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

IN RE THE MARRIAGE OF: CASE NO. 13-012058 (37)

HEATHER BRASSNER,
Petitioner

And

MEGAN E. LADE,
Respondent.

_____/

ORDER GRANTING PETITIONER'S MOTION FOR DECLARATORY JUDGMENT

This cause came before this Court on Petitioner's Motion For Declaratory Judgmcnt. The Court, having reviewed the motion, having considered the arguments of counsel and The State of Florida, and being otherwise fully advised in the premises, hereby finds as follows:

I. Introduction

Petitioner, who entered into a civil union in the State of Vermont in 2002, now seeks to have that union dissolved in Broward County Florida where she currently resides. This Court can only grant that petition were the law of the State of Florida to recognize out-of-state same-sex civil unions. As a result, Petitioner challenges Florida's prohibition on same-sex marriage, as set forth in Article I, § 27 of the Florida Constitution and Florida Statute § 741.212. The Petitioner contends that Florida's ban on

same-sex marriage, or refusal to recognize her out-of-state union, violates her rights to due process and equal protection under the law as required by the Fourteenth Amendment of the Constitution.

The Supreme Court in United States v. Windsor, U.S. , 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013), recently held that the federal government cannot refuse to recognize a valid state-sanctioned same-sex marriage with regard to federal legislation. This Court is now called upon to decide whether the Windsor decision applies to state law that prohibits same-sex marriage or civil unions. The issue before this Court is thus whether the State of Florida's definition of marriage is in violation of the United States Constitution. After applying the law and considering all the issues, this Court finds that Florida's ban on same-sex marriage violates the guarantees of due process and equal protection under the laws. Florida's prohibition on same-sex marriage denies some citizens, based on their sexual orientation, the fundamental right to marry, and does so without a legitimate state purpose. This Court finds these laws are unconstitutional and GRANTS the Petitioner's Motion For Declaratory Relief, declaring Florida's ban on same-sex marriage unconstitutional.

With a full understanding of the politically and emotionally charged sentiments behind the issue of same-sex marriage, this Court's analysis of the law and its ruling is based solely on the law, independent of bias, personal feelings or beliefs, which is the role of the judiciary. Judges are bound to rule with impartially and neutrality, while applying the law to the facts in any controversy before them. Protecting citizens from unequal treatment under the law is constitutionally mandated and is the cornerstone of our Constitution and this Nation.

II. Petitioner

Petitioner, Heather Brassner, and Respondent, Megan E. Lade, were joined by civil union in Vermont on July 6, 2002. At that time, civil union was the only form of legal relationship afforded same-sex couples in Vermont. The law changed in Vermont in 2009 when same-sex marriage was sanctioned. Vermont law provides for dissolving civil unions, which requires both parties to agree and execute requisite forms. Petitioner sought to locate Respondent in order to execute the forms but has been unable to locate her after a diligent search, which included employing a private investigator.

Petitioner seeks to dissolve the Vermont civil union and has filed a Petition For Dissolution of Marriage in this Court. As a result Petitioner seeks to have this Court recognize her out-of-state civil union. She seeks to marry her current partner, but cannot do so without the legal dissolution of her civil union with Respondent. Petitioner has been a resident of the State of Florida for 14 years.

III. Petitioner's Right To Relief

The State correctly points that Petitioner must show a bona fide, actual and present practical need for declaratory relief. Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991). The State also argues that the respondent is absent and that all adverse parties interests must appear before the court, that the petitioner cannot seek relief without the presence of the respondent. Id. at 1170. Petitioner finds herself in court in Florida and not in Vermont because the respondent is unavailable and not locatable. She is seeking relief for a dissolution of her civil union with a partner she has not had contact with in many years. Petitioner seeks this Court declare Florida's ban on same-sex marriage unconstitutional so that she can avail herself of the same rights that all citizens

in Florida have with regard to recognizing their out of state marriages. She has a bona fide, actual and present practical need to have the ban on same-sex marriage declared unconstitutional so that she can have her civil union dissolved in Florida.

