**UNITED STATES DISTRICT COURT**
**DISTRICT OF SOUTH CAROLINA**
**COLUMBIA DIVISION**

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| Katherine Bradacs and Tracie Goodwin,<br><br>Plaintiffs,<br><br>vs.<br><br>Nimrata ("Nikki") Randhawa Haley, in her official capacity as Governor of South Carolina; Alan M. Wilson, in his official capacity as Attorney General of South Carolina,<br><br>Defendants. | ) | Civil Action No.: 3:13-cv-02351-JMC<br><br>**Motion for Summary Judgment** |

Plaintiffs, by and through their attorneys, move the Court pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, for an Order directing entry of summary judgment in favor of Plaintiffs and against Defendant, on the causes of action and for the relief sought in Plaintiffs' Complaint.

This motion is made on the ground that no genuine triable issue of material fact exists, and that Plaintiffs are entitled to judgment as a matter of law.

This motion is based on the files, exhibits, and pleadings in this proceeding, together with the Memorandum of Law attached hereto as Exhibit 1.

October 20, 2014

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFFS**

**United States District Court**
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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the Plaintiffs Katherine Bradacs and Tracy Goodwin submit their brief in support of their motion for summary judgment.

## INTRODUCTION

In the sixteen months since the United States Supreme Court decided *U.S. v. Windsor*, 133 S.Ct. 2675 (2013), there have been more than 40 federal and state court decisions striking down bans on marriage equality. Five rulings have been issued by federal appellate courts covering four circuits, dozens have been issued by federal district courts, and at least fourteen have been issued by state courts.[1] Only two

[1] A complete list of the significant decisions, in reverse chronological order, can be found at: http://www.freedomtomarry.org/pages/marriage-rulings-in-the-courts [last visited October 19, 2014].

On October 17, 2014, US Attorney General Eric Holder announced that the

decisions have upheld a state's same-sex marriage ban.[2] **EXHIBIT A** lists the most significant decisions. As of this date, October 20, 2014, 32 states and the District of Columbia recognize marriage equality: a larger portion of the United States population lives in jurisdictions that recognize same-sex marriage than do not. **EXHIBIT C**.

For this case now before this Court, the most important of these is *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014). In *Bostic*, the Court of Appeals, by Floyd, J., held that Virginia's marriage laws violated the Due Process and Equal Protection Clauses to the extent that they prevented same-sex couples from marrying and prohibited Virginia from recognizing same-sex couples' lawful out-of-state marriages.

On October 6, 2014, the United States Supreme Court refused to hear the appeal in *Bostic v. Schaefer* (one among the seven cases docketed with the court that struck down same-sex marriage bans in five states: Indiana, Oklahoma, Utah, Virginia, and Wisconsin). *McQuigg v. Bostic*, No. 14-251, 2014 WL 4354536 (U.S., Oct. 6, 2014); *Schaefer v. Bostic*, No. 14-225, 2014 WL 4230092 (U.S., Oct. 6, 2014); *Rainey v. Bostic*, No. 14-153, 2014 WL 3924685 (U.S., Oct. 6, 2014). The Fourth Circuit issued its mandate on October 6, 2014. *Bostic v. Schaefer*, 2014 WL 4960335 (4th Cir., Oct. 6, 2014). Arguably, by leaving in place the now-authoritative last words on same-sex

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federal government would recognize same-sex marriages in Colorado, Indiana, Nevada, Oklahoma, Utah, Virginia, and Wisconsin, bringing the total to 26 states plus the District of Columbia. http://www.justice.gov/opa/pr/after-supreme-court-declines-hear-same-sex-marriage-cases-attorney-general-holder-announces.

[2] *Robicheaux v. Caldwell*, 2 F.Supp.3d 910 (E.D. La. 2014); *Borman v. Pyles-Borman*, No. 2014-CV-36 (Cir. Ct. Roane County, Tenn., August 5, 2014), available at: (http://freedomtomarry.org/page/-/files/pdfs/TennesseDivorceRulingLoss.pdf) (last visited Oct. 20, 2014). The plaintiffs in *Robicheaux* have appealed to the Fifth Circuit, which has expedited the appeal. *Robicheaux v. Caldwell*, No. 14-31037.

marriage by three U.S. Courts of Appeals (the Fourth, Seventh, and Tenth Circuits), same-sex couples in West Virginia, North Carolina, South Carolina, Colorado, Kansas and Wyoming could also now marry. Recognizing the inevitable, Colorado cleared the way for same-sex marriage on October 7, 2014, and West Virginia cleared the way for same-sex marriage on October 9, 2014. In light of *Bostic*, on October 10, 2014, the United States District Court, Western District of North Carolina, in *General Synod of the United Church of Christ v. Resinger*, ___ F.Supp.3d ___, 2014 WL 5092288 (W.D. N.C., Oct. 14, 2014), per Cogburn, J., held that as a matter of law, North Carolina's ban on same-sex marriage and same-sex marriage recognition violated the 14th Amendment's due process and equal protection guarantees. *Accord Fisher-Borne v. Smith*, ___ F.Supp.3d ___, 2014 WL 5138922 (M.D. N.C., Oct. 14, 2014). This left South Carolina *alone* in this Circuit refusing to recognize the rights of persons of the same sex to marry.

Also recognizing the inevitable, on Wednesday, October 8, 2014, Charleston (South Carolina) County Probate Court Judge Irvin G. Condon began accepting applications for marriage licenses from same-sex couples. On Thursday, October 9, 2014, however, the South Carolina Supreme Court ordered state probate courts not to issue same-sex marriage licenses until this Honorable Court decides the issue.[3] *State ex rel. Wilson v. Condon*, Order (S.C. Sup. Ct. filed Oct. 9, 2014), 2014 WL 5038396.

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[3] Kansas followed the same pattern: The Johnson County (Kansas) clerk announced it would issue same-sex marriage licenses, and the state obtained a stay preventing the issuance of such licenses until the Kansas federal court could rule. *State ex rel. Schmidt v. Moriarty*, No. 112,590 (Kan. Sup. Ct. filed Oct. 10, 2014). http://www.kscourts.org/State_v_Moriarty/112590.pdf.

In addition, 17 states legally recognize same-sex marriages.[4] While "[t]he arc of the moral universe is long, it bends toward justice"[5] - albeit slowly for these Plaintiffs. It is now this Honorable Court's turn to consider South Carolina's constitutional and statutory ban on same-sex marriage,[6] and consign it to "the dustbin of history."[7]

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[4] Six states have legalized same-sex marriage through court decisions (California, Connecticut, Iowa, Massachusetts, New Jersey, and New Mexico); eight have done so through legislation (Delaware, Hawaii, Illinois, Minnesota, New Hampshire, New York, Rhode Island, and Vermont); and three have legalized same-sex marriage by popular vote (Maine, Maryland, and Washington). The District of Columbia also legalized same-sex marriage through legislation.

[5] Martin Luther King, Jr. (March 25, 1965, Montgomery, Alabama).

[6] This Court must reject any argument this case is controlled by *Baker v. Nelson*, 409 U.S. 810 (1972) (Supreme Court stated that challenge to Minnesota law defining marriage as between a man and a woman did not raise a substantial federal question). The Court's decisions in *Romer v. Evans*, 517 U.S. 620 (1996), and *Lawrence v. Texas*, 539 U.S. 558 (2003), cast doubt on the proposition that *Baker* commands lower courts to treat challenges to same-sex marriage prohibitions as matters not raising a substantial federal question. The Court's more recent decision in *United States v. Windsor*, 133 S.Ct. 2675 (2013), eliminates all uncertainty. The majority opinion striking down the federal Defense of Marriage Act ("DOMA") holds that DOMA's definition of marriage as between members of different genders for purposes of all federal laws required the Supreme Court "to address whether the resulting injury and indignity (to same-sex couples) is a deprivation of an essential part of the liberty protected by the Fifth Amendment." Our own Fourth Circuit Court of Appeals concluded that *Baker* was depredated of its precedential authority:

> * * * The district court determined that doctrinal developments stripped *Baker* of its status as binding precedent. *Bostic*, 970 F.Supp.2d at 469–70. Every federal court to consider this issue since the Supreme Court decided *United States v. Windsor*, ––– U.S. ––––, 133 S.Ct. 2675, 186 L.Ed.2d 808 (2013), has reached the same conclusion. *See Bishop v. Smith*, Nos. 14–5003, 14–5006, ––– F.3d ––––, ––––, 2014 WL 3537847, at *6–7 (10th Cir. July 18, 2014); *Kitchen v. Herbert*, No. 13–4178, ––– F.3d ––––, ––––, 2014 WL 2868044, at *7–10 (10th Cir. June 25, 2014); *Love v. Beshear*, 989 F.Supp.2d 536, ––– (W.D.Ky.2014); *Baskin v. Bogan*, Nos. 1: 14–cv–00355–RLY–TAB, 1: 14–CV–00404–RLY–TAB, ––– F.Supp.2d ––––, ––––, 2014 WL 2884868, at *4–6 (S.D.Ind. June 25,

2014); *Wolf v. Walker*, 986 F.Supp.2d 982, 989–91 (W.D.Wis.2014); *Whitewood v. Wolf*, No. 1: 13–cv–1861, ––F.Suup.2d ––––, ––––, 2014 WL 2058105, at *5–6 (M.D.Pa. May 20, 2014); *Geiger v. Kitzhaber*, Nos. 6:13–cv–01834–MC, ––– F.Suup.2d ––––, ––––– n. 1, 6:13–cv–02256–MC, 2014 WL 2054264, at *1 n. 1 (D.Or. May 19, 2014); *Latta v. Otter*, No. 1: 13–cv–00482–CWD, ––– F.Supp.2d ––––, ––––, 2014 WL 1909999, at *8–9 (D.Idaho May 13, 2014); *DeBoer v. Snyder*, 973 F.Supp.2d 757, 773 n. 6 (E.D.Mich.2014); *De Leon v. Perry*, 975 F.Supp.2d 632, 647–49 (W.D.Tex.2014); *McGee v. Cole*, No. 3:13–24068, ––– F.Supp.2d ––––, ––––, 2014 WL 321122, at *8–10 (S.D.W.Va. Jan. 29, 2014).

* * *

The Supreme Court's willingness to decide *Windsor* without mentioning *Baker* speaks volumes regarding whether *Baker* remains good law. The Court's development of its due process and equal protection jurisprudence in the four decades following *Baker* is even more instructive. On the Due Process front, *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003), and *Windsor* are particularly relevant. In *Lawrence*, the Court recognized that the Due Process Clauses of the Fifth and Fourteenth Amendments "afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.... Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do." *Id.* at 574, 123 S.Ct. 2472. These considerations led the Court to strike down a Texas statute that criminalized same-sex sodomy. *Id.* at 563, 578–79, 123 S.Ct. 2472. The *Windsor* Court based its decision to invalidate section 3 of DOMA on the Fifth Amendment's Due Process Clause. The Court concluded that section 3 could not withstand constitutional scrutiny because "the principal purpose and the necessary effect of [section 3] are to demean those persons who are in a lawful same-sex marriage," who—like the unmarried same-sex couple in *Lawrence*—have a constitutional right to make "moral and sexual choices." 133 S.Ct. at 2694–95. These cases firmly position same-sex relationships within the ambit of the Due Process Clauses' protection.

* * *

In light of the Supreme Court's apparent abandonment of *Baker* and the significant doctrinal developments that occurred after the Court issued its summary dismissal in that case, we decline to view *Baker* as binding precedent and proceed to the meat of the Opponents' Fourteenth Amendment arguments.

*Bostic v. Schaefer*, 760 F.3d at 373-75 (emphasis added). The Tenth Circuit in *Kitchen v. Herbert*, 755 F.3d 1193, 1204–08 (10th Cir. 2014), the Seventh Circuit in *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014), and the Ninth Circuit in *Latta v.Otter*, ___ F.3d ___, 2014 WL 4977682, *3 (9th Cir., Oct. 7, 2014), joined these other federal appellate courts in recognizing that *Baker* does not foreclose consideration of claims challenging the constitutionality of state laws forbidding same-sex marriages.

[7] The phrase, first popularized by Leon Trotsky, is now applied to bans on same-sex marriage:

> Most importantly, though, the taboo will die because the scare tactics, propaganda, and misinformation of those who would hang on to the maledictions and stereotypes have proven to be so patently false, malicious, and absurd. Most decent people just hate being lied to. Indeed, a not-too-distant generation of Montanans will consign today's decision, the Marriage Amendment, and the underlying intolerance to the dustbin of history and to the status of a meaningless, shameful, artifact.

*Donaldson v. State*, 367 Mont. 228, 322, 292 P.3d 364, 422 (2012). *See also, e.g.*, *Whitewood v. Wolf*, 992 F.Supp.2d 410 (M.D. Pa. 2014) ("In the sixty years *Brown* was decided, 'separate' has thankfully faded into history, and only 'equal' remains. Similarly, in future generations the label same-sex marriage will be abandoned, to be replaced simply by marriage. We are a better people than what these laws represent, and it is time to discard them into the ash heap of history.").

## STATEMENT OF FACTS

Plaintiffs Bradacs and Goodwin are residents of Lexington County, South Carolina. They were legally married in the District of Columbia on April 6, 2012. Twin children, "B" and "C," were born between them in 2012, with Goodwin being the gestational carrier using Bradacs's ova. Bradacs also has a minor son, "J," (born 2001) from a previous relationship. The Plaintiffs' marriage is legally recognized in the District of Columbia and by the federal government by virtue of the decisions in *United States v. Windsor*, 133 S.Ct. 2675 (U.S. 2013) and *Bostic v. Shaefer*, 760 F.3d 352 (4th Cir. 2014); however, the State of South Carolina refuses to recognize their marriage.

Bradacs has been a law enforcement officer in South Carolina since 2006 and has been a State Trooper with the Highway Patrol since 2011. Goodwin is also a public employee and a former law enforcement officer. Furthermore, Goodwin is an Air Force veteran, having been deployed to Saudi Arabia during Operation Southern Watch in 1999. She is 80% disabled and receives disability from the VA.

Because their marriage is not recognized in South Carolina, the Plaintiffs have incurred the following direct injuries (**Exhibit D** and **Exhibit E)**: Neither can nominate the other as a spouse on her health or dental insurance policy through the State of South Carolina, although they have attempted to do so; up until well after the filing of this lawsuit, Bradacs could not nominate her biological children on her health or dental insurance policy through the State of South Carolina, resulting in both children being placed on Medicaid; neither Plaintiff can claim "married" as an exemption on their State of South Carolina tax return, causing each Plaintiff the burden and expense of filing

separate State tax returns; until two weeks ago, Goodwin was unable to claim Bradacs as her spouse or Bradacs's son, J, as her step-son, for VA disability purposes, which caused a loss of additional VA disability income, including VA subsistence for school (benefits were not made retroactive to the date of their marriage); Bradacs was unable to claim the Family Medical Leave Act (FMLA) as a means to take leave from her employment to provide assistance to her spouse, Goodwin, after Goodwin's hand surgery; Bradacs was required to obtain a physician's statement proving she was the biological mother of B and C during Goodwin's delivery of the children, and only then was Bradacs able to take leave from her employment under the FMLA in order to attend her children's births; all of the Plaintiffs' minor children are under a cloud of social stigma by virtue of the State of South Carolina refusing to recognize Plaintiffs as a wedded couple or a legally recognized family unit; Bradacs cannot be added to the birth certificates for B and C as their biological mother without first obtaining a decree of adoption of her own children; Bradacs was not authorized to make medical care decisions on behalf of her infant son, B, who was born with a life-threatening medical condition because Bradacs was not listed on the child's birth certificate; Bradacs was required to provide written proof that she was the biological mother of her twin children in order to be present at their births (Exhibit 5); Bradacs is unable to nominate Goodwin as a spouse on her Police Officer Retirement Systems beneficiary designation form, and as a result, Goodwin cannot receive 100% of Bradacs's monthly survivor annuity benefit upon her untimely death; Goodwin cannot nominate Bradacs as a spouse on her state retirement beneficiary designation form so that Bradacs will receive a reduced

amount of Goodwin's retirement benefit or survivor benefits; because Bradacs is not recognized as Goodwin's spouse under the Veterans Administration loan regulations, she is required to provide a "gift letter" for any contributions toward the parties' home purchase and payments to avoid tax implications; because Bradacs is not listed on B's or C's birth certificates, she is required to obtain a decree of adoption or legal guardianship order over both children in order to obtain their school, medical, and related records; Goodwin cannot change her name to "Bradacs" without a court order.

Neither Plaintiff can make medical care decisions for the other, or discuss medical issues with either Plaintiff's healthcare providers without a healthcare power of attorney; neither Plaintiff can claim Social Security benefits from the other due to the other's untimely passing; Plaintiffs are denied the protections of the South Carolina Family Court system, particularly in setting child support, alimony or other support, division of assets, and otherwise maintaining the status quo pending any separation of the Plaintiffs; Plaintiffs face uncertainty as to who may receive priority for custody of their two children upon either Plaintiff's untimely passing or their separation should family members file petitions for custody of the minor children; Plaintiffs will be required to endure the hardship and impracticality of going to the District of Columbia or to some other jurisdiction, meet that jurisdiction's residency requirement, and then seek and obtain a judgment for divorce; Bradacs's biological children are unable to receive her line of duty death benefits without Bradacs obtaining a decree of adoption over her own biological children; neither Plaintiff is able to receive her intestate share of the other's probate estate as a surviving spouse should either Plaintiff pass away without a will; there is uncertainty over whether Bradacs may claim survivor benefits through the VA.

## ARGUMENT

### I. PROVISIONS UNDER REVIEW

In 1996, Congress enacted the Defense of Marriage Act, 28 U.S.C. § 1738C ("DOMA"), in reaction to the possibility that a state – specifically Hawaii – might authorize same-sex marriage. In *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993), the Supreme Court of Hawaii became the first court in the United States to recognize same-sex marriage. The events in Hawaii sparked a storm of controversy, and in response, a majority of states amended their marriage laws to prohibit same-sex marriage.

In 1996, the South Carolina Marriage Law was amended to expressly prohibit marriage for same-sex couples, and to prevent the recognition of valid same-sex marriages contracted elsewhere. South Carolina Code Ann. § 20-1-15, entitled "Prohibition of same sex marriage," provides, "A marriage between persons of the same sex is void ab initio and against the public policy of this State." *See also* S.C. Code Ann. § 20-1-10 (amended in 1996 to prohibit a man from marrying "another man," or a woman from marrying "another woman"). As a result, by declaring that a marriage between persons of the same sex is both (a) void ab initio and (b) against the public policy of this State, marriage is legally available only to opposite-sex couples in this State. Same-sex couples may not marry in South Carolina, and if they are married elsewhere, their marriages are not recognized in South Carolina.

Seven years later, the Massachusetts Supreme Judicial Court declared that the state's own ban on same-sex marriage violated their state constitution. *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309, 798 N.E.2d 941, 969 (2003). In May 2004,

Massachusetts began marrying same-sex couples. In response, anti-same-sex marriage advocates in many states initiated campaigns to enact constitutional amendments to protect "traditional marriage." States passing constitutional amendments banning same-sex marriage in 2004 include Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, North Dakota, Ohio, Oklahoma, Oregon, and Utah. Other states followed suit: in 2005, Kansas and Texas; in 2006 and 2007, Alabama, Colorado, Idaho, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin; in 2008, Arizona, California, and Florida; and in 2012, North Carolina.

The South Carolina Constitution was amended in 2007 to expressly prohibit marriage for same-sex couples, and to prevent the recognition of valid same-sex marriages contracted elsewhere:

> A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State. This State and its political subdivisions shall not create a legal status, right, or claim respecting any other domestic union, however denominated. This State and its political subdivisions shall not recognize or give effect to a legal status, right, or claim created by another jurisdiction respecting any other domestic union, however denominated. Nothing in this section shall impair any right or benefit extended by the State or its political subdivisions other than a right or benefit arising from a domestic union that is not valid or recognized in this State. This section shall not prohibit or limit parties, other than the State or its political subdivisions, from entering into contracts or other legal instruments.

S.C. Const. art. XVII, § 15. As a result, marriage in South Carolina is legally available only to opposite-sex couples. Same-sex couples may not marry in South Carolina, and if they are married elsewhere, their marriages are not recognized in South Carolina.

The legislative history of Section 20-1-10 (as amended), Section 20-1-15 and S.C. Const. art. XVII, § 15 suggests that these provisions were, in the words of *United*

*States v. Windsor*, specifically "designed to injure the same class the State seeks to protect" 133 S.Ct. at 2681, [that is, persons in state-recognized same-sex marriages], whose "interference with the equal dignity of same-sex marriages . . . was more than an incidental effect" but rather "was its essence." *Windsor*, 133 S.Ct. at 2693. Indeed, as Justice Scalia recognized in his dissent in *Windsor*, the same motivations and smoking guns of moral disapproval of gays and lesbians could readily be found in the legislative histories of the so-called "mini-DOMAs" widely enacted by states across the country. *Windsor*, 133 S.Ct. at 2707.

The Fourth Circuit recognized that the statutes and constitutional provisions in all the states in the Fourth Circuit were similar when describing the Virginia provisions:

> Three other states in this Circuit have similar bans: North Carolina, N.C. Const. art. XIV, § 6; N.C. Gen.Stat. §§ 51–1, 51–1.2; **South Carolina, S.C. Const. art. XVII, § 15; S.C.Code Ann. §§ 20–1–10, 20–1–15**; and West Virginia, W. Va.Code § 48–2–603. The Southern District of West Virginia has stayed a challenge to West Virginia's statute pending our resolution of this appeal. *McGee v. Cole*, No. 3:13–cv–24068 (S.D. W.Va. June 10, 2014) (order directing stay).

*Bostic v. Schaefer*, 760 F.3d at 368, n.1 (bold added). **EXHIBIT B** provides a comparison of the Virginia and South Carolina provisions.

## II. STANDING

Standing requires that the following three elements be met: (1) "the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;" (2) "there must be a causal connection between the injury and the conduct complained

of—the injury has to be fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court;" and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130 (1992). In regard to the first prong, the Supreme Court has explained that "[b]y particularized, [it] mean[s] that the injury must affect the plaintiff in a personal and individual way." *Id.* at 560 n. 1, 112 S.Ct. 2130.

In *Bostic v. Schaefer*, 760 F.3d at 370-72, our Fourth Circuit Court of Appeals considered the standing of Carol Schall and May Townley, women who were a couple since 1985 and who lawfully married in California in 2008. The Court made short shrift of any argument that Schall and Townley lacked standing:

> Schall and Townley also possess standing to bring their claims against Rainey. They satisfy the injury requirement in two ways. First, in equal protection cases—such as this case—"[w]hen the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, .... [t]he 'injury in fact' ... is the denial of equal treatment resulting from the imposition of the barrier[.]" *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993). The Virginia Marriage Laws erect such a barrier, which prevents same-sex couples from obtaining the emotional, social, and financial benefits that opposite-sex couples realize upon marriage. Second, Schall and Townley allege that they have suffered stigmatic injuries due to their inability to get married in Virginia and Virginia's refusal to recognize their California marriage. Stigmatic injury stemming from discriminatory treatment is sufficient to satisfy standing's injury requirement if the plaintiff identifies "some concrete interest with respect to which [he or she] [is] personally subject to discriminatory treatment" and "[t]hat interest independently satisf[ies] the causation requirement of standing doctrine." *Allen*, 468 U.S. at 757 n. 22, 104 S.Ct. 3315, abrogated on other grounds by *Lexmark Int'l, Inc. v. Static Control Components*, —— U.S. ——, 134 S.Ct. 1377, 188 L.Ed.2d 392 (2014). Schall and Townley point to several concrete ways in which the Virginia Marriage Laws have resulted in discriminatory treatment. For example, they allege that their marital status

> has hindered Schall from visiting Townley in the hospital, prevented Schall from adopting E. S.-T., and subjected Schall and Townley to tax burdens from which married opposite-sex couples are exempt. Because Schall and Townley highlight specific, concrete instances of discrimination rather than making abstract allegations, their stigmatic injuries are legally cognizable.
>
> Schall and Townley's injuries are traceable to Rainey's enforcement of the Virginia Marriage Laws. Because declaring the Virginia Marriage Laws unconstitutional and enjoining their enforcement would redress Schall and Townley's injuries, they satisfy standing doctrine's three requirements with respect to Rainey. In sum, each of the Plaintiffs has standing as to at least one defendant.

760 F.3d at 372.

The standing of the Plaintiffs in this case cannot be gainsaid. They have suffered the stigma *Bostic* described, and they have detailed in the Statement of the Facts above a myriad of concrete ways that South Carolina's laws result in discriminatory treatment.

*No* court has denied standing to a couple lawfully married in one jurisdiction to challenge the non-recognition of that status in a second jurisdiction. *E.g., De Leon v. Perry*, 975 F.Supp.2d at 646 ("Plaintiffs De Leon and Dimetman contend that because Texas does not recognize same-sex marriage, Dimetman could not be considered their child's legal parent unless she went through the long administrative and expensive process of adoption. The Court finds these monetary damages constitute a concrete, injury in fact suffered by Plaintiffs due to Texas' ban on same-sex marriage."). Indeed, in *Latta v. Otter*, ___ F.Supp.2d ___, 2014 WL 1909999, *29 n. 5 (D. Idaho, May 13, 2014), the Idaho district court tossed off in a footnote as regards to the standing of two couples who wished to have their out of state marriage recognized, "There is no dispute that Plaintiffs have standing to bring this lawsuit or, considering the relief requested, that Defendants are proper parties." *Accord Bishop v. Smith*, 760 F.3d 1070, 1077-78 (10th

Cir. 2014); *Brenner v. Scott*, 999 F.Supp.2d 1278 (N.D. Fla. 2014); *Whitewood v. Wolf*, 992 F.Supp.2d 410 (M.D. Pa. 2014).

## III. LEVEL OF SCRUTINY

Some courts have concluded that *Windsor* applied heightened scrutiny, *Latta v. Otter* (and *Sevcik v. Sandoval*), ___ F.3d ___, 2014 WL 4977682 (9th Cir., Oct. 7, 2014); *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 481 (9th Cir. 2014); *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); others have found that *Windsor* applied intermediate scrutiny. *Henry v. Himes*, ___ F.Supp.2d ___, 2014 WL 1418395 (S.D. Ohio, April 14, 2014); *Whitewood v. Wolf*, 992 F.Supp.2d 410 (M.D. Pa., May 20, 2014); *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013). Still others have determined that the *Windsor* Court applied rational basis review, *Love v. Beshear*, 989 F.Supp.2d 536 (W.D. Ky., July 1, 2014); *Deboer v. Snyder*, 973 F.Supp.2d 757 (E.D. Mich., March 21, 2014), a "more searching form of rational basis review" known colloquially as "rational basis with bite." *See* Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, 536 (1997) ("Many argue that the Court in these cases [(referring to *Romer v. Evans*, 517 U.S. 620 (1996), *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432 (1985), and other cases)] applied a different, more rigorous version of the rational basis test—one with 'bite.' The claim is that there is not a singular rational basis test but one that varies between complete deference and substantial rigor."). Courts that have relied on rational basis review to strike down laws barring same-sex marriage post-*Windsor* have tended to settle on this standard after concluding that *Windsor* was unclear on this point and that the issue need not be resolved because same-sex marriage bans violate even

rational basis. *See, e.g., Bourke v. Beshear*, 996 F.Supp.2d 542, 549 (W.D. Ky. 2014) (applying rational basis after concluding that *Windsor* did not definitively apply heightened scrutiny and that "the result in this case is unaffected by the level of scrutiny applied").

In *Baskin v. Bogan*, Judge Richard A. Posner described the heightened level of scrutiny to be applied thus:

> The approach is straightforward but comes wrapped, in many of the decisions applying it, in a formidable doctrinal terminology—the terminology of rational basis, of strict, heightened, and intermediate scrutiny, of narrow tailoring, fundamental rights, and the rest. We'll be invoking in places the conceptual apparatus that has grown up around this terminology, but our main focus will be on the states' arguments, which are based largely on the assertion that banning same-sex marriage is justified by the state's interest in channeling procreative sex into (necessarily heterosexual) marriage. We will engage the states' arguments on their own terms[.] . . . The difference between the approach we take in these two cases and the more conventional approach is semantic rather than substantive.

766 F.3d 648, 655-56 (7th Cir. 2014).

For simplicity's sake, the Plaintiffs argue that South Carolina's prohibitions against same-sex marriage and the recognition thereof must be judged under the strict scrutiny standard, as applied in *Bostic v. Schaefer*, 760 F.3d at 375-76. This level of scrutiny is entirely appropriate. Indeed, two decades ago, the South Carolina Court of Appeals noted that strict scrutiny is appropriate in the marriage context "where the obstacle to marriage is a direct one, *i.e.*, one that operates to preclude marriage entirely for a certain class of people." *Hamilton v. Board of Trustees of Oconee County*, 282 S.C. 519, 524, 319 S.E.2d 717, 720 (Ct. App. 1984).

Under strict scrutiny, a law "may be justified only by compelling state interests,

and must be narrowly drawn to express only those interests." *Carey v. Population Servs. Int'l*, 431 U.S. 678, 686, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1977). The Proponents bear the burden of demonstrating that the South Carolina marriage laws satisfy this standard, *see Fisher v. Univ. of Tex. at Austin*, 570 U.S. ___, 33 S.Ct. 2411, 2420 (2013), and they must rely on the laws' "actual purpose[s]" rather than hypothetical justifications, *see Shaw v. Hunt*, 517 U.S. 899, 908 n. 4, 116 S.Ct. 1894 (1996).

We now turn to the Plaintiffs' claims.

## IV. EQUAL PROTECTION

Plaintiffs argue that the South Carolina marriage laws violate the Fourteenth Amendment's Equal Protection Clause. The Equal Protection Clause "commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (quoting U.S. Const., amend. XIV., § 1). The clause must take into account the fact that governments must draw lines between people and groups. *See Romer v. Evans*, 517 U.S. 620, 631, 116 S.Ct. 1620 (1996).

Gradually, the United States Supreme Court has invalidated laws that single out gay and lesbian individuals for disparate treatment. *See U.S. v. Windsor,* 33 S.Ct. at 2692–96 (holding the DOMA's restrictions on same-sex couples unconstitutional as a deprivation of liberty); *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (overruling *Bowers v. Hardwick*, 478 U.S. 186 (1986), and finding the criminal anti-sodomy law an unconstitutional government intrusion on the personal and private life of consenting

adult individuals); *Romer v. Evans*, 517 U.S. 620 (1996) (invalidating a state law prohibiting local ordinances banning discrimination against gays and lesbians).

The reasoning and result in *Bostic v. Schaefer* must be followed here. In *Bostic*, the Court examined the equal protection claim of Schall and Townley, a couple who were legally married in another jurisdiction:

> First, in equal protection cases—such as this case—"[w]hen the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, .... [t]he 'injury in fact' ... is the denial of equal treatment resulting from the imposition of the barrier[.]" *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993). The Virginia Marriage Laws erect such a barrier, which prevents same-sex couples from obtaining the emotional, social, and financial benefits that opposite-sex couples realize upon marriage. Second, Schall and Townley allege that they have suffered stigmatic injuries due to their inability to get married in Virginia and Virginia's refusal to recognize their California marriage. Stigmatic injury stemming from discriminatory treatment is sufficient to satisfy standing's injury requirement if the plaintiff identifies "some concrete interest with respect to which [he or she] [is] personally subject to discriminatory treatment" and "[t]hat interest independently satisf[ies] the causation requirement of standing doctrine." *Allen*, 468 U.S. at 757 n. 22, 104 S.Ct. 3315, abrogated on other grounds by *Lexmark Int'l, Inc. v. Static Control Components*, —— U.S. ——, 134 S.Ct. 1377, 188 L.Ed.2d 392 (2014). Schall and Townley point to several concrete ways in which the Virginia Marriage Laws have resulted in discriminatory treatment. For example, they allege that their marital status has hindered Schall from visiting Townley in the hospital, prevented Schall from adopting E. S.-T., and subjected Schall and Townley to tax burdens from which married opposite-sex couples are exempt. Because Schall and Townley highlight specific, concrete instances of discrimination rather than making abstract allegations, their stigmatic injuries are legally cognizable.

760 F.3d at 372. After examining the Commonwealth of Virginia's arguments, the Court concluded:

> Because the Proponents' arguments are based on overbroad generalizations about same-sex parents, and because there is no link

> between banning same-sex marriage and promoting optimal childrearing, this aim cannot support the Virginia Marriage Laws. All of the Proponents' justifications for the Virginia Marriage Laws therefore fail, and the laws cannot survive strict scrutiny.
>
> For the foregoing reasons, we conclude that the Virginia Marriage Laws violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the extent that they prevent same-sex couples from marrying and prohibit Virginia from recognizing same-sex couples' lawful out-of-state marriages. We therefore affirm the district court's grant of the Plaintiffs' motion for summary judgment and its decision to enjoin enforcement of the Virginia Marriage Laws.

*Id.*, 760 F.3d at 384.

The same result must obtain here. As a matter of law, there is simply no basis the state of South Carolina can put forth that withstands strict scrutiny, or any scrutiny at all. The arguments usually advanced by the state — federalism, history and tradition, safeguarding the institution of marriage, responsible procreation,[8] and optimal child-rearing — do not withstand strict scrutiny, or any scrutiny at all. *See also Latta v. Otter*, ___ F.3d ___, 2013 WL 4977682 (9th Cir., Oct. 7, 2014); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014); *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014).

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[8] The "responsible procreation" argument can be summed up thus: Because only straight people can impulsively and accidentally have illegitimate children out of wedlock, they need a stable institution of marriage to discourage them from doing so and to force them to focus on the consequences of their animalistic passions. But as Justice Kagan indicated, the idea that denying marriage equality to gay couples would encourage monogamy and responsible procreation by straight couples is hard to follow, let alone to fathom. *Hollingsworth v. Perry*, No. 12-144 (argument transcript pp. 24-27). http://www.supremecourt.gov/oral_arguments/argument_transcripts/12-144_5if6.pdf.

## V. DUE PROCESS

The Due Process Clause of the Fourteenth Amendment guarantees that no state shall "deprive any person of life, liberty, or property without the due process of law." U.S. Const. amend. XIV § 1. The purpose of the Due Process Clause is to "protect[ ] those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty...." *Washington v. Glucksberg*, 521 U.S. 702, 720–21, 117 S.Ct. 2258 (1997) (quotations and citations omitted). Because such rights are so important, "an individual's fundamental rights may not be submitted to vote." *De Leon*, 975 F.Supp.2d at 657 (citing *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638, 63 S.Ct. 1178 (1943)).

The fact that the right to marry is a fundamental right, although not explicitly stated by the Supreme Court, can hardly be disputed. *See, e.g., Zablocki v. Redhail*, 434 U.S. 374, 384, 98 S.Ct. 673 (1978) ("[D]ecisions of this Court confirm that the right to marry is of fundamental importance for all individuals."); *United States v. Kras*, 409 U.S. 434, 446, 93 S.Ct. 631 (1973) (concluding the Court has come to regard marriage as fundamental); *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817 (1967) ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."); *Skinner v. Okla. ex rel. Williamson*, 316 U.S. 535, 62 S.Ct. 1110 (1942) (noting marriage is one of the basic civil rights of man fundamental to our existence and survival); *Maynard v. Hill*, 125 U.S. 190, 205, 8 S.Ct. 723 (1888) (characterizing marriage as "the most important relation in life" and as "the foundation of the family and society, without which there would be neither

civilization nor progress."). Additionally, the right to marry necessarily entails the right to marry the person of one's choice. *See Lawrence*, 539 U.S. at 574, 123 S.Ct. 2472 (2003) ("Our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.").

"Fundamental rights, once recognized, cannot be denied to particular groups on the ground that these groups have historically been denied those rights." *In re Marriage Cases*, 43 Cal.4th 757, 76 Cal. Rptr.3d 683, 183 P.3d 384, 430 (2008) (superseded by constitutional amendment). In fact, "the history of our Constitution ... is the story of the extension of constitutional rights and protections to people once ignored or excluded." *United States v. Virginia*, 518 U.S. 515, 557, 116 S.Ct. 2264 (1996).

The reasoning in *Henry v. Himes*, from the Southern District of Ohio, is particularly persuasive on this point:

> The Supreme Court has consistently refused to narrow the scope of the fundamental right to marry by reframing a plaintiff's asserted right to marry as a more limited right that is about the characteristics of the couple seeking marriage ... [T]he Court consistently describes a general 'fundamental right to marry' rather than 'the right to interracial marriage,' 'the right to inmate marriage,' or 'the right of people owing child support to marry.'

___F.Supp.2d ___, 2014 WL 1418395, *7 (emphasis added) (citing *Loving*, 388 U.S. at 12, 87 S.Ct. 1817; *Turner v. Safley*, 482 U.S. 78, 94–96, 107 S.Ct. 2254 (1987); *Zablocki*, 434 U.S. at 383–86, 98 S.Ct. 673).

*Loving v. Virginia* best illustrates this point. In that case, the Court held that Virginia's ban on interracial marriage violated the plaintiffs' rights under the Due Process Clause. 388 U.S. at 12, 87 S.Ct. 1817. The *Loving* Court stated "[t]he freedom

to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men," and further recognized that, "marriage is one of the 'basic civil rights of man.'" *Id.* If the Court in *Loving* had looked only to the "traditional" approach to marriage prior to 1967, the Court would not have recognized that there was a fundamental right for Mildred and Richard Loving to be married, because the nation's history was replete with statutes banning interracial marriages between Caucasians and African Americans. Notably, the Court in *Loving* did not frame the issue of interracial marriage as a "new" right, but recognized the fundamental right to marry regardless of that "traditional" classification.

Thus, Plaintiffs are not asking the court to recognize a new right; but rather, "[t]hey seek 'simply the same right that is currently enjoyed by heterosexual individuals: the right to make a public commitment to form an exclusive relationship and create a family with a partner with whom the person shares an intimate and sustaining emotional bond.'" *Bostic v. Rainey*, 970 F.Supp.2d 456, 472 (E.D. Va. 2013). The courts have routinely protected the choices and circumstances defining sexuality, family, marriage, and procreation. As the Supreme Court found in *Windsor*, "[m]arriage is more than a routine classification for purposes of certain statutory benefits," and "[p]rivate, consensual intimacy between two adult persons of the same sex ... can form 'but one element in a personal bond that is more enduring.'" *Windsor*, 133 S.Ct. at 2693 (quoting *Lawrence*, 539 U.S. at 567, 123 S.Ct. 2472). The right to marry should not be interpreted narrowly, but rather encompasses the ability of same-sex couples to marry. Indeed,

> It is ... tempting ... to suppose that the Due Process Clause protects only those practices, defined at the most specific level, that were protected against government interference ... when the Fourteenth Amendment was ratified. But such a view would be inconsistent with our law.

*Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 847, 112 S.Ct. 2791 (1992).

Cases subsequent to *Loving* have similarly confirmed that the fundamental right to marry is available even to those who have not traditionally been eligible to exercise that right. *See Boddie v. Connecticut*, 401 U.S. 371, 376, 91 S.Ct. 780 (1971) (states may not require indigent individuals to pay court fees in order to obtain a divorce, since doing so unduly burdened their fundamental right to marry again); *see also Zablocki*, 434 U.S. at 388–90, 98 S.Ct. 673 (state may not condition ability to marry on fulfillment of existing child support obligations). Similarly, the right to marry as traditionally understood in this country did not extend to people in prison. Nevertheless, in *Turner v. Safley*, 482 U.S. 78, 107 S.Ct. 2254 (1987), the Supreme Court held that a state cannot restrict a prisoner's ability to marry without sufficient justification. When analyzing other fundamental rights and liberty interests, the Supreme Court has consistently adhered to the principle that a fundamental right, once recognized, properly belongs to everyone.

Tradition is revered in the Palmetto State, and often rightly so. However, "tradition alone cannot justify denying same-sex couples the right to marry any more than it could justify Virginia's ban on interracial marriage." *Bostic v. Rainey*, 970 F.Supp.2d 456, 475 (E.D. Va. 2014). *See also Baskin v. Bogan*, 766 F.3d at 666-68 (Judge Posner discussed in detail the fallacy of the "tradition" argument for upholding the ban on same-sex marriage). It is time for South Carolina to embrace a new tradition: that of stable, loving partners in committed relationships, regardless of sex.

## VI. EQUAL PROTECTION FOR FULL FAITH AND CREDIT

"If there is one thing that people are entitled to expect from their lawmakers, it is rules of law that will enable individuals to tell whether they are married and, if so, to whom." *Estin v. Estin*, 334 U.S. 541, 553, 68 S.Ct. 1213 (1948) (Jackson, J., dissenting). South Carolina's refusal to recognize a marriage that is valid in more than half the states is a denial of both equal protection and the mandates of the full faith and credit clause.

If South Carolina cannot exclude same-sex couples from marriage, then South Carolina cannot refuse to recognize out-of-state, same-sex marriages. *Loving v. Virginia*, 388 U.S. at 4, 87 S.Ct. 1817. The non-recognition of the Plaintiffs' marriage violates the Equal Protection Clause *independent* of the state's ban on same-sex marriage within the state, because out-of-state, same-sex marriages are treated differently than out-of-state, opposite-sex marriages.

In *Windsor*, the Supreme Court concluded that by treating same-sex married couples differently than opposite-sex married couples, Section 3 of DOMA "violate[d] basic due process and equal protection principles applicable to the Federal Government." 133 S.Ct. at 2693. The Eastern District of Kentucky found two guiding principles from *Windsor* that strongly suggest the result here, that non-recognition of an out-of-state marriage violates the right of equal protection. *See Bourke v. Beshear*, 996 F.Supp.2d at 549. First, the court should look to the actual purpose of the law. *Id.* The second principle is that such a law "demeans the couple, whose moral and sexual choices the Constitution protects." *Id.* (quoting *Windsor*, 133 S.Ct. at 2694).

