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Attorneys for Plaintiffs

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SASHA BALLEEN, et al.,

Plaintiffs,

v.

THOMAS W. CORBETT, JR., GOVERNOR
OF THE COMMONWEALTH OF
PENNSYLVANIA, KATHLEEN KANE,
ATTORNEY GENERAL OF THE
COMMONWEALTH OF PENNSYLVANIA,
and MICHAEL WOLF, SECRETARY OF
HEALTH OF THE COMMONWEALTH OF
PENNSYLVANIA,

Defendants,

NO. 481 MD 2013

2013 NOV -8 P 2 11

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claims in the Complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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NO. 481 MD 2013

AMENDED PETITION FOR REVIEW IN THE NATURE OF A CIVIL ACTION
COMPLAINT

Sasha Ballen, Diana Spagnuolo, and the other same-sex couples listed below¹ (collectively “Plaintiffs”), hereby bring the following action against the Governor and certain officers of the Commonwealth of Pennsylvania (collectively “Defendants”) seeking to have this Court declare their marriages valid and the Marriage Law, *see* 23 Pa. C.S. §§ 1102, 1704, which defines marriage as a union between one man and one woman, unconstitutional. These provisions of the Marriage Law violate Plaintiffs’ rights under the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution and under Article I of the Pennsylvania Constitution.

INTRODUCTION

1. In 1996, as the federal government considered the federal Defense of Marriage Act, 1 U.S.C. § 7 (“DOMA”),² Pennsylvania debated and passed amendments to Pennsylvania’s Marriage Law, 23 Pa. C.S. §§ 1102, 1704 (the “Marriage Law”). *See* 1996 Pa. Legis. J. (House), at 2019.

¹ The Plaintiffs include: Sasha Ballen and Diana Spagnuolo; Jennifer L. Anderson and Lisa A. Fraser; Gabriela Assagioli and Lynn Zeitlin; Youval Balistra and Glen Loev; Mark C. Baumann-Erb and Ronald S. Baumann-Erb; Jeffrey Becker and Kevin Taylor; Joan Bennett and Joanne Glusman; Joseph Billips and Andrew Pruessner; Loreen Bloodgood and Alicia Terrizzi; Leigh Taylor Braden and Sophie Forge; Joan Brown and Jill Galper; Henry Collins and Peter Friel; William B. Cook and Clarence Samuel Warden; Dr. Marta Dabezies and Patricia Rose; Dr. Mary Margaret DeSouza and Kimberly A. Lane; Mary E. Flynn and Elaine A. Spangler; William A. Gray, Jr. and John Kandray; Dawn Grove and Tracy Harper; Joann Hyle and Kathryn Kolbert; Charlene Kurland and Ellen Toplin; Christine Lindgren and Andrea Myers; Ethelda Makoid and Wendy Sheppard; Marcia Martinez-Helfman and Sarah Martinez-Helfman; Andrea McDonald and Patricia Traub; Nicholas Pantaleone and Anthony Ruffo; Ruth Parks and Michelle Schaeffer; Robert Polay and N. Nicholas Vlasisavljevic; Kenneth Robinson and Richard Strahm.

² Section 3 of DOMA provided: “In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” 1 U.S.C. § 7.

2. Using similar language as that used in DOMA, the Marriage Law provides that marriage is “a civil contract by which one man and one woman take each other for husband and wife.” 23 Pa. C.S. § 1102. The law further states that “marriage shall be between one man and one woman.” *Id.* § 1704.

3. Pennsylvania legislators supporting the provision argued that “traditional” marriage was between one man and one woman. *See* 1996 Pa. Legis. J. (House), at 2018-19.

4. On June 26, 2013, in a landmark decision, the United States Supreme Court found DOMA unconstitutional. *See United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013). The Supreme Court found: “The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity.” *Id.* at 2696. In so doing, the Supreme Court held that, because the law’s “principal purpose is to impose inequality,” it “demeans the couple, whose moral and sexual choices the Constitution protects.” *Id.* at 2694.

5. Like DOMA, the Marriage Law’s principal purpose is to impose inequality, and it demeans Plaintiffs and other same-sex couples.

