IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-1817

CATHERINE BURNS;
SHEILA SCHROEDER;
MARK THRUN;
GEOFFREY BATEMAN;
RACHEL CATT;
CASSIE RUBALD;
BREANNA ALEXANDER;
STACY PARRISH;
ANGELA CRANMORE;
JULIANNE DELOY;
KAREN COLLIER; and
DENISE LORD;

Plaintiffs,

v.

JOHN W. HICKENLOOPER, JR., in his official capacity as Governor of Colorado;
JOHN SUTHERS, in his official capacity as Attorney General of Colorado;
PAM ANDERSON, in her official capacity as Clerk and Recorder for Jefferson County;
DEBRA JOHNSON, in her official capacity as Clerk and Recorder for the City and County of Denver;

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their attorneys, Mari Newman, David A. Lane, Darren M. Jankord, and Danielle C. Jefferis of KILLMER, LANE & NEWMAN, LLP, respectfully allege for their Complaint for Declaratory and Injunctive Relief as follows:

I. INTRODUCTION

1. "[T]he Fourteenth Amendment protects the fundamental right to marry, establish a family, raise children, and enjoy the full protection of a state's marital laws. A state may not

deny the issuance of a marriage license to two persons, or refuse to recognize their marriage, based solely upon the sex of the persons in the marriage union." So held the Tenth Circuit Court of Appeals in the case of *Kitchen v. Herbert*, No. 13-4178, 2014 U.S. App. LEXIS 11935, at *3-4 (10th Cir. June 25, 2014).

2. In direct violation of the United States Constitution, Colorado law unlawfully denies the issuance of marriages licenses, and refuses to recognize the marriages of certain couples, based solely on the sex of the persons in the marriage union. *See* COLO. CONST. art. II, § 31; C.R.S. § 14-2-104(1)(b); C.R.S. § 14-2-104(2).

3. This action concerns the rights of loving and committed same-sex couples to enjoy our nation's fundamental commitment "to the principles of liberty, due process of law, and equal protection of the laws [ ] made live by our adherence to the Constitution of the United States Constitution," through the abolition of Colorado's discriminatory denial of the fundamental right to marry the person of one's choice. *See Kitchen*, 2014 U.S. App. LEXIS 11935, at *1-2.

4. Finding unconstitutional an analogous prohibition on the marriages of people of different races, the Supreme Court of the United States has long recognized that "[m]arriage is one of the 'basic rights of man,' [and women], fundamental to our very existence and survival." *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Yet 40 years later, the State of Colorado discriminates against and denies its gay and lesbian citizens access to "the fundamental right to marry, establish a family, raise children, and enjoy the full protection of [Colorado]'s martial laws," in violation of the Fourteenth Amendment to the United States Constitution. *See Kitchen*, 2014 U.S. App. LEXIS 11935, at *3-4.

5. Civil unions, Colorado's separate and unequal substitute to the full legal and societal recognition of marriage for one group of individuals based solely on their status as homosexual, are not a legally adequate substitute. Separate is inherently equal. *See, e.g., Brown v. Bd. of Educ.,* 347 U.S. 483, 495 (1954).

6. Plaintiffs in this case seek the right to legally recognized marriage by the State of Colorado. Plaintiffs are same-sex, unmarried couples who have been denied the right to marry in the State of Colorado; same-sex married couples whose out-of-state marriages are relegated to civil union status by Colorado, and who desire to have their lawful marriages fully recognized by the State of Colorado; and same-sex couples whose relationships are only legally recognized by the separate, and unequal status of civil unions.

7. Plaintiffs seek a declaration from this Court that Amendment 43, C.R.S. § 14-2-104(1)(b), and C.R.S. § 14-2-104(2), violate the Fourteenth Amendment to the United States Constitution, and a judgment to permanently enjoin the enforcement of Amendment 43 and any other Colorado statute that refuse to allow same-sex couples to marry within the state or to recognize the validity of out-of-state marriages of same-sex couples.

II. JURISDICTION AND VENUE

8. This action arises under the Constitution and laws of the United States, including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. Jurisdiction supporting Plaintiffs' claims for attorneys' fees is conferred by 42 U.S.C. § 1988.

9. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado, and all of the parties are and were residents of the State of Colorado at all relevant times.

III. PARTIES

10. Plaintiffs CATHERINE ("Kate") BURNS and SHEILA SCHROEDER are citizens of the United States and residents of, and domiciled in, the State of Colorado. They currently reside in the City of Englewood, in Arapahoe County. Plaintiffs Burns and Schroeder have repeatedly sought to obtain a Colorado marriage license but have been denied each time by the Denver Clerk and Recorder. Their relationship has been relegated to the separate and unequal status of civil union.

11. Plaintiffs MARK THRUN and GEOFFREY ("Geoff") BATEMAN are citizens of the United States and residents of, and domiciled in, the State of Colorado. They currently reside in the City and County of Denver. Plaintiffs Thrun and Bateman have been legally married in the State of Washington, but the State of Colorado refuses to legally recognize their marriage. Their relationship has been relegated to the separate and unequal status of civil union.

12. Plaintiffs RACHEL CATT and CASSIE RUBALD are citizens of the United States and residents of, and domiciled in, the State of Colorado. They currently reside in the City of Golden, in Jefferson County, Colorado. Plaintiffs Catt and Rubald have been legally married in the State of California, but the State of Colorado refuses to legally recognize their marriage. Their relationship has been relegated to the separate and unequal status of civil union.

13. Plaintiffs BREANNA ("Bre") ALEXANDER and STACY PARRISH are citizens of the United States and residents of, and domiciled in, the State of Colorado. They currently

reside in the City of Arvada, in Jefferson County, Colorado. Plaintiffs Alexander and Parrish have sought to obtain a Colorado marriage license which was denied by the Jefferson County Clerk and Recorder's Office. Their relationship has been relegated to the separate and unequal status of civil union.

14. Plaintiffs ANGELA ("Angie") CRANMORE and JULIANNE DELOY are citizens of the United States and residents of, and domiciled in, the State of Colorado. They currently reside in the City of Lakewood, in Jefferson County, Colorado. They desire the right to legally marry in the State of Colorado. Their relationship has been relegated to the separate and unequal status of civil union.

15. Plaintiffs KAREN COLLIER and DENISE LORD are citizens of the United States and residents of, and domiciled in, the State of Colorado. They currently reside in the City and County of Denver. Plaintiffs Collier and Lord have been legally married in the State of California, but the State of Colorado refuses to legally recognize their marriage. Their relationship has been relegated to the separate and unequal status of civil union.

