

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
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MICHELLE BOWLING, SHANNON BOWLING and)
LINDA BRUNER)

Plaintiffs,)

vs.)

1 : 14 -cv- 0405 SEB -DKL'

MICHAEL PENCE, in his official capacity as)
Governor of the State of Indiana, GREGORY)
ZOELLER, in his official capacity as Attorney General)
for the State of Indiana, MICHAEL ALLEY, in his)
capacity as Commissioner of the Indiana Department of)
Revenue; and ANITA SAMUEL, in her capacity)
as Executive Director of the Indiana Department of)
State Personnel,)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Michelle Bowling, Shannon Bowling and Linda Bruner (collectively "Plaintiffs"), by their attorneys, for their Complaint against Defendants Michael Pence, Gregory Zoeller, Michael Alley and Anita Samuel, in their official capacities (collectively "Defendants"), hereby allege as follows:

INTRODUCTION

1. Plaintiffs bring this action to challenge the constitutionality of Indiana Code §31-11-1-1 (herein the "Indiana's DOMA"). Indiana's DOMA provides that "only a female may marry a male. Only a male may marry a female." Ind. Code §31-11-1-1(a). Further, Indiana's

DOMA prohibits the State of Indiana from recognizing lawful marriages of same-sex couples entered into in sister-states that recognize same-sex marriages. Indiana's DOMA specifically states that "[a] marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it is solemnized." Ind. Code § 31-11-1-1(b). Indiana's DOMA violates Plaintiffs' constitutional rights. As such, this Court should declare Indiana's DOMA unconstitutional and issue an injunction requiring Indiana state officials to allow same-sex couples to marry and recognize the marriage of same-sex couples as being equal to marriages between opposite sex couples.

2. Plaintiffs bring this cause of action pursuant to 42 U.S.C. §§ 1983 and 1988 for declaratory and preliminary and permanent injunctive relief against Defendants pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2201. Plaintiffs specifically seek a declaration that Indiana's DOMA violates the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, as well as the Establishment Clause of the First Amendment, Full Faith and Credit of Article IV and penumbra Right to Travel of the United States Constitution. Plaintiffs also seek a preliminary and permanent injunction which would prevent Defendants from denying Plaintiffs and all other same-sex couples the right to marry, and requiring Defendants to recognize the marriages of Plaintiffs and other same-sex couples lawfully entered into outside of Indiana.

3. Indiana's DOMA which legally prohibits the State from recognizing same-sex marriages celebrated in other jurisdictions consistent with the manner in which Indiana treats and recognizes opposite-sex couples, is effectively enforcing the notion that homosexuals are a disadvantaged minority group who are politically being discriminated against.

4. There is no adequate remedy at law in Indiana for the Plaintiffs and other similarly situated same-sex couples and the Plaintiffs are suffering irreparable injury. Granting a declaratory judgment and injunction prohibiting enforcement of Indiana's DOMA would not cause harm to Defendants, the State of Indiana or to opposite-sex marriages.

THE PARTIES

5. Plaintiff Michelle Bowling (herein "Michelle"), is a female and an Indiana citizen who resides in Indianapolis, Indiana.

6. Plaintiff Shannon Bowling (herein "Shannon"), is a female and Indiana citizen who resides in Indianapolis, Indiana.

7. Plaintiff Linda Bruner (herein "Linda"), is a female and Indiana citizen who resides in Greenfield, Indiana.

8. Defendant Michael "Mike" Pence, is the Governor of the State of Indiana (herein "Governor"). As Governor, he is the chief executive officer of the State of Indiana, and is charged with the responsibility to ensure the laws of the State of Indiana are enforced. The Governor's office is in Indianapolis, Indiana.

9. Defendant Gregory "Greg" Zoeller, is the Attorney General for the State of Indiana (herein "Attorney General"). The Attorney General is the chief legal officer for the State of Indiana. The Attorney General's office is in Indianapolis, Indiana. The Attorney General has publically declared that he will defend Indiana's DOMA against all legal challenges.

10. Defendant Michael "Mike" Alley, is the Commissioner of the Indiana Department of Revenue (herein "DOR"). The DOR is responsible for providing service to Indiana citizens regarding state tax matters. The DOR's office is in Indianapolis, Indiana.

