

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
3rd DIVISION

M. KENDALL WRIGHT, Individually, and JULIA E. WRIGHT, Individually and M. Kendall Wright and Julia E. Wright by, for and on behalf of their son, G.D.W., a minor, and their daughter, P.L.W., a minor, RHONDA L. EDDY and TREBA L. LEATH, CAROL L. OWENS and RANEE J. HARP, NATALIE WARTICK, Individually, and TOMMIE J. WARTICK, Individually and Natalie Wartick and Tommie J. Wartick by, for and on behalf of their son, T. B. W., KIMBERLY M. KIDWELL and KATHRYN E. SHORT, JAMES BOONE and WESLEY GIVENS, KIMBERLY M. ROBINSON and FELICITY L. ROBINSON, LINDA L. MEYERS and ANGELA K, SHELBY, GREGORY A. BRUCE and WILLIAM D. SMITH, JR., MONICA J. LOYD and JENNIFER L. LOCHRIDGE, JENNIFER D. MOORE and MANDY A. LYLES, JONATHAN K. GOBER and MARK R. NORWINE, ANDRA ALSBURY and AMBER GARDNER-ALSBURY, ANGELA SPEARS GULLETTE and LIVICIE C. GULLETTE, SHANNON HAVENS and RACHEL WHITTENBURG, CODY RENEGAR and THOMAS STAED, KATHERINE HENSON and ANGELIA BUFORD, CHRISTOPHER H. HORTON and MICHAEL E. POTTS, JOHN SCHENCK and ROBERT LOYD, WILLIAM A. KING and JOHN McCLAY RANKINE

PLAINTIFFS

V. CASE NO. 60CV-13-2662

THE STATE OF ARKANSAS, the Governor of the State of Arkansas, MICHAEL D. BEEBE, in his official capacity, and his successors in office, the Attorney General of the State of Arkansas, DUSTIN McDANIEL, in his official capacity, and his successors in office, NATHANIEL SMITH, MD, MPH, Interim Director, of the Arkansas Department OF Health, in his official capacity, and his successors in office, Pulaski Circuit/ County Clerk, LARRY CRANE, in his official capacity, and his successors in interest, White County Clerk, CHERYL EVANS, in her official capacity, and her

successors in interest, Lonoke County Clerk, WILLIAM "LARRY" CLARKE, in his official capacity, and his successors in interest, Conway County Clerk, DEBBIE HARTMAN, in his official capacity, and her successors in office, Saline County Clerk, DOUG CURTIS, in his official capacity, and his successors in office, Faulkner County Clerk, MELINDA REYNOLDS, in her official capacity, and her successors in office, Washington County Clerk, Becky Lewallen, in her official capacity, and her successors in office

DEFENDANTS

### **SECOND AMENDED COMPLAINT**

Comes the Plaintiffs, M. KENDALL WRIGHT, Individually, and JULIA E. WRIGHT, Individually and M. Kendall Wright and Julia E. Wright by, for and on behalf of their son, G.D.W., and their daughter, P.L.W., RHONDA L. EDDY and TREBA L. LEATH, CAROL L. OWENS and RANEE J. HARP, NATALIE WARTICK, Individually, and TOMMIE J. WARTICK, Individually and Natalie Wartick and Tommie J. Wartick by, for and on behalf of their son, T. B. W., KIMBERLY M. KIDWELL and KATHRYN E. SHORT, JAMES BOONE and WES GIVENS, LINDA L. MEYERS and ANGELA K, SHELBY, GREGORY A. BRUCE and WILLIAM D. SMITH, JR., MONICA J. LOYD and JENNIFER L. LOCHRIDG, and JENNIFER D. MOORE and MANDY A. LYLES, JONATHAN K. GOBER and MARK R. NORWINE, ANDRA ALSBURY and AMBER GARDNER-ALSBURY, ANGELA SPEARS GULLETTE and LIVICIE C. GULLETTE, SHANNON HAVENS and RACHEL WHITTENBURG, CODY RENEGAR and THOMAS STAED, KATHERINE HENSON and ANGELIA BUFORD, CHRISTOPHER H. HORTON and MICHAEL E. POTTS, JOHN SCHENCK and ROBERT LOYD, WILLIAM A. KING and JOHN McCLAY RANKINE by and through their attorney, Cheryl K. Maples, and for their Second Amended Complaint for Declaratory and Injunctive Relief against Defendants, THE STATE OF ARKANSAS, the Governor of the State of

Arkansas, MICHAEL D. BEEBE, in his official capacity, and his successors in office, the Attorney General of the State of Arkansas, DUSTIN McDANIEL, in his official capacity, and his successors in office, NATHANIEL SMITH, MD, MPH, Interim Director of the Arkansas Department Of Health, in his official capacity, and his successors in office, Pulaski Circuit/County Clerk, LARRY CRANE, in his official capacity, and his successors in office, White County Clerk, CHERYL EVANS, in her official capacity, and her successors in office, Lonoke County Clerk, WILLIAM "LARRY" CLARKE, in his official capacity, and his successors in office, Conway County Clerk, DEBBIE HARTMAN, in her official capacity, and her successors in office, Saline County Clerk, DOUG CURTIS, in his official capacity, and his successors in office, Faulkner County Clerk, MELINDA REYNOLDS, in her official capacity, and her successors in office, Washington County Clerk, BECKY LEWALLEN, in her official capacity, and her successors in office, state:

## **I**

### **INTRODUCTION AND NATURE OF DISPUTE**

1. The citizens and government of the State of Arkansas are governed by the Arkansas Constitution. When our Constitution grants a right, privilege, or provides a principle of law or procedure beyond the protections provided by the federal constitution, the Constitution of the State of Arkansas is the final authority. The Constitution of the United States is the floor of Arkansas's constitutional rights and the Constitution of the State of Arkansas is the ceiling. The Declaration of Rights set forth in Article 2 of the state constitution are the basic, unalienable rights fundamental to the protection of individual liberty under which all governmental actions, laws and amendments to the constitution must abide. The Declaration of Rights is set forth in the body of the Arkansas Constitution. It was not deferred to any amendment process.

2. Act 146 of 1997, Amendment 83 to the Arkansas Constitution,

Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) violate and are in conflict with the core Declaration of Rights contained in the Constitution of the State of Arkansas and the core Bill of Rights contained in the Constitution of the United States of America.

