

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

KATHERINE VARNUM, et al.

Plaintiffs,

v.

TIMOTHY J. BRIEN, in his official capacities
as the Polk County Recorder and Polk County
Registrar,

Defendant.

CASE NO. CV5965

FILED
POLK COUNTY
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IOWA DISTRICT COURT

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF
ALL PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 1.981(8) of the Iowa Rules of Civil Procedure, Plaintiffs Katherine Varnum and Patricia Varnum; Dawn and Jennifer BarbouRoske; Jason Morgan and Charles Swaggerty; David Twombly and Lawrence Hoch; William Musser and Otter Dreaming; Ingrid Olson and Reva Evans (collectively, "Plaintiffs") together with McKinley and Breeanna BarbouRoske (by their next friends and parents Dawn and Jennifer BarbouRoske) and Jamison Olson (by his next friend and parent Reva Evans) ("Minor Plaintiffs") (collectively, "All Plaintiffs"), by their attorneys Dorsey & Whitney LLP and Lambda Legal Defense and Education Fund, Inc. respectfully submit this Statement of Material Facts in support of All Plaintiffs' Motion for Summary Judgment on all claims.

Attached are the following exhibits: Affidavit of Katherine Varnum ("Ex. 1"); Affidavit of Patricia Varnum ("Ex. 2"); Affidavit of Jennifer BarbouRoske ("Ex. 3"); Affidavit of Dawn BarbouRoske ("Ex. 4"); Affidavit of Jason Morgan ("Ex. 5"); Affidavit of Charles Swaggerty ("Ex. 6"); Affidavit of David Twombly ("Ex. 7"); Affidavit of Lawrence Hoch ("Ex. 8");

Affidavit of William M. Musser (“Ex. 9”); Affidavit of Otter Dreaming (“Ex. 10”); Affidavit of Ingrid Olson (“Ex. 11”); Affidavit of Reva Evans (“Ex. 12”); Affidavit of Michael E. Lamb (“Ex. 13”); Affidavit of Pepper Schwartz (“Ex. 14”); Affidavit of Gregory M. Herek (“Ex. 15”); Affidavit of Dan Johnston (“Ex. 16”); Affidavit of John Schmacker (“Ex. 17”); Affidavit of George Chauncey (“Ex. 18”); Affidavit of Nancy Cott (“Ex. 19”); Affidavit of M. V. Lee Badgett (“Ex. 20”); Affidavit of Deborah M. Tharnish (“Ex. 21”); Affidavit of Sharon K. Malheiro (“Ex. 22”); Defendant’s Responses to Requests for Admissions (“Ex. 23”); Appendix A consisting of a partial list of rights and responsibilities granted to married persons and their children but denied to same-sex couples and their children by state law; and Appendix B consisting of newspaper articles regarding passing of the statutes in question.

The Parties

1. Plaintiffs each have chosen and consented to marry the one unique person who is irreplaceable to them and with whom they have formed a deeply intimate bond and share daily family life, but have been denied this right by the government. Ex. 1 at ¶¶ 13-14; Ex. 2 at ¶¶ 6, 13; Ex. 3 at ¶¶ 6, 18; Ex. 4 at ¶¶ 6, 16; Ex. 5 at ¶¶ 12, 27; Ex. 6 at ¶¶ 7, 10; Ex. 8 at ¶¶ 12, 15; Ex. 9 at ¶¶ 7, 17; Ex. 10 at ¶¶ 7, 11; Ex. 11 at ¶¶ 8, 24; Ex. 12 at ¶¶ 12, 26.

2. Plaintiffs are twelve lesbians and gay men, who comprise six same-sex couples, who reside throughout the State of Iowa and who wish to marry their partners in Iowa. Minor Plaintiffs are the children of two of Plaintiff couples. Amended Petition at ¶¶ 5-12.

3. Plaintiffs Katherine Varnum (“Kate”), 33, and Patricia Varnum (“Trish”), 41, are a lesbian couple who reside in Cedar Rapids. Kate and Trish have been in a loving, committed relationship for almost 6 years. They have had a commitment ceremony and intend to become parents. Ex. 1 at ¶¶ 3-4, 10-12; Ex. 2 at ¶¶ 3-4, 7, 10.

4. Plaintiffs Jennifer BarbouRoske (“Jen”), 36, and Dawn BarbouRoske (“Dawn”), 38, are a lesbian couple residing in Iowa City with their two daughters, McKinley and Breeanna. Jen and Dawn have been in a loving, committed relationship for over 16 years. They have had a private commitment ceremony and are registered domestic partners in Iowa City. Ex. 3 at ¶¶ 4, 6-7, 15; Ex. 4 at ¶¶ 3-4, 7, 15.

5. Plaintiffs David Twombly (“David”), 65, and Lawrence Hoch (“Larry”), 64, are a gay male couple residing in Urbandale. David and Larry have been in a loving, committed relationship for over 5 years, and obtained a civil union in a private ceremony in Vermont in 2002. Ex. 7 at ¶¶ 2-3, 7; Ex. 8 at ¶¶ 3-4, 13.

6. Plaintiffs Jason Morgan (“Jason”), 36, and Charles Swaggerty (“Chuck”), 34, are a gay male couple residing in Sioux City. Jason and Chuck have been in a loving, committed relationship for 9 years, are licensed foster parents, and intend to adopt in the future. Ex. 5 at ¶¶ 3-4, 21; Ex. 6 at ¶¶ 3, 7, 9.

7. Plaintiffs William M. Musser (“Bill”), 48, and Otter Dreaming (“Otter”), 49, are a gay male couple residing in Decorah. They have been together as a same-sex couple in a loving, committed relationship for over 5 years, obtained a civil union in Vermont in 2002, are licensed foster parents and intend to adopt in the future. Ex. 9 at ¶¶ 1-2, 5, 10, 16; Ex. 10 at ¶¶ 3-5, 7-8.

8. Plaintiffs Ingrid Olson (“Ingrid”), 28, and Reva Evans (“Reva”), 32, are a lesbian couple residing in Council Bluffs with their son, Jamison Olson. Ingrid and Reva have held a commitment ceremony and have been in a loving, committed relationship for 9 years. Ex. 11 at ¶¶ 3, 7, 11, 13, 15; Ex. 12 at ¶¶ 3, 7, 12, 15, 18.

9. Minor Plaintiff McKinley BarbouRoske (“McKinley”) is the older daughter of Jen and Dawn, her legal parents. Jen gave birth to McKinley in 1998 after conceiving via donor

insemination. McKinley became Dawn's legal daughter via an adoption in which Jen also joined. Ex. 3 at ¶¶ 7-11; Ex. 4 at ¶¶ 7, 10-11.

10. Minor Plaintiff Breeanna BarbouRoske ("Bre") is the younger daughter of Jen and Dawn, her legal parents. In 2002, Bre was an Iowa foster child who was placed in Jen and Dawn's home at three weeks old. In 2003, Jen and Dawn jointly adopted Bre. Ex. 3 at ¶¶ 12-13; Ex. 4 at ¶¶ 7, 12.

11. Minor Plaintiff Jamison Olson is the son of Ingrid and Reva, his legal parents. Reva gave birth to Jamison in 2006. In September, 2006, Ingrid adopted Jamison. Ex. 11 at ¶¶ 15, 22; Ex. 12 at ¶ 19.

12. Defendant Timothy J. Brien ("Brien") was at all times relevant the Polk County Recorder and the Polk County Registrar. Amended Petition for Declaratory Judgment and Supplemental Injunctive and Mandamus Relief ("Petition"), ¶ 13; Answer of Timothy J. Brien to Plaintiffs' Amended Petition ("Answer"), ¶ 13.

13. Julie M. Haggerty is the current Polk County Recorder and the Polk County Registrar.

Defendant's Denial of Marriage Licenses and Applications to Plaintiffs

14. As Polk County Recorder and the Polk County Registrar, Brien and his agents and employees ("Defendant"), furnished and processed applications for licenses to marry in Iowa, including accepting and denying applications for marriage licenses. Petition, ¶13; Answer, ¶13.

15. At all relevant times, Defendant executed these duties from the Office of the Polk County Recorder in Des Moines, Polk County, Iowa. Petition, ¶13; Answer, ¶13.

16. On various dates between November 23, 2005 and January 24, 2006, each Plaintiff appeared in person with his or her partner at the Des Moines office of Defendant, accompanied

by a suitable witness and prepared to tender the required application fee and identification documents to obtain a marriage license. Petition, ¶¶ 19-24; Answer, ¶¶ 19-24; Ex. 1 at ¶ 14; Ex. 2 at ¶ 13; Ex. 3 at ¶ 18; Ex. 4 at ¶ 16; Ex. 5 at ¶ 27; Ex. 6 at ¶ 10; Ex. 7 at ¶ 16; Ex. 8 at ¶ 15; Ex. 9 at ¶ 17; Ex. 10 at ¶ 11; Ex. 11 at ¶ 24; Ex. 12 at ¶ 26.

17. Each Plaintiff couple attempted to submit their application for a marriage license to Defendant in order that they could marry each other in the State of Iowa. Petition, ¶¶ 19-24; Answer, ¶¶ 19-24; Ex. 1 at ¶ 14; Ex. 2 at ¶ 13; Ex. 3 at ¶ 18; Ex. 4 at ¶ 16; Ex. 5 at ¶ 27; Ex. 6 at ¶ 10; Ex. 7 at ¶ 16; Ex. 8 at ¶ 15; Ex. 9 at ¶ 17; Ex. 10 at ¶ 11; Ex. 11 at ¶ 24; Ex. 12 at ¶ 26.

18. In each case, Defendant refused to accept Plaintiffs' applications for marriage licenses or to issue marriage licenses to Plaintiffs, citing Iowa law, "gender restrictions" in the law or the fact that the couple was a same-sex couple. Petition, ¶¶ 19-24; Answer, ¶¶ 19-24; Ex. 1 at ¶ 14; Ex. 2 at ¶ 13; Ex. 3 at ¶ 18; Ex. 4 at ¶ 16; Ex. 5 at ¶ 27; Ex. 6 at ¶ 10; Ex. 7 at ¶ 16; Ex. 8 at ¶ 15; Ex. 9 at ¶ 17; Ex. 10 at ¶ 11; Ex. 11 at ¶ 24; Ex. 12 at ¶ 26.

19. Plaintiffs otherwise met all legal requirements to obtain a marriage license and to marry in Iowa. Petition ¶ 25; Ex. 1 at ¶ 14; Ex. 2 at ¶ 13; Ex. 3 at ¶ 18; Ex. 4 at ¶ 16; Ex. 5 at ¶ 27; Ex. 6 at ¶ 10; Ex. 7 at ¶ 16; Ex. 8 at ¶ 15; Ex. 9 at ¶ 17; Ex. 10 at ¶ 11; Ex. 11 at ¶ 24; Ex. 12 at ¶ 26.

20. Defendant denied the Plaintiffs the opportunity to apply for and obtain marriage licenses only because each Plaintiff wished to marry a partner of the same sex and Iowa forbids same-sex couples to marry under Iowa Code §595.2(1), which Defendant enforced. Petition, ¶26; Answer, ¶26.

21. Iowa Code §§ 595.2(1) and (20) were passed in response to marriage litigation brought by same-sex couples in Hawaii in order to ensure that lesbian and gay people are treated unequally to everyone else in Iowa with respect to their relationships.¹

Harms from Denial of Marriage Rights

22. Plaintiffs and their families are harmed in numerous tangible and intangible (including dignitary) respects by their exclusion from the right to marry in Iowa. *See* Ex. 1 at ¶¶ 12-13; Ex. 2 at ¶¶ 8, 10-12; Ex. 3 at ¶¶ 9-14, 17; Ex. 4 at ¶¶ 10-15; Ex. 5 at ¶¶ 6, 12-17, 19-20, 23-26; Ex. 6 at ¶¶ 8-9; Ex. 7 at ¶¶ 8-10, 13-15; Ex. 8 at ¶¶ 8-9; Ex. 9 at ¶¶ 13-16; Ex. 10 at ¶ 10; Ex. 11 at ¶¶ 11-15, 19-22; Ex. 12 at ¶¶ 15, 19-25; Ex. 13 at ¶¶ 46-48; Ex. 14 at ¶ 21; Ex. 15 at ¶¶ 6, 23-29; Ex. 16 at ¶ 16; Ex. 22 at ¶¶ 5, 7, 12-14.

23. As a result of their exclusion from the civil institution of marriage, Plaintiffs, their relationships and their families are stigmatized and made more vulnerable in comparison to heterosexuals. Through the marriage exclusion the State devalues and de-legitimizes relationships at the very core of Plaintiffs' sexual orientation and expresses, compounds, and perpetuates the stigma historically attached to homosexuality, for them and all gay persons. *See* Ex. 1 at ¶¶ 9, 11, 13; Ex. 2 at ¶¶ 8, 11, 12; Ex. 3 at ¶¶ 9-10, 12-14; Ex. 4 at ¶¶ 10-15; Ex. 5 at ¶¶ 12-16, 19-20, 23; Ex. 6 at ¶ 8-9; Ex. 7 at ¶¶ 10, 13-15; Ex. 8 at ¶¶ 9, 14; Ex. 9 at ¶¶ 12, 14, 16;

¹ *See, e.g.,* Johnathan Roos, *House committee passes bill to bar same-sex marriages; But critics say the legislation is a waste of lawmakers' time*, Des Moines Register, February 17, 1998, at 6M (noting that the bill would deny legal recognition in Iowa of "gay marriages that take place in other states," that "the issue was sparked by a lawsuit in Hawaii that sought to have same-sex marriages legalized in that state," and that Rep. Dan Boddicker, R-Tipton, a member of the Committee, explained his support of the legislation by stating that "most people view homosexuality as deviant behavior and would disapprove of recognition of gay marriages. . . .") (attached); Johnathan Roos, *Iowa House votes to reject gay marriages; The bill now goes to the Senate, where a similar effort died two years ago*, Des Moines Register, March 12, 1998, at 1A-4A (measure "would deny legal recognition here of gay marriages that take place in other states" and "was sparked by a lawsuit in Hawaii to have same-sex marriages legalized in that state") (attached); Johnathan Roos, *House panel to eye bill denying recognition of gay marriages; similar measure died in '96 session*, Des Moines Register, February 21, 1997, at 5M (same, and noting that Rep. Jeffrey Lamberti, an Ankeny Republican who heads the House Judiciary Committee, described the Iowa law as "voiding recognition of same-sex marriages") (attached); Briefly in the Legislature, *Committee passes gay-marriage bill*, Des Moines Register, February 26, 1997, at 4M (same) (attached).

Ex. 10 at ¶¶ 9-10; Ex. 11 at ¶¶ 12-15, 19-22; Ex. 12 at ¶¶ 15-16, 20-22, 25; Ex. 13 at ¶ 48; Ex. 15 at ¶¶ 6, 22-29; Ex. 16 at ¶ 16.

24. Plaintiffs suffer great dignitary harm because the State's denial to Plaintiffs of access to an institution so woven into the fabric of daily life and so determinative of legal rights and status amounts to a badge of inferiority imposed on them and Minor Plaintiffs. Plaintiffs are continually reminded of their own and their family's second-class status in daily interactions in their neighborhoods, workplaces, schools, and other arenas in which their relationships and families are poorly or unequally treated, or are not recognized at all. *See* Ex. 1 at ¶¶ 9, 11, 13; Ex. 2 at ¶¶ 8, 11, 12; Ex. 3 at ¶¶ 9-10, 12-14; Ex. 4 at ¶¶ 10-15; Ex. 5 at ¶¶ 12-16, 19-20, 23; Ex. 6 at ¶¶ 8-9; Ex. 7 at ¶¶ 10, 13-15; Ex. 8 at ¶¶ 9, 14; Ex. 9 at ¶¶ 12, 14, 16; Ex. 10 at ¶¶ 9-10; Ex. 11 at ¶¶ 12-15, 19-22; Ex. 12 at ¶¶ 15-16, 20-22, 25; Ex. 15 at ¶¶ 22-29.

25. Because their parents cannot marry, Minor Plaintiffs are subjected to the historical stigma of "illegitimacy" or "bastardy" which, though of diminished social and legal force, is still a status widely considered undesirable. *See* Ex. 15 at ¶ 28. Minor Plaintiffs also experience the effects of stigma directed at them and at their parents because of how their parents are treated unequally by the government as a result of their parents' sexual orientation. The Minor Plaintiffs would benefit from having even the threat of such stigma removed from their lives. *See* Ex. 15 at ¶ 29.

26. Without access to the institution, familiar language and legal label of marriage, Plaintiffs are unable instantly or adequately to communicate the depth and permanence of their commitment to others, or to obtain respect for that commitment, as others do simply by invoking their married status. *See* Ex. 1 at ¶ 13; Ex. 2 at ¶¶ 7, 12; Ex. 3 at ¶ 13; Ex. 4 at ¶¶ 10-11, 13; Ex. 5 at ¶¶ 12, 19-20; Ex. 6 at ¶ 9; Ex. 7 at ¶¶ 11, 13-15; Ex. 8 at ¶¶ 9, 14; Ex. 9 at ¶ 14; Ex. 10 at ¶ 10;

Ex. 11 at ¶ 22; Ex. 12 at ¶¶ 21-22; Ex. 16 at ¶ 16; Ex. 22 at ¶¶ 9, 10-11, 14.

27. Plaintiffs' inability to marry their chosen partners is a painful frustration of their life goals and dreams, their personal happiness and their self-determination. *See* Ex. 1 at ¶¶ 12-13; Ex. 2 at ¶¶ 8, 10-12; Ex. 3 at ¶¶ 9-14, 17; Ex. 4 at ¶¶ 10-15; Ex. 5 at ¶¶ 6, 12-17, 19-20, 23-26; Ex. 6 at ¶¶ 8-9; Ex. 7 at ¶¶ 8-10, 13-15; Ex. 8 at ¶¶ 8-9; Ex. 9 at ¶¶ 13-16; Ex. 10 at ¶ 10; Ex. 11 at ¶¶ 11-15, 19-22; Ex. 12 at ¶¶ 15, 19-25; Ex. 14 ¶¶ 20-21, 29; Ex. 16 at ¶ 16.

28. Civil marriage in Iowa is the only gateway to an extensive legal structure that protects a married couple's relationship and family in and outside the State. Iowa reserves an unparalleled array of rights, obligations and benefits to married couples and their families, privileging married couples as a financial and legal unit and stigmatizing same-sex couples. *See* Ex. 13 at ¶ 48; Ex. 15 at ¶ 22; Ex. 16 at ¶ 16; Ex. 21 at ¶¶ 6-7, 17; Ex. 22 at ¶¶ 5, 7-14.

29. Plaintiffs and their families are in just as much or more need of the rights, obligations, benefits and privileges of marriage as heterosexuals and their families, but cannot access them. Ex. 13 at ¶ 49; Ex. 14 at ¶ 22; Ex. 16 at ¶ 16; Ex. 21 at ¶¶ 7, 17; Ex. 22 at ¶ 5.

