

Of Counsel:

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

JENNIFER C. PIZER (Motion to Appear Pro Hac Vice Pending)

TARA L. BORELLI (Motion to Appear Pro Hac Vice Pending)

3325 Wilshire Blvd., Suite 1300

Los Angeles, California 90010

Telephone: (213) 382-7600

Facsimile: (213) 351-6050

Email: jpizer@lambdalegal.org

tborelli@lambdalegal.org

ALSTON HUNT FLOYD & ING

PAUL ALSTON 1126-0

CLYDE J. WADSWORTH 8495-0

STEPHEN M. TANNENBAUM 8397-0

American Savings Bank Tower

1001 Bishop Street, Suite 1800

Honolulu, Hawai'i 96813

Telephone: (808) 524-1800

Facsimile: (808) 524-4591

Email: palston@ahfi.com

cwadsworth@ahfi.com

smt@ahfi.com

ACLU OF HAWAII FOUNDATION

LOIS K. PERRIN 8065-0

DANIEL M. GLUCK 7959-0

LAURIE A. TEMPLE 8716-0

P.O. Box 3410

Honolulu, Hawai'i 96801

Telephone: (808) 522-5907

Facsimile: (808) 522-5909

Email: lperrin@acluhawaii.org

dgluck@acluhawaii.org

lt@acluhawaii.org

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

TAMBRY YOUNG and SUZANNE KING;	)	CIVIL NO. _____
ROBIE LOVINGER and LOUISE	)	(Other Civil Action)
ESSELSTYN; KALE TAYLOR and SEAN	)	
SMITH; JILL GUILLERMO-TOGAWA	)	COMPLAINT FOR DECLARATORY
and PAULINE GUILLERMO-TOGAWA;	)	AND INJUNCTIVE RELIEF;
LINDA HAMILTON KRIEGER and	)	SUMMONS
KATHLEEN SANDS; and ALLEN	)	
CASTRO and DANNY ROBINSON,	)	
	)	
Plaintiffs,	)	

vs.
LINDA LINGLE, in her official capacity
as Governor of Hawai`i; and the STATE
OF HAWAII,
Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Tambry Young and Suzanne King; Robie Lovinger and Louise Esselstyn; Kale Taylor and Sean Smith; Jill Guillermo-Togawa and Pauline Guillermo-Togawa; Linda Hamilton Krieger and Kathleen Sands; and Allen Castro and Danny Robinson (collectively "Plaintiffs" or "Plaintiff couples"), by and through their counsel undersigned, file this complaint for declaratory, injunctive, and other relief against Defendants Linda Lingle and the State of Hawai`i (collectively "Defendants"), and allege and aver as follows:

I. INTRODUCTION

1. Plaintiffs comprise six loving and devoted same-sex couples. Each Plaintiff wishes to assume the same duties, responsibilities and obligations, and to obtain the same protections, rights and benefits as the State of Hawai`i (the "State") affords to different-sex spouses, and would marry his or her life partner if the State permitted him or her to do so. Instead, the State's discriminatory family protection scheme for committed same-sex couples relegates Plaintiffs to the lesser relationship status of reciprocal beneficiaries, to which only limited protections, rights, benefits, duties, responsibilities and obligations attach. Each Plaintiff couple has registered as reciprocal beneficiaries with the State even though this inferior legal status affords an

insufficient and defective safety net for their families, and the significant gaps in the limited protections, rights, benefits, duties, responsibilities and obligations that accompany such status subject them to myriad concrete economic and dignitary harms.

2. Plaintiffs are residents of the State of Hawai'i who experience the same joys and shoulder the same challenges of family life as their heterosexual neighbors, co-workers and other community members. They are productive, contributing citizens who support their families and nurture their children, but must do so within the inferior reciprocal beneficiary status, which withholds important protections, rights, benefits, and stability from their families that the State makes available to heterosexual couples who may marry. Each Plaintiff is being denied one or more of the statutory protections, rights, or benefits that the State affords to different-sex spouses. Each Plaintiff also has experienced the frustration of others' confusion—and his or her own—regarding the protections, rights, benefits, duties, responsibilities, and obligations that the status of reciprocal beneficiary confers. There is no adequate justification for the State to subject Plaintiffs to this discriminatory and harmful treatment.

3. The State's relegation of same-sex couples to the inadequate status of reciprocal beneficiaries subjects the Plaintiff couples to legal vulnerability and related stress, while depriving them of the dignity and legitimacy of a legal status that, while still unequal to marriage, would at least recognize their equal entitlement to the same rights, benefits and obligations as are

provided to different-sex couples who marry. The State's family relationship scheme, which discriminates against same-sex couples in major spheres affecting family life such as parenting and financial stability, sends a clear and purposeful message that the State views lesbian and gay people as second-class citizens who are undeserving of the legal sanction, protections and support that heterosexual people and their families enjoy.

4. Equal access to the institution of marriage is the only means fully to eliminate the myriad harms inflicted by the State on committed same-sex couples. Although this Court lacks the authority to order such access due to the constitutional amendment described below, this Court remains subject to a constitutional duty to reduce the foregoing harms and to afford equal protection of the laws and respect for individual liberty and privacy to the greatest extent possible. The Court should do so by ordering the State to provide Plaintiffs a process through which to acquire a legal status that confers upon same-sex couples the same rights and responsibilities that the State provides different-sex couples through marriage.

5. Plaintiffs seek a declaration that the Defendants' withholding from the Plaintiff couples of the full panoply of rights and responsibilities that the State offers to different-sex couples through marriage denies the Plaintiff couples equality of rights, equal protection of the laws, due process and privacy, as guaranteed by Article I, sections 2, 3, 5 and 6 of the Hawai'i Constitution. Plaintiffs also seek relief enjoining the Defendants from continuing to deny equal protections, rights and responsibilities to Plaintiffs and

requiring the State to provide to same-sex couples a process through which to acquire a legal status that confers upon them the same protections, rights and responsibilities that the State provides to different-sex couples through marriage.

