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DISTRICT COURT, ADAMS COUNTY
STATE OF COLORADO

Adams County Justice Center, 1100 Justice Center Drive, Brighton, Colorado 80601

Plaintiffs: Rebecca Brinkman and Margaret Burd

v.

Defendant: Karen Long, in her official capacity as Clerk and Recorder of Adams County

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Ralph Ogden, #13623
M. Anne Wilcox, # 13604
WILCOX & OGDEN, P.C.
160 Lafayette Street
Denver, Colorado 80218
Phone No.: 303-399-5005
Fax No.: 303-399-5605
E-mail: Irishcorky@aol.com

and
Professor Thomas Russell, # 34771
1001 16th St. B180 #175
Denver, CO 80265
Phone No.: 303-856-7531
Fax No.: Omitted
E-mail: tdrlaw@comcast.net

Attorneys for the Plaintiffs

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Case No.:

COMPLAINT

Plaintiffs complain against the defendant as follows:

1. Plaintiffs are citizens of the United States and residents of Adams County, Colorado.

2. Venue is proper in Adams County because the defendant is an Adams County official.

3. Plaintiffs are two women who wish to marry each other.

4. On October 30, 2013, during the hours that the office of the Adams County Clerk and Recorder was open, plaintiffs went to the marriage license desk in the Clerk's office and asked for an application for a marriage license. C.R.S. section 14-2-107.

5. Plaintiffs were prepared to present the deputy clerk with proof of their names, gender, address, social security numbers and dates and places of their birth. C.R.S. section 14-2-105(1)(a), and when asked, presented the deputy with their driver's licenses.

6. Neither plaintiff has been previously married. C.R.S. section 14-2-105(1)(b).

7. Plaintiffs are not related to each other. C.R.S. section 14-2-105(1)(d) and C.R.S. section 14-2-110(a)(b) or (c).

8. Plaintiffs are over the age of eighteen years. C.R.S. section 14-2-106(1)(a)(I).

9. Plaintiffs were prepared to pay the fee for the marriage license. C.R.S. section 14-2-106(1)(a).

10. Plaintiffs are fully qualified to marry each other in the state of Colorado save and except for the fact that they are of the same gender.

11. The deputy clerk who served them looked at their driver's licenses and said that they could not get married to each other because they were both female. She also said that they could only get a license for a civil union.

12. Plaintiffs rejected the civil union application because a civil union is not the same as marriage, because a civil union is more like a business relationship than a marriage between two people who love each other and are committed to each other, and because plaintiffs want to marry each other and have the same dignified relationship as married heterosexual couples.

13. In 2007, the voters of Colorado approved Amendment 43, which ironically became part of the Colorado Constitution's Bill of Rights even though the amendment denied a right rather than guaranteeing one. This amendment reads, "Only a union between one man and one woman shall be valid or recognized as a marriage in this state." This section became section 31 of Article II of the Colorado Constitution.

14. Same gender couples have thus lost the right to petition the General Assembly to allow them to marry each other and the only means by which they can obtain the right to marry is by convincing a majority of Colorado voters to amend the Constitution or by asking the courts to declare Amendment 43 unconstitutional.

15. Several years before the passage of Amendment 43, the Colorado General Assembly amended parts of the Uniform Marriage Act, C.R.S. sections 14-2-101 et seq. Specifically, section 14-2-104 was amended to state, in part, that, ". . . .(1)(b) a marriage is valid in this state if: (b) It is only between one man and one woman;"

16. Section 14-2-110, however, is entitled "Prohibited Marriages" and contains no provision which prohibits a marriage between two people of the same gender.

First Claim for Relief

17. The allegations of paragraphs 1 through 16 are incorporated herein by reference.

18. This claim is brought pursuant to 42 U.S.C. section 1983.

19. In the United States Supreme Court decision in *United States v. Windsor,* decided on June 26, 2013, the Court held, in part that the United States must recognize marriages between same gender couples if they are valid under the law of the state in which they were performed. Thus, federal benefits must be available to these same gender marriage couples in the same manner and to the same extent as they are to married heterosexual couples.