11. Defendant Anita Samuel, is the Executive Director of the Indiana State Personnel Department (herein "ISPD"). The ISPD is responsible to deliver integrated Human Resource services, allowing the governor's office and agencies to effectively achieve their stated goals and objectives. The ISPD's office is in Indianapolis, Indiana,

12. Defendants and those subject to their supervision, direction and control, are responsible for the enforcement of Indiana's DOMA and other related laws. The relief requested in Plaintiffs' Complaint is sought against each Defendant, each Defendant's office, employees and agents, and against all other persons acting in cooperation with, under the supervision of, at the direction of, or under the control of the Defendants.

13. By statute in Indiana, the Defendants took an oath before entering office "to support the Constitution of the United States and the Constitution of the State of Indiana, and that the officer or deputy will faithfully discharge the duties of such office." Ind. Code § 5-4-1-1.

14. All Defendants named above are, and at all relevant times have been, acting under color of state law, subjected or caused Plaintiffs to be subjected to a deprivation of Plaintiffs' rights, and are sued in their official capacities in accordance with 42 U.S.C. § 1983.

JURISDICTION AND VENUE

15. This Court has original jurisdiction over the parties and the subject matter of this proceeding under 28 U.S.C. §§ 1331 and 1343, as Plaintiffs' Complaint raises questions under the Constitution of the United States and under 42. U.S.C. §§ 1983 and 1988.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) as all Defendants reside in this District and the State of Indiana and a substantial portion of the event giving rise to this claim occurred in this District.

**THERE IS NO RATIONAL OR LEGITIMATE STATE INTEREST IN EXCLUDING
SAME-SEX MARRIAGE**

17. Marriage is the legal institution in Indiana in which a family unit is recognized and protected and which third parties are required by law to recognize and protect.

18. A legal marriage creates an array of automatic legal and economic benefits and privileges.

19. Indiana's Family Law Code was codified to: (1) recognize the importance of family and children in our society; (2) recognize the responsibility of the state to enhance the viability of children and family in our society; (3) acknowledge the responsibility each person owes to the other; and (4) strengthen family life by assisting parents to fulfill their parental obligations. Ind. Code § 31-10-2-1.

20. Marriage has been described as "the most important relation in life." Zablocki v. Redhail, 434 U.S. 374, 384 (1978).

21. Marriage is a fundamental constitutional right and "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." Loving v. Virginia, 388 U.S. 1, 12 (1967)(finding that the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State).

22. Indiana only recognizes opposite-sex couples for the purposes of marriage and provides statutory rights, protections and benefits to those couples only while specifically excluding those statutory rights, protections and benefits to same-sex couples who wish to marry or have been lawfully married in other states.

23. Homosexuals are a politically disadvantaged minority group that have been subjected to disparate and unequal treatment and have not historically been afforded the constitutional protections nationally and here in the State of Indiana.

24. The Federal Defense of Marriage Act, allowing states to refuse to recognize same-sex marriage was enacted in 1996. 28 U.S.C. § 1738C.

25. Indiana's DOMA to ban same-sex marriage was enacted by in 1997. Ind. Code §31-11-1-1. Indiana's DOMA furthers no legitimate government or state interest but was rather the enactment was motivated by animus towards gays, lesbians and same-sex couples.

26. In 2003, Massachusetts became the first state in the U.S. to legalize same-sex marriage. Goodridge v. Dept. of Public Health, 798 N.E.2d 941, 962 (Mass. 2003). In response and to "protect marriage" in 2004, an amendment was introduced in Indiana to amend the Indiana Constitution to prohibit same-sex marriage in "an effort to preserve existing law, religious tradition and thousands of years of history from a carefully orchestrated attack by liberal special interests." Press Release, State Senator Brandt Hershman, Senate Passes Resolution to Protect Marriage (February 5, 2004).

