

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

SYLVIA SAMUELS and DIANE  
GALLAGHER, HEATHER  
McDONNELL and CAROL SNYDER,  
AMY TRIPI and JEANNE VITALE,  
WADE NICHOLS and HARNG SHEN,  
MICHAEL HAHN and PAUL  
MUHONEN, DANIEL J. O'DONNELL  
and JOHN BANTA, CYNTHIA BINK  
and ANN PACHNER, KATHLEEN  
TUGGLE and TONJA ALVIS, REGINA  
CICCHETTI and SUSAN ZIMMER,  
ALICE J. MUNIZ and ONEIDA GARCIA,  
ELLEN DREHER and LAURA COLLINS,  
JOHN WESSEL and WILLIAM  
O'CONNOR, and MICHELLE CHERRY-  
SLACK and MONTEL CHERRY-  
SLACK,

Plaintiffs,

v.

The NEW YORK STATE DEPARTMENT  
OF HEALTH and the STATE OF NEW  
YORK,

Defendants.

Index No. \_\_\_\_\_

**COMPLAINT**

Plaintiffs Sylvia Samuels and Diane Gallagher, Heather McDonnell and Carol Snyder, Amy Tripi and Jeanne Vitale, Wade Nichols and Harng Shen, Michael Hahn and Paul Muhonen, Daniel J. O'Donnell and John Banta, Cynthia Bink and Ann Pachner, Kathleen Tuggle and Tonja Alvis, Regina Cicchetti and Susan Zimmer, Alice J. Muniz and Oneida Garcia, Ellen Dreher and Laura Collins, John Wessel and William O'Connor, and Michelle Cherry-Slack and Montel Cherry-Slack, by their counsel, Paul Weiss, Rifkind, Wharton & Garrison LLP, the American Civil Liberties Union

Foundation and the New York Civil Liberties Union Foundation, for their complaint against defendants the New York State Department of Health (“DOH”) and the State of New York, allege as follows:

### **Nature of the Action**

1. Marriage is the universally recognized social structure for two people who have committed to build a life together. At heart, it is both a personal and a very public commitment of two people to each other. And in this State, as in the rest of the nation, it is surrounded by a complex legal structure that reflects that commitment. Laws about property and taxes, for example, generally reflect the understanding that married people function not as separate individuals, but as a unit. Laws about decision-making in a crisis demonstrate the understanding that when an adult is incapacitated, it is her or his spouse who is usually best suited above all, even above parents and siblings, to know how he or she would choose to act. Marriage is also the structure through which two people typically raise children together. Even laws about death and dying reflect the understanding that the person most central in a married adult’s life is his or her spouse.

2. By reflecting legally the reality of life as a committed couple, the legal institution of marriage creates vitally important protections, rights and obligations.

3. At one time, the right to marry in America was far more restricted than it is today. Marriage was not available to African-Americans held in slavery; it was not available to couples who were not thought to be of the same race. People of different religious faiths, as a practical matter, typically were not permitted to marry. Decisions about marriage were at one time widely thought to be the prerogative of a person’s parents. And historically, marriage was far from an equal partnership. Until surprisingly

recently, women were legally held incapable in matters of finance and property, and men were viewed, in the eyes of the law, as less capable in matters of child rearing.

4. In recent years, governments, businesses, universities and other institutions have begun to acknowledge that society has failed to make its legal and social structure for committed adult couples available to lesbians and gay men. Those institutions, generally with limited ability to affect complex legal structures, have nonetheless attempted to remedy that failure. They have created insurance policies, hospital visitation policies, registration systems and other protections for domestic partners. While the goals of these policies and systems are indeed laudable, unfortunately, they fall far short of reflecting the commitment that two people who build a life together have, and they fail adequately to protect the relationships of same-sex couples.

5. Society's continued failure to make the structures of marriage available to lesbian and gay couples who live their lives together has led these plaintiffs to this Court. They are here to ask that this Court perform what is perhaps its most solemn and sacred duty – namely, ensuring that the basic rights of being a New Yorker and an American are extended to all, and to do so most particularly when the political branches lack the will to act.

6. Plaintiffs here are thirteen same-sex couples who seek recognition of the commitment that they have already made to each other by being permitted to marry. Many of the plaintiffs have placed their names on a waiting list for those who wished to be wed by the Mayor of New Paltz, New York, and have sought marriage licenses from the Town Clerk of New Paltz.

7. The plaintiff couples come from many parts of New York: Binghamton, Schenectady, Port Jervis, West Hurley, Mount Vernon, White Plains, Brooklyn and Manhattan. The plaintiffs come from all walks of life: they include professionals (some are teachers, one is a counselor, one a financial aid officer, and one a lawyer) and blue collar workers (one is a shipping clerk, some are hotel workers). One plaintiff is an artist, another a member of the New York State Assembly, and yet another is a New York City police officer. These plaintiffs reflect the rich diversity of this State: they are African-American, Latino, Caucasian and Asian; Jewish, Catholic, Protestant, religious and not. Many have been together for decades, and some are raising children together. One couple has grandchildren. The situations faced by these couples are similar to those faced by the many thousands of same-sex couples in this State who are being denied basic rights that are afforded to millions of married New Yorkers on a daily basis.

