

INTRODUCTION

2. In 1997, Dave met his future husband Carl Allen (“Carl”) in Baltimore, Maryland. In many ways, their lives mirrored one another. Both had rural upbringings and excelled in school. Both were raised in churchgoing homes, and both shared a commitment to their faith. Each spent part of his career protecting the United States—Dave, as an Air Force Judge Advocate General, and Carl, as a linguist and budget analyst for the National Security Administration. In meeting Carl, Dave found his match. Together, Dave and Carl forged a relationship based on love, respect, and mutual commitment.

3. Carl had been diagnosed as HIV-positive during the 1980s. Undaunted by the possibility that their time together might be limited by the impact of HIV on Carl, Dave and Carl thrived as a couple. With Dave’s support, Carl weathered health challenges. The two settled together in Arkansas in 2007. Aspiring to have their love and commitment solemnized under the law, Dave and Carl traveled to San Francisco, California and were validly married on September 29, 2008.

4. Although Dave and Carl enjoyed many more years together than Carl originally anticipated, they were still denied the ability to grow old together. Carl’s health deteriorated in late 2009, forcing him to stop working and to apply to SSA for disability insurance benefits. Throughout Carl’s illness, Dave remained by Carl’s side as a devoted spouse—caring for and comforting Carl, and allowing Carl to live his final days at home and in dignity. Carl died on April 14, 2010, at the couple’s home in Arkansas.

5. As Carl’s surviving spouse, following Carl’s death, Dave applied to SSA for a lump-sum death benefit payment, and for the already accrued disability insurance benefits that were owed to Carl. In seeking these benefits, Dave believed that the federal government would

treat him and his marriage with the same respect and dignity it would afford any other grieving widower or widow and his or her marriage. Dave believed that the federal government would respect his relationship with Carl and afford him equal protection under the law.

6. Sadly, Dave was wrong. Citing the now defunct Section 3 of the so-called Defense of Marriage Act (“DOMA”), and SSA regulations that unconstitutionally incorporate discriminatory Arkansas marital laws barring recognition of marriages between persons of the same sex, SSA turned down Dave’s request for benefits. Even after the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), removed DOMA as an obstacle to SSA’s recognition of the couple’s marriage, SSA continued to deny Dave his spousal benefits based on Arkansas’s discriminatory marriage laws.

7. As a legally married couple, Dave and Carl wished only to be treated with the same dignity and respect as their heterosexual counterparts. However, same-sex couples seeking to vindicate their rights continue to face daunting legal minefields. At present, eighteen states still deny same-sex couples the freedom to marry, and seventeen states still refuse to recognize marriages validly entered by same-sex couples in other jurisdictions—thereby withholding access to state marital benefits.

8. Nonetheless, with increasing frequency, state and federal executives, and courts—including the United States Supreme Court—have recognized the patent discrimination and affront to dignity faced by same-sex couples whose families are denied the protections and benefits of marriage.

9. In the landmark *Windsor* decision, the Supreme Court held that Section 3 of DOMA, which denied federal recognition and benefits to same-sex spouses, violates the Fifth Amendment of the United States Constitution and can no longer be enforced. *Windsor* enabled

legally married same-sex couples and surviving widows and widowers to participate in myriad federal programs previously foreclosed to them. *Windsor* reaffirmed the Constitution’s guarantees of liberty, equality, and due process under the law for *all*, including those who legally commit to share their lives through marriage with loved ones of the same sex. *Windsor* now serves as a guiding analytical framework for courts examining and overturning unconstitutional state bans on marriages between persons of the same sex.

10. In a statement issued immediately following *Windsor*, President Obama applauded the decision as “a victory for couples who have long fought for equal treatment under the law; for children whose parents’ marriages will now be recognized, rightly, as legitimate; for families that, at long last, will get the respect and protection they deserve; and for friends and supporters who have wanted nothing more than to see their loved ones treated fairly and have worked hard to persuade their nation to change for the better.”

<http://www.whitehouse.gov/doma-statement>. President Obama ordered the Attorney General to work with other federal officials and agencies to implement the *Windsor* decision.

11. To comply with *Windsor* and to ensure broad access to federal benefits for same-sex spouses, the Department of Justice and federal agencies endeavored to look, to the extent possible, to the law of the jurisdiction where a marriage took place (the “place of celebration”) to determine whether a couple is eligible for federal spousal benefits.

12. In June 2014, the Department of Justice publicly announced that two key federal agencies—SSA and the Department of Veterans Affairs—view themselves as statutorily prohibited from adopting a “place of celebration” standard for certain programs. Under SSA’s interpretation of 42 U.S.C. § 416(h)(1)(A)(i)—a provision of the Social Security Act (the “Act”)—and under SSA’s regulations and staff guidelines, SSA instead applies a “place of

domicile” standard to determine eligibility for such benefits. Specifically, in determining whether an applicant is eligible for distributions of underpayments owed by SSA to deceased benefit recipients, SSA assesses the validity of the applicant’s marriage by looking to the law of the place of domicile. Similarly, spousal, survivor, lump-sum death, and other benefits paid to spouses of persons insured by the Social Security program also are assessed under the place of domicile standard. Under that standard, SSA determines marital status by incorporating and applying the law of the insured person’s state of domicile—including the law of those states that unconstitutionally discriminate against same-sex couples in marriage.

13. SSA is following this place of domicile standard even where the underlying state marriage law it is incorporating to determine federal marital status violates same-sex spouses’ constitutionally-protected rights to due process and equal protection. Thus, although *Windsor* overturned Section 3 of DOMA, even after *Windsor* SSA issued Dave a final determination denying his request for review of the adverse administrative decision denying him benefits—based on Arkansas law that denies state recognition of his marriage to Carl.

