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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

Case No.: 13-012058 (37)
Division: Cohen

HEATHER BRASSNER,
Petitioner,

and

MEGAN E. LADE,
Respondent

MOTION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

The Petitioner, Heather Brassner, by and through the undersigned counsel, files this Motion for Declaratory Judgment and Injunctive Relief, and alleges as follows:

INTRODUCTION

Petitioner brings this Motion to challenge the constitutionality of Fl. Stat. §741.212, and Article 1 §27 of the Florida Constitution which states as follows:

> Marriage defined. Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

This provision of the Florida Constitution, enacted by referendum in 2008, and the marriage statute are both in direct violation of the United States and the Florida Constitutions in that they deny the Petitioner's rights to a dissolution of her civil union entered into with another woman, to which she would otherwise be entitled were her spouse of the opposite sex instead of the same sex. In addition, the statute and the constitution prevent the Petitioner from marrying her partner, which she intends to do once her civil union to the Respondent is dissolved. The constitutional provision specifically purports to prevent the Circuit Courts of this State to recognize a same-sex marriage or civil union, and the Circuit Court must recognize a marriage or civil union in order to dissolve it.

Despite Florida's long history of recognizing marriages performed all over the United States and the world, the Florida Constitution, since 2008, has ignominiously prohibited courts of this State from recognizing unions between same sex couples that were legal in the states in

which those unions occurred.

Heather Brassner and Megan Lade were joined by civil union in Vermont on July 6, 2002. At that time, civil union was the only form of legal relationship afforded to same-sex couples in Vermont. In reviewing the civil union laws of Vermont, it is apparent that the State of Vermont conferred all of the benefits and obligations of marriage on couples who entered into civil unions.[1] Same-sex marriage arrived in Vermont only in September 2009. Civil unions were officially dissolved as a legal relationship in Vermont in 2009 as well. Civil unions did not automatically convert to marriages, but there is a process to dissolve civil unions in Vermont. However, dissolution of the civil union is permitted only where both parties are available to sign the requisite forms. In this case, despite diligent search, the Petitioner was unable to locate Megan Lade. Even a private investigator hired to find her was unable to do so. Ms. Brassner has been a Florida resident for more than 14 years now. She cannot now become a Vermont resident for one year in order to file for a contested dissolution of her civil union. Therefore, there is no adequate remedy at law for Ms. Brassner, except for this Court to grant her a Dissolution of her Civil Union to Megan Lade.

Although this is a case of first impression in Florida, there is guidance from the State of Massachusetts as to whether one who entered into a civil union must dissolve that union prior to remarriage in order for that marriage to be valid, and not void as bigamous. In Elia-Warnken v. Elia, 463 Mass. 29 (2012), the Supreme Judicial Court of Massachusetts held that because a civil union was the equivalent of marriage, it was entitled to recognition by the State of Massachusetts under the principle of comity, and therefore needed to be dissolved in order for one party's marriage to be valid. Since the civil union had never been dissolved, the subsequent marriage was invalid.

And here is Ms. Brassner. She and Ms. Lade divided all their property, including real estate. Their civil union has been dead for years. But both are still locked in this legal relationship with no other avenue to dissolve it.

Ms. Brassner is a Florida resident, and has been for 14 years. If she had been married to a man, or united by civil union to a man, there would be little question about this court's authority to grant her a divorce. She is here to tell the Court that she has been a resident of the State of Florida for more than 6 months prior to the filing of the petition and that her civil union is irretrievably broken. For this Court to refuse to take jurisdiction of this Petition under these circumstances based on Article 1 §27 of the Florida Constitution would violate the Equal Protection Clauses of the United States and Florida Constitutions. Art. 1 §2 Basic rights. "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness..." The US Constitution's 14th Amendment states that "no State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws".

There is no dispute that this constitutional amendment, enacted by ballot referendum in 2008, is intended to deny marriage rights, or civil union rights, or perhaps even domestic partnership rights, to same-sex couples. The entire history of the Amendment and the plain

language of its ballot initiative unabashedly was designed to prevent same sex couples from marrying in the State of Florida, and to prevent Florida from giving full faith and credit, and comity, to same sex marriages or civil unions performed in other jurisdictions.