8. Sylvia Samuels, for example, has a life-threatening illness, and she and her partner Diane Gallagher know only too well from the past that their relationship is unlikely to receive the respect it deserves when hospitals and doctors get involved. Carol Snyder and Heather McDonald, who went through an experience with a hospital similar to that of Sylvia and Diane, took all the steps that they could to make sure that such problems would not happen again, only to find that powers of attorney and domestic partnerships are no substitute for marriage. Amy Tripi and Jeanne Vitale must face the fact that their relationship is not recognized by the State as they prepare to become parents of a child. Wade Nichols and Harnng Shen are forced to move back and forth between the two nations of which they are citizens because neither nation recognizes

their relationship as legally significant. John Wessel and William O'Connor, as well as Laura Collins and Ellen Dreher, who are older couples, must confront the problems that might arise if one of them becomes disabled, needs to go into a nursing home, or dies.

9. These couples present a snapshot of the issues raised by this constitutional challenge, and reveal how the inability of same-sex couples in this State to get married is not only an unconstitutional deprivation of rights, but also results in real, everyday, practical problems in the lives of many thousands of ordinary New Yorkers.

10. More specifically, denying marriage to same-sex couples results in the deprivation of more than 700 provisions of New York State law that protect couples through civil marriage. These rights and responsibilities include, among others: the ability to maintain a tenancy by the entirety; the ability to file income taxes jointly and receive a marital deduction; the equitable distribution of property; financial protection for surviving partners of police officers and firefighters; the right to inherit; protections against creditors; the presumption of coverage of a spouse under automobile insurance; decision-making authority for funeral arrangements and disposition of a spouse's remains; and any number of parental rights and responsibilities.

11. Equally as important, denying two people in a loving, committed relationship the right to marry one another denies that couple the opportunity to express their commitment in the most serious way that society provides. It denies them the opportunity to enter into a relationship that is universally respected and recognized as a symbol of their love and commitment. Being excluded from this institution thus brands same-sex couples with the stigma of inferiority.

12. The last United States census, conducted in 2000, counted 46,490 New York State households as being comprised of same-sex “unmarried partners.” According to a recent study of gay and lesbian demographics conducted by the Urban Institute, some 1.2 million gays and lesbians report living together in the United States as “unmarried partners.” These numbers, however, are widely viewed as being only a fraction of the actual numbers since many same-sex unmarried partners are reluctant to disclose their relationship to a government entity out of fear of reprisal or discrimination. According to the Urban Institute’s study, same-sex couples account for nearly one percent of households nationwide and it is widely believed that New York City has the largest gay population of any city in the United States, including San Francisco. Moreover, more than a quarter of same-sex couples are raising children and these couples, like their heterosexual counterparts, typically have an average of two children per family.

13. The State of New York has had a long and distinctive tradition of affording protection to gays and lesbians, a history that mandates interpreting the State’s Constitution to require that same-sex couples have an ability equal to that of opposite-sex couples to marry under State law.

14. New York has long been a center for gay and lesbian life and a bastion for gay culture. Indeed, New York has in a very real sense served as a point of gathering and refuge for millions of gay and lesbian Americans who, over the course of the last century, fled other areas of the country to move to New York where they believed they could live and prosper in a more tolerant community. The term “Stonewall,” after all, which has served as the symbolic rallying cry of the modern gay and lesbian civil

rights movement, is derived from the name of the Greenwich Village bar that served as the backdrop for a confrontation between the gay community and police during the summer of 1969. New York State uniquely values the recognition of gay and lesbian persons as equal to all other persons, and the failure to recognize in a legal sense the committed relationships of gay men and lesbians thus contravenes the basic policy of this State.

15. Article 1, Sections 6, 8 and 11 of the New York State Constitution guarantee same-sex couples the right to marry. Because the relevant provisions of the New York State Domestic Relations Laws (the “DRL”) do not permit same-sex couples to marry, the statute, on its face, is unconstitutional.

### **The Plaintiffs**

#### **Sylvia Samuels and Diane Gallagher**

16. Plaintiffs Sylvia Samuels (“Sylvia”) and Diane Gallagher (“Diane”) have maintained a committed relationship of mutual protection and support for the past twenty-four (24) years. They live together in Mount Vernon, New York. Sylvia is presently on disability leave from her career as a computer information technology specialist. Diane is a high school social studies teacher in New York City.

17. When Sylvia and Diane became a couple, Sylvia had two children, who were then 4 and 6 years old. Sylvia and Diane raised the children together, and they now have three grandchildren.

18. A number of years ago, when they lived in North Carolina, Sylvia was hit by a car while riding a bicycle. The doctors would not let Diane be with Sylvia while she lay unconscious in the emergency room because they did not believe that they

were a family. In fact, one of the doctors callously stated that Diane could not come in the emergency room because Diane “didn’t look like her.” (Sylvia is African-American and Diane is white.)