II. PARTIES

6. Plaintiffs Tambry Young and Suzanne King are lesbian individuals comprising a committed same-sex couple and reside in the City and County of Honolulu, State of Hawai`i.

7. Plaintiffs Robie Lovinger and Louise Esselstyn are lesbian individuals comprising a committed same-sex couple and reside in the City of Kapolei in the County of Honolulu, State of Hawai`i.

8. Plaintiffs Kale Taylor and Sean Smith are gay male individuals comprising a committed same-sex couple and reside in the City and County of Honolulu, State of Hawai`i.

9. Plaintiffs Jill Guillermo-Togawa and Pauline Guillermo-Togawa are lesbian individuals comprising a committed same-sex couple and reside part-time in the City and County of Honolulu, State of Hawai`i, and part-time in the County of Alameda, State of California.

10. Plaintiffs Linda Hamilton Krieger and Kathleen Sands are lesbian individuals comprising a committed same-sex couple and reside in the City and County of Honolulu, State of Hawai`i.

11. Allen Castro and Danny Robinson are gay male individuals comprising a committed same-sex couple and reside in the County and State of Hawai`i.

12. At all times relevant herein, Defendant Linda Lingle has been a resident of the City and County of Honolulu, State of Hawai`i, and the Governor of the State of Hawai`i. Defendant Lingle's role as the State's chief executive vests her with responsibility for the execution of the State's laws and supervision of its departments and instrumentalities. Defendant Lingle is sued in her official capacity.

13. The State of Hawai`i is amenable to suit with respect to Plaintiffs' prospective claims for declaratory and injunctive relief.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to HAWAII REVISED STATUTES ("HRS") §§ 603-21.5(a)(3), 632-1, and Hawai`i Rules of Civil Procedure ("HRCP") Rules 57 and 65.

15. Venue is proper in this Court pursuant to HRS § 603-36, because the majority of acts and omissions complained of occurred in this Circuit.

IV. FACTS

A. The History of the State's Treatment of Lesbian and Gay Couples.

16. In 1993, the Hawai`i Supreme Court held in *Baehr v. Lewin* (later re-captioned *Baehr v. Mūike*) that disqualifying same-sex couples from eligibility for a marriage license based on their respective sexes was discrimi-

nation based on sex and violated state constitutional guarantees of equality in the absence of a narrowly tailored and compelling governmental interest. After remand for trial, which included an examination of the State's purported interests in maintaining such sex-based discrimination, the circuit court held a trial and then ruled that the State lacked any sufficient interests for denying same-sex couples access to civil marriage.

17. Having heard extensive expert testimony, the circuit court specifically rejected the State's contention that marriage should be restricted to different-sex couples in order to further a purported public interest in protecting children, and found to the contrary, *inter alia*, (1) that good parenting is not a function of gender, sexual orientation or biological connection, (2) that same-sex parents can provide the nurturing that makes for happy, healthy and well-adjusted children, and (3) that lesbian and gay parents are equally fit as heterosexual parents. The circuit court found that the State had failed to meet its burden of proving that allowing same-sex couples to marry and access the full measure of rights and obligations that marriage provides would have any adverse effects on the well-being of children. The circuit court also found that the State had failed to prove that providing same-sex couples equal access to marriage would have any adverse impact on the public fisc or the institution of marriage.

18. While the circuit court's decision in *Baehr* was being considered on appeal, the Hawai'i legislature passed a bill that presented a proposed constitutional amendment to the voters ("Amendment 2"). Amend-

ment 2 provided that "[t]he legislature shall have the power to reserve marriage to opposite-sex couples," as the Hawai`i legislature already had done.

19. The voters ratified Amendment 2 on November 3, 1998, and the provision was codified as Article I, section 23 of the Hawai`i Constitution.

20. On December 9, 1999, the Hawai`i Supreme Court issued a final, unpublished summary disposition order in *Baehr*, ruling (1) that the ratification of Amendment 2 had taken Hawai`i's discriminatory marriage statute "out of the ambit of the equal protection clause of the Hawai`i Constitution, at least insofar as the statute, both on its face and as applied, purported to limit access to the marital status to opposite-sex couples" and (2) that Amendment 2 had therefore "rendered the plaintiffs' complaint moot."

B. Hawai`i's Discriminatory, Incomplete and Confusing Family Protection Scheme for Lesbian and Gay Couples.

21. In 1997, during the same session when the Hawai`i legislature passed a bill to present Amendment 2 to the electorate, the legislature also passed House Bill No. 118 ("HB 118"), which established a reciprocal beneficiary status available to any two persons legally prohibited from marrying.

22. The legislature's intent to disadvantage same-sex couples by relegating them to the lesser status of reciprocal beneficiaries is stated in HB 118's findings, which evince a deliberate decision to favor the private biases of constituents with anti-gay views. HB 118's findings state that "the people of Hawai`i choose to preserve the tradition of marriage as a unique social institution" by reserving it to heterosexual couples. The legislature acknowledged in HB 118's findings that "a multiplicity of rights and benefits" appearing

throughout the law in Hawai'i were contingent upon marriage, and that same-sex couples were among those who "have significant personal, emotional, and economic relationships" that deserve protection under the law. Despite these findings, HB 118 records the legislature's purposeful decision to extend only "certain" of those rights and benefits to same-sex couples and to treat same-sex couples similarly to other pairs of individuals who may not marry, but not similarly to different-sex couples. The reciprocal beneficiary law also expressly provided that it should be construed narrowly and should not be interpreted to confer rights other than those expressly enumerated in the law.

23. The result is a reciprocal beneficiary law that intentionally begrudges an arbitrary and limited aggregation of rights and responsibilities that falls woefully short of providing committed same-sex Hawai'i couples the legal protection and dignity to which they are entitled.