6. On July 11, 2013, Pennsylvania Attorney General Kathleen G. Kane announced that the Office of Attorney General would not defend Pennsylvania’s Marriage Law in a case challenging the law’s constitutionality under the U.S. Constitution, *see Whitewood v.*

Corbett, No. 13-1861 (M.D. Pa. filed July 9, 2013), because, in light of *Windsor*, she had determined that the Marriage Law is “wholly unconstitutional.”³

7. Following Attorney General Kane’s pronouncement of her legal opinion, on July 23, 2013, the Clerk of the Orphans’ Court of Montgomery County, D. Bruce Hanes, announced that his office would begin issuing marriage licenses to same-sex couples.⁴

8. Over the course of several weeks, Plaintiffs applied for and obtained marriage licenses from Clerk Hanes, and were married pursuant to those licenses.

9. Plaintiffs ask this Court to declare Plaintiffs’ marriages valid and to nullify and declare invalid sections 1102 and 1704 of the Marriage Law, permanently enjoin Defendants from enforcing these provisions, and uphold Plaintiffs’ rights under the United States Constitution and Pennsylvania Constitution.

THE PARTIES

10. Plaintiffs Sasha Ballen and Diana Spagnuolo received the first marriage license that Clerk Hanes issued to a same-sex couple and were married on July 28, 2013.

11. Plaintiffs Jennifer L. Anderson and Lisa A. Fraser received a marriage license from Clerk Hanes and were married on August 11, 2013.

³ Press Release, Pennsylvania Attorney General Kathleen Kane, “Attorney General Kane Will Not Defend DOMA” (July 11, 2013), <http://www.attorneygeneral.gov/press.aspx?id=7043>.

⁴ Press Release for Main Line Times, D. Bruce Hanes, “Montco Register of Wills D. Bruce Hanes on his Decision to Issue a Marriage License to a Same Sex Couple,” (July 23, 2013), http://www.mainlinemedianews.com/articles/2013/07/23/main_line_times/news/doc51eeca35360b015385105.txt

12. Plaintiffs Gabriela Assagioli and Lynn Zeitlin received a marriage license from Clerk Hanes and were married on July 31, 2013.

13. Plaintiffs Youval Balistra and Glen Loev received a marriage license from Clerk Hanes and were married on July 27, 2013.

14. Plaintiffs Mark C. Baumann-Erb and Ronald S. Baumann-Erb received a marriage license from Clerk Hanes and were married on July 29, 2013.

15. Plaintiffs Jeffrey Becker and Kevin Taylor received a marriage license from Clerk Hanes and were married on July 28, 2013.

16. Plaintiffs Joan Bennett and Joanne Glusman received a marriage license from Clerk Hanes and were married on August 2, 2013.

17. Plaintiffs Joseph Billips and Andrew Pruessner received a marriage license from Clerk Hanes and were married on August 2, 2013.

18. Plaintiffs Loreen Bloodgood and Alicia Terrizzi received a marriage license from Clerk Hanes and were married on July 24, 2013.

19. Plaintiffs Leigh Taylor Braden and Sophie Forge received a marriage license from Clerk Hanes and were married on July 29, 2013.

20. Plaintiffs Joan Brown and Jill Galper received a marriage license from Clerk Hanes and were married on August 4, 2013.

21. Plaintiffs Henry Collins and Peter Friel received a marriage license from Clerk Hanes and were married on August 19, 2013.

22. Plaintiffs William B. Cook and Clarence Samuel Warden received a marriage license from Clerk Hanes and were married on August 14, 2013.

23. Plaintiffs Dr. Marta Dabezies and Patricia Rose received a marriage license from Clerk Hanes and were married on August 11, 2013.

24. Plaintiffs Dr. Mary Margaret DeSouza and Kimberly A. Lane received a marriage license from Clerk Hanes and were married on August 4, 2013.

25. Plaintiffs Mary E. Flynn and Elaine A. Spangler received a marriage license from Clerk Hanes and were married on August 4, 2013.

26. Plaintiffs William A. Gray, Jr. and John Kandray received a marriage license from Clerk Hanes and were married on August 5, 2013.

27. Plaintiffs Dawn Grove and Tracy Harper received a marriage license from Clerk Hanes and were married on August 4, 2013.

28. Plaintiffs Joann Hyle and Kathryn Kolbert received a marriage license from Clerk Hanes and were married on August 8, 2013.

29. Plaintiffs Charlene Kurland and Ellen Toplin received a marriage license from Clerk Hanes and were married on July 29, 2013.

