UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

ELLEN W. GERBER; PEARL BERLIN; LYN MCCOY; JANE BLACKBURN; ESMERALDA MEJIA; CHRISTINA GINTER-MEJIA, for herself and as guardian *ad litem* for J.G.-M., a minor;

Plaintiffs,

v.

ROY COOPER, in his official capacity as the Attorney General of North Carolina; JEFF THIGPEN, in his official capacity as the Register of Deeds for Guilford County; DONNA HICKS SPENCER, in her official capacity as the Register of Deeds for Catawba County; JOHN W. SMITH, in his official capacity as the Director of the North Carolina Administrative Office of the Courts; AL JEAN BOGLE, in her official capacity as the Clerk of the Superior Court for Catawba County.

Defendants.

CIVIL ACTION NO. 1:14-cv-299

COMPLAINT

INTRODUCTION

1. Plaintiffs are three North Carolina families. In each family, the adults are loving, committed same-sex couples who seek to have their legal out-of-state marriages recognized as lawful marriages in North Carolina. In addition, one couple is raising a child together, and seeks to ensure that both his parents have legally recognized parent-child relationships. Because North Carolina law does not respect their legal marriages, and in the case of the family raising a child, bars one parent from legalizing her relationship with her child, plaintiffs bring this suit alleging violations of the U.S. Constitution.

2. Plaintiffs Berlin, Blackburn, and Mejia have serious, life-threatening medical issues that make it likely that they and their families will suffer irreparable harm unless the state recognizes their legal out-of-state marriages. There is also an imminent risk of potential harm to child plaintiff J.G.-M..

3. The adult plaintiffs seek to have their marriages from other jurisdictions recognized in North Carolina because of the numerous financial, psychological and social benefits that flow from a legally recognized marriage. Having their out-of-state marriages recognized by North Carolina will address the regular deprivations and indignities—economic, psychological and otherwise—the adult plaintiffs face each day.

4. Because of the gender and sexual orientation of the adult plaintiffs, they are denied the freedom to marry in North Carolina, and their out-of-state marriages are deemed invalid by North Carolina law, which specifies that the plaintiffs' marriages are not "valid or recognized in the State." N.C. Const. art. XIV, § 6 (as amended).

5. In addition, to secure similar benefits that flow from a legally recognized parent-child relationship, Ms. Mejia and Ms. Ginter-Mejia want to establish, via adoption, a full, legal parental relationship between their child J. G.-M. and his second parent. Specifically, Ms. Mejia, who is the non-legal parent, wishes to apply to adopt J.G.-M. whom she is currently raising with Ms. Ginter-Mejia, J.G.-M.'s legal parent. This adoption process is often referred to as "second parent adoption."

6. North Carolina law prevents Ms. Mejia from forming such a legal relationship in the only way she can—through application for adoption—also because of her sexual orientation.

7. Plaintiffs bring this action ("Action") to challenge the constitutionality of North Carolina's laws that exclude same-sex couples from marrying and that effectively void the marriages of same-sex couples lawfully entered into in other jurisdictions. In addition, Ms. Mejia and Ms. Ginter-Mejia challenge the constitutionality of North Carolina's adoption laws that prevent J.G.-M., the child plaintiff, from having a legal relationship with both of his parents.

8. The adult plaintiffs seek the same legal recognition of their family relationships afforded to heterosexual married spouses and their families for the same reason all families seek such relationships: so the members of each of the plaintiff couples can publicly declare their love and commitment before their friends, family and community, so each family member can achieve the benefits, security and protection that only a legal marriage and a legal adoption can provide, and so each family member can avoid the numerous psychological, social and financial detriments that arise from the lack of a legally recognized marriage or a legally recognized relationship between a parent and child.

Marriage

9. Like other couples who have made a lifetime commitment to each other, the adult plaintiffs, Esmeralda Mejia and Christina Ginter-Mejia, Ellen W. Gerber and Pearl Berlin, and Lyn McCoy and Jane Blackburn, are spouses in every sense except that North Carolina law will not permit them to marry or recognize their marriages from other jurisdictions.

10. The adult plaintiffs wish to have their out-of-state marriages recognized in North Carolina.

11. North Carolina's exclusion of same-sex couples from marital recognition deprives plaintiffs and similar couples from many legal protections available to married spouses, including (without limitation) benefits available under tax laws; inheritance laws; retirement benefits; and insurance laws and contracts. Moreover, depriving same-sex couples of marital recognition undermines those couples' financial security and their ability to achieve life goals as couples, and deprives them of the immensely important dignity and status of marriage.

12. If plaintiffs Mejia and Ginter-Mejia's valid marriage were recognized in North Carolina, they would then qualify for the same stepparent adoption process available to heterosexual married parents without amendment or change to North Carolina's existing adoption laws.

Adoption

13. Absent the recognition of marriage for same sex couples, a second parent adoption is the only way that a family in North Carolina with gay or lesbian parents can ensure (i) that both parents have a legal relationship with their child and (ii) that the child receives the many protections and benefits of a legally cognizable parent-child relationship with both parents. A child who is

prevented from having such a legally recognized relationship with both parents suffers numerous deprivations as a result, including exclusion from private health insurance benefits, public health benefits, veterans' benefits, disability benefits, social security benefits, life insurance benefits and workers' compensation, as well as uncertainty about the ability to continue his or her relationship with the second parent if something should happen to the legal parent. While many other states grant second parent adoptions when they are in a child's best interests, under North Carolina law, as authoritatively construed by the North Carolina Supreme Court in *Boseman* v. *Jarrell*, 704 S.E.2d 494 (N.C. 2010),[1] second parent adoptions are categorically prohibited.

14. Ms. Mejia and Ms. Ginter-Mejia therefore bring this action because North Carolina's categorical prohibition on second parent adoption violates the constitutional rights and protections of their child, J.G.-M., who faces direct and substantial deprivations—legal, psychological, financial, and otherwise—simply because he is being raised by lesbian parents, and violates the rights of his parents, who face similar direct and substantial burdens on their rights simply because they are lesbians.

15. There is no basis for the state automatically and categorically to reject any petition for second parent adoption by gay or lesbian parents—without even considering what is best for the child—while simultaneously adjudicating any stepparent adoption petition by a heterosexual stepparent on its merits, according to what is in the child's best interest and otherwise consistent with established procedures.

[1] Further references to North Carolina's adoption statutes herein are a reference to those statutes as construed by the North Carolina Supreme Court in *Boseman*.

CONSTITUTIONAL VIOLATIONS

16. By depriving the plaintiffs of marital recognition and respect, North Carolina stigmatizes the adult plaintiffs and relegates them to second-class status. The laws forbidding marital recognition and preventing a parent from establishing a legal relationship with her child tell the plaintiffs that their relationships are less worthy, humiliating each plaintiff and denigrating the integrity and closeness of their family.

17. North Carolina's exclusion of same-sex couples from marriage and adoption of the children they raise are both independently unconstitutional because such prohibitions infringe on the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Each prohibition is subject to heightened scrutiny because (a) it discriminates against a suspect class and (b) it burdens several fundamental rights, including the right to marry and the right of parents to make decisions about the care and nurturing of their children and the integrity of their families. Furthermore, the challenged laws cannot stand under any level of scrutiny, because the exclusions do not rationally further any legitimate government interest. They serve only to disparage and injure lesbian and gay couples and their families.

18. As a basis for their Action, plaintiffs respectfully allege as follows on the basis of their personal knowledge and otherwise on the basis of information and belief:

NATURE OF THE ACTION

19. This Action is brought under 42 U.S.C. § 1983 against state actors who, acting in their official capacity under color of state law, are responsible for making and enforcing state policies and laws that directly infringe plaintiffs' constitutional rights under the Fourteenth Amendment to the United States Constitution.

JURISDICTION AND VENUE

20. Plaintiffs bring this Action pursuant to 42 U.S.C. § 1983.

21. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3)-(4).

22. All defendants are located, or otherwise are present and conducting business, within the state of North Carolina.

23. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b). A substantial part of the events and omissions that give rise to the plaintiffs' claims occurs in this judicial district.

THE NORTH CAROLINA MARRIAGE LAWS

North Carolina Marriage Statutes

24. North Carolina statutory law defines marriage as being between one man and one woman, thereby prohibiting marriage by persons of the same sex. North Carolina Gen. Stat. § 51-1 provides in relevant part: "A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other . . . ."

25. North Carolina statutory law explicitly provides that marriages by persons of the same gender are not valid. North Carolina Gen. Stat. § 51-1.2 provides: "Marriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina."

The North Carolina Anti-Marriage Amendment ("Amendment One")

26. On May 8, 2012, Section 6 of Article XIV of the North Carolina Constitution was amended to exclude same-sex couples from the freedom to marry in North Carolina and to bar

within North Carolina any recognition of the lawful marriages of same-sex couples from other jurisdictions. *See* 2011 North Carolina Laws S.L. 2011-409 (S.B. 514).

27. Amendment One provides:

> Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State. This section does not prohibit a private party from entering into contracts with another private party; nor does this section prohibit courts from adjudicating the rights of private parties pursuant to such contracts.

N.C. Const. art. XIV, § 6 (as amended).

28. Many of the justifications offered by public officials and others in support of Amendment One and excluding same-sex couples from marrying were based on animus toward gay and lesbian individuals because of their intimate and familial relationships. Statements in support of Amendment One included the following:

a. "[Y]ou cannot construct an argument for same sex-marriage that would not also justify philosophically the legalization of polygamy and adult incest"; "In countries around the world where they legitimized same-sex marriage, marriage itself is delegitimized."[2]

b. "We need to reach out to them and get them to change their lifestyle back to the one we accept"; "[The City of Asheville, North Carolina is] a cesspool of sin."[3]

c. "[Y]ou don't rewrite the nature of God's design for marriage based on the demands of a group of adults."[4]

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[2] Paige Lavender, *Paul Stam*, *North Carolina GOP Representative: Gay Marriage Leads to Polygamy*, *Incest*, Huffington Post (Aug. 31, 2011, 12:23 PM), *available at* http://www.huffingtonpost.com/2011/08/31/gay-marriage- north-carolina_n_943336.html.