The purpose of the South Carolina marriage laws is to prevent the recognition of same-sex marriage in South Carolina due to South Carolina's moral approbation of these marriages. This is a violation of the Equal Protection Clause. *See Romer*, 517 U.S. at 633–35, 116 S.Ct. 1620 ("[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare ... desire to harm a politically unpopular group cannot constitute a legitimate state interest.") The South Carolina marriage laws, like DOMA, were passed during the time that Hawaii courts were deciding whether the United States Constitution required it to allow same-sex marriages. The purpose of these laws was specifically to exclude same-sex couples from the protection of South Carolina's laws. The State of South Carolina chose one group to single out for disparate treatment. The State's laws place same-sex marriages in a second-class category, unlike other marriages performed in other states. Thus, like the Supreme Court in *Windsor*, this Court can conclude that this law is motivated by animus, thus violating the Equal Protection Clause.

Further, the full faith and credit clause, in and of itself, demands recognition of the Plaintiffs' marriage. Article IV, § 1 of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." In incorporating this clause into our Constitution, the Framers "foresaw that there would be a perpetual change and interchange of citizens between the several states." *McElmoyle, for Use of Bailey v. Cohen*, 38 U.S. 312, 315, 13 Pet. 312, 10 L.Ed. 177 (1839). The Supreme Court has explained that the "animating purpose" of the full faith and credit command is:

to alter the status of the several states as independent foreign

> sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin.

*Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232, 118 S.Ct. 657 (1998) (quoting *Milwaukee Cnty. v. M.E., White Co.*, 296 U.S. 268, 277, 56 S.Ct. 229 (1935)).

The Supreme Court has thus rejected any notion that a state may disregard the full faith and credit obligation simply because the state finds the policy behind the out-of-state judgment contrary to its own public policies. According to the Court, "our decisions support no roving 'public policy exception' to the full faith and credit due judgments." *Baker*, 522 U.S. at 233, 118 S.Ct. 657; *see also Estin v. Estin*, 334 U.S. 541, 546, 68 S.Ct. 1213 (1948) (Full Faith and Credit Clause "ordered submission ... even to hostile policies reflected in the judgment of another State, because the practical operation of the federal system, which the Constitution designed, demanded it"); *Williams v. North Carolina*, 317 U.S. 287, 63 S.Ct. 207 (1942) (requiring North Carolina to recognize change in marital status effected by Nevada decree contrary to North Carolina laws).

The full faith and credit clause demands that the Plaintiffs' valid, out of state marriage be recognized by the State of South Carolina, and the Plaintiffs be allowed to partake of all the privileges of marriage. Whatever powers Congress may have under the Full Faith and Credit Clause, "Congress does not have the power to authorize the individual States to violate the Equal Protection Clause." *Graham v. Richardson*, 403 U.S. 365, 382, 91 S.Ct. 1848 (1971). "When a state effectively terminates the marriage of a same-sex couple married in another jurisdiction, it intrudes into the realm of private marital, family, and intimate relations specifically protected by the Supreme Court."

*Obergefell v. Wymyslo*, 962 F.Supp.2d at 979; *Henry v. Himes*, ___ F.Supp.2d ___, 2014 WL 1418395, *9; *De Leon v. Perry*, 975 F.Supp.2d at 662; *see also Windsor*, 133 S.Ct. at 2694 (when one jurisdiction refuses recognition of family relationships legally established in another, "the differentiation demeans the couple, whose moral and sexual choices the Constitution protects ... and whose relationship the State has sought to dignify"). As the Supreme Court has held, this differential treatment "humiliates tens of thousands of children now being raised by same-sex couples," which group now includes the children of Katherine Bradacs and Tracy Goodwin. *Windsor*, 133 S.Ct. at 2694. *See* Steve Sanders, *The Constitutional Right to (Keep Your) Same–Sex Marriage*, 110 Mich. L.Rev. 1421 (2011) (the right to remain married is a liberty interest protected by the Due Process Clause).

The South Carolina case of *Widenhouse v. Colson*, 405 S.C. 55, 747 S.E.2d 188 (2013), supports the result that South Carolina marriage laws, applied to deny recognition of the Plaintiffs' valid out-of-state marriage, violates the principles of the full faith and credit clause. In that case, the plaintiff obtained a valid money judgment in North Carolina based on a cause of action for alienation of affections. The plaintiff sought to enforce the judgment in South Carolina by the Uniform Enforcement Foreign Judgments Act. The defendant sought to escape enforcement under that section of the Uniform Enforcement of Foreign Judgments Act denying enforcement to foreign judgments based on claims which are contrary to the public policies of South Carolina. The South Carolina Supreme Court held that even though the cause of action was against the public policy of the state of South Carolina, the judgment must be given recognition under the full faith and credit cause of the United States Constitution:

> *Estin v. Estin*, 334 U.S. 541, 546, 68 S.Ct. 1213, 92 L.Ed. 1561 (1948) (the full faith and credit clause "order[s] submission by one State even to hostile policies reflected in the judgment of another State.... [T]he requirements of full faith and credit, so far as judgments are concerned, are exacting, if not inexorable...."). Thus, we conclude that under the full faith and credit clause a money judgment obtained in another state must be accorded full faith and credit regardless of the underlying cause of action.

405 S.C. at 61, 747 S.E.2d at 191.

## VII. DISCRIMINATION ON THE BASIS OF SEX

South Carolina's marriage laws discriminate against the Plaintiffs on basis of their gender. For example, if Katherine Bradacs were a man, she would be allowed to marry Tracy Goodwin; because she is a female, however, she cannot marry Tracy. Additionally, the marriage laws enforce sex stereotypes, requiring men and women to adhere to traditional marital roles. *See e.g., J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 114 S.Ct. 1419 (1994).

"[S]tatutory classifications that distinguish between males and females are "subject to scrutiny under the Equal Protection Clause." *Craig v. Boren*, 429 U.S. 190, 197, 97 S.Ct. 451 (1976) (quoting *Reed v. Reed*, 404 U.S. 71, 75, 92 S.Ct. 251 (1971)). "To withstand constitutional challenge, ... classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." *Id.* "The burden of justification" the state shoulders under this intermediate level of scrutiny is "demanding": the state must convince the reviewing court that the law's "proffered justification" for the gender classification "is 'exceedingly persuasive.'" *United States v. Virginia*, 518 U.S. 515, 533, 116 S.Ct. 2264 (1996). The South

Carolina same-sex marriage ban discriminates on the basis of sex and so are invalid unless they meet this "demanding" standard.

Under the South Carolina marriage laws, only women may marry men, and only men may marry women. Katherine Bradacs may not marry her partner Tracie Goodwin for the sole reason that Goodwin is a woman; Bradacs could marry Goodwin if Goodwin were a man. But for their gender, plaintiffs would be able to marry the partners of their choice. Their rights under the states' bans on same-sex marriage are wholly determined by their sex.

A law that facially dictates that a man may do X while a woman may not, or vice versa, constitutes, without more, a gender classification. "[T]he absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect. Whether [a policy] involves disparate treatment through explicit facial discrimination does not depend on why the [defendant] discriminates but rather on the explicit terms of the discrimination." *UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199, 111 S.Ct. 1196 (1991). Thus, plaintiffs challenging policies that facially discriminate on the basis of sex need not separately show either "intent" or "purpose" to discriminate. *Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 277–78, 99 S.Ct. 2282 (1979).

In his concurring opinion in *Latta v. Otter*, ___ F.3d ___, 2014 WL 4977682, *18, Judge Berzon, saw the same-sex marriage bans as discrimination on the basis of sex:

> As Justice Johnson of the Vermont Supreme Court noted, the same-sex marriage prohibitions, if anything, classify more obviously on the basis of sex than they do on the basis of sexual orientation: "A woman is denied the right to marry another woman because her would-be partner is a woman, not because one or both are lesbians.... [S]exual orientation

> does not appear as a qualification for marriage" under these laws; sex does. *Baker v. State*, 170 Vt. 194, 744 A.2d 864, 905 (Vt.1999) (Johnson, J., concurring in part and dissenting in part). * * *
>
> *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003) also underscores why the continuation of the same-sex marriage prohibitions today is quite obviously about gender. Lawrence held that it violates due process for states to criminalize consensual, noncommercial same-sex sexual activity that occurs in private between two unrelated adults. *See id.* at 578. After *Lawrence*, then, the continuation of the same-sex marriage bans necessarily turns on the gender identity of the spouses, not the sexual activity they may engage in. To attempt to bar that activity would be unconstitutional. *See id.* The Nevada intervenors recognize as much, noting that *Lawrence* "differentiates between the fundamental right of gay men and lesbians to enter an intimate relationship, on one hand, and, on the other hand, the right to marry a member of one's own sex." The "right to marry a member of one's own sex" expressly turns on sex.
>
> In concluding that these laws facially classify on the basis of gender, it is of no moment that the prohibitions "treat men as a class and women as a class equally" and in that sense give preference to neither gender, as the defendants fervently maintain. That argument revives the long-discredited reasoning of *Pace v. Alabama*, which upheld an anti-miscegenation statute on the ground that "[t]he punishment of each offending person, whether white or black, is the same." 106 U.S. 583, 585 (1883), overruled by *McLaughlin v. Florida*, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964). Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), overruled by *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), similarly upheld racial segregation on the reasoning that segregation laws applied equally to black and white citizens.

So, too, does the South Carolina same-sex marriage ban discriminate on the basis of sex in addition to discriminating on the basis of sexual orientation (*infra*).

## VIII. DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION

The right to marry is about the ability to form a partnership, hopefully lasting a lifetime, with that one special person of your choosing. Additionally, although South

Carolina previously defined marriage in this manner, the South Carolina marriage laws make clear that the marriage laws were not about defining marriage but to prohibit gays and lesbians from marrying the individual of their choice. Thus, since the primary purpose of the statute is to exclude same-sex couples from marrying, the Defendants must show at least a rational basis to exclude them.

The purpose of the marriage laws is evident by the timing of the statutes, which were passed in an emergency session near the time that DOMA was passed and immediately after and in response to a Hawaiian court's pronouncement in *Baehr v. Miike*, CIV. No. 91–1394, 1996 WL 694235 (Haw. Cir. Ct. Dec. 3, 1996), *aff'd* 87 Hawai'i 34, 950 P.2d 1234 (1997), that same-sex couples should be allowed to marry. Because the effect of the law is to exclude and void same-sex marriages, the Court should analyze whether there is a rational basis to exclude same-sex marriages. Additionally, Plaintiffs are similar in all relevant aspects to opposite-sex couples seeking to marry—they are in long-term, committed, loving relationships and some have children.

In *Johnson v. Robison*, 415 U.S. 361, 373–374, 94 S.Ct. 1160, 39 L.Ed.2d 389 (1974), the Court considered a challenge brought by a conscientious objector seeking to declare the educational benefits under the Veterans' Readjustment Benefits Act of 1966 unconstitutional on Equal Protection grounds. 415 U.S. at 364, 94 S.Ct. 1160. In reviewing whether or not the classification was arbitrary, the Court looked to the purpose of that Act and found that the legislative objective was to (1) make serving in the Armed Forces more attractive and (2) assist those who served on active duty in the Armed Forces in "readjusting" to civilian life. *See id.* at 376–377, 94 S.Ct. 1160. The Court found that conscientious objectors were excluded from the benefits that were

offered to the veterans because the benefits could not make service more attractive to a conscientious objector and the need to readjust was absent. *See id.* The Supreme Court found that the two groups were not similarly situated and thus, Congress was justified in making that classification. *See id.* at 382–83, 94 S.Ct. 1160.

In contrast to *Johnson*, Plaintiffs are similarly situated in all relevant aspects to opposite-sex couples for the purposes of marriage. Also of great importance is the fact that unlike the statute at issue in *Johnson*, "[m]arriage is more than a routine classification for purposes of certain statutory benefits." *Windsor*, 133 S.Ct. at 2693. In fact, having the status of "married" comes with hundreds of rights and responsibilities under state and federal law. As the court in *Kitchen* stated in analyzing the Equal Protection claim before it:

> [T]he State poses the wrong question. The court's focus is not on whether extending marriage benefits to heterosexual couples serves a legitimate governmental interest. No one disputes that marriage benefits serve not just legitimate, but compelling governmental interests, which is why the Constitution provides such protection to an individual's fundamental right to marry. Instead, courts are required to determine whether there is a rational connection between the challenged statute and a legitimate state interest. Here, the challenged statute does not grant marriage benefits to opposite-sex couples. The effect of [Utah's marriage ban] is only to disallow same-sex couples from gaining access to these benefits. The court must therefore analyze whether the State's interests in responsible procreation and optimal child-rearing are furthered by prohibiting same-sex couples from marrying.

961 F.Supp.2d at 1210–11. Like Utah's laws, the effect of South Carolina's marriage laws is to exclude certain people from marrying that one special person of their choosing on the basis of his/her sexual orientation.

There is no rational basis to exclude same-sex couples. The purpose of marriage

is served by any marriage, regardless of the sexes of the spouses. In order to fit under *Johnson's* rationale, the Defendants in all other same-sex marriage cases point to the one extremely limited difference between opposite-sex and same-sex couples, the ability of the couple to naturally and unintentionally procreate, as justification to deny same-sex couples a vast array of rights. The connection between these rights and responsibilities and the ability to conceive unintentionally is too attenuated to support such a broad prohibition. *See Romer*, 517 U.S. at 635. Furthermore, the exclusion has no effect on opposite-sex couples and whether they have children or stay together for those children. No defendant can proffer any reason why excluding same-sex couples from marriage benefits opposite-sex couples. There simply is no rational link between the two. *See Tanco*, ___F.Supp.2d at ___, 2014 WL 997525 at *6; *see also Bishop*, 962 F.Supp.2d at 1290–93 (finding there is no rational link between excluding same-sex marriages and "steering 'naturally procreative' relationships into marriage, in order to reduce the number of children born out of wedlock and reduce economic burdens on the State"); *DeBoer*, 973 F.Supp.2d at 771–72 (noting that prohibiting same-sex marriages "does not stop [gay men and lesbian women] from forming families and raising children. Nor does prohibiting same-sex marriage increase the number of heterosexual marriages or the number of children raised by heterosexual parents.").

The recent case of *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014), opined that all same-sex marriage cases are about, at heart, discrimination on the basis of sexual orientation. "Indiana and Wisconsin are among the shrinking majority of states that do not recognize the validity of same-sex marriages, whether contracted in these states or in states (or foreign countries) where they are lawful. The states have appealed from

district court decisions invalidating the states' laws that ordain such refusal. Formally these cases are about discrimination against the small homosexual minority in the United States." 766 F.3d at 653. The *Baskin* court concluded that such discrimination cannot stand in our modern society. *Accord Wolf v. Walker*, 986 F.Supp.2d 982, 1014 (W.D. Wis. 2014).

In the more recent *Latta v. Otter*, ___ F.3d ___, 2014 WL 4977682, *3, the Court clearly stated this conclusion:

> Defendants argue that their same-sex marriage bans do not discriminate on the basis of sexual orientation, but rather on the basis of procreative capacity. Effectively if not explicitly, they assert that while these laws may disadvantage same-sex couples and their children, heightened scrutiny is not appropriate because differential treatment by sexual orientation is an incidental effect of, but not the reason for, those laws. However, the laws at issue distinguish on their face between opposite-sex couples, who are permitted to marry and whose out-of-state marriages are recognized, and same-sex couples, who are not permitted to marry and whose marriages are not recognized. Whether facial discrimination exists "does not depend on why" a policy discriminates, "but rather on the explicit terms of the discrimination." *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc*., 499 U.S. 187, 199, 111 S.Ct. 1196, 113 L.Ed.2d 158 (1991). Hence, while the procreative capacity distinction that defendants seek to draw could in theory represent a justification for the discrimination worked by the laws, it cannot overcome the inescapable conclusion that Idaho and Nevada do discriminate on the basis of sexual orientation.

The court continued that marriage is not simply about procreation, but as much about:

> expressions of emotional support and public commitment.... [M]any religions recognize marriage as having spiritual significance; ... therefore, the commitment of marriage may be an exercise of religious faith as well as an expression of personal dedication.... [M]arital status often is a precondition to the receipt of government benefits (*e.g.*, Social Security benefits), property rights (*e.g.*, tenancy by the entirety, inheritance rights), and other, less tangible benefits (*e.g.*, legitimation of children born out of wedlock).

*See Turner v. Safley*, 482 U.S. 78, 95–96, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987) (recognizing that prisoners, too, enjoyed the right to marry, even though they were not allowed to have sex, and even if they did not already have children).

**CONCLUSION**

*Bostic v. Schaefer* demands that S.C. Code Ann. § 20-1-10(B)(C) (to the extent the statute precludes a man from marrying a man and a woman from marrying a woman), S.C. Code Ann. § 20-1-15, and S.C. Const. art. XVII, § 15 be declared unconstitutional for the reasons herein stated, and that the State be ordered to both recognize valid out-of-state same-sex marriages and allow same-sex persons to marry in South Carolina.

Respectfully submitted

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October 20, 2014

**EXHIBIT A**

Those cases considering the issue of recognizing valid out-of-state marriages under the Full Faith and Credit Clause are marked with **.

***Federal Courts of Appeals (listed in reverse chronological order):***

• *Latta v. Otter* (and *Sevcik v. Sandoval*), ___ F.3d ___, 2014 WL 4977682 (9th Cir., October 7, 2014): The Court of Appeals, by Reinhardt, J., held that: (1) an Article III case or controversy existed; (2) the action presented substantial federal questions; and (3) the Idaho and Nevada statutes and constitutional amendments preventing same-sex couples from marrying and refusing to recognize same-sex marriages validly performed elsewhere violated same-sex couples' rights under Equal Protection Clause.

On October 8, 2014, Justice Kennedy stayed the decision as to Idaho only, clearing the way for same-sex marriages in Nevada. On October 10, 2014, the stay with regards to Idaho was lifted, clearing the way for same-sex marriage in that state as well.

• *Baskin v. Bogan* (and *Wolf v. Walker*), 766 F.3d 648 (7th Cir., September 4, 2014): The Court of Appeals, by Posner, J., held that: (1) Indiana statute banning same-sex marriage bore no rational relationship to legitimate state interest in enhancing child welfare; (2) amendment to Wisconsin constitution banning same-sex marriage did not further state interest in tradition; (3) amendment did not further state interest in acting deliberately and with prudence, or at the very least, gathering sufficient information; and (4) amendment did not further state interest in leaving decision as to whether to permit or forbid same-sex marriage to democratic process.

• *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir., July 28, 2014): The Court of Appeals, by Floyd, J., held that: Virginia's marriage laws violated Due Process and Equal Protection

Clauses to extent that they prevented same-sex couples from marrying and prohibited Virginia from recognizing same-sex couples' lawful out-of-state marriages. **

• *Bishop v. Smith*, 760 F.3d 1070 (10th Cir., July 18, 2014): The Court of Appeals, by Lucero, J., held that: Oklahoma's constitutional amendment prohibiting same-sex marriage was not narrowly tailored to achieve that end, for purposes of same-sex couples' Fourteenth Amendment challenge to Oklahoma's prohibition as violative of their due process and equal protection rights.

• *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir., June 25, 2014): The Court of Appeals, by Lucero, J., held that the amendment to Utah's Constitution, as well as two statutes, that prohibited same-sex marriage were violative of same-sex couples' due process and equal protection rights under Fourteenth Amendment.

***Federal District Courts (listed alphabetically by jurisdiction)***

• *Hamby v. Parnell*, ___ F.Supp.3d ___, 2014 WL 5089399 (D. Alaska, October 12, 2014): The District Court of Alaska, by Burgess, J., held that Alaska's ban on same-sex marriage and refusal to recognize same-sex marriages lawfully entered in other states is unconstitutional as a deprivation of basic due process and equal protection principles under the Fourteenth Amendment of the U.S. Constitution. Stay denied by Justice Kennedy on October 17, 2014 (Dkt. 14A413)
http://cdn.ca9.uscourts.gov/datastore/general/2014/10/17/14A413%20Order.pdf

• *Connolly v. Jeanes*, ___ F.Supp.3d ___, No. 2:14-cv-00024 JWS (D. Ariz., Oct. 17, 2014) (Dkt. No. 88): The District of Arizona (Sedwick, J.) struck down those portions of Arizona law that deny recognition to valid, out-of-state same sex marriages, and prevent same-sex couples from marrying in Arizona. **

• *Majors v. Jeanes*, ___ F.Supp.3d ___, 2014 WL 4541173 (D. Ariz., September 12, 2014) (unreported): The District Court of Arizona (Sedwick, J.) held that Arizona must recognize the California marriage of the plaintiffs. http://scholar.google.com/scholar_case?case=17876495128894404230&hl=en&as_sdt=6&as_vis=1&oi=scholarr **

• *Burns v. Hickenlooper*, 2014 WL 3634834 (D. Colo., July 23, 2014), 14-cv-01817-RM-KLM (Dkt. 45) (unreported): The District of Colorado, by Moore, J., in a case in which six same-sex couples were legally married in another state but whose marriage Colorado does not legally recognize or who have been refused a Colorado marriage license, solely because they are same-sex couples, ordered that: the Plaintiffs' Motion for Preliminary Injunction be granted, and the Defendants enjoined from enforcing or applying Article II, Section 31 of the Colorado Constitution and C.R.S. §§ 14–2–104(1)(b) and 14–2–104(2) as a basis to deny marriage to same-sex couples or to deny recognition of otherwise valid same-sex marriages entered in other states. Judge Moore entered injunctive relief on October 17, 2014. *Burns v. Hickenlooper*, 14-cv-01817-RM-KLM (Dkt. 63)**

• *Brenner v. Scott*, 999 F.Supp.2d 1278 (N.D. Fla., August 21, 2014): The Northern District Court of Florida, by Hinkle, J., held that: (1) couples had standing to challenge Florida same-sex marriage provisions; (2) provisions of Florida Constitution and statutes banning same-sex marriage violated Due Process and Equal Protection Clauses of Fourteenth Amendment; (3) grant of preliminary injunction barring enforcement of provisions was warranted; and (4) state was entitled to stay of execution of judgment ordering preliminary injunction.

http://www.flnd.uscourts.gov/announcements/documents/20140821_Brenner_Scott_414cv107.pdf

• *Latta v. Otter*, ___ F.Supp.2d ___, 2014 WL 1909999 (D. Idaho May 13, 2014): The District Court of Idaho (Dale, J.) in a case in which two same-sex couples seeking to marry in Idaho, and two same-sex couples seeking to have their out-of-state marriages recognized in Idaho, held that: (1) Supreme Court's prior summary disposition did not preclude review; (2) laws violated due process; (3) laws violated Equal Protection Clause; (4) heightened scrutiny applied to sexual orientation classifications; (5) purpose of laws was, in part, to express moral disapproval; (6) state's interest in child welfare was not persuasive; and (7) state's interest in religious freedom was not persuasive. **

• *Gray v. Orr*, 4 F.Supp.3d 984 (N.D. Ill., December 5, 2013): The Northern District Court of Illinois (Durkin, J.) held that: (1) partners had Article III standing to bring action challenging constitutionality of the current Illinois law that prohibited same-sex marriage; (2) partners demonstrated the absence of an adequate remedy at law and that they would suffer irreparable injury absent temporary injunctive relief; (3) partners demonstrated some likelihood of success on the merits of their equal protection challenge; and (4) balance of harms and public interest weighed heavily in favor of granting temporary injunctive relief.

http://scholar.google.com/scholar_case?case=11629554060928153098&hl=en&as_sdt=6&as_vis=1&oi=scholarr

• *Bowling v. Pence*, ___ F.Supp.2d ___, 2014 WL 4104814 (S.D. Ind., August 19, 2014): The Southern District of Indiana (Young, J.) in a case where Indiana residents who were members of same-sex marriages brought suit against state officials alleging

state law providing that a marriage between persons of the same gender was void in Indiana was unconstitutional, the court held that: (1) Indiana's governor was proper defendant to suit; (2) Ex parte Young exception to Eleventh Amendment immunity applied to allow plaintiffs to sue the governor; and (3) Indiana's ban on same-sex marriages violated the Equal Protection Clause. http://scholar.google.com/scholar_case?case=4428646707081481 15&hl=en&as_sdt=6&as_vis=1&oi=scholarr **

• *Love v. Beshear*, 989 F.Supp.2d 536 (W.D. Ky., July 1, 2014): The Western District Court of Kentucky (Heyburn, J.) held that: Kentucky's constitutional and statutory provisions prohibiting same-sex couples from marrying did not withstand rational scrutiny under Equal Protection Clause. *See also Bourke v. Beshear*, 996 F.Supp.2d 542 (W.D. Ky., February 12, 2014). **

• *DeBoer v. Snyder*, 973 F.Supp.2d 757 (E.D. Mich., March 21, 2014): The Eastern District Court of Michigan, by Friedman, J., held that: (1) the voter approved Michigan Marriage Amendment was not rationally related to government interest in providing optimal environment for child rearing; (2) asserted interests in tradition and morality were not rational bases; and (3) that Michigan had exclusive and inherent powers to define marriage did not preclude district court from finding MMA violated the Fourteenth Amendment.

• *General Synod of the United Church of Christ v. Resinger*, ___ F.Supp.3d ___, 2014 WL 5092288 (W.D. N.C., Oct. 10, 2014): The Western District Court of North Carolina (Cogburn, J.) held that Article XIV, Section 6 of the North Carolina Constitution, North Carolina General Statute § 51–1 et seq. , and any other source of state law that

operates to deny same-sex couples the right to marry in the State of North Carolina, prohibits recognition of same-sex marriages lawfully solemnized in other States, Territories, or a District of the United States, or threatens clergy or other officiants who solemnize the union of same-sex couples with civil or criminal penalties, are, in accordance with *Bostic*, unconstitutional as they violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. http://scholar.google.com/scholar_case?case=12113304803331251l0&hl=en&as_sdt=6&as_vis=1&oi=scholarr

• *Henry v. Himes*, ___ F.Supp.2d ___, 2014 WL 1418395 (S.D. Ohio, April 14, 2014): The Southern District Court of Ohio (Black, J.) held in a case where same-sex couples married in jurisdictions that provided for such marriages brought action against state officials, alleging ban on same-sex marriages in Ohio violated the Fourteenth Amendment, that: (1) intermediate scrutiny applied; (2) Ohio's interest in "preserving the traditional definition of marriage" was not a legitimate justification; (3) Ohio's refusal to recognize same-sex marriages performed in other jurisdictions was not justified under heightened or rational basis review by its preference for procreation or childrearing by heterosexual couples; and (4) refusal to recognize same-sex marriages performed in other jurisdictions caused irreparable harm. ** *See also Obergefell v. Kasich*, 2013 WL 3814262 (S.D. Ohio, July 22, 2013); *Obergefell v. Wymyslo*, 962 F.Supp.2d 968 (S.D. Ohio , Dec. 23, 2013). **

• *Geiger v. Kitzhaber*, 994 F.Supp.2d 1128 (D. Or., May 19, 2014): The District Court of Oregon, by McShane, J., held that: (1) Oregon's prohibition of same-sex marriage discriminated on basis of sexual orientation, not gender; (2) tradition, alone, did not

provide legitimate state interest to support prohibition; and (3) while goals of protecting children and encouraging stable families were legitimate state interests, they were not burdened by overturning prohibition.

• *Whitewood v. Wolf*, 992 F.Supp.2d 410 (M.D. Pa., May 20, 2014): The Middle District Court of Pennsylvania held that: (1) the plaintiffs had fundamental right to marry, which was infringed by Pennsylvania's same-sex marriage ban; (2) non-recognition provision violated plaintiffs' fundamental liberty interest in legal recognition of their marriages; (3) on equal protection challenge, intermediate scrutiny was warranted; and (4) challenged provisions did not survive intermediate scrutiny. **

• *Tanco v. Haslam*, ___ F.Supp.2d ___, 2014 WL 997525 (M.D. Tenn., March 14, 2014): The Middle District Court of Tennessee (Trauger, J.) in a case in which married, same-sex couples who lived and were legally married in other states before moving to Tennessee brought action against Tennessee officials, held that: (1) couples had likelihood of success on merits of their claim that the anti–recognition laws violated their constitutional rights; (2) couples would likely suffer irreparable harm absent the injunction; (3) balance of hardships favored issuance of the injunction; and (4) public interest supported grant of the injunction. **

• *De Leon v. Perry*, 975 F.Supp.2d 632 (W.D. Tex., Feb. 26, 2014): The Western District of Texas (Garcia, J.) in a case in which two homosexual couples, one wishing to marry in Texas and another seeking to have their Massachusetts marriage recognized under Texas law, brought action to challenge prohibition of same-sex marriage under Texas constitutional amendment, held that: (1) purported reasons for prohibition were not rationally related to legitimate state interests; (2) couple wishing to marry sought

existing right to marry, not new right to same-sex marriage; (3) state did not identify any rational, much less compelling, reason for prohibiting same-sex marriage; (4) Defense of Marriage Act (DOMA) did not bar couples' challenge; (5) state's refusal to recognize out-of-state same-sex marriage did not survive rational basis review; (6) couples suffered irreparable harm; (7) equities favored preliminary injunction. **

• *Guzzo v. Meade,* No. 2:14-cv-00200-SWS (Dist. Wyo., Oct. 17, 2014): The District Court of Wyoming, by Skavdahl, J., granted the plaintiffs' request for a preliminary injunction, preventing the state from enforcing its ban on same-sex marriage, on the authority of *Kitchen v. Herbert* and *Bishop v. Smith.* The Defendant Clerk of Laramie County has indicated she will not appeal.

***State Courts (listed alphabetically by jurisdiction)***

• *Costanza v. Caldwell*, No. 2013-0052 D2 (La. 15th Jud. Dist., Sept. 23, 2014), http://www.afer.org/wp-content/uploads/2014/09/Louisiana-Costanza.pdf: The Louisiana district court (Rubin, J.) in a case in which the parties were legally married in California, held that the law prohibiting same-sex marriage and the recognition of such violates due process, equal protection, and the full faith and credit clause. **

• *Barrier v. Vasterling*, No. 1416-CV-03892 (Circuit Court of Jackson County, Missouri, Oct. 3, 2014): The Jackson County, Missouri Circuit Court (Young, J.) ruled that marriages between same-sex couples legally performed in other states must be respected in Missouri. On October 6, Missouri Attorney General Chris Koster announced that the state would not appeal the ruling, http://ago.mo.gov/newsreleases/2014/Attorney_General_Kosters_statement_on_his_decision_not_to_appeal_in_Barrier_v_Vasterling/; thus, the ruling will stand and the

marriages of same-sex couples performed in other states is in effect.**

• *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013): The Supreme Court of New Mexico, by Chavez, J., held that: denying same-sex couples right to marry violated state constitutional equal protection clause. ** (See footnote 3.)

• *Garden State Equality v. Dow*, 216 N.J. 314, 79 A.3d 1036 (N.J. 2013): The New Jersey Supreme Court (Rabner, J.) held that: because the New Jersey Civil Union Act offers same-sex couples civil unions, but not the option of marriage, and federal agencies provided federal benefits only to married same-sex couples, same-sex couples in New Jersey are deprived of the full rights and benefits the State Constitution guarantees in the Equal Protection Clause. (See footnote 3.)

**EXHIBIT B**

**South Carolina Statutes**

§ 20-1-10: Persons who may contract matrimony.

(A) All persons, except mentally incompetent persons and persons whose marriage is prohibited by this section, may lawfully contract matrimony.

(B) No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, mother's sister, or another man.

(C) No woman shall marry her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, mother's brother, or another woman.
§ 20-1-15: A marriage between persons of the same sex is void ab initio and against the public policy of this State.

§ 20-1-15: Prohibition of same sex marriage.

A marriage between persons of the same sex is void ab initio and against the public policy of this State.

**South Carolina Constitution**

S.C. Const. Art. XVII, § 15: A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State. This State and its political subdivisions shall not create a legal status, right, or claim respecting any other domestic union, however denominated. This State and its political subdivisions shall not recognize or give effect to a legal status, right, or claim created by another jurisdiction respecting any other domestic union, however denominated. Nothing in this section shall impair any right or benefit extended by the State or its political subdivisions other than a right or benefit arising from a domestic union that is not valid or recognized in this State. This section shall not prohibit or limit parties, other than the State or its political subdivisions, from entering into contracts or other legal instruments.

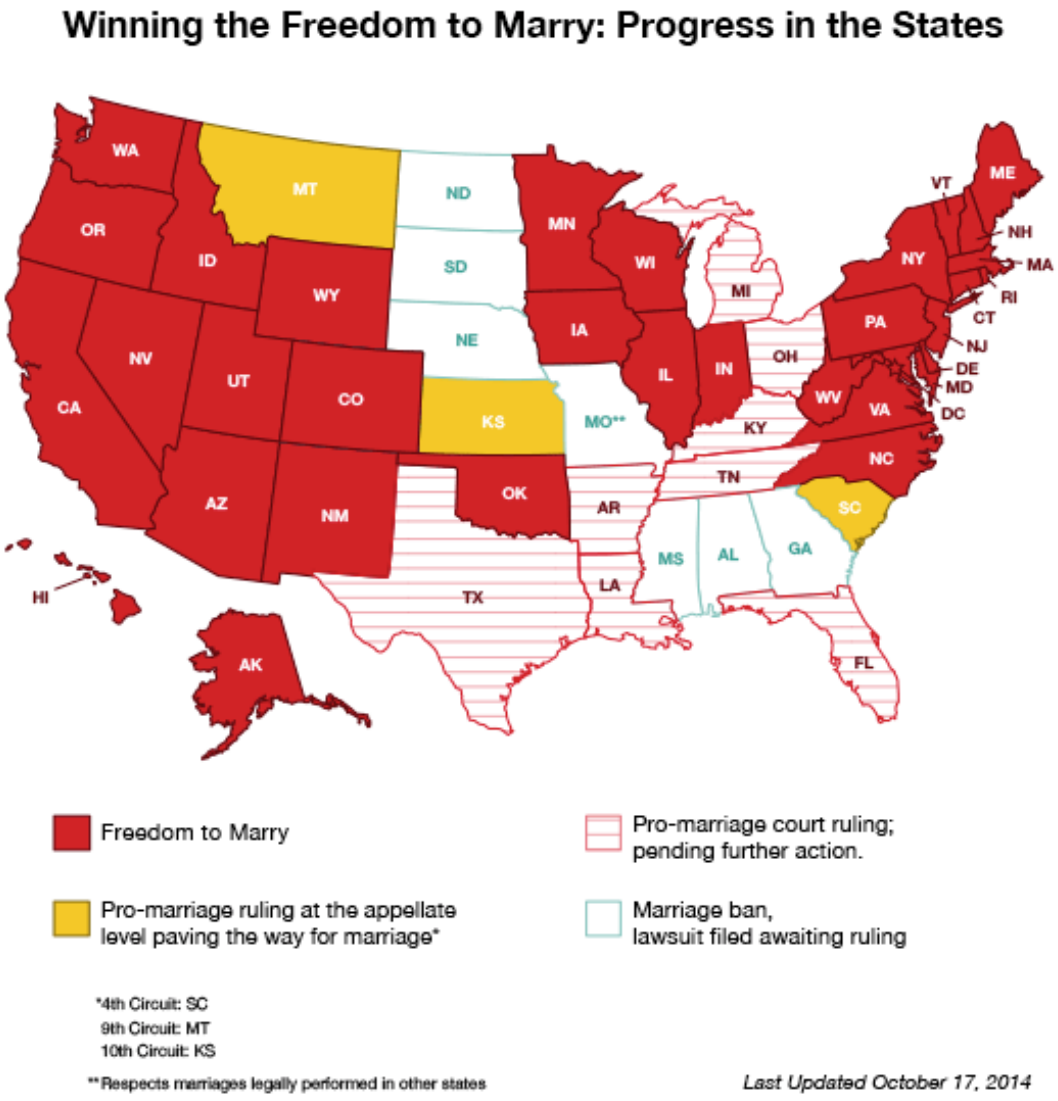
**Virginia Statute**

Va. Code § 20-45.2: A marriage between persons of the same sex is prohibited. Any marriage entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created by such marriage shall be void and unenforceable.

**Virginia Constitution**

Marshall/Newman Amendment to the Virginia Constitution, Va. Const. art. 1, § 15-A:
That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions.
This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.

**EXHIBIT C (current as of October 19, 2014, from Equality Case Files)**



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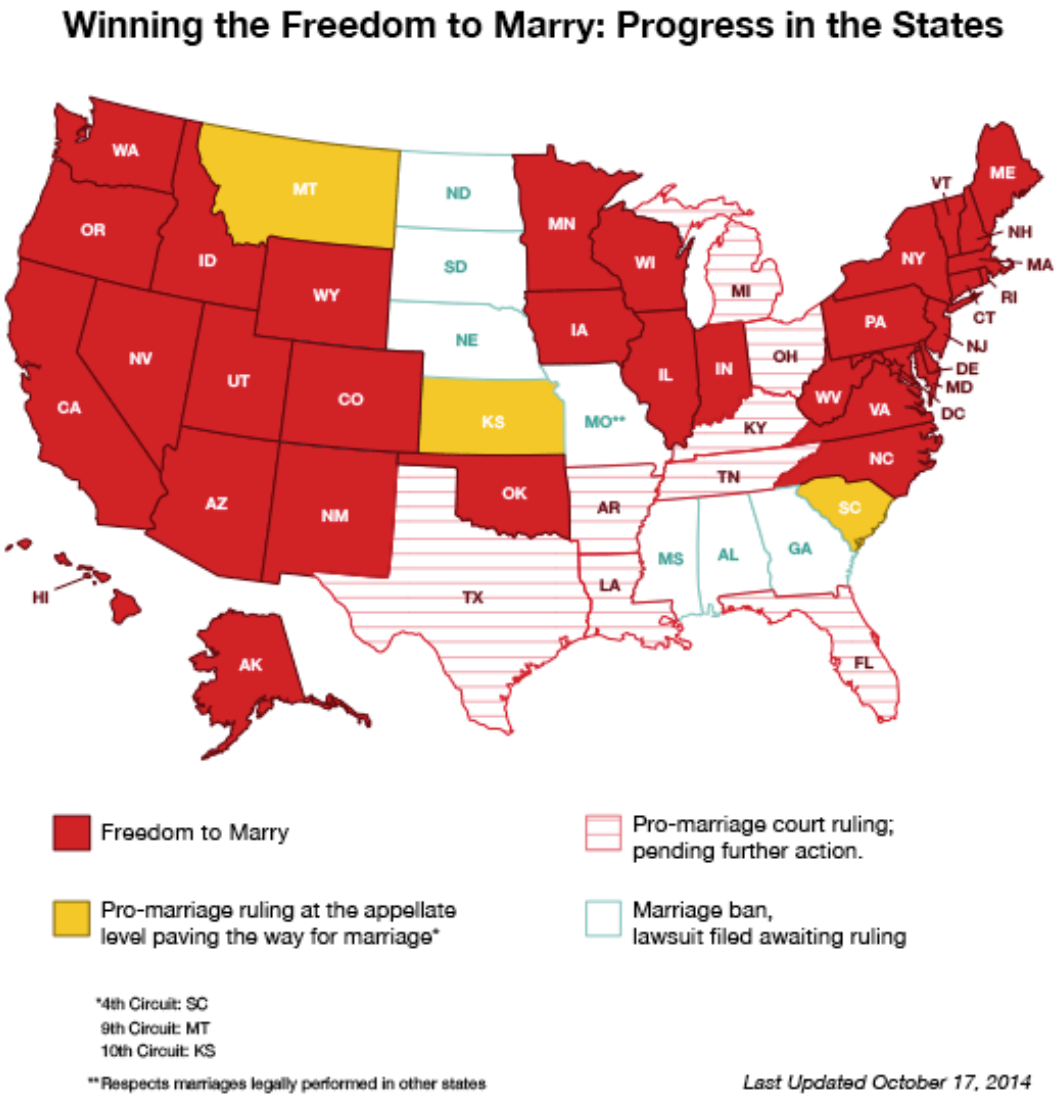
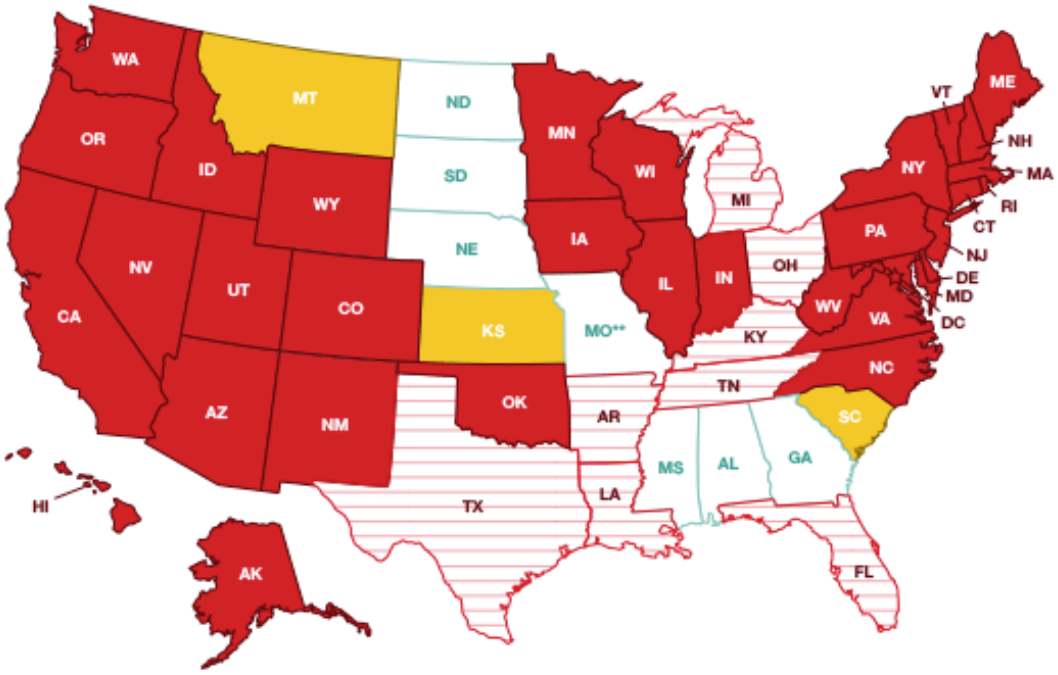


**EXHIBIT C (current as of October 19, 2014, from Equality Case Files)**

## Winning the Freedom to Marry: Progress in the States




Freedom to Marry

Pro-marriage court ruling; pending further action.

