

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MIDORI FUJII,)
MELODY LAYNE and TARA BETTERMAN,)
SCOTT and RODNEY MOUBRAY-CARRICO,)
MONICA WEHRLE and HARRIET MILLER,)
GREGORY HASTY and CHRISTOPHER)
VALLERO,)
ROB MACPHERSON and STEVEN STOLEN,)
L.M.-C., by his next friends and parents, SCOTT)
and RODNEY MOUBRAY-CARRICO,)
A.M.-S., by her next friends and parents)
ROB MACPHERSON and STEVEN STOLEN,)

Plaintiffs,)

v.)

No. 1:14-CV-404)

GOVERNOR, STATE OF INDIANA, in his)
official capacity,)
COMMISSIONER, INDIANA STATE)
DEPARTMENT OF HEALTH, in his official)
capacity,)
CLERK, ALLEN COUNTY, INDIANA, in her)
official capacity,)
CLERK, HAMILTON COUNTY, INDIANA, in)
her official capacity,)

Defendants.)

Complaint for Declaratory and Injunctive Relief – Notice of Claim that Indiana Statute is Unconstitutional

Introduction

1. Plaintiffs bring this action to challenge the constitutionality of Indiana Code § 31-11-1-1. The statute excludes same sex couples from marriage and voids within Indiana the marriages of same-sex couples lawfully entered into in other states. The plaintiffs consist of a number of persons who are severely burdened because of the above statute. Plaintiff Midori Fujii is a

widow whose same-sex spouse died in October of 2011 after three years in a marriage that was solemnized in a state recognizing same-sex unions. However, because Indiana law does not recognize such unions, she is not provided the protections afforded widows under Indiana law. This significantly disadvantages her. Plaintiffs Monica Wehrle and Harriet Miller, Gregory Hasty and Christopher Vallero, and Scott and Rodney Moubray-Carrico are lesbian and gay couples in loving and committed relationships who wish to marry in Indiana for the same reasons that opposite-sex couples marry – to publicly declare their love and commitment and to give one another the security and protection that only marriage provides. However, they cannot do so because of the challenged statute. Melody Layne and Tara Betterman and Rob MacPherson and Steven Stolen are lesbian and gay couples who have married in other jurisdictions where same-sex marriages are lawful but whose marriages are deemed void by the challenged law so that they are treated as legal strangers and denied the significant benefits, both tangible and intangible, that Indiana bestows on married persons. Scott and Rodney Moubray-Carrico are the parents and next friends of their minor child and plaintiff, L.M.-C., and Rob MacPherson and Steven Stolen are the parents and next friends of their minor child and plaintiff, A.M.-S. The fact that their parents are not permitted to marry or to have their marriages recognized in Indiana materially harms the children, stigmatizes them, and denies their families the legal protections, security, and social support that only marriage provides. Indiana Code § 31-11-1-1 is unconstitutional as violating both due process and equal protection as secured by the Fourteenth Amendment to the United States Constitution. Appropriate injunctive and declaratory relief is therefore requested.

Jurisdiction, venue, cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57 of the Federal Rules of Civil Procedure.
5. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

6. Midori Fujii is an adult resident of Hamilton County, Indiana.
7. Melody Layne and Tara Betterman are adult residents of Marion County, Indiana.
8. Scott and Rodney Moubray-Carrico are adult residents of Floyd County, Indiana.
9. Monica Wehrle and Harriet Miller are adult residents of Allen County, Indiana.
10. Gregory Hasty and Christopher Vallero are adult residents of Hamilton County, Indiana.
11. Rob MacPherson and Steven Stolen are adult residents of Marion County, Indiana.
12. L.M.-C. is a minor child and lives with his parents and next friends Scott and Rodney Moubray-Carrico. He is proceeding by his initials pursuant to F.R.Civ.P. 5.2(a)(3).
13. A.M.-S. is a minor child and lives with her parents and next friends Rob MacPherson and Steven Stolen. She is proceeding by her initials pursuant to F.R.Civ.P. 5.2(a)(3).
14. The Governor of the State of Indiana is the duly elected chief executive of the State of Indiana. He is sued in his official capacity and is designated by official title pursuant to Fed.R.Civ.P. 17(d).
15. The Commissioner, Indiana State Department of Health is the duly appointed director of Indiana's health agency. He is sued in his official capacity and is designated by official title pursuant to Fed.R.Civ.P. 17(d).
16. The Clerk of Allen County is the duly elected Clerk of that county. She is sued in her

official capacity and is designated by official title pursuant to Fed.R.Civ.P. 17(d).