[3] Statement of James Forrester, North Carolina Senator. Rob Schofield, *Anti-gay lawmakers speak their (very troubled) minds*, The Progressive Pulse (Sept. 9, 2011), *available at* http://pulse.ncpolicywatch.org/2011/09/09/anti-gay-lawmakers-speak-their-very-troubled-minds/.

d. Marriage by same-sex individuals "undermines the marriage culture by making marriage a meaningless political gesture, rather than a child-affirming social construct"; "We will have an inevitable increase in . . . all of the documented social ills associated with children being raised in a home without their married biological parents."[5]

e. North Carolina residents were urged "to contribute money, 'so we can confront the devils against us on the other side.'"[6]

29. As a result of Amendment One and the North Carolina marriage statute, N.C. Gen. Stat. §§ 51-1, 51-1.2, the adult plaintiffs' legal marriages conferred by other states are not valid or recognized in North Carolina. *See* N.C. Gen. Stat. § 51-1.2 ("Marriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina.").

30. While North Carolina gives effect to and recognizes marriages of heterosexual spouses from other jurisdictions, *see*, *e.g.*, *Parker* v. *Parker*, 46 N.C. App. 254, 257 (1980), Amendment One forbids giving effect to or recognizing marriages of same-sex spouses that were first solemnized and recognized in another state.

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[4] Statements of Tami Fitzgerald, Head of Vote For Marriage NC. CNN Wire Staff, *North Carolina passes same-sex marriage ban*, *CNN projects*, CNN (May 11, 2012, 11:01 AM), *available at* http://www.cnn.com/2012/05/08/politics/north-carolina-marriage.

[5] Vote FOR Marriage NC, *The Threat to Marriage*, Honest NC (Jan. 25, 2012), *available at* http://honestnc.com/in-their-own-words-the-threat-to-marriage/#more-1165.

[6] Statement of Jim Jacumin, former state Senator, speaking at a public forum hosted by Vote for Marriage NC. Craig Jarvis, *Marriage amendment galvanizes activists*, newsobserver.com (Mar. 29, 2012), *available at* http://www.newsobserver.com/2012/03/29/1965637/pro-marriage-amendment-rallies.html.

OTHER BARRIERS TO MARRIAGE HAVE BEEN STRUCK DOWN

31. As recently as the 1960s, many states prohibited marriage between people of different races. The Supreme Court struck down that prohibition in *Loving* v. *Virginia*, 388 U.S. 1, 2 (1967), which declared that "the freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." *Id.* at 12.

32. Our courts and our society have discarded, one by one, marriage laws that violated the Constitution's mandate of equality, such as anti-miscegenation laws and laws that denied married women legal independence and the right to make decisions for themselves. History has taught that the vitality of marriage does not depend on maintaining such discriminatory laws. To the contrary, eliminating these unconstitutional impediments to marriage has enhanced the institution. Ending the exclusion of gay and lesbian couples from marriage is no different. Indeed, same-sex couples are marrying in 17 states and the District of Columbia, and the institution of marriage continues to thrive. Moreover, the Supreme Court held in *United States* v. *Windsor*, 133 S. Ct. 2675 (2013) that the failure of the federal government to recognize state- sanctioned marriages of gay and lesbian couples deprived those couples of their constitutional rights.

33. This is because, at heart, marriage is both a personal and a public commitment of two people to one another, licensed by the state. Through marriage, North Carolina recognizes a couple's decision to establish a family unit together and support one another and any children and other family members.

34. Marriage contributes to the happiness and security of countless people, but it also contributes to society. North Carolina, like other states, encourages and regulates marriage through hundreds of laws that provide benefits to and impose obligations on married couples. In exchange,

North Carolina receives the well-established benefits that marriage brings: stable, supportive families that contribute to both the social and economic well-being of the State.

35. The prohibition against recognition of out-of-state marriages for same-sex couples in North Carolina is not closely tailored to serve an important government interest or substantially related to an exceedingly persuasive justification. In fact, the prohibition fails any level of constitutional scrutiny. It is not even rationally related to either any legitimate justifications that were offered in support of it when Amendment One became law or any legitimate interest of North Carolina that defendants might now offer as a basis for denying same-sex couples the freedom to marry in North Carolina.

36. Neither tradition nor moral disapproval of same-sex relationships or marriage for lesbian and gay couples is a legitimate basis for unequal treatment under the law. The fact that discrimination is long-standing does not immunize it from constitutional scrutiny. The Supreme Court has made clear that the law cannot, directly or indirectly, give effect to private biases and has expressly rejected moral disapproval of marriage for same-sex couples as a legitimate basis for discriminatory treatment of lesbian and gay couples. *Windsor*, 133 S. Ct. 2675 at 2693 (an "interest in protecting traditional moral teachings reflected in heterosexual-only marriage laws" was not a legitimate justification for the federal Defense of Marriage Act) (internal quotation marks and citation omitted).

37. North Carolina cannot justify its refusal to recognize the valid marriages of gay and lesbian couples by claiming an interest in preserving public fiscal resources or the coffers of private business. Saving money is not a justification for excluding a group from a government benefit without an independent rationale for why the cost savings ought to be borne by the particular group

denied the benefit. Moreover, the evidence will show that there is no factual basis for the notion that recognizing the marriages of same-sex couples will burden North Carolina financially or constitute a burden on business.

38. North Carolina's ban on marriage by same-sex couples is not rationally related to child welfare concerns. The government has a vital interest in protecting the well-being of children, but the refusal to recognize the marriages of gay couples in North Carolina bears no relation to this interest. To the contrary, it harms children in North Carolina.

39. Excluding same-sex couples from marriage has no conceivable benefit to children of heterosexual couples. Denying recognition of the marriages of same-sex couples does not encourage opposite-sex couples who have children to marry or stay married for the benefit of the children. Regardless of whether marriages of same sex couples are respected, the children of opposite-sex spouses will continue to enjoy the same benefits and protections that flow from their parents' marriage.

40. Excluding same-sex couples from marriage serves only to harm the children raised by lesbian and gay couples by denying their families significant benefits and by branding their families as inferior and less deserving of respect and, thus, encouraging private bias and discrimination.

41. The Supreme Court has called marriage "the most important relation in life," *Zablocki* v. *Redhail*, 434 U.S. 374, 384 (1978) (internal quotation marks omitted), and an "expression[] of emotional support and public commitment." *Turner* v. *Safley*, 482 U.S. 78, 95 (1987). This is as true for same-sex couples as it is for opposite-sex couples.

42. Same-sex couples such as the plaintiff couples are similarly situated to opposite-sex couples in all of the characteristics relevant to marriage.

43. Same-sex couples make the same commitment to one another as opposite-sex couples. Like opposite-sex couples, same-sex couples build their lives together, plan their futures together and hope to grow old together. Like opposite-sex couples, same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness.

44. Same-sex couples seeking to have their marriages recognized by the state have already assumed the obligations of marriage, despite not having their marriages recognized by the state.

45. The plaintiff couples and other same-sex couples in North Carolina, if permitted to marry or have their marriages recognized by the state, would benefit no less than opposite-sex couples from the many legal protections and social recognition afforded to married couples.

46. There was a time when an individual's sex was relevant to his or her legal rights and duties within the marital relationship. For example, husbands had a duty to support their wives, but not vice versa, and husbands had legal ownership of all property belonging to their wives. But these legal distinctions have all been removed such that the legal rights and duties of husbands and wives are now identical.

47. Regardless of whether they are provided the numerous benefits of marriage afforded to heterosexual couples, the adult plaintiffs will continue their committed relationships as spouses, albeit absent the numerous benefits that would come with marriages recognized in North Carolina.

ANY ALLEGED STATE INTEREST IN FORBIDDING MARRIAGE IS SUBJECT TO HEIGHTENED SCRUTINY

48. In the twentieth century and continuing to the present, gay and lesbian individuals have experienced a history of unequal treatment in the United States because of their sexual orientation.

49. In the twentieth century and continuing to the present, gay and lesbian individuals have been discriminated against in the United States because of their sexual orientation.

50. In the twentieth century and continuing to the present, gay and lesbian individuals have been discriminated against in the United States because of perceived stereotypes associated with being gay or lesbian.

51. In the twentieth century and continuing to the present, gay and lesbian individuals have been harassed in the United States because of their sexual orientation.

52. In the twentieth century and continuing to the present, gay and lesbian individuals have been subject to violence in the United States because of their sexual orientation.

53. Discrimination against gay and lesbian individuals has, historically, given them limited ability to protect their interests through the legislative process.

54. In terms of population share, openly gay and lesbian individuals are underrepresented in federal and state elected office and in the judiciary.

55. The majority of people in North Carolina in particular, and in the United States generally, do not identify as gay or lesbian. Gay and lesbian persons are therefore a minority population.

56. Gay and lesbian individuals have comparatively little ability to protect their interests through the normal political process.

57. Other groups that face discrimination in society, such as women and racial minorities, have been able to secure statutory protections against such discrimination through federal civil rights legislation.

58. With the sole exception of the federal Hate Crimes Act, passed in 2009, gay and lesbian individuals have secured no such federal non-discrimination protection, even today.

59. Instead, the rights of gay and lesbian individuals have been voted on at the ballot box repeatedly, with the vote going against the gay and lesbian rights position almost every single time.

60. For many gay and lesbian individuals, their sexual identity is a core part of their identity.

61. Efforts to change a person's sexual orientation through interventions by medical professionals have not been shown to be effective.

62. A person's sexual orientation — heterosexual or homosexual — bears no relation to his or her ability to participate in or contribute to society.

63. North Carolina's categorical ban on second parent adoptions and Amendment One perpetuate historical discrimination against gay and lesbian persons whose sexual orientation is immutable and a core part of their identity.

64. Amendment One also discriminates on the basis of gender, as each adult plaintiff is denied the right to marry her spouse or have her marriage recognized based solely on her gender.

In fact, Amendment One limits marriage to a relationship based wholly on the gender of the spouses. *See also* N.C. Gen Stat. §§ 51-1, 51-1.2.

THE NORTH CAROLINA ADOPTION STATUTES

65. North Carolina law permits an unmarried individual person to adopt children and does not distinguish, for purposes of approving or denying an adoption, among individuals who are gay, lesbian or heterosexual.

66. Nevertheless, gay and lesbian parents cannot petition for adoption jointly (*i.e*., as a couple), because N.C. Gen. Stat. § 48-2-301(c) provides that "[i]f the individual who files [an adoption] petition is unmarried, no other individual may join in [that] petition."

