

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

KATHERINE VARNUM, PATRICIA HYDE)
VARNUM; DAWN BARBOUROSKE and)
JENNIFER BARBOUROSKE, individually)
and as next friends of MCKINLEY and)
BREEANNA BARBOUROSKE, minor)
children; JASON MORGAN, CHARLES)
SWAGGERTY; DAVID TWOMBLEY,)
LAWRENCE HOCH; WILLIAM M.)
MUSSER, OTTER DREAMING; INGRID)
OLSON, and REVA EVANS, individually,)
and as next friend of JAMISON OLSON, a)
minor child,)

Plaintiffs,)

v.)

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

Defendant.)

CASE NO. CV5965

**AMENDED PETITION FOR
DECLARATORY JUDGMENT AND
SUPPLEMENTAL INJUNCTIVE AND
MANDAMUS RELIEF**

Plaintiffs, for their Petition against the Defendant, allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are twelve lesbian and gay Iowans who comprise six committed, same-sex couples (“adult plaintiffs” or “plaintiff couples”), and three of their children (“child plaintiffs” or “plaintiff children”). Plaintiffs bring this action to challenge the Defendant’s discriminatory denial to each of the plaintiff couples of a license to marry and of the right to marry in the State of Iowa (“the State”) solely because the members of each of the plaintiff couples are of the same sex. Each of the adult plaintiffs seeks to enter into the legal institution of marriage with his or her respective partner and thereby assume the responsibilities and obtain the protections of the myriad obligations and benefits conferred upon them and their families by the

civil contract of marriage under Iowa law. The child plaintiffs seek the dignity, legitimacy, protections, benefits, support and security conferred on children whose parents are permitted to marry. The denial of the right to marry to the plaintiff couples on terms and conditions equal to those afforded to heterosexual, different-sex couples violates all plaintiffs' rights under the Iowa Constitution.

2. The right to marry the unique person of one's choice and to direct the course of one's life in this intimate realm without undue government restriction is one of the fundamental liberty interests protected for all by the Due Process Clause of the Iowa Constitution, Art. I, § 9. The exclusion of the plaintiff couples and other same-sex couples from legal marriage violates their fundamental rights under this provision of the Iowa Constitution.

3. The right to equal protection of the laws guaranteed to all under the Iowa Constitution, Art. I, §§ 1 and 6, also is denied all plaintiffs by the State's discriminatory marriage scheme. It leaves the adult plaintiffs and all other same-sex couples without access to this unique and extraordinarily significant legal and social institution and thereby renders them second-class citizens. Likewise, plaintiff children, like other children of same-sex parents, are denied equal access to the dignity, legitimacy, protections, benefits, support and security conferred on the children of married parents.

4. Plaintiffs seek a declaratory judgment recognizing and respecting the right of the plaintiff couples to marry their partners as a matter of due process and equal protection under the Iowa Constitution and the right of the plaintiff children to liberty and equality conferred on other Iowa children, as well as an injunction and mandamus relief requiring Defendant to grant the plaintiff couples access to marriage licenses and civil marriage on the same terms and conditions as different-sex couples.

PARTIES

5. Plaintiffs KATHERINE VARNUM (“KATE”), age 32, and PATRICIA HYDE VARNUM (“TRISH”), age 41, are a lesbian couple residing in Cedar Rapids, Linn County, Iowa. KATE’s father’s family includes Iowa farmers going back three generations or more. KATE, like her mother, was raised in Cedar Rapids from age 2, six blocks from where KATE now lives with TRISH. TRISH was born and raised in Lubbock, Texas and moved to Iowa in 1998. KATE works as a database manager for directory assistance at a telephone company, and TRISH is a training specialist at an insurance company. KATE and TRISH, who are practicing Episcopalians, have been together as a same-sex couple in a loving, committed relationship for five and a half years. They are close to their families and had a commitment ceremony with 120 friends and family in 2004, at which KATE’s father gave 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.’” KATE and TRISH intend to become parents and TRISH legally changed her last name to Hyde Varnum to mark their commitment as a family. Because of a health condition, KATE cannot become pregnant and the couple wishes to marry in Iowa in part to protect both of their future parent-child relationships as well as to protect the children they hope to raise together. KATE has had to disclose her marital status on medical forms; she does not consider herself “single” and yet cannot legally check “married” and finds it difficult without marriage to convey to others the importance of TRISH in her life.

