

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY
SIXTEENTH JUDICIAL CIRCUIT**

Janice Barrier and Sherie Schild;)	
)	
Lisa Layton-Brinker and JoDe Layton-Brinker;)	
)	
Zuleyma Tang-Martinez and Arlene Zarembka;)	
)	
James MacDonald and Andrew Schuerman;)	
)	
Elizabeth Drouant and Julikka LaChe;)	
)	
Ashley Quinn and Katherine Quinn;)	
)	
Adria Webb and Patricia Webb; and)	
)	
Alan Ziegler and LeRoy Fitzwater)	
)	
Plaintiffs,)	
)	Cause No.
v.)	
)	Div.
Gail Vasterling, in her official capacity as)	
Director of the Missouri Department of)	
Health and Senior Services,)	
)	
Chris Koster, in his official capacity as)	
Attorney General for the State of)	
Missouri,)	
)	
Jeremiah W. Nixon, in his official capacity as)	
Governor for the State of Missouri,)	
)	
City of Kansas City, Missouri, a municipal)	
corporation and political subdivision of)	
the State of Missouri,)	
)	
Defendants)	

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs bring this action to challenge the constitutionality of Missouri's laws denying recognition to the marriages of same-sex couples that have been legally entered into in other jurisdictions. Section 451.022 RSMo; Section 104.012 RSMo; Mo. Const. art. I, § 33.

2. Plaintiffs are already legally married, having wed in other jurisdictions, but are treated as legal strangers in their home state, Missouri.

3. Like other couples who have made a lifetime commitment to each other, the plaintiff couples are spouses in every sense, except that Missouri law says their marriages are not honored here.

4. Missouri's refusal to recognize plaintiffs' marriages excludes them from the many legal protections available to spouses. For example, when one spouse dies, the surviving spouse may face serious financial hardship, including the loss of her home, because the couples are not allowed to title their joint property in the same way that different-sex married couples can. Lesbian and gay police officers, firefighters and other first responders are denied the peace of mind of knowing that if they make the ultimate sacrifice, their spouse will be taken care of through the financial support available to help those who lost their spouses in service to the community. Because of Missouri's refusal to recognize their marriages, same-sex couples are also denied many federal protections afforded to married couples such as the ability to take time off work to care for a sick spouse under the Family Medical Leave Act and access to a spouse's social security retirement benefits.

5. The refusal to recognize plaintiffs' marriages undermines the couples' ability to achieve their life goals and dreams, threatens their mutual economic stability, and denies them "a

dignity and status of immense import.” *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). Moreover, they and their children are stigmatized and relegated to a second class status by being barred from marriage. The exclusion “tells [same-sex] couples and all the world that their otherwise valid relationships are unworthy” of recognition. *Id.* at 2694. And it “humiliates . . . children now being raised by same-sex couples” and “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.*

6. Some of the plaintiffs are old enough to remember when a majority of states had laws prohibiting marriage between people of different races and when the Supreme Court struck down such prohibitions in *Loving v. Virginia*, 388 U.S. 1, 12 (1967), declaring: “The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”

7. Our courts and our society have discarded, one by one, marriage laws that violated the Constitution’s mandate of equality, such as anti-miscegenation laws and laws that denied married women legal independence and the right to make decisions for themselves. History has taught us that the vitality of marriage does not depend on maintaining such discriminatory laws. To the contrary, eliminating these unconstitutional restraints on the freedom to marry has enhanced the institution.

8. Through recognition of marriage, Missouri recognizes a couple’s decision to establish a family unit together and support one another and any children of the marriage. The recognition of marriage contributes to the happiness of countless couples and their families and also contributes to society. Missouri, like other states, encourages and regulates marriage through hundreds of laws that provide benefits to and impose obligations on married couples. In

exchange, Missouri receives the well-established benefits that marriage brings: stable, supportive families that contribute to both the social and economic well-being of the State. It is because of the well-recognized benefits of marriage that Missouri has traditionally recognized lawful marriages performed in other states.

9. Missouri's exclusion of married same-sex couples from the protections and responsibilities of marriage violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This discriminatory treatment is subject to heightened scrutiny because it burdens the fundamental right to marry and because it discriminates based on sex and sexual orientation. But it cannot stand under any level of scrutiny because Missouri's refusal to recognize the legal marriages of same-sex couples does not rationally further any legitimate government interest. It serves only to disparage and injure same-sex couples and their families.

10. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief against defendants. Specifically, plaintiffs seek: (a) a declaration that Missouri's refusal to recognize marriages of same-sex couples validly entered into outside of the State violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and (b) a permanent injunction directing defendants to recognize the marriages of the plaintiff couples and other same-sex couples validly entered into outside of Missouri.

THE PARTIES

Plaintiffs

Janice Barrier and Sherie Schild

11. Plaintiffs Janice Barrier and Sherie Schild were married on May 1, 2009, in Iowa City, Iowa. They have been a couple for more than 30 years. In 1996, Janice was a director of the St. Louis office of the United States Department of Labor's Occupational Safety and Health Administration. After Sherie was diagnosed with breast cancer, Janice attempted to secure leave to care for her, as different-sex spouses were allowed to care for their seriously ill spouses. Janice's boss told her that she would be transferred to the Des Moines office if she took any more leave. When Sherie required surgery, Janice's boss followed through on his threat and told Janice that she had ten days to move to Iowa or she would be fired. The matter was settled when Janice agreed to accept a demotion and transfer to an office in O'Fallon, Illinois, in exchange for missing work to help Sherie with treatment. After surviving breast cancer, Sherie was diagnosed with thyroid cancer in 2001. Sherie was unable to continue working in a family business, and, because they could not be married, Janice was unable to add Sherie to her medical insurance coverage. As a result, Sherie and Janice have spent their life-savings on medical care. Janice had to stop working in June 2012, when she was diagnosed with rectal cancer. Sherie and Janice are concerned that their cancers might reoccur. They are also concerned that if one of them would need care in a nursing home, then they would not have the same right to care for each other in privacy that different-sex married couples enjoy in Missouri.

Lisa Layton-Brinker and JoDe Layton-Brinker

12. Plaintiffs Lisa Layton-Brinker and JoDe Layton-Brinker live in mid-Missouri. They were married in Des Moines, Iowa, on July 17, 2010. They have been together for six years. Their family includes three children, ages 17, 20, and 21. Lisa is a firefighter for a city in mid-Missouri. She worries that if she is seriously injured or killed at work then her family will not be cared for. This is because the benefits available to surviving spouses of different-sex married firefighters who are injured or killed in the line-of-duty would not be available for her spouse since Missouri refuses to recognize their marriage.

Zuleyma Tang-Martinez and Arlene Zarembka

13. Plaintiffs Zuleyma Tang-Martinez and Arlene Zarembka recently celebrated their thirty-one year anniversary as a couple. They were married in Canada on July 18, 2005. Zuleyma retired after a distinguished career as Professor of Biology at the University of Missouri—St. Louis. In October 2013, Arlene applied, as Zuleyma’s spouse, for Social Security spousal benefits. Because Missouri does not recognize legal marriages between same-sex couples, the application has not been approved. Eligibility for spousal Social Security benefits is determined by whether the state of residence recognizes a couple’s marriage. While Zuleyma and Arlene have gone to great lengths to ensure that their property is owned jointly, they are unable to own property in Missouri as tenants by the entirety, as Missouri would allow a different-sex couple married in another state to do. This provides them with less security than different-sex married couples enjoy.

James MacDonald and Andrew Schuerman

14. Plaintiffs Jim MacDonald and Andy Schuerman have been together for twelve years. Jim and Andy were married in Vancouver on July 25, 2005. They live in Kansas City with

their two-year-old daughter, Grace. Jim is a non-profit professional. Andy is a school counselor. They want Missouri to recognize their marriage to protect Grace and the surviving spouse in the event that one of them dies and to enjoy the same rights as different-sex married couples in terms of inheritance and end-of-life decision-making. The cost of securing health-insurance coverage for the family is greater because Jim and Andy's marriage is not recognized by Missouri.

Elizabeth Drouant and Julikka LaChe

15. Plaintiffs Elizabeth Drouant and Julikka LaChe have been together for ten years and were married on March 12, 2010, in Iowa City, Iowa. Both Beth and Julikka in special education. Beth is a teacher while Julikka is a sign-language interpreter. They have noticed that their families have a better understanding of their commitment to one another now that they are married. They have also found that being married has strengthened the bond they feel with one another. Beth and Julikka have dedicated their careers to working with children. They would like to adopt children of their own one day, but are concerned that Missouri's refusal to recognize their marriage will make the adoption process and raising children more difficult.