67. The parent who is prevented from having a legal relationship with her child (the "second parent") cannot file for an adoption as an individual unless the existing legal parent agrees to give up all of his or her existing parental rights. Specifically, under N.C. Gen. Stat. § 48-3-606(9), an adoption petition must include a written consent to the adoption by any existing legal parent, and the existing legal parent must acknowledge that granting the adoption will result in the termination of his or her existing parental rights. Similarly, under N.C. Gen. Stat. § 48-1-106(c), "[a] decree of adoption severs the relationship of parent and child between the individual adopted and that individual's biological or previous adoptive parents" and relieves the former parents "of all legal duties and obligations due from them to the adoptee."

68. Thus, as a result of operation of the law — specifically that cited in paragraphs 24 through 26 above and the North Carolina Supreme Court's decision in *Boseman* — Ms. Mejia and Ms. Ginter-Mejia are precluded from having both parents be recognized simultaneously as legal parents to their child, J.G.-M.

69. Adoptions by a parent's legal spouse — a stepparent — are exempt from the termination requirement of N.C. Gen. Stat. § 48-1-106. "A stepparent may file a petition under this Article to adopt a minor who is the child of the stepparent's spouse if . . . [t]he parent who is the spouse has legal and physical custody of the child, and the child has resided primarily with this parent and the stepparent during the six months immediately preceding the filing of the petition." N.C. Gen. Stat. § 48-4-101. Notably, according to N.C. Gen. Stat. § 48-1-106(d), adoption by a stepparent does not have "any effect on the relationship between the child and the parent who is the stepparent's spouse."

70. N.C. Gen. Stat. § 48-1-101(18) defines "Stepparent" to mean "an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

71. North Carolina does not recognize a marriage "between individuals of the same gender." N.C. Gen. Stat. § 51-1.2; *see also* N.C. Const. art. XIV, § 6; N.C. Gen. Stat. § 51-1, 51-1.2.

72. Because Ms. Mejia is not considered to be the "spouse" of Ms. Ginter-Mejia under North Carolina law, Ms. Mejia is unable to use the stepparent adoption statute to adopt J.G.-M., the child she is raising with her legal spouse under Maryland law, without terminating the parental rights of Ms. Ginter-Mejia.

73. Prior to December 20, 2010—when the North Carolina Supreme Court decided *Boseman*—the North Carolina District Court in Durham County entered adoption decrees allowing unmarried second parents to adopt children without terminating the parental rights of the legal parent.

74. As discussed in greater detail below, the granting of such adoptions was consistent with actions of courts in numerous other states construing their own statutes, which are similar to North Carolina's. Those courts have recognized that second parent adoption can be granted to unmarried individuals without terminating the legal parent's rights.

75. Under the practice that existed prior to *Boseman*, adoption decrees allowing unmarried, second parents to adopt children without terminating the parental rights of the legal parent "effect[ed] a complete substitution of families for all legal purposes and establishe[d] the relationship of parent and child . . . between . . . [the non-biological parent] and the individual being adopted," while at the same time "not sever[ing] the relationship of parent and child between the individual adopted and that individual's biological mother." *Boseman*, 704 S.E.2d at 497.

76. In *Boseman*, the Supreme Court of North Carolina held that the district court lacked subject matter jurisdiction to issue the adoption decree because the type of adoption sought, allowing a legal parent's same-sex partner to become a second legal parent, was not permitted under North Carolina law. *Id*. at 505.

OTHER STATES GRANT SECOND PARENT ADOPTION, RECOGNIZING THAT SUCH ADOPTIONS ARE IN THE BEST INTERESTS OF CHILDREN

77. Courts in many other jurisdictions with adoption statutes similar to North Carolina's permit second parent adoption by gay and lesbian parents.

78. For example, courts in California, Indiana, New Jersey, New York, Vermont, the District of Columbia, Delaware, Illinois, Massachusetts, Pennsylvania and Maine have held that their adoption statutes permit second parent adoption without regard to the parents' marital status, and

have explicitly recognized that permitting second parent adoption furthers the best interests of children. *See*, *e.g.*, *Sharon S.* v. *Superior Court*, 73 P.3d 554 (Cal. 2003); *In re Jacob*, 660 N.E.2d 397 (N.Y. 1995); *In re Adoption of B.L.V.B.*, 628 A.2d 1271 (Vt. 1993); *In re Adoption of K.S.P.*, 804 N.E.2d 1253 (Ind. Ct. App. 2004); *In re Adoption of Two Children by H.N.R.*, 666 A.2d 535 (N.J. Super. Ct. App. Div. 1995); *In re M.M.D.*, 662 A.2d 837, 862 (D.C. 1995); *In re Hart*, 806 A.2d 1179 (Del. Fam. Ct. 2001); *In re Petition of K.M.*, 653 N.E.2d 888 (Ill. App. Ct. 1995); *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993); *In re Adoption of R.B.F.*, 803 A.2d 1195 (Pa. 2002); *In re Adoption of M.A.*, 930 A.2d 1088 (Me. 2007).

79. In addition, the laws of Connecticut, Colorado and Vermont expressly authorize second parent adoption. Conn. Gen. Stat. § 45a-724(3); Colo. Rev. Stat. § 19-5-203(d.5)(I); and Vt. Stat. Ann. Tit. 15A, § 1-102(b).

80. In summarizing the benefits of second parent adoption, the Indiana Court of Appeals found that "[a]llowing a second parent to share legal responsibility for the financial, spiritual, educational, and emotional well-being of the child in a stable, supportive, and nurturing environment can only be in the best interest of that child." *In re Adoption of M.M.G.C.*, 785 N.E.2d 267, 270-71 (Ind. Ct. App. 2003).

81. Other state courts have found that, because second parent adoption furthers the same purpose as stepparent adoptions, statutes like North Carolina's that expressly permit stepparent adoptions should be broadly construed in furtherance of the goal of the statute to permit second parent adoption. *See*, *e.g.*, *In re Adoption of Two Children by H.N.R.*, 666 A.2d at 539 ("[W]here the mother's same-sex partner has, with the mother's consent, participation and cooperation, assumed a full parental role in the life of the mother's child, and where the child is

consequently bonded to the partner in a loving, functional parental relationship, the stepparent provision of [the New Jersey termination statute] should not be narrowly interpreted so as to defeat an adoption that is clearly in the child's best interests."); *In re Hart*, 806 A.2d at 1186-88 (reading Delaware stepparent exception broadly to further the best interests of the children); *In re M.M.D.*, 662 A.2d at 860-61 (D.C. 1995) (same).

82. Altogether, 22 states plus the District of Columbia currently permit gay and lesbian parents to obtain second parent or stepparent adoptions, without regard to the parents' marital status.

WHILE NORTH CAROLINA PROHIBITS ADOPTION BY SECOND PARENTS, NORTH CAROLINA LAWS AND POLICIES OTHERWISE RECOGNIZE THE VALUE THAT GAY AND LESBIAN COUPLES PROVIDE AS PARENTS

Minimum Standards for Family Foster Homes

83. There are many ways in which North Carolina law currently recognizes the legitimacy of lesbian and gay parents and does not prevent gay or lesbian persons from being recognized as parents.

84. North Carolina's Division of Social Services ("DSS") has the authority to enact foster and adoptive parent eligibility requirements, and has enacted such regulations, which are contained in the Minimum Standards for Family Foster Homes ("Foster Care Standards").

85. The Foster Care Standards articulate the official state policy as to the placement of children in state-licensed foster care. Such licensure is, as a practical matter, a prerequisite to adoption of any children from the state foster care system.

86. The Foster Care Standards state, that as a matter of official North Carolina state policy, "Foster parents shall be persons whose behaviors, circumstances and health are conducive

to the safety and well being of children." DSS, Foster Home Licensing § VII. Section 1100 D (A) (rev. March 2013), *available at* http://info.dhhs.state.nc.us/olm/manuals/dss/csm-94/man/.

87. In certifying individuals for foster or adoptive placements, DSS requires that a home study be conducted to determine whether a particular placement would be in the child's best interests. *See* Foster Home Licensing § IV (rev. Mar. 2013). This home study includes an assessment of whether other individuals who are currently in the home, including an unmarried partner, would be suitable caretakers for the children. § IV.B(3)

88. As described below, DSS places children in the homes of same-sex couples after determining that those placements would be in the best interests of the children.

89. Adoptions by gay or lesbian individuals in committed long-term relationships are granted in North Carolina after a judicial finding that a life with those parents would be in the best interests of the child. However, as a result of North Carolina law, the second parent within any particular home cannot petition to become another legal parent alongside his or her same-sex partner.

De Facto Parent Doctrine

90. Notwithstanding the prohibition on petitions for second parent adoption, North Carolina recognizes a limited *de facto* parent doctrine, which allows a judge to award certain limited rights, such as custody and visitation, to a non-legal parent based on that parent's role in the child's life.

91. A "*de facto* parent" is generally defined to be an "adult who (1) is not the child's legal parent, (2) has, with the consent of the child's legal parent, resided with the child for a significant period, and (3) has routinely performed a share of the caretaking functions at least as great as that

of the parent who has been the child's primary caregiver without any expectation of compensation for this care." Black's Law Dictionary 1222 (9th ed. 2009); *see also Boseman*, 704 S.E.2d at 503-04.

92. Under North Carolina law, a *de facto* parent may have standing in certain circumstances to seek visitation or custody of a child. *See* N.C. Gen. Stat. § 50-13.1(a) (conveying standing to initiate a custody proceeding to any "other person . . . claiming the right to custody of a minor child").

93. North Carolina courts have awarded joint custody to gay or lesbian second parents under the *de facto* parent doctrine. *See Mason* v. *Dwinnell*, 660 S.E.2d 58, 63 (N.C. Ct. App. 2008) (affirming award of custody to *de facto* parent); *Boseman*, 704 S.E.2d at 505 (same). Courts have done so in recognition of the significance of the second parent's role in their child's life. *See*, *e.g.*, *Boseman*, 704 S.E.2d at 503 (nonparent may become a *de facto* parent "when a parent brings a nonparent into the family unit, represents that the nonparent is a parent, and voluntarily gives custody of the child to the nonparent without creating an expectation that the relationship would be terminated").

94. A court may even award full custody to a *de facto* parent if, in such circumstance, it would be in the best interest of the child. *Id.* at 503-04 ("As a result of the parties' creation, the nonparent became the only other adult whom the child considers a parent.").

95. Despite the recognition through the *de facto* parent doctrine of a second parent's significant role in the life of a child, *de facto* parent status does not create a full parent-child relationship. While a *de facto* parent may be permitted to make custodial decisions, he or she

cannot access and does not receive any of the other attendant rights, privileges and responsibilities that flow automatically from legal parent status.

