

1 **SHAWN K. AIKEN**
2 **2390 East Camelback Road**
3 **Suite 400**
4 **Phoenix, Arizona 85016**
5 **Telephone: (602) 248-8203**
6 **E-Mail: ska@ashrlaw.com**
7 **Shawn K. Aiken - 009002**
8 **Heather A. Macre - 026625**
9 **William H. Knight - 030514**

10 **ELLEN K. AIKEN**
11 **SACKS TIERNEY, P.A.**
12 **4250 North Drinkwater Blvd. 4th**
13 **Floor**
14 **Scottsdale, Arizona 85251-3693**
15 **E-Mail: Ellen.Aiken@SacksTierney.com**
16 **Ellen Aiken - 028795**

17 Attorneys for Plaintiffs

18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 Joseph Connolly; Terrel L. Pochert;
21 Suzanne Cummins; Holly N. Mitchell;
22 Clark Rowley; David Chaney; R. Mason
23 Hite IV; And, Christopher L. Devine;
24 Each For Themselves And All Others
25 Similarly Situated,

26 Plaintiffs,

27 V.

28 Janice K. Brewer, In Her Official Capacity
As Governor Of Arizona; Thomas C.
Horne, In His Official Capacity As
Attorney General Of Arizona; Michael K.
Jeanes, In His Official Capacity As Clerk
Of The Superior Court Of Maricopa
County, Arizona; And, Does 1-25,
Defendants.

Case No.

**COMPLAINT FOR
PERMANENT INJUNCTION
AND DECLARATORY
JUDGMENT**

I. NATURE OF THE CASE AND BACKGROUND TO CLAIMS FOR RELIEF

1. Over ten years ago, the Supreme Court of the United States recognized that the federal constitution protects the choice to have an intimate relationship with a same-sex partner “without intervention of the government.” *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

2. Six months ago, the Supreme Court struck Section 3 of the Defense of Marriage Act (DOMA), which barred any federal marital benefits to same-sex couples who were legally married in states that permitted such marriages. *See United States v. Windsor*, 133 S.Ct. 2675 (2013).

3. Today, Plaintiffs ask this Court to follow the reasoning in *Windsor* and strike Arizona’s ban on same-sex marriage found in Article 30, Section 1 of the Arizona Constitution (and other laws of the State of Arizona).

4. It is widely expected that the Supreme Court will eventually resolve this issue. Until that decision, Plaintiffs seek this Court’s declaration that the U. S. Constitution bars Arizona from the same discriminatory conduct that the *Windsor* court declared unconstitutional.

A. Arizona’s Marital Laws Prohibit Same-Sex Marriage.

5. In 1996, immediately following Congressional passage of DOMA, Arizona’s forty-second legislature banned same-sex marriage. *See Arizona Revised Statutes* (“A.R.S.”) § 25-101(C)(“Marriage between persons of the same sex is void and prohibited.”). That same Arizona legislature also prohibited recognition of same-sex marriages that were otherwise valid under another state’s law. *See A.R.S. § 25-112(A)*(“Marriages valid by the laws of the place where contracted are valid in this state, except marriages that are void and prohibited by section 25-101.”).

6. Three years later, in 1999, the Arizona legislature approved amendments to several statutes related to marriage, including a statutory definition of marriage as between a male and a female person. *See A.R.S. § 25-125(A)*(“A valid marriage is contracted by a male person and a female person with a proper marriage license[.]”). The

1 legislature also provided that persons “shall not be joined in marriage in [Arizona] until a
2 license has been obtained for that purpose from the clerk of the superior court in any
3 county of this state.” A.R.S. § 25-121(A).

4 7. In 2003, the Arizona Court of Appeals upheld Arizona’s definition of
5 marriage. *See Standhardt v. Superior Court*, 77 P.3d 451 (App. 2003)(accepting special
6 action jurisdiction over a challenge to the clerk of the court’s refusal to issue a marriage
7 license to a same sex couple).

8 8. In 2006, Arizona voters rejected an amendment to the state constitution
9 banning same-sex marriage.

10 9. In 2008, the Arizona legislature referred and the voters of Arizona passed
11 Proposition 102, an amendment to the Arizona Constitution barring State recognition of
12 same-sex marriages. *See* Ariz. Const. art. 30, § 1 (“Only a union of one man and one
13 woman shall be valid or recognized as a marriage in this state.”).

14 10. The Arizona Constitution now prevents gay men and women from entering
15 into a marriage with a committed same-sex life partner.

16 11. The Arizona Constitution further prohibits the State from honoring a valid,
17 same-sex marriage sanctioned by another jurisdiction.

18 12. As a result, same-sex couples who desire to marry cannot do so in Arizona.
19 Moreover, Arizona denies recognition of the marriages of those gay men and women who
20 have entered into valid marriages elsewhere in the United States.