IV. Recognition of Out-Of-State Marriage or Civil Union

Petitioner is seeking that this Court dissolves her out-of-state civil union so that she can legally marry her new partner. In a case cited by Petitioner, the Massachusetts Supreme Court held that a civil union is the equivalent of marriage, and that the state must recognize the legal union pursuant to full faith and credit, just as other out-of-state and foreign marriages are recognized. Elia-Warnken v. Elia, 463 Mass. 29 (2012). The State of Florida, in its memorandum in opposition, argues that no Florida court has ruled that a civil union is the same as a marriage. The State is correct in stating the obvious, that no court in Florida has held as such, however, no appellate court has ruled that a civil union is not the equivalent of a marriage, rendering this issue one of first impression. Cases of first impression occur with regularity in courts all over the State of Florida and the United States.

This issue is analogous to Florida's recognition of common law marriage from other states. In Florida, a common law marriage occurring after 1968 is not recognized. Anderson v. Anderson, 577 So. 2d 658, 660 (Fla. 1st DCA 1991). However, out-of-state common law marriages that are sanctioned in the states where the marriages were formed are recognized. Smith v. Anderson, 821 So. 2d 323, 325 (Fla. 2d DCA 2002). Out-of-state marriages are recognized in Florida pursuant to the full faith and credit clause of the Constitution. Petitioner seeks to avail herself of the same legal rights that opposite-sex married couples have in the recognition of their out-of-state marriages or civil unions.

Further, in Brenner v. Scott, the federal court, ruling on the validity of out-of state same sex marriages, criticized the State's argument that Florida has a right to invoke their own laws governing marriage, which must be given deference. 999 F. Supp 1278, 1287 (N.D. Fla. 2014). However, where out-of-state marriages are concerned Florida refuses to give deference to those valid and lawful unions entered into in those states. Id.

V. The Merits

The State of Florida, pursuant to Article I, § 27 of the Florida Constitution and §741.212, Fla. Stat., prohibits recognition of same-sex civil unions performed in other states. The United States Supreme Court in Windsor recently addressed the issue of whether the federal government's legislation regarding marriage rights must also recognize same-sex marriages. 133 S. Ct. at 2693. The Windsor Court held that state sanctioned same-sex married couples must be treated the same as opposite-sex married couples with regard to federal legislation such as the Defense of Marriage Act. Id. at 2693. Notably, the Windsor Court held that out-of-state same-sex marriage recognition is a protected right under the Constitution, but fell short of clarifying whether out-of-state marriage recognition is a fundamental right. Id. at 2696.

In Brenner v. Scott, the court, relying on the U.S. Supreme Court's decision in Windsor and other federal decisions interpreting that ruling, held that Florida's refusal to allow same-sex marriages or to recognize same-sex marriages was unconstitutional. 999 F. Supp 2d. 1278 (N.D. Fla. 2014). In its ruling the court stated:

> The Supreme Court struck down part of the federal Defense of **Marriage** Act last year. *United States v. Windsor*, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013). Since that decision, 19 different federal courts, now including this one, have ruled on the constitutionality of state bans on same-**sex marriage**. The result: 19 consecutive victories for those challenging the bans. Based on these decisions, gays and lesbians, like all other adults, may choose a life partner and

> dignify the relationship through **marriage**. To paraphrase a civil-rights leader from the age when interracial **marriage** was first struck down, the arc of history is long, but it bends toward justice.

Id. at 1281. The Brenner court held that marriage is a fundamental right "requiring the Fourteenth Amendment's Due Process and Equal Protection Clauses," and that "Florida's same–sex marriage provisions ... must be reviewed under strict scrutiny, and that, ... the provisions are unconstitutional." Id. at 1281-1282. The court cited several recent Federal Circuit decisions and found those to be controlling. See, Bostic v. Schaefer, 760 F.3d 352 (4th Cir. July 28, 2014); Bishop v. Smith, 760 F.3d 1070 (10th Cir. July 18, 2014); and Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 2014).

By failing to recognize Petitioner's out-of-state union her constitutional right to due process and equal protection under the law is violated. Florida's refusal to recognize Petitioner's union is tantamount to banning her from marrying someone of the same sex. Accordingly, Florida's ban on same-sex marriage and refusal to recognize out-of-state same-sex marriages violates Petitioner's fundamental right to marry under the due process clause and discriminates based on sexual orientation, which violates the equal protection clause.