Pro-marriage ruling at the appellate level paving the way for marriage*

Marriage ban, lawsuit filed awaiting ruling

*4th Circuit: SC
9th Circuit: MT
10th Circuit: KS

**Respects marriages legally performed in other states

*Last Updated October 17, 2014*

# EXHIBIT D

# AFFIDAVIT OF KATHERINE E. BRADACS WITH ATTACHMENTS

**UNITED STATES DISTRICT COURT**
**DISTRICT OF SOUTH CAROLINA**
**COLUMBIA DIVISION**

| | |
|---|---|
| Katherine Bradacs and Tracie Goodwin,<br><br>Plaintiffs,<br><br>vs.<br><br>Nimrata ("Nikki") Randhawa Haley, in her official capacity as Governor of South Carolina; Alan M. Wilson, in his official capacity as Attorney General of South Carolina,<br><br>Defendants. | Civil Action No.:3:13-CV-02351-JMC<br><br>**AFFIDAVIT OF KATHERINE E. BRADACS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** |

**KATHERINE E. BRADACS**, first being duly sworn, deposes and says as follows in support of Plaintiff's Motion for Summary Judgment:

1. On April 6, 2012, Tracie Goodwin and I were married in Washington, D.C.

2. At the time of our marriage, Tracie was pregnant with my biological children, C and B, who were eventually born in July, 2012. I have one child, J, from a previous relationship.

3. I am an employee of the State of South Carolina. During the course of Tracie's pregnancy, I went to the Human Resources Department at the Department of Public Safety Headquarters to inquire about the requirements to add my children to my State benefits, including health and dental insurance. I spoke to an attorney who works for South Carolina Public Employment Benefit Authority (PEBA), explaining the situation to him and was advised that they would not cover my spouse, Tracie, and that I could add my children if I was listed as the mother on their birth certificates. He then proceeded to tell me that in order to add them to my state

benefits that I would have to either obtain a guardianship Order or adopt my own biological children.

4. Shortly after my first inquiry about adding my soon-to-be-born children to my benefits, I received an audit letter from PEBA asking for proof that my older son was my child and requiring me to provide his birth certificate, all despite having provided the very same document to them in March 2011 when I initially became employed with the South Carolina Highway Patrol.

5. In April 2012, I contacted the Human Resources Department at the Department of Public Safety Headquarters to inquire about taking a family leave for the birth of our children. I was told by their representative that since they did not recognize my marriage to Tracie that I would have to provide proof that the children were my biological children. I was only able to obtain Family Medical Leave for the birth of my children after I provided them with a notarized letter from our physician who performed the fertility procedure indeed verifying that C and B were my biological children.

6. In July 2012 our children were born at Lexington Medical Center. Upon their births, the hospital refused to allow me to add my name on their birth certificates as the biological parent without a court order, adding Tracie as the birth mother instead.

7. Almost immediately after the children's birth, our son was having life threatening medical issues and was transferred to Richland Hospital to receive necessary medical treatment, while our daughter stayed at Lexington Medical Center with Tracie. Because I was not recognized as their parent, I was unable to make any medical decisions for either of the children. Although the physicians provided me with the medical results for my son, I was required to physically pick up Tracie from Lexington Medical Center to bring her back to Richland Hospital to sign all documents for his treatment.

8. At the beginning of 2013, I spoke with Alex Wilcox at Human Resources for the Department of Public Safety, who then called and spoke to an attorney at PEBA asking again about adding my biological children onto my state benefits. After Mr. Wilcox made other phone calls, he then called and informed me of the same thing that I was previously told – that I either had to obtain an Order for guardianship of or adopt my own children. I expressed my frustration at having to adopt my own children when my male counterparts were not required to go to this extreme.

9. I then was forced to incur attorney fees to consult with an attorney to discuss my rights and the requirement that I file for a legal guardianship or adoption of my own children.

10. In March 2013, I was not allowed to take family leave under the FMLA because my wife, Tracie, was going to have surgery.

11. On August 27, 2013, I wrote a letter to PEBA demanding that they recognize my children and add them to my benefits and not hold me to a higher standard than they would my male counterparts. **[Exhibit 1]**

12. On September 16, 2013, after we filed this lawsuit, I received the attached letter from PEBA stating that the documents that I provided them with my August 27, 2013 letter were inadequate because the letter from the fertility physician predated the children's birth. That letter required me to go back to the physician to get another notarized statement from her stating that the children were biologically mine and despite the fact that the original letter I sent was used to grant me Family Medical Leave at the birth of our children. It also stated that if I proved a biological relationship to my children, I could add them during open enrollment. The letter also stated that I could take a DNA test to prove maternity when these options were not previously offered to me. **[Exhibit 2]**

13. I hand-delivered the letter from my physician to Justice Perkins at PEBA and advised Mr. Perkins that I wanted my children immediately added to my plan and was not waiting until open enrollment to do so. I also asked Mr. Perkins for the name of the attorney he spoke to who had advised him of these new options that I had never heard about, as I had been told several different versions of what I needed to do and was seeking a definitive answer. It was not until November 14, 2013 that I learned that our children had been added to my benefits.

14. During the 2013 open enrollment period, I attempted to add Tracie as my spouse onto my State insurance. I listed Tracie in the section where it said to list the name of my spouse and my applications were being rejected. I completed numerous Notice of Election forms, all of which were rejected. I received a call from Patty Dugan in Human Resources stating that they could not process my paperwork if I submitted it online and that she was deleting my online applications. **[Exhibit 3]** When I had not received a response from Human Resources on the last date of enrollment, I once again went online to add my wife and children to my insurance.

15. Ironically, it was only after reviewing the State of South Carolina's Answer to our Complaint in this case filed on November 14, 2013 that I learned for the first time that our children had been covered under my health insurance plan. I placed a call to Blue Cross Blue Shield and learned from their representative that our children had been added to my health insurance plan and that the addition was retroactive to their births. On November 19, 2013, after the filing of the State's Answer to our Complaint, I received an email from my Human Resources Department advising that our children were added to our health insurance plan retroactive to their births, resulting in additional paperwork for all involved in having to go back over a year to rebill the medical insurance claims, but refusing to add Tracie as my spouse. **[Exhibit 4]**

16. In 2013, Tracie and I decided that we needed to move to a larger home. Tracie applied for a VA loan, but due to the State of South Carolina's failure to recognize our marriage,

the VA would only guaranty Tracie's interest in the property, causing me to have prepared a "gift letter" for tax purposes to avoid taxation on any payments on made on the mortgage.

17. Tracie and I cannot file joint state tax returns because the State of South Carolina does not recognize our marriage resulting in our having to file separate returns and preventing us from availing ourselves of the benefits of filing as a married couple.

18. I have also read the additional injuries and future injuries as set forth in our Complaint and Memorandum in Support of our Motion for Summary Judgment and verify that indeed these are all direct injuries that I have experienced as a result of the State of South Carolina not recognizing our marriage.

**KATHERINE BRADACS**

Subscribed and sworn to before me on
this 9th day of October, 2014.

Notary Public, South Carolina
My Commission Expires: 10/04/2020

Katherine E. Bradacs
[redacted]
Lexington, SC 29073
Email: [redacted]

August 27, 2013

South Carolina Public Employee Benefit Authority
Insurance Benefits
1201 Main Street, Suite 300
Columbia, SC 29201

In Re: Appeal of Verbal Denial of Coverage for Minor Children

To Whom It May Concern:

I have attempted to no avail to add my two biological children, [redacted] and [redacted] to my state health plan coverage since their births on [redacted] 2012. I have repeatedly been denied my requests for coverage for my children.

Under the Patient Protection and Affordable Care Act (PPPACA), as amended by the Health Care and Education Reconciliation Act of 2010, and as cited in the State's Coverage and Eligibility benefit information, children younger than 26 must be eligible for coverage on their parent's insurance regardless of student status, residency, financial dependency or marital status. An eligible child is defined as someone who is "younger than 26 years of age and must be **the subscriber's natural child**, adopted child, stepchild, foster child or a child for whom the subscriber has legal custody."

As evidenced by attached report from Advance Fertility & Reproductive Endocrinology Institute, these children are my natural children who were born to my wife, Tracie Goodwin who served as the surrogate. While the question of whether the State of South Carolina must recognize my marriage to Tracie Goodwin is a question for another day, I must not be precluded from covering my biological children under my group health insurance coverage. I am confident that requiring me, as a woman, to bear a greater burden than that required of my male counterparts (who must only submit to a DNA test to prove parentage before being allowed to cover their biological children) to obtain coverage runs afoul of Title VII of the Civil Rights Act of 1964, as well as other state and federal constitutional rights.

I respectfully request that the State of South Carolina and the State Health Plan reconsider the decision to deny health insurance coverage for my biological children. I ask you to consider the attached information which also includes both Birth and marriage Certificates. Alternatively, I request that you hold me only to the standard to which male employees are held in adding their children to their plan, and allow me to prove paternity through a DNA test.

Sincerely,

Katherine E. Bradacs

**EXHIBIT 1**

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

**PEBA**

David K. Avant
Interim Executive Director
Insurance Benefits

September 16, 2013

Katherine E. Bradacs
[redacted]
Lexington, SC 29073

RE: **State of South Carolina Group Health Benefits Plan**
**Subscriber: Katherine E. Bradacs**
**BIN: 932[redacted]**

Dear Ms. Bradacs:

Our office is in receipt of your letter requesting to add C[redacted] Bradacs and B[redacted] Bradacs to your coverage as your natural children.

To enroll a natural child in your coverage, a copy of the long-form birth certificate showing the subscriber as the parent is required. While you included C[redacted] and B[redacted]'s long-form birth certificates with your letter, you, as the subscriber, are not listed as the parent. As a result, the long-form birth certificates submitted are insufficient to enroll C[redacted] and B[redacted] in your coverage.

You also included with your letter a report from Advance Fertility & Reproductive Endocrinology Institute dated April 25, 2012, requesting "all due consideration" regarding the delivery of your "own genetic child via a gestational surrogate." While there is no reason to doubt the validity of the report, it was written prior to the birth of C[redacted] and B[redacted] and is therefore insufficient to establish a biological relationship between you and C[redacted] and B[redacted] Bradacs.

Please fill out and return the enclosed Notice of Election to my attention at the address below along with documentation verifying your biological relationship to C[redacted] and B[redacted] Bradacs. Examples of suitable documentation include a DNA test, records of an ova transfer procedure, or a notarized letter from a physician involved in the ova transfer procedure linking the procedure to the birth of C[redacted] and B[redacted] Bradacs.

As you may be aware, Open Enrollment will occur from October 1, 2013, to October 31, 2013. During this time, you may add or drop eligible dependents from your coverage without regard to Special Eligibility Situations. Changes made during Open Enrollment 2013 become effective January 1, 2014.

If you need any additional information, please contact me at (803) 734-3569.

Sincerely,

Justice Perkins

Enclosure



**EXHIBIT 2**

**Gail Whitman-Elia, MD, Founder**

Board Certified: Reproductive Endocrinology/ Infertility and Obstetrics and Gynecology

Fellowship: University of Connecticut

Residency: University of Chicago

MD: University of Chicago

BA: University of Chicago

Previous academic appointments: Professor and Director of the Division of Reproductive Endocrinology, University of South Carolina; faculty member, University of Chicago, Northwestern University, University of Connecticut and the Medical College of Georgia

Member: Society for Assisted Reproductive Technology, Society for Reproductive Endocrinology and Infertility, Association of Professors of Gynecology and Obstetrics, Fellow, American College of Obstetricians and Gynecologists; Fellow, American College of Endocrinology; American Association of Bioanalysts

**Complete reproductive medicine:**

- high-success IVF plus the spectrum of fertility services
- female & male factor diagnosis & treatment
- reproductive endocrinology, embryology & andrology services on site
- preimplantation genetic diagnosis
- egg donor program

**Support, compassion & service:**

- counseling with our licensed psychotherapist
- 24-hour access during treatment cycles
- financing & insurance specialists
- accommodating professional staff committed to you
- massage therapy & acupuncture available
- state-of-the-art facility designed for results & your total comfort

April 25, 2012

The art & science of creating families

Advanced Fertility & Reproductive Endocrinology Institute, LLC

Re: Katherine Bradacs

To whom it may concern:

Ms. Bradacs is expecting delivery of her own genetic child via a gestational surrogate. The estimated date of delivery is August [redacted] 2012. She would like to attend the delivery whenever it takes place. Please give her all due consideration.

Sincerely,

Gail F. Whitman-Elia, MD

**Gail Whitman-Elia, MD, Founder**

Board Certified: Reproductive Endocrinology/ Infertility and Obstetrics and Gynecology

Fellowship: University of Connecticut

Residency: University of Chicago

MD: University of Chicago

BA: University of Chicago

Previous academic appointments: Professor and Director of the Division of Reproductive Endocrinology, University of South Carolina; faculty member, University of Chicago, Northwestern University, University of Connecticut and the Medical College of Georgia

Member: Society for Assisted Reproductive Technology, Society for Reproductive Endocrinology and Infertility, Association of Professors of Gynecology and Obstetrics, Fellow, American College of Obstetricians and Gynecologists; Fellow, American College of Endocrinology; American Association of Bioanalysts

**Complete reproductive medicine:**

- high-success IVF plus the spectrum of fertility services
- female & male factor diagnosis & treatment
- reproductive endocrinology, embryology & andrology services on site
- preimplantation genetic diagnosis
- egg donor program
- egg freezing

**Support, compassion & service:**

- counseling with our licensed psychotherapist
- 24-hour access during treatment cycles
- financing & insurance specialists
- accommodating professional staff committed to you
- massage therapy & acupuncture available
- state-of-the-art facility designed for results & your total comfort

The art & science of creating families

**Advanced Fertility & Reproductive Endocrinology Institute, LLC**

September 19, 2013

Attn: Justice Perkins
State of South Carolina Group Health Benefits Plan
Subscriber: Katherine E. Bradacs
BIN: 93290645

Re: Notice of Election verifying a biological relationship between the subscriber, Katherine Bradacs, to C[redacted] and B[redacted] Bradacs

Dear Ms. Perkins:

This letter is to provide documentation requested by your letter of September 16, 2013 to Ms. Bradacs.

On November 17, 2011 Ms. Bradacs underwent a transvaginal oocyte retrieval. The oocytes retrieved were inseminated on that day. Two embryos were generated from this procedure. On November 20, 2011 the two embryos were transferred to a gestational surrogate, Tracie Goodwin. Two children were born as a result of this procedure – C[redacted] and B[redacted] B[redacted] I am enclosing photographs of the embryos generated and transferred. Ms. Bradacs is clearly a biological parent of these two children. This can be verified by DNA testing should you demand it.

Sincerely,

Gail F. Whitman-Elia, MD

Brenda C Sims
My Commission expires
March 14, 2015

Katie Burrows

**Documentation Worksheet**

This is a list of acceptable documentation to prove the relationship of your covered family members in response to the dependent eligibility audit. If you need information on how to obtain any of the documents, please read the Frequently Asked Questions section of our website www.eip.sc.gov/audit. **Please be sure to submit photocopies of your documentation. EIP scans the submitted documents and destroys them at the end of the process.** Please do not use a highlighter on submitted documents. Highlighted items appear blacked out when they are scanned.

Where to find documentation:
If you do not have the required documentation, you may have to pay a fee to receive one from the governmental agency that has the original. We encourage you to request your documentation as soon as possible since this process may take several weeks and many agencies increase fees for expedited delivery.

- Federal tax return: www.irs.gov (Click on the link for Individuals then the link "Need a Copy of Your Tax Return Information?")
- Marriage license/birth certificate: http://www.cdc.gov/nchs/w2w.htm
- Birth certificate (for children born in SC): www.scdhec.gov/administration/vr/index.htm.

**Legal Spouse:**

1) Marriage license and page 1 of your current federal tax return. If married filing separately, submit page 1 of both federal tax returns. To protect your privacy, please black out all financial information.
2) If not married long enough to file a joint tax return, a photocopy of your marriage license.

**Former or Separated Spouse:**

1) Photocopy of divorce decree ordering the subscriber to cover the former spouse. If separated, a copy of the separation agreement or legal document indicating a divorce is in progress.

**Common Law Spouse (provide both):**

1) One of the following to prove that you and your spouse live at the same residence (submit one for yourself and one for your spouse):
    - Lease or mortgage
    - Auto registration
    - Drivers license
    - Pay stub (with your address listed)
    - Utility bill
    - Current tax return
2) **PLUS** one proof of current financial interdependency:
    - Joint ownership of your home
    - Joint lease/rental agreement

Continued →

- Joint homeowner/renters insurance policy*
- Joint bank account statement* or a voided check
- Joint credit card statement*

*Account numbers and account balances may be blacked out.

**NOTE: If you have not already submitted a signed, notarized Common Law Marriage Affidavit, you should do so at this time.**

**Natural Child:**

1) A copy of a birth certificate (long form[1]) showing the subscriber as the parent.

**Step Child:**

1) A copy of the birth certificate showing the name of the natural parent (long form[1]), **plus** proof that the natural parent and the subscriber are married (see Legal Spouse/Common Law Spouse requirement above).

**Adopted Child:**

1) A copy of a birth certificate (long form[1]) showing the subscriber as parent or
2) Court documentation verifying completed adoption or
3) A letter of placement from an adoption agency, an attorney or the S.C. Department of Social Services, verifying the adoption is in progress.

**Foster Child:**

1) A court order or other legal document placing the child with the subscriber, who is a licensed foster parent.

**Other Children:**

1) For all other children for whom a subscriber has legal custody, a court order or other legal document granting custody of the child to the subscriber. Documentation must verify the subscriber has guardianship responsibility for child, not merely financial responsibility.

**Incapacitated Child:**

1) Proof of incapacitation was established at time of enrollment. See the appropriate child type (natural, step, foster or other) in the list above for acceptable proof of relationship. If you have not submitted a copy of page 1 of your federal tax return in the last year, you must do so at this time to demonstrate that the child is principally dependent on you, the subscriber, for support and maintenance. If your incapacitated child is employed, you must also submit a copy of page 1 of his federal tax return.

[1] If your child's birth certificate does not include the parent's names, it is the short form and will not be accepted. To obtain a long form, see your local S.C. Department of Health and Environmental Control office. You may also request this information by mail. See www.scdhec.gov/administration/vr/index.htm for instructions.

Delete This / Per EHP

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 505414765
Change Reason:OPEN ENROLLMENT Approval Date: Oct 01, 2013 Group Id: [redacted]

## KATHERINE E BRADACS

**SUPPORTING DOCUMENTS**

1. Appropriate supporting document verifying eligibility of your dependent.

| CONTACT INFORMATION | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | KATHERINE E BRADACS | |
| Street 1 | [redacted] | |
| Street 2 | | |
| City | LEXINGTON | |
| State | SOUTH CAROLINA | |
| Zip | 29073 | |
| County | LEXINGTON | |
| Country | UNITED STATES | |
| Home Number | 803-[redacted] | |
| Work Number | | |
| Email Address | [redacted] | |

On Oct 01, 2013, 10:46 PM, I, KATHERINE E BRADACS, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.



**EXHIBIT 3**

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 505414765
Change Reason:OPEN ENROLLMENT Approval Date: Oct 01, 2013 Group Id: [redacted]

## KATHERINE E BRADACS

| COVERAGE INFORMATION | PREVIOUS VALUE | NEW VALUE | PREMIUM |
|---|---|---|---|
| Health | STANDARD PLAN | | 143.86 |
| | ENROLLEE AND CHILD(REN) | | |
| Dental | STATE DENTAL PLAN | | 21.34 |
| | ENROLLEE AND CHILD(REN) | FULL FAMILY | |
| Dental Plus | NO | | 0.00 |
| Vision | STATE VISION PLAN | | 7.94 |
| | ENROLLEE | | |
| Optional Life | $50,000 | $100,000 | 5.90 |
| Dependent Life Spouse | REFUSED | | 0.00 |
| Dependent Life Child | REFUSED | | 0.00 |
| SLTD | 90 | | 1.72 |
| Tobacco Premium | NO | | 0.00 |
| PREMIUM PRETAX FEATURE (MONEYPLU$) | YES | | |
| TOTAL | | | 180.76 |

* Rates will be higher than those listed above if your age category changed or will change in 2013. See rate chart for accurate 2014 rates for Optional Life, Dependent Life Spouse, & SLTD.

On Oct 01, 2013, 10:46 PM, I, KATHERINE E BRADACS, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

| | | | | | |
|---|---|---|---|---|---|
| SSN: [redacted] | Date of Occurrence: | Jan 01, 2014 | Transaction Id: | 505414765 |
| Change Reason: OPEN ENROLLMENT | Approval Date: | Oct 01, 2013 | Group Id: | K050000 |

## KATHERINE E BRADACS

| DEPENDENT | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | J[redacted] | |
| SSN | [redacted] | |
| Relation | NATURAL CHILD | |
| Birth Date | [redacted] 2001 | |
| Gender | MALE | |
| Eligibility | CHILD UNDER 26 | |
| Health | ACTIVE | |
| Dental | ACTIVE | |
| Vision | REFUSED | |
| Dependent Life Child | | |

| DEPENDENT | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | | B[redacted] |
| SSN | | [redacted] |
| Relation | | NATURAL CHILD |
| Birth Date | | [redacted] 2012 |
| Gender | | MALE |
| Eligibility | | CHILD UNDER 26 |
| Health | | ACTIVE |
| Dental | | ACTIVE |
| Vision | | REFUSED |
| Dependent Life Child | | REFUSED |

On Oct 01, 2013, 10:46 PM, I, **KATHERINE E BRADACS**, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 505414765
Change Reason:OPEN ENROLLMENT Approval Date: Oct 01, 2013 Group Id: [redacted]

## KATHERINE E BRADACS

| DEPENDENT | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | | C[redacted] |
| SSN | | [redacted] |
| Relation | | NATURAL CHILD |
| Birth Date | | [redacted]2012 |
| Gender | | FEMALE |
| Eligibility | | CHILD UNDER 26 |
| Health | | ACTIVE |
| Dental | | ACTIVE |
| Vision | | REFUSED |
| Dependent Life Child | | REFUSED |

| DEPENDENT | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | | TRACIE GOODWIN |
| SSN | | [redacted] |
| Relation | | LAWFUL SPOUSE |
| Birth Date | | [redacted]1978 ? |
| Gender | | MALE |
| State Employee | | NOT A STATE EMPLOYEE |
| Health | | REFUSED |
| Dental | | ACTIVE |
| Vision | | REFUSED |
| Dependent Life Spouse | | REFUSED |

Per EIP this will have to go thru the review process & a determination will have to be made!

On Oct 01, 2013, 10:46 PM, I, **KATHERINE E BRADACS**, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 505414765
Change Reason:OPEN ENROLLMENT Approval Date: Oct 01, 2013 Group Id: K050000

## KATHERINE E BRADACS

| BENEFICIARY | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | DIANE BRADACS | |
| SSN | [redacted] | |
| Relation | MOTHER | |
| Birth Date | [redacted] 1953 | |
| Street 1 | | |
| Street 2 | | |
| City | | |
| State | | |
| Zip | | |
| Basic Life | 100%(PRIMARY) | 100%(CONTINGENT) |
| Optional Life | 100%(PRIMARY) | 100%(CONTINGENT) |

| BENEFICIARY | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | STEPHANIE BRADACS | REMOVED |

| BENEFICIARY | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | | TRACIE GOODWIN |
| SSN | | [redacted] |
| Relation | | WIFE |
| Birth Date | | MAR 08, 1978 |
| Street 1 | | [redacted] |
| Street 2 | | |
| City | | LEXINGTON |
| State | | SOUTH CAROLINA |
| Zip | | 29073 |
| Basic Life | | 100%(PRIMARY) |
| Optional Life | | 100%(PRIMARY) |

On Oct 01, 2013, 10:46 PM, I, KATHERINE E BRADACS, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

| | | | | | |
|---|---|---|---|---|---|
| SSN: | [redacted] | Date of Occurrence: | Jan 01, 2014 | Transaction Id: | 505414765 |
| Change Reason: | OPEN ENROLLMENT | Approval Date: | Oct 01, 2013 | Group Id: | [redacted] |

## KATHERINE E BRADACS

**DISCLAIMER**

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

On Oct 01, 2013, 10:46 PM, I, **KATHERINE E BRADACS**, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

FILE NOTES

Employee: Katherine Bradacs S.S. #:

| | |
|---|---|
| 11/1/2013 | Spoke with Ms. Bradacs again on 11/1 & explained to her that I had to cancel her 1/1/2014 open enroll. change because EIP cannot process the paperwork to add the children SSNs & date of birth with a pending transaction. That the (2) paper WOE's for open enrollment will replace her electronic change. Also advised her to go to My Benefits & update her beneficiary that she changed it to on her electronic enrollment form. |
| 11/19/2013 | EIP received request to add Tracie as a spouse. Sent employee email that EIP could not process her request due to: "must be legally recognized spouse under State Law". |

[redacted]

17

Per PEBA / EIP they have approved you to add the (2) Children retro back to the DOB of the Children. * Signed NOE to add the Children to Coverage as a newborn. (Find out what coverage she wants to add the children to. opt. life or additional $50,000 - Would require her to pay retro-premiums.

"Delete" - "Open Enrollment" Charge in ebs so EIP can key the charge to add the children at birth.
EIP cannot add the children with a pending enrollment charge.

(1st) Open Enrollment (paper NOE) to reflect all of the charges that we know can happen that will not require a review. (Do not add spouse to this one, because adding a spouse will have to be received by PEBA. EIP & a determination will have to be made by PEBA. ← Mark (Revised)

(2nd) Open Enrollment (NOE) needs to reflect all of your open enrollment charges from the 1st open enrollment NOE plus the information to add lawful spouse (must provide a copy of marriage license).

"Revised" Open Enrollment - will have to go thru the review process & PEBA will have to make a determination whether they will receive coverage.

Account Name: PATTY W DUGGAN
Group ID: [redacted] - S.C. Department of Public Safety

## Subscriber Inquiry - Coverage

SSN [redacted]8552
Name KATHERINE E BRADACS

Group K050000
Type ACTIVE - REGULAR

Coverage

| | Status | Plan Category | Effective & End Dates | Employee Premium | Waiver Date |
|---|---|---|---|---|---|
| Health | Active | STANDARD PLAN - Enrollee and Child(ren) | 04-01-2011 | 143.86 | |
| Dental | Active | Enrollee and Child(ren) | 04-01-2011 | 13.72 | |
| Vision | Active | Enrollee | 04-01-2011 | 7.76 | |
| Dental Plus | Refused | | 04-01-2011 | 0.00 | |
| DL Child | Refused | | 04-01-2011 | 0.00 | |
| Basic Life | Active | | 04-01-2011 | 0.00 | |
| LTD | Active | | 04-01-2011 | 0.00 | |
| Tobacco Premium | Refused | | 04-01-2011 | 0.00 | |

Pre Existing End Date: Leave Without Pay End Date:

| | Status | Cover | Age Group | Salary | Effective & End Dates | Employee Premium | Waiver Date |
|---|---|---|---|---|---|---|---|
| SLTD | Active | 90 DAY | < 31 | $32,729.00 | 01-01-2013 | 1.36 | |
| Optional Life | Active | 50000 | < 35 | | 04-01-2011 | 2.96 | |
| DL Spouse | Refused | | | | 04-01-2011 | 0.00 | |

 ebs2

8-5 until 7:pm fri.
email:
home # (803)

Opt. life + all/c - Birth
retro premiums

**Account Name:** PATTY W DUGGAN
**Group ID:** K050000 - S.C. Department of Public Safety

## Subscriber Inquiry - Dependents

SSN [redacted]6552
Name KATHERINE E BRADACS

Group K050000
Type ACTIVE - REGULAR

Dependents

| Name | Relationship | Eligibility | State Empl. | Group | HS | DD | VC | DL | DLS |
|---|---|---|---|---|---|---|---|---|---|
| [redacted] | NATURAL CHILD | Child Under 26 | No | | A1 | A1 | | | |

** Hover mouse over Dependent Name for SSN*
** Hover mouse over Status Codes for full status description.*

 ebs2

*You must also complete a Tobacco Certification form within 31 days of enrolling in health coverage and whenever the status of tobacco use changes for you or a dependent covered under your health insurance.*

# ACTIVE EMPLOYEE NOTICE OF ELECTION (NOE)
SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY
INSURANCE BENEFITS

[A] See Instructions - If Completing By Hand Use Black Ink

## ACTION

| Select One: | Type of Change | BA Use Only | MoneyPlus Pretax Premiums |
|---|---|---|---|
| ☐ New Hire<br>☐ Transfer<br>☐ Change | ☒ Enrollment Other *(specify)* _____<br>Date of Change Event: _____ | Effective Date: _____ ☐ Permanent P/T EE *(20 hrs.)*<br>Group ID #: _____<br>Group Name: _____ | ☐ Refuse ☐ Yes |

## ENROLLEE INFO

| 1. Social Security Number (SSN) | 2. Last Name | 3. Suffix | 4. First Name | 5. M.I. | 6. Date of Birth MM/DD/YYYY |
|---|---|---|---|---|---|
| | BRADACS | | CATHERINE | F | [redacted] |

| 7. Sex | 8. Marital Status | 9. Home Phone # | 10. Work Phone # | 11. E-mail Address |
|---|---|---|---|---|
| ☐ M<br>☒ F | ☐ Single ☐ Married ☐ Widowed ☐ Divorced ☐ Separated | ([redacted] | ( ) | [redacted] |

| 12. Mailing Address | 13. Apt. | 14. City | 15. State | 16. Zip Code | 17. County Code | 18. Annual Salary | 19. Date of Hire MM/DD/YYYY |
|---|---|---|---|---|---|---|---|
| [redacted] | | LEXINGTON | SC | 29073 | LEXINGTON | | |

## MEDICARE & OTHER COVERAGE

20. List yourself and any other persons to be covered who are eligible for Part A and/or Part B of Medicare.

| Name | Medicare # | Eligible Due To | Effective Date Part A MM/DD/YYYY | Effective Date Part B MM/DD/YYYY |
|---|---|---|---|---|
| | | ☐ Age ☐ Disability ☐ Renal Disease | | |
| | | ☐ Age ☐ Disability ☐ Renal Disease | | |

21. Do you or any of your dependent(s) have other health coverage? ☐ YES ☐ NO Does this coverage include prescription drug benefits? ☐ YES ☐ NO

| Dependent Name | Insurance Company | Policy Holder Date of Birth | Effective Date of Policy | Termination Date *(If Applicable)* |
|---|---|---|---|---|
| | | | | |

## COVERAGE

22. HEALTH PLAN *(Refuse or select one plan and one level of coverage)*
PLAN ☐ Refuse ☐ BlueChoice HMO ☐ Standard ☐ Savings ☐ TRICARE Supplement
Basic Life and Basic Long Term Disability included automatically with Standard, Savings and BlueChoice HMO
COVERAGE LEVEL ☐ Employee ☐ Employee/Child(ren) ☐ Employee/Spouse ☐ Family

23. STATE DENTAL PLAN *(Select One)*
☐ Refuse ☐ Employee ☐ Employee/Spouse ☐ Employee/Child(ren) ☐ Family

24. DENTAL PLUS *(Select One)*
☐ Refuse ☐ Yes

| 25. DEPENDENT LIFE - Child(ren) *(Select One)* | 26. DEPENDENT LIFE - Spouse *(Select One)* | 27. OPTIONAL LIFE *(Select One)* | 28. SUPPLEMENTAL LTD *(Select One)* | 29. VISION CARE *(Select One)* |
|---|---|---|---|---|
| ☐ Refuse<br>☐ $15,000 | ☐ Refuse ☐ Coverage Level<br>$ _____<br>*(Must be in increments of $10,000)* | ☐ Refuse ☐ Coverage Level<br>$ _____<br>*(Must be in increments of $10,000)* | ☐ Refuse<br>☐ Plan One - *90-day benefit waiting period*<br>☐ Plan Two - *180-day benefit waiting period* | ☐ Refuse ☐ Employee ☐ Employee/Spouse ☐ Employee/Child(ren) ☐ Family |

## BENEFICIARIES

In blocks 30 and 31, if there are additional beneficiaries or dependents, list on separate sheet, signed and dated by employee.

| 30. Basic Life/Optional Life *(Select one or both)* | SSN# | Last Name | First Name | Relationship | Date of Birth MM/DD/YYYY | Primary or Contingent? |
|---|---|---|---|---|---|---|
| ☐ Basic Life<br>☐ Optional Life | | | | | | ☐ Primary<br>☐ Contingent |
| ☐ Basic Life<br>☐ Optional Life | | | | | | ☐ Primary<br>☐ Contingent |

If beneficiary is an estate or trust, complete the following:
Estate/Trust _____ Address _____ If Trust, Date Signed _____

## DEPENDENTS

31. Always list spouse. List eligible children to be covered. If they are not listed, they will not be covered. For a child age 19-24 to be eligible for Dependent Life-Child coverage, your child must be eligible according to the requirements on the reverse of this NOE.

| Add (A) or Delete (D) | Dependent SSN# | Last Name | First Name | Sex M/F | Relationship | Date of Birth MM/DD/YYYY | Indicate Special Status |
|---|---|---|---|---|---|---|---|
| A | Spouse [redacted] | Goodwin-Bradacs | TRACIE | F | WIFE | [redacted]1978 | Does PEBA Insurance Benefits already cover your spouse? ☐ Yes ☒ No |
| | Child | | | | | | ☐ Full-time Student ☐ Incapacitated |
| | Child | | | | | | ☐ Full-time Student ☐ Incapacitated |
| | Child | | | | | | ☐ Full-time Student ☐ Incapacitated |

## CERTIFICATION & AUTHORIZATION

32. CERTIFICATION: I have read this NOE and made authorizations herein and selected the coverage noted. I have provided Social Security numbers and documentation establishing my dependent(s)' eligibility for the plan(s) selected. I certify that any child enrolled in Dependent Life/Child insurance is eligible according to the requirements on the reverse of this NOE. I also understand that proof of eligibility (at the time of enrollment and at the time of the claim) will be required before any Dependent Life/Child insurance claim is paid. I understand that unless otherwise provided in the Plan, I may cancel coverage for me or my dependent(s) only during an open enrollment period (every two years). Should I refuse any coverage or fail to enroll all eligible dependents when first eligible, I and/or all eligible dependents may only enroll during an open enrollment period (every two years) unless otherwise provided by the Plan. I understand and agree that all selected plans will not be effective unless and until the NOE is approved. I understand that the State reserves the right to alter benefits or premiums at any time to preserve the financial stability of the Plan. I further acknowledge that the eligibility status of any covered individual is subject to audit at any time.

AUTHORIZATION: I hereby authorize my employer to deduct from my salary premiums necessary to pay for all plans selected and verify my salary for enrollment. I authorize any healthcare provider, prescription drug dispenser and claims administrator to release any information necessary to evaluate, administer and process claims for any benefits.

DISCLAIMER: THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Employee Signature _____ Date 10-15-2013

33. I hereby attest the employee meets eligibility requirements, proper premiums are being collected, this form is complete and accurate and all required documentation is attached to process NOE form.

Benefits Administrator Signature _____ Date _____

*You must also complete a Tobacco Certification form within 31 days of enrolling in health coverage and whenever the status of tobacco use changes for you or a dependent covered under your health insurance.*

# ACTIVE EMPLOYEE NOTICE OF ELECTION (NOE)
SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY
INSURANCE BENEFITS

[A] See Instructions - If Completing By Hand Use Black Ink

## ACTION

| Select One: | Type of Change | BA Use Only | MoneyPlus Pretax Premiums |
|---|---|---|---|
| ☐ New Hire<br>☐ Transfer<br>☒ Change | ☐ Enrollment Other *(specify)* _____<br>Date of Change Event: _____ | Effective Date: _____ ☐ Permanent P/T EE *(20 hrs.)*<br>Group ID #: _____<br>Group Name: _____ | ☐ Refuse ☐ Yes |

## ENROLLEE INFO

| 1. Social Security Number (SSN) | 2. Last Name | 3. Suffix | 4. First Name | 5. M.I. | 6. Date of Birth MM/DD/YYYY |
|---|---|---|---|---|---|
| [redacted] | BRADDOCK | | CATHERINE | E | [redacted]/1962 |

| 7. Sex | 8. Marital Status | 9. Home Phone # | 10. Work Phone # | 11. E-mail Address |
|---|---|---|---|---|
| ☐ M<br>☒ F | ☐ Single ☐ Widowed<br>☒ Married ☐ Divorced<br>☐ Separated | (803) [redacted] | ( ) | [redacted] |

| 12. Mailing Address | 13. Apt. | 14. City | 15. State | 16. Zip Code | 17. County Code | 18. Annual Salary | 19. Date of Hire MM/DD/YYYY |
|---|---|---|---|---|---|---|---|
| [redacted] | | LEXINGTON | SC | 29073 | | | |

## MEDICARE & OTHER COVERAGE

20. List yourself and any other persons to be covered who are eligible for Part A and/or Part B of Medicare.

| Name | Medicare # | Eligible Due To | Effective Date Part A MM/DD/YYYY | Effective Date Part B MM/DD/YYYY |
|---|---|---|---|---|
| | | ☐ Age ☐ Disability ☐ Renal Disease | | |
| | | ☐ Age ☐ Disability ☐ Renal Disease | | |

21. Do you or any of your dependent(s) have other health coverage? ☐ YES ☐ NO Does this coverage include prescription drug benefits? ☐ YES ☐ NO

| Dependent Name | Insurance Company | Policy Holder Date of Birth | Effective Date of Policy | Termination Date *(If Applicable)* |
|---|---|---|---|---|
| | | | | |

## COVERAGE

22. HEALTH PLAN *(Refuse or select one plan and one level of coverage)*

PLAN ☐ Refuse ☐ BlueChoice HMO ☐ Standard ☐ Savings ☐ TRICARE Supplement
Basic Life and Basic Long Term Disability included automatically with Standard, Savings and BlueChoice HMO

COVERAGE LEVEL ☐ Employee ☐ Employee/Child(ren) ☐ Employee/Spouse ☐ Family

23. STATE DENTAL PLAN *(Select One)* ☐ Refuse ☐ Employee ☐ Employee/Spouse ☐ Employee/Child(ren) ☐ Family

24. DENTAL PLUS *(Select One)* ☐ Refuse ☐ Yes

| 25. DEPENDENT LIFE - Child(ren) *(Select One)* | 26. DEPENDENT LIFE - Spouse *(Select One)* | 27. OPTIONAL LIFE *(Select One)* | 28. SUPPLEMENTAL LTD *(Select One)* | 29. VISION CARE *(Select One)* |
|---|---|---|---|---|
| ☐ Refuse<br>☐ $15,000 | ☐ Refuse ☐ Coverage Level<br>$ _____<br>*(Must be in increments of $10,000)* | ☐ Refuse ☒ Coverage Level<br>$ 100,000<br>*(Must be in increments of $10,000)* | ☐ Refuse<br>☐ Plan One - *90-day benefit waiting period*<br>☐ Plan Two - *180-day benefit waiting period* | ☐ Refuse ☐ Employee/Spouse<br>☐ Employee ☐ Employee/Child(ren)<br>☐ Family |

## BENEFICIARIES

In blocks 30 and 31, if there are additional beneficiaries or dependents, list on separate sheet, signed and dated by employee.

| 30. Basic Life/Optional Life *(Select one or both)* | SSN# | Last Name | First Name | Relationship | Date of Birth MM/DD/YYYY | Primary or Contingent? |
|---|---|---|---|---|---|---|
| ☐ Basic Life<br>☐ Optional Life | | | | | | ☐ Primary<br>☐ Contingent |
| ☐ Basic Life<br>☐ Optional Life | | | | | | ☐ Primary<br>☐ Contingent |

If beneficiary is an estate or trust, complete the following:
Estate/Trust _____ Address _____ If Trust, Date Signed _____

## DEPENDENTS

31. Always list spouse. List eligible children to be covered. If they are not listed, they will not be covered. For a child age 19-24 to be eligible for Dependent Life-Child coverage, your child must be eligible according to the requirements on the reverse of this NOE.

| Add (A) or Delete (D) | Dependent SSN# | Last Name | First Name | Sex M/F | Relationship | Date of Birth MM/DD/YYYY | Indicate Special Status |
|---|---|---|---|---|---|---|---|
| | Spouse | | | | | | Does PEBA Insurance Benefits already cover your spouse? ☐ Yes ☐ No |
| | Child | | | | | | ☐ Full-time Student<br>☐ Incapacitated |
| | Child | | | | | | ☐ Full-time Student<br>☐ Incapacitated |
| | Child | | | | | | ☐ Full-time Student<br>☐ Incapacitated |

## CERTIFICATION & AUTHORIZATION

32. CERTIFICATION: I have read this NOE and made authorizations herein and selected the coverage noted. I have provided Social Security numbers and documentation establishing my dependent(s)' eligibility for the plan(s) selected. I certify that any child enrolled in Dependent Life/Child insurance is eligible according to the requirements on the reverse of this NOE. I also understand that proof of eligibility (at the time of enrollment and at the time of the claim) will be required before any Dependent Life/Child insurance claim is paid. I understand that unless otherwise provided in the Plan, I may cancel coverage for me or my dependent(s) only during an open enrollment period (every two years). Should I refuse any coverage or fail to enroll all eligible dependents when first eligible, I and/or all eligible dependents may only enroll during an open enrollment period (every two years) unless otherwise provided by the Plan. I understand and agree that all selected plans will not be effective unless and until the NOE is approved. I understand that the State reserves the right to alter benefits or premiums at any time to preserve the financial stability of the Plan. I further acknowledge that the eligibility status of any covered individual is subject to audit at any time.