19. Sylvia presently suffers from hepatitis C that has now developed into liver cancer. She needs a liver transplant to survive. If she does not receive a transplant, she probably has less than two years to live. Sylvia is presently on a waiting list for a transplant organ.

20. Sylvia receives health insurance through the City of New York, which is Diane’s employer. But Sylvia and Diane want to be sure that what happened to them in North Carolina does not happen again. As they face the certainty of spending much of their future in hospitals and the possibility of death in the near future, they want to be sure that Diane is recognized as family, indeed as Sylvia’s partner. They want the respect they would get as a married couple. Sylvia wants spousal protections for Diane in the event that something happens to her. Diane wants Sylvia to continue to be covered under her health insurance, no matter where she works. Sylvia and Diane’s adult children and grandchildren very much want to see them get married.

Heather McDonnell & Carol Snyder

21. Plaintiffs Heather McDonnell (“Heather”) and Carol Snyder (“Carol”) have maintained a committed relationship of mutual protection and support for the past fourteen (14) years. They are known to friends as “the McSnyders.”

22. Carol is a New York City public school teacher, and Heather is the Director of Financial Aid at Sarah Lawrence College. Heather and Carol live together in White Plains, New York. They share their financial resources, and they are raising their



daughters together. (Carol has two daughters, and Heather has legal guardianship of one daughter.)

23. Carol was diagnosed with stage two breast cancer eleven years ago. When that occurred, Heather had to fight to be a part of Carol's care at the hospital. They purposefully sought a surgeon who understood the significance of committed same-sex relationships. However, the nurses and other hospital staff were constantly challenging Heather. They frequently demanded to know who she was, saying things like: "Who are you? Why are you here? Are you her sister?" Only their doctor seemed to comprehend and respect their relationship.

24. After that experience, they formally registered as domestic partners, and set up health care proxies naming each other. However, being registered as a domestic partner is not the same thing as being married. New York City's domestic partnership law (N.Y. City. Admin. Code § 3-240), for example, provides only a pale shadow of the protection conferred by civil marriage. For example, New York City's domestic partnership law does not expressly provide domestic partners with the right to make emergency medical decisions for their domestic partners or to inherit from each other. If a couple moves out of New York City, it is far from clear that even the limited protections its law confers will move with them. Moreover, although New York City has had a domestic partnership registry in place since 1998, many large employers in New York City still do not offer health insurance benefits to same-sex domestic partners.

25. In January 2003, Carol had a cardiac event that was caused by a sedative. Despite their legal domestic partnership and the health care proxy, the hospital again did not recognize Heather's role as family and in particular as Carol's partner. At

one point, Carol was crashing and the doctor told Heather to keep talking to Carol to soothe her. A nurse came into the room and told Heather, “You can leave.” Heather pointed out that she was Carol’s health care proxy, and the nurse responded: “Who *are* you?”

26. As a result of these experiences, Carol and Heather are acutely aware that even with planning in advance, health care proxies and domestic partnerships are no substitute for the recognition that comes with marriage. They want to be sure that in any future crisis, especially a health crisis, they won’t have to explain who they are to one another and go looking for papers to back them up. They want their relationship to be recognized as a marriage.

27. They have not applied for a marriage certificate in any other State because they want to be married in New York, their home State.

Amy Tripi and Jeanne Vitale

28. Plaintiffs Amy Tripi (“Amy”) and Jeanne Vitale (“Jeanne”) met ten (10) years ago and have maintained a committed relationship of mutual protection and support for the past seven (7) years.

29. Amy and Jeanne live together in Highland, New York, in a home that they jointly own. They are also jointly responsible for a home equity line of credit.

30. Amy and Jeanne exchanged rings and registered three years ago as domestic partners in the City of New York; their certificate of domestic partnership is framed and hanging on a wall in their home.

31. Amy and Jeanne are expecting their first child this summer. The child is Amy’s biological child. The sperm donor is a close friend and has agreed that he

will have no legal or financial role in the child's upbringing. Once the child is born, Jeanne intends to apply to be a second legal parent through adoption.

32. However, second parent adoption is not an uncomplicated process. It requires the couple to file an adoption petition in either New York's Surrogate's or Family Court. This petition must be accompanied by such supporting documentation as a birth certificate and medical history of the child, an explanation of how the child was conceived, proof that the parent and proposed adoptive parent live together and information about the nature of their relationship, letters of reference, and health care proxies and medical directives for the parents. The couple must then undergo a home study by a social worker. This cumbersome process can easily take over a year in Surrogates Court, and typically takes even longer in Family Court. Furthermore, it can cost thousands of dollars in attorney's fees.

33. There are practical problems with the State's refusal to marry Amy and Jeanne. Both Amy and Jeanne are self-employed: Amy works as a fundraiser for nonprofit organizations, and Jeanne is a video producer and editor. As a result, Amy and Jeanne purchase their health insurance individually from their local Chambers of Commerce: Jeanne from New Paltz, and Amy from Ulster. If Amy and Jeanne qualified as married under their current health plans, their family health care costs once their baby is born would be approximately \$2,000 less expensive per year.