VI. Due Process Challenge

1. Fundamental Right To Marry

The due process clause of the Fourteenth Amendment guarantees that all citizens have certain fundamental rights. See, Planned Parenthood v. Casey, 505 U.S. 833, 846-47, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992). Petitioner contends that the right to marry is a fundamental right. The United States Supreme Court has held that marriage is a fundamental right protected by the Constitution. Turner v. Safley, 482 U.S. 78, 95,

(1987); Loving v. Virginia, 388 U.S. 1, 12 (1967). The due process clause of the Fourteenth Amendment protects ones liberty, which includes the fundamental right to marry. The Supreme Court has ruled on numerous occasions that the right to marry is a central part of the liberty protected by the due process clause. Meyer v. Nebraska, 262 U.S. 390, 399, (1923). Also see, Turner, 482 U.S. at 95 ("[T]he decision to marry is a fundamental right."); Zablocki v. Redhail, 434 U.S. 374, 98 S. Ct. 673, 54 L. Ed. 2d 618 (1978) ("[T]he right to marry is of fundamental importance for all individuals."); Cleveland Bd. of Educ. v. La Fleur, 414 U. S. 632, 639-40 (1974) (the Court recognizes freedom of personal choice in matters of marriage and family life as a liberty protected by the due process clause.); United States v. Kras, 409 U. S. 434, 446 (1973); Maynard v. Hill, 125 U. S. 190, 206 and 211 (1888) (marriage is the "most important relation in life" and "the foundation of the family and of society"); Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (the Court lists fundamental rights and marriage is the first one).

2. Standard of Review

The states regulate fundamental rights, such as marriage, however the states cannot violate those protected rights. Windsor, 113 S. Ct. 2675, 2680, 2691 (2013); Loving , 388 U. S. at 7. The Supreme Court has held that when a statutory classification prohibits an individual's fundamental rights, the statute must be supported by an important state interest and must be closely tailored to those interests. Zablocki, 434 U.S. at 388. The Supreme Court has also held that regulating a constitutionally protected decision, such as whom one shall marry, must be predicated on legitimate state concerns. Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990) (marriage is a matter of individual choice); Roberts v. U.S. Jaycees, 468 U.S. 609, 620,

104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984) ("[T]he Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse.") Accordingly, the standard of review is strict scrutiny as the ban on same-sex marriage involves a restriction on the fundamental right to marriage.

3. The State of Florida may not infringe on an individual's fundamental rights

The State has argued that the same-sex marriage ban is supported by history and tradition. That is not a legitimate state concern. Many courts have held that tradition alone does not constitute a rational basis for any law. Pareto v. Ruvin, Case No. 14-1661 CA 24 (11th Cir. Ct. July 25, 2014); Brenner v. Scott, 999 F. Supp 2d 1278, 1289 (N.D. Fla. 2014); Lawrence v. Texas, 539 U.S. 558, 602, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003); De Leon v. Perry, 975 F. Supp at 655 (W.D. Texas 2014). The Pareto Court held that denying same-sex couples the right to marry based on history and tradition is neither compelling nor a legitimate governmental interest. Pareto, at 19. Also see, Golinski v. U. S., Office of Pers. Mgmt., 824 F. Supp. 2d 968 (N.D. Cal. 2012) (the argument that marriage as defined is set in stone is not a rational justification); Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 967 (N.D. Cal. 2010) (states must have an interest other than the fact of tradition); Williams v. Illinois, 399 U.S. 235, 239, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970) ("Neither the antiquity of a practice nor the fact of steadfast legislative and judicial adherence to it through the centuries insulates it from constitutional attack."); Bostic v. Schaefer, 760 F.3d 352 (4th Cir. July 28, 2014); Bishop v. Smith, 760 F.3d 1070 (10th Cir. July 18, 2014); and Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 2014).

The State has argued that the ban on same sex marriage protects children. Florida Adoption Law recognizes the right of same-sex couples to adopt and raise children. The court in Fla. Dept. of Children & Families v. Adoption of X.X.G., noted that there was a plethora of research on the issue of childrearing by same-sex couples and the research indicates that there were no differences in the parenting of homosexuals and heterosexuals. 45 So. 3d 79, 86-87 (Fla. 3d DCA 2010). Additionally, the State argues that the same–sex marriage ban furthers responsible and natural procreation. However, all states allow infertile individuals, elderly people, and those who choose not to procreate to get married. Brenner v. Scott, 999 F. Supp at 1289. Pareto, at 21-22; De Leon, 975 F. Supp. 2d at 654. In applying strict scrutiny to this burden on liberty interests, restricting same-sex marriage does not serve a legitimate state interest in promoting procreation or childrearing and therefore is not rationally related to that interest. Perry, 704 F. Supp. 2d at 972. Further, the ban nullifies the legal import of same-sex out-of-state marriages, which can stigmatize the children of same-sex couples. De Leon, 975 F. Supp at 655.