16. Defendant John W. Hickenlooper, Jr. is the Governor of the State of Colorado. In his official capacity, the Governor Hickenlooper is the chief executive officer of the State of Colorado. It is his responsibility to ensure that the laws of the State are properly enforced. COLO. CONST. art. IV, § 2. Governor Hickenlooper is a person with the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint. Governor Hickenlooper's official residence is in the City and County of Denver, Colorado. He is being sued in his official capacity.

17. Defendant John Suthers is the Attorney General of the State of Colorado. Attorney General Suthers is the chief legal officer of the State of Colorado. It is his duty to see that the laws of the State are uniformly and adequately enforced. Attorney General Suthers' official residence is in the City and County of Denver, Colorado. Attorney General Suthers is a person with the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint. He is being sued in his official capacity.

18. Defendant Pam Anderson is the Clerk and Record for Jefferson County. Under Colorado law, when a completed application has been submitted and the appropriate fees paid, "the county clerk shall issue a license to marry and a marriage certificate form upon being furnished" proof that the applicants meet the age requirement and proof that the marriage is not prohibited under C.R.S. section 14-2-110. *See* C.R.S. § 14-2-106(1)(a). Clerk and Recorder Anderson is a person with the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint. Ms. Anderson's official residence is in the City of Golden in Jefferson County, Colorado. She is being sued in her official capacity.

19. Defendant Debra Johnson is the Clerk and Recorder for the City and County of Denver. Under Colorado law, when a completed application has been submitted and the appropriate fees paid, "the county clerk shall issue a license to marry and a marriage certificate form upon being furnished" proof that the applicants meet the age requirement and proof that the marriage is not prohibited under C.R.S. section 14-2-110. *See* C.R.S. § 14-2-106(1)(a). Clerk and Recorder Johnson is a person with the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint. Ms. Johnson's official residence is in the City and County of Denver, Colorado. She is being sued in her official capacity.

IV. FACTUAL ALLEGATIONS

A. Plaintiffs Have Been Injured By Colorado's Laws Banning Same-Sex Marriage And Refusing To Recognize Marriages Performed In Other States

20. The Plaintiffs in this case represent a broad cross-section of the Colorado community. They are diverse in ethnicity, race, age, and gender, and include an honorably discharged Army veteran, an enrolled member of the Klamath tribe, proud and loving parents, government employees, a physician, educators, administrators, attorneys, hiking and cycling enthusiasts, rugby players, a retiree, and homeowners in different Colorado Counties, among other things.

21. Each of the Plaintiffs in this case has suffered an injury in fact, fairly traceable to the acts of the Defendants, and that injury will be redressed by a judicial declaration of unconstitutionality and permanent injunction of Colorado's laws banning same-sex marriage and recognition of same-sex marriages performed in other jurisdictions.

22. Marriage provides tangible and intangible legal, economic, cultural, historical, emotional, psychological, and social benefits to its participants and their families.

23. Colorado law would allow Plaintiffs to marry or have their out-of-state marriages recognized here, but for the fact that they are same-sex couples. They are not related to one another by blood or marriage. None is married to anyone else, and all are over the age of 18. Each Plaintiff has the capacity to consent to marry, and the members of each couple consent, or have consented, to marry one another.

1. Plaintiffs Who Have Been Denied Colorado Marriage Licenses

Plaintiffs Catherine Burns and Shelia Schroeder

24. Plaintiffs Catherine ("Kate") Burns and Sheila Schroeder have been together since 2001 and have twice attempted – unsuccessfully – to obtain a marriage license from Defendants. They have a civil union but desire to be married in Colorado.

25. Plaintiff Kate Burns is a fourth generation Colorado native. She was born and raised in Colorado and has lived in Colorado for the vast majority of her adult life. Plaintiff Sheila Schroeder was born in Indiana, but has lived in Colorado for much of her adult life.

26. Sheila is an Associate Professor in the Media, Film & Journalism Studies Department at the University of Denver. Kate is the Student Services Coordinator at the University of Denver. Kate and Sheila own their home together in Englewood, Colorado. They love the outdoors, love to garden, and love having their home in the beautiful State of Colorado.

27. Kate Burns and Sheila Schroeder met in 2001 through mutual friends at Kate's family's cabin in Eldora, Colorado. They are the loves of one another's lives and they intend to spend the rest of their lives together.

28. Because a legally recognized marriage ceremony was not available to them as a same-sex couple in Colorado, on June 21, 2003, Kate and Sheila celebrated their love with a commitment ceremony, officiated by their minister, at the cabin where they met. They have committed to growing old together and being together to the end. Both of their families attended the ceremony.

29. In 2007, Kate and Sheila sought a marriage license at the Clerk and Recorder's office in Denver, Colorado. The Clerk and Recorder refused to grant them a marriage license,

informing them that, as same-sex partners, they could not legally marry in Colorado. They were extremely disappointed, though not surprised.

30. On May 1, 2013, the first day that they were legally allowed to do so, Kate and Sheila entered into a civil union in Denver, Colorado.

31. While better than nothing, societal and legal benefits afforded by the civil union fall far short of those available associated with legal marriage.

32. Even with the civil union, Kate and Sheila do not enjoy many of the same rights that married couples take for granted. For example, Kate and Sheila cannot file joint federal tax returns, and they cannot leave each other Social Security survivor's benefits.

33. Kate and Sheila have been required to spend additional money and time to engage legal assistance with estate planning issues that they would not have to address if they were a legally married couple.

34. Although they have been in a committed relationship for over ten years, Kate and Sheila have suffered consequences as a result of being denied the right to enter into a legal marriage.

35. In 2005, two years after their commitment ceremony, Sheila was in the hospital being treated for a possible heart attack. Kate rushed to the hospital to be at her side. When Kate arrived she was asked by the nurse if she was Sheila's sister. When she told her Sheila was her partner, the nurse rushed out of the room in a manner that made it obvious to both Kate and Sheila that the nurse's hostility was related to the fact that they were a same-sex couple. In that moment, instead of focusing on Sheila's physical and mental health they were forced to wonder if the hospital was going to allow Kate to stay by her side and support her. Were they legally

married, the hospital would have been obliged to do so; but as unwed members of a couple, the hospital was able to use its discretion to choose to allow Kate to remain with Sheila, or not, at the whim of a discriminatory nurse. Ultimately, the nurse returned to the room, subdued and less friendly, and Kate was able to stay, but the emotional impact Kate and Sheila suffered was real and lasting. Kate and Sheila have had to live with the insecurity of knowing that they may be denied access to one another during a medical emergency because they are not legally married.

36. Kate and Sheila are both members of the First Unitarian Society of Denver. Although their religion recognizes their marriage, their minister cannot perform a legal marriage ceremony for them like he can for the heterosexual couples of their congregation.