96. Moreover, *de facto* parentage can be recognized only by a judicial decision in the context of a custody dispute, and is therefore unavailable to plaintiffs Mejia and Ginter-Mejia.

FORBIDDING APPLICATIONS FOR SECOND PARENT ADOPTION ADVANCES NO COMPELLING OR EVEN LEGITIMATE STATE PURPOSE

97. North Carolina's categorical ban on second parent adoption serves no compelling or even legitimate government purpose or interest.

98. Any valid interest of the state can be fully vindicated through the current adoption process that applies to all applicants, including stepparents.

99. The question of whether an adoption by a second parent is in an individual child's best interest can be determined only through an individualized review process, not through categorical bans such as that applied in North Carolina.

100. North Carolina's current foster care and adoption policies do not deny that gay and lesbian individuals are suitable parents.

101. There is a consensus in the scientific literature that children raised by same-sex couples are just as well-adjusted as children raised by heterosexual couples.

102. North Carolina's ban on second parent adoption does not affect the number of children raised by either same-sex or heterosexual couples.

103. Ms. Ginter-Mejia and Ms. Mejia will continue raising their child regardless of whether the parent-child relationship between J.G.-M. and Ms. Mejia is legally validated, albeit absent numerous benefits that would come through legal recognition of the parent-child relationship.

104. A categorical ban on second parent adoption does not eliminate the possibility of custody disputes in families headed by same-sex couples, because second parents who have developed a parent-child relationship already have standing to petition for custody or visitation as *de facto* parents.

PARTIES

PLAINTIFFS

Esmeralda Mejia, Christina Ginter-Mejia, and J.G.-M.

105. Plaintiffs Esmeralda ("Esme") Mejia and Christina Ginter-Mejia are residents of Hickory, North Carolina. They have a son, plaintiff J.G.-M., who is six years old.

106. Ms. Mejia is 57 years old. She was commissioned as an officer in the United States Army in 1979 and served until 1993, when she retired as a major. During her service, Ms. Mejia earned the Bronze Star, four Meritorious Awards for outstanding performance in her duties, two Army Commendation Medals for initiative and technical knowledge, two Army Achievement Awards, a medal from the Country of Kuwait and a medal from Southwest Asia Service. During her career as an officer, Ms. Mejia commanded paratrooper units along with other specialized roles.

107. As a result of medical conditions resulting from her service to her country in Operation Desert Storm, Ms. Mejia was determined to be 100% disabled under the Veteran Administration's standards. She is now a stay-at-home mom.

108. Christina Ginter-Mejia is 53 years old and an occupational therapist for a state early-intervention program, working with children.

109. Ms. Mejia and Ms. Ginter-Mejia met while they were in college at the University of Wisconsin at Madison. They stayed in touch after college and when Ms. Mejia retired from the

military in 1993, she visited Ms. Ginter-Mejia, who was living in Asheville. They began dating at that time, and have been in a committed relationship since then.

110. Ms. Mejia and Ms. Ginter-Mejia were legally married in Maryland on August 21, 2013, after being in a committed relationship for approximately 20 years. Their marriage, however, is not recognized by the State of North Carolina.

111. Because their marriage is not recognized in North Carolina, Ms. Mejia and Ms. Ginter-Mejia have been deprived of many of the benefits and subject to many of the deprivations set out in paragraph 151 (a)-(q), *infra*.

112. Among other things, because their marriage is not recognized by the State of North Carolina:

a. Ms. Mejia and Ms. Ginter-Mejia cannot file a joint state tax return and avail themselves of the tax benefits that the State of North Carolina confers upon married couples. Moreover, Ms. Mejia's and Ms. Ginter-Mejia's ability to plan for their family's financial future is negatively impacted by the uncertainty over whether they may file a joint federal tax return in light of the State of North Carolina's refusal to recognize their marriage.

b. Ms. Mejia and Ms. Ginter-Mejia are at risk that North Carolina's inheritance laws would affect them negatively if one of them predeceases the other.

c. Ms. Mejia and Ms. Ginter-Mejia are at risk that they will receive significantly fewer benefits from state-sponsored or private retirement plans, which they would otherwise be afforded if North Carolina recognized their marriage. Even if North Carolina someday recognizes same-sex marriages, if such recognition were to occur after one spouse predeceases the other, they also worry that the surviving spouse might not be

entitled to the same survivor's benefits that would have been available if their marriage had been recognized during their lifetimes.

d. Ms. Mejia and Ms. Ginter-Mejia constantly fear being denied access and decision-making ability during a crisis; for example, if a medical professional should deny one of them access to the other, or to their child, in a medical emergency.

113. In 1992, Ms. Mejia was diagnosed with cervical cancer and had a hysterectomy. Four years later, in 1996, doctors found a Pancoast tumor in her left lung. She underwent surgery to remove the upper lobe of her lung and three ribs and disconnect her T1 nerve root, as well as chemotherapy and radiation. As a result of these treatments, she suffered from chronic pain for several years.

114. In 2008, Ms. Mejia suffered acute liver failure, which was later determined to have been caused by her radiation treatments in 1996. Until Ms. Mejia was able to receive a liver transplant, she suffered acute symptoms of liver failure, including temporary cortical blindness and coma.

115. During the entire course of Ms. Mejia's treatment, Ms. Ginter-Mejia was not granted family or medical leave to which she would have been entitled had she and Ms. Mejia been permitted to marry or have their marriage recognized in North Carolina.

116. Ms. Mejia's health has been a concern since her first cancer diagnosis in 1992, but it has become a heightened concern since her liver transplant. She is currently on immunosuppressant medication and has developed a condition that results in necessary trips to the hospital emergency room on a regular basis. In addition, she has constrictive lung disease, which makes her more susceptible to flu and other viruses.

117. Ms. Mejia and Ms. Ginter-Mejia wanted to have children for many years. They first tried to adopt a child from the state foster care system in 2005, but were told they were being denied because they were lesbians.

118. When they decided to pursue adoption again, the director of a local organization that serves Latino families introduced Ms. Mejia and Ms. Ginter-Mejia to J.G.-M.'s biological mother.

119. Ms. Ginter-Mejia adopted J.G.-M., but, because of North Carolina's ban on second parent adoption, Ms. Mejia was not able to adopt J.G.-M. without forfeiting Ms. Ginter-Mejia's parental rights.

120. Because of their proven ability to provide a permanent home for, care for, and enrich the life of a child who has been put up for adoption or foster care, Ms. Mejia and Ms. Ginter-Mejia hope to adopt again, and have submitted their paperwork to apply for a state foster care license.

121. J.G.-M. is developing mentally and physically as a healthy, well-adjusted child.

122. Their loving, supportive family serves the best interests of J.G.-M.

123. Despite the fact that both Ms. Mejia and Ms. Ginter-Mejia participate equally in all aspects of raising their child, under North Carolina law, only Ms. Ginter-Mejia is recognized as a legal parent to J.G.-M.

124. Under North Carolina's adoption statutes, Ms. Mejia could adopt J.G.-M. only if Ms. Ginter-Mejia signed away her own parental rights. Thus, North Carolina law bars both mothers from being simultaneously recognized as their children's legal parents.

125. Nonetheless, if Ms. Mejia were able to file a petition for a second parent adoption of J.G.-M., and the petition was considered pursuant to other existing law and regulation, on information and belief, the petition would be granted as in the child's best interests.

126. If Ms. Ginter-Mejia were to die or become incapacitated, both parents believe it would be in their child J.G.-M.'s best interests for Ms. Mejia to continue to raise J.G.-M.

127. Absent a legal relationship with J.G.-M. there is no way for Ms. Mejia to ensure that she would be legally permitted to continue to raise J.G.-M.

128. Because of the uncertainty inherent in the status of a second parent in North Carolina, Ms. Mejia and Ms. Ginter-Mejia worry that if something were to happen to the other, either individuals or state actors might seek to challenge the second parent's parental status or guardianship.

129. If Ms. Mejia were to die or become incapacitated, both parents believe it would be in their child J.G.-M.'s best interests for Ms. Ginter-Mejia, and J.G.-M. as their child, to receive or continue receiving military benefits to which they would be entitled as the spouse or child of a disabled veteran, described in paragraphs 151, 153, and 177-178, *infra*.

130. The granting of Ms. Mejia's petition would prevent these plaintiffs from suffering the harms set out in this Complaint.

131. A petition has been submitted for Christina Ginter-Mejia to be appointed guardian *ad litem* for J.G.-M. in this Action.

132. In the event that the court approves the petition, Christina Ginter-Mejia will appear in this Action in her capacity as guardian *ad litem* for J.G.-M.

Ellen W. Gerber and Pearl Berlin

133. Plaintiffs Ellen ("Lennie") W. Gerber and Pearl Berlin are residents of High Point, North Carolina. Ms. Gerber is 78 years old, and Dr. Berlin is 89 years old. They were both born and raised in Brooklyn, New York in Jewish families. They went to Boston University as undergraduates and went on to pursue academic careers in the field of physical education, but they did not meet, or even know of each other, until the early 1960s. They celebrate as their anniversary June 2, 1966, the day that they committed to living together, thus joining their lives.

134. Ms. Gerber and Dr. Berlin moved to North Carolina in 1971 after Dr. Berlin was offered a position as the head of the University of North Carolina at Greensboro's new Ph.D. program in the physical education program. Ms. Gerber had hoped to get a job in the physical education department alongside Dr. Berlin, but the head of the department had remarked to someone that Ms. Gerber and Dr. Berlin were "too open," and that Ms. Gerber would not be offered any job there.

135. Dr. Berlin worked at UNC-Greensboro until she retired in 1985. Ms. Gerber attended law school at the University of North Carolina at Chapel Hill, and then worked at Legal Aid Society of Northwest North Carolina in Winston-Salem. Although Ms. Gerber retired as an attorney in December 2012, she continues to volunteer three days per week, helping individuals at the public library prepare their taxes—something she has been doing for 22 years.

136. Dr. Berlin is 89 years old and her health is steadily deteriorating. She has a condition that causes complex partial seizures, for which she takes medication that makes her very weak and affects her balance, making her more prone to falling. In a recent fall, Dr. Berlin hit her head, suffered internal bleeding, and broke three ribs. In addition, Dr. Berlin is prone to suffering

from blood clots, but the doctors are worried about prescribing blood thinners, since that could cause Dr. Berlin to bleed severely if she falls again. Dr. Berlin has also been hospitalized for pneumonia within the last two years.

