

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
THIRD DIVISION**

CASE NO. 60CV-13-2662

M. KENDALL WRIGHT and JULIA E. WRIGHT, individually and on behalf of their minor children G.D.W. and P.L.W.; RHONDA L. EDDY and TREBA L. LEATH; CAROL L. OWENS and RANEE J. HARP; NATALIE WARTICK and TOMMIE J. WARTICK, individually and on behalf of their minor son, T.B.W.; KIMBERLY M. KIDWELL and KATHRYN E. SHORT; JAMES BOONE and WESLEY GIVENS; KIMBERLY M. ROBINSON and FELICITY L. ROBINSON; LINDA L. MEYERS and ANGELA K. SHELBY; GREGORY A. BRUCE and WILLIAM D. SMITH, JR.; MONICA J. LOYD and JENNIFER L. LOCHRIDGE; JENNIFER D. MOORE and MANDY A. LYLES; JONATHAN K. GOBER and MARK R. NORWINE; ANDRA ALSBURY and AMBER GARDNER-ALSBURY; ANGELA SPEARS GULLETTE and LIVICIE C. GULLETTE; SHANNON HAVENS and RACHEL WHITTENBURG; CODY RENEGAR and THOMAS STAED; KATHERINE HENSON and ANGELIA BUFORD; CHRISTOPHER H. HORTON and MICHAEL E. POTTS; JOHN SCHENCK and ROBERT LOYD; WILLIAM A. KING and JOHN McCLAY RANKINE; ARICA NAVARRO; RANDY and GARY EDDY-MCCAIN,

PLAINTIFFS,

v.

NATHANIEL SMITH, MD, MPH, Interim Director of the Arkansas Department of Health, in his official capacity, and his successors in office; RICHARD WEISS, Director of the Arkansas Department of Finance and Administration, in his official capacity, and his successors in office; Pulaski Circuit/County Clerk, LARRY CRANE, in his official capacity, and his successors in interest; White County Clerk, CHERYL EVANS, in her official capacity, and her successors in interest; Lonoke County Clerk, WILLIAM "LARRY" CLARKE, in his official capacity, and his successors in interest; Conway County Clerk, DEBBIE HARTMAN, in her official capacity, and her successors in office; Saline County Clerk, DOUG CURTIS, in his official capacity, and his successors in office; Faulkner County Clerk, MELINDA REYNOLDS, in her official capacity, and her successors in office; Washington County Clerk, BECKY LEWALLEN, in her official capacity, and her successors in office; and PATRICIA NAVARRO.

DEFENDANTS.

**THIRD AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Plaintiffs bring this action to challenge the constitutionality of Arkansas Constitutional Amendment 83 (hereinafter “Amendment 83”), Ark. Code Ann. § 9-11-208, Ark. Code Ann. § 9-11-107, and Ark. Code Ann. § 9-11-109 (hereinafter “referenced statutes”), all of which exclude same-sex couples from marriage and forbid recognition of lawful same-sex marriages entered into in other states.

2. Amendment 83 defines marriage as consisting “only of the union of one man and one woman.” Ark. Code Ann. § 9-11-109 restates Amendment 83’s definition of marriage as “between a man and a woman” and declares all marriages of same-sex couples to be void. Ark. Code Ann. § 9-11-107 provides for recognition of marriages from other states or countries, but excludes marriages by persons of the same sex. Ark. Code Ann. § 9-11-208 provides that the State only recognizes the marital union of “man and woman,” forbids clerks from issuing marriage licenses to same-sex couples, forbids recognition of lawful same-sex marriages entered into in other states, and holds unenforceable any contractual or other rights granted by a marriage of another state, including termination thereof.

3. Plaintiffs seek a declaration that Amendment 83 and the referenced statutes violate the right to equal protection and due process of law under the Fourteenth Amendment to the United States Constitution and the Declaration of Rights contained in the Arkansas Constitution. Plaintiffs also seek an injunction prohibiting the State of Arkansas, and all political subdivisions thereof, from enforcing Amendment 83 or the referenced statutes. Declaratory relief is sought pursuant to Ark. Code Ann. § 16-111-101, *et seq.*, and injunctive relief is sought pursuant to Ark. Code Ann. § 16-113-101, *et seq.*

4. On June 26, 2013, the Supreme Court of the United States issued its decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), striking down Section 2 of the federal “Defense of Marriage Act” (DOMA) as unconstitutional. Section 2 of DOMA defined “marriage” for purposes of all federal laws and regulations to include only marriages of opposite-sex couples. The Supreme Court found that Section 2 of DOMA violated the Equal Protection and Due Process clauses of the Fifth Amendment to the United States Constitution¹ because

¹ *Windsor* was analyzed under the Equal Protection and Due Process clauses of the Fifth Amendment to the United States Constitution because it involved actions of the federal government. These same Constitutional protections were extended to actions of the States by the

DOMA served no legitimate purpose, but instead targeted a class of same-sex couples for unlawful discrimination.

5. In *Windsor*, the Supreme Court emphasized that “State laws defining and regulating marriage, of course, must respect the constitutional rights of persons.” *Windsor*, 133 S.Ct. at 2691. As authority for this statement, the Court cited the 1967 case of *Loving v. Virginia*, 388 U.S. 1, where the Court held that it was unconstitutional for states to prohibit individuals of different races from marrying. *Loving* also found that “the freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” *Loving*, 388 U.S. at 12.

6. All Plaintiffs in this case wish to marry or have their existing out-of-state marriages recognized for the same reasons so many other couples get married—to publicly declare their love and commitment for each other before their family, friends, and community, and to give one another, and their family, the security and protections that only marriage provides.

7. Plaintiffs come from various walks of life and occupations and include a military veteran, a minister, a nurse practitioner, a social worker, an executive assistant, a retired schoolteacher, artists, a law enforcement officer, a full-time student, and small business owners. Many of the Plaintiffs own homes or businesses. Several are raising children together. They are all tax-paying citizens actively involved in their communities and have been in committed relationships with one another for many years. The situations faced by these couples are similar to those faced by thousands of same-sex couples in the State of Arkansas who are being denied the basic rights that are afforded by marriage. They have cared for one another, devoted their lives to support each other, sacrificed for each other and their families, raised children together, and made plans for the future with each other. Some of the couples are recognized and registered as domestic partners, and many have married in states or other

Fourteenth Amendment to the U.S. Constitution. This case involves state action rather than federal action, so references are to the Fourteenth Amendment rather than the Fifth Amendment. The analysis, however, is the same. See *Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (“Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.”); *Town of Tonawanda v. Lyon*, 181 U.S. 389, 21 S. Ct. 609, 45 L. Ed. 908 (1901) (“The purpose of [the Fourteenth] Amendment is to extend to the citizens and residents of the states the same protection against arbitrary state legislation affecting life, liberty, and property, as is afforded by the 5th Amendment against similar legislation by Congress.”)

jurisdictions that recognize marriage between same-sex couples. They have gone through hardships, illness, joy, and success during the course of their relationships. As with other couples that have made a lifetime commitment to each other, the Plaintiff couples are spouses in every sense, except that Arkansas law says they cannot marry and, even if they are legally married under the laws of another state, Arkansas law says that their marriages are not honored here. Moreover, the Plaintiff couples with children are deprived certain benefits that children with known and married parents are afforded, which creates stigma for their children that no person should be asked to bear.