34. To Amy and Jeanne, it is important that there be no doubt about whether they are legally the parents of their child. For instance, if Amy were to die before Jeanne is able to adopt their child as a second parent, there would be a risk that Jeanne would not be recognized as the surviving parent. If one of them were to become

disabled, the other will be better able to take care of her and their child as a result of being married. Similarly, when one of them dies, the survivor and their child will be better protected if they are married.

Wade Nichols and Harnng "Francis" Shen

35. Plaintiffs Wade Nichols ("Wade") and Harnng "Francis" Shen ("Francis") have maintained a committed relationship of mutual respect and support for the past five (5) years. Wade currently lives in New York City and Francis lives in Taiwan. Wade and Francis met at a social club in Colorado. Wade is a U.S. Citizen and Francis is a citizen of Taiwan.

36. Wade and Francis had a large public wedding ceremony in Taipei in front of 100 guests, including members of both of their families, as well as their friends, coworkers, and employers. Despite this ceremony that was conducted in Taiwan, Wade and Francis are denied the rights that an opposite-sex couple would enjoy in being nationalized as citizens.

37. Wade and Francis spend most of their time together in Taiwan because it is easier for Wade to get work sponsorship there than for Francis to find a way to stay in the United States. Due to immigration laws, Francis (a Taiwanese citizen) cannot stay for long periods of time in the United States, and Wade (a United States citizen) cannot stay for long periods of time without work sponsorship (which has to be renewed every year).

38. Prior to meeting Francis, Wade had bought and remodeled a house in Denver, Colorado. He has decided to sell the house this summer because he cannot manage the property from Taiwan.

39. Wade recently suffered a death in the family, and was not able to be present to mourn and comfort other family members because he was in Taiwan with Francis.

40. Wade is presently on a grant to obtain an advanced degree at Columbia University, which forces him to be apart from Francis except for short visits from Francis on tourist visas.

41. Wade and Francis are a committed couple who simply want to be able to live together in the same country. Marriage is a step in making that wish a reality.

Michael Hahn and Paul Muhonen

42. Plaintiffs Michael Hahn (“Michael”) and Paul Muhonen (“Paul”) live together in Binghamton, New York. They have maintained a committed relationship of mutual respect and support for the past twenty-two (22) years.

43. Michael and Paul met at Yellowstone National Park. They both worked at a lodge, where Paul was playing piano and Michael was doing dishes.

44. Michael works in the back office of a local bank in Binghamton, New York, and Paul is a manager at a local Howard Johnson’s hotel and restaurant. Paul does not have health insurance at his job, and Michael’s employer does not offer domestic partner benefits. Michael has tried to find a way to cover Paul on the insurance that he receives from his employer, but he cannot because their committed relationship is not recognized in the eyes of the law.

45. Discrimination based on their status as gay men is not something new to Michael and Paul. When Michael relocated from Ohio to his job in Binghamton, he was promised reimbursement for moving expenses. When his employer found out that

Michael has a gay partner, however, the employer refused to pay the moving expenses. The employer noted that he considered it to be the same as paying for the move of a friend or a roommate, and stated that he was not obliged to pay for such moving expenses.

46. Michael and Paul are now looking to buy a house together in Binghamton. In trying to rent a house last year, their realtor introduced Michael and Paul to the owner of the property that they were seeking to rent. When the owner asked them point-blank if they were gay, and they responded in the affirmative, he told them that he would not rent to them.

47. Michael and Paul live together as a committed couple. For them, marriage offers concrete, practical benefits as well as social recognition of their existing relationship. They want to be married in order to ensure that Paul is covered by Michael's health insurance, and to protect both of them in the event that should something happen to either one of them.

Daniel J. O'Donnell and John Banta

48. Plaintiffs Daniel J. O'Donnell ("Daniel") and John Banta ("John") live together in New York City.

49. Daniel and John met on their first day of college in September, 1978. As Daniel explains, he and John are "soul mates," and everyone who knows them can see that they are the "perfect counterparts" to each other. They have maintained a committed relationship of mutual support and protection since they met in 1978.

50. Daniel is the first openly gay man to be a member of the New York State Assembly, to which he was elected in 2002. Prior to becoming a member of the

Assembly, Daniel worked as a lawyer in both a private public-interest oriented practice and as a staff attorney at the Legal Aid Society.

51. John is the Director of Special Events for the American Ballet Theatre (“ABT”), where he coordinates special events for the purpose of raising funds for the ABT.

52. To Daniel and John, the right to marry is a simple matter of equality and justice. In fact, they have not registered as domestic partners in New York City because nothing short of marriage is acceptable to them.

Cynthia Bink and Ann Pachner

53. Plaintiffs Cynthia Bink (“Cindy”) and Ann Pachner (“Ann”) live together in West Hurley, New York, and have maintained a committed relationship of mutual respect and support for the past sixteen (16) years.

