp. 2d at 997; *In re Marriage Cases*, 183 P.3d 384, 435 (Cal. 2008), *superseded by* Cal. Const. art. I, § 7.5; *Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407, 424 (Conn. 2008); *Varnum v. Brien*, 763 N.W.2d 862, 883 (Iowa 2009); *Griego*, 316 P.3d at 880–84.

In sum, "same-gender couples who are in loving and committed relationships and want to be married under the laws of [Wyoming] are similarly situated to opposite-gender couples who likewise are in loving and committed relationships and want to be married." *Griego*, 316 P.3d at 878. "Because same-gender couples . . . are a discrete group which has been subjected to a

history of discrimination and violence, and which has inadequate political power to protect itself from such treatment, the classification at issue must withstand intermediate scrutiny to be constitutional." *Id.* at 871.

3. Wyoming's different treatment of same-sex couples cannot withstand heightened scrutiny.

Under the heightened scrutiny that applies to classifications involving a fundamental right or a suspect class, "the classification must be closely scrutinized to determine if it is necessary to achieve a compelling state interest. In addition, the burden is on the State to demonstrate that it could not use a less onerous alternative to achieve its objective." *Mills v. Reynolds*, 837 P.2d 48, 53 (Wyo. 1992); *see also Herschler*, 606 P.2d at 335. On the rare occasions where the Wyoming Supreme Court has recognized a compelling state interest sufficient to satisfy heightened scrutiny, the identified state interest in some way related to protecting the fundamental rights of a threatened third party. *See, e.g., In re RM*, 2004 WY 162, ¶¶ 20–21, 102 P.3d 868, 875 (Wyo. 2004); *In re JL*, 989 P.2d 1268, 1272–73 (Wyo. 1999); *In re GP*, 679 P.2d 976, 981–82 (Wyo. 1984). Here, the state can make no credible claim that allowing same-sex couples to marry in Wyoming in any way threatens the fundamental rights of other Wyoming residents.

Moreover, the Wyoming Constitution forbids the state from making class-based distinctions that have no legitimate effect other than to "demean the ability or social status of the affected class." *See A v. X, Y, Z*, 641 P.2d at 1224–25. Just as the "necessary effect" of the federal law at issue in *Windsor* was to "impose inequality" on same-sex couples and their families, 133 S. Ct. at 2694–95, so too is the necessary effect of Wyoming law limiting marriage to opposite-sex couples to prevent same-sex couples from enjoying the protections of marriage. This demeans same-sex couples and their children, and designates them as less worthy and

deserving of respect compared to their opposite-sex peers. In light of *Windsor*, Wyoming's statutory marriage ban for same-sex couples would not pass muster under the United States Constitution, and it certainly cannot pass muster under the Wyoming Constitution. *See, e.g.*, *Johnson*, 838 P.2d at 165 (recognizing that the Wyoming Constitution provides more protection against discrimination than the federal constitution).

4. Wyoming's different treatment of same-sex couples cannot withstand even rational basis scrutiny.

Wyoming's lesser treatment of same-sex couples with respect to marriage does not satisfy even rational basis review. The Wyoming Supreme Court applies a unique rational-basis test that reflects "that the Wyoming guarantee is broader than the federal protection." *Wilson v. State ex rel. Office of Hearing Exam'r*, 841 P.2d 90, 95 (Wyo. 1992). The court asks the following four questions:

> First, what class is harmed by the legislation and has that group been subjected to a "tradition of disfavor" by our laws? . . . Second, what is the public purpose that is being served by the law? Third, what is the characteristic of the disadvantaged class that justifies the disparate treatment? And lastly, how are the characteristics used to distinguish people for such disparate treatment relevant to the purpose that the challenged laws purportedly intend to serve?

Johnson, 838 P.2d at 166. The first prong of this inquiry favors the Plaintiffs because there is no question but that gays and lesbians have been subject to a long history of discrimination. *See, e.g.*, *Lawrence*, 539 U.S. at 571; *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 954 (9th Cir. 2009); *Wilson*, 841 P.2d at 95 (noting a tradition of disfavor could be determined by policies that stem from "stereotypical thinking about a disadvantaged group of people").

Turning to the second prong—the public purpose behind the law—courts since *Windsor* have uniformly concluded that state laws that discriminate against same-sex couples do not further any legitimate public purpose. Whatever purpose Wyoming points to in support of its discriminatory law, however, "must rest not on conjecture but must be supported by something

of substance." *Nehring v. Russell*, 582 P.2d 67, 77 (Wyo. 1978); *see also City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446–47 (1985). "[R]equiring that the classification bear a rational relationship to an independent and legitimate legislative end . . . ensure[s] that classifications are not drawn for the purpose of disadvantaging the group burdened by the law." *Romer v. Evans*, 517 U.S. 620, 633 (1996); *see A v. X, Y, & Z*, 641 P.2d at 1224–25.

Wyoming's purported purpose behind its marriage laws must be something greater than an interest in fulfilling the legislature's desire to maintain the "traditional" definition of marriage as between a man and a woman. *See Griego*, 316 P.3d at 871–72 ("[T]he purported governmental interest of preventing the deinstitutionalization of marriage, which is nothing more than an argument to maintain only opposite-gender marriages, cannot be an important governmental interest under the Constitution."). It is just as inappropriate to define the governmental interest as maintaining the "tradition" of "opposite-gender marriages . . . as it was inappropriate to define the governmental interest as maintaining same-race marriages in *Loving*." *Id.*; *see also Lawrence*, 539 U.S. at 577–78 ("[T]he fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice; neither history nor tradition could save a law prohibiting miscegenation from constitutional attack."); *Hodgson v. Minnesota*, 497 U.S 417, 435 (1990) ("[T]he regulation of constitutionally protected decisions, such as . . . whom he or she shall marry, must be predicated on legitimate state concerns other than disagreement with the choice the individual has made."); *Johnson*, 838 P.2d at 167 ("It is important to the understanding of equal protection not to confuse commonly shared prejudices with relevance."). "[T]he fact that the law may also incidentally serve some other neutral governmental interest cannot save it from unconstitutionality." *See Obergefell*, 962 F. Supp. 2d at 995 (citing *Windsor*, 133 S. Ct. at 2696).

Turning to the third and fourth prongs—the relevance of the characteristics of the disadvantaged class to the purpose that purportedly justifies the disparate treatment—the Wyoming Supreme Court previously has rejected the argument that "[h]omosexuality is inherently inconsistent with families, and with the relationships and values which perpetuate families." *Hertzler v. Hertzler*, 908 P.2d 946, 950–51 (Wyo. 1995). The United States Supreme Court likewise holds that same-sex couples are as capable of entering into loving, committed relations as are opposite-sex couples. *Windsor*, 133 S. Ct. at 2694–95; *see also Kitchen*, 961 F. Supp. 2d at 1211 ("Both opposite-sex and same-sex couples model the formation of committed, exclusive relationships, and both establish families based on mutual love and support."). Similarly, the Wyoming Supreme Court and courts across the county reject the notion that same-sex couples are any less equipped to raise healthy children than their opposite-sex counterparts. *See Hertzler*, 908 P.2d at 952; *see also Henry*, 2014 WL 1418395, at *16 ("[T]he overwhelming scientific consensus, based on decades of peer-reviewed scientific research, shows unequivocally that children raised by same-sex couples are just as well adjusted as those raised by heterosexual couples."); *Golinski*, 824 F. Supp. 2d at 991 ("More than thirty years of scholarship resulting in over fifty peer-reviewed empirical reports have overwhelmingly demonstrated that children raised by same-sex parents are as likely to be emotionally healthy, and educationally and socially successful as those raised by opposite-sex parents."); *Perry*, 704 F. Supp. 2d at 980–81 (same); *Varnum*, 763 N.W.2d at 899 (same). The only study that purports to show contrary evidence was deemed "entirely unbelievable and not worthy of serious consideration." *DeBoer*, 973 F. Supp. 2d at 766.

In short, there is no relevant characteristic of same-sex couples that will support any legitimate justification for treating them differently from opposite-sex couples with regard to

marriage. As there is no rational basis for Wyoming's lesser treatment of same-sex couples, this Court should declare Wyoming's law and policy unconstitutional and enter an Order directing Defendants to treat same-sex couples as equals to opposite-sex couples with regard to marriage.

III. Wyoming Statute Requires the State to Recognize the Valid Marriages of Cora Courage and Nonie Proffit, and Carl Oleson and Rob Johnston (Claim Five)

Plaintiffs Courage and Proffit, and Oleson and Johnston, were validly married in other jurisdictions. Under Wyoming law, this should be the end of the inquiry. Wyoming Statute § 20-1-111 (the "Validity Statute") provides that "[a]ll marriage contracts which are valid by the laws of the country in which contracted are valid in this state." The statute also applies to marriages validly performed in another state: "As has been the law of this state since 1876, marriages outside the state which are valid therein are valid in this state." *Bowers v. Wyo. State Treasurer ex rel. Workmen's Comp. Div.*, 593 P.2d 182, 184 (Wyo. 1979); *see also In re Fray*, 721 P.2d at 1057 (holding that a change in marital status in one state cannot be disregarded in another state "merely because its enforcement or recognition in another state would conflict with the policy of the latter").

The Validity Statute is written in plain English, using common words that are not susceptible to more than one meaning. "It is well settled that when the language of a statute is plain and unambiguous there is no room for construction and the court is powerless to give it a different meaning." *Town of Clearmont v. State Highway Comm'n*, 357 P.2d 470, 475–76 (Wyo. 1960). When the "plain English, understandable language of the statute speaks for itself [it], therefore, settles the question." *Jones ex rel. Jones v. State of Wyo. Dep't of Health*, 2001 WY 28, ¶ 12, 18 P.3d 1189, 1194 (Wyo. 2001); *see also Countrywide Home Loans, Inc. v. First Nat'l Bank of Steamboat Springs, N.A.*, 2006 WY 132, ¶ 22, 144 P.3d 1224, 1231 (Wyo. 2006).

The description of marriage in the Definition Statute does not conflict with the mandate of the Validity Statute. *See Christiansen v. Christiansen*, 2011 WY 90, ¶¶ 6–13, 253 P.3d 153, 155–57 (Wyo. 2011). In *Christiansen*, the Wyoming Supreme Court considered whether a "district court's determination that, despite a valid Canadian marriage, no valid marriage exists under Wyoming law" ran afoul of the Validity Statute. *Id.* at ¶ 7, 253 P.3d at 155. Although the question was presented in the context of a divorce proceeding, the Wyoming Supreme Court compared the purpose of the Definition Statute—namely, to "prevent[] a same-sex couple from entering into a marital contract in Wyoming"—with the purpose of the Validity Statute—namely, to "expressly allow[] for the recognition of a valid [foreign] marriage in Wyoming." *Id.* at ¶ 9; 253 P.3d at 156 (emphasis added). The court found that, because the Definition Statute only concerned "the creation of same-sex marriages," and "does not speak to recognition of a same-sex marriage validly entered into in Canada" or any other jurisdiction, there was no conflict between the two. *Id.* at ¶¶ 9–13; *see also Bowers*, 593 P.2d at 184 (holding that the rule requiring Wyoming to recognize a marriage performed in another state "in no way . . . weakens our laws as to consummation of marriage in Wyoming").

Had the Wyoming legislature intended to exclude same-sex marriages from the scope of the Validity Statute, it certainly could have done so. Indeed, in 2001, 2004, 2005, 2007, and again in 2014 (after *Windsor* and numerous related cases), the legislature rejected amendments to the Validity Statute intended to carve out an explicit exception for same-sex marriages. *See* H.B. No. 0223, 56th Leg., Gen. Sess. (Wyo. 2001); H.B. No. 0207, 57th Leg., Budget Sess. (Wyo. 2004); H.B. No. 0184, 58th Leg., Gen. Sess. (Wyo. 2005); S.F. No. 0013, 59th Leg., Gen. Sess. (Wyo. 2007); H.B. No. 0087, 62nd Leg., Budget Sess. (Wyo. 2014). As a result, Wyoming law

still declares only three types of marriages void on public policy[6] grounds: (1) bigamous marriages; (2) marriages entered into when either party is mentally incompetent; and (3) marriages in which the parties "stand in relation to each other of parent and child, grandparent and grandchild, brother and sister of half or whole blood, uncle and niece, aunt and nephew or first cousins." Wyo. Stat. § 20-2-101(a). The omission of the marriages of same-sex couples from this list, and the consistent decision of the legislature not to add those marriages to the list, shows that the legislature did not so intend. *See Walters v. State ex rel. Wyo. Dep't of Transp.*, 2013 WY 59, ¶ 18, 300 P.3d 879, 884 (Wyo. 2013) ("The doctrine of *expressio unius est exclusio alterius* requires us to construe a statute 'that enumerates the subjects or things on which it is to operate, or the persons affected, or forbids certain things as excluding from its effect all those not expressly mentioned.'") (quoting *Cathcart v. Meyer*, 2004 WY 49, ¶ 40, 88 P.3d 1050, 1066 (Wyo. 2004)).

In light of the plain statutory mandate and instruction from the Wyoming Supreme Court, the Wyoming Defendants' refusal to recognize the Married Plaintiffs' marriages violates Wyoming law. The Court should grant summary judgment on Claim Five and issue a declaration that the Married Plaintiffs' marriages, and the marriages of all other same-sex couples entered into in other jurisdictions, are valid in the State of Wyoming.

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[6] Although the Wyoming Supreme Court has recognized that the Validity Statute may be subject to "public policy" exceptions, *Hoagland v. Hoagland*, 193 P. 843, 844 (Wyo. 1920), the "policy exception is necessarily narrow, lest it swallow the rule," *Christiansen*, at ¶ 11, 253 P.3d at 156. Indeed, there is no reported case in which a Wyoming court ever has found a marriage validly performed in another state or country to be invalid for purposes of Wyoming law due to the "policy exception." Further, as noted by the Wyoming Supreme Court, in each case where a court found a marriage invalid under the policy exception, there was a specific rule or statute that set forth the state's policy invalidating the marriage in question. *See Hoagland*, 193 P. at 844–45. No such rule or statute exists in Wyoming with regard to marriages of same-sex couples.

IV. The Wyoming Constitution Requires the State to Recognize Valid Same-Sex Marriages from Other Jurisdictions (Claims Two and Four)

For the same reasons that Wyoming cannot discriminate against same-sex couples who wish to marry, *see supra* Part II, the due process and equal protection guarantees of the Wyoming Constitution forbid the state from refusing to recognize the Married Plaintiffs' valid marriages. In addition, however, the Married Plaintiffs have another right that is infringed by Wyoming's policies—namely, the right to stay married even if they live in Wyoming. Under Wyoming Supreme Court jurisprudence, there can be no legitimate interest that is served by the state refusing to recognize the Married Plaintiffs' out-of-state marriages. *See Bowers*, 593 P.2d at 184 (holding that "no legitimate state interest is served by discrimination . . . between legally married spouses" married outside the state and those married within the state). Similarly, federal courts considering the question consistently hold "the fundamental right to marry necessarily includes the right to remain married." *Kitchen*, 2014 WL 2868044, at *16. Accordingly, "once you get married lawfully in one state, another state cannot summarily take your marriage away." *Obergefell*, 962 F. Supp. 2d at 973; *see also Henry*, 2014 WL 1418395, at *9. The "Supreme Court has established that *existing* marital, family, and intimate relationships are areas into which the government should generally not intrude without substantial justification." *Obergefell*, 962 F. Supp. 2d at 978 (citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984); *Lawrence*, 539 U.S. at 578). "When a state effectively terminates the marriage of a same-sex couple married in another jurisdiction, it intrudes into the realm of private marital, family, and intimate relations specifically protected by the Supreme Court." *Id.* at 979; *see also Kitchen*, 2014 WL 2868044 at *21 ("Consistent with our constitutional tradition of recognizing the liberty of those previously excluded, we conclude that plaintiffs possess a fundamental right to marry and to have their marriages recognized."); *Bourke,* 2014 WL 556729, at *13 (noting *Windsor* "would seem to

command that a [state] law refusing to recognize valid out-of-state same-sex marriages has only one effect: to impose inequality"); *Henry*, 2014 WL 1418395, at *9. The Married Plaintiff couples have the same interests as other married couples in the liberty, autonomy, and privacy afforded by the fundamental right to marry—and stay married.

CONCLUSION

Wyoming's state motto is "Equal Rights." There is no asterisk indicating that these equal rights apply only to heterosexuals, and no footnote in Wyoming's history suggesting such a qualification should be applied. Wyoming's lesser treatment of same-sex couples with regard to marriage puts a blemish on Wyoming's reputation for fairness, and "constitutes an invidious serendipity which ill-befits 'The Equality State.'" *Haagensen v. State ex rel. Wyo. Workers' Comp. Div.*, 949 P.2d 865, 871 (Wyo. 1997) (Hanscum, J., dissenting). As successfully argued by former United States Senator Alan Simpson and other conservative Wyoming legislators before the Tenth Circuit in *Kitchen*:

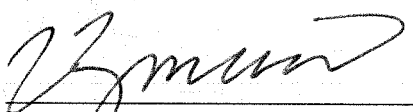
> Over the past two decades, the arguments presented by proponents of [bans on same-sex marriages] have been discredited by social science, rejected by courts, and contradicted by Amici's personal experience with same-sex couples. Amici thus do not believe that any "reasonable support in fact" exists for arguments that allowing same-sex couples to join in civil marriage will damage the institution of marriage, jeopardize children, or cause any other social ills. Rather, experience shows that permitting civil marriage for same-sex couples will do quite the opposite and will actually enhance the institution, protect children, and benefit society generally.

Br. of Amici Curiae Western Republicans in Support of Appellees and Affirmance at 7, Kitchen v. Herbert (Nos. 13-4178, 14-5003, at 14-5006) (10th Cir. Mar. 3, 2014) (attached as Ex. 12). The Amici conclude: "Our Nation has undergone too many changes for the better already—especially in its repudiation of discrimination against minorities—to allow social policy to be dictated by unexamined assumptions undermined by evidence." *Id.* at 20.

This Court should permanently enjoin Defendants from enforcing Wyo. Stat. § 20-1-101, and any other sources of state law, policy, or practice that exclude same-sex couples from marriage or that refuse recognition of the valid marriages of same-sex couples from other jurisdictions.

DATED: July 1, 2014.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify the foregoing **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** was served by U.S. First Class Mail upon all parties to this action pursuant to the Wyoming Rules of Civil Procedure on this 1st day of July, 2014.