8. Plaintiffs and their families are harmed in numerous ways by Arkansas's refusal to grant state-recognized marriages of same-sex couples and its failure to respect the lawful marriages of same-sex couples celebrated in other jurisdictions.

9. Marriage plays a unique and central social, legal, and economic role in American society. Being married reflects the commitment that a couple makes to one another, as well as representing a public acknowledgement of the value, legitimacy, depth, and permanence of the married couple's private relationship. Marriage is also the sole legal institution in Arkansas through which couples can create a family unit that the state recognizes and protects.

10. Conversely, denial to some couples of the status of being married in the eyes of the state conveys the state's view that the couple's private relationship is of lesser value and unworthy of legal recognition and support. This public rejection of the Plaintiffs' most significant relationship damages them and their children and promotes the view that their relationships and families are inferior to those of other committed couples. Indeed, in *Windsor*, the Court echoed principles set forth in *Loving* forty-six (46) years earlier, finding that discrimination against same-sex couples "demeans the couple, whose moral and sexual choices the Constitution protects." *Windsor*, 133 S.Ct. at 2694 (citing *Lawrence v. Texas*, 539 U.S. 558 (2003)). The Court made clear that the discriminatory treatment "humiliates tens of thousands of children now being raised by same-sex couples" and that "the law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id.*

11. Arkansas also provides a broad array of statutory protections, benefits, and mutual responsibilities for couples recognized as married under state law. The exclusion of same-sex couples from these protections causes Plaintiffs numerous tangible harms. Plaintiffs are denied

the public and private safety net that attaches to marriage. The harms to Plaintiffs from Arkansas's refusal to respect their marriages include the following, among others: Ark. Code Ann. §§ 20-9-602 (allowing spouse or parent to consent to medical treatment for spouse and child); 28-6-204 (preference to spouse or person related by blood in guardianship proceedings); 16-61-102 (right to prosecute and defend civil actions in spouse's name); 24-7-710 (teacher retirement benefits); 24-4-406 (public employee benefits before retirement); 11-9-812 (workers' compensation benefits); 23-83-108 (group life insurance policies and annuities); 23-79-128 (life insurance); Arkansas Probate Code (Ark. Code Ann. §28-1-101 *et seq.* (rights to dower/curtesy for widow/widower of deceased spouse, rights to certain statutory allowances for surviving spouse, homestead rights, right to inherit from deceased spouse, right of children to inherit from legal parent); and Arkansas Rule of Evidence 504 (Husband-Wife testimonial privilege). Married couples may also take advantage of the right to file joint state and federal tax returns and may receive numerous other tax benefits available to married couples and their families. These are just a few of the many of sections of the Arkansas Code that draw distinctions in treatment based on whether one is a "spouse." Importantly, marriage protects the children born to or adopted by couples and makes clear to those children, and everyone with whom they come in contact, that their families deserve respect, dignity, and legal protection.

12. As a result of Defendants' actions, Plaintiffs have been denied both the intangible and tangible benefits of being married under Arkansas law. The State's prohibition of marriage between persons of the same sex and its refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates due process and equal protection guarantees under the Arkansas and United States Constitutions. This Court should issue appropriate declaratory and injunctive relief to remedy these constitutional harms.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to Ark. Code Ann. § 16-13-201(a).

14. Venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-103(3).

III. PARTIES

A. PLAINTIFFS

NATALIE WARTICK AND TOMMIE J. WARTICK, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR SON, T.B.W.

15. Plaintiffs Natalie Wartick and Tommie J. Wartick, and their minor child T.B.W., are residents of Saline County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

16. Plaintiffs Natalie Wartick, aged 31, and Tommie J. Wartick, aged 38, are a lesbian couple who have a long-standing, devoted relationship. They bring this action both individually, and by, for and on behalf of T.B.W., their son.

17. On August 9, 2010, Natalie and Tommie were legally married under the laws of the State of Iowa.

18. Plaintiffs' son, T.B.W., was born on March 21, 2012. Under Arkansas law, a child born or conceived during a marriage is presumed to be the legitimate child of both spouses. *See Putt v. Suttles*, 2011 Ark. App. 688, at *11 ("strong presumption as to the legitimacy of a child born during the marriage.") In fact, it is the custom and practice for the Arkansas Department of Health to list both parents on a birth certificate when a child is born of a marriage. But because of Amendment 83, Natalie is not listed as a parent on the T.B.W.'s birth certificate.

19. T.B.W., the minor child of this union, is deprived of dignity and benefits afforded all other children of known parents who are married.

20. The Court should find that Amendment 83 is unconstitutional and order that the birth certificate of T.B.W. be amended so as to show both Tommie and Natalie as the lawful parents of T.B.W. The Court should further issue a mandatory injunction requiring the Arkansas Department of Health, through its interim director and his successors, to do the same for any other same-sex couple married under the laws of another state and who had a child born during their marriage.

21. Natalie and Tommie also expect another child in February 2014. Plaintiffs reserve the right to amend this Complaint to include that child in the event this case is still pending. Unless Amendment 83 and the relevant statutes are struck down, the birth certificate will list only one parent, and Natalie will not automatically be presumed to be a legal parent of the child

at birth, as is the case with married couples. Recognizing their marriage before birth will provide them with automatic protections that will allow Natalie the ability to make medical decisions for the baby should something happen to Tommie at the hospital, and will allow Natalie to add her baby to her health insurance.

22. The Court should find that Amendment 83 is unconstitutional. Defendant Nathaniel Smith, M.D., interim director of the Arkansas Department of Health should be ordered to issue a birth certificate upon the birth of the child that Tommie and Natalie are expecting showing Tommie and Natalie to be the parents of the child. The Court should further issue a mandatory injunction requiring the Arkansas Department of Health, through its interim director and his successors, to do the same for any other same-sex couple married under the laws of another state who give birth to a child in the State of Arkansas.