30. Plaintiffs are harmed in an infinite number of daily transactions as a result of being denied the right to marry, including transactions with employers, hospitals, courts, preschools, insurance companies, businesses such as health clubs, and public agencies including taxing bodies. *See* Ex. 1 at ¶¶ 12-13; Ex. 2 at ¶¶ 10-11; Ex. 3 at ¶ 9; Ex. 4 at ¶¶ 10-13, 15; Ex. 5 at ¶¶ 13-19; Ex. 6 at ¶¶ 8-9; Ex. 7 at ¶¶ 8-9; Ex. 9 at ¶ 15; Ex. 11 at ¶¶ 14-15, 22; Ex. 12 at ¶¶ 15, 19-21, 23-24; Ex. 13 at ¶ 47; Ex. 14 at ¶¶ 25, 27, 35; Ex. 20 at ¶¶ 22-25, 27-37, 39-44; Ex. 21 at ¶ 7; Ex. 22 at ¶¶ 7, 9-14.

31. As a result of their exclusion from marriage, Plaintiffs and their children or future children may be denied the full benefit of laws that determine custody, visitation, child and

spousal support, and parentage. Ex. 2 at ¶ 10; Ex. 3 at ¶¶ 9-12, 17; Ex. 4 at ¶¶ 13-15; Ex. 5 at ¶¶ 23-26; Ex. 6 at ¶ 9; Ex. 9 at ¶ 13; Ex. 10 at ¶ 10; Ex. 11 at ¶¶ 14, 19, 21-22; Ex. 12 at ¶¶ 15, 19-21; Ex. 13 at ¶ 47; Ex. 21 at ¶¶ 16-17.

32. Marriage uniquely secures the legal bonds between parents and children welcomed into their home. Plaintiffs who are or will be parents, as well as their children, are significantly harmed by their inability to access the presumptions of parenthood afforded to married couples. The child of a married woman who was conceived via donor insemination automatically is considered to have a legal parent-child relationship with both spouses even though there is no biological or genetic tie to one parent.² Thus, if Plaintiffs were able to marry, adoptions (which are costly, time-consuming, and invasive of privacy) would not be necessary. Likewise, with marriage, a child who has had only one legal parent could be readily adopted by a same-sex spouse as a stepparent upon the consent of the partner, saving substantial time, money and uncertainty.³ Ex. 2 at ¶ 10; Ex. 3 at ¶¶ 9-12, 17; Ex. 4 at ¶¶ 13-15; Ex. 5 at ¶¶ 23-26; Ex. 6 at ¶ 9; Ex. 9 at ¶ 13; Ex. 10 at ¶ 10; Ex. 11 at ¶¶ 14, 19, 21-22; Ex. 12 at ¶¶ 15, 19-21; Ex. 21 at ¶¶ 6-7, 16.

33. Plaintiffs incur significant expenses to secure parent-child relationships that automatically would be secured if Plaintiffs were married, rendering funds unavailable for other uses such as educational savings for the children. The alternative of “second-parent adoption” by one’s partner, even where available and within the couple’s financial means, is a laborious, intrusive, lengthy and expensive process, during which the partner and the child have a legally

² See Iowa Code § 144.13 (if a mother is married at conception, at birth, or anytime in between, the name of the husband is entered onto the birth certificate as father unless paternity otherwise has been determined by a court); see also, e.g., *In re Marriage of Schneckloth*, 320 N.W.2d 535, 536 (Iowa 1982) (presumption that a child born to a married couple is the child of both spouses is rebuttable only by clear, strong, and satisfactory evidence); Iowa Code § 252A.3 (child born of married parents considered a child of both spouses for purposes of determining support obligations); Iowa Code § 598.31 (children of married spouses deemed “legitimate” regardless of later divorce).

³ Iowa Code § 600.7 (permitting spouse to consent to adoption by stepparent).

insecure relationship that is at risk. Some Plaintiffs have found it difficult to afford the expenses of adoption. *See* Ex. 2 at ¶ 10; Ex. 3 at ¶¶ 10-11; Ex. 5 at ¶¶ 23-26; Ex. 9 at ¶ 10; Ex. 11 at ¶ 22; Ex. 12 at ¶¶ 15, 19-23; Ex. 13 at ¶ 47; Ex. 20 at ¶¶ 21, 27; Ex. 21 at ¶¶ 8-11; Ex. 22 at ¶¶ 3, 5-6.

34. Plaintiffs are denied the automatic spousal right to make health care decisions for a partner when the partner cannot, including the right to withhold or withdraw life-sustaining procedures and the right to donate a spouse's organs and tissues.⁴ A spouse has the unquestioned right to make important medical decisions for an incapacitated partner, but Plaintiffs cannot walk into a hospital in an emergency and count on equal treatment.⁵ Documents like health care proxies must be carried at all times as proof to have a chance of being honored, but emergencies do not always allow Plaintiffs time to prepare. *See* Ex 1 at ¶ 13; Ex. 2 at ¶ 12; Ex. 3 at ¶ 15; Ex. 4 at ¶¶ 10-11; Ex. 7 at ¶ 8; Ex. 9 at ¶ 13; Ex. 11 at ¶ 21; Ex. 12 at ¶ 15; Ex. 14 at ¶¶ 25-27; Ex. 20 at ¶ 27; Ex. 22 at ¶ 9.

35. Iowa law also grants married couples such additional protections as the right to make decisions concerning admission to or transfer from a health care facility,⁶ the right to receive medical information from a mental health professional,⁷ the right to request the release of a patient from a mental hospital,⁸ and the right to make crucial decisions concerning burial, autopsies, handling and disposition of remains, and even anatomical gifts.⁹ Plaintiffs will have

⁴ Iowa Code § 144A.7.

⁵ *See* Iowa Code § 144A.7 (permitting spouses to make decisions about the withholding or withdrawing of life-sustaining procedures in the case of a terminal condition).

⁶ Iowa Code § 135C.23 (permitting spouses to make decisions concerning admission to or transfer from health care facilities).

⁷ Iowa Code § 228.8.

⁸ Iowa Code § 229.4 (permitting a spouse to request the release of a patient from a mental hospital).

⁹ *See* Iowa Code §§ 523I.309 (persons having the right to control the interment of a decedent's remains within a cemetery); 144.34 (disinterment for autopsy or reburial not authorized without permission of the surviving spouse); 144.56 (autopsies); Iowa Code § 142C.4 (anatomical gifts).

none of these guarantees if their partners become ill, are incapacitated or pass away. Ex. 22 at ¶¶ 10, 12.

36. Plaintiffs are denied economic and property protections that married persons have upon the death of one member of the couple, such as intestacy rights permitting a spouse to inherit automatically from the deceased spouse's estate if there are no parents or issue; the ability to elect the minimum one-third share of the deceased's estate even if there is a will;¹⁰ the right to an allowance or to occupy the marital homestead while the estate is being settled; the right to file a wrongful death lawsuit when a spouse is killed, and presumptions benefiting spouses in the absence of a designated beneficiary for death benefits and life insurance policies. Ex. 22 at ¶¶ 5, 7, 10-12, 14.¹¹

37. A Plaintiff whose partner dies as a result of a workplace accident at an eligible job would be denied the right to file for or receive workers' compensation death benefits that a surviving spouse could pursue, even though the employee may pay precisely the same taxes and insurance premiums as their work colleagues. Ex. 22 at ¶ 12.¹²

38. Spouses of public employees are often entitled to pension benefits,¹³ including death

¹⁰ Iowa Code §§ 633.211, 633.238.

¹¹ Iowa Code § 450.9 (spouses exempt from inheritance tax); Iowa Code § 249A.5 (protecting surviving spouse from debt collection for state medical assistance received by the deceased prior to his or her death); Iowa Code § 633.238 (permitting surviving spouses to take an elective share); Iowa Code § 633.272; Iowa Code § 218.66; Iowa Code § 627.6 (protecting a surviving spouse's interest in life insurance proceeds from creditors); Iowa Code § 904.508 (in the absence of a designated beneficiary, or if a designated beneficiary cannot be found, property left by a decedent in correctional custody goes to the surviving spouse); Iowa Code § 633.374 (providing for allowance to be paid to surviving spouse from decedent's estate during the twelve months following decedent's death).

¹² See Iowa Code §§ 85.31, 85.42 (providing for worker's compensation to dependent and partially dependent spouses of workers killed on the job). Unmarried cohabitants cannot make claims for workers compensation, *see In re Marriage of Martin*, 681 N.W.2d 612, 618 (Iowa 2004), citing *Baldwin v. Sullivan*, 201 Iowa 955, 957-61, 204 N.W. 420, 421-23 (Iowa 1925). Additionally, while spouses may sue for loss of consortium, unmarried cohabitants may not, *see Laws v. Griep*, 332 N.W.2d 339, 340-41 (Iowa 1983) (rejecting the notion that "persons who do not accept the legal responsibilities of marriage should have a legal right of married persons").

¹³ Iowa Code §§ 97A.6, 411.1A, 411.6.

benefits, that are not available to unmarried partners.¹⁴ Spouses of public employees who receive health insurance under a state plan also may request the continuation of coverage after the death of the public employee and will have the same status as a public employee with regard to the plan.¹⁵ Ex. 22 at ¶ 12.

39. Plaintiffs are deprived of numerous spousal rights under tax laws, including the option to file jointly to reduce tax liability, and tax benefits when transferring or inheriting interests in real and personal property.¹⁶ Spouses also receive deductions on their state income

¹⁴ Spouses of public employees who receive health insurance under a state plan may request the continuation of coverage after the death of the public employee and will have the same status as a public employee with regard to the plan. Iowa Code § 509A.13A. In addition, spouses of private employees are permitted “conversion privileges” (entitlement to a converted health insurance policy after coverage under a group policy has been terminated) after the death of a covered spouse. Iowa Code § 509B.4. Other miscellaneous protections include the ability for mortgaged property to be transferred from a decedent to a surviving spouse without triggering repayment, *see* Iowa Code § 16.83, and for franchisees to name successors-in-interest (limited to spouses and adult children) who have the option to continue the franchise in the event of a franchisee’s death. Iowa Code § 323.14.

¹⁵ Married couples who are experiencing conflicts also receive benefits. *See* Iowa Code § 598.16 (providing for free marital counseling for indigent couples). If a relationship ends in divorce, Iowa law and courts provide a structure and forum for effecting the separation and resolving disputes. Domestic relations courts make determinations about custody, visitation, and support in the best interests of children of the marriage. *See* Iowa Code §§ 598.10, 598.12, 598.41. Courts also assist couples in dividing their property, and making determinations about alimony and maintenance payments, *see* Iowa Code § 598.21. Thus, just as the State supports the married couple’s parenting and sharing of property, it also provides structure and support if the couple later divorces and must divide parenting responsibilities and property.

Spouses also are protected from each other in certain respects. *See* Iowa Code § 97B.44 (preventing one spouse from changing the beneficiary of his or her death benefits without the written consent of the other spouse); Iowa Code §§ 561.7, 561.13, 561.15 (preventing one spouse from taking action with respect to a homestead without the other’s consent); *see also, generally*, Iowa Code § 239B.2B (married noncitizens in abusive relationships with citizen spouses are eligible to participate in Iowa’s family investment program, which provides cash grants and job training to needy families).

Even Plaintiffs’ intimate communications with their partners are not protected; if Plaintiffs were able to marry, these communications would be shielded in legal proceedings by the spousal privilege. *See* Iowa Code § 622.9, a codification of a common law principle, which has been employed in both criminal and civil cases. *See* *Sexton v. Sexton*, 105 N.W. 314, 315 (Iowa 1905); *State v. Anderson*, 636 N.W.2d 26, 30 (Iowa 2001); *Allen v. Lindeman*, 148 N.W.2d 610, 615 (Iowa 1967). Further, spouses are exempt from prosecution as accessories after the fact if they harbor, aid, or conceal their partners with the intent of preventing apprehension. Iowa Code § 703.3.

¹⁶ *See, e.g.*, Iowa Code § 428A.2 (exemption from real estate tax for transfer of real estate between spouses); Iowa Code § 321.46 (credit for new vehicle registration fee available to spouses who transfer ownership of a car from one to the other); Iowa Code § 249F.1 (spousal exemption from presumption that a transfer of property was intended to make the transferor eligible for state medical assistance).

taxes and other protections in the tax code,¹⁷ as well as protection from creditors.¹⁸ Ex. 20 at ¶¶ 21, 26, 30-31, 38-40; Ex. 22 at ¶ 12.

40. Marriage also imposes reciprocal responsibilities on spouses, such as the legal requirement that they provide each other with financial support or face legal redress in certain circumstances, such as if one spouse is a recipient of public assistance.¹⁹ Thus, Iowa laws make it easier for married couples to own property jointly and communally and recognize married couples as economic units. Although Plaintiff couples have intertwined their finances and are committed to care for one another financially as well as emotionally, they are deprived of significant legal and economic help in doing so. See Ex. 1 at ¶ 12; Ex. 2 at ¶ 9; Ex. 5 at ¶¶ 16-17; Ex. 9 at ¶ 8; Ex. 14 at ¶ 35; Ex. 20 at ¶¶ 20-21, 46-51, 53-56; Ex. 22 at ¶¶ 10-12, 14.

41. In addition to legal rights and obligations embodied in Iowa statutes, many private parties rely on the State's definition of a "spouse" in providing benefits and protections, such as from employers, banks, and insurers. Plaintiffs and their children therefore suffer deprivation of many privately conferred benefits and protections as well. Significantly, health insurance coverage, is frequently available through an employee health plan for a spouse, but infrequently for an employee's same-sex partners. Further, unlike spousal coverage, an employer's contribution to any domestic partner coverage that is provided is deemed additional taxable income to the employee under both state and federal law. Under COBRA laws, domestic partner

¹⁷ Iowa Code § 422.9 (married couples filing jointly receive over \$500 more than single taxpayers in standard deductions and are eligible for up to \$5000 in additional deductions if one spouse requires care for a physical or mental infirmity); Iowa Code § 425.2 (spouses eligible for homestead tax credit); Iowa Code § 425A.4 (spouses eligible for family farm tax credit).

¹⁸ Iowa Code § 627.6 (protection in bankruptcy for debtor's wedding rings and life insurance policies benefiting the spouse, among other things).

¹⁹ Iowa Code § 252A.3 (spouse liable for the other's support); Iowa Code § 598.21(1) (providing for action for separate maintenance); *In re Estate of Carlisle*, 653 N.W.2d 368, 369 (Iowa 2002); Iowa Code § 230.15 (spouse liable for the support of a spouse with mental illness); Iowa Code § 597.10 (if one spouse is abandoned by the other, the abandoned spouse may petition for authority to sell the other's property to pay debts); *see, also, generally*, Iowa Code § 596.5 (parties cannot contract out of support obligation by an antenuptial agreement).

coverage need not be offered for continuation after a job ends. An uninsured partner must find a job that provides insurance coverage to employees (sometimes leaving a child in daycare), find another source of group insurance, obtain an individual insurance policy with higher premiums and deductibles, or run the risks of remaining uninsured. *See* Ex. 5 at ¶¶ 25-26; Ex. 6 at ¶ 8; Ex. 9 at ¶ 15; Ex. 14 at ¶¶ 25, 27-28; Ex. 20 at ¶¶ 22-25; Ex. 22 at ¶¶ 5, 7, 12.

42. Likewise, auto or home insurance, membership fees to health and swim clubs, and other expenses offered at a discount for families or spouses may be unavailable to Plaintiffs and their families. For example, Iowa law specifies that spouses are authorized drivers on each other's car rentals.²⁰ Same-sex partners, who typically are viewed as two unrelated individuals who might as well be strangers to one another, often face additional costs for comparable access or coverage, when it is even possible to obtain. The many added costs faced by same-sex couples like Plaintiffs stretch their financial means and leave them and their children with fewer resources. *See* Ex. 1 at ¶ 12; Ex. 3 at ¶ 11; Ex. 5 at ¶ 25; Ex. 6 at ¶ 8; Ex. 7 at ¶ 9; Ex. 9 at ¶ 15; Ex. 12 at ¶ 23; Ex. 20 at ¶¶ 17, 20-21, 46-51, 53-56; Ex. 22 at ¶ 12.

43. Despite the efforts of some Plaintiffs with means to protect their families and commitments insofar as is possible with legal documents such as wills, these piecemeal efforts are costly, and many may be revoked and/or undone by a court. It is impossible for Plaintiffs by any alternate means to come close to achieving the security and certainty that the law automatically affords to married spouses, nor do Plaintiffs have any means to access countless benefits reserved to married persons and children of the marriage. Ex. 1 at ¶ 12; Ex. 2 at ¶ 12; Ex. 3 at ¶ 17; Ex. 4 at ¶¶ 11, 15; Ex. 5 at ¶ 23; Ex. 6 at ¶ 8; Ex. 7 at ¶ 9; Ex. 8 at ¶ 9; Ex. 9 at ¶ 15; Ex. 11 at ¶¶ 21-22; Ex. 12 at ¶¶ 15, 23; Ex. 21 at ¶¶ 6-7; 22 at ¶¶ 5-6, 15-16.

²⁰ Iowa Code § 516D.3.

Sexual Orientation and Same-Sex Relationships

44. “Sexual orientation” refers to an enduring pattern or disposition to experience sexual, affectional, or romantic desires for and attractions primarily or exclusively to members of a different sex (“heterosexual”) or the same sex (“homosexual”), or to experience a significant degree of attraction to both men and women (“bisexual”).²¹ Ex. 15 at ¶ 13.

45. Sexual orientation is a characteristic of the individual, like biological sex, gender identity, race or age, that is always defined in relational terms and necessarily involves relationships with other individuals. Sexual orientation is integrally linked to the intimate personal relationships that human beings form with others to meet their deeply felt needs for love, attachment and intimacy. One’s sexual orientation defines the universe of persons with whom one is likely to find the satisfying and fulfilling relationships that, for many individuals, comprise an essential component of human identity and life. The bonds formed in these relationships encompass not only sexual behavior, but also nonphysical affection between partners, shared goals and values, mutual support, and ongoing commitment. Ex. 15 at ¶¶ 15-17.

46. Homosexuality is a normal expression of human sexuality. Although homosexuality once was classified as a mental disorder or abnormality, empirical research since the 1950’s consistently has failed to provide an empirical or scientific basis for this view, which has been renounced by professionals in multiple disciplines. Ex. 15 at ¶ 18.

47. As lesbians and gay men, each of the Plaintiffs experiences an innate attraction to people of the same sex. Plaintiffs cannot help (and would not change) that they have fallen in

²¹ The term “gay” often is used by itself and is used here to embrace both lesbians and gay men (e.g., “gay people,” “the gay community”). Bisexuals are subsumed here within the terms “gay” and “lesbian and gay” to the extent they are in a committed same-sex relationship or are perceived or treated as lesbians or gay men because of their attraction to and relationships with same-sex partners.

love with a person of the same sex. Ex. 1 at ¶ 13; Ex. 2 at ¶ 6; Ex. 3 at ¶ 6; Ex. 4 at ¶ 6; Ex. 5 at ¶ 12; Ex. 6 at ¶ 7; Ex. 7 at ¶ 11; Ex. 8 at ¶ 13; Ex. 9 at ¶ 7; Ex. 10 at ¶ 7; Ex. 11 at ¶ 10; Ex. 12 at ¶ 12.