Discrimination against a class of people without so much as a rational basis therefor can never be accomplished by legislative fiat or majority vote. If that were so, Jim Crow laws would still be in effect in half the state of Florida. Schools would still be segregated by law. And in Virginia, interracial marriage would still be banned. In Loving v. Virginia, 388 U.S. 1 (1967), the United States Supreme Court overturned Virginia's long-standing ban against interracial marriage, and held "there can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause". According to that opinion, "marriage is one of the basic civil rights of man, fundamental to our very existence and survival". Ibid.

In the recent Florida Supreme Court decision of D.M.T. v. T.M.H., 2013 Fla. LEXIS 2422; 38 FLW S 812 (Nov. 7, 2013), the Court expounded at length on the subject of constitutional rights and the classification of sexual orientation:

> The constitutional guarantee of equal protection "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985) (quoting Plyler v. Doe, 457 U.S. 202, 216 (1982)). Indeed, "the Constitution neither knows nor tolerates classes among citizens,'" which is an assurance that the law remains neutral "where the rights of persons are at stake." Romer v. Evans, 517 U.S. 620, 623 (1996) (quoting Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting)).
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> "In the absence of a fundamental right or a protected class, equal protection demands only that a distinction which results in unequal treatment bear some rational relationship to a legitimate state purpose." Duncan v. Moore, 754 So. 2d 708, 712 (Fla. 2000). Conversely, where the equal protection challenge does abridge a fundamental right or adversely affect a protected class, a higher level of scrutiny is appropriate. See Lane v. Chiles, 698 So. 2d 260, 263 (Fla. 1997).
>
> Sexual orientation has not been determined to constitute a protected class and therefore sexual orientation does not provide an independent basis for using heightened scrutiny to review State action that results in unequal treatment to homosexuals. See Romer, 517 U.S. at 630-32 (applying rational basis review to a state constitutional amendment banning state or local governments from providing minority protections based on sexual orientation). Further, even though our state constitution recognizes gender as a specific class, see art. I, § 2, Fla. Const., it does not separately recognize sexual orientation as a protected class, and thus we do not rely on our state's Equal Protection Clause to apply a heightened scrutiny examination to statutes discriminating on the basis of sexual orientation. See Fla. Dep't of Children & Families v. Adoption of X.X.G., 45 So. 3d 79, 81, 83 (Fla. 3d

DCA 2010) (applying rational basis review to a statute prohibiting homosexuals from adopting).

The court then applied a rational basis analysis to the case *sub judice*, which involved the assisted reproductive technology statute, which defined a commissioning couple as "one man and one woman". The question framed was whether the classification between heterosexual and same-sex couples drawn by the assisted reproductive technology statute bore some rational relationship to a legitimate state purpose. The Court concluded that the distinction was unconstitutional as applied because it lacked a rational basis.

It is worthy of note that at the time of the completion of this Motion for Declaratory Judgment that every single state and appellate Court across these United States that has considered the bans (both constitutional and legislative) against the right to marry regardless of gender and the bans against the recognition of legally performed same sex marriages and civil unions has declared such bans unconstitutional on the basis of the Fourteenth Amendment to the United States Constitution, as violative of the equal protection and due process clauses therein. [2] On June 25, 2014, the United States Court of Appeals for the 10th Circuit held that

> the 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.[3]

It is abundantly clear that Art. 1 §27 of the Florida Constitution and Florida Statute §741.212 limiting marriage to opposite sex couples are both unconstitutional, and in direct violation of the Due Process and Equal Protection clauses of both the Florida and the United States Constitutions. And since the Petitioner has no adequate remedy at law to dissolve her civil union, which is the substantial equivalent to marriage, this Court has both the authority and the moral imperative to grant this Petition for Dissolution, and to declare both the statutory and constitutional bans prohibiting same sex couples from marrying and prohibiting the State of Florida from recognizing such legally performed same sex unions in other states unconstitutional and to enjoin their enforcement.

1. **§ 1204. Benefits, protections, and responsibilities of parties to a civil union**

(a) Parties to a civil union shall have all the same benefits, protections, and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law, or any other source of civil law, as are granted to spouses in a civil marriage.

(b) A party to a civil union shall be included in any definition or use of the terms "spouse," "family," "immediate family," "dependent," "next of kin," and other terms that denote the spousal relationship, as those terms are used throughout the law.

(c) Parties to a civil union shall be responsible for the support of one another to the same degree and in the same manner as prescribed under law for married persons.

(d) The law of domestic relations, including annulment, separation and divorce, child custody and support, and property division and maintenance shall apply to parties to a civil union.