54. Cindy and Ann come from different faiths. Cindy was raised as a Roman Catholic; Ann’s father is Jewish. Nonetheless, both of their families are supportive of their relationship.

55. Cindy is director of counseling at the City College of New York. Ann does consulting work for *The Economist* magazine and is an art and wood sculptor. Ann does not have her own health insurance.

56. As Ann and Cindy got older, they became more and more concerned about Ann’s lack of health care coverage. Cindy had been a counselor at Passaic County Community College in New Jersey for 17 years. But Passaic Community did not offer domestic partner health coverage, so Cindy was unable to cover Ann. Eventually, Cindy resigned, expressly citing “lack of domestic partner health care

benefits” as her prime reason. Ultimately, Cindy found a job working for the City of New York, which offered health care for both her and Ann.

57. Cindy and Ann are extremely concerned about what could happen to the surviving partner if either of them dies. They want their relationship to be acknowledged by society and they want to have access to public benefits such as Social Security and health insurance in the same manner as heterosexual married couples.

Kathleen Tuggle and Tonja Alvis

58. Kathleen Tuggle (“Kathy”) and Tonja Alvis (“Tonja”) live together in Schenectady, New York. Kathy and Tonja have maintained a committed relationship of mutual protection and support for the past five (5) years.

59. Kathy has two children: Ryan, age 18, and Sean, age 8, from two prior marriages. Kathy and Tonja raise Sean together. They are both involved with Sean’s school, and attend Parent Teacher Association meetings together.

60. Kathy is a Resident Nurse in an emergency room, and once delivered a baby in a van stuck in traffic. Tonja works as a shipping and receiving clerk, and also works as a salesperson at a local lighting fixtures store. Tonja has no health insurance because she cannot afford the plan offered by her employer. Kathy pays for family coverage but is not allowed to put Tonja on her policy as a member of her family.

61. Tonja and Kathy love each other deeply and have built a life together. They want to formalize their relationship in order to ensure stability and protection for their son, Sean. They know that they are a family and would like to be recognized as such in the eyes of society and the law. Tonja and Kathy are raising their



son together, and they want their family to have all the same protections that opposite-sex couples have in New York State.

Regina Cicchetti and Susan Zimmer

62. Regina Cicchetti (“Regina”) and Susan Zimmer (“Susan”) have maintained a committed relationship of mutual protection and support for the past thirty-four (34) years. Regina is 57 years old and Susan is 58.

63. They live together in Port Jervis, New York, in a home that they jointly own.

64. Over the course of their relationship, Regina and Susan have repeatedly been denied benefits and protections to which their committed relationship would entitle them if they were an opposite-sex couple. For instance, the Federal Housing Authority loan that they applied for when they purchased their home was not open to same-sex couples, and they were thus unable to receive as large a loan as an opposite-sex couple who was married.

65. Similarly, Regina and Susan were unable to get joint mortgage insurance. Nor could they obtain joint life insurance policies; instead, they were forced to buy two insurance policies.

66. Like the other plaintiff couples who are getting older, Regina and Susan are concerned about the legal status of their relationship in the face of decisions about health care and inheritance. For instance, even though they have shared the same home for the past 34 years, if either Regina or Susan were forced to go to a nursing care facility, the other would have to buy out her share of the home in order to remain there. That would not be the case if they were married.

67. Regina and Susan want to get married because they feel that their longstanding relationship should be entitled to the civil privileges that are accorded to heterosexual married couples. They believe that as citizens, they should be ensured the right to be treated equally, and that right should not be denied due to the religious or other beliefs of others.

Alice J. Muniz and Oneida Garcia

68. Alice J. Muniz (“Alice”) and Oneida Garcia (“Oneida”) have maintained a committed relationship of mutual protection and support for the past four (4) years. They rent a home together in Brooklyn, New York.

69. Alice and Oneida both have children from previous relationships. Alice’s son is 12 years old; Oneida’s daughter is 14. Alice’s son lives with them full-time, while Oneida’s daughter lives with them during the week, and with her father (with whom the couple has a good relationship) on weekends. They consider themselves a family: Alice and Oneida share responsibilities for parenting the two children.

70. Alice works as a New York City police officer. She has been a police officer for nine years, and is assigned to the 23rd Precinct in Spanish Harlem. Although Alice used to work nights, which pays better, since the events of September 11, 2001, she works days so as to be able to spend time with her family in the evenings. Oneida works as hotel director at the TriBeCa Grand Hotel in Manhattan.

71. Alice and Oneida are registered as domestic partners in the City of New York. They would, however, like to be married because they believe that having their committed relationship recognized by the State would have a positive emotional impact on their children.

72. Alice is concerned that because Oneida is not close with her mother's side of the family, if Oneida were to die or become seriously ill, Oneida's maternal relatives might make important decisions contrary to Oneida's wishes, and without Alice's involvement. Also, both Oneida and Alice want to marry so that if one of them becomes disabled, the other will be better able to take care the rest of the family, including the children.

"Chelsea" Ellen Dreher and Laura Collins

73. "Chelsea" Ellen Dreher ("Chelsea") and Laura Collins ("Laura") live together in New York City.