3. Under common law and pursuant to Ark. Code Anno. § 9-11-101 marriage is defined as “a civil contract to which the consent of the parties capable in law of contracting is necessary.” Every state recognizes the contractual nature of marriage.

4. The denial of the right to same-sex couples to marry specifically violates Arkansas’ Constitutional **Declaration of Rights** Article 2 Sections 2, 3, 18 and 29. Additionally, this denial is a flagrant violation of Arkansas’ duties to protect its citizen’s constitutional rights under the U. S. Constitution.

5. Arkansas’ denial of recognizing same-sex marriages legally entered into in other states or countries specifically violates Arkansas’ Constitutional **Declaration of Rights** Article 2 Sections 2, 3, 17, 18 and 29. Additionally, this denial is a flagrant violation of Arkansas’ duties to protect its citizen’s constitutional rights and comply with the Full Faith and Credit Clause of the U. S. Constitution.

6. Marriage grants certain mutual legal rights and obligations including, but not limited to, those assuring spouses can rely upon each other economically, such as: the right to be financially supported; the right to an equitable division of property and/or alimony in the event of divorce or separation; the right to inherit if one’ spouse dies intestate; the right to receive certain benefits from the federal or state government; the right to receive employment benefits of the other spouse, such as health insurance; the right to be taxed as a single economic unit; the right to claim an evidentiary privilege for marital communications. Additionally, marriage grants a right to priority in being appointed guardian of an incapacitated

spouse; the right to be recognized as having priority in health decisions for an incapacitated spouse and a priority in the right to claim a deceased spouse's body. Marriage most importantly grants the children born or adopted of the union legitimacy and grants both parents rights and responsibilities to those children.

7. The pertinent provisions of the Arkansas' Constitutional **Declaration of Rights** provide for:

**Article 2 § 2:** Freedom and Independence;

**Article 2 § 3:** Equality before the law;

**Article 2 § 17:**No laws impairing the obligation of contracts;

**Article 2 § 18:**No citizen or class of citizen's shall be granted privileges and/or immunities that are not equally provided to all citizens; and

**Article 2 § 29:**All rights provided in Article 2 of the Constitution are excepted out of the general powers of the government, shall forever remain inviolate and all laws contrary thereto are void.

8. In *Loving v. Virginia*, 388 U. S. 1, 12 (1967) the Supreme Court of the United States recognized marriage to be "one of the 'basic civil rights of man,' fundamental to our very existence and survival." That was forty-six years ago.

9. Even though the Declaration of Rights of the Arkansas Constitution is more protective of an individual's rights than the Constitution of the United States, in violation of Article 2 § 29 of the Arkansas Constitution in 1997 the Arkansas General Assembly enacted

"an act to amend Arkansas Code § 9-11-208 to clarify that Arkansas does not issue marriage licenses to persons of the same sex and does not recognize marriages between members of the same sex and they are not entitled to the

benefits of marriage; and for other purposes.”

This Act 146 of 1997 is codified today as, but not limited to, amended Arkansas Code § 9-11-208 and impacts many other statutes, including § 9-11-107(b).

10. In 2002, in its finding that the sodomy law was unconstitutional, the Arkansas Supreme Court examined in detail the rights granted to the citizens of Arkansas by their Constitution in *Jegley v. Picado*, 349 Ark.600, 80 S.W.3d 332 (2002). The Court found that the citizens are guaranteed:

“certain inherent and inalienable rights, including the enjoyment of life and liberty and the pursuit of happiness: All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.”

“The rights granted by our constitution are guaranteed to all citizens equally. Article 2, Section 3, provides: “The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of race, color or previous condition.” Ark. Const.art. 2 § 3. “The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.” Ark. Const. art. 2 § 18.”

*Jegley* at 627-628.

11. Two years later in an apparent response to the *Jegley* ruling, the Arkansas Constitution was amended. Jerry Cox of the Family Council, a religious organization, organized the Arkansas Marriage Amendment Committee that spearheaded the move for the amendment. The stated purpose for the organization of the committee and the campaign to pass the

amendment was for the preservation of traditional marriage and families.

12. Amendment 83 is in direct conflict with the Declaration of Rights provisions existing in the Constitution. Amendment 83 of 2004 (hereinafter "Amendment 83") denies homosexual couples, and only homosexual couples, the fundamental right to contract, to establish a familial institution with the protections and benefits enjoyed by heterosexual couples. Same gender couples also have families who desire and deserve the same rights and benefits.

13. Discrimination based upon the sex of an individual is barred by our Constitution. A woman cannot marry the person of her choice if it is a woman she wishes to marry, but a man is free to do so. A woman cannot enter into this civil contract with a woman, but a man is free to do so. A man cannot marry the person of his choice if it is a man he wishes to marry, but a woman is free to do so. A man cannot enter into this civil contract with a man, but a woman is free to do so. This unconstitutional amendment still stands.

14. There are two types of marriages: civil and religious. Marriages within a church, in compliance with that religion's laws, are only recognized by the State of Arkansas and afforded all privileges and benefits recognized by the state if they also comply with the requirements of a civil marriage. Civil marriage is defined by Ark. Code Anno. § 9-11-101 as "a civil contract to which the consent of the parties capable in law of contracting is necessary." All citizens of the State of Arkansas that are competent to enter into a contract may enter into a civil marriage – except for homosexuals who are equally competent to enter into a contract.

15. There is no compelling state interest that overrides the right of competent, consenting adults to share their lives, to become an economic unit to which all members of their family can benefit – just as heterosexual couples are able to do.

16. The U. S. Supreme Court recently found that marriage imparts to a couple a “dignity and status of immense import” and that marriage is “an essential part of the liberty protected.” *United States v. Windsor*, 133 S. Ct. 2675, Case No. 12-307, Slip Op. at 18 (June 26, 2013).

17. The denial of the fundamental right to marry or to have their legal union recognized by the State of Arkansas is an attempt to inhibit personal relationships. Due to the involvement of fundamental rights, a heightened scrutiny is required. Due to the complete lack of even a rational basis for Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), intermediate scrutiny or higher, although appropriate, is likely unnecessary.

18. Permitting same sex marriage and recognizing same from other jurisdictions will not result in damage to marriage or families in the State of Arkansas. There is no legitimate governmental interest furthered by the denial of these rights.