21 **B. Arizona’s Ban on Same-Sex Marriage Violates the Equal Protection**
22 **and Due Process Clauses of the Fourteenth Amendment.**

23 13. Seventeen years ago, the Supreme Court confirmed that the U.S.
24 Constitution prohibits discrimination on the basis of sexual orientation. *See Romer v.*
25 *Evans*, 517 U.S. 620, 635–36 (1996).

26 14. Nevertheless, today, twenty-eight states have constitutional prohibitions
27 against same-sex marriage and another four states—West Virginia, Wyoming,
28 Pennsylvania, and Indiana—prohibit same-sex marriage under state law.

1 15. Setting aside the Ninth Circuit’s now-vacated decision in *Perry v. Brown*,
2 the only federal circuit court that squarely faced this issue upheld the “traditional”
3 definition of marriage. *See Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8th Cir.
4 2006)(holding that Nebraska state constitutional amendment defining marriage as
5 “between a man and a woman” did not violate Equal Protection Clause; and reversing
6 contrary district court opinion under 42 U.S.C. § 1983).

7 16. Before *Windsor*, the federal district courts in the Ninth Circuit that had
8 most recently considered the constitutionality of such laws also upheld the definition of
9 marriage as the union between one man and one woman. *See Jackson v. Abercrombie*, 884
10 F.Supp. 2d 1065 (D. Haw. 2012); *Sevcick v. Sandoval*, 911 F.Supp. 2d 996 (D. Nev. 2012).

11 17. But, deep change has taken place elsewhere in the country. Today, same-
12 sex marriage is allowed in states where over forty percent of Americans live. Late last
13 year, Hawaii became the sixteenth state to recognize same-sex marriage.

14 18. In December 2013, the U.S. District Court for the District of Utah and the
15 unanimous New Mexico Supreme Court made Utah and New Mexico the seventeenth
16 and eighteenth states to join the list of states that recognize same-sex marriage.

17 19. And, six months ago, the U.S. Supreme Court’s opinion in *Windsor*
18 confirmed a profound doctrinal change in the law whose origins stretch back forty-six
19 years to the historic decision in *Loving v. Virginia*, 388 U.S. 1, 12 (1967)(recognizing
20 marriage as “one of the ‘basic civil rights of man[]’”(citation omitted)).

21 20. In *Windsor*, the Supreme Court held that the definition of marriage in
22 Section 3 of the federal Defense of Marriage Act (“DOMA”) as “a legal union between
23 one man and one woman” was unconstitutional as a deprivation of equal protection under
24 the Fifth Amendment to the U.S. Constitution. More precisely, *Windsor* held that the
25 definition of marriage as a legal union between a man and a woman was unconstitutional
26 because it denied same-sex married couples “the benefits and responsibilities that come
27 with the federal recognition of their marriages.” 133 S.Ct. at 2693.

28 21. Two federal district courts, including one in the Ninth Circuit, have since

1 followed that rationale by applying the Equal Protection Clause of the Fourteenth
 2 Amendment to the states and striking state laws that either banned same-sex marriage or
 3 recognition of such marriages. *See Kitchen v. Herbert*, 2013 WL 6697874 (D. Utah)(Dec.
 4 20, 2013); *Obergefell v. Wymyslo*, 2013 WL 6726688 (S.D. Ohio)(Dec. 23, 2013).

5 22. The “freedom to marry has long been recognized as one of the vital
 6 personal rights essential to the orderly pursuit of happiness by free men.” *Loving v.*
 7 *Virginia*, 388 U.S. 1, 12 (1967).

8 23. This Court should reach the conclusion that flows from the decisions in
 9 *Loving v. Virginia*, *Lawrence v. Texas* and *United States v. Windsor*.

10 24. Plaintiffs respectfully ask that this Court enforce their fundamental right to
 11 equal protection and due process under the United States Constitution, and declare as
 12 unconstitutional Article 30, Section 1 of the Arizona Constitution and all similar marital
 13 statutes (“Marriage Discrimination Statutes”), and permanently enjoin the enforcement
 14 of any and all other provisions of Arizona law that may deny Plaintiffs equal access to the
 15 benefits of marriage in the State of Arizona, including the right of same-sex couples to
 16 marry in or have their out-of-state marriages recognized by the State of Arizona.

17 18 **II. JURISDICTION, PARTIES AND VENUE**

19 **A. Federal Question Jurisdiction**

20 25. Because Plaintiffs allege violations of rights arising under the Fourteenth
 21 Amendment to the U.S. Constitution and 42 U.S.C. § 1983, this Court has subject matter
 22 jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

23 26. Given the far-reaching doctrinal change in the law confirmed by the
 24 decisions in *Windsor* and *Hollingsworth v. Perry*, 133 S.Ct. 2652 (2013), Plaintiffs raise
 25 substantial federal questions despite the contrary conclusion reached over forty years ago
 26 in *Baker v. Nelson*, 409 U.S. 810 (1972) (summarily dismissing “for want of substantial
 27 federal question” appeal from Minnesota Supreme Court decision upholding statute that
 28 restricted marriage to opposite-sex couples).