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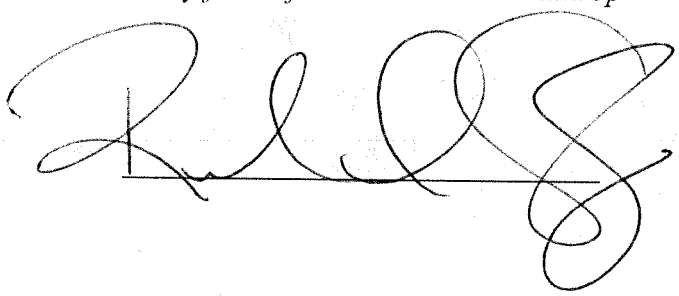
Attorney for Defendant Debra K. Lathrop



ANNEX

PLAINTIFFS' STATEMENT OF MATERIAL FACTS PURSUANT TO RULE 56.1

Plaintiffs file this statement of the material facts as to which Plaintiffs contend there is no genuine issue to be tried. All of the issues to be resolved by the Court involve matters of law. None of the following facts are genuinely in dispute.

1. Plaintiffs Cora Courage and Nonie Proffit were legally married to one another in Iowa on December 4, 2009. Courage Aff. ¶ 2; Proffit Aff. ¶ 15; Courage/Proffit Marriage License.

2. Cora Courage is an employee of the State of Wyoming. Courage Aff. at ¶¶ 2, 26.

3. As an employee of the State of Wyoming, Cora Courage is entitled to have her spouse covered by the group insurance plan that the state provides. Wyo. Stat. §§ 9-3-203(a)(iii); 9-3-209(a).

4. On September 13, 2013, Cora Courage submitted an application to have her spouse, Nonie Proffit, covered by the group insurance plan. Courage Aff. ¶ 26; September 18, 2013 letter to Cora Courage from Kathy Simpson.

5. On or about September 19, 2013, Cora Courage received a letter from Kathy Simpson, a Human Resource Specialist with the Wyoming Department of Administration and Information Human Resources Division, stating: "We are in receipt of your application dated September 13, 2013. We are unable to add Wyoma Proffit to your health and dental coverage. Wyoma does not qualify as a dependent as defined by the State of Wyoming. I have enrolled your dependent life coverage; however, be aware that if Wyoma is your intended dependent, she would not be eligible." September 18, 2013 letter to Cora Courage from Kathy Simpson.

6. Ms. Simpson denied Cora Courage's application to add Nonie Proffit as a dependent because both Cora and Nonie are women and Wyoming does not recognize the marriages of same-sex couples. Courage Aff. ¶ 26.

7. Cora Courage and Nonie Proffit are harmed by Wyoming's refusal to recognize their marriage. Courage Aff.; Proffit Aff.

8. Plaintiffs Carl Oleson and Rob Johnston were legally married to one another in Canada on July 16, 2010. Oleson Aff. ¶¶ 2, 12; Johnston Aff. ¶¶ 1, 9, 19; Oleson/Johnston Marriage License.

9. Rob Johnston was an employee of the Sate of Wyoming until January 2013. Johnston Aff. ¶ 12, 20.

10. As an employee of the State of Wyoming, Rob Johnston was entitled to have his spouse covered by the group insurance plan that the state provides. Wyo. Stat. §§ 9-3-203(a)(iii); 9-3-209(a).

11. While employed by the State of Wyoming, Rob Johnston approached his supervisor to inquire about having his spouse, Carl Oleson, covered by the group insurance plan. Johnston Aff. ¶¶ 13, 22.

12. Rob Johnston was told by his supervisor that he could not enroll his spouse, Carl Oleson, under the state-provided insurance plan because both Rob and Carl are men and Wyoming does not recognize the marriages of same-sex couples. Johnston Aff. ¶¶ 13, 22.

13. Rob Johnston and Carl Oleson are harmed by Wyoming's refusal to recognize their marriage. Johnston Aff.; Oleson Aff.

14. Plaintiffs Anne Marie Guzzo and Bonnie Robinson applied for a marriage license at the office of Defendant Lathrop, the Laramie County Clerk, on March 3, 2014. Stipulations of Fact between Plaintiffs and Defendant Debra K. Lathrop ("County Stip.") ¶ 8.

15. But for their status as a same-sex couple, Anne Marie Guzzo and Bonnie Robinson were qualified to receive a marriage license from Defendant Lathrop. County Stip. ¶¶ 13–14.

16. Defendant Lathrop did not issue a marriage license to Anne Marie Guzzo and Bonnie Robinson because of their status as a same-sex couple. County Stip. ¶¶ 12–14.

17. Defendant Lathrop would have issued a marriage license to Anne Marie Guzzo and Bonnie Robinson if they were an opposite-sex couple. County Stip. ¶¶ 12–14.

18. Plaintiffs Anne Marie Guzzo and Bonnie Robinson are harmed by Defendants' refusal to allow them to marry. Guzzo Aff.; Robinson Aff.

19. Plaintiffs Ivan Williams and Chuck Killion applied for a marriage license at the office of Defendant Lathrop, the Laramie County Clerk, on March 3, 2014. County Stip. ¶ 8.

20. But for their status as a same-sex couple, Ivan Williams and Chuck Killion were qualified to receive a marriage license from Defendant Lathrop. County Stip. ¶¶ 13–14.

21. Defendant Lathrop did not issue a marriage license to Ivan Williams and Chuck Killion because of their status as a same-sex couple. County Stip. ¶¶ 12–14.

22. Defendant Lathrop would have issued a marriage license to Ivan Williams and Chuck Killion if they were an opposite-sex couple. County Stip. ¶¶ 12–14.

23. Plaintiffs Ivan Williams and Chuck Killion are harmed by Defendants' refusal to allow them to marry. Williams Aff.; Killion Aff.

EXHIBIT 1

IN THE DISTRICT COURT OF LARAMIE COUNTY, WYOMING
FIRST JUDICIAL DISTRICT

Cora Emma-Terese Sacah Courage and Wyoma Kay Proffit; Carl Oleson and Rob Johnston; Anne Marie Guzzo and Bonnie Robinson; Ivan Williams and Charles Killion; and Wyoming Equality, Plaintiffs, v. State of Wyoming; Matthew H. Mead, in his official capacity as the Governor of Wyoming; Dean Fausset, in his official capacity as Director of the Wyoming Department of Administration and Information; Dave Urquidez, in his official capacity as Administrator of the State of Wyoming Human Resources Division; and Debra K. Lathrop, in her official capacity as Laramie County Clerk, Defendants.	)	Civil Action No. 182-262

AFFIDAVIT OF JERAN ARTERY ON BEHALF OF PLAINTIFF WYOMING EQUALITY

I, Jeran Artery, being 18 years of age or older, swear or affirm under oath that the following statements are true and correct:

1. I am the Chairman of Wyoming Equality, one of the Plaintiffs in this action. I have personal knowledge of the matters stated in this Affidavit and could and would competently testify to these facts.

2. Wyoming Equality was founded in 1987. I have been the Chairman of Wyoming Equality since 2011. Wyoming Equality is the largest civil rights organization

dedicated to securing full equality for Wyoming's lesbian, gay, bisexual, and transgender (LGBT) community. Through advocacy, grassroots organizing, education, and coalition building, we seek to change Wyoming so that no one suffers harassment or discrimination on the basis of their sexual orientation or gender identity. We coordinate public education campaigns to inform and engage policymakers, LGBT people, and the public at large on issues affecting the LGBT community.

3. One of Wyoming Equality's main areas of focus is working to protect LGBT families. Without legal protections, LGBT families are unable to make vital health care, child care, and end of life decisions for their partners and their children. We represent same-gender couples and their families who are proud to call "The Equality State" home. Many of our members, including myself, are Wyoming natives and are part of third and fourth generation families who have called Wyoming home for 100 years or more. Being forced to leave the state in order to get married, and not being able to have our marriages recognized when we return, seems contrary to the live-and-let-live mantra so many Wyomingites adhere to.

4. We decided to be a Plaintiff in this lawsuit for marriage equality because Wyoming's lesser treatment of same-gender couples with regard to marriage is wrong and it is harmful to LGBT Wyoming residents and their families, including our members. Participating in this lawsuit is central to our mission as Wyoming's statewide LGBT organization.

5. Many of our members, including some of the named Plaintiff couples, wish to marry in Wyoming or are already married in other jurisdictions but don't have their marriages recognized by Wyoming. Our members have expressed a desire to marry

but are prevented by Wyoming's discriminatory laws and policies. If those laws and policies were struck down, many of these members, including the ones raising children, would apply for marriage licenses and would marry their same-sex partners, or would ask Wyoming to recognize their existing marriages and afford them the numerous rights that Wyoming affords opposite-gender married couples.

DATED this 18th day of June, 2014.

By: _____
Jeran Artery

STATE OF Wyoming)
) SS
COUNTY OF Laramie)

Subscribed and sworn to me on this 18 day of June, 2014.

My commission expires: August 25, 2014

JANET L. CATHCART - NOTARY PUBLIC
COUNTY OF LARAMIE STATE OF WYOMING
MY COMMISSION EXPIRES AUG. 25, 2014

_____
NOTARY PUBLIC

EXHIBIT 2

MARRIAGE

Wyoming governor: Marriage is between man, woman

Gays married out of state need recognition in state courts

APRIL 21, 2014 7:00 AM • BY LAURA HANCOCK STAR-TRIBUNE STAFF WRITER

CHEYENNE -- Wyoming Gov. Matt Mead believes marriage is between one man and one woman, not between same-sex couples.

While Mead recently told reporters at a news conference that he thinks the state law that defines marriage as between a man and a woman should be defended in a gay-marriage lawsuit, he didn't expound on personal beliefs.

On Wednesday, during an interview with the Star-Tribune, he said his personal beliefs and religion influenced his opinion. Mead is an Episcopalian.

But Mead thinks gay couples married outside Wyoming should have access to the state courts.

"While I disagree with perhaps what other states have done in regards to gay marriage, it's a reality in other states," he said. "And those married couples will move to Wyoming. They are moving to Wyoming, and one of the hallmarks and strengths of Wyoming is our judicial system.

"And we need to make sure in Wyoming that those married gay couples know they have access to the courts, and then with that goes your dying spouse is on the deathbed and will you have access to say goodbye? Those types of things."

Cheyenne resident Jeran Artery, who is leading a campaign for same-sex marriage called Wyoming Unites for Marriage, isn't surprised by Mead's stance.

"When I've met with him personally in the past, he has said the same thing to me," Artery said. "What I would hope, though, is like so many other Americans, his views will evolve. I know a lot of the country is not where they need to be on this, but attitude and hearts and minds are changing very quickly. He doesn't seem to me like he's a close-minded person."

Artery is also chairman of the gay-rights group Wyoming Equality, which sued Mead and other state officials in First District Court in Cheyenne last month to allow same-sex couples to marry.

The parties have not appeared in court yet. Artery believes the case will ultimately be appealed to the Wyoming Supreme Court.

Artery is encouraged by Mead's comments about gay married couples getting court access. But the governor needs to go further, he said.

"That has been the issue for us in the past, and that was one of the reasons why this lawsuit was filed is so we do have access to equality in the courts, and health care and benefits, and everything else heterosexual couples are afforded with a $15 marriage license," he said.

Mead, a Republican, is up for re-election. The primary is Aug. 19, and he will face Superintendent of Public Instruction Cindy Hill and Cheyenne rancher and physician Taylor Haynes.

Hill did not reply to text and voice messages Friday about her views on gay marriage.

Haynes thinks it should be reserved for a man and woman.

"If you want the state to sanction your marriage, you have to meet the requirements that everybody else meets," Haynes said.

EXHIBIT 3

IN THE DISTRICT COURT OF LARAMIE COUNTY, WYOMING
FIRST JUDICIAL DISTRICT

Cora Emma-Terese Sacah Courage and Wyoma Kay Proffit; Carl Oleson and Rob Johnston; Anne Marie Guzzo and Bonnie Robinson; Ivan Williams and Charles Killion; and Wyoming Equality,	)	Civil Action No. 182-262
Plaintiffs,	)	
v.	)	
State of Wyoming; Matthew H. Mead, in his official capacity as the Governor of Wyoming; Dean Fausset, in his official capacity as Director of the Wyoming Department of Administration and Information; Dave Urquidez, in his official capacity as Administrator of the State of Wyoming Human Resources Division; and Debra K. Lathrop, in her official capacity as Laramie County Clerk,	)	
Defendants.		

AFFIDAVIT OF PLAINTIFF CORA COURAGE

I, Cora Courage, being 18 years of age or older, swear or affirm under oath that the following statements are true and correct:

1. I am one of the Plaintiffs in this action, along with my wife, Wyoma Proffit. I have personal knowledge of the matters stated in this Affidavit and could and would competently testify to these facts.

2. I am currently 57 years old and I live near Evanston, Wyoming with my wife, Wyoma, who is nick-named "Nonie," our three dogs, and a cat, on her family's ranch outside of town. I am a Clinical Psychologist and the Director of Clinical Services

at the Wyoming State Hospital. Nonie raises sheep and we have horses and cattle, as well. Her parents and three of her sisters live on the ranch with their spouses and children. We have the good fortune to have many nieces and nephews of varying ages living close by. My wife has worked as a reference librarian at the Uinta County Public Library for fourteen years. Nonie recently cut back her hours to be more involved in the family ranching, as her parents are aging and she and her sisters want to be more involved in the affairs of the ranch. Nonie and I have been together for ten years and we were legally married in Iowa in 2009.

3. I was born and spent the first couple of years of my life in Missouri. I was raised in the Midwest, primarily Illinois, with two sisters and a brother. My parents divorced after my 16 year old sister was killed in a car wreck when I was 12 years old. The stress of dealing with the loss took too large a toll on the marriage and our family. My mother remarried a man that I referred to as Dad because he really was the father I had always longed for as a child. He was a former marine who had served in the Pacific Theater during WWII. When my parents retired, they moved back to Missouri to raise cattle. My brother still lives there in our parents' home with his family, and my sister remained in Illinois with her family.

4. I knew all throughout my childhood that I was not like my friends, the girls who were crazy about boys, preferring to have a close female friend. As a child, I had always had one good friend, a girl, I was close to and heartbroken if the friendship came to an end. After I came out, my mother often said that I always seemed to have friendships that appeared to be closer than most girlfriends.

5. When I was 17 years old I was given parental permission to enlist in the United States Women's Army Corps (WAC). My enlistment into the WAC was a search for belonging. I wanted to be in the military because it was a family tradition. Service to your country is valued and respected in my family. I became the first female Survival Evasion Resistance and Escape (SERE) instructor in the Warrant Officer Candidate School at Ft. Rucker, Alabama. I had hoped to make the Army my career. That came to a halt in 1976 when I was called into my Commander's office and was told that the military police were coming to escort me to the Criminal Investigation Division (CID) where I was arrested and advised that I was under investigation for homosexuality.

6. During those years a wide net was often cast to find and discharge gay men and lesbians from service. Suspicion was often all that was needed to warrant an investigation. As it turned out, several of my friends were also charged and eventually discharged, some with many years of service. I had been careful and had not dated anyone in the military for fear of being discovered. I had a brief affair with a civilian who lived two hours away from my base. That was my first girlfriend, it lasted for a few months, and I accepted that I was lesbian. It was six months later when I was charged by CID, and I was devastated.

7. Because of the investigation my record was flagged, which means no favorable action can occur until the investigation is completed. I was unable to leave Ft. Rucker to attend Drill Instructor Academy, could not be promoted, and was unable to continue working in my job because my security clearance was suspended. I had felt shame about my feelings for women since I discovered I liked girls, but this struck my sense of self with such a harsh blow that I became very depressed. I grew up hearing that

homosexuality was sinful. Despite having been rated as an exceptional Soldier while on active duty, after approximately 6 months of daily interrogations by CID, I struck a deal with the Judge Advocate General and signed a document attesting that I no longer believed that I could live the disciplined life of a Soldier. This allowed me to be granted a General Under Honorable Conditions discharge and maintain my military benefits. However, that decision to sign that document haunted me for many years and contributed to my own self-hatred.

8. I worked a series of odd jobs, eventually enrolled in school, and became an aviation mechanic. I remained in Alabama after my discharge and secured a job in the aviation field. I was ashamed to go home. After four years, my mother became ill and my sister contacted me and asked me to come home to Illinois. I feared rejection but knew that I had to face the situation eventually, so in 1980 I went back home. I was amazed to discover that my parents, my mother and step-father, accepted me and wanted me in their lives. My biological father and step-mother refused to talk with me or see me for the rest of their lives after I told them I was discharged and they discovered I was lesbian.

9. When I came back to Illinois, I not only found my family, but I also discovered a support system of friends. I decided to work on a Bachelor's degree and focused on general studies, but found that psychology really excited me. Several students at Augustana University where I enrolled were openly gay. We formed a support group of students who spoke to groups, faculty, and community organizations about the struggle of accepting oneself and the fear of exposure. I became active in the movement for gay rights and stopped hiding. As someone I know once said, "The only thing scarier than

coming out is living in a dark empty closet all your life." I realized then that I needed to be authentic or the crippling effects of trying to hide who I am would crush my spirit.

10. I went to school part-time while working in a chemical dependency treatment center called Riverside Retreat. I started out volunteering in the detoxification unit and then became a mental health technician. I pursued a degree in psychology but only completed about two years of a bachelor's program because of my part-time status and working full-time. Several of my close friends had decided to attend graduate school at the University of Minnesota and encouraged me to visit Minneapolis to truly experience a sense of community. In 1985 my parents returned to Missouri to retire and I moved to Minneapolis, Minnesota. The first gay pride rally and parade I attended had me in tears. To see that many people stating openly "I am a member of the LGBT community" or "I walk with you today to demonstrate my support and acceptance" was overwhelming, to say the least. I decided to make the Twin Cities my home.

11. While in Illinois, I had become a certified chemical dependency counselor. When I moved to Minnesota, I transferred to Concordia University, where I continued to pursue a bachelor's degree but decided to focus on Organizational Psychology and Communication. I secured a job as a chemical dependency counselor at Pride Institute, an LGBT program that helped patients deal with substance abuse, trauma, and the coming out process. The experience of working with other professionals helping members of my community who struggled with shame, like I had in the past, was very rewarding. I graduated from Concordia in 1988 and soon thereafter knew I wanted to go to graduate school. I was working in the chemical dependency field and often wished that I could be the therapist that I would refer my patients to for ongoing psychotherapy

after they completed treatment. So I enrolled in a Master's program and in 1992 I graduated from Saint Mary's University with a Master's in Psychology and Counseling, making me eligible for licensure as a psychologist in the state of Minnesota.