37. The fact that they cannot be legally married makes Kate and Sheila feel like second-class citizens, especially when they are surrounded by their friends who are married couples. Kate and Sheila are denied the privilege of referring to one another as legal spouses, instead having to hold themselves out in society as having a relationship status that is something different, and lesser, than the status of opposite-sex committed couples.

38. As Kate and Sheila grow older, the stress related to being denied the right to marry the person they love becomes more and more real. They live everyday with the fear that if something were to happen they will not be given the power to make decisions for the person they have vowed to spend their life with and care for.

39. Kate and Sheila have both been arrested for protesting Colorado’s unequal marriage laws that so deeply impact their lives.

40. As a native of Colorado, the unjust nature of these laws hit particularly close to home for Kate. She has a strong desire to see these laws change, not just for Sheila and for her, but for the state in which she grew up is so proud to call her home.

41. Although they are not lawyers, Kate and Sheila actively follow the legal developments relating to important court decisions impacting same-sex marriage. They were thrilled when the United States Supreme Court issued its ruling in the *Windsor* case opening the door for legal recognition of same-sex marriage.

42. On June 25, 2014, Kate and Sheila were delighted when the Tenth Circuit Court of Appeals issued its ruling that Utah's ban on same-sex marriage was not constitutional.

43. The very next day, June 26, 2014, Kate and Sheila went to the Denver Clerk and Recorder's office and requested a Colorado marriage license. While expressing her disappointment at having to do so, the Denver Clerk and Recorder, Defendant Johnson, refused to issue Kate and Sheila a marriage license based on their status as a same-sex couple. Kate and Sheila were very disappointed again by this refusal, and left empty handed.

44. Although Kate and Sheila know it is possible to travel to another state to get married, they strongly desire to get married in Colorado. Colorado is their home; it is where their friends, family and faith community reside. They want the legal right to be perceived and recognized as a married couple by the community that is so important to them.

Plaintiffs Breanna Alexander and Stacy Parrish

45. Plaintiffs Breanna ("Bre") Alexander and Stacy Parrish have been together since 2010 and are the proud parents of a handsome baby boy. They have attempted – unsuccessfully

– to obtain a marriage license from the office of the Jefferson County Clerk and Recorder. They have a civil union but desire to be married in Colorado.

46. Plaintiff Bre Alexander is a native of Denver, Colorado and has lived here her entire life. Plaintiff Stacy Parrish is an enrolled member of the Klamath tribe of Chiloqin, Oregon. She has called Colorado home since 2009, when she moved here to pursue her passion for urban education reform.

47. Bre is an attorney for a personal injury law firm in Aurora, Colorado. Stacy is an Assistant Principal in a local school district.

48. Bre and Stacy met in 2010 through their rugby team. They had many common interests and they instantly hit it off.

49. As their relationship progressed, Stacy and Bre knew they wanted to spend the rest of their lives with one another. They knew they wanted to have children and raise a family together.

50. Stacy and Bre own their home together in Arvada, Colorado.

51. On Mother's Day, May 11, 2014, Stacy and Bre welcomed their first child.

52. Like most new parents, they are thrilled every day to watch their child grow and develop.

53. For several years they have known that they wanted to get married. However, as a same-sex couple in Colorado, that option was not legally available to them.

54. Bre and Stacy did not want to settle for a civil union, because the rights and legal recognition that it offers are not equal to those of marriage, and because a civil union does not enjoy the same societal meaning as a marriage.

55. Out of necessity, Bre and Stacy ended up settling for this separate and unequal option, because they wanted to ensure as many legal protections for their family as they could, although those legal protections available as members of a civil union are less than those they would enjoy as members of a legally recognized marriage. On May 1, 2013, Stacy and Bre became the forty-second couple to enter into a civil union in Denver County.

56. While the civil union is preferable to no legal recognition whatsoever, it falls short of being married. Even with the civil union, Stacy and Bre do not enjoy many of the same rights that married couples take for granted. They continue to struggle to navigate the patchwork of state and federal legislation concerning their status as a couple united in a civil union. For example, although they entered in to a civil union, because they are not a married couple they cannot file joint federal tax returns.

57. Stacy and Bre follow the legal developments relating to important court decisions impacting same-sex marriage.

58. On June 25, 2014, Stacy and Bre were thrilled when the Tenth Circuit Court of Appeals issued its ruling that Utah's ban on same-sex marriage was not constitutional.

59. On June 27, 2014, Stacy and Bre went to the Jefferson County Clerk and Recorder's office requested a Colorado marriage license. The Jefferson County Clerk rebuffed their effort to become legally married in Colorado. The clerk turned Bre and Stacy away, telling them that Jefferson County was not issuing marriage licenses to same-sex couples. They were crushed.

60. Bre and Stacy believe that marriage is the highest recognition for a family unit that one can enter into and is a union that is recognized and understood globally.

61. Colorado's refusal to allow Bre and Stacy to legally marry has made them feel like they belong in a separate, and lesser, class, and devalues their love and commitment to one another.

62. Although they know it is possible to travel to another state to get married, Bre and Stacy strongly desire to get married in Colorado. Colorado is where they grew up, where Bre's parents live, and where they have made their home and their family. They want to be perceived and recognized as legally married by the community where they have built their life together.

63. It is their hope that they will not have to explain to their child that the State of Colorado, despite their committed partnership and desire to fully protect and assume responsibility for one another, will not allow his parents to marry. Instead, they hope to tell him of the progress Colorado made to equality, and the small role that they were able to play in history by participating in this lawsuit.

2. Plaintiffs Whose Out-of-State Marriages Are Not Recognized By the State of Colorado

Plaintiffs Mark Thrun and Geoffrey Bateman

64. Plaintiffs Mark Thrun and Geoffrey (Geoff) Bateman have been together for nearly twelve years and are raising two smart and active children together. The state of Colorado does not recognize their marriage issued by the State of Washington. They have a civil union but desire to have their marriage legally recognized by the State of Colorado.

65. Plaintiff Mark Thrun has called Colorado home since moving here in 2000. Plaintiff Geoff Bateman has called Colorado home since moving here in 2001.

66. Mark is a physician in the Public Health Department of Denver Health. Geoff is an Assistant Professor in the Peace and Justice Studies Department at a Regis University in Denver, Colorado.

67. Mark and Geoff met over Labor Day weekend 2001. They instantly connected and had so much to talk about. They knew they loved one another the night they met. They intend to spend the rest of their lives together.

68. Geoff and Mark own their home together in Denver, Colorado and they are the proud parents of two wonderful sons. Geoff is their biological father, and Mark is equally their parent in every respect.