1 **B. The Plaintiffs and the Plaintiff Class**

2 ***Joe and Terry***

3 27. Plaintiffs Joseph Connolly and Terrel Pochert are residents of Pinal County,
4 Arizona.

5 28. Joe and Terry met in Michigan in 1995 and, after Terry's retirement,
6 moved to Arizona in 1997 where they continue to live together as life-partners in a
7 committed relationship.

8 29. For several years, Joe and Terry have lived together in Pinal County,
9 Arizona. They own a home, have a joint bank account, and otherwise live as any other
10 married couple would. They have been long-time, active members of a Lutheran church
11 congregation in Maricopa County, Arizona. And, like any other Arizona couple and
12 family, they hoped to marry in their state of residence and enjoy the benefits that flow
13 from recognition of their marriage.

14 30. For years, Joe and Terry wished to confirm their love for and life-long
15 commitment to one another. Unfortunately, they lived in Arizona where the law
16 prohibited their marriage.

17 31. On May 15, 2008, the California Supreme Court struck down the California
18 statutes limiting marriage to opposite-sex couples. *See In re Marriage Cases*, 189 P.3d 384,
19 427 (Cal. 2008)("[T]he California Constitution properly must be interpreted to
20 guarantee this basic civil right to [marry to] all individuals and couples, without regard to
21 their sexual orientation.").

22 32. As a result, in mid-June 2008, county officials across California began
23 issuing marriage licenses to same-sex couples.

24 33. On July 4, 2008, following this change in California law, Joe and Terry
25 married in that state. A retired pastor of the Lutheran Church in America performed their
26 wedding ceremony under the laws and procedures of the State of California. Later, the
27 County of Riverside, California recorded and issued them a *License and Certificate of*
28 *Marriage*.

1 responsibilities, and otherwise living together as any married couple would.

2 42. Holly and Suzanne actively volunteer their time and resources to various
3 community childcare endeavors. Suzanne, for example, is a troop leader in the Purple
4 Sage Council, a local chapter of the Girl Scouts of America, and both Holly and Suzanne
5 serve as foster care mentors.

6 43. Like any other Arizona couple and family, they hoped to marry in their state
7 of residence and enjoy the benefits that flow from recognition of their marriage.

8 44. For years, Holly and Suzanne wished to confirm their love for and life-long
9 commitment to one another. Unfortunately, they live in Arizona where the law prohibits
10 their marriage.

11 45. Because the law of Arizona prohibits them from becoming married and
12 affirmatively denies the validity of any marriage they might legally enter in another state,
13 Holly and Suzanne have no way to validate their union as a legal marriage in their home
14 state.

15 46. Despite having been denied the dignity and benefits the State of Arizona
16 affords others solely because they are a same-sex couple, Holly and Suzanne continue to
17 live as a married couple and treat all household finances and other responsibilities
18 accordingly.

19 47. In 2008, Holly and Suzanne began planning for the future of their family.
20 Holly and Suzanne decided to foster and ultimately adopt children into their loving
21 family.

22 48. In September of 2009, Holly and Suzanne both began attending the
23 Partnering for Safety and Permanence-Model Approach to Partnership in Parenting ("PS-
24 MAPP") classes required to become licensed foster parents in Arizona.

25 49. Holly and Suzanne became certified foster care parents in late 2009.

26 50. Holly and Suzanne wished to grow their family by becoming permanent
27 adoptive parents.

1 51. Although Holly and Suzanne were able to become certified foster care
2 parents, Arizona law strongly prefers heterosexual couples in permanent adoption
3 proceedings and permits only a husband and wife to jointly adopt. *See* A.R.S. § 8-
4 103(A)(“A husband and wife may jointly adopt children.”).

5 52. Given these obstacles, Holly and Suzanne, committed to raising a family
6 together, made the difficult decision to adopt in Suzanne’s name only.

7 53. If they could have legally married, both Holly and Suzanne would not have
8 faced these hurdles and both would have been listed on the State’s certification for
9 adoption.

10 54. In November 2009, Holly and Suzanne received their first foster care
11 placements.

12 55. Both children were quickly approved for adoption. Holly and Suzanne
13 adopted the youngest in November 2010 and the oldest in July 2011.

14 56. Suzanne is the legal adoptive parent of both children.

15 57. Holly and Suzanne continue to serve as foster parents, and are currently the
16 foster parents of an 18-month-old child in addition to their two adopted children.

17 58. Given the statutory and policy obstacles same-sex couples face in Arizona,
18 Holly currently has no legal parental rights over either of her adopted children.

19 59. One of their children has a rare and chronic medical condition that has
20 required and will continue to require years of ongoing medical treatment.

21 60. But only Suzanne, as the sole legal parent, may authorize the required
22 treatments and medical procedures.