Ashley Quinn and Katherine Quinn

16. Plaintiffs Ashley Quinn and Katherine Quinn live in Springfield. Ashley and Kate have been together for eight years and were married on January 12, 2010, in Boston, Massachusetts. After being married, they moved to Colorado. They were relieved when the State of Colorado began recognizing their Massachusetts marriage for many purposes. *See* Colo. Rev. Stat. Ann. § 14-15-116. A close relative of Kate's is nearing the end of his life, so Ashley and Kate decided to move back to Missouri to be close to him. But they are concerned that under Missouri law they are treated as legal strangers and are not afforded the protections that different-sex married couples have.

Adria Webb and Patricia Webb

17. Plaintiffs Adria Webb and Patricia Webb married on March 12, 2010, in Iowa. They live in St. Louis and are raising two children, aged 12 and 13. They see marriage as the most faithful of commitments. They have taught their children that marriage is the natural progression when two people are deeply in love. Marriage also protects their family from harm. They are both actively involved in the children's lives, and it is important to them that they be married for the children, as well as for themselves.

Alan Ziegler and LeRoy Fitzwater

18. Plaintiffs Alan Ziegler and LeRoy Fitzwater have been a couple since 2001. On November 1, 2008, they were married at Stanford Memorial Church in Stanford, California. Alan was born in Mexico, Missouri, and raised in Kelso. After graduating from high school in Cape Girardeau and college in St. Louis, he left Missouri. Recently, a transfer at LeRoy's employment required them to leave California and move to Missouri. While they are excited to be living closer to family, they are troubled by the fact that, in the eyes of Missouri's law, it is as if they were never married. They are concerned that simply moving to Missouri has cost them the legal benefits of being married.

Defendants

19. Defendant Gail Vasterling is sued solely in her official capacity as Director of the Missouri Department of Health and Senior Services. As Director, Vasterling is responsible for the management of the department and the administration of its programs and services, including death records.

20. Defendant Chris Koster is sued in his official capacity as the Attorney General of the State of Missouri. As Attorney General, Koster is the State's chief law enforcement officer and is charged with instituting any proceedings necessary to enforce state statutes. Mo. Rev. Stat.

§ 27.060. He is also authorized by statute to appear and answer or defend in any proceeding in which Missouri's interests are involved. *Id.*

21. Defendant Jeremiah W. Nixon is sued in his official capacity as the Governor of the State of Missouri. The supreme executive power is vested in the Governor. Mo. Const. art. IV, § 1. It is his duty to take care that the laws, including the Fourteenth Amendment, are faithfully executed in Missouri. Mo. Const. art. IV, § 2.

22. Defendant City of Kansas City, Missouri, is a municipal corporation and political subdivision of the State of Missouri. The City of Kansas City has enacted ordinances and policies that extend protections and benefits based upon, or otherwise recognize, marital status; however, relying on § 451.022 RSMo, § 104.012 RSMo, and Mo. Const. art. I, § 33, the City of Kansas City does not recognize the marriages of same-sex couples.

23. All defendants named above are, and at all relevant times have been, acting under color of state law, and are sued in their official capacities.

General Allegations

24. All of the plaintiffs were married legally under the laws of other jurisdictions, and their marriages would be recognized within Missouri but for the fact that they are married to a person of the same sex.

Missouri's Refusal to Recognize the Legal Marriages of Same-Sex Couples

25. In Missouri, marriage is governed by Chapter 451 of the Revised Statute, captioned "Marriage, Marriage Contracts, and Rights of Married Women." In 1996, Chapter 451 was revised to prohibit marriage for same-sex couples. The revision provided that "[a]ny purported marriage not between a man and a woman is invalid [and] [n]o recorder shall issue a marriage license, except to a man and a woman." § 451.022 RSMo. In addition, in a stark departure from Missouri's usual recognition of marriages entered into in other states, the

amendment declared, “[a] marriage between persons of the same sex will not be recognized for any purpose in this state even when valid where contracted.” *Id.*¹

26. The operation of state retirement systems is governed by Chapter 104 of the Revised Statutes of Missouri. In 2001, Chapter 104 was revised to provide that “[f]or the purposes of public retirement systems administered pursuant to this chapter, any reference to the term “**spouse**” only recognizes marriage between a man and a woman.” § 104.012 RSMo.