19. This action is brought due to Defendants’ violations of the right to equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983; a denial of fundamental rights in violation of Due Process Clause of the Arkansas Constitution and of the Fourteenth Amendment to the Constitution of the United States; violation of Article 2 Section 17 of the Arkansas Constitution and of Article I Section IX of the United States Constitution and violation of duties imposed upon the State of Arkansas by the Full Faith and Credit Clause of the United States Constitution, all in violation of the rights of all Plaintiffs.

20. That Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are unconstitutional as violative of Plaintiffs’ fundamental rights, including



the right to privacy and their due process and equal protection rights under both federal and state constitutional law. These unconstitutional restrictions on the rights of homosexuals are motivated by an improper animus. The only principal purpose is to impose inequality and deny rights and responsibilities that enhance the dignity and integrity of the person.

21. That Plaintiffs seek a declaratory judgment finding the unequal treatment of homosexuals as set forth in Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) to be unconstitutional and facially invalid due to their narrow focus of only denying the class of homosexuals the right to be married and/or the right to have their legal marriage recognized by the State of Arkansas.

22. That Plaintiffs additionally seek a declaratory judgment finding Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) to be in violation of the Article IV, Section 1 of the United States Constitution, known familiarly as the "Full Faith and Credit Clause", which states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

23. That Plaintiffs seek an injunction against future enforcement of Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b)

## **II**

### **JURISDICTION AND VENUE**

24. That this Court has jurisdiction pursuant to Ark. Code Ann. § 16-13-201(a).

25. That venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-103(3).

### **III**

### **PARTIES**

#### **Plaintiffs:**

**M. KENDALL WRIGHT, INDIVIDUALLY, AND JULIA WRIGHT, INDIVIDUALLY, AND M. KENDALL WRIGHT AND JULIA WRIGHT BY, FOR AND ON BEHALF OF THEIR SON, G.D.W., A MINOR, AND BY, FOR AND ON BEHALF OF THEIR DAUGHTER, P.L.W., A MINOR**

26. Plaintiffs M. Kendall Wright and Julia Wright, both individually, and by, for and on behalf of G.D.W., their son, and P.L.W., their daughter are residents of White County, Arkansas.

27. Plaintiffs M. Kendall Wright, aged 35, and Julia Wright, aged 38, are a lesbian couple who have a long-standing, devoted relationship. M. Kendall Wright is a military veteran and currently a fulltime college student. Julia Wright has been employed in the meat service industry for 20 years.

28. Said Plaintiffs have attempted to establish a familial institution on several occasions for the benefit of themselves and their two children born during their relationship and of their union.

29. That on March 8, 2008 a ceremony was to recognize their relationship and was conducted at an Arkansas Open Door Church.

30. That on September 14, 2008 a son, G.D.W., was born to the parties.

31. That in March of 2011 the City of Eureka Springs, Arkansas officially recognized Plaintiffs' relationship and commitment to each other by including them in the Domestic Partnership Registry.

32. That on December 31, 2012 another child was born to this union, a daughter, P.L.W.

33. That on March 8, 2013, on the anniversary of their initial formal commitment to each other, M. Kendall Wright and Julia Wright became legally married in Des Moines, Iowa.

34. That in spite of the deep commitment as evidenced by three events solemnizing their relationship, including a valid, legal marriage under the laws of the State of Iowa, due to Amendment 83 to the Arkansas Constitution, to Act 146 of 1997, as codified, Arkansas Code Anno. § 9-11-208 and Arkansas Code Anno. § 9-11-107 Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are females and are a homosexual couple.

35. That G.D.W. and P.L.W., the minor children of this union, are deprived legitimacy and benefits afforded all other children of known parents who are married.

36. That M. Kendall Wright and Julia Wright are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code Anno. § 9-11-208 and Arkansas Code Anno. § 9-11-107 are in clear violation of said Plaintiffs' guarantee of their constitutional rights set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

37. That said Plaintiffs were legally married in the State of Iowa. That Arkansas' Act 146, Amendment 83, Arkansas Code Anno. § 9-11-208

and Arkansas Code Anno. § 9-11-107 are in direct violation of Article IV, Section 1 of the United States Constitution, commonly referred to as the “Full Faith and Credit Clause”.

38. That Arkansas’ Act 146, Amendment 83, Arkansas Code Anno. § 9-11-208 and Arkansas Code Anno. § 9-11-107 impinge on fundamental liberties of M. Kendall Wright, Julia Wright, G.D.W. and P.L.W. denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to equal protection and due process under the law.

39. That M. Kendall Wright, Julia Wright, G.D.W. and P.L.W. have all been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b). This has resulted in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by M. Kendall Wright and Julia Wright’s inability to have their marriage recognized by the State of Arkansas and have society allow their relationship and children the same respect and dignity afforded heterosexual relationships.

### **RHONDA L. EDDY AND TREBA L. LEATH**

40. Plaintiffs Rhonda L. Eddy and Treba L. Leath are residents of Lonoke County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

41. Plaintiffs Rhonda L. Eddy, aged 45, and Treba L. Leath, aged 38, are a lesbian couple who have a long-standing, devoted relationship.

42. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, William “Larry” Clarke, Lonoke County Clerk. Same was denied because they are both female and are a homosexual couple.

43. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

44. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are female and are a homosexual couple.

45. That Rhonda L. Eddy and Treba L. Leath are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

46. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Rhonda L. Eddy and Treba L. Leath denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

47. That Rhonda L. Eddy and Treba L. Leath have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

## **CAROL L. OWENS AND RANEE J. HARP**

48. Plaintiffs Carol L. Owens and Rane J. Harp are residents of Pulaski County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

49. Plaintiffs Carol L. Owens, aged 51, and Rane J. Harp, aged 58, are a lesbian couple who have a long-standing, devoted relationship.

50. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. Same was denied because Plaintiffs are both female and are a homosexual couple.

51. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

52. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both female and are a homosexual couple.

53. Carol L. Owens and Rane J. Harp are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation clear violation of said Plaintiffs' guarantee of their constitutional rights set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

54. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Carol L. Owens and Rane J. Harp, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

55. That Carol L. Owens and Rane J. Harp have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) that has resulted in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

**NATALIE WARTICK, INDIVIDUALLY, AND TOMMIE J. WARTICK, INDIVIDUALLY, AND NATALIE WARTICK AND TOMMIE J. WARTICK BY, FOR AND ON BEHALF OF THEIR SON, T.B.W., A MINOR**

56. Plaintiffs Natalie Wartick, aged 31, and Tommie J. Wartick, aged 38, are a lesbian couple who have a long-standing, devoted relationship. They bring this action both individually, and by, for and on behalf of T.B.W., their son. Another child is expected in February 2014 and Plaintiffs reserved the right to amend to include that child in the event this case is still pending. Both Plaintiffs are residents of Saline County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

57. Said Plaintiffs have attempted to establish a familial institution on several occasions for themselves and for their son, T. B. W., born March 21, 2012.