24. The 1993 *Baehr* decision identified "a number of the most salient [State-conferred] marital rights and benefits" of which committed same-sex couples were deprived by their inability to marry, including, but not limited to, the following: "(1) a variety of state income tax advantages, including deductions, credits, rates, exemptions, and estimates, under HRS chapter 235 . . . ; (2) public assistance from and exemptions relating to the Department of Human Services under HRS chapter 346 . . . ; (3) control, division, acquisition, and disposition of community property under HRS chapter 510 . . . ; (4) rights relating to dower, curtesy, and inheritance under HRS chapter 533 . . . ; (5) rights to notice, protection, benefits, and inheritance under the Uniform

Probate Code, HRS chapter 560 . . . ; (6) award of child custody and support payments in divorce proceedings under HRS chapter 571 . . . ; (7) the right to spousal support pursuant to HRS § 572-24 . . . ; (8) the right to enter into premarital agreements under HRS chapter 572D . . . ; (9) the right to change of name pursuant to HRS § 574-5(a)(3) . . . ; (10) the right to file a nonsupport action under HRS chapter 575 . . . ; (11) post-divorce rights relating to support and property division under HRS chapter 580 . . . ; (12) the benefit of the spousal privilege and confidential marital communications pursuant to Rule 505 of the Hawaii Rules of evidence . . . ; (13) the benefit of the exemption of real property from attachment or execution under HRS chapter 651 . . . ; and (14) the right to bring a wrongful death action under HRS chapter 663"

25. Now, 17 years later, the State still has yet to provide committed same-sex couples many of the foregoing rights and benefits, including, without limitation, the following: the right of one partner easily to adopt the other's surname upon entry into a formally recognized relationship; the right of couples to enter into premarital agreements with state-prescribed procedural safeguards; the ability to protect the confidentiality of communications *inter se*; and, upon dissolution, access to family court and the orderly rules that help former spouses to achieve independent lives through alimony, child support, custody arrangements, and fair division of property. Additionally, many private entities defer to the State's dispensation of the marital status in defining "family" when conferring an array of valuable benefits, often resulting in the exclusion of committed same-sex couples from important safety nets,

such as employer-provided health insurance for family members, and inviting disrespect of committed same-sex couples by others in workplaces, schools, businesses, and other major arenas of life, in ways that would be alleviated if a status providing comprehensive state-law rights and responsibilities were available to committed same-sex couples.

26. In addition to the myriad concrete harms that flow from the denial of critical protections, rights, benefits, duties, responsibilities, and obligations, committed same-sex couples must bear the intangible burdens of a novel and inferior legal status, which previously was unknown in Hawai'i and does not exist in similar form in any other state. Bearing the imprimatur of government, this unfamiliar and inferior status not only proliferates confusion regarding the legal rights to which committed same-sex couples may or may not be entitled, but also invites others to follow the government's example in discriminating against committed same-sex couples.

27. Lesbian and gay couples in Hawai'i, including Plaintiffs, accordingly have had their relationships demeaned by public and private actors alike, as described further below. Plaintiffs and other same-sex couples receive additional signals of devaluation and stigma because the reciprocal beneficiary status—which is available to any two people ineligible to marry—categorizes Plaintiffs and other committed same-sex couples with other pairings that do not constitute committed couples, many of which do not resemble the intimate, enduring, mutually responsible bonds that Plaintiffs and other committed same-sex couples share. This lack of recognition of same-sex couples as

couples and this withholding of full legal protection harmfully communicates to Plaintiffs and others that Plaintiffs' family relationships fall far short of deserving the level of respect and support that heterosexual spouses receive from government and society.

28. The substantive and dignitary inequities imposed on committed same-sex couples include particular harms for same-sex couples' children, who are equally deserving of the legal stability, permanence and legitimacy that children of heterosexual spouses enjoy. For example, Defendants wrongfully exclude committed same-sex couples and their children from access to legal processes for securing a non-biological parent's relationship with his or her child, such as joint adoption, stepparent adoption, and the presumption that both adults are parents of all children born into the relationship.

29. This discrimination requires committed same-sex couples and their children to cope with the frightening insecurity of having one parent treated as a legal stranger to his or her child in educational, medical or emergency circumstances, and deprives children of the legitimacy of a formally recognized parent. Same-sex parents and their children also must shoulder the unfair cost burden of attempting to obtain through privately prepared legal documents some of the protections that are available automatically to different-sex spouses by operation of law.

30. Consistently from 2001 through 2010, the legislature has considered bills that addressed the foregoing constitutional injuries by propos-

ing that committed same-sex couples should be allowed to access the same state-conferred protections, rights, benefits, duties, responsibilities and obligations as are provided to different-sex couples who marry through a separate legal status called civil unions. In 2010, the legislature approved House Bill 444, which would have created a civil union status open to both same-sex and different-sex couples, but Governor Lingle vetoed it.

31. Article I, section 23 of the Hawai'i Constitution prevents this Court from ordering that Plaintiffs be allowed to marry but imposes no restriction on this Court's authority to order that committed same-sex couples must be offered a way to qualify for the same state-conferred protections, rights and responsibilities that the State bestows upon different-sex couples through marriage.

C. The Plaintiffs.

32. Plaintiffs are committed, loving same-sex couples who share their lives as spouses and would marry each other if they could. All Plaintiffs meet the requisites for a valid marriage contract under HRS § 572-1, with the exception that each is a lesbian or gay man with a same-sex life partner rather than a different-sex life partner. All Plaintiffs have suffered and continue to suffer one or more concrete injuries because of Defendants' refusal to afford them the same protections, rights, benefits, duties, responsibilities and obligations for themselves, their respective life partners, and their families as different-sex spouses and their families receive.

a. Tambry Young and Suzanne King.

33. Tambry R. Young ("Tambry") and Suzanne Kalikolehua King ("Suzanne") have shared more than 29 years as a loving, committed same-sex couple. Both were born in Hawai'i and are proud of their Hawaiian heritage. Their lives revolve around their ten-year-old daughter, Shylar Kalikolehua Young ("Shylar"). Tambry and Suzanne are 46 and 50 years old respectively.