27. Since 2004, same-sex couples in Indiana have even been targeted relentlessly through proposed legislation to amend the Indiana Constitution to ban same-sex marriage. Specifically in 2013-2014 session, House Joint Resolution 3, which passed both the Indiana House and Senate would constitutionally define, "[o]nly a marriage between one (1) man and one (1) woman shall be valid or recognized as a marriage in Indiana." HJR3 (2013). Most recently on March 3, 2014, the legislature introduced House Bill 1380 which would prohibit lawfully married same-sex couples from filing state returns taxes jointly in accordance with current IRS policies if passed. HB1380 (2014).

28. In 2005, the Indiana Court of Appeals addressed the constitutionality of Indiana's DOMA and found it to be constitutional. Morrison v. Sadler, 821 N.E.2d 15, 35 (Ind. Ct. App. 2005).

29. The purpose and interests in upholding Indiana's DOMA are moral and political in nature. The State's past reasoning in excluding recognition of same-sex couples is based on the traditional idea of marriage and on "responsible" and "natural" procreation grounds. *Id.* at 24-25. Indiana claims that the rights, protections and benefits given to heterosexual marriage is in order to "encourage male-female couples to procreate within the legitimacy and stability of a state-sanctioned relationship and to discourage unplanned, out-of-wedlock births resulting from casual intercourse." *Id.* It further reasons that where heterosexual couples enter into marriage with no intention of having children, if an "accident" happens, it will "encourage them to stay together to raise a child." *Id.*

30. The State's reasoning on "responsible procreation" grounds is not only irrational but also unreasonable. The disparate treatment accorded by Indiana's DOMA is not rationally related to a legitimate government purpose and furthers no legitimate state interest which can justify its intrusion into the personal and private life of same-sex couples.

31. Indiana does not check the procreative ability of parties who marry in Indiana or in opposite-sex marriages from other states. In addition, the reasoning does not take into consideration couples that are infertile, those who chose not to have children, are post-menopausal, has had a vasectomy or even a sex change. *See Davis v. Summers*, 1 N.E.3d 184, 187 (Ind. Ct. App. 2013) (finding that a marriage between persons of the same gender, where one spouse obtained a sex change, was found to be a valid marriage in Indiana). Clearly, after one party has had a sex change, accidental procreation is no longer possible.

32. In also finding that the state's procreation argument lacks a rational basis, other federal courts have reasoned that "permitting same-sex couples to marry will not affect the number of opposite-sex couples who marry, divorce, cohabit, have children outside of marriage

or otherwise affect the stability of opposite-sex marriages." Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 972 (N.D. Cal. 2010); see also Perry v. Brown, 671 F.3d 1052, 1089 (9th Cir. 2012).

33. Many same-sex couples are adopting and also using the assistance of artificial assisted reproduction. In fact, Indiana allows same-sex couples to adopt. See In Re Adoption of M.M.G.C., 785 N.E.2d 267, 270 (Ind. Ct. App. 2003).

34. There are no studies or evidence indicating that same-sex couples lack the ability to be in a successful relationship or lack the ability raise children the same as opposite-sex couples. Rather, "extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities. Those same-sex couples are willing to embrace marriage's solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit." Goodridge, 798 N.E.2d at 962.

35. This instant case is distinguishable to Morrison. The Court in Morrison, began its analysis by stating that the Plaintiffs in the case made no explicit argument that Indiana's limitation of marriage to opposite sex couples violated the United States Constitution and that there was binding United States Supreme Court precedent indicating that state bans on same-sex marriage did not violate the United States Constitution. Morrison, 821 N.E.2d. at 19; (citing Baker v. Nelson, 409 U.S. 810 (1972) where the U.S. Supreme Court dismissed a challenge on the ban of same-sex marriage for want of a substantial federal question).

36. Unlike the Plaintiffs in Morrison, Plaintiffs in this instant case are making an explicit argument that Indiana's limitation of marriage to opposite-sex couples violates not only the Indiana Constitution but United States Constitution as well.

37. Moreover, because of the 2013 U.S. Supreme Court's decision in United States v. Windsor, where the U.S. Supreme Court held that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional, Baker is no longer controlling. U.S. v. Windsor, 133 S.Ct. 2675, 2695 (2013)

38. The Court in Windsor held that, "the principal purpose and necessary effect of the Anti-Recognition Laws are to demean those persons who are in a lawful same-sex marriage." Id. at 2695. The Court found that by refusing to acknowledge lawful same-sex marriage has the effect of "instructing all officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others. Id. at 2696.