AUTHORIZATION: I hereby authorize my employer to deduct from my salary premiums necessary to pay for all plans selected and verify my salary for enrollment. I authorize any healthcare provider, prescription drug dispenser and claims administrator to release any information necessary to evaluate, administer and process claims for any benefits.

DISCLAIMER: THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Employee Signature _____ Date 10-19-2013

33. I hereby attest the employee meets eligibility requirements, proper premiums are being collected, this form is complete and accurate and all required documentation is attached to process NOE form.

Benefits Administrator Signature _____ Date _____

*You must also complete a Tobacco Certification form within 31 days of enrolling in health coverage and whenever the status of tobacco use changes for you or a dependent covered under your health insurance.*

# ACTIVE EMPLOYEE NOTICE OF ELECTION (NOE)
SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY
INSURANCE BENEFITS

A
See Instructions - If Completing By Hand Use Black Ink

## ACTION

| Select One: | Type of Change | BA Use Only | MoneyPlus Pretax Premiums |
|---|---|---|---|
| ☐ New Hire<br>☐ Transfer<br>☒ Change | ☐ Enrollment Other *(specify)*<br>Date of Change Event: 7-20-2012 | Effective Date:<br>Group ID #:<br>Group Name:<br>☐ Permanent P/T EE *(20 hrs.)* | ☐ Refuse ☐ Yes |

## ENROLLEE INFO

| 1. Social Security Number (SSN) | 2. Last Name | 3. Suffix | 4. First Name | 5. M.I. | 6. Date of Birth MM/DD/YYYY |
|---|---|---|---|---|---|
| [redacted]-6552 | Bridges | | Katherine | E | [redacted]1952 |

| 7. Sex | 8. Marital Status | 9. Home Phone # | 10. Work Phone # | 11. E-mail Address |
|---|---|---|---|---|
| ☐ M<br>☒ F | ☐ Single ☐ Widowed<br>☒ Married ☐ Divorced<br>☐ Separated | (803) [redacted] | ( ) | [redacted] |

| 12. Mailing Address | 13. Apt. | 14. City | 15. State | 16. Zip Code | 17. County Code | 18. Annual Salary | 19. Date of Hire MM/DD/YYYY |
|---|---|---|---|---|---|---|---|
| [redacted] | | Lexington | SC | 29073 | | | |

## MEDICARE & OTHER COVERAGE

20. List yourself and any other persons to be covered who are eligible for Part A and/or Part B of Medicare.

| Name | Medicare # | Eligible Due To | Effective Date Part A MM/DD/YYYY | Effective Date Part B MM/DD/YYYY |
|---|---|---|---|---|
| | | ☐ Age ☐ Disability ☐ Renal Disease | | |
| | | ☐ Age ☐ Disability ☐ Renal Disease | | |

21. Do you or any of your dependent(s) have other health coverage? ☐ YES ☐ NO Does this coverage include prescription drug benefits? ☐ YES ☐ NO

| Dependent Name | Insurance Company | Policy Holder Date of Birth | Effective Date of Policy | Termination Date *(if Applicable)* |
|---|---|---|---|---|
| | | | | |

## COVERAGE

22. HEALTH PLAN *(Refuse or select one plan and one level of coverage)*

PLAN: ☐ Refuse ☐ BlueChoice HMO ☒ Standard ☐ Savings ☐ TRICARE Supplement
Basic Life and Basic Long Term Disability included automatically with Standard, Savings and BlueChoice HMO

COVERAGE LEVEL: ☐ Employee ☒ Employee/Child(ren) ☐ Employee/Spouse ☐ Family

23. STATE DENTAL PLAN *(Select One)*: ☐ Refuse ☐ Employee ☐ Employee/Spouse ☒ Employee/Child(ren) ☐ Family

24. DENTAL PLUS *(Select One)*: ☒ Refuse ☐ Yes

| 25. DEPENDENT LIFE - Child(ren) *(Select One)* | 26. DEPENDENT LIFE - Spouse *(Select One)* | 27. OPTIONAL LIFE *(Select One)* | 28. SUPPLEMENTAL LTD *(Select One)* | 29. VISION CARE *(Select One)* |
|---|---|---|---|---|
| ☐ Refuse<br>☐ $15,000 | ☐ Refuse ☐ Coverage Level<br>$ _____<br>*(Must be in increments of $10,000)* | ☐ Refuse ☐ Coverage Level<br>$ _____<br>*(Must be in increments of $10,000)* | ☐ Refuse<br>☐ Plan One - *90-day benefit waiting period*<br>☐ Plan Two - *180-day benefit waiting period* | ☒ Refuse ☐ Employee/Spouse<br>☐ Employee ☐ Employee/Child(ren)<br>☐ Family |

## BENEFICIARIES

In blocks 30 and 31, if there are additional beneficiaries or dependents, list on separate sheet, signed and dated by employee.

| 30. Basic Life/Optional Life *(Select one or both)* | SSN# | Last Name | First Name | Relationship | Date of Birth MM/DD/YYYY | Primary or Contingent? |
|---|---|---|---|---|---|---|
| ☐ Basic Life<br>☐ Optional Life | | | | | | ☐ Primary<br>☐ Contingent |
| ☐ Basic Life<br>☐ Optional Life | | | | | | ☐ Primary<br>☐ Contingent |

If beneficiary is an estate or trust, complete the following:
Estate/Trust _____ Address _____ If Trust, Date Signed _____

## DEPENDENTS

31. Always list spouse. List eligible children to be covered. If they are not listed, they will not be covered. For a child age 19-24 to be eligible for Dependent Life Child coverage, your child must be eligible according to the requirements on the reverse of this NOE.

| Add (A) or Delete (D) | Dependent SSN# | Last Name | First Name | Sex M/F | Relationship | Date of Birth MM/DD/YYYY | Indicate Special Status |
|---|---|---|---|---|---|---|---|
| | Spouse | Georgann Bridges | Thomas | F | Wife | [redacted]1948 | Does PEBA Insurance Benefits already cover your spouse? ☐ Yes ☐ No |
| A. | Child [redacted] | [redacted] | [redacted] | M | Son | | ☐ Full-time Student ☐ Incapacitated |
| A. | Child [redacted] | [redacted] | [redacted] | F | Daughter | | ☐ Full-time Student ☐ Incapacitated |
| | Child | | | | | | ☐ Full-time Student ☐ Incapacitated |

## CERTIFICATION & AUTHORIZATION

32. CERTIFICATION: I have read this NOE and made authorizations herein and selected the coverage noted. I have provided Social Security numbers and documentation establishing my dependent(s)' eligibility for the plan(s) selected. I certify that any child enrolled in Dependent Life/Child Insurance is eligible according to the requirements on the reverse of this NOE. I also understand that proof of eligibility (at the time of enrollment and at the time of the claim) will be required before any Dependent Life/Child Insurance claim is paid. I understand that unless otherwise provided in the Plan, I may cancel coverage for me or my dependent(s) only during an open enrollment period (every two years). Should I refuse any coverage or fail to enroll all eligible dependents when first eligible, I and/or all eligible dependents may only enroll during an open enrollment period (every two years) unless otherwise provided by the Plan. I understand and agree that all selected plans will not be effective unless and until the NOE is approved. I understand that the State reserves the right to alter benefits or premiums at any time to preserve the financial stability of the Plan. I further acknowledge that the eligibility status of any covered individual is subject to audit at any time.

AUTHORIZATION: I hereby authorize my employer to deduct from my salary premiums necessary to pay for all plans selected and verify my salary for enrollment. I authorize any healthcare provider, prescription drug dispenser and claims administrator to release any information necessary to evaluate, administer and process claims for any benefits.

DISCLAIMER: THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Employee Signature _____ Date 10-28-2013

33. I hereby attest the employee meets eligibility requirements, proper premiums are being collected, this form is complete and accurate and all required documentation is attached to process NOE form.

Benefits Administrator Signature _____ Date _____

Deleted — must do paper WOE Transaction

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 512435185
Change Reason: OPEN ENROLLMENT Approval Date: Oct 31, 2013 Group Id: K050000

## KATHERINE E BRADACS

**SUPPORTING DOCUMENTS**

1. Appropriate supporting document verifying eligibility of your dependent.

| CONTACT INFORMATION | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | KATHERINE E BRADACS | |
| Street 1 | [redacted] | |
| Street 2 | | |
| City | LEXINGTON | |
| State | SOUTH CAROLINA | |
| Zip | 29073 | |
| County | LEXINGTON | |
| Country | UNITED STATES | |
| Home Number | 803-[redacted] | |
| Work Number | | |
| Email Address | [redacted] | |

* advised employee to go back in My Benefits & update her beneficiary info to reflect her Choice! PP 11/1/2013

On Oct 31, 2013, 4:57 PM, I, **KATHERINE E BRADACS**, Benefits Identification Number 932[redacted] ~~hereby Electronically~~ Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 512435185
Change Reason: OPEN ENROLLMENT Approval Date: Oct 31, 2013 Group Id: [redacted]

## KATHERINE E BRADACS

| COVERAGE INFORMATION | PREVIOUS VALUE | NEW VALUE | PREMIUM |
|---|---|---|---|
| Health | STANDARD PLAN | | 143.86 |
| | ENROLLEE AND CHILD(REN) | | |
| Dental | STATE DENTAL PLAN | | 21.34 |
| | ENROLLEE AND CHILD(REN) | FULL FAMILY | |
| Dental Plus | NO | | 0.00 |
| Vision | STATE VISION PLAN | | 7.94 |
| | ENROLLEE | | |
| Optional Life | $50,000 | $100,000 | 5.90 |
| Dependent Life Spouse | REFUSED | | 0.00 |
| Dependent Life Child | REFUSED | | 0.00 |
| SLTD | 90 | | 1.72 |
| Tobacco Premium | NO | | 0.00 |
| PREMIUM PRETAX FEATURE (MONEYPLU$) | YES | | |
| TOTAL | | | 180.76 |

* Rates will be higher than those listed above if your age category changed or will change in 2013. See rate chart for accurate 2014 rates for Optional Life, Dependent Life Spouse, & SLTD.

On Oct 31, 2013, 4:57 PM, I, KATHERINE E BRADACS, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 512435185
Change Reason:OPEN ENROLLMENT Approval Date: Oct 31, 2013 Group Id: K050000

## KATHERINE E BRADACS

| DEPENDENT | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | [redacted] | |
| SSN | [redacted] | |
| Relation | NATURAL CHILD | |
| Birth Date | [redacted]2001 | |
| Gender | MALE | |
| Eligibility | CHILD UNDER 26 | |
| Health | ACTIVE | |
| Dental | ACTIVE | |
| Vision | REFUSED | |
| Dependent Life Child | | |

| DEPENDENT | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | | TRACIE D GOODWIN |
| SSN | | [redacted] |
| Relation | | LAWFUL SPOUSE |
| Birth Date | | [redacted] |
| Gender | | MALE |
| State Employee | | NOT A STATE EMPLOYEE |
| Health | | REFUSED |
| Dental | | ACTIVE |
| Vision | | REFUSED |
| Dependent Life Spouse | | REFUSED |

On Oct 31, 2013, 4:57 PM, I, KATHERINE E BRADACS, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 512435185
Change Reason:OPEN ENROLLMENT Approval Date: Oct 31, 2013 Group Id: [redacted]

## KATHERINE E BRADACS

| DEPENDENT | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | | E [redacted] |
| SSN | | [redacted] |
| Relation | | NATURAL CHILD |
| Birth Date | | [redacted] |
| Gender | | MALE |
| Eligibility | | CHILD UNDER 26 |
| Health | | ACTIVE |
| Dental | | ACTIVE |
| Vision | | REFUSED |
| Dependent Life Child | | REFUSED |

| DEPENDENT | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | | C [redacted] |
| SSN | | [redacted] |
| Relation | | NATURAL CHILD |
| Birth Date | | [redacted] |
| Gender | | FEMALE |
| Eligibility | | CHILD UNDER 26 |
| Health | | ACTIVE |
| Dental | | ACTIVE |
| Vision | | REFUSED |
| Dependent Life Child | | REFUSED |

On Oct 31, 2013, 4:57 PM, I, **KATHERINE E BRADACS**, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 512435185
Change Reason:OPEN ENROLLMENT Approval Date: Oct 31, 2013 Group Id: K050000

## KATHERINE E BRADACS

| BENEFICIARY | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | DIANE BRADACS | |
| SSN | [redacted] | |
| Relation | MOTHER | |
| Birth Date | [redacted] | |
| Street 1 | | |
| Street 2 | | |
| City | | |
| State | | |
| Zip | | |
| Basic Life | 100%(PRIMARY) | 100%(CONTINGENT) |
| Optional Life | 100%(PRIMARY) | 100%(CONTINGENT) |
| **BENEFICIARY** | **PREVIOUS VALUE** | **NEW VALUE** |
| Name | STEPHANIE BRADACS | REMOVED |
| **BENEFICIARY** | **PREVIOUS VALUE** | **NEW VALUE** |
| Name | | TRACIE GOODWIN |
| SSN | | [redacted] |
| Relation | | WIFE |
| Birth Date | | [redacted] 1978 |
| Street 1 | | [redacted] |
| Street 2 | | |
| City | | Lexington |
| State | | SOUTH CAROLINA |
| Zip | | 29073 |
| Basic Life | | 50%(PRIMARY) |
| Optional Life | | 50%(PRIMARY) |

On Oct 31, 2013, 4:57 PM, I, **KATHERINE E BRADACS**, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# SUMMARY OF CHANGE

SSN: [redacted] Date of Occurrence: Jan 01, 2014 Transaction Id: 512435185
Change Reason: OPEN ENROLLMENT Approval Date: Oct 31, 2013 Group Id: [redacted]

## KATHERINE E BRADACS

| BENEFICIARY | PREVIOUS VALUE | NEW VALUE |
|---|---|---|
| Name | | [redacted] |
| SSN | | [redacted] |
| Relation | | CHILD |
| Birth Date | | [redacted]2001 |
| Street 1 | | [redacted] |
| Street 2 | | |
| City | | Lexington |
| State | | SOUTH CAROLINA |
| Zip | | 29073 |
| Basic Life | | 50%(PRIMARY) |
| Optional Life | | 50%(PRIMARY) |

**DISCLAIMER**

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

On Oct 31, 2013, 4:57 PM, I, **KATHERINE E BRADACS**, Benefits Identification Number 932[redacted] hereby Electronically Sign the Summary of Change, thereby authorizing PEBA Insurance Benefits to make the selected changes on my behalf.

# Statement of Benefits as of 10-31-2013

## Enrollee

SSN & Name:
[redacted]6552
KATHERINE E BRADACS

Address:
185 MOSSBOROUGH DR
LEXINGTON, SOUTH CAROLINA 29073
LEXINGTON
UNITED STATES

Phone Numbers & Email
Phone: 803[redacted]
Work:
Email: KATIELIZABETH22@YAHOO.COM

Date of Birth: [redacted]982
Gender: FEMALE
Marital Status: SINGLE

Status: FULL TIME PERM
Group ID: K050000

Money Plus (pretax): YES
Hlth Savings Acct: NO
Pre Existing End Date:

Medicare Coverage: NO

## Coverage

| | Plan | Category | Premium |
|---|---|---|---|
| Health: | STANDARD PLAN | ENROLLEE AND CHILD (REN) | 143.86 |
| Dental: | STATE DENTAL PLAN | ENROLLEE AND CHILD (REN) | 13.72 |
| Dental Plus: | NO | | 0.00 |
| Vision: | STATE VISION PLAN | ENROLLEE | 7.76 |
| Optional Life: | $50,000 | | 2.96 |
| Dependent Life Child: | REFUSED | | 0.00 |
| Dependent Life Spouse: | REFUSED | | 0.00 |
| SLTD: | 90-DAY WAITING PERIOD | | 1.36 |
| Tobacco Premium: | NO | | 0.00 |
| Total | | | 169.66 |

Note: Your employer provides Basic Life and Basic Long Term Disability Insurance at no cost to you if you participate in a "state" health plan.

## Dependents

1

SSN & Name:
371277303
[redacted]

Gender: MALE
Relation: NATURAL CHILD
Date of Birth: [redacted]2001
Eligibility: CHILD UNDER 26
Late Entrant:

| Coverage Type | Status | Effective Date | End Date |
|---|---|---|---|
| Health: | ACTIVE | 04-01-2011 | 08-31-2027 |
| Dental: | ACTIVE | 04-01-2011 | 08-31-2027 |
| Dependent Life: | | | |
| Vision: | | | |

Other Coverage: NO
Pre Existing End Date:

Medicare Coverage: NO
Audit Status: Completed 02-03-2012

## Beneficiaries

1

SSN & Name:
[redacted]0658
[redacted]
Address:

Type: PERSON
Relation: MOTHER
Date of Birth: [redacted]1953
Coverage
Basic Life: 100% (PRIMARY)
Optional Life: 100% (PRIMARY)

2

SSN & Name:
[redacted]6821
[redacted]
Address:

Type: PERSON
Relation: SISTER
Date of Birth: [redacted]1978
Coverage

# Statement of Benefits as of 10-31-2013

## Enrollee

SSN & Name:
[redacted]552
KATHERINE E BRADACS

Address:
[redacted]
LEXINGTON , SOUTH CAROLINA 29073
LEXINGTON
UNITED STATES

Phone Numbers & Email
Phone: [redacted]
Work:
Email: [redacted]@YAHOO.COM

Date of Birth: [redacted]1982
Gender: FEMALE
Marital Status: SINGLE

Status: FULL TIME PERM
Group ID: K050000

Money Plus (pretax): YES
Hlth Savings Acct: NO
Pre Existing End Date:

Medicare Coverage: NO

## Coverage

| | Plan | Category | Premium |
|---|---|---|---|
| Health: | STANDARD PLAN | ENROLLEE AND CHILD (REN) | 143.86 |
| Dental: | STATE DENTAL PLAN | ENROLLEE AND CHILD (REN) | 13.72 |
| Dental Plus: | NO | | 0.00 |
| Vision: | STATE VISION PLAN | ENROLLEE | 7.76 |
| Optional Life: | $50,000 | | 2.96 |
| Dependent Life Child: | REFUSED | | 0.00 |
| Dependent Life Spouse: | REFUSED | | 0.00 |
| SLTD: | 90-DAY WAITING PERIOD | | 1.36 |
| Tobacco Premium: | NO | | 0.00 |
| Total | | | 169.66 |

Note: Your employer provides Basic Life and Basic Long Term Disability Insurance at no cost to you if you participate in a "state" health plan.

## Dependents

1)

SSN & Name:
[redacted]303
J[redacted]

Gender: MALE
Relation: NATURAL CHILD
Date of Birth: [redacted]2001
Eligibility: CHILD UNDER 26
Late Entrant:

| Coverage Type | Status | Effective Date | End Date |
|---|---|---|---|
| Health: | ACTIVE | 04-01-2011 | 08-31-2027 |
| Dental: | ACTIVE | 04-01-2011 | 08-31-2027 |
| Dependent Life: | | | |
| Vision: | | | |

Other Coverage: NO
Pre Existing End Date:

Medicare Coverage: NO
Audit Status: Completed 02-03-2012

## Beneficiaries

1)

SSN & Name:
[redacted]658
[redacted]

Address:

Type: PERSON
Relation: MOTHER
Date of Birth: [redacted]1953

Coverage
Basic Life: 100% (PRIMARY)
Optional Life: 100% (PRIMARY)

2)

SSN & Name:
[redacted]6821
[redacted]

Address:

Type: PERSON
Relation: SISTER
Date of Birth: [redacted]1978

Coverage

| | |
|---|---|
| Basic Life: | 100% (CONTINGENT) |
| Optional Life: | 100% (CONTINGENT) |

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

PEBA

David K. Avant
Interim Executive Director
Retirement Benefits

11/7/2013

KATHERINE BRADACS [redacted] -6552

[redacted]

LEXINGTON, SC 29073

## FINANCIAL SERVICES - ENROLLMENT
## REJECTION NOTICE OF BENEFICIARY DESIGNATION

Our office has received your *Beneficiary Designation* form and is unable to process the form as submitted. Indicated below are the changes needed to properly complete the request. A new form is enclosed for you to complete, sign, and have notarized. You may also refer to the instructions provided on the back of the form.

☐ The specific retirement system must be checked.

☐ Please complete Section II-A for your primary beneficiary and Section II-B for your contingent beneficiary. These beneficiaries cannot be the same.

☐ Section II-A may have a person's name or estate designated, but cannot have both.

☐ Section III must have a person's name or estate designated if the employer has Incidental Death Benefit coverage.

☐ The member and a Notary Public must sign in the Ceritifcation Section, and a valid notarization date must be listed.

☐ The date of birth is incomplete in section(s) _____

☒ This form appears altered, and is, therefore, unacceptable. Please complete a new form if changes are required.

☐ Please use additional Beneficiary Designation forms to list more than three beneficiaries.

☐ A *Beneficiary Designation* (Form 1102) was submitted. We require the *State ORP Active Incidental Death Benefit Beneficiary Designation* (Form 1106). Please submit.

☒ Other: Please complete the enclosed form 1102 in its entirety, sign and have notarized.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS AND DOES NOT CREATE A CONTRACT BETWEEN THE MEMBER AND THE SOUTH CAROLINA RETIREMENT SYSTEMS. THE SOUTH CAROLINA RETIREMENT SYSTEMS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT.

Form 1109
Revised 9/18/2013

# INSTRUCTIONS

**USE THIS FORM FOR ACTIVE MEMBER BENEFICIARY DESIGNATIONS WHICH DO NOT REQUIRE A TRUSTEE APPOINTMENT. THIS FORM MUST BE COMPLETED IN ITS ENTIRETY EACH TIME. AN ACKNOWLEDGMENT LETTER WILL BE SENT TO THE MEMBER EACH TIME A FORM IS RECEIVED BY THE SC RETIREMENT SYSTEMS. FOR RETIREE BENEFICIARY DESIGNATION, USE FORM 7201.**

Check the appropriate boxes in the upper right corner. If you are a member of more than one system, complete a beneficiary form (FORM 1102) for each system. You should complete a form for each system of which you are a member when making any beneficiary changes (i.e. if you complete a FORM 1102 for your SCRS account, beneficiary changes will be for that system only, your prior designations for your PORS account would still be in effect).

## SECTION I

**1-8. Complete the general information concerning yourself.**

## SECTION II-A REFUND OF CONTRIBUTIONS/SURVIVOR BENEFITS

On this form you may designate a person(s) or your estate as beneficiary for your retirement contributions or survivor benefits. Leave the relationship, sex, date of birth, and SSN blank if you are naming your estate as beneficiary. If you are naming your estate as beneficiary, you may not designate a person(s) for this portion of your retirement benefits. If additional space is needed to designate more than three beneficiaries, complete and attach a second FORM 1102 and indicate on the form how many pages are being submitted. That information will assist the SC Retirement Systems in determining total number of forms submitted in the event the forms are separated during the processing. **If Section II-A is left blank the Form 1102 is incomplete. The Form 1102 is marked "VOID" and returned for completion of a new form.**

**NOTE: SURVIVOR BENEFITS WILL NOT BE PAID TO AN ESTATE - LUMP SUM REFUND ONLY!**

## SECTION II-B CONTINGENT BENEFICIARY (OPTIONAL)

In accordance with §9-1-1650, §9-9-100, and §9-11-110, Code of Laws of SC (1976) as amended, an "active" member (a member who is actively employed, making regular contributions and earning service credit) may name contingent beneficiaries to receive a refund of member contributions or survivor benefits (if eligible). **(THESE CONTINGENT BENEFICIARIES HAVE NO RIGHTS, UNLESS ALL PRIMARY BENEFICIARIES HAVE DIED).** Contingent beneficiaries may not be designated for Incidental Death Benefit. If you do not want a contingent beneficiary, write "NONE" in Section II-B on the reverse (Page 1) of this form. **If a form is received in which the contingent beneficiary section is left blank, the designation will default to estate, even if there is a prior contingent beneficiary designation on file.**

## SECTION III INCIDENTAL DEATH BENEFIT

You may name different beneficiaries for the Incidental Death Benefit (a benefit equal to your annual salary), paid in a lump sum (if the employer has elected this coverage). The $3,000 State Life Insurance and Optional Life Insurance are administered by the Employee Insurance Program (EIP); contact EIP for information pertaining to those benefits. Contact your employer or the SC Retirement Systems for Incidental Death Benefit coverage. If you do not have Incidental Death Benefit coverage, write "N/A" in Section III on the reverse (Page 1) of this form.

## SECTION IV CERTIFICATION AND CONDITIONS

1. **CERTIFICATION:** This form must be signed by the member in the presence of a notary public and be properly notarized. If more than one form is completed, ALL forms must be notarized on the same date. FORMS ALTERED IN THE BENEFICIARY DESIGNATION OR CERTIFICATION SECTIONS WILL NOT BE ACCEPTED.
2. **REVOCATION:** All previous beneficiary designations to receive retirement benefits are hereby revoked.
3. **AUTHORIZATION:** I hereby authorize the SC Retirement Systems to make payment of any refund of my accumulated contributions and/or any other payment due in the event of my death prior to retirement to the beneficiary(ies) designated on the front of this form (Page 1) in accordance with the provisions of the SC Retirement Systems , and agree on behalf of myself and my heirs and assigns, that any payment so made shall be a complete discharge of the claim or claims, and shall constitute a release of the Retirement Systems from any further obligations on account of the benefit or benefits. In the event my primary beneficiary(ies) predeceases me and if a contingent beneficiary designation is on file, the SC Retirement Systems would pay any benefits due to the contingent beneficiary(ies). In the event that no primary beneficiary(ies) or contingent beneficiary(ies) are alive at the time of my death, my estate (which is ineligible for survivor benefits), will automatically become my designated beneficiary. I reserve the right to change the designated beneficiary(ies) by a written designation filed with the SC Retirement Systems in accordance with its rules and regulations.
4. **PAYMENT:** The SC Retirement Systems shall be fully discharged of liability for all amounts paid to the beneficiary(ies), and shall have no other obligation as to the application of such amounts. In any dealing with a beneficiary(ies), including but not limited to any consent, release, or waiver of interest, the SC Retirement Systems shall be fully protected against the claim or claims of every other person.
5. **MULTIPLE BENEFICIARIES:** Survivor benefits payable to two or more beneficiaries shall be calculated based upon the average age of the designated beneficiaries. Payments will be equally divided among surviving beneficiaries at the member's death.

Please contact Customer Services with any questions: (803)737-6800, (800)868-9002 (within SC only) or www.retirement.sc.gov.

# INSTRUCTIONS

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You may name different beneficiaries for the Incidental Death Benefit (a benefit equal to your annual salary), paid in a lump sum (if the employer has elected this coverage). The $3,000 State Life Insurance and Optional Life Insurance are administered by the Employee Insurance Program (EIP); contact EIP for information pertaining to those benefits. Contact your employer or the SC Retirement Systems for Incidental Death Benefit coverage. If you do not have Incidental Death Benefit coverage, write "N/A" in Section III on the reverse (Page 1) of this form.

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1. CERTIFICATION: This form must be signed by the member in the presence of a notary public and be properly notarized. If more than one form is completed, ALL forms must be notarized on the same date. FORMS ALTERED IN THE BENEFICIARY DESIGNATION OR CERTIFICATION SECTIONS WILL NOT BE ACCEPTED.
2. REVOCATION: All previous beneficiary designations to receive retirement benefits are hereby revoked.
3. AUTHORIZATION: I hereby authorize the SC Retirement Systems to make payment of any refund of my accumulated contributions and/or any other payment due in the event of my death prior to retirement to the beneficiary(ies) designated on the front of this form (Page 1) in accordance with the provisions of the SC Retirement Systems , and agree on behalf of myself and my heirs and assigns, that any payment so made shall be a complete discharge of the claim or claims, and shall constitute a release of the Retirement Systems from any further obligations on account of the benefit or benefits. In the event my primary beneficiary(ies) predeceases me and if a contingent beneficiary designation is on file, the SC Retirement Systems would pay any benefits due to the contingent beneficiary(ies). In the event that no primary beneficiary(ies) or contingent beneficiary(ies) are alive at the time of my death, my estate (which is ineligible for survivor benefits), will automatically become my designated beneficiary. I reserve the right to change the designated beneficiary(ies) by a written designation filed with the SC Retirement Systems in accordance with its rules and regulations.
4. PAYMENT: The SC Retirement Systems shall be fully discharged of liability for all amounts paid to the beneficiary(ies), and shall have no other obligation as to the application of such amounts. In any dealing with a beneficiary(ies), including but not limited to any consent, release, or waiver of interest, the SC Retirement Systems shall be fully protected against the claim or claims of every other person.
5. MULTIPLE BENEFICIARIES: Survivor benefits payable to two or more beneficiaries shall be calculated based upon the average age of the designated beneficiaries. Payments will be equally divided among surviving beneficiaries at the member's death.

Please contact Customer Services with any questions: (803)737-6800, (800)868-9002 (within SC only) or www.retirement.sc.gov.

2013-11-14 10:48:52

(2e) "Revised" - Open Enrollment [A]

You must also complete a Tobacco Certification form within 31 days of enrolling in health coverage and whenever the status of tobacco use changes for you or a dependent covered under your health insurance.

# ACTIVE EMPLOYEE NOTICE OF ELECTION (NOE)
## SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY
## INSURANCE BENEFITS

See Instructions - If Completing By Hand Use Black Ink

**ACTION**

| Select One: | Type of Change | BA Use Only | MoneyPlus Pretax Premiums |
|---|---|---|---|
| ☐ New Hire<br>☐ Transfer<br>☐ Change | ☒ Enrollment Other (specify) _____<br>Date of Change Event: _____ | Effective Date: 1-1-2014 ☐ Permanent P/T EE (20 hrs.)<br>Group ID #: R05<br>Group Name: DRS | ☐ Refuse ☐ Yes |

**ENROLLEE INFO**

| 1. Social Security Number (SSN) | 2. Last Name | 3. Suffix | 4. First Name | 5. M.I. | 6. Date of Birth MM/DD/YYYY |
|---|---|---|---|---|---|
| [redacted]52 | Beadacs | | CATHERINE | E | [redacted] 1972 |

| 7. Sex | 8. Marital Status | 9. Home Phone # | 10. Work Phone # | 11. E-mail Address |
|---|---|---|---|---|
| ☐ M ☒ F | ☐ Single ☒ Married ☐ Widowed ☐ Divorced ☐ Separated | (803) [redacted] | ( ) | [redacted] |

| 12. Mailing Address | 13. Apt. | 14. City | 15. State | 16. Zip Code | 17. County Code | 18. Annual Salary | 19. Date of Hire MM/DD/YYYY |
|---|---|---|---|---|---|---|---|
| [redacted] | | Lexington | SC | 29073 | Lexington | | |

**MEDICARE & OTHER COVERAGE**

20. List yourself and any other persons to be covered who are eligible for Part A and/or Part B of Medicare.

| Name | Medicare # | Eligible Due To | Effective Date Part A MM/DD/YYYY | Effective Date Part B MM/DD/YYYY |
|---|---|---|---|---|
| | | ☐ Age ☐ Disability ☐ Renal Disease | | |
| | | ☐ Age ☐ Disability ☐ Renal Disease | | |

21. Do you or any of your dependent(s) have other health coverage? ☐ YES ☐ NO Does this coverage include prescription drug benefits? ☐ YES ☐ NO

| Dependent Name | Insurance Company | Policy Holder Date of Birth | Effective Date of Policy | Termination Date (If Applicable) |
|---|---|---|---|---|
| | | | | |

**COVERAGE**

22. HEALTH PLAN *(Refuse or select one plan and one level of coverage)*
PLAN ☐ Refuse ☐ BlueChoice HMO ☐ Standard ☐ Savings ☐ TRICARE Supplement
Basic Life and Basic Long Term Disability included automatically with Standard, Savings and BlueChoice HMO
COVERAGE LEVEL ☐ Employee ☐ Employee/Child(ren) ☐ Employee/Spouse ☐ Family

23. STATE DENTAL PLAN *(Select One)* ☐ Refuse ☐ Employee ☐ Employee/Spouse ☐ Employee/Child(ren) ☒ Family

24. DENTAL PLUS *(Select One)* ☒ Refuse ☐ Yes

25. DEPENDENT LIFE - Child(ren) *(Select One)* ☐ Refuse ☐ $15,000

26. DEPENDENT LIFE - Spouse *(Select One)* ☐ Refuse ☐ Coverage Level $_____ *(Must be in increments of $10,000)*

27. OPTIONAL LIFE *(Select One)* ☐ Refuse ☒ Coverage Level $ 100,000 *(Must be in increments of $10,000)*

28. SUPPLEMENTAL LTD *(Select One)* ☐ Refuse ☐ Plan One - *90-day benefit waiting period* ☐ Plan Two - *(60-day benefit waiting period*

29. VISION CARE *(Select One)* ☐ Refuse ☐ Employee ☐ Employee/Spouse ☐ Employee/Child(ren) ☐ Family

**BENEFICIARIES**

In Blocks 30 and 31, if there are additional beneficiaries or dependents, list on separate sheet, signed and dated by employee.

| 30. Basic Life/Optional Life *(Select one or both)* | SSN# | Last Name | First Name | Relationship | Date of Birth MM/DD/YYYY | Primary or Contingent? |
|---|---|---|---|---|---|---|
| ☐ Basic Life ☐ Optional Life | | | | | | ☐ Primary ☐ Contingent |
| ☐ Basic Life ☐ Optional Life | | | | | | ☐ Primary ☐ Contingent |

If beneficiary is an estate or trust, complete the following:
Estate/Trust _____ Address _____ If Trust, Date Signed _____

**DEPENDENTS**

31. Always list spouse. List all children to be covered. If they are not listed, they will not be covered. For a child over age 26 to be eligible for Dependent Life/Child coverage, your child must be eligible according to the requirements on the reverse of this NOE.

| Add (A) or Delete (D) | Dependent SSN# | Last Name | First Name | Sex M/F | Relationship | Date of Birth MM/DD/YYYY | Indicate Special Status |
|---|---|---|---|---|---|---|---|
| A | S[redacted] | Goodwin-Beadacs | TRACIE | F | WIFE | [redacted] 1978 | Does PEBA Insurance Benefits already cover your spouse? ☐ Yes ☒ No |
| | Child | | | | | | ☐ Full-time Student ☐ Incapacitated |
| | Child | | | | | | ☐ Full-time Student ☐ Incapacitated |
| | Child | | | | | | ☐ Full-time Student ☐ Incapacitated |

**CERTIFICATION & AUTHORIZATION**

32. CERTIFICATION: I have read this NOE and made authorizations herein and selected the coverage noted. I have provided Social Security numbers and documentation establishing my dependent(s)' eligibility for the plan(s) selected. I certify that any child enrolled in Dependent Life/Child insurance is eligible according to the requirements on the reverse of this NOE. I also understand that proof of eligibility (at the time of enrollment and at the time of the claim) will be required before any Dependent Life/Child insurance claim is paid. I understand that unless otherwise provided in the Plan, I may cancel coverage for me or my dependent(s) only during an open enrollment period (every two years). Should I refuse any coverage or fail to enroll all eligible dependents when first eligible, I and/or all eligible dependents may only enroll during an open enrollment period (every two years) unless otherwise provided by the Plan. I understand and agree that all selected plans will not be effective unless and until the NOE is approved. I understand that the State reserves the right to alter benefits or premiums at any time to preserve the financial stability of the Plan. I further acknowledge that the eligibility status of any covered individual is subject to audit at any time.

AUTHORIZATION: I hereby authorize my employer to deduct from my salary premiums necessary to pay for all plans selected and verify my salary for enrollment. I authorize any healthcare provider, prescription drug dispenser and claims administrator to release any information necessary to evaluate, administer and process claims for any benefits.

DISCLAIMER: THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

Employee Signature _____ Date 10-15-2013

33. I hereby attest the employee meets eligibility requirements, proper premiums are being collected, this form is complete and accurate and all required documentation is attached to process NOE form.

Benefits Administrator Signature Tatty W Pugsley Date 11-6-2013

PEBA INSURANCE BENEFITS REV. 06/13 ORIGINAL TO PEBA INSURANCE BENEFITS COPY TO EMPLOYEE

**Duggan, Patty**

**From:** Duggan, Patty
**Sent:** Tuesday, November 19, 2013 8:53 AM
**To:** Bradacs, Katherine E.
**Cc:** Wilcox, Alex; Woodard, Shakwana K.; Autry, Tosha L.
**Subject:** Open Enrollment Request to Add Tracie!

Good morning Katherine,

This is to let you know that PEBA Insurance Benefits has processed the paperwork adding your (2) children to your health and dental coverage with the effective date of 07/20/2012. However, I did receive notification yesterday from PEBA Insurance Benefits that your request to add Tracie Goodwin-Bradacs as a spouse could not be processed due to: " ***must be legally recognized spouse under state law".*** If you have any questions concerning this issue, please contact PEBA Insurance Benefits. Thanks and have a great day!

Patty

**Patty Duggan**
**Benefits & Payroll Manager**
**Office of Human Resources**
**S. C. Department of Public Safety.**
**10311 Wilson Blvd.**
**Blythewood, S. C. 29016**
**803-896-8018 (office)**
**803-896-9683 (fax)**
**pattyduggan@scdps.gov**
**www.scdps.gov/ohr**

"A goal we can all live with."





**EXHIBIT 4**

2013-11-14 06:40:54

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

**PEBA**

David K. Avant
Interim Executive Director
Insurance Benefits

elp

Date: November 14, 2013

Group ID: K050000
Group Name: S.C. DEPARTMENT OF PUBLIC SAFETY

Dear Benefits Administrator:

Due to the reason(s) below, we cannot process the attached Notice of Election (NOE) we have received for:

**KATHERINE E. BRADACS** [redacted]

Please return the attached NOE with necessary corrections or submit a new NOE to PEBA Insurance Benefits, P.O. Box 11661, Columbia, SC 29211. Be sure to include this suspense notice and any required documentation. **THIS INFORMATION MUST BE RETURNED WITHIN 60 DAYS OF THE DATE OF THIS NOTICE.**

If you do not respond promptly, any precertifications for inpatient care and/or claims payment will be delayed. Also, if this suspense notice is not cleared from our suspense records within 60 days, it is stamped "more than 60 days – no response from benefits administrator" and then sent to a closed file. In this case, the individual will not be able to enroll until the next open enrollment period or until a special eligibility situation occurs.

You can access your group's suspense records through Employee Benefits Services (EBS) by entering your User ID and password.

If you have any questions regarding suspended records or if you cannot provide the required information within 60 days, please call us at 803-734-2352 (Greater Columbia area) or at 888-260-9430 (toll-free outside the Columbia area).

**The attached NOE could not be processed due to:**
01 Other
must be legally recognized spouse under state law
HWILSC

RECEIVED
NOV 18 2013
Office of Human Resources
Dept. of Public Safety

ACTREJ

rev.05/13

South Carolina
PUBLIC EMPLOYEE BENEFIT AUTHORITY

PEBA

David K. Avant
Interim Executive Director
Insurance Benefits

December 18, 2013

Katherine E. Bradacs
[redacted]
Lexington, SC 29073

RE: **State of South Carolina Group Health Benefits Plan**
**Subscriber: Katherine E. Bradacs**
**BIN: 932[redacted]**

Dear Ms. Bradacs:

Our office is in receipt of your appeal requesting to add Tracie Goodwin-Bradacs to your coverage.

The purpose of this letter and enclosure is to provide you with an outline of the appeals process, applicable deadlines, and your rights during this process. Please read this information carefully and completely.

Please understand that we will make every effort to process your appeal as efficiently as possible. If you need any additional information regarding this appeal process, please contact me at (803) 734-3569.

Sincerely,

Justice Perkins

Enclosure

# APPEALS PROCESS
## ELIGIBILITY AND ENROLLMENT APPEALS COMMITTEE

Who will review your claim?

Your claim will be reviewed by the Eligibility and Enrollment Appeals Committee, which is composed of three individuals appointed by the General Counsel of the South Carolina Public Employee Benefit Authority ("PEBA") Insurance Benefits. These Committee members are familiar with the South Carolina Group Health Benefits Plan ("Plan"), which sets forth the eligibility and enrollment requirements for all health insurance plans offered through PEBA Insurance Benefits. These Committee members also have not been involved in the prior decisions to deny benefits for your claim.

Will there be an opportunity to meet with the Committee?

Typically, the Committee will not meet with the claimant. Any decision to conduct a conference or other non-adversarial proceeding is within the Committee's sole discretion. The Committee instead conducts an independent evaluation of all written documentation submitted prior to its meeting. At the meeting, the Committee discusses the information and the applicable Plan language and ultimately makes a decision regarding the claim.

What will the Committee review?

The Committee will review:

- The relevant Plan language;
- Any relevant, reliable information maintained by or accessible to PEBA Insurance Benefits, including your correspondence and Customer Service contact summaries;
- Any relevant information provided by your employer; and
- Any additional information you submit.

If you have any additional information you believe is relevant to your claim, please submit it in writing **within fifteen (15) days** of the date of this letter to:

Appeals Coordinator
South Carolina Public Employee Benefit Authority, Insurance Benefits
Post Office Box 11661
Columbia, South Carolina 29211-1661

If you need additional time to submit information, please contact the Appeals Coordinator at (803)734-3569. If you choose not to submit additional information within this timeframe, the Committee will proceed with your appeal based on the Plan language, the information maintained by or accessible to PEBA Insurance Benefits, and the information provided by your

employer. Once the Committee begins its review of your appeal, you will not be allowed to submit additional documentation and your claim will be decided based on the record before the Committee at that time.

What are your rights during this process?

As explained above, you have the right to submit within fifteen (15) days of this letter any written information you want the Committee to consider when reviewing your claim.

You have the right to review your claim file. If you wish to review your claim file, you may send a written request for a copy of your file to the Appeals Coordinator at the address listed above.

You have the right to be represented by an attorney during the appeals process.

How will you be notified of the Committee's decision?