34. Over their nearly 30 years together, the couple has entwined every aspect of their lives, caring for each other emotionally and financially. On March 7, 1991, their tenth anniversary, Suzanne and Tambry held a commitment ceremony at a Unitarian church attended by family and friends. The couple registered as reciprocal beneficiaries on March 13, 2000. Tambry and Suzanne have weathered many of the same life challenges as different-sex spouses do. When both of Suzanne's parents fell very ill in 2007, Tambry remained by Suzanne's side to help care for them. In October 2007, it was Tambry and Suzanne together who shared the final 18 hours of Suzanne's mother's life. In October 2009, together they grieved the loss of Suzanne's father.

35. When Tambry and Suzanne began planning to have a child in the mid-1990s, their health care provider's policy barred them from receiving medical assistance because they were not married. After paying a private doctor out-of-pocket, Tambry became pregnant and gave birth to Shylar in 1999. Because the couple did not have the advantage of the legal presumption that Suzanne is an equal parent to their child, which Hawai'i law still restricts

to spouses (HRS § 584-4(a)(1)), they had no choice but to retain an attorney and spend valuable family resources petitioning for Suzanne's adoption of Shylar as a joint legal parent. This required the couple to navigate a stressful, confusing and uncertain legal process, as same-sex couples still must do today.

36. When Suzanne's father passed away in October of 2009, and she and her four siblings met with his estate planning attorney, the attorney repeatedly asked whether she was married or single for purposes of drafting a real property deed. When the attorney ignored Suzanne's response that she was a reciprocal beneficiary, she insisted repeatedly that he research whether a reciprocal beneficiary status was relevant. The attorney ultimately informed Suzanne that such deeds could only designate individuals as married or single. This stressful and belittling exchange in the presence of her family was especially painful as it came while Suzanne was mourning the loss of her father.

37. In October 2009, Tambry traveled to New England as a volunteer for the ultimately unsuccessful effort in Maine to retain the law that would have opened marriage to same-sex couples in that state. Her work there and the widespread acceptance and support of same-sex couples she experienced when visiting in Massachusetts inspired her to propose to Suzanne that they marry. Suzanne accepted, and the couple married in Massachusetts on November 7, 2009. Their wedding was transformative for them and their families, and particularly so for Shylar, who was immensely proud of her

parents. The joy of that experience has been painfully diminished for them in Hawai`i, however, where they are relegated to the status of reciprocal beneficiaries, which confers such incomplete protections and does not even acknowledge that that they are a committed couple rather than simply being a pair of individuals who cannot marry.

38. In honor of their wedding, Suzanne has decided to change her surname, King, to Tambry and Shylar's last name, Young. Under Hawai`i law, reciprocal beneficiaries are not afforded the streamlined name change process upon registration that spouses have upon marriage; accordingly, Suzanne has not been able to complete her name-change easily. Instead, she will be required to complete burdensome paperwork, pay additional fees, and obtain approval from Hawai`i's Lieutenant Governor—the same official who testified, in his personal capacity, in the 2009 legislative session that he "strongly" opposed civil unions for same-sex couples. These obstacles have felt all the more frustrating and insulting because the name-change holds such important meaning for Suzanne and her family. Shylar is eager for Suzanne to share the same surname, and was surprised and upset to learn that despite Suzanne and Tambry's wedding, Suzanne must complete a separate process in Hawai`i to share the same family name. Suzanne believes the change will diminish her own anxiety about others questioning her parental status due to Shylar's different last name, which has led Suzanne always to carry a copy of Shylar's birth certificate on which Suzanne is listed as a co-parent.

39. Tambry and Suzanne wish to have the stability of a state-sanctioned relationship that provides greater recognition of the depth and permanence of their family bonds, as well as the same broad, legal safety net that spouses receive. The couple particularly wants this support for their daughter, who currently is at risk of practical legal harms and will thrive upon receiving an official message that her family is valued in ways more similar to how the state values other families, especially those of her cousins and classmates.

b. Robie Lovinger and Louise Esselstyn.

40. Robie Lovinger ("Robie") and Louise Esselstyn ("Louise") have been in a loving, committed same-sex relationship for more than 17 years. Robie is an employee of the State of Hawai'i Civil Rights Commission ("Commission"), and Louise recently retired from directing a program that facilitates the reintegration of former prisoners into society as productive citizens. Robie and Louise are 56 and 65 years old respectively. They have lived in Hawai'i since the 1980s.

41. Robie and Louise were mature adults when they met and realized soon thereafter that they wished to spend the rest of their lives together. The couple held a commitment ceremony on Waimānalo Beach in 1993 to celebrate their relationship with approximately one hundred friends and family members. Although the ceremony was important both to the couple and their families, Robie and Louise both wished that it were legally sanctioned

by the State and had led to effective protection for their relationship under state law.

42. Robie and Louise own their home jointly and have completely merged their finances since their commitment ceremony. They also have obtained estate planning documents providing for inheritance of one another's property and advance health care directives to make clear their mutual intent to have the other make medical decisions if necessary—a particular area of worry for the couple, inasmuch as they have supported each other through surgeries and other health needs in recent years.

43. Robie and Louise registered with the State as reciprocal beneficiaries on July 8, 1997. The ability to register their relationship with the State, even through the inferior vehicle of reciprocal beneficiaries, was so important to the couple that they ensured that they were first in line to register on the day the State began accepting registrations.

44. Robie and Louise have made a mutual pledge to care for each other in sickness and in health, and that promise assumed new meaning when they each experienced health challenges. In 2000, Robie had back surgery followed by neck surgery in 2005. At the end of that year, Louise began having serious health challenges. In 2006, Louise was diagnosed with normal pressure hydrocephalus, which required brain surgery on June 7, 2006. In 2009, after an episode that required Louise to be hospitalized, Louise was diagnosed with multiple sclerosis.