39. Further, as the Circuit Court in Windsor noted "[i]n the forty years after Baker, there have been manifold changes to the Supreme Court's equal protection jurisprudence" and that "[e]ven if Baker might have had resonance. . . in 1971, it does not today." Windsor v. United States, 699 F.3d 169, 178 (2nd Cir. 2012), *aff'd*, 133 S. Ct. 2675 (2013).

40. As noted by the U.S. Supreme Court, "for centuries there have been powerful voices to condemn homosexual conduct as immoral. The condemnation has been shaped by religious beliefs, conceptions of right and acceptable behavior, and respect for the traditional family." Lawrence v. Texas, 539 U.S. 558, 571 (2003).

41. However, the last several decades and more recently in the last nine months following the Supreme Court's decision in Windsor, there has been a significant change in attitude and acceptability regarding homosexuality and same-sex marriage. See Windsor, 133 S.Ct. 2575

42. In 1996, the U.S. Supreme Court confirmed that the United States Constitution prohibits discrimination on the basis of sexual orientation. Romer v. Evans, 517 U.S. 620, 635 (1996).

43. The U.S. Supreme Court held that the Due Process Clause of the Fourteenth Amendment protected the sexual relations and privacy of gay men and lesbians. Lawrence, 539 U.S. at 578. Relying on Planned Parenthood v. Casey, where the Court had previously held that individuals were entitled to constitutional protections in regards to "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing and education without infringement by the States" the Court added that "persons in homosexual relationships may seek autonomy for these purposes, just as heterosexuals do." Id. at 574; citing Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 850 (1992).

44. Allowing the denial of legal rights, protections and benefits to same-sex couples with lawful marriages outside of Indiana facilitates and encourages discrimination.

45. Today, seventeen states, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, Washington and the District of Columbia have legalized same-sex marriage. Illinois' law legalizing same-sex marriage will be effective June 1, 2014 but many counties are issuing marriage licenses in advance of the date. Twenty-eight states have constitutional prohibitions against same-sex marriage, including Oregon who does recognize same-sex marriages in other states, while another four states West Virginia, Wyoming, Pennsylvania, and Indiana prohibit same-sex marriage under state law.

46. Given the changes in the jurisprudence and binding precedent in Windsor, Indiana's DOMA violates the United States Constitution and the Defendants, who have taken an

oath to support the Constitution of the United States must be enjoined from enforcing Indiana's DOMA.

47. Declaring Indiana's DOMA unconstitutional and recognizing the right to same-sex marriage, provides legitimacy and in the process increases further social acceptability.

**INDIANA'S REFUSAL TO RECOGNIZE LAWFUL SAME-SEX MARRIAGES IS
HARMFUL AND DISCRIMINATORY**

48. Indiana's recognition of the existence of a foreign marriage is a matter of comity. Mason v. Mason, 775 N.E.2d 706, 707 (Ind. Ct. App. 2002)(citing Roche v. Washington, 19 Ind. 53, 54 (Ind. 1862)).

49. On comity grounds, Indiana will accept as legitimate a marriage lawfully contracted in the place where it is celebrated, but Indiana need not apply a sister state's laws if the law violates Indiana public policy. Id. (citing Bolkovac v. State, 304, 98 N.E.2d 250, 254 (Ind. 1951)).

50. The Indiana Court of Appeals ruled in Mason that a man who was married to his first cousin, which is void in Indiana pursuant to Ind. Code§ 31-11-8-3, was nevertheless valid under the Full Faith and Credit Clause of the United States Constitution because the court found that it was legal to marry a first cousin in Tennessee where the parties were married. Mason, 775 N.E.2d at 707.

51. Based on the changing jurisprudence and because of the fact that there is no legitimate state interest in banning same-sex marriages or in not recognizing lawful marriages from sister-states, no public policy exception exists.

52. The anti-recognition of Plaintiffs' lawful marriages and other similarly situated same-sex married couples in Indiana is discriminatory and causes not only social but legal and economic harms as well.