The ban on marriage recognition of same-sex couples denies Petitioner's fundamental right to marry. The ban is not supported by any state interest, and certainly not by any "sufficiently important" interest that would justify the restriction. Zablocki, 434 U. S. at 388. Florida's ban on same-sex marriage is unconstitutional as it violates the due process clause of the Fourteenth Amendment. Every federal court to address this issue since the Supreme Court's decision in Windsor, as well as several recent decisions in the Florida Circuit Courts, has found that denying same-sex couples the fundamental right to marry violates due process. Bostic v. Schaefer, 760 F.3d 352 (4th Cir. July 28,

2014); Bishop v. Smith, 760 F.3d 1070 (10th Cir. July 18, 2014); Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 2014); Wolf v. Walker, 986 F. Supp. 2d 982 (2014); De Leon v. Perry, 975 F. Supp. 2d 632 (W. D. Tex. 2014); Love v. Beshear, 989 F. Supp 2d 536 (W.D. Ken. 2014); Baskin v. Bogan, 766 F. 3d 648 (7 Cir. 2014); Whitewood v. Wolf, 992 F. Supp 2d 410 (M.D. Penn. 2014); Geiger v. Kitzhaber, 2014 U.S. App. LEXIS 68171 ; Latta v. Otter, 2014 U.S. App. LEXIS 66417; DeBoer v. Snyder, 973 F. Supp 2d 757, 632, 647-49 (W. D. Tex. 2014; Obergefell v. Wymyslo, 962 F. Supp. 2d 968 (S. D. Ohio 2013). Parcto v. Ruvin, Case No. 14-1661 CA 24 (11th Cir. Ct. July 25, 2014); Hunstman v. Heavlin, Case No. 2014-CA-305-K (16th Cir. Ct. July 17, 2014).

4. Equal protection

Just as the states cannot deprive individual liberty pursuant to the Fourteenth Amendment, the states cannot deny any person the equal protection of the laws. The equal protection clause commands that no state laws shall deny any person the equal protection of the laws. See, U. S. Const. amend. XIV, § 1. The equal protection clause requires states to treat all persons equal regardless of his or her status. Essentially, all laws must be equal in operation to all people. City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985); Cruzan v. Director, Missouri Dep't of Health, 497 U.S. 261 (1990); Railway Express Agency v. People of State of New York, 336 U.S. 106 (1949). Equal protection under the laws means that all persons similarly situated should be treated alike. City of Cleburne, Tex., 473 U.S. at 439 (1985).

5. Standard of Review

The standard of review for equal protection claims is generally one of rational basis review; however, the Supreme Court has applied a heightened standard of review

for suspect classifications such as race, alienage, and national origin. Massachusetts Board of Retirement v. Murgia, 427 U. S. 307 (1976). When strict scrutiny review applies the government must show that the classification is "narrowly tailored" to further a "compelling" [State] interest. Parents Involved in Community Schools v. Seattle School District 1; 551 U. S. 701, 720 (2007). The Supreme Court has also applied an intermediate scrutiny for certain classifications, such as those based on sex. These are "quasi-suspect" classifications, and the review is an intermediate scrutiny, whereby the classifications must be "substantially related" to the achievement of an "important governmental objective." United States v. Virginia, 518 U. S. 515, 524 (1996).

In the recent decision in Wolf the Federal Court applied a "quasi-suspect" intermediate review pursuant to the Plaintiffs' claims that the ban on same-sex marriage discriminated based on sexual orientation. 986 F. Supp at 86-87. Other federal courts and state courts have applied a heightened level of scrutiny as well. See, Bachr v. Lewin, 852 P. 2d 44, 67 (1993); Golinski, 824 F. Supp. 2d at 985-90; Griego v. Oliver, 316 P. 3d 865, 884 (N.M. 2013); Obergefell, 962 F. Supp at 986-991; SmithKline Beecham Corp., v. Abbott Labs, 740 F. 3d 471, 481 (9th Cir. 2014); Windsor v. U. S., 699 F. 3d 169, 185 (2d Cir. 2012); also see, Kerrigan v. Comm'r of Pub Health, 957 A. 2d 407, 432 (Conn. 2008); Varnum v. Brien, 763 N. W. 2d 862, 885-96 (Iowa 2009).