20. Colorado does not recognize the legitimacy of marriages between two persons of the same gender even if the marriages have been lawfully performed in states which allow two persons of the same gender to marry each other. Instead of recognizing these lawful marriages as marriages, Colorado peremptorily converts them to civil unions. C.R.S. section 14-15-116 is entitled "Reciprocity - principle of comity" and states, "(1) A relationship between two persons that does not comply with section 31 of Article II of the state constitution but that was legally entered into in another jurisdiction is deemed to be a civil union in Colorado."

21. Thus, under C.R.S. section 14-15-116, a lawful marriage between two persons of the same gender entered into in a state that allows such marriages can never be a lawful marriage in Colorado: it is reduced to the lesser status of a "civil union." Even if the plaintiffs were lawfully married in a state that allows couples of the same gender to marry each other, Colorado would not recognize the legitimacy of their marriage.

22. The fact that Colorado refuses to recognize the legitimacy of marriages lawfully entered into in other states violates at least two sections of the United States Constitution: First,

Section 1 of Article IV, which states that, "Full faith and credit and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." Second, Section 2 of Article IV states that, "(1) The citizens of each state shall be entitled to all privileges and immunities of citizens of the several states."

23. Because Colorado denies them the right to marry, plaintiffs are denied the right to various federal benefits to which married heterosexual couples would be entitled. Colorado's refusal to allow plaintiffs to marry thus deprives them of a federal right. This refusal violates Section 1 of the Fourteenth Amendment to the United States Constitution, which states in part that, ". . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." *Cf. Garden State Equality et al v. Dow et al.*, New Jersey Superior Court, Mercer County, No. L-1729-11, *no appeal filed.*

24. Colorado's refusal to allow couples of the same gender to marry each other is a form of gender discrimination, because if either member of the couple is of the opposite gender, Colorado would allow them to marry each other. In plaintiffs' case, if one of them were male, Colorado would allow them to marry. Colorado thus discriminates against the plaintiffs because one of them is female.

25. More than forty-five years ago, the United States Supreme Court recognized that "[m]arriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." *Loving v. Virginia*, 388 U.S. 1, 12 (1967). But today, as a result of Amendment 43 and C.R.S. section 14-2-104(1)(b), Colorado denies its gay and lesbian residents access to marriage and thus denies them "one of the 'basic civil rights of man.'" *Id.*

26. Gender is not relevant to the state in determining spouses' obligations to each other. The fact that the civil union statute attempts to give civil union partners the same rights, privileges and obligations of married partners attests to this simple fact. Thus, relative gender composition aside, same gender couples are situated identically to opposite gender couples in terms of their ability to perform the rights and obligations of marriage under Colorado law.

27. Instead of allowing gay and lesbian residents to enjoy this fundamental right, Colorado condemns unions between persons of the same gender to the separate but unequal institution of "civil union," which was created because Amendment 43 created a need to recognize in some fashion the unions between persons of the same gender while distinguishing same gender unions from marriages. This unequal treatment of gays and lesbians denies them the basic liberties and Equal Protection under the law that are guaranteed by the Fourteenth Amendment to the United States Constitution.

28. Under Amendment 43 and C.R.S. section 14-2-104(1)(b) , gay and lesbian individuals are unable to marry the person of their choice. Thus, Colorado law treats similarly situated individuals differently by providing civil marriage to heterosexual couples but not to gay and lesbian couples. Even if civil unions provided all of the legal benefits and privileges of marriage, and they do not, they would still be unequal to marriages because of the tangible, symbolic difference between the designation "marriage," which enjoys a long history and uniform dignity, respect and recognition, and the different and unequal institution of civil union, which is a recent and manifestly unequal creation. Gays and lesbians are therefore unequal in the eyes of the law, which demeans their committed relationships by calling them civil unions rather than marriages.

29. Amendment 43 does not bear even a rational relationship to any legitimate state purpose.

30. Amendment 43 invidiously discriminates, and was intended to discriminate, against minority members of society who wish to marry another person of the same gender.