45. Louise's condition has left her unable to work, so the couple is grateful that Robie's employer offers domestic partner health benefits. But they were frustrated that the State required them to complete more burdensome paperwork to enroll for the benefits, while married spouses are offered a streamlined enrollment process.

46. The process of purchasing their home confirmed for Robie and Louise that the reciprocal beneficiary system's incompleteness leads to confusion and a lack of effective protections. When Robie and Louise were preparing to purchase their home, their mortgage agent incorrectly informed them that reciprocal beneficiaries cannot title real property in a tenancy by the entirety, and instructed them instead to title the property as a tenancy in common, providing them less protection from liens on the property.

47. Robie and Louise worry that if Louise requires long-term care, she is likely to need Medicaid assistance, administered by the State's Department of Human Services ("DHS"), to cover some portion of her care. The law allows DHS to place a lien on a recipient's home to recoup the State's expenses. Spouses are shielded from such a lien on a family home as long as they continue to occupy the home (HRS § 346-29.5), but the statute provides reciprocal beneficiaries no such protection. When Robie inquired of DHS staff whether, as reciprocal beneficiaries, they could protect themselves against a lien by re-titling their home as a tenancy by the entirety, she was told a lien would be imposed and the form of title does not matter. Robie and Louise feel

acutely vulnerable knowing that they would not have this protection, and the concern has felt increasingly pressing since Louise's diagnosis.

48. Robie and Louise dearly wish to see equal protections, rights, and responsibilities available to same-sex couples while they are both alive and well enough to enjoy each other's company. Rendered vulnerable by Louise's illness, the extra worry the law imposes on Robie and Louise has inflicted pain and anxiety upon them as they strive to cope with Louise's diagnosis.

c. Kale Taylor and Sean Smith.

49. Kale Taylor ("Kale") and Sean Smith ("Sean") have been in a mutually exclusive, committed same-sex relationship since 2005. Kale, who is Hawaiian and was born in Hawai'i, and Sean, an Afghanistan war veteran who was stationed in Hawai'i before his tour of duty, are 29 and 32 years old respectively.

50. After more than four years together, Kale and Sean consider themselves to be complementary halves of a whole. They share an apartment and have combined their finances. The couple registered as reciprocal beneficiaries in 2006.

51. Kale works as a veterinary technician at an animal hospital. Sean worked as a Chinese linguist in the army and intended to pursue a career in government intelligence work. After he came out as a gay man, however, Sean was honorably discharged under the military's "Don't Ask, Don't Tell" policy and that career dream ended. He went to law school and now is a junior associate at a law firm. For a period of time while he was in law school, Sean

was denied the ability to qualify for in-state tuition because the school refused to give his reciprocal beneficiary registration with a Hawai'i resident the same consideration that is granted to spouses.

52. Kale and Sean hope to adopt and raise children together in the near future, and are readying themselves financially to begin their family. They worry that because the State restricts to married spouses the ability jointly to adopt a child (HRS § 578-1), they are likely to encounter difficulty in establishing their joint legal relationship to their children, and the resulting legal uncertainty will create risks and stresses for them as parents and will stigmatize both themselves and their children.

53. The tangible harms that Kale and Sean endure from being denied access to state spousal benefits take on a deeply personal dimension for the couple, both because they must shoulder greater legal uncertainty and financial burdens in structuring their family, and because of the State-sanctioned devaluation of their relationship implicit in current state law. Kale and Sean wish to solemnize their relationship in a state-sanctioned ceremony, as heterosexual couples do pursuant to HRS § 572-1. They believe the inability to have a legally-sanctioned ceremony has affected negatively how their families view the couple's relationship. Even if not the same as a marriage, a formal solemnization of their union with a state-issued license would communicate the loving commitment and civic validity of their relationship to a far greater extent than the mail-in reciprocal beneficiary registration process and would bring their families together in a more intuitive and recognizable way.

d. Jill Guillermo-Togawa and Pauline Guillermo-Togawa.

54. Jill Guillermo-Togawa ("Jill") and Pauline Guillermo-Togawa ("Pauline") have been a committed, loving same-sex couple for more than nine years. Jill was born and raised in Honolulu, and although she periodically has spent extended periods on the mainland as an adult, she always has considered Hawai'i to be her permanent home. Jill is a choreographer and teacher, and Pauline is a business management consultant.

55. Pauline and Jill own their Honolulu home jointly and have comingled their finances. They also share a part-time home in Berkeley, California. They jointly adopted their daughter, Carmel H. Shizumi-Lei Guillermo-Togawa ("Carmel"), shortly after her birth in September 2006.

56. Jill and Pauline held a commitment ceremony in November 2003 to celebrate their life together with over 200 of their friends and family members present. They also registered with the State of California as domestic partners in 2003, a status which has come to convey all the rights, protections, benefits, duties, responsibilities, and obligations of spouses under state law. They were in San Francisco in early 2004 when the city briefly permitted same-sex couples to marry and they did so. After California's Supreme Court nullified those marriages, they arranged to marry again in 2008 with the state of California's full sanction. Jill and Pauline remain legally married under California law and cherish that recognition of their family's equal worth, particularly for the powerful reinforcement that it provides their daughter Carmel, who now is four years old. They are disappointed and frustrated that

the multiple comprehensive state legal statuses they have assumed are not honored by Hawai`i, which caused them to remain legal strangers to each other within the State until they registered as reciprocal beneficiaries in 2005.

57. Hawai`i's unequal treatment of committed same-sex couples is palpable for Pauline and Jill, who have spent significant time in California over the years where both have large networks of friends and professional contacts, and where Pauline has had important family relationships. They are keenly aware of the different treatment their family receives when they leave California, where they are equal under the law, and return to Hawai`i, where their reciprocal beneficiary status relegates them to an inferior status.