48. A person's sexual orientation is highly resistant to change. Ex. 23, Def. Admit 15; Ex. 15 at ¶ 21; Ex. 5 at ¶¶ 6-8.

49. Interventions aimed at changing an individual's sexual orientation have not been demonstrated by empirical research to be effective or safe. They are considered ethically suspect, and have generated cautionary statements from virtually all of the major mental health professional associations because such interventions can be and have been harmful to the psychological well-being of those who attempt them. Ex. 15 at ¶ 21.

50. Sexual orientation is a trait unrelated to ability. Ex. 23, Def. Admit 14. It bears no relation to a person's ability to perform, to contribute to, or to participate in society, and one's sexual orientation (whether heterosexual, homosexual or bisexual) implies no impairment in judgment, stability, reliability, or general social or vocational capabilities. Ex. 15 at ¶¶ 15-17.

51. Being gay or lesbian poses no inherent obstacle to leading a happy, healthy and productive life. Gay and lesbian persons have the capacity to form and are successful at forming lasting, committed, healthy, and mutually satisfying intimate relationships, just as heterosexual persons do, and which are equivalent to heterosexual relationships. The prevalence and durability of same-sex relationships are striking especially considering lack of access to marriage and marriage's attendant obstacles to separation. Marriage offers unique benefits beyond the material necessities of life, including increased relationship durability, higher levels of reported happiness, physical and mental health benefits, and decreased stress during times of illness or death of a partner. Gay and lesbian persons who wish to marry are likely to benefit in the ways

that heterosexuals do. Ex. 14 at ¶¶ 16-38; Ex. 15 at ¶¶ 16-17.

**Sexual Orientation, Male and Female Parenting
and Parenting by Same-Sex Couples**

52. Iowa's interest in the welfare of children of lesbian and gay parents is as great as its interest in the welfare of any other children. Def. Admit 6.

53. More than 5800 same-sex couples live in Iowa. There are same-sex couples in literally every Iowa county. Approximately 37% of same-sex couple households in Iowa are raising children under 18. Approximately 3158 of Iowa's children are living in households headed by same-sex couples. Ex. 20 at ¶¶ 9, 10, 15.

54. Lesbian and gay individuals and couples, including some of the Plaintiff couples, have been licensed by the State of Iowa as, and have served as, foster parents. Ex. 23, Def. Admit 11; Ex. 2 at ¶ 10; Ex. 3 at ¶ 12; Ex. 5 at ¶¶ 21-26; Ex. 6 at ¶ 9; Ex. 9 at ¶ 10; Ex. 10 at ¶ 5.

55. Under Iowa's adoption law, assuming all other legal requirements are met, a lesbian or gay couple may adopt jointly, or one partner may adopt his or her partner's child, in each case giving the child two permanent parent-child relationships with parents of the same sex. Ex. 23, Def. Admit 12; Ex. 3 at ¶¶ 10-12, 17; Ex. 5 at ¶¶ 23-26; Ex. 11 at ¶ 22; Ex. 12 at ¶¶ 15, 19, 21, 23; Ex. 21 at ¶¶ 13-15.

56. The main factors accounting for children's adjustment in both "traditional" and "non-traditional" family structures, including families headed by same-sex couples, are: 1) the quality of a child's relationship with the parent who is primarily responsible for his or her care; 2) the quality of the child's relationship with a second parent figure, if the child has two important parental figures; 3) the quality of the adults' intimate relationship, with conflict predicting maladjustment and a harmonious relationship predicting healthy adjustment; and, 4) the availability of economic resources, with adequate resources predicting better adjustment. Ex. 13

at ¶¶ 11, 13-14, 22, 30.

57. Nothing about a parent's sex or sexual orientation affects either that parent's capacity to be a good parent or a child's healthy development ("adjustment"). Lesbian and gay persons have the capacity to raise healthy and well-adjusted children. Ex. 13 at ¶¶ 10-11, 22, 24-25, 28, 31-32, 42-43; Ex. 15 at ¶ 17.

58. There is consensus within the mainstream scientific community that parental sexual orientation has no effect on children's adjustment. Numerous leading organizations representing mental health and child welfare professionals (*e.g.*, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, the National Association of Social Workers and the Child Welfare League of America) have issued statements confirming that lesbian and gay parents are as effective as heterosexual parents in raising well-adjusted children and that these parents and their children should not face discrimination. See Ex. 13 at ¶ 32.

59. Children raised by gay and lesbian parents are as well-adjusted and as psychologically, emotionally, educationally and socially successful as children raised by heterosexual parents. This has been documented by numerous studies conducted over 25 years by respected researchers, including more than 50 peer-reviewed empirical reports. The material facts set forth in paragraphs 55 through 67 hereof are based on studies published in mainstream journals in developmental and child clinical psychology, including the flagship peer-review journals (*Child Development*, *Developmental Psychology* and the *Journal of Child Psychology and Psychiatry*). These periodicals are rigorously peer-reviewed and highly selective and their standards reflect expert consensus on generally accepted social scientific standards for research on child development. The studies discussed in these paragraphs represent the type of research

that members of these professions consider reliable. Ex. 13 at ¶¶ 10, 17-18, 24, 29, 31-32, 34-36; Ex. 15 at ¶ 29.

60. This body of research uses standard, reliable methodologies and standard sample types and sizes that are well-accepted in the field of developmental psychology and psychology generally. The methods used in some studies of gay and lesbian parents and their children have been criticized by certain advocacy groups, but not based on standards in the field. Recognized experts in developmental psychology have not criticized the methods used in these studies. Ex. 13 at ¶¶ 34, 36-39, 41.

61. As a result of over 50 years of research into nontraditional families, it also is well-established that children do not need a parent of each gender to be well adjusted, that both men and women have the capacity to be good parents, and that children do not need male and female role models in the home to develop normally. Ex. 13 at ¶¶ 11, 17-18, 22, 24-26, 30-31, 42-43.

62. There is no empirical support in the social science literature for the claim that there is an optimal gender mix of parents or that children with two female or two male parents suffer any developmental disadvantages relative to children with two different-sex parents. Ex. 13 at ¶¶ 10-11, 17-18, 22, 24, 26, 31-32, 42.

63. There is no empirical support for the notion that children need both male and female role models in their homes to adjust well. Children encounter many role models in addition to their parents in everyday life. Despite the absence of male role models in the home, for example, children who have only one resident female parent are no more likely than other children to have gender identity disorders or gender roles that differ from their peers. Ex. 13 at ¶¶ 10-11, 17-19, 22, 24-33.

64. The gender identity of a child is not affected by the gender of parents or parent

figures in the home, nor by having one rather than two parents. Ex. 13 at ¶¶ 26-27.

65. There is nothing about the sex of a parent that directly affects that parent's capacity to be a good parent. Disparities in parenting skills reflect greater or lesser "on the job" experience and opportunities to learn rather than biological differences. Nothing about a parent's sex determines one's parenting style. While, on average, men and women tend to assume different styles when parenting the same child, men who parent alone or are the child's primary caregiver tend to adopt the parenting style often characteristic of mothers. Observed differences appear to reflect differences between the responsibilities of the primary or secondary parent rather than sex-based differences. Many parents do not assume traditional gender roles or offer both of the typical male and female parenting styles and this has been shown not to affect a child's adjustment. Ex. 13 at ¶¶ 24, 28.

66. Studies reporting that children of gay and lesbian parents have less sex-stereotyped beliefs, and are more open-minded in their views of societal norms and standards about appropriate gender roles (*e.g.*, seeing becoming a nurse, doctor or astronaut as appropriate aspirations for both boys and girls) are consistent with findings as to children in other types of non-traditional families (*e.g.*, families with two employed parents). Reported differences in sex-stereotyped beliefs and behavior are not differences in adjustment. The past view of some developmental psychologists that conformance to these stereotypes is a component of healthy adjustment has been discredited and abandoned by authorities in the field of psychology. Ex. 13 at ¶¶ 19, 33.

67. Research showing that children in one-parent families are at greater risk of maladjustment than children raised in heterosexual married-couple families has been mischaracterized by advocates as supporting the notions that children need families headed by a

mother and father and/or that heterosexual couples make the best parents, which that research does not support. The research on one-parent families looks exclusively at heterosexual parents and elucidates nothing about parental sexual orientation or gender. Instead, the studies suggest that, all else being equal, children tend to do better with two parents than one, which only supports extending marriage rights to same-sex couples to solidify family ties. Ex. 13 at ¶¶ 42-43, 45.

68. Likewise, some advocates point to research demonstrating that children thrive with so-called “biological” parents to argue that parenting by same-sex couples cannot provide children with the advantages of being raised by two biological parents. In fact, in many studies the term “biological parent” is used collectively to refer to and distinguish *both* biological and adoptive parents from children raised in step-families. These studies do not explore differences between biologically-related and non-related parents. Nor do these studies examine children being raised by lesbian and gay couples, including those who jointly planned to have children. Children raised by reconstituted stepfamilies are at a higher risk for adverse outcomes, but one would not expect to see comparable adjustment difficulties among lesbian and gay parents who jointly plan to raise children. Research comparing lesbian and gay families with heterosexual families reveals no reliable difference in outcomes. Ex. 13 at ¶ 44.

All Plaintiffs Are Similarly Situated to Those Benefited by Iowa Marriage Laws

69. Plaintiffs are similarly situated to different-sex couples who have the option to marry. See Ex. 1 at ¶¶ 4-9; Ex. 2 at ¶¶ 4-5, 9-10; Ex. 3 at ¶¶ 4-8; Ex. 4 at ¶¶ 4-5, 7-9; Ex. 5 at ¶¶ 4-5, 9-11, 22-23; Ex. 6 at ¶¶ 4-6; Ex. 7 at ¶¶ 4-7, 12; Ex. 8 at ¶¶ 4-7; Ex. 9 at ¶¶ 2-6, 8-10; Ex. 10 at ¶¶ 4-5; Ex. 11 at ¶¶ 4-5, 13, 17-19; Ex. 12 at ¶¶ 4-5, 10.

70. Plaintiffs’ backgrounds and their daily lives and experiences as Iowans are very

similar to those of different-sex couples who freely may marry. *See* Exs. 1–12.

71. The emotional, romantic and dignitary reasons Plaintiffs seek to marry are very similar to those of different-sex couples who freely may marry. *See* Ex. 1 at ¶¶ 9-13; Ex. 2 at ¶¶ 6-8; Ex. 3 at ¶¶ 6-7, 9, 12-15, 17; Ex. 4 at ¶¶ 6, 10-15; Ex. 5 at ¶¶ 9, 11-13, 7, 17, 19-20, 23; Ex. 6 at ¶¶ 7, 9; Ex. 7 at ¶¶ 7-8; Ex. 8 at ¶¶ 9, 12, 14; Ex. 9 at ¶¶ 7-8, 12-15, 16; Ex. 10 at ¶¶ 7-10; Ex. 11 at ¶¶ 8, 10-12, 19-22; Ex. 12 at ¶¶ 11-12, 15, 20-22, 25.

72. The economic, legal and practical needs Plaintiffs have that only marriage fully addresses are very similar to those of different-sex couples who freely may marry. These needs include the stabilizing impact of marriage and its rights on a family's finances and legal ties. *See* Ex. 1 at ¶¶ 12-13; Ex. 2 at ¶¶ 8, 10-12; Ex. 3 at ¶¶ 9-14, 17; Ex. 4 at ¶¶ 10-15; Ex. 5 at ¶¶ 13-20, 23-26; Ex. 6 at ¶¶ 8-9; Ex. 7 at ¶¶ 8-10, 15; Ex. 8 at ¶ 9; Ex. 9 at ¶¶ 13-16; Ex. 10 at ¶ 10; Ex. 11 at ¶¶ 12-14; Ex. 12 at ¶¶ 15, 19-25.

73. Some Plaintiffs have used, are using or anticipate using methods commonly used by heterosexual parents to conceive, foster or adopt children. As with heterosexuals engaging in unprotected sexual intercourse, using these methods is known to bring children into a family, but the children may arrive at unplanned times. *See* Ex. 2 at ¶ 10; Ex. 3 at ¶ 3; Ex. 5 at ¶¶ 21, 23; Ex. 6 at ¶ 9; Ex. 9 at ¶¶ 9-10; Ex. 10 at ¶ 5; Ex. 11 at ¶ 13; Ex. 12 at ¶ 13.

74. Minor Plaintiffs are similarly situated to the children of heterosexual couples who have the option to marry. *See* Ex. 3 at ¶¶ 8-9, 12, 14, 15, 17; Ex. 4 at ¶¶ 7-19, 13; Ex. 11 at ¶¶ 15, 17, 19; Ex. 12 at ¶¶ 14-18, 24-25.

75. Minor Plaintiffs have similar daily lives and family interactions to those of children of different-sex couples. *See* Ex. 3 at ¶¶ 8, 14, 16; Ex. 4 at ¶¶ 7-9; Ex. 11 at ¶¶ 17, 19; Ex. 12 at ¶¶ 17, 18, 24.

76. Minor Plaintiffs were born to and/or adopted by their parents, and receive parenting that is very similar to and no less healthy and effective than the parenting other children receive from two different-sex parents. *See* Ex. 3 at ¶¶ 8-12, 15, 16; Ex. 4 at ¶¶ 7-9, 13; Ex. 11 at ¶¶ 17-19; Ex. 12 at ¶¶ 17-19, 24.

77. The benefits of marriage are needed as much by children in homes headed by same-sex couples as they are by children reared in the homes of different-sex couples. Marriage is as likely to benefit the Minor Plaintiffs emotionally, economically and legally as it does other children, and would secure greater dignity and social legitimacy for them and their families. *See* Ex. 3 at ¶¶ 9-14, 17; Ex. 4 at ¶¶ 12-15; Ex. 11 at ¶¶ 13-15, 19-22; Ex. 12 at ¶¶ 15-16, 19-25; Ex. 13 at ¶¶ 18, 46-48; Ex. 15 at ¶¶ 28-29; Ex. 21 at ¶¶ 16-17.

78. Minor Plaintiffs have the same needs for emotional, legal and economic security; personal dignity; familial stability; and social acceptance and legitimacy for their families and themselves as do children of different-sex couples, including the need for clearly defined and recognized legal relationships with both parents. Children whose parents cannot access or afford adoption especially would benefit from the automatic parent-child ties that marriage law provides children born into the marriage. Ex. 13 at ¶¶ 46-48; Ex. 15 at ¶¶ 28-29; Ex. 21 at ¶ 17.

79. Legal security in Minor Plaintiffs' parent-child relationships is especially important during time of crisis, such as medical emergencies or the death of a parent. A parent's death is highly stressful for a child and likely to have effects on the child's well-being. Secure legal ties can assure continuity in the child's relationship with the surviving parent and minimize the risk of claims by others for custody. Likewise, should the parents separate, secure legal ties make it unlawful for one parent arbitrarily to seek to cut off the other parent-child relationship. Marriage and its benefits also increase the overall economic resources available to the children whether the

marriage continues or ends by death or divorce. Ex. 13 at ¶¶ 46-48; Ex. 21 at ¶¶ 16-17.

80. Allowing same-sex couples to marry is in the best interests of and will benefit children being raised by same-sex couples and the couples themselves, without having any detrimental effect on heterosexual couples or their children. *See* Ex. 3 at ¶¶ 9-11, 17; Ex. 4 at ¶¶ 10-11, 15; Ex. 11 at ¶¶ 13-15, 19-22; Ex. 12 at ¶¶ 19-25; Ex. 13 at ¶ 46; Ex. 21 at ¶¶ 16-17.

The Changing Nature and Meaning of Marriage

81. Marriage has evolved over time, in legislatures and courts, to meet the changing needs of American society and to embody fuller notions of consent and personal choice. *See* Ex. 19 at ¶¶ 20-55.

82. Despite these many changes, marriage remains a fundamental right and a highly respected institution that plays a unique and central social, legal and economic role in American society, including in Iowa. *See* Ex. 19 at ¶¶ 9-12.

83. Marriage in the United States is virtually unrecognizable from its earlier common law counterpart, having undergone radical, unthinkable changes in laws governing who may marry, when marriages may end, and the legal significance and consequences of marriage for the individuals involved. *See* Ex. 19 at ¶¶ 13-55.

84. American marriage law is vastly changed in its treatment of men and women. When Iowa's first marriage law was passed, the centuries-old doctrine of coverture, in which the woman's separate legal identity disappeared into the man's upon marriage, reigned in Iowa as elsewhere. Married women were essentially chattel; they were not considered legal "persons" who could exercise rights, hold property, earn money, or deny their husbands access to their bodies. Men were expected alone to support the family and to represent and make decisions for the family in the external world. *See* Ex. 19 at ¶¶ 23-24; 27-33.

85. Marriage law in Iowa today reflects a steady elimination of stereotyping and discrimination against both women and men. The sexes are equal before the law and have reciprocal obligations within marriage. Iowa courts and legislatures have remedied numerous longstanding gender-based inequities, many of which previously had been considered inherent in marriage and reflective of the proper and natural roles of men and of women. *See* Ex. 19 at ¶¶ 27-34.

86. For hundreds of years in the United States there also were legal barriers to marriage, originating in colonial times, based on the races of the partners wishing to marry. Slaves, not being considered legal persons, could not lawfully consent and therefore could not legally marry. The vast majority of States had laws prohibiting certain marriages based on racial and ethnic classifications; most of these laws survived long after Emancipation. *See* Ex. 19 at ¶¶ 35-37.

87. As in other states, Iowa has committed to eliminating racial and ethnic discrimination in marriage and family law. It was the third state to repeal its anti-miscegenation law that had denied individual freedom of choice in marriage partners on the basis of race. Iowa courts also have worked to eliminate considerations of racial prejudice in custody and parenting decisions. *See* Ex. 19 at ¶ 39.

88. The ability to end a marriage to which one or both spouses no longer consent is another fundamental change that has transformed American marriage law. Divorce first became available in some states and territories shortly after the American Revolution, but only in very narrow circumstances involving findings of fault in one spouse's failure to meet his or her (largely gender-driven) marital responsibilities to the other spouse and to the state. Divorce took this form in Iowa as well and, though the grounds for divorce expanded over time, continued as a fault-driven process well into the 20th century. *See* Ex. 19 at ¶¶ 43-50.

89. In 1970, Iowa became only the second state to institute no-fault divorce. This fundamental change permitted spouses to exercise continuing choice over whether to be married, to set their own goals for the marriage and to evaluate for themselves whether their goals for the marriage were being met. *See* Ex. 19 at ¶¶ 49-51.