23 61. Should a family emergency make Suzanne unavailable, Holly cannot guide
24 medical decisions or authorize life-saving medical treatment if her children so require.

25 62. Because Arizona law has prevented Holly from becoming the second legal
26 parent of her children, only Suzanne can remove the children from school to take them to
27 doctors’ appointments.

72. So, on October 9, 2010, Clark and David held a commitment ceremony before the fountains at the Scottsdale Civic Center in testimony to their love and commitment to one another in front of over 300 of their closest friends and family.

73. Thereafter, Clark and David opened a joint bank account and they have shared their finances ever since.

74. Clark and David wish to be legally married in their home state of Arizona, but they have not and cannot be legally married in Arizona.

75. Clark and David's inability to legally marry in Arizona is complicated by the fact that David is a Type-One Diabetic and has suffered from this illness since he was fifteen years old.

76. Because he and Clark cannot be married in Arizona, Clark has no role in the decision-making when dealing with David's disease or should David become incapacitated.

77. In other words, solely because of Arizona's denial of marriage rights to Clark and David, Clark will have no legal authority to act if something were to happen to David, his life-partner, including making end-of-life or other medical care decisions.

78. Arizona's refusal to allow Clark and David to marry harms them by denying them many other rights, protections, and benefits associated with marriage, such as spousal pension benefits, other spousal survivorship rights, the right to loss-of-consortium damages in civil lawsuits, the privilege not to testify against one another, and so on.

Mason and Chris

79. Plaintiffs Mason Hite and Christopher Devine reside in Maricopa County, Arizona.

80. Mason and Chris met in Phoenix in 2001 and have lived together in a committed relationship since 2002. Since then, they have attempted to live as would any other married couple. They own a home together, for instance, and have a joint bank account.

81. For years, Mason and Chris sought the responsibilities, privileges and benefits of marriage. The laws of Arizona, however, prevented their marriage to one another. So, like Joe and Terry, Mason and Chris married in California in 2008. Still today, however, their marriage remains invalid under Arizona law. *See* A.R.S. §25-112(A).

82. In 2011, Mason and Chris became foster parents licensed by the State of Arizona. They have cared for several foster children since then and are still licensed foster parents.

83. In 2012, Mason and Chris sought to permanently adopt a seven-year-old boy in their foster care. Arizona law strongly prefers heterosexual couples in permanent adoption proceedings and permits only a husband and wife to jointly adopt. *See* A.R.S. § 8-103(A) (“A husband and wife may jointly adopt children.”).

84. Because of these barriers, Mason and Chris were forced to choose which of them would be their son's adoptive father. They eventually decided that Mason would adopt him, so Mason's name appears on their son's birth certificate. But, their son calls both Mason and Chris "Daddy."

85. The State's refusal to recognize the validity of Chris and Mason's California marriage prevents them from attaining equal legal status as fathers to their son. This creates one of several unfair and unnecessary burdens for the family in every aspect of life: from the mundane (permission slips and bank accounts) to the profound (decision-making in end-of-life situations).

The Proposed Plaintiff Class

86. For these reasons, and after years of suffering the unfair denial of the benefits of marriage in Arizona, Plaintiffs bring this action for themselves and all others similarly situated.

87. The Plaintiff Class consists of the following two sub-classes: (a) all those who, like Clark and David, and Suzanne and Holly, reside in the State of Arizona and otherwise meet the legal requirements to marry in Arizona, but wish to marry someone of the same sex, and who are for that reason alone denied the right to marry by Arizona law;

1 and, (b) all those who, like Joe and Terry, and Chris and Mason, reside in the State of
 2 Arizona and have legally married one another under the laws and procedures of another
 3 state, but to someone of the same sex, and whose marriage for that reason alone is not
 4 recognized as valid under Arizona law.

5 **C. The Defendants**

6 88. This Court has personal jurisdiction over the defendants because they are
 7 domiciled in the State of Arizona.

8 89. Defendant Janice K. Brewer, the governor and chief executive officer of the
 9 State of Arizona, conducts official business from her office located in this District (in
 10 Phoenix, Arizona). Gov. Brewer must, among other duties, “supervise the official
 11 conduct of all executive and ministerial officers.” A.R.S. § 41-101(A).

12 90. Defendant Thomas C. Horne, the chief legal officer of the State of Arizona,
 13 conducts official business from his office located in this District (in Phoenix, Arizona).

14 91. Under Arizona law, the governor may serve no more than two consecutive
 15 terms in office. Most authorities believe that the law does not allow Gov. Brewer to seek a
 16 third term, so, under current law, she must leave office at the end of her term (2014). She
 17 likely would vacate the office of Governor, therefore, during the pendency of this lawsuit.

18 92. Attorney General Horne faces uncertain re-election to his office in
 19 November 2014.