14. Applying *Windsor*, a tidal wave of courts around the nation—including the United States Courts of Appeals for the Seventh, Fourth, Ninth, and Tenth Circuits and an Arkansas state court, where Dave and Carl lived—have ruled that state laws denying same-sex couples the right to marry within the state or recognition of their marriages obtained outside of the state violate constitutional guarantees of due process and equal protection. On October 6, 2014, the Supreme Court denied petitions for *certiorari* to review the marriage rulings of the Seventh, Fourth, and Tenth Circuits, and the Ninth Circuit issued its marriage ruling the following day. As a result, marriages of same-sex couples commenced in states in all four Circuits.

15. SSA nonetheless has finally denied Dave’s application for benefits solely because he and Carl resided in Arkansas—a state that has refused to recognize their marriage—at the time of Carl’s death. SSA incorporated, applied, and deferred to Arkansas’s discriminatory marriage laws to reach this decision. Had Dave and Carl resided in a state that does not discriminate against same-sex spouses, Dave would have been granted the Social Security benefits to which he is entitled.

16. For Social Security benefit applicants like Dave, SSA’s unconstitutional incorporation of discriminatory state laws replicates and perpetuates the same basic Fifth Amendment violation condemned by the Supreme Court in *Windsor*. Marriage confers “a dignity and status of immense import.” *Windsor*, 133 S. Ct. at 2692. Same-sex couples seeking to marry and thus ensure stable, secure lives of mutual emotional and financial support are recognized by the place of celebration, and in many other jurisdictions, as worthy of the same recognition and protection afforded to married different-sex couples. Just as DOMA undermined “both the public and private significance of state-sanctioned same-sex marriages[,]” *id.* at 2694, SSA’s incorporation of discriminatory state laws tells same-sex couples living in those states that their valid marriages are unworthy of federal recognition. And just as DOMA demeaned the dignity of same-sex spouses “whose moral and sexual choices the Constitution protects,” *id.*, SSA demeans their dignity by refusing to acknowledge their legal status solely due to the discrimination practiced by their place of domicile.

17. SSA’s incorporation of discriminatory state marriage bans is a deprivation of the liberty and equality protected by the Fifth Amendment’s Due Process Clause and thus unconstitutional. It impermissibly burdens the fundamental right to marry and the fundamental

right to travel secured by the U.S. Constitution. And it deprives same-sex spouses and survivors the equal protection of the law based on those individuals' sexual orientation and sex.

18. Plaintiff respectfully asks this Court to declare unlawful and enjoin Defendant's unconstitutional incorporation of and reliance on discriminatory state laws when determining spousal Social Security benefits for same-sex spouses and survivors. Plaintiff also respectfully asks the Court to enjoin SSA from refusing to recognize a marriage between same-sex spouses where that marriage was valid in the place of celebration.

JURISDICTION AND VENUE

19. Jurisdiction is proper pursuant to 42 U.S.C. § 405(g) because Plaintiff's claims arise under the Act and its implementing regulations. Dave met the presentment requirement of 42 U.S.C. § 405(g) when he completed his claim for Social Security benefits on June 24, 2010.

20. As set forth below, Dave exhausted his administrative remedies. His initial application for benefits was denied on August 7, 2010. It was denied again after reconsideration on September 24, 2010. On December 9, 2011, SSA Administrative Law Judge ("ALJ") Deborah L. Rose issued a decision again denying Dave's application. A true and correct copy of that decision is attached as Exhibit A. By notice dated September 5, 2014, SSA informed Dave that his request for review of the ALJ decision was denied, and that the ALJ's decision "is the final decision of the Commissioner of Social Security in [his] case." The notice advised Dave that if he "disagree[s]" with the Commissioner's decision, he "may ask for court review . . . by filing a civil action" within 65 days of the date of the notice. A true and correct copy of that notice is attached as Exhibit B.

21. Venue is proper in this judicial district pursuant to 42 U.S.C. § 405(g) because Dave resides in Chicago, Illinois.

THE PARTIES

22. Plaintiff David A. Williams III (Social Security Number **REDACTED**) is a citizen of the United States. Dave became a widower upon the death of his husband Carl Allen (Social Security Number **REDACTED**), who was born in 1951, and who was also a citizen of the United States. Dave moved in 2014 to Chicago, Illinois, where he now resides. He has not remarried.

23. Defendant Carolyn W. Colvin is the Acting Commissioner of the Social Security Administration. In that capacity, Acting Commissioner Colvin is the federal official responsible for implementing and enforcing SSA's policies and procedures. Acting Commissioner Colvin is named in her official capacity only.

FACTS

Dave and Carl's Life and Marriage Together

24. Dave was born in 1957 in Fort Walton Beach, Florida, and was raised in a rural, unincorporated area of Mississippi. Dave graduated high school early and attended the University of Southern Mississippi, where he graduated in 1977 with a degree in political science. After college, Dave attended the University of Mississippi Law School and served in the Air Force as a Judge Advocate General following graduation. Dave remained with the Air Force from 1980 until 1984, before transitioning to the field of healthcare and medical malpractice risk management. Between 1985 and 1996, Dave worked for several medical providers, including the University of Arizona's and Howard University's hospital systems. By 1997, Dave was living in Baltimore, Maryland, and working as a regional risk management officer for Bon Secours Health System.

25. Carl was born in Royalton, Minnesota in 1951. He attended the University of Minnesota, where he studied Russian and graduated in the early 1970s. Recognizing Carl's

superior language skills, the National Security Agency (“NSA”) recruited Carl to work as a linguist following his college graduation. Carl later redirected his efforts towards budgetary matters for the NSA. While working for the NSA, Carl obtained his MBA from the University of Maryland. In late 1997, Carl retired from his position with the NSA, and began work as a consultant for a private company based in Maryland.