(e) The following is a nonexclusive list of legal benefits, protections, and responsibilities of spouses, which shall apply in like manner to parties to a civil union:

(1) laws relating to title, tenure, descent and distribution, intestate succession, waiver of will, survivorship, or other incidents of the acquisition, ownership, or transfer, inter vivos or at death, of real or personal property, including eligibility to hold real and personal property as tenants by the entirety (parties to a civil union meet the common law unity of person qualification for purposes of a tenancy by the entirety);

(2) causes of action related to or dependent upon spousal status, including an action for wrongful death, emotional distress, loss of consortium, dramshop, or other torts or actions under contracts reciting, related to, or dependent upon spousal status;

(3) probate law and procedure, including nonprobate transfer;

(4) adoption law and procedure;

(5) group insurance for state employees under 3 V.S.A. § 631, and continuing care contracts under 8 V.S.A. § 8005;

(6) spouse abuse programs under 3 V.S.A. § 18;

(7) prohibitions against discrimination based upon marital status;

(8) victim's compensation rights under 13 V.S.A. § 5351;

(9) workers' compensation benefits;

(10) laws relating to emergency and nonemergency medical care and treatment, hospital visitation and notification, including the Patient's Bill of Rights under 18 V.S.A. chapter 42 and the Nursing Home Residents' Bill of Rights under 33 V.S.A. chapter 73;

(11) advance directives under 18 V.S.A. chapter 111;

(12) family leave benefits under 21 V.S.A. chapter 5, subchapter 4A;

(13) public assistance benefits under state law;

(14) laws relating to taxes imposed by the state or a municipality;

(15) laws relating to immunity from compelled testimony and the marital communication privilege;

(16) the homestead rights of a surviving spouse under 27 V.S.A. § 105 and homestead property tax allowance under 32 V.S.A. § 6062;

(17) laws relating to loans to veterans under 8 V.S.A. § 1849;

(18) the definition of family farmer under 10 V.S.A. § 272;

(19) laws relating to the making, revoking and objecting to anatomical gifts by others under 18 V.S.A. § 5250i;

(20) state pay for military service under 20 V.S.A. § 1544;

(21) application for early voter absentee ballot under 17 V.S.A. § 2532;

(22) family landowner rights to fish and hunt under 10 V.S.A. § 4253;

(23) legal requirements for assignment of wages under 8 V.S.A. § 2235; and

(24) affirmance of relationship under 15 V.S.A. § 7.

(f) The rights of parties to a civil union, with respect to a child of whom either becomes the natural parent during the term of the civil union, shall be the same as those of a married couple, with respect to a child of whom either spouse becomes the natural parent during the marriage. (Added 1999, No. 91 (Adj. Sess.), § 3; amended 2001, No. 6, § 12(a), eff. April 10, 2001; 2001, No. 140 (Adj. Sess.), § 19, eff. June 21, 2002; 2009, No. 3, § 12a, eff. Sept. 1, 2009; 2009, No. 119 (Adj. Sess.), § 2.)

2. Whitewood v. Wolf, US District Court Middle District of Pennsylvania, 5/20/14; Geiger v. Kitzhaber, US District Court District of Oregon 5/19/14; DeBoer v. Snyder, US District Court Eastern District of Michigan 3/21/14; Tanco v. Haslam, US District Court Middle District of Tennessee, 3/14/14; De Leon v. Perry, US District Court Western District of Texas 2/26/14; Bostic v. Rainey, US District Court Eastern District of Virginia, 2/13/14; Bourke v. Beshear, US District Court Western District of Kentucky 2/12/14; Bishop v. United States, US District Court Northern District of Oklahoma 1/14/14; Kitchen v. Herbert, US District Court for the District of Utah 12/20/13; Obergefell v. Kasich, US District Court Southern District of Ohio 7/22/13; Latta v. Otter, US District Court District of Idaho, 5/13/14; Baskin v. Bogan, US District Court Southern District of Indiana 6/25/14; Lee v. Orr, US District Court Northern District of Illinois 2/21/41; Sevcik v. Sandoval, US District Court District of Nevada 11/26/12; Evans v. Utah, US District Court District of Utah 5/19/14; Wolf v. Walker, US District Court Western District of Wisconsin 6/6/14.

3. Kitchen v. Herbert, US Court of Appeals, Tenth Circuit, 6/25/14.

Respectfully submitted,

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