20 93. In such cases—where the defendant public officer leaves office during the
 21 suit—the officer’s successor is automatically substituted as a party (e.g., Fed.R.App.Proc.
 22 43(c)(1)). *See Kentucky v. Graham*, 473 U.S. 159 (1985). Plaintiffs give notice of the same
 23 here.

24 94. Defendant Michael K. Jeanes, the Clerk of the Court of Maricopa County,
 25 Arizona, conducts official business from his office located in this District (in Phoenix,
 26 Arizona). In every county of Arizona, the superior court clerk serves as an officer of the
 27 judicial branch of state government. Ariz. Const. art. 6, § 23. The duties of the superior
 28 court clerk, described generally in A.R.S. § 12-283, include operation of a marriage license

1 office, where Defendant Jeanes receives applications for and issues marriage licenses (or,
2 as described on the Clerk's website, so-called "Traditional Marriage Licenses").

3 95. Defendants, and those under their supervision, including Does 1–25,
4 interpret and enforce state laws related to marriage in Arizona, especially those
5 constitutional and statutory provisions that deny same-sex couples the right to marriage
6 in the State of Arizona.

7 96. Plaintiffs and the Plaintiff Class seek relief against each Defendant and each
8 Defendant's officers, employees, and agents, and against all persons acting in cooperation
9 with Defendants, or under their supervision, at their direction, or under their control.

10 **D. Venue**

11 97. Venue lies in this Court under 28 U.S.C. § 1391(b) because every
12 Defendant resides in this District and events giving rise to the claims for relief occurred in
13 the District.

14 98. The case is founded on causes of action arising in the Phoenix Division of
15 the District. L. R. Civ. 77.1.

16 **E. Facts Common to All Claims for Relief**

17 99. In 1996, Congress passed and President Clinton signed into law the so-
18 called Defense of Marriage Act ("DOMA"), 110 Stat. 2419. In Section 3, DOMA
19 provided in part that "the word 'marriage' means only a legal union between one man
20 and one woman as husband and wife, and the word 'spouse' refers only to a person of the
21 opposite sex who is a husband or wife." 1 U.S.C. § 7. Section 2 provided that no state
22 shall be required to give effect to same-sex marriages recognized in other states. 28 U.S.C.
23 § 1738C.

24 100. Along with many other states, Arizona followed suit and, in 1996 and 1999,
25 passed similar laws.

26 101. Meanwhile, the *Lawrence* case was taking shape in Texas. In 1998, Harris
27 County, Texas sheriff's officers arrested two gay men in their bedroom for violation of
28 the state's anti-sodomy law. The case reached the U.S. Supreme Court, which struck

1 down the Texas laws that criminalized adult, consensual, homosexual sex because the
 2 Fourteenth Amendment's Due Process Clause "gives substantial protection to adult
 3 persons in deciding how to conduct their private lives in matters pertaining to sex."
 4 *Lawrence v. Texas*, 539 U.S. 558, 572 (2003). Moreover, the Court declared, the Due
 5 Process Clause broadly protects "the autonomy of the person," including "personal
 6 decisions relating to marriage, procreation, contraception, family relationships, child
 7 rearing, and education." *Id.* at 573–74 (citing *Planned Parenthood of Se. Pa. v. Casey*, 505
 8 U.S. 833, 851 (1992)).

9 102. Even so, in 2008, the voters of Arizona approved an amendment to the state
 10 constitution that banned same-sex marriage. *See* Ariz. Const., art. 30, § 1.

11 103. Five years later, in 2013, the *Windsor* case reached the U.S. Supreme Court.
 12 In June of last year, the *Windsor* Court struck Section 3 of DOMA as unconstitutional
 13 under the Fifth Amendment. The Court relied on *Lawrence*, among other cases, and
 14 declared that DOMA's restrictive definition of marriage as "only a legal union between
 15 one man and one woman" violated the principles of due process and equal protection and
 16 was therefore unconstitutional. *Windsor*, 133 S.Ct. at 2695–96.

17 104. Years after *Lawrence*, and months after *Windsor*, the State of Arizona
 18 continues to discriminate against gay couples by doing what the federal government
 19 (wrongly) accomplished through DOMA: denying same-sex couples their fundamental
 20 right to marry.

21 105. Like the offending provision of DOMA (Section 3), Arizona law imposes
 22 inequality on same-sex couples in violation of the U.S. Constitution.

23 106. The text of Article 30, section 1 of the Arizona Constitution, which defines
 24 marriage as the "union of one man and one woman," mirrors the text in Section 3 of
 25 DOMA that was stricken as unconstitutional by the Supreme Court in *Windsor*. *Compare*
 26 Ariz. Const. art. 30, § 1 ("Only a union of one man and one woman shall be valid or
 27 recognized as a marriage in this state."), *with* 1 U.S.C. § 7 ("the word 'marriage' means
 28 only a legal union between one man and one woman as husband and wife").