After the Committee makes its decision, you will receive a written explanation of the Committee's decision. The written determination will explain the specific reasons for the Committee's decision and will include the applicable Plan provisions relied upon by the Committee. The Committee will make every effort to provide you a written determination within thirty (30) days of the Committee's decision.

Please note: if your appeal is approved, **the effective date may be retroactive** based on the Plan rules (for example, to the date you made the first request, or to the date your dependent was dropped). **Premiums will be due in full from the effective date of the coverage change to the date of approval** on the next billing cycle following approval. If you are an actively working employee, you may want to discuss this with your Benefits Administrator (BA).

What if your claim is denied by the Committee?

If the Committee denies your claim in whole or in part, you will have thirty (30) days to seek appellate review in the Administrative Law Court.

# EXHIBIT E

# AFFIDAVIT OF TRACIE GOODWIN WITH ATTACHMENTS

**UNITED STATES DISTRICT COURT**
**DISTRICT OF SOUTH CAROLINA**
**COLUMBIA DIVISION**

| | |
|---|---|
| Katherine Bradacs and Tracie Goodwin,<br><br>Plaintiffs,<br><br>vs.<br><br>Nimrata ("Nikki") Randhawa Haley, in her official capacity as Governor of South Carolina; Alan M. Wilson, in his official capacity as Attorney General of South Carolina,<br><br>Defendants. | Civil Action No.:3:13-CV-02351-JMC<br><br>**AFFIDAVIT OF TRACIE GOODWIN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** |

**TRACIE GOODWIN**, first being duly sworn, deposes and says as follows in support of Plaintiffs' Motion for Summary Judgment:

1. On April 6, 2012, Katherine Bradacs and I were married in Washington, D.C.

2. At the time of our marriage, I was pregnant with Katherine's biological children, C and B, who were eventually born in July 2012.

3. Katherine is a State employee. During the course of my pregnancy and following the birth of our children, Katherine made several attempts to add me to her State benefits but we were informed each time that I could not be covered.

4. After the births of our children in July 2012, Katherine was not allowed to be listed as my spouse on our children's birth certificates because the State refused to recognize our marriage. I am listed as the birth mother and thereby presumed to be the biological mother of our children by virtue of medical care providers, State of South Carolina employees, and the like.

5. Further, I was forced to travel between two hospitals after delivering the children by C-section (C was at Lexington Medical Center and B was at Richland Hospital) to make medical decisions for the children, despite the fact that Katherine, who was staying at our son's bedside

at Richland Hospital, is the biological mother of the children. This would never have happened had the State recognized us as lawfully wedded spouses.

6. In March 2013, Katherine was unable to take family leave for my bilateral surgery on my hands because she had been advised that she did not qualify for Family Medical Leave Act.

7. On September 10, 2013, I applied for a change in disability benefits with the VA as I am deemed 80% disabled as a result of my service with the United States Air Force. I requested a change in marital status from "single" to "married" and sought to add Katherine and Jordan (my step-son) as my dependents. The VA advised me they could not change my marital status or add the dependents because the State of South Carolina did not recognize our marriage. Had our marriage been recognized by the State at that time, I would have also qualified for additional monthly VA disability income.

8. In 2013, Katherine and I began the process of building a new home, which was to be completed in February 2014. During the loan process we learned that if Katherine were to be a co-signor on the loan, the VA's guaranty is only limited to "that portion of the loan allocable to the veteran's interest in the property" because Katherine was not recognized as my spouse in the State of South Carolina. **(Exhibit 1 - VA Pamphlet 26, Pg. 7-5).** As a result, and in order to avoid tax ramifications, Katherine was required to sign a "gift letter" for her contributions towards the down payment on the house.

9. In November 2013, we once again attempted to modify our children's birth certificates to add Katherine's name down as my spouse and the biological mother of our children **[Exhibit 2 – Birth Certificate Modification Applications]**. On November 23, 2013 I received a letter from the South Carolina Department of Health and Environmental Control denying my request to amend the children's birth certificate and advising me that Katherine would be required to legally adopt her own biological children. **[Exhibit 3 – November 22, 2013 DHEC letter]**

10. On December 6, 2013, I obtained a position at the Department of Employment and Workforce. I completed all of my enrollment paperwork as required. On January 27, 2014, I contacted Human Resources because I had not received an insurance card and my pay check did not show a deduction for insurance coverage. I was then advised I was denied coverage because my listed spouse could not be of the same sex. I was advised by Human Resources in order to get coverage for myself, I would have to change my marital status to "single". I was also advised that I would have to change my life insurance form from listing Katherine as my wife to listing her as a "friend" and change my contingent beneficiary from "Diane Bradacs" as my "mother-in-law" to "Diane Bradacs" as a "friend". This requirement forced me to lie on my paperwork in order to get this coverage.

11. Katherine and I cannot file joint state tax returns because the State of South Carolina does not recognize our marriage, resulting in each of us having to file separate returns and preventing us from availing ourselves of the benefits of filing as a married couple.

12. I have also read the additional injuries and future injuries as set forth in our Complaint and Memorandum in Support of our Motion for Summary Judgment and verify that indeed these are all direct injuries that I have experienced as a result of the State of South Carolina not recognizing our marriage.

**TRACIE GOODWIN**

Subscribed and sworn to before me on
this 9th day of October, 2014.

Diane M. Bradacs

Notary Public, South Carolina
My Commission Expires: 10/04/2020

# Chapter 7. Loans Requiring Special Underwriting, Guaranty and Other Considerations

## Overview

**Introduction** This chapter contains information about loans requiring special underwriting, guaranty, and other considerations.

**In this Chapter** This chapter contains the following topics.



**EXHIBIT 1**

## 1. Joint Loans, Continued

**g. How to Underwrite a Joint Loan** (continued)

| Part Type of Joint Loan | Underwriting Considerations Function |
|---|---|
| Veteran/nonveteran joint loan | Veteran's credit must be satisfactory and veteran's income must be sufficient to repay that portion of the loan allocable to the veteran's interest in the property.<br><br>A different analysis applies to the portion of the loan allocable to the nonveteran. The credit of the nonveteran must be satisfactory. However, the combined income of both borrowers can be considered in evaluating repayment ability.<br><br>In other words:<br><br>• income strength of the veteran may compensate for income weakness of the nonveteran, but<br>• income strength of the nonveteran cannot compensate for income weakness of the veteran in analyzing the veteran's ability to repay his or her allocable portion of the loan. |

**h. How to Calculate Guaranty and Entitlement Use on Veteran/ Nonveteran Joint Loans**

Guaranty is limited to that portion of the loan allocable to the veteran's interest in the property.

The lender **must** satisfy itself that the requirements of its investor or the secondary market can be met with this limited guaranty.

*Continued on next page*

D H E C

PROMOTE PROTECT PROSPER

# Vital Records Birth/Death Application

A photocopy of a government, school or employer photo identification of the applicant must be submitted with all requests. Applications without proper identification will be returned unprocessed.

Name of applicant: Tracii Goodwin Day phone number: [redacted]

Address: [redacted]

City: Lexington State: SC Zip code: 29073

E-mail address: [redacted]

Address certificate to be mailed to if different than applicant's address:

Name: _____

Address: _____

City: _____ State: _____ Zip code: _____

Your relationship to person named on the certificate. (Check one)

___Self ___Adult child ___Family member (specify) _____

_✓_Parent ___Guardian ___Legal representative (for whom?) _____

For what purpose are you requesting this certificate? need a change

By signing this application, I understand that making a false application for a vital record is a felony under state law.

Signature of applicant: [signature]

Printed name of applicant: Tracii Goodwin

## BIRTH CERTIFICATES

Full name: [redacted] (First) [redacted] (Middle) [redacted] (Last) (Suffix)

Date of birth: [redacted]12 Sex: F City of birth: Lexington County of birth: Lexington

Name of mother prior to any marriage: Tracii (First) Desirée (Middle) Goodwin (Last)

Name of father: None (First) (Middle) (Last)

Were parents married at time of birth: ✓ Yes ___ No Number of children born in SC to this mother? 2

Name at birth if ever changed for any reason other than marriage: _____

Specify the number and type of certification(s) requested:

___ Birth long ($12) ___ Additional long ($3 each) ___ Birth short ($12) ___ Additional short ($3 each)

Total fees submitted: _____ ___ Expedite Additional $5

## DEATH CERTIFICATES

Name of deceased: _____ (First) (Middle) (Last) (Suffix)

Date of death: _____ Age at death: _____ Social security number _____

Sex: _____ City of death: _____ County of death: _____

Specify the number and type of certification(s) requested:

___ Death long ($12) ___ Additional long ($3 each) ___ Death short ($12) ___ Additional short ($3 each)

___ Death statement ($12) ___ Additional statement ($3 each)

Total fees submitted: _____ ___ Expedite Additional $5

Send completed application/photocopy of identification to: SC DHEC – Vital Records
2600 Bull Street, Columbia, SC 29201

## OFFICE USE ONLY

| | | |
|---|---|---|
| Date received: _____ | BC SFN _____ R/F _____ | DC SFN _____ R/F _____ |
| BC 1st Search _____ | BC Issue Date _____ | 1st Search _____ DC Issue Date _____ |
| BC 2nd Search _____ | DCN _____ | 2nd Search _____ DCN _____ |
| LOC _____ | | DNL _____ |
| NFL/DNL _____ | | |

DHEC 0640 (10/2009) SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

**EXHIBIT 2**

D H E C
PROMOTE PROTECT PROSPER

# Vital Records Birth/Death Application

A photocopy of a government, school or employer photo identification of the applicant must be submitted with all requests. Applications without proper identification will be returned unprocessed.

Name of applicant: Tracie Goodwin Day phone number: [redacted]
Address: [redacted]
City: Lexington State: SC Zip code: 29073
E-mail address: [redacted]

Address certificate to be mailed to if different than applicant's address:
Name:
Address:
City: State: Zip code:

Your relationship to person named on the certificate. (Check one)
___Self ___Adult child ___Family member (specify)
_X_Parent ___Guardian ___Legal representative (for whom?)

For what purpose are you requesting this certificate?

By signing this application, I understand that making a false application for a vital record is a felony under state law.
Signature of applicant:
Printed name of applicant: Tracie Goodwin

## BIRTH CERTIFICATES

Full name: B[redacted] [redacted] B[redacted]
First Middle Last Suffix
Date of birth: [redacted]2012 Sex: M City of birth: Lexington County of birth: Lexington
Name of mother prior to any marriage: Tracie Desiree Goodwin
First Middle Last
Name of father: None
First Middle Last
Were parents married at time of birth: X Yes ___ No Number of children born in SC to this mother? 2
Name at birth if ever changed for any reason other than marriage:
Specify the number and type of certification(s) requested:
___ Birth long ($12) ___ Additional long ($3 each) ___ Birth short ($12) ___ Additional short ($3 each)
Total fees submitted: ___ Expedite Additional $5

## DEATH CERTIFICATES

Name of deceased:
First Middle Last Suffix
Date of death: Age at death: Social security number
Sex: City of death: County of death:
Specify the number and type of certification(s) requested:
___ Death long ($12) ___ Additional long ($3 each) ___ Death short ($12) ___ Additional short ($3 each)
___ Death statement ($12) ___ Additional statement ($3 each)
Total fees submitted: ___ Expedite Additional $5

Send completed application/photocopy of identification to: SC DHEC – Vital Records
2600 Bull Street, Columbia, SC 29201

## OFFICE USE ONLY

Date received: BC SFN R/F DC SFN R/F
BC 1st Search BC Issue Date 1st Search DC Issue Date
BC 2nd Search DCN 2nd Search DCN
LOC DNL
NFL/DNL

D H E C

PROMOTE PROTECT PROSPER

Catherine B. Templeton, Director

*Promoting and protecting the health of the public and the environment*

November 22, 2013

Tracie Goodwin
[redacted]
Lexington, SC 29073

Re: C[redacted] Bradacs (Adoption)
E[redacted] Bradacs (Adoption)

Dear Ms. Goodwin:

The Division of Vital Records is in receipt of your request to amend the children's birth certificates by adding the name of your partner, Katherine Bradacs as a parent.

Because Ms. Bradacs was not the birth mother, this office will not be able to administratively add her name to the children's birth certificates. Ms. Bradacs would need to legally adopt the children with the assistance of legal counsel. When you have obtained the necessary adoptions, please send certified Certificates of Adoption to this office to my attention, as well as the enclosed applications and a $27.00 fee per child.

If you have any questions or require additional assistance, you may reach me directly at (803) 898-3717. Please refer to the name and file number above when replying.

Sincerely,

Alicia Abrams

Alicia Abrams
Adoptions & Court Orders
SC DHEC – Vital Records



EXHIBIT 3

# EXHIBIT F

# COPIES OF DECISIONS AND RULINGS

1. *Bowling v. Pence*, No. 1:14-cv-00405-RLY-TAB (S.D. Ind. 8/19/14) - Order of Judgment

2. *Brenner v. Scott*, No. 4:14-cv-107-RH/CAS (N.D. Fla. 8/21/14) - Order of Judgment

3. *Burns v. Hickenlooper*, No. 14-cv-01817-RM-KLM (D.Co. 10/17/14) - Order of Judgment

4. *Costanza v. Caldwell*, No. 1023-0052 D2 (15th Jud. Dist. Ct. Lafayette, La. 9/22/14) - Order of Judgment

5. *General* Synod of the United Church of Christ v. Resinger, No. 3:14-cv-00213-MOC-DLH (W.D.N.C. 10/10/14) - Order of Judgment

6. *Gray v. Orr*, No. 13-C-449-TMD (N.D. Ill. 12/5/13) - Order of Judgment

7. *Hollingsworth v. Perry*, No. 12-144 (U.S. Sup. Ct.) - Oral Argument excerpt.

8. *Majors v. Jeanes*, No. 2:14-cv-00518-JWS (D. Az. 9/12/14) - Order of Judgment

9. *Parnell v. Hamby*, No. 14A413 (U.S. Sup. Ct. 10/17/14) - Order denying stay.

10. *Robicheaux v. Caldwell*, No. 14-31037 (5th Cir. 9/25/14) - Order expediting review.

**MICHELLE BOWLING, SHANNON BOWLING, and LINDA BRUNER, Plaintiffs,**

**v.**

**MICHAEL PENCE, in his official capacity as Governor of the State of Indiana; GREGORY ZOELLER, in his official capacity as Attorney General for the State of Indiana; MICHAEL ALLEY, in his capacity as Commissioner of the Indiana Department of Revenue; and ANITA SAMUEL, in her official capacity as Executive Director of the Indiana Department of State Personnel, Defendants.**

Case No. 1:14-cv-00405-RLY-TAB.

**United States District Court, S.D. Indiana, Indianapolis Division.**

August 19, 2014.

# ENTRY ON CROSS MOTIONS FOR SUMMARY JUDGMENT

RICHARD L. YOUNG, Chief District Judge.

Plaintiffs, Michelle Bowling, Shannon Bowling, and Linda Bruner, all currently reside in Indiana and are members of same-sex marriages. Plaintiffs brought suit against the Defendants to challenge the constitutionality of Indiana Code Section 31-11-1-1(b), which states: "A marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it is solemnized." Plaintiffs and Defendants filed cross motions for summary judgment. For the reasons set forth below, the court GRANTS Plaintiffs' motion for summary judgment and DENIES Defendants' motion for summary judgment.

## I. Background

Michelle and Shannon were married in Polk County, Iowa on January 18, 2011. They currently reside in Marion County, Indiana, with Michelle's children from a prior relationship. Shannon is employed by the Department of Corrections of the State of Indiana. Through this employment, Shannon is eligible to participate in the State's benefit plans managed by Defendant, Anita Samuel, Executive Director of the Indiana Department of State Personnel; however, the state will not recognize Michelle as her spouse or Michelle's children for such benefits because of Section 31-11-1-1(b). This causes both parties economic harms and stigmatic harms.

Linda married her wife, Lori, on July 20, 2013, after nearly seven years of dating. Unfortunately, Linda's and Lori's marriage has reached a point where they have irreconcilable differences, and Linda has received a protective order against her wife. Linda filed a Petition for Dissolution of Marriage in the Marion Superior Court under Cause Number 49D05-1301-DR-3893. The Marion Superior Court dismissed the action, *sua sponte,* finding that it did not have subject matter jurisdiction because of Section 31-11-1-1. Linda filed a motion to correct errors, which the trial court denied. Linda plans to file her Notice of Appeal with the Indiana Court of Appeals.

## II. Standard

The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is appropriate if the record "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED R. CIV. P. 56(a). A genuine issue of material fact exists if there is sufficient evidence

for a reasonable jury to return a verdict in favor of the non-moving party on the particular issue. *See* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

On a motion for summary judgment, the burden rests with the moving party to demonstrate "that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). After the moving party demonstrates the absence of a genuine issue for trial, the responsibility shifts to the non-movant to "go beyond the pleadings" and point to evidence of a genuine factual dispute precluding summary judgment. *Id.* at 322-23. "If the non-movant does not come forward with evidence that would reasonably permit the finder of fact to find in her favor on a material question, then the court must enter summary judgment against her." Waldridge v. Am. Hoechst Corp., 24 F.3d 918, 920 (7th Cir. 1994) (citing Matsushita Elec. Indus. Co., 475 U.S. at 585-87); *see* Celotex, 477 U.S. at 322-24; *see also* Anderson, 477 U.S. at 249-52.

Prior to discussing the merits of the summary judgment motions, the court must decide several threshold issues. First, the court must address Plaintiffs' motion to strike. Second, the court must determine whether Defendants, Attorney General Zoeller, Governor Pence, and Michael Alley, Commissioner of the Indiana State Department of Revenue ("Department of Revenue Commissioner") are proper parties, and third, whether Baker v. Nelson, 409 U.S. 810 (1972) bars the present lawsuit.

## III. Motion to Strike

Plaintiffs move to strike Defendants' cross-motion for summary judgment as untimely. The court notes that pursuant to Local Rule 7-1, "a motion must not be contained within a brief, response, or reply." As such, the court need not consider the motion to strike. Even if the court considered it, the court would deny this motion because the court's scheduling order was not intended to require Defendants to file cross motions for summary judgment by that date as evidenced by the proceedings in the court's earlier same-sex marriage cases, *Baskin, Fujii,* and *Lee*. Therefore, Plaintiffs' motion to strike is DENIED.

## IV. Proper Party-Defendants

The proper defendants are those who bear "'legal responsibility for the flaws [plaintiffs] perceive in the system' and not one[s] from whom they `could not ask anything . . . that could conceivably help their cause.'" *Sweeney v. Daniels,* No. 2:12-cv-81-PPS/PRC, 2013 WL 209047, * 3 (N.D. Ind. Jan. 17, 2013) (quoting Hearne v. Bd. of Educ., 185 F.3d 770, 777 (7th Cir. 1999)). Defendants Zoeller, Pence, and Alley assert that they are not the proper parties. For the reasons explained below, the court finds that all three are proper parties.

## A. Attorney General Zoeller

The court found in its prior decision in Baskin v. Bogan, that the Attorney General is a proper party defendant. *See* Baskin v. Bogan, No. 1:14-cv-355-RLY-TAB, 2014 WL 2884868 (S.D. Ind. June 25, 2014). Defendant Zoeller puts forth the same argument here that the court previously found to be unpersuasive. As such, the court reaffirms its prior holding that Attorney General Zoeller is a proper party.

## B. Governor Pence

The Governor has repeatedly represented to this court that he does not have "any authority to enforce, or other role respecting, Indiana Code Section 31-11-11-1." (Defendants' Memorandum in Support of Their Motion for Summary Judgment, Filing No. 26, at ECF p. 17). Based on this representation and an absence of statutory authority allowing the governor to issue executive decrees telling other elected officials how to do their jobs, the court previously granted summary judgment in favor of the Governor. *See* Baskin, 2014 WL 2884868 at * 4; *see also Love v. Pence,* No. 4:14-cv-

15-RLY-TAB, 2014 WL 2884569. The court found that the general authority to enforce the laws was insufficient to show the governor was a proper party defendant. *See Love,* 2014 WL 2884569. Additionally, the court concluded that because the governor could not enforce Indiana's marriage laws, he could not redress the Plaintiffs' injuries. *See id.* Since that time, the Governor issued memoranda, through his attorney, and did what he claimed he could not do by directing executive agencies on how to proceed in enforcing the law. (See Memorandum from General Counsel to Governor Mike Pence, July 7, 2014 (hereinafter "July 7 Memorandum"), Plaintiffs' Exhibit 10). In light of this bold misrepresentation, the court must now revisit the issue.

In the July 7 Memorandum sent to "all executive branch agencies," the general counsel to the Governor expresses that he sent a memorandum on June 25, 2014 ("June 25 Memorandum"), the day of the court's order, directing all executive branch agencies to comply with the decision. (July 7 Memorandum). The memorandum also notes that after the Seventh Circuit issued a stay of the court's order, "the Governor's general counsel instructed all executive branch agencies to stop any processes they had commenced in complying with the District Court order of June 25." (*Id.* at ¶ 3). On July 7, 2014, the Governor sent a memo stating that "Indiana Code § 31-11-1-1 is in full force and effect and executive branch agencies are to execute their functions as though the U.S. District Court Order of June 25, 2014 had not been issued." (*Id.*).

The memoranda issued by the Governor clearly contradict his prior representations to the court. The Governor can provide the parties with the requested relief as was evident by his initial memorandum on June 25, 2014, and he can enforce the statute to prevent recognition as evident by his correspondence on June 27 and July 7. Thus, the court finds that this case is distinguishable from the cases cited by Defendants because it is not based on the governor's general duty to enforce the laws. It is based on his specific ability to command the executive branch regarding the law. Therefore, the court finds that the Governor can and does enforce Section 31-11-1-1(b) and can redress the harm caused to Plaintiffs in not having their marriage recognized.

The next question is whether the Eleventh Amendment bars suit against the Governor. Under the Eleventh Amendment, a citizen cannot sue their state in federal court unless the state consents. However, the Supreme Court created an important exception to that immunity in *Ex Parte Young*, 209 U.S. 123 (1908). Under that doctrine, "a private party can sue a state officer in his or her official capacity to enjoin prospective action that would violate federal law." *Ameritech Corp. v. McCann*, 297 F.3d 582, 585-86 (7th Cir. 2002) (quoting *Dean Foods Co. v. Brancel*, 187 F.3d 609, 613 (7th Cir. 1999)). Because Plaintiffs seek an injunction to enjoin actions which violate federal law, *Ex parte Young* applies. Nevertheless, the court must determine "whether the connection is sufficiently intimate to meet the requirements of Ex parte Young." *See Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979).

The court previously did not consider this connection because a general duty to enforce the laws is not enough. *See id.* As noted above, however, the governor has shown that he is willing and able to take affirmative action to enforce the statute as shown in his July 7 Memorandum. The governor's actions are similar to those of the governor of Utah as discussed by the Tenth Circuit in *Kitchen v. Herbert,* issued just hours after the court issued its opinion in *Baskin.* In finding the governor to be a proper party, the Tenth Circuit noted that "state agencies with responsibility for the recognition of out-of-state marriages are being directed by the Governor . . . ." No. 13-4178, 2014 WL 2868044, * 6 (10th Cir. June 25, 2014). The exercise of his authority along with the executive power being vested in the governor, provided the requisite connection to satisfy Ex parte Young.

Governor Pence is vested with the executive authority in Indiana and has exercised his authority to declare how state executive agencies should act. Thus, in accordance with *Kitchen,* the court finds that there is a sufficient connection to meet the Ex parte Young exception to Eleventh Amendment immunity.

## C. Commissioner Alley

The court also found in *Baskin* that the Commissioner of the Indiana State Department of Revenue is a proper party. With no new arguments presented, the court reaffirms its holding here.

## V. *Baker v. Nelson*

The court previously held that *Baker v. Nelson*, 409 U.S. 810 (1972) is no longer binding. *See* *Baskin*, 2014 WL 2884868, * 6. Since the court's decision, the Tenth and Fourth Circuit Courts of Appeal have also reached this conclusion. *See Kitchen*, 2014 WL 2868044 at * 10. *See* *Bostic v. Schaefer*, No. 14-1167, 2014 WL 3702493 ** 6-8 (4th Cir. Jul. 28, 2014). Thus, the court reaffirms its holding and will proceed to evaluate the merits of this case.

## VI. Equal Protection Clause

The court adopts its reasoning in *Baskin* that Section 31-11-1-1(b) violates the Equal Protection Clause and incorporates such reasoning here. 2014 WL 2884865 at ** 10-15. There is no rational basis to single out one set of non-procreative couples for disparate treatment. *See id.* at ** 13-15. Therefore, as the court previously found, Section 31-11-1-1(b) violates the Equal Protection Clause of the Fourteenth Amendment. *See id.*

## VII. Other Claims

Plaintiffs set forth several other arguments that Section 31-11-1-1(b) is unconstitutional. Specifically, Plaintiffs assert that this Section violates their due process rights to marry, access to courts, and right to travel; the Establishment Clause, and the Full Faith and Credit Clause. As a matter of judicial restraint, the court will not consider these additional arguments because it has already found the law unconstitutional. *See* *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) ("A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.").

## VIII. Motion for Stay

Defendants filed a motion for Stay of Judgment Pending Appeal. Because the Seventh Circuit granted a stay in the cases previously before the court on this matter, the court GRANTS Defendants' motion (Filing No. 35) to stay the declaratory judgment and permanent injunction below.

## IX. Conclusion

The phenomenon that the court previously observed has continued to grow. Since issuing its prior orders, two circuit courts have found bans similar to Indiana's to be unconstitutional. This court reaffirms that conclusion today. Additionally, the court, after witnessing the Governor do what he claimed he could not do, reverses course and finds him to be a proper party to such lawsuits. The court wishes to reiterate that it finds the Governor's prior representations contradicting such authority to be, at a minimum, troubling. Therefore, the court GRANTS Plaintiffs' motion for summary judgment (Filing No. 19) and DENIES Defendants' motion for summary judgment (Filing No. 25). The court also GRANTS Defendants' motion for stay (Filing No. 35).

## ORDER

Pursuant to the reasoning contained above, the court DECLARES that Indiana Code § 31-11-1-1(b), both facially and as applied to Plaintiffs, violates the Fourteenth Amendment's Equal Protection Clause.

Having found that Indiana Code § 31-11-1-1(b) and the laws in place enforcing such violate the Plaintiffs' rights under the Equal Protection Clause, Defendants and their officers, agents, servants, employees and attorneys, and those acting in concert with them are PERMANENTLY ENJOINED from enforcing Indiana Code Section 31-11-1-1(b) and other Indiana laws preventing the equal treatment of same-sex marriages to opposite-sex marriages. Additionally, Defendants

and officers, agents, servants, employees and attorneys, and those acting in concert with them, are PERMANENTLY ENJOINED from enforcing or applying any other state or local law, rule, regulation or ordinance as the basis to deny marriage to same-sex couples otherwise qualified to marry in Indiana, or to deny married same-sex couples any of the rights, benefits, privileges, obligations, responsibilities, and immunities that accompany marriage in Indiana.

Specifically, this permanent injunction requires the following, and the court ORDERS the following:

1. The Governor, his officers, agents, servants, employees and attorneys, and all those acting in concert with him, are PERMANENTLY ENJOINED to recognize same-sex marriages that, but for their sex, satisfy all the requirements to marry under Indiana law. This includes directing all executive agencies to take actions to comply with this court's order to afford same-sex marriages the same rights, responsibilities, and benefits as opposite-sex marriages.

2. The Attorney General, Greg Zoeller, his officers, agents, servants, employees and attorneys, and all those acting in concert with them, are PERMANENTLY ENJOINED from prosecuting or assisting in the prosecution, using his authority from Indiana Code § 4-6-1-6, of Indiana Code § 35-44.1-2-1 (perjury) as applied to same-sex couples who use and sign under the penalty of perjury government forms that require the individuals to fill out information based on gender, such as marriage license applications.

3. The Commissioner of the Indiana State Department of Revenue, his officers, agents, servants, employees and attorneys, and all those acting in concert with them, are PERMANENTLY ENJOINED to exercise their authority under Indiana Code § 6-8.1-3 to revise the filing guidelines to allow and process joint tax returns for same-sex married couples as they do for opposite-sex married couples.

4. The Executive Director of the Indiana Department of State Personnel, her officers, agents, servants, employees and attorneys, and all those acting in concert with them, are PERMANENTLY ENJOINED to offer employee benefits and all other human resource services to same-sex married couples as they do for opposite-sex married couples.

This Order is stayed until the Seventh Circuit rules on the merits of this case or one of the related cases of *Baskin v. Bogan*, *Lee v. Pence*, and *Fujii v. Pence*. Should the Seventh Circuit stay its decision in the related cases, this order shall remain stayed.

SO ORDERED.

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION**

JAMES DOMER BRENNER et al.,

Plaintiffs,

v. CASE NO. 4:14cv107-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

_____/

SLOAN GRIMSLEY et al.,

Plaintiffs,

v. CASE NO. 4:14cv138-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

_____/

**ORDER DENYING THE MOTIONS TO DISMISS, GRANTING A PRELIMINARY INJUNCTION, AND TEMPORARILY STAYING THE INJUNCTION**

The issue in these consolidated cases is the constitutionality of Florida's refusal to allow same-sex marriages or to recognize same-sex marriages lawfully entered elsewhere.

The founders of this nation said in the preamble to the United States Constitution that a goal was to secure the blessings of liberty to themselves and their posterity. Liberty has come more slowly for some than for others. It was 1967, nearly two centuries after the Constitution was adopted, before the Supreme Court struck down state laws prohibiting interracial marriage, thus protecting the liberty of individuals whose chosen life partner was of a different race. Now, nearly 50 years later, the arguments supporting the ban on interracial marriage seem an obvious pretext for racism; it must be hard for those who were not then of age to understand just how sincerely those views were held. When observers look back 50 years from now, the arguments supporting Florida's ban on same-sex marriage, though just as sincerely held, will again seem an obvious pretext for discrimination. Observers who are not now of age will wonder just how those views could have been held.

The Supreme Court struck down part of the federal Defense of Marriage Act last year. *United States v. Windsor*, 133 S. Ct. 2675 (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.

These consolidated cases are here on the plaintiffs' motions for a preliminary injunction and the defendants' motions to dismiss. This order holds that marriage is a fundamental right as that term is used in cases arising under the Fourteenth Amendment's Due Process and Equal Protection Clauses, that Florida's same-sex marriage provisions thus must be reviewed under strict scrutiny, and that, when so reviewed, the provisions are unconstitutional. The order dismisses the claims against unnecessary defendants but otherwise denies the motions to dismiss. The order grants a preliminary injunction but also grants a temporary stay.

All of this accords with the unbroken line of federal authority since *Windsor*. Indeed, except for details about these specific parties, this opinion could end at this point, merely by citing with approval the circuit decisions striking down state bans on same-sex marriage: *Bostic v. Schaefer*, Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014).

## I. Background

This order addresses two cases that have been consolidated for pretrial purposes. The order sometimes refers to Case No. 4:14cv107 as the "Brenner case." The order sometimes refers to Case No. 4:14cv138 as the "Grimsley case."

### A. The Plaintiffs

The combined total of 22 plaintiffs in the two cases includes 9 sets of same-sex spouses who were lawfully married in New York, the District of Columbia, Iowa, Massachusetts, or Canada; the surviving spouse of a New York same-sex marriage; 2 individuals who have been in a same-sex relationship for 15 years, are not married, but wish to marry in Florida; and an organization asserting the rights of its members who lawfully entered same-sex marriages outside Florida. All the individual plaintiffs live in Florida. The details follow.

The first two Brenner-case plaintiffs are James D. Brenner and Charles D. Jones. Mr. Brenner has worked for the Florida Forest Service since 1981. Mr. Jones has worked for the Florida Department of Education since 2003. They were married in Canada in 2009. Mr. Brenner asserts that the state's refusal to recognize their marriage eliminates a retirement option that would provide for Mr. Jones after Mr. Brenner's death.

Brenner-case plaintiffs Stephen Schlairet and Ozzie Russ live in Washington County, Florida. They are not married in any jurisdiction. They meet all

requirements for marriage in Florida except that they are both men. They wish to marry and have applied to the defendant Washington County Clerk of Court for a marriage license. During breaks in employment, they have been unable to obtain healthcare coverage under one another's insurance plans because of Florida's challenged marriage provisions. Based solely on those provisions, the Clerk refuses to issue a license.

Grimsley-case plaintiffs Sloan Grimsley and Joyce Albu have been together for 9 years and were married in New York in 2011. They have two adopted minor children. Ms. Grimsley is a firefighter and paramedic for the City of Palm Beach Gardens, Florida. Ms. Grimsley and Ms. Albu are concerned that if something happens to Ms. Grimsley in the line of duty, Ms. Albu will not receive the same support the state provides to surviving opposite-sex spouses of first responders.

Grimsley-case plaintiffs Chuck Hunziker and Bob Collier have been together for over 50 years. They lived most of their lives in New York and were married there in 2013. They now are retired and live in Florida.

Grimsley-case plaintiffs Lindsay Myers and Sarah Humlie have been together for nearly 4 years and were married in the District of Columbia in 2012. They live in Pensacola, Florida. Ms. Myers works for the University of West Florida. Ms. Myers seeks the option to designate Ms. Humlie as her joint annuitant for pension purposes. Ms. Humlie does not receive health insurance through her

employer. Because state law prohibits public employers from providing insurance for same-sex spouses, Ms. Myers cannot get coverage for Ms. Humlie on Ms. Myers's health plan. The couple makes substantial payments each month for private health insurance for Ms. Humlie.

Grimsley-case plaintiffs Robert Loupo and John Fitzgerald have been together for 12 years. They were married in New York in 2013. Mr. Loupo is employed with the Miami-Dade County public schools. Mr. Fitzgerald is retired but previously worked for Miami-Dade County. Mr. Loupo wishes to designate Mr. Fitzgerald as his retirement-plan joint annuitant.

Grimsley-case plaintiffs Denise Hueso and Sandra Newson were married in Massachusetts in 2009. They lived in Massachusetts, but now they live in Miami. They have had custody of their now 15-year-old son for 5 years, first as foster parents and now as adoptive parents.

Grimsley-case plaintiffs Juan del Hierro and Thomas Gantt, Jr., have been together for 6 years and were married in Washington, D.C., in 2010. They live in North Miami Beach. They have an adopted son under age 2. Mr. Gantt taught for more than a decade in public schools but now works at a virtual school. If their marriage were recognized, Mr. Gantt would designate Mr. del Hierro as his pension beneficiary.

Grimsley-case plaintiffs Christian Ulvert and Carlos Andrade live in Miami. They have been together for 4 years and were married in the District of Columbia in 2013. Mr. Ulvert previously worked for the Florida Legislature and wishes to designate Mr. Andrade as his pension beneficiary. They wish to someday adopt children.

Grimsley-case plaintiffs Richard Milstein and Eric Hankin live in Miami Beach. They have been together for 12 years and were married in Iowa in 2010.

Grimsley-case plaintiff Arlene Goldberg married Carol Goldwasser in New York in 2011. Ms. Goldwasser died in March 2014. The couple had been together for 47 years. Ms. Goldwasser was the toll-facilities director for Lee County, Florida, for 17 years. Ms. Goldberg is retired but works part time at a major retailer. The couple had been living with and taking care of Ms. Goldwasser's elderly parents, but now Ms. Goldberg cares for them alone. Social-security benefits are Ms. Goldberg's primary income. Florida's refusal to recognize the marriage has precluded Ms. Goldberg from obtaining social-security survivor benefits. Ms. Goldberg says that for that reason only, she will have to sell her house, and Ms. Goldwasser's parents are looking for another place to live. Ms. Goldberg also wishes to amend Ms. Goldwasser's death certificate to reflect their marriage.

Grimsley-case plaintiff SAVE Foundation, Inc. was established in 1993 and is dedicated to promoting, protecting, and defending equality for lesbian, gay, bisexual, and transgendered people. SAVE's activities include education initiatives, outreach, grassroots organizing, and advocacy. In this action SAVE asserts the rights of its members who are same-sex couples and have lawfully married outside of Florida.

**B. The Defendants**

The Brenner and Grimsley cases have four defendants in common. The Brenner case adds a fifth.

The defendants in common are State of Florida officers, all in their official capacities: the Governor, the Attorney General, the Surgeon General, and the Secretary of the Department of Management Services. This order sometimes refers to these four defendants as the "state defendants." The order sometimes refers to the Secretary of the Department of Management Services as "the Secretary."

The fifth defendant in the Brenner case is the Clerk of Court of Washington County, Florida, again in his official capacity. This order sometimes refers to him as the "Clerk of Court" or simply "the Clerk."

**C. The Claims**

In each case, the plaintiffs have filed an amended complaint. Each amended complaint asserts that the Florida same-sex marriage provisions violate the Fourteenth Amendment's Due Process and Equal Protection Clauses. On the Equal Protection claim, the Brenner plaintiffs say the challenged provisions improperly discriminate based on sexual orientation, while the Grimsley plaintiffs assert improper discrimination based on both sexual orientation and sex (that is, gender). The Brenner plaintiffs assert additional claims based on the First Amendment's right of association, the Establishment Clause, and the Supremacy Clause.

**D. The Challenged Provisions**

The Brenner and Grimsley plaintiffs all challenge Article I, § 27, of the Florida Constitution, and Florida Statutes § 741.212. The Brenner plaintiffs also challenge Florida Statutes § 741.04(1).

Article I, § 27 provides:

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

Florida Statutes § 741.212 provides:

> (1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either

> domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.
>
> (2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.
>
> (3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

Florida Statutes § 741.04(1) provides:

> No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person . . . unless one party is male and the other party is female.

**E. The Pending Motions**

In each case, the plaintiffs have moved for a preliminary injunction barring enforcement of the challenged provisions. The defendants oppose the motions and assert that if a preliminary injunction is granted, it should be stayed pending appeal.

In each case, the state defendants have moved to dismiss the amended complaint. They do not contest the standing of most of the plaintiffs to bring these

cases. They acknowledge that the Secretary of the Department of Management Services is a proper defendant, but they assert that the Governor, Attorney General, and Surgeon General are not. They say these defendants have no role in enforcing the challenged provisions. On the merits, the state defendants say the state's same-sex marriage provisions are constitutional.

The Clerk of Court has moved to dismiss the Brenner amended complaint—the only one in which the Clerk is named as a defendant—on the ground that he has done nothing more than comply with state law, that he therefore is not a proper defendant, and that, in any event, the state's same-sex marriage provisions are constitutional.

All parties have agreed that these motions should be decided based on the existing record, without further evidence.

## II. Standing

The plaintiffs whose financial interests are directly affected by the Florida marriage provisions plainly have standing to challenge them. This apparently includes most or all of the individual plaintiffs. The effect is the most direct for current or former public employees who are unable to obtain for themselves or their spouses the same benefits—primarily retirement benefits and healthcare coverage—as are available to opposite-sex couples. The defendants do not challenge the plaintiffs' standing in this respect.

The defendants question only Ms. Goldberg's standing to pursue a change in Ms. Goldwasser's death certificate or to seek social-security benefits based on their marriage. But Ms. Goldberg has standing on each basis. The death certificate says Ms. Goldwasser was "never married" and, in the blank for listing a spouse, says "none." That a spouse would find this offensive and seek to have it changed is neither surprising nor trivial. Ms. Goldberg has a sufficient personal stake in pursuing this relief to have standing.

## III. The Proper Defendants

Under *Ex parte Young*, 209 U.S. 123 (1908), a plaintiff may pursue a federal constitutional claim for prospective relief against an official-capacity state defendant who "is responsible for the challenged action" or who, " 'by virtue of his office, has some connection' with the unconstitutional act or conduct complained of." *Luckey v. Harris*, 860 F.2d 1012, 1015-16 (11th Cir. 1988) (quoting *Ex parte Young*, 209 U.S. at 157).

The state defendants acknowledge that the Secretary meets this test. The Secretary administers the retirement and healthcare provisions that apply to current and former state employees. As required by the challenged provisions, the Secretary refuses to recognize same-sex marriages. The plaintiffs assert that the Secretary thus violates the United States Constitution.

The Surgeon General also meets the test. The Surgeon General is the head of the Department of Health. The Surgeon General thus must "execute the powers, duties, and functions" of the department. Fla. Stat. § 20.05(1)(a). Those functions include establishing the official form for death certificates, which must include the decedent's "marital status." *Id.* § 382.008(6). The official form includes a blank for listing the decedent's spouse. The Department may change a death certificate's marital information when the name of a "surviving spouse" is omitted or based on an order from "a court of competent jurisdiction." *Id.* § 382.016(2). This is a court of competent jurisdiction, Ms. Goldberg seeks such an order, and the person to whom such an order should properly be directed is the Surgeon General. He is a proper defendant in this action.

Whether the Governor and Attorney General are proper defendants is less clear. It also makes no difference. As the state defendants acknowledge, an order directed to the Secretary—or, for matters relating to the death certificate, to the Surgeon General—will be sufficient to provide complete relief. The Eleventh Circuit has held that a district court may dismiss claims against redundant official-capacity defendants. *See Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991) (approving the dismissal of official-capacity defendants whose presence was merely redundant to the naming of an institutional defendant). The prudent course here is to dismiss the Governor and Attorney General on this basis. *See generally*

*Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 341, 345-46 (1936) (Brandeis, J., concurring) (setting out fundamental principles of constitutional adjudication, including that, "The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it' ") (quoting earlier authorities in part); *see also Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) ("A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them."), *quoted with approval in United States v. $242,484.00*, 318 F.3d 1240, 1242 n.2 (11th Cir. 2003).

If it turns out later that complete relief cannot be afforded against the Secretary and Surgeon General, any necessary and proper additional defendant can be added.

Finally, the Clerk of Court for Washington County is plainly a proper defendant. The Clerk denied a marriage license to Mr. Schlairet and Mr. Russ and would properly be ordered to issue the license if they prevail on their claims in this action. That the Clerk was acting in accordance with state law does not mean he is not a proper defendant. Quite the contrary. The whole point of *Ex parte Young* is to provide a remedy for unconstitutional action that is taken under state authority, including, as here, a state constitution or laws.