30. Plaintiffs Christine Lindgren and Andrea Myers received a marriage license from Clerk Hanes and were married on August 3, 2013.

31. Plaintiffs Ethelda Makoid and Wendy Sheppard received a marriage license from Clerk Hanes and were married on August 8, 2013.

32. Plaintiffs Marcia Martinez-Helfman and Sarah Martinez-Helfman received a marriage license from Clerk Hanes and were married on July 29, 2013.

33. Plaintiffs Andrea McDonald and Patricia Traub received a marriage license from Clerk Hanes and were married on September 2, 2013.

34. Plaintiffs Nicholas Pantaleone and Anthony Ruffo received a marriage license from Clerk Hanes and were married on August 2, 2013.

35. Plaintiffs Ruth Parks and Michelle Schaeffer received a marriage license from Clerk Hanes and were married on August 7, 2013.

36. Plaintiffs Robert Polay and N. Nicholas Vlasisavljevic received a marriage license from Clerk Hanes and were married on July 28, 2013.

37. Plaintiffs Kenneth Robinson and Richard Strahm received a marriage license from Clerk Hanes and were married on August 16, 2013.

38. Defendant Thomas W. Corbett ("Corbett") is Governor of the Commonwealth of Pennsylvania.

39. Defendant Kathleen Kane ("Kane") is Attorney General of the Commonwealth of Pennsylvania.

40. Defendant Michael Wolf ("Wolf") is Secretary of the Pennsylvania Department of Health.

JURISDICTION AND VENUE

41. Jurisdiction is proper in the Commonwealth Court of Pennsylvania pursuant to 42 Pa. C.S. § 761(a) because this action is brought against officers of the Commonwealth government acting in their official capacities.

42. Venue is proper in this Court pursuant to 42 Pa. C.S. § 8523(a).

FACTS

43. Pennsylvania law defines “marriage” as “a civil contract by which one man and one woman take each other for husband and wife.” 23 Pa. C.S. § 1102. The law further states that “marriage shall be between one man and one woman.” *Id.* § 1704.

44. No person shall be joined in marriage unless and until a marriage license has been obtained. *See* 23 Pa. C.S. § 1301.

45. In Pennsylvania, as in most states, marriage carries with it certain tangible benefits available from the state. In 1999, the Center for Lesbian and Gay Civil rights conducted a survey of Pennsylvania laws and determined that 683 statutory provisions provide benefits or protections to married couples that are not, by virtue of section 1102, available to same sex couples. *See* Center for Lesbian and Gay Civil Rights, *Survey of Statutory Rights Associated with Marriage in Pennsylvania* 1-6 (1999), attached as Exhibit A.

46. Pennsylvania legal protections that are not available to same-sex couples impact all facets of life, including health care, parental rights, property rights, taxation, domestic relations, educational benefits, estate planning, family businesses, public assistance, public

employment benefits, consumer protections, criminal defenses, survivors' rights, and others. *Id.* at 6-12. As the study concluded, "marriage and the spousal relationship pervade[] almost every area of law, affecting the operation of the state and individual at every level." *Id.* at 13.

47. At its heart, the Pennsylvania Marriage Law was intended to demean, devalue, and degrade same-sex relationships.

48. Supporters of the law heavily relied on a "moral opposition to same-sex marriages." 1996 Pa. Legis. J. (House), at 2017. Legislators also asserted: "[T]he large majority [of Pennsylvanians] do not want our traditional marriage institution and our state of morals to be changed." *Id.* at 2019.

49. In addition to characterizing same-sex marriage as immoral, legislators suggested that homosexual couples threaten "family values and traditional beliefs," and that "it is imperative that we in Pennsylvania should stand up for traditional marriage for the benefit of families and children in the Commonwealth and our future." *Id.* at 2022.

50. Pennsylvania legislators thus cast aspersions on same-sex couples as immoral people who threaten the future of the Commonwealth, a manifestation of a deep-seated and long-standing animus against same-sex couples in the Commonwealth.

51. Plaintiffs are similarly situated to heterosexual couples who wish to be or are married in that each couple consists of two people who love each other, who are committed to each other, and who wish to have the legal and societal recognition of their relationship that comes from marriage.