53. Socially, anti-recognition laws stigmatize and deny individuals the stability and respect given to opposite-sex couples and their children. As Justice Kennedy noted in Windsor, "the law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." Windsor, 133 S.Ct. at 2694.

54. The denial of Plaintiffs' right to marry or have their out of state marriage recognized as lawful in Indiana, has resulted in irreparable legal and economical harms to Plaintiffs and other same-sex couples.

55. One of the most significant legal harms is the inability of a same-sex couple to obtain a divorce in Indiana and therefore have a right to an equitable division of property. Ind. Code. § 31-15-2 *et. seq.* and Ind. Code. § 31-15-7-4. By denying access to the Courts, same-sex couples have no redress and would have to in violation of the right to travel, physically relocate to another state in order to file for a divorce or have their constitutional right as to privacy and right to marry be infringed by having to remain married indefinitely. Also, should a same-sex couple want a divorce in order to marry a person of the opposite-sex, they would also further be denied the right to marry an individual in which Indiana's DOMA accepts.

56. Article 1§ 12 of the Indiana Constitution prohibits denial of access: "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely; and without denial; speedily, and without delay." Ind. Const. Art. I, § 12.

57. The U.S. Supreme Court has ruled that a State's refusal to admit appellants to its courts, where the court is the sole means for obtaining a divorce, must be regarded as the equivalent of denying them an opportunity to be heard and a denial of due process pursuant to the Fourteen Amendment. Boddie v. Connecticut, 401 U.S. 371, 381 (1971)(holding that a state may not pre-empt the right to dissolve this lawful relationship without affording all citizens access to the means it has prescribed for doing so due to an individual's inability to pay a filing fee).

58. The court system is the only means in which an individual can obtain a divorce in Indiana. Therefore, Indiana must therefore recognize lawful same-sex marriages in order to afford to Plaintiffs and all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

59. Other legal and economical injuries facing Plaintiffs and other same-sex couples include but are not limited to:

a. Same-sex couples cannot obtain a legal separation in Indiana. Ind. Code § 31-15-3-9.

b. Same-sex couples are not entitled to spousal maintenance and the financial duty to support a spouse. Ind. Code § 31-15-7-2.

c. Communications between husband and wife are privileged and are not extended to same-sex couples. Ind. Code § 34-46-3-1(4).

d. Same-sex couples would not qualify as presumptive dependents entitled to death benefits under Indiana's Worker's Compensation law. Ind. Code § 22-3-3-19.

e. Same-sex couples do not have the legal standing to bring suit for wrongful death and loss of consortium. Ind. Code § 34-23-1-1.

f. If a same-sex spouse dies intestate, the other spouse does not qualify to take the elective share and family allowance pursuant to Indiana Probate law and receives nothing. Ind. Code § 29-1-3-1(a); Ind. Code § 29-1-2-1; Ind. Code § 29-1-4-1(c).

g. Same-sex couples are not granted the spousal priority if a conservator needs to be appointed to make financial and or medical decisions on the spouse's behalf. Ind. Code § 29-1-10-1(a).

h. Same-sex couples are not allowed to hold title by tenancy in the entirety and therefore do not have rights of survivorship. Ind. Code § 31-17-3-1.

i. Opposite-sex couples may have burial rights held in joint tenancy by Husband and Wife. Ind. Code § 23-14-40-4.

j. A surviving opposite-sex spouse has priority to make burial and final arrangements after the death of a spouse. Ind. Code § 29-2-19-17.

k. Same-sex couples cannot file joint income tax returns to the Indiana Department of Revenue and must specifically file with a filing status of single.

l. Same-sex couples are NOT eligible for Indiana State Insurance Benefits and said policies specifically provide that coverage only extends to a member of the opposite-sex to whom you are lawfully married and a marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it is solemnized. See The Indiana State Personnel Department Employee Group Benefit Handbook.

m. Children born to same-sex couples are not deemed to be children of both spouses. Ind. Code Same-sex couples are not afforded the same rights to child support, custody and

parenting time. Ind. Code. § 31-14-7-1. Children born to same-sex couples are not entitled to the right of inheritance through intestate succession. Ind. Code § 29-1-2-1.