17. The Clerk of Hamilton County is the duly elected Clerk of that county. She is sued in her official capacity and is designated by official title pursuant to Fed.R.Civ.P. 17(d).

Legal background

18. Indiana Code § 31-11-1-1 provides:

(a) Only a female may marry a male. Only a male may marry a female.

(b) A marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it is solemnized.

19. As a result of the challenged law, marriage in Indiana is legally available only to opposite-sex couples. Same-sex couples may not marry in Indiana, and if they are married in other states, their marriages are not recognized in Indiana.

20. Pursuant to Indiana law, Indiana Code § 31-11-4-4, the State Department of Health is required to develop the form for applications for marriage licenses. The form adopted by the State Department of Health is attached to this Complaint.

21. The application currently has information only for the “Male Applicant” and the “Female Applicant.” It is therefore impossible for a same-sex couple to complete the form. The form notes that furnishing false information in completing the form is a felony.

22. Under Indiana law the Clerk of each County is required to issue marriage licenses to eligible couples who complete the application. Ind. Code § 31-11-4-1, *et seq.* The Clerk is precluded from issuing a license to persons who do not have the authority to marry each other under, among other things, Indiana Code § 31-11-1-1. Ind. Code § 31-11-4-2.

23. The Executive Power of the State of Indiana is vested in the Governor. Ind. Const. art. 5, § 1. As such, the Governor appoints the heads of, and is ultimately in charge of, numerous state agencies.

Factual allegations

Midori Fujii

24. Plaintiff Midori Fujii ("Midori"), lived in a committed relationship with Kristie Kay Brittain ("Kris") from 2000 until Kris's death in October, 2011.

25. Midori and Kris met in 1997 when both were serving on the Board of Directors of a local non-profit organization. They developed a strong friendship that, after a few years, grew into a life-long, committed relationship and then marriage.

26. Their lives together revolved around family, friends and their beloved pets. They were self-described "foodies" who enjoyed both going out to different restaurants and trying out new recipes at home. They would pick up food magazines like *Bon Appetite* or *Gourmet*, go to kitchen stores like Williams Sonoma or Sur La Table, or watch Food Network and get inspired for a "project" to either cook something or go in search of a restaurant. They also loved travel with family and friends, and often combined their love of travel and food to search out new dishes to re-create at home.

27. Midori and Kris married in Los Angeles, California in the summer of 2008.

28. In March 2009, Kris was diagnosed with ovarian cancer. During her fight with cancer, she went through two major surgeries, several hospitalizations, multiple courses of chemotherapy, and numerous tests and doctor's appointments. Midori was her primary caregiver throughout. Midori initially used her sick leave and paid time off to take care of Kris, but as Kris's medical care needs increased, Midori began to work from home when possible and she took unpaid leaves of absence.

29. Because of Indiana's marriage discrimination statute, Midori and Kris were considered unmarried and did not have the protections and decision-making authority they automatically

would have been given by statute had they been an opposite-sex couple married in California and living in Indiana. They had an attorney draft expensive documents, including wills and powers of attorney, to ensure Midori could care for Kris, make medical decisions as needed and inherit property from her spouse. Throughout Kris's battle with cancer the couple was always a little on guard going to the doctors and hospitals and they lived with the added emotional stress of constantly being apprehensive about how they as a lesbian couple they would be treated by health care providers.

30. While Kris was suffering the physical and emotional pain of end stage cancer, she had the additional burden of worrying about how Midori would manage financially after she was gone. The attorney with whom the couple consulted was able to provide some protections, such as a will to ensure that Kris's wishes to leave her property to Midori would be honored. But there was nothing the attorney could do to establish most of the legal protections that are available to widows and widowers.

31. Because Midori's marriage to Kris is not recognized in Indiana, Midori was required to pay more than \$300,000.00 in Indiana inheritance tax on all of the property that Kris left to her, including their shared home. If Midori were an opposite sex spouse she would have paid no inheritance tax on the property she inherited from Kris. And unless their marriage is recognized in Indiana, Midori will not be eligible to receive Kris's social security benefits when she turns 65. Because Kris was the family's primary breadwinner, if Midori could draw on Kris's social security, as an opposite sex spouse could, Midori would have more financial security in retirement.

32. If Midori's marriage to Kris was now recognized in Indiana as valid she could file the necessary proceedings in Indiana to have the inheritance tax refunded to her.

33. Indiana's refusal to recognize her marriage to Kris does not just cause Midori economic hardship. In her time of grief, she is denied the comfort and dignity of being acknowledged as Kris's widow. For example, following Kris's death in 2011, Midori experienced problems with a funeral director because she was not considered to be a surviving spouse.