12. My love of the Army didn't stop because they didn't want me. When Desert Storm began, I was in graduate school I and volunteered at a local Army National Guard (ARNG) armory, providing counsel and support to service members' families who seemed caught unaware that the ARNG would be activated and deployed to war. One evening a recruiter asked if I would be interested in enlisting in the National Guard to do this same sort of work as a behavioral health technician. At the time, the ARNG had a program called Try One, meaning you could enlist for one year without further obligation just to give it a try and see if it was what you wanted. I immediately told him that I would love to but I didn't believe that I could enlist because of the way my discharge paperwork was written. I gave him my DD 214, filled out enlistment paperwork, and somehow, I was in! To this day I am uncertain as to how this was done, but I have come to believe that exceptions were made because we were at war.

13. When my dad got sick I was nearing the end of my Try One enlistment and had the option of continuing to serve, but I moved back to Missouri for less than a year to emotionally support my mom. I knew that I would get back into the service because I needed to prove to myself and the Army that I <u>was</u> capable of living the disciplined life of a Soldier and doing a good job for the long term. My stepfather was diagnosed with Cancer that year, and my mother asked me to move to Missouri because she feared he would not live long. But, just like he survived WWII, diabetes, and a life-threatening burn injury, he fought back with a vengeance and was in remission quickly.

14. While in Missouri, I met my previous partner, Paula, who had a three year old daughter, Bianca, and I fell in love with both of them. My dad was doing well and my parents accepted Paula and Bianca as family. Paula yearned to live in a strong LGBT community, so I contacted a professor from my graduate program who offered me job in the LGBT program in the Department of Children and Family Services for Hennepin County, Minnesota, and we moved to Minneapolis. Having our daughter grow up where she didn't feel odd or peculiar because she had two moms was great. There were other children in her school who had two moms or two dads, so we had a community in the Twin Cities as a family as well as individuals.

15. My love of learning as well as my love of the military continues to this day. I went back to the ARNG and also enrolled in the Minnesota School of Professional Psychology, with the goal of obtaining my doctorate in Clinical Psychology. As a Masters level Psychologist, I was unable to become a commissioned officer but I rose through the Non-commissioned Officer ranks quickly. I was soon a Sergeant First Class (E-7), the Non-commissioned Officer in Charge of the Behavioral Health Section, a Platoon Sergeant leading Soldiers, and was responsible for the Minnesota Army National Guard Basic Training Orientation Course to prepare service members to complete Basic Training successfully.

16. In order to complete my Psy.D., I had to complete a one-year Internship. I applied mostly to Veteran's Administration Medical Centers and matched with the Black Hills VAMC at Ft. Meade, South Dakota. My family loved Minnesota but we wanted to stay together, so we moved to Spearfish, South Dakota to complete my Internship in 1999. I graduated in 2000 and secured a post-doctoral residency and then a full-time job

at Cornerstone Behavioral Health/Mountain Regional Services, Inc. in Evanston, Wyoming. The ARNG commissioned me as an Officer upon graduation.

17. I fell in love with the West when I travelled across the United States and felt that Evanston was a great place to raise our daughter through middle and high school. The negligible crime rate, the open spaces and wilderness close by, and the accepting community were all such positive experiences that I was excited to come here to live. There is a sense of "live and let live" and a quiet acceptance that made the equality state very appealing to me as a lesbian, a mother, and a professional.

18. Just as I had done in Minnesota, I began to develop a reputation for being a clinician who could help children deal with traumatic experiences. I felt the appreciation for my skills grow as more and more parents brought their troubled children to me for treatment. I continued to travel back to Minnesota to complete my service in the Minnesota ARNG. My daughter grew more and more a patriot as she saw my dedication to our nation, and when September 11, 2001 shook our nation, I came home from work that Tuesday to see that she had put the flag in our front yard at half-mast and asked me if I needed her help to pack because she assumed I would have to go.

19. Throughout her childhood I was never able to claim her as a dependent, and my previous partner and I were always treated as legal strangers. When the war began in Iraq, I had just become licensed as a Psychologist, and I received orders to deploy to the Balkans as part of the peace-keeping mission. During my deployment I tried not to think about the fact that if something happened to me, my mother would be notified but not my partner and child. They would have had no rights. When my relationship ended while I was deployed, I realized I would return to Wyoming with no

rights to see the child I had raised since she was three years old. Her biological mother would have to consent to any contact we might be able to have because the state of Wyoming does not allow same-sex partners to adopt children.

20. I was fortunate. Bianca's biological parents decided to relinquish their parental rights and allowed me to adopt her. She sat in a court room and told the judge here in Evanston that I was her mom and had raised her and she wanted me to become her legal parent. It was one of the proudest days in my life, but I realize that, had the circumstances been different I could have lost her, at least until she was 18 years old and could make her own choice.

21. Over the next year, Nonie and I became good friends, and as that friendship became a romance Bianca was probably the happiest member of our family. She encouraged our relationship, knowing that Nonie came from a strong, connected family, and that good friends often make for good partners. We decided that while Bianca was still in high school, Nonie and I would develop our commitment, but would not live together until Bianca graduated and decided what she wanted to pursue and where she wanted to live after high school. I felt that it was important that she have a stable parent who supported her in making life choices about her future, especially since the adoption had just happened. However, the Army had different plans.

22. I was mobilized to deploy to Iraq and, as a single parent in the military's and my state's eyes, I had to decide where Bianca would live and who would be her guardian in my absence. Her Godmother lives in Minnesota and happily agreed to have Bianca come to live with her while I was deployed. Bianca wanted to remain here in Evanston where she had roots and friends. We discussed the situation at length and then

I asked Nonie if she was willing to take on this responsibility. I should have known that the answer would be yes, because Nonie is the kind of person who puts children's needs first and would be do anything to help Bianca deal with my absence. Nonie had been a foster parent to a niece when her cousin struggled with addiction. I watched her grieve when her previous partner took their son, who she had no legal claim to, and moved him across the country. I watch the diligence and love she has for new mothers when she is lambing. I knew that between her, my in-laws, and the sisters, Bianca would have a home. I remember Bianca saying, "What would we do without our Nonie?"

23. I was mobilized and was on active duty for 28 months. Our ARNG Brigade Combat Team was part of President Bush's plan to surge the troops in 2007. We entered Iraq in March 2006 expecting to return home in February or April 2007 but were extended and remained in Iraq until July. Nonie became Bianca's legal guardian because the military requires all Soldiers with dependents to have a Family Care Plan when they deploy. Of course I was counseled about leaving my child with someone other than family, since as far as the military and the state of Wyoming were concerned, Nonie was just my friend. Nonie loved and supported Bianca and was there for her in several situations that only a parent could truly appreciate. My mother died while I was deployed, and although I was granted leave to return to the states for her funeral, it was Nonie who comforted my daughter through this loss. She was there for her when she graduated from high school and helped her through delivery of our first grandchild. But in Wyoming, Bianca, although now an adult, is not considered Nonie's child or step-child because the state will not recognize us as a legally married couple.

24. In December 2008 I transferred to the Army Reserve in order to be with a unit closer to where I live. Several Soldiers were killed at Ft. Hood, Texas on November 5, 2009 when a gunman opened fire on Soldiers who were completing Soldier Readiness Processing (SRP) prior to deployment. The gunman killed 13 Soldiers and wounded 32 others, and six of the dead were mental health professionals. I contacted my unit to ask if I might be needed to conduct traumatic event debriefings at Ft. Hood and let my command know that I was willing to assist in any way needed. I was notified very soon thereafter that I would be replacing a Psychologist who was murdered that day. The military afforded me 11 days to advise my employer and patients, make transfers, and get my affairs in order. The Don't Ask, Don't Tell (DADT) policy was still in place at the time. Despite this, I asked Nonie to marry me, not in Wyoming because we could not do that here, but in Iowa, where we could legally marry. I knew that I was deploying to Afghanistan and thought that if we had our marriage license, perhaps in the event that something happened to me, the Army might allow her some privileges afforded opposite-sex spouses who have their loved ones wounded or killed in action. It was a long shot, but I wanted something on record that would document who were are to each other. She is my wife and I am hers.

25. After I returned from that tour of duty, the repeal of DADT on September 20, 2011 became a holiday we celebrate in our home. I was mobilized in January 2012 to deploy to Afghanistan again. I proudly presented my marriage license during SRP. The military noted that they could not list her as my spouse yet, but they took the record and drafted a new will, listing Nonie as my spouse. After my deployment, when the Supreme Court deemed the Defense of Marriage Act unconstitutional, we again celebrated, hoping

that I would be able to identify Nonie as my spouse with the Department of Defense. In September 2013, we proudly applied and received her Dependent Identification Card, which allowed me to enroll her in Tricare Medical and Dental Insurance coverage and assured us some comfort, knowing that should I ever be injured she would be legally recognized as my next of kin. The cost of family Tricare coverage is expensive and it is not the best coverage. But I appreciate that I am fortunate that, because I wear the uniform, I am able to get my wife the same benefits that other married Soldiers are permitted regardless of gender.

26. I began my employment at the Wyoming State Hospital in September 2013, and when I signed up for benefits I attempted to get family coverage. I provided the Human Resources Department with the appropriate documentation and a copy of our marriage license. I was advised by the state within a few days that I would be enrolled in the "Single coverage plan" because the state of Wyoming defines marriage as a contract between one man and one woman. I had hoped that the state would permit me to put my wife on my plan because the deductibles are less, the coverage is much better, and the state pays 80% of the cost of the premium. Tricare is certainly better than nothing, but I have appreciated having it as well as coverage through my employer because it reduces the out-of-pocket expenses I must pay for healthcare, dental treatment, and optical services. Nonie has supported me through three combat deployments and I think that anyone who serves our country feels that the one who has been there for them should be entitled to these benefits.

27. I strongly believe that most people in Wyoming value personal liberty and minimal government interference. I believe that people in Wyoming also pride ourselves

in being the "Equality State," yet Wyoming treats same-sex married residents as second-class citizens. All that we are asking is that we, those of us who wish to engage in a legal contract recognizing our commitment to be loving lifelong companions, be recognized as having made the same legal commitment as opposite-sex couples. Opposite-sex married couples are allowed to have these benefits without question.

28. Our daughter returns to the ranch whenever she can to give us time with our grandchildren and give them the experiences of being a kid on the ranch. She has always said that she is grateful that I have claimed Wyoming as my home and have married a woman with deep roots in this state because she will always have Wyoming to come home to. Nonie's son comes home to the ranch a couple of times a year for a week or two at a time. We cherish our time with our children and grandchildren just like any other family.

29. We love Wyoming, but it is unfair to be denied constitutional rights afforded other citizens and residents of this great state. We had to go to another state to marry, which meant that we couldn't have the celebration that we would have loved to have shared with family and friends. We will live and die here, but I feel it is vital that the state recognize our marriage for what it is: a legal bond between two people who love each other and have bound our lives together.

DATED this 19 day of June, 2014.

By: Cora E. Courage
Cora Courage

STATE OF Wyoming)
) SS
COUNTY OF Uinta)

Subscribed and sworn to me on this 19 day of June, 2014.

My commission expires: August 17, 2015

Karen L. Donovan - Notary Public
County of Uinta State of Wyoming
My Commission Expires 08/17/2015

Karen L. Donovan
NOTARY PUBLIC

EXHIBIT 4

IN THE DISTRICT COURT OF LARAMIE COUNTY, WYOMING
FIRST JUDICIAL DISTRICT

Cora Emma-Terese Sacah Courage and Wyoma Kay Proffit; Carl Oleson and Rob Johnston; Anne Marie Guzzo and Bonnie Robinson; Ivan Williams and Charles Killion; and Wyoming Equality, Plaintiffs, v. State of Wyoming; Matthew H. Mead, in his official capacity as the Governor of Wyoming; Dean Fausset, in his official capacity as Director of the Wyoming Department of Administration and Information; Dave Urquidez, in his official capacity as Administrator of the State of Wyoming Human Resources Division; and Debra K. Lathrop, in her official capacity as Laramie County Clerk, Defendants.	)	Civil Action No. 182-262

AFFIDAVIT OF PLAINTIFF WYOMA "NONIE" PROFFIT

I, Wyoma "Nonie" Proffit, being 18 years of age or older, swear or affirm under oath that the following statements are true and correct:

1. I am one of the Plaintiffs in this action, along with my wife, Cora Courage. I have personal knowledge of the matters stated in this Affidavit and could and would competently testify to these facts.

2. I am most commonly called Nonie Proffit, and am currently 46 years old. I currently live on a ranch near Evanston, Wyoming, with my wife Cora, three dogs, one cat, and assorted horses and livestock. I work in the Uinta County Library as a Reference

Librarian in addition to working on the family ranch, where I also run a small band of sheep consisting of about 50 ewes. Cora is the Clinical Director of the Wyoming State Hospital as well as being a Major in the Army Reserve. We have been in a committed relationship for nearly ten years, and have been legally married since 2009. Both of us have children from previous relationships.

3. I was born in 1967, in Owyhee, Nevada, where my father was teaching Vocational Agriculture to high school students on the Duck Valley Reservation. Both of my parents are Wyoming natives and graduates of the University of Wyoming, and soon returned to their home state to raise their family. We celebrated their 50th anniversary this past December. My early memories are of growing up on the family ranch. We run a cow/calf operation primarily, although there have always been sheep and good horses as well.

4. I am one of six children, and we all graduated from Evanston High School before going on to get our college degrees. I began my college adventures at the University of Wyoming in the fall of 1985, shifted to St. Mary of the Plains College in Dodge City, Kansas for the next year to play basketball, returned to the University of Wyoming for another year, and eventually finished at Utah State University in Logan, Utah, with a Bachelor's degree in English Literature.

5. I "came out" to myself as a lesbian during my second year of college, after fighting the knowledge and punishing myself for being unable to change my orientation. This caused a severe internal crisis with my faith and my whole world view. I was raised Mormon, and had never seriously questioned those beliefs. Discovering that I was—at the very core of myself—an abomination in the eyes of the faith that had nurtured me was

excruciating. I learned firsthand about the darkness of depression, and at one point attempted to take my own life. I told myself that it would be better to die than to shame my family. At that low point I couldn't see any way for them to love or "forgive" me for being gay. Fighting my way out of that darkness left me little tolerance for hiding who I am, and from the time I acknowledged and accepted my true self, I have not hidden who I am from my family. This does not mean that I actively sought out open conversations with them about my orientation.

6. By the time I arrived at Utah State University, I was active in the campus GLA (Gay and Lesbian Alliance) and often spoke on panels for the gender studies classes. I felt that being visible and willing to openly answer questions was the best way that I could contribute to increased understanding of gay and lesbian people.

7. I returned to Evanston after college and took a job with the Uinta County Library in June 1995, and have worked there in various positions since that time. I am part of the Reference Department and most enjoy the interactions with people interested in local history. My passion for our history, and the belief that it must be recorded, pushed me to accept the responsibility of writing a pictorial history of the area for the Uinta County Museum. It was published February 2014.

8. When I returned to Evanston in 1995, I was in a long-term relationship with another woman. We had met and fallen in love at Utah State University, and upon graduation she took a job in Evanston. Eventually we decided the time was right to start a family of our own. As we started the adoption process, we soon realized that because we were not legally married we would have to do a single parent adoption. Only one of us could be listed as a parent to our child. It wasn't easy deciding who would be the legal

mother, but we decided based on other factors. It mattered a great deal to her to see her name on the official document. I wanted our baby to have my family's last name. My partner had very good insurance and I was willing to reduce my hours at the library and become a stay-at-home mom. My work on the ranch, and building our log home, could be worked in around a child's schedule, and the chance to raise my son on the ranch was exciting enough to make up for the sting of not being legally recognized as a parent. We were on the homestretch of getting our son from an orphanage in Bulgaria when my partner of over 12 years ended our relationship. Suddenly my lack of legal standing as a parent mattered a great deal.

9. We went to Bulgaria and picked up our son "Souf" (Issouf Stanov Ivanov) in July 2002. My lack of any sort of legal status as a parent was very apparent almost immediately. I was relegated to handling the baggage and keeping quiet about being his other mother. My Ex instructed me to choose another word or title other than "Mom," "Mama," or "Mother," as she wished those to be hers alone. I selected a Bulgarian word meaning mother, "Maika," and that is what my son calls me. His new birth certificate shows his name as "Isaac Sloan Proffit Bullock," instead of using the last name of my family, as we had originally agreed. Once my former partner left, and had all of the legal standing and control, I was told not to make a fuss about anything or I would lose my ability to see him at all. Had we been legally wed, even in divorce I would have had some standing and a voice in the decisions related to raising my son.

10. I followed the plan of reducing my hours at the library so that I could spend the days with my son, and for the first two years after bringing him home we were together from 7 am until 7 pm, Monday to Saturday. I worked a couple hours in the

evenings after dropping Souf off with his other mother for his bath and bedtime. When Souf turned 5 years old, my ex moved with him to Salt Lake City and put him in a daycare there. She allowed me to have him every other weekend and met me halfway to exchange him. Then she moved with her girlfriend to Tacoma, Washington. I was devastated. My part-time wages barely stretched to plane tickets for me to fly up and get Souf twice a year for a week-long visit. The holiday that matters most to us on the ranch is Branding, in June, and that's the holiday that I get with my son. During the "gathers" before the actual branding, Souf gets reacquainted with his horse and settles back into the rhythms of life on the ranch. He turns 15 this summer, and is growing into an amazing young man.

11. In 2004, I began dating Cora, and my world opened up. In addition to understanding how it felt to be a parent and to have no legal standing as a mother, Cora had also gone through the life-changing end of a significant relationship. We started out as friends, but soon moved beyond that. Among the things that most attracted me to her were a strong work ethic and sense of honor and duty. These qualities have served her well in her time as a soldier serving our country, as well as in her civilian career as a clinical psychologist. It wasn't long until I knew that she was The One.

12. We hadn't been together long before Cora was deployed to Iraq. It was hard to stay connected when we knew our calls were monitored and any endearments could be used against her. The "Don't Ask, Don't Tell" (DADT) policy was still in effect at the time, and Cora needed to be extremely cautious about any pronouns or information she gave about home. Any proof of our relationship could have cost Cora her career.

