UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CIVIL ACTION NO.:
FOR DECLARATORY JUDGMENT

8:04-CV-1680-T-30TBM

REV. NANCY WILSON and
DR. PAULA SCHOENWETHER,

Plaintiffs,

v.

RICHARD L. AKE, in his official capacity as Clerk of the Circuit and County Courts, Hillsborough County, Florida; and JOHN ASHCROFT, in his official capacity as Attorney General of the United States and head of the Department of Justice of the United States,

Defendants.
_____/

COMPLAINT FOR DECLARATORY JUDGMENT

CLAIM OF UNCONSTITUTIONALITY

1. This Court has jurisdiction pursuant to 28 U.S. Code 1331. This is a civil action arising under the Constitution and laws of the United States presenting a substantial Federal question.

2. Venue is properly in the Middle District of Florida, Tampa Division, pursuant to 28 United States Code 1391. Both Defendants AKE and ASHCROFT have offices for the conduct of official business in Hillsborough County, Florida: also a substantial part of the events or omissions giving raise to the claim occurred in the Middle District of Florida, Tampa Division.

3. This is an action for a Declaratory Judgment pursuant to 28 U.S. Code 2201 and Rule 57 of the Federal Rules of Civil Procedure for the purpose of determining an actual and existing justiciable controversy to declare the rights and other legal relations and

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questions of construction and/or the validity of an Act of Congress and a Florida Statute between the parties as hereinafter more fully appears.

BACKGROUND

4. Through the institution of marriage, society publicly guarantees individuals respect and legitimacy as a couple. For those who choose to marry, and for their children, marriage provides an abundance of legal, financial and social benefits. The ability to marry and to thereby participate in this fundamental societal institution is something that most Americans take for granted. Florida Same-sex couples do not; they are denied access solely on the basis of their sexual orientation and gender.

5. The Supreme Court of the United States has found that the right to marry is not a privilege conferred by the State, but a fundamental right that is protected against unwarranted State interference. As Mr. Chief Justice WARREN said in Loving v. Virginia, 87 S. Ct. 1817 (1967) at p. 1824;

> "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.
>
> Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival."

This right is vitiated if one is denied the right to marry a person of one's choice; the decision to marry is among the personal decisions that is part of the fundamental "right of privacy" protected by the Fourteenth Amendment.

6. Our highest court has also mandated that if a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution, (it) is presumptively unconstitutional." As a result, the burden shifts to the government to pass a "strict scrutiny" test by the courts for certain classifications and fundamental rights to be valid; the government must justify an intrusion on Plaintiffs' fundamental rights of privacy, liberty and autonomy found in the Due Process Clause and the right of equality in the Equal Protection Clause. Excluding same-sex couples from a basic element of civic life – marriage – infringes human dignity and violates the Constitution of the United States, which affirms the dignity and equality of all individuals; it forbids the creation of second-

class citizens. There is no identifiable constitutionally adequate reason for denying civil marriage to same-sex couples.

Plaintiffs would show that the Act of Congress and the Florida Statute under the microscope here and both of which define "marriage" as a legal union between one man and one woman as husband and wife AND which prohibit recognition of same-sex marriages - - can meet constitutional muster ONLY if they further a compelling governmental interest and the legislation substantially furthers that interest, doing so through the least restrictive means to overcome the constitutional right. The ordinary deference due legislation does not apply when fundamental constitutional rights are implicated.

7. Plaintiffs ask this Court to construe constitutional rights which operate in favor of the individual against government so as to achieve the primary goal of individual freedom and autonomy - - especially where homosexuals are the traditional targets of unfair, irrational and unlawful discrimination.

8. The legislative decisions of Congress and Florida are clearly erroneous, arbitrary or wholly unwarranted here; their decisions clearly transgress private rights.

In spite of the foregoing, the United States' and Florida's statutory codes as detailed later, do not permit marriages of lesbian and gay couples. It is this selective denial of marriage equality to this disfavored group that has led to this action.