58. That on August 9, 2010, Natalie Wartick and Tommie Jean Wartick were legally married under the laws of the State of Iowa.

59. That T.B.W., the minor child of this union, is deprived legitimacy and benefits afforded all other children of known parents who are married.

60. That in spite of the deep commitment as evidenced by their valid marriage in Iowa, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both female and are a homosexual couple.

61. That Natalie Wartick and Tommie J. Wartick are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

62. That said Plaintiffs were legally married in the State of Iowa. That Arkansas' Act 146 and Amendment 83 are in direct violation of Article IV, Section 1 of the United State Constitution, commonly referred to as the "Full Faith and Credit Clause".

63. That Arkansas' Act 146 and Amendment 83 impinge on fundamental liberties of Natalie Wartick and Tommie Jean Wartick denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.



64. That Natalie Wartick and Tommie Jean Wartick and their son, T. B. W. have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by Natalie Wartick and Tommie Jean Wartick's inability to have their marriage to the person they love recognized and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

**KIMBERLY M. KIDWELL AND KATHRYN E. SHORT**

65. Plaintiffs Kimberly M. Kidwell and Kathryn E. Short are residents of Pulaski County, Arkansas.

66. Plaintiffs Kimberly M. Owens and Kathryn E. Short are a lesbian couple who have a long-standing, devoted relationship. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

67. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. Same was denied because Plaintiffs are both female and are a homosexual couple.

68. Plaintiffs have attempted to establish a familial institution for their benefit and are unable to do so.

69. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are females and are a homosexual couple.

70. Kimberly M. Kidwell and Kathryn Short are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas

Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights set forth in Arkansas Constitution, Article 2 § 2,3, 17, 18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

71. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Kimberly M. Kidwell and Kathryn Short, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

72. That Kimberly M. Kidwell and Kathryn Short have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **JAMES BOONE AND WESLEY GIVENS**

73. Plaintiffs James Boone and Wesley Givens are residents of Conway County, Arkansas.

74. Plaintiffs James Boone, aged 53, and Wesley Givens, aged 52, are a gay couple who have a long-standing, devoted relationship.

75. That Plaintiff James Boone is retired from the United States Navy. That the benefits and privileges available as a spouse of a retired veteran and as the spouse of any married individual (other than a homosexual couple) are denied to James Boone's life partner, Wesley

Givens, due to Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b).

76. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Debbie Hartman, Conway County Clerk. Same was denied because Plaintiffs are both male and are a homosexual couple.

77. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

78. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both male and are a homosexual couple.

79. James Boone and Wesley Givens are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights set forth in Arkansas Constitution, Article 2 § 2,3, 17, 18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

80. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of James Boone and Wesley Givens, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and to due process under the law.

81. That James Boone and Wesley Givens have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

**KIMBERLY M. ROBINSON AND FELICITY L. ROBINSON**

82. Plaintiffs Kimberly M. Robinson, aged 30, and Felicity L. Robinson, aged 32, are a lesbian couple who have a long-standing, devoted relationship. Both are residents of Lonoke County, Arkansas.

83. Said Plaintiffs have attempted to establish a familial institution on several occasions. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

84. That on December 14, 2012, Kimberly M. Robinson and Felicity L. Robinson were legally married under the laws of the State of Iowa in Des Moines, Iowa.

85. That in spite of the deep commitment as evidenced by their valid marriage in Iowa, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both females and are a homosexual couple.

86. That Kimberly M. Robinson and Felicity L. Robinson are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of

said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

87. That said Plaintiffs were legally married in the State of Iowa. That Arkansas' Act 146 and Amendment 83 are in direct violation of Article IV, Section 1 of the United State Constitution, commonly referred to as the "Full Faith and Credit Clause".

88. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Kimberly M. Robinson and Felicity L. Robinson denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

89. That Kimberly M. Robinson and Felicity L. Robinson have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial and stigma caused by Kimberly M. Robinson and Felicity L. Robinson's inability to have their marriage to the person they love recognized by the State of Arkansas and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **LINDA L. MEYERS AND ANGELA K. SHELBY**

90. Plaintiffs Linda L. Meyers and Angela K. Shelby are residents of Faulkner County, Arkansas. They are responsible, active, employed, tax-paying citizens of the State of Arkansas.

91. Plaintiffs Linda L. Meyers, aged 47, and Angela K. Shelby, aged 47, are a lesbian couple who have a long-standing, devoted relationship.

92. That Plaintiff Linda L. Meyers is employed in communications and Angela K. Shelby is a registered nurse at a Pulaski County hospital.

93. That in 2012 the City of Eureka Springs, Arkansas officially recognized Plaintiffs' relationship and commitment to each other by including them in the Domestic Partnership Registry.

94. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Melinda Reynolds, Faulkner County Clerk. Same was denied because Plaintiffs are females and are a homosexual couple.

95. Plaintiffs have attempted to establish a familial institution for their benefit and are unable to do so.

96. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both female and are a homosexual couple.

97. Linda L. Meyers and Angela K. Shelby are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

98. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Linda L. Meyers and Angela K. Shelby, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

99. That Linda L. Meyers and Angela K. Shelby have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

**GREGORY A. BRUCE AND WILLIAM D. SMITH, JR.**

100. Plaintiffs Gregory A. Bruce and William D. Smith, Jr. are residents of Pulaski County, Arkansas.

101. Plaintiffs Gregory A. Bruce, aged 35, and William D. Smith, Jr., aged 52, are a gay couple who have a long-standing, devoted relationship.

102. That Plaintiffs Gregory A. Bruce and William D. Smith, Jr. are successful, responsible businessmen who own a pool and patio business, are taxpayers and citizens of the State of Arkansas.

103. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. Same was denied because Plaintiffs are a homosexual couple.

104. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

105. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are male and are a homosexual couple.