23. Despite their deep commitment as evidenced by their valid marriage in Iowa and their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

24. Plaintiffs and their son, T. B. W., have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

M. KENDALL WRIGHT AND JULIA WRIGHT, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILDREN, G.D.W. AND P.L.W.

25. Plaintiffs M. Kendall Wright and Julia Wright, and their minor children, G.D.W. and P.L.W., are residents of White County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

26. M. Kendall, aged 35, and Julia, aged 38, are a lesbian couple who have a long-standing, devoted relationship. M. Kendall is a military veteran and currently a full-time college student. Julia has been employed in the meat service industry for 20 years.

27. On March 8, 2008, M. Kendall and Julia had a ceremony to recognize their relationship at Arkansas Open Door Church.

28. On September 14, 2008, a son, G.D.W., was born to the couple.

29. In March of 2011, the City of Eureka Springs, Arkansas officially recognized their relationship and commitment to each other by including them in the Domestic Partnership Registry.

30. On December 31, 2012 another child was born to Plaintiffs, a daughter, P.L.W.

31. On March 8, 2013, on the anniversary of their initial formal commitment to each other, M. Kendall and Julia legally married in Des Moines, Iowa.

32. Despite their deep commitment, as evidenced by three events solemnizing their relationship, including a valid, legal marriage under the laws of the State of Iowa, Plaintiffs are denied the benefits and privileges of marriage due to Amendment 83 and the referenced statutes because they are a same-sex couple.

33. G.D.W. and P.L.W., the parties' minor children, are deprived of dignity and benefits afforded all other children of known parents who are married.

34. M. Kendall, Julia, G.D.W. and P.L.W. have all been irreparably injured by Amendment 83 and the referenced statutes. This has resulted in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma resulting from the inability to have their marriage recognized by the State of Arkansas, and the accompanying inability to secure the same respect, dignity and legal protections for their family and children afforded to heterosexual relationships.

PLAINTIFF ARICA NAVARRO

35. Plaintiff Arica Navarro is a resident of the State of Arkansas and has resided in the State of Arkansas for a period in excess of sixty continuous days next to the filing of this Complaint.

36. Arica Navarro is a resident of Union County, Arkansas. Patricia Navarro is a resident of Gulfport, MS. Both parties consent to Pulaski County, Arkansas as the venue for this action.

37. Arica and Patricia were married on June 29, 2012 in the State of New York and separated on or about June 30, 2013.

38. No children were born of the marriage and none are expected.

39. The parties own no real property. They have divided their personal property by agreement and agree that each will keep all property in their respective possessions.

40. The parties have agreed that each will be responsible for the debts in their own individual names. Arica will be responsible for the debt on the Zales card. She will also be responsible for paying the balance owed on the Best Buy account, which has now been closed.

41. Neither party requests any support from the other.

42. Plaintiff Arica Navarro's grounds for divorce are general indignities, as provided for in Arkansas Code Ann. §9-12-301. She should be granted a divorce.

43. Although the Navarros are married, having been married under the laws of the State of New York, Ark. Code Ann. §9-11-208(b) prohibits the marriage from being recognized *or* terminated by a court of this State.

44. Because of Amendment 83 and Ark. Code Ann. §9-11-208(b), in order to obtain a divorce, Arica Navarro would have to leave her residence in Arkansas and become a resident of another state (one that does not discriminate against same-sex couples) for long enough to meet the residency requirements of that state for obtaining a divorce. Arkansas's residency requirement of sixty days prior to filing for divorce is one of the shortest in the nation. To meet the residency requirements of another state for filing for divorce, Arica Navarro would have to quit her job, leave her home, and move to another state for a period of six weeks to two years before being eligible to file for a divorce.

45. The Court should find that Amendment 83 and Ark. Code Ann. §9-11-208 are unconstitutional, recognize the New York marriage of Arica and Patricia Navarro, and grant the divorce to Arica Navarro upon proper proof of residency and grounds.

46. As a part of the divorce, Arica Navarro should be restored to her maiden name.

RHONDA L. EDDY AND TREBA L. LEATH

47. Plaintiffs Rhonda L. Eddy and Treba L. Leath are residents of Lonoke County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

48. Rhonda, aged 45, and Treba, aged 38, are a lesbian couple who have a long-standing, devoted relationship.

49. Prior to the filing of this matter, Rhonda and Treba requested a marriage license from the office of Defendant, William "Larry" Clarke, Lonoke County Clerk. That license was denied because they are a same-sex couple.

50. Despite their deep commitment to each other, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage because they are a same-sex couple.

51. Rhonda and Treba have been irreparably injured by Amendment 83 and the referenced statutes. This has resulted in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma resulting from the inability to have their marriage

recognized by the State of Arkansas, and the accompanying inability to secure the same respect, dignity and legal protections for their family afforded to heterosexual relationships.

CAROL L. OWENS AND RANEE J. HARP

52. Plaintiffs Carol L. Owens and Ranee J. Harp are residents of Pulaski County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

53. Carol, aged 51, and Ranee, aged 58, are a lesbian couple who have a long-standing, devoted relationship.

54. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. That license was denied because Plaintiffs are both female and are a same-sex couple.

55. Despite their deep commitment to each other, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage because they are a same-sex couple.

56. Carol and Ranee have been irreparably injured by Amendment 83 and the referenced statutes. This has resulted in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma resulting from the inability to have their marriage recognized by the State of Arkansas, and the accompanying inability to secure the same respect, dignity and legal protections for their family afforded to heterosexual relationships.

KIMBERLY M. KIDWELL AND KATHRYN E. SHORT

57. Plaintiffs Kimberly M. Kidwell and Kathryn E. Short are residents of Pulaski County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

58. Kimberly and Kathryn are a lesbian couple who have a long-standing, devoted relationship.

59. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. That license was denied because Plaintiffs are a same-sex couple.

60. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

61. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by the inability to have their marriage recognized or to have legal protections for their family.

JAMES BOONE AND WESLEY GIVENS

62. Plaintiffs James Boone and Wesley Givens are residents of Conway County, Arkansas.

63. James, aged 53, and Wesley, aged 52, are a gay couple who have a long-standing, devoted relationship.

64. James is retired from the United States Navy. Although Wesley is entitled to some federal benefits related to James' military service, he will be denied any state-related military benefits and possibly some federal benefits as a direct result of Amendment 83 and the referenced statutes.

65. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Debbie Hartman, Conway County Clerk. That license was denied because Plaintiffs are a same-sex couple.

66. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

67. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

KIMBERLY M. ROBINSON AND FELICITY L. ROBINSON

68. Plaintiffs Kimberly M. Robinson, aged 30, and Felicity L. Robinson, aged 32, are a lesbian couple who have a long-standing, devoted relationship. They are residents of Lonoke County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

69. On December 14, 2012, Kimberly and Felicity were legally married under the laws of the State of Iowa in Des Moines, Iowa.