PLAINTIFFS

9. Plaintiffs are a lesbian couple who are citizens of the United States, over 18 years of age seeking to live a full life by availing themselves of a marriage universally recognized, the social validation it confers, and the hundreds of rights, responsibilities, benefits and obligations that it affords and which are predicated on marriage under the laws of the United States and the State of Florida. These Plaintiffs share the same goal as countless "straight" American couples; their reasons for wanting to engage in a recognized civil ceremony of marriage are the same as the reasons of heterosexual couples. Plaintiffs seek only to be married, not to undermine the institution of marriage; they do not want marriage abolished; they do not attack the binary nature of marriage, the consanguinity provisions or any of the other gate-keeping provisions of marriage licensing laws. Recognizing same-sex marriages will not diminish the nature, dignity or validity of opposite-sex marriages.

10. Plaintiffs do not have another living wife or husband; they are not first cousins or any nearer of kin to each other; and neither is incapable for want of legal age or sufficient understanding. They consent freely to marry each other; but for the fact that they are same-sex couples, the United States and the State of Florida would recognize their marriage.

11. The Plaintiffs want to live with the confidence that, if one of them unexpectedly dies or becomes disabled or sick, the other will have all of the protections that marriage in Florida affords. Although they have tried to make arrangements to maximize economic and legal protections for their families' well-being, marriage affords greater security in light of the many legal benefits that are reserved for spouses. These Plaintiffs need the benefits of marriage to protect themselves from economic hardship and discrimination.

12. Plaintiffs have been legally married in the State of Massachusetts and now hold a valid marriage license from that State. They have personally presented that marriage license to a Deputy Clerk of the Hillsborough Circuit Court Clerk's Office, asking for recognition and acceptance of the valid and legal Massachusetts marriage license. Their demand was refused by the Defendant AKE, whose Deputy Clerk stated that according to Federal and Florida law, the Clerk is not allowed to recognize, for marriage purposes, the Massachusetts marriage license, because Federal and Florida law prohibit such recognition.

As a result, the United States and the State of Florida send a stigmatizing message that Plaintiffs are less worthy than other Americans and that their relationship is inferior to those of other Americans.

13. Plaintiff REV. NANCY WILSON is a senior pastor of the Metropolitan Community Church and Plaintiff DR. PAULA SCHOENWETHER is a Ph.D and a former family marriage counselor. They lived together and are residents of the Middle District of Florida.

DEFENDANTS

14. Defendant RICHARD L. AKE is the duly elected Clerk of the Circuit and County Courts in and for the 13th Judicial Circuit of Florida and, pursuant to Florida Statute 741.01 (1), is the public official who shall issue every marriage license upon application for the

license, "if there appears to be no impediment to the marriage." He is also the proper official to recognize and record legal marriage licenses, if requested to do so. This Defendant is sued in his official capacity.

Defendant JOHN ASHCROFT is the duly appointed Attorney General of the United States. According to 28 U.S. Code § 501, The Department of Justice is an executive department of the United States at the seat of Government. Section 503 designates that, "The Attorney General is the head of the Department of Justice;" and "all functions of agencies and employees of the Department of Justice are vested in the Attorney General..." (Section 509). The Attorney General has discretion in deciding whether the United States is concerned in particular civil actions; and the head of any executive department of the United States "may require the opinion of the Attorney General on questions of law arising in the administration of his department" (Section 512). 28 U.S. Code § 516 reserves to the Department of Justice "the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested..." under the direction of the Attorney General. This Defendant is sued in his official capacity. He has confirmed his support and approval of the Federal Act of Congress that does not permit marriages of same-sex couples or recognition of same by any State.

THE QUESTIONED ACT OF CONGRESS

15. In 1996, the Congress of the United States enacted into law The Defense of Marriage Act, 110 Stat. 2419 (1996), Title 28, Chapter 115, U.S. Code, Section 1738C and Chapter 1 of Title 1, U.S. Code, Paragraph 7. A copy of the full Act is attached hereto as Exhibit "A" and should be considered a part of this Complaint. Basically, the Federal DOMA defines marriage as "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." This definition excludes Plaintiffs from federal rights and benefits including but not limited to Social Security, family and medical leave, rights of survivorship, rights of visitation for medical reasons, the right to file joint tax returns, certain evidentiary rights, etc. In all, the U.S. General Accounting Office has counted 1,138 statutory provisions in which marital status is a factor in determining or receiving "benefits, rights and privileges."