n. Same-sex couples cannot receive family rates for homeowner's, auto and other types of insurance.

o. There are no laws in Indiana prohibiting rules on denying hospital visitations to same-sex couples.

p. There are no laws in Indiana prohibiting housing discrimination against same-sex couples.

q. Same-sex couples cannot receive social security benefits, Medicare and disability benefits for their spouses. 42 U.S.C. § 416(h)(a)(A)(i).

r. Same-sex couples cannot receive veterans and military benefits for their spouses such as medical care, special loans and education assistance.

s. Same-sex couples cannot take family leave under FMLA to care for their spouse. 29 C..R. 825.122(b).

t. Same-sex couples are not as protected in federal bankruptcies as are heterosexual couples in Indiana. Married couples in Indiana are given higher exemptions for personal and real property, whereas same-sex couples would receive the single exemption rate.

60. Declaring Indiana's DOMA unconstitutional and enjoining the Defendants from its enforcement, would provide the Plaintiffs and other same-sex couples a remedy to the harms the discriminatory laws create.

PLAINTIFFS

61. After living together and committing to relationship together, Michelle and Shannon decided to get married to express their love and commitment to one another. Even

though Michelle and Shannon wanted to get married, Indiana's DOMA prohibited them from marrying a consenting adult of their choosing. As a result of the prohibition under Indiana's DOMA, Michelle and Shannon were forced to travel out of state to enter into a lawful marriage.

62. On January 18, 2011, Michelle and Shannon were lawfully married in Polk County, Iowa.

63. After they were lawfully married in Polk County, Iowa, Michelle and Shannon returned to their home and employment in Indiana. Michelle is employed as a clerk of the Marion County Small Claims Court, Decatur Township Division, and Shannon is an employee of the State of Indiana working for the Department of Corrections.

64. As an employee for the State of Indiana, Shannon receives benefits but Michelle is NOT eligible for Indiana State Insurance Benefits because the policies of the ISPD expressly prohibits coverage for same-sex couples.

65. Michelle and Shannon live with and are raising Michelle's three (3) children from a previous relationship. Michelle, Shannon, and their children live together as a loving, warm, and caring family. However, Indiana's DOMA treats their family differently from other families where the parents are opposite-sex couples. This discriminatory treatment not only causes Michelle and Shannon's family to suffer the numerous harms listed above, but also demeans and devalues their family as a whole.

66. Linda is employed as an Emergency Medical Technician who married her wife Lori Roberts on July 20, 2010.

67. Linda and her wife Lori began dating in August of 2003 and eventually living together raising Lori's two (2) children, prior to their lawful marriage in Iowa.

68. Linda and Lori were married in Sioux City in Woodbury County, Iowa.

69. Like many opposite-sex marriages in Indiana, Linda and Lori's relationship reached a point where there became irreconcilable differences and they could no longer remain together as wife and wife.

70. After their separation, Linda petitioned and was granted a protective order against her wife in Hancock County, Indiana.

71. On January 31, 2013, Linda filed her Petition for Dissolution of Marriage in the Marion Superior Court, Civil Division, Room Five under Cause Number 49D05-1301-DR-3893.

72. The Marion Circuit and Superior's position is that the court does not have subject matter jurisdiction to grant a same-sex couple's dissolution in Indiana. In addition to filing this Complaint, should her petition be dismissed, Linda intends to file an appeal with the Indiana Court of Appeals.

73. The court system is the only means in which an individual may obtain a divorce in Indiana. The trial court's refusal to grant a dissolution to Linda, denies her access to the courts and a meaningful opportunity to be heard in violation of her constitutional rights. Further, Linda is forced to remain in an unhealthy and unsafe marriage.

74. In order to obtain a divorce, Linda would be forced to forgo her current employment as an Emergency Medical Technician, would be forced to leave her home and relocate to another state that recognizes her lawful marriage. In addition, in order to be able to obtain a divorce in another state, Linda would have to meet that state's residency requirements, which in Iowa would be one year. Relocating to another state would also create personal jurisdiction problems as to Lori.