90. Other remarkable changes in marriage and related laws have included: rising age requirements for entry into marriage; elimination of the legal categories of “illegitimates” and “bastards” for those children born out of wedlock; treatment of men as legal parents of children born out of wedlock; separation of marital misconduct from determinations of child custody and visitation; and the removal of criminal restrictions on extramarital and non-procreative sexual activities. *See* Ex. 19 at ¶ 53.

Lingering Sex and Gender Discrimination in Marriage

91. Each Plaintiff would have been able to marry his or her partner had the Plaintiff been of a different sex. Answer to Amended Petition at ¶¶ 19-26.

92. Historically and to the present, lesbian and gay people have been subjected to discrimination, harassment and misunderstanding because they are perceived as departing from the gender roles expected of each sex. *See* Ex. 18 at ¶¶ 9-11, 19.

93. Lesbians and gay men (as well as heterosexuals perceived to be gay or as acting or appearing gay) are commonly debased through slurs, jokes and stereotypical references to same-sex attraction, appearance, dress, mannerisms, sexual practices, occupations and the like. These remarks reflect personal and/or societal animus, and fear or discomfort with gay people’s perceived departures from sex role norms; such remarks seek to and do coerce conformity with those norms. *See* Ex. 17 at ¶¶ 20, 24; Ex. 18 at ¶¶ 9-12.

94. Sex-role conformity remains embedded in Iowa marriage law. As a condition of

marriage in Iowa, male Plaintiffs must conform to the State's view that men should fall in love with, be intimate with and marry only women, while female Plaintiffs must conform to the State's view that women should fall in love with, be intimate with and marry only men. In fact, these are old and overbroad stereotypes that do not reflect the diversity of individual men and women. *See* Ex. 19 at ¶ 55.

History of Anti-Gay Discrimination

95. There is a long history both of prejudice by individuals against lesbian and gay people in Iowa and nationally, Def. Admit 13, and of purposeful unequal treatment and discrimination by government and the private sector against gay people. *See* Ex. 18.

96. Pervasive public and private discrimination has kept many lesbian and gay people in fear of being identified as gay and then targeted for discrimination. Many lesbian and gay people in Iowa remain "closeted" to try to prevent retribution; even family members may be unaware of their sexual orientation. Anti-gay discrimination in Iowa commonly goes unreported because of these concerns and because there is no remedy for most of them. *See* Ex. 16 at ¶¶ 9, 11-13; Ex. 17 at ¶¶ 14, 22, 25-26; Ex. 18; Ex. 22 at ¶ 7.

97. Anti-gay discrimination and purposeful unequal treatment by individuals and organizations in the private sector have taken many forms, including but not limited to: vicious physical assaults and threats; damage to property; verbal harassment of gay people, including students in public schools; propagation of stereotypes; discrimination in employment, public accommodations, and housing; past classification of homosexuality as a mental disorder and "treatments" including electroshock and aversion therapies; efforts to blackmail gay people; shunning by family members and neighbors; refusal to recognize a same-sex partner as family, as the intended next of kin to make medical and death-related decisions, or as the intended

beneficiary of a deceased's estate; and refusal to honor legal documents expressing the wishes and intentions of a gay person or couple. *See* Ex. 16 at ¶¶ 9-15; Ex. 17 at ¶¶ 23-27; Ex. 18 at ¶¶ 7-11, 23-24.

98. Reported hate crimes attributable to anti-gay bias account for approximately 15% of hate crimes in Iowa and are the third most common type of hate crime nationally, despite frequent under-reporting due to victims' fears of further harm from disclosing their sexual orientation. Ex. 17 at ¶¶ 23-26.

99. Discrimination against gay people in the public sector nationally has included: bans on military service including the inaptly named "Don't Ask, Don't Tell" law; initiatives, referenda and lawsuits orchestrated by national anti-gay groups to repeal or prevent passage of marriage, anti-discrimination, domestic partner and civil union laws benefiting gay people; pervasive invocation of stereotypes and falsehoods to advance anti-gay public policies; state and military laws criminalizing consensual sodomy and discrimination in other sectors justified by such laws; bans on employment by the federal government and federal contractors, and related invasive FBI surveillance programs; treatment of gay people as security risks; prohibitions on service to or congregating by gay people in bars, restaurants and other establishments; prohibitions on gay characters and issues in films; police campaigns against gay people in public and private places; and restrictions on adoption and foster parenting. *See* Ex. 16 at ¶¶ 9-15; Ex. 18 at ¶¶ 7, 17-20, 28-29; 39-40.

100. Discrimination against gay people in the public sector in Iowa also has included not only the marriage exclusion and its effects (see Pars. 22-43) but also: criminal laws against sodomy and related solicitation and conspiracy; laws permitting the exclusion from the United States and the indefinite confinement of gay people as "sexual psychopaths;" rounding up of gay

people on morals charges as a form of harassment; refusals of political parties to slate openly gay candidates, and of public bodies and officials to appoint them; political and personal attacks on public officials who are openly gay or perceived to be pro-gay; and “outing” of and personal attacks against gay public officials to cause them political and personal harm. Ex. 16 at ¶¶ 11-12, 14-15; Ex. 17 at ¶¶ 22, 30-34; Ex. 18 at ¶¶ 7, 20, 23-24, 26-27.

Relative Political Powerlessness of the Gay Community

101. No Iowa state law remedies discrimination on the basis of sexual orientation, except the State’s hate crimes law. Ex. 17 at ¶ 13.

102. Bills were introduced to include sexual orientation as a protected category within the Iowa Civil Rights Act approximately 15 years ago, but the Iowa legislature has repeatedly declined to pass it. The legislature also has declined to pass proposed legislation to address pervasive problems of anti-gay bullying in schools. Iowa has not passed other types of legislation that other states have passed, including for civil unions; domestic partnerships; anti-discrimination protection or domestic partner benefits for state employees; requirements against discrimination by professions or to obtain licenses. Ex. 17 at ¶¶ 13, 20.

103. The Iowa House passed legislation in 1995 to ban lectures at state universities that would depict gay people in a positive light. Legislators successfully sued to invalidate Governor Vilsack’s executive order prohibiting sexual orientation discrimination in State employment. Legislators filed an extraordinary writ petition to invalidate an Iowa court’s dissolution of a lesbian couple’s civil union. The legislature passed §§ 595.2(1) and (20) to make certain that marriages by lesbian and gay couples would not occur or be recognized in Iowa. Ex. 17 at ¶ 21; *King v. Vilsack*, No. CE40318, Polk County District Court, Dec. 7, 2000 (not officially published); Appendix B, Johnathan Roos, *House committee passes bill to bar same-sex*

marriages; But critics say the legislation is a waste of lawmakers' time, Des Moines Register, February 17, 1998, at 6M; Johnathan Roos, *Iowa House votes to reject gay marriages; The bill now goes to the Senate, where a similar effort died two years ago*, Des Moines Register, March 12, 1998, at 1A-4A; Johnathan Roos, *House panel to eye bill denying recognition of gay marriages; similar measure died in '96 session*, Des Moines Register, February 21, 1997, at 5M; Briefly in the Legislature, *Committee passes gay-marriage bill*, Des Moines Register, February 26, 1997, at 4M; *Alons v. Iowa Dist. Court for Woodbury County*, 698 N.W.2d 858 (Iowa 2005).

104. Public officials in Iowa have felt free to make anti-gay comments in public, including in legislative session. For example, in 1987, the State epidemiologist, Laverne Wintermeyer, stated that HIV and AIDS did not pose much risk in Iowa because small-town residents would apply “certain social pressures” to discourage homosexual activity: “I don’t know what they’d do — whether they’d go in your room and shoot you or what — but they’re not going to allow it.” More recently, a state senator opposing expansion of the Iowa Civil Rights Act to include sexual orientation commented, “We don’t grant ‘special rights’ to wood nymphs. Why would we grant them to fairies?” Ex. 17 at ¶¶ 6, 20.

105. Only eight Iowa cities, six in eastern Iowa and none west of Des Moines, have passed limited protections against some forms of sexual orientation discrimination (Ames, Bettendorf, Cedar Rapids, Davenport, Decorah, Des Moines, Dubuque and Iowa City). Ex. 17 at ¶ 13.

106. There are very few openly lesbian or gay elected officials in Iowa state or local government, and being openly gay is a distinct liability in most electoral jurisdictions. Public officials who are gay or lesbian but remain closeted to avoid political or personal attacks are of little use in advancing gay issues. Non-gay elected officials who support protections against

anti-gay discrimination often suffer severe political reprisals as well as personal attacks and threats. Ex. 16 at ¶¶ 9, 11-12, 14; Ex. 17 at ¶¶ 18, 22, 28-34.

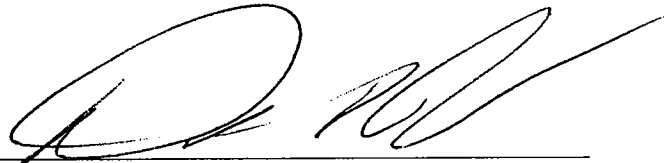
107. Gay elected officials and candidates in Iowa have been harassed, targeted for defeat, or asked not to run, based solely on their sexual orientation. The strategies used against them have included exploiting and inflaming anti-gay sentiment within the electorate; monitoring by police in an effort to establish homosexuality or illegal conduct; filing unfounded lawsuits; generating baseless rumors playing on anti-gay stereotypes; repeated vandalism of an official's home including scrawling anti-gay epithets; and, accusing them of promoting a gay "agenda" or "lifestyle." Ex. 16 at ¶¶ 9-12, 14-15; Ex. 17 at ¶¶ 30, 32-33.

108. The gay community in Iowa faces significant impediments to using the usual democratic channels to address their needs. Serious obstacles include the prevalence of anti-gay bias in the community and among legislators and certain religious leaders. Also, although they face disproportionate discrimination, it is a small percentage of the population that is lesbian or gay, and a smaller number that is openly so. Ex. 17 at ¶¶ 21-22, 25, 27-29, 34.

109. Because many gay people legitimately fear retribution if they are publicly identified as gay, gay groups guard the privacy of their members. This inhibits coalition-building such as trading of membership lists that build a group's base. Ex. 17 at ¶ 27.

110. Other advocacy groups, even allies, are unwilling to form coalitions with gay groups to lobby in support of gay issues because it is counter-productive to their self-interest to be associated with gay issues and groups. Ex. 17 at ¶ 19.

Date: January 26, 2007



Dennis W. Johnson (AT0004022)
DORSEY & WHITNEY LLP
801 Grand Ave., Suite 3900
Des Moines, IA 50309-2790
Tel: (515) 283-1000
Fax: (515) 283-1060

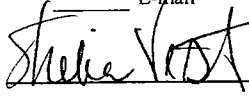
Camilla B. Taylor (admitted *pro hac vice*)
Kenneth D. Upton Jr. (admitted *pro hac vice*)
Patricia M. Logue (admitted *pro hac vice*)
Lambda Legal Defense and Education Fund, Inc.
Midwest Regional Office
11 East Adams, Suite 1008
Chicago, IL 60603
Tel: (312) 663-4413
Fax: (312) 663-4307

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on the 26th day of January, 2007.

By: ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ E-mail ☐ Other



COPY TO:

John P. Sarcone
Michael B. O'Meara
Roger J. Kuhle
Polk County Attorney's Office
340 Polk County Admin. Bldg.
111 Court Avenue
Des Moines, IA 50309
ATTORNEYS FOR DEFENDANT

EXHIBIT 1



Trish Varnum and Kate Varnum

**Affidavit of
KATHERINE VARNUM**

AFFIDAVIT OF KATHERINE VARNUM

Katherine Varnum, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on December 31, 1973, and I am 33 years old.
3. I am in a permanent committed relationship of six years with Trish Varnum, who also has provided an affidavit.
4. I was born in St. Louis, Missouri. I've lived in Cedar Rapids, Iowa, since the age of two. My family has strong Iowa farming roots. On my father's side are Iowa farmers going back three generations or more. And, like me, my mother was raised in Cedar Rapids. Presently, Trish and I live six blocks from the home in which I grew up.
5. I have worked for MCI for the past eight years, where I am a database manager for directory assistance.
6. Growing up, I dealt with depression for most of my teenage and young adult life. It wasn't until I met Trish and accepted who I am that I felt whole and human again. I remember once, when I was in the depths of depression, I looked at a photograph of myself as a child and saw a light in my eyes that I hadn't seen in a long while. That light is back now. My mother says that I've never been happier or healthier than I am now with Trish.
7. Trish and I both have close relationships with our two families, but because Trish moved here from Texas, her family is located farther away and we don't see them as often. We do see my family very often. My parents call Trish their "Texas daughter," and they refer to our dog as their "granddog." My younger brother calls Trish his "other sister."
8. I was raised Episcopalian and Trish and I attend Christ Episcopal Church, the church in which I grew up. Trish was confirmed into the Episcopal Church three years ago.

9. Trish and I are asking simply to be treated fairly by the State by having the right to enter into a civil marriage. We want to be legally married. While we are people of faith, and our religion is very important to us and to my family, we understand that there is a difference between a religious marriage ceremony and a legal marriage, and we are not asking in this lawsuit for our church to marry us.

10. After Trish and I decided to have a commitment ceremony in the spring of 2003, we arranged to have it in our church. However, on the day of Trish's confirmation, we learned from the Bishop of Iowa that others at our church had objected to our holding our ceremony there. So instead we held our ceremony at a park in Marion, Iowa. An Episcopal priest performed the service on October 2, 2004, before 120 guests. It was fantastic. While our ceremony may not have been where we wanted it originally, it was where God wanted us, and was perfect. Our church has been accepting in other ways. Our anniversary was announced last October during the service along with other couples celebrating anniversaries.

11. I have many wonderful memories from our commitment ceremony. My father was there to walk me down the aisle and Trish's dad walked her down the aisle. Many of our friends and family members were there. Several relatives from my father's side as well as my mother's side attended. A number of Trish's friends flew in from Texas. During the reception my dad gave Trish this toast: "In another place and in another time, Trish would be referred to as my daughter-in-law. But in this time and in this place, I prefer to call her "my daughter-in-love." There was barely a dry eye in the room.

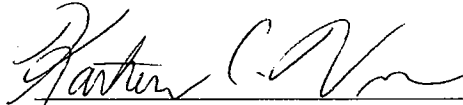
12. I want to marry Trish. I'm old enough not to go into this lightly, and I take it very seriously. We need the protections that marriage brings. While our families have been very supportive of us, I would hate to think that one of my family members would be able to say to

Trish if I die, "You have to move out." As another example, I had already purchased our home before I met Trish, and so her name isn't on the deed. When I called my insurance company to list Trish on the homeowners policy, I was asked by the agent if I had changed the deed. Since I hadn't done this I was told that since she wasn't my spouse she couldn't be placed on the policy. If I were to put her name on the deed, it might be viewed as a gift with tax consequences. Our inability to marry prevented us from being able to take care of each other properly.

13. Last year when I was completing a medical form prior to a surgical procedure, I had to disclose my marital status. The right answer is not "single," yet I couldn't answer "married." There was no way for me to indicate who Trish is in my life. I need to know that other people will recognize her as the most important person in my life, so that if anything happens to me, she will be the first to know. We need our relationship to have that level of respect.

14. Trish and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Friday, December 2, 2005, Trish and I went to the Office of the Polk County Registrar, along with our witness, Linda Smith, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. A clerk named Ron politely told us that the Iowa Code prevented him from filing our application or accepting the fee we offered him. He stated that because of "gender specifications" in the Iowa Code, there was no way for him to give us a license to marry.

15. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.


Katherine Varnum

Sworn to before me this
11 day of January, 2007


Notary Public

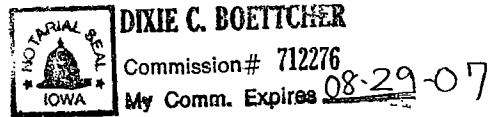


EXHIBIT 2



Trish Varnum and Kate Varnum

**Affidavit of
PATRICIA VARNUM**

AFFIDAVIT OF PATRICIA HYDE VARNUM

Patricia Hyde Varnum, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on March 5, 1965 and I am 41 years old.
3. I am in a permanent committed relationship of six years with Katherine Varnum, who has also provided an affidavit. I will try not to repeat things she said.
4. I was born and raised in Lubbock, Texas. I moved to Coralville, Iowa, in June of 1998. I have been a resident of Cedar Rapids for the past five-and-a-half years.
5. I work as a performance monitoring analyst at Geico Insurance.
6. Kate and I had our first date on January 14, 2001. I chose the day of the Czech ethnic festival in May, 2003, to ask her to share the rest of her life with me. This is a special day to us as it's a day Kate and I always spend together. Kate's mother went with us to the festival that day and I remember the anxiety of waiting and waiting for the right moment, when the two of us would be alone. Eventually, I took Kate to a state park and we stopped at a stone bridge under a canopy of trees. I got down on one knee and asked, "Will you marry me?" She said, "Yes."
7. We have not been able legally to marry in Iowa. In the meantime, in the spring of 2003, we decided to have a commitment ceremony and to exchange rings. I used stones from my mother's and my grandmother's wedding rings, and Kate and I picked out bands and settings together.
8. I want to marry Kate. I want to know she will be taken care of if something should happen to me. We need legal recognition of our relationship, as well as the security and

mutual responsibility that civil marriage entails. It doesn't take a piece of paper or a law to make us family, but it's important to us to be treated fairly.

9. Kate and I have melded our lives together. I recently changed my last name to Varnum to help show our commitment as a family. We have a joint bank account and we're both listed as owners of a financed vehicle. We have living wills and durable powers of attorney for each other. Kate is the beneficiary of my life insurance and 401K, and vice versa.

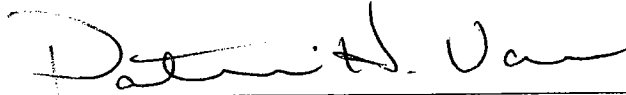
10. Kate and I hope to start our own family very soon. When Kate and I learned that both of us had health conditions that would make becoming pregnant difficult if not dangerous for us, we began exploring adoption options. We discovered that most private adoption agencies in Iowa work only with married couples and therefore wouldn't work with us. We began taking foster-to-adopt classes and will be eligible for a child to be placed with us soon. When we do have a child, I want our child protected by law rather than by good intentions, and for that, we need to marry.

11. We also need to marry in order to make sure that our relationship is respected at the times when we're most vulnerable. I recently had a painful and invasive procedure using dye to determine if there was a blockage in a fallopian tube that could prevent pregnancy. Kate was told that she couldn't be in the room with me while the test was performed despite the power of attorney document we had drawn up because we were not married. I was waiting for her in the examination room where I was nervous, undressed, and feeling vulnerable, and I didn't know why she was delayed. The doctor and nurse wanted to start the procedure. I insisted to the doctor that I wouldn't allow him to perform the test unless he allowed Kate in the room. Luckily, he relented and Kate was allowed in the room.