This Act of Congress also requires any State not to give effect to any public act of any other State respecting a relationship, right or claim between persons of the same sex treated as a marriage under the laws of such other State. And where federal programs set the eligibility requirements for many federally funded State of Florida programs, those

corresponding Florida programs will not be allowed to treat same-sex couples as married either; thus excluding them from (or profoundly affecting the calculation of) entitlement to benefits under many such Florida programs. Florida officials - - not just Federal officials will, of necessity, have to differentiate between same-sex and opposite-sex couples for all of these Florida programs.

16. At present, Plaintiffs would not have access to Florida's courts for purposes of obtaining a divorce or separation and the necessary orders (with respect to alimony, child support or child custody) that accompany a divorce or separation.

THE FLORIDA STATUTE

17. In 1997, the Florida legislature followed Congress' lead and adopted as law The Florida Defense of Marriage Act, Section 741.212 (1), (2) and (3), Florida Statutes, a copy of which is attached hereto as Exhibit "B" and should be considered a part of this Complaint. F.S. 741.212 does not allow Florida to recognize or give effect to marriages between persons of the same-sex entered into in or outside of Florida, the United States of America or any other jurisdiction, either domestic or foreign. The Florida DOMA also tracks the Federal DOMA definition of "marriage" as "only a legal union between one man and one woman as husband and wife..." Among the hundreds of benefits, rights and privileges granted to different-sex couples who marry in Florida but which are not granted to same-sex couples who desire to marry in Florida or have a foreign marriage license recognized in Florida are:

> Equal rights and property acquired during the marriage, the right to hold property as tenants by the entireties, the right to rehabilitative or permanent alimony in a proceeding for the dissolution of marriage, the right to an elective share in the estate of a deceased spouse, the right to enter into a gestational surrogacy, distribution rights in homestead property, legitimacy of children born out of wedlock upon the marriage of the parents, etc.

THE ISSUES

18. The questions this Court is asked to consider are whether it is constitutional to create a separate class of citizens by status and gender discrimination, withholding from that class the right to participate, anywhere in the world, in the fundamental institution of civil

marriage with its attendant protections, benefits and obligations; AND whether it is constitutional to deny any citizen of the United States the right of recognition of a valid and legal marriage license from one state, territory or country to another.

Plaintiffs challenge this combination of the Act of Congress and the Florida Statute as a violation of both their fundamental rights and the Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well as being a violation of the Full Faith and Credit Clause, the Privileges and Immunities Clauses and the Commerce Clause of the Constitution of the United States.

THE EQUAL PROTECTION CLAUSE

> "…. No State shall…. deny to any person within its jurisdiction the equal protection of laws." United States Constitution, Amendment XIV, Section I.

19. The Fourteenth Amendment does not tolerate unjustified discrimination against a disfavored class. The exclusion of lesbian and gay couples from marriage violates this most fundamental and basic constitutional guarantee of equality of privileges and immunities for all Americans.

Plaintiffs urge that this Act of Congress and the Florida Statute make it more difficult, if not impossible, for them than for all others to seek to be civilly married; that this is itself a denial of equal protection in the most literal sense.

A bare desire to harm a politically unpopular group cannot constitute a legitimate government interest; the Act of Congress and the Florida Statute at issue raise the inevitable inference that they were born of animosity toward the class that they were to affect. The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason. The absence of any reasonable relationship between, on the one hand, an absolute disqualification of same-sex couples who wish to enter into civil marriage and, on the other, protection of public health, safety, or general welfare, suggests that the marriage restriction is rooted in persistent prejudices against persons who are (or who are believed to be) homosexual. "The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."

20. Plaintiffs would also show that these Statutes are a "status-based" classification of persons undertaken for its own sake, something the Equal Protection Clause does not

permit. Plaintiffs, solely because of their sexual orientation, by Federal and Florida decree, are put in a solitary class with respect to transactions and relations in both the private and governmental spheres.