6. Plaintiffs JENNIFER BARBOUROSKE (“JEN”), age 36, and DAWN BARBOUROSKE (“DAWN”), age 38, are a lesbian couple residing in Iowa City, Johnson County, Iowa. JEN is a registered nurse and a nursing supervisor, and DAWN is a substitute elementary school teacher. JEN and DAWN met in Grinnell, Iowa in 1990 and have been together as a same-sex couple in a loving, committed relationship for almost 16 years. Their last

name, BarbouRoske, melds their respective former last names. JEN and DAWN are the legal parents of two daughters, MCKINLEY and BREEANNA, for whom JEN and DAWN equally provide childcare. JEN and DAWN are Girl Scout leaders and also started Proud Families, a playgroup for children of gay and lesbian parents. JEN and DAWN jointly adopted BREEANNA through the foster care system in Iowa. JEN and DAWN lived for a brief period in California, where MCKINLEY was born to JEN eight weeks premature and had to be in neonatal intensive care for 24 days. Both DAWN and JEN watched over her, but worried whether DAWN's parental rights would be recognized before an expensive adoption in California sometime later. In addition, JEN has a heart condition and, upon an emergency room visit, DAWN was told by a desk clerk that she could not be with JEN. Experiences like these brought home the hardships JEN, DAWN and their children face from DAWN and JEN being unable to express their commitment to one another through marriage and have led JEN and DAWN to pay for alternate, but still inadequate protections such as powers of attorney for health care and MCKINLEY's costly adoption. They must remember to carry important legal documents wherever they go. JEN and DAWN are concerned about the practical and dignitary harms they and their children suffer or may suffer in the future from JEN and DAWN being denied the right to marry. JEN and DAWN, who had a private commitment ceremony in 1990 and are registered domestic partners in Iowa City, wish to marry in Iowa.

7. Plaintiffs MCKINLEY BARBOUROSKE ("MCKINLEY"), age 8, and BREEANNA BARBOUROSKE ("BREEANNA"), age 4, sue through their parents and next friends JEN and DAWN BARBOUROSKE. JEN and DAWN bring this action on behalf of MCKINLEY and BREANNA because MCKINLEY and BREANNA are harmed by their parents' inability legally to marry. Because the State does not allow JEN and DAWN to marry, MCKINLEY and BREANNA do not have the benefit of the rights, obligations, cost savings and

benefits conferred on married parents under Iowa law, nor of the rights and status conferred on children of married parents by Iowa law, that help and provide security to other Iowa children in good times and bad. For example, JEN and DAWN would have preferred to but were unable to invest the thousands of dollars they had to pay in adoption-related legal fees and expenses to secure DAWN's parent-child relationship with MCKINLEY toward MCKINLEY's and BREEANNA's future education instead; MCKINLEY and BREEANNA are harmed by they and their parents not having had access to laws that establish and protect the parentage of children of married couples. MCKINLEY and BREEANNA also face a loss of dignity and legitimacy, in their own eyes, the eyes of many others and under law, from their parents not having the freedom to marry one another. For example, upon learning that her parents could not marry, even at an early age MCKINLEY was shocked and started to cry, exclaiming "You're not married?" JEN and DAWN fear that MCKINLEY and BREEANNA will internalize the message that they receive from their government that their family is not as worthy as other families, and that they and their parents do not deserve the support for their relationships to each other that other children and their parents receive.

8. Plaintiffs DAVID TWOMBLEY ("DAVID"), age 65, and LAWRENCE HOCH ("LARRY"), age 64, are a gay couple residing in Urbandale, Polk County, Iowa. Both men are retired schoolteachers and together they have a combined 72 years of teaching. They feel increasingly vulnerable as unmarried partners as they get older, worrying about things like respectful treatment in medical emergencies, and whether LARRY will lose the benefit of DAVID's State pension should DAVID die first. Their many hobbies include an extensive collection of presidential campaign buttons dating back to 1840. DAVID has stayed active in music education and organizations such as the Iowa High School Music Association and he and LARRY sing in a chorus. LARRY is an active member of the United Methodist Church.