58. Despite their unsatisfactory legal status, Jill and Pauline choose to reside in Hawai`i because they value highly the community and culture in which Jill grew up, and their close relationships with Jill's aging parents and the community of family and friends they and Carmel have on O`ahu. With both of Pauline's parents having passed away recently, Pauline and Jill cherish even more deliberately the time they are able to spend with family members, especially those who are elderly and infirm.

59. Because Carmel soon will begin school, Pauline and Jill have become concerned about the effect of their inferior legal status on Carmel, who has a growing awareness of the ways in which her family is similar to and different from others. Unlike in California, where the state's treatment of Jill and Pauline reinforces to their daughter that her family has equal worth, Hawai`i's dramatically inferior treatment of same-sex couples does not even

recognize that Jill and Pauline have formed a family as a loving, committed couple, which the State should permit them to demonstrate legally and then should protect.

60. The ability to adopt their daughter jointly in California—which provides critical legal protections and state-sanctioned recognition of their co-equal roles as Carmel's parents—was very important to Jill and Pauline. They plan to adopt a second child and know that Hawai'i law does not afford them access to the joint adoption procedure currently reserved to different-sex spouses. The prospect of attempting to secure their anticipated new parental relationships, when the State does not explicitly afford them access to a process for adopting a child together, feels stressful and demeaning to them. Access to the same procedures as are available to different-sex spouses for securing parental relationships with children, through a comprehensive state status for same-sex couples, would facilitate their expansion of their family and relieve significant anxiety for Jill and Pauline.

e. Linda Hamilton Krieger and Kathleen Sands.

61. Linda Hamilton Krieger ("Linda"), 56 years old, and Kathleen Sands ("Kathleen"), 55 years old, have been in a loving, committed relationship since 2004. Linda was raised in Hawai'i and Kathleen was raised in New York and Connecticut. They met in 2004 while both were living in Massachusetts. Linda and Kathleen instantly were drawn to each other by the centrality of spirituality in their lives. They were married by Linda's rabbi in 2007 on the

same spot where they first met. The experience was profoundly, religiously meaningful to them.

62. Each now belongs to the faculty of the University of Hawai'i at Manoa. Linda is a professor of law and Director of the Ulu Lehua Scholars Program at the William S. Richardson School of Law. Kathleen is a Christian theologian and an Associate Professor in the Department of American Studies.

63. Linda and Kathleen jointly own their home. They share mutual responsibility for their expenses and for the care and financial support of members of their respective families. They have designated each other as agents in their financial powers of attorney and advance health care directives. Linda and Kathleen registered as reciprocal beneficiaries in December 2007.

64. The couple has felt keenly the stigma that attaches to their inferior status as reciprocal beneficiaries. When they sought to buy their home, they were erroneously told by their title company that, as reciprocal beneficiaries, they could not take title as tenants by the entirety—a status that confers significant benefits should either die. The title company refused to draft the deed designating them as tenants by the entirety until the couple did legal research to prove that reciprocal beneficiaries can take title this way.

65. Having resolved this problem only days before the purchase was to close, the couple sought an expedited registration as reciprocal beneficiaries from the Hawai'i Department of Health ("Department"). When Linda took the application in to the Department's office on Punchbowl Street she observed department employees providing marriage licenses and

congratulatory wishes to heterosexual couples wearing lei and being photographed by friends and family. Linda approached the guard at the welcome desk and inquired where to find assistance for an expedited reciprocal beneficiary registration. The guard refused to make eye contact with Linda and said, "We don't do that RB thing here. You have to mail it. You can't come here." Linda renewed her request and the guard sneered at her, "I guess you don't know how to follow directions." She was shocked and felt deeply humiliated.

66. After Linda regained her composure she took her request to a woman staffing the marriage license counter, who called out to another employee, "Hey, do we do this RB thing?" The marriage license applicants and their family members began to stare at Linda. The other employee responded that she did not know how that process worked. Linda asked again. Finally, another employee appeared and indicated in a hushed voice that she would help. Linda felt painfully demeaned by the actions of the Department's employees, which both showed their confusion and lack of concern, and implied that her reciprocal beneficiary application somehow was shameful.

67. By virtue of their legal training, Linda and Kathleen are well aware that their reciprocal beneficiary status leaves them vulnerable in a multitude of circumstances in which married different-sex couples receive legal protection. They know, for example, that they cannot file their state income tax returns jointly or rely upon the spousal privilege under Hawai'i law. Especially given Linda's humiliating experience trying to register as reciprocal beneficiaries and the bullying of the antigay lobbying groups, the couple lives with the

constant worry that their inferior legal status will invite disregard and harm in an emergency.

68. Linda and Kathleen wish they could access a legal status under Hawai'i law that would permit them to solemnize their commitment as a loving couple, as committed different-sex couples have the right to do. Their marriage in Massachusetts was one of the most important events of their lives. But because their home state does not honor their marriage, they wish to enter a status in Hawai'i that at least confers upon them the same protections, rights and responsibilities as the State affords different-sex couples who marry.

f. Allen Castro and Danny Robinson.

69. Allen Castro ("Allen") and Danny Robinson ("Danny") have been a loving and committed same-sex couple since shortly after they met in 1976. Allen has long-standing ties to the Island of Hawai'i, where his Portuguese immigrant great-grandfather worked on a Pāhala sugar cane plantation in the Kingdom of Hawai'i. Allen and Danny are retired and are 60 and 56 years old, respectively. Allen devoted his career to investigating elder abuse, while Danny held various jobs in a restaurant.

70. Over the course of their 34 years together, Allen and Danny have lived out their promises to care for each other emotionally and financially. They own their home as tenants by the entirety, have designated each other as agents in advance health care directives, and share responsibility for each other's financial obligations.

71. Allen and Danny married in California on Valentine's Day of 2004, when the City and County of San Francisco was licensing same-sex couples to marry. They both were deeply moved by the experience of taking public vows to love, care and be responsible for each other through an officially-sanctioned ceremony.