13. Cora was able to legally adopt her daughter in 2005 right before being deployed, and Bianca came to live with me on the ranch for her final two years of high school. As her daughter's designated guardian while Cora was away, I had a legitimate role in Cora's affairs as far as the military was concerned. It was comforting to know that if anything happened to Cora, as Bianca's guardian I would be notified. It was a rough deployment for us all. Cora's unit was part of the "surge" of troops, and was extended for another several months in Iraq. She was on active duty for roughly two years. During that time, she lost her mother and missed important milestones in her daughter's life, including Bianca's high school graduation and the birth of her first child.

14. When soldiers return from combat, there are often difficulties reintegrating into their families and society. We were no exception to this, but stuck it out and emerged stronger as a couple.

15. In late 2009, as a result of the deaths at Ft. Hood, Cora was abruptly called to fill a slot in a unit deploying to Afghanistan. She was given only ten days to terminate with clients in her civilian practice and to arrange her affairs. We were again confronted with our lack of any legal status recognizing our commitment to each other. Although quite open in our hometown, where the military was concerned we had to be hidden and deceptive about our relationship. If anything happened to Cora while deployed, it would be her estranged sister and her daughter who would be notified and who would make arrangements. Bianca, of course, would have kept me in the loop, but it was a hard spot in which we found ourselves. Cora and I had been discussing the possibility of travelling to a state where marriage was legal for us, and were enjoying the early stages of planning a wedding. With only ten days left before she reported for duty, our wedding plans

changed. We flew to Minneapolis, Minnesota, picked up two friends to act as witnesses, and drove down to our appointment with a Justice of the Peace in Worth County, Iowa. In spite of the rush and the pressured circumstances it was a wonderful day.

16. Of course, nothing had changed as far as the military was concerned, and we kept our marriage pretty quiet for that reason, but the peace of mind it brought cannot be over-emphasized. Knowing that I had a legal right to fight to carry out Cora's wishes helped make that deployment more bearable.

17. After the repeal of DADT, Cora deployed again to Afghanistan, and was able to do so openly. She took a copy of our marriage certificate in to be filed and had me listed as her next of kin and spouse in the records. I was included for the first time in the "Yellow Ribbon" events both prior to and after the deployment. We no longer had to fear that our marriage, if discovered, would destroy Cora's army career.

18. Since the fall of the Defense of Marriage Act (DOMA), the military has systematically removed the barriers that treat us as a separate and lesser married couple. I now carry a dependent ID card that lists me as Cora's wife. I am enrolled in her family insurance plan through the military. Our marriage is treated in the same manner as all the other soldiers' marriages. With the Federal Government's recognition of our marriage, we are finally able to file our taxes as a married couple. These may seem like small things to others, but to us they make a huge difference. We are married in the eyes of the federal government. But because Wyoming does not recognize our marriage, we have spent an enormous amount of time and thousands of dollars to create legal agreements to protect our relationship and our family. Yet those documents do not provide the same

safety, security, and stability for our family that marriage provides. It's time to remove the barriers that prevent our being treated equally under the law.

DATED this 19 day of June, 2014.

By: _____
Wyoma "Nonie" Proffit

STATE OF Wyoming)
) SS
COUNTY OF Uinta)

Subscribed and sworn to me on this 19 day of June, 2014.

My commission expires: August 17, 2015

Karen L. Donovan - Notary Public
County of Uinta State of Wyoming
My Commission Expires 08/17/2015

Karen L. Donovan
NOTARY PUBLIC

EXHIBIT 5

CERTIFICATION OF VITAL RECORD

STATE OF IOWA

County Record

CERTIFICATE OF MARRIAGE

Marriage Ceremony Performed in the State of Iowa

COUNTY: Worth 98

NUMBER: 027964

IOWA DEPARTMENT OF PUBLIC HEALTH

STATE FILE NUMBER

PARTY A – NAME BEFORE MARRIAGE: FIRST	MIDDLE	LAST	LAST NAME PRIOR TO ANY MARRIAGE
Cora	Emma-Iorese Sicah	Courage	Courage
PARTY A – NAME AFTER MARRIAGE: FIRST	MIDDLE	LAST	
Cora	Emma-Iorese Sicah	Courage	
RESIDENCE – STATE	RESIDENCE – COUNTY	RESIDENCE – CITY, TOWN, OR LOCATION	
Wyoming	Uinta	Evanston	
STATE OF BIRTH (If not USA, name country)	DATE OF BIRTH (Month, Day, Year)	AGE	GENDER
Missouri	05/31/1956		Female
FATHER – CURRENT NAME	MOTHER – NAME PRIOR TO ANY MARRIAGE		
Chester Wayne Box	Golda Mae Cantrell		
PARTY B – NAME BEFORE MARRIAGE: FIRST	MIDDLE	LAST	LAST NAME PRIOR TO ANY MARRIAGE
Wyoma	Kay	Profitt	Profitt
PARTY B – NAME AFTER MARRIAGE: FIRST	MIDDLE	LAST	
Wyoma	Kay	Profitt	
RESIDENCE – STATE	RESIDENCE – COUNTY	RESIDENCE – CITY, TOWN, OR LOCATION	
Wyoming	Uinta	Evanston	
STATE OF BIRTH (If not USA, name country)	DATE OF BIRTH (Month, Day, Year)	AGE	GENDER
Nevada	06/21/1957		Female
FATHER – CURRENT NAME	MOTHER – NAME PRIOR TO ANY MARRIAGE		
Donald Hight Profitt	Claudia Ellin Hamilton		

SIGNATURE OF PARTY A: Cora Ell Courage	SIGNATURE OF PARTY B: Wyoma K. Profitt		DATE SIGNED (Month, Day, Year): 12/04/2009
DATE OF MARRIAGE (Month, Day, Year): 12/04/2009	PLACE OF MARRIAGE – COUNTY: Worth	CITY, TOWN, OR LOCATION: Northwood	WERE BOTH PARTIES PRESENT WHEN LICENSE WAS ISSUED?: yes
OFFICIANT – NAME AND TITLE: Douglas A. Krull	OFFICIANT MAILING ADDRESS: 714 Central Avenue, Northwood, IA 50459-1030		
WITNESS SIGNATURE: Erika Lee	WITNESS SIGNATURE: Joan Sheppard		
COUNTY REGISTRAR – SIGNATURE: Liz Kerian BK 43 PG 162			DATE RECEIVED: DECEMBER 7, 2009

PLEASE PRINT NAMES OF: OFFICIANT: Douglas A. Krull

FIRST WITNESS: Erika Lee

SECOND WITNESS: Joan Sheppard

This is to certify that this is a true and correct reproduction of the original record as recorded in this office, issued under authority of Chapter 144, Code of Iowa.
This copy not valid unless prepared on engraved border displaying state seal and signature of the Registrar.

JAN 24 2012 — DATE ISSUED

BY Liz Kerian — COUNTY REGISTRAR OF VITAL RECORDS

OF WORTH COUNTY

C3258971

FORM 606-0236 (01/2007) WARNING: IT IS ILLEGAL TO DUPLICATE THIS COPY

COUNTY REGISTRAR — IOWA — REGISTRATION OF VITAL RECORDS

EXHIBIT 6

THE STATE OF WYOMING

MATTHEW H MEAD
GOVERNOR

DEAN FAUSSET
AGENCY DIRECTOR

Department of Administration and Information
Human Resources Division – Employee Benefits

September 18, 2013

Cora Courage
1767 CR 159
Evanston, WY 82930

Re: New Hire Application

Dear Ms. Courage:

We are in receipt of your application dated September 13, 2013. We are unable to add Wyoma Proffit to your health and dental coverage. Wyoma does not qualify as a dependent as defined by the State of Wyoming. I have enrolled your dependent life coverage; however, be aware that if Wyoma is your intended dependent, she would not be eligible.

If you should have any further questions, please feel free to contact me at (307)777-2945.

Sincerely,

Kathy Simpson

Kathy Simpson
Human Resource Specialist

EMERSON BUILDING - ROOM B3- CHEYENNE, WY 82002-0060
Telephone: 307-777-6835 or 800-891-9241 Fax: 307-777-7685

EXHIBIT 7

IN THE DISTRICT COURT OF LARAMIE COUNTY, WYOMING
FIRST JUDICIAL DISTRICT

Cora Emma-Terese Sacah Courage and Wyoma Kay Proffit; Carl Oleson and Rob Johnston; Anne Marie Guzzo and Bonnie Robinson; Ivan Williams and Charles Killion; and Wyoming Equality, Plaintiffs, v. State of Wyoming; Matthew H. Mead, in his official capacity as the Governor of Wyoming; Dean Fausset, in his official capacity as Director of the Wyoming Department of Administration and Information; Dave Urquidez, in his official capacity as Administrator of the State of Wyoming Human Resources Division; and Debra K. Lathrop, in her official capacity as Laramie County Clerk, Defendants.	)	Civil Action No. 182-262

AFFIDAVIT OF PLAINTIFF CARL IRVIN OLESON

I, Carl Irvin Oleson, being 18 years of age or older, swear or affirm under oath that the following statements are true and correct:

1. I am one of the Plaintiffs in this action, along with my spouse, Robert Hays Johnston. I have personal knowledge of the matters stated in this Affidavit and could and would competently testify to these facts.

2. I am currently 54 years old and live in Casper, Wyoming with my spouse Robert, 2 dogs, and 3 cats. Rob and I have been together for nearly 17 years and married for nearly 4 years. We have lived in our home in Casper for 13 years this July.

3. I came to Casper as a trained Kitchen Designer with The Home Depot. I was there for approximately 3 years before I started working for a custom cabinet maker, selling custom and factory made cabinets, mouldings, millworks, and doors. After the economy took a downswing in 2008-2009, I left kitchen design to become the store manager of a small, locally owned remote control hobby store. I will have been in that position 5 years this coming August.

4. A year and a half ago Rob retired from the State of Wyoming Department of Health ("DOH") after several years as the HIV Prevention Manager. He was hired immediately after he left the DOH by a local alcohol/drug recovery center to create a program to assist people in developing life and job skills to help them advance in their recovery. Very recently, Rob interviewed for and accepted a position with the Prevention Management Organization, a statewide non-profit organization that partners with the State to improve the general well being of the citizens of the State of Wyoming.

5. I was born December 15, 1959 in Rock Springs, Wyoming. My parents moved very shortly after my birth, with my older brother and me, to Oklahoma, Colorado, Arkansas, Texas, and New Mexico, before returning to Riverton, Wyoming in 1969. We'd picked up southern accents and two new brothers by then. My father started his own data collection business in the oilfield and Riverton became our permanent home until my parents divorced, sold the house, and moved on with their separate lives in 1992. I attended elementary school from the 3rd grade through my first year of junior college there, graduating from Riverton High School in 1978 while also taking college courses at Central Wyoming College. In 1979 I auditioned for and was accepted into the very competitive American Academy of Dramatic Art in New York, NY. I transferred, after

having been invited back to continue studying for the second year of training, to the sister campus in Pasadena, California, where I was then invited to perform in the production company for a 3rd year at AADA. To have been accepted to attend the first year and invited back to both the second year and company year were tremendous honors at such a prestigious and historical school for the performing arts in America. I qualified for my Screen Actors Guild card by having a very small part in the 1984 Oscar Nominated film "Frances" starring Sam Shepard and Jessica Lange. For the next 15 years I participated in all aspects of performance and production in local, regional, and post-secondary theatre and theatre education in the states of Colorado, Washington, and Wyoming.

6. Theatre was not my first love, however. From the time I was a very small boy until I had a life-changing epiphany at 14 years of age, I was going to be a minister. I had been raised in the Southern Baptist Church, attending on my own even after my parents ceased to attend. I was also a Cub Scout, Webelos, Boy Scout, and member of the DeMolay's—until the day I realized I was gay and none of those institutions were particularly accepting of anyone who strayed too far from their narrow definition of what it meant to be a real man, a good Christian, or a worthy citizen. I had dreamed of the day I could stand in the pulpit, spreading and celebrating God's love with my brothers and sisters. I also dreamed of being a father and marrying the man of my dreams. Until I met Rob, I thought I would never achieve any of these three dreams. I had to learn a spirituality that was based on my own experiences of being open to discovering my own truths and having faith in what I could make happen in my own life, and helping others to achieve their dreams and live in dignity and respect for themselves and others. I defined what it meant to be a man in my life.

7. I met Rob on July 7, 1997 when he came to the home decor shop I worked at in Las Vegas, Nevada. By September 1st of that same year, we had moved in together and have never looked back or regretted a moment we've spent together. I was 38 and Rob was 49. A few years later, while at dinner with some friends at their apartment, Rob asked me to marry him while we stood on their balcony, watching the lights of the nearby Las Vegas Strip. I thought he was being flippant and shared with him, in no uncertain terms, that that was the last of my childhood dreams, one which I felt was as unlikely to occur in my life as the other two, and the idea of marriage was too sacred and too important to just seemingly throw out the suggestion with the casualness of asking if I wanted to go to a movie or buy a new shirt. A few months later, while visiting New York City, Rob proposed to me again while I was showing him one of my favorite spots in Central Park. He even wrote me a note stating his desire to share his life with me and for me to share my life with him. After I said "Yes!" we asked a passerby to take our picture, which now hangs in our kitchen along with the note.

8. Initially, we had planned on marrying in California while the narrow window of marriage was available to same-sex couples, but my father, who had recently remarried, had a heart attack and stroke. After our visit to see him when he'd left the hospital, we immediately realized my stepmother could not take good care of him during his long recovery without some additional help. We put our plans to marry on hold, sold our house in Las Vegas, and moved to Casper, Wyoming to aid in my father's return to health.

9. After a couple of years of long walks along the river with Rob and a will forged of iron, Dad had recovered to a degree that astounded his doctors and all the rest

of us. But the strain and subsequent changes in his personality were too great for my stepmother to handle, and they divorced. Dad moved in with us until he had recovered enough to move out and onward with his own life. By that time, marriage was no longer an option in California, so we decided to wait until such time as we could enjoy full legal marriage somewhere else.

10. In August of 2008, Dad was bitten by a mosquito in a field in rural Utah. In less than a week, he was airlifted, in a coma, from the small-town hospital closest to where he was working to a neurological ICU at a hospital in Salt Lake City, Utah, with no idea what was causing his condition. The next morning, I was in my van headed to Salt Lake City. I did not return home for four months, when I made the return trip with him, paralyzed, on a portable ventilator and in a wheelchair strapped to the space where my seats once attached to the floor. Less than two weeks later Dad died from respiratory failure brought on by a severe neurological reaction to West Nile Virus. We were emotionally devastated and financial unable to follow through on our wedding plans at that time.

11. Then, in late 2009, Rob's mom was diagnosed with an aggressive form of lung cancer and we made plans to spend her last Christmas with her, as she was not expected to live much past the beginning of the New Year. In February of 2010, while at Rob's mother's memorial service, a lesbian couple who are longtime friends of Rob's family, and who had been together for 20 years or more, suggested we have a double wedding in Windsor, Ontario, Canada, where full legal same-sex marriage was the rule of law.

12. On July 16, 2010 Rob and I were married in a sculpture park with a view of downtown Detroit across the river, in the company of friends and family, present and departed. Crossing into Canada, the border guard was genuinely congratulatory. Upon our return to Detroit the American official was at first officious but then became rude and interrogative when he found we had just been married.

13. When we returned to Wyoming, Rob asked his supervisor at the Department of Health if he could add me to his health insurance and was told that our marriage was not legal in Wyoming, so therefore I didn't qualify for an extension of benefits as his legal spouse. At his new job, when he asked the Human Resources person if he could add me to his new insurance, she asked if the State recognized our marriage. When he said "No," she said she could not add me as they have a contract with the State and Wyoming doesn't recognize our legal Canadian marriage. Most businesses as small as the last two I have worked for cannot or choose not to provide health insurance to their employees. If our legal Canadian marriage were recognized, I would be able to get excellent health insurance from Rob's new employer.

14. When Rob retired from the Wyoming Department of Health in December 2012, we were both present at the exit meeting he had with the people who handle retirement benefits for state employees. When asked what beneficiary option Rob wanted to use, he told them that he wanted to use the "Married" option, naming me his spouse. The woman who was helping us had no idea if the State would support that choice and declared that ours would be a "test case" with no sense as to whether I would receive Rob's pension as his spouse or not.

15. In our research to protect our home, property, and health care wishes, we have found that it could cost thousands of dollars to create the documents and legal protections we would need while opposite-sex couples often have those protections for the cost of a marriage license.

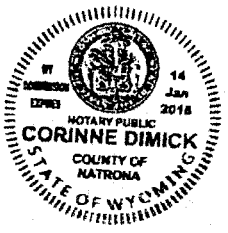
16. The greatest harm we face through the non-recognition of our lawful union is the fact that we are invisible to state government agencies, most healthcare providers, corporations, public accommodations, private businesses, and charitable organizations. Their refusal to recognize our marriage relegates us to less than others around us, who differ from us only because their spouse is of the opposite sex. We own our home, have good jobs, pay taxes, and contribute time and money and energy to our community and several charitable organizations. But if I were to die tomorrow, there is no guarantee that Rob could continue to live in our home or claim sole surviving ownership of the life we have worked so hard to build, sometimes under very adverse circumstances, together. As good, kind, and honest citizens of this great nation, there can be no greater harm done to us than the inequitable application of the rule of law regarding our marriage. As I understand it, an important element of our constitutional democracy protects the rights of minorities from the unreasonable or unfounded fears and abuses of the majority, particularly if that abuse is not based on empirical truths or fact but ignorance or bigotry.

DATED this 18 day of June, 2014.

By: Carl Irvin Oleson
Carl Irvin Oleson

STATE OF Wyoming)
) SS
COUNTY OF Natrona)

Subscribed and sworn to me on this 18th day of June, 2014.



My commission expires: Jan. 2018

Corinne Dimick
NOTARY PUBLIC

EXHIBIT 8

IN THE DISTRICT COURT OF LARAMIE COUNTY, WYOMING
FIRST JUDICIAL DISTRICT

Cora Emma-Terese Sacah Courage and Wyoma Kay Proffit; Carl Oleson and Rob Johnston; Anne Marie Guzzo and Bonnie Robinson; Ivan Williams and Charles Killion; and Wyoming Equality, Plaintiffs, v. State of Wyoming; Matthew H. Mead, in his official capacity as the Governor of Wyoming; Dean Fausset, in his official capacity as Director of the Wyoming Department of Administration and Information; Dave Urquidez, in his official capacity as Administrator of the State of Wyoming Human Resources Division; and Debra K. Lathrop, in her official capacity as Laramie County Clerk, Defendants.	)	Civil Action No. 182-262

AFFIDAVIT OF PLAINTIFF ROBERT HAYS JOHNSTON

I, Robert Hays Johnston, being 18 years of age or older, swear or affirm under oath that the following statements are true and correct:

1. I am one of the Plaintiffs in this action, along with my spouse, Carl I. Oleson. I have personal knowledge of the matters stated in this Affidavit and could and would competently testify to these facts.