52. Plaintiffs have all been negatively affected by the Marriage Law's definition of marriage as between one man and one woman. Without comprehensively listing every way same-sex couples are harmed, one example is that same sex couples with children, like Plaintiffs Loreen Bloodgood and Alicia Terrizzi, have had to pay for the non-biological parent to adopt their children so that both parents would have legal rights. They also have to explain to their children why they are not married like other children's parents. Plaintiffs Sasha Ballen and Diana Spagnuolo suffered anxiety during the periods between the birth of each of their children and that child's adoption by the non-biological parent, because until the adoption was finalized the non-biological parent had no legal rights. Moreover, because the Commonwealth does not recognize their relationship, they were forced to complete the Commonwealth's "Unwed Mother" forms when they each gave birth.

53. Other same-sex couples have been financially impacted by being unable to receive the benefits afforded married couples. For example, despite their committed and lengthy relationship, Plaintiffs Charlene Kurland and Ellen Toplin have paid higher rates on their long-term care insurance, because the Commonwealth does not allow them to qualify for benefits available to married couples. Plaintiffs Ruth Parks and Michelle Schaeffer have paid taxes on shared employee health benefits beyond what a heterosexual married couple would pay, because the Commonwealth does not consider them spouses. The financial impact also spreads to other family members who are not granted familial status and, thus, are subject to additional taxes for gifts and inheritance purposes. These taxes and higher rates can have an enormous impact on the finances of same-sex couples.

54. Same-sex couples also must take extra precautions to ensure that they are legally protected should one member become ill or die. Plaintiffs Ruth Parks and Michelle

Schaeffer used extreme caution in wording the deed to their home to ensure that neither would lose their home should something happen to the other. Plaintiffs Kenneth Robinson and Richard Strahm were forced to purchase extra life insurance coverage that would cover the Commonwealth's inheritance tax – a tax that heterosexual married couples do not have to pay – so that the surviving partner could afford the home they both live in.

55. The Commonwealth's continued refusal to recognize the basic dignity of same-sex couples also have an emotional impact on same-sex couples as a result of their being singled out as "other." Plaintiffs Joseph Billips and Andrew Pruessner felt humiliation from undergoing the process of attempting to locate a jurisdiction that would permit them to marry or recognize their marriage. Despite their marriage certificate being on file with the Commonwealth, their relationship continues to be treated as less by their employers, the Commonwealth, and the federal government.

56. In *United States v. Windsor*, the United States Supreme Court struck down the federal version of the Pennsylvania Marriage Law when it found DOMA unconstitutional. *See United States v. Windsor*, 133 S. Ct. at 2694. The Supreme Court found that DOMA "seeks to injure the very class that New York seeks to protect," such that it "violates basic due process and equal protection principles." *Id.* at 2693. In reaching this conclusion, the Supreme Court found that justifications based on "traditional" views of marriage "demean[] the couple, whose moral and sexual choices the Constitution protects" and fail constitutional scrutiny. *Id.* (internal quotations omitted). Such a purpose does not "overcome[] the purpose and effect to disparage and injure." *Id.* Although *United States v. Windsor* did not directly address the constitutionality of any state law restricting same-sex marriage, the Supreme Court's reasoning in that case also supports the conclusion that the Pennsylvania Marriage Law is unconstitutional.

57. Following the Supreme Court's decision in *United States v. Windsor*, Attorney General Kane, who is charged with defending and enforcing the Pennsylvania Marriage Law, announced that she believes that the Marriage Law is "wholly unconstitutional." See Press Release, *Pennsylvania Attorney General Kathleen Kane, "Attorney General Kane Will Not Defend DOMA"* (July 11, 2013), available at <http://www.attorneygeneral.gov/press.aspx?id=7043>.

58. Attorney General Kane's opinion on the Marriage Law states that she has concluded:

- Pennsylvania's DOMA, like the federal DOMA, imposes a disadvantage, a separate status, and a stigma on those who enter into same-sex marriages.
- Pennsylvania's DOMA wrongly denies same-sex couples the fundamental right to marry in Pennsylvania; and for those same-sex couples who legally marry outside Pennsylvania, it denies them the fundamental right to have their lawful marriage recognized in our state.
- Pennsylvania's DOMA has no legitimate purpose other than to disparage and injure same-sex couples by placing them in a less respected position than others.
- The discriminatory treatment explicitly authorized by DOMA violates both the US and Pennsylvania Constitution.

Id.

59. On July 23, 2013, Clerk Hanes, who is charged with determining the "legality" of and any "legal objection" to a contemplated marriage, 23 Pa. C.S. §§ 1306-07, reviewed the state of the law and also determined that the Marriage Law's definition of marriage is unconstitutional.