69. Geoff and Mark love taking advantage of Colorado's natural wonders. They make it to the mountains as often as they can. They love to hike and ski and their sons enjoy snowboarding.

70. As many parents do, Geoff and Mark spend much of their time enjoying watching their children grow and participate in the various activities in which their children have become interested.

71. Two years after they met, Mark proposed to Geoff in Paris. Mark told Geoff he wanted nothing more than to spend his life with him. Geoff happily accepted.

72. Geoff and Mark knew there was no legal process available to them in Colorado to solidify their commitment to one another. They decided they could wait no longer to forever commit themselves to one another, and in 2006, they returned to Paris and slipped rings onto each other's fingers as they professed their love. Despite their unwavering commitment to one

another, this exchange of rings was not legally recognized in any jurisdiction, but rather was only a symbolic statement of their commitment to one another.

73. Geoff and Mark have vowed to one another to keep each other safe and work hard to make each other, and their children, happy.

74. The legal recognition of their family is very important not just to Geoff and Mark, but also to their children.

75. On May 1, 2013, Geoff and Mark were one of the first couples in Denver to enter into a civil union.

76. Geoff and Mark have both observed that a civil union, and the rights that come with it, are better than nothing, but a civil union is certainly not a marriage. It is not recognized by the federal government and still denies them many rights married couples take for granted.

77. To Geoff and Mark, entering into a civil union felt like a consolation prize. They have never understood why their straight friends had the privilege of entering into a marriage and they did not. Their relationship was clearly no different in any significant way.

78. Colorado is their home. It is where they have built their life with their family and their friends. Geoff and Mark had always vowed that they would not get married until they could get married in Colorado.

79. However, after the Supreme Court issued the *Windsor* decision, they decided it would be in the best interest of their family unit to enjoy as many of the legal benefits associated with marriage that they could.

80. On July 29, 2013, after a weekend of camping, they married on the beach in the State of Washington. Although this was a wonderful experience, it would have meant much more to them to have been able to wed in the state where they have made their home.

81. Although they have been in a committed relationship for well over ten years, due to their status as unmarried domestic partners, civil union partners, and now as a same-sex couple married out-of-state, they have consistently had concerns that married couples do not.

82. Geoff and their children are now covered under Mark's health insurance. However, before they were married in the State of Washington, they had to pay that portion of the insurance premiums after-taxes. Geoff's and the children's portions of the premiums were not able to be taken out Mark's paycheck before-taxes due to Mark and Geoff's status as domestic partners.

83. Many times, Geoff and Mark have had to spend time and money seeking the advice of professionals in order to assure that their children could receive Mark's benefits. If Colorado were to recognize their marriage, this would be unnecessary.

84. Geoff and Mark have had to spend additional time and money seeking counsel on how they should file their taxes. If Colorado were to recognize their marriage, this would be unnecessary.

85. Geoff and Mark have had to spend additional money and time to address estate planning issues they would not have to address if their marriage were recognized in Colorado.

86. Geoff and Mark fear for the security of their children, should something happen to them and the Colorado courts choose not to recognize their marriage.

87. They have had to live with the insecurity of knowing that they may be denied access to one another during a medical emergency because their marriage is not recognized in Colorado.

88. Their family, their friends, and their children have no doubt about Mark and Geoff's love and devotion to one another. However, semantics are powerful and actionable to many people. Being able to legally call one another "husband," rather than "civil union partner," is much more meaningful in this society.

Plaintiffs Rachel Catt and Cassie Rubald

89. Plaintiffs Rachel Catt and Cassie Rubald have been together for nearly a decade and are raising two bright and inquisitive children together. The state of Colorado does not recognize their marriage issued by the State of California. Notwithstanding their California marriage, the State of Colorado recognizes their relationship as a civil union. They desire to have their marriage legally recognized by the State of Colorado.

90. Plaintiff Rachel Catt moved to Colorado with her family when she was five years old. She was raised in Colorado and completed her undergraduate degree at University of Colorado at Boulder. Plaintiff Cassie Rubald was born in Glenwood Springs, Colorado and lived in Colorado throughout much of her childhood. She attended college at Colorado State University.

91. After spending much of their adult lives in California, in June 2013, they returned to Colorado to raise their children and be near their families.

92. Rachel is an attorney in Denver, Colorado and Cassie is a California attorney.

93. The two Coloradans met and fell in love in California in 2005. Rachel and Cassie have been in a committed relationship ever since. They intend to spend their lives together.

94. Cassie and Rachel live together in Golden, Colorado. They are the proud and loving parents of two children. Rachel is the biological mother of their children, and Cassie is equally their parent in every respect.

95. Although it does not have the same societal meaning, or the same legal rights, in order to protect Cassie's interests as a parent of their children to the full extent available to them, they registered for a California domestic partnership (a lesser relationship status that predated legal marriage rights in California) while they lived in California.

96. The process was degrading. Instead of being given a marriage license at City Hall like married couples, Rachel and Cassie had to fill out forms and mail them to the Secretary of State, as though they were registering for a business partnership.

97. This legal registration enabled Cassie to proceed with a stepparent adoption. Similar to the process of registering for a domestic partnership, this too felt degrading. Cassie is not a stepparent to their children; she is their intended parent from the start.

98. In July 2008, although not legally recognized due to their status as a same-sex couple, they celebrated their love with a marriage ceremony in Colorado with their family and friends.

99. In June 2013, Rachel and Cassie moved back to Colorado. This has enabled them to spend more time with their close and supportive families and has given their families the opportunity to watch their children grow. Colorado has always felt like home to them. They have very deep and established connections and friendships in Colorado.

100. After their move back home to Colorado, their California domestic partnership was recognized as a civil union.

101. After the *Windsor* decision, just to file joint tax returns, they had to bear the cost and burden of traveling back to California in December 2013 to enter into a legal marriage. At that point, California (unlike Colorado) allowed same-sex couples to wed.

102. This was Rachel and Cassie's third marriage ceremony. Throughout their committed relationship, they have consistently had to deal with extra burdens that heterosexual couples do not, just to ensure that their family unit is protected and they are afforded at least some of the same rights that are presumptively available to their married heterosexual counterparts.

103. Throughout the course of their loving and committed relationship, they have had to bear the financial and emotional costs of two adoptions and three separate wedding ceremonies.

104. Upon their return back home to Colorado, their legal marriage in California has been demoted to a Colorado civil union.

105. A civil union, and the rights that come with it, are better than no legal recognition at all, but a civil union is certainly not a marriage. It is not recognized by the federal government and still denies them many rights married couples take for granted.