12. It turned out to be very fortunate for me that Kate was there. During the procedure, something went wrong. We learned later that one of my fallopian tubes was malformed and flattened, and dye instead had been forced into my body cavity. I was in agony. The doctor and nurse did not realize at the time what had happened and wanted to continue. I was in no position to speak up for myself, but Kate could tell what I was going through because she knew me so well. She demanded on my behalf that they stop the procedure. Later, after examining the photographs, the doctor realized what had happened. This experience brought home how important it is for our relationship to be recognized so that we can be together during medical emergencies and speak up for each other. I shouldn't have had to argue and bargain with a doctor right before going through a frightening procedure when a spouse would have been allowed in the room automatically.

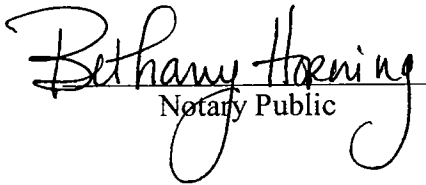
13. Kate and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Friday, December 2, 2005, Kate and I went to the Office of the Polk County Registrar, along with our witness, Linda Smith, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. A clerk named Ron politely told us that the Iowa Code prevented him from filing our application or accepting the fee we offered him. He stated that because of "gender specifications" in the Iowa Code, there was no way for him to give us a license to marry.

14. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.



Patricia Hyde Varnum

Sworn to before me this
11th day of January, 2007



Notary Public

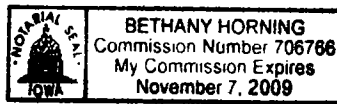
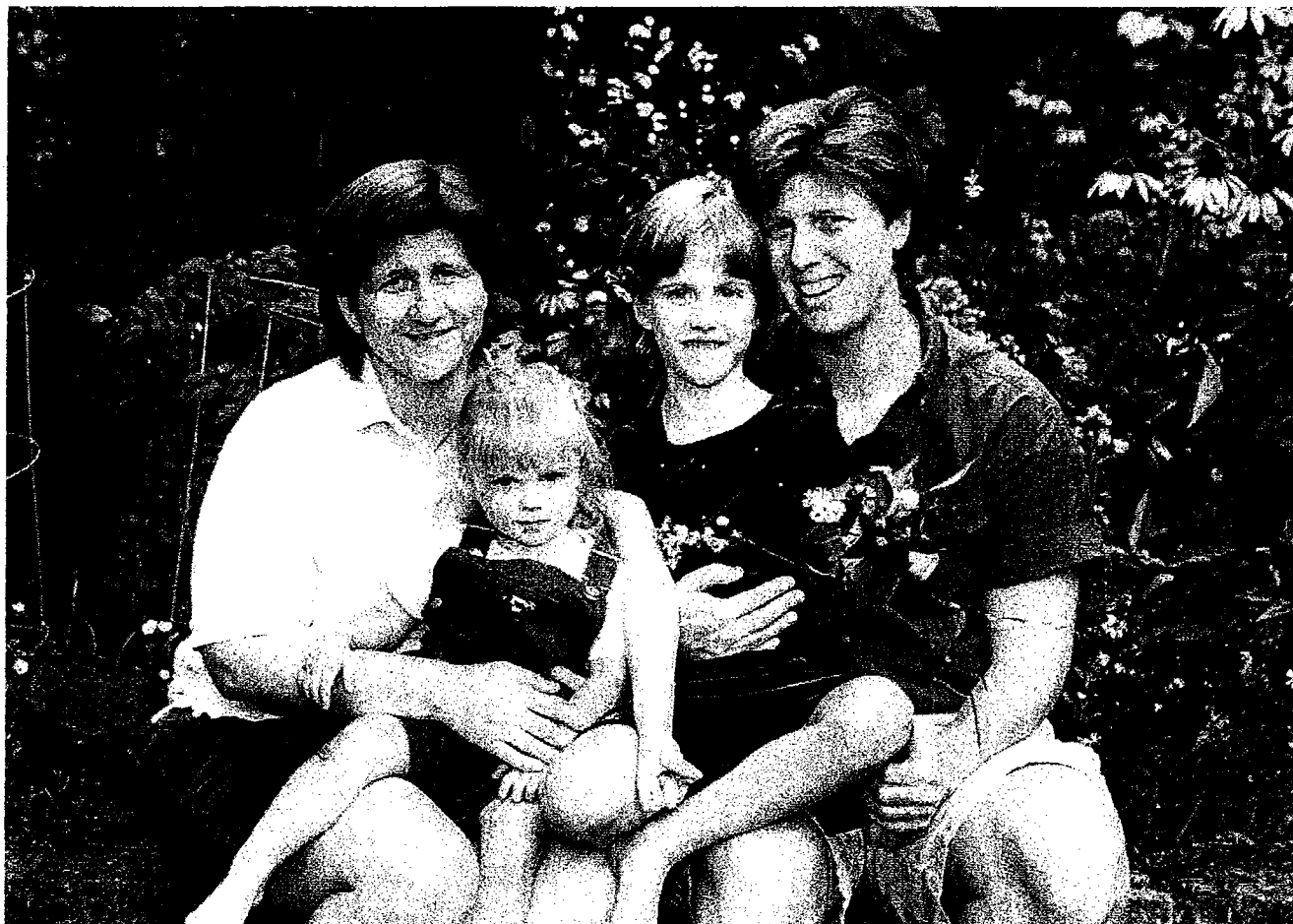


EXHIBIT 3



Dawn, Breeanna, McKinley, and Jennifer BarbourRoske

**Affidavit of
JENNIFER BARBOUROSKE**

AFFIDAVIT OF JENNIFER BARBOUROSKE

Jennifer BarbouRoske, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on May 15, 1970, and I am 36 years old.
3. I am in a permanent committed relationship of over 16 years with Dawn BarbouRoske, who also has provided an affidavit.
4. I was born in Madison, Wisconsin, and grew up in Wheaton, Illinois. I've lived in Iowa for much of my adult life, and have lived in Iowa City for the past five years.
5. I attended college at The University of Iowa and earned a bachelor of science degree in nursing. I received my degree as a Licensed Practical Nurse ("L.P.N.") in Marshalltown, Iowa. I currently work as a registered nurse and a nursing supervisor in the Children and Women's Services Department at the Children's Hospital of Iowa, a division of The University of Iowa Hospitals and Clinics. Prior to that, I was a nurse in the neonatal intensive care unit.
6. Dawn and I met in the summer of 1990 when we lived in Grinnell and were placed on the same softball team. It was love at first sight; we just knew we were meant to be together. I asked her, "Oh my gosh, where have you been?"
7. We moved in together in September of that year. I gave her a ring I had made in high school, and Dawn proposed marriage to me soon afterward and I accepted. Our promise of commitment was something we took seriously, though we could not marry. Afterward, we drove to Marshalltown, Iowa, to order rings. On the day that the rings arrived, October 12th, 1990, we had a private commitment ceremony. We continue to celebrate October 12th as our anniversary until we are able to get married.

8. After several years together, Dawn and I decided to have children through donor insemination. Dawn and I now have a beautiful family with two very happy children, McKinley, who is 8, and Breeanna ("Bre"), who is 4. McKinley is doing well in school, and is proud of her two mommas, and Bre looks forward to joining her in school as well. So far, the parents of the other children at school generally have been very supportive of our family, as has the school itself.

9. In 1998, when I gave birth in California to McKinley, she arrived eight weeks early. She spent 24 days in the neonatal intensive care unit. Like most new parents with a days-old infant who needed a high level of critical medical care, Dawn and I hovered over her three-and-a-half-pound body closely. We were grateful each time her little chest drew breath. But every minute that ticked by as we sat at her bedside was another minute that Dawn, with no biological connection to McKinley, didn't have parental rights that she could exercise on our daughter's behalf if needed. In order to protect our family, Dawn needed to have legal recognition as McKinley's mother as well. To do this, we had to leave our seven-day-old preemie in intensive care to go see our attorney. Whenever people ask us why it is important for same-sex couples to be able to marry, we tell this story. With marriage, we would have been spared all that worrying and fretting during what was already a very stressful time. Marriage would have provided automatic parental rights for Dawn.

10. To obtain parental rights for both Dawn and me through adoption at that time, McKinley had to have no legal parent. Thus, California law required me to terminate my own parental rights before I could join with Dawn in a joint adoption. I remember reading through the form. Having to sign away all my parental ties to McKinley, even for a few moments and

subject to a rider that made clear that I would adopt her moments later, just felt awful. I kept thinking about what would happen if the rider were lost or dishonored. It was very hard on me.

11. As part of the adoption process, Dawn and I had to see a counselor to discuss my willingness to give up my parental rights. It cost about \$600. We also had to have an intrusive home study performed to demonstrate that we would be good adoptive parents. This was a significant amount of money for us. We were willing to do it for the sake of McKinley, but we would have preferred to put the money toward something like her future education. I know that if we had been married we would not have had to go through all of that in order to secure Dawn's legal rights as a parent.

12. After McKinley was born, Dawn and I returned to Iowa. We decided we wanted to have another child and became foster parents in Johnson County. We received a call on June 20, 2002 that forever changed our lives. Bre was placed with us at three-weeks old. We have loved her and cared for her each and every day since then. We were able to adopt Bre jointly on March 25, 2003. To celebrate, we had a large "Family Day Celebration". McKinley, now a big sister, requested a three-tiered wedding cake she saw in a store. She got her wish and we had a rainbow trimmed three-tiered wedding cake topped with two women, one holding a baby, and a small girl all standing together -- our family. Despite this great day, we still longed for the legal recognition of Dawn's and my committed relationship and of our family unit as a whole. Dawn and I consider ourselves emotionally married, although we are not legally married. We often say that we have been engaged to be married for 16 years.

13. I remember when McKinley first found out that we were not married. I mentioned in passing to Dawn at breakfast one day that one of my coworkers was stunned to learn that Dawn and I couldn't marry. McKinley was shocked and started to cry, exclaiming,

“You’re not married?” She had assumed, as any child would, that her parents were married. It was difficult trying to explain to her why we couldn’t marry. We had always taught her that she should treat other people as she would want to be treated herself, and she couldn’t understand why her parents were being treated unequally. One of the reasons we want to get married is for her sake – so that we can fulfill our children’s highest hopes and dreams for us.

14. Two years ago, a parent was helping out in the kindergarten classroom and told us that during an exercise where the students were asked to write about two of something, McKinley wrote that she had two moms. When a classmate said that he didn’t think that somebody could have two moms, McKinley shrugged it off and said, “Yes, it is true because I do have two moms.” Someday a classmate is going to ask if her moms are married. We’d like her to be able to say yes. We want our children to have equal footing in the eyes of the government and, by extension, among their peers.

15. Dawn and I are completely committed to each other and to our family and our lives are very intertwined. We are registered domestic partners in Iowa City. We changed our last names from Barbour and Roske to BarbouRoske so we could have one name for our family. Our house is in both of our names. We have joint checking and credit card accounts, and we own two cars together. We make all household decisions together and divide childcare responsibilities equally. Dawn and I both have living wills and are each other’s power of attorney in health care matters. We are beneficiaries of each other’s life insurance. My health insurance covers our children and Dawn, as my domestic partner, and she receives dental coverage as part of my plan.

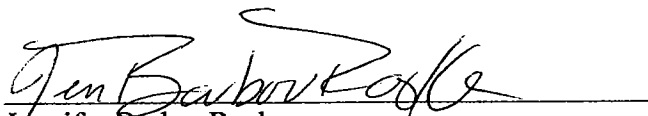
16. My extended family has been particularly supportive of my relationship with Dawn and of our nuclear family. My 84-year-old grandmother, who passed away the year before

last, described Dawn as "better than a husband" for me. Dawn and I have been bridesmaids in my brother's wedding, and his children call us "Aunt Jen" and "Aunt Dawn." My parents speak to McKinley and Bre by phone almost every week.

17. I want Dawn and our children to have all possible legal protections, and I need security in the knowledge that nothing bad will happen to Dawn or to them if anything happens to me. While the legal relationship between Dawn and our children is now recognized, the relationship between Dawn and me, their parents, is not, and this denies them complete security.

18. Dawn and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Wednesday, November 23, 2005, Dawn and I went to the Office of the Polk County Registrar, along with our witness, Natoshia Askelson, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. A clerk named Tori told us that under the Iowa Code she could not accept our application to marry.

I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.


Jennifer BarbouRoske

Sworn to before me this
4 day of January, 2007


Notary Public

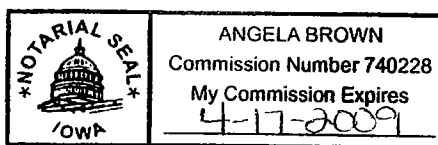


EXHIBIT 4



Dawn, Breeanna, McKinley, and Jennifer Barbouroske

**Affidavit of
DAWN BARBOUROSKE**

AFFIDAVIT OF DAWN BARBOUROSKE

Dawn BarbouRoske, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on September 2, 1968, and I am 38 years old.
3. I am in a permanent committed relationship of over 16 years with Jennifer BarbouRoske, who also has provided an affidavit. I will try not to repeat the things she said.
4. I was born in Doylestown, Pennsylvania, and grew up in Jacksonville, Florida. I attended college at North Carolina School of the Arts and earned a BFA degree in technical direction. I first moved to Grinnell, Iowa after I graduated from college, where I met Jen in 1990. The following year we moved together to Iowa City and both attended The University of Iowa. I earned a MFA in production stage management. After living in Berkeley and Oakland, California, we moved back to Iowa to raise our family. We have been residents of Iowa City for the past five years.
5. I received a teaching certificate at The University of Iowa, and am currently a substitute elementary schoolteacher.
6. Jen and I are one of those goofy “love at first sight” couples. We just knew when we first saw each other and we’ve never looked back.
7. Ever since McKinley and Bre arrived, Jen and I have divided childcare responsibilities equally. The girls call me “Mema,” and Jen “Mommy.” Every morning, Jen walks McKinley and Bre to school, and I join them when I am not working. I pick them both up from school, and because my current job as a substitute teacher is fairly flexible, I often am able to spend time at home with our children during the day. I’ll read them stories, play games with them, and take them on walks with our dog, Riley. Sometimes we’ll ride bikes or play with

neighborhood children. McKinley started violin lessons about three years ago, and I go to lessons with her and help her practice, working through the sheet music with her. In the evenings, I generally make supper. Every night before bed, Jen and I always read to the children. Sometimes we read to them together, and sometimes we rotate, with one of us reading to McKinley while the other reads to Bre. If one of us is in the middle of a book with McKinley, we'll stay with it until we finish it together.

8. Together, Jen and I started "Proud Families," a playgroup for gay and lesbian families. Proud Families creates social ties for gay and lesbian couples and their kids and hosts an annual campout, and potlucks once a month. We currently have about twenty-four couples participating, and eight couples who attend regularly. One of our favorite annual events is the local Pride Parade, in which our families walk together as a group.

9. Jen and I are both Girls Scout leaders for a troop of 12 girls in the third and fourth grades. We meet twice a month and do activities based on solidifying friendships and creating a sense of community. We have made crafts together such as friendship bracelets, and have planted flowers as the girls work toward their badges. Jen, with her nursing background, plans activities designed to increase the girls' health and fitness.

10. Jen has a worrisome heart condition and blood clotting disorder that might one day require her hospitalization. Once when we were in Austin, Texas, she suddenly fell ill and had to go to the emergency room twice in 24 hours. As we arrived at the hospital the first time, I was terrified that hospital staff would refuse to recognize our relationship, and that I would not be permitted to stay by her bedside. Also, I know a great deal about her health history, and I was scared that hospital staff wouldn't listen to me, or that they would keep me from her doctors. During that first visit, I was lucky, and was allowed to remain with Jen. While doctors worked

on her, I gave a nurse her medical history. However, the second time she fell ill, a desk clerk stopped me from going back into the emergency room: “No, you need to stay here.” I told her that I had been there earlier that day with Jen, and that I had been permitted to stay with her, and that I’d given the nurses valuable information about Jen’s condition, but it did no good. The clerk told me, “They’ll take care of her, and when they’re ready, they’ll get you.” We were separated and I had to stay in the waiting room. I felt then, and I still do today, that it would have made a difference if I could have said, “We’re married.”

11. I often worry that Jen will get sick again and that I won’t be allowed into her hospital room. Jen and I need to take our legal paperwork with us everywhere, just to be sure we can be together in an emergency. If we were able to marry, we would be more likely to have our relationship respected. Because we cannot marry, my relationship is not accepted at face value. I find myself having to justify myself and our relationship, even during the times when we’re most vulnerable.

12. I remember when Jen was in the hospital after giving birth to McKinley, and I was given the “father” wrist-band to wear. We made it into a joke, but I still felt sad. Years later, when we enrolled the children in school, we had to cross out the word, “father,” on forms provided by the school. So many forms and paperwork have spaces only for “mother” and “father.” Other forms require us to check boxes stating that we are “single.” Since we’ve been together for 16 years and we’re a family, it’s insulting and ridiculous for us to describe ourselves as “single.” Also, when people hear that McKinley or Bre have two moms, they sometimes assume that the children have gone through a divorce, and that there’s a step-mom, instead of understanding that we’re one unified family. These experiences are jarring for me, and a constant reminder of our inequality.


13. McKinley and Bre are proud of who we are and McKinley often tells other children that she has “two mommies.” But I wish that we were able to marry so that we could give them comfort in knowing that their parents are treated equally and are accepted just like everyone else. I worry that they will internalize the message that their family is not as good as other families. Once, when we were visiting potential pre-schools, a teacher told us that she would refuse to allow McKinley to talk about our family during the unit on families when children are asked to speak about their home lives. We chose not to send McKinley to that daycare center, but she may be hearing similar statements about the worth of our family elsewhere.

14. McKinley’s reaction to learning that Jen and I are not married shows that she already has been affected deeply by the common assumption that an unmarried couple doesn’t have as permanent or as worthy a relationship as a married couple’s relationship. I want to be able to tell her and Breeanna that their mommies are married.

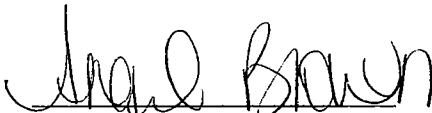
15. Some of my family members have extreme anti-gay political views and are hostile to my relationship with Jen. My grandparents have never acknowledged that I have children, and my brother opposed my relationship with Jen from the beginning. When Jen and I suffered a miscarriage before McKinley was born, my brother told us that he thought our child was better off with God than alive with us. This was so painful that I have not spoken with him since. I often worry that my brother, perhaps with the support of other family members, might try to do something to get custody of the children someday. Marriage would provide an additional layer of legal protection for us, and it also would help show my brother and other family members that we deserve to be treated as a family.

16. Jen and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Wednesday, November 23, 2005, Jen and I went to the Office of the Polk County Registrar, along with our witness, Natoshia Askelson, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. A clerk named Tori told us that under the Iowa Code she could not accept our application to marry.

17. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.