Melody Layne and Tara Betterman

34. Plaintiffs Melody Layne ("Melody") and Tara Betterman ("Tara") of Indianapolis have lived together in a committed relationship for nearly 5 years. They met through a mutual friend.

35. Melody, 37, is a lifelong Indiana resident, born and raised in Greenwood. Tara, 44, grew up in New York and Florida and moved to Indiana in the late 1990s to be near her twin brother. Melody works in business development for John Wiley & Sons, a publishing company. Tara is the owner and CEO of a property management company in Indianapolis where she employees 12 people.

36. Melody and Tara share their home in Indianapolis with Melody's 5 year old biological daughter. Although Tara does not have a legal relationship with the child, she is a parent in every practical respect and their daughter understands that they are family.

37. Melody and Tara strongly support each other. They share finances and responsibility for their property, including the home they share.

38. In 2012, Melody and Tara married in Central Park in New York City. They would have preferred to marry in their home state but are prohibited from doing so by Indiana's marriage discrimination statute.

39. Because their marriage is not recognized in their home state of Indiana, Melody and Tara have gone to considerable expense to have an attorney draw up documents, such as health

care and general powers of attorney, to try to protect themselves. They understand, however, that this affords them only a fraction of the protections that come with marriage and they are concerned that those papers will not be honored in a crisis. They also still must incur the added expense of having wills drafted to provide the right to inherit from one another they would receive automatically by statute if their marriage were recognized.

40. They also suffer additional financial harms and burdens opposite sex married couples do not endure. For example, because IRS recognizes their marriage but Indiana does not, they must complete three separate federal tax returns for 2013 – one joint return as a married couple to file and two individual returns to be used to transfer information to the separate Indiana state income tax returns they must file.

41. If Melody and Tara were an opposite sex couple their New York marriage would be recognized in Indiana and they would be treated as a married couple under Indiana law.

42. The recognition and legitimacy that marriage provides to them means the world to Melody and Tara when they get to experience it. When they married in New York they felt happy and free every time they were recognized as a legal couple. They feel the loss of that freedom every time they return home to Indiana after travelling in a state where their marriage is respected.

43. For Tara and Melody, the cost of continuing to live in Indiana to be close to family was to be effectively "unmarried" and, thus, considered less of a family in the eyes of the state. Melody and Tara would like their marriage to be recognized in Indiana not only because of the concrete protections it would provide to them and their daughter, but also because being treated as an unmarried couple disrespects the commitment they have made to one another and devalues their family. They hope that their marriage will be recognized in Indiana before their

daughter is old enough to be aware that the state does not consider her family deserving of the same respect afforded other families.

Scott Moubray-Carrico, Rodney Moubray-Carrico, and L.M.-C.

44. Plaintiffs Scott Moubray-Carrico ("Scott") and Rodney Moubray-Carrico ("Rodney") have lived together in a committed relationship for 12 years. Scott and Rodney live in New Albany, in Floyd County, with their son. Rodney, 47, is General Manager of a hotel. Scott, 47, is store manager of a department store. Scott and Rodney have lived in New Albany, Indiana since 2006.

45. Scott and Rodney have one son, plaintiff L.M.-C., who is 6. Scott adopted L.M.-C. initially and Rodney later obtained a second parent adoption to establish a legal parent-child relationship with their son.

46. Scott and Rodney are very involved in their son's school and in their church, including leading a service project in their son's school to donate money and supplies to a neglected school in an impoverished area.

47. In 2010, Scott and Rodney both changed their last names to Moubray-Carrico, a combination of their surnames. They changed their last names through legal process after experiencing challenges in being viewed as a family while enrolling their son in pre-school. Because they cannot be married in Indiana, presenting themselves as a family to their son's preschool caused confusion. They also hoped that changing their last names would contribute to their son's self-esteem and sense of security by conveying the stability, permanence, and family legitimacy that his peers enjoy simply by virtue of the fact that their parents are permitted to marry in Indiana.

48. Scott and Rodney would like to be able to get married in Indiana in order to have the legal

protections married couples rely on. Because they cannot marry in Indiana they must have expensive planning documents in order to protect themselves and one another. To secure some measure of protection, Scott prepared a Last Will & Testament and Power of Attorney. Because of the cost associated with the preparation of these documents Scott prepared his online and Rodney has not yet been able to obtain documents. But for Indiana's marriage discrimination statute, Scott and Rodney would marry and receive the automatic protections given to married couples. For example, even without health care powers of attorney they could make health care decisions for one another in the event of a crisis and they could inherit property from one another through intestate succession. Rodney is fearful of how they might be treated in a time of crisis since Scott's documents are self-prepared. And they know if tragedy were to befall Rodney, Scott would be treated as a legal stranger unable to make decisions for or perhaps even visit in a hospital the person to whom he has committed his life.