106. In our society where semantics are so important, the relegation of their California marriage to a civil union makes Rachel and Cassie feel like second-class citizens who are treated as separate and unequal from their married heterosexual counterparts. Although their

relationships and families are very similar in every respect, Cassie and Rachel have to call their relationship something different and lesser.

107. Colorado's refusal to recognize their California marriage, or to allow them to marry here, negatively impacts their parenting relationship with their children. When explaining to their children that the law does not treat them as though they are married here in Colorado, they send the negative message that some people do not believe that a child can have two mothers. This gives their children the message that somehow their family is less important and less legitimate than other families. They continue to try to teach their children otherwise; they tell their children to teach love.

108. Rachel and Cassie desire to be recognized as a married couple in Colorado where they have returned to make their home and raise their family.

Plaintiffs Karen Collier and Denise Lord

109. Plaintiffs Karen Collier and Denise Lord have been together for nearly a decade. The state of Colorado does not recognize their marriage issued by the State of California. They have a civil union but desire to have their marriage legally recognized by the State of Colorado.

110. Plaintiff Karen Collier is a third generation Colorado native and she has lived in Colorado her entire life. Plaintiff Denise Lord has lived in Colorado since 2001 when she was transferred here through the military.

111. Karen worked as a court reporter in Colorado for thirty years and is now retired. Denise is a six year veteran of the Army National Guard and works as a college librarian.

112. In 2005, Denise and Karen met through Outspoken, a non-exclusive Lesbian, Gay, Bisexual, Transgender, and Questioning ("LGBTQ") philanthropic road cycling club. They

quickly connected and have been in a committed relationship ever since. They love each other and they intend to spend the rest of their lives together.

113. Denise and Karen own their home together in Denver, Colorado. They have lived together for eight years. They continue to enjoy having fun together, being active, and taking advantage of all Colorado has to offer including cycling, playing tennis, and skiing.

114. As their relationship progressed, they reached a point where they knew that if they had the legal right to do so, they would get married. They were in love and ready to commit to one another; marriage felt like the natural next step for their relationship. However, at that time they did not even have the option to enter into a civil union, let alone a marriage.

115. On January 10, 2014, Karen and Denise decided to enter into the only type of legally-recognized relationship status for same-sex couples in Colorado, and entered into a civil union.

116. They were advised that because their civil union is not recognized as a legal marriage they would be unable to file joint federal tax returns.

117. With this knowledge, although Colorado is their home and the place where they desire to get married, on May 22, 2014, Denise and Karen married in Martinez, California.

118. Throughout their relationship, Denise and Karen have been forced to jump through legal and financial hoops that they would not have if they had the right to marry in their home state of Colorado.

119. For example, Denise is a veteran of the United States Army, and Denise and Karen meet all of the qualifications for the Veteran's Administration Refinance Loan Guaranty program—except that they cannot legally marry. They were told that because of Colorado's ban

on same-sex marriage they were unable to qualify for the program. Ultimately, they had to refinance their home in Denise's name alone, compromising Karen's legal ownership of the home she has lived in for decades.

120. Denise and Karen have had to spend additional money and time to address estate planning issues they would not have to address if their marriage were recognized in Colorado.

121. They have had to live with the insecurity of knowing that they may be denied access to one another during a medical emergency because their California marriage is not recognized in Colorado.

122. They desire to have their marriage recognized in Colorado, because it is the state where they have built their home and their life together. In addition to the legal benefits associate with marriage, marriage is a term that everyone understands and they feel it describes the love and commitment they have for one another.

3. Additional Plaintiffs Whose Colorado Civil Unions Provide Separate and Unequal Benefits to Those Afforded to Different-Sex Couples

Plaintiffs Angela Cranmore and Julianne Deloy

123. Plaintiffs Angela ("Angie") Cranmore and Julianne Deloy are in a long-term committed relationship and are the proud and loving parents of one young son, and have a second child on the way. They have entered into a civil union, but desire to have their marriage legally recognized by the State of Colorado.

124. Plaintiff Julianne Deloy was raised in Colorado and has lived here throughout her adult life. Plaintiff Angie Cranmore has called Colorado home since 2009.

125. Angie works for the Department of Veteran's Affairs and Julianne works for a government contracting company.

126. Julianne and Angie met in March 2010 through mutual friends. They have been in a loving and committed relationship ever since. They intend to spend the rest of their lives with one another.

127. Julianne and Angie own their home together in Lakewood, Colorado. They are the proud parents of a wonderful son and they are soon expecting their second child. Julianne is their biological mother, and Angie is equally their parent in every respect. They are very busy and very happy with attending to the needs of their growing family.

128. Angie and Julianne have committed to one another and they want to spend their lives together. However, because they are a same-sex couple in Colorado, marriage is not legally available to them.

129. They did not want to settle for a civil union, because the rights and legal recognition that it offers are not equal to those of marriage, and because a civil union does not have the same societal meaning as marriage.

130. Because it was the best way for them to ensure Angie's legal rights to their children, on May 28, 2014, Angie and Julianne entered into a civil union.

131. While the civil union provides some of the benefits of legal marriage, it falls far short of being married. Notwithstanding their civil union, Angie and Julianne do not enjoy many of the same rights that married couples take for granted.

132. For example, because Julianne is Angie's civil union partner, and not her legal spouse, Angie is not able to include Julianne on her federally-offered health insurance.

133. When their first child was born into their committed relationship, their inability to legally marry required Angie and Julianne to spend a great deal of time and money to establish

Angie's rights, as the non-biological parent, to their child. They had to pay for, and Angie had to undergo, Federal Bureau of Investigation and Colorado Bureau of Investigation background checks. Angie had to hire an attorney, appear in front of a judge, and prove why Angie should be allowed to adopt their child. They had to incur the cost of using an adoption agency to complete two different home studies. Angie could not be named on their son's initial birth certificate. Angie and Julianne had to wait for the adoption to go through, the paperwork to be processed, and a new birth certificate to be issued before they could see both of their names listed on their son's birth certificate, even though both had always been the intended parents. None of these steps would have been necessary if Angie and Julianne had the right to legally marry in Colorado.

134. As they prepare for the arrival of their second child their circumstances have changed somewhat, but Angie and Julianne are still not treated in the same manner as if they were legally married. Now, their civil union has enabled them to ensure Angie's rights to their child through the stepparent adoption process. However, Angie is not their children's stepparent; she is their intended parent from the start. The adoption cannot be finalized until after their child's birth. Therefore, again Angie will not be able to be named on their child's original birth certificate. Angie cannot claim their child under her health insurance until after the adoption is finalized. Again, all of these financial, legal, and emotional burdens would be unnecessary if Angie and Julianne were legally married.