70. Despite their deep commitment as evidenced by their long-term relationship, due

to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

71. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

LINDA L. MEYERS AND ANGELA K. SHELBY

72. Plaintiffs Linda L. Meyers and Angela K. Shelby are residents of Faulkner County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

73. Linda, aged 47, and Angela, aged 47, are a lesbian couple who have a long-standing, devoted relationship.

74. Linda is employed in communications and Angela is a registered nurse at a Pulaski County hospital.

75. In 2012, the City of Eureka Springs, Arkansas officially recognized Plaintiffs' relationship and commitment to each other by including them in the Domestic Partnership Registry.

76. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Melinda Reynolds, Faulkner County Clerk. That license was denied because Plaintiffs are a same-sex couple.

77. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

78. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

GREGORY A. BRUCE AND WILLIAM D. SMITH, JR.

79. Plaintiffs Gregory A. Bruce and William D. Smith, Jr. are residents of Pulaski County, Arkansas.

80. Gregory, aged 35, and William, aged 52, are a gay couple who have a long-standing, devoted relationship.

81. Gregory and William are successful, responsible businessmen who own a pool and patio business, and are taxpayers and citizens of the State of Arkansas.

82. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. That license was denied because Plaintiffs are a same-sex couple. As a result, Gregory and William had to incur the expense and difficulties in having their marriage legally performed on September 23, 2013 in Washington, D. C.

83. Although Gregory and William are now married, they are still denied the benefits and recognition afforded opposite-sex married couples in the State of Arkansas.

84. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

85. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

MONICA J. LOYD AND JENNIFER L. LOCHRIDGE

86. Plaintiffs Monica J. Loyd and Jennifer L. Lochridge are residents of Faulkner County, Arkansas. Plaintiffs are responsible, full-time employed, tax paying residents of the State of Arkansas.

87. Monica, aged 40, and Jennifer, aged 32, are a lesbian couple who have a long-standing, devoted relationship.

88. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Melinda Reynolds, Faulkner County Clerk. That license was denied because Plaintiffs are a same-sex couple.

89. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

90. Plaintiffs have been irreparably injured by Amendment 83 and the referenced

statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

JENNIFER D. MOORE AND MANDY A. LYLES

91. Plaintiffs Jennifer D. Moore and Mandy A. Lyles are residents of Lonoke County, Arkansas.

92. Jennifer, aged 29 and Mandy, aged 33, are a lesbian couple who have a long-standing, devoted relationship. Jennifer is a veteran, having spent nine years in the United States Air Force and is employed as a law enforcement officer. Mandy is currently seeking a nursing degree to be a registered nurse and works part-time at a nursing and rehabilitation facility.

93. On May 9, 2011 Jennifer and Mandy legally married in Iowa City, Iowa under the laws of the State of Iowa.

94. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

95. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

JONATHAN K. GOBER AND MARK R. NORWINE

96. Plaintiffs Jonathan K. Gober and Mark R. Norwine are residents of Pulaski County, Arkansas. Plaintiffs are responsible, employed, tax paying residents of the State of Arkansas.

97. Jonathan, aged 34, and Mark, aged 50, are a gay couple who have a long-standing, devoted relationship for more than nine years.

98. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. That license was denied because Plaintiffs are a same-sex couple.

99. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of

marriage only because they are a same-sex couple.

100. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

ANDRA ALSBURY AND AMBER GARDNER-ALSBURY

101. Plaintiffs Andra Alsbury and Amber Gardner-Alsbury are residents of Washington County, Arkansas.

102. Andra, aged 37, and Amber, aged 30, are a lesbian couple who have a long-standing, devoted relationship. Andra is a 1st Lieutenant in the Army Reserves and is employed full-time as a registered nurse. Amber is employed with the University of Arkansas and is a singer/songwriter.

103. On October 15, 2012, Andra and Amber legally married in Provincetown, Massachusetts under the laws of the State of Massachusetts.

104. Despite their deep commitment as evidenced by their long-term relationship and marriage to each other in another state, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

105. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

ANGELA SPEARS-GULLETTE AND LIVICIE C. GULLETTE

106. Plaintiffs Angela Spears-Gullette and Livicie C. Gullette are residents of Lonoke County, Arkansas.

107. Angela, aged 36, and Livicie, aged 38, are a lesbian couple who have a long-standing, devoted relationship.

108. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, William “Larry” Clarke, Lonoke County Clerk. That license was denied because they are a same-sex couple.

109. In August of 2010, the City of Eureka Springs, Arkansas officially recognized Plaintiffs' relationship and commitment to each other by including them in the Domestic Partnership Registry.

110. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

111. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

SHANNON HAVENS AND RACHEL WHITTENBURG

112. Plaintiffs Shannon Havens and Rachel Whittenburg are residents of Pulaski County, Arkansas. Plaintiffs are responsible, hard-working, tax-paying citizens of the State of Arkansas.

113. Shannon, aged 34, and Rachel, aged 34, are a lesbian couple who have a long-standing, devoted relationship.

114. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. That license was denied because they are a same-sex couple.

115. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

116. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

CODY RENEGAR AND THOMAS STAED

117. Plaintiffs Cody Renegar and Thomas Staed are residents of Washington County, Arkansas. Plaintiffs are responsible, hard-working, tax-paying citizens of the State of Arkansas

118. Cody, aged 37, and Thomas, aged 30, are a gay couple who have a long-standing,

devoted relationship.

119. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Becky Lewallen, Washington County Clerk. That license was denied because they are a same-sex couple.

120. On June 16, 2012, Plaintiffs held a ceremony to represent their commitment to each other. The State of Arkansas refuses to recognize that ceremony as a marriage.

121. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

122. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

KATHERINE HENSON AND ANGELIA BUFORD

123. Plaintiffs Katherine Henson and Angela Buford are residents of Pulaski County, Arkansas. Plaintiffs are responsible, hard-working, tax-paying citizens of the State of Arkansas.

124. Katherine, aged 41, and Angelia, aged 37, are a lesbian couple who have a long-standing, devoted relationship. Both are licensed social workers with masters degrees.

125. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. That license was denied because they are a same-sex couple.

126. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

127. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

CHRISTOPHER H. HORTON AND MICHAEL E. POTTS

128. Plaintiffs Christopher H. Horton and Michael E. Potts are residents of Saline

County, Arkansas.

129. Christopher, aged 38, a Registered Nurse, and Michael, aged 45, a full-time college student, are a gay couple who have a long-standing, devoted relationship.

130. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Doug Curtis, Saline County Clerk. That license was denied because they are a same-sex couple.

131. Despite their deep commitment as evidenced by their long-term relationship, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

132. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

JOHN SCHENCK AND ROBERT LOYD

133. Plaintiffs John Schenck and Robert Loyd are residents of Faulkner County, Arkansas. Robert is a Vietnam Veteran. Both Plaintiffs are respected businessmen, taxpayers and responsible, involved citizens of the State of Arkansas.