2. I am currently 65 years old and I live in Casper, Wyoming, with my spouse, Carl, and our two dogs, and three cats. I am a Program Director at the 12-24 Club, a community resource for persons in recovery. I recently accepted a new job as a

Community Prevention Professional with the Prevention Management Organization of Natrona County.

3. I was born in Pittsburgh, Pennsylvania in 1948. My parents grew up in Canonsburg, Pennsylvania, went to high school together, graduated from college and then married in 1940. I have an older brother who lives in Ohio; my older sister died thirty-five years ago; my other brother is 13 months younger than me; and, my youngest sister is nine years younger than me.

4. I knew I was different from other boys at a very early age. It took me over fifteen years to begin to accept my sexuality, and even then, it was very difficult. I went to a very small high school outside of Pittsburgh, and although I dated girls, I was never sexually active. I did my undergraduate and graduate work at Pennsylvania State University. I pledged a fraternity and that same fraternity voted to blacklist me from the fraternity because they thought I was too effeminate. For ten weeks, I practiced how I walked, smoked cigarettes, and talked. I was forced to do push-ups and sit-ups every time I entered the fraternity house. At the time I was in college, if I told anyone I was gay, I could be dismissed from school. Friends who knew that I was gay threatened to expose me to others on the residence hall staff, thereby threatening my ability to complete my education.

5. Upon completion of my master's degree, I obtained a job at Cornell University on the Dean of Student's staff. I told staff there I was gay and began the process of being more upfront about my sexuality. In my third year at Cornell, I was offered a job as the Placement Coordinator for the New York School of Industrial and Labor Relations. In my second year in that job, my contract was not renewed as I was

perceived as not masculine enough for the job. My previous boss in the Dean of Student's Office recommended me to her sister, who was then Vice President of Student Affairs at Pomona College in Claremont, California. So I moved across the country, and "came out of the closet" as a gay man.

6. In California, I became very active in the gay community. I came out to my family. As a result of that process, I was banned from my older brother and his wife's home for years and was not allowed any contact with their children.

7. In 1980, I started a journey related to recovery from alcoholism and drug addiction. Many of my friends began to die from what we now know as AIDS. When I left my second partner in 1985, I decided to take some time and travel the country. I sold everything I owned and loaded up my car with camping equipment and my dog. We spent four months traveling two-lane highways across the United States. I finally ended up in Washington, D.C., living with my younger sister and her female partner. I got a job working as a Training Specialist with PSI Associates, a minority owned firm that provided day treatment services to the developmentally disabled. Two years later, I was offered another training position with the Center for HIV and Substance Abuse Services. It was the first time that I actually worked with other gay men and had a gay man as my supervisor.

8. While working for the Center, I provided training in Nevada. Later, I was offered a job as Deputy Chief of the Bureau of Alcohol and Drug Abuse for the state of Nevada in Carson City. Several years later, I was then given the opportunity of relocating to Las Vegas to provide more of a presence in Nevada's largest metropolitan

area. I was also named Chief of the Bureau and commuted between Las Vegas and Carson City during the legislative session.

9. I bought a home in Las Vegas, and when I was trying to redesign elements of the house, I asked a friend who was an interior decorator for his assistance. He told me that he had just brought a guy in from Phoenix who might be willing to work with me. The next day, July 7, 1997, I drove to his shop and met Carl. He came by the house to check things out, and we had our first date on July 11th. He moved in on September 1st, following a dinner at my house where he fixed my washing machine, and I knew that I had found a "keeper."

10. Our journey together has been filled with a lot of love and a lot of loss. My family met Carl when they ventured to Las Vegas for my fiftieth birthday. It was a melding of my family and our friends from Carson City, Las Vegas, and Los Angeles. During that time, I also met Carl's dad and his girlfriend, Charlene, who would often visit us in Las Vegas. My first trip to Wyoming was to witness his father's wedding to Charlene. I met his family and got to see those places critical to his life growing up in Wyoming. Carl endeared himself to my mother when he nursed me through several surgeries as a result of bile duct blockage caused by gall stones, which grew years following the removal of my gall bladder.

11. In 2002, we moved from Las Vegas to Casper, Wyoming, after his dad had a stroke and a heart attack. Carl had been working as a kitchen designer at Home Depot in Las Vegas, and he was able to transfer to the Casper store immediately. We were able to find a house in Casper, and Carl promptly filled our little pickup with a bed and a TV. I stayed in Las Vegas to sell our old house. Two months later, at the

beginning of September, I drove a U-Haul truck to Casper with our two dogs at the time, Rusty (an Irish setter) and Bandit (our black lab).

12. In early October, I attended a conference in Casper sponsored by the Wyoming AIDS Project. I introduced myself to the Wyoming Department of Health's HIV Prevention Coordinator. I explained my history with recovery and HIV, and she encouraged me to apply for a new contract position they had created for a High Risk Population Specialist. I was hired, and for the most part worked from my home. I would travel to Cheyenne about once a week to meet with other staff. My position was salaried with no benefits.

13. Several years later, my boss resigned to take an Executive Director position with a local family planning clinic. I was promoted into her position, now having benefits. Everyone there knew I was gay, and most had met Carl. I did mention to my new supervisor that it would be nice if Carl could be covered by my benefits. She agreed, but knew that the political climate in the state and in the Department of Health would not support it. We kept hoping that benefit changes might occur for faculty and staff at the University of Wyoming for same gender domestic partnerships. As of today, nothing has changed.

14. During this time, I was contacted by the National Development Research Institute (NDRI) in New York City to see if I was willing to write a training curriculum on Gay Men and Methamphetamine based upon the research of two NDRI scientists. I traveled to New York twice to present the curricula, and to the best of my knowledge the AIDS Institute in New York State is still using the curricula. I was then asked to present

the research findings at that year's annual education conference of the Wyoming Public Health Association.

15. Our Section Chief resigned to take a job as Executive Director of the Nebraska AIDS Project. She was replaced by a woman who worked in the Substance Abuse Division, and who years before facilitated the HIV Prevention Planning group. Early in her tenure, my Project Officer for the Centers for Disease Control and Prevention recommended me to the International Health Organization to provide HIV training for physicians and other medical and social service providers in Patna, India. It was an honor and a challenge to do this.

16. Requesting benefits for my partner was not feasible. I also remember filling out a survey for a national organization where I was asked how many open gay men and lesbians worked for the Wyoming Department of Health, and I was the only one I knew of at that time.

17. I proposed marriage to Carl on a trip to New York City when I worked for the Bureau of Alcohol and Drug Abuse while we were in NYC for a national methadone conference. We still have that written proposal framed with a picture of us in Central Park. We had planned on getting married at Lake Tahoe when California originally allowed same-sex couples to marry. However, his father was infected with the West Nile virus, and all of our funds went to supporting Carl's living in Salt Lake City to care for his father, who was totally paralyzed with severe neurological complications. Carl and his uncle eventually brought Carl's dad back to Casper, where he died within a week of being home.

18. Carl's dad was the most accepting and supportive of our relationship. I loved him probably more than my own father. When he was recuperating from his earlier stroke and heart attack, we would walk our dogs every morning down by the river. We would look at the deer and antelope, search for owls in the trees, and transplant wildflowers in our garden (Carl accused us of planting weeds!).

19. My mother several years ago was diagnosed with terminal lung cancer, so we spent her last Christmas with her and my other siblings in Naples, Florida. My mother talked about how happy she was that Carl and I had found one another and were so happy in our relationship. She died a little over a month later. It was while visiting again in February 2010, that we planned a July wedding with our friends Susie and Suzanne outside Detroit in Windsor, Ontario. My younger brother and his wife graciously hosted a party following our wedding.

20. At the end of 2012, I was offered a job at a recovery center in Casper. Just before New Year's, I gave two weeks' notice to the state and resigned by position as the HIV Prevention Program Manager in January 2013. When Carl came to Cheyenne to help move me back to Casper, we made an appointment on my last day with the folks in the Retirement Office. As I was completing the paperwork, I asked if it was okay to list Carl as my partner. The woman helping us said yes. We then were asked to look at several disbursement options should I precede him in death. One option given was to list him as my spouse since we had been married in Ontario, Canada the preceding July (July 16th to be exact). She had never had a same sex couple submit the form with this designation, but she said we could be the "test case" and let me designate Carl.

Unfortunately, I feel like I will have to die before we know whether the state will honor my wishes.

21. Carl and I have been very active in the gay community in Casper and Wyoming. Based upon a previous judicial ruling, we can get a divorce in Wyoming but the state will not recognize our marriage. We will need to spend thousands of dollars to protect our investments and to insure that any property, fiscal benefits, etc. go to a surviving partner. A legally recognized marriage would be so much easier and would provide our family with full protection.

22. When I was offered the position with the Prevention Management Organization, I asked if I could pay for my partner to be covered for medical, dental, and vision coverage. I was informed that because our contract was with the Wyoming Department of Health and the state does not recognize our marriage, that providing coverage for Carl was impossible.

DATED this 18 day of June, 2014.

By: Robert Hays Johnston
Robert Hays Johnston

STATE OF Wyoming)
) SS
COUNTY OF Johnson)

Subscribed and sworn to me on this 18 day of June, 2014.

My commission expires: 5/10/18

B. DRAKE - NOTARY PUBLIC
County of Johnson State of Wyoming
My Commission Expires May 10, 2018

B Drake
NOTARY PUBLIC

EXHIBIT 9

Part 5

Record
of Solemnization of
Marriage

This is to certify that

ROBERT H. JOHNSTON and CARL I. OLESON

were married on

16 JULY 2010

Day, month, year

in the city or town of

WINDSOR

Name of city, town, village

Signature of person who performed the marriage

Signature of witness

Signature of witness

E 0669400

Licence number

Corporation of City of Windsor
VTL - Vital Statistics
400 City Hall Square
Floor 4
Windsor ON N9A 7K6
REG-RECEIPT: 11292 - 306648
CASHIER ID : VO15/07/2010 12:36:23
Date Printed: 15/07/2010 12:36:47

Vital Statistics

51220 - VITALS - Marriage Licences	135.00
E:0669400	

SubTotal	$135.00
PST	$0.00
GST	$0.00
HST	$0.00
TOTAL DUE	$135.00

RECEIVED FROM :
Robert Johnston/Carl Oleson

VISA	$135.00
TOTAL TENDERED	$135.00
CHANGE DUE	$0.00

VITAL STATISTICS
400 CITY HALL SQUARE E.
SUITE #408
WINDSOR,ON N9A6N4
5192556100

TERM ID: 004
VISA ID: 16200400281

SALE

XXXXXXXXXXXX1181
VISA ENTRY METHOD: SWIPED
07/15/10 12:33:35
INV #: 000009 APPR CODE: 03530A
BATCH #: 000013
REF #: 009

AMOUNT **$135.00**

CARDHOLDER COPY

APPROVED

EXHIBIT 10

IN THE DISTRICT COURT OF LARAMIE COUNTY, WYOMING
FIRST JUDICIAL DISTRICT

Cora Emma-Terese Sacah Courage and Wyoma Kay Proffit; Carl Oleson and Rob Johnston; Anne Marie Guzzo and Bonnie Robinson; Ivan Williams and Charles Killion; and Wyoming Equality, Plaintiffs, v. State of Wyoming; Matthew H. Mead, in his official capacity as the Governor of Wyoming; Dean Fausset, in his official capacity as Director of the Wyoming Department of Administration and Information; Dave Urquidez, in his official capacity as Administrator of the State of Wyoming Human Resources Division; and Debra K. Lathrop, in her official capacity as Laramie County Clerk, Defendants.	)	Civil Action No. 182-262

FILED
JUN 20 2014
SANDY LANDERS
CLERK OF THE DISTRICT COURT

STIPULATIONS OF FACT BETWEEN PLAINTIFFS AND DEFENDANT DEBRA K. LATHROP

Plaintiffs and Defendant Debra K. Lathrop, the Laramie County Clerk, stipulate to and agree to be bound by the following undisputed facts:

1. Defendant Lathrop's Constitutional and statutory duties include processing marriage license applications in Laramie County, Wyoming. Defendant Lathrop processes applications in her official capacity as Clerk.

2. Defendant Lathrop's Oath of Appointment, which is set forth in Exhibit 1 and incorporated here by reference, requires her to perform her duties of office with fidelity.

3. Plaintiffs Anne Marie Guzzo and Bonnie Robinson, and Ivan Williams and Charles "Chuck" Killion (collectively the "Unmarried Plaintiffs") are residents of Wyoming.

4. The Unmarried Plaintiffs visited Defendant Lathrop's office on or about February 27, 2014 and asked to apply for marriage licenses.

5. Defendant Lathrop's staff informed the Unmarried Plaintiffs that they were not allowed to complete Applications.

6. Defendant Lathrop refused to allow the applications based on her belief that the Unmarried Plaintiffs did not meet the "a male and a female person" requirement of the marriage statute, Wyo. Stat. § 20-1-101 (2013).

7. Defendant Lathrop later contacted the Unmarried Plaintiffs and invited them to return to her office to complete application forms.

8. On or about March 3 or 4, 2014, the Unmarried Plaintiffs submitted the "Application for Marriage License" forms set out in Exhibit 2, along with the required filing fees. Exhibit 2 is attached and incorporated here by reference, and the Unmarried Plaintiffs waive any objection to the public disclosure of the forms set out in Exhibit 2, in their redacted form.

9. The marriage licensing forms used by Defendant Lathrop are prescribed by the language of Wyoming's marriage statutes and by the State Department of Health pursuant to the Wyoming vital records statutes. *See, e.g.*, Wyo. Stat. § 35-1-422(a) (2013). Defendant Lathrop uses the marriage licensing forms set out in Exhibit 3, which is incorporated here by reference.

10. Defendant Lathrop's staff used information provided by the Unmarried Plaintiffs to generate the Application forms set out in Exhibit 2 at the computer terminal in Defendant Lathrop's office used for this purpose.

11. The marriage statute requires Defendant Lathrop to "ascertain" any legal impediment to a marriage and to refuse a license if there is any legal impediment.

12. The laws of Wyoming, on their face, appeared to Defendant Lathrop to impose a "legal impediment" to the marriage of an applicant and intended spouse who are not "a male and a female person."

13. No legal impediment, other than the "a male and a female person" requirement of the marriage statute, exists to justify the refusal of marriage licenses to the Unmarried Plaintiffs.

14. The Unmarried Plaintiffs meet all of the prerequisites for the issuance of marriage licenses, other than the "a male and a female person" requirement of the marriage statute.

15. Upon receiving the Unmarried Plaintiffs' Applications, Defendant Lathrop commenced an action in this Court for a declaratory judgment and injunction clarifying her duties. *See Lathrop v. CK & IW, et al.*, Docket 182 No. 242 (Complaint filed Mar. 4, 2014). The file in Defendant Lathrop's action is set out in Exhibit 4, which is incorporated here by reference. The parties ask the Court to take judicial notice of the facts established by contents of the court file. The parties have agreed to stay the proceedings in Defendant Lathrop's action, pending a resolution of this case.

16. Defendant Lathrop sent a Letter dated March 10, 2014 to the attorney for the Unmarried Plaintiffs, documenting her refusal to issue marriage licenses. The Letter is attached as Exhibit 5 and incorporated here by reference.

17. Defendant Lathrop has refused to issue marriage licenses to the Unmarried Plaintiffs, pending an order from the Court.

18. Defendant Lathrop believes that her office is a public agency subject to both the provisions of the Constitution of the State of Wyoming and the Wyoming Civil Rights Acts, Wyo. Stat. §§ 6-9-101 & -102 (2013).

19. Defendant Lathrop believes that issuing licenses to the Unmarried Plaintiffs may violate the marriage statute.

20. Defendant Lathrop also believes that refusing to issue the licenses may violate either the Constitution of the State of Wyoming or the Wyoming Civil Rights Acts, or both.

DATED: June 10, 2014.

Respectfully submitted,

L. James Lyman
ARNOLD & PORTER LLP
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Denver, Colorado 80202-1370
Telephone: (303) 863-1000
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Attorneys for the Defendant
Debra K. Lathrop, Laramie County Clerk

EXHIBIT 11

ELECTRONICALLY FILED
2014-May-09 16:51:40
60CV-13-2662
C06D02 : 13 Pages

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SECOND DIVISION

M. KENDALL WRIGHT, ET AL.	:	
V.	:	**Case No: 60CV-13-2662**
STATE OF ARKANSAS, ET AL.	:	

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF THE PLAINTIFFS AND FINDING ACT 144 OF 1997 AND AMENDMENT 83 UNCONSTITUTIONAL

This case involves twelve same-sex couples who seek to marry in Arkansas and eight same-sex couples who have married in states that permit marriage between same-sex couples and seek to have their marriages recognized in Arkansas.

There are two state laws at issue in this matter which expressly prohibit such recognition—Act 144 of 1997 of the Arkansas General Assembly and Amendment 83 to the Arkansas Constitution. Act 144 states that "a marriage shall be only between a man and a woman. A marriage between persons of the same sex is void." Ark. ACT 144 of 1997, § 1 (codified at Ark. Code Ann. § 9-11-109). The Act further provides that a marriage which would be valid by the laws of the state or country entered into by a person of the same sex is void in Arkansas. *Id.* at § 2 (codified at Ark. Code Ann. § 9-11-107).

Amendment 83, which was approved by a majority of voters in a general election on November 2, 2004, states:

> §1. Marriage
>
> Marriage consists of only the union of one man and one woman

§2. Marital Status

Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common law marriage from another state between a man and a woman.

§3. Capacity, rights, obligations, privileges and immunities

The Legislature has the power to determine the capacity of persons to marry, subject to this amendment, and the legal rights, obligations, privileges, and immunities of marriage.

The plaintiffs contend that these prohibitions infringe upon their due process and equal protection rights under the Fourteenth Amendment of the United States Constitution and Article 2, § 3 of the Arkansas Constitution's Declaration of Rights. The State of Arkansas defends that it has the right to define marriage according to the judgment of its citizens through legislative and constitutional acts. Both parties have submitted motions for summary judgment.