106. Gregory A. Bruce and William D. Smith, Jr. are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

107. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Gregory A. Bruce and William D. Smith, Jr., denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

108. That Gregory A. Bruce and William D. Smith, Jr. have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

**MONICA J. LOYD AND JENNIFER L. LOCHRIDGE**



109. Plaintiffs Monica J. Loyd and Jennifer L. Lochridge are residents of Faulkner County, Arkansas.

110. Plaintiffs Monica J. Loyd, aged 40, and Jennifer L. Lochridge, aged 32, are a lesbian couple who have a long-standing, devoted relationship.

111. That Plaintiffs Monica J. Loyd and Jennifer L. Lochridge are responsible, full-time employed, tax paying residents of the State of Arkansas.

112. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Melinda Reynolds, Faulkner County Clerk. Same was denied because Plaintiffs are females and are a homosexual couple.

113. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

114. That in spite of their deep commitment to each other, due to Amendment 83, Arkansas Constitution and to Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a females and are homosexual couple.

115. Monica J. Loyd and Jennifer L. Lochridge are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3, 17, 18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

116. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Monica J. Loyd and Jennifer L. Lochridge, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

117. That Monica J. Loyd and Jennifer L. Lochridge have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **JENNIFER D. MOORE AND MANDY A. LYLES**

118. Plaintiffs Jennifer D. Moore and Mandy A. Lyles are residents of Lonoke County, Arkansas.

119. Plaintiffs Jennifer D. Moore, aged 29 and Mandy A. Lyles, aged 33, are a lesbian couple who have a long-standing, devoted relationship. Jennifer D. Moore is a veteran, having spent nine years in the United State Air Force and is employed as a law enforcement officer. Mandy A. Lyles is currently seeking a nursing degree to be a registered nurse and works part-time at a nursing and rehabilitation facility.

120. Said Plaintiffs have attempted to establish a familial institution for the personal and financial benefits and privileges such an institution provides.

121. That on May 9, 2011 Jennifer D. Moore and Mandy A. Lyles became legally married in Iowa City, Iowa under the laws of the State of Iowa.

122. That in spite of their deep commitment as evidenced by legal marriage in the State of Iowa, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both females and are a homosexual couple.

123. That Jennifer D. Moore and Mandy A. Lyles are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

124. That said Plaintiffs were legally married in the State of Iowa. That Arkansas' Act 146 and Amendment 83 are in direct violation of Article IV, Section 1 of the United State Constitution, commonly referred to as the "Full Faith and Credit Clause".

125. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Jennifer D. Moore and Mandy A. Lyles, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

126. That Jennifer D. Moore and Mandy A. Lyles have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and

stigma caused by Jennifer D. Moore and Mandy A. Lyles' inability to have their marriage to the person they love recognized by the State of Arkansas and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

**JONATHAN K. GOBER AND MARK R. NORWINE**

127. Plaintiffs Jonathan K. Gober and Mark R. Norwine are residents of Pulaski County, Arkansas.

128. Plaintiffs Jonathan K. Gober, aged 34, and Mark R. Norwine, aged 50, are a gay couple who have a long-standing, devoted relationship of in excess of nine years.

129. That Plaintiffs Jonathan K. Gober and Mark R. Norwine are responsible, employed, tax paying residents of the State of Arkansas.

130. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/ County Clerk. Same was denied because Plaintiffs are both male and are a homosexual couple.

131. Plaintiffs have attempted to establish a familial institution for their family's personal and financial benefit and are unable to do so.

132. That in spite of their deep commitment to each other, due to Amendment 83, Arkansas Constitution and to Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both males and are a homosexual couple.

133. Jonathan K. Gober and Mark R. Norwine are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas

Constitution, Article 2 § 2,3, 17, 18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

134. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Jonathan K. Gober and Mark R. Norwine, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

135. That Jonathan K. Gober and Mark R. Norwine have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **ANDRA ALSBURY AND AMBER GARDNER-ALSBURY**

136. Plaintiffs Andra Alsbury and Amber Gardner-Alsbury are residents of Washington County, Arkansas.

137. Plaintiffs Andra Alsbury, aged 37 and Amber Gardner-Alsbury, aged 30, are a lesbian couple who have a long-standing, devoted relationship. Andra Alsbury is a 1<sup>st</sup> Lieutenant in the Army Reserves and is employed full-time as a registered nurse. Amber Gardner-Alsbury is employed with the University of Arkansas and is a singer/song writer.

138. Said Plaintiffs have attempted to establish a familial institution for the personal and financial benefits and privileges such an institution provides.

139. That on October 15, 2012 Andra Alsbury and Amber Gardner-Alsbury became legally married in Provincetown, Massachusetts under the laws of the State of Massachusetts.

140. That in spite of their deep commitment as evidenced by their legal marriage in the State of Massachusetts, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both females and are a homosexual couple.

141. That Andra Alsbury and Amber Gardner-Alsbury are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

142. That said Plaintiffs were legally married in the State of Massachusetts. That Arkansas' Act 146 and Amendment 83 are in direct violation of Article IV, Section 1 of the United State Constitution, commonly referred to as the "Full Faith and Credit Clause".

143. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Andra Alsbury and Amber Gardner-Alsbury, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

144. That Andra Alsbury and Amber Gardner-Alsbury have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by Andra Alsbury and Amber Gardner-Alsbury's inability to have their marriage to the person they love recognized by the State of Arkansas and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **ANGELA SPEARS-GULLETTE AND LIVICIE C. GULLETTE**

145. Plaintiffs Angela Spears-Gullette and Livicie C. Gullette are residents of Lonoke County, Arkansas.

146. Plaintiffs Angela Spears-Gullette, aged 36, and Livicie C. Gullette, aged 38, are a lesbian couple who have a long-standing, devoted relationship.

147. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, William "Larry" Clarke, Lonoke County Clerk. Same was denied because they are female and are a homosexual couple.

148. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so. That in August of 2010 the City of Eureka Springs, Arkansas officially recognized Plaintiffs' relationship and commitment to each other by including them in the Domestic Partnership Registry.

149. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated

§ 9-11-101, only because they are both females and are a homosexual couple.

150. That Angela Spears-Gullette and Livicie C. Gullette are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3, 17, 18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

151. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Angela Spear- Gullette and Livicie C. Gullette, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

152. That Angela Spears-Gullette and Livicie C. Gullette have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) that has resulted in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **SHANNON HAVENS AND RACHEL WHITTENBURG**

153. Plaintiffs Shannon Havens and Rachel Whittenburg are residents of Pulaski County, Arkansas. That Plaintiffs are responsible, hard-working, tax-paying citizens of the State of Arkansas.