75. Indiana's DOMA violates several clauses Indiana Constitution as well as the United States Constitution.

COUNT I: DUE PROCESS CLAUSE

76. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-75.

77. The Fourteenth Amendment to the United States Constitution precludes any State from "depriving any person of life, liberty or property, without the due process of law." U.S. Const. amend. XIV, § 1.

78. The freedom to marry has long been a fundamental liberty protected by the Due Process Clause of the United States Constitution.

79. Plaintiffs have a liberty, property, and privacy interest in their marital status and should be entitled to the certain rights, responsibilities, benefits and protections regardless of sexual orientation.

80. Defendants enforcement of Indiana's DOMA and all other sources of state law that preclude marriage and exclude recognition of lawful marriages for same-sex couples, violates the Due Process Clause.

81. Extending the Loving analogy to the same-sex marriage context, the freedom to marry or not marry, a person of the same-sex should reside with the individual and cannot be infringed by the State and to deny this fundamental freedom would "surely deprive all the State's citizens liberty without the due process of the law." Loving, 388 U.S. at 12.

82. Defendants enforcement of Indiana's DOMA deprives Plaintiffs and other same sex couples of their constitutional rights without due process of law because it prevents Plaintiffs from marrying the person of their choice, denies them access to the state-recognized institution of marriage and violates the Plaintiffs' fundamental freedom to marry and fundamental freedom

in liberty, dignity, privacy, family integrity and intimate association under the Fourteenth Amendment.

83. Indiana's DOMA is not tailored to serve any important government interest that justifies the Plaintiffs being denied the right to have their marriages recognized and or to marry.

84. The Defendants, acting under color of state law, have deprived and absent relief from this Court, will continue to deprive, Plaintiffs of their fundamentals rights secured by the Due Process Clause in violation of 42 U.S.C. § 1983.

COUNT II: EQUAL PROTECTION

85. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-84.

86. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution provides in pertinent part: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States... nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV, § 1.

87. Plaintiffs, just like other same-sex couples, are identical to opposite-sex couples in all characteristics relevant to marriage.

88. Denying the Plaintiffs the ability to marry and have their lawful marriages recognized, discriminates the Plaintiffs on the basis of their sexual orientation and sex and denies them the equal protections afforded heterosexual couples.

89. Indiana's DOMA singles Plaintiffs and other same-sex couples out for disfavored treatment, demeans them, treats them as a lesser class and prevents legal shelter to them and their families.

90. The enforcement of these laws violates the right of the Plaintiffs to equal protection by discriminating impermissibly on the basis of sexual orientation and sex.

91. Indiana's DOMA which excludes same-sex couples from marriage and Defendants' actions in enforcing Indiana's DOMA, reflects their moral disapproval of the Plaintiffs and other same-sex couples. The Defendants cannot use morality, religion or the traditional definition of marriage to justify the ban on same-sex marriage and refusal to recognize lawful same-sex marriages from other states.

92. The Defendants, acting under color of state law, have deprived and absent relief from this Court, will continue to deprive, Plaintiffs of their fundamentals rights secured by the Equal Protection Clause in violation of 42 U.S.C. § 1983.

COUNT III: ESTABLISHMENT CLAUSE

93. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-92.

94. The Establishment Clause of the First Amendment specifically provides that "Congress shall make no law respecting the establishment of religion." U.S. Const.. amend. I.

95. The First Amendment applies to the states through the Fourteenth Amendment of the United States Constitution.

96. The intent of the Establishment Clause is to prevent Defendants from the very endorsement and support of religion.

97. Indiana's DOMA and other related legislation which targets Plaintiffs and other same-sex couples, is secular in nature, has the primary purpose of furthering the religious beliefs of the Defendants and the majority of Indiana's legislature, and fosters an excessive governmental entanglement with religion.

98. The Defendants, acting under color of state law, have deprived and absent relief from this Court, will continue to deprive, Plaintiffs of their fundamentals rights secured by the Establishment Clause in violation of 42 U.S.C. § 1983.

COUNT IV: FULL FAITH AND CREDIT

99. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-98.

100. The Full Faith and Credit Clause of the United States Constitution provides, "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." U.S. Const. art. IV, § 1.