49. In addition, the exclusion from marriage impacts the family financially. If either were to die, the survivor would be denied social security. Scott would be entitled to no inheritance from Rodney. They must pay costly attorney fees to obtain properly drafted, enforceable documents to give them some measure of protection.

50. Scott and Rodney also want to be able to marry because they are concerned that their son is being taught the message that his family is less deserving of respect and support than other families.

51. Scott and Rodney meet all the requirements to marry one another in Indiana, except for the fact that they are both male.

52. Scott and Rodney intend to marry in Maryland on April 3, 2014. It will be a small ceremony devoid of the many family and friends they have in Indiana who cannot make the trip

with them. They would prefer to marry in Indiana surrounded by family and friends, but they believe they cannot wait any longer for Indiana law to treat them equally. When they marry Rodney and Scott would like their marriage to be recognized in Indiana not only because of the concrete protections it would provide to them and their son, but also because they feel that being treated as an unmarried couple disrespects the commitment they have made to one another and devalues their family.

53. Even after they marry in Maryland they will remain legal strangers in Indiana. If they were an opposite sex couple their Maryland marriage would be recognized by Indiana and they would be treated as a married couple under Indiana law.

54. L.M-C., at age 6, is beginning to understand the concept of marriage and its unequalled role in defining family. He knows he and his parents are a family but he does not understand why his friends' parents are allowed to marry and his parents are not. He is stigmatized and his family is demeaned by the fact that his parents are excluded from marriage. Allowing his parents to marry and recognizing their impending Maryland marriage would demonstrate that he and his family are equally worthy of respect and the substantive protections and benefits marriage provides.

Monica Wehrle and Harriet Miller

55. Monica Wehrle ("Monica") and Harriet Miller ("Harriet") reside in Allen County, Indiana. Monica is a native of Fort Wayne, Indiana, and Harriet, an Ohio native, has lived in Fort Wayne since 1971.

56. They are lesbians and have been a committed, loving couple since 1977.

57. Monica has B.A. and M.P.A. degrees from Indiana University. Harriet has a B.A. degree from Goucher College and was also awarded an honorary Ph.D. from Indiana University.

58. Monica and Harriet have a lengthy history of being advocates for the rights of women and, in 1977, created the Fort Wayne Women's Bureau, a not-for-profit human services agency that provides a host of services to women and children.

59. Subsequent to creating the Fort Wayne Women's Bureau, Monica and Harriet created "run, jane, run," an event for amateur female athletes that was a fundraiser for the Fort Wayne Women's Bureau. By the late 1980's "run, jane, run." had become a separate national organization with affiliates in 15 communities across the United States.

60. The couple has a significant history of civic leadership and involvement in the Fort Wayne community. They have been active participants, both nationally and internationally, in the Gay Games.

61. During the course of their relationship as a couple they have had to expend significant sums of money to pay attorneys to create legal documents to assure that they each have the right to make medical and other important life decisions for the other person in the event of incapacity. If they were married, these would not be necessary. Additionally, they remain concerned that in the event one of them is hospitalized these documents will not be honored.

62. Because they are not married they are unable to own property as married persons do, as tenants by the entirety. Instead, they have had to incur legal fees to insure that in the event of one of their deaths, the property would automatically pass to the surviving person.

63. Harriet has three adult children and four grandchildren. And, between Harriet and Monica, they have many great nieces and nephews who know them only as a couple.

64. They wish to marry and wish to do so in Indiana – where they live.

65. They want their state to support their committed relationship.

66. They want their young relatives to know that their State – Indiana – supports loving couples completely, regardless of whether the couples are gay or straight.

67. At the current time they are made to feel like second-class citizens without the same rights, benefits, and privileges that heterosexual couples may attain when they marry. They wish to be treated equally.

68. They want their legacy to be honored with dignity and their heirs to be proud of who they are, with knowledge that Indiana and the United States recognizes them and their contributions as a couple and provides them with full legal rights.

Gregory Hasty and Christopher Vallero

69. Gregory Hasty and Christopher Vallero are a gay couple who live in Hamilton County, Indiana.

70. Gregory Hasty is a surgical technologist who is working on a nursing degree and Christopher Vallero, a graduate of Indiana University's Kelly School of Business, is employed by a medical research company in Indianapolis.

71. They have lived with each other in a committed and loving relationship for eight years.

72. They have not married although they desire to do so.

73. Gregory Hasty is a native of Indiana and wishes to be married in his home state.

74. They lead shared lives comparable to that of a married couple. However, they are denied the many benefits of marriage.