154. Plaintiffs Shannon Havens, aged 34, and Rachel Whittenburg, aged 34, are a lesbian couple who have a long-standing, devoted relationship.

155. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/ County Clerk. Same was denied because they are both females and are a homosexual couple.

156. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

157. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are females and are a homosexual couple.

158. That Shannon Havens and Rachel Whittenburg are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3, 17, 18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

159. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Shannon Havens and Rachel Whittenburg, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

160. That Shannon Havens and Rachel Whittenburg have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) that has resulted in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **CODY RENEGAR AND THOMAS STAED**

161. Plaintiffs Cody Renegar and Thomas Staed are residents of Washington County, Arkansas. That Plaintiffs are responsible, hard-working, tax-paying citizens of the State of Arkansas

162. Plaintiffs Cody Renegar, aged 37, and Thomas Staed, aged 30, are a gay couple who have a long-standing, devoted relationship.

163. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Becky Lewallen, Washington County Clerk. Same was denied because they are both males and are a homosexual couple.

164. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so. That on June 16, 2012 the Plaintiffs held a ceremony to represent their commitment to each other, said ceremony holding no legal status.

165. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both males and are a homosexual couple.

166. That Cody Renegar and Thomas Staed are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

167. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Cody Renegar and Thomas Staed, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

168. That Cody Renegar and Thomas Staed have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) that has resulted in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **KATHERINE HENSON AND ANGELIA BUFORD**

169. Plaintiffs Katherine Henson and Angela Buford are residents of Pulaski County, Arkansas. That Plaintiffs are responsible, hard-working, tax-paying citizens of the State of Arkansas

170. Plaintiffs Katherine Henson, aged 41, and Angelia Buford, aged 37, are a lesbian couple who have a long-standing, devoted relationship. Both are licensed master social workers.

171. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/ County Clerk. Same was denied because they are both female individuals and are a homosexual couple.

172. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

173. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both female and are a homosexual couple.

174. That Katherine Henson and Angelia Buford are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

175. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Katherine Henson and Angelia Buford, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

176. That Katherine Henson and Angelia Buford have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and

Arkansas Code § 9-11-107(b) that has resulted in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **CHRISTOPHER H. HORTON AND MICHAEL E. POTTS**

177. Plaintiffs Christopher H. Horton and Michael E. Potts are residents of Saline County, Arkansas.

178. Plaintiffs Christopher H. Horton, aged 38, a Registered Nurse, and Michael E. Potts, aged 45, a full-time college student, are a gay couple who have a long-standing, devoted relationship.

179. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Doug Curtis, Saline County Clerk. Same was denied because they are both males and are a homosexual couple.

180. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

181. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are males and are a homosexual couple.

182. That Christopher H. Horton and Michael E. Potts are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the

Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

183. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Christopher H. Horton and Michael E. Potts, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

184. That Christopher H. Horton and Michael E. Potts have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) that has resulted in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

### **JOHN SCHENCK AND ROBERT LOYD**

185. Plaintiffs John Schenck and Robert Loyd are residents of Faulkner County, Arkansas.

186. Plaintiffs John Schenck and Robert Loyd, are a gay couple who have a long-standing, thirty-eight (38) year, devoted relationship. Plaintiff, Robert Loyd, is a Vietnam Veteran. Both Plaintiffs are respected businessmen, taxpayers and responsible, involved citizens of the State of Arkansas.

187. Said Plaintiffs have attempted to establish a familial institution on several occasions for their personal and financial benefit.

188. That in 1999 Plaintiffs entered into a Domestic Partnership under the laws of the State of California.

189. That in 2004, John Schenck and Robert Loyd became legally married in and under the laws of Canada. That Arkansas Code Anno. 9-11-107 provides that all marriages **contracted** in another country (or state) and valid under the laws of that country shall be valid in Arkansas, EXCEPT marriages of homosexuals, and only homosexuals. This is a clear and flagrant violation of Plaintiffs' fundamental right to equal protection, due process and constitutes a law that impairs the obligation of contracts.

190. That in spite of the deep commitment as evidenced by these events solemnizing their relationship, including a valid, legal marriage under the laws of Canada, due to Amendment 83 to the Arkansas Constitution, to Act 146 of 1997, as codified, Arkansas Code Anno. § 9-11-208 and Arkansas Code Anno. § 9-11-107 Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are males and are a homosexual couple.

191. That John Schenck and Robert Loyd are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code Anno. § 9-11-208 and Arkansas Code Anno. § 9-11-107 are in clear violation of said Plaintiffs' guarantee of their constitutional rights set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

192. That Arkansas' Act 146, Amendment 83, Arkansas Code Anno. § 9-11-208 and Arkansas Code Anno. § 9-11-107 impinge on fundamental liberties of John Schenck and Robert Loyd, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

193. That John Schenck and Robert Loyd have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b). This has resulted in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by M. Kendall Wright and Julia Wright's inability to have their marriage recognized by the State of Arkansas and have society allow their relationship and the same respect and dignity afforded heterosexual relationships.

**WILLIAM A. KING and JOHN McCLAY RANKINE**

194. Plaintiffs William A. King and John McClay Rankine are residents of Carroll County, Arkansas. Plaintiff John McClay Rankine is a Canadian citizen who has had permanent resident alien status since the mid 1980's.

195. Plaintiffs William A. King, aged 59, and John McClay Rankine, aged 58, are a homosexual couple who have a long-standing, devoted relationship of more than twenty-one years. Plaintiffs are self-employed individuals operating an antique store, an event hall and managing their several rental properties they own. Plaintiff William A. King additionally operates a non-profit dog rescue and Plaintiff John McClay Rankine additionally is an accomplished artist. Both Plaintiffs are responsible, involved, tax-paying residents of the State of Arkansas.

196. Said Plaintiffs have attempted to establish a familial institution for the personal and financial benefits and privileges such an institution provides.

197. That on December 27, 2004 William A. King and John McClay Rankine became legally married in Toronto, Ontario, Canada pursuant to Canadian law.

198. That in spite of their deep commitment as evidenced by legal marriage in Toronto, Ontario, Canada, due to Amendment 83 to the



Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are both males and are a homosexual couple.