Congress and Florida withdraw from homosexuals, BUT NO OTHERS, specific legal protection from the injuries caused by discrimination. These Defendants have imposed a special disability upon the Plaintiffs alone. Homosexuals are forbidden the safeguards, benefits and rights of civil marriage that others enjoy or may seek without constraint. These Florida and Federal Statutes not only lack a rational relationship to legitimate Federal and State interests, but this classification also was drawn for the purpose of disadvantaging the group burdened by these laws.

21. Guaranteed to all people in this country equally is the enjoyment of rights that are deemed important or fundamental. The withholding of relief from the Plaintiffs who wish to marry and are otherwise eligible to marry on the ground that the couples are of the same gender constitutes a categorical restriction of a fundamental right. The restriction creates a straight forward case of discrimination that disqualifies an entire group of our citizens and their families from participation in an institution of paramount legal and social importance because of their sex or gender. This is impermissible under the Fourteenth Amendment of the Constitution.

The Supreme Court has already struck down class-based legislation directed at homosexuals as a violation of the Equal Protection Clause. "We concluded that the provision was 'born of animosity toward the class of persons affected' and further that is had no rational relation to a legitimate governmental purpose."

Because these questioned marriage statutes intend and state that marriage under our law consists only of a legal union between a man and a woman, they create a statutory classification based on the sex of the two people who wish to marry. That the classification is sex based is self-evident. As a factual matter, an individual's choice of a marital partner is constrained because of his or her own sex. Only their gender prevents the Plaintiffs from marrying their chosen partners under the present law. By enacting these questionable laws mandating that gays and lesbians shall not have any of the rights, benefits and protections awarded to married heterosexuals, Defendants inflict on these Plaintiffs immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it. Plaintiffs contend that these statutes classify homosexuals, not to further a proper legislative end, but to make them unequal to everyone else. The United States and Florida cannot so deem a class of persons a stranger to its laws. Moreover, the substantive equal protection guarantees of the Constitution

prohibit an unjustifiable burden on the fundamental right to equality and non-discrimination. The failure to permit marriages of same-sex couples constitutes an unjustified denial of a privilege based on sexual orientation and gender.

The Act of Congress and the Florida Statute under consideration violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

DUE PROCESS CLAUSE

> "...; nor shall any State deprive any person of life, liberty, or property without due process of law..." United States Constitution, Amendment XIV, Section I.

22. Because civil marriage is central to the lives of individuals and the welfare of the community, our laws assiduously protect the individual's right to marry against undue government incursion.

The United States Supreme Court has read into the Federal Constitution an implicit right of privacy, which includes the right to liberty and self-determination. That Court has also reaffirmed the substantive force of the liberty protected by the Due Process Clause. "Our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." In explaining the respect the Constitution demands for the autonomy of the person in making these choices, the Supreme Court has held:

> "These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."

"Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do."

The Defendants cannot show that their discriminatory laws bear a close relationship to the promoting of a compelling state interest or that the classification is necessary to achieve the government's goal or that the classification is narrowly drawn to achieve the goal by the least restrictive means possible - - all of which are required when, such as

here, laws impinge on certain fundamental rights that will be subjected to strict judicial scrutiny and the presumption that such laws are unconstitutional.

The Plaintiffs' liberty, privacy and autonomy safeguards in the United States Constitution protect both "freedom from" unwarranted government intrusion into protected spheres of life and "freedom to" partake of benefits created by the State for the common good. Both freedoms are involved here. Whether and whom to marry, how to express sexual intimacy, and whether and how to establish a family - - these are among the basics of everyone's liberty, privacy and self-determination due process rights. The liberty interest in choosing whether and whom to marry would be hollow if the State could foreclose an individual from freely choosing the person with whom to share an exclusive commitment in the unique institution of civil marriage. The substantive due process guarantees of the Constitution prohibit an unjustifiable burden on the fundamental right to privacy, liberty and autonomy, including the fundamental right to enter into a civil marriage.

This Act of Congress and the Florida Statute violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

THE FULL FAITH AND CREDIT CLAUSE

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." United States Constitution, Article IV, Section 1.

23. Plaintiffs urge this Court to compare this constitutional requirement with the wording and intent of 28 United States Code 1738C, which mandates that "No State...shall be required to give effect to any public act, record, or judicial proceedings of any other State... respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State..., or a right or claim arising from such relationship." And Florida Statute 741.212 (1) also bars recognition of same-sex marriages from any other state and within Florida.