134. John and Robert are a gay couple who have a long-standing, thirty-eight (38) year, devoted relationship.

135. In 1999, Plaintiffs entered into a Domestic Partnership under the laws of the State of California.

136. In 2004, John and Robert legally married in Canada.

137. Despite their deep commitment as evidenced by their long-term relationship and marriage to each other in another jurisdiction, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

138. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

WILLIAM A. KING and JOHN McCLAY RANKINE

139. Plaintiffs William A. King and John McClay Rankine are residents of Carroll County, Arkansas. John is a Canadian citizen who has had permanent resident alien status since the mid-1980s. Both Plaintiffs are responsible, involved, tax-paying residents of the State of Arkansas.

140. William, aged 59, and John, aged 58, are a gay couple who have a long-standing, devoted relationship of more than twenty-one years. Plaintiffs are self-employed; they operate an antique store, an event hall and manage several rental properties they own. William also operates a non-profit dog rescue business and John is an accomplished artist.

141. On December 27, 2004, William and John legally married in Toronto, Ontario, Canada pursuant to Canadian law.

142. Despite their deep commitment as evidenced by their long-term relationship and marriage to each other in another jurisdiction, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

143. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

RANDY AND GARY EDDY-MCCAIN

144. Plaintiffs Randy and Gary Eddy-McCain are residents of Pulaski County, Arkansas

145. Randy and Gary are a gay couple who have been in a committed relationship for twenty-one (21) years. They are legally married under the laws of the State of New York in 2012.

146. Although Randy and Gary Eddy-McCain are legally married, they are treated as legal strangers in their home state of Arkansas.

147. Prior to the filing of this matter, Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski County Clerk. That license was denied because they are a same-sex couple.

148. Despite their deep commitment as evidenced by their long-term relationship and

marriage to each other in another state, due to Amendment 83 and the referenced statutes, Plaintiffs are denied the benefits and privileges of marriage only because they are a same-sex couple.

149. Plaintiffs have been irreparably injured by Amendment 83 and the referenced statutes, resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to have their marriage recognized and have legal protections for their family.

B. DEFENDANTS

150. Defendant, Nathaniel Smith, MD, MPH, is the Interim Director of the Arkansas Department of Health. In this official capacity, he is the State Registrar of Vital Statistics. It is his duty to maintain the marriage records, prescribe and furnish forms for application of the marriage laws to the several counties and said counties are mandated to report their marriages to his office. He and his successors are sued in their official capacity only.

151. Defendant Richard Weiss is the Director of the Arkansas Department of Finance and Administration. In his official capacity, he is responsible for accepting or refusing tax returns filed by Arkansas residents and non-residents. Amendment 83 prohibits same-sex couples married in other states from filing joint Arkansas tax returns. He and his successors are sued in their official capacity only.

152. Defendant, Larry Crane, is the Pulaski Circuit/County Clerk. In this official capacity, he is responsible for maintaining vital records of marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

153. Defendant, Cheryl Evans, is the White County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

154. Defendant, William "Larry" Clarke, is the Lonoke County Clerk. In this official capacity, he is responsible for maintaining vital records of marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

155. Defendant, Debbie Hartman, is the Conway County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

156. Defendant, Doug Curtis, is the Saline County Clerk. In this official capacity, he is

responsible for maintaining vital records of marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

157. Defendant, Melinda Reynolds, is the Faulkner County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

158. Defendant, Becky Lewallen, is the Washington County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

159. Defendant Patricia Navarro is the spouse of Plaintiff Arica Navarro, the two having lawfully married in the State of New York on June 29, 2012. She is named as a defendant in this action because Arica Navarro seeks an absolute divorce from Patricia Navarro. No other relief is requested with respect to Defendant Patricia Navarro in this action.

IV. ARKANSAS CANNOT JUSTIFY ITS EXCLUSION OF SAME-SEX COUPLES FROM MARRIAGE AND MARRIAGE RECOGNITION

160. Arkansas cannot justify its harmful exclusion of same-sex couples from marriage and marriage recognition under any standard of constitutional scrutiny.

161. In 2002, the Arkansas Supreme Court struck down the state sodomy law as unconstitutional. In so doing, the Supreme Court examined in detail the rights granted to the citizens of Arkansas by their Constitution. *See Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002). The Court found that all citizens are guaranteed:

certain inherent and inalienable rights, including the enjoyment of life and liberty and the pursuit of happiness: All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.

The rights granted by our constitution are guaranteed to all citizens equally. Article 2, Section 3, provides: "The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of race, color or previous condition." Ark. Const. art. 2 § 3. "The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens." Ark. Const. art. 2 § 18.

Jegley, 349 Ark. at 627–28.

162. Two years later, apparently partially in response to *Jegley*, Arkansas voters enacted Amendment 83 to the Arkansas Constitution. The sponsor of Amendment 83 was the Arkansas Marriage Amendment Committee. The President of that Committee, Jerry Cox, is also the head of an anti-gay organization known as the “Family Council.” Jerry Cox stated that the purpose of the Amendment was to preserve marriage and families, and he argued that locations in which a child has both a mother and a father are areas in which crime is lower and education is better, while locations in which single-parent households were common are higher-crime areas. Laura Kellams, *Foes Use Family, Fairness in Amendment 3 Debate: It Limits Marriage to Union of Man, Woman*, ARK. DEMOCRAT-GAZETTE, Sep. 5, 2004, at 1A. Mr. Cox did not explain how a comparison of crime rates in “single parent neighborhoods” and “mother/father neighborhoods” relates to crime rates in “same-sex parent neighborhoods.” Indeed, it is unlikely that there are any statistics on crime rates in “same-sex parent neighborhoods”—if such neighborhoods even exist.

163. There is no credible evidence that banning same-sex marriage serves in any way to “preserve marriage and families.” As the American Psychological Association (APA) stated in an *amicus* brief filed with the Supreme Court in *Windsor*:

[s]cientific evidence strongly supports the conclusion that homosexuality is a normal expression of human sexuality; that most gay, lesbian, and bisexual adults do not experience their sexual orientation as a choice; that gay and lesbian people form stable, committed relationships that are equivalent to heterosexual relationships in essential respects; and that same-sex couples are no less fit than heterosexual parents to raise children and their children are no less psychologically healthy and well-adjusted than children of heterosexual parents. In short, the claim that legal recognition of marriage for same-sex couples undermines the institution of marriage and harms their children is inconsistent with scientific evidence.