74. Chelsea and Laura have maintained a committed relationship of mutual support and protection for the past thirty (30) years.

75. Chelsea and Laura met working on women's studies issues in the early 1970s. Chelsea had made a feminist pamphlet with cartoons and was looking for a printer. At the printer's office, Chelsea liked the books she saw on Laura's desk, and thought she must be an interesting person.

76. Although Chelsea and Laura are registered as domestic partners, Laura's health care plan does not permit her to cover Chelsea.

77. Their apartment is leased in Chelsea's name, and they are concerned that if anything were to happen to Chelsea, Laura would have a legal fight to keep the apartment.

78. They are also concerned that, as they get more advanced in age (Chelsea is 68 and Laura is 60), they could be denied rights in the context of seeking medical care. They very much want one another to be responsible for each other's care

in the case of a medical emergency and do not want to have to fight about this issue when they get to that point. In other words, Chelsea and Laura want to get married so that they can have peace of mind in knowing that the person each trusts the most will be responsible for the other's care and welfare.

John Wessel and William ("Billy") O'Connor

79. Plaintiffs John Wessel ("John") and William O'Connor ("Billy") live together in New York City. John and Billy plan on celebrating the twenty-fifth anniversary of their relationship this summer.

80. In 1985, John and Billy started a business together selling contemporary art. They ran their business, which had grown to include stores in Rome, Italy and New York City, until the summer of 2003.

81. Working together as a couple, they have "earned everything [they] have together." All of their property is jointly owned.

82. John and Billy have made one another the exclusive beneficiaries of each other's wills. However, they are concerned that because they are not married, they will be subject to substantially higher inheritance taxes than they otherwise would be if they were married. Indeed, the fruits of their labors have been and will be taxed inequitably because they are not recognized as married by the state.

83. John is 62 years old; Billy is 46 years old. The protections marriage affords to spouses and surviving spouses at times of disability or death are very important to them. John and Billy worry that as they age, they will run into difficulties concerning medical decision-making. John in particular wants to be sure that Billy will make decisions about his medical care. They can never be sure the medical proxies will

give them the same protection that a marriage would. And they worry that not being married will deprive them of other protections crucial for senior couples, such as the right not to lose their home should one of them have to go to a nursing home.

84. Although John and Billy intend to execute medical proxies for one another, even with such proxies they will not have the same visitation and other rights afforded to opposite-sex married couples. The protections marriage uniquely provides to spouses and surviving spouses at times of disability or death are particularly important to John and Billy. In addition, if John and Billy were accorded the legal protections of civil marriage, they would obtain other benefits that are crucial for senior couples to protect themselves and care for one another, such as the right not to lose their home should one of them have to go to a nursing home.

Michelle Cherry-Slack and Montel Cherry-Slack

85. Michelle Cherry-Slack (“Michelle”) and Montel Cherry-Slack (“Montel”) live together in Brooklyn, New York.

86. Michelle and Montel met in law school, and have been together for four years.

87. Michelle and Montel are both African-American, and they see many similarities in their struggle for equality as both African-Americans and as lesbians.

88. Michelle works part time at the Metropolitan Community Church of New York (“MCCNY”), where she is a deacon. She also assists with an agency that provides elderly lesbian, gay, bisexual and transgender people with elder care and companionship services. She presently is applying to study in a seminary.

89. Montel is an attorney at Harlem Legal Services, and works on securing public benefits, including Social Security, for low-income people.

90. Michelle and Montel were married in a religious ceremony by the Reverend Pat Bumgardner at MCCNY on October 4, 2003. Michelle remembers that day as “the greatest day of my whole life.” They became engaged on Valentine’s Day 2002.

91. They were also married on the steps of New York City Hall on March 18, 2004. Although Michelle and Montel understand that their marriages are not recognized by the State of New York, they hope to be married someday in a wedding ceremony that will have true legal significance.

92. Michelle’s parents had asked her not to talk about her sexual orientation with other members of her family for many years. At the wedding, her mother and two younger sisters, along with several aunts and uncles, all came up from Georgia. One of her male relatives told her: “It just never occurred to me that the love you might have for each other is the same love I think of when I think of my wife.”

93. None of Montel’s family attended the wedding because they do not approve of their relationship.

94. Michelle worries that if anything ever happened to Montel, Montel’s mother might make decisions that would be inconsistent with Montel’s wishes. Montel has the same fears with regard to Michelle’s family, even though they are more supportive of the relationship.

95. Michelle and Montel hope to have children, and want to have the same legal recognition as opposite-sex couples. They are frightened that they have little certainty in their marital status.

\* \* \*

96. As shown above, except for their status as same-sex couples, all of the plaintiffs are legally qualified to marry under the laws of the State of New York.

97. Indeed, all thirteen couples wish very much to marry.

### **The Defendants**

98. Defendant DOH is charged with administering the laws governing marriage in the State of New York, and has refused to issue or allow town and city clerks to issue marriage licenses to same-sex couples seeking to marry.