135. In a time that should be filled with excitement and anticipation for Angie and Julianne, it has been very stressful and emotionally draining to go through all of these legal and

financial steps just to ensure that Angie has the same rights to their children that heterosexual couples take for granted and receive automatically.

136. Angie and Julianne want to be able to teach their children that all people should be treated equal. They hope that they will not have to explain to them that although their parents love each other and have committed to spending their lives together; because of their sexual orientation they are unable to be married in Colorado.

137. Although they know it is possible to travel to another state to get married, Angie and Julianne strongly desire to get married in Colorado. Colorado is their home and it is where they plan to raise their family. They want to be perceived and recognized as married by the community where they have built their life together.

B. The United States Constitution Does Not Tolerate Discrimination of the Basis of Sexual Orientation

138. The United States Constitution does not tolerate discrimination on the basis of sexual orientation – in Colorado or anywhere else.

139. Striking down a 1992 amendment to the Colorado state Constitution ("Amendment 2") that would have prevented any city, town, or county in the state from taking legislative, executive, or judicial action to recognize gay and lesbian individuals as a protected class, the Court made clear that the law may not treat people as second-class citizens on the basis of their sexual orientation:

> We must conclude that Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do. A State cannot so deem a class of persons a stranger to its laws.

Romer v. Evans, 517 U.S. 620, 635 (1996).

140. Same-sex couples have a constitutionally protected right to intimate personal relations. *Lawrence v. Texas*, 539 U.S. 558 (2003).

141. Last summer, the Supreme Court struck down a key provision in the Defense Against Marriage Act ("DOMA"), holding that the federal government defining marriage as between one man and one woman was unconstitutional animus. *United States v. Windsor*, 133 S. Ct. 2675 (2013).

142. Colorado's laws banning same-sex marriage share the same constitutional infirmity as the federal DOMA: "the avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States." *See Windsor*, 133 S. Ct. at 2693.

C. Marriage Is A Fundament Right That Must Be Afforded To Same-Sex Couples

143. "There can be little doubt that the right to marry is a fundamental liberty. The marital relationship is older than the Bill of Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. The Court has long recognized that marriage is 'the most important relation in life.' 'Without doubt,' the liberty protected by the Fourteenth Amendment includes the freedom 'to marry, establish a home[,] and bring up children.'" *Kitchen v. Herbert*, No. 13-4178, 2014 U.S. App. LEXIS 11935, at *34 (10th Cir. June 25, 2014) (citing *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965); *Maynard v. Hill*, 125 U.S. 190, 205 (1888); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)). *See also, Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("The freedom to marry has long

been recognized as one of the vital personal rights essential to the orderly pursuit of happiness…”).

144. Even while our Courts have long acknowledged that “the right to marry is of fundamental importance for all individuals,” *Kitchen*, 2014 U.S. App. LEXIS 11935, at *36 (citing *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978)), Colorado law denies lesbians and gay men the freedom afforded to different-sex couples in this State to have their loving, committed relationships recognized through marriage.

D. Colorado Has Historically Discriminated Against Lesbian, Gay, Bisexual, and Transgender Individuals and Same-Sex Couples, and Continues to Do So Today through its Discriminatory Marriage Laws

145. Colorado and the United States have historically subjected Lesbian, gay, bisexual and transgender (“LGBT”) individuals to painful societal and government-sponsored discrimination.

146. Colorado and the United States have singled out lesbians and gay men for discriminatory treatment even though sexual orientation bears no relation to an individual’s ability to contribute to society. LGBT individuals have faced unconstitutional criminal penalties for private sexual conduct between consenting adults, harassment, hate crimes, and discrimination in employment and public accommodations, and many other areas.

147. Colorado has led the nation when it comes to enacting government-sponsored discrimination against LGBT individuals. In 1992, Colorado passed Amendment II, which unconstitutionally prohibited “all legislative, executive or judicial action at any level of state of local government designed to protect…gays and lesbians.” *Romer*, 517 U.S. at 624. The purpose of Amendment II was “not to further a proper legislative end but to make [LGBT individuals]

unequal to everyone else." *Id.* at 635. The United States Supreme Court struck down this unconstitutional law.

148. In 2000, the Colorado legislature amended its marriage statute, C.R.S. § 14-2-104, to specifically ban marriage by same-sex couples and to deny recognition to same-sex marriages validly performed outside of Colorado. H.B. 00-1249 Colo. Legis. Serv. Ch. 233. Contravening Colorado's longstanding practice of recognizing legally valid marriages from other states, *Payne v. Payne*, 214 P.2d 495, 497 (Colo. 1950); C.R.S. § 14-2-112, Colorado law now states:

> (1). . . [A] marriage is valid in this state if: (a) It is licensed, solemnized, and registered as provided in this part 1; and (b) It is only between one man and one woman. (2) Notwithstanding the provisions of section 14-2-112, any marriage contracted within or outside this state that does not satisfy paragraph (b) of subsection (1) of this section shall not be recognized as valid in this state.

C.R.S. § 14-2-104.

149. In 2006, even though Colorado's statutes already barred same-sex marriages and denied recognition to marriages of same-sex couples who legally married out of state, Colorado amended its Constitution to do so as well.

150. Amendment 43 was ostensibly passed to "persev[e] the commonly accepted definition of marriage" and that "[m]arriage as an institution has historically consisted of one man and one woman and, as such, provides the optimal environment for creating, nurturing, and protecting children and preserving families." Colo. Leg. Council, Colo. Blue Book, Amendment 43: Marriage 13 (2006).

151. Colorado voters were told that Amendment 43 was "necessary to avoid court rulings that expand marriage beyond one man and one woman in Colorado." Colo. Leg. Council, Colo. Blue Book, Amendment 43: Marriage 13 (2006).

152. The express and stated purpose of Amendment 43 was to single out same-sex couples alone by stripping them of federal constitutional protections that apply to all other citizens, and state protections and rights that are granted to all different-sex married couples in Colorado by operation of law.

153. Colorado's Constitutional Amendment singling out same-sex couples for the denial of marriage rights afforded to others was approved by a very thin margin of not more than 56 percent of voters in November 2006, an even smaller majority than the approximately 66% of voters that approved Utah's substantially similar discriminatory ban against same-sex marriage. This is among those instances in which it is the duty of the judiciary to vigilantly protect the rights of the minority against the tyranny of the majority. Indeed, James Madison decried the potential for a tyranny of the majority, pointing out that it was as important in our system of government to guard the minority in our society against injustice by the majority, as it was to guard society from the oppression of its rulers. The Federalist, No. 51, at 351 (James Madison) (Jacob E. Cooke ed., 1961).