26. By chance, Dave and Carl lived a few blocks away from each other in Baltimore, and met in 1997. Not long after they met, they entered into a loving, committed relationship. Dave was soon introduced to Carl’s son from a prior relationship, James Allen, and was accepted by Carl’s family as Carl’s partner. Over the course of the couple’s life together, Dave developed a warm relationship with Carl’s family. James regularly visited the couple’s home during his college vacations. To this day, Dave is in frequent contact with James and other members of Carl’s family. Viewed by Dave as a son, James is named in Dave’s will as Dave’s beneficiary.

27. As a couple, Dave and Carl recognized that they were at different stages in their respective careers—Dave was developing his career in risk management, while Carl was retiring from his position with the NSA. Yet they remained committed to each other. In 1998, Carl sold his home in Baltimore so that he could move with Dave to Virginia, where Dave pursued a career opportunity. Carl worked from the couple’s Virginia home as a consultant. Likewise, when Carl was offered a position with a Maryland-based company, the couple sold their home in Virginia and moved back to Baltimore.

28. In 2007, Dave and Carl purchased a home in northwestern Arkansas and moved there together. They wanted to move closer to Carl’s sister, who lived in the area, and to settle in one place for the rest of their lives together. Dave developed a real estate business in Arkansas,

and Carl continued working for his employer by commuting frequently between Maryland and Arkansas.

29. As a couple, Dave and Carl were financially interdependent and committed to each other's support—both while they were together and after one should pass away. They pooled their financial assets and shared bank accounts from which they jointly paid mortgage, utility, credit card, medical, insurance, and household expenses. Dave and Carl jointly owned all of the real estate they purchased together, with rights of survivorship. They had mirror durable medical powers of attorney. And each designated the other as his beneficiary in wills and trust agreements.

30. Throughout their relationship, Dave and Carl were active in their local community, which treated them as a committed couple. Together, Dave and Carl joined the Olde Towne Civics League of Portsmouth, Virginia—a club devoted to home restoration. As active participants in the Olde Towne Civics League, Dave and Carl welcomed visitors to their home for organized tours of local historic homes.

31. Together, Dave and Carl also joined the Trinity Episcopal Church of Portsmouth, Virginia. Carl served on Trinity's vestry—a body of lay members who assist the church. Following Carl and Dave's move to Arkansas, the couple joined St. Paul's Episcopal Church in Fayetteville, where they developed a friendly, supportive relationship with church leadership.

32. In 2008, Carl asked Dave to marry him. Carl and Dave travelled to California, and married at the San Francisco courthouse on September 29, 2008, in a valid and legally recognized marriage ceremony. Their wedding was the culmination of many years of love and devotion. Carl's sister attended the ceremony and later described it as just as meaningful as her

own wedding with her husband had been. Carl and Dave's church community celebrated their marriage back in Arkansas.

Carl's Declining Health, Application for Disability Benefits, and Death

33. Carl was diagnosed as HIV-positive in the 1980s, and developed AIDS during the late 1990s. When they first began their relationship, Carl warned Dave that he expected the couple would have only three years together. Ultimately, thanks to medical advances, the couple would enjoy nearly thirteen loving years together.

34. In August 2009, Carl suffered a seizure which prevented him from continuing to work. Concerned for Carl's welfare, Dave retired from his job and devoted his time, energy, and attention to Carl's care.

35. On August 12, 2009, Carl applied to SSA for disability insurance benefits.

36. Between August 2009 and April 2010, Carl's condition deteriorated. As his symptoms progressed, Carl lost weight and the use of his legs. Dave continued to take care of Carl full-time as Carl became bedridden. Because of Dave's care, Carl was able to stay in the couple's home and die with dignity—as was Carl's wish. Carl died on April 14, 2010. Dave was with him through the end, assisting in Carl's treatment and seeing to his needs.

37. On June 3, 2010—ten months after Carl's application and nearly two months after his death—SSA finally approved Carl's application for Title II disability and disability insurance benefits. SSA found that Carl had been disabled beginning August 1, 2009. On information and belief, SSA owes more than \$3,500 in unpaid disability benefits on Carl's claim.

The Legal Framework for Social Security Benefits

38. By overturning Section 3 of DOMA, *Windsor* should have given lesbian and gay married couples, widows, and widowers access to the full range of Social Security benefits

granted in the ordinary course to different-sex spouses. For decades, Social Security benefits have been profoundly important to many millions of people around the nation, allowing incapacitated and aging workers and their families to live with financial security and dignity.

39. On August 14, 1935, President Franklin Roosevelt signed into law the Social Security Act, Pub. L. 74–271, 49 Stat. 620, now codified at 42 U.S.C. ch. 7. Enacted during the Great Depression, the Act authorizes the collection of funds to allow the federal government to grant financial assistance to elderly and disabled individuals. The Act provides for, among other things, the payment of disability benefits, old-age insurance benefits, spousal benefits, survivor benefits for widows and widowers, and lump-sum death benefits.

40. Americans earn the right to participate in Social Security by working and contributing to the program throughout their working lives. Through payroll deductions over the course of their employment, workers earn the security of being able to rely for themselves and their spouses on Social Security benefits after the workers' disability, retirement, or death.

41. Under the current scheme, SSA is the federal agency tasked with administering the Act. SSA promulgates regulations interpreting the Act. In addition, SSA employees are guided by SSA's Program Operations Manual System ("POMS"). The POMS is a primary source of information used by SSA employees to process claims for Social Security benefits.

42. Generally, an individual must be fully insured under the Social Security program before benefits may be paid—whether directly to the individual, or to his or her spouse or survivors. With some exceptions, status as an insured person is earned through years worked and wages earned. To be fully insured, a worker needs at least one quarter of covered work for each calendar year elapsing after he or she turned 21 and the earliest of: (1) the year before the

worker attained age 62; (2) the year before the worker died; or (3) the year before the worker became disabled. 42 U.S.C. §§ 413-14; 20 C.F.R. 404.110.