137. After being in a committed relationship for approximately 47 years, Ms. Gerber and Dr. Berlin were legally married in Maine on September 10, 2013. They also had a ceremony under a traditional Jewish chuppah at Beth David Synagogue in Greensboro, North Carolina on June 2, 2013 (their 47th anniversary) in front of family and friends. The State of North Carolina, however, does not recognize their marriage.

138. Because their marriage is not recognized in North Carolina, Ms. Gerber and Dr. Berlin have been deprived of many of the benefits and subject to many of the deprivations set out in paragraph 151 (a)-(q), *infra*.

139. Among other things, because their marriage is not recognized by the State of North Carolina:

a. Ms. Gerber and Dr. Berlin cannot file a joint state tax return and avail themselves of the tax benefits that the State of North Carolina confers upon married couples. Moreover, Ms. Gerber's and Dr. Berlin's ability to plan for each other's financial future is negatively impacted by the uncertainty regarding the validity and significance of a joint federal tax return in light of the State of North Carolina's refusal to recognize their marriage.

b. Ms. Gerber and Dr. Berlin are at risk that, if one of them predeceases the other, North Carolina's inheritance laws would affect them disparately to the way it would affect a heterosexual married couple.

c. Ms. Gerber and Dr. Berlin constantly fear being denied access and decision-making ability during a crisis; for example, if a medical professional should deny one of them access to the other in a medical emergency.

d. Ms. Gerber and Dr. Berlin are also worried that they will not receive each other's Social Security benefits, or that the benefits they do receive will be treated disparately under North Carolina law to the benefits afforded to heterosexual married spouses.

e. Perhaps worst of all, they dread the emotional impact of their marriage not being recognized on a death certificate, an obituary, a funeral home, or a cemetery.

Lyn McCoy and Jane Blackburn

140. Plaintiffs Lyn McCoy and Jane Blackburn are residents of Greensboro, North Carolina. Ms. McCoy was born and raised in Greensboro. Ms. Blackburn was born and raised in Falls Church, Virginia.

141. Ms. McCoy and Ms. Blackburn met in 1991, and have been in a committed relationship since that time.

142. In 1993, two years into their relationship, Ms. McCoy was offered a job working in an overseas staff position for the Peace Corps, so the couple moved to Moldova, where they lived for two and a half years. They subsequently returned to Northern Virginia, and moved to Greensboro in 2008.

143. Ms. McCoy and Ms. Blackburn were married on August 27, 2011 in Washington, D.C. after being in a committed relationship for approximately 20 years. Their families attended the wedding, and remain supportive of Ms. McCoy's and Ms. Blackburn's relationship.

144. In early 2012, Ms. Blackburn was diagnosed with breast cancer and underwent aggressive chemotherapy, surgery, and radiation. Ms. Blackburn recovered well, but in February 2013, after she began having difficulty walking and pain in her hips, doctors discovered that the cancer had spread to her bones.

145. Ms. Blackburn currently has Stage IV cancer. Although she is undergoing chemotherapy and hyperbaric treatment, Ms. Blackburn's physicians have determined that her cancer is not curable.

146. Because their marriage is not recognized in North Carolina, Ms. McCoy and Ms. Blackburn have been deprived of many of the benefits and subject to many of the deprivations set out in paragraph 151 (a)-(q), *infra*.

147. Among other things, because their marriage is not recognized by the State of North Carolina:

a. Ms. McCoy and Ms. Blackburn cannot file a joint state tax return and avail themselves of the tax benefits that the State of North Carolina confers upon married couples. Moreover, their ability to plan for each other's financial future is negatively impacted by the uncertainty over whether they may file a joint federal tax return in light of the State of North Carolina's refusal to recognize their marriage.

b. Ms. McCoy and Ms. Blackburn are at risk that North Carolina's inheritance laws would affect them negatively if one of them predeceases the other.

c. Ms. McCoy and Ms. Blackburn receive significantly fewer benefits from state-sponsored or private retirement plans, which they would otherwise be afforded if North Carolina recognized their marriage. Even if North Carolina someday recognizes same-sex

marriages, if such recognition were to occur after one spouse predeceases the other, they also worry that the surviving spouse might not be entitled to the same survivor's benefits that would have been available if their marriage had been recognized during their lifetimes.

d. Ms. McCoy and Ms. Blackburn constantly fear being denied access and decision-making ability during a crisis; for example, if a medical professional should deny one of them access to the other in a medical emergency.

e. Ms. McCoy and Ms. Blackburn are also worried that they will not receive each other's Social Security benefits, or that the benefits they do receive will be treated disparately under North Carolina law to the benefits afforded to heterosexual married spouses.

HARMS SUFFERED BY PLAINTIFFS AS A RESULT OF BEING DENIED THE FREEDOM TO MARRY

148. Plaintiffs are harmed in numerous ways by the exclusion of same-sex couples from the freedom to marry in North Carolina or have their marriages recognized and respected in North Carolina.

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

150. Conversely, denial to some couples of the status of being married in the eyes of the state conveys the state's view that the couple's private relationship is of lesser value and unworthy

of legal recognition and support. This public rejection of what is among the adult plaintiffs' most significant relationships creates psychological and dignitary harm, invites and facilitates private discrimination against them, and promotes the view that their relationships and families are inferior to those of other committed couples.

151. By refusing to recognize the out-of-state marriages of same-sex couples, Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 deprive same-sex couples of numerous legal protections that are available to heterosexual couples in North Carolina by virtue of their marriages. By way of example only:

a. In North Carolina, both parties to a married couple may jointly petition to be an adoptive parent. N.C. Gen. Stat. § 48-2-301(b). Same-sex couples are prohibited from jointly filing a petition for adoption, because North Carolina law prohibits any other person from joining an unmarried person's adoption petition. N.C. Gen. Stat. § 48-2-301(c).

b. If a heterosexual married person becomes incapacitated without a health care power of attorney or guardian, his or her spouse is first authorized to make decisions regarding the spouse's care. *See* N.C. Gen. Stat. § 90-322(b). A same-sex partner's parents, children and siblings are consulted first. *See id*. The same-sex partner would only be consulted after these individuals and would be subjected to requirements not placed on the spouse, parent, children or sibling. *See id*.

c. In North Carolina, a spouse cannot be compelled to disclose confidential communications made by one to another during their marriage. N.C. Gen. Stat. § 8-57(c). The same privilege does not protect the communications of same-sex spouses or partners.

d. Married students are eligible for larger loans under the Scholarship Loan Fund for Prospective College Teachers. N.C. Gen. Stat. § 116-73(2). Students with a same-sex spouse or partner would receive a smaller loan.

e. A nonresident military spouse with a valid driver's license in another state who is residing in North Carolina because of military orders is not required to maintain a North Carolina license. N.C. Gen. Stat. § 20-8. A same-sex spouse or partner would be required to obtain a North Carolina license.

f. The North Carolina Constitution provides that a heterosexual married couple's home shall remain exempt from a spouse's debts even after the spouse's death. *See* N.C. Const. Art. X, Sec. 2. The death of a same-sex spouse or partner would subject the property to creditors.

g. A surviving spouse is the first person who may authorize the type, method, place and disposition of the body of a decedent spouse who did not have a will. N.C. Gen. Stat. § 130A-420(b)(1). A surviving same-sex spouse or partner could only do so after the decedent's children, parents, siblings, grandchildren, great-grandchildren, great- great grandchildren, nieces, nephews, grandnephews, grandnieces, uncles, aunts, children of aunts and uncles, grandchildren of aunts and uncles, and grandparents are first consulted. *See* N.C. Gen. Stat. §§ 130A-420(b)(5), 29-15.

h. Under the North Carolina Workers' Compensation Act, a heterosexual surviving spouse is entitled to receive benefits under the Act. N.C. Gen. Stat. §§ 97-2(14)-(15), 97-39. A same-sex spouse or partner is not entitled to any benefits.

i. A surviving spouse in North Carolina is entitled to receive up to one-half of the property of the decedent who passes without a will. N.C. Gen. Stat. § 29-14. A same-sex spouse or partner would receive nothing.

j. Surviving spouses in North Carolina also receive a number of benefits even if the dying spouse had a will that does not provide such benefits. For instance, a surviving spouse is entitled to one-half of the community property of the couple. N.C. Gen. Stat. § 31C-3. A surviving spouse also has a right to an elective share of up to one-half the total assets of the decedent or a one-third life estate in all of the decedent's real estate holdings. N.C. Gen. Stat. §§ 29-30, 30-3.1. A surviving spouse is entitled to a year's allowance of up to $30,000. N.C. Gen. Stat. § 30-15. These benefits are not available to same-sex spouses or partners.

k. Disabled veterans and their surviving spouses receive property tax exclusions under North Carolina law. *See* N.C. Gen. Stat. § 105-277.1C. These exclusions are not available to same-sex surviving spouses or partners.

l. Spouses of members of the North Carolina National Guard receive the pension and benefits of a member who dies in service. N.C. Gen. Stat. § 127A-108. A surviving same-sex spouse or partner does not.

m. Surviving spouses of North Carolina law enforcement officers, firefighters and other first responders killed in the line of duty receive up to $70,000 of financial assistance. N.C. Gen. Stat. § 143-166.3. This assistance is not provided to same-sex spouses or partners.

n. A number of special license plates are available to surviving spouses of qualifying members, such as Prisoner of War, Retired Law Enforcement Officer and Retired State Highway Patrol. N.C. Gen. Stat. § 20-79.4(b)(183), (192), (194). Surviving same-sex spouses or partners are not eligible for license plates recognizing their loved ones' sacrifice.

o. Surviving spouses of members of the North Carolina State, city and county law-enforcement agencies killed in the line of duty receive the badge worn or carried by the decedent. N.C. Gen. Stat. § 20-187.2. Same-sex spouses or partners would not receive this emblem of their partners' service.

p. A surviving spouse is entitled to refunds of certain overpayment of income tax by the decedent spouse. N.C. Gen. Stat. § 28A-15-8. The same refund is not provided to same-sex spouses or partners.

q. North Carolina laws promote the stability of marriages through rules such as a year-long mandatory waiting period prior to divorce. N.C. Gen. Stat. § 50-6. The divorce laws, including these provisions, do not apply to same-sex spouses or partners.