E. Despite the Tenth Circuit Court of Appeals Ruling in *Kitchen v. Herbert*, Defendants Continue to Enforce Amendment 43 and Colorado's Related Discriminatory Marriage Laws

154. In light of the Tenth Circuit Court of Appeals' June 25, 2014 decision, *Kitchen v. Herbert*, which overturned Utah's substantially similar discriminatory restrictions on same-sex marriage based on the fundamental right to marry, Plaintiffs Burns and Schroeder, and Plaintiffs Alexander and Parrish, sought to enforce their same right in Colorado. Accordingly Plaintiffs Burns and Schroeder, and Plaintiffs Alexander and Parrish, applied for marriage licenses from

the Denver Clerk and Recorder, and from the office of the Jefferson County Clerk and Recorder, respectively.

155. Both the Denver Clerk and Recorder and the Jefferson County Clerk and Recorder denied these Plaintiffs' applications for licenses because of the Colorado laws prohibiting same sex marriage, which are substantially similar to the Utah laws that were ruled unconstitutional and are still being enforced by Defendants.

156. In response to the Tenth Circuit's ruling in *Kitchen v. Herbert*, Boulder Clerk and Recorder Hillary Hill determined that Boulder County would issue marriage licenses to same-sex couples.

157. Thereafter, in response to the Tenth Circuit ruling and Boulder County's issuance of marriage licenses to same-sex couples, Defendant Colorado Attorney General John Suthers issued the following public statement:

> Colorado's constitutional prohibition on same-sex marriages remains in effect. ... Any marriage licenses issued to same-sex couples in Colorado before a final court resolution of the issue are invalid.
>
> As Colorado Attorney General J.D. MacFarlane opined in 1975 when the Boulder County Clerk and Recorder issued same-sex marriage licenses, "the issuance of a license under such circumstances is useless and an official act of no validity and may mislead the recipients of the license and the general public."

http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2014/06/25/062514_reactive_statement_10th_circuit_court_same_sex_marriage_ruling.pdf.

158. Defendant Suthers thus nullified Boulder's attempt to equalize same-sex marriages, confirming that, absent Court action, same-sex couples will remain unequal under Colorado law.

159. Following Defendant Suthers' lead and in response to requests for marriage licenses from same-sex couples, Defendant Anderson and Jefferson County issued this statement reiterating their refusal to issues marriage licenses to same-sex couples:

> We are currently not issuing same-sex marriage licenses in Jefferson County in accordance with the state constitution. We are watching the legal proceedings regarding marriage equality closely as it is completely adjudicated for Colorado citizens.

http://jeffco.us/recording/news/2014/statement-on-same-sex-marriage-ruling/.

160. Arapahoe County also issued a similar statement:

> Arapahoe County will continue to uphold Colorado's constitutional provision on same-sex marriage, and will follow Colorado statute by issuing civil union certificates to same-sex couples.

http://arapahoegov.com/DocumentCenter/View/2093.

F. Colorado's Civil Union Law is Not an Adequate Substitute for Legal Marriage

161. Colorado is currently the only state that offers civil unions to same-sex couples.[1]

162. Plaintiffs Thrun and Bateman, Catt and Rubald, and Collier and Lord are legally married in other states, but Colorado refuses to recognize those legal marriages. Plaintiffs Cranmore and Deloy wish to marry in Colorado, but are prohibited from doing so. This, the only legal status afforded to these Plaintiffs' relationships is the separate and unequal status of civil union.

163. Colorado and Defendants do not recognize Plaintiffs' legal out-of-state marriages and denigrate the status and significance of their relationship to a civil union.

[1] Nevada currently offers domestic partnerships. Other states had civil unions or domestic partnerships, but those states now have full marriage equality or a court's granting of marriage equality is pending appeal.

164. While same-sex couples are eligible to enter into civil unions under Colorado law, those civil unions are not identical to marriage, and do not offer the full protections of marriage. For example (though not exhaustive):

a. Plaintiffs are ineligible for virtually all the federal protections otherwise available to validly married couples. *Windsor*, 133 S. Ct. at 2683 (There are "over 1,000 federal laws in which marital or spousal status is addressed as a matter of federal law.")

b. Plaintiffs face uncertainty when they travel as to whether other states will recognize or respect their relationship status.

c. Plaintiffs cannot file joint state and federal tax returns as a married couple.

d. Plaintiffs are taxed for health benefits provided by employers to their same-sex partner, thus significantly raising the cost of health care for the families. 26 U.S.C. § 106.

165. In addition to the tangible harms listed above, Plaintiffs are denied the unique social recognition that marriage conveys. Without access to the familiar language and legal label of marriage, Plaintiffs are unable instantly or adequately to communicate to others the depth and permanence of their commitment, or to obtain respect for that commitment as others do simply by invoking their married status.

166. When the Colorado Legislature passed the Colorado Civil Union Act, it expressly emphasized the separate and unequal status of civil unions, stating that civil unions do "not alter the public policy of the State, which recognizes only the union of one man and one woman as a marriage." Colorado Civil Union Act., C.R.S. §14-15-101, *et seq.* Additionally, the Colorado Legislature specifically defined "spouses" as "two persons who are married pursuant to the provisions of the Uniform Marriage Act," meaning the term "spouse" is exclusive to different-

sex married couples. C.R.S. § 14-15-103(6). The Colorado legislature determined that persons in a civil union would be labeled "partner in a civil union" or "party to a civil union." C.R.S. § 14-15-103(5). This designation is expressly unequal.

167. A marriage is the pinnacle relationship in our society. When married people communicate their marital status to others, that status is readily recognized and understood. Conversely, a civil union is not a readily recognized or understood relationship either in Colorado, throughout the United States, or anywhere else.

168. Different-sex couples who chose to make a public commitment to each other get married. Although different-sex couples are permitted to obtain a civil union in Colorado, almost without exception, different-sex couples chose to get married instead of "unionize." Indeed given the legal uncertainty and the social implications of civil unions, it would be illogical for a different-sex couple to obtain a civil union instead of marriage. Accordingly, in Colorado, different-sex couples get married; same-sex couples obtain a civil union. This separate status is inherently unequal.

169. Because of the way in which their relationships are labeled differently by Colorado, the Plaintiff couples and other same-sex couples must disclose their sexual orientation in their civic dealings, in a manner that is discriminatory, unfair and violates their privacy.

170. The Plaintiff couples and other same-sex couples have experienced confusion about and disregard for their civil union status when seeking government and private-sector services that require them to accurately fill out required forms, as the forms fail to acknowledge "civil union" as a family or legal structure.