101. Marriage is a status conferred by the states and evidenced by a public record.

102. Plaintiffs are lawfully married in the State of Iowa. However, Indiana's DOMA states that Plaintiffs' marriages are void.

103. By declaring Plaintiffs' marriages void, Defendants have refused to recognize Plaintiffs' union for purposes of Indiana state law therefore causing uncertainty, unpredictability, non-uniformity which the Full Faith and Credit Clause protect against.

104. Indiana's DOMA has the effect of creating conflicts of law problem where Plaintiffs' are considered lawfully married for federal purposes and lawfully married in all states that recognize same-sex marriage but not in their home state of Indiana.

105. Also, Indiana's DOMA has the additional effect of creating jurisdictional issues which violate a spouse's due process to obtain a dissolution. Should one spouse in a same-sex marriage move to another state outside of Indiana and file for a dissolution, there are issues of whether the sister-state has sufficient jurisdiction for the spouse that resides in Indiana. The conflict would in essence help individual escape obligations.

106. Based upon the changes in jurisprudence and the growing acceptability of homosexuality, there is no public policy exception.

107. Defendants refusal to recognize Plaintiffs' same-sex marriages lawfully entered into in the State of Iowa violates the Full Faith and Credit Clause of the United States Constitution. As such, Plaintiffs are entitled to declaratory and injunctive relief requested in this Complaint.

108. The Defendants, acting under color of state law, have deprived and absent relief from this Court, will continue to deprive, Plaintiffs of their fundamentals rights secured by the Full Faith and Credit Clause in violation of 42 U.S.C. § 1983.

COUNT V: RIGHT TO TRAVEL

109. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-108.

110. The right to travel is recognized as one of the privileges and immunities afforded constitutional protection. The Supreme Court has held that "long ago recognized...our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout...our land uninhibited by statutes, rules, or regulations which unreasonably restrict this movement." Shapiro v. Thompson, 394 U.S. 618, 629 (1969).

111. The right to travel "encompasses and protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State." Saenz v. Roe, 526 U.S. 489, 500 (1999).

112. State laws that have "no other purpose...than to chill the assertion of constitutional rights by penalizing those who choose to exercise them...[is] patently unconstitutional." Shapiro, 349 U.S. at 629.

113. Indiana's DOMA unreasonably restricts Plaintiffs freedom to travel.

114. Defendants refusal to recognize Plaintiffs' marriages lawfully entered into in the State of Iowa places an unreasonable burden on Plaintiffs' and other similarly situated same-sex couples' constitutional right to travel, as Plaintiffs are forced to decide whether to continue living in a state that refuses to recognize their marriages or relocate to another state who will recognize their marriages.

115. The Defendants, acting under color of state law, have deprived and absent relief from this Court, will continue to deprive, Plaintiffs of their fundamentals rights secured by the penumbra rights giving the right to travel within the United States Constitution. in violation of 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment as follows:

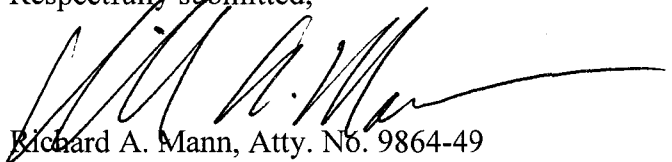
1. Declaring Indiana's DOMA and any other state law, regulation or policy that excludes recognition of the marriages of Plaintiffs and other similarly situated same-sex couples who were lawfully married under the law of another jurisdiction violates the Plaintiffs' under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and may not be enforced against same-sex couples married in another jurisdiction.

2. Permanently enjoin the enforcement of Indiana's DOMA and all other provisions of Indiana law, regulation or policy that may deny Plaintiffs equal access to the benefits of marriage

in the State of Indiana, including the right of same-sex couples to marry in or have their out-of-state marriages recognized by the State of Indiana.

3. Awarding Plaintiffs' their costs, expenses and reasonable attorneys' fees according to 42 U.S.C. §1988 and any other applicable laws;
4. Granting any and all other such relief the Court deems necessary and proper.

Respectfully submitted,



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