43. Under the Act and SSA’s interpreting regulations, a covered individual—and certain family members of a covered individual—may receive disability benefits if the covered individual has a physical or mental impairment that has lasted or can be expected to last for a continuous period of one year or more, or that can be expected to result in death. 42 U.S.C. §§ 416(i)(1), 423(a); 20 C.F.R. 404.1505(a). Disability benefit payments are made on a monthly basis. 20 C.F.R. 404.1807.

44. Furthermore, under the Act and SSA’s interpreting regulations, an individual aged 62 or older may receive wife’s or husband’s insurance benefits (collectively, “spousal benefits”) if his or her spouse or ex-spouse is receiving or is eligible for retirement or disability benefits. 42 U.S.C. § 402(b) (wife’s insurance benefits) and 42 U.S.C. § 402(c) (husband’s insurance benefits); *see also* 20 C.F.R. 404.330. If aged 60 or older, the surviving spouse of a deceased insured person is eligible to be paid monthly survivor benefits. 42 U.S.C. § 402(e) (widow’s insurance benefits) and 42 U.S.C. § 402(f) (widower’s insurance benefits); *see also* 20 C.F.R. 404.335. In addition, a one-time lump sum death payment of \$255 may be paid to a surviving spouse if he or she was living with the deceased. 42 U.S.C. § 402(i); *see also* 20 C.F.R. 404.390.

45. The Act and SSA regulations provide that, if an approved benefit applicant dies before owed benefits are received, the underpayment will be distributed to living persons based on an order of priority. 42 U.S.C. § 404(d)(1); 20 C.F.R. 404.503(b); *see also* POMS GN 02301.030 (“Title II Underpaid Person is Deceased”). First in the order of priority is a surviving spouse living with the decedent at the time of death. The decedent’s children and parents are further down the line in order of priority. Last in the order of priority is the legal representative

of the decedent's estate—generally defined as the administrator or executor of the estate. 42 U.S.C. § 404(d)(1); 20 C.F.R. 404.503(d).

46. 42 U.S.C. § 416(h)(1)(A)(i) provides the primary means by which a person may qualify as a spouse or surviving spouse for Social Security benefits. It provides:

[a]n applicant is the wife, husband, widow, or widower of a fully or currently insured individual. . . if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.

47. SSA's interpretive regulations provide that an individual "may be eligible for benefits if [an individual is] related to the insured person as a wife, husband, widow, or widower. To decide [an individual's] relationship to the insured, [SSA] look[s] first to State laws." 20 C.F.R. 404.344. Similarly, 20 C.F.R. 404.345 states, "[t]o decide [the individual's] relationship as the insured's wife or husband, we look to the laws of the State where the insured had a permanent home when you applied for wife's or husband's benefits. To decide [an individual's] relationship as the insured's widow or widower, [SSA] look[s] to the laws of the State where the insured had a permanent home when he or she died."

SSA's Denial of Dave's Application for Benefits

48. On June 24, 2010, Dave applied for the lump-sum death payment and for the owed underpayment for Carl's disability benefits. Dave's application was denied on August 7, 2010, and then denied again after reconsideration on September 24, 2010.

49. At the time Dave applied for benefits, same-sex couples seeking federal benefits were forced to contend with DOMA. Section 3 of DOMA (codified at 1 U.S.C. § 7), enacted in

1996, provided that, “[i]n determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” Section 3 thereby barred married same-sex couples from recognition as “spouses” for the purpose of federal laws or programs—even if a state or foreign government recognized those couples as legally married. DOMA deprived married same-sex couples of the benefits of more than a thousand federal statutes and programs available to married different-sex couples, including Social Security, immigration, taxation, employment, military, and veterans benefits.

50. In August 2011, after requesting a hearing on SSA’s denial of his application pursuant to SSA regulations, Dave testified before ALJ Rose in Tulsa, Oklahoma. At that hearing, Dave provided proof of his marriage to Carl and argued that DOMA was unconstitutional.

51. On December 9, 2011, Dave’s application was denied by ALJ Rose. Exhibit A. Although ALJ Rose agreed that Dave and Carl entered into a marriage in California, she held that the benefits requested by Dave could not be granted because of DOMA, which precluded recognition of Dave and Carl’s marriage by federal agencies such as SSA:

The Defense of Marriage Act states that for purposes of federal law, the term “marriage” means only a legal union between one man and one woman. Thus, despite the State of California’s recognition of same-sex marriage, Federal law specifically limits the definition of “marriage” to a legal union between one man and one woman. Under DOMA, a same-sex marriage performed under State law is not recognized as valid for purposes of Federal law. Therefore, under federal law, agencies are expressly prohibited from recognizing same-sex marriages as valid. Given the prohibition on recognition of a same-sex marriage by federal

agencies in interpreting regulations, I conclude that the claimant's marriage to Mr. Allen is not valid under DOMA (1 U.S.C. § 7 & 28 U.S.C. § 1738(C)).

52. ALJ Rose further held that even if DOMA was found to be unconstitutional, Dave and Carl's marriage was not valid under the laws of Arkansas—where they were domiciled—and thus SSA would not consider Dave and Carl married pursuant to 20 C.F.R. 404.345:

[T]he claimant is not a widower under Arkansas law, because same-sex marriages occurring outside the State of Arkansas are invalid under Arkansas law. Amendment 83 of the Arkansas Constitution defines marriage as a union between one man and one woman When Arkansas law is applied as required under 20 CFR 404.345, the claimant's California marriage is deemed invalid Therefore, even if DOMA is unconstitutional as alleged by the claimant, the claimant still does not meet the definition of a widower

53. Finally, ALJ Rose concluded that Dave and Carl's marriage "was not valid for Social Security purposes," and denied Dave's request for benefits. This decision utterly disrespected the years of love, care, and support Dave and Carl provided to each other, brutally undercutting the solemnity and dignity granted to their relationship through their lawful marriage.