DAVID is active in the Disciples of Christ Church, a member of the choir and co-chairperson of the Worship Committee. LARRY came out to his family as gay in 2000, though many family members knew long before he accepted that fact or told them. He has a 22-year-old daughter and a 16 year-old son from a previous marriage and believes that being able to marry DAVID would help others respect and accept their relationship instead of seeing something wrong with it. DAVID has known he was gay since at least 8th grade and always has had a great sense of loss and feeling of being worth “less than” others because of his lack of access to marriage. Marriage is a part of his value system about how couples demonstrate commitment and DAVID would like to marry LARRY to live out this value for himself and for others. DAVID and LARRY have been together as a same-sex couple for 5 years, obtained a civil union in a private ceremony in Vermont in 2002, and wish to marry in Iowa.

9. Plaintiffs JASON MORGAN (“JASON”), age 36, and CHARLES SWAGGERTY (“CHUCK”), age 34, are a gay couple residing in Sioux City, Woodbury County, Iowa. JASON was born in Sioux City, and has lived his entire life there. He attended community college there and now works as an agent at a bank. CHUCK was raised in Manitowoc, Wisconsin and Waterloo, Iowa and has a G.E.D. from Hawkeye Community College. CHUCK works in outbound sales at a telephone company. When JASON was temporarily unemployed, they relied on domestic partner coverage from CHUCK’s employer to cover JASON, but that insurance is not portable if CHUCK changes employers and may not always be available. JASON and CHUCK are Episcopalians and regularly attend church. The two men gradually have been restoring their home and yard with the help of neighbors who know and support them as a gay couple and have provided cuttings and other contributions. CHUCK’s mother recently died. Her funeral was in Manitowoc, Wisconsin and JASON made the ten-hour trip with CHUCK. Although JASON sought his employer’s advance permission to

miss work to attend the funeral, he received no reply to his request. Upon his return, rather than receiving bereavement leave given to spouses, JASON formally was disciplined and told that any time he could not make up over the following weekend would be unpaid. This is one of many ways their relationship does not receive the societal respect JASON feels it deserves, because they are not legal “spouses” but “domestic partners” or “boyfriends,” which he finds to be awkward and inadequate terms for their bond. JASON and CHUCK have been together as a same-sex couple in a loving, committed relationship for 9 years, and they wish to marry in Iowa.

10. Plaintiffs WILLIAM M. MUSSER (“BILL”), age 48, and OTTER DREAMING (“OTTER”), age 49, are a gay couple residing in rural Decorah, Winneshiek County, Iowa. OTTER was born and raised in Elgin, Iowa and attended Upper Iowa University. OTTER works as a church organist, piano teacher, accompanist and childcare provider. BILL, a Norwegian-American, grew up near the border in Spring Grove, Minnesota, attending church in Decorah. They cemented their relationship while driving thousands of miles together one summer collecting prairie grass for OTTER’s school project. After many years as a librarian, BILL recently changed careers for flexibility in anticipation of adopting children with OTTER. The couple believes that marriage will be important to securing their future family, modeling the seriousness and responsibility of their commitment to their children, and providing protections, support and security to those children. Now, when people ask BILL if he is married, he can only answer “Sort of” or “Not legally” or “*I feel as though I am.*” BILL now works as assistant to the executive director of Vesterheim Norwegian-American Museum, drives for a cab company he co-owns, and plays the bass fiddle in *Foot-Notes*, a Scandinavian old-time dance band that performs professionally, including representing Iowa at a Smithsonian folklife festival in 1996 on the National Mall. They currently have no health insurance and know that a shared family policy would be more affordable. BILL’s cab customers and the community in Decorah know

about and have been very accepting of his relationship with OTTER – even pushing them onto the dance floor together when other members of BILL’s band are performing. OTTER and BILL often spend holidays with BILL’s family who are accepting and welcoming of their relationship. BILL and OTTER 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, and wish to marry in Iowa.

11. Plaintiffs INGRID OLSON (“INGRID”), age 28, and REVA EVANS (“REVA”), age 32, are a lesbian couple residing in Council Bluffs, Pottawattamie County, Iowa who are raising an infant son JAMISON. They live in a home REVA’s family has owned since 1918, and eat at the table her family gathered around on Christmas Eve for decades. REVA’s mother lives across the street and the couple are very close to their families. Most of REVA’s parents’ thirteen siblings still live in the area, and REVA and INGRID are often at family barbeques or playing board games with numerous cousins, nieces and nephews. REVA was born in Council Bluffs, and raised largely in small town Lenox, Iowa, where she learned values of commitment to family, a strong work ethic, and taking care of others in the community. She is pursuing a master’s in social work degree and works as a therapist for adolescents struggling with substance abuse. INGRID was born in Cedar Rapids and raised on her family’s farm near Volga, Iowa, which they struggled to keep in the 1980’s. She was president of the student body in high school in Elkader, Iowa, and of the Luther League in Strawberry Point, Iowa. INGRID earned a B.A. from Drake University and works for the federal government. In 2004, the couple held a commitment ceremony at Northside Christian Church in Omaha, Nebraska, followed by a reception in Council Bluffs with 200 family and friends. While this day was very special and important to them, they realize that, without marriage, JAMISON and the additional children they hope to have in the future will have much less shelter, their relationship to each other will be less secure, and they will have to continue to cobble together as many partial measures as