99. The State of New York establishes laws governing marriage. The New York State Domestic Relations Law, on its face, does not permit the plaintiff couples to marry.

### **Venue and Jurisdiction**

100. This Court has jurisdiction pursuant to CPLR § 301.

101. Venue is proper in Albany County pursuant to CPLR § 503 because defendants include the New York State Department of Health and the State of New York.

### **Factual Background**

102. On February 27, 2004, Jason West, the Mayor of the Village of New Paltz, New York, performed marriage ceremonies for approximately twenty-five couples in a park near the New Paltz Town Hall. Following that ceremony, the Village of New Paltz established a waiting list on the Village website for same-sex couples that sought to be married. Many of the plaintiff couples have placed their names on that waiting list.

103. Plaintiffs Amy Tripi and Jeanne Vitale, for example, applied to be married by the Town of New Paltz, and had been notified by the Village of New Paltz that they were scheduled to be married on March 6, 2004. However, because of the temporary restraining order issued against Mayor West, they were unable to be married as planned. They still very much want to marry, however.

104. Plaintiff Cindy Bink called the Town Clerk's Office in New Paltz, New York on March 31, and spoke with Marian Cappillino, the Town Clerk, at 4:17 p.m. Cindy told Ms. Cappillino that she was a member of a same-sex couple, and would like to apply for a marriage license. Ms. Cappillino responded that she could not give Cindy a marriage license. Cindy asked if she had any recourse, and Ms. Cappillino told her to go to Vermont.

105. On Thursday, April 1, 2004, plaintiff Heather McDonnell emailed the Town Clerk of the Town of New Paltz and said that she and Carol "would like to apply for a marriage license. Please advise. Thank you." The Town Clerk responded by email: "Our requirements are: 24 hour waiting period prior to the ceremony; birth certificates, photo ID, \$30 fee. If previously married, divorce papers or death certificate required. We do not provide licenses for same-sex couples."

106. At 9:03 a.m. on April 1, 2004, plaintiff Michael Hahn called the Town Clerk of New Paltz and spoke to a woman named Donna. He asked if he could receive a marriage license as a member of a same-sex couple. Donna responded that they do not issue marriage licenses to same-sex couples, and referred Michael to the office of Jason West, Mayor of New Paltz.



107. On Friday, April 2, 2004, at approximately 9:30 a.m., plaintiff Kathy Tuggle called the Town Clerk's Office of New Paltz, New York. She spoke with a woman named Maryanne and asked if she could obtain a marriage license for herself and her same-sex partner. Her response was that "We don't issue same sex marriage licenses. I can give you Jason's number in town as he is the person that is handling this issue."

108. At 10:25 a.m. on Monday, April 5, 2004, plaintiff Wade Nichols called the County Clerk's Office in the Town of New Paltz to ask if he could obtain a marriage license as a member of a same-sex couple. He spoke with a woman who said that the Clerk's Office was not allowed to issue licenses to same-sex couples, and never had been. The woman hung up before Wade could ask her name.

109. Plaintiff Regina Cicchetti called the Office of the Town Clerk of New Paltz, New York and reached Marion Cappillino, the Town Clerk, at 11:24 a.m on Tuesday, April 6, 2004. Regina asked: "I would like to know if I am eligible to apply for a marriage license as a same sex couple?" Ms. Cappillino responded "No". Regina asked, "Can you please tell me why that is?" Ms. Cappillino responded: " Domestic relations law doesn't permit us to issue licenses to same sex couples". Regina thanked her, and the conversation ended.

110. Plaintiff Cynthia Bink called the Office of the Town Clerk of New Paltz, New York and spoke to Marian Cappillino, the Town Clerk, on March 31, 2004 at 4:17 PM. Cynthia told her she was in a same sex couple and would like to apply for a marriage license. Ms. Cappillino said that she could not give Cynthia a marriage license because she was in a same sex couple. Cynthia asked her if she had any recourse and Ms. Capillino told her to go to Vermont.

111. At 11:10 a.m. on Tuesday, April 6, 2004, plaintiff Diane Gallagher called the Office of the Town Clerk of New Paltz, New York. She spoke with Mary Ann Liggin, the Deputy Town Clerk, and asked if she could receive a marriage license as a member of a same-sex couple. Ms. Liggin told her that her office “is no longer involved in that,” and referred Diane to Mayor Jason West.

112. Michelle Cherry-Slack called the Office of the Town Clerk of New Paltz, New York, at 11:00 a.m. on Tuesday, April 6, 2004. She spoke with Marian Cappillino, the Town Clerk, and asked Ms. Cappillino if the Town of New Paltz would grant her a marriage license as a member of a same-sex couple. Ms. Cappillino responded: “No, we don't issue same-sex marriage licenses. And that's pretty standard in the state.”

113. At 3:00 p.m. on Tuesday, April 6, 2004, plaintiff Laura Collins called the Office of the Town Clerk of New Paltz, New York, and spoke with Marian Cappillino, the Town Clerk. She asked Ms. Cappillino if she was allowed to receive a marriage license as a member of a same-sex couple. Ms. Cappillino directed her to the Mayor's Office. When she called the Mayor's Office, a woman named Polly instructed her to go to the New Paltz Website, and to register there.