Windsor, Case No. 12-307, Br. of Am. Psychological Ass’n, at 4–5 (Mar. 1, 2013). The APA is the world’s largest professional association of psychologists. The American Medical Association, the American Academy of Pediatrics, the American Psychiatric Association, and the National Association of Social Workers joined in the APA *amici curiae* brief in *Windsor*. The American Medical Association is the Nation’s largest organization of doctors and medical students in the United States. The American Academy of Pediatrics is the largest professional organization of

pediatricians in the United States. The American Psychiatric Association is the Nation's largest organization of physicians specializing in psychiatry. The National Association of Social Workers is the Nation's largest association of professional social workers.

164. Amendment 83 and the challenged statutes cannot survive rational basis review, much less the "strict scrutiny" review accorded to laws affecting fundamental rights, where such laws must be narrowly tailored to achieve the purpose behind the law.

165. The relationship between preservation of marriage and excluding same-sex couples is tenuous at best. Legalization of same-sex marriage has not negatively affected heterosexual marriage rates in the states that have legalized same-sex marriage or in other countries where it is legal. Banning such marriages is not rationally related to the interest of protecting marriage.

166. Arkansas's purported attempt to "preserve families" appears related to procreation and children. This is illogical, however, because procreation is unrelated to a person's legal right to marry. *See e.g., Lawrence v. Texas*, 539 U.S. 558, 605 (2003)(J. Scalia, dissenting)(noting that "the sterile and the elderly are allowed to marry").

167. The purported purposes of Amendment 83 and the referenced statutes are, in reality, merely a pretext to do what was forbidden by the Supreme Court in *Windsor*—"harm a politically unpopular group." *Windsor*, 133 S.Ct. at 2693.

168. Arkansas law denies Plaintiffs and other same-sex couples the fundamental right to marry, the fundamental right to travel, and the fundamental right to intimate familial association by denying them access to the state-recognized institution of marriage and refusing to recognize the marriages they entered into in other states.

169. The State can demonstrate no important interest to justify denying the Plaintiff couples these fundamental rights. Indeed, it cannot demonstrate that the denial is tailored to any legitimate interest at all.

V. CLAIMS FOR RELIEF

CLAIM ONE: VIOLATION OF ARKANSAS CONSTITUTION, ARTICLE 2, SECTION 29

170. Plaintiffs repeat and incorporate by reference all of the preceding paragraphs of this Complaint as if fully set forth herein.

171. The Declaration of Rights contained in the Arkansas Constitution specifically

directs, due to the overarching importance of those rights for citizens of the state, that “everything in this article is excepted out of the general powers of the government; and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.” Ark. Const. art. 2, § 29. In *Eason v. State*, the Supreme Court of Arkansas ruled that a similar provision from the prior state constitution prohibited the legislature from repealing “either partial or entire of any of the provisions of the Bill of Rights . . . even when in the exercise of their delegated authority to amend the constitution.” *Eason v. State*, 11 Ark. 481, 490 (1851).

172. The Bill of Rights contained in the Arkansas Constitution ensures that no citizen will be deprived of life, liberty, or property without due process of law. Ark. Const. art. 2, §§ 8, 21. The Bill of Rights also declares that “[a]ll men are created equally free and independent,” recognizes the “equality of all persons” and prohibits any laws that “grant any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.” Ark. Const. art. 2, §§ 2, 3, 18, 29. Moreover, the Arkansas Supreme Court has recognized a “fundamental right to privacy [] implicit in the Arkansas Constitution.” *Jegley v. Picado*, 349 Ark. 600, 632 (2002); *see also, Ark. Dept. of Human Servs. v. Cole*, 2011 Ark. 145.

173. Amendment 83 and the referenced statutes directly conflict with the above referenced sections of the Declaration of Rights, which “shall forever remain inviolate.” Therefore, Amendment 83 and the referenced statutes should be deemed and are void.

174. Defendants’ enforcement of Amendment 83 and the referenced statutes deprive Plaintiffs of their constitutional rights under color of state law.

175. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

176. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

**CLAIM TWO: DEPRIVATION OF DUE PROCESS
(FUNDAMENTAL RIGHT TO MARRY)
UNITED STATES CONSTITUTION, AMENDMENT XIV**

177. Plaintiffs repeat and incorporate by reference all of the preceding paragraphs of this complaint as if fully set forth herein.

178. The Fourteenth Amendment to the United States Constitution, enforceable

pursuant to 42 U.S.C. § 1983, provides that no state shall “deprive any person of life, liberty, or property without due process of law.” U.S. Const. amend. XIV, § 1.

179. The right to marry the person of one’s choice is a fundamental liberty interest protected by the Due Process Clause. *See Loving*, 388 U.S. at 12 (“[m]arriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.”) Arkansas law denies the Plaintiff couples and other same-sex couples this fundamental right by denying them access to the state-recognized institution of marriage and refusing to recognize the marriages they entered into in other jurisdictions. The Arkansas laws at issue in this case are thus unconstitutional on their face and as applied to Plaintiffs.

180. Defendants’ actions infringe upon Plaintiffs’ fundamental right to marry by penalizing Plaintiffs’ constitutionally protected choice to marry the person they love. Because government interference with this fundamental right triggers strict scrutiny, Arkansas’s denial of state-recognized marriages to same-sex couples and its refusal to recognize the valid out-of-state marriages of same-sex couples may be upheld only upon a showing that the restriction is narrowly tailored to advance a compelling government interest. Defendants cannot satisfy this requirement. The challenged statutes are not even rationally related to the furtherance of a legitimate government interest.

181. Defendants’ enforcement of Amendment 83 and the referenced statutes deprive Plaintiffs of their constitutional rights under color of state law.

182. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

183. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

**CLAIM THREE: DEPRIVATION OF DUE PROCESS
(DENIAL OF AUTONOMY, FAMILY PRIVACY, AND ASSOCIATION)
UNITED STATE CONSTITUTION, AMENDMENT XIV**

184. Plaintiffs repeat and incorporate by reference all of the above allegations of this Complaint as though fully set forth herein.

185. The Due Process Clause of the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, also protects fundamental liberty interests in choices that lie at the core of personal dignity, privacy, and autonomy, including each person’s right to family integrity and

intimate association. Arkansas law denies the Plaintiff couples and other same-sex couples these fundamental rights by denying them access to the state-recognized institution of marriage and refusing to recognize the marriages they entered into in other jurisdictions. Arkansas law thereby burdens and infringes upon Plaintiffs' intimate, personal, and private decisions about how and with whom they have chosen to form a family, and prevents them from enjoying their constitutionally protected interests in liberty, dignity, privacy, and security for themselves and their families. Defendants' actions constitute a "deprivation of the liberty of the person," *Windsor*, 133 S. Ct. at 2695, protected by the Fourteenth Amendment.