75. For example, they own their home together. But, because they are not married they do not own the property as tenants by the entirety, but as tenants in common.

76. During their relationship they have had to employ attorneys to draw up legal documents – such as medical powers of attorney – that would be completely unnecessary if they were married,

as a spouse would automatically have these powers and rights. And, there is no guarantee that if an emergency arises and one of them is hospitalized they will have the proper documents with them giving the non-hospitalized partner decision-making rights or, even if the papers are there, the hospital will honor them.

77. They are looking into the possibility of adopting a child. They want to adopt a child into a family where the partners are married. They want their child to be raised by married parents in a State that recognizes the right of loving couples to wed, regardless of whether they are straight or gay.

78. In addition to the many tangible benefits that are denied to them because they are denied the right to marry, even though they are in a committed relationship, they are denied the many intangible benefits that arise from being able to show the world that they are married. They are stigmatized by Indiana's refusal to allow them to wed.

Rob MacPherson, Steven Stolen, and AM-S

79. Rob MacPherson and Steven Stolen reside in Indianapolis.

80. They have been a committed and loving couple for more than 25 years and were married in California in October of 2008.

81. Steven Stolen has a B.M. degree in Music Performance and a Master's Degree in Music from the University of Michigan. He is an arts advocate and professional singer. He was a college professor for 20 years and is currently the Regional Director for Rocketship Indiana, a charter school management association.

82. Rob MacPherson has a B.A. from Central Michigan University. He currently serves as the Vice President for Development and Philanthropic Services with the Central Indiana Community Foundation whose goal is to inspire, support, and practice philanthropy, leadership,

and service in Central Indiana. He directs the Foundation's asset development strategies and donor services activities. He has been involved in non-profit organizations his entire career.

83. A.M.-S. was born in July 1998. Her birth mother chose Rob MacPherson and Steven Stolen to be A.M.-S.'s adoptive parents prior to the child's birth. A.M.-S. was legally adopted by Rob MacPherson in November 1998 and then filed a co-parenting petition to the State of Indiana. The State of Indiana granted that petition and A.M.-S. was adopted by Steven Stolen in March 1999.

84. Because their marriage is not recognized by the State of Indiana, Rob MacPherson and Steven Stolen have to deny their status as married persons when they pay their state taxes, even though the federal government now recognizes them as married.

85. They own their home. However, because their marriage is not recognized, they do not own the property as tenants by the entirety.

86. They have had to hire attorneys to set up medical decision-making and other documents to allow one partner to make decisions for the other in case of incapacity. Much of this would be unnecessary if their marriage were recognized. And, there is no guarantee that if there is a medical emergency that the decision-making authority of the other partner will be recognized.

87. They recognize that there are many tangible benefits bestowed under Indiana law to married persons, but these are denied to them.

88. This is – at its most basic – grossly unfair, regardless of all the tangible benefits that they, and their child, are denied. It is unfair that they are not recognized as a family and treated like all other families with married parents. To have their relationship not afforded the same legal status as the relationships of other couples, merely because they are both men, is onerous.

89. It is particularly onerous because they are parents and this burdens not only them, but A.M.-S., their daughter.

90. A.M.-S. is currently 15 and is aware that her parents' marriage is not recognized by the State of Indiana and this causes her concern as she does not view her parents any differently than those of her friends who have married, opposite-sex, parents. Yet, she is acutely aware that the State of Indiana treats her parents, and hence her, differently.

The general effects of the challenged law

91. Excluding same-sex couples from marriage disqualifies them from critically important rights and responsibilities that different-sex couples rely upon to secure their commitment to each other, and to safeguard their families. By way of example only, same-sex couples are denied:

- a. The right to make health care decisions for an incapacitated spouse, although opposite-sex spouses enjoy this statutory right. Ind. Code § 16-36-1-5.
- b. The protection of the marital privilege that is given to opposite-sex couples who wed. Ind. Code § 34-46-3-1.
- c. The duty of support and rights regarding child custody and parenting time with respect to children of the marriage. *See generally* Ind. Code § 31-9-2-13 (Definition of "child").
- d. Statutory protections granted to opposite-sex spouses upon death, including rights to inheritance when an opposite-sex spouse dies without a will, Ind. Code § 29-1-2-1; the right to claim an elective share of the estate of a deceased, opposite-sex spouse who died with a will, Ind. Code § 29-1-3-1, *et seq.*; various survivor benefits for the opposite-sex spouse of a public safety officer or state police officer killed in the line of duty, Ind. Code