The Equal Protection Clause forbids a state from denying "to any person within its jurisdiction the equal protection of the laws," U.S. Const. amend. XIV, § 1, and promotes the ideal that "all persons similarly situated should be treated alike." *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985). However, states are empowered to "perform many of the vital functions of modern government," *Nat'l Fed'n of Indep. Bus. v. Sebelius*, —— U.S. ——, 132 S.Ct. 2566, 2578 (2012), which necessarily involves adopting regulations which distinguish between certain groups within society. *See Romer v. Evans*, 517 U.S. 620, 631 (1996). Therefore, all courts must balance equal protection principles with the practical purposes of government when reviewing constitutional challenges to state laws.

The United States Supreme Court has outlined three categories for analyzing equal protection challenges. The most rigorous is referred to as "strict" scrutiny, which is reserved for laws that interfere with the exercise of a fundamental right or discriminate against "suspect classes." S*ee Plyler v. Doe*, 457 U.S. 202, 216-217 (1982). A more relaxed standard of review is "intermediate" or "heightened" scrutiny, which courts have applied to laws that discriminate against groups on the basis of gender, alienage or illegitimacy (also referred to as "quasi-suspect

classes"). *See Clark v. Jeter,* 486 U.S. 456, 461 (1988); *Miss. Univ. for Women v. Hogan,* 458 U.S. 718, 723–724 (1982). When the law does not interfere with a fundamental right or the rights of a suspect or quasi-suspect class, rational basis review applies. Here, the Arkansas marriage laws implicate both a fundamental right and the rights of a suspect or quasi-suspect class.

Although marriage is not expressly identified as a fundamental right in the Constitution, the United States Supreme Court has repeatedly recognized it as such.[1] It has also consistently applied heightened scrutiny to laws that discriminate against groups considered to be a suspect or quasi-suspect classification. *Mass. Bd. of Ret. v. Murgia,* 427 U.S. 307, 313 (1976) (a group that has experienced a "history of purposeful unequal treatment or [has] been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities."). Courts consider whether the characteristics that distinguish the class indicate a typical class member's ability to contribute to society, *Cleburne,* 473 U.S. at 440–41; whether the distinguishing characteristic is "immutable" or beyond the group member's control, *Lyng v. Castillo,* 477 U.S. 635, 638 (1986); and whether the group is "a minority or politically powerless," *Bowen v. Gilliard,* 483

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[1] *See M.L.B. v. S.L.J.,* 519 U.S. 102, 116 (1996) (quoting *Boddie v. Connecticut,* 401 U.S. 371, 376 (1971)) (finding that choices about marriage "are among associational rights this Court has ranked as 'of basic importance in our society' "); *Planned Parenthood of Southern Pennsylvania v. Casey,* 505 U.S. 833, 848 (1992) (finding marriage "to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause"); *Turner v. Safley,* 482 U.S. 78, 97 (1987) (finding that a regulation that prohibited inmates from marrying without the permission of the warden impermissibly burdened their right to marry); *Zablocki v. Redhail,* 434 U.S. 374, 383–84 (1978) (defining marriage as a right of liberty); *Carey v. Population Servs. Int'l,* 431 U.S. 678, 684–85 (1977) (finding that the right to privacy includes personal decisions relating to marriage); *United States v. Kras,* 409 U.S. 434, 446 (1973) (concluding that the Court "has come to regard [marriage] as fundamental"); *Boddie,* 401 U.S. at 376 (defining marriage as a "basic importance in our society"); *Loving v. Virgina,* 388 U.S. 1, 12 ("Marriage is one of the 'basic civil rights of man,' fundamental to our existence and survival" (quoting *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535 541 (1942)); *Griswold v. Connecticut,* 381 U.S. 479, 486 (1965) (defining marriage as a right of privacy and a "coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred"); *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 541 (1942) (finding marriage to be a "basic civil right[ ] of man"); *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923) (the right to marry is a central part of Due Process liberty); *Andrews v. Andrews,* 188 U.S. 14, 30 (1903) (quoting *Maynard v. Hill,* 125 U.S. 190, 205 (1888)) (finding marriage to be "most important relation in life"), *abrogated on other grounds, Sherrer v. Sherrer,* 334 U.S. 343, 352 (1948); *Maynard,* 125 U.S. at 205 (marriage creates "the most important relation in life")(same).

U.S. 587, 602 (1987). On this issue, this Court finds the rationale of *De Leon v. Perry*, *Obergefell v. Wymyslo,* and the extensive authority cited in both cases to be highly persuasive, leading to the undeniable conclusion that same-sex couples fulfill all four factors to be considered a suspect or quasi-suspect classification. *See respectively*, SA-13-CA-00982-OLG, 2014 WL 715741, *12 (W.D. Tex. Feb. 26, 2014) and 962 F. Supp.2d 968, 987-88 (S.D. Ohio 2013) (internal citations omitted). Therefore, at a minimum, heightened scrutiny must be applied to this Court's review of the Arkansas marriage laws.

Regardless of the level of review required, Arkansas's marriage laws discriminate against same-sex couples in violation of the Equal Protection Clause because they do not advance any conceivable legitimate state interest necessary to support even a rational basis review. Under this standard, the laws must proscribe conduct in a manner that is rationally related to the achievement of a legitimate governmental purpose. *See Vance v. Bradley,* 440 U.S. 93, 97 (1979). "[S]ome objectives ... are not legitimate state interests" and, even when a law is justified by an ostensibly legitimate purpose, "[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *Cleburne,* 473 U.S. at 446–47.

At the most basic level, by requiring that classifications be justified by an independent and legitimate purpose, the Equal Protection Clause prohibits classifications from being drawn for "the purpose of disadvantaging the group burdened by the law." *Romer,* 517 U.S. at 633; *see also United States v. Windsor,* 570 U.S. ---, 133 S.Ct. 2675 (2013); *Cleburne,* 473 U.S. at 450; Rational basis review is a deferential standard, but it "is not a toothless one". *Mathews v. Lucas,* 427 U.S. 495, 510 (1976).

The Supreme Court invoked this principle most recently in *Windsor* when it held that the principal provision of the federal Defense of Marriage Act ("DOMA") violated equal protection guarantees because the "purpose and practical effect of the law ... [was] to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages." *Windsor,* 570 U.S. ---, 133 S.Ct. at 2693. The case at bar and many around the country have since challenged state laws that ban same-sex marriage as a result of that decision. *See e.g., De Leon,* 2014 WL 715741; *Lee v. Orr,* No. 13–cv–8719, 2014 WL 683680 (N.D. Ill. Feb. 21, 2014); *Bostic v. Rainey,* 970 F. Supp.2d 456 (E.D. Va. Feb. 13, 2014); *Bourke,* ——F.Supp.2d ——, 2014 WL 556729 (W.D. Ky. Mar. 19, 2013); *Bishop v. United States ex rel. Holder,* 962 F.Supp.2d 1252 (N.D. Okla. 2014); *Obergefell,* 962 F. Supp.2d 968; *Kitchen v. Herbert,* 961 F.Supp.2d 1181 (C.D. Utah 2013).

Edith Windsor and Thea Spyer were a same-sex couple that married in Canada and lived in New York, a state that recognizes same-sex marriages. When Spyer died, Windsor attempted to claim the estate tax exemption, but DOMA prevented her from doing so, and she filed suit to obtain a $363,053 tax refund from the federal government.

In the *Windsor* opinion, Justice Kennedy explained how the strict labels placed upon the definition of a marriage have begun to evolve:

> It seems fair to conclude that, until recent years, many citizens had not even considered the possibility that two persons of the same sex might aspire to occupy the same status and dignity as that of a man and woman in a lawful marriage. For marriage between a man and a woman no doubt had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization. That belief, for many who have long held it, became even more urgent, more cherished when challenged. For others, however, came the beginnings of a new perspective, a new insight.

Id. at 2689.

He further points out how this restriction on marriage impacts not only the individuals involved but also their families:

> This places same-sex couples in an unstable position of being in a second tier marriage. The differentiation demeans the couple, whose moral and sexual choices the Constitution protects and whose relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes 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. at 2694 (citation omitted).

The Court concluded that this impact deprived a person of liberty protected by the Fifth Amendment and held that DOMA is unconstitutional.

> While the Fifth Amendment itself withdraws from Government the power to degrade or demean in the way

> this law does, the equal protection guarantee of the Fourteenth Amendment makes that Fifth Amendment right all the more specific and all the better understood and preserved.

Id. at 2695.

Since *Windsor*, a Virginia federal district court has considered the constitutionality of the Virginia law that banned same-sex marriages and found that the laws "fail to display a rational relationship to a legitimate purpose, and so must be viewed as constitutionally infirm under even the least onerous level of scrutiny." *Bostic*, 970 F. Supp. 2d at 482. The court explained, "Justice has often been forged from fires of indignities and prejudices suffered. Our triumphs that celebrate the freedom of choice are hallowed. We have arrived upon another moment in history when "We the People" becomes more inclusive, and our freedom more perfect." *Id.* at 483-484. The *Bostic* opinion includes a statement made by Mildred Loving on the fortieth anniversary of *Loving v. Virginia,* 388 U.S. 1 (1967). Her statement further demonstrates how definitions and concepts of marriage can change and evolve with time:

> We made a commitment to each other in our love and loves, and now had the legal commitment, called marriage, to match. Isn't that what marriage is? ... I have lived long enough now to see big changes. The older generations' fears and prejudices have given way, and today's young people realize that if someone loves someone they have a right to marry. Surrounded as I am now by wonderful children and grandchildren, not a day goes by that I don't think of Richard and our love, our right to marry, and how much it meant to me to have that freedom to marry the person precious to me, even if others thought he was the "wrong kind of person" for me to marry. I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry. Government has no business imposing some people's religious beliefs over others... I support the freedom to marry for all. That's what *Loving*, and loving, are all about.

Id. at 1 (quoting Mildred Loving, "Loving for All").

In *Kitchen v. Herbert*, a Utah federal district court also held that its state's constitutional ban of same-sex marriage violated plaintiffs' federal due process and equal protection rights. 961 F.Supp.2d at 1216. The Court explained:

> Rather than protecting or supporting the families of opposite-sex couples, Amendment 3 perpetuates inequality by holding that the families and relationships of same-sex couples are not now, nor ever will be, worthy of recognition. Amendment 3 does not thereby elevate the status of opposite-sex marriage; it merely demeans the dignity of same-sex couples. And while the State cites an interest in protecting traditional marriage, it protects that interest by denying one of the most traditional aspects of marriage to thousands of its citizens: the right to form a family that is strengthened by a partnership based on love, intimacy, and shared responsibilities. The Plaintiffs' desire to publicly declare their vows of commitment and support to each other is a testament to the strength of marriage in society, not a sign that, by opening its doors to all individuals, it is in danger of collapse.

Id. at 1215-1216.

The defendants offer several rationalizations for the disparate treatment of same-sex couples such as the basic premise of the referendum process, procreation, that denying marriage protections to same-sex couples and their families is justified in the name of protecting children, and continuity of the laws and tradition. None of these reasons provide a rational basis for adopting the amendment.

The state defendants contend that this court must follow the last pronouncement by Arkansas voters, as long as the ban does not violate a fundamental right of the United States Constitution. They argue that the Arkansas Constitution can be amended by the people, and three out of four voters in the 2004 general election said that same-sex couples cannot marry. This position is unsuccessful from both a federal and state constitution perspective.

Article 2, § 2 of the Arkansas Constitution guarantees Arkansans certain inherent and inalienable rights, including the enjoyment of life and liberty and the pursuit of happiness.

> All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing, and protecting property, and reputation; and of pursuing their own happiness, To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

ARK. CONST., art 2, § 2.

In this case, Article 2 § 2 was left intact by the voters, but in Amendment 83 they singled out same-sex couples for the purpose of disparate treatment. This is an unconstitutional attempt to narrow the definition of equality. The exclusion of a minority for no rational reason is a dangerous precedent.

Furthermore, the fact that Amendment 83 was popular with voters does not protect it from constitutional scrutiny as to federal rights. "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *W.Va. State Bd. of Educ. v. Barnette,* 319 U.S. 624, 638 (1943). The Constitution guarantees that all citizens have certain fundamental rights. These rights vest in every person over whom the Constitution has authority and, because they are so important, an individual's fundamental rights "may not be submitted to vote; they depend on the outcome of no elections." *Id. at 638.*

Defendants also cite *Donaldson v. State*, 367 Mont. 228 (2012), for the proposition that procreation can be a legitimate rational basis for the upholding of a ban on same-sex marriages.

> The replication, by children, of the procreative marital relationship as role-modeled by their married parents not only perpetuates the race-sustaining function by populating the race, but also builds extended families which share hereditary characteristics of a common gene pool.

Id at 237.

In a 1955 decision, the Supreme Court of Appeals of Virginia accepted the state's legitimate purposes "to preserve the racial integrity of its citizens," to prevent "the corruption of blood," "a mongrel breed of citizens" and "the

obliteration of racial pride." *Naim v. Naim*, 197 Va. 80, 90 (1955). In a comparison of *Donaldson* to *Naim*, the state's purposes sound eerily similar.

Procreation is not a prerequisite in Arkansas for a marriage license. Opposite-sex couples may choose not to have children or they may be infertile, and certainly we are beyond trying to protect the gene pool. A marriage license is a civil document and is not, nor can it be, based upon any particular faith. Same-sex couples are a morally disliked minority and the constitutional amendment to ban same-sex marriages is driven by animus rather than a rational basis. This violates the United States Constitution.

Even if it were rational for the state to speculate that children raised by opposite-sex couples are better off than children raised by same-sex couples, there is no rational relationship between the Arkansas same-sex marriage bans and the this goal because Arkansas's marriage laws do not prevent same-sex couples from having children. The only effect the bans have on children is harming those children of same-sex couples who are denied the protection and stability of parents who are legally married.

The defendants also argue that *Windsor* is a federalism issue and claim the states have the authority to regulate marriage as a matter of history and tradition, and that DOMA interfered with New York's law allowing same-sex marriage. The state defendant points to *Baker v. Nelson*, as precedent for upholding the application of Amendment 83 to the Arkansas Constitution. 191 N.W.2d 185 (1971). In that case, the United States Supreme Court dismissed an appeal from the Minnesota Supreme Court for lack of a substantial federal question. 409 U.S. 810 (1972). While a summary disposition is considered precedential, the courts that have considered this issue since *Windsor*, *supra.*, have found that doctrinal developments render the decision in *Baker* no longer binding. *Bostic*, 970 F. Supp. 2d at 469.

Tradition alone cannot form a rational basis for a law. *Heller v. Doe,* 509 U.S. 312, 326 (1993) (stating that the "[a]ncient lineage of a legal concept does not give it immunity from attack for lacking a rational basis."). The fact that a particular discrimination has been "traditional" is even more of a reason to be skeptical of its rationality. "The Court must be especially vigilant in evaluating the rationality of any classification involving a group that has been subjected to a tradition of disfavor for a traditional classification is more likely to be used without pausing to consider its justification than is a newly created classification." *Cleburne,* 473 U.S. at 454 n. 6 (Stevens, J., concurring). Just as the tradition of banning interracial marriage represented the embodiment of deeply-held prejudice and long-term racial discrimination in *Loving,* 388 U.S. at 1, the same is true here

with regard to Arkansas's same-sex marriage bans and discrimination based on sexual orientation.

The traditional view of marriage has in the past included certain views about race and gender roles that were insufficient to uphold laws based on these views. *See Lawrence v. Texas,* 539 U.S. 558, 577–78 (2003) ("[N]either history nor tradition could save a law prohibiting miscegenation from constitutional attack") (citation omitted). And, as Justice Scalia has noted in dissent, " 'preserving the traditional institution of marriage' is just a kinder way of describing the State's *moral disapproval* of same-sex couples." *Lawrence,* 539 U.S. at 601 (Scalia, J., dissenting).

Defendants contend that the Eighth Circuit decision in *Citizens for Equal Protection v. Bruning*, 455 F. 3rd 859 (2006) is dispositive of this issue because it upheld a Nebraska constitutional ban on same-sex marriage. However, both the *Donaldson* and *Bruning* decisions predate *Windsor* where the United States Supreme Court held:

> DOMA instructs all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others. The federal statute is invalid, **for no legitimate purpose overcomes the purpose and effect to disparage and to injure** these whom the State, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment. This opinion and its holding are confined to those lawful marriages.

Windsor at 2696 (emphasis added).

The state defendant attempts to distinguish *Windsor* by claiming that DOMA is related only to states that have allowed same-sex marriages. However:

> The Constitution's guarantee of equality "must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot" justify disparate treatment of that group.

Dep't of Agriculture v. Moreno, 413 U.S. 528, 534-535 (1973).

The issues presented in the case at bar are of epic constitutional dimensions—the charge is to reconcile the ancient view of marriage as between

one man and one woman, held by most citizens of this and many other states, against a small, politically unpopular group of same-sex couples who seek to be afforded that same right to marry.

Attempting to find a legal label for what transpired in *Windsor* is difficult but as United States District Judge Terence C. Kern wrote in *Bishop v. United States*, "this court knows a rhetorical shift when it sees one." Judge Kern applied deferential rational review and found no "rational link between exclusion of this class from civil marriage and promotion of a legitimate governmental objective." 962 F. Supp. 2d 1252, 1296 (2014).

The strength of our nation is in our freedom which includes, among others, freedom of expression, freedom of religion, the right to marry, the right to bear arms, the right to be free of unreasonable searches and seizures, the right of privacy, the right of due process and equal protection, and the right to vote regardless of race or sex.

The court is not unmindful of the criticism that judges should not be super legislators. However, the issue at hand is the fundamental right to marry being denied to an unpopular minority. Our judiciary has failed such groups in the past.

In *Dred Scott v. John Sandford*, Chief Justice Taney narrowed this issue by contemplating when and if a person can attain certain fundamental rights and freedoms that were not originally granted to that individual or group of individuals. 60 U.S. 393 (1856). Scott, a slave whose ancestors were brought to America on a slave ship, attempted to file a case in federal court to protect his wife and children. In the majority opinion, Chief Justice Taney pondered:

> The question is simply this: Can a negro, whose ancestors were imported in to this country, and sold as slaves, become a member of the political community formed and brought into existence by the constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

Id. at 403.

The Court majority in 1856 relied on a strict interpretation of the intent of the drafters to come to their decision.

> We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, there were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

Id. at 404-405.

One hundred years later, in *Loving*, the Supreme Court was still struggling with race in a miscegenation statute from the state of Virginia where interracial marriages were considered a criminal violation. The Lovings were convicted and sentenced to one year in jail suspended for twenty-five years on the condition that they leave the state for twenty-five years. 388 U.S. at 1. The trial judge stated in his opinion that:

> Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages, The fact that he separated the races shows that he did not intend for the races to mix.

Id. at 2 (citation omitted).