31. Colorado's refusal to allow couples of the same gender to marry each other also deprives them of the right to petition their government, in this case, the General Assembly, for the right to marry each other, and this denial violates the First Amendment to the United States Constitution, which the United States Supreme Court has repeatedly held applies to the states as well as to the United States, and which states, in part, that no law shall be passed "abridging.. . . the right of the people. . . .to petition the government for redress of grievances." This situation is precisely the same as the situation when Amendment 2 was held unconstitutional by the Supreme Courts of Colorado and of the United States. *See, Evans v. Romer,* 882 P.2d 1335 (Colo. 1994) and *Romer v. Evans,* 517 U.S. 620 (1996).

32. The Due Process Clause of the Fourteenth Amendment to the United States Constitution forbids state governments from acting in an arbitrary and capricious manner towards its citizens, and especially towards a minority group.

33. Amendment 43 and C.R.S. section 14-2-104(1)(b) violate the Due Process Clause of the Fourteenth Amendment because they treat a particular group of Colorado residents in an utterly arbitrary and capricious manner.

Wherefore, plaintiffs demand judgment against the defendant that C.R.S. section 14-2-104(1)(b) and Article II, section 31 of the Colorado Constitution unconstitutionally abridge rights

guaranteed to the plaintiffs under the Constitution of the United States, for preliminary and permanent injunctions that mandate the Clerk and Recorder of Adams County to issue them a marriage license, for attorneys fees under 42 U.S.C. section 1988, and for all other just and proper relief in the premises.

Second Claim for Relief

34. The allegations of paragraphs 1 through 33 are incorporated herein by reference.

35. Article II, section 25 of the Colorado Constitution guarantees Due Process of Law to all persons. Just as the United States Supreme Court has ruled that the Due Process Clause of the Fifth Amendment to the United States Constitution includes an implicit guarantee of Equal Protection by the United States, so has the Colorado Supreme Court ruled that the Due Process guarantee of Article II, section 25 contains an implicit guarantee of Equal Protection. *Mayo v. National Farmers Union*, 833 P.2d 54 (Colo. 1992).

36. The Colorado Supreme Court has suggested in many decisions that the guarantees provided in Article II, section 25 may be broader than the guarantees of the Fourteenth Amendment to the United States Constitution. *Cf. People ex rel. Juhan v. District Court*, 165 Colo. 253, 439 P.2d 741 (1968).

37. Article II, section 24 of the Colorado Constitution, like the First Amendment to the United States Constitution, guarantees the right to petition the government for redress of grievances.

38. Article II, section 31, like the stricken Amendment 2, abridges that right by making

any effort to petition the General Assembly an act of total futility because the General Assembly is powerless to alter or delete Article II, section 31 from the Constitution.

39. Article II, section 29 of the Colorado Constitution states that, "Equality of rights under the law shall not be denied or abridged by the State of Colorado or any of its political subdivisions on account of sex."

40. Article II, section 31, abridges the guarantees of Article II, section 29 because it guarantees the right of one man and one woman to marry each other, but denies that same right to two women and two men.

41. Colorado's refusal to allow couples of the same gender to marry each other deprives members of these couples of the right to Equal Protection that is guaranteed by the Equal Protection provisions implicit in the Due Process Clause of Article II, section 25 of the Colorado Constitution.

42. More than forty-five years ago, the United States Supreme Court recognized that "[m]arriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." *Loving v. Virginia*, 388 U.S. 1, 12 (1967). But today, as a result of Amendment 43 and C.R.S. section 14-2-104(1)(b), Colorado denies its gay and lesbian residents access to marriage and thus denies them "one of the 'basic civil rights of man.'" *Id.*

43. Gender is not relevant to the state in determining spouses' obligations to each other. The fact that the civil union statute attempts to give civil union partners the same rights, privileges and obligations of married partners attests to this simple fact. Thus, relative gender composition aside, same gender couples are situated identically to opposite gender couples in

terms of their ability to perform the rights and obligations of marriage under Colorado law.

44. Instead of allowing gay and lesbian residents to enjoy this fundamental right, Colorado condemns unions between persons of the same gender to the separate but unequal institution of "civil union," which was created because Amendment 43 created a need to recognize in some fashion the unions between persons of the same gender while distinguishing same gender unions from marriages. This unequal treatment of gays and lesbians denies them the basic liberties and Equal Protection under the law that are guaranteed by Article II, Section 25 of the Colorado Constitution.