The Overturn of Section 3 of DOMA and SSA's Response

54. Many current and former federal officials criticized DOMA as incompatible with the Constitution's guarantees of liberty, equality, and due process of law. In response to then-pending legal challenges to the constitutionality of Section 3 of DOMA, *Windsor v. United States*, No. 1:10-cv-8435 (S.D.N.Y.), and *Pedersen v. OPM*, No. 3:10-cv-1750 (D. Conn.), Attorney General Holder advised Congress in 2011 that "classifications based on sexual orientation warrant heightened scrutiny and that, as applied to same-sex couples legally married under state law, Section 3 of DOMA is unconstitutional." Department of Justice, *Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act* (Feb. 23,

2011), <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>. Reflecting the Executive Branch's view, the Department of Justice argued that heightened scrutiny was warranted in challenges to DOMA and in *Hollingsworth v. Perry*—a case challenging the constitutionality of California's ban on marriages between persons of the same sex enacted after Dave and Carl had validly married in that state. The Attorney General also informed Congress that the Department of Justice would no longer defend the constitutionality of Section 3, but that the Executive Branch would nonetheless continue to enforce it until further action by Congress or the Supreme Court.

55. On June 26, 2013, while Dave was pursuing his administrative remedies with SSA, the Supreme Court held that Section 3 of DOMA is unconstitutional “as a deprivation of the liberty of the person protected by the Fifth Amendment.” *Windsor*, 133 S. Ct. at 2695. The Court observed that, under DOMA, “same-sex married couples have their lives burdened, by reason of government decree, in visible and public ways.” *Id.* at 2694. The Court specifically identified among those burdens loss of Social Security protections, noting that DOMA “*denies or reduces benefits allowed to families upon the loss of a spouse and parent, benefits that are an integral part of family security.*” *Id.* at 2695 (citing SSA, Social Security Survivors Benefits 5 (2012)) (emphasis added). Finally, the Court observed that DOMA “writes inequality into the entire United States Code,” specifically referring, among other things, to eligibility for Social Security benefits. *Id.* at 2694.

56. During a June 2013 press conference, President Obama hailed the *Windsor* decision as a “victory for American democracy.” He then expressed his “personal belief...that if you’ve been married in Massachusetts and you move someplace else, you’re still married, and that under federal law you should be able to obtain the benefits of any lawfully married couple.”

In a press release dated December 16, 2013, Acting Commissioner Colvin stated, “I am pleased to announce that, effective today, Social Security is processing some widow’s and widower’s claims by surviving members of same-sex marriages and paying benefits where they are due. In addition, we are able to pay some one-time lump sum death benefit claims to surviving same-sex spouses. As I stated shortly after the Supreme Court decision on Section 3 of the Defense of Marriage Act, our goal is to treat all Americans with dignity and respect.” SSA, *Statement of Carolyn W. Colvin, Acting Commissioner of Social Security, on New Payments to Same-Sex Married Couples* (Dec. 16, 2013),

<http://www.socialsecurity.gov/news/press/releases.html#!/post/12-2013-2>.

57. By overturning DOMA, *Windsor* gave married same-sex couples access to the full range of Social Security benefits regularly granted to married heterosexual couples. After the Supreme Court declared Section 3 of DOMA unconstitutional in *Windsor*, SSA ceased to deny claims for spousal benefits based solely on DOMA. According to SSA, following June 26, 2013, SSA “no longer is prevented from recognizing same-sex marriages to determine entitlement or payment amount.” SSA, *Important Information for Same-Sex Couples*, <http://www.ssa.gov/people/same-sexcouples/>. SSA began granting spousal benefits, including to widows and widowers with pending claims whose same-sex spouses had died prior to *Windsor*. Since that date, DOMA has not been a barrier to Dave’s Social Security claim.

58. After the *Windsor* decision, SSA nonetheless followed a practice of holding applications for spousal and survivor benefits from same-sex spouses, widows, and widowers domiciled in states that disrespected the couples’ marriages while it conferred with the Department of Justice regarding how to evaluate the marital status of such claimants.

59. Finally, in late June 2014, SSA issued a press release announcing that SSA had “consulted with the Department of Justice and determined that the Social Security Act requires the agency to follow state law in Social Security cases.” *Social Security Defines Policy for Same-Sex Married Couples* (June 20, 2014), <http://www.socialsecurity.gov/news/press/releases.html#!/post/6-2014-1>. Notwithstanding SSA’s expressed commitment following *Windsor* to treat all Americans with “dignity and respect,” SSA is applying a “place of domicile” standard, codified in 42 U.S.C. § 416(h)(1)(A)(i), and discriminatory state laws unconstitutionally incorporated via that standard, to determine the marital status of same-sex spouses, widows, and widowers.

60. Soon after the announcement, SSA updated its POMS to reflect SSA’s reliance on state marital laws for benefits determinations. POMS provisions GN 00210.100 B (“Policy for spouse benefits involving same-sex couples”), GN 00210.400 B (“Instructions for same-sex surviving spouse claims: determining the status and duration of the relationship”), and GN 00210.600 B (“Instructions for processing [lump sum death payment] claims involving same-sex marriage”) instruct SSA officials to consult POMS GN 00210.002 C (“How to determine marital status for same-sex couples”) to determine whether SSA will recognize a marriage between persons of the same sex. Steps 10 and 11 of the 13-step process set forth in POMS GN 00210.002 C in turn direct SSA officials to consult POMS GN 00210.003 (“Same-Sex Marriage – Dates States Permitted or Recognized Same-Sex Marriage”)—which sets forth a list of U.S. jurisdictions permitting or recognizing marriages between persons of the same sex. If the insured person does not reside in one of the jurisdictions listed on POMS GN 00210.003 (*e.g.*, if the insured person resides in Arkansas, which is not on the list),¹ then step 13 of POMS GN

¹ In October 2014, SSA issued revised POMS GN 00210.003 following the Supreme Court’s October 6, 2014 denial of review of Fourth, Seventh, and Tenth Circuit decisions declaring state marriage bans

00210.002 C directs SSA employees to find that the applicants are “not in a marriage that can be recognized for purposes of determining entitlement.”