60. Upon receipt of marriage license applications from same-sex couples, Clerk Hanes began issuing marriage licenses to those applicants, including Plaintiffs. Plaintiffs subsequently were married pursuant to those licenses.

61. Defendant Corbett, acting through his General Counsel James D. Schultz, has stated that his administration will defend the constitutionality of the Marriage Law.⁵

62. On July 30, 2013, the Department of Health, managed by Defendant Wolf, filed a petition for mandamus against Clerk Hanes. *See Department of Health v. Hanes*, 379 MD 2013, Amended Petition for Review in the Nature of an Action in Mandamus at 19 (Cmwlth. Ct. 2013). Throughout its pleadings, attorneys for the Office of General Counsel and Department of Health repeatedly stated that Plaintiffs' marriage licenses and marriages are invalid, *see id.* at 18-19, and argued that the Department of Health has a statutory duty to ensure that the Marriage Law is uniformly enforced, *see id.* at 7-8.

63. On September 12, 2013, the Honorable Dan Pellegrini, Presiding Judge of the Commonwealth Court, granted the petition for mandamus but made no determination regarding the validity of the Marriage Law or of Plaintiffs' marriage licenses or marriages. *See Department of Health v. Hanes*, 379 M.D. 2013, Memorandum Opinion at 32 (Cmwlth. Sept. 12, 2013) (“[T]he legality of Hanes’ actions and any purported rights obtained thereby are not at issue and may not be established in the instant mandamus action.”).

⁵ *See* Letter from General Counsel James D. Schultz to First Deputy Attorney General Adrian R. King, at 4 (July 30, 2013) (“In so doing, [the Office of General Counsel] and its public official clients have decided to defend the constitutionality of the Marriage Law, as this Governor’s Administration would do where it is a party to the challenge of any duly enacted law the Attorney General has refused her obligation to defend.”), attached as Exhibit B.

64. Accordingly, Plaintiffs seek a declaration both that their marriages are valid and that sections 1102 and 1704 of the Marriage Law are unconstitutional under the United States Constitution and the Pennsylvania Constitution.

65. In the event that a court determines that Plaintiffs' marriages are not valid, each of the Plaintiff couples wish to be married, but are currently barred by sections 1102 and 1704 of the Marriage Law. Accordingly, Plaintiffs ask that the Court nullify and declare invalid sections 1102 and 1704 of the Marriage Law, permanently enjoin Defendants from enforcing these provisions, and uphold Plaintiffs' rights under the United States Constitution and the Pennsylvania Constitution.

COUNT I
UNITED STATES CONSTITUTION – FOURTEENTH AMENDMENT:
EQUAL PROTECTION

66. The previous paragraphs of the Complaint are hereby incorporated by reference as if fully set forth herein.

67. Sections 1102 and 1704 of the Marriage Law classify on the basis of sexual orientation and sex. Sections 1102 and 1704 (i) are not rationally related to furthering a legitimate state interest, (ii) do not further an important government interest in a way that is substantially related to that interest, and/or (iii) are not narrowly tailored and/or the least restrictive means to further a compelling government interest.

68. As the Supreme Court of the United States has explained, “[t]he Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction

that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)).

69. Sections 1102 and 1704 of the Marriage Law impermissibly discriminate on the basis of sexual orientation and sex, because they have the purpose and effect of disparaging and injuring same-sex couples and lack any rational basis. Therefore, the laws are based on nothing more than animus, which is forbidden under the Equal Protection Clause. *See United States v. Windsor*, 133 S.Ct. at 2694.

70. To the extent that Pennsylvania lawmakers rely on “tradition” to justify sections 1102 and 1704 of the Marriage Law, that reliance cannot justify a law which denies certain rights and benefits to a group of individuals. *See Lawrence v. Texas*, 539 U.S. 558, 577-78 (2003) (“[T]he fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice . . .”).

71. Because sections 1102 and 1704 of the Marriage Law violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Plaintiffs ask that this Court declare sections 1102 and 1704 of the Marriage Law unconstitutional and enjoin their enforcement. *See* 42 Pa. C.S. § 7532.