107. Because the Marriage Discrimination Laws facially discriminate against same-sex couples, they are plainly infirm under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Additionally, the Marriage Discrimination Laws are unconstitutional under the Full Faith and Credit Clause of the federal constitution because they prohibit recognition of valid same-sex marriages legally executed and recorded under the public acts, records, and judicial proceedings of other states.

III. CLAIMS FOR RELIEF

FIRST CLAIM **Enforcement of Full Faith and Credit Clause** **and 42 U.S.C. § 1983**

108. Plaintiffs incorporate paragraphs 1–107 as though fully set forth.

109. The Arizona Constitution explicitly recognizes the U.S. Constitution as supreme. *See* Ariz. Const. art. 2, § 3 (“The Constitution of the United States is the supreme law of the land.”).

110. The U.S. Constitution provides in part that “[f]ull faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.” U.S. Const. art. IV, § 1. Thus, just as Arizona gives full faith and credit to the legal out-of-state marriage of an opposite-sex couple, it must likewise, under both the Arizona Constitution and the Full Faith and Credit Clause of the U.S. Constitution, give full faith and credit to the legal out-of-state marriages of same-sex couples.

111. Taken together, A.R.S. §§ 25-112(A) and -101 deny the validity of out-of-state marriages, such as, for example, the marriages of Plaintiffs Joseph Connolly and Terrel Pochert; Mason Hite and Chris Devine; and others similarly situated. Therefore, facially and as applied to Plaintiffs and Married Class Members, these statutes violate the Full Faith and Credit Clause of the U.S. Constitution.

112. Granted, the *Windsor* Court did not reach and therefore let stand Section 2 of DOMA, which provides that no state “shall be required to give effect to any public

1 act” by another state that validates same-sex marriage. 28 U.S.C. § 1738C.

2 113. But, although Congress “may by general laws prescribe the manner in
3 which [the public acts of other states] shall be proved, and the effect thereof[,]” U.S.
4 Const. art. IV, § 1, Congress may not supersede the federal constitution, including the
5 Full Faith and Credit Clause.

6 114. And so, if any Defendant seeks to rely on Section 2 of DOMA in support of
7 the Arizona laws refusing to recognize valid out-of-state marriages between same-sex
8 partners, then this Court should also strike Section 2 of DOMA as an unconstitutional
9 exercise of the authority granted Congress in contravention of the Full Faith and Credit
10 Clause and Article IV of the U.S. Constitution, which in turn violates 42 U.S.C. § 1983.

11 115. Plaintiffs accordingly pray for the relief described in paragraphs 144–150
12 below.

13 **SECOND CLAIM**
14 **Violation of Equal Protection Clause of the**
Fourteenth Amendment and 42 U.S.C. § 1983

15 116. Plaintiffs incorporate paragraphs 1–115 as though fully set forth.

16 117. The Equal Protection Clause of the Fourteenth Amendment requires
17 consideration whether the classifications drawn by a state law constitute “an arbitrary and
18 invidious discrimination.” *Loving*, 388 U.S. at 10. A state law that singles out
19 homosexuals for disfavored treatment and imposes inequality on them violates the
20 principle of equal protection under the law. *Windsor*, 133 S.Ct. at 2694–96.

21 118. The Marriage Discrimination Laws do exactly that. For example, A.R.S.
22 Sections 25-101(C), -112(A), and -125(A), together with article 30, section 1 of the state
23 constitution, restrict access to marriage to opposite-sex couples, thereby denying
24 homosexuals the right to marry their chosen partner.

25 119. These laws treat similarly situated persons differently by conferring the
26 benefits and protections of marriage to heterosexual but not homosexual couples. Stated
27 differently, these Arizona laws single out homosexuals for disfavored treatment.
28

120. For these reasons, these Arizona laws violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

121. Defendants, under color of state law, have deprived and, absent relief from this Court, will continue to deprive Plaintiffs and the Class of their fundamental right to marry and thereby enjoy, in the words of the Supreme Court in *Windsor*, “dignity and status of immense import,” all in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, which in turn violates 42 U.S.C. § 1983.

122. Plaintiffs accordingly pray for the relief described in paragraphs 144–50 below.

THIRD CLAIM
Violation of Due Process Clause of the Fourteenth Amendment
and 42 U.S.C. § 1983

123. Plaintiffs incorporate paragraphs 1–122 as though fully set forth.

124. The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution provides that no “State [shall] deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1.

125. “Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival. To deny this fundamental freedom . . . is surely to deprive all the State’s citizens of liberty without the due process of law.” *Loving*, 388 U.S. at 12 (citation omitted).

126. The Marriage Discrimination Laws deprive Plaintiffs of the due process of law under the federal constitution because the State of Arizona takes away from gay citizens the opportunity to marry the person of their choosing or recognize as valid their out-of-state marriages.

127. Because the Due Process Clause of the Fourteenth Amendment protects the ‘fundamental freedom’ to marry, along with the settled rights that attend valid out-of-state marriages, even the voters of Arizona may not infringe this constitutional right.