186. Because government interference with this fundamental liberty interest triggers strict scrutiny, Arkansas's denial of state-recognized marriages to same-sex couples and its refusal to recognize the valid out-of-state marriages of same-sex couples may be upheld only upon a showing that the restrictions are narrowly tailored to advance a compelling government interest. Defendants cannot satisfy this requirement. The challenged statutes are not even rationally related to the furtherance of a legitimate government interest. Thus, the Arkansas laws at issue in this case are unconstitutional on their face and as applied to Plaintiffs.

187. Defendants' enforcement of Amendment 83 and the referenced statutes deprive Plaintiffs of their constitutional rights under color of state law.

188. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

189. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

**CLAIM FOUR: DEPRIVATION OF LIBERTY INTEREST IN VALID
MARRIAGES
UNITED STATES CONSTITUTION, AMENDMENT XIV**

190. Plaintiffs repeat and incorporate by reference all of the above allegations of this Complaint as though fully set forth herein.

191. As the Supreme Court of the United States recognized in *Windsor*, (1) a same-sex couple who has entered into a valid marriage has a liberty interest in their marital status that is protected by the due process and equal protection guarantees of the United States Constitution, and (2) governmental refusal to recognize a same-sex couple's existing marital status denies that protected liberty interest. 133 S.Ct. at 2695. The "principal purpose and necessary effect" of a

government's refusal to recognize the legal marriages of same-sex couples "are to demean those persons who are in a lawful same-sex marriage." *Id.* These constitutional rights are enforceable pursuant to 42 U.S.C. § 1983.

192. Defendants' actions infringe Plaintiffs' constitutionally protected interests in liberty by penalizing Plaintiffs' constitutionally protected choices in the most intimate and personal areas of their lives. Because government interference with this fundamental liberty interest triggers strict scrutiny, Arkansas's refusal to recognize the valid out-of-state marriages of same-sex couples may be upheld only upon a showing that the restrictions are narrowly tailored to advance a compelling government interest. Defendants cannot satisfy this requirement. The challenged statutes are not even rationally related to the furtherance of a legitimate government interest.

193. Defendants' enforcement of Amendment 83 and the referenced statutes deprive Plaintiffs of their constitutional rights under color of state law.

194. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

195. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

CLAIM FIVE: DEPRIVATION OF FUNDAMENTAL RIGHT TO TRAVEL UNITED STATES CONSTITUTION, AMENDMENT XIV

196. Plaintiffs repeat and incorporate by reference all of the above allegations of this Complaint as though fully set forth herein.

197. The United States Constitution, including the Due Process Clause, protects the liberty of individuals to travel throughout the nation, uninhibited by statutes, rules, or regulations which unreasonably burden or restrict their movement. This right to travel guards against interference with citizens' rights "to migrate, resettle, find a new job, and start a new life." *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969). The right to travel prohibits both laws that affirmatively interfere with or prevent a citizen's travel, and also laws that "penalize[e] those who choose to" migrate to another state. *Id.* at 629–30. The right, enforceable pursuant to 42 U.S.C. § 1983, extends not only to temporary visits to other states, but also to becoming a permanent resident of another state.

198. Defendants' refusal, under color of state law, to respect the valid out-of-state marriages of Plaintiffs and other same-sex couples unconstitutionally burdens and infringes on Plaintiffs' right to travel among the states and to resettle and make a new home in Arkansas. By conditioning Plaintiffs' choices to reside in Arkansas on relinquishment of all rights, benefits, and responsibilities of their marriages lawfully celebrated in other states, the state has imposed a penalty on Plaintiffs' exercise of their constitutionally protected right to travel, guaranteed by the Fourteenth Amendment and other constitutional provisions. Thus, Amendment 83, the referenced statutes, and any other state law that purports to deny recognition to marriages of same-sex couples validly celebrated in another jurisdiction are unconstitutional on their face and as applied to Plaintiffs.

199. A law that has the effect of imposing a penalty on the exercise of the right travel is subject to strict scrutiny and may be upheld only upon a showing that the restriction is narrowly tailored to advance a compelling government interest. Defendants cannot satisfy this requirement. The challenged statutes are not even rationally related to the furtherance of a legitimate government interest.

200. Defendants' enforcement of Amendment 83 and the referenced statutes deprive Plaintiffs of their constitutional rights under color of state law.

201. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

202. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

**CLAIM SIX: DEPRIVATION OF EQUAL PROTECTION
DISCRIMINATION BASED ON SEXUAL ORIENTATION
UNITED STATES CONSTITUTION, AMENDMENT XIV**

203. Plaintiffs repeat and incorporate by reference all of the preceding paragraphs of this complaint as if fully set forth herein.

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

205. Defendants' enforcement, under color of state law, of Arkansas laws that deny state-recognized marriages to same-sex couples and that fail to respect Plaintiffs' valid out-of-

state marriages, even though Arkansas respects the out-of-state marriages of opposite-sex couples, discriminates against Plaintiffs on the basis of their sexual orientation. As a result of such discrimination, Plaintiffs are deprived of the many benefits afforded opposite-sex couples. Arkansas's denial of state-recognized marriages to same-sex couples and its refusal to respect Plaintiffs' marriages, and Defendants' actions to enforce that refusal, deny Plaintiffs equal dignity and respect, treats same-sex couples and their children as second-class citizens (and their legal marriages as second-class marriages), and invites private bias and discrimination by instructing all persons with whom same-sex couples interact, including their own children, that their marriages or family relationships are less worthy than the marriages of others. Plaintiffs are similarly situated to opposite-sex couples in all respects relevant to the Arkansas laws at issue in this case. Arkansas laws nevertheless treat them differently in a manner that reflects moral disapproval and animus toward same-sex couples.

206. Many same-sex couples, including Plaintiff couples in this action, are parents raising children together. Plaintiffs and their children are equally deserving of the respect and dignity that legal recognition of marriage confers on opposite-sex married couples and their children, as well as the tangible protections and responsibilities that state law provides to married couples and their children.

207. The Arkansas laws at issue in this case, and any other Arkansas law that denies state-recognized marriage to same-sex couples or refuses to recognize marriages of same-sex couples validly celebrated in another jurisdiction are unconstitutional on their face and as applied to Plaintiffs because they violate equal protection guarantees by categorically depriving Plaintiffs of their rights on the basis of sexual orientation.

208. This categorical deprivation is not rationally related to the furtherance of any legitimate government interest, let alone narrowly tailored to substantially advance any compelling or important government interest.

209. Arkansas's denial of state-recognized marriages to same-sex couples and its refusal to respect the valid out-of-state marriages of Plaintiffs and other same-sex couples based on their sexual orientation is subject to heightened or strict scrutiny.

210. Sexual orientation bears no relation to a person's ability to perform in or contribute to society.

211. Gay, lesbian, and bisexual people have endured a long history of discrimination

both in Arkansas and nationally.

212. Sexual orientation is a trait that is so deep-seated and fundamental to an individual's identity and sense of self that no person should be required to change it to avoid discrimination, even if such change were possible.