possible to protect themselves and their family, such as wills and powers of attorney. These are costly, and they would prefer to put their limited funds toward JAMISON's education. INGRID and REVA have been together as a same-sex couple in a loving, committed relationship for almost 9 years and wish to marry in Iowa.

12. Plaintiff JAMISON OLSON, an infant, sues through his next friend and birth mother REVA EVANS. INGRID and REVA jointly planned to bring JAMISON into the world, jointly intended from before birth to parent JAMISON equally and to hold each other out in the community as his parents, and in fact do so. REVA gave birth to JAMISON after becoming pregnant through assisted insemination using an unknown donor. INGRID and REVA bring this action on behalf of JAMISON because JAMISON is harmed by INGRID's and REVA's inability legally to marry. Because the State does not allow INGRID and REVA to marry, JAMISON does not have the benefit of the rights, obligations, cost savings and benefits conferred on married parents under Iowa law, nor of the rights and status conferred on children of married parents by Iowa law, that help and provide security to other Iowa children in good times and bad. JAMISON is harmed by his, INGRID's and REVA's lack of access to laws that establish and protect the parentage of children of married couples. JAMISON also faces a loss of dignity and legitimacy, in his own eyes, the eyes of many others and under law, from INGRID and REVA not having the freedom to marry one another. INGRID and REVA fear that JAMISON will grow up internalizing the message he receives from his government that his family is not as worthy as other families, and that he and his parents do not deserve the support for their relationships to each other that other children and their parents receive.

13. Defendant TIMOTHY J. BRIEN is the POLK County Recorder and, by operation of Iowa Code § 144.9, the Polk County Registrar and is sued in these official capacities ("Defendant BRIEN"). As Polk County Recorder and Registrar, Defendant BRIEN is charged

with administering and enforcing sections of Iowa Code chapters 144 and 595, including furnishing and processing forms and applications for marriage licenses, accepting and denying applications for marriage licenses, and issuing, maintaining and forwarding Marriage Certificates to the State Registrar of Vital Statistics. Defendant BRIEN executes these duties from the Office of the Polk County Recorder office in Des Moines, Polk County, Iowa.

JURISDICTION AND VENUE

14. This is a suit for a declaratory judgment and supplemental relief pursuant to Iowa Rules of Civil Procedure 1.1101 and 1.1106. This Court has jurisdiction of this matter pursuant to Iowa Code § 602.6101 (2005).

15. Venue is proper in this district pursuant to Iowa Code § 616.3(2) because the acts complained of occurred within Polk County, Iowa.

OPERATIVE FACTS

16. The legal status of being married or unmarried, or of being the child or intended child of a couple who is married or unmarried, determines hundreds of rights, obligations and legal statuses under Iowa law.

17. Before a valid civil marriage can take place in Iowa, a couple must obtain a marriage license from a county registrar. Iowa Code § 595.3. To obtain a marriage license, a couple must sign and file a verified application with the county registrar and provide an affidavit from a disinterested witness as to their age and qualifications to marry. Iowa Code § 595.4. The couple must also pay a \$35 fee and present valid identification.

18. Chapter 595 of the Iowa Code sets forth the qualifications to marry in Iowa. Iowa Code § 595.2(1) provides that: “Only a marriage between a male and a female is valid.”

19. On or about the 2nd day of December, 2005, Plaintiffs KATE VARNUM and TRISH HYDE VARNUM (then known as Trish Hyde) appeared in person, accompanied by a

witness and prepared to tender the application fee and identification documents, at the office of the Polk County Recorder. KATE and TRISH asked to submit their application for a marriage license so that they could marry each other in the State of Iowa. Upon learning that KATE and TRISH are both women, an agent or employee of Defendant BRIEN refused to permit them to apply for a marriage license because of what were described as “gender specifications” in the Iowa Code.