128. Defendants, under color of state law, have deprived and, absent relief from this Court, will continue to deprive Plaintiffs and the Class of their fundamental right to marry and thereby enjoy, in the words of the Supreme Court in *Windsor*, “dignity and status of immense import,” all in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution, which in turn violates 42 U.S.C. § 1983.

129. Plaintiffs accordingly pray for the relief described in paragraphs 144–50 below.

CLASS ALLEGATIONS

130. Plaintiffs incorporate paragraphs 1–129 as though fully set forth.

131. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves— and all other similarly situated persons—who reside in the State of Arizona, that is, gay and lesbian couples who either (a) desire to be married in Arizona (“Unmarried Class Members”) or, (b) having married elsewhere, wish to have their marriage recognized as valid in Arizona (“Married Class Members”) (together referred to as “Class Members” or “the Class”).

132. Numerosity: Today, over 650,000 same-sex couples live in the United States. The U.S. Census Bureau estimates that the percentage of cohabiting same-sex couples living in Arizona equals the percentage living in, for example, the state of New York, the fourth most populous state in the nation. In 2010, the U.S. Census Bureau estimated that roughly 21,000 same-sex couples live in Arizona. The Class is therefore so numerous as to make joinder of all Class Members impractical. Maintaining this action as a class action is superior to other available methods of adjudication because it will promote the convenient administration of justice and achieve a fair and efficient adjudication of the controversy given the number of potential Class Members. Fed.R.Civ.Proc. 23(a)(1).

133. Commonality: The action is manageable as a class action because proofs are the same for all members of the Class on all major issues. Plaintiffs present no disputed questions of fact for resolution because all members of the Class are either already legally

1 married under the laws of another state or wish to be married in Arizona. The common
2 questions of law presented by all Class Members include the following:

- 3 a. whether the Marriage Discrimination Laws violate the
4 Equal Protection or Due Process Clauses of the
5 Fourteenth Amendment of United States
6 Constitution; and,
- 7 b. whether the Marriage Discrimination Laws violate the
8 Full Faith and Credit Clause of the United States
9 Constitution.

10 134. Typicality: The Plaintiffs' claims are typical of the claims of the Class
11 Members. By denying Plaintiffs the right to marry, or recognize their out-of-state
12 marriage, the State of Arizona, through Defendants, denies Plaintiffs (and the Plaintiff
13 Class) access to numerous state-law benefits and protections. Plaintiffs accordingly are
14 similarly situated with and have suffered injuries similar to those suffered by the Class
15 Members. Fed.R.Civ.Proc. 23(a)(3).

16 135. Adequacy: Plaintiffs will fairly and adequately protect the interests of all
17 Class Members in the prosecution of this action and in the administration of all matters
18 relating to their claims. Fed.R.Civ.Proc. 23(a)(4).

19 136. Type of action: Because Defendants acted on grounds that apply to the
20 Class, and Plaintiffs seek no monetary damages, final injunctive relief and corresponding
21 declaratory relief for all Class Members is appropriate. Fed.R.Civ.Proc. 23(b)(2).

22 APPLICATION FOR PERMANENT INJUNCTION

23 137. Plaintiffs incorporate paragraphs 1-136 as though fully set forth.

24 138. Plaintiffs have been wronged and want Defendants stopped from
25 perpetrating similar wrongs on others.

26 139. Plaintiffs have suffered and will suffer permanent and personal harm absent
27 an order from this Court permanently enjoining Defendants from enforcing the Marriage
28 Discrimination Laws restricting the right of same-sex couples to marry or be married in
Arizona.

1 140. Plaintiffs and the Plaintiff Class accordingly seek an order permanently
2 enjoining Defendants from enforcing the Marriage Discrimination Laws.

3 141. Although opposite-sex couples enjoy the benefits of marriage in Arizona,
4 the Defendants' denial of Plaintiffs' right to marry, or have their out-of-state marriage
5 recognized as valid in Arizona, has resulted and will result in concrete, irreparable harm
6 to Plaintiffs including, by way of example only: denial of spousal pension benefits; the
7 preference granted to heterosexual couples in adoption proceedings (A.R.S. § 8-103);
8 heterosexual spouses' (but not same-sex partners') receipt of workers' compensation
9 death benefits (A.R.S. § 23-1046(A)(2)); denial of similar burial (A.R.S. § 36-831),
10 community property (A.R.S. § 25-211) and early voting rights (A.R.S. § 16-548(B); the
11 right to file joint state tax returns; denial of the privilege not to testify against one's
12 spouse (A.R.S. § 13-4062); loss of intestacy rights (A.R.S. § 14-2102); the right to file a
13 wrongful death suit if his or her partner is killed (A.R.S. § 12-612(A)); and so on.