The U.S. Supreme Court disagreed with the trial court and in their opinion, Chief Justice Warren stated that "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." *Id.* at 12.

Our freedoms are often acquired slowly, but our country has evolved as a beacon of liberty in what is sometimes a dark world. These freedoms include a right to privacy.

The United States Supreme Court observed:

> We deal with a right of privacy older than the BILL OF RIGHTS—older than our political parties, older than our school system. Marriage is a coming together for the

> better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Griswold v. Connecticut, 381 U.S. 479, 486 (1965).

The Arkansas Supreme Court has previously addressed the right to privacy as it involves same-sex couples. In *Jegley v. Picado*, the Arkansas Supreme Court struck down the sodomy statute as unconstitutional in violating Article 2, § 2 and the right to privacy. 349 Ark. 600, 638 (2002). Justice Brown, in *Arkansas Dep't of Human Services v. Cole*, noted "that Arkansas has a rich and compelling tradition of protecting individual privacy and that a fundamental right to privacy is implicit in the Arkansas Constitution." 2011 Ark. 145, 380 S.W. 3d. 429, 435 (2011) (citing *Jegley*, *id.* at 632). The Arkansas Supreme Court applied a heightened scrutiny and struck down as unconstitutional an initiated act that prohibited unmarried opposite-sex and same-sex couples from adopting children. *Id* at 442. The exclusion of same-sex couples from marriage for no rational basis violates the fundamental right to privacy and equal protection as described in *Jegley* and *Cole*, *supra*. The difference between opposite-sex and same-sex families is within the privacy of their homes.

THEREFORE, THIS COURT HEREBY FINDS the Arkansas constitutional and legislative ban on same-sex marriage through Act 144 of 1997 and Amendment 83 is unconstitutional.

It has been over forty years since Mildred Loving was given the right to marry the person of her choice. The hatred and fears have long since vanished and she and her husband lived full lives together; so it will be for the same-sex couples. It is time to let that beacon of freedom shine brighter on all our brothers and sisters. We will be stronger for it.

IT IS SO ORDERED this 9th day of May, 2014

CHRISTOPHER CHARLES PIAZZA
CIRCUIT COURT JUDGE

EXHIBIT 12

Nos. 13-4178, 14-5003, and 14-5006

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DEREK KITCHEN, individually, et al.,
Plaintiffs-Appellees,
—v.—
GARY R. HERBERT, in his official capacity as Governor of Utah, et al.,
Defendants-Appellants.

MARY BISHOP, et al.,
Plaintiffs-Appellees,
—and—
SUSAN G. BARTON, et al.,
Plaintiffs-Appellees/Cross-Appellants,
—v.—
SALLY HOWE SMITH, in her official capacity as Court Clerk
for Tulsa County, State of Oklahoma,
Defendant-Appellant/Cross-Appellee.

Case No. 13-4178: Appealed from the United States District Court for the District of Utah · Civil Case No. 13-CV-00217-RJS · Honorable Robert J. Shelby · Case Nos. 14-5003 and 14-5006: Appealed from the United States District Court for the Northern District of Oklahoma · Civil Case No. 04-CV-848-TCK-TLW · Honorable Terence C. Kern

BRIEF OF AMICI CURIAE WESTERN REPUBLICANS IN SUPPORT OF APPELLEES AND AFFIRMANCE

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INTEREST OF AMICI CURIAE

Amici are Western conservatives, moderates and libertarians who embrace the individual freedoms protected by our Constitution. They embrace Ronald Reagan's belief that the Republican Party must be a "big tent." Though they hail from diverse backgrounds, they share a common belief in the importance of limited government, individual freedom and stable families. Many have served as elected or appointed officeholders in states within the Tenth Circuit. They share Barry Goldwater's belief that "[w]e don't seek to lead anyone's life for him. We only seek . . . to secure his rights, . . . [and] guarantee him opportunity to strive, with government performing only those needed and constitutionally sanctioned tasks which cannot be otherwise performed." Because Amici believe that these values are advanced by recognizing civil marriage rights for same-sex couples, Amici submit that, for the reasons set forth herein, this Court should affirm the judgments of the district courts.

A full list of Amici is provided as an Appendix to this brief.

AUTHORSHIP STATEMENT

Pursuant to F.R.A.P. 29(c), Amici state that the parties have consented to the filing of this brief pursuant to the joint notice of consent on file with the Clerk. No counsel for any party has authored this brief in whole or in part, and no party has made a monetary contribution intended to fund the preparation or submission of

this brief. The Gill Foundation, a non-party, contributed to some of the cost of preparation of this brief.

SUMMARY OF ARGUMENT

Amici hold a diverse set of social and political views, but generally believe that while government should play a limited role in the lives of Americans, it must act when individual liberties are at stake. Amici are united in their belief that, to the extent that the government acts in ways that affect individual freedom in matters of family and child-rearing, it should promote family-supportive values like responsibility, fidelity, commitment, and stability, but that such considerations cannot be determined based solely on history and tradition.

As various states have legalized civil marriage for same-sex couples, undersigned Amici, like many Americans, have examined the emerging evidence and have concluded that there is no legitimate, fact-based reason for denying same-sex couples the same recognition in law that is available to opposite-sex couples. To the contrary, Amici have concluded that marriage is strengthened and its benefits, importance to society, and the social stability of the family unit are promoted by providing access to civil marriage for same-sex couples. In the absence of a legitimate, fact-based reason, Amici believe that the Constitution prohibits denying same-sex couples access to the legal rights and responsibilities that flow from the institution of civil marriage. This view is buttressed by the

United States Supreme Court's recent ruling that no rational basis exists to treat same-sex marriage differently at the federal level. *See United States v. Windsor*, 133 S.Ct. 2675 (2013).

Amici acknowledge that deeply held social, cultural, and religious tenets lead sincere and fair-minded and people to take the opposite view. However, no matter how strongly or sincerely they are held, the law is clear that such views cannot serve as the basis for denying a certain class of people the benefits of marriage in the absence of a legitimate fact-based governmental goal. Amici take this position with the understanding that providing access to *civil* marriage for same-sex couples poses no credible threat to religious freedom or to the institution of religious marriage. Amici believe firmly that religious individuals and organizations should, and will, make their own decisions about whether and how to participate in marriages between people of the same sex, and that the government must not intervene in those decisions

Amici believe strongly in the principle of judicial restraint and that courts generally ought to defer to legislatures and the electorate on matters of social policy. Amici also believe that courts should be particularly wary of invoking the Constitution to remove issues from the normal democratic process. But Amici equally believe that actions by legislatures and popular majorities can on occasion pose significant threats to individual freedom, and that, when they do, courts

should intervene. It is precisely at moments like this—when discriminatory laws appear to reflect unexamined, unfounded, or unwarranted assumptions rather than facts and evidence, and the rights of one group of citizens hang in the balance—that the courts' intervention is most needed. Amici accordingly urge this Court to affirm the judgments below.

ARGUMENT

I. THERE IS NO LEGITIMATE, FACT-BASED JUSTIFICATION FOR DIFFERENT LEGAL TREATMENT OF COMMITTED RELATIONSHIPS BETWEEN SAME-SEX COUPLES.

Equal protection analysis typically invokes one of three levels of scrutiny: strict scrutiny, intermediate scrutiny, or rational basis review. *Clark v. Jeter*, 486 U.S. 456, 461 (1988). Strict scrutiny applies to suspect classifications based on race, alienage, or national origin. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985). Under strict scrutiny review, a state must show that the challenged classification is narrowly tailored to further a compelling governmental interest. *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003). Intermediate scrutiny has been applied to quasi-suspect, discriminatory classifications based on illegitimacy and gender. *Cleburne*, 473 U.S. at 441. To survive intermediate scrutiny review, a classification must be substantially related to a sufficiently important governmental interest. *Id.* All other classifications are subject to a rational basis review. *Id.* at 440-41. Under rational basis review, a classification can only be upheld if there is

a rational relationship between the disparity of treatment and some legitimate governmental purpose. *Heller v. Doe*, 509 U.S. 312, 319 (1993).

In order to survive under a rational basis test, a law that makes distinctions between classes of people must have "reasonable support in fact," *New York State Club Ass'n v. City of New York,* 487 U.S. 1, 17 (1988), and must "operate so as rationally to further" a legitimate government goal. *United States Dep't of Agric. v. Moreno*, 413 U.S. 528, 537 (1973). That law "must find some footing in the realities of the subject addressed by the legislation," *Heller*, 509 U.S. at 321, and a court reviewing it must insist on knowing the relation between the classification adopted and the object to be attained. *Romer v. Evans*, 517 U.S. 620, 632 (1996). A law will not survive rational basis analysis unless it is "narrow enough in scope and grounded in a sufficient factual context for [the court] to ascertain some relation between the classification and the purpose it serve[s]." *Id.* at 632–33.

Recent rulings in marriage cases for same-sex couples have observed that discrimination on the basis of sexual orientation fits well into the Supreme Court's analysis of factors meriting application of strict scrutiny. *See De Leon v. Perry*, No. SA–13–CA–00982–OLG, 2014 WL 715741 at *12-13 (W.D. Tex. Feb. 26, 2014) (reviewing cases supporting application of strict scrutiny to laws that discriminate on the basis of sexual orientation). The Supreme Court consistently applies heightened scrutiny to laws that discriminate against groups that have

experienced a "history of purposeful unequal treatment or have been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities." *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976). In applying heightened scrutiny, the Supreme Court also considers whether the distinguishing characteristic is "immutable" or beyond the group member's control, *Lyng v. Castillo*, 477 U.S. 635, 638 (1986); and whether the group is "a minority or politically powerless," *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987). *See also United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).

The various district courts addressing these marriage cases have nonetheless chosen to avoid a strict scrutiny analysis because, as the lower courts here recognized, discrimination on the basis of sexual orientation in the context of marriage cannot survive even the lowest level of review – rational basis scrutiny. *E.g. De Leon*, 2014 WL 715741 at *14. After all, even rational basis review is not toothless. It requires that the law in question serve a "legitimate" governmental interest. *Moreno*, *supra*; *see also SECSYS, LLC v. Vigil*, 666 F.3d 678, 685–86 (10th Cir. 2012) (equal protection inquires into whether a discriminatory law "can be justified by reference to some upright government purpose."); *Cleburne*, 473 U.S. at 442-50 (rejecting lower courts' decision to analyze law discriminating against mentally disabled persons under intermediate scrutiny, but nonetheless holding that the law failed rational basis review); *Romer v. Evans*, 517 U.S. 620,

632-35 (1996) (striking down, under rational basis review, Colorado constitutional amendment that prohibited state and local laws that would afford protected status based on sexual orientation).

Amici do not believe the Oklahoma and Utah constitutional provisions at issue here rest on a legitimate, fact-based justification for excluding same-sex couples from civil marriage. Over the past two decades, the arguments presented by proponents of such initiatives have been discredited by social science, rejected by courts, and contradicted by Amici's personal experience with same-sex couples. Amici thus do not believe that any "reasonable support in fact" exists for arguments that allowing same-sex couples to join in civil marriage will damage the institution of marriage, jeopardize children, or cause any other social ills. Rather, experience shows that permitting civil marriage for same-sex couples will do quite the opposite and will actually enhance the institution, protect children, and benefit society generally.

A. Although the Utah and Oklahoma Constitutional Provisions at Issue May Rest on Sincerely Held Beliefs and Tradition, That Does Not Sustain Their Constitutionality.

While the proponents of Utah's and Oklahoma's constitutional provisions prohibiting civil marriages of same-sex couples may hold strong beliefs that are founded on the history of the man-woman definition of marriage, tradition and sincere beliefs cannot insulate those constitutional provisions from rational basis

scrutiny under the Equal Protection Clause of the Fourteenth Amendment. *Heller*, 509 U.S. at 326 ("Ancient lineage of a legal concept does not give it immunity from attack for lacking a rational basis."); *Williams v. Illinois*, 399 U.S. 235, 239 (1970) ("Neither the antiquity of a practice nor the fact of steadfast legislative and judicial adherence to it through the centuries insulates it from constitutional attack.").

The Supreme Court has repeatedly recognized that private beliefs, no matter how strongly held, do not, without more, establish a constitutional basis for a law. *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (private beliefs "may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect"); *Reitman v. Mulkey*, 387 U.S. 369, 374-76 (1967) (striking down constitutional referendum repealing state anti-discrimination laws, and holding that that enshrining such "private discriminations" in state law violated the Fourteenth Amendment).

Gender discrimination cases provide a particularly clear illustration of how formerly widespread traditional views alone cannot justify a discriminatory law. *Stanton v. Stanton*, 421 U.S. 7, 14-15 (1975) ("old notions" and "role-typing" did not supply a rational basis for classification); *Taylor v. Louisiana*, 419 U.S. 522, 537 (1975) ("If it was ever the case that women were unqualified to sit on juries or were so situated that none of them should be required to perform jury service, that

time has long since passed."); *Craig v. Boren*, 429 U.S. 190, 198-99 (1976) (rejecting "increasingly outdated misconceptions" as "loose-fitting characterizations incapable of supporting state statutory schemes that were premised upon their accuracy"); *Trammel v. United States*, 445 U.S. 40, 52 (1980) (rejecting basis for law discriminating based on sex because its "ancient foundations ... have long since disappeared" as "over the years those archaic notions [of women's roles] have been cast aside").

Moreover, courts in other such cases have consistently and explicitly rejected traditional views as supplying a sufficient rational basis to support bans on same-sex couples marrying. *See Bostic v. Rainey*, No. 2:13cv395, 2014 WL 561978 at *15 (E.D. Va. Feb 13, 2014) (noting that "tradition alone cannot justify denying same-sex couples the right to marry any more than it could justify Virginia's ban on interracial marriage."); *Bourke v. Beshear*, No. 3:13–CV–750–H, 2014 WL 556729 at *7 (W.D. Ky. Feb 12, 2014) (holding that tradition cannot alone justify the infringement on individual liberties); *Perry v. Schwarzenegger*, 704 F.Supp.2d 921, 998 (N.D. Cal. 2010) ("[T]he state must have an interest apart from the fact of the tradition itself."); *Golinski v. U.S. Office of Personnel Management*, 824 F.Supp.2d 968, 998 (N.D. Cal. 2012) ("[T]he argument that the

definition of marriage should remain the same for the definition's sake is a circular argument, not a rational justification."); *De Leon*, 2014 WL 715741 at *16.[1]

B. Marriage Promotes the Conservative Values of Stability, Mutual Support, and Mutual Obligation.

The marriage bans at issue here fare no better in their equal protection analysis when the court considers the governmental goal of preserving and protecting the institution of marriage.

Marriage is a venerable institution that confers countless benefits, both to those who marry and to society at large. *See, e.g., Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) ("Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions." (internal quotation marks omitted)). Marriage makes it immeasurably easier for family members to make plans with, and decisions for, each other, without relying on outside assistance

[1] Justice Scalia's dissent in *Lawrence v. Texas* acknowledged as much, when he wrote that "[p]reserving the traditional institution of marriage ... is just a kinder way of describing the State's moral disapproval of same-sex couples." 539 U.S. 558, 602 (2003) (Scalia, J., dissenting). This interest of expressing moral disapproval, however, can be no more legitimate when applied to discrimination on the basis of sexual orientation than it was when applied to the defense of laws enshrining traditional gender roles. *Id.* at 571; *Stanton, supra*; *Craig, supra*. *Accord Windsor*, 133 S.Ct. at 2694.

from lawyers. Married individuals can make medical decisions together (or for each other if one spouse is not able to make a decision) and can make joint decisions for the upbringing of children; they can plan jointly for their financial future and their retirement; they can hold property together; they can share a spouse's medical insurance policy and have the health coverage continue for a period after a spouse's death; and they have increased protections against creditors upon the death of a spouse. Some—not all—of these rights and responsibilities can be approximated outside marriage, but only marriage provides family members with the security that these benefits will be *automatically* available when they are most needed.

Marriage also benefits children. "We know, for instance, that children who grow up in intact, married families are significantly more likely to graduate from high school, finish college, become gainfully employed, and enjoy a stable family life themselves[.]" Institute for American Values, *When Marriage Disappears: The New Middle America* 52 (2010); *see also id.* at 95 ("Children who grow up with cohabiting couples tend to have more negative life outcomes compared to those growing up with married couples. Prominent reasons are that cohabiting couples have a much higher breakup rate than do married couples, a lower level of household income, and a higher level of child abuse and domestic violence." (footnote omitted)). These benefits have become even more critical in recent

decades, as marital rates have declined and child-rearing has become increasingly untethered to marriage. *See, e.g.,* Cherlin, *American Marriage in the Early Twenty-First Century*, 15 The Future of Children 33, 35-36 (2005).

As numerous courts have recognized, these findings do not depend on the gender of the individuals forming the married couple. *See Perry v. Schwarzenegger*, 704 F.Supp.2d at 980 ("Children raised by gay or lesbian parents are as likely as children raised by heterosexual parents to be healthy, successful and well-adjusted"); *Varnum v. Brien*, 763 N.W.2d 862, 899 (Iowa 2009) ("Plaintiffs presented an abundance of evidence and research, confirmed by our independent research, supporting the proposition that the interests of children are served equally by same-sex parents and opposite-sex parents."). In fact, all courts to recently examine the issue conclude that prohibitions on same-sex marriage actually harm familial stability more than help it. *See De Leon*, 2014 WL 715741 at *14 ("[T]his Court finds that far from encouraging a stable environment for childrearing, [Texas' same-sex marriage ban] denies children of same-sex parents the protections and stability they would enjoy if their parents could marry."); *Obergefell v. Wymyslo*, No. 1:13–cv–501, 2013 WL 6726688 at *20 (S.D. Ohio Dec. 23, 2013) (noting the only effect the marriage recognition bans have on children's well-being is harming the children of same-sex couples who are denied the protection and stability of having parents who are legally married); *Golinski v.*

U.S. Office of Personnel Management, 824 F.Supp.2d 968, 992 (N.D. Cal. 2012) ("The denial of recognition and withholding of marital benefits to same-sex couples does nothing to support opposite-sex parents, but rather merely serves to endanger children of same-sex parents."); *Pedersen v. Office of Personnel Management*, 881 F.Supp.2d 294, 336-37 (D. Conn. 2012) (finding that the denial of marriage to same-sex parents "in fact leads to a significant unintended and untoward consequence by limiting the resources, protections, and benefits available to children of same-sex parents.").