§§ 5-10-10-6, 5-10-10-6.5, 5-10-14-3; 10-12-2-6; various state retirement fund survivor benefits for opposite-sex spouses, Ind. Code §§ 5-10.2-3-7.6, 5-10.2-3-8, 5-10.3-12-27.

e. The stabilizing effects and legal protections granted to opposite-sex spouses and their children through mandatory waiting periods prior to marriage dissolution, Ind. Code § 31-15-2-10, and by the requirements of fair division of marital property whether owned or acquired by one or both parties to the marriage, Ind. Code § 31-15-7-4.

f. Preference given to opposite-sex spouses in being appointed legal guardian for an incapacitated spouse. Ind. Code § 29-3-5-5.

g. Protection of the criminal code that makes it a crime to fail to support a needy spouse. Ind. Code § 35-46-1-6.

h. Eligibility for “Gold Star family member” status and eligibility for personalized or special group license plates for surviving, opposite-sex spouses of active duty armed forces or National Guard members or former prisoners of war. Ind. Code §§ 9-18-15-1, 9-18-25-8, 9-18-54-1.

i. The right/obligation to file joint state income tax returns. Ind. Code § 6-3-4-2.

j. Exemption from state inheritance tax imposed on property transferred by a decedent to a surviving, opposite-sex spouse. Ind. Code § 6-4.1-3-7.

92. In addition to state-level benefits and obligations, Indiana’s exclusion of same-sex couples from marriage denies them eligibility for numerous federal protections that are only available to married couples if their marriages are legally recognized in the state where they live. For example, spousal eligibility for social security benefits and the Family Medical Leave Act are based on the law of the state where the couple resides at the time of application. 42 U.S.C. §416(h)(1)(A)(i) (social security); 29 C.F.R. §825.122(b) (Family Medical Leave Act).

93. Furthermore, while some federal agencies currently recognize marriages validly performed in a state regardless of where the married couple lives, those are administrative decisions and are thus subject to the vagaries of agency policy under different administrations and subject to congressional action. On January 9, 2014 and February 14, 2014, bills were introduced in the U.S. House of Representatives and U.S. Senate, respectively, which would require the federal government to defer to the laws of a person's state of legal residence in determining marital status. *See* H.R. 3829, 113th Cong. § 3 (2014) (For Federal purposes "the term 'marriage' shall not include any relationship that the state, territory, or possession [where the couple resides] does not recognize as a marriage."); S. 2024, 113th Cong. (2014) ("A bill to amend chapter 1 of title 1 of the United States Code, with regard to the definition of 'marriage' and 'spouse' for Federal purposes and to ensure respect for State regulation of marriage.").

94. In addition to the tangible harms above, same-sex couples wishing to marry in Indiana, or who live in Indiana but entered into a marriage in another jurisdiction, are denied the unique social recognition that marriage conveys. Without access to the familiar language and legal label of marriage, they are unable to instantly or adequately 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.

95. The many substantive and dignitary inequities imposed on committed same-sex couples include particular harms to same-sex couples' children, who are equally deserving of the stability, permanence, and legitimacy that are enjoyed by children of different-sex couples who marry. Civil marriage affords official sanctuary to the family unit, offering parents and children critical means to secure legal parent-child bonds, and a familiar, public way of demonstrating those bonds to third parties. By denying same-sex couples marriage, Indiana reinforces the view that the

family bonds that tie same-sex parents and their children are less consequential, enduring, and meaningful than those of different-sex parents and their children. Same-sex couples and their children accordingly must live with the vulnerability and the stress inflicted by a lack of access to the same mechanisms for securing their legal relationships, and the ever-present possibility that others may question their familial relationship – in social, legal, educational, and medical settings and at times of crisis – in ways that opposite-sex spouses can avoid simply by reference to being married.

96. From a young age, children understand that marriage signifies an enduring family unit, and also understand that Indiana classifies families headed by same-sex couples as less worthy than other families, undeserving of marriage, and not entitled to the same societal recognition and legal support as other families. Indiana has no adequate interest to justify marking the children of same-sex couples, including plaintiffs L.M.-C. and A.M.-S., with a badge of inferiority that will invite disrespect in school, on the playground, and in every other sphere of their lives.

97. The government is a powerful teacher of discrimination to others. By decreeing that the relationships of same-sex couples should be ignored in Indiana, Indiana instructs all persons with whom same-sex couples interact, including those couples' own children, that their relationships are less worthy than others. Bearing the imprimatur of the government, Indiana's marriage discrimination statute communicates a view that same-sex couples are unfit for the dignity, respect, and stature afforded to different-sex couples, and this encourages others to follow the government's example in discriminating against them.