COUNT II
PENNSYLVANIA CONSTITUTION – ARTICLE I:
EQUAL PROTECTION

72. The previous paragraphs of the Complaint are hereby incorporated by reference as if fully set forth herein.

73. Article I, Section 1 recognizes inherent and inalienable rights of mankind, which include the right of Pennsylvanians to “pursu[e] their own happiness.” Pa. Const. art. I § 1. Section 26 further provides: “Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” Pa. Const. art. I § 26.

74. “The essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly.” *DeFazio v. Civil Serv. Comm’n of Allegheny Cnty.*, 756 A.2d 1103, 1106 (Pa. 2000).

75. Sections 1102 and 1704 of the Marriage Law treat same-sex couples differently from heterosexual couples based on no more than animus and fear.

76. Because sections 1102 and 1704 of the Marriage Law violate the Equal Protection provisions of the Pennsylvania Constitution, Plaintiffs ask that this Court declare sections 1102 and 1704 of the Marriage Law unconstitutional and enjoin their enforcement. *See* 42 Pa. C.S. § 7532.

COUNT III
PENNSYLVANIA CONSTITUTION – ARTICLE I:
EQUAL RIGHTS AMENDMENT

77. The previous paragraphs of the Complaint are hereby incorporated by reference as if fully set forth herein.

78. The Equal Rights Amendment provides: “Equality under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.” Pa. Const. art. I, § 28.

79. As the Supreme Court of Pennsylvania has held: “In this Commonwealth, sex may no longer be accepted as an exclusive classifying tool.” *Commonwealth v. Butler*, 328 A.2d 851, 855 (Pa. 1974).

80. The underlying principle behind the Equal Rights Amendment embodied in Article I, Section 28 is that one’s sex should not define one’s rights.

81. In the Marriage Law, “marriage” is defined as a “civil contract by which one man and one woman take each other for husband and wife.” 23 Pa. C.S. § 1102. The Law explains further that “marriage shall be between one man and one woman.” 23 Pa. C.S. § 1704.

82. The ability to marry within the state of Pennsylvania depends exclusively on the sex of the participants.

83. For instance, if Plaintiff Sasha Ballen were a man, this fictional man could marry Diana Spagnuolo; however, Plaintiff Ballen is a woman, so she is not entitled to do so by sole virtue of her sex.⁶

84. Under Pennsylvania’s Equal Rights Amendment, such classifications are impermissible.

85. Because sections 1102 and 1704 of the Marriage Law violate the Equal Rights Amendment to the Pennsylvania Constitution, *see* Pa. Const. art. I, § 28, Plaintiffs ask

⁶ The same is true for a gay male couple. If Plaintiff Jeffrey Becker were a woman, this fictional woman could marry Plaintiff Kevin Taylor. However, because Plaintiff Becker is a man, he is not entitled to do so by sole virtue of his sex.

that this Court declare sections 1102 and 1704 of the Marriage Law unconstitutional and enjoin their enforcement. *See* 42 Pa. C.S. § 7532.

COUNT IV
UNITED STATES CONSTITUTION – FOURTEENTH AMENDMENT:
DUE PROCESS

86. The previous paragraphs of the Complaint are hereby incorporated by reference as if fully set forth herein.

87. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from depriving its citizens of fundamental rights without due process of law. *See Loving v. Virginia*, 388 U.S. 1, 12 (1967) (denying the fundamental freedom of marriage to some “is surely to deprive all the State’s citizens of liberty without due process of law”).

88. The right to marry is a fundamental right, and laws that infringe on that right are subject to strict scrutiny. *See Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). “To survive strict scrutiny, a state must do more than assert a compelling state interest—it must demonstrate that the law is necessary to serve the asserted interest.” *Burson v. Freeman*, 504 U.S. 191, 199-200 (1992).

89. The Commonwealth has no compelling state interest in defining marriage as between one man and one woman. The policy articulated in sections 1102 and 1704 of the Marriage Law is “longstanding public policy.” Tradition, however, does not satisfy even rational basis review, let alone any heightened level of scrutiny. *See Heller v. Doe*, 509 U.S. 312, 326 (1993) (“[a]ncient lineage of a legal concept does not give a [law] immunity from attack”).

Morality alone also does not satisfy rational basis review. *See Lawrence v. Texas*, 539 U.S. at 577-78.