152. Same-sex couples are excluded from these and many other legal protections provided for married couples under North Carolina law.

153. In addition, because Ms. Ginter-Mejia is not recognized as Ms. Mejia's "spouse" in North Carolina, there are military benefits that Ms. Ginter-Mejia is not currently eligible to receive, and may not ever be able to receive, if Ms. Mejia dies before such time as their marriage is recognized by the state. For example:

154. In state government hiring of employees, the state of North Carolina gives preference to veterans, the surviving spouses of deceased veterans, and the spouses of disabled veterans, without regard to age, provided they are otherwise qualified.

155. The U.S. armed forces provide Dependency and Indemnity Compensation ("DIC") to survivors of a veteran whose death resulted from a service-related injury or disease, or a veteran who received VA compensation for a service-connected disability that was categorized as totally disabling.

156. The U.S. armed forces provide a death pension to the surviving spouse and children of certain veterans, including if the deceased veteran was discharged from service under other than dishonorable conditions and served 90 days or more of active duty with at least one day during a period of war, and the survivor's income is below a set limit.

157. The exclusion of same-sex couples from marriage also denies them eligibility for numerous federal protections afforded to married couples, including in the areas of immigration and citizenship, taxes, and social security. Some of these federal protections for married couples are only available to couples if their marriages are legally recognized in the state in which they live. *See*, *e.g.*, 42 U.S.C. § 416(h)(1)(A)(i) (marriage for eligibility for social security benefits based on law of the state where couple resides at time of application); 29 C.F.R. § 825.122(b) (same for Family Medical Leave Act). Thus, although all the adult plaintiffs were legally married in another state, they cannot access such protections as long as North Carolina refuses to recognize their marriages.

158. The exclusion from marriage also harms same-sex couples and their families in many other ways.

159. Excluding same-sex couples from marriage also harms couples and their children by denying them the social recognition that comes with marriage. Marriage has profound social significance both for the couple that gets married and the family, friends and community that surround them. The terms "married" and "spouse" have universally understood meanings that command respect for a couple's relationship and the commitment they have made.

160. The exclusion from the esteemed institution of marriage demeans and stigmatizes lesbian and gay couples and their children by sending the message that they are less worthy and valued than families headed by married opposite-sex couples.

161. The impact of the exclusion from marriage on same-sex couples and their families is extensive and real. The denial of the freedom to marry causes these couples and their families to suffer significant emotional, physical and economic harms.

162. The plaintiff couples recognize that marriage entails both benefits to, and obligations on, the partners and they welcome both.

163. The plaintiff couples suffer from an emotional toll due to the possibility that one partner may die before the couple can be legally married, thereby forever prohibiting each couple from ever having their relationship legally recognized.

HARMS SUFFERED AS A RESULT OF NORTH CAROLINA'S CATEGORICAL PROHIBITION AGAINST SECOND PARENT ADOPTION

164. Legal recognition of a parent-child relationship gives rise to numerous benefits for both the child and the parent that are not available otherwise.

165. Legal recognition of the parent-child relationship provides rights, benefits, privileges and entitlements that may come from federal, state, local or private sources.

166. Legal recognition also increases the strength and stability of the parent-child bond and enhances the security of the relationship.

167. Legal recognition of the parent-child bond strengthens the whole family.

168. Legal recognition of the parent-child bond ensures that the child and surviving parent will remain together even in the event of death or incapacity of one legal parent, or in the unlikely event that a child's two parents separate.

169. Ms. Mejia and Ms. Ginter-Mejia have a son J.G.-M., who is the legal child of Ms. Ginter-Mejia. Ms. Mejia and Ms. Ginter-Mejia want Ms. Mejia to be able to adopt J.G.-M. through second parent adoption. Ms. Mejia, Ms. Ginter-Mejia, and J.G.-M. are each harmed and made less secure by North Carolina's prohibition on second parent adoption, and they suffer injury as a result of being deprived of protections they otherwise would receive but for North Carolina's prohibition.

170. J.G.-M., the Child Plaintiff, suffers direct and immediate harm as a result of defendants' categorical rejection of any petition for second parent adoption and is denied many public and private rights and privileges that flow from a legally recognized parent-child relationship, including the benefits set out below.

171. For example, under North Carolina law, only a legal parent can consent to medical treatment for a minor child. *See* N.C. Gen. Stat. § 90-21.1. Even when a Second Parent Plaintiff holds a power of attorney permitting him or her to make decisions on behalf of the Legal Parent Plaintiff, a medical care provider could rely on the plain language of N.C. Gen. Stat. § 90-21.1 and either refuse to permit Ms. Mejia, the second parent, from making important medical decisions concerning J.G.-M., or refuse to permit her from remaining with J.G.-M. during a medical procedure or medical emergency—a time when the child needs his parents most.

172. Serious harm to a child can result at any moment if one of his or her parents and caretakers is unable to give instructions to health care providers or consent to emergency medical treatment.

173. In addition, through the federal Social Security Insurance program, upon the death of a qualifying wage-earner, a surviving spouse and/or dependent legal child or children can collect survivor benefits that generally equal between 150% and 180% of the deceased family member's Social Security benefit amounts.

174. Survivor benefits under the Social Security program are available to legal spouses and children, or other dependents with a legally formalized relationship to the decedent. They are not available between family members like the one here, who do not have a formal legal relationship between one of the parents and the child.

175. Under the Social Security Insurance program, J.G.-M., the child plaintiff, is currently unable to collect survivor benefits, and other federal government benefits that are available to legal children whose parents become disabled or retire, from his second parent.

176. Under North Carolina law, children of an injured employee may claim the parent-employee's compensation payments in the event of that parent's death. *See* N.C. Gen. Stat. § 97-39. North Carolina defines "child" to include "a child legally adopted prior to the injury of the employee." N.C. Gen. Stat. § 97-2(12).

177. Because Ms. Mejia cannot adopt J.G.-M., he will be ineligible to collect these worker compensation benefits if Ms. Mejia dies.

178. Under North Carolina law, children of veterans are entitled to a four-year scholarship at state universities and colleges within North Carolina. J.G.-M. is not currently eligible to receive

this benefit because he lacks a legal relationship with Ms. Mejia. Furthermore, if Ms. Mejia were to die before obtaining a legal parent-child relationship with J.G.-M., he might never be eligible to receive this benefit to which he otherwise would have been entitled if North Carolina had recognized a legal parent-child relationship with Ms. Mejia during her lifetime.

179. Similarly, there are military benefits that J.G.-M. is not currently eligible to receive because he lacks a legal relationship with Ms. Mejia. If Ms. Mejia were to die before obtaining a legal parent-child relationship with J.G.-M., he would never become eligible to receive benefits to which he otherwise would have been entitled if North Carolina had recognized a legal parent-child relationship with Ms. Mejia during her lifetime. For example, the Dependency and Indemnity Compensation and the death pension, described *supra* paragraphs 155-156, would not be available to J.G.-M.

180. Under North Carolina intestacy law, the property of a deceased parent passes to biological children or adopted children. *See* N.C. Gen. Stat. §§ 29-16, 29-17. North Carolina intestacy law makes no provision for property to pass from a deceased parent to a non-legal child.

181. Because Ms. Mejia cannot adopt J.G.-M., her property would not pass to him if she dies intestate or has her will declared invalid.

182. This problem is magnified because intestacy laws affect inheritances from a spectrum of relatives, including grandparents, aunts and uncles. J.G.-M. is therefore also ineligible to inherit, through intestacy law, from grandparents and other relatives of Ms. Mejia. While it may be burdensome for Ms. Mejia to carry papers such as a power of attorney with her at all times, it is virtually impossible for her or Ms. Ginter-Mejia to ensure that various relatives maintain and update their wills.

183. Similarly, J.G.-M. would be ineligible to be a beneficiary of trusts put in place by Ms. Mejia's parents (*i.e.*, non-legal grandparents) or other family members who died before ever knowing that J.G.-M. would become part of their family through the Second Parent Plaintiff, if the writings governing those trusts conferred benefits upon "issue," "grandchildren," or were not otherwise specifically drafted to contemplate a bequest to J.G.-M.

184. Under North Carolina law, damages from an action brought for wrongful death flow to a decedent's estate and are distributed to the beneficiaries of that estate. *See* N.C. Gen. Stat. § 28A-18-2. Because Ms. Mejia cannot adopt J.G.-M., should a wrongful death action be brought by her estate, J.G.-M. would not be deemed a beneficiary of any damages from such action.

185. For those harms described in paragraphs 173-184 that depend on future events, there is no action that the plaintiffs can take to cure (or even mitigate) those harms once those future events have occurred. These harms would then be immediate and irremediable.

186. For example, some of the harms described in paragraphs 173-184 are precipitated by Ms. Mejia's death. Once Ms. Mejia dies, she will never be able to formalize a legal parent-child relationship with J.G.-M. through second parent adoption or otherwise. Thus, any benefits to which J.G.-M. would have been entitled had he been legally adopted by Ms. Mejia will be irretrievably lost at the moment of Ms. Mejia's death.

187. In addition to being deprived of rights and benefits, Ms. Mejia, Ms. Ginter-Mejia, and J.G.-M. also suffer emotional harm and fear as a result of North Carolina's ban on second parent adoption.

188. Once J.G.-M. is old enough to understand that he does not have a legal relationship with one parent, upon information and belief, he will suffer anxiety from the uncertainty that accompanies that lack of legal relationship.

189. For example, when J.G.-M. is old enough to understand the differences in the legal statuses of his parents, he will face uncertainty regarding where he will live, or with whom he will live, should his legal parent die or become incapacitated.

190. Both Ms. Mejia and Ms. Ginter-Mejia suffer anxiety and worry because they know that if Ms. Ginter-Mejia were to die or become incapacitated, Ms. Mejia's ability to continue caring for J.G.-M. would be subject to challenge precisely at the time when the child would be most vulnerable and emotionally fragile, and most in need of continuing stability in Ms. Mejia's and Ms. Ginter-Mejia's domestic life.

191. The harms to Ms. Mejia, the second parent plaintiff, range from the mundane (*e.g.*, being unable to consent to school activities for their children), to the life-threatening (*e.g.*, being unable to consent to medical treatment), to the emotional (*e.g.*, feeling that her parental role is less legitimate because it is not legally recognized by the state).