98. Many private entities defer to Indiana's designation of marital status in defining "family" for purposes of an array of important benefits, often resulting in the exclusion of same-sex couples and their children from important safety nets such as private employer-provided health

insurance for family members. Indiana also encourages disrespect of committed same-sex couples and their children by others in workplaces, schools, businesses, and other major arenas of life, in ways that would be less likely to occur and more readily corrected if marriage were available to same-sex couples.

Marriage and same-sex couples

99. Same-sex couples and opposite-sex couples are similarly situated for purposes of marriage.

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

101. Plaintiffs seek to marry and/or to have their marriages recognized for the same emotional, romantic, and dignitary reasons, and to provide the same legal shelter to their families, as opposite-sex couples.

102. Plaintiffs, both adults and children, are equally worthy of the tangible rights and responsibilities, as well as the respect, dignity, and legitimacy that access to marriage confers on opposite-sex couples and their children. For the many children being raised by same-sex couples, the tangible resources and societal esteem that marriage confers on families is no less important than for children of opposite-sex couples. The harms inherent in Indiana's marriage discrimination statute are inflicted upon the plaintiffs and their children on a daily basis.

Sexual orientation and the status of lesbians and gay men

103. Sexual orientation bears no relation to an individual's ability to perform in, or contribute to, society.

104. Sexual orientation is a core, defining trait that is so fundamental to an individual's identity and conscience that a person may not legitimately be required to abandon it, even if that were possible.

105. Sexual orientation generally is fixed at an early age and is highly resistant to change through intervention. No credible evidence supports the notion that such interventions are either effective or safe; indeed, they often are harmful and damaging. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and virtually all of them – including the American Psychological Association and the American Psychiatric Association – have adopted policy statements cautioning professionals and the public about treatments attempting to alter sexual orientation.

106. Lesbians and gay men are a discrete and insular minority who have suffered a long and painful history of discrimination in Indiana and throughout the United States.

107. Ongoing prejudice against lesbians and gay men continues seriously to curtail the operation of those political processes that might ordinarily be relied upon to protect minorities.

108. Lesbians and gay men lack express statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half the states, including Indiana; they are the only group in Indiana to have been targeted by the legislative process to strip them of the right to marry by state constitutional amendment; and they have been targeted across the nation through the voter initiative process more than any other group.

The role of the defendants

109. As Indiana's chief executive officer, defendant Governor is responsible for the actions of the numerous state agencies, and the numerous state policies, that disadvantage plaintiffs. These

include policies regarding tax obligations, vital records, and insurance coverage, among others.

110. The Commissioner of the Indiana State Department of Health is responsible for the marriage certificate application that prevents same-sex couples from being able to apply for, and receive, marriage licenses.

111. The defendant county clerks are delegated the power by Indiana law to issue marriage licenses and to determine if those applying meet the requirements for marriage under Indiana law.

112. At all times defendants have acted and have refused to act under color of state law.

113. The actions of the defendants are causing plaintiffs irreparable harm for which there is no adequate remedy at law.

Legal claims

114. By failing to allow same-sex couples to marry, or to recognize in Indiana marriages they enter into in other states, Indiana Code § 31-11-1-1 is unconstitutional as impinging on the fundamental right of marriage, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

115. Same-sex couples and their children are similarly situated to opposite-sex couples and their children and to the extent that Indiana Code § 31-11-1-1 allows opposite-sex couples to marry, but not same-sex couples, the statute is unconstitutional as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Claim for relief

WHEREFORE, plaintiffs request that this Court:

- a. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
- b. Enter a declaratory judgment that Indiana Code § 31-11-1-1 is unconstitutional for the reasons noted above.

- c. Enter a preliminary injunction, later to be made permanent, enjoining defendants from enforcing Indiana Code § 31-11-1-1, thus recognizing the marriages of the plaintiff same-sex couples who have wed outside of Indiana and allowing the plaintiff same-sex couples who have not wed to do so in Indiana, and enjoining defendant Commissioner of the Indiana State Board of Health to change all appropriate forms to recognize same-sex marriage applications and marriages.
- d. Award plaintiffs their costs and reasonable attorneys' fees.
- e. Award all other proper relief.

/s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49

/s/ Gavin M. Rose

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APPLICATION FOR MARRIAGE LICENSE
State Form 53394 (R / 12-11)
INDIANA STATE DEPARTMENT OF HEALTH

Number _____

File _____

Prescribed under authority of IC 31-11-4

County _____

Date of Application (month, day, year) _____

MALE APPLICANT

FEMALE APPLICANT

- 1. Are you now or have you ever been adjudged to be of unsound mind or incompetent?
If yes, has the adjudication been removed by court order?
2. Are you related to the co-applicant closer than second cousin?
If yes, are you first cousins and over age 65?
3. Are you now under the influence of an alcoholic beverage?
4. Are you now under the influence of a narcotic drug?