45. Under Amendment 43 and C.R.S. section 14-2-104(1)(b) , gay and lesbian individuals are unable to marry the person of their choice. Thus, Colorado law treats similarly situated individuals differently by providing civil marriage to heterosexual couples but not to gay and lesbian couples. Even if civil unions provided all of the legal benefits and privileges of marriage, and they do not, they would still be unequal to marriages because of the tangible, symbolic difference between the designation "marriage," which enjoys a long history and uniform dignity, respect and recognition, and the different and unequal institution of civil union, which is a recent and manifestly unequal creation. Gays and lesbians are therefore unequal in the eyes of the law, which demeans their committed relationships by calling them civil unions rather than marriages.

46. Article II, section 31 does not bear even a rational relationship to any legitimate state purpose.

47. Article II, section 31 and C.R.S. section 14-2-104(1)(b) invidiously discriminate, and were intended to discriminate, against an entire segment of society whose members wish to

marry another person of the same gender.

48. With the sole exception of Article II, section 31 of the Colorado Constitution, the entirety of Article II contains a list of the fundamental rights of the people and forbids the government to abridge these rights. Section 31, in contrast to the balance of Article II, destroys a fundamental right for one group of people while guaranteeing it for another.

49. With the sole exception of section 31, Article II contains rights and guarantees of liberty and fundamental fairness that are core values of our democracy. No provision of the constitution approved by the People can alter, amend, or destroy these core values. *See, West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 638 (1943): "fundamental rights may not be submitted to [a] vote; they depend on the outcome of no election."

50. Article II, section 31 would, if enforced, abridge fundamental rights guaranteed by other provisions of the Colorado Constitution. *Cf. Zavilla v. Masse,* 112 Colo. 183, 147 P.2d 823 (1944) ("liberty. . . .as used in this article. . . .is broad enough to protect one from governmental interference in the exercise of his intellect, in the formation of opinions, in the expression of them and in action or inaction dictated by his judgment or choice in countless matters of purely personal concern."). The People are not empowered to abridge these rights because doing so would destroy rights and protections which are essential to the preservation of our democratic society. Accordingly, section 31 must be stricken from the Constitution.

51. Article II, Section 28 of the Colorado Constitution states that, "Rights reserved not disparaged. The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people." *See, e.g., Colorado Anti-Discrimination*

Commission v. Case, 151 Colo. 235, 380 P.2d 34 (1962) ("every citizen of the United States owns a residue of individual rights and liberties which have never been, and which are never to be surrendered to the state, but which are still to be recognized, protected and secured from infringement or diminution. . . .by any department of government."). *And see, Toland v. Strohl,* 147 Colo. 577, 364 P.2d 588 (1961) (""Due process is summarized constitutional respect for those personal immunities which are so rooted in the traditions and conscience of the people as to be ranked as fundamental, or are implicit in the concept of ordered liberty."). Article II, Section 31 is distinctly inapposite to Article II, Section 28 and the principles for which it stands.

52. Article II, section 31 must also be stricken because it requires the state to act in a wholly arbitrary and capricious manner towards a minority group of people and to treat them as second class citizens. *People v. Harris,* 104 Colo. 386, 91 P.2d 989 (1939) ("The exercise of arbitrary power by any department of government. . . .is inconsistent with democracy. The guarantees against the exercise of such arbitrary power are found in [Article II, Section 25].")

Wherefore, plaintiffs demand judgment against the defendant, a declaration under the Colorado Uniform Declaratory Judgments Act, that C.R.S. section 14-2-104(1)(b) and Article II, section 31 of the Colorado Constitution arbitrarily, capriciously and intentionally discriminates against an insular minority and makes them second class citizens, and that it violates the core principles upon which American democracy is based, that the People do not have either the right or the power to violate these core principles by enacting a constitutional amendment, for preliminary and permanent injunctions which mandate the Clerk and Recorder of Adams County to issue them a marriage license, and for all other just and proper relief in the premises.

Respectfully submitted,

WILCOX & OGDEN, P.C.

Duly signed original on file at the offices of

WILCOX & OGDEN, P.C.

/s/ Ralph Ogden

Ralph Ogden, #13623

/s/Thomas Russell

Thomas Russell # 34771