The Constitution clearly mandates that the public Acts, Records, and Judicial Proceedings of each State SHALL be given FULL FAITH AND CREDIT by every other State. Congress and Florida, on the other hand, say NO! The States SHALL NOT be required to give FULL FAITH AND CREDIT to those Acts respecting same-sex marriages. This is a conflict that should be resolved in favor of the United States Constitution.

The Full Faith and Credit Clause is an essential part of our federal system of government. The drafters sought to transform several independent sovereign entities into one cohesive nation; "it was clearly not to continue a relation of several, separate sovereign states with various contradicting laws possessing no effect beyond each state's border." The Federal Act under consideration here is beyond the scope of congressional legislative power because of the Full Faith and Credit Clause. Each state has an interest in the marital status of those domiciled within the state. Once Massachusetts sanctioned legal same-gender marriage, all other states should be constitutionally required to uphold the validity of the marriage.

The differentiation among the states (here, Massachusetts and Florida) is exactly what the Full Faith and Credit Clause was intended to prohibit. A valid marriage, hence a valid same-gender marriage, should be given full faith and credit in every state in this country.

Plaintiffs would urge that not only would Massachusetts have an interest in a valid marriage performed within its jurisdiction, it may also determine the extraterritorial effect of its judgment. Therefore, if Massachusetts recognizes same-gender marriages with all the legal rights, privileges and immunities of different-sex marriages, Florida should be obliged to recognize the full scope of legal rights bestowed upon them under Massachusetts law.

The Florida Legislature, in deciding to cancel out, overrule, and nullify Article IV, Section I by enacting Section 741.212, Florida Statutes, 1997, not only exempted every other State and itself from recognizing same-sex marriages, but also extends the ban to "any other jurisdiction, either domestic or foreign, or any other place or location..." Florida really wants to make sure; however, limiting the jurisdiction of State courts over out-of-state marriage relationships is a violation of this Clause.

No sister state has such an overriding valid interest in the Florida Statute or the Act of Congress such that the sister state's own constitution and laws can be ignored by surrendering jurisdiction, subject matter and fundamental due process to another State. The same-sex prohibitions in question constitute infringement of that sister state's sovereignty.

No out-of-state judicial proceedings can gain or exert jurisdiction over the Defendant AKE or any other Florida official in order for the other State to direct AKE to issue or not issue a marriage license to Floridians. This Act of Congress and the Florida Statute violate the FULL FAITH AND CREDIT CLAUSE of the United States Constitution.

THE PRIVILEGES AND IMMUNITIES AND THE COMMERCE CLAUSES

24. Attached hereto as Collective Exhibit "C" are the Privileges and Immunities Clause (Article 4, Section 2) and the Commerce Clause (Article 1, Section 8) of the United States Constitution. Together with the Privileges and Immunities Clause found in Section 1 of the Fourteenth Amendment, these three provisions of our organic law have been interpreted by our highest court to make interstate travel a national concern that states may not infringe on through diverse treatment... "a state law implicates the right to travel when it actually deters such travel... or when it uses 'any classification which serves to penalize the exercise of that right.'"

The Act of Congress and the Florida Statute under question in this case implicates this right because these Plaintiffs who were legally married in Massachusetts were deterred from traveling to Florida. One of the reasons? If one of the parties to the marriage faces a medical emergency, Florida would not recognize the other's legal right to make medical decisions for her spouse.

A state may not interfere with the constitutional right to interstate travel by denying legal rights to those who have recently moved. This Act of Congress and Florida Statute denies the legally married Plaintiffs all of the legal rights, privileges and immunities normally granted to a valid marriage. Plaintiffs would urge this Court to find, as the U.S. Supreme Court has noted, "If a law has 'no other purpose than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it is patently unconstitutional.'" Thus, this Act of Congress and Florida Statutes 741.212 are similarly unconstitutional.