Dawn BarbouRoske

Sworn to before me this
4 day of January, 2007


Notary Public

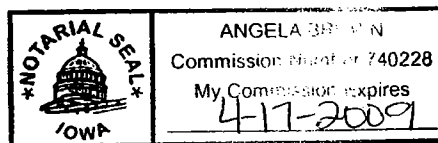


EXHIBIT 5



Chuck Swaggerty and Jason Morgan

Affidavit of JASON MORGAN

AFFIDAVIT OF JASON MORGAN

Jason Morgan, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on March 5, 1970, and I am 36 years old.
3. I am in a permanent committed relationship of 9 years with Chuck Swaggerty, who also has provided an affidavit.
4. We live together in Sioux City, Iowa.
5. I was born in St. Luke's hospital in Sioux City, and have lived here my whole life. I attended North High School and Western Iowa Technical Community College in Sioux City, where I studied electronic communications. I worked for Gateway for 14 years, but was laid off when jobs there were outsourced. On May 22, 2005, I found a new job as an agent for a bank.
6. I knew from a very young age that there was something different about me – that I was gay – and I struggled with this knowledge for many years. At age 12, I became a Jehovah's Witness, hoping that God could change who I was and eliminate the same-sex attractions I experienced. I tried to date girls as a teenager and I dated a fellow Jehovah's Witness for a number of years. At age nineteen, we talked more and more about marriage. I had to face the reality that if I married this young lady I would be living a lie, and might ruin her life because I couldn't love her in the way that she deserved. We broke up and I lived a celibate life as a Jehovah's Witness for several years.
7. While I was attending college, I took an English class in which I was asked to write an essay on something controversial. I chose to write about homosexuality and began doing library research about it. I came to understand that there was nothing

wrong with being gay or with me in particular. I now believe that God loves gay people. God created gay people. God would rather have me be honest and live an honest life than live a lie.

8. Even after this realization, I remained celibate for a few years, which was a very difficult time for me. Thus, I know firsthand that being gay is not about whom you have sex with. It's about who you *are* inside.

9. Eventually, I met Chuck in 1997 and we decided to make a life together. He lived in Waterloo at the time. We commuted for the relationship and visited each other every weekend until Chuck moved to Sioux City to be with me in late 1997.

10. Faith has always played a central part in my life and it continues to do so today. Chuck and I both have been baptized as Episcopalians. We regularly attend St. Thomas Episcopal Church.

11. For the past four years, Chuck and I have lived in a historic two-story house built in 1914, which is our pride and joy. One of our hobbies is to go to auctions to try to find beautiful antiques, and we've also been restoring the house gradually ourselves. We redid the hardwood floors on the first floor, glazed all the windows, repaired rotten wood, fixed the underhangs, brought the wiring up to code, and did a lot of landscaping. Our family and friends helped us paint it. All of our neighbors know that we're a gay couple, and they have been supportive of us. Many of the ladies in our neighborhood have given us cuttings and flowers from their own gardens, and one neighbor gave us his ornamental rocks when he replaced the borders in his garden. Lots of people have complimented us on our house. It used to be the worst house in the

neighborhood and it's now among the nicest. If we could get married, we would hold our wedding in our house surrounded by our close friends.

12. I love Chuck, and I feel married to him. But because we can't legally marry, our relationship does not receive the respect it deserves. Married people don't experience any awkwardness when they refer to their partners. I don't always feel like explaining what a "domestic partner" is when I talk about Chuck with acquaintances, and "boyfriend" sounds juvenile. It doesn't conjure up the appropriate importance of Chuck in my life. It would be so much easier if I could just say "spouse."

13. I was still within the 90-day probationary period at my new job at a bank when Chuck's mother passed away. She lived in Manitowoc, Wisconsin, which is a 10-hour drive away. I did not know if my employer would recognize Chuck and his mother as part of my family and give me bereavement leave, but I knew I had to attend the funeral and be there for Chuck. I called my employer's answering service immediately to request leave two days before we had to leave for the funeral. I also left a message with my manager. When we finally arrived in Manitowoc, I left a third message. No one ever called back. It was devastating to go through the funeral wondering whether I would still have a job when we returned home.

14. On my first day back at work, I walked into the human resources department to ask whether I still had a job, and what the bereavement policy was. I brought a copy of the obituary for Chuck's mom that listed my name as a "survivor," describing me as Chuck's partner. The first human resources person I asked said she didn't know if I'd been fired, and got up to ask another staff person. I heard the second

one say, "I don't know. Forward his call to a manager." The first whispered, "He's sitting right there in my office."

15. When I approached a manager, I had to start by explaining that I'm gay and that Chuck is my partner. I said that I needed to be at his mother's funeral and I could not help getting tears in my eyes as I told her, "Chuck is an important person in my life. It may not be family to you, but it is to me." It was humiliating to have to go through this. Luckily this manager had met Chuck, and she told me, "You're not fired." She asked human resources staff to check into whether I would get bereavement leave.

16. I was not granted leave. Instead, when I got to work the next day, I found a note stuck to my computer screen from a different manager that said, "Jason, you can make up the hours you've missed – as many as you can. Otherwise, it's going to be unpaid." I left Chuck alone and worked that weekend to make up as much time as I could, but because the pay period ended on Saturday, I wasn't able to make up all the hours I had missed. Instead of excused time off to spend with my partner who was mourning the loss of his mother, I received lost pay and an "occurrence," which is a disciplinary mark on my employment record.

17. Although I was recognized as being one of the top 13 performers at my bank, in a review at the end of my probationary period I learned that the "occurrence" was still on my record. It was my only absence. I told my manager that I thought this was wrong. She said that she would "not count" the occurrence, but I do not know if it remains on my record. If employees receive more than one occurrence they can be fired.

18. Chuck and I aren't wealthy; we're just getting by. However, my commitment to Chuck at this difficult time was most important to me. That's what lifetime commitment means.

19. It was insulting to my relationship that I ended up with a disciplinary mark on my record when a married person would have been able to take bereavement leave, and would not have had to explain a thing. It hurt that our relationship had to be explained and still was not seen as having the same validity as married employees' relationships.

20. As an agent for a bank, when I am having a conversation with a cardholder who tells me that he or she has lost a loved one, my employer directs me to drop the script and immediately offer condolences on behalf of the bank and myself. No one at the bank offered condolences to me. It took a lot of explaining about our family and tears in my eyes for anyone to say anything remotely sympathetic. But as hurt as I was, I never believed that the problem was my particular bank. The problem was that society teaches people not to treat our relationship equally.

21. Chuck and I are jointly licensed as foster parents, and we now have two wonderful foster children in our home that we are ready and eager to adopt. Our life is hectic with two babies in diapers and we are not getting as much sleep as we used to, but for us, having two babies is twice the blessing and we feel lucky that God put these two little souls into our lives.

22. Our neighbors have responded just as warmly to our new role as foster parents as they did to us initially when we moved in. One neighbor gave us lots of hand-me-down toys from her own grade-school boys. Other neighbors, who are seniors with

grandchildren, hugged Chuck before saying, "I think it's wonderful what you're doing." They told us that they knew we would give the children a great life, and said that they would pray for us that the adoption goes well.

23. Having children in our home with the intent to adopt has helped us see more than ever how important formalizing our relationship is, not only to ourselves, but also to the children. Being unable to secure our relationship with marriage is not only unfair to us, it hurts them, too. Chuck and I believe in marriage and family, and we show this by the way we live our lives and by how we take care of the children in our home. It is unfair that we cannot take the step that we believe is most important to protect our family.

24. Chuck and I would like to perform a joint adoption of our two foster children. We know that numerous other gay and lesbian couples in Iowa have performed joint adoptions. However, several local Department of Human Services employees have made it clear to us that they will not approve a joint adoption. Instead, they will let only one of us adopt the children; we will have to choose who should be the legal parent and hope we later can secure a second-parent adoption without any disruptions in the meantime.

25. It makes most sense for Chuck to adopt first, since he is the stay-at-home parent to our two foster children and therefore most likely to handle the children's medical emergencies, school enrollment, and other matters in which being their recognized legal parent is tremendously important. He frequently takes them to the doctor as one of them has significant health issues and recently had surgery. However, while they are solely Chuck's legal children, they could not be covered by my employer's

health insurance. We can't afford to buy separate health insurance policies for them, and therefore I may have to adopt the children out of foster care to provide them insurance. At best, it will be many months before we can have a second parent adoption done to secure Chuck's relationship with the children, and they will be vulnerable in the interim. It also will be far more expensive to do two adoptions than one joint adoption. If we were able to marry, we wouldn't have to worry about these things because we could perform a joint adoption, and I would be able to put my family on my health insurance plan.

26. Parents who are fostering to adopt have a million worries. We prepare the children for unsupervised visits with the birth parent and worry that something might happen to them while they're out of our sight. We worry about what lies in the future for them if they are returned permanently to their birth parent and how we will feel now that we have come to love them so much. As a same-sex couple, we also have to deal with additional worries about how to care for Chuck if he gets sick and how to cobble together as many protections for the children as we can without marriage. This is highly stressful.

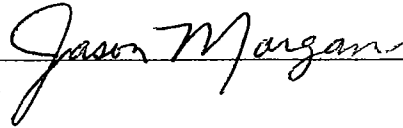
27. Chuck and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Tuesday, November 29, 2005, Chuck and I went to the Office of the Polk County Registrar, along with our witness, Linda Wideman, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. We asked to submit an application for a marriage license. A clerk named Tori refused to accept our application,

telling us that marriage is exclusively between a man and a woman in the Iowa Code.

She said that she could not accept our application because we are a same-sex couple.

28. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.

Jason Morgan



Sworn to before me this
27 day of December, 2006

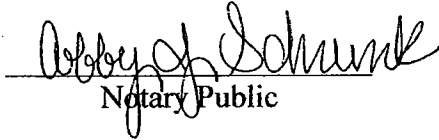
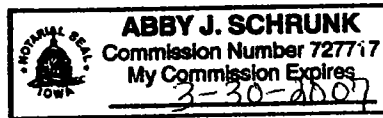

Notary Public

EXHIBIT 6



Chuck Swaggerty and Jason Morgan

Affidavit of CHARLES SWAGGERTY

AFFIDAVIT OF CHUCK SWAGGERTY

Chuck Swaggerty, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on July 25, 1972, and I am 34 years old.
3. I am in a permanent committed relationship with Jason Morgan, who also has provided an affidavit. I will avoid repeating what Jason said.
4. I was born in Manitowoc, Wisconsin and grew up there and in Waterloo, Iowa, moving back and forth frequently. I got my G.E.D. from Hawkeye Community College in 1992.
5. I've lived in Sioux City since 1997, when I moved here to live with Jason.
6. I worked at Gateway for 4 years in production and worked in Outbound Sales at MCI for over four years. I lost my job when MCI closed the call center. My last day was June 31, 2006. I've also bartended and worked in restaurants as a server in the past.
7. Jason and I are completely committed to each other and to our relationship.
8. About three years ago, MCI instituted domestic partner insurance benefits, which Jason received until I lost my job. Now Jason is able to get health insurance through his own employer but his employer does not offer insurance for domestic partners so I no longer have health insurance. Married couples we know usually can get spousal insurance and it feels very unfair that we are so vulnerable to a medical disaster because we are not permitted to marry. We hope and pray I don't get sick or have an accident because we cannot afford to buy separate insurance for me.

9. I am a stay-at-home foster dad (with the intent to adopt), and I am dedicated to Jason and the children. However, being together for 9 years and raising two children in our home together means nothing to some companies because we don't have a legal marriage. This experience has brought home to me how important marriage is and how unfairly we as a couple are treated compared to a married couple.

10. Jason and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Tuesday, November 29, 2005, Jason and I went to the Office of the Polk County Registrar, along with our witness, Linda Wideman, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. We asked to submit an application for a marriage license. A clerk named Tori refused to accept our application, telling us that marriage is exclusively between a man and a woman in the Iowa Code. She said that she could not accept our application because we are a same-sex couple.

11. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.

Charles Swaggerty
Chuck Swaggerty

Sworn to before me this
4 day of January, 2007

Abby J. Schrunk
Notary Public

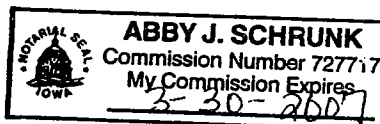


EXHIBIT 7



Larry Hoch and David Twombly

**Affidavit of
DAVID TWOMBLY**

AFFIDAVIT OF DAVID TWOMBLEY

David Twombley, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on April 11, 1941, in Osceola, Iowa, and am 65 years old.
3. I am in a permanent committed relationship with Larry Hoch, who also has provided an affidavit.
4. I attended school at Drake University and graduated in 1963 with a Bachelor of Music Education degree. I received my Master of Music Education degree from Drake in 1968. I taught music theory and performance in middle and high school for 37 years until I retired in 2000. I'm currently an adjunct clarinet instructor at Graceland University and a member of the Iowa High School Music Association for which I am an active music contest adjudicator and All-State Band auditor.
5. Larry and I are active in our respective churches. I belong to the Disciples of Christ Church, which has been quite supportive of my relationship with Larry. I am currently Co-Chairman of the Worship Committee at my church and have been asked to continue this position for the next year.
6. Larry and I enjoy many of our hobbies together. We both sing in a gay men's chorus. We're both interested in political matters, and Larry has a collection of about 5,000 presidential campaign buttons going all the way back to the election of 1840. Both of us were longtime Republicans until recently. I also am an avid marathon runner, although Larry does not join me in this particular hobby. I have run 21 marathons, including 3 "Bostons."
7. Larry and I are totally committed to each other and to our relationship. We have drafted wills that include each other, we have a joint checking account, and we've drawn up

health care powers of attorney. In 2001, on Easter Sunday morning at dawn, Larry and I exchanged rings and vows on a beach in Florida in our own private ceremony. On January 15, 2002, we went to Vermont and privately entered into a civil union in Bennington, a lovely place. I felt married to him then even though we understood that a civil union is not the same as a marriage. We haven't had any public ceremony yet because we want to do something religious and public with our friends and families present after we are able to get married.

8. Larry and I are feeling increasingly vulnerable as we get older. We don't have the protections that married couples have. I worry about whether we will be able to visit each other in the hospital if one of us gets sick. We have drawn up health care powers of attorney, but we fear that we may not have them with us in an emergency, or that they may not be respected. In January, 2004, Larry had surgery in a New York hospital and I flew there to be by his bedside. I was concerned about whether the hospital would even permit me to be with him, as well as worrying about his health condition. Luckily, the hospital staff and doctors treated us well, but next time we might not be as lucky.

9. I also worry about how to protect Larry if anything happens to me. If I die before Larry, he won't be able to receive benefits from my pension with the Iowa Public Employees Retirement System that would go automatically to a spouse.

10. Also disturbing to me is that, if one of us dies, the other won't have the right to claim the body or to make funeral or burial arrangements under Iowa law because Iowa law does not consider us "next of kin." We would have to rely on the kindness of each other's relatives who could disrespect our wishes or even bar the survivor from attending the funeral altogether if they wanted to.

11. I want to marry Larry because we love each other. I'm not trying to make a political statement; if I'd fallen in love with a woman it would be the same. We want to show everyone that we are committed to each other.

12. I have strong values, and marriage is one of those values. In my 37 years of teaching, I always have tried to set a strong example for my students. My parents did the same for me by demonstrating that marriage is part of a couple's commitment to each other. They married in 1926 and had a wonderful life together until my father passed away in 1973. My brother and I often have commented to each other on how fortunate we were that our parents' relationship was so strong and loving. My parents' marriage was a Norman Rockwell-type marriage, and it's what I always understood marriage to be and wanted for myself.

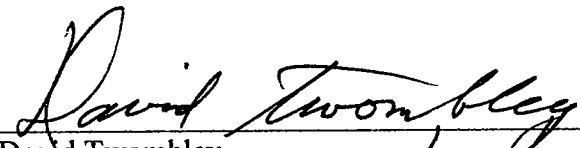
13. I've intuitively known since I was 5 years old that I was 'gay.' As I got older, I came to understand that to marry a woman would be a mistake, and unfair to both of us, as I could never be emotionally and physically attracted to a woman in the way a married heterosexual man would be to his wife. I was in eighth grade when my brother and sister-in-law got married. While I was very happy for my brother and his new wife, I remember being conscious of a great sense of loss that I myself could not marry.

14. I understand that marriage is not necessarily for everyone, but I think it is very important, both for me and for society. All my life I have suppressed the feeling of loss at being unable to marry someone I love. I feel an especially pronounced sense of longing when we attend other peoples' weddings. I would like to be a role model for marriage as my parents were for me.


15. Marriage would give Larry and me a sense of completion. It would let us know that our relationship belongs. I couldn't love Larry any more than I do now, but marriage would be a recognition of our commitment, and we no longer would feel "less than" everyone else.

16. Larry and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Tuesday, November 29, 2005, Larry and I went to the Office of the Polk County Registrar, along with our witness, Carol Leach, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. We asked to submit an application to marry each other. Two clerks, named Sue and Ron, refused to accept our application, and told us that doing so would violate Iowa law.

17. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.


David Twombly 12/29/06

Sworn to before me this
28 day of December, 2006


Notary Public

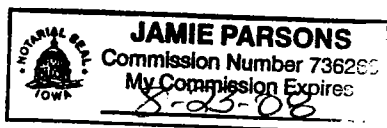


EXHIBIT 8



Larry Hoch and David Twombly

**Affidavit of
LAWRENCE HOCH**

AFFIDAVIT OF LAWRENCE HOCH

Lawrence Hoch, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on August 8, 1942, and I am 64 years old.
3. I am in a permanent committed relationship of over five years with David Twombly, who has also provided an affidavit. I will try not to repeat the things he has said.
4. I moved to Iowa in 2004 in order to live with David. We live in Urbandale, Iowa.
5. I graduated from Syracuse University in 1963. I taught high school students in New Hartford, New York for three years, and then taught middle school math for 32 years in Rockland County, New York, before retiring in 1999.
6. I am a member of Grace United Methodist Church in Des Moines, and I have been an active church member all of my life, having taught Sunday School for a total of thirty-seven years in several churches. This past spring I was one of three teachers of an adult Bible study that was sponsored by Grace Church.
7. Before I met David, I was married to a woman for about ten years, divorcing in 1994. I have two children from my previous marriage, a daughter who is 23 and a son who is 17. Neither one of my children is gay.
8. People who know about my previous marriage often ask if I knew I was gay before I got married. My answer is always "yes." I always have been attracted to men rather than to women, and aware of my sexual orientation, but for much of my life I was uncomfortable with my identity and still harbored hopes that I could change who I was. I feared that I would be ostracized by family and friends if I came out, and that I would lose the job I loved as a junior high school teacher. In fact, my former wife and I discussed my attractions to men quite frankly

before we were married, but we decided to marry anyway in the hope that I could change, and I did my best to make the marriage work. Since our divorce, my former wife has been very supportive of my coming out and of my relationship with David.