171. Colorado's civil union law is not an adequate substitute for marriage. Denying two people in a loving, committed relationship the freedom to marry denies them the opportunity to express and legally embody their commitment in the most serious way that society provides. It refuses them the opportunity to enter into a relationship that is universally respected and recognized as a symbol of their love and commitment. The civil union designation withholds from same-sex couples the reverence and recognition associated only with marriage. It offers no more than a mundane entryway to an extremely limited subset of benefits. The essence of marriage is a private and public celebration of love and commitment; civil unions fail to achieve that goal. Marriage is something many people hope for from a young age, an ideal they aspire to; a civil union is not.

STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983
Fourteenth Amendment – Due Process Violation

172. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

173. The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides that no "State [shall] deprive any person of life, liberty, or property, without due process or law." U.S. CONST. AMEND. XIV § 1. The Due Process Clause protects individuals from arbitrary government intrusion into life, liberty, and property.

174. Amendment 43 of the Colorado Constitution, C.R.S § 14-2-104(1)(b) and 14-2-104(2), *et seq.,* and all other sources of state law that preclude marriage or marital recognition for

same-sex couples, violate fundamental liberties that are protected by the Fourteenth Amendment's Due Process Clause, both on their face and as applied to Plaintiffs.

175. The freedom to marry is one of the fundamental liberties protected by the Due Process Clause of the Fourteenth Amendment. *Kitchen*, 2014 U.S. App. LEXIS 11935, at *34 ("There can be little doubt that the right to marry is a fundamental liberty.").

176. The fundamental right to marry includes the right to remain married, and the legal recognition of a marriage performed in a different state.

177. Colorado's Amendment 43 and the Colorado statutes that define and limit marriage to one man and one woman violate this fundamental right protected by the Due Process Clause because they prevent each Plaintiffs from marrying the person of his or her choice, and from enjoying the legal recognition of a legal marriage performed in another state.

178. The right to marry is intertwined with the rights to privacy, family integrity and intimate association, and an individual's choices related to marriage are protected by the Due Process Clause because they are integral to a person's dignity and autonomy. Defendants' actions to enforce the marriage ban directly and impermissibly infringe upon Plaintiffs' deeply intimate, personal, and private decisions regarding family life, and preclude them from obtaining full liberty, dignity, privacy, and security for themselves, their families, and their parent-child bonds, including the right to have those parent-child bonds recognized in the first instance.

179. Colorado's ban on same-sex marriages and its provision of unequal civil unions impair Plaintiffs' fundamental right to travel as civil unions are not recognized as valid in the vast majority of states or internationally.

180. Colorado's refusal to recognize otherwise lawful, out-of-state same-sex marriages "undermines both public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of [Colorado's] recognition." *Windsor*, 133 S. Ct. at 2694.

181. Nothing logically or physically precludes same-sex couples from marrying.

182. Defendants' enforcement of the Colorado laws prohibiting same-sex marriages and refusing to recognize out-of-state same-sex marriages has harmed, and continues to harm, Plaintiffs.

183. Defendants' actions in enforcing Amendment 43 and other Colorado laws restricting marriage to one man and one woman have no compelling, important, rational, or otherwise sufficient justification.

184. Injunctive and declaratory relief are necessary, as there is no adequate remedy at law to redress these constitutional wrongs.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983
Fourteenth Amendment – Violation of Equal Protection

185. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

186. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. AMEND. XIV § 1.

187. Amendment 43 of the Colorado Constitution, C.R.S § 14-2-104(1)(b) and 14-2-104(2), *et seq.*, and all other sources of state law that preclude marriage for same-sex couples and

refuse to recognize legal marriages preformed in other states, violate the Equal Protection Clause of the Fourteenth Amendment, both on their face and as applied to Plaintiffs.

188. Amendment 43 and other Colorado laws that restrict marriage to one man and one woman violate Plaintiffs' right to equal protection of the laws by impermissibly discriminating on the basis of sex and sexual orientation.

189. Plaintiffs are similarly situated to different-sex spouses in every relevant respect. Plaintiffs and their children are as worthy of respect, dignity, social acceptance, and legitimacy as different-sex spouse and their children. The emotion, romantic, and dignitary reasons Plaintiffs seek to marry are similar or identical to those of different-sex couples who choose to marry.

190. Defendants' actions enforcing Amendment 43 and other Colorado laws restricting marriage to one man and one woman have harmed, and continue to harm, each of the Plaintiffs and their families.

191. Defendants' actions have no compelling, important, rational, or otherwise sufficient justification for their actions enforcing Amendment 43 and Colorado laws restricting marriage to one man and one woman.

192. Injunctive and declaratory relief are necessary, as there is no adequate remedy at law to redress these constitutional wrongs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, vindicate the Plaintiffs' basic constitutional rights to essential human dignity and to be treated like every other citizen of this country, and:

(a) Declare that the provisions of and enforcement by defendants of Colorado's laws excluding same-sex couples from marriage, including Article II, section 31 of Colorado's Constitution, Colorado Revised Statutes sections 14-2-104(1)(b) and 14-2-104(2), *et seq.*, and all other sources of state law that exclude same-sex couples from marrying, violate the Unmarried Plaintiffs' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United State Constitution;

(b) Declare that the provisions of and enforcement by defendants of Colorado's laws barring recognition of the valid out-of-state marriages of same-sex couples, including Article II, section 31 of Colorado's Constitution, Colorado Revised Statutes sections 14-2-104(1)(b) and 14-2-104(2), *et seq.*, and all other sources of state law that bar recognition of valid out-of-state marriages entered into by same-sex couples, violate the Married Plaintiffs' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

(c) Permanently enjoin enforcement by Defendants of Article II, section 31 of Colorado's Constitution, Colorado Revised Statutes sections 14-2-104(1)(b) and 14-2-104(2), *et seq.*, and all other sources of state law that exclude Unmarried Plaintiffs from marriage or refuse to recognize the marriages of the Married Plaintiffs;

(d) Enter an Order requiring defendants Hickenlooper, Suthers, Anderson and Johnson in their official capacities to permit issuance of marriage licenses to the Unmarried Plaintiffs, pursuant to the same restrictions and limitations applicable to opposite-sex couples, and to recognize the out-of-state marriages validly entered into by the Married Plaintiffs;

(e) Award plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws,

(f) Award Pre- and post-judgment interest at the lawful rate as allowed by law; and

(g) Grant such other and further relief as the Court deems just and proper and any other relief as allowed by law.

DATED this 1st day of July, 2014.

KILLMER, LANE & NEWMAN, LLP

s/ Mari Newman

____

Mari Newman
David A. Lane
Darren M. Jankord

Danielle C. Jefferis
KILLMER, LANE & NEWMAN, LLP
1543 Champa Street, Suite 400
Denver, Colorado 80202
(303) 571-1000

ATTORNEYS FOR PLAINTIFF