199. That William A. King and John McClay Rankine are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs' guarantee of their constitutional rights as set forth in Arkansas Constitution, Article 2 § 2,3,17,18, and 29, under Article I Section X and the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and protected pursuant to 42 U.S.C. § 1983.

200. That said Plaintiffs were legally married in Toronto, Ontario, Canada. That Arkansas Code § 9-11 107 provides that all marriages **contracted** in another country (or state) and valid under the laws of that country shall be valid in Arkansas, EXCEPT marriages of homosexuals, and only homosexuals. This is a clear and flagrant violation of Plaintiffs' fundamental right to equal protection, due process and constitutes a law that impairs the obligation of contracts.

201. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of William A. King and John McClay Rankine, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to equal protection and due process under the law.

202. That William A. King and John McClay Rankine have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation,

emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by William A. King and John McClay Rankine's inability to have their marriage to the person they love recognized by the State of Arkansas and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

## **Defendants**

203. Defendant, the State of Arkansas, is responsible for enforcing and defending the laws of the State of Arkansas, the Arkansas Constitution and the United States Constitution, including through its Courts.

204. Defendant, Michael D. Beebe, is the Governor of the State of Arkansas. In this official capacity, the Governor is the chief executive officer of the State of Arkansas. He is responsible to ensure that the laws of this state and the Arkansas Constitution are properly enforced. He and his successors are sued in their official capacity only.

205. Defendant, Dustin McDaniel, is the Attorney General of the State of Arkansas. In this official capacity, the Attorney General is the chief legal officer of the State of Arkansas. It is his duty to uniformly and adequately enforce the laws of the State of Arkansas and the Arkansas Constitution. He and his successors are sued in their official capacity only.

206. Defendant, Nathaniel Smith, MD, MPH, Interim Director of the Arkansas Department of Health. In this official capacity, he is the State Registrar of Vital Statistics. It is his duty to maintain the marriage records, prescribe and furnish forms for application of the marriage laws to the several counties and said counties are mandated to report their marriages to his office. He and his successors are sued in their official capacity only.

207. Defendant, Larry Crane, is the Pulaski Circuit/County Clerk. In this official capacity, he is responsible for maintaining vital records of

marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

208. Defendant, Cheryl Evans, is the White County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

209. Defendant, William "Larry" Clarke, is the Lonoke County Clerk. In this official capacity, he is responsible for maintaining vital records of marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

210. Defendant, Debbie Hartman, is the Conway County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

211. Defendant, Doug Curtis, is the Saline County Clerk. In this official capacity, he is responsible for maintaining vital records of marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

212. Defendant, Melinda Reynolds, is the Faulkner County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

213. Defendant, Becky Lewallen, is the Washington County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

#### **IV**

### **STATEMENT OF FACTS**

## **ACT 146 OF 1997**

214. Act 146 of 1997 of the Arkansas General Assembly states in pertinent part:

### **For An Act To Be Entitled**

"AN ACT TO AMEND ARKANSAS CODE ' 9-11-208 TO CLARIFY THAT ARKANSAS DOES NOT ISSUE MARRIAGE LICENSES TO PERSONS OF THE SAME SEX AND DOES NOT RECOGNIZE MARRIAGES BETWEEN MEMBERS OF THE SAME SEX AND THEY ARE NOT ENTITLED TO THE BENEFITS OF MARRIAGE; AND FOR OTHER PURPOSES."

### **Subtitle**

"TO CLARIFY THAT ARKANSAS DOES NOT ISSUE MARRIAGE LICENSES TO PERSONS OF THE SAME SEX NOR RECOGNIZE MARRIAGES BETWEEN MEMBERS OF THE SAME SEX."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code ' 9-11-208 is amended to read as follows:

"9-11-208. License not issued to persons under age or to persons of the same sex.

*(b) It shall be the declared public policy of the State of Arkansas to recognize the marital union only of man and woman. No license shall be issued to persons to marry another person of the same sex and no same-sex marriage shall be recognized as entitled to the benefits of marriage.*

*(c) Marriages between persons of the same sex are prohibited in this state. Any marriage entered into by persons of the same sex, where a marriage license is issued by another state or by a foreign jurisdiction, shall be void in Arkansas and any contractual or other rights granted by virtue of that license, including its termination, shall be unenforceable in the Arkansas courts."*

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

**ARKANSAS CODE ANNOTATED § 9-11-208**

215. Arkansas Code § 9-11-208 provides in pertinent part:

9-11-208. License not issued to persons of the same sex.

(a)

(1) (A) It is the public policy of the State of Arkansas to recognize the marital union only of man and woman. (B) A license shall not be issued to a person to marry another person of the same sex, and no same-sex marriage shall be recognized as entitled to the benefits of marriage.

(2) Marriages between persons of the same sex are prohibited in this state. Any marriage entered into by a person of the same sex, when a marriage license is issued by another state or by a foreign jurisdiction, shall be void in Arkansas, and any contractual or other rights granted by virtue of that license, including its termination, shall be unenforceable in the Arkansas courts.

**ARKANSAS CODE ANNOTATED § 9-11-107**

216. Arkansas Code § 9-11 107 states:

9-11-107. Validity of foreign marriages.

(a) All marriages contracted outside this state that would be valid by the laws of the state or country in which the marriages were consummated and in which the parties then actually resided shall be valid in all courts in this state.

(b) This section shall not apply to a marriage between persons of the same sex.

**AMENDMENT 83 TO THE ARKANSAS CONSTITUTION**

217. Arkansas Constitutional Amendment 83 of 2004 states:

**Marriage.**

Section:

1. Marriage.
2. Marital status.

3. Capacity, rights, obligations, privileges, and immunities.

**1. Marriage.**

Marriage consists only of the union of one man and one woman.

**4. Marital status.**

Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common law marriage from another state between a man and a woman.

**3. Capacity, rights, obligations, privileges, and immunities.**

The legislature has the power to determine the capacity of persons to marry, subject to this amendment, and the legal rights, obligations, privileges, and immunities of marriage.

**V**

**CLAIMS FOR RELIEF**

**CLAIM ONE: DENIAL OF DUE PROCESS**

218. Plaintiffs incorporate by reference Paragraphs 1-208, *supra*, as if fully set forth herein.

219. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) violate fundamental liberties that are protected by both the federal and state Due Process Clause, both on their face and as they are applied to Plaintiffs.

220. Even under the lower level of protection afforded Plaintiffs' fundamental rights in the Constitution of the United States, "(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).

221. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) were enacted for the sole purpose of denying Plaintiffs and others in their situation this

fundamental right solely because they are members of a politically unpopular group.

222. For this reason, Plaintiffs ask this Court to declare Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) to be unconstitutional and to enjoin, preliminarily and permanently all enforcement of these and any other Arkansas statute that seeks to exclude gays and lesbians from civil marriages, denying them the same dignity, respect and stature afforded heterosexual family relationships.

### **CLAIM TWO: DENIAL OF EQUAL PROTECTION**

223. Plaintiffs incorporate by reference Paragraphs 1-213, *supra*, as if fully set forth herein.

224. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) violate the Equal Protection Clauses of the Arkansas Constitution and the Fourteenth Amendment to the United States Constitution in that they restrict the performance of civil marriages and the recognizing of legal civil marriages from other states to those of heterosexual couples. Only gay and lesbian couples are denied this fundamental liberty.

225. As a direct result of Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), all of the tangible benefits and privileges afforded to all other individuals with the capacity to contract are denied to homosexual couples.

226. Gays and Lesbians are a distinct group, singled out due to their gender and sexual orientation to be denied rights enjoyed by all other adult groups. They are unequal in the eyes of the State of Arkansas and their families are denied the same respect as officially sanctioned families of opposite-sex individuals.

227. The Equal Protection Clauses of the federal and state

governments do not permit discrimination on the basis of sex. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) blatantly distinguish between couples made up of a man and woman and couples made up of two men or two women. A man who wishes to marry a man cannot do so – because he is a man. A woman who wishes to marry a woman cannot do so – because she is a woman. This discrimination is a clear violation of Equal Protection and 42 U.S.C. § 1983, both on their face and as they are applied to Plaintiffs.

### **CLAIM THREE: VIOLATION OF FULL FAITH AND CREDIT**

228. Plaintiffs incorporate by reference Paragraphs 1-218, *supra*, as if fully set forth herein.

229. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) violate Article IV, Section 1 of the United States Constitution, known familiarly as the "Full Faith and Credit Clause", which states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

230. Plaintiffs, M. Kendall Wright, Julia E. Wright, Natalie Wartick, Tommie J. Wartick, Kimberly M. Robinson, Felicity L. Robinson, Jennifer D. Moore, Mandy Ann Lyles, Andra Alsbury and Amber Gardner-Alsbury were legally married in another state. The act of marriage is a state sanctioned, public act, maintained in state records, and enforced or dissolved by judicial proceeding.

231. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) forbid Full Faith and Credit to be given to lawful marriages of only homosexual couples.



#### **CLAIM FOUR: IMPAIRMENT OF OBLIGATION OF CONTRACTS**

232. Plaintiffs incorporate by reference Paragraphs 1-222, *supra*, as if fully set forth herein.

233. Article 2 § 17 of the Arkansas Constitution provides that there shall be no law impairing the obligation of contracts.

234. Arkansas Code Anno § 9-11-107 provide for the validity of "(a)ll marriages **contracted** outside this state that would be valid by the laws of the state or country in which the marriages were consummated and in which the parties then actually resided shall be valid in all courts in this state. It then excepts marriages similarly contracted between same-sex couples.

235. Arkansas Code Annotated § 9-11-101 states: "Marriage is considered in law a civil **contract** to which the consent of the parties capable in law of contracting is necessary." (Emphasis added.)

236. The fact that an individual is female does not make her incapable of entering into a contract to marry a female.

237. The fact that an individual is male does not make him incapable of entering into a contract to marry a male.

238. The fact that an individual is homosexual does not make her/him incapable of entering into a contract to marry another homosexual.

239. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) deny same sex couples the right to enter into a valid contract of marriage, thereby denying them the privileges, benefits and responsibilities inherent in a marriage.

240. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) deny same sex couples the right to have their marriage, contracted in and under the laws of another state or country, recognized as a valid contract of marriage, thereby denying them the privileges, benefits and responsibilities inherent in a marriage.

241. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) impairs the obligation of contracts of these citizens in clear violation of the Declaration of Rights of the Arkansas Constitution and Article I Section X of the U. S. Constitution.

### **CLAIM FIVE: IRREPARABLE INJURY**

242. Plaintiffs incorporate by reference Paragraphs 1-232, *supra*, as if fully set forth herein.

243. Plaintiffs, and all of them are severely and irreparably injured by Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) due to their violation of federal and state Due Process and Equal Protection Clauses. Plaintiffs' continuing and increasing injuries include, but are not limited to, the deprivation of fundamental rights Constitutionally guaranteed, severe humiliation, stigma, emotional distress, psychological harm, financial loss, pain and suffering, all caused by their denial of the right to be married to the person of their choice and have their familial relationship accorded the same dignity and respect as that received by heterosexual families.

244. The severe and irreparable injuries to Plaintiffs, and all of them, can only be redressed by this Court's finding that Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) are unconstitutional and enjoining all Defendants from enforcing same.

245. An actual and judicially cognizable controversy exists between Plaintiffs and Defendants on the issues of the violation of the Due Process and Equal Protection Clauses, the unconstitutional Impairment of Obligation of Contract and the violation of the Full Faith and Credit Clause of the United States Constitution. All Defendants are currently enforcing Act 146 of 1997,

Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) to the detriment of all Plaintiffs.

WHEREFORE, Plaintiffs pray this Court find Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) to be unconstitutional due to their violation of Plaintiffs' rights to due process, equal protection, and freedom from impairment of the obligation of contracts and due to the direct conflict of Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) with the Declaration of Rights contained in the Arkansas Constitution; for a preliminary and permanent injunction barring enforcement of Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), for Plaintiffs' costs and attorney fees as set forth in 42 U.S.C. § 1983 and otherwise; and for all other relief to which they may be entitled.

Respectfully submitted,

/s/ Cheryl K. Maples

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### **Certificate of Service**

I, the undersigned attorney do hereby state that a true and correct copy of the foregoing document was served upon David Fuqua, Attorney for Separate Defendant, Doug Curtis, in his official capacity as Saline County Clerk, Fuqua Campbell, P. A., 425 West Capitol, Suite 400, Little Rock, AR

72201 by electronic mail only to [dfuqua@fc-lawyers.com](mailto:dfuqua@fc-lawyers.com) on this 5<sup>th</sup> day of August, 2013.

/s/ Cheryl K. Maples