

IN THE IOWA DISTRICT COURT  
FOR POLK COUNTY

---

KATHERINE VARNUM, PATRICIA HYDE;	)	
DAWN BARBOUROSKE, JENNIFER	)	
BARBOUROSKE; JASON MORGAN,	)	
CHARLES SWAGGERTY; DAVID	)	CASE NO.
TWOMBLEY, LAWRENCE HOCH;	)	
WILLIAM M. MUSSER, OTTER	)	
DREAMING; INGRID OLSON and REVA	)	
EVANS,	)	
	)	<b>PETITION FOR DECLARATORY</b>
Plaintiffs,	)	<b>JUDGMENT AND SUPPLEMENTAL</b>
	)	<b>INJUNCTIVE AND MANDAMUS</b>
v.	)	<b>RELIEF</b>
	)	
TIMOTHY J. BRIEN, in his official capacities	)	
as the Polk County Recorder and Polk County	)	
Registrar,	)	
	)	
Defendant.	)	

---

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. Plaintiffs bring this action to challenge the Defendant's discriminatory denial to each couple of a license to marry and of the right to marry in the State of Iowa ("the State") solely because the members of each couple are of the same sex. Each plaintiff 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 themselves and their families by the civil contract of marriage under Iowa law. The denial of the right to marry to plaintiffs on terms and conditions equal to those afforded heterosexual, different-sex couples violates 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 Plaintiffs 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, § 6, also is denied to plaintiffs by the discriminatory marriage scheme because it leaves 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.

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

#### PARTIES

5. Plaintiffs KATHERINE VARNUM ("KATE"), 31, and PATRICIA HYDE ("TRISH"), 40, 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

almost five 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. 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. 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"), 35, and DAWN BARBOUROSKE ("DAWN"), 37, 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 over 15 years. Their last name, BarbouRoske, melds their respective former last names. JEN and DAWN are the legal parents of two daughters, aged 7 and 3, and JEN and DAWN equally provide childcare to their children. JEN and DAWN are Girl Scout leaders and also started Proud Families, a playgroup for children of gay and lesbian parents. JEN and DAWN lived for a brief period in California, where JEN and DAWN's older daughter 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 DAWN