192. Conversely, Ms. Ginter-Mejia, the Legal Parent Plaintiff, is harmed by having all legal responsibility fall on her shoulders, and is deprived of the joy of sharing legal parentage with her spouse, partner, and co-parent. Ms. Mejia and Ms. Ginter-Mejia share in all aspects of raising their child, but in the eyes of the law, only Ms. Ginter-Mejia, the Legal Parent Plaintiff, is responsible for decision-making and support concerning J.G.-M.

193. Ms. Ginter-Mejia would like to share legal responsibility for J.G.-M. with Ms. Mejia, and they both know it is in the best interests of their child to do so. By categorically prohibiting Ms.

Mejia from formalizing her parental relationship with J.G.-M., North Carolina prevents Ms. Mejia and Ms. Ginter-Mejia from fully asserting parental authority and responsibility to act in the best interests of their child.

194. The effects of the harms set out above are current and real, as they affect planning, budgets and other current and real financial decisions. Such denials also cause current psychological and emotional harm that would not arise but for North Carolina law.

DEFENDANTS

195. Defendant Roy Cooper is the Attorney General of North Carolina. In that capacity, it is his duty to appear on behalf of the state in any court or tribunal in any cause or matter, civil or criminal, in which the state may be a party or interested. N.C. Gen. Stat. § 114-2. It is the duty of Defendant Cooper to defend and enforce the laws of North Carolina.

196. Additionally, in that capacity, and among other relevant opinions, Defendant Cooper has advised that "a register of deeds would violate North Carolina law in issuing a marriage license to persons of the same gender. If, in issuing such a license, the register of deeds operates in bad faith he may subject himself to [certain civil and criminal] penalties . . . ." Re: Advisory Opinion: Issuance of Marriage Licenses to Individuals of Same Gender; Penalties, N.C. Op. Att'y Gen., 2004 WL 871437, at *2 (2004).

197. Defendant Cooper and his successors are sued in their official capacity only.

198. Defendant Jeff Thigpen is the Register of Deeds for Guilford County. . In that capacity, he is entrusted with the authority to carry out certain laws of the state, including recognizing out-of-state marriage licenses and issuing death certificates.

199. Specifically, Defendant Thigpen presides over whether a death certificate will list the spouse of an individual, including by recognizing an out-of-state marriage license, which is crucial for certain tangible benefits and social recognition.

200. Defendant Thigpen and his successors are sued in their official capacity only.

201. Defendant Donna Hicks Spencer is the Register of Deeds for Catawba County. In that capacity, she is entrusted with the authority to carry out certain laws of the state, including recognizing out-of-state marriage licenses and issuing death certificates.

202. Specifically, Defendant Spencer presides over whether a death certificate will list the spouse of an individual, including by recognizing an out-of-state marriage license, which is crucial for certain tangible benefits and social recognition.

203. Defendant Spencer and her successors are sued in their official capacity only.

204. Defendant John W. Smith is the Director of the North Carolina Administrative Office of the Courts ("AOC"), which, on information and belief, has the responsibility for promulgating rules, policies and procedures to control or advise North Carolina clerks of county courts who apply the North Carolina adoption laws when considering whether to accept or reject petitions for adoption.

205. In particular, the AOC has the responsibility and authority to instruct the Clerks of the Superior Court in the 100 counties of North Carolina regarding proper and lawful application of North Carolina law.

206. He and his successors are sued in their official capacity only.

207. Defendant Al Jean Bogle is the Clerk of the Superior Court for Catawba County. In that capacity, she is entrusted with the authority to carry out certain laws of the state, including the adoption statutes described herein.

208. Specifically, Defendant Bogle presides over adoption proceedings in Catawba County, adjudicating individual petitions for adoption and ultimately deciding whether any particular adoption is in the best interests of the child.

209. Defendant Bogle and her successors are sued in their official capacity only.

210. Defendants' actions constitute actions under color of law.

FUTILITY

211. Amendment One bars the adult plaintiffs from marrying their spouse in North Carolina or having their out-of-state marriage recognized in North Carolina. *See* N.C. Const. art. XIV, § 6; N.C. Gen. Stat. §§ 51-1, 51-1.2.

212. The adult plaintiffs would seek recognition of their marriage under North Carolina laws were such recognition available.

213. Because the laws of the State of North Carolina categorically prohibit gays and lesbians from marrying or the state from recognizing out-of-state marriages of gays and lesbians, it would be futile for the adult plaintiffs to seek to marry or have their out-of-state marriages recognized in North Carolina.

214. In addition, Plaintiff Mejia is categorically excluded from consideration for a second parent adoption by the laws of North Carolina.

215. Under North Carolina law, as definitively interpreted by the North Carolina Supreme Court, the courts of North Carolina have no jurisdiction to hear such a petition for a second parent adoption. *See Boseman*, 704 S.E.2d 494.

216. Defendant Roy Cooper, the Attorney General, Defendants Al Jean Bogle and other Clerks of the Superior Court, and Defendants Jeff Thigpen, Donna Hicks Spencer, and other

Registers of Deeds, and Defendant John W. Smith, the Director of the North Carolina Administrative Office of the Courts, are required to follow the laws of the State of North Carolina cited in this Action as definitively interpreted by the North Carolina Supreme Court.

217. A Clerk of the Superior Court following North Carolina law necessarily would reject any petition for a second parent adoption that Ms. Mejia filed.

218. Ms. Mejia would seek a second parent adoption were such adoptions available.

219. Because the laws of the State of North Carolina, as definitively interpreted by the North Carolina Supreme Court, categorically prohibit second parent adoption under the circumstances described above, it would be futile for Ms. Mejia to seek a second parent adoption.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(BY THE ADULT PLAINTIFFS)
(DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983)

220. Plaintiffs repeat and reallege paragraphs 1 to 229 as if set forth in full.

221. Defendants' enforcement, under color of state law, of Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 by refusing to deem valid or recognize the out-of-state marriages of the adult plaintiffs—while North Carolina recognizes the out-of-state marriages of heterosexual couples—discriminates against these plaintiffs on the basis of their sexual orientation and sex. As a result of such discrimination, the adult plaintiffs are deprived of the many benefits afforded heterosexual couples whose out-of-state marriages are recognized in North Carolina and who can then avoid the deprivation experienced by the Married Plaintiffs as a result of Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2.

222. Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 are unconstitutional on their face and as applied to the adult plaintiffs because the amendment and statutes violate the Equal Protection Clause of the United States Constitution by categorically depriving these plaintiffs of the recognition of their marriage in North Carolina.

223. This categorical exclusion is not narrowly tailored to further any compelling government interest and, in fact, is not even rationally related to the furtherance of any legitimate government interest.

224. Defendants' enforcement of Amendment One, under color of state law, deprives these plaintiffs of their constitutional right to equal protection of the laws under the Fourteenth Amendment of the United States Constitution.

225. Defendants' deprivation of these plaintiffs' constitutional rights violates the Civil Rights Act, 42 U.S.C. § 1983.

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

227. Unless defendants are enjoined, they will apply and/or cause to be applied Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2.

SECOND CLAIM FOR RELIEF
(BY THE MARRIED PLAINTIFFS)
(EQUAL PROTECTION CLAUSE UNDER THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983)

228. Plaintiffs repeat and reallege paragraphs 1 to 219 as if set forth in full.

229. Defendants' enforcement, under color of state law, of Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 refusing to recognize out-of-state marriages of same-sex couples denies

these plaintiffs the fundamental right to marriage protected by the Due Process Clause of the United States Constitution.

230. This categorical exclusion is not narrowly tailored to further any compelling government interest and, in fact, is not even rationally related to the furtherance of any legitimate government interest.

231. Defendants' enforcement of Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2, under color of state law, deprives these plaintiffs of their constitutional right to equal protection of the laws under the Fourteenth Amendment of the United States Constitution.

232. Defendants' deprivation of these plaintiffs' constitutional rights violates the Civil Rights Act, 42 U.S.C. § 1983.

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

234. Unless defendants are enjoined, they will apply and/or cause to be applied Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2.

THIRD CLAIM FOR RELIEF
(BY PLAINTIFF J.G.-M.)
(EQUAL PROTECTION CLAUSE UNDER THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983)

235. Plaintiffs repeat and reallege paragraphs 1 to 219 as if set forth in full.

236. Defendants' enforcement, under color of state law, of Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 to prevent J.G.-M's parents from having their out-of-state marriage recognized in North Carolina discriminates against J.G.-M. on the basis of his parents' sexual orientation and sex, and deprives J.G.-M. of the benefits enumerated above and causes the

deprivations enumerated above because his parents cannot have a marriage recognized in North Carolina.

237. The damages and deprivations to J.G.-M. caused by Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 are separate and distinct from the damages and deprivations to the adult plaintiffs caused by Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2.

238. North Carolina would recognize and allow the marriage of heterosexual parents.

239. J.G.-M. is thus denied legal protections and subject to deprivations as a result of circumstances that are beyond his control and flow solely from the status of his parents.

240. Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 create a class of children who cannot have married parents or parents whose marriages are recognized in North Carolina.

241. Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 are thus unconstitutional on their face and as applied to J.G.-M., who is deprived of the benefits of having recognized married parents.

242. This categorical exclusion is not narrowly tailored to further any compelling government interest and, in fact, is not even rationally related to the furtherance of any legitimate government interest.

243. Defendants' enforcement of Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2, under color of state law, deprives J.G.-M. of his constitutional right to equal protection of the laws under the Fourteenth Amendment of the United States Constitution.

244. Defendants' deprivation of J.G.-M.'s constitutional right violates the Civil Rights Act, 42 U.S.C. § 1983.

245. J.G.-M. has no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause irreparable harm.

246. Unless defendants are enjoined, they will apply and/or cause to be applied Amendment One and N.C. Gen Stat. §§ 51-1, 51-1.2.

FOURTH CLAIM FOR RELIEF
(BY PLAINTIFF J.G.-M.)
(J.G.-M.'S RIGHTS UNDER THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983)

247. Plaintiffs repeat and reallege paragraphs 1 to 219 as if set forth in full.

248. North Carolina's categorical refusal to permit applications for second parent adoption petitions by same-sex couples and evaluate those petitions in accordance with other existing law and regulations creates an absolute barrier to creating a legal parent-child relationship with both parents, and is unconstitutional on its face and as applied to J.G.-M. because it discriminates against him on the basis of his parents' sexual orientation and/or sexual orientation and marital status.

249. Specifically, the state prohibits J.G.-M. from receiving the benefits of a legal parent-child relationship with the woman who raises him and his legal parent's spouse.