The Supreme Court in Windsor found that failing to recognize out-of-state marriages and denying federal benefits to same-sex couples married under the laws of states that allow same-sex marriages unfairly discriminates against same-sex couples. 133 S. Ct. 2675. Other courts have interpreted the review standard applied by the Supreme Court in Windsor as one that was "unquestionably higher than rational basis review."

SmithKline Beecham Corp., 740 F. 3d at 481. Some courts found the standard of review to not be heightened, such as De Leon v. Perry, but nonetheless found that the state's interest did not pass even a rational basis test. 975 F. Supp at 652.

Notwithstanding the above analysis, when determining the proper standard for review in this case this Court is bound by the Florida Supreme Court decision in D.M.T. v. T. M. H., which held that under the Florida Constitution gender is recognized as a specific class, but sexual orientation is not. 129 So. 3d 320, 341-342 (Fla. 2013). Accordingly, the Court did not apply a heightened scrutiny to Florida's equal protection clause. Id. As a result this Court is bound to follow Florida law and cannot review the Petitioner's equal protection claim under a "quasi-suspect" standard but must do so under a rational basis review. Also See, Pareto at 28. Notably, in Pareto the court suggested that the question of level of scrutiny to be applied to the claim of equal protection as it applies to sexual orientation should be revisited on appeal, this court agrees. Id. at 31.

6. The State of Florida cannot deny equal protection under the law

In reviewing the previous arguments that have been espoused by the State in other similar cases, and as mentioned previously in this order, even under a rational basis review the same-sex marriage ban and refusal to recognize out-of-state same-sex marriage violates equal protection as it does not rationally further any legitimate state interest. In evaluating the previously stated state interests of protecting children and procreation, this Court finds no rational relation to those interests. Instead the ban discriminates against same-sex couples by questioning their skill in parenting while the law does not question opposite sex couples abilities to parent. See, Perry v. Schwarzenegger, 704 F. Supp. at 967 ("Like opposite-sex couples, same-sex couples

have happy, satisfying relationships and form deep emotional bonds and strong commitments to their partners."); Varnum v. Brien, 763 N.W. 2d at 899 (noting that there is abundant evidence proposing that the interests of children are served equally by same-sex and opposite-sex parents). Further, so long as opposite sex couples can marry without government analysis of their right to procreate, then so can same-sex couples marry without an analysis of their right to procreate. See, Golinski, 824 F. Supp 2d at 993 ("The ability to procreate cannot and has never been a precondition to marriage.").

In the instant case the Petitioner seeks to have her out-of-state civil union recognized. In Windsor, the Supreme Court invalidated the Defense of Marriage Act (DOMA), a law that prohibited federal recognition of same-sex marriages authorized under state law. 133 S. Ct. 2675 (2013). The Court repeatedly emphasized throughout the opinion that DOMA imposes a disability on same-sex couples, is demeaning to same-sex couples and violates their dignity while lowering their status. 133 S. Ct. at 2692, 2695. The Supreme Court held that state-sanctioned same-sex married couples cannot be treated differently than state-sanctioned opposite-sex married couples. 133 S. Ct at 2693.

In Brenner, the Florida Federal Court held that the ban on same-sex marriage in Florida violates Due Process and Equal Protection and held that out-of-state same-sex marriages must be recognized. Also See, De Leon v. Perry, 975 F. Supp 632 (W. D. Tex. 2014) (court held that Texas law, which refuses to recognize out-of-state same-sex marriage, violates due process and the equal protection clause of the Constitution); Obergefell v. Wymyslo, 962 F. Supp. 2d 968 (S. D. Ohio 2013).

There are tangible benefits of being married that same-sex couples can enjoy in the states that recognize their marriage. There are legal, social and financial benefits that

arise from having a marriage license, and these benefits are significant. Denying those tangible benefits to same-sex couples deprives them of the same rights afforded to opposite-sex couples without sufficient grounds to do so. Florida in essence is failing to recognize Petitioner's Vermont civil union and as such she does not have the right to dissolve a legal union that holds her back from marrying another. The same-sex marriage ban denies her the right to dissolve her marriage, a right that is not denied to opposite-sex couples who were married out-of-state.