27. At the 2004 primary election, the Missouri Constitution was amended to include a provision, “[t]hat to be valid and recognized in this state, a marriage shall exist only between a man and a woman.” Mo. Const. art. I, § 33

28. As a result, marriage in Missouri is legally available only to different-sex couples. Same-sex couples may not marry in Missouri, and if they are married elsewhere, their marriages are not recognized in Missouri.

Same-Sex and Different-Sex Couples Are Similarly Situated

for Purposes of Having Their Legal Out-of State Marriages Recognized in Missouri

29. The Supreme Court has called marriage “the most important relation in life,” *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (internal quotation marks omitted), and an “expression[] of emotional support and public commitment,” *Turner v. Safley*, 482 U.S.78, 95 (1987). It is “a far-reaching legal acknowledgement of the intimate relationship between two

¹ Prior to 1996, the longstanding rule in Missouri was that the validity of a marriage was determined by the law of the jurisdiction where the marriage occurred. *See, e.g., Green v. McDowell*, 210 Mo. App. 517, 242 S.W. 168, 171 (Mo. App. 1922) (“The general rule is that a marriage, valid where contracted, is valid everywhere.”); *Hartman v. Valier & Spies Milling Co.*, 356 Mo. 424, 432, 202 S.W.2d 1, 5 (1947) (“The rule in Missouri is that the validity of a marriage is governed by the *lex loci contractus*[, not the *lex loci domicilii*].”); *Derrell v. United States*, 82 F. Supp. 18, 20-21 (E.D. Mo. 1949) (“The validity of a marriage is to be determined by the law of the place where it is contracted.”); *Yun v. Yun*, 908 S.W.2d 787, 789 (Mo. App. W.D. 1995).

people. . . .” *Windsor*, 133 S. Ct. at 2692. This is as true for same-sex couples as it is for different-sex couples.

30. Same-sex married couples such as the plaintiff couples are similarly situated to different-sex married couples in all of the characteristics relevant to the recognition of their legal marriages.

31. When they marry, same-sex couples make the same commitment to one another as different-sex couples. Like married different-sex couples, married same-sex couples build their lives together, plan their futures together, and hope to grow old together. Like married different-sex couples, married same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness.

32. Like many married different-sex couples, many married same-sex couples, such as plaintiffs Lisa and JoDe Layton-Brinker, as well as Jim MacDonald and Andy Schuerman, are parents raising children together.

33. Same-sex couples seeking to have their marriages recognized in Missouri are just as willing and able as married different-sex couples to assume the obligations of marriage.

34. The plaintiff couples and other married same-sex couples in Missouri, if permitted to have their marriages recognized, would benefit no less than different-sex couples from the many legal protections and the social recognition afforded to married couples.

35. There was a time when an individual’s sex was relevant to his or her legal rights and duties within the marital relationship. For example, husbands had a duty to support their wives but not vice versa and husbands had legal ownership of all property belonging to their

wives. But these legal distinctions have all been removed such that the legal rights and duties of husbands and wives are now identical.

Refusing to Recognize the Legal Marriages of Same-Sex Couples

Causes Substantial Harm to Couples and Their Families

36. By refusing to recognize the marriages of same-sex couples from other jurisdictions, Missouri deprives them of numerous legal protections that are available to different-sex couples in Missouri by virtue of their marriages.

37. Missouri law requires a decedent's marital status and surviving spouse's name to appear on a death certificate. Mo. Code Regs. Ann. tit. 19, § 10-10.050. Upon their deaths, all of the plaintiffs want their own and their spouse's respective death certificates issued and maintained by the State of Missouri to reflect their marriage, but § 451.022 RSMo and Mo. Const. art. I, § 33 prohibit and will continue to prohibit the same absent relief from this Court. Unless enforcement of § 451.022 RSMo and Mo. Const. art. I, § 33 are enjoined, when each of the plaintiffs dies, their death certificates will fail to accurately reflect their marital status and, if their spouse survives, the name of their surviving spouse.

38. Indeed, because § 451.022 RSMo and Mo. Const. art. I, § 33 prohibit and will continue to prohibit the recognition of the plaintiffs' marriages, Missouri's rules prohibit the state registrar of vital records from issuing a copy of a death certificate to the surviving spouse of a marriage if the spouses are of the same sex. *See* Mo. Code Regs. Ann. tit. 19, § 10-10.090.