90. Because “tradition” and purported morality cannot withstand the rigors of strict scrutiny, sections 1102 and 1704 of the Marriage Law are unconstitutional violations of due process under the Fourteenth Amendment to the United States Constitution. Plaintiffs ask that this Court declare sections 1102 and 1704 of the Marriage Law unconstitutional and enjoin their enforcement. *See* 42 Pa. C.S. § 7532.

COUNT V
PENNSYLVANIA CONSTITUTION – ARTICLE I:
DUE PROCESS

91. The previous paragraphs of the Complaint are hereby incorporated by reference as if fully set forth herein.

92. Article I of the Pennsylvania Constitution recognizes a right to marry that is as fundamental as the right to life and liberty. *See Commonwealth v. Shoemaker*, 518 A.2d 591, 593 n.1 (Pa. Super. 1986); *Constant A. v. Paul C.A.*, 496 A.2d 1, 54 n.2 (Pa. Super. 1985).

93. When reviewing whether a state action unconstitutionally deprives a person of a protected interest, a substantive due process inquiry balances “the rights of the parties involved subject to the public interests sought to be protected.” *Johnson v. Allegheny Intermediate Unit*, 59 A.3d 10, 20 (Pa. Cmwlth. 2012).

94. Because “tradition” cannot withstand the rigors of strict scrutiny, sections 1102 and 1704 of the Marriage Law are an unconstitutional violation of due process under the

Pennsylvania Constitution. Plaintiffs ask that this Court declare sections 1102 and 1704 of the Marriage Law unconstitutional and enjoin their enforcement. *See* 42 Pa. C.S. § 7532.

COUNT VI
DECLARATORY JUDGMENT—23 Pa. C.S. § 3306

95. The previous paragraphs of the Complaint are hereby incorporated by reference as if fully set forth herein.

96. Plaintiffs all have received marriage licenses and been married pursuant to those licenses.

97. The Department of Health’s action for mandamus in *Department of Health v. Hanes*, 379 MD 2013 (Cmwlth 2013) and the Marriage Law cast doubt on the validity of Plaintiffs’ marriages.

98. Under 23 Pa. C.S. § 3306, “both of the parties to the marriage may bring an action for a declaratory judgment seeking a declaration of the validity or invalidity of the marriage.”

99. To lift the cloud over their unions, Plaintiffs seek a declaratory judgment that their marriages are valid under Pennsylvania law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Sasha Ballen and Diana Spagnuolo, et al., pray for judgment as follows:

- A. Judgment in their favor, and against Defendants;
- B. Declaring the validity of their marriages;

C. Declaring their rights to equal protection under the laws and to due process as guaranteed by Amendment XIV of the United States Constitution and/or the Pennsylvania Constitution;

D. Nullifying and declaring unenforceable the Marriage Law, 23 Pa. C.S. §§ 1102, 1704, which defines marriage as “a civil contract by which one man and one woman take each other for husband and wife”;

E. Preliminarily and permanently enjoining Defendants from enforcing 23 Pa. C.S. §§ 1102, 1704; and

F. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

Respectfully submitted,



Dated: November 8, 2013

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Attorneys for Plaintiffs

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SASHA BALLEEN, et al.,

Plaintiffs,

v.

THOMAS W. CORBETT, JR., GOVERNOR
OF THE COMMONWEALTH OF
PENNSYLVANIA, KATHLEEN KANE,
ATTORNEY GENERAL OF THE
COMMONWEALTH OF PENNSYLVANIA,
and MICHAEL WOLF, SECRETARY OF
HEALTH OF THE COMMONWEALTH OF
PENNSYLVANIA,

Defendants,

NO. 481 MD 2013

VERIFICATION

I, Sasha Esther Ballen, state that I am a Plaintiff in this matter, and that the factual averments set forth in the foregoing Amended Complaint are true and correct to the best of my knowledge, information, and belief.

I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904.

Dated: November 7, 2013



Sasha Esther Ballen

CERTIFICATE OF SERVICE

I certify that the foregoing Amended Petition for Review in the Nature of A Civil Action Complaint was served upon the interested parties listed below on November 8, 2013 via prepaid First Class U.S. Mail, addressed as follows:

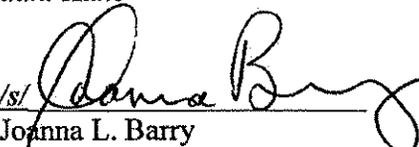
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Dated: November 8, 2013


/s/ Joanna L. Barry
Joanna L. Barry
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