72. By comparison, their 2006 registration in Hawai'i as reciprocal beneficiaries felt to them like an impersonal and ministerial transaction, similar to registering an automobile. It is apparent to Allen and Danny that the reciprocal beneficiary status does not communicate to others their profound commitment to each other as a couple. Allen and Danny regularly interact with neighbors who refer to them as "friends," reflecting a perception that demeans their decades-long, family relationship. Danny and Allen believe that a legal status endowing them with the full range of protections, rights, benefits, duties, responsibilities, and obligations that the State affords to married different-sex couples would be much more reflective of their commitment to each other and would lead others to a greater understanding that they are a legitimate family. Ever since the California Supreme Court nullified their 2004 marriage, Allen and Danny have longed to solemnize their relationship again through a State-sanctioned ceremony and desire to do so in their home state of Hawai'i. Danny also would like to adopt Allen's surname, but faces burdensome paperwork and additional expense for a name change approval process not required of spouses.

73. Allen and Danny are concerned about end-of-life issues. In addition to worrying that the inferior legal status of their relationship invites others to disregard their rights of visitation and decisionmaking for each other in emergency circumstances or in the event of incapacitation, they also are concerned that they will not be sheltered from a state family home lien if either must depend on Medicaid assistance for long-term care (HRS § 346-29.5). Allen has inquired and been informed repeatedly and consistently by DHS staff that the Department places liens on the homes of unmarried couples whenever either member of a couple receives nursing home care paid for by Medicaid, regardless of how the property is titled, and does not similarly place a lien when a surviving spouse remains living in the home.

FIRST CLAIM FOR RELIEF

Denial of Equal Protection Based on Sex and Sexual Orientation Pursuant to Article I, Sections 2, 3 and 5 of the Hawai'i Constitution

74. Plaintiffs reallege and incorporate herein by reference the allegations contained in Paragraphs 1 through 73 set forth above.

75. The Hawai'i Constitution contains several central guarantees of equality. Article I, section 2 provides that "[a]ll persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property." Article I, section 3 provides that "[e]quality of rights under the law shall not be denied or abridged by the State on account of sex." Article I, section 5 provides that "[n]o person shall be denied life, liberty or property without due process of law, nor be denied equal protection of the

laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry." For purposes of Article I section 5, discrimination based on sex includes sexual orientation discrimination.

76. As described more fully above, the State reserves many critically important family protections, rights, benefits, duties, responsibilities, and obligations to different-sex couples who avail themselves of their prerogative to marry under Hawai'i law, and relegates same-sex couples, including Plaintiffs, at most to the inferior status of reciprocal beneficiaries. Defendants' exclusion of Plaintiffs from access to many of the protections, rights, benefits, duties, responsibilities, and obligations afforded to different-sex spouses subjects Plaintiffs to unequal treatment on the basis of each Plaintiff's sex and sexual orientation, thereby denying each Plaintiff equality of rights and the equal protection of the laws.

77. Defendants' purposeful acts and omissions have deprived committed same-sex couples, including Plaintiffs, of myriad substantive and dignitary protections, rights, benefits, duties, responsibilities, and obligations that are conferred upon married different-sex spouses and therefore have discriminated unlawfully against Plaintiffs, to their economic and dignitary detriment and harm, because of each Plaintiff's sex and sexual orientation, in violation of Article I, sections 2, 3, and 5 of the Hawai'i Constitution.

78. Defendants' actions and inactions reflect moral disapproval and antipathy toward lesbians and gay men, including Plaintiffs, serve no

legitimate government interest and are, therefore, invalid under any form of constitutional scrutiny.

79. Defendants' actions and inactions purposefully single out a minority group, lesbians and gay men, that historically has suffered unjust and discriminatory treatment in law and society based on group members' sexual orientation and sex in relation to the sex of each one's committed life partner.

80. But for their sexual orientation and being in committed relationships with a same-sex partner, Plaintiffs are similarly situated in every material respect to the different-sex couples who are afforded the opportunity to marry and thereby to obtain the comprehensive range of family protections, right, benefits, duties, responsibilities, and obligations that are made available by the State.

81. Defendants' denial to committed same-sex couples of any means to access a legal status conferring many of the family protections, rights, benefits, duties, responsibilities, and obligations that Defendants have reserved exclusively to different-sex married spouses is subject to strict constitutional scrutiny, which Defendants' discrimination based on sex and sexual orientation cannot withstand because Defendants' discrimination based on sex and sexual orientation serves no compelling state or governmental interest in a sufficiently and narrowly tailored manner.

82. Defendants' restriction of many important family protection rights to different-sex couples who have married, and affording to same-sex couples only the limited protections available through registration as reciprocal

beneficiaries, imposes significant economic and dignitary harms upon Plaintiffs, which are a direct and proximate result of Defendants' actions and inactions towards Plaintiffs.

83. Defendants' denial to Plaintiffs of any way to access critical rights and responsibilities the State makes available to different-sex couples through marriage abridges in an unequal manner based on sex and sexual orientation Plaintiffs' fundamental right to and protected liberty interest in forming and maintaining an intimate family relationship with another consenting adult as part of each Plaintiff's private life. Defendants' discriminatory actions and omissions, which differentially burden Plaintiffs' exercise of fundamental rights and enjoyment of liberties in a manner based on sex and sexual orientation, are subject to strict constitutional scrutiny, which Defendants' conduct cannot withstand because this discriminatory conduct serves no compelling governmental interest in a sufficiently narrow and tailored manner.

84. Defendants' exclusion of Plaintiffs from the many family protections offered exclusively to different-sex spouses, because of each Plaintiff's sexual orientation and sex, violates Article 1, sections 2, 3 and 5 of the Hawai'i Constitution.

SECOND CLAIM FOR RELIEF

Denial of Due Process and Privacy Pursuant to Article I, Sections 5 and 6 of the Hawai'i Constitution

85. Plaintiffs reallege and incorporate herein by reference the allegations contained in Paragraphs 1 through 84 set forth above.