As Professors Jesse Choper and John Yoo—who support civil marriage for same-sex couples as a policy choice—have explained:

> With regard to gay marriage, the cost of a prohibition is the restriction of the liberty of two individuals of the same sex who seek the same legal status for an intimate relationship that is available to individuals of different sexes. This harm may not be restricted just to the individuals involved but may also involve broader social costs. If the government believes that marriage has positive benefits for society, some or all of those benefits may attach to same-sex marriages as well. Stable relationships may produce more personal income and less demands on welfare and unemployment programs; it may create the best conditions for the rearing of children; and it may encourage individuals to invest and save for the future.

Choper & Yoo, *Can the Government Prohibit Gay Marriage?*, 50 S. Tex. L. Rev. 15, 33-34 (2008).

Moreover, hundreds of thousands of children being raised by same-sex couples[2]—some married, some precluded from marrying—would benefit from the security and stability that civil marriage confers. The denial of civil marriage to same-sex couples does not mean that their children will be raised by married opposite-sex couples. Rather, the choice here is between allowing same-sex couples to marry, thereby conferring on their children the benefits of marriage, and depriving those children of married parents altogether.

C. Social Science Does Not Support Any of the Putative Rationales for the State Constitutional Provisions at Issue.

Proponents of laws like the Oklahoma and Utah constitutional provisions at issue here have advanced certain social-science arguments that they contend support the exclusion of same-sex couples from civil marriage. The proponents' main arguments are (1) *deinstitutionalization*: that allowing same-sex couples to marry will harm the institution of marriage by severing it from child-rearing; (2) *biology*: that marriage is necessary only for opposite-sex couples because only they can procreate; and (3) *child welfare*: that children are better off when raised by two parents of the opposite sex. Each of these arguments reflects a speculative assumption rather than fact, is unsupported in the records in these cases, and have in fact been refuted by evidence.

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[2] *See* Sears, *et al.*, *Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000*, at 1 (Sept. 2005) (reporting that same-sex couples are "raising more than 250,000 children under age 18").

Deinstitutionalization. No credible evidence supports the deinstitutionalization theory, and courts that have considered this argument have not found it persuasive. *See Pedersen*, 881 F.Supp.2d at 335-39. Extending civil marriage to same-sex couples is a clear endorsement of the multiple benefits of marriage—including stability, lifetime commitment, and financial support during crisis and old age—and a reaffirmation of the social value of this institution for all committed couples and their families. Although marriage has undoubtedly faced serious challenges over the last few decades, as demonstrated by high rates of divorce and greater incidence of child-bearing and child-rearing outside marriage, nothing suggests that allowing committed same-sex couples to marry has exacerbated or will in any way accelerate those trends, which have their origins in complex social forces. *See* Choper & Yoo, 50 S. Tex. L. Rev. at 34 ("We are not aware of any evidence that the marriage of two individuals of the same sex produces any tangible, direct harm to anyone either in the marriage or outside of it.").

Opposite-sex couples confront many challenges in raising families, and Amici strongly believe that society should make marriage a stronger and more valuable institution for those couples and families. But those challenges will remain whether or not same-sex couples can marry.

In addition, the evidence (albeit limited) from States that allow civil marriage for same-sex couples undermines the deinstitutionalization hypothesis. Same-sex marriage has had no measurable negative effect on rates of marriage, divorce, or birth in States where it has been recognized. *See De Leon*, 2014 WL 715741 at *14 ("Defendants have failed to establish how recognizing a same-sex marriage can influence, if at all, whether heterosexual couples will marry, or how other individuals will raise their families."). As the Utah District Court below correctly noted:

> [I]t defies reason to conclude that allowing same-sex couples to marry will diminish the example that married opposite-sex couples set for their unmarried counterparts. Both opposite-sex and same-sex couples model the formation of committed, exclusive relationships, and both establish families based on mutual love and support.

2013 WL 6697874, at *25.

Biology. There is also no biological justification for denying civil marriage to same-sex couples. Allowing same-sex couples to marry in no way undermines the importance of marriage for opposite-sex couples who enter into committed relationships to provide a stable family structure for their children. Indeed, there is no evidence that marriage between individuals of the same sex affects opposite-sex couples' decisions about procreation, marriage, divorce, or parenting whatsoever. *Cf. Windsor v. United States*, 699 F.3d 169, 188 (2d Cir. 2012), *aff'd* 133 S.Ct. 2675 (2013) (laws burdening same-sex couples' right to civil marriage "do[] not

provide any incremental reason for opposite-sex couples to engage in 'responsible procreation,'" as the "[i]ncentives for opposite-sex couples to marry and procreate (or not) [are] the same after [such laws are] enacted as they were before" (footnote omitted); *Massachusetts v. HHS*, 682 F.3d 1, 14-15 (1st Cir. 2012) (laws burdening same-sex couples' right to civil marriage "do[] not increase benefits to opposite-sex couples ... or explain how denying benefits to same-sex couples will reinforce heterosexual marriage. Certainly, the denial will not affect the gender choices of those seeking marriage").

Our society has long recognized that civil marriage provides numerous benefits to couples who are unable to, or who choose not to, bear children. Some married couples adopt children and thus benefit from the child-protective institution of marriage; others marry after child-bearing age but still benefit from the web of rights and obligations conferred by marriage. Whatever the merits of speculation that marriage was originally fashioned only to channel the procreative impulse, it has been centuries since marriage was so limited (if it ever was). Our Nation's first President and his wife had no children together, but their marriage provided a protective family structure for raising Martha Washington's children by her first marriage as well as her grandchildren. *See* Chernow, *Washington: A Life* 78-83, 421-22 (2010).

Moreover, hundreds of thousands of children are *in fact* being raised in loving families with same-sex parents. The last few decades have demonstrated that many same-sex couples strongly wish to raise children and are doing so; this is a social development that will not be reversed, but will likely only accelerate. Because Amici believe that having married parents is optimal for children, Amici conclude that granting the rights and responsibilities of civil marriage to same-sex couples will benefit, not harm, these hundreds of thousands of children, as well as the many children who will be raised by same-sex couples in the future.

Child Welfare. Amici are not aware of any persuasive evidence that same-sex marriage is detrimental to children. Social scientists have resoundingly rejected the claim that children fare better when raised by opposite-sex parents than they would with same-sex parents. Empirical research "gathered during several decades" showed "no systemic difference" between the child-rearing capabilities of same-sex and heterosexual parents, but rather that the sexual orientation of a child's parent had no measureable effect on the child's well-being. Perrin, *et al.,* Technical Report: *Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341, 343 (2002) (finding no differences regarding "emotional health, parenting skills, and attitude towards parenting" between same-sex and opposite-sex parents, and finding that "[n]o data have pointed to any risk to children as a result of growing up in a family with 1 or more gay parents"); *see*

also Farr, *et al., Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?,* 14 Applied Developmental Sci. 164, 175 (2010) (finding children adopted by same-sex parents to be "as well adjusted as those adopted by heterosexual parents" and that there were "no significant differences" between same-sex and heterosexual parents "in terms of child adjustment, parenting behaviors, or couples' adjustment").[3]

Courts are necessarily guided by evolving notions of what types of discrimination can no longer be maintained as legitimate. Although Amici firmly believe that society should proceed cautiously before adopting significant changes to beneficial institutions and should carefully weigh the costs and benefits of such changes, Amici do not believe that society must remain indifferent to facts. *Cf.* 2 Burke, *The Works of the Right Honourable Edmund Burke* 295 (Bell ed. 1886) ("A state without the means of some change is without the means of its conservation.").

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[3] Courts that have examined the evidence have unanimously agreed with these studies. *See Gill v. Office of Personnel Management,* 699 F.Supp.2d 374, 388 (D. Mass. 2010) ("[A] consensus has developed among the medical, psychological, and social welfare communities that children raised by gay and lesbian parents are just as likely to be well-adjusted as those raised by heterosexual parents."); *Golinski,* 824 F.Supp.2d at 991-92 (examining studies on each side and concluding that there is no "genuine issue of disputed fact regarding whether same-sex married couples function as responsible parents").

In addition, no evidence suggests that the sexual orientation of a child's parents has an impact on a child's sexual orientation. Tr. 1029-32, *Perry* (N.D. Cal. Jan. 15, 2010) (testimony of Michael Lamb, expert in developmental psychology); *see also* Farr, 14 Applied Developmental Sci. at 175 (finding that children of same-sex parents exhibit "typical gender development").

Our Nation has undergone too many changes for the better already—especially in its repudiation of discrimination against minorities—to allow social policy to be dictated by unexamined assumptions undermined by evidence.

The Utah and Oklahoma constitutional provisions at issue here rest on similar beliefs—sincere and strongly held, but ultimately illegitimate in the eyes of the law and devoid of any true grounding in facts—and thus cannot stand even under rational basis scrutiny.

II. THIS COURT SHOULD PROTECT THE FUNDAMENTAL RIGHT OF CIVIL MARRIAGE BY ENSURING THAT IT IS AVAILABLE TO SAME-SEX COUPLES.

It is well established that the right to marry a spouse of one's own choosing is a fundamental right, guaranteed under the Due Process Clause of the Fourteenth Amendment. *See, e.g., Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) ("[D]ecisions of this Court confirm that the right to marry is of fundamental importance for all individuals."); *United States v. Kras*, 409 U.S. 434, 446 (1973) (concluding the Court has come to regard marriage as fundamental); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("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."); *Skinner v. Okla. ex. rel. Williamson*, 316 U.S. 535, 541 (1942) (noting marriage is one of the basic civil rights of man fundamental to our existence and survival); *Maynard v. Hill*, 125 U.S. 190, 205, 211 (1888) (characterizing marriage

as "the most important relation in life" and as "the foundation of the family and society, without which there would be neither civilization nor progress."). *Accord Roberts v. U.S. Jaycees*, 468 U.S. 609, 620 (1984) (holding that our federal Constitution "undoubtedly imposes constraints on the state's power to control the selection of one's spouse"); *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684–85 (1977) ("[I]t is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education.").[4]

Amici value marriage and families, which play a central role in our society and reinforce essential values such as commitment, faithfulness, responsibility, and sacrifice. Marriage is the foundation of the secure families that form the building blocks of our communities and our Nation. It both provides a protective shelter and reduces the need for reliance on the State.

Choosing to marry is also a paradigmatic exercise of human liberty. Indeed, "[i]t is only those who cannot marry the partner of their choice ... who are aware of the extent to which ... the ability to marry is an expression of one's freedom." Tr. 206, *Perry* (N.D. Cal. Jan. 11, 2010). As an expert on the history of marriage

[4] As the Court is aware, the *Kitchen* case from Utah based its analysis in part on the status of marriage as a fundamental right; but the *Bishop* case from Oklahoma chose not to, ruling that the equal protection violation was sufficient.

testified, "When slaves were emancipated, they flocked to get married. And this was not trivial to them, by any means. [One] ex-slave who had also been a Union soldier ... declared, 'The marriage covenant is the foundation of all our rights.'" *Id.* at 202-03. Marriage is thus central to the liberty of individuals and a free society. Indeed, the mutual dependence and obligation fostered by marriage affirmatively advance the appropriately narrow and modest role of government. *See* Goldwater, The Conscience of a Conservative 14 (1960) ("[F]or the American Conservative, there is no difficulty in identifying the day's overriding political challenge: it is to preserve and extend freedom. As he surveys the various attitudes and institutions and laws that currently prevail in America, many questions will occur to him, but the Conservative's first concern will always be: *Are we maximizing freedom?*").

For those who choose to marry, the rights and responsibilities conveyed by civil marriage provide a bulwark against unwarranted government intervention into deeply personal concerns such as medical and child-rearing decisions. *See, e.g., Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (affirming "the liberty of parents and guardians to direct the upbringing and education of children under their control"); *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (recognizing "the power of parents to control the education of their own"). Thus, as noted above, the Supreme Court has recognized on numerous occasions that the freedom to marry is one of the fundamental liberties that an ordered society must strive to protect and

promote. The Supreme Court has reaffirmed that freedom by securing marriage rights for prisoners, *Turner v. Safley*, 482 U.S. 78, 95 (1987); striking down laws requiring court permission to marry, *Zablocki*, 434 U.S. at 388; and eliminating racially discriminatory restrictions on the right to marry, *Loving*, 388 U.S. at 12.

As other marriage cases involving same-sex couples have noted, *Loving* is particularly apt because it disposes of the familiar "definitional" argument – that the fundamental right to marriage cannot include the right to marry a person of the same sex because marriage is defined as the union of persons of the opposite sex. This argument seeks to characterize the right sought as a new right to same-sex marriage, as opposed to the existing right to marry without unjustified government constraint. *Loving* is analogous and controlling on this point. Instead of declaring a new right to interracial marriage, the Supreme Court held that individuals could not be restricted from exercising their "existing" right to marry on account of their chosen partner's race. *Loving*, 388 U.S. at 12. The same is true in this instance: individuals cannot be restricted from exercising their "existing" right to marry on account of their chosen partner's gender. The marriage bans at issue here thus violate due process in the same fashion as the anti-miscegenation laws struck down long ago in *Loving*. *Id.* *Accord De Leon*, 2014 WL 715741 at *19-20.

The Supreme Court's most recent foray into this area confirms that this analysis remains sound. In *United States v. Windsor*, the Supreme Court held that

the federal government was prohibited from treating same-sex couples differently for the purpose of federal law. 133 S.Ct. 2675 (2013). The Utah and Oklahoma constitutional provisions at issue here attempt to do what was forbidden at the federal level. But the existing federally-recognized fundamental character of the right to marry necessarily forecloses this attempt.

III. ACTING TO STRIKE DOWN THESE LAWS IS NOT "JUDICIAL ACTIVISM."

Amici recognize that judicial restraint is admirable when confronted with a provision duly enacted by the people or their representatives, and it is not the job of a court "to protect the people from the consequences of their political choices." *National Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2579 (2012). Nonetheless, a court's "deference in matters of policy cannot ... become abdication in matters of law." *Id.* It is the court's duty to set aside laws that overstep the limits imposed by the Constitution—limits that reflect a different kind of restraint that the people wisely imposed on themselves to ensure that segments of the population are not deprived of liberties that there is no legitimate basis to deny them. As James Madison put it,

> In our Governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents.

5 *Writings of James Madison* 272 (Hunt ed. 1904). Likewise, while it is the duty of the political arms of the government "in the first and primary instance" "to preserve and protect the Constitution," the judiciary must not "admit inability to intervene when one or the other level of Government has tipped the scales too far." *United States v. Lopez*, 514 U.S. 549, 577-78 (1995) (Kennedy, J., concurring).

It is accordingly not a violation of principles of judicial restraint for courts to strike down laws that infringe on "fundamental rights necessary to our system of ordered liberty." *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3042 (2010). It is instead a key protection of limited, constitutionally constrained government. *See The Federalist* No. 78 (Hamilton) ("[A] limited Constitution ... can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void."); *see also* Madison, *Speech in Congress on the Removal Power* (June 8, 1789) ("[I]ndependent tribunals ... will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution.").

The right to marry indisputably falls within the narrow band of specially protected liberties that courts ensure are protected from unwarranted curtailment.

See Bostic, 2014 WL 561978, at *12 ("Plaintiffs ask for nothing more than to exercise a right that is enjoyed by the vast majority of ... adult citizens.").

The state constitutional provisions at issue here ran afoul of the Fourteenth Amendment by submitting to popular referendum a fundamental right that there is no legitimate, fact-based reason to deny to same-sex couples. *Cleburne*, 473 U.S. at 448 ("It is plain that the electorate as a whole, whether by referendum or otherwise, could not order [State] action violative of the Equal Protection Clause, and the [State] may not avoid the strictures of that Clause by deferring to the wishes or objections of some fraction of the body politic." (citation omitted)); *see also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) ("One's right to life, liberty, and property, ... and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."); *Lucas v. Forty-Fourth Gen. Assembly of Colorado*, 377 U.S. 713, 736-37 (1964) ("A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be."). This case accordingly presents one of the rare instances in which judicial intervention is necessary to prevent overreaching by the electorate. When fundamental liberties are at stake, personal "choices and assessments ... are not for the Government to make," *Citizens United v. FEC*, 558 U.S. 310, 372 (2010), and courts must step in to prevent any encroachment upon individual rights.

Our constitutional guarantees of freedom are no less a part of our legal traditions than is the salutary principle of judicial restraint, and this Court does no violence to those traditions—or to conservative principles—when it acts to secure constitutionally protected liberties against overreaching by the government. *Cf.* Goldwater 13-14 ("The Conservative is the first to understand that that practice of freedom requires the establishment of order: it is impossible for one man to be free if another is able to deny him the exercise of his freedom. ... He knows that the utmost vigilance and care are required to keep political power within its proper bounds."). Our society is more free when courts vindicate individual rights by enforcing the Constitution. The Court should do likewise in this case.

CONCLUSION

It is precisely because marriage is so important in producing and protecting strong and stable family structures that Amici do not agree that the government can rationally promote the goal of strengthening families by *denying* civil marriage to same-sex couples. As British Prime Minister and Conservative Party Leader David Cameron explained, "Conservatives believe in the ties that bind us; that society is stronger when we make vows to each other and support each other. So I

don't support gay marriage despite being a Conservative. I support gay marriage because I'm a Conservative."[5]

Amici agree. They support marriage for same-sex couples because they are conservatives. Amici therefore urge the Court to affirm the well-reasoned decisions below striking down two states' bans on same-sex marriage as violating the equal protection and due process protections of the Federal Constitution.

Respectfully submitted this 4th day of March, 2014.

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[5] Cameron, *Address to the Conservative Party Conference* (Oct. 5, 2011), *available at* http://www.bbc.co.uk/news/uk-politics-15189614.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations in Fed. R. App. P. 32(a)(7)(B) and 29(d) because it contains 6,507 words, excluding the parts of brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief also complies with the typeface requirements in Fed. R. App. 32(a)(5) and the type style requirements in Fed. R. App. 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman typeface, font size 14.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was filed electronically with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court (with a copy to be mailed to any individuals who do not receive electronic notice from the Clerk) this 4th day of March 2014, to all counsel of record.

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APPENDIX

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Gary E. Johnson, Governor of New Mexico, 1995 to 2003

Kenneth B. Mehlman, Chairman, Republican National Committee, 2005 to 2007

Michael Von Flatern, Wyoming State Senator, 2005 to present

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Ruth Ann Petroff, Wyoming House District 16, 2011 to present

Al White, Colorado Senate District 8, 2009 to 2011, Colorado House District 64, 2001 to 22003, Colorado House District 57 (Redistricted) 2003 to 2009.

Jean White, Colorado Senate District 8, 2011 to 2013

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