In sum, this action will go forward against the Secretary, the Surgeon General, and the Clerk. The claims against the Governor and Attorney General will be dismissed without prejudice as redundant.

## IV. The Merits

The Fourteenth Amendment provides, among other things, that a state shall not "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The amendment was added to the Constitution after the Civil War for the express purpose of protecting rights against encroachment by state governments. By that time it was well established that a federal court had the authority—indeed, the duty—to strike down an unconstitutional statute when necessary to the decision in a case or controversy properly before the court. The State of Florida has itself asked federal courts to do so. So the suggestion that this is just a federalism case—that the state's laws are beyond review in federal court—is a nonstarter.

That this case involves marriage does not change this result. The Supreme Court recognized this in *Loving v. Virginia*, 388 U.S. 1 (1967). There the Court struck down a Virginia statute that prohibited interracial marriage. The defendants say interracial marriage is different from same-sex marriage. But on the question of whether a federal court has the authority—indeed, the duty—to strike down a state marriage provision if it conflicts with a party's rights under the Fourteenth

Amendment, *Loving* is on point and controlling. So are *Zablocki v. Redhail*, 434 U.S. 374 (1978), and *Turner v. Safley*, 482 U.S. 78 (1987), where the Court invalidated state provisions restricting marriage. Further, in *Windsor*, the Court said—three times—that a state's interest "in defining and regulating marital relations" is "subject to constitutional guarantees." 133 S. Ct. at 2691, 2692. In short, it is settled that a state's marriage provisions must comply with the Fourteenth Amendment and may be struck down when they do not.

It bears noting, too, that the defendants' invocation of Florida's prerogative as a state to set the rules that govern marriage loses some of its force when the issue raised by 20 of the 22 plaintiffs is the validity of marriages lawfully entered in other jurisdictions. The defendants do not explain why, if a state's laws on marriage are indeed entitled to such deference, the State of Florida is free to ignore the decisions of other equally sovereign states, including New York, Iowa, and Massachusetts.

In sum, the critical issue is whether the challenged Florida provisions contravene the plaintiffs' rights to due process and equal protection. The general framework that applies to such claims is well settled.

First, the Due Process Clause includes a substantive element—a check on a state's authority to enact certain measures regardless of any procedural safeguards the state may provide. Substantive due process is an exceedingly narrow concept

that protects only fundamental rights. When governmental action impinges on fundamental rights and is challenged in a case properly before a court, the court reviews the governmental action with strict scrutiny. Whether some actions that impinge on fundamental rights are properly subject to a lower level of scrutiny—sometimes labeled intermediate scrutiny—is unsettled and ultimately makes no difference here.

Second, under the Equal Protection Clause, a court applies strict scrutiny to governmental actions that impinge on fundamental rights or employ suspect classifications. Most other governmental actions are subject to only rational-basis review. Some actions are properly subject to intermediate equal-protection scrutiny, but the scope of actions subject to intermediate scrutiny is unsettled and ultimately makes no difference here.

So the first step in analyzing the merits in these cases, as both sides agree, is determining whether the right asserted by the plaintiffs is a fundamental right as that term is used in due-process and equal-protection jurisprudence. Almost every court that has addressed the issue since the Supreme Court's 2013 decision in *Windsor* has said the answer is yes. That view is correct.

The right asserted by the plaintiffs is the right to marry. The Supreme Court has repeatedly recognized that this is a fundamental right. Thus, for example, in *Loving*, the Court held that Virginia's ban on interracial marriage violated the Due

Process and Equal Protection Clauses, even though similar bans were widespread and of long standing. The Court did not cast the issue as whether the right to *interracial* marriage was fundamental. *See Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1202 (D. Utah 2013) ("Instead of declaring a new right to interracial marriage, the Court held [*in Loving*] that individuals could not be restricted from exercising their existing right to marry on account of the race of their chosen partner.").

Similarly, in *Zablocki*, the Court labeled the right to marry fundamental and struck down, on equal-protection grounds, a Wisconsin statute that prohibited residents with unpaid court-ordered child-support obligations from entering new marriages. The Court did not ask whether the right not to pay child support was fundamental, or whether the right to marry while owing child support was fundamental; the Court started and ended its analysis on this issue with the accepted principle that the right *to marry* is fundamental.

The Court took the same approach in *Turner*. A Missouri regulation prohibited prisoners from marrying other than for a compelling reason. The Court said the state's interests in regulating its prisons were insufficient to overcome the prisoners' fundamental right to marry. The Court did not ask whether there is a fundamental right to marry while in prison, as distinguished from the more general right to marry.

In other cases, too, the Court has said the right to marry is fundamental. Indeed, the Court has sometimes listed marriage as the very paradigm of a fundamental right. *See, e.g.*, *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (refusing to recognize assisted suicide as a fundamental right, listing rights that *do* qualify as fundamental, and placing the right to marry first on the list); *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (including the right to marry in the fundamental right to privacy); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) (labeling marriage "one of the basic civil rights of man"); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (saying that "[w]ithout doubt" the right "to marry" is within the liberty protected by the Due Process Clause); *Maynard v. Hill*, 125 U.S. 190, 205 (1888) (labeling marriage "the most important relation in life").

Perhaps recognizing these authorities, the defendants do not, and could not plausibly, assert that the right to marry is not a fundamental right for due-process and equal-protection purposes. Few rights are *more* fundamental. The defendants assert, though, that the right at issue in the cases at bar is the right to marry a person of the same sex, not just the right to marry. In support of this assertion, the defendants cite a principle derived from *Glucksberg*: due-process analysis requires a " 'careful description' of the asserted fundamental liberty interest." 521 U.S. at 721 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

A careful description means only an accurate one, determined at the appropriate level of generality. Indeed, *Glucksberg* itself said the right to marry is fundamental, describing the right at that level of generality. 521 U.S. at 720. And *Loving*, *Zablocki*, and *Turner* applied the right to marry at that level of generality, without asking whether the specific application of the right to marry—to interracial marriage or debtor marriage or prisoner marriage—was fundamental when viewed in isolation.

This approach makes sense. The point of fundamental-rights analysis is to protect an individual's liberty against unwarranted governmental encroachment. So it is a two-step analysis: is the right fundamental, and, if so, is the government encroachment unwarranted (that is, does the encroachment survive strict scrutiny)? At the first step, the right to marry—to choose one's own spouse—is just as important to an individual regardless of whom the individual chooses to marry. So the right to marry is just as important when the proposed spouse is a person of the same race and different sex (as in the most common marriages, those that have been approved without controversy for the longest period), or a person of a different race (as in *Loving*), or a person with unpaid child-support obligations (as in *Zablocki*), or a prisoner (as in *Turner*), or a person of the same sex (as in the cases at bar).

It is only at the second step—on the question of whether the government encroachment is unwarranted—that the nature of the restriction becomes critical. The governmental interest in *overriding* a person's fundamental right to marry may be different in these different situations—that certainly was the case in *Zablocki* and *Turner*, for example—but that is a different issue from whether the right itself is fundamental. The right to marry is as fundamental for the plaintiffs in the cases at bar as for any other person wishing to enter a marriage or have it recognized.

That leaves for analysis the second step, the application of strict scrutiny. A state may override a fundamental right through measures that are narrowly tailored to serve a compelling state interest. A variety of justifications for banning same-sex marriages have been proffered by these defendants and in the many other cases that have plowed this ground since *Windsor*. The proffered justifications have all been uniformly found insufficient. Indeed, the states' asserted interests would fail even intermediate scrutiny, and many courts have said they would fail rational-basis review as well. On these issues the circuit decisions in *Bostic*, *Bishop*, and *Kitchen* are particularly persuasive. All that has been said there is not repeated here.

Just one proffered justification for banning same-sex marriage warrants a further note. The defendants say the critical feature of marriage is the capacity to procreate. Same-sex couples, like opposite-sex couples and single individuals, can

adopt, but same-sex couples cannot procreate. Neither can many opposite-sex couples. And many opposite-sex couples do not wish to procreate.

Florida has never conditioned marriage on the desire or capacity to procreate. Thus individuals who are medically unable to procreate can marry in Florida. If married elsewhere, their marriages are recognized in Florida. The same is true for individuals who are beyond child-bearing age. And individuals who have the capacity to procreate when married but who voluntarily or involuntarily become medically unable to procreate, or pass the age when they can do so, are allowed to remain married. In short, the notion that procreation is an essential element of a Florida marriage blinks reality.

Indeed, defending the ban on same-sex marriage on the ground that the capacity to procreate is the essence of marriage is the kind of position that, in another context, might support a finding of pretext. It is the kind of argument that, in another context, might be "accompanied by a suspicion of mendacity." *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993). The undeniable truth is that the Florida ban on same-sex marriage stems entirely, or almost entirely, from moral disapproval of the practice. Properly analyzed, the ban must stand or fall on the proposition that the state can enforce that moral disapproval without violating the Fourteenth Amendment.

The difficulty for the defendants is that the Supreme Court has made clear that moral disapproval, standing alone, cannot sustain a provision of this kind. *Windsor* so indicates. Further, in *Bowers v. Hardwick*, 478 U.S. 186 (1986), the Court upheld a state law prohibiting sodomy, basing the decision on the state's prerogative to make moral choices of this kind. But later, in *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court revisited the issue, struck down a statute prohibiting gay sex, and expressly overruled *Bowers*. In his *Lawrence* dissent, Justice Scalia made precisely the point set out above—that a ban on same-sex marriage must stand or fall on the proposition that the state can enforce moral disapproval of the practice without violating the Fourteenth Amendment. Justice Scalia put it this way: "State laws against . . . same-sex marriage . . . are likewise sustainable only in light of *Bowers*' validation of laws based on moral choices." *Lawrence*, 539 U.S. at 590 (Scalia, J., dissenting).

Had we begun with a clean slate, one might have expected the defendants to lead off their arguments in this case by invoking the state's moral disapproval of same-sex marriage. But the defendants did not start there, undoubtedly because any such defense would run headlong into the Supreme Court's decisions in *Lawrence* and *Windsor*. *See also Romer v. Evans*, 517 U.S. 620 (1996) (striking down a state constitutional amendment that discriminated based on sexual orientation). Each of these decisions rejected moral disapproval of same-sex

orientation as a legitimate basis for a law. *See also Bowers*, 478 U.S. at 216 (Stevens, J., dissenting) ("[T]he fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice; neither history nor tradition could save a law prohibiting miscegenation from constitutional attack.").

In short, we do not write on a clean slate. Effectively stripped of the moral-disapproval argument by binding Supreme Court precedent, the defendants must fall back on make-weight arguments that do not withstand analysis. Florida's same-sex marriage provisions violate the Due Process and Equal Protection Clauses.

In reaching this conclusion, I have not overlooked the defendants' reliance on *Baker v. Nelson*, 409 U.S. 810 (1972), and *Lofton v. Sec'y of Dep't of Children & Family Servs.*, 358 F.3d 804 (11th Cir. 2004).

In *Baker*, the Supreme Court dismissed for want of a substantial federal question an appeal from a state supreme court decision rejecting a constitutional challenge to the state's ban on same-sex marriage. Such a summary disposition binds lower federal courts unless "doctrinal developments" in the Supreme Court undermine the decision. *See Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975) (holding that a summary disposition binds lower courts "except when doctrinal developments indicate otherwise") (quoting *Port Auth. Bondholders Protective*

*Comm. v. Port of New York Auth.*, 387 F.2d 259, 263 n.3 (2d Cir. 1967) (Friendly, J.)). The Eleventh Circuit has recognized this principle:

> Doctrinal developments need not take the form of an outright reversal of the earlier case. The Supreme Court may indicate its willingness to reverse or reconsider a prior opinion with such clarity that a lower court may properly refuse to follow what appears to be binding precedent. Even less clear-cut expressions by the Supreme Court can erode an earlier summary disposition because summary actions by the Court do not carry the full precedential weight of a decision announced in a written opinion after consideration of briefs and oral argument. The Court could suggest that a legal issue once thought to be settled by a summary action should now be treated as an open question, and it could do so without directly mentioning the earlier case. At that point, lower courts could appropriately reach their own conclusions on the merits of the issue.

*Hardwick v. Bowers*, 760 F.2d 1202 (11th Cir. 1985) (citations omitted), *rev'd on other grounds, Bowers v. Hardwick*, 478 U.S. 186 (1986), *overruled by Lawrence v. Texas*, 539 U.S. 558 (2003).

Every court that has considered the issue has concluded that the intervening doctrinal developments—as set out in *Lawrence*, *Romer*, and *Windsor*—have sapped *Baker*'s precedential force.

In *Lofton*, the plaintiffs challenged a Florida statute that prohibited adoptions by gays. Circuit precedent held, and both sides agreed, that adoption was *not* a fundamental right. The court said sexual orientation was not a suspect classification. With no fundamental right and no suspect classification, the court

applied only rational-basis scrutiny, not strict or intermediate scrutiny. And the court said that, because of the primacy of a child's welfare, "the state can make classifications for adoption purposes that would be constitutionally suspect in other arenas." 358 F.3d at 810. The court criticized the Supreme Court's *Lawrence* decision, 358 F.3d at 816-17, and apparently gave it little or no sway. The court upheld the Florida statute. The statute—the last in the nation banning gay adoption—was later struck down by Florida's own courts. *See Florida Dep't of Children & Families v. Adoption of X.X.G.*, 45 So. 3d 79, 81 (Fla. 3d DCA 2010).

The plaintiffs argue, with considerable force, that *Lofton* does not square with *Lawrence*, *Romer*, and *Windsor*. But *Lofton* is the law of the circuit. It establishes that, at least for now, sexual orientation is not a suspect classification in this circuit for equal-protection purposes. But *Lofton* says nothing about whether marriage is a fundamental right. *Lofton* does not change the conclusion that Florida's same-sex marriage provisions violate the Due Process and Equal Protection Clauses.

The institution of marriage survived when bans on interracial marriage were struck down, and the institution will survive when bans on same-sex marriage are struck down. Liberty, tolerance, and respect are not zero-sum concepts. Those who enter opposite-sex marriages are harmed not at all when others, including these plaintiffs, are given the liberty to choose their own life partners and are

shown the respect that comes with formal marriage. Tolerating views with which one disagrees is a hallmark of civilized society.

## V. Preliminary Injunction

As a prerequisite to a preliminary injunction, a plaintiff must establish a substantial likelihood of success on the merits, that the plaintiff will suffer irreparable injury if the injunction does not issue, that the threatened injury outweighs whatever damage the proposed injunction may cause a defendant, and that the injunction will not be adverse to the public interest. *See, e.g.*, *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc).

For the reasons set out above, the plaintiffs are likely to prevail on the merits. The plaintiffs also meet the other requirements for a preliminary injunction. The plaintiffs will suffer irreparable harm if an injunction is not issued. Indeed, the ongoing unconstitutional denial of a fundamental right almost always constitutes irreparable harm. The threatened injury to the plaintiffs outweighs whatever damage the proposed injunction may cause the defendants, that is, the state. And a preliminary injunction will not be adverse to the public interest. Vindicating constitutional rights almost always serves the public interest.

This order requires the plaintiffs' to give security for costs in a modest amount. Any party may move at any time to adjust the amount of security.

## VI. Stay

A four-part test governs stays pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). *See also Venus Lines Agency v. CVG Industria Venezolana De Aluminio, C.A.*, 210 F.3d 1309, 1313 (11th Cir. 2000) (applying the same test).

The four-part test closely tracks the four-part test governing issuance of a preliminary injunction. Because the governing four-part tests are so similar, it is a rare case in which a preliminary injunction is properly stayed pending appeal. This is the rare case.

As set out above, the state's interest in refusing to allow or recognize the plaintiffs' same-sex marriages is insufficient to override the plaintiffs' interest in vindicating their constitutional rights. The public interest does not call for a different result. So the preliminary injunction will issue, eliminating any delay in this court, and allowing an enjoined party to go forward in the Eleventh Circuit.

But at the stay-pending-appeal stage, an additional public interest comes into play. There is a substantial public interest in implementing this decision just once—in not having, as some states have had, a decision that is on-again, off-

again. This is so for marriages already entered elsewhere, and it is more clearly so for new marriages. There is a substantial public interest in stable marriage laws. Indeed, there is a substantial public interest in allowing those who would enter same-sex marriages the same opportunity for due deliberation that opposite-sex couples routinely are afforded. Encouraging a rush to the marriage officiant, in an effort to get in before an appellate court enters a stay, serves the interests of nobody.

A stay thus should be entered for long enough to provide reasonable assurance that the opportunity for same-sex marriages in Florida, once opened, will not again close. The stay will remain in effect until stays have been lifted in *Bostic*, *Bishop*, and *Kitchen*, and for an additional 90 days to allow the defendants to seek a longer stay from this court or a stay from the Eleventh Circuit or Supreme Court.

There is one exception to the stay. The exception is the requirement to correct Ms. Goldwasser's death certificate. The correction is important to Ms. Goldberg. There is little if any public interest on the other side of the scale. There is no good reason to further deny Ms. Goldberg the simple human dignity of being listed on her spouse's death certificate. Indeed, the state's refusal to let that happen is a poignant illustration of the controversy that brings us here.

## VII. Filing

Because this is an appealable order, it will be filed separately in each of the consolidated cases. Any notice of appeal must be filed separately in each case to which it applies.

## VIII. Conclusion

The Supreme Court has repeatedly recognized the fundamental right to marry. The Court applied the right to interracial marriage in 1967 despite state laws that were widespread and of long standing. Just last year the Court struck down a federal statute that prohibited federal recognition of same-sex marriages lawfully entered in other jurisdictions. The Florida provisions that prohibit the recognition of same-sex marriages lawfully entered elsewhere, like the federal provision, are unconstitutional. So is the Florida ban on entering same-sex marriages.

For the reasons set out in this order,

IT IS ORDERED:

1. The state defendants' motion to dismiss, ECF No. 50 in Case No. 4:14cv107, is granted in part and denied in part. All claims against the defendant Governor and Attorney General are dismissed without prejudice as redundant. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b). In all other respects the motion to dismiss is denied.

2. The defendant Clerk of Court's motion to dismiss, ECF No. 49 in Case No. 4:14cv107, is denied.

3. The plaintiffs' motions for a preliminary injunction, ECF Nos. 2, 11, and 42 in Case No. 4:14cv107, are granted against the remaining defendants.

4. The defendant Secretary of the Florida Department of Management Services and the defendant Florida Surgeon General must take no steps to enforce or apply these Florida provisions on same-sex marriage: Florida Constitution, Article I, § 27; Florida Statutes § 741.212; and Florida Statutes § 741.04(1). The preliminary injunction set out in this paragraph will take effect upon the posting of security in the amount of $500 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Secretary, the Surgeon General, and their officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

5. The defendant Florida Surgeon General must issue a corrected death certificate for Carol Goldwasser showing that at the time of her death she was married to Arlene Goldberg. The deadline for doing so is the later of (a) September 22, 2014, or (b) 14 days after all information is provided that would be required in the ordinary course of business as a prerequisite to listing an opposite-sex spouse on a death certificate. The preliminary injunction set out in this

paragraph will take effect upon the posting of security in the amount of $100 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Surgeon General and his officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

6. The defendant Clerk of Court of Washington County, Florida, must issue a marriage license to Stephen Schlairet and Ozzie Russ. The deadline for doing so is the later of (a) 21 days after any stay of this preliminary injunction expires or (b) 14 days after all information is provided and all steps are taken that would be required in the ordinary course of business as a prerequisite to issuing a marriage license to an opposite-sex couple. The preliminary injunction set out in this paragraph will take effect upon the posting of security in the amount of $100 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Clerk of Court and his officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

The preliminary injunctions set out in paragraphs 4 and 6 are stayed and will not take effect until 91 days after stays have been denied or lifted in *Bostic v. Schaefer*,

Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014). The stay may be lifted or extended by further order.

SO ORDERED on August 21, 2014.

s/Robert L. Hinkle
United States District Judge

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLORADO**
**Judge Raymond P. Moore**

Civil Action No. 14-cv-01817-RM-KLM

CATHERINE BURNS;
SHEILA SCHROEDER;
MARK THRUN;
GEOFFREY BATEMAN;
RACHEL CATT;
CASSIE RUBALD;
BREANNA ALEXANDER;
STACY PARRISH;
ANGELA CRANMORE;
JULIANNE DELOY;
KAREN COLLIER; and
DENISE LORD;

Plaintiffs,

v.

JOHN W. HICKENLOOPER, JR., in his official capacity as Governor of Colorado;
JOHN SUTHERS, in his official capacity as Attorney General of Colorado; and
PAM ANDERSON, in her official capacity as Clerk and Recorder for Jefferson County,

Defendants.

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**ORDER**

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THIS MATTER is before the Court on "Defendants' Joint, Unopposed Motion to Make Preliminary Injunction Permanent" ("Joint Motion") (ECF No. 62), requesting that the preliminary injunction issued on July 23, 2014, be made permanent and a final judgment be entered under Fed. R. Civ. P. 54. Upon consideration of the Joint Motion, and being otherwise fully advised, Defendants' Joint Motion is GRANTED for the reasons stated herein.

## I. PROCEDURAL BACKGROUND

On July 1, 2014, Plaintiffs, same-sex couples, filed a Complaint for Declaratory and Injunctive Relief seeking to declare certain laws banning same-sex marriage as unconstitutional under the United States Constitution, and to enjoin Defendants from enforcing those laws. Plaintiffs also filed a Motion for Preliminary Injunction ("Motion") that same day. By Order ("Order") dated July 23, 2014, the Court granted Plaintiffs' Motion and enjoined Defendants from enforcing or applying Article II, Section 31 of the Colorado Constitution and C.R.S. §§ 14-2-104(1)(b) and 14-2-104(2) (collectively, the "Challenged Laws") as a basis to deny marriage to same-sex couples or to deny recognition of otherwise valid same-sex marriages entered in other states.

Defendant Attorney General appealed the Order and obtained from the United States Court of Appeals for the Tenth Circuit a stay ("Stay") of the Order pending final resolution of *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014) and *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014), cases which held that same-sex marriage bans do not withstand constitutional scrutiny. On October 6, 2014, the United States Supreme Court denied certiorari review of *Kitchen* and *Bishop*. Thereafter, upon motion filed by the parties, the Tenth Circuit dissolved the Stay, dismissed the appeal of the Order, and issued the mandate. Defendants' Joint Motion is now before the Court, which represents that the issuance of a permanent injunction will resolve all of Plaintiffs' claims for relief in this case.

## II. FINDINGS AND CONCLUSIONS OF LAW

"To obtain a permanent injunction, a plaintiff must show: '(1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs

the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest.'" *Kitchen*, 755 F.3d at 1208 (*quoting Sw. Stainless, LP v. Sappington*, 582 F.3d 1176, 1191 (10th Cir. 2009)). By Defendants' unopposed Joint Motion, all parties agree that these four factors are met. In light of *Kitchen* and *Bishop*, and for the reasons stated in the Order, the Court agrees. The Court finds and concludes: (1) Colorado's Challenged Laws impermissibly violate Plaintiffs' fundamental right to marry under the Due Process and Equal Protection Clauses of the United States Constitution; (2) Plaintiffs suffered – and will continue to suffer – irreparable harm in the form of violations of their constitutional right unless the injunction is issued[1]; (3) the balance of equities tip strongly in favor of Plaintiffs as their actual and threatened injury outweigh any harm[2] that the injunction may cause Defendants; and (4) the public interest will not be adversely affected by the injunction because the preservation of constitutional rights serves everyone's interest.

## III. CONCLUSION

Based on the foregoing, all claims in this case have been resolved. It is therefore

**ORDERED** that Defendants' Joint, Unopposed Motion to Make Preliminary Injunction Permanent (ECF No. 62) is **GRANTED**. In accordance therewith, Defendants, their officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with them, are **PERMANENTLY ENJOINED** from enforcing or applying Article II, Section 31 of the Colorado Constitution and C.R.S. §§ 14-2-104(1)(b) and 14-2-104(2) as a

[1] Notwithstanding the Defendant Attorney General's dismissal of the appeal of the Order and of pending appeals in similar proceedings, this injunction is necessary in order to permanently secure the protection of the constitutional right at issue.

[2] In light of Defendants' position, it appears they will suffer no harm.

basis to deny marriage to same-sex couples or to deny recognition of otherwise valid same-sex marriages entered in other states; and it is

**FURTHER ORDERED** that the Clerk of the Court shall enter judgment in favor of Plaintiffs and against Defendants John W. Hickenlooper, Jr., in his official capacity as Governor of Colorado; John Suthers, in his official capacity as Attorney General of Colorado; and Pam Anderson, in her official capacity as Clerk and Recorder for Jefferson County; and it is

**FURTHER ORDERED** that Plaintiffs are awarded costs and shall within 14 days of the date of this Order file a bill of costs, in accordance with the procedures under Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1, which shall be taxed by the Clerk of the Court.

DATED this 17th day of October, 2014.

BY THE COURT:

RAYMOND P. MOORE
United States District Judge

SEALED

35642214

**ANGELA MARIE COSTANZA and CHASITY SHANELLE BREWER for themselves and on behalf of their minor son, [redacted]**

**VERSUS**

**JAMES D. CALDWELL, in his official capacity as Louisiana Attorney General, ET AL**

**15TH JUDICIAL DISTRICT COURT**

**DOCKET NO.: 2013-0052 D2**

**PARISH OF LAFAYETTE**

**STATE OF LOUISIANA**

**********

2014 SEP 22 AM 11:08

## MINUTE ENTRY RULING

PETITIONERS ARE: Angela Marie Costanza and Chasity Shanelle Brewer for themselves and on behalf of their minor son, [redacted]

NAMED DEFENDANTS ARE: James D. Caldwell in his official capacity as Attorney General for the State of Louisiana, Piyush "Bobby" Jindal, in his official capacity as Governor of the State of Louisiana, Tim Barfield in his official capacity as Secretary of the State of Louisiana Department of Revenue, and, Devin George in his official capacity as Registrar of Vital Records for the State of Louisiana.

### BACKGROUND

Chasity Brewer is the biological mother who on August 1, 2004 gave birth to [redacted] as a result of insemination by an anonymous sperm donor. According to the California Uniform Parentage Act the anonymous sperm donor bears no rights to and no responsibilities for children born through donor insemination using his semen. The biological father remains to be unknown.

On August 8, 2008 petitioners, Costanza and Brewer were married in the state of California, whose laws permit same-gender couples to marry. Both were at the time of their marriage, of the full age of majority. Both are now domiciled in the Parish of Lafayette, State of Louisiana.

On July 12, 2013, Petitioners filed a Petition for Intrafamily adoption pursuant to La.Ch.Code art. 1243, et seq. The Courts' Sealed Record shows that on October 17, 2013, the Legal Department for Attorney General was served with a certified copy of plaintiffs' Petition for Intrafamily Adoption, and their First Supplemental and Amended Petition. On October 21, 2013 the assistant Attorney General's office, Civil Division on behalf of James "Buddy" Caldwell, in his official capacity as Attorney General for Louisiana filed a request for written notice requesting notice "in advance of the date fixed for trial, hearing or other proceeding scheduled to come before this Honorable Court ....." On December 17, 2013

the clerk's office set the Adoption for Rule/Motion to be heard on January 27, 2014. The record shows that the notice for Adoption hearing was cc'd to: DCFS, Judge Rubin, Tameka Thomas [docket clerk], and Jessica Thornhill [assistant Attorney General]. On January 27, 2014 counsel for Petitioners, presented the court with the entire adoption file. Petitioners including the child, [redacted] were present. The Attorney General was not present. This court declined to address any of plaintiffs' constitution issues at that time, but carefully reviewed the adoption file which included, but was not limited to: an Authentic Act of Consent to Adoption from the biological mother, Chasity Brewer, criminal records check from the Sheriff of Lafayette Parish, the recommendations and records check for any validated complaints of child abuse or neglect from the Dept. of Child and Family Services (DCFS), and Child Welfare State Central Registry Check. Thus, relying on the contents of the adoption file, the court having found all reports and recommendation from Child Services in proper form, granted the intrafamily adoption on January 27, 2014. The final decree of adoption and Judgment was signed on February 5, 2014.

On March 6, 2014, Attorney General Caldwell, on behalf of the State of Louisiana, moved the court for a Suspensive Appeal from the final adoption decree signed on February 5, 2014. The Order for that Suspensive Appeal was signed March 10, 2014. Briefs were filed with the Court of Appeal of Louisiana, Third Circuit and oral arguments were heard. The Third Circuit rendered a Judgment on June 11, 2014. The findings of the Third Circuit are as follows:

"We find that the trial court erred by holding the hearing on this matter without notifying the Attorney General as required by La. Code of Civ.P. art. 1572. There is no question that the Attorney General made an appearance and requested notice pursuant to law. The record established that the Attorney General did not receive the notice to which it was entitled nor have an opportunity to be heard. The judgment of adoption is vacated and the case is remanded. On remand, the trial court is instructed to hear arguments on all issues raised by both the petitioners and the Attorney General."

The petitioners were permitted to file their Second, Third, and Fourth Supplemental and Amended Petitions.

The defendants, Attorney General and the Governor filed their peremptory Exception of No Cause of Action. Both sides filed Motions for Summary Judgment attaching their memoranda of law. These matters were set for hearing on Monday, September 15, 2014 at 10:00 a.m. The court heard oral argument on the exception of no cause of action and on the motions for summary judgment, and thereafter took the matter under advisement.

Petitioners ask that this court reaffirm its February 5, 2014 final decree of adoption. In their Prayer petitioners ask this court to issue an injunction, directing the Clerk of Court for this Parish to comply with the requirements of La.

Ch. C. Art. 1182(B) by forwarding a certificate of this final decree to the State Registrar of Vital Records, for entry of certificate of live birth of [redacted]. They assert their rights to Due Process and Equal Protection guaranteed by the 14th Amendment U.S. Constitution have been denied. Petitioners assert that Louisiana's refusal to recognize their California marriage violates Article IV, Section 1 of the United States Constitution, Full Faith and Credit Clause. They challenge the constitutionality of Article XII, Section 15 of the Louisiana Constitution known as the Defense of Marriage Act (DOMA); La. Civ. Code Art. 86, defining marriage; La. Civ. Code Art. 89, the impediment of same-sex article; and, La. Civ. Code Art. 3520(B) denying recognition of same-sex marriages contracted in other states.

The defendants deny that Louisiana's constitutional and statutory provisions challenged by the petitioners violate equal protection and due process guaranteed by the Fourteenth Amendment. They likewise deny that the challenged laws violate the Full Faith and Credit Clause of Article IV, Section 1 of the U.S. Constitution.

THE PARTIES HAVE ASKED THE COURT TO ADDRESS THE FOLLOWING ISSUES:

Whether La. Const. Article XII, Section 15 (the Defense of Marriage Act DOMA), and La. Civil Code Articles 86, 89, and 3520(B) violate the Due Process and Equal Protection Clauses of the 14th Amendment to the U. S. Constitution.

Whether for purposes of the federal Due Process Clause, the right to marry someone of the same sex is a right deeply grounded in our Nation's history and tradition.

Whether the authority to recognize out-of-state marriages falls within the traditional authority of States over domestic relations law.

Whether La. Const. Art XII, Section 15, La. C.C. Art. 86, 89, and 3520(B) violate Article IV, Section 1 , the Full Faith and Credit Clause of the United States Constitution.

**PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION**

In the petitioners Third and Fourth Supplemental and Amended Petitions, paragraph 29, Governor Jindal, Attorney General Caldwell, Secretary of La. Department of Revenue, Tim Barfield, and the La. State Registrar, Devin George were made defendants and cited to appear and answer the same. The court notes that the two defendants who filed an Answer to plaintiffs' Original and Amended Petitions were Tim Barfield and Devin George. Jindal and Caldwell did not answer; rather they filed an exception of no cause of action.

Jindal in his official capacity as Governor, and Caldwell in his official capacity as Attorney General except to plaintiffs' petition on the grounds:

A) that although the plaintiffs' Second Supplemental and Amended Petition named the Governor and Attorney General as defendants, the plaintiffs make no allegations nor seek any relief as to Governor Jindal or the Attorney General; B) that the plaintiffs have failed to state a cause of action against Governor Jindal and Attorney General Caldwell; and C) neither the Governor nor the Attorney General is a proper party defendant under La.C.C.P. Art. 1880.

> **Art. 1880 deals with Parties to Declaratory Judgments & states in pertinent part: " When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of person not parties to the proceeding ..... If the statute, ..... is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard."**

Defendants agree that under C.C.P. Art. 1880 "the attorney general must receive notice of any constitutional challenge to a state law." "But the purpose of Art. 1880 is only to allow the attorney general to defend the challenged law, not make him a party defendant." They also cite La. R.S. 49:257(C) which authorizes the Attorney General to "represent or supervise the representation of the interests of the state" where constitutionally of law is challenged. Defendants also rely on the Louisiana Supreme Court case of Vallo v. Gayle Oil Company, Inc., 94-1238 (La. 11/30/94), 646 So.2d 859 which explained that Art. 1880 "did not contemplate the Attorney General be required to be joined as an actual party..... Only that he be served and given an opportunity to be heard and participate in the case in a representative capacity."

Defendants further contend that plaintiffs mistakenly named the defendants Governor Jindal and Attorney General Caldwell. They argue that the plaintiffs make no allegations against, nor seek any relief from the governor or the attorney general. Further argue that neither the governor nor the attorney general has any direct role in administering or enforcing any of the laws to which plaintiffs object; and for those reasons plaintiffs have failed to state a cause of action against Jindal & Caldwell. Defendants cite the Louisiana Supreme court case, Everything on Wheels Subaru, Inc. v. Sabaru South, Inc., 616 So.2d 1234 (La. 1993) which reiterates the legal standard used by courts in determining whether or not to sustain an exception of no cause of action. "..... the court reviews the petition and accepts well pleaded allegations of fact as true, and the issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought." Defendants also cite La.C.C.P. article 931 which states "No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action." *Id.*

Defendants further allege that it is irrelevant that, under the La. Const. art. IV, section 5(A) the governor "shall faithfully support the constitution and laws of the state ..... and shall see that the laws are faithfully executed. Defendants

assert "that duty does not mean the governor himself is a proper defendant anytime a lawsuit alleges a state law is unconstitutional." "Rather, the proper question is whether the plaintiffs' factual allegations establish that they have a legal remedy against the Governor." Hoag v. State, 2004-0857, p.9 (La. 12/1/04); 889 So.2d 1019, 1025.

With respect to the defendants, Secretary of Department of Revenue and the State Registrar of Vital Records, defendants concede that "it was the Secretary of Department of Revenue—not the Governor—who issued the bulletin declining to recognize same-sex marriages for tax purposes. Similarly, the State Registrar is vested with authority over Louisiana vital records, including amending.....birth certificates, not the Governor." Defendants concede that the State Secretary of Revenue and the State Registrar are the defendants from whom petitioners can obtain relief if they prevail on their claims regarding Louisiana's tax and vital records laws.

In petitioners' opposition they cite Louisiana Supreme court cases in which suits brought against the Governor and/or Attorney General were sustained in actions for declaratory judgment where state laws were challenged as unconstitutional. Plaintiffs cite: Bates v. Edwin Edwards, 294 So.2d 532 (La. 1974) which was an action to enjoin election on proposed new State Constitution and have declared null and void an Act providing for the meeting of constitutional convention to draft new State Constitution; Aguillard v. Treen, 440 So.2d 704 (LA. 1983)which dealt with constitutionality of La.R.S. Sections 17:286.7 through 17:286.8 and found that the statute did not violate Article 8 of the Louisiana Constitution; and Polk v. Edwin Edwards, 626 So.2d 1128 (1993) where action was brought challenging constitutionality of four statutes authorizing licensing of gaming operations.

Petitioners also assert that defendants' reliance on Vallo was misplaced since Vallo says nothing about naming the governor and/or the Attorney General as party defendants in litigation challenging the constitutionality of state law.

This court also heard oral argument regarding the exception of no cause of action. The State responded to the cases cited by petitioners and agreed that in Bates and in Aguillard the Governor had an enforcing role, whereas, in Polk the Governor's role was merely the appointment of members..... The State further maintains that Governor Jindal does not play any role in Louisiana's same-sex ban.

The petitioners responded in oral argument saying that, because this matter is an action for declaratory judgment, the Governor is a proper party defendant.

This court having considered the record, including memoranda, arguments, and applicable law, finds that with respect to petitioners' Original and Supplemental and Amending Petitions this court accepts the well pleaded allegations of fact as true, and on viewing the face of the petition(s), the petitioners are entitled to the relief sought. The court finds that all named defendants except Governor Jindal

are proper party plaintiffs. We find that the Attorney General in his official capacity has more than just an interest in this case; he has the authority to represent the State, and is the proper party defendant to represent the State involving laws of the State that are challenged as unconstitutional, and where plaintiffs are seeking injunctive relief as in the case at bar. Although Vallo explained that "Article 1880 did not contemplate the Attorney General b required to be joined as an actual party", we do not see how the Attorney General would not be the proper party to be sued and to defend the state of Louisiana with respect to the state laws challenged herein. This court similarly, finds that the Secretary of Revenue and the State Registrar are defendants who have direct roles in administering and enforcing the challenged laws in this case. . As such the court hereby sustains the State's exception of no cause of action as to the defendant, Governor Jindal only, dismissing plaintiffs' claims against the governor. The court hereby denies the exception of no cause of action as it relates to three defendants: Louisiana Attorney General Caldwell, Secretary of Louisiana Department of Revenue Tim Barfield, and Louisiana Vital Records Registrar Devin George.

## SUMMARY JUDGMENT STANDARD

La. Code of Civil Procedure Article 966, the primary statute codifying Louisiana's procedural vehicle for summary judgment, states in part: "judgment shall be forthwith if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law."

Section C (2) of article 966 states that "the burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact.

In the case at bar, the court is required to consider in its ruling, that petitioners and state defendants are both movants and adverse parties, since each side has filed a motion for summary judgment.

## THE CHALLENGED LAWS

**Section 1 of the XIV Amendment to the U.S. Constitution:**

**All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

**Article IV, Section 1 of the United States Constitution:**

**Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.....**

**LSA-Const. Article 12, Section 15, the Defense of Marriage Act (DOMA):**

**Marriage in the state of Louisiana shall consist only of the union of one man and one woman. No official or court of the state of Louisiana shall construe this constitution or any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized. No official or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of one man and one woman.** (Added by acts 2004, No. 926, sec 1, approved Sept. 18, 2004, eff. Oct. 19, 2004).

**La. Civil Code Art. 3520(B):**

**A purported marriage between persons of the same sex violates a strong public policy of the state of Louisiana and such a marriage contracted in another state shall not be recognized in this state for any purpose, including the assertion of any right or claim as a result of the purported marriage. (eff. Jan. 1, 1992)**

**La. Civil Code Art. 86 (definition of marriage):**

**Marriage is a legal relationship between a man and a woman that is created by civil contract. The relationship and the contract are subject to special rules prescribed by law.**

**La. Civil Code Art. 89 (Impediment of same sex-marriage):**

**Persons of the same sex may not contract marriage with each other. A purported marriage between persons of the same sex contracted in another state shall be governed by the provisions of Title II of Book IV of the Civil Code.**

**La. Revenue Info. Bulletin No. 13-024 (Sept. 13, 2013) in part:**

**..... The Louisiana Department of Revenue shall not recognize same-sex marriages when determining filing status. If a taxpayer's federal filing status of married filing jointly, married filing separately.....is pursuant to IRS Revenue Ruling 2013-17 [ruling that same-sex couples legally married in states that recognize such marriages will be treated as married for federal tax purposes], the taxpayer must file a separate Louisiana return as single, head of household or qualifying widow, as applicable. The taxpayer (s) who filed a federal return pursuant to IRS Revenue Ruling 2013-17 may not file a Louisiana state income tax return as married filing jointly, married filing separately or qualifying widow. The taxpayer must provide the same federal income tax information on the Louisiana State Return that would have been provided prior to the issuance of Internal Revenue Service Ruling 2013-17.**

## EQUAL PROTECTION CLAUSE

**(The court notes that both petitioners and defendants rely largely on their memoranda of law to support their equal protection arguments.)**

The court considers petitioners' equal protection argument first.

Petitioners move this court to enter a summary judgment in their favor, alleging that there are no genuine disputes as to any material fact, and plaintiffs are entitled to judgment as a matter of law.

They assert that Louisiana's denial of intra-family adoption rights to petitioners is arbitrary and capricious in violation of equal protection of the laws.

Plaintiffs contend that there is absolutely no genuine issue of material fact in this matter. They maintain that the State doesn't deny that they are lawfully married under the laws of California. Nor is there any dispute that petitioners are of the same gender and ask that their marriage be recognized in this State. Additionally, the State does not deny that petitioners seek an intra-family adoption regarding their child, [redacted], whom they assert they have raised since his birth. There is no dispute that the current laws of our State deny all relief sought by petitioners in this matter.

Petitioners cite the case of Collins v. Brewer, 727 F. Supp. 2d 797 (D. Ariz. 2010) to support their argument that "because only same-sex couples are denied the ability to adopt, the State's discrimination on the basis of sexual orientation

violates the Equal Protection Clause." Plaintiffs assert that "categorically denying any mechanism for same-sex couples raising children to secure a legal parent relationship with both parents denies those families equal protection of laws." They submit that the Third Circuit Court of Appeal construed Louisiana's adoption laws as not permitting petitioners [who are a same-sex married couple] to adopt on the same terms as step-parents. They submit that "this discrimination..... violates the Equal Protection Clause.

Plaintiffs argue that "same-gender couples and opposite-gender couples are two classes that are similarly situated for purposes of marriage and Louisiana's ban on same-gender marriage unjustly treats these two classes differently." Plaintiffs assert that "the State must have a legitimate interest to satisfy an Equal Protection challenge. None is evident herein." Citing Huntsman v. Heavilin and State of Florida, No. 2014-CA-305-K, Sixteenth Judicial District Court, Monroe County, Florida (July 17, 14), Slip Opinion.