250. North Carolina, unlike many other states, does not permit gay or lesbian second parents to adopt. As a result, J.G.-M. cannot be recognized as the lawful child of Ms. Mejia unless Ms. Ginter-Mejia terminates her own parental rights.

251. North Carolina law, however, allows similarly situated children of heterosexual couples to be adopted by their second parent, provided that their second parent becomes their stepparent through marriage, and lives with them for six months.

252. J.G.-M. is thus being denied legal protections as a result of circumstances that are beyond his control and flow solely from the status of his parents.

253. North Carolina's statutory scheme for adoption of children, as definitively interpreted by the North Carolina Supreme Court, creates a class of children who cannot be adopted by their second parent under any circumstances. The statutory scheme is unconstitutional on its face and as applied to J.G.-M., who is deprived of the many protections, rights and privileges that flow to other children for no reason other than the fact that their parents are in a same-sex relationship, while children whose parents are heterosexual can be, and often are, adopted by stepparents.

254. This categorical exclusion is not narrowly tailored to further any compelling government interest and, in fact, is not even rationally related to the furtherance of any legitimate government interest.

255. Defendants' enforcement, under color of state law, of North Carolina's adoption laws, including the categorical prohibition against second parent adoption by same-sex couples, deprives J.G.-M. of his constitutional right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

256. Defendants' deprivation of J.G.-M.'s constitutional rights violates the Civil Rights Act, 42 U.S.C. § 1983.

257. J.G.-M. has no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause irreparable harm.

258. Unless defendants are enjoined, they will apply and/or cause to be applied North Carolina's categorical prohibition against second parent adoption.

FIFTH CLAIM FOR RELIEF
(BY PLAINTIFFS MEJIA AND MEJIA-GINTER)
(PARENTS' RIGHTS UNDER THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983)

259. Plaintiffs repeat and reallege paragraphs 1 to 219 as if set forth in full.

260. North Carolina's categorical refusal to permit applications for second parent adoption by same-sex couples discriminates against those parents on the basis of their sexual orientation. In doing so, it deprives Ms. Mejia, the second parent plaintiff, of an opportunity to secure the benefits of a legal parent-child relationship, while those benefits would inure to similarly situated parents who are heterosexual. Relatedly, the denial of second parent adoption deprives Ms. Ginter-Mejia of the protection of having her co-parent also be legally responsible for caring for their child, whom Ms. Mejia and Ms. Ginter-Mejia are raising together.

261. Ms. Mejia is denied an opportunity to secure the benefits of a legal parent-child relationship because the state does not permit gay or lesbian second parents to adopt, while heterosexual second parents can apply to adopt as stepparents.

262. North Carolina's statutory scheme for adoption of children, as definitively interpreted by the North Carolina Supreme Court, is unconstitutional on its face and as applied to Ms. Mejia because it violates the Equal Protection Clause of the United States Constitution by categorically depriving her of the ability to create a legal parent-child relationship on no basis other than the fact that she is a lesbian.

263. North Carolina's adoption laws further burden Ms. Ginter-Mejia by placing sole legal responsibility for J.G.-M. on her shoulders, without allowing her to share that responsibility with a

second parent, while heterosexual parents are able to share legal parenting responsibility by consenting to adoption by a stepparent.

264. This categorical exclusion is not narrowly tailored to further any compelling government interest and, in fact, is not even rationally related to the furtherance of any legitimate government interest.

265. Defendants' enforcement, under color of state law, of North Carolina's adoption laws, including the categorical prohibition against second parent adoption by same-sex couples, deprives both Ms. Mejia and Ms. Ginter-Mejia of their constitutional right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

266. Defendants' deprivation of Ms. Mejia's and Ms. Ginter-Mejia's constitutional rights violates the Civil Rights Act, 42 U.S.C. § 1983.

267. Ms. Mejia and Ms. Ginter-Mejia have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause irreparable harm.

268. Unless defendants are enjoined, they will apply and/or cause to be applied North Carolina's categorical prohibition against second parent adoption.

SIXTH CLAIM FOR RELIEF
(BY PLAINTIFF GINTER-MEJIA)
(GINTER-MEJIA'S RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983)

269. Plaintiffs repeat and reallege paragraphs 1 to 219 as if set forth in full.

270. Defendants' enforcement, under color of state law, of North Carolina's adoption laws, including the categorical prohibition against consideration of applications for second parent

adoption by same-sex couples, violates Ms. Ginter-Mejia's fundamental right to parental autonomy protected by the Due Process Clause of the United States Constitution, by improperly burdening her fundamental right to make decisions concerning the care, custody and control of her child.

271. North Carolina adoption law prevents Ms. Ginter-Mejia from making fundamental decisions about her children that are central to her status as a parent. These decisions include: (i) the ability to take steps to have the family she has created become legally recognized; (ii) the ability to take steps to support an application for Ms. Mejia to apply to be the legal second parent of the child already within Ms. Ginter-Mejia's custody; (iii) the ability to support and contribute to the making of a legally certain determination of who will receive custody of her child in the event of Ms. Ginter-Mejia's death or incapacitation; (iv) the ability to support and contribute to the making of a legally certain determination of who will have the unquestioned ability to make decisions regarding her child's medical care; and (v) other decisions central to her child's health and well-being.

272. This categorical exclusion is not narrowly tailored to further any compelling government interest and, in fact, is not even rationally related to the furtherance of any legitimate government interest.

273. Defendants' deprivation of Ms. Ginter-Mejia's constitutional rights violates the Civil Rights Act, 42 U.S.C. § 1983.

274. Ms. Ginter-Mejia has no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause irreparable harm.

275. Unless defendants are enjoined, they will apply and/or cause to be applied North Carolina's categorical prohibition against second parent adoption.

SEVENTH CLAIM FOR RELIEF
(BY PLAINTIFFS GINTER-MEJIA, MEJIA AND J.G.-M.)
(DUE PROCESS CLAUSE UNDER THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983)

276. Plaintiffs repeat and reallege paragraphs 1 to 219 as if set forth in full.

277. Defendants' enforcement, under color of state law, of North Carolina's adoption laws, including the categorical prohibition of second parent adoption by same-sex couples, will deprive Ms. Mejia, Ms. Ginter-Mejia, and J.G.-M. of their constitutional right to family integrity protected by the Due Process Clause of the United States Constitution.

278. North Carolina's adoption laws categorically prohibit Ms. Mejia from securing a legally recognized adoption of J.G.-M. This deprivation in turn prevents all three family members from enjoying other protections, rights and benefits enumerated above, to which they would otherwise be entitled.

279. By withholding from this family the protections that flow from legal recognition of the parent-child relationship that exists between Ms. Mejia and J.G.-M., the state burdens their constitutionally protected family integrity by creating uncertainty and insecurity, and denying these important legal protections and rights.

280. Defendants' deprivation of Ms. Mejia, Ms. Ginter-Mejia, and J.G.-M.'s constitutional rights violates the Civil Rights Act, 42 U.S.C. § 1983.

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

282. Unless defendants are enjoined, they will apply and/or cause to be applied North Carolina's categorical prohibition against second parent adoption.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

283. A declaration that Amendment One and N.C. Gen. Stat. §§ 51-1, 51-1.2 violate plaintiffs' rights to due process and equal protection under the United States Constitution and 42 U.S.C. § 1983, and that such laws are thus void and unenforceable.

284. A declaration that the adoption provisions of North Carolina General Statutes §§ 48-1-100 *et seq*., including N.C. Gen. Stat. §§ 48-1-106, 48-3-202, 48-4-100-103, as construed by the North Carolina Supreme Court violate plaintiffs' rights to due process and equal protection under the United States Constitution and 42 U.S.C. § 1983, and that such laws are thus void and unenforceable.

285. An order enjoining defendants and those acting in concert with them from enforcing and/or applying restrictions against (a) marriages of same-sex couples either now or at any time in the future; and (b) second parent adoption by same-sex couples.

286. An order directing defendants and those acting in concert with them to recognize and deem valid out-of-state marriages of same-sex couples to the same extent that out-of-state marriages of heterosexual couples are recognized and deemed valid.

287. An order directing defendants to accept applications for adoption from the Second Parents and to process such applications consistently with stepparent adoption applications, or by any other procedure determined by defendants that provides a path for the Second Parents to secure second parent adoption consistent with that currently provided to stepparents.

288. An order enjoining defendants from enforcing, under color of state law, Amendment One and/or N.C. Gen. Stat. §§ 51-1, 51-1.2 to refuse to recognize their out-of-state marriages.

289. An order awarding plaintiffs their costs, including their reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, to the extent permitted by law.

290. An order awarding such other and further relief as the Court deems just and proper.

This the 9th day of April, 2014.

Rose A. Saxe
James D. Esseks
American Civil Liberties Union Foundation
125 Broad Street
New York, New York 10004-2400
Telephone: (212) 549-2500
Facsimile: (212) 549-2646
rsaxe@aclu.org
jesseks@aclu.org

Elizabeth O. Gill
American Civil Liberties Union Foundation
39 Drumm Street
San Francisco, California 94111-4805
Telephone: (415) 343-1237
Facsimile: (415) 255-1478
egill@aclunc.org

Christopher Brook
N.C. State Bar No. 33838
ACLU of North Carolina
P.O. Box 28004
Raleigh, North Carolina 27611-8004
Telephone: (919) 834-3466
Facsimile: (866) 511-1344
cbrook@acluofnc.org

/s/ Jonathan D. Sasser
Jonathan D. Sasser
N.C. State Bar No. 10028
Jeremy M. Falcone
N.C. State Bar No. 36182
Ellis & Winters LLP
P.O. Box 33550
Raleigh, North Carolina 27636
Telephone: (919) 865-7000
Facsimile: (919) 865-7010
jon.sasser@elliswinters.com
jeremy.falcone@elliswinters.com

Garrard R. Beeney
David A. Castleman
C. Megan Bradley
William R.A. Kleysteuber
Michael P. Reis
Tina Gonzalez Barton
Rachel S. Harris
Christopher Hazlehurst
Hilary R. Huber
Kerri-Ann Limbeek
Sarah E. Nudelman
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004-2498
Telephone: (212) 558-4000
Facsimile: (212) 558-3588
beeneyg@sullcrom.com
castlemand@sullcrom.com
bradleyc@sullcrom.com
kleysteuberr@sullcrom.com

Attorneys for Plaintiffs