9. I came out to others as gay in 2000. When I told my children in November of that year, my daughter simply hugged me and said, "Yeah, Dad, I kind of figured." My son did not have this same awareness. He has come to understand it better as he has grown older himself, but my inability to marry David is an impediment to full acceptance by him and others. If David and I were able to marry, I think that it would help my son to see that society treats us equally, and demands fairness to everyone, regardless of sex or sexual orientation or our choice of life partner. He needs to know that there is nothing "wrong" with his father. My being able to marry would help show that to him.

10. In the fall of 2000, I flew to California to tell my 89-year-old aunt and uncle in person that I am gay. My aunt responded simply, "Yes, we know. Your mother told me." Apparently, my late mother had known all along, and told my aunt that I was gay when I was about 17, but she had never mentioned it to me. I realized through this experience that my closest family members really didn't care what my sexual orientation was. They simply loved me unconditionally. We've been very blessed because I know it is different for many other gay people whose families reject them, and I lived with that fear for most of my life.

11. David and I met in 2000 through a discussion group on-line. Our decision to come out to our families was the opening for our meeting. David had come out to his older brother on August 18, 2000. I had come out to my own brother on August 8, 2000. We learned of this coincidence in the discussion group, and we shared our common perception that our respective brothers were having a hard time with the news. In fact, both brothers were simply

surprised and have since been supportive. David's brother is very close to both of us. He has three children, all of whom are accepting and consider me a part of the family.

12. After David and I had been chatting on-line for a few weeks, I called him and asked, "What would you think of my coming out to meet you?" I flew to see him. At the airport, we were both very nervous. But then he kissed me in the car and welcomed me to Iowa and the rest is history.

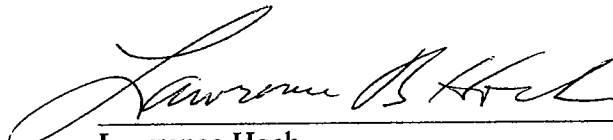
13. For the first few years that we were together we had a long-distance relationship. I wanted to remain near my son so that he would not think that I was leaving him behind for a new love. As my relationship with David endured and my son got older, he was better able to understand why I needed to make my life here with David, and I moved to Iowa. I visit my children often.

14. I want to marry David for emotional reasons. I've been married before, and I want to show people that I've finally gotten it right. After years of being closeted, marriage is a self-affirming thing for me.

15. David and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Tuesday, November 29, 2005, David and I went to the Office of the Polk County Registrar, along with our witness, Carol Leach, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. We asked to submit an application to marry each other. Two clerks,

named Sue and Ron, refused to accept our application, and told us that doing so would violate Iowa law.

16. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.


Lawrence Hoch

Sworn to before me this
28 day of December, 2006

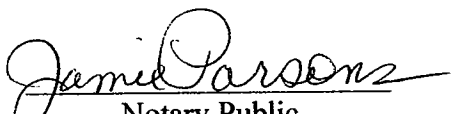

Notary Public



EXHIBIT 9



Bill Musser and Otter Dreaming

**Affidavit of
WILLIAM M. MUSSER**

AFFIDAVIT OF WILLIAM MUSSER

William Musser, having been duly sworn, states as follows:

1. I am one of the plaintiffs in this lawsuit.
2. I was born on March 10, 1958, and I am 48 years old. I am in a permanent committed relationship of over five years with Otter Dreaming, who also has provided an affidavit. We live just outside the town of Decorah in Winneshiek County, Iowa.
3. I was born and grew up on a farm near Spring Grove, Minnesota, where I attended public school. My family was active in a rural Lutheran church just across the border in Iowa, and my father and I worked together as custodians and groundskeepers of the church. I moved to Decorah over 25 years ago and I have lived here ever since, with the exception of time away in theological seminaries and graduate school.
4. I graduated from Luther College in Decorah in 1980 with a degree in religion and classical studies, and I received my master's degree in library and information science from the University of Iowa, Iowa City, in 2001. I spent much of my career as a librarian at Luther College. Over the last few years, I worked as a taxi driver for Hometown Taxi, a cab company that I co-owned, and I also have been a refugee service worker and a teacher of English as a second language.
5. I recently became the interim Director of Development at Vesterheim Norwegian-American Museum. My parents were Norwegian-American and I identify with my Norwegian heritage, food ways, folk art, and musical traditions. I have played the bass-fiddle in Foot-Notes, a Scandinavian old-time dance band, for 15 years. I was proud when in 1996, Iowa's sesquicentennial, the Smithsonian Institution selected our band to represent Iowa in performances on the National Mall as part of the Festival of American Folklife.

6. My faith journey has always been central to my life. I co-founded and have chaired the board of the Northeast Iowa Unitarian Universalist Fellowship. I was raised Lutheran and studied theology with a concentration in Hebrew Scripture at Luther Theological Seminary in St. Paul, Minnesota, from 1980 to 1981, at Wartburg Theological Seminary in Dubuque, Iowa, from 1987 to 1988, and at Augustana Hochschule, a theological seminary in Neuendettelsau, Germany, from 1988 to 1989.

7. I first met Otter in June of 2001 at an outdoor music concert at a café. I felt very comfortable with Otter from the beginning. I've never felt as at-home in previous relationships as I do with Otter. Otter and I have lived together for over four years now and we are very committed to each other. We are caretakers together of the property on which we live and we have a dog named Ginny, a cat named Claude, and several birds and fish.

8. Otter and I have intertwined our lives, both emotionally and as much as we can afford to do financially. We have a shared calendar and a joint bank account, and Otter is listed as the beneficiary on my retirement account.

9. Family is very important to me, and I am fortunate that my extended family has welcomed Otter into the family. Otter often spends holidays with my family, and performed some of his music at a family funeral and a family reunion.

10. Children have always been an important part of our lives, and Otter and I have always wanted children of our own. We plan to adopt someday and are jointly licensed as foster/adoptive parents. We were foster parents for a teenager until the child reached age 18, and we all remain in touch. We also have been foster parents for two infants. While they were with us, we arranged our schedules so that we could share child-care responsibilities, though Otter did more as I worked during the day. We took turns caring in all ways for the babies, feeding and

entertaining them, diapering and dressing them, preparing them for family visits, and getting up at night to give them bottles or console them when they cried. Until two months ago, when the second baby was reunited with his birth father, much of our time was spent engaged in childcare and child-centered activity.

11. Our community in Decorah is aware of and has been supportive of our relationship. Because I used to drive a taxi in Decorah, I transported a lot of senior citizens, people with disabilities, and others who couldn't or didn't want to drive. It's a small town, and by necessity I knew where and when my neighbors had their hair done, went to mass, did grocery shopping, had regular medical appointments, etc. They, in turn, knew a lot about my life. Otter and I would communicate over the taxi radio about scheduling, grocery lists, when I'd be coming home from work, what we'd like to eat for dinner, and other everyday details of our lives. Anyone could listen in on the taxi radio and hear about our relationship. (Listening in on the taxi bandwidth is actually a form of entertainment in Decorah.) My riders seemed very accepting and actually interested in keeping up with the latest "Otter and Bill" news. Otter and I have never felt rejected in our community. In fact, when my band and I have performed music at local dances, friends occasionally have made sure my part on a dance tune was covered and have practically pushed us together on the dance floor to enjoy a dance along with everyone else.

12. To me, civil marriage most powerfully symbolizes commitment, and commitment is all-important. Otter stands for all of the things that I value most in relationships – integrity, honesty, respect and idealism. We want to honor our commitment to each other through marriage, as others do. Through marrying we would like to model for any children we have and the other young people in our lives the seriousness and responsibility of a relationship.

13. In addition, as Otter and I get older, if we were able to marry there would be relief in knowing that in case of hospitalization or death or other major life events, we could be with each other, support each other and provide for each other. We want to be sure we can make important decisions for each other if one of us is incapacitated. Also, because we hope to adopt children, we want to marry so that we can perform a joint adoption more easily and protect our children properly. Being able to marry is essential both for our own security and for that of the future children we hope to have.

14. It's uncomfortable when people assume that my partner is female. People ask, "Are you married?" and I have to answer, "Sort of," or "Not legally," or "*I feel* as though I am." Our inability to marry feeds the problem of gay people being treated negatively by society. Being able to marry would give the message that our relationship merits the same respect and protection as other relationships.


15. Marriage also has economic benefits. Being unmarried, we need to go to a lawyer in order to draw up numerous documents to protect ourselves, such as wills and health care powers of attorney. If Otter were my spouse, my employer would offer him health insurance, but because we can't marry, Otter is uninsured. Legal documents and individual health insurance policies are expensive, and we have modest means. If we were married, we wouldn't have to worry about saving money to cover Otter's medical expenses or need to get an attorney to protect us in ways that would happen automatically. Additionally, if we had the option to file our tax returns jointly as a married couple, we could save money that we dearly need.

16. On March 28, 2002, we traveled to Vermont and formalized our relationship as much as we could by entering into a civil union. We celebrated our relationship by having parties for family and friends in both Iowa and Washington State, where Otter still has many

friends. Nearly 375 people attended our two celebrations. However, we understand that a civil union is not the same as a marriage. It has not been treated as such and our legal relationship to each other in Vermont is of uncertain validity at best here in Iowa. We need to marry in Iowa so that we know that we have a legal relationship to each other in our home community.

17. Otter and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On January 23, 2006, Otter and I went to the office of the Polk County Recorder, along with our witness, Deborah Wiley, who is over the age of 18, competent, disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. We asked to submit an application to marry each other. A clerk named Susan Minnick-Smith refused to accept our application because of what she described as the "gender-specific nature" of the Iowa Code.

18. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.


William M. Musser

Sworn to before me this
13th day of December, 2006


Notary Public

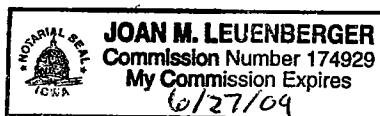


EXHIBIT 10



Bill Musser and Otter Dreaming

Affidavit of OTTER DREAMING

AFFIDAVIT OF OTTER DREAMING

Otter Dreaming, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born in Elgin, Iowa on April 12, 1957, and am 49 years old.
3. I am in a permanent committed relationship with Bill Musser, who also has provided an affidavit. I will try not to repeat the things he has said.
4. I was raised in Elgin and have lived in Decorah, Iowa for the last five years.
5. I attended school at Upper Iowa University, where I studied biology and chemistry. I currently am working as a church organist, piano teacher, and accompanist. In the past, I also have been a childcare provider for three children in addition to our foster children, and I have taught classes in English as a second language.
6. I came out to my family and friends in 1980. They accepted it at the time.
7. Bill and I met on June 28, 2001. I realized then that it was true love. That summer, I was working on a school project collecting prairie grass. We drove hundreds – probably thousands of miles together. I kept telling Bill he didn't have to come if he didn't want to, but we had so much fun. We really got to know each other that way.
8. I proposed to Bill while he was house sitting. I came to the house with candles and roses in the middle of the night after playing music for a relative's wedding. Bill was asleep when I arrived, so I asked him to marry me three times just to be sure that he was awake. He agreed. We cannot marry legally yet, but we had a commitment ceremony in 2002 that my family and friends attended.

9. I am completely committed to Bill. One day I would like for us to *be* in a wedding instead of just playing the music for one. When people say the word, "married," you know what it means. The two of you are a unit, and society recognizes you as such.

10. To ourselves and our friends, we are a married couple. We have dealt with childcare issues and done the juggling act like any other family. People in town understand that our "lifestyle" is simply a human lifestyle. But our inability to marry creates a context in which other people can continue to denigrate our relationship.

11. Bill and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On January 23, 2006, Bill and I went to the office of the Polk County Recorder, along with our witness, Deborah Wiley, who is over the age of 18, competent, disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. We asked to submit an application to marry each other. A clerk named Susan Minnick-Smith refused to accept our application because of what she described as the "gender-specific nature" of the Iowa Code.

12. I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.

Otter Dreaming
Otter Dreaming

Sworn to before me this 24th day of January, 2007

Joan M. Leuenberger
Notary Public

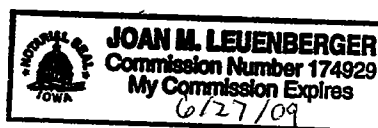
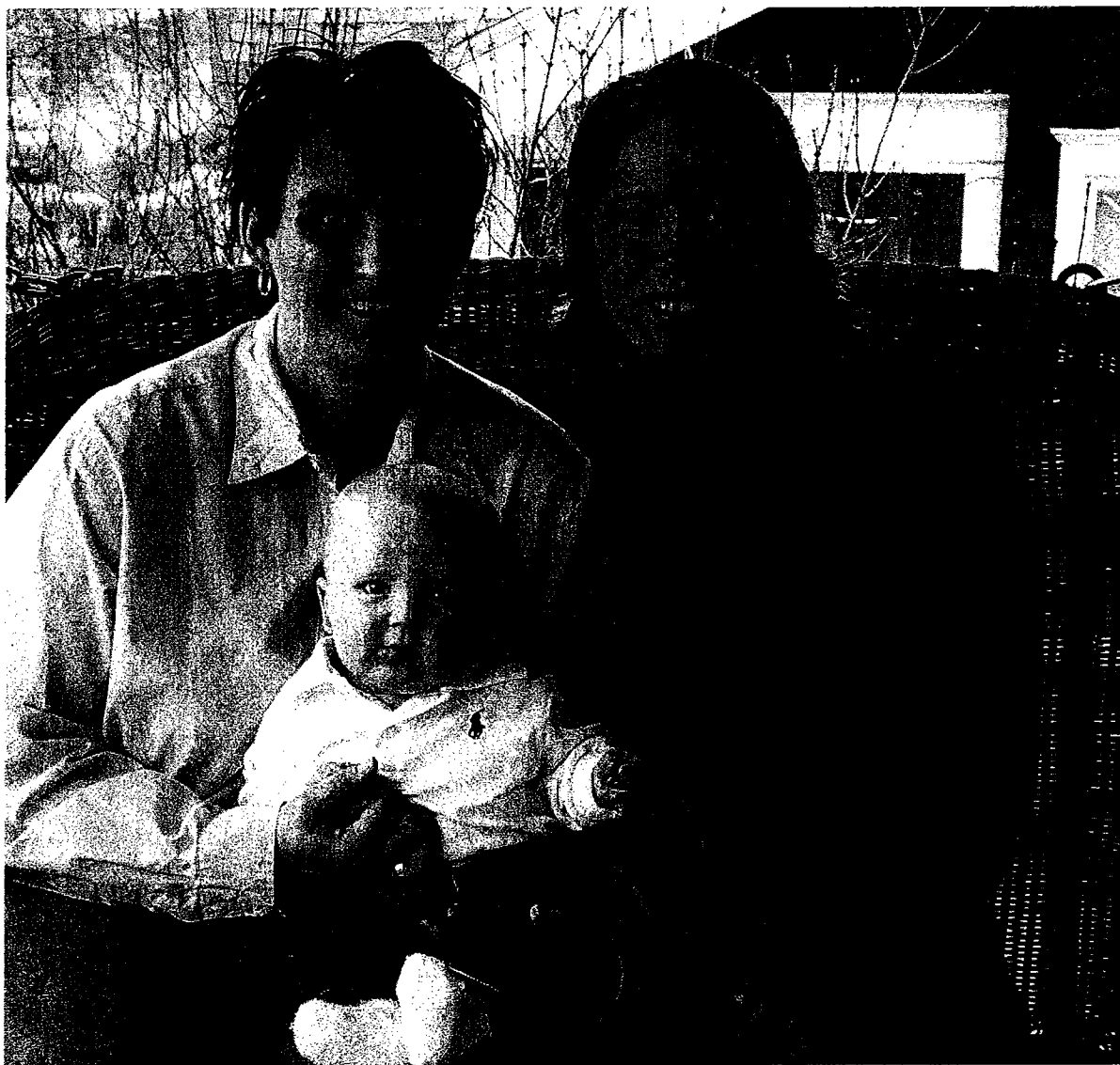


EXHIBIT 11



Reva Evans, Jamison Olson, and Ingrid Olson

Affidavit of INGRID OLSON

AFFIDAVIT OF INGRID OLSON

Ingrid Olson, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born May 19, 1978, and I am 28 years' old.
3. I am in a permanent committed relationship of nine years with Reva Evans, who also has provided an affidavit.

4. I was born in Cedar Rapids, Iowa, and I grew up on our family farm, which was located near Volga, Iowa. I cannot think of a better place to raise a family than an Iowa farm. Although there were hard times, like the farm crisis of the 1980's and my father's death, I cherish my memories of being an Iowa farm girl: pretending to help my dad drive the tractor, picking apples in our orchard, searching for arrowheads in our fields after spring tilling, playing cowboys and Indians in the woods with my siblings, mushroom hunting, and even weeding our garden. Growing up on our farm instilled in me the values of hard work and dedication to family.

5. I attended Central Community Schools in Elkader, Iowa, from kindergarten through high school. I have especially fond memories from high school. In addition to working and volunteering outside of school, I was active in school government, band, athletics and numerous other extracurricular activities. In my senior year, I was elected student body president. As president, I brought in speakers to address issues such as AIDS awareness and drunk driving. I also held numerous leadership positions with Saint Sebald Lutheran Church in Strawberry Point, Iowa.

6. After graduation, I attended Ellsworth Community College in Iowa Falls and later transferred to Drake University. I completed my B.A. in May, 2001. At Drake

I was a member of the political science and sociology honor societies. Since graduating, I have worked for a private college, in the insurance industry, and mostly recently as a government employee.

7. I met Reva at a New Year's Eve party in Waterloo in 1998. Reva and I moved in together in the fall of 2000 in Des Moines while I was attending Drake. In the fall of 2002, we moved to Council Bluffs. We currently live in a home Reva's family has owned since it was built in 1918.

8. Reva and I live a life of mutual respect and love. Our ability to communicate openly with each other is one of our greatest strengths. Reva is the most decent, positive human being I have ever met. She loves unconditionally, gives without expectation of getting anything back, and dedicates her life to serving others, helping anyone in need. From her I have learned the art of true forgiveness and how to cherish life. She has made me a better person and I am amazed by her love everyday.

9. One of the greatest blessings I have received from being with Reva is her family. I have never met another person who loves her family as much. And just as much as she adores her family, they adore her. Although I grew up with my own wonderful family, I now have an even greater appreciation of the importance of an extended family.

10. I believe there are people who are so perfectly matched that no one else can understand the marvel of their love. That is the love that Reva and I share; I could not have what I have with her with anyone else. My sister Kathleen recently remarked that I could not have found anyone, man or woman, better than Reva to share my life with.

11. On September 11, 2004, Reva and I held a commitment ceremony at the North Side Christian Church in Omaha, Nebraska, followed by a reception at Bayliss Park Hall in Council Bluffs. More than 200 people celebrated with us. Although I typically am worrisome and anxious in high-pressure situations, that day was the most peaceful day I can remember. We were surrounded by family and friends who came from every corner of Iowa, and from as far as Washington. That is the one day in my life so far that I wish I could live again and again. However, as wonderful as it was, Reva and I know that it didn't make us married.