61. POMS GN 00210.003 also designates dates on which “Same-Sex Marriages from Any Other State Were Recognized” by those jurisdictions that now do respect the marriages of same-sex couples. SSA’s application of those dates may also operate to deny benefits to spouses with marriages valid where celebrated if the state of domicile purportedly did not yet recognize the marriage at the relevant point for determining spousal status for benefits purposes.

62. By letter dated September 5, 2014, SSA communicated its denial of Dave’s request for review of ALJ Rose’s decision, stating that the Appeals Council “found no reason” to review the ALJ’s decision. SSA found further that ALJ Rose did not abuse her discretion, make an error of law, or supply a decision unsupported by substantial evidence. Additionally, the Appeals Council found that there was no broad policy interest at stake.

63. SSA’s refusal, based on Dave and Carl’s Arkansas domicile, to recognize that Dave and Carl were spouses entitled to legal recognition and earned Social Security benefits from the federal government is a profound affront to their relationship, and to Carl’s memory. For Dave, it is almost as though the Supreme Court’s *Windsor* decision had never happened. He suffers the humiliation of the federal government’s pronouncement “that their marriage is less worthy than the marriages of others.” *Windsor*, 133 S. Ct. at 2696. After giving years of their

unconstitutional, and the Ninth Circuit’s October 7, 2014 decision similarly striking down state marriage bans. In addition to Arkansas, other states not listed in POMS GN 00210.003 include Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Texas. Married same-sex couples living in Michigan are generally prevented from receiving Social Security spousal and survivor benefits due to Michigan’s state marriage ban. However, because Michigan briefly recognized the marriages of same-sex couples during the period of March 21-22, 2014, POMS GN 00210.003 B.2. currently instructs SSA workers to process claims from same-sex spouses, widows and widowers of Michigan domiciliaries that were filed or pending during the brief March 21-22 period. In addition, POMS GN 00210.003 currently instructs SSA workers to “Hold per instructions in GN 00210.005” applications involving domiciliaries of Indiana, Kansas, Montana, South Carolina, and Utah. POMS GN 00210.002 C and POMS GN 00210.003 are attached as Exhibit C.

professional lives in service to the federal government and their nation in the Air Force and the NSA, Dave and Carl rightfully expected to be treated as equal citizens whose marital bond was as worthy of respect as any other.

64. SSA's continued practice of incorporating discriminatory state marital laws to deny distribution of underpayments and lump-sum death benefits—as well as spousal, survivor, and other benefits—to otherwise eligible married same-sex spouses and survivors is a violation of the U.S. Constitution.

65. SSA harms Dave and all similarly-situated spouses by predicating awards of underpayments and lump-sum death, spousal, survivor, and other benefits for same-sex spouses on the marital laws of an insured person's state of domicile where that law discriminates against the couple based on their sexual orientation and the sex of the surviving spouse. These legally married same-sex couples, and the surviving spouses of such marriages, are ineligible for Social Security benefits that would be extended to them if they had been different-sex couples.

66. Since the Supreme Court's *Windsor* decision, a multitude of courts across the country have declared unconstitutional state laws barring marriages between persons of the same sex or precluding state recognition of such marriages. For example, in Arkansas, where Dave and Carl resided together, a state circuit court held that Act 144 of 1997 of the Arkansas General Assembly and Amendment 83 to the Arkansas Constitution—which together ban marriages between people of the same sex and the legal recognition of such marriages—violate the U.S. Constitution's guarantee of equal protection, and the right to privacy under both the U.S. and Arkansas constitutions. *Wright v. Arkansas*, No. 60CV-13-2662, 2014 WL 1908815 (Ark. Cir. Ct. May 9, 2014), *appeal docketed*, No. CV-14-414 (dismissed for lack of jurisdiction) and No. CV-14-427 (Ark. Sup. Ct. May 16, 2014). In *Wright*, the court—relying on *Windsor*—found

that “[r]egardless of the level of review required, Arkansas’s marriage laws discriminate against same-sex couples in violation of the Equal Protection Clause because they do not advance any conceivable legitimate state interest necessary to support even a rational basis review.” 2014 WL 1908815 at *2.