They also cite as authority U.S. Supreme court cases, Romer v. Evans , 517 U.S. 620 (1996), Lawrence v. Texas, 539 U.S. 558 558 (2003), and United States v. Windsor, 133 S. Ct. 2675 (2013) which according to plaintiffs held that there is absolutely no legitimate interest for the government to discriminate based on sexual orientation.

Petitioners argue that Windsor "indicates that same-sex marriage restrictions communicate to children the message that same-sex parents are less deserving of family recognition than other parents." Petitioners further argue that "under the latest expression of Louisiana's revenue laws (Revenue Information Bulletin, No. 13-024, 9/13/13) Costanza and Brewer are denied the "married filing jointly" status afforded to hundreds of other married couples in Louisiana." They also assert that "the United States has issued Revenue Ruling 2013-17 post-Windsor, allowing for same-sex married couples to use "married filing jointly status" on their federal tax returns, even in states that do not recognize same-sex marriage."

They maintain that Louisiana's Revenue Ruling is another factual basis of their claim that Louisiana law denies them equal protection of the laws.

The court now considers the defendants' equal protection arguments.

The state defendants maintain that "the Third Circuit has already held in this case that Plaintiffs' stepparent adoption of [redacted] is not permitted under Louisiana Law, a determination which is therefore law of the case. They cite Adoption of [redacted] 2014 WL 2853947. The court notes that this case's current citation is 140 So.3d 126, (La. App. 3 Cir. 6/11/14). Defendants contend that only the federal constitutional questions are before this court.

State defendants seek to have this court grant their motion for summary judgment on all of petitioners' claims and deny petitioners' motion for summary

judgment. Defendants assert that they agree with plaintiffs that there are no material fact disputes and that this court may decide all claims as a matter of law.

Defendants assert in their memorandum that "with respect to Plaintiffs' equal protection claims, Louisiana's decision to recognition only man-woman marriage triggers rational basis review." Citing Johnson v. Johnson, 385 F.3d 503 (5th Cir. 2004).

Defendants maintain that "Louisiana's definition [of marriage] "is not subject to courtroom factfinding, and so Louisiana need not "produce evidence" to justify it." Heller v. Doe, 509 U.S. 312 (1993). In addition they argue that Plaintiffs' equal protection "challenge must fail if there is any reasonable conceivable state of facts that could provide a rational basis for [Louisiana's definition]." Again, citing Heller.

Citing as authority, Doe v. Jindal, 851 F. Supp.2d 995 (E.D. La. 2012) which quoted the U.S. Supreme court in Kimel v. Florida Bd. Of Regents, 528 U.S. 62 (2000), defendants state that "Plaintiffs must show Louisiana's decision is "so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that [Louisiana's] actions were irrational." Defendants suggest that "Plaintiffs cannot do so."

Defendants maintain that Louisiana's marriage and adoption laws pass rational basis review because the state has a legitimate interest in a) linking children to intact families formed by their biological parents, and b) ensuring that fundamental social change occurs through widespread social consensus. They cite La.C.C. article 86 to support their argument that "Marriage in Louisiana— anchored in the reality that opposite-sex couples naturally produce children—is ordered to promote the stability of that resulting family." Defendants add, "the marriage contract differs from other contracts in that it creates a social status that affects not only the contracting parties, but also their posterity and the good order of society." ..... "In every known human society the institution developed "to solidify, standardize, and legalize the relationship between a man, a woman, and their offspring, is civil marriage between one man and one woman. Citing Sevcik v. Sandoval, 911 F. Supp.2d 966 (D. Nev. 2012) which cites Maynard v. Hill, 125 U.S. 190 (1888).

Defendants cite Williams v. Williams, 87 So.2d 707 (La. 1956) which held that "It has always been the policy of the Louisiana law to protect innocent children, born during marriage, against scandalous attacks upon their paternity by the husband of the mother."

Defendants argue that Wilkinson v. Wilkinson, 323 So.2d 120 (La. 1975) stated that "the public policy of Louisiana that every effort must be made to uphold the validity of marriages ..... is closely intertwined with the presumption of legitimacy."

Defendants maintain that Louisiana voters acted to ensure that a change as profound as altering the basic definition of marriage would occur only through wide social consensus. They state that "Windsor confirmed that Louisiana acted not only rationally but wisely in elevating that momentous issue above the ordinary legislative process." Citing as authority, Frontiero v. Richardson, 411 U.S. 677,692 (1973) "A court would "act prematurely and unnecessarily.....[by] assum[ing] a decisional responsibility at the very time when state legislatures, functioning within the traditional democratic process, are debating" the shape of marriage."

**DUE PROCESS CLAUSE**

The court considers first, the defendants' due process arguments.

Defendants argue that Louisiana's recognition of only man-woman marriage does not violate the Due Process Clause. They state that "To establish a substantive due process violation, a plaintiff must first both carefully describe that right and establish it as 'deeply rooted in this Nation's history and tradition." Citing Malagon de Fuentes v. Gonzales, 462 F.3d 498 (5th Cir. 2006) which quoted Washington v. Glucksberg, 521 U.S. 702 (La. 1997). For this reason, they maintain that "Plaintiffs' due process claims fail because a right to marry someone of the same sex is not deeply rooted in our national history."

Defendants point out that Sevcik states that "Windsor recognizes the obvious: same-sex marriage is a "novel concept," provoking "intense democratic debate" across the nation." "As Windsor explained, "until recent years" the man-woman aspect of marriage "had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization."

Defendants also maintain that Plaintiffs may not rely on right to privacy cases to establish a due process right to marry someone of the same sex. Citing Planned Parenthood of Pa. v. Casey, 505 U.S. 833 (1992); Griswold v. Connecticut, 381 U.S. 479 (1965); and Lawrence v. Texas, 539 U.S. 558 (2003).

Defendants argue that the recent Tenth and Fourth Circuit decisions mistakenly create a due process right to marry someone of the same sex. Citing Kitchen v. Hebert, 961 F.Supp.2d 1185 (D. Utah 2013) and Bostic v. Schaefer, ___F.3d ___, 2014 WL 3702493 (4th Cir. July 28, 2014). Defendants allege that Kitchen and Bostic are wrong because "they 1) misapply the Supreme Court's right-to-marry cases; and 2) misapply the Supreme Court's right-to-privacy cases."

In furtherance of their contention that Louisiana's laws do not violate the federal due process clause of the 14th Amendment, in their oral argument, defendants maintain that the right to marry someone of the same sex is not a right that is deeply rooted in our Nation's history and tradition.

The court now outlines the petitioners' due process agruments.

Petitioners contend that the material facts are not in dispute. In their memorandum they state they maintain that "the State doesn't deny that they are lawfully married under the laws of California." Nor is there any "dispute that petitioners are of the same gender and ask that their marriage be recognized in this State. Additionally, the State does not deny that petitioners see an intrafamily adoption regarding their child, [redacted], whom they assert they have raised since his birth. They further allege that there is no dispute that the current laws of our State deny all relief sought by petitioners in this matter.

They assert that Louisiana adoption law discriminates against Costanza and Brewer's lawful marriage in California. They submit that Costanza and Brewer have a 14th Amendment liberty interest in rearing and parenting of [redacted] as his lawfully married parents, and that Louisiana's non-recognition of petitioners' lawful California marriage denies the couple liberty without due process of law.

Plaintiffs argue that "The court has repeatedly referenced the raising of children—rather than just their creation as a key factor in inviolability of marital and family choices." They cite Kitchen v. Hebert, which cites the U.S. Supreme court in Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925). They assert that this case discussed "the liberty of parents and guardians to direct the upbringing and education of children under their control" and quote Kitchen as finding "Thus childrearing, a liberty closely related to the right to marry, is one exercised by same-sex and opposite – sex couples alike, as well as by single individuals."

Plaintiffs also argue that at a minimum, Chasity Brewer has a fundamental right to rear her biological child, [redacted] and that the State's refusal to sanction the Costanza/Brewer intra-family of [redacted] infringes upon petitioners' fundamental right to rear their child in violation of the Fourteenth Amendment. Citing Troxel v. Granville, 530 U.S. 57 (2000).

Plaintiffs argue that "the U.S. Constitution protects the Constanza/Brewer "family" unit---judicially determined by Your Honor to be in the best interest of [redacted] from Louisiana's attenuated severance claim, that only the State knows what is best for [redacted]" They cite as authority the U.S. Supreme court in Moore v. East Cleveland , 431 U.S. 494, 499 (1977) which held that "when the government intrudes on choices concerning family living arrangements, this Court must examine the important governmental interests advanced and the extent to which they are served by the challenged regulation."

Plaintiff argue that Brewers' affidavit states ".....refusal to recognize her marriage to Angela ....Constanza denies both Petitioners and their son [redacted]., the social recognition that comes with marriage." They further add that "The State has offered no contradictory affidavits.

Plaintiffs direct this court's attention to their Request for Admission No. 15 and defendants' response. "Admit or deny that Plaintiffs ..... have a fundamental right to rear their child, [redacted] (in the context of a Liberty interest in same as expanded by our U. S. Supreme Court in its jurisprudential interpretation of the Due Process Clause of the 14th Amendment to the U.S. Constitution."

The record indicates that the State's response was: "Denied as written. The fundamental right to raise children does not encompass Plaintiffs' right to raise a child together in the context of a same-sex marriage."

Petitioners argue that "Denying Angela Costanza eligibility to Petition for adoption of the child she is raising with her partner Chasity Brewer violates the Constitution and does not turn on whether same-sex couples are allowed to marry.

"Petitioners' claim that Louisiana's refusal to grant them the same family protections afforded couples headed by different-sex parents denies them liberty and equality in violation of the 14th Amendment.....The State argues that Louisiana adoption law only allows single individuals or married opposite-sex couples, or the lawfully married spouse of a legal parent to adopt."

Plaintiffs argue that they have a fundamental right to marry. They cite as authority the Supreme court cases of Meyer v. Nebraska, 262 U.S. 390 (1923) and Loving v. Virginia, 388 U.S. 1 (1967) "..... Choices about marriage, such as choices about other aspects of family life, are a central part of the liberty protected by the Due Process Clause." Meyer, and "liberty protected by the Due Process Clause includes the "right to marry, establish a home, and bring up children. Loving. The Slip Opinion in Kitchen states that Loving did not provide a fundamental right to marry based purely on race, one's gender, or even one's sexual orientation. Defendants argue that "Loving guarantees to all people that fall under the realm of our federal Constitutional, the fundamental right to marry whomever they choose." They further argue that " the focus of Loving is choice, not humanistic attributes over which an individual has no control such as race or sexual orientation. Citing Huntsman v. Heavilin, July 17, 2014 Slip Opinion.

Plaintiffs argue that they have a fundamental right to rear a child. "The State's refusal to sanction their intra-family adoption of [redacted] infringes upon petitioners' fundamental right to rear their child in violation of the Fourteenth Amendment."

Plaintiffs cite Kitchen, which cites the Slip Opinion in Pierce v. Soc'y of Sisters which addresses the liberty of parents and guardians to direct the upbringing and education of children under their control. Kitchen went further to say that "....childrearing, a liberty closely related to the right to marry, is one exercised by same-sex and opposite-sex couples alike, as well as by single individuals."

**FULL FAITH AND CREDIT CLAUSE**

The court first considers the petitioners' full faith and credit arguments.

In their memorandum of law the petitioners contend that "Marriage is a public act and record. Louisiana prohibition of the courts and officials of the State of Louisiana from recognizing valid marriages between two persons of the same gender contracted in another state violates the Full Faith and Credit Clause of the U.S. Constitution, Article IV, Section 1." They further state that "said denial of full faith and credit is unmerited and does not fall within the discretion of a State within our Republic." (no authority is cited). Petitioners also assert in their memorandum that "no compelling, overriding "public policy" has been presented by the State." Petitioners point out that defendants argue that Texas' 'public policy' allows the state to deny recognition to valid out-of-state marriages." Citing Deleon v. Perry, 2014 WL 715741 (W.D. Tex., Feb. 26, 2014), Slip Opinion. Petitioners add "but [Texas] fail[s] to articulate what that 'public policy is."

During oral argument, the court asked the question, "why not full faith and credit?" Petitioners responded by saying they "believe the U.S Supreme court got it right in Loving." They also opined that public policy [against same-sex marriage] is not as strong as the State argues. They further argued that the State can't hide behind its sovereignty.

Petitioners also argued that with respect to full faith and credit clause, it is unfair, and very capricious for Louisiana not to recognize the petitioners' marriage.

Petitioners conclude their oral argument by asking the court to reconsider the exhibits attached to the adoption file as well as the affidavits of petitioners. They suggested to the court that a particular teacher gave excellent remarks concerning [redacted] parentage and his very fine and compassionate character, and thus begged the court to 'renew' its previous Adoption Order.

The court now considers the defendants' full faith and credit arguments.

Defendants contend that the Full Faith and Credit Clause (FFC) does not require Louisiana to recognize the Petitioners' out-of-state same-sex marriage.

Defendants maintain that FFC also confirms that the States have authority to decide whether to adopt same-sex marriage. They further maintain that a State need not recognize marriages that violate public policy.

Defendants cite as authority the case of Baker v. General Motors Corp., 522 U.S. 222 (1998) which quoted the Supreme Court in Pac. Employers Ins. Co. v. Indus. Accident Comm'n., 306 U.S. 493 (1939). Those cases held that "While FFC demands "exacting" credit to another state's judgment, it "does not compel a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate."

Defendants cite Restatement (2d) Conflicts of Laws Section 92 which states that "One State's marriage is not a "judgment" that merits full faith and credit in

another State. A marriage has none of a judgment's earmarks—i.e., adversarial court proceeding, notice and opportunity-to-be-heard by affected parties, and a final decision."

Franchise Tax Bd. Of Cal. v. Hyatt, 538 U.S. 488 (2003) held "That one State recognizes same-sex marriage thus triggers a far lighter standard for those that do not: a State may apply its own marriage laws, provided it has "a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." Defendants add "That lenient standard does not oblige Louisiana to recognize Plaintiffs' same-sex marriages."

Williams v. North Carolina, stated that "Each state as a sovereign has a rightful and legitimate concern in the marital status of persons domiciled within its borders. It is also argued in their memorandum, that "Congress has confirmed that FFC does not require interstate recognition of same-sex marriages. Citing U.S. Const. art. IV, section 1. Defendants state that in 1996 Congress provided that " No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, ..... respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State..... or a right or claim arising from such relationship." 28 U.S.C. A. section 1738C.

Defendants further assert that Sevcik (quoting Nevada v. Hall, 440 U.S. 410 (1979) rejected recognition claims asserted under equal protection because [FFC] didn't enable states to legislate for others or "project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it."

Defendants asserted in their oral argument that the "full faith and credit clause draws sharp distinction between a public act and a judgment and that no federal case has ever held that a marriage is a judgment for purposes of full faith and credit." The state defendants further argued that some judgments, e.g. adoption decrees and divorce decrees, are given full faith and credit among states, but not marriage, which is enacted by statutes.

Defendants agrees that "if the minor, [redacted] had been adopted in California, then Louisiana would be required to recognize that adoption."

Defendants maintain that "courts don't have the powers to overturn laws, even bad laws."

Defendants argued that Windsor said "marriage laws can vary in some respects from state to state, such as in minimum age requirement and the permissible degree of consanguinity."

With respect to Loving, defendants maintain that Loving was about laws that were so bad that the Court applied strict scrutiny analysis to strike down the law.

In their memorandum defendants contend that because Loving involved White Supremacy laws that violated the "clear and central purpose of the 14th Amendment" and triggered strict scrutiny, it is not applicable to this case. This court believes that Loving cannot be so easily dismissed. From a historical standpoint, we have not been able to find any analogy to this same-sex marriage ban since the miscegenation laws. Peggy Pascoe is an Associate Professor .....Not since Loving has this country had such a controversy over a set of laws directed restricting a certain class of people to marry whom they chose. Anti-miscegenation laws dealt with what people considered at that time, non-traditional marriages. The

Defendants contend that the Supreme court in Windsor struck down New York's Defense of Marriage Act (DOMA), "not.....as [the recent Tenth and Fourth Circuit] courts thought, because it classified by sexual orientation or burdened a fundamental right to marry someone of the same sex—but rather because DOMA's purpose [was] to influence or interfere with state sovereign choices about who may be married."

## THE COURTS' ANALYSIS AND FINDINGS

Since taking this matter under advisement this court has had much to consider in addressing issues of a most serious nature.

This court adopts the reasoning of Windsor as discussed below. It is true that in 2013 the U.S. Supreme court in Windsor struck down New York's Defense of Marriage Act (DOMA) because it found that the purpose of that Act [was] to influence or interfere with the state's sovereign choices about who may be married; but Windsor also addressed the definition of marriage and spouse contained within DOMA. Section 3 of DOMA defined marriage as the "legal union between one man and one woman as husband and wife" for purposes of federal law 1 S.S.C. Section 7 (2012). Windsor like the case at hand involved a same sex marriage. The marriage in Windsor that took place in Ontario, Canada was recognized by the State of New York, but DOMA's definition of marriage had the effect of depriving the petitioners there of their liberty protected by the Fifth Amendment. The court stated that "DOMA seeks to injure the very same class New York seeks to protect. By doing so, it violates basic due process and equal protection principles applicable to the Federal Government." See U.S. Const. Amdt. 5. Winsor stated that "The State's decision to give this class of persons a right to marry conferred upon them a dignity and status of immense import. But the Federal Government uses the state-defined class for the opposite purpose, to impose restrictions and disabilities." Windsor stated: "DOMA's principal effect is to identify and make unequal a subset of state-santioned marriages. It contrives to deprive some couples married under the laws of their state, but not others, of both rights and responsibilities, creating two contradictiory marriage regimes

within the same State. It also forces same-sex couples to live as married for the purpose of the state law, but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect."

Windsor went further to explain that "Marriage laws vary in some respects form state to state. For example, the required minimum age is 16 in Vermont, but only 13 in New Hampshire.....Likewise the permissible degree of consanguinity can vary (most states permit first cousins to marry, but a handful .....prohibit the practice. But, these rules are in every event consistent within each state." Windsor cites the 2003 U.S. Supreme Court case of Lawrence v. Texas which held that " Private, consensual sexual intimacy between two adult persons of the same sex may not be punished by the State, and it can form " but one element in a personal bond that is more enduring." Windsor reasoned that marriage is more than a routine classification for purposes of certain statutory benefits. Windsor also cited 1973 U.S. Supreme Court case of Dept. of Agriculture v. Moreno which stated that "The Constitution's guarantee of equality "must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot" justify disparate treatment of that group. Windsor reasoned that "the..... practical effect of the law [DOMA] ..... impose a disadvantage, separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States." Windsor concludes by saying "....though Congress has great authority to design laws to fit its own conception of sound national policy, it cannot deny the liberty protected by the Due Process Clause of the Fifth Amendment. .....the principal purpose and the necessary effect of [DOMA] are to demean those persons who are in a lawful same-sex marriage. This requires the Court to hold, that DOMA is unconstitutional as a deprivation of the liberty of the person protected by the 5th Amendment of the Constitution.

This court notes that the opinions and holding of Windsor addressed only persons of the same-sex that were in lawful marriages. All parties in this matter concede that the petitioners in this case were lawfully married in California.

While petitioners cite as authority the 2013 U. S. District Court for the Central Division of Utah in Kitchen v. Herbert, 961 F.Supp.2d 1185 (D. Utah 2013), we recognize that since that although the background and facts are similar, that case went to the U.S. Court of Appeals, Tenth Circuit. Hence we look to holdings of the Tenth Circuit. Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 6/25/14). Utah dealt with the gay/lesbian couples who wished to have their marriage recognized in Utah. The petitioners Kitchen, just the petitioners in this case challenge their state's Constitution, and two statutes that prohibit same-sex marriage as violative of plaintiffs' due process and equal protection rights under the 14th Amendment of U.S. Constitution. The Tenth Circuit in Kitchen affirmed the lower court and held that that Utah's laws were unconstitutional. The Tenth Circuit in Kitchen held: "The Fourteenth Amendment protects the fundamental right to marry,

establish a family, raise children, and enjoy the full protection of a state's marital laws. A state may not deny the issuance of a marriage license to two persons, or refuse to recognize their marriage, based solely upon the sex of the persons in the marriage union." We also adopt the ruling in Meyer v. Nebraska, 262 U.S. 390 (1923) which recognized that the right to marry and raise children in the home was "a central part of the liberty protected by the Due Process Clause."

We find that petitioners are in a better position than the state to make decisions regarding the custody and care of the child, [redacted]. To hold otherwise would be a denial of petitioner's personal liberty interest guaranteed under the Due Process Clause of the 14th Amendment.

Defendants, argue that Louisiana's marriage and adoption laws are rationally related to furthering its legitimate interests in a) linking children to intact families formed by their biological parents, and b) ensuring that fundamental social change occurs through widespread social consensus.

Defendants cite the U.S. Supreme court case of Baker v. Nelson, 409 U.S. 810 (1972) as authority to support their position that the Constitution does not require Louisiana to recognize same-sex marriage. But in Baker, the Supreme Court summarily dismissed the claim that the Constittution requires a state to recognize same-sex marriage, for want of a substantial federal question. The lower district court and the Tenth Circuit in Kitchen points out that "Baker is no longer controlling precedent. Both courts concluded "that doctrinal developments" had superseded Baker. The Tenth Circuit in Kitchen found that "Baker was decided before the Supreme Court held that "intimate conduct with another person ..... can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice." Citing Lawrence v. Texas. Hence, this court likewise recognizes that Baker is no longer binding precedent.

This court agrees with defendants' argument that marriage laws can vary in some respects from state to state, but Louisiana cannot define and regulate marriage to the extent that it infringes upon the constitutional rights of the petitioners. This court finds that there is no rational connection between Louisiana's laws prohibiting same sex marriage and its goals of linking children to intact families formed by their biological parents, or ensuring that fundamental social change occurs through widespread social consensus. What is meant by 'intact' is not clear. This court is not convinced that only linking children to intact families formed by a child's biological parent serves a legitimate state interest. Louisiana already allows for foster parent adoptions where there is no linkage to a child's biological parent or family. Such placements have been found to be in the best interest of the child. It would be illogical to say that intact families are only those that are formed by a child's biological parents. There can be no distinction between linking children to 'intact families' formed by biological parents and linking children who are already in intact families involving same-sex marriages

such as the Costanza/Brewer family. We firmly agree with Smith v. Org. of Foster Families for Equal. & Reform, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977) which stated "Children of same-sex couples may lack a biological connection to at least one parent, but "biological relationships are not [the] exclusive determina[nt] of the existence of a family."

As to the state's argument that laws prohibiting same-sex marriage ensure fundamental social change occurs through widespread social consensus, the State has given no legitimate state interest in waiting to ensure that fundamental social change occurs through widespread social consensus. It hasn't been shown what that widespread consensus might look like. This court notes that widespread social consensus can vary among our citizens, and not always for reasons that are fair and just, or comport with rights guaranteed by the U.S. Constitution. This court ask the question, how is there a strong public policy against same-sex marriage in this day and age? It is the opinion of this court that widespread social consensus leading to acceptance of same-sex marriage is already in progress. The moral disapproval of same-sex marriages is not the same as it was when Louisiana first defined marriage as a union between a man and a woman. Thus, for the reasons outlined above, the court holds that Louisiana's interests in linking children to intact families formed by their biological parents, or ensuring that fundamental social change occurs through widespread social consensus, simply do not justify banning same-sex marriage.

The court adopts the opinion in Carey v. Population Servs. Int'l, 431 U.S. 678 (1977) which stated that "It is clear that among the decisions that an individual may make without unjustified governmental interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education." This court agrees with petitioners' contention that "at a minimum, Chasity Brewer has a fundamental right to rear her biological child, [redacted] and that the State's refusal to sanction this court's prior Adoption decree infringes upon petitioners' fundamental right to rear [redacted]. This is a violation of the 14th Amendment. This court opines that if petitioners in this case had been a married opposite-sex couple, Louisiana would no doubt have given recognition to their marriage, the adoption of [redacted], and their personal liberty rights contained within the due process clause of the 14th Amendment.

There are those who might argue that gays and lesbians can be treated differently, and yet be considered to be equal to the rest of Americans. More than a century ago, there was a "case that turned upon the constitutionality of an act of the general assembly of the state of Louisiana, providing for separate railway carriages for the white and colored races." Plessy v. Ferguson, 163 U.S. 537 (1896). Plessy stood for the proposition that there could be separate but equal treatment of the two races. Fortunately for this country, the U.S. Supreme court was presented with the case of Brown v. Board of Education of Topeka, Shawnee County, Kan., et al, 347 U.S. 483 (1954), which overruled any doctrine

that held 'separate but equal'. That court held that "plaintiffs and others similarly situated ..... are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

This court accepts the petitioners' argument that Loving is relevant to their case. In the defendant's memorandum and oral argument, the State cited the case of Hernandez v. Robles, 855 N.E.2d 1, 8 (N.Y. 2006). The New York Court of Appeals upheld that state's man-woman marriage laws and explained that "to equate the same-sex marriage debate with the racist laws struck down in Loving is to suffer from historical myopia. Hernandez further articulated that "[T]he historical background of Loving is different from the history underlying this case. Racism has been recognized for centuries—at first by a few people, and later by many more—as a revolting moral evil. This country ..... has passed three constitutional amendments to eliminate that curse and its vestiges. Loving was part of the civil rights revolution of the 1950's and 1960's, the triumph of a cause for which many heroes and many ordinary people had struggled since our nation began."

Lest we forget, there was a time in America's history when gays and lesbians were not permitted to even associate in public. Many in this country held a deep seated hatred for the lifestyle of gays, lesbians, bisexuals etc., and with that hatred carried numerous arrests and imprisonment for those who chose a different lifestyle than what was "traditionally" recognized. We are past that now, but when it comes to marriage between persons of the same sex, this nation is moving towards acceptance that years ago would have never been contemplated. Kitchen stated "Thus the question as stated in Loving, and characterized in subsequent opinions, was not whether there is a deeply rooted tradition of interracial marriage, or whether interracial marriage is implicit in the concept of ordered liberty; the right at issue was "the freedom of choice to marry." There was a time when racially mixed marriages were non-traditional, as were marriages between certain degrees of cousins and common law marriages. The Third Circuit Court of Appeal of Louisiana, in 2005 gave full-faith and credit to a valid common-law marriage contracted in the state of Texas. Fritsche v. Vermilion Parish Hospital Service District # 2 et al., 893 So.2d 935 (La. App. 3 Cir. 2/2/05). Just a few decades ago in these United States, miscegenation was illegal. It is now something that most Americans in today's society hardly even debate. From a historical standpoint we've not been able to find any case law analogous to petitioner's non-traditional marriage based on their sexual orientation, other than America's miscegenation laws. Those laws were eventually resolved in the Supreme court decision in Loving v. Virginia.

This court does not believe that the historical background of Loving is so different from the historical background underlying state's bans on same-sex marriage. One cannot look at Loving without recognizing that it was about racism as well as a couples' decision to assert their right to choose whom to marry.

In Loving, the Supreme Court struck down Virginia's law anti-miscegenation statute as being in violation of both Equal Protection Clause and the Due Process Clause of the 14 Amendment. Loving was correctly decided, even though mixed-race marriages had been illegal in many states and for many years. Peggy Pascoe an Associate Professor and Beekman Chair of Northwest and Pacific History at the University of Oregon, wrote an article entitled, Why the Ugly Rhetoric Against Gay Marriage Is Familiar to this Historian of Miscegenation. (George Mason University's History News Network. Retrieved 14 July 2008). In her article she stated the following: "We are in the midst of an attempt to ground a category of discrimination in the fundamental social bedrock of marriage law. I would argue that it is virtually impossible to understand the current debate over same-sex marriage without first understanding the history of American miscegenation laws and the long legal fight against them, if only because both supporters and opponents of same-sex marriage come to this debate, knowing or unknowingly, wielding rhetorical tools forged during the history of miscegenation law."

Ms. Pascoe further wrote that "It is important to remember that there are real differences in the case of gay marriage and so- called mixed marriages. The situation of a lesbian or gay couple in 2004 is not the same as that of an interracial couple in the 1930s, when miscegenation laws carried criminal penalties, ..... The federal government is a much bigger player in the fight over same-sex marriage than it ever was in the case of miscegenation law; in the case of interracial marriage, there was no federal equivalent to the Defense of Marriage Act."

This court has been asked to determine whether for purposes of the due process clause, the right to marry someone of the same sex is a 'right' deeply grounded in our Nation's history and tradition. In line with what the Tenth Circuit said in Kitchen in regards to Loving; we respond by saying, the question for this court is not whether the right to marry someone of the same sex is deeply rooted in our Nation's history and tradition; but the 'right' at issue is the freedom of choice to marry. Loving, 388 U.S. at 12, 87 S.Ct. 1817.

In Perry v. Schwarzenegger, 704 F. Supp.2d 921 (N.D. Cal. 2010) the court recognized that 'race restrictions, despite their historical prevalence, stood in stark contrast to the concepts of liberty and choice inherent in the right to marry." Meyer v. Nebraska recognized that the right to marry and raise children in the home was "a central part of the liberty protected by the Due Process Clause."

As to Louisiana Revenue Bulletin No. 13-024, if this court were to allow that Revenue policy to stand, it would have the effect of treating married same-sex couples, differently than married opposite-sex couples. The court cannot find that the State would have any rational reason for doing so. On the contrary, Rev. Bulletin No. 13-024 imposes a disadvantage and separate status on the Brewer/Costanza household, a politically unpopular group of individuals. Our

Constitution's guarantee of equality simply cannot permit disparate treatment of this group of individuals.

The court notes that neither petitioner nor the State interjected any argument using religion as ground for, or against same-sex marriage.

This court acknowledges that in deciding an equal protection claim, the Supreme court recognizes that the 14th Amendment does not deny states the power to treat different classes of people in different ways. However, the statute which creates different classes and by treating some people different must be related to the objective of that statute. We find in this case that Louisiana's laws banning same-sex marriage is entirely unrelated to the objective of those statutes. Therefore the court finds that the state's laws prohibiting the petitioners' same-sex marriage and the adoption of [redacted] are due to the sole reason that this couple is of the same gender, and thus those laws are arbitrary, capricious, discriminatory, and unrelated to any legitimate state interest. As such, La. Const. Article XII, Section 15 (the Defense of Marriage Act), and La. Civil Code Articles 86, 89, and 3520(B) are unconstitutional.

Defendant contend that our Third Circuit Court of Appeal held in this case that petitioners' stepparent adoption of [redacted] is not permitted under Louisiana law, and that determination is therefore law of the case. This statement is only partly correct. When this case went up to the Third Circuit Court of Appeal that court found that this trial court erred in holding the [Adoption] hearing without notifying the Attorney General. The Third Circuit noting that the Attorney General had not had an opportunity to be heard vacated the adoption and remanded the case with instructions to the trial court to **[hear arguments on all issues raised by both]** petitioners and the Attorney General. **Emphasis added.** For that reason both parties have submitted their arguments and ask this court to rule on the constitutionality of Louisiana's marriage and petitioner's adoption and whether Louisiana's laws against same-sex marriage violate the due process, and equal protection clauses of the 14th Amendment to the U.S. Constitution, and Article IV, Section 1 Full Faith and Credit Clause of the U.S. Constitution.

This court has search and found that nearly eight decades ago, our U.S. Supreme court spoke to the importance of this nation's full faith and credit clause. In Milwaukee County v. M.E. White Co., 269 U.S. 268 (1935) the court held that "the public policy of the forum state must give way, because the "very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereigntles, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation....."

Our Supreme court in Sherrer v. Sherrer, 334 U.S. 343 (1948) ordered the state of Massachusetts to give full faith and credit to a Florida divorce decree. Sherrer

stated " ..... If in its application local policy must at times be required to give way, such is part of the price of our federal system."

This court finds that Milwaukee County and Sherrer are controlling and hence the positions of those courts as stated above are embraced by this court.

**ORDER**

The court grants the Petitioners' Motion for Summary Judgment and denies the Defendants' Motion for Summary Judgment. It hereby declares that La. Const. Article XII, Section 15 (the Defense of Marriage Act/DOMA), and La. Civil Code Articles 86, 89, and 3520(B) are unconstitutional because they violate the Due Process and Equal Protection Clauses of the 14th Amendment to the U. S. Constitution and Article IV, Section 1, the Full Faith and Credit Clause, of the United States Constitution. Louisiana's Revenue Bulletin No. 13-024 (9/13/13) is likewise declared unconstitutional as it violates the petitioners' rights guaranteed by the Due Process and Equal Protection Clauses of the 14th Amendment of the U.S. Constitution. Hence, Tim Barfield in his official capacity as the Secretary of the State of Louisiana Department of Revenue, is hereby ordered to act in accordance with this courts' ruling and allow the petitioners to file their state tax returns as a couple whose marriage is valid and recognized in Louisiana. The court hereby enjoins the State from enforcing the above referenced laws to the extent that these laws prohibit a person from marrying another person of the same sex. Additionally, having ruled that the petitioners' marriage shall be recognized by the state of Louisiana, it follows that Angela Marie Costanza has satisfied the requirement of stepparent under the provisions of La. Ch.C. article 1243, which allows for Intrafamily adoption. The court reaffirms its previous decision in Adoption of [redacted] which declared Angela Costanza's adoption of [redacted] to be in the child's best interest. The minor child, [redacted]. is declared, for all purposes, to be the child of petitioner, Angela Marie Costanza to the same extent as if [redacted] had been born to Angela Costanza in marriage. As such, the court further orders Devin George in his official capacity as the State's Registrar of Vital Records, to issue a new birth certificate naming Angela Costanza as [redacted] mother.

The State of Louisiana is hereby ordered to recognize the Petitioners' marriage validly contracted in California as lawful in this state, pursuant to the Full Faith and Credit guaranteed by Article IV, Section 1 of the United Stated Constitution.

THUS DONE AND SIGNED in chambers this 22nd day of September, 2014 in Lafayette, Louisiana.

EDWARD D. RUBIN, JUDGE, 15TH JDC

ATTN CLERK: Please forward a copy of this Minute Entry Ruling to the parties of record.

FILED THIS 24th DAY OF Sept 2014

Deputy Clerk of Court

**GENERAL SYNOD OF THE UNITED CHURCH OF CHRIST, et al., Plaintiffs,**

**v.**

**DREW RESINGER, REGISTER OF DEEDS FOR BUNCOMBE COUNTY, et al., Defendants. And ROY COOPER, ATTORNEY GENERAL OF NORTH CAROLINA, Intervenor.**

Docket No. 3:14-cv-00213-MOC-DLH.

**United States District Court, W.D. North Carolina, Charlotte Division.**

October 10, 2014.

## MEMORANDUM OF DECISION AND ORDER

MAX O. COGBURN, Jr., District Judge.

**THIS MATTER is before the court on its own Motion for Judgment on the Pleadings. In light of the decision of the Court of Appeals for the Fourth Circuit in Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014), cert. denied, ___ S.Ct. ___, 2014 WL 4354536 (U.S. Oct. 6, 2014), as to which the Mandate has now issued, Bostic v. Schaefer, No. 14-1167, 14-1169, 14-1173 (4th Cir. Oct. 6, 2014), the court determines that North Carolina's laws prohibiting same-sex marriage are unconstitutional as a matter of law.[1]**

Specifically, the court finds Article XIV, Section 6 of the North Carolina Constitution, North Carolina General Statute § 51-1 *et seq.*, and any other source of state law that operates to deny same-sex couples the right to marry in the State of North Carolina, prohibits recognition of same-sex marriages lawfully solemnized in other States, Territories, or a District of the United States, or threatens clergy or other officiants who solemnize the union of same-sex couples with civil or criminal penalties, are, in accordance with Bostic, supra, unconstitutional as they violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

Finally, in the hours preceding this Order there have been a number of last minute motions filed by interested parties. The issue before this court is neither a political issue nor a moral issue. It is a *legal* issue and it is clear as a matter of what is now settled law in the Fourth Circuit that North Carolina laws prohibiting same sex marriage, refusing to recognize same sex marriages originating elsewhere, and/or threating to penalize those who would solemnize such marriages, are unconstitutional.

## ORDER

IT IS, THEREFORE, ORDERED that

(1) the consent Motion to Dismiss Plaintiff's First Amendment Claims (#114) is GRANTED, and those claims are DISMISSED without prejudice;

(2) the court's Motion for Judgment on the Pleadings is GRANTED, and the court finds Article XIV, Section 6 of the North Carolina Constitution, North Carolina General Statute § 51-1 *et seq.*, and any other source

of state law that operates to deny same-sex couples the right to marry in the State of North Carolina or prohibits recognition of same-sex marriages lawfully solemnized in other States, Territories, or a District of the United States, or threatens clergy or other officiants who solemnize the union of same-sex couples with civil or criminal penalties, are UNCONSTITUTIONAL as they violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

(3) all other pending motions are terminated as MOOT.

## PERMANENT INJUNCTION

Defendants are PERMANENTLY ENJOINED from enforcing such laws to the extent these laws prohibit a person from marrying another person of the same gender, prohibit recognition of same-sex marriages lawfully solemnized in other States, Territories, or a District of the United States, or seek to punish in any way clergy or other officiants who solemnize the union of same-sex couples.

With the exception of retaining such jurisdiction as may be necessary to enforce such injunction, this action is otherwise DISMISSED.

The Clerk of Court shall issue a Judgment consistent with this Memorandum of Decision and Order.

[1] The Stay (#91) previously imposed was automatically dissolved on October 6, 2014, when *certiorari* was denied in *Bostic.*

**VERNITA GRAY AND PATRICIA EWERT, Plaintiffs, and**
**PEOPLE OF THE STATE OF ILLINOIS EX REL. LISA MADIGAN, ATTORNEY GENERAL OFILLINOIS, Intervenor,**
**v.**
**DAVID ORR, IN HIS OFFICIAL CAPACITY AS COOK COUNTY CLERK, Defendant.**

No. 13C8449.

**United States District Court, N.D. Illinois, Eastern Division.**

December 5, 2013.

# MEMORANDUM OPINION AND ORDER

THOMAS M. DURKIN, District Judge.

Under current Illinois law, same-sex partners cannot be married. That will change on June 1, 2014. On that date, Illinois will recognize marriages between same-sex partners. Between now and then, however, same-sex couples must wait to marry in Illinois and also wait to have their lawful marriages in other states recognized in Illinois. Due to extraordinary and compelling circumstances, Plaintiffs Vernita Gray and Patricia Ewert asked this Court to order Defendant Cook County Clerk David Orr to issue them a marriage license and allow them to marry in Illinois before June 1, 2014.

The issue presented here is a narrow one: whether the State of Illinois has any remaining governmental interest in a law prohibiting same-sex marriage when it has effectively disavowed any prior justification for that law by enacting a new law that will allow same-sex couples to marry. Underlying that narrow issue is the even narrower issue of when balancing the equities in this case, have Plaintiffs demonstrated a sufficient likelihood of success on the merits of their as-applied equal protection challenge to the current Illinois law prohibiting same-sex marriage such that temporary injunctive relief should be granted.

On November 25, 2013, the Court held a hearing on Plaintiffs' motion for a temporary restraining order ("TRO"). Following lengthy argument from, and discussion with, the parties, this Court granted the TRO that day, finding that the balancing of equities and hardships weighed strongly in Plaintiffs' favor. R. 21. This Order memorializes the oral findings the Court made at the hearing on Plaintiffs' motion.[1]

## Factual Background

For purposes of evaluating Plaintiffs' request for a TRO, the following facts are taken as true. *See Ridge Chrysler Jeep, LLC v. Daimler Chrysler Servs. North Am., LLC*, No. 03 C 760, 2006 WL 2808158, at *8 (N.D. Ill. Sept. 6, 2006); *see also* Fed. R. Civ. P. 65(b)(1)(A). The facts of this case are compelling. Plaintiffs Vernita Gray and Patricia Ewert are Chicago residents who have been in a committed relationship for more than five years. When the Illinois General Assembly authorized civil unions for gay and lesbian couples in 2011, Gray and Ewert expressed their commitment to each other by joining in such a union, taking part in both civil and religious ceremonies. Gray is now terminally ill with cancer and does not have long to live. Sadly, Gray may only have weeks to live. She and Ewert wish to marry before Gray passes away. A marriage recognized under Illinois law would allow Gray and Ewert to enjoy the same personal, emotional benefits and satisfactions that accrue to couples whose marriages are recognized by society and the State. A marriage recognized under Illinois law would also entitle Ewert to make health decisions on Gray's behalf and receive survivor benefits, including social security and estate tax benefits.

As it stands, current Illinois law prohibits marriages between two individuals of the same sex. 750 ILCS 5/212(a)(5). On

November 5, 2013, the General Assembly passed Public Act 98-597 (Senate Bill 10), which amended the Illinois Marriage and Dissolution of Marriage Act to permit same-sex couples to legally marry in Illinois. The Governor of Illinois signed this bill into law on November 20, 2013. This amendment did not become effective immediately, however. Instead, the amendment becomes effective on June 1, 2014. *See* Ill. Const. art. IV, § 10. Gray's illness will almost certainly prevent her from living until that date. Given the seriousness of Gray's medical condition, Ewert called the Office of the Cook County Clerk, inquiring about whether the Clerk would issue a marriage license to a same-sex couple before June 1, 2014. An employee informed Ewert that the Clerk could not issue that license before that date.

Soon thereafter, Plaintiffs filed a two-count complaint against Defendant Clerk Orr, raising both a facial and as-applied constitutional challenge to the current Illinois law. They allege that the law violates both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Plaintiffs also requested that the Court issue a TRO and a preliminary injunction prohibiting Clerk Orr from enforcing the Illinois statutes excluding lesbian and gay couples from marrying in Illinois as applied to them, ordering Clerk Orr to issue a marriage license to Plaintiffs, and requiring Clerk Orr to register their solemnized marriage in the same manner as all other marriages in Illinois are registered. The Illinois Attorney General moved to intervene in the litigation, but not to defend the constitutionality of the Illinois law. Rather, the Illinois Attorney General joined in Plaintiffs' claim that the current Illinois law prohibiting same-sex marriage discriminates against individuals who wish to marry based on their sexual orientation and that such discrimination violates the Equal Protection Clause as applied to Plaintiffs.