12. Being able to marry each other is important both for our own self-respect, and for that of our children. Also very important to us are the legal protections for married parents and families that we can't access otherwise.

13. Reva and I have always talked about our desire to be mothers and our dream of raising children together. Since Reva is slightly older than I am, we decided that she would attempt to conceive first. The day that we knew Reva was pregnant was a day of joy -- and worry. We were elated that we would be parents, but also concerned for Reva's and our future child's well-being during the pregnancy and beyond. On top of the usual new-parent worries, we also were scared that we would encounter people who wouldn't recognize us as a family. We eventually told our families of the pregnancy over the holiday season and have felt fortunate to be supported by them as well as our friends, neighbors and co-workers.

14. Reva's and Jamison's health during pregnancy and birth, and how our family would be treated by health care providers, remained a great concern throughout 2006. We had no legal protection for my relationships with Jamison or Reva, and if

something had happened to Reva during the birth, there would have been nothing to ensure that I could speak for her or that I had the right even to take Jamison home. If Reva and I had been married, I would have been seen as Jamison's lawful parent regardless of whether I was biologically related to him. However, we did not have that security.

15. On Thursday, June 15, 2006, at 11:27 p.m. our dreams came true and Jamison C Profeda Olson was born. Thankfully, although there were complications and Jamison was delivered by C-section, Reva and Jamison ended up doing well and both remain healthy. We also were lucky that the staff across the border at Methodist Hospital in Omaha were respectful of our relationship throughout the stay, and referred to both of us as Jamison's mothers. I know that many gay and lesbian families aren't as fortunate.

16. At Jamison's birth, I experienced a spontaneous reaction that I had never felt before that I refer to as 'tears from my toes.' Upon hearing Jamison's first cry and seeing his face, I was overwhelmed with a feeling that will live deep within me forever and began crying tears of joy. Jamison is a miracle and a blessing.

17. Being a mother has been a rewarding and challenging experience. As all parents will tell you, I think Jamison is perfect. He already sleeps through the night, smiles, "talks," and has a wonderful disposition. It is amazing to see him develop into the person he is becoming, and his calm and laidback disposition is just like Reva's. He rarely ever cries. During the pregnancy I would sing "Baby Beluga" to Jamison, and even now if Jamison does start to cry or fuss, all I have to do to calm him is sing "Baby Beluga" and he stops.

18. We have adjusted our work and school schedules for Jamison. Reva only recently returned to work and I have taken the year off from my master's program. Jamison is in daycare for only a few hours each day. I pick him up at 4:15 and spend the evenings with him. I plan to return to school after Reva completes her master's degree this year.

19. Our experience of pregnancy, childbirth, and parenting parallels that of other couples and parents we know. Most of the fears, joys, and challenges of parents are universal; just as every other parent wants what is best for their child, we want what is best for Jamison. However, without marriage, unlike other parents, we are not able to provide Jamison the best life he deserves, and we cannot give him the rights and protections that all children need. As a married couple we would have fewer obstacles that could impede Jamison's future and his emotional and financial security.

20. I also know that if Reva and I were able to marry, people would be less likely to question that Jamison has two moms. I want to be able to look Jamison and our future children in the eyes and tell them that our family deserves as much respect as any other family.

21. We also need to marry in order to make sure that Reva will be able to make medical decisions on my behalf in the event of an illness or medical emergency. Reva knows my wishes and she is the one person on earth I would like to speak for me if I am not able to speak for myself. We recently signed durable power of attorney forms to try to ensure that in the event of a medical emergency we would be able to make the decisions we have agreed upon. However, even with these legal documents, we don't

have the safety that marriage brings – the ability to tell a hospital staff person, “She’s my spouse, and I’m the one she wants to make decisions for her.”

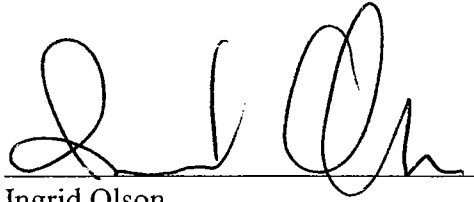
22. It is a terrible feeling to know the State of Iowa does not recognize our relationship and allow us to marry. I remain scared that someone may try to attack or challenge my relationship with Jamison someday, despite the legal adoption. Even though I know rationally that our adoption is supposed to be ironclad and that any such attack won’t be successful, I can’t help but think that I could be one of the lesbian or gay parents put in the position of having to defend my relationship with my own son. Also, I am deeply hurt that I had to go through the financially and emotionally draining process of adopting our very own baby despite our having planned jointly to bring Jamison into the world, and despite our being equal parents from the beginning.

23. Reva and I are not asking any church to recognize our devotion to each other; we know that some faiths celebrate marriages between gays and lesbians and others do not. In the eyes of our faith, we are already committed to each other. We are asking solely for the State of Iowa to treat us fairly and equally.

24. Reva and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Wednesday, November 30, 2005, Reva and I went to the Office of the Polk County Registrar, along with our witness, Gail K. Olson, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. A clerk refused to

accept our application or accept the fee we offered him. He stated that under the Iowa Code, marriage is exclusively between a man and a woman.

I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.



Ingrid Olson

Sworn to before me this
9 day of January, 2007


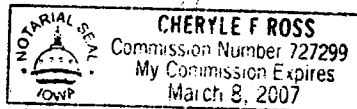
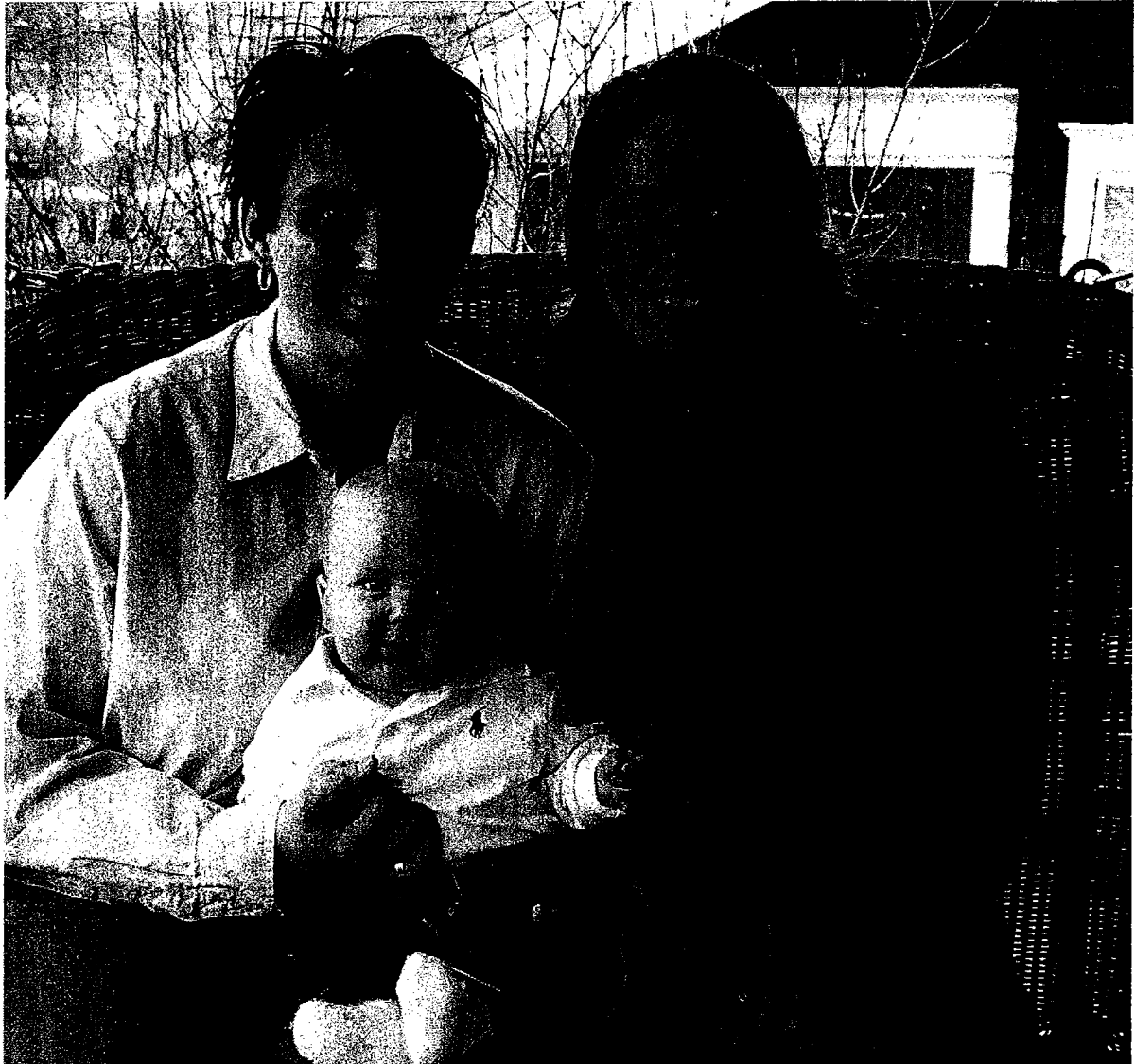

Notary Public

EXHIBIT 12



Reva Evans, Jamison Olson, and Ingrid Olson

Affidavit of REVA EVANS

AFFIDAVIT OF REVA EVANS

Reva Evans, having been duly sworn, states as follows:

1. I am one of the Plaintiffs in this lawsuit.
2. I was born on January 21, 1974 and I am 32 years' old.
3. I am in a permanent committed relationship of nine years with Ingrid Olson, who also has provided an affidavit. I will try not to repeat things she said in her affidavit.
4. I was born in Council Bluffs, Iowa, and spent the majority of my childhood in Lenox, a small town in southwest Iowa. I started pre-school in Lenox, and remained there until I proudly graduated from Lenox High School.
5. Growing up in small town Iowa was a wonderful experience. I was called home for meals by the noon and five o'clock whistles and could leave my bike out all night without a worry. I didn't have to leave the block to find my playmates for a summer day filled with all kinds of adventures. I had strong friendships and a huge support system of teachers, coaches, and my church. I participated in all kinds of activities, like sports, drama, student council, honor society and Future Homemakers of America. I always look forward to my visits to Lenox and will always have warm feelings of my childhood. I look forward to my children experiencing those same benefits of growing up in Iowa.
6. My closest friends and most of the community have embraced my life with Ingrid. When I came out to my high school friends we were already in college. My friends' only response was, "We knew that in high school!"

7. Three years ago I was fortunate to have the opportunity to “come home” to my grandparents’ house in Council Bluffs, where I now live. My Grandmother Reva called this house home for over 60 years. You can see my grandfather’s initials carved in the basement. Ingrid and I eat at the table my family gathered around every Christmas Eve for decades. Down the street is the house in which I spent the first three years of my life, and in the front yard is a tree my father planted for my mother as a present. I feel that I have been given an amazing gift to be able to share my past, first with Ingrid, and now with our son, as we plan for our future and dream about the life our family will share here.

8. My mother also has returned “home,” and now lives across the street from Ingrid and me. It has been comforting for both Ingrid and I to have mom across the street. I will be there if she needs me, and she is there when we need her.

9. Another great thing about returning to Council Bluffs is that I have been reunited with extended family. My father had eleven siblings and my mother had two sisters, most of whom still live in this area. I couldn’t ask for a more supportive, loving family as they all have embraced Ingrid as their own and surrounded us with an abundance of love. I cherish the times we share with my cousins, aunts, uncles, nephews, and niece, such as playing board games or having a barbeque. I know that I am blessed to have the family that I do.

10. I work as a therapist for adolescents who struggle with substance abuse issues. My colleagues are an incredible group of professionals whom I also consider my friends, and they always have supported my relationship with Ingrid. I also am a student

pursuing a master's degree in social work, and my classmates and professors have been supportive, too.

11. I feel as though meeting Ingrid was fate. I still to this day cannot explain why I ended up in Waterloo that New Years Eve, as I had spent the day in Lenox. Nevertheless, that afternoon I decided on the spur of the moment to make the almost five-hour drive to northeast Iowa to visit college friends. I have no way to explain it other than fate. That night was the beginning of endless phone conversations, countless movies, concerts and ISU women's basketball games, and the foundation of the most amazing eight years of my life.

12. My relationship with Ingrid has been life-altering. Ingrid has become my source of inspiration. She challenges me daily, and I am a better person because she is in my life. I honestly don't know where my life would be without her, but I do know that I would have missed out on some incredible experiences. Ingrid has the Iowa work ethic and loves to work hard and play hard. Her sense of humor and playful nature are part of why I fell in love with her. She loves to play practical jokes. She also has the greatest internal drive that I ever have personally witnessed. I know that no matter where we are in life, she will do everything humanly possible to protect our family. My love for Ingrid grows every day. I often imagine our children as adults with her strong determination and sense of humor.

13. Ingrid was the driving force in making this pregnancy happen. She spent hours looking for a donor who met our expectations in regards to family health history and personal characteristics, and studied the procedures that we would be using,

searching for the safest, most effective method. She was my source of support as we went through each step to conceive, keeping a positive attitude along the way.

14. Ingrid took great care of us during the pregnancy. She took over all household duties and made sure I was taking good care of myself and our future child. She prepared the house so that we could build an addition for a nursery. Ingrid talked, sang, and even read books to Jamison long before he was born. She was there for the doctor's appointments and ultrasounds and was so excited to see and hear the baby's heart beat.

15. I need marriage so that Ingrid and her relationships with Jamison and our future children will be protected if something happens to me. I also want Ingrid to be the one to make decisions for me and for our children if I cannot participate. Jamison's birth was a terrifying illustration of how vulnerable we are without marriage. Unexpectedly, I had to deliver Jamison by cesarean section. This surgery was extremely scary for several reasons. Legally, Ingrid had no parental rights, which jeopardized her ability to be with Jamison at all; though we later got an adoption order for her, it could not be in place for some time. Ingrid also had no legal right to make decisions about Jamison's care if I were incapacitated as a result of the surgery, and she could not legally make decisions in regards to my care. These are rights she would have had automatically if we were married.

16. Because I had undergone surgery I was not able to be with Jamison for the first four hours of his life. It was very important to me that Jamison be with his parents as much as possible from the beginning to begin the crucial bonding process. We were

lucky that the hospital staff allowed Ingrid to stay by his side until I was out of recovery and able to hold him, too.

17. Ingrid and Jamison have a special connection that is beautiful. I recently watched the video of Jamison's birth for the first time and witnessed the bond between them from the moment he was born. Each time Jamison started to cry, Ingrid soothed him with her touch and voice. During the tough days when I was recovering from surgery, Ingrid took over almost all parenting responsibilities so that I did not have to change his diaper or strain to give him a bath.

18. As soon as Ingrid and I heard Jamison cry for the first time, I saw in her eyes what I felt in my own heart and soul: pure unconditional love. I knew at that moment that we were going to love this beautiful boy, no matter what, for the rest of our lives. We are fortunate that Jamison is a healthy and happy baby, and I know that Ingrid's relationship with him contributes as much to his mental and physical well-being as my own relationship with him does. I truly believe that Jamison already understands that we are a family. He eats better, sleeps better and is more content when we are all together.

19. Because Ingrid's connection with Jamison was not legally acknowledged, we had no choice but to file for a formal adoption, which we were not able to do until several months after Jamison's birth. The adoption was expensive and took a substantial amount of time. We spent several thousand dollars to complete the home study and adoption, money that could have been saved for Jamison's future.

20. Trying to find an individual to complete the home study as well as a lawyer to represent us was disturbing. We were turned down several times by people who stated that they were uncomfortable “dealing with these types of situations.”

21. We had to let a stranger into our home and share personal information about our lives in order to prove that Ingrid deserved to be Jamison’s parent. From start to finish, the adoption process was emotionally invasive. It is so frustrating that we had to spend time, money, emotions and energy in order to obtain a piece of paper stating Ingrid is Jamison’s parent, even though she planned his birth alongside me and was the first one to see him, hold him, kiss him, bathe him and sing to him! While the adoption will always be a special day, it also conjures up bittersweet memories. I always will be resentful that we were not treated like other families. No matter how much love Ingrid had shown for Jamison, her relationships with him and with me were not honored by the State of Iowa in the same way a married person’s would be.

22. I often think about the questions Jamison may have for us in the future regarding why our family is treated differently. I know that Jamison will understand that he is loved by his two mothers and a large extended family, but I worry that he will be hurt by the message he receives from society that his family is not worth as much as other families. We can’t know for sure what impact our inequality will have on our son in the future, but we are certain that Jamison will be affected by it. When Jamison faces questions growing up about his family, it would be easier for him to explain, and easier for others to understand, if his parents had the right to marry.

23. It also saddens me to think about the amount of money we have had to spend because we cannot legally marry. For example, if Ingrid and I had been able to

marry, Jamison and I automatically would have been placed on Ingrid's insurance. Instead, we had to place Jamison on my own insurance, which was not as good, and which cost substantially more. In total, our inability to marry cost us approximately \$8500 in adoption and home study expenses and additional health insurance expenses for Jamison and me. We would have liked to save this money for Jamison's college fund, among other things.

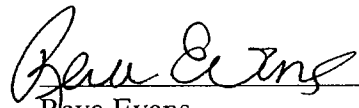
24. Every day, just as other parents do, we make decisions with hopes that Jamison's future will be bright. We searched for the right pediatrician and daycare that would enable him to thrive. We rearranged our schedules so that we can maximize the time that we are with him. But the State of Iowa treats us differently from other parents and makes caring for Jamison more difficult.

25. My childhood in Iowa taught me my values of commitment to my family, of working hard, and taking care of the people where I live. That is exactly what the right to marry means to me. As I think about my future with Ingrid, and now Jamison and possibly future children, I think about wanting to protect them. I cannot do that – I cannot follow through on my commitment to my family and take care of them, no matter how hard I work – without being able to marry Ingrid.

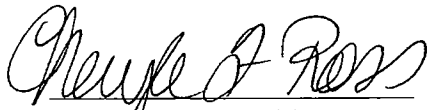
26. Ingrid and I are both over the age of 18, have the capacity to contract, are not within the degrees of consanguinity or affinity prohibited by law for a legal marriage, are not wards under a guardianship, and are not legally married to any other person. On Wednesday, November 30, 2005, Ingrid and I went to the Office of the Polk County Registrar, along with our witness, Gail K. Olson, who is over the age of 18, competent, and disinterested regarding the result of our marriage, and capable of attesting to our ages

and qualifications. We brought with us our identification documents and were prepared to tender the \$35 fee required to submit an application to marry. A clerk refused to accept our application or accept the fee we offered him. He stated that under the Iowa Code, marriage is exclusively between a man and a woman.

I hereby declare, under penalties of perjury, that the facts stated in this affidavit are personally known to me, and that they are true.


Reva Evans

Sworn to before me this
15 day of January, 2007


Notary Public