67. Other courts across the nation have similarly held unconstitutional state laws that restrict access to, or recognition of, marriages of same-sex couples—including the Seventh, Fourth, Ninth, and Tenth Circuits, as well as numerous lower federal and state courts. *See Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014), *cert. denied*, __S. Ct.__, No. 14-225, 2014 WL 4230092 (Oct. 6, 2014); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014), *cert. denied*, __S. Ct.__, No. 14-277, 2014 WL 4425162 (Oct. 6, 2014); *Latta v. Otter*, No. 14-35420, 2014 WL 4977682 (9th Cir. Oct. 7, 2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014), *cert. denied*, __S. Ct.__, No. 14-124, 2014 WL 3841263 (Oct. 6, 2014); *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014), *cert. denied*, __S. Ct.__, No. 14-136, 2014 WL 3854318 (Oct. 6, 2014); *see also, e.g., Majors v. Jeanes*, No. 2:14-cv-00518 JWS; 2014 WL 4541173 (D. Ariz. Sept. 12, 2014); *Brinkman v. Long*, Nos. 13-CV-32572, 14-CV-30731, 2014 WL 3408024 (Colo. Dist. Ct. July 9, 2014); *Brenner v. Scott*, 999 F. Supp. 2d 1278 (N.D. Fla. 2014), *appeal docketed*, Nos. 14-14061, 14-14066 (11th Cir. Sept. 19, 2014); *Bourke v. Beshear*, 996 F. Supp. 2d 542 (W.D. Ky. 2014), *appeal docketed*, No. 14-5291 (6th Cir. Mar. 19, 2014); *Love v. Beshear*, 989 F. Supp. 2d 536 (W.D. Ky. 2014), *appeal docketed*, No. 14-5818 (6th Cir. July 8, 2014); *Costanza v. Caldwell*, No. 2013-0052 D2, slip op. (La. 15th Jud. Dist. Ct. Sept. 22, 2014); *DeBoer v. Snyder*, 973 F. Supp. 2d 757 (E.D. Mich. 2014), *appeal docketed*, No. 14-1341 (6th Cir. Mar. 21, 2014); *Barrier v. Vasterling*, No. 1416-CV03892, slip op. (Mo. Cir. Ct. Jackson Co. Oct. 3, 2014); *Garden State Equality v. Dow*, 82 A.3d 336 (N.J. Super. Ct. 2013); *Griego v. Oliver*, 316 P.3d

865 (N.M. 2013); *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013), *appeal docketed*, No. 14-3057 (6th Cir. Jan. 22, 2014); *Henry v. Himes*, No. 1:14-cv-129, 2014 WL 1418395 (S.D. Ohio Apr. 14, 2014), *appeal docketed*, No. 14-3464 (6th Cir. May 9, 2014); *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128 (D. Or. 2014); *Whitewood v. Wolf*, 992 F. Supp. 2d 410 (M.D. Pa. 2014); *Tanco v. Haslam*, 7 F. Supp. 3d 759 (M.D. Tenn. 2014), *appeal docketed*, No. 14-5297 (6th Cir. Mar. 19, 2014); *De Leon v. Perry*, 975 F. Supp. 2d 632 (W.D. Tex. 2014), *appeal docketed*, No. 14-50196 (5th Cir. Mar. 1, 2014).

68. There is no rational—let alone important or compelling—basis for discriminating, at the federal level, against same-sex couples, as SSA does, by applying 42 U.S.C. § 416(h)(1)(A)(i) unconstitutionally to incorporate and defer to discriminatory state marriage laws when making federal benefits determinations. Defendant’s continued incorporation of discriminatory state laws to make Social Security benefits determinations violates the constitutional rights of Dave and other similarly-situated same-sex spouses and widows and widowers, including their right to due process and equal protection, their fundamental right to marry, and their fundamental right to travel.

CAUSES OF ACTION

COUNT I: VIOLATION OF THE RIGHT TO EQUAL PROTECTION

69. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1-68 as if set forth fully herein.

70. Pursuant to 42 U.S.C. § 416(h)(1)(A)(i), the Act directs SSA to interpret and apply the law of the state of domicile when determining whether a Social Security benefit applicant was legally married, rendering him or her eligible for distribution of benefit underpayments owed by SSA to a surviving spouse under 42 U.S.C. § 404(d)(1), spousal

benefits under 42 U.S.C. § 402(b) and (c), survivor benefits under 42 U.S.C. § 402(e) and (f), a lump-sum death payment benefit under 42 U.S.C. § 402(e), and other provisions.

71. SSA's application of 42 U.S.C. § 416(h)(1)(A)(i), 20 C.F.R. 404.344, 20 C.F.R. 404.345, POMS GN 00210.002 and GN 00210.003, and other policies and procedures causes the federal government to treat legally married same-sex couples and survivors living in states that do not recognize such marriages differently than other married spouses and survivors, and differently than same-sex spouses living in states where their marriages are recognized.

72. This differential treatment discriminates on the basis of sexual orientation and sex, and is therefore subject to strict or at least heightened scrutiny, which Defendant's actions cannot withstand.

73. SSA's application of discriminatory state marriage restrictions that target lesbians and gay men and deny recognition to their marriages discriminates against Dave and other same-sex spouses and survivors on the basis of their sexual orientation.

74. Lesbians and gay men have suffered a long and painful history of discrimination in the United States.

75. Sexual orientation bears no relation to an individual's ability to contribute to society.

76. Sexual orientation is a core, defining trait so fundamental to one's identity and conscience that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment.

77. Sexual orientation is generally fixed at an early age and is highly resistant to change through intervention. No credible evidence supports the notion that such interventions are either effective or safe; indeed, they often are harmful and damaging. No mainstream mental

health professional organization approves interventions that attempt to change sexual orientation, and virtually all of them have adopted policy statements cautioning professionals and the public about these treatments.

78. Lesbians and gay men are a discrete and insular minority, and ongoing prejudice against them continues seriously to curtail the operation of those political processes that might ordinarily be relied upon to protect minorities. Lesbians and gay men lack express statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half the states. They are systematically underrepresented in federal, state, and local democratic bodies. And they have seen 30 states attempt to strip them of the right to marry by passing state constitutional amendments barring them from marriage.

79. SSA also discriminates on the basis of sex, by applying standards to deny Social Security benefits that bar same-sex couples from recognition of their marriages solely because each member of the couple wishes to marry a life partner of the same sex. SSA's application of this sex-based classification deprives Dave of Social Security spousal benefits because he is a man and not a woman; if he were a woman, his marriage to Carl would be recognized for purposes of Social Security benefits.

80. This discrimination also impermissibly enforces conformity with sex stereotypes by excluding Dave and other same-sex spouses from Social Security benefits because they have failed to conform to the sex-based stereotypes that men should marry women, and that women should marry men.