20. On or about the 23rd day of November, 2005, Plaintiffs JEN BARBOUROSKE and DAWN BARBOUROSKE appeared in person, accompanied by a witness and prepared to tender the application fee and identification documents, at the office of the Polk County Recorder. JEN and DAWN asked to submit their application for a marriage license so that they could marry each other in the State of Iowa. An agent or employee of Defendant BRIEN told them that, under the Iowa Code, she could not accept their application to marry.

21. On or about the 29th day of November, 2005, Plaintiffs DAVID TWOMBLEY and LARRY HOCH appeared in person, accompanied by a witness and prepared to tender the application fee and identification documents, at the office of the Polk County Recorder. DAVID and LARRY asked to submit their application for a marriage license so that they could marry each other in the State of Iowa. At that time, an agent or employee of Defendant BRIEN refused to accept their application, stating that to do so would violate Iowa law.

22. On or about the 29th day of November, 2005, Plaintiffs JASON MORGAN and CHUCK SWAGGERTY appeared in person, accompanied by a witness and prepared to tender the application fee and identification documents, at the office of the Polk County Recorder. JASON and CHUCK asked to submit their application for a marriage license so that they could marry each other in the State of Iowa. At that time, an agent or employee of Defendant BRIEN refused to accept their application on the ground that people of the same sex legally cannot marry

in the State of Iowa.

23. On or about the 23rd day of January, 2006, Plaintiffs BILL MUSSER and OTTER DREAMING appeared in person, accompanied by a witness and prepared to tender the application fee and identification documents, at the office of the Polk County Recorder. BILL and OTTER asked to submit their application for a marriage license so that they could marry each other in the State of Iowa. At that time, an agent or employee of Defendant BRIEN refused to accept their application because of what the agent or employee described as the “gender-specific nature” of the Iowa Code.

24. On or about the 30th day of November, 2005, Plaintiffs INGRID OLSON and REVA EVANS appeared in person, accompanied by a witness and prepared to tender the application fee and identification documents, at the office of the Polk County Recorder. INGRID and REVA asked to submit their application for a marriage license so that they could marry each other in the State of Iowa. An agent or employee of Defendant BRIEN refused to accept their application, stating that, under the Iowa Code, marriage is exclusively between a man and a woman.

25. Each adult plaintiff legally is capable of marriage and meets every requirement of Iowa Code chapter 595, except for the different-sex requirement of the Iowa Code.

26. Defendant BRIEN and his agents and employees denied the plaintiff couples the opportunity to apply for and obtain marriage licenses solely because each adult plaintiff wished to marry a partner of the same sex.

The Harms of Iowa’s Marital Discrimination

27. Plaintiffs and their families are harmed in numerous respects by the exclusion of same-sex couples from the right to marry in Iowa.

28. The marital exclusion, privileging as it does the relationships of different-sex

partners, penalizes the adult plaintiffs' self-determination in the most intimate sphere of their lives. It does so even though, as lesbians and gay men, the adult plaintiffs are innately drawn to form intimate relationships with same-sex partners, and, as human beings, they largely cannot help with whom they fall in love.

29. The marital exclusion penalizes the plaintiff children and harms their well-being by denying them the dignity, legitimacy, rights, benefits, support, security and obligations conferred on children whose parents are married. The plaintiff children and their parents must combat the common assumption, reinforced by Iowa law, that as members of a family headed by an unmarried couple their bonds are impermanent, insubstantial and unworthy of equal dignity and legitimacy because the couple has not made a marital commitment and taken on the obligations of marriage. The plaintiff couples cannot invoke their status as married in order to communicate to the plaintiff children and others the depth and permanence of the plaintiff couples' commitment in terms that society, and even young children, readily understand and respect. The plaintiff children are left to grow up with the message that their parents and families are inferior to others and that they and their parents do not deserve the same societal recognition and support. They are also less legally secure and economically well off than children whose parents may marry, including because of expenses incurred in attempting to create legal protections that approximate some of those that are automatic through marriage and because their families are denied the strengthening effect that marriage can provide to their parent's relationships.

30. The adult plaintiffs are prohibited from exercising their right to enter the highly respected institution of marriage, and the child plaintiffs are prevented from having married parents. Marriage plays a unique and central social, legal and economic role in American society. Indeed, marriage is so integrally entwined in the relationships among the State, its

citizens, and society that the words “husband,” “wife,” “spouse,” or some form of the words “marriage” or “marry” appear in more than 540 sections of the Iowa Code, the Iowa Administrative Code, and the Iowa Court Rules.