Florida cannot define marriage in a way that denies its citizens the right to make the choice as to whom to marry, nor may it deny equal status and dignity to each citizen's decision. Windsor, 133 S. Ct. at 2689. As such, this Court finds that Article I, § 27 of the Florida Constitution, and Fla. Sta. § 741.212, which bans same-sex couples from marrying in Florida and fails to recognize out-of-state same-sex unions, violates the due process protections of the Fourteenth Amendment and also violates the federal constitutional guarantee of equal protection. As such, these laws are void and unenforceable.

The State argues that the decision in Baker v. Nelson, 409 U.S. 810 (1972), precludes this Court from ruling that the same-sex ban is unconstitutional. However, several federal courts including the Florida court in Brenner have concluded that intervening doctrinal developments have all but abated the precedence of Baker. Brenner, 999 F. Supp at 1290-91, citing, Hicks v. Miranda, 422 U.S. 332, 344-45 (1975).

Conclusion

This Court's Order in declaring the same-sex marriage ban unconstitutional is the result of legal analysis of the laws of the federal government and the State of Florida. The

decision is a result of applying the United States Constitution and all Florida laws binding on this Court to the facts. The ruling is thus based on the law as applied to the facts. The Court is well aware of the emotionally charged environment behind this important issue. However, politics and emotionality cannot rule, it is the laws of our government that create the free society that we enjoy. The judicial role is to rule by applying the law to the facts with neutrality and impartiality.

This Court finds that the issue here is not whether there is a right to same-sex marriage but instead whether there is a right to marriage from which same-sex couples can be excluded. The State of Florida cannot ignore the status and dignity afforded to opposite-sex couples, who were married out-of-state, and not extend those same rights, dignities and benefits to same-sex couples similarly situated.

The Court's decision does not speak to the views of society on traditional beliefs about marriage, religious beliefs about marriage, or morality. The decision is based on legal precedents regarding whether the State of Florida can intrude without a legitimate purpose on the fundamental right to marry and the right to have an out-of-state same-sex civil union recognized. This Court addresses the issues of liberty and equality and finds that without a rational relation to a legitimate state interest, Florida cannot impose inequality under the Constitution.

Our country has evolved each generation, and the generation before is often baffled at the changes. Setting aside personal biases, feelings, beliefs and anxieties, and embracing change is often difficult but essential to ensuring that all people are treated fairly under our Constitution. Our country has always strived to recognize the rights of all people. Equality is the cornerstone of our nation. In pursuit of that ideal comes the

often-uncomfortable feeling of change. We have learned that over time change becomes apart of what this great nation is all about.

The tides are turning on the issue of same-sex marriage throughout this country. Since the 2013 ruling of the Supreme Court in Windsor, there have been numerous decisions of courts throughout this country and none have found that same-sex marriage bans pass constitutional muster. To deny same-sex couples the right to enjoy the same laws, benefits and protections of opposite-sex couples without a rational governmental interest unduly violates their due process rights and their equal protection under the laws. To discriminate based on sexual orientation, to deny families equality, to stigmatize children and spouses, to hold some couples less worthy of legal benefits then others based on their sexual orientation, to deny individuals tax credits, marital property rights, the ability to dissolve their unions from other jurisdictions is against all that this country holds dear, as it denies equal citizenship. Marriage is a well-recognized fundamental right, all people should be entitled to enjoy its benefits.

Accordingly, it is hereby ORDERED and ADJUDGED that:

1. Florida's same-sex marriage bans violate the Due Process and Equal Protection Clauses of the United States Constitution. The Plaintiff's Motion for Declaratory Judgment is GRANTED.

2. Florida's explicit failure to recognize legal out of state civil unions, without any rational basis, violates the Due Process and Equal Protection Clauses of the United States Constitution.

3. Article 1, section 27 of Florida's Constitution is void and unenforceable.

4. Florida Statute 741.212 is void and unenforceable.

DONE and ORDERED in Chambers, Fort Lauderdale, Broward County, Florida on December 8, 2014.

DALE C. COHEN

DEC 0 8 2014

A TRUE COPY

Dale C. Cohen
Circuit Court Judge

Copies to:
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