39. Missouri law provides a "right of sepulcher" that allows an individual "the right to choose and control the burial, cremation, or other final disposition of a dead human body." Section 194.119 RSMo. The statute assigns the right of sepulcher to a hierarchical list of persons. "The surviving spouse" appears third on the list, preceded only by "[a]n attorney in

fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact” and in cases where the decedent “was on active duty in the United States military at the time of death[.]” *Id.* Upon their deaths, all of the plaintiffs want their spouse to choose and control the burial, cremation, or other final disposition of their body. Absent a valid power of attorney, § 451.022 RSMo and Mo. Const. art. I, § 33’s prohibitions on the recognition of the plaintiffs’ marriages will give the right of sepulcher to the decedent spouse’s surviving adult child, surviving minor child’s guardian, surviving parent, surviving sibling, and “[t]he next nearest surviving relative of the deceased by consanguinity or affinity” over any right claimed by the surviving spouse. Section 194.119 RSMo.

40. As a result of their public service, several plaintiffs are participating in state retirement systems operated pursuant to Chapter 104 of the Revised Statutes of Missouri. The retirement systems provide benefits to the surviving spouses of employees. Section 451.022 RSMo; § 104.012 RSMo; Mo. Const. art. I, § 33, prohibit any of the state retirement systems from recognizing the spouse of a gay man or lesbian. Unless enforcement of § 451.022 RSMo, § 104.012 RSMo, and Mo. Const. art. I, § 33 are enjoined, those surviving spouses of the plaintiffs who participate in a state retirement system will be deprived of the rights and benefits to which different-sex spouses are entitled. Even now, those plaintiffs who participate in state retirement systems are deprived of the comfort and security of knowing that their spouses will be cared for in the event of their death.

41. Many Missouri municipalities, including the City of Kansas City, extend protection in housing from discrimination based on marital status. *See, e.g.*, Kansas City Code of Ordinances, § 38-105; Maryland Heights Code of Ordinances § 12-17; Sunset Hills Code of

Ordinances, § 2-354; Black Jack Code of Ordinances, § 9.5-21; Crestwood Code of Ordinances, § 7-152; Kirksville Code of Ordinance, § 10-38; Mexico Code of Ordinances, § 10-63; Perryville Code of Ordinances, § 9.24.040; Ballwin Code of Ordinances, § 13-102. Section 451.022 RSMo and Mo. Const. art. I, § 33's prohibitions on the recognition of the plaintiffs' marriages prevent these municipalities from affording equal protection to the plaintiffs.

42. Many of Missouri's political subdivisions, including the City of Kansas City, seek to attract and retain the most qualified employees by offering equal benefits to same-sex couples but are prohibited by § 451.022 RSMo and Mo. Const. art. I, § 33 from recognizing the marriages of these couples. As a result, these political subdivisions impose criteria and require documentation not required of other married couples.

43. There are many other ways in which Missouri's refusal to recognize the marriage of same-sex couples causes those couples to be treated unequally. By way of example only:

- a. A married person is entitled to private visits with his or her spouse in a nursing home and, if both are residents at the same facility, spouses are permitted to share a room. § 198.088 RSMo. A same-sex spouse is not entitled to privacy during a visit to his or her spouse, and married same-sex couples are not permitted to share a room.
- b. An opposite-sex spouse may give consent for an experimental treatment, test, or drug on behalf of his or her spouse who is incapable of giving informed consent. § 431.064 RSMo. A same-sex spouse may not.

- c. Different-sex spouses are not required to testify against their spouse in a criminal trial. §546.260 RSMo. Same-sex spouses can be compelled to testify against their spouse.
- d. Different-sex spouses have priority to bring an action for wrongful death if their spouse is killed. §537.080, RSMo. Same-sex spouses do not.
- e. Different-sex spouses may file a claim for compensation on behalf of an incapacitated or disabled spouse. §537.684, RSMo. Same-sex spouses may not.
- f. Different-sex spouses may petition for maintenance when they are abandoned without good cause and without maintenance. § 452.130. Same-sex spouses may not.
- g. A different-sex spouse whose husband or wife is the victim of a drunk driver may apply for the installation of a drunk-driving victim memorial sign. § 227.295 RSMo; Mo. Code Regs. Ann. tit. 7, § 10-27.010. A same-sex spouse may not.
- h. Surviving different-sex spouses are entitled to remainder of workers' compensation payments for permanent total disability of their decedent spouse. §287.200.4(5) RSMo. Same-sex spouses are not.
- i. Surviving different-sex spouses are entitled to continued coverage under their spouses' health, dental, vision care, or prescription-drug insurance plans. § 376.892, RSMo. Same-sex spouses are not.
- j. A surviving different-sex spouse of a "firefighter, police officer, capitol police officer, parole officer, probation officer, correctional employee,

water patrol officer, park ranger, conservation officer, commercial motor enforcement officer, emergency medical technician, first responder, or highway patrolman employed by the state of Missouri or a political subdivision thereof who is killed in the line of duty” is entitled to an income-tax credit. § 135.090. A surviving same-sex spouse would not be allowed the tax credit.