31. Plaintiffs also are excluded from a broad array of statutory protections, benefits, and mutual responsibilities afforded under Iowa State and local laws exclusively to married persons and their families. Plaintiffs are denied protections relating to the incapacitation or death of a spouse, support for family finances, and other public and private safety nets and responsibilities attaching to marriage, including the following:

(a) Plaintiffs are denied protections afforded married families upon the death of one member of the couple, such as intestacy rights permitting the surviving spouse/parent to inherit automatically from the deceased spouse’s estate if there are no parents or issue; the ability of the surviving spouse/parent to elect the minimum one-third share of the deceased’s estate even if there is a will; the right of the surviving spouse/parent to an allowance or to occupy the homestead while the estate is being settled; the right of the surviving spouse/parent to file a wrongful death lawsuit when a spouse is killed, and presumptions benefiting spouses/parents in the absence of a designated beneficiary for death benefits and life insurance policies.

(b) Plaintiffs are denied protections resulting from the right of employee spouses/parents to file for or receive workers’ compensation death benefits, even though the adult plaintiff-employees pay insurance premiums for workers’ compensation benefits to provide protections to employees and their dependents if the employee is injured or killed on the job, and may pay precisely the same taxes and insurance premiums as their work colleagues.

(c) Plaintiffs are denied the financial safety net provided to spouses/parents

under numerous tax laws, including the right to file jointly to reduce tax liability, and tax benefits when transferring or inheriting interests in real and personal property.

(d) Plaintiffs may be denied family health insurance coverage and the adult plaintiffs/parents may be denied continuation of coverage provided to spouses of deceased public employees;

(e) Plaintiffs may be denied the full benefit of dissolution laws that regulate the separation and divorce process, protect the rights of both spouses/parents and determine custody, visitation, support and other matters, some of which may be addressed, if at all, only in ad hoc processes for unmarried same-sex adults/parents;

(f) Adult plaintiffs are denied the automatic right to make health care decisions for a spouse when the spouse cannot, including the right to withhold or withdraw life-sustaining procedures and the right to donate a spouse's organs and tissues;

(g) Adult plaintiffs are denied the automatic right to make burial decisions and other decisions concerning the disposition and handling of remains of deceased spouses;

(h) Because many private parties rely upon the State's definition of a "spouse," plaintiffs also suffer deprivation of many privately conferred benefits and protections, such as from employers, banks, and insurers, and further suffer from lack of appropriate recognition and respect for their families in their neighborhoods, workplaces, schools, and in other areas of their everyday lives.

32. By denying the plaintiff couples access to marriage in Iowa, Defendant BRIEN forbids the plaintiff couples from making the legal commitment to one another that marriage entails, placing plaintiffs, their relationships, and families in a secondary class in the eyes of society and the State.

COUNT I

DENIAL OF DUE PROCESS: GOVERNMENTAL INTERFERENCE WITH THE FUNDAMENTAL RIGHT TO MARRY AND TO FAMILY INTEGRITY

33. Plaintiffs hereby incorporate the allegations of all previous paragraphs as though those allegations were fully set forth herein.

34. Iowa's Due Process Clause, Article I, § 9 of the Iowa Constitution, provides that "no person shall be deprived of life, liberty, or property, without due process of law." Among the personal interests protected by the Iowa State Constitution's due process clause is the right to privacy, which includes one's right to make intimate choices of a deeply personal nature, including whether and whom to marry, without undue government restriction.

35. Because of Defendant BRIEN's enforcement of the State's prohibition on marriages between persons of the same sex under Iowa Code § 595.2(1), adult plaintiffs have been denied the fundamental right to marry, and have been denied due process of law in violation of Article I, § 9 of the Iowa Constitution.

36. The State's laws governing marriage preclude two individuals of the same sex from exercising the fundamental right to marry each other, interfering with a core, life-altering personal choice.

37. The State's laws governing marriage preclude the plaintiff couples, other same-sex couples, the child plaintiffs, and other children of parents of the same sex who wish to marry but are denied that fundamental right from obtaining full liberty, dignity, integrity, autonomy and security for themselves, their family and their parent-child bonds.

COUNT II

DENIAL OF EQUAL PROTECTION: GOVERNMENTAL DISCRIMINATION IN ACCESS TO MARRIAGE

38. Plaintiffs hereby incorporate the allegations of all previous paragraphs as though those allegations were fully set forth herein.