RELIEF SOUGHT

25. The refusal of the Defendant AKE to recognize and accept the valid and legal marriage license issued to the Plaintiffs by the State of Massachusetts and Congress' edict to not recognize same-sex marriage in any State have left the Plaintiffs in doubt and uncertain about their rights under said State and Federal Statutes; thus giving rise to a justiciable controversy and an actual rather than a theoretical controversy as to the validity and constitutionality of the Act of Congress and Florida Statute 741.212.

The Defendants contend that these two almost identical laws are constitutional; Defendant AKE has already enforced these statutes against these Plaintiffs and Defendant

ASHCROFT seeks to and has announced intentions to enforce these laws. Accordingly, an active justiciable controversy has arisen and now exists between the Plaintiffs and the Defendants concerning their respective rights, duties and responsibilities. The controversy is definite and concrete, touching on the legal relations of the parties.

Title 28 U.S. Code 2201 and Rule 57 of the Federal Rules of Civil Procedure (Declaratory Judgments) allow this Court to render declaratory judgments on the existence or nonexistence of any immunity, power, privilege or right OR of any fact upon which the existence or nonexistence of such immunity, power, privilege or right does or may depend; and when and where such immunity, power, privilege or right now exists or will arise in the future.

Section 2201 and Rule 57 also permits this Court to order a speedy hearing and may advance it on the calendar.

26. Pursuant to F.S. 86.091 the State Attorney for the Thirteenth Judicial Circuit of Florida is being served with a copy of this Complaint so that he may be heard in this action.

WHEREFORE, for the reasons set forth above, Plaintiffs pray for relief as follows:

1. An Order of this Court advancing this cause on its calendar and granting a speedy hearing thereof; and
2. A Declaration that this Court has jurisdiction of a real and active justiciable controversy between these parties; and
3. A Declaration that the right to marry is fundamental under the Fourteenth Amendment and that restrictions on fundamental rights are presumed unconstitutional; thus are entitled to this Court's "strict scrutiny" standard; and
4. A Declaration that the Act of Congress and the Florida Statute under consideration herein do not further a compelling State interest nor has Congress and Florida employed the least restrictive means to overcome Plaintiffs' constitutional rights; and
5. A Declaration of the Plaintiffs' Rights, Status and other equitable and other legal relations as to Florida Statute 741.212 and the Act of Congress; and a Declaration of the power and duties of the Defendants in applying these laws to the Plaintiffs; and

6. A Declaration that F.S. 741.212 and the Act of Congress at issue are unconstitutional in that they violate the Fourteenth Amendment's Equal Protection and Due Process Clauses, the Full Faith and Credit Clause of the United States Constitution, the Privileges and Immunities Clause of the Fourteenth Amendment, and the Privileges and Immunities Clause of Article 4, Section 2 of the United States Constitution and Commerce Clause (Article 1, Section 8) of the United States Constitution and thus are void and unenforceable; and

7. A Declaration that Florida Statutes and the Act of Congress at issue are unconstitutional in that they impermissibly discriminate on the basis of sexual orientation and gender in violation of the Constitutions of the United States and Florida; and

8. A Declaration that the Act of Congress and the Florida Statute at issue under consideration are unconstitutional in that they impermissibly violate the liberty interests protected by the Equal Protection and Due Process Clauses of the United States and Florida Constitutions; and

9. A Declaration that the Act of Congress and the Florida Statute under consideration and at issue are unconstitutional in that they impermissibly violate privacy interests protected by the United States and Florida Constitutions; and

10. A Declaration that the Act of Congress and Florida Statute under consideration and at issue are unconstitutional in that they impermissibly violate the Privileges and Immunities Clauses and the Commerce Clause of the United States Constitution; and

11. A Declaration that eligible same-sex couples enjoy and are entitled to the benefits, protections, rights and responsibilities afforded opposite-sex couples by the marriage laws of the State of Florida and of the United States; and

12. A Declaration that if the preceding Declarations are granted, then Plaintiffs would be entitled by law to compel the Defendants and the State of Florida and the United States to recognize and apply the Massachusetts license to marry issued to the Plaintiffs by the State of Massachusetts in the State of Florida and elsewhere.

13. Costs, including but not limited to any and all other relief to which the Plaintiffs may be justly entitled.

Dated: July 20, 2004

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