114. Plaintiffs Alice Muniz and Oneida Garcia called the New Paltz Town Clerk's office shortly after Jason West solemnized a number of same-sex weddings on February 27, 2004. They were told to sign up to be married on the New Paltz Town web site, which they did.

115. Plaintiffs Daniel O'Donnell and John Banta are aware that the defendant DOH has instructed clerks to refuse to issue marriage licenses to same-sex

couples. Accordingly, they have not requested such a license, because such a request would be futile. Indeed, it is evident to all plaintiffs that any such requests would be futile.

**First Claim for Relief**  
**(N.Y. Const. Art. I, § 11 – Equal Protection Based on Sexual Orientation)**

116. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

117. Article 1, section 11 of the New York State Constitution (the “Equal Protection Clause”) provides that “No person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

118. The Equal Protection Clause of the New York State Constitution protects against discrimination based on sexual orientation.

119. The DRL does not permit same-sex couples to marry.

120. Defendants can offer no adequate justification for the exclusion of same-sex couples from the legal institution of marriage.

121. Denying same-sex couples the ability to marry in the State of New York deprives them of the equal protection of the laws based on their sexual orientation.

**Second Claim for Relief**  
**(N.Y. Const. Art. I, § 11 – Equal Protection Based on Gender)**

122. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

123. Article 1, section 11 of the New York State Constitution (the “Equal Protection Clause”) provides that “No person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

124. The Equal Protection Clause of the New York State Constitution protects against discrimination based on gender.

125. The DRL discriminates based on gender because it allows a man and woman to marry, but does not allow a man to marry a man, or a woman to marry a woman.

126. Defendants can offer no adequate legal justification for this gender-based discrimination.

127. Denying same-sex couples the ability to marry in the State of New York deprives them of the equal protection of the laws based on their gender.

**Third Claim for Relief**  
**(N.Y. Const. Art. I, § 6 – Due Process)**

128. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

129. Article 1, section 6 of the New York State Constitution provides that “No person shall be deprived of life, liberty, or property without due process of law.”

130. The Due Process Clause of the New York State Constitution protects the fundamental right to form relationships, to create and maintain family life, and to marry.

131. The DRL does not permit same-sex couples to marry.

132. Defendants can offer no adequate justification for denying marriage to same-sex couples.

133. Denying same-sex couples the ability to marry in the State of New York violates the Due Process Clause of the New York State Constitution.

**Fourth Claim for Relief**  
**(N.Y. Const. Art. I, § 8 – Freedom of Speech)**

134. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

135. Marriage is an important public act of speech that represents to the community at large the nature of two people’s commitment to each another. The public “expression of emotional support and public commitment” two people make when they marry is a unique form of public expression that can only be made through a civil marriage ceremony or contract.

136. The ability to declare that one is married is created by the State. The State must provide equal access to all citizens to participate in this unique public act of speech, regardless of gender or sexual orientation. Having created the institution of civil marriage, through which individuals can proclaim their commitment in a unique way, the State cannot allow access to that institution on a discriminatory basis.

137. Article I, § 8 of the New York State Constitution provides a guarantee of freedom of speech – including access to state-created forums for speech – more broad than that afforded by the First Amendment to the United States Constitution. Included in that guarantee is the right of equal access by all groups to state-created forums for speech.

138. Denying same-sex couples in the State of New York the ability to marry based on their gender and sexual orientation violates Article I, § 8 of the New York Constitution.

**WHEREFORE**, plaintiffs respectfully ask this Court to grant judgment in favor of plaintiffs and against defendants as follows:

- (a) declaring that the provisions of the Domestic Relations Law that prohibit same-sex marriage are invalid under the Constitution of this State; and
- (b) awarding plaintiffs their costs incurred in this action.

Dated: April 7, 2004  
New York, New York

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP

By: \_\_\_\_\_  
Roberta A. Kaplan  
Andrew J. Ehrlich  
1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000

– and –

James D. Esseks  
Matthew Coles  
American Civil Liberties Union Foundation  
125 Broad Street  
New York, New York 10004-2400  
(212) 549-2500

– and –

Arthur Eisenberg  
Donna Lieberman  
New York Civil Liberties Union  
Foundation  
125 Broad Street, 17th Floor  
New York, New York 10004  
(212) 344-3005

Counsel for Plaintiffs Sylvia Samuels and Diane Gallagher, Heather McDonnell and Carol Snyder, Amy Tripi and Jeanne Vitale, Wade Nichols and Harnng Shen, Michael Hahn and Paul Muhonen, Daniel J. O'Donnell and John Banta, Cynthia Bink and Ann Pachner, Kathleen Tuggle and Tonja Alvis, Regina Cicchetti and Susan Zimmer, Alice J. Muniz and Oneida Garcia, Ellen Dreher and Laura Collins, John Wessel and William O'Connor, Michelle Cherry-Slack and Montel Cherry-Slack.