86. Article I, section 5 of the Hawai`i Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry." This guarantee has a substantive component that shields the people of this state, including Plaintiffs, from government interference with fundamental rights and protected liberties.

87. Furthermore, Article I, section 6 of the Hawai`i Constitution provides that "[t]he right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right." The framers of the Hawai`i Constitution declared that the "privacy concept" embodied in Article I, section 6 is to be treated as a fundamental right.

88. Each Plaintiff has a protected, fundamental right and liberty in the formation and maintenance of an intimate family relationship with his or her committed same-sex life partner.

89. Defendants' denial to Plaintiffs and other lesbians and gay men in committed same-sex relationships of a means of access to critical legal protections, rights and responsibilities offered only to different-sex married spouses burdens and punishes Plaintiffs by imposing economic and dignitary harms upon them, and interferes with Plaintiffs' autonomy and interest in freely making important decisions of an intimate and personal nature concern-

ing the structuring and conduct of their family lives. The relegation of Plaintiffs to an inferior legal status with greatly diminished protections, rights and responsibilities impairs Plaintiffs' ability to manage their family affairs, such as the ways they choose to structure their finances, and to ensure the decision-making, support and physical security for each other and other dependent family members that they intend.

90. Defendants' actions and inactions impermissibly infringe upon, intrude upon, and subject Plaintiffs to punishment and penalties with respect to Plaintiffs' exercise of their fundamental rights and protected liberties, in violation of Plaintiffs' right not to be deprived of substantive due process, privacy and the equal enjoyment of their civil rights absent a compelling and narrowly tailored state justification.

91. Defendants' actions and inactions select for disfavored treatment lesbians and gay men who exercise their fundamental rights and liberties by pursuing family life with a same-sex life partner, and provide favored treatment to heterosexuals who do so by marrying a different-sex life partner, thereby burdening and infringing upon Plaintiffs' exercise of their protected rights and liberties in a discriminatory and impermissible manner.

92. Defendants' actions and inactions of selecting for disfavored treatment lesbians and gay men who exercise their protected right to form and maintain an intimate family relationship with a same-sex partner are intentional and purposeful, and undertaken improperly to encourage heterosexual relationships and to discourage same-sex relationships.

93. Defendants' actions and inactions are arbitrary, irrational and indefensible, and violate Plaintiffs' substantive due process and privacy rights because they do not advance any compelling state or governmental interest in a narrowly tailored manner, all in violation of the rights guaranteed to Plaintiffs by Article I, sections 5 and 6 of the Hawai'i Constitution.

DECLARATORY AND INJUNCTIVE RELIEF

HRS § 632-1 *et seq.* and HRCP Rules 57 and 65

94. Plaintiffs are entitled to a declaration that Defendants' withholding from the Plaintiff couples of the full panoply of protections, rights, benefits, duties, responsibilities, and obligations that state law offers to different-sex couples through marriage denies them equality of rights, the equal protection of the laws, due process and privacy, as guaranteed by Article I, sections 2, 3, 5 and 6 of the Hawai'i Constitution. An actual controversy exists between Plaintiffs and Defendants over Plaintiffs' concrete interest in, and assertion of legal rights to, access to all of the state law protections, rights, benefits, duties, responsibilities, and obligations offered to different-sex couples through marriage. A declaratory judgment will terminate the present uncertainty concerning whether and when the State will provide Plaintiffs the equality of rights and treatment, due process and privacy to which they are entitled under Hawai'i law.

95. Plaintiffs are entitled to preliminary and permanent injunctive relief because they are likely to and will prevail on the merits. Plaintiffs have no plain, adequate, or complete remedy at law to redress their injuries.

Plaintiffs are irreparably harmed by the impairment of their constitutional rights, and the balance of irreparable damage favors the issuance of an injunction. The public interest strongly supports granting an injunction to end Defendants' invidious discrimination against Plaintiffs.

96. Accordingly, this Court should enjoin Defendants from continuing to deny equal protections, rights, benefits, duties, responsibilities, and obligations to Plaintiffs and other committed same-sex couples and should require the State to provide same-sex couples a way to qualify for the same protections, rights, benefits, duties, responsibilities, and obligations under state law that the State affords different-sex couples through marriage.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Entering a declaratory judgment that Defendants' withholding from the Plaintiff couples of the full panoply of protections, rights, benefits, duties, responsibilities, and obligations that state law offers to different-sex couples through marriage denies the Plaintiff couples equality of rights, the equal protection of the laws, due process and privacy, as guaranteed by Article I, sections 2, 3, 5 and 6 of the Hawai`i Constitution;

B. Preliminarily and permanently enjoining Defendants (and their officers, agents, servants, employees, and attorneys, and all persons acting or purporting to act in concert or cooperation with Defendants) from continuing to deny equal protections, rights, benefits, duties, responsibilities, and obligations to Plaintiffs and other committed same-sex couples, and

requiring the State to provide same-sex couples a way to qualify for the same protections, rights, benefits, duties, responsibilities, and obligations under state law that the State affords different-sex couples through marriage.

C. Awarding reasonable attorneys' fees, costs and other expenditures incurred as a result of bringing this action, pursuant to all applicable laws and doctrines; and

D. Awarding Plaintiffs such other and further relief as this Court may deem just and proper.

Dated: Honolulu, Hawai'i, July 29, 2010.

JENNIFER C. PIZER
TARA L. BORELLI
(Motion to Appear Pro Hac Vice Pending)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

PAUL ALSTON
CLYDE J. WADSWORTH
STEPHEN M. TANNENBAUM
ALSTON HUNT FLOYD & ING

LOIS K. PERRIN
DANIEL M. GLUCK
LAURIE A. TEMPLE
ACLU OF HAWAI'I FOUNDATION

Attorneys for Plaintiffs