- 1. Are you now or have you ever been adjudged to be of unsound mind or incompetent?
If yes, has the adjudication been removed by court order?
2. Are you related to the co-applicant closer than second cousin?
If yes, are you first cousins and over age 65?
3. Are you now under the influence of an alcoholic beverage?
4. Are you now under the influence of a narcotic drug?

Name _____
First Middle Last

Name _____
First Middle Last

Date of Birth _____
Month Day Year

Date of Birth _____
Month Day Year

Date of Birth Verified By
[] Birth Certificate [] Valid Operator License / ID Card
[] Other (specify) _____

Date of Birth Verified By
[] Birth Certificate [] Valid Operator License / ID Card
[] Other (specify) _____

Place of Birth (State or Foreign Country) _____

Place of Birth (State or Foreign Country) _____

Residence _____
Street/City/State/Zip or Street/City/Foreign Country

Residence _____
Street/City/State/Zip or Street/City/Foreign Country

Dependent Children (list full names of each) _____

Dependent Children (list full names of each) _____

Full Name of Father (if adopted, list adoptive father only) _____

Full Name of Father (if adopted, list adoptive father only) _____

Residence of Father (Last Known. If deceased, so state) _____
Street/City/State/Zip or Street/City/Foreign Country

Residence of Father (Last Known. If deceased, so state) _____
Street/City/State/Zip or Street/City/Foreign Country

Birthplace of Father (state or foreign country) _____

Birthplace of Father (state or foreign country) _____

Full Maiden Name of Mother (if adopted, list adoptive mother only) _____

Full Maiden Name of Mother (if adopted, list adoptive mother only) _____

Residence of Mother (Last known. If deceased, so state) _____
Street/City/State/Zip or Street/City/Foreign Country

Residence of Mother (Last known. If deceased, so state) _____
Street/City/State/Zip or Street/City/Foreign Country

Birthplace of Mother (state or foreign country) _____

Birthplace of Mother (state or foreign country) _____

Consent of Parent(s) or Guardian(s) (if applicant is under 18)
I (we), the parent(s) of this applicant, hereby give consent for this marriage. (If only one parent signs, state facts which make consent of the other parent unnecessary)

Consent of Parent(s) or Guardian(s) (if applicant is under 18)
I (we), the parent(s) of this applicant, hereby give consent for this marriage. (If only one parent signs, state facts which make consent of the other parent unnecessary)

Signature of Parent/Guardian _____

Signature of Parent/Guardian _____

Signature of Parent/Guardian _____

Signature of Parent/Guardian _____

Subscribed and sworn to before me this _____ day of _____, 20____

Subscribed and sworn to before me this _____ day of _____, 20____

_____, Clerk of the _____ Circuit Court

_____, Clerk of the _____ Circuit Court

Acknowledgements: I acknowledge that I have received information regarding dangerous communicable diseases that are sexually transmitted and a list of the test sites for the virus that causes AIDS (Acquired Immune Deficiency Syndrome).

Signature of applicant _____ Date (month, day, year) _____

[] The above applicant has objected to verifying by oath or affirmation or signature to the above acknowledgment because of religious beliefs.

Affirmation: I swear/affirm that the information given in this application is true and correct. I acknowledge that a person who knowingly furnishes false information to a clerk of the circuit court when the person applies for a marriage license under IC 31-11-11 commits a Class D felony. I understand that under IC 31-11-8-4 a marriage is void if either party to the marriage is mentally incompetent when the marriage is solemnized.

Signature of applicant _____ Date _____

Subscribed and sworn to before me this _____ day of _____, 20____

Court Order: A marriage license having been refused to the above named parties, the _____ County _____ Court, by written order issued _____ and filed in _____ authorizes and directs the issuance of a marriage license to the above named parties.

Return of Marriage License and Marriage Certificate

I certify that there was filed in my office a marriage license dated _____ authorizing the marriage of the individuals listed below. I further certify that the following marriage certificate was filed in my office.

I, _____ (name), certify that on _____ (date), at _____ in _____ County, Indiana, _____ of _____ County, _____ (state), and _____ of _____ County, _____ (state) were married by me as authorized under a marriage license that was issued by the Clerk of the Circuit Court of _____ County, Indiana, dated _____ Signed by: _____ Official Designation: _____

Filed and recorded in accordance with the laws of the State of Indiana on _____ (date).

Signed: _____, Clerk of the _____ Circuit Court.