81. Moreover, SSA affords Dave and other same-sex spouses unequal access to and protections for their fundamental rights of marriage, family integrity and association, and to travel, subjecting SSA's discrimination to strict or at least heightened scrutiny.

82. Defendant cannot articulate any legitimate or rational basis—let alone a compelling or important government interest—for discriminating against Social Security benefit applicants by predicating the award of benefits on the sex or sexual orientation of the applicant and the applicant’s spouse or survivor.

83. SSA’s incorporation of discriminatory state laws that bar recognition of same-sex marriages, pursuant to 42 U.S.C. § 416(h)(1)(A)(i), 20 C.F.R. 404.344, 20 C.F.R. 404.345, POMS GN 00210.002 and GN 00210.003, and other policies and procedures, mandates unequal treatment for same-sex couples living in states where their marriages are not recognized. As a consequence, Dave and other similarly-situated same-sex spouses have been and will continue to be denied Social Security benefits that are extended to their peers in different-sex relationships. There is no constitutional justification for such unequal treatment. This disparate treatment is based on the sex and sexual orientation of the applicant and violates the right of equal protection secured by the due process clause of the Fifth Amendment of the Constitution of the United States.

COUNT II:
VIOLATION OF THE FUNDAMENTAL RIGHT TO MARRY

84. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1-83 as if set forth fully herein.

85. SSA’s unconstitutional incorporation, pursuant to 42 U.S.C. § 416(h)(1)(A)(i), 20 C.F.R. 404.344, 20 C.F.R. 404.345, POMS GN 00210.002 and GN 00210.003, and other policies and provisions, of discriminatory state laws barring recognition of marriages between persons of the same sex for Social Security benefit determinations, denies recognition to same-sex spouses’ fundamental right to marry. To obtain the full status and dignity of marriage in the federal government’s eyes, same-sex spouses must choose as a domicile a jurisdiction that recognizes

their marriage. This imposes an unconstitutional condition on the exercise of the fundamental constitutional right to marry the person of one's choice, secured by the Due Process Clause of the Fifth Amendment of the Constitution of the United States.

86. Defendant cannot articulate any legitimate or rational basis—let alone a compelling or important government interest—for restricting in this fashion Dave's and similarly-situated same-sex spouses' fundamental right to marry.

87. Without constitutional justification, SSA denies Dave and other similarly-situated same-sex spouses benefits that are an integral part of family security and married life. The unconstitutional incorporation of discriminatory and unconstitutional state marriage laws allows SSA to deny a legally married same-sex spouse the right to be recognized as married under the law and denies access to the benefits flowing from marital status that are extended to different-sex married couples and to same-sex married couples domiciled in states that do not discriminate against their marriages.

**COUNT III:
VIOLATION OF THE FUNDAMENTAL RIGHT TO TRAVEL**

88. Plaintiff realleges and incorporates by reference all allegations contained in paragraphs 1-87 as if set forth fully herein.

89. Article IV, Section 2, Clause 1 of the United States Constitution states that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

90. Article IV's Privileges and Immunities Clause protects the fundamental right to travel and migrate interstate.

91. Other constitutional provisions, including the Fifth Amendment, also protect the fundamental right to travel.

92. SSA's incorporation of discriminatory and unconstitutional state laws barring recognition of marriages between persons of the same sex for Social Security benefit determinations infringes and imposes an unconstitutional condition on the exercise of the fundamental constitutional right to travel. To obtain Social Security benefits while remaining married, legally married same-sex couples would have to limit their domiciles to states recognizing their marriages. Defendant cannot articulate any legitimate or rational basis—let alone compelling or important government interest—for restricting in this fashion Dave's and other similarly-situated same-sex spouses' fundamental right to travel.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Declare that the Social Security Administration's refusal to recognize the spousal status of Plaintiff David A. Williams III and other same-sex spouses, widows, and widowers who validly married in the place of celebration is unconstitutional.
2. Declare that the Social Security Administration's incorporation, pursuant to 42 U.S.C. § 416(h)(1)(A)(i), 20 C.F.R. 404.344, 20 C.F.R. 404.345, POMS GN 00210.002 and GN 00210.003, and other policies and procedures, of unconstitutionally discriminatory state laws barring recognition of marriages between persons of the same sex to determine eligibility for Social Security benefits is unconstitutional and cannot be used to deny benefits to Plaintiff David A. Williams III.
3. Grant a permanent injunction
 - (a) prohibiting Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors from applying

discriminatory and unconstitutional state laws barring recognition of marriages between persons of the same sex to make Social Security benefit decisions;

(b) requiring Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to apply the law of the place of celebration to determine whether a benefit applicant is or was married to a same-sex spouse;

(c) requiring Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to recognize David A. Williams III as entitled to a distribution of the SSA's underpayment of disability insurance benefits originally owed to Carl Allen, based on his status as Carl Allen's surviving spouse;

(d) requiring Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to recognize David A. Williams III as entitled to a Social Security lump-sum death benefit payment based on his status as Carl Allen's surviving spouse;

(e) ordering Acting Commissioner Colvin and her successors in office, her agents, employees, and all persons acting in concert with her or her successors, to revise any agency rules or regulations that apply discriminatory and unconstitutional state laws barring recognition of marriages between persons of the same sex for Social Security benefit determinations;

(f) requiring Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to direct all persons who render Social Security benefit decisions at any level to correct any internal

guidelines, directives, or other written material for employees that apply discriminatory and unconstitutional state statutes barring recognition of marriages between persons of the same sex for Social Security benefit determinations.

4. Award reasonable attorneys' fees and allowed costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or any other applicable statutory provision.
5. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: November 6, 2014

By: /s/ Joni S. Jacobsen

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Electronically filed.