On November 25, 2013, the Court held a hearing on Plaintiffs' motion. At the hearing, Plaintiffs stressed the urgency of Gray's medical condition. The Illinois Attorney General reiterated that the State did not object to the injunctive relief Plaintiffs sought; nor would such relief, the State represented, disserve the public interest. Clerk Orr, through his counsel the Cook County State's Attorney, indicated his desire to immediately issue a marriage license to Plaintiffs but his unwillingness to do so absent a court order given the constraints imposed by the current law.

## Legal Standard

In determining whether to grant preliminary injunctive relief, this Court must, as a threshold matter, determine whether the moving party has demonstrated: (1) some likelihood of success on the merits of the underlying claim; (2) the absence of an adequate remedy at law; and (3) the suffering of irreparable harm if preliminary relief is denied. *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992).

If the moving party clears these thresholds, the Court then balances the harm to the non-moving party if preliminary relief is granted against the harm to the moving party if relief is denied, and further considers the consequences to the public interest of granting or denying relief.[2] *Id.* at 11-12. This equitable balancing process employed by the Seventh Circuit involves a "sliding scale" analysis, "weighting harm to a party by the merit of [her] case," *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 544, 547 (7th Cir. 2007), with the aim "to minimize the costs of a wrong decision," *Korte v. Sebelius*, 735 F.3d 654, 665 (7th Cir. 2013). "The strength of the moving party's likelihood of success on the merits affects the balance of harms." *Planned Parenthood of Ind., Inc. v. Comm'r of the Ind. State Dep't of Health*, 699 F.3d 962, 972 (7th Cir. 2012); *see also Abbott*, 971 F.2d at 12 ("[T]he more likely it is the plaintiff will succeed on the merits, the less the balance of irreparable harms need weigh towards its side; the less likely it is the plaintiff will succeed, the more the balance need weigh towards its side."). In other words:

> Irreparable injury is not enough to support equitable relief. There also must be a plausible claim on the merits, and the injunction must do more good than harm (which is to say that the "balance of equities" favors the plaintiff). How strong a claim on the merits is enough depends on the balance of harm: the more net harm an injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting some preliminary relief.

*Hoosier Energy Rural Elec. Coop., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009) (internal citations omitted).

## Analysis

At the outset, the Court briefly addresses the question of whether Plaintiffs have standing to pursue this litigation. Constitutional standing is a jurisdictional inquiry; indeed it is "an essential component of Article III's case-or-controversy requirement." *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009); *see Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Article III standing requires a: (1) concrete injury-in-fact; (2) causal connection between the injury and the conduct complained of; and (3) likelihood that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560-61; *see also United States v. Windsor*, ___ U.S. ___, 133 S. Ct. 2675, 2685-86 (2013). There are also prudential limitations to a federal court's exercise of jurisdiction, but these rules "are more judicially self-imposed limits on the exercise of federal jurisdiction." *Windsor*, 133 S. Ct. at 2685 (internal quotation marks omitted). As the parties invoking federal jurisdiction, Plaintiffs bear the burden of establishing that they have standing. *Lujan*, 504 U.S. at 561.

Plaintiffs here have suffered a concrete redressable injury. Clerk Orr has represented to the Court that given the current state of Illinois law, which neither allows nor recognizes same-sex marriages, he cannot issue Plaintiffs a marriage license absent a court order. Clerk Orr maintains this position despite the Illinois Attorney General's representation that the State is not defending the constitutionality of the current Illinois law as applied to these two plaintiffs. Accordingly, because Plaintiffs have suffered a "concrete, persisting, and unredressed" injury, Article III standing exists. *See Windsor*, 133 S. Ct. at 2685.

The Illinois Attorney General's decision not to defend the constitutionality of the Illinois law in court while County Clerk Orr continues to deny a marriage license to Plaintiffs presents a prudential limitation on the exercise of jurisdiction. But such a prudential limitation does not deprive the Court from exercising Article III jurisdiction. Indeed, the procedural posture here is similar to the posture of the parties in *Windsor*. And there, the Supreme Court concluded that Article III standing existed in the district court despite the Government's position to agree with Windsor's legal claim and yet refuse to give it legal effect. *Id.* at 2684-85, 2686-87 (relying on reasoning of *INS v. Chadha*, 462 U.S. 919 (1983)). Accordingly, a justiciable controversy under Article III exists.

Both the Illinois Attorney General and Clerk Orr have represented that they agree with Plaintiffs' as-applied equal protection challenge to the current Illinois law prohibiting marriages between same-sex partners. They submit that the current Illinois law discriminates against individuals who wish to marry based on their sexual orientation, and that the law, which classifies on the basis of sexual orientation, should be subjected to heightened equal protection scrutiny. Alternatively, they contend that the discrimination underpinning the current Illinois law cannot, as applied to Plaintiffs, withstand a rational basis review. Because Plaintiffs' equal protection claim is the claim on which the parties focus, that is where the Court will direct its attention.

In 1977, Illinois passed the Illinois Marriage and Dissolution of Marriage Act. *See* Public Act 80-293; Ill. Rev. Stat. 1977, ch. 40, § 101, *et seq.* Although the Act did not explicitly prohibit same-sex couples from being married, Ill. Rev. Stat. 1977, ch. 40, § 212, that was the understanding when the legislation was passed, *see* 80th Ill. Gen. Assem., Senate, Transcript of May 19, 1977, at 286-87. Nearly twenty years later, Illinois amended its Marriage Act to explicitly prohibit same-sex marriages, 750 ILCS 5/212(a)(5) (2006), and to declare same-sex marriages to be contrary to Illinois public policy, *see* Public Act 89-459; 750 ILCS 5/213.1 (2006).

In 2011, the Illinois General Assembly authorized "civil unions" for gay and lesbian partners, granting those couples the same rights and privileges under Illinois law afforded to opposite-sex married couples except the right to marital status and the federal rights that accompany that status. *See* Public Act 96-1513; 750 ILCS 75/10. Recently, the General Assembly passed, and Governor Quinn signed into law, Senate Bill 10, which permits same-sex marriages. Because Senate Bill 10 was passed after May 31, 2013—it was passed by both General Assembly bodies on November 5, 2013—it could not become effective prior to June 1 of the next calendar year (*i.e.* 2014) absent a three-fifths vote from the members of each house of the General Assembly providing for an earlier effective date. *See* Ill. Const. art. IV, § 10.[3] The General Assembly did not provide for an earlier effective date in Senate Bill 10, and the bill thus becomes effective

on June 1, 2014.

Against this backdrop, Plaintiffs seek preliminary injunctive relief, arguing that if forced to wait to marry until June 1, 2014, they will suffer real, immediate, and irreparable harm for which there will be no adequate remedy at law. Given Gray's medical condition and imminent death, Gray and Ewert may not be able to wait to marry until June 1, 2014 or until final resolution of their claims on the merits. Should Gray pass away before either of these two events, Gray and Ewert will never be able to obtain the relief they seek here. Accordingly, Plaintiffs have cleared the initial threshold of demonstrating entitlement to temporary injunctive relief by showing the absence of an adequate of remedy at law should temporary relief be denied.

Plaintiffs have further demonstrated that absent temporary injunctive relief, irreparable injury would result. Concomitant with official marriage status conferred under Illinois law are important federal rights and benefits, including for example, the right to take leave under the Family and Medical Leave Act, 29 U.S.C. § 2614(c)(1); the right to file a joint income tax return; spousal tax benefits such as exemption from certain estate tax obligations; and eligibility for Ewert for social security benefits as a surviving spouse. *See* *Windsor*, 133 S. Ct. at 2692-96 (holding that federal laws based on marriage status must apply to same-sex marriages recognized under state law). Marriage will thus confer concrete financial benefits to Plaintiffs, and denying Gray and Ewert the opportunity to marry before Gray passes away will cause irreparable harm by preventing them from realizing those benefits. Equally, if not more, compelling is Plaintiffs' argument that without temporary relief, they will also be deprived of enjoying the less tangible but nonetheless significant personal and emotional benefits that the dignity of official marriage status confers. *See id.* at 2692 (stating that a state's recognition of same-sex marriage "is more than a routine classification for purposes of certain statutory benefits" but is a status that is a "far-reaching legal acknowledgement of the intimate relationship between two people, a relationship deemed by the State worthy of dignity in the community equal with all other marriages"). Ultimately, by passing Senate Bill 10, the General Assembly has officially recognized the value of all the benefits that official marriage status imparts and determined that these are benefits same-sex couples are entitled to enjoy.

Plaintiffs claim that they are likely to succeed on the merits of their equal protection claim as applied to them. *Windsor* certainly informs the analysis of the merits. In *Windsor,* the Supreme Court invalidated section 3 of the Federal Defense of Marriage Act ("DOMA"), and in doing so, gave married same-sex couples the same rights under federal law as those now enjoyed by opposite-sex couples. 133 S. Ct. at 2695-96. In reaching this conclusion, the Court denounced section 3 of DOMA, which was based on legislative "animus" toward gays and lesbians, as having "no legitimate purpose":

> DOMA seeks to injure the very class [of married gay couples that] New York seeks to protect. By doing so it violates basic due process and equal protection principles applicable to the Federal Government. The Constitution's guarantee of equality must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot justify disparate treatment of that group.

*Id.* at 2693 (internal quotation marks and citations omitted), 2696; *see also id.* at 2694 (stating that "DOMA's principal effect is to identify a subset of state-sanctioned marriages and make them unequal" and noting that DOMA "tells [same-sex] couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition"). An examination of the Illinois Marriage Act's history and the 1996 amendment declaring same-sex marriages to be against Illinois public policy reveals a similar animus towards same-sex couples. *See* 80th Ill. Gen. Assem., Senate, Transcript of May 19, 1977, at 286-87; Public Act 89-459, 89th Ill. Gen. Assem., Senate, Transcript of Mar. 28, 1996, at 97, 100-101.

Further informing the analysis is the fact that on November 5, 2013, the Illinois General Assembly recognized marriage (and the rights and privileges that come with it) as a fundamental right to which same-sex couples are entitled. Despite this recognition, however, same-sex couples must still wait until June 1, 2014 to enjoy that right. Any policy justification for the current Illinois law has been undercut and since rejected by the Illinois General Assembly with its passage of Senate Bill 10, which now seeks to protect same-sex couples. *See* new.livestream.com/blueroomstream/events/2448173 (98th Ill. Gen. Assem., House, Livestream Debate of Nov. 5, 2013). There is no legislative history that the parties have pointed to, or that the Court could find, that provides either a legitimate governmental justification or a rational basis for the General Assembly's decision to delay the effective date of

Senate Bill 10. Nowhere is there any mention or suggestion that a delay in the effective date is necessary to, for example, change forms in county clerks' offices to allow for an orderly transition to the new law. Indeed, the only reason the parties have cited for the delay is the functioning of the state's logistical process of passing a law.

Ultimately, the General Assembly's recent enactment of the new law permitting same-sex marriages and the attendant policy goal of that new law undermines any reason for applying the justification underlying the current law to these plaintiffs in these compelling circumstances. In any event, at least at this stage, Plaintiffs have demonstrated the requisite "some likelihood of success" on the merits of their as-applied equal protection claim, a conclusion that supports granting preliminary relief.

Both the balance of harms and the public interest as determined by the people of the State of Illinois—the two other components of the preliminary injunctive relief calculus—weigh heavily in favor of granting temporary injunctive relief. Should a final determination of Plaintiffs' equal protection claim reveal that it has no merit, the harm to Clerk Orr and the State of Illinois by permitting Gray and Ewert to marry would be relatively minor. Given the Illinois General Assembly's enactment of Senate Bill 10, any harm by an erroneous decision only results in moving up the date for them to marry by a relatively short period of time. Far weightier is the harm that will be done to Plaintiffs should the injunction not issue and Plaintiffs are forced to wait until the end of the suit for relief, relief which could be moot as to Plaintiffs should Gray pass beforehand.

For similar reasons, the public interest is not disserved by granting temporary injunctive relief given these compelling circumstances. Indeed, the Illinois Attorney General, the State's chief law enforcement officer charged with defending the State's interests, has disavowed any interest the State has in defending the constitutionality of the current Illinois law as applied to these Plaintiffs and has instead argued that the public interest is advanced, not thwarted, by granting the requested injunctive relief. The General Assembly has officially extended the institution of marriage to same-sex couples and, by doing so, has demonstrated its belief that such a policy serves the public interest. On June 1, 2014, Clerk Orr will be required to issue marriage licenses to, and register the solemnized marriages of, same-sex couples. In light of this fact, the Court is hard-pressed to articulate a reason why the public interest would be disserved by allowing Gray and Ewert, given their compelling circumstances, to marry a few months earlier than permitted under the current timeline. At bottom, the harm Plaintiffs will suffer should relief not be granted far outweighs what little harm, if any, the State will suffer as a result of granting temporary relief.

Balancing the equities and hardships strongly militates in favoring of granting temporary injunctive relief. At this balancing stage, though, the Court must still weigh in its analysis the strength of Plaintiffs' likelihood of success on the merits against the balancing of harms.[4] Given that the balancing of harms strongly weighs in favor of granting Plaintiffs the temporary injunctive relief they request, only a lesser showing of likelihood of success on the merits is required here. *See Abbott,* 971 F.3d at 12. Plaintiffs have demonstrated that their likelihood of success in challenging the constitutionality of the current Illinois law prohibiting same-sex marriage as applied to them is at least plausible. And, given the irremediable harm to Plaintiffs that would result from delaying injunctive relief, as well as the comparatively minor harm that granting injunctive relief would cause Clerk Orr and the State of Illinois, plausibility is all that is required at this stage. *See Hoosier Energy,* 582 F.3d at 725.

## Conclusion

It must be noted that the relief granted here is limited and extends no further than Vernita Gray and Patricia Ewert. The parties are in agreement on this point.[5] To be sure, Plaintiffs seek a broader ruling from this Court that the current Illinois law is facially unconstitutional because it violates the Due Process and Equal Protection Clauses. That request may be moot in light of this Order. But the request for temporary injunctive relief applies solely to Gray and Ewert. The Court has found after weighing all the factors applicable to determining whether injunctive relief should issue, that given the compelling circumstances surrounding Gray's medical condition and her potentially imminent death, the injury she and Ewert would suffer by denying injunctive relief would be irreparably great. When balancing the equities as the Court is required to do, the Court concludes that the requested injunctive relief is the only equitable result.

[1] Following the entry of the TRO, Plaintiffs married in Cook County on November 27, 2013.

[2] The standards for issuing a TRO are identical to those for a preliminary injunction. *Long v. Bd. of Educ., Dist. 128*, 167 F. Supp. 2d 988, 990 (N.D. Ill. 2001).

[3] Section 10 of Article IV of the Illinois Constitution provides: "The General Assembly shall provide by law for a uniform effective date for laws passed prior to June 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to June 1. A bill passed after May 31 shall not become effective prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date."

[4] At the threshold stage, Plaintiffs must demonstrate that there is some likelihood of success on the merits. *Storck USA, L.P. v. Farley Candy Co.*, 14 F.3d 311, 314 n. 1 (7th Cir. 1994). It is at the later balancing stage that the court determines how great that likelihood is. *Id.*

[5] Indeed, Clerk Orr has represented that despite the ruling granting injunctive relief in this case, absent a ruling that the current Illinois law is facially unconstitutional, he will continue to deny same-sex couples marriage licenses until Senate Bill 10 becomes effective on June 1, 2014.

MR. COOPER: Yes, Your Honor. The concern is that redefining marriage as a genderless institution will sever its abiding connection to its historic traditional procreative purposes and it will refocus, refocus the purpose of marriage and the definition of marriage away from the raising of children and to the emotional needs and desires of adults -- of adult couples.

Suppose, in turn --

JUSTICE KAGAN: Well, suppose a State said -- Mr. Cooper, suppose a State said because we think that the focus of marriage really should be on procreation, we are not going to give marriage licenses anymore to any couple where both people are over the age of 55. Would that be constitutional?

MR. COOPER: No, Your Honor, it would not be constitutional.

JUSTICE KAGAN: Because that's the same State interest, I would think, you know. If you are over the age of 55, you don't help us serve the government's interest in regulating procreation through marriage. So why is that different?

MR. COOPER: Your Honor, even with respect to couples over the age of 55, it is very rare that both couples -- both parties to the couple are infertile, and

the traditional --

(Laughter.)

JUSTICE KAGAN: No, really, because if a couple -- I can just assure you, if both the woman and the man are over the age of 55, there are not a lot of children coming out of that marriage.

(Laughter.)

MR. COOPER: Your Honor, society's -- society's interest in responsible procreation isn't just with respect to the procreative capacities of the couple itself. The marital norm, which imposes the -- the obligations of fidelity and monogamy, Your Honor, advances the interests in responsible procreation by making it more likely that neither party, including the fertile party to that --

JUSTICE SOTOMAYOR: Actually, I'm not even --

JUSTICE SCALIA: I suppose we could have a questionnaire at the marriage desk when people come in to get the marriage -- you know, are you fertile or are you not fertile?

(Laughter.)

JUSTICE SCALIA: I suspect this Court would hold that to be an unconstitutional invasion of privacy, don't you think?

JUSTICE KAGAN: Well, I just asked about

age. I didn't ask about anything else. That's not an -- we ask about people's age all the time.

MR. COOPER: Your Honor, and even asking about age, you would have to ask if both parties are infertile. Again --

JUSTICE SCALIA: Strom Thurmond was -- was not the chairman of the Senate committee when Justice Kagan was confirmed.

(Laughter.)

MR. COOPER: Very few men -- very few men outlive their own fertility. So I just --

JUSTICE KAGAN: A couple where both people are over the age of 55 --

MR. COOPER: I --

JUSTICE KAGAN: A couple where both people are over the age of 55.

MR. COOPER: And Your Honor, again, the marital norm which imposes upon that couple the obligation of fidelity --

JUSTICE SOTOMAYOR: I'm sorry, where is that --

CHIEF JUSTICE ROBERTS: I'm sorry, maybe you can finish your answer to Justice Kagan.

JUSTICE SOTOMAYOR: I'm sorry.

MR. COOPER: -- is designed, Your Honor, to

make it less likely that either party to that -- to that marriage will engage in irresponsible, procreative conduct outside of that marriage. Outside of that marriage. That's the marital -- that's the marital norm. Society has an interest in seeing a 55-year-old couple that is -- just as it has an interest of seeing any heterosexual couple that intends to engage in a prolonged period of cohabitation to reserve that until they have made a marital commitment, a marital commitment. So that, should that union produce any offspring, it would be more likely that that child or children will be raised by the mother and father who brought them into the world.

JUSTICE GINSBURG: Mr. Cooper, we said that somebody who is locked up in prison and is not going to get out has a right to marry -- has a fundamental right to marry, no possibility of procreation.

MR. COOPER: Your Honor is referring, I'm sure, to the Turner case, and --

JUSTICE GINSBURG: Yes.

MR. COOPER: -- I think that, with due respect, Justice Ginsburg, way over-reads -- way over-reads Turner against Safley. That was a case in which the prison at issue -- and it was decided in the specific context of a particular prison -- where there

**Nelda Majors, et al., Plaintiffs,**

**v.**

**Michael K. Jeanes, in his official capacity as Clerk of the Superior Court of Maricopa County, Arizona, et al., Defendants.**

No. 2:14-cv-00518 JWS.

**United States District Court, D. Arizona.**

September 12, 2014.

# ORDER AND OPINION [Re: Motion at Docet 64]

JOHN W. SEDWICK, District Judge.

## I. MOTION PRESENTED

At docket 64, plaintiff Fred McQuire ("McQuire") asks for a temporary restraining order which would require defendants to recognize the legitimacy of his California marriage to his recently deceased partner George Martinez ("Martinez"), require defendant Will Humble ("Humble") to prepare and issue a death certificate showing that Martinez was married to McQuire when he died, and require Humble to issue any necessary directives to health departments, funeral homes, physicians, medical examiners, and anyone else involved in preparing the death certificate to comply with the requirement to show that Martinez was married to McQuire at the time of his death. Defendants' response is at docket 70. McQuire replies at docket 73. Oral argument was heard on September 12, 2014.

## II. BACKGROUND

McQuire and Martinez were a gay couple who lived together for many years in Green Valley, Arizona, until the time of Martinez's death. They are among the nineteen plaintiffs who filed the case at bar to challenge Arizona's constitutional and statutory provisions which ban same-sex marriage in Arizona and prevent Arizona from recognizing same-sex marriages lawfully entered in other states.[1] The defendants named in the current complaint[2] are Michael K. Jeanes, sued in his official capacity as Clerk of the Superior Court of Maricopa County; Will Humble, sued in his official capacity as Director of Arizona's Department of Health Services; and David Raber, sued in his official capacity as Director of the Arizona Department of Revenue.

Plaintiffs contend—and defendants deny—that the challenged provisions of Arizona law deny them the equal protection of the laws required by the Fourteenth Amendment. In addition, plaintiffs contend—and defendants deny—that the challenged laws deny plaintiffs the substantive due process of law required by the Fourteenth Amendment.

## III. STANDARD OF REVIEW

McQuire asks the court to issue an injunction commanding defendant Humble and his agents to prepare, issue, and accept a death certificate for Martinez stating he was married and naming McQuire as his spouse.[3] Injunctive relief is an extraordinary remedy[4] which is not routinely granted.[5] The Ninth Circuit has explained that to obtain injunctive relief a plaintiff must show four things: First, he is likely to succeed on the merits; second, he is likely to suffer irreparable harm without the relief sought; third, a balancing of the equities tips toward him; and fourth, the public interest favors

issuance of an injunction.[6]

# IV. DISCUSSION

## A. Preliminary Consideration

Defendants contend that the Supreme Court's decision in *Baker v. Nelson*[7] effectively decided the claim upon which McQuire's motion rests—that a state violates the United States Constitution when it refuses to sanction same-sex marriages.[8] Defendants misapprehend the current significance of *Baker*. There, 42 years ago the Court said that a challenge to a Minnesota law defining marriage as between a man and a woman did not raise a substantial federal question. Even such a terse pronouncement binds the lower federal courts unless subsequent developments in the Supreme Court's own jurisprudence establish that the pronouncement no longer comports with the Supreme Court's view of an issue.[9]

The Supreme Court's decisions in *Romer v. Evans,*[10] and *Lawrence v. Texas,*[11] cast doubt on the proposition that *Baker* commands lower courts to treat challenges to same-sex marriage prohibitions as matters not raising a substantial federal question. The Court's more recent decision in *United States v. Windsor*[12] eliminates any uncertainty. The majority opinion striking down the federal Defense of Marriage Act ("DOMA") holds that DOMA's definition of marriage as between members of different genders for purposes of all federal laws required the Supreme Court "to address whether the resulting injury and indignity (to same-sex couples) is a deprivation of an essential part of the liberty protected by the Fifth Amendment."[13] Less than two weeks ago the Seventh Circuit joined numerous other federal courts in recognizing that *Baker* does not foreclose consideration of claims challenging the constitutionality of state laws forbidding same-sex marriages.[14] *Baker* is not an impediment to consideration of McQuire's claim.

## B. Likelihood of Success on the Merits

Within the past year, many federal courts have held that state laws forbidding same-sex marriage violate the United States Constitution. The most recent circuit court decision is the Seventh Circuit's decision in *Baskin v. Bogan,*[15] which held that the prohibitions on same-sex marriages in Indiana and Wisconsin violated the Equal Protection clause of the Fourteenth Amendment. Just weeks prior to *Baskin,* the Fourth Circuit held in *Bostic v. Schaefer*[16] that Virginia's prohibition on same-sex marriages violated both the Equal Protection and Due Process clauses of the Fourteenth Amendment. Prior to that, the Tenth Circuit held in *Kitchen v. Herbert*[17] that Utah's prohibition of same-sex marriages violated the Constitution. No other circuit courts have yet addressed the issue. Numerous district courts have also held that state prohibitions on same-sex marriage violate the Constitution.[18]

Only a Nevada district court and two Louisiana district courts have upheld state bans.[19] None of these decisions are persuasive. The judges in Nevada and the more recent Louisiana case applied rational basis review to the plaintiffs' equal protection challenges. However, the Ninth Circuit's decision in *SmithKline Beecham v. Abbott Laboratories,*[20] holds that discrimination based on sexual orientation must be evaluated using a heightened standard of review.[21] Defendants contend that *SmithKline Beecham* is inapposite for four reasons.

First, defendants argue Arizona's man/woman marriage laws do not discriminate on the basis of sexual orientation.[22] Yet, the reason why couples such as McQuire and Martinez may not marry is precisely because of their sexual orientation. This argument lacks merit.

Second, defendants contend Arizona's man/woman marriage laws were not intended to discriminate against same-sex couples.[23] Accepting that as true, it does not alter the fact that the laws do discriminate. Evidence of malignant intent

might support a higher standard of review, but defendants do not explain why its absence necessarily forecloses use of a higher standard.

Third, defendants argue that because the marriage laws in question are based upon a biological difference which reflects society's interest in the capacity to create children, a higher standard of review should not apply.[24] This argument is circular—there is a rational basis for the distinction, ergo rational basis review applies. Whether marriage laws which discriminate between heterosexuals and homosexuals should be subject to a higher level of scrutiny depends on whether a fundamental right or a suspect classification is involved,[25] not whether the state can offer a rational basis for the distinction.[26] Moreover, there is circuit court authority for the proposition that marriage laws which discriminate between heterosexual couples and homosexual couples infringe a fundamental right.[27]

Fourth, defendants argue that *SmithKline Beecham* does not reach so far as the circumstances before this court because it relied on the Supreme Court's decision in *Windsor,* which did not explicitly establish a heightened standard of review for all cases involving laws with a disparate impact on same-sex couples.[28] The argument is not persuasive. To begin with, the issue here was not before the court in *Windsor,* so the Court did not need to explain how far its analysis might reach. Second, if one is to infer the reach of the *Windsor* analysis, it is at least as reasonable to infer that *Windsor* does imply use of a heightened standard of review in the case before this court as it is to infer the opposite. Finally, it is important to note that *SmithKline Beecham* relied on *Windsor* to reverse Ninth Circuit precedent which had held that rational basis review applied, and broadly declared, "there can no longer be any question that gays and lesbians are no longer a group or class of individuals normally subject to rational basis review."[29]

The court now turns to the other Louisiana district court case which upheld a state law forbidding same-sex marriage. As relevant to the issue at hand, the court relied on a single proposition—that *Baker v. Nelson* was controlling.[30] As explained in the previous subsection of this order, *Baker* is no longer controlling.

The remainder of defendants' opposition essentially details its arguments on the merits. While the court is not presently passing on the merits of those arguments, for present purposes it suffices to say that in the persuasive decisions by other federal courts set out above, they have all been found wanting. Given the wealth of case law holding that state prohibitions on same-sex marriage violate the Constitution, and the absence of any persuasive case law to the contrary, the court concludes that McQuire is likely to prevail on the merits.

## C. Likelihood of Irreparable Harm

McQuire identifies three types of irreparable harm he will suffer absent injunctive relief: (1) he will lose the dignity associated with his marriage and suffer that loss in the midst of his grieving; (2) he will lose significant financial benefits; and (3) he will suffer a violation of his constitutional rights.

## 1. Emotional harm caused by the loss of dignity and status

McQuire argues that if he is not listed as a spouse on Martinez's death certificate, he will lose the dignity associated with their marriage and suffer that loss in the midst of his grieving. The Supreme Court has recognized that the right to marry confers on the individuals able to exercise the right "a dignity and a status of immense import."[31] McQuire likely faces irreparable emotional harm by being denied this dignity and status as he grieves Martinez's death.

Defendants deny McQuire's allegation that the marriage laws deprive him of the dignity and status conferred by his marriage to Martinez. Defendants rely on the fact that the Supreme Court stayed the effect of three lower court decisions in *Herbert v. Kitchen,*[32] *Herbert v. Evans,*[33] and *McQuigg v. Bostic.*[34] The cases subject to these stays involve lengthy opinions. The Court's stays shed no light on what issue, if any, will deserve review in the Supreme Court. In sum, it is not possible to say that the stays disclose anything about the legitimacy of McQuire's claim for loss of dignity. On the other hand, the Court's decision in *Windsor* expressly recognizes that where it is permitted, the marital state of same-sex

couples is invested with "a dignity and status of immense import."[35] Further, the stays suspended the effect of lower court decisions that affected the general populations of Utah and Virginia. The Court was not presented with particularized showings of irreparable harm, as is the case here. Defendants' argument based on the three stays issued by the Supreme Court is not persuasive.

## 2. Financial harm

At a more prosaic level, McQuire argues that if his marriage is not recognized now he will lose significant financial benefits. In particular, if his name does not appear on Martinez's death certificate, McQuire will be unable to succeed to Martinez's much more substantial social security and Veteran's benefits.[36] McQuire is in poor health and unable to work. By succeeding to Martinez's benefits, McQuire would have a monthly income in excess of $4,000. Without those benefits, his income would be only a bit over $1,300. Given that McQuire's monthly mortgage payment is about $725, the court accepts as true that without Martinez's benefits, McQuire will be unable to keep his home. Defendants contend that the monetary harm urged by McQuire is illusory because federal law would not allow him to succeed to either Martinez's social security benefits or his Veterans benefits.[37] The court agrees.

Defendants cite 20 C.F.R. § 404.335(a)(1) to support the argument that because the McQuire/Martinez marriage license was obtained (and therefore the marriage was performed) less than nine months prior to Martinez's death, McQuire is not entitled to succeed to Martinez's social security benefits. The marriage took place July of 2014.[38] Martinez died on August 28, 2014.[39] While the regulation includes four situations in which a widow married less than 9 months prior to the death may still receive benefits,[40] none of those exceptions applies here. The court concludes that regardless of what is said on Martinez's death certificate, McQuire will be unable to succeed to his social security benefits.

Defendants cite 38 U.S.C. § 1304 to support their argument that McQuire cannot obtain enhanced Veterans benefits as a result of Martinez's death. As pertinent here, the provision which controls provides that to obtain benefits, the surviving spouse must have been married to the deceased veteran for a period of "one year or more."[41] McQuire was married to Martinez for less than a year, so he is not qualified to obtain any Veteran's benefits as a result of Martinez's death.

## 3. Harm caused by the deprivation of a constitutional right

Finally, McQuire argues that because the harm of which he complains flows from a violation of his constitutional rights, that fact alone suffices to show irreparable harm. The Ninth Circuit has said that "[t]he deprivation of constitutional rights `unquestionably constitutes irreparable injury.'"[42]

Defendants do not dispute that deprivation of a constitutional right is in-and-of-itself an irreparable harm. Instead, they contend that the Arizona marriage laws do not violate the Fourteenth Amendment. However, as discussed above, for purpose of the pending motion that contention fails in light of the substantial case law which contravenes defendants' position.[43]

In summary, the court agrees with defendants that McQuire has not shown irreparable harm based on the financial consequences of not recognizing his marriage to Martinez. Nevertheless, on the basis of the loss of dignity and status coming in the midst of an elderly man's personal grief and on the fact that deprivation of a constitutional right constitutes irreparable harm, the court holds that McQuire has shown the requisite irreparable harm.

## D. Balance of the Equities

On one side of the scale rest McQuire's loss of dignity and the irreparable harm to him caused by denial of his constitutional rights. On the other side, there is the fact recognized by the Ninth Circuit that whenever a state law is enjoined, the state and its people also suffer an irreparable injury.[44] It is to be noted that McQuire seeks relief that

would apply only to him and not to the other plaintiffs. This limitation substantially reduces the reach and impact of the injunctive relief he seeks. Because McQuire's irreparable harm inheres in a claimed violation of the Constitution—a violation which he is very likely to establish for the reasons set out in subsection B. above—and because the injunctive relief sought is limited to a single individual, it cannot be said that the balance of the equities favors defendants. In these circumstances, the court concludes that the balance of equities is consistent with issuance of an injunction limited in scope to McQuire's situation.

## E. Public Interest

The public has an important interest in the faithful discharge of duties imposed on Arizona's public officials by Arizona law. The public also has an important interest in those same officials' compliance with the highest law of the land, the United States Constitution. Where discharging state law runs afoul of the United States Constitution, the interest of the public necessarily lies in compliance with the higher law.

The court has not yet decided whether there is a conflict between Arizona law and the Constitution, but the court has decided that it is probable that there is such a conflict so that Arizona will be required to permit same-sex marriages. Thus, it is probable that the public interest would be advanced if the requested narrowly-limited injunctive relief is awarded. Conversely, it is probable that the public interest would be harmed if no such relief were provided.

## V. CONCLUSION AND ORDER

For the reasons above, McQuire's motion at docket 64 is GRANTED, and IT IS ORDERED:

1. As to plaintiff Fred McQuire only, Arizona officials receiving notice of this order are TEMPORARILY RESTRAINED from enforcing § 1 of Article 30 of the Arizona Constitution, A.R.S. § 25-101(C), A.R.S. § 25-112(A), and any other Arizona law against recognition of the marriage of Fred McQuire to George Martinez; and

2. Defendant Will Humble, in his capacity as Director of the Arizona Department of Health Services, and his agents shall promptly prepare, issue, and accept a death certificate for George Martinez which records his marital status as "married" and his surviving spouse as Fred McQuire.

[1] ARIZ. CONST. art. XXX, § 1; A.R.S. §§ 25-101(C), 25-112(A), and 25-125(A).

[2] Second Amended Complaint for Injunctive and Declaratory Relief at doc. 50.

[3] Requests for temporary restraining orders are governed by the same standards that govern the issuance of a preliminary injunction. *Brown Jordan Int'l, Inc. v. Mind's Eye Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2002); *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F.Supp. 1320, 1323 (N.D. Cal. 1995).

[4] *See United States v. Oakland Cannabis Buyers' Co-op*, 532 U.S. 483, 496 (2001).

[5] *Martin v. O'Grady*, 783 F.Supp. 1191, 1195 (N.D. Ill. 1990).

[6] *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 759 (9th Cir. 2014).

[7] 409 U.S. 810 (1972).

[8] Doc. 70 at 3.

[9] *See, Hicks v. Miranda*, 422 U.S. 332, 344 (1975) (recognizing that the Court's "doctrinal development" may vitiate the binding nature of a decision like *Baker*.)

[10] 517 U.S. 620 (1996).

[11] 539 U.S. 558 (2003).

[12] 133 S.Ct. 2675 (2013).

[13] *Id.* at 2692.

[14] *Baskin v. Bogan*, ___ F.3d ___, Nos. 14-2386, 14-2387, 14-2388, 14-2526, 2014 WL 4359059, at *7 (7th Cir. Sept. 4, 2014).

[15] *Id.* at *21 (holding Indiana and Wisconsin prohibitions on same-sex marriage violated equal protection).

[16] ___ F. 3d ___, Nos. 14-1167, 14-1169, 14-1173, 2014 WL 3702493, at *16 (4th Cir. July 28, 2014).

[17] 755 F.3d 1193, 1229-30 (10th Cir. 2014).

[18] *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128, 1147-48 (D. Or. 2014); *Whitewood v. Wolf*, 992 F. Supp. 2d 410, 431 (M.D. Pa. 2014); *Love v. Beshear*, 989 F. Supp. 2d 536, 550 (W.D. Ky. 2014); *Baskin v. Bogan*, ___ F. Supp. 2d ___, Nos. 1:14-cv-00355-RLY-TAB, 1:14-cv-00404-RLY-TAB, 1:14-cv-00406-RLY-MJD, 2014 WL 2884868, at *14 (S.D. Ind. June 25, 2014); *Wolf v. Walker*, 986 F. Supp. 2d 982, 1026-28 (W.D. Wisc. 2014); *Latta v. Otter*, ___ F. Supp. 2d ___, No. 1:13-cv-00482-CWD, 2014 WL 1909999, at *28 (D. Idaho May 13, 2014); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 775 (E.D. Mich. 2014); *DeLeon v. Perry*, 975 F. Supp. 2d 632, 665-66 (W.D. Tex. 2014) (granting preliminary injunction, but staying same pending appeal).

[19] *Robicheaux v. Caldwell*, ___ F. Supp. 2d ___, Nos. 13-5090, 14-97, 14-327, 2014 WL 4347099, at *12 (E.D. La. Sept. 3, 2014) (applying rational basis review standard); *Sevcik v. Sandoval*, 911 F. Supp. 2d 996, 1018 (D. Nev. 2012) (applying rational basis review standard); *Merritt v. Attorney General*, No. 13-00215-BAJ-SCR, 2013 WL 6044329, at *1 (M.D. La. Nov. 14, 2013) (district court adopted recommendation of a magistrate judge).

[20] 740 F.3d 471 (9th Cir. 2014).

[21] *Id.* at 484.

[22] Doc. 70 at 4.

[23] *Id.*

[24] *Id.*

[25] *Am. Tower Corp. v. City of San Diego*, ___ F.3d ___, Nos. 11-56766, 11-56767, 11-56861, and 11-56862, 2014 WL 3953765, at *17 (9th Cir. Aug. 14, 2014).

[26] *See Kitchen*, 755 F.3d at 1218.

[27] *Bostic*, 2014 WL 3702493 at *8-10; *Kitchen*, 755 F.3d at 1218.

[28] Doc. 70 at 11-12.

[29] *SmithKline Beecham*, 740 F.3d at 484 (internal quotation marks omitted) (quoting *J.E.B. v. Alabama ex rel T.B.*, 511 U.S. 114, 143 (1994) .

[30] *Merritt*, 2013 WL 6044329 at *2.

[31] *Windsor*, 133 S.Ct. at 2692

[32] 134 S.Ct. 893 (2014).

[33] No. 14A65, 2014 WL 3557112 (U.S. July 18, 2014).

[34] No. 14A196, 2014 WL 4096232 (U.S. Aug. 20, 2014).

[35] *Windsor*, 133 S.Ct. at 2692.

[36] Doc. 66 at 5 ¶ 14. The substantial roadblocks standing between McQuire and the enhanced benefits to which he would be entitled if recognized as Martinez's spouse are explained in the memorandum supporting his motion. Doc. 64 at pp. 13-15. *See also* *Baskin*, 2014 WL 4359059 at *6 (describing the catalog of benefits denied to same-sex couples whose marriages are not officially recognized).

[37] Doc. 70 at 4-5.

[38] Doc. 66 at 2-3 ¶ 5.

[39] *Id.* at 3 ¶ 9.

[40] 20 C.F.C. § 404.335(a)(2).

[41] 38 U.S.C. § 1304(2).

[42] *Planned Parenthood Arizona, Inc. v. Humble*, 753 F.3d 905, 911 (9th Cir. 2014) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.2012)).

[43] Doc. 70 at 14-15.

[44] *Coalition for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997).

(ORDER LIST: 574 U.S.)

FRIDAY, OCTOBER 17, 2014

ORDER IN PENDING CASE

14A413 PARNELL, GOV. OF AK, ET AL. V. HAMBY, MATTHEW, ET AL.

The application for stay presented to Justice Kennedy and by him referred to the Court is denied.

# *United States Court of Appeals*

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

September 25, 2014

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 14-31037
Jonathan Robicheaux, et al v. James Caldwell, et al
USDC No. 2:13-CV-5090
USDC No. 2:14-CV-327
USDC No. 2:14-CV-97

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Shea E. Pertuit

By: _____
Shea E. Pertuit, Deputy Clerk
504-310-7666

P.S. to Counsel: The briefing notice will issue under separate cover. Additionally, you will receive separate notification of the tentative date of the oral argument and further information regarding same.

Mr. James Dalton Courson
Mr. Stuart Kyle Duncan
Mrs. Angelique Duhon Freel
Ms. Lesli Danielle Harris
Mr. James Michael Johnson
Mr. Richard Gerard Perque
Mr. Scott Jerome Spivey

# IN THE UNITED STATES COURT OF APPEALS
# FOR THE FIFTH CIRCUIT

No. 14-31037

JONATHAN P. ROBICHEAUX; DEREK PENTON;
NADINE BLANCHARD; COURTNEY BLANCHARD,

Plaintiffs–Appellants,

versus

JAMES D. CALDWELL, in His Official Capacity
as the Louisiana Attorney General, Also Known as Buddy Caldwell,

Defendant–Appellee.

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JONATHAN P. ROBICHEAUX; DEREK PENTON; NADINE BLANCHARD;
COURTNEY BLANCHARD; ROBERT WELLS; GARTH BEAUREGARD,

Plaintiffs–Appellants,

versus

DEVIN GEORGE, in His Official Capacity as the State Registrar
and Center Director at Louisiana Department of Health and Hospitals;
TIM BARFIELD, in His Official Capacity as
the Louisiana Secretary of Revenue;
KATHY KLIEBERT, in Her Official Capacity as
the Louisiana Secretary of Health and Hospitals,

Defendants–Appellees.

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FORUM FOR EQUALITY LOUISIANA, INCORPORATED; JACQUELINE M. BRETTNER; M. LAUREN BRETTNER; NICHOLAS J. VAN SICKELS; ANDREW S. BOND; HENRY LAMBERT; R. CAREY BOND; L. HAVARD SCOTT, III; SERGIO MARCH PRIETO,

Plaintiffs–Appellants,

versus

TIM BARFIELD, in His Official Capacity as Secretary of the Louisiana Department of Revenue; DEVIN GEORGE, in His Official Capacity as Louisiana State Registrar,

Defendants–Appellees.

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Appeals from the United States District Court
for the Eastern District of Louisiana

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O R D E R :

IT IS ORDERED that the appellees' unopposed motion to expedite the appeal is GRANTED.

IT IS FURTHER ORDERED that the appellees' unopposed motion to establish a briefing notice is GRANTED.

IT IS FURTHER ORDERED that the appellees' unopposed motion for assignment to the same merits panel as No. 14-50196 is GRANTED.

/s/ Jerry E. Smith
JERRY E. SMITH
United States Circuit Judge