213. Gay, lesbian, and bisexual people are a discrete and insular minority, and ongoing prejudice against them continues to seriously curtail the operation of those political processes that might ordinarily be relied upon to protect minorities. They lack express statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half the states, including Arkansas. They are underrepresented in federal, state, and local elected offices. Gay, lesbian, and bisexual people have been frequent targets of discriminatory voter initiatives, and same-sex couples have been stripped of the right to marry through 30 state constitutional amendments, including Amendment 83 in Arkansas.

214. Moreover, laws that discriminate based on sexual orientation—including the laws challenged in this lawsuit—are impermissibly based on overbroad gender stereotypes or expectations, including the expectation that a person's most intimate relationship or marriage should be with someone of the opposite sex, not a person of the same sex.

215. Defendants' enforcement of Amendment 83 and the referenced statutes deprive Plaintiffs of their constitutional rights under color of state law.

216. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

217. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

**CLAIM SEVEN: DEPRIVATION OF EQUAL PROTECTION
DISCRIMINATION BASED ON SEX
UNITED STATES CONSTITUTION, AMENDMENT XIV**

218. Plaintiffs repeat and incorporate by reference all of the preceding paragraphs of this complaint as if fully set forth herein.

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

220. Defendants' enforcement, under color of state law, of Arkansas laws that deny

state-recognized marriages to same-sex couples and that fail to respect Plaintiffs' valid out-of-state marriages, even though Arkansas respects the out-of-state marriages of opposite-sex couples, discriminates against Plaintiffs on the basis of their sex. Because each Plaintiff is married to a person of the same sex rather than a person of the opposite sex, Plaintiffs are deprived of the many benefits afforded opposite-sex couples in Arkansas.

221. The sex-based classifications created by the Arkansas laws at issue in this case, and any other Arkansas law that denies state-recognized marriage to same-sex couples or refuses to recognize marriages of same-sex couples validly celebrated in another jurisdiction, violate equal protection guarantees both facially and as applied to Plaintiffs. These sex-based classifications are apparent on the face of Amendment 83, § 1, Arkansas Code § 9-11-109, and Arkansas Code § 9-11-208, all of which limit recognition to marriages comprised “only of man and woman” or “one man and one woman” and provide that marriages involving spouses of the same sex are “void” in Arkansas. The sex-based classification is also apparent from Arkansas Code § 9-11-107, which excludes “a marriage between persons of the same sex” from the state’s general policy of recognizing all marriages contracted outside of Arkansas. Because of these classifications, each Plaintiff is prevented from having his or her marriage recognized solely because of his or her sex. For example, if Rhonda Eddy were a man rather than a woman who wishes to marry Treba Leath, she would be permitted to do so under Arkansas law. Similarly, if Andra Alsbury were a man rather than a woman married to Amber Gardner-Asbury, her marriage, validly celebrated in Massachusetts, would be fully respected under Arkansas law; because she is a woman, however, Arkansas categorically denies recognition to her marriage.

222. Arkansas’s denial of state-recognized marriage to same-sex couples and refusal to respect the valid out-of-state marriages of same-sex couples also unconstitutionally penalizes Plaintiffs for their nonconformity with sex-based stereotypes. Arkansas treats Plaintiffs and other same-sex couples this way because they do not conform to sex-based stereotypes that women should marry only men and men should marry only women. Enforcement by the state of the gender-based expectation that a person’s most intimate relationship or marriage should be with someone of the opposite sex, not a person of the same sex, imposes severe constitutional harms by burdening the most personal choices a person makes in life.

223. Plaintiffs are similarly situated to opposite-sex couples in all respects relevant to the Arkansas laws at issue in this case, but Arkansas denies them the right to marry or refuses to

recognize their marriages based they are in relationships with a person of the same sex. Arkansas's categorical denial of state-recognized marriage to same-sex couples and refusal to respect the valid out-of-state marriages of same-sex couples based on Plaintiffs' sex and their nonconformity with sex stereotypes requires application of heightened scrutiny.

224. Arkansas's denial of state-recognized marriage to same-sex couples and refusal to respect the valid out-of-state marriages of same-sex couples does not sufficiently advance any important or compelling government interest to survive heightened scrutiny.

225. Defendants' enforcement of Amendment 83 and the referenced statutes deprive Plaintiffs of their constitutional rights under color of state law.

226. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

227. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that Amendment 83, the referenced statutes, and all other Arkansas statutes that prevent same-sex couples from marrying, or from having their lawful marriages entered into in other states recognized in Arkansas, violate Article 2, Section 29 of the Arkansas Constitution, and thus Amendment 83 and the referenced statutes are void;

2. Enter a declaratory judgment that Amendment 83 to Arkansas's Constitution, the referenced statutes and all other Arkansas statutes that prevent same-sex couples from marrying, or from having their lawful marriages entered into in other states recognized in Arkansas, violate the due process guarantees contained in the United States Constitution;

3. Enter a declaratory judgment that Amendment 83 to Arkansas's Constitution, the referenced statutes, and all other Arkansas statutes that prevent same-sex couples from marrying, or from having their legitimate marriages entered into in other states recognized in Arkansas, violate the equal protection guarantees contained in the United States Constitution;

4. Enter a permanent injunction enjoining Defendants from denying Plaintiffs and all other same-sex couples the right to marry in Arkansas and directing the Defendants to recognize marriages of same-sex couples validly entered outside of Arkansas.

5. Issue an injunction requiring that Defendants recognize the New York marriage of

Arica and Patricia Navarro and, upon proper proof of residency and grounds, grant Arica Navarro an absolute divorce from Patricia Navarro;

6. Issue a permanent mandatory injunction requiring Defendant Nathaniel Smith, M.D., as interim director of the Arkansas Department of Health, and his successors, to henceforth issue birth certificates for children born of same-sex marriages entered in other states reflecting the married parents to be the parents of the child born of the marriage and, also, requiring said Defendant to issue amended birth certificates to any same-sex married couples previously giving birth to a child in Arkansas reflecting he married parents to be the parents of the child born of the marriage.

7. Issue a permanent mandatory injunction prohibiting Defendant Richard Weiss, as Director of the Arkansas Department of Finance and Administration, and his successors, from refusing to accept for filing joint tax returns filed by same-sex couples married under the laws of other jurisdictions where same-sex marriage is recognized.

8. Award Plaintiffs reasonable attorneys' fees, expenses and costs of suit; and;

9. Order all other appropriate relief to which it determines Plaintiffs are entitled.

Dated: September 30, 2013

Respectfully Submitted,

/s/ Cheryl K. Maples

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CERTIFICATE OF SERVICE

I, undersigned counsel, do hereby state that a true and correct copy of the foregoing document was served upon the following counsel via email:

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