- k. The surviving different-sex spouse of a public employee with five or more years of service who dies before retirement would receive a survivorship benefit. § 104.140 RSMo. A same-sex surviving spouse would not.
- l. A surviving different-sex spouse of certain police officers killed in the line of duty would receive a one-time \$50,000.00 payment. § 86.1260 RSMo. A same-sex spouse would not.
- m. The surviving different-sex spouse of a firefighter who dies in the line of duty is entitled to a pension. § 87.445 RSMo. A same-sex spouse is not.
- n. A surviving different-sex spouse of an individual killed in an automobile accident may obtain a copy of the coroner’s report. § 58.449 RSMo. A same-sex spouse would be required to seek a subpoena. *Id.*
- o. A bank deposit made by different-sex spouses will be considered a tenancy by the entirety. § 362.470 RSMo. Same-sex spouses cannot hold an account as tenants by the entirety.

44. By refusing to recognize the legal marriages of same-sex couples, Missouri excludes those couples from the foregoing – and many other – protections provided to married couples under Missouri law.

45. Refusing to recognize the legal marriages of same-sex couples also denies them eligibility for numerous federal protections afforded to married couples. Some of the federal protections for married couples are only available to couples if their marriages are legally recognized in the state in which they live. *See, e.g.*, 42 U.S.C. § 416(h)(1)(A)(i) (marriage for eligibility for social security benefits based on law of state where couple resides at time of application); 29 C.F.R. § 825.122(b) (same for Family Medical Leave Act). Thus, even though plaintiffs are already married, they cannot access such federal protections as long as Missouri refuses to recognize their existing marriages.

46. Refusing to recognize the legal marriages of same-sex couples also harms same-sex couples and their families in less tangible ways. Although the plaintiff couples are all legally married, they and other same-sex married couples are denied the stabilizing effects of having their marriages recognized in their home state, which helps keep couples together during times of crisis or conflict.

47. Refusing to recognize the legal marriages of same-sex couples also harms couples and their children by denying them the social recognition that comes with marriage. Marriage has profound social significance both for the couple that gets married and the family, friends and community that surround them. The terms “married” and “spouse” have understood meanings that command respect for a couple’s relationship and the commitment they have made.

48. Refusing to recognize the legal marriages of same-sex couples also demeans and stigmatizes lesbian and gay couples and their children by sending the message that they are less worthy and valued than families headed by different-sex couples.

49. The plaintiff couples understand that having their marriages recognized in Missouri entails both benefits to and obligations on the partners – and they welcome both.

Refusing to Recognize the Legal Marriages of Same-Sex Couples Is Not Rationally Related to a Legitimate Government Interest, Let Alone Able to Withstand Heightened Scrutiny

50. Refusing to recognize the legal marriages of same-sex couples in Missouri is not closely tailored to serve an important government interest or substantially related to an exceedingly persuasive justification. In fact, the prohibition fails any level of constitutional scrutiny. It is not even rationally related to any legitimate government interests that were offered in support of it when Chapter 451 was revised in 1996, Chapter 104 was amended in 2001, and the Bill of Rights was altered in 2004 or to any legitimate interest of the State that defendants might now offer as a basis for refusing to recognize the marriages of same-sex couples.

Moral Opposition to Marriage for Same-Sex Couples and Support of the Traditional Family

51. Neither tradition nor moral disapproval of same-sex relationships or marriage for lesbian and gay couples is a legitimate basis for unequal treatment of same-sex couples under the law. The fact that a discriminatory law is long-standing does not immunize it from constitutional scrutiny. And the Supreme Court has made clear that the law cannot, directly or indirectly, give effect to private biases and has expressly rejected moral disapproval of marriage for same-sex couples as a legitimate basis for discriminatory treatment of lesbian and gay couples. *Windsor*, 133 S. Ct. at 2693 (holding an “interest in protecting traditional moral

teachings reflected in heterosexual-only marriage laws” was not a legitimate justification for federal Defense of Marriage Act).