14 142. The Marriage Discrimination Laws also deny Plaintiffs eligibility for federal
15 benefits associated with taxes, immigration, social security, and many other areas. Many
16 rights and protections offered by the federal government turn on the law of the state in
17 which the couple lives. *See, e.g.*, 29 C.F.R. § 825.122(b)(eligibility under Family Medical
18 Leave Act based on recognition of marriage under law of the state of residence at time of
19 application); 42 U.S.C. § 416(h)(1)(A)(i)(eligibility for social security benefits (same)).

20 143. The Court's order permanently enjoining Defendants from enforcing state
21 law banning same-sex marriage will prevent continued harm to Plaintiffs.

22 23 **IV. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for judgment on Claims One, Two and Three as
25 follows:

26 144. Plaintiffs and the Class respectfully request a declaratory judgment and an
27 order for permanent injunctive relief under (a) Federal Rules of Civil Procedure 57 and
28 65, (b) 28 U.S.C. § 2201(a), and (c) any "further necessary or proper relief" under 28

1 U.S.C. § 2202.

2 145. Under these rules and statutes, Plaintiffs request that the Court construe
3 art. 30, §1 of the Arizona Constitution, and the Marriage Discrimination Laws, and enter
4 a declaratory judgment that these and all other laws of the State of Arizona banning,
5 refusing to recognize, or otherwise restricting same-sex marriage, violate the United
6 States Constitution and 42 U.S.C. § 1983.

7 146. Plaintiffs also respectfully ask this Court to construe Section 2 of DOMA,
8 and, if necessary, to enter a declaratory judgment stating that, if Defendants contend that
9 Section 2 permits the State of Arizona to avoid giving full faith and credit to a same-sex
10 marriage legally entered into in another state, then Section 2 exceeds the authority
11 granted to Congress under Article IV, and is therefore unconstitutional.

12 147. Based on these declarations, Plaintiffs respectfully seek entry of a
13 permanent injunction in favor of them and the Class (a) enjoining the Defendants, acting
14 in their official capacities, and all others under their supervision and control, and those
15 acting in concert with them, under color of the law of the State of Arizona, from enforcing
16 art. 30, § 1 of the Arizona Constitution and any Arizona statute that excludes gay men and
17 women from access to marriage in the State of Arizona; (b) requiring Defendants Janice
18 K. Brewer and Thomas C. Horne, in their official capacities as Governor and Attorney
19 General of the State of Arizona, respectively, to recognize the valid California marriages
20 of Joseph Connolly and Terrel Pochert, and Mason Hite and Chris Devine, and all other
21 similarly situated same-sex couples who have married out-of-state, as valid in the State of
22 Arizona; and, (c) compelling Defendant Michael K. Jeanes to accept the application of,
23 issue marriage licenses to, and record the returned marriage licenses from Suzanne
24 Cummins and Holly Mitchell, and Clark Rowley and David Chaney, and all other same-
25 sex couples residing in Maricopa County, Arizona who wish to marry and otherwise meet
26 the qualifications for marriage under the laws of Arizona, A.R.S. § 25-101 *et seq.*

27 148. Plaintiffs request a “speedy hearing” under Rule 57, Fed.R.Civ.Proc.
28 (Declaratory Judgment)(“The court may order a speedy hearing of a declaratory-

1 judgment action.”). Because Plaintiffs present important legal questions for resolution,
 2 and no disputed material questions of fact, the Court would be justified in scheduling the
 3 case for early hearing on motion for summary judgment.

4 149. Plaintiffs request an award of the costs and expenses of this action,
 5 including attorneys’ fees. 42 U.S.C. § 1988(b)(if plaintiff “prevails” in section 1983
 6 action, authorizing discretionary award of “a reasonable attorney’s fee” to plaintiff); *see*
 7 *Rhodes v. Stewart*, 488 U.S. 1, 4 (1988)(per curiam)(injunction or declaratory usually
 8 satisfies test for award of prevailing party attorney’s fees); *Lefemine v. Wideman*, 133 S.Ct.
 9 9, 11 (2012)(per curiam)(same); *Higher Taste, Inc. v. City of Tacoma*, 717 F.3d 712 (9th Cir.
 10 2013).

11 150. Plaintiffs request any further relief that the Court determines may be just or
 12 equitable.

13
 14
 15 DATED: January 6, 2014.

By /s/ Shawn K. Aiken

Shawn K. Aiken
 Heather A. Macre
 William H. Knight
 2390 East Camelback Road
 Suite 400
 Phoenix, Arizona 85016

20 -and-

21
 22 Ellen Aiken
 Sacks Tierney, P.A.
 23 4250 North Drinkwater Blvd., 4th Floor
 24 Scottsdale, Arizona 85251-3693
 25 Attorney for Plaintiffs
 26
 27
 28

1 I hereby certify that on this 6th day of January, 2014 I electronically transmitted the
2 attached document to the Clerk's Office using the CM/ECF System for filing.

3 /s/ DeAnn M. Buchmeier
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28