39. Iowa's Constitution contains two central guarantees of equality. Iowa's Inalienable Rights Clause, Article I, § 1 of the Iowa Constitution, provides: "All men and women are, by nature, free and equal, and have certain inalienable rights – among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness." Iowa's Equal Protection Clause, Article I, § 6 of the Iowa Constitution, provides: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."

40. Defendant BRIEN's enforcement of the State's marriage laws denies to plaintiffs the equal benefit of those laws and of the legal rights, privileges and immunities that the State grants to other citizens and classes of citizens.

41. The State's prohibition on marriages between persons of the same sex discriminates against individuals in same-sex relationships because they wish to marry a life partner of the same sex, allowing access to marriage only for different-sex couples.

42. The prohibition discriminates against the children of same-sex couples, denying these children the dignity, legitimacy, security, support and protections available to children whose parents are married.

43. Iowa marriage laws and laws based on marital status draw impermissible distinctions based on the adults' sex, and sexual orientation; impermissibly classify their children on the bases of their parents' sex, sexual orientation and marital status, and discriminate against

all plaintiffs in the enjoyment of equal liberties and equal exercise of fundamental rights, all in violation of the equal protection guarantees of the Iowa Constitution, Article I, §§ 1 and 6.

DECLARATORY JUDGMENT AND SUPPLEMENTAL RELIEF

44. Plaintiffs hereby incorporate the allegations of all previous paragraphs as though those allegations were fully set forth herein.

45. This matter is appropriate for declaratory relief pursuant to Iowa Rule of Civil Procedure 1.1101 and granting such relief would terminate the legal dispute that gave rise to this Petition.

46. This matter also is appropriate for injunctive relief pursuant to Iowa Rules of Civil Procedure 1.1106 and 1.1501. Absent injunctive relief, plaintiffs will suffer irreparable injury for which there is no adequate remedy at law for every day the adult plaintiffs cannot marry their partners and the plaintiff children are denied having married parents.

47. Once the Court enters the requested declaratory relief, the plaintiff couples' right to a marriage license is clear and Defendant has a mandatory obligation to accept and honor their applications for marriage licenses. The extraordinary circumstances also merit waiver for adult plaintiffs of the statutory waiting period before which a marriage license ordinarily becomes valid.

WHEREFORE, the Court respectfully is urged to enter judgment as follows:

(1) Declaring that:

(a) Iowa's prohibitions on marriages by same-sex couples, including Iowa Code § 595.2(1), are invalid and unconstitutional;

(b) Same-sex couples otherwise qualified to marry one another, including plaintiff couples, may not be denied marriage license applications, licenses or certificates

or in any other way prevented from exercising the right to civil marriage by virtue of seeking to marry a partner of the same sex;

(c) Children of same-sex couples who wish to marry under Iowa law may not be denied the dignity, legitimacy, protections, benefits, support, security and obligations conferred on children whose parents wish to marry and are permitted to marry under Iowa law;

(d) Pursuant to Iowa Code § 4.12, Iowa Code § 595.2(1) is invalid and severed from the remaining sections of chapter 595;

(e) Any further provision of chapter 595 or Iowa law relating to who may marry, who is a spouse, husband or wife, who receives the benefits or obligations of marriage, and similar provisions are to be interpreted in a gender-neutral manner without distinction between different-sex and same-sex couples.

(2) Enjoining Defendant BRIEN to stop refusing to accept applications for marriage licenses from and to grant licenses to otherwise qualified same-sex couples, including adult plaintiffs, in accordance with the provisions of Iowa law, and in all other respects to recognize the validity of marriages between persons of the same sex;

(3) Issuing a Writ of Mandamus requiring Defendant BRIEN immediately to issue valid marriage licenses to adult plaintiffs upon receipt of their completed marriage applications;

(4) For plaintiffs' costs incurred herein; and,

(5) For such other and further relief as the Court deems just and proper.

Date: August 30, 2006

Dennis W. Johnson (AT0004022)
Amy M. Bjork (AT0000925)
DORSEY & WHITNEY LLP
801 Grand Ave., Suite 3900
Des Moines, IA 50309-2790
Tel: (515) 283-1000
Fax: (515) 283-1060

Camilla B. Taylor
Kenneth D. Upton, Jr.*
Patricia M. Logue
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

* Motion for admission *pro hac vice* pending