Preserving the Public Fisc and the Coffers of Private Business

52. Missouri cannot justify its refusal to recognize the marriages of lesbian and gay couples by claiming an interest in preserving the public fisc or the coffers of private business. Saving money is not a justification for excluding a group from a government benefit without an independent rationale for why the cost savings ought to be borne by the particular group denied the benefit. Moreover, there is no factual basis for the notion that recognizing the marriages of same-sex couples will burden the State financially or constitute a burden on businesses.

Protection of Children

53. Missouri’s refusal to recognize the plaintiffs’ marriages is not rationally related to child welfare concerns. The government has a vital interest in protecting the well-being of children, but the exclusion of same-sex couples from marriage bears no relation to this interest. To the contrary, it harms children in the State.

54. Moreover, there is no valid basis to assert a preference for childrearing by different-sex couples over same-sex couples. There is a consensus within the scientific community, based on over thirty years of research, that children raised by same-sex couples are just as well adjusted as children raised by different-sex couples. This is recognized by every major professional organization dedicated to children’s health and welfare, including the American Academy of Pediatrics, the American Psychological Association, the American Medical Association, the National Association of Social Workers, and the Child Welfare League of America.

55. Other courts have found, after trials involving expert testimony, that there is no rational basis for favoring parenting by heterosexual couples over gay and lesbian couples. *See, e.g., Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 980 (N.D. Cal. 2010) (finding that the research supporting the conclusion that “[c]hildren raised by gay or lesbian parents are as likely as children raised by heterosexual parents to be healthy, successful and well-adjusted” is “accepted beyond serious debate in the field of developmental psychology”), *aff’d sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *vacated for lack of standing sub nom Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *In re Adoption of Doe*, 2008 WL 5006172, at *20 (Fla. Cir. Ct. Nov. 25, 2008) (“[B]ased on the robust nature of the evidence available in the field, this Court is satisfied that the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of children are not preserved by prohibiting homosexual adoption.”), *aff’d sub nom Florida Dep’t of Children & Families v. Adoption of X.X.G.*, 45 So.3d 79 (Fla. Dist. Ct. App. 2010); *Howard v. Child Welfare Agency Review Bd.*, Nos. 1999-9881, 2004 WL 3154530, at *9 and 2004 WL 3200916, at *3-4 (Ark. Cir. Ct. Dec. 29, 2004) (holding based on factual findings regarding the well-being of children of gay parents that “there was no rational relationship between the [exclusion of gay people from becoming foster parents] and the health, safety, and welfare of the foster children.”), *aff’d sub nom Dep’t of Human Servs. v. Howard*, 238 S.W.3d 1 (Ark. 2006).

56. Refusing to recognize the marriages of same-sex couples has no conceivable benefit to children of heterosexual couples. It does not encourage different-sex couples who have children to marry or stay married for the benefit of their children. And regardless of whether the marriages of same-sex couples are recognized, the children of different-sex spouses will continue to enjoy the same benefits and protections that flow from their parents’ marriage.

57. Refusing to recognize the marriages of same-sex couples harms the children raised by lesbian and gay couples by denying their families significant benefits and by branding their families as inferior and less deserving of respect and, thus, encouraging private bias and discrimination. According to data from the 2010 United States Census, there are over 1,900 same-sex couples raising children in Missouri. The State’s interest in the welfare of children of lesbian and gay parents is, or should be, as great as its interest in the welfare of other children.

CLAIMS FOR RELIEF

COUNT I

Deprivation of the Fundamental Right to Marry in Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

58. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

59. The Fourteenth Amendment to the United States Constitution precludes any State from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Governmental interference with a fundamental right may be sustained only upon a showing that the legislation is closely tailored to serve an important governmental interest.

60. The Supreme Court has long recognized that marriage is a fundamental right and that choices about marriage, like choices about other aspects of family, are a central part of the liberty protected by the Due Process Clause.

61. Courts in Missouri have recognized marriage as a fundamental right. *See Fuller v. Norman*, 936 F. Supp. 2d 1096, 1097 (W.D. Mo. 2013); *Nichols v. Moyers*, 4:13CV735 CDP,

2013 WL 2418218, at *1 (E.D. Mo. June 3, 2013); *Amos v. Higgins*, 14-004011-CV-C-GAF (W.D. Mo. Feb. 6, 2014); *Komosa v. Komosa*, 939 S.W.2d 479, 483 (Mo. App. E.D. 1997).

62. Missouri law denies the plaintiff couples and other same-sex couples this fundamental right by refusing to recognize the marriages they entered into in other states.

63. Missouri can demonstrate no important interest to justify denying the plaintiff couples this fundamental right. Indeed, it cannot demonstrate that the denial is tailored to any legitimate interest at all.

64. Missouri's refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates the Due Process Clause.

65. Defendants, acting under color of state law, are depriving plaintiffs of rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

COUNT II

Discrimination on the Basis of Sexual Orientation in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

66. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

67. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

68. By denying the plaintiff couples and other lesbian and gay couples the ability to have their out-of-state marriages recognized, the State, through defendants, disadvantages lesbian and gay people on the basis of their sexual orientation. It denies them significant legal

protections. And it “degrade[s] [and] demean[s]” them by “instruct[ing] . . . all persons with whom same-sex couples interact, including their own children,” that their relationship is “less worthy” than the relationships of others. *Windsor*, 133 S. Ct. at 2696.

69. Same-sex married couples and different-sex married couples are similarly situated for purposes of marriage.

70. The evidence will show that classifications based on sexual orientation demand heightened scrutiny.

71. Lesbians and gay men are members of a discrete and insular minority that has suffered a history of discrimination in the Commonwealth and across the United States.

72. Sexual orientation bears no relation to an individual’s ability to perform or contribute to society.

73. Sexual orientation is a core, defining trait that is so fundamental to one’s identity that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment. Sexual orientation generally is fixed at an early age and highly resistant to change through intervention. Efforts to change a person’s sexual orientation through interventions by medical professionals have not been shown to be effective. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and many – including the American Psychological Association and the American Psychiatric Association – have adopted policy statements cautioning professionals and the public about these treatments.

74. Prejudice against lesbians and gay men continues to seriously curtail the operation of the political process preventing this group from obtaining redress through legislative means. Lesbians and gay men lack statutory protection against discrimination in employment, public

accommodations, and housing at the federal level and in more than half of the states, including Missouri. Lesbians and gay men have far fewer civil rights protections at the state and federal level than women and racial minorities had when sex and race classifications were declared to be suspect or quasi suspect. They have been stripped of the right to marry through 30 state constitutional amendments, and have been targeted through the voter initiative process more than any other group.

75. For all these reasons, classification based on sexual orientation should be reviewed under heightened scrutiny, but this classification cannot survive under any level of constitutional scrutiny. The refusal to recognize the marriage of same-sex couples is not rationally related to any legitimate governmental interest. All it does it disparage and injure lesbian and gay married couples and their children.

76. Missouri's refusal to recognize the marriages of same-sex couples entered into elsewhere violates the Equal Protection Clause.

77. Defendants, acting under color of state law, are depriving plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

COUNT III

Discrimination on the Basis of Sex in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

78. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

79. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

80. Missouri’s codified public policy is “to recognize marriage only between a man and a woman.” § 451.022, RSMo. In addition, the State provides that “[a] marriage between persons of the same sex will not be recognized for any purpose in this state even when valid where contracted.” *Id.*

81. By limiting the recognition of marriage in this way, the State discriminates on the basis of sex. For example, the marriage of Lisa Layton-Brinker is not recognized because she married JoDe Layton-Brinker and they are both women. If Lisa (or JoDe) were a man, their marriage would be recognized. The only reason the marriage is not recognized is the sex of the spouses.

82. The Supreme Court of the United States has made clear that perpetuation of traditional gender roles is not a legitimate government interest.

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

84. The defendants can demonstrate no exceedingly persuasive justification for this discrimination based on sex.

85. State law prohibiting recognition of marriage for same-sex couples thus violates the Equal Protection Clause.

86. Defendants, acting under color of state law, are depriving plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

1. Enter a declaratory judgment that § 451.022, § 104.012 RSMo, and Mo. Const. art. I, § 33 violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
2. Enter a declaratory judgment that § 451.022, § 104.012 RSMo, and Mo. Const. art. I, § 33 violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
3. Enter a permanent injunction directing defendants to recognize marriages validly entered into by the plaintiff couples and other same-sex couples outside of the State of Missouri;
4. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
5. Enter all further relief to which plaintiffs may be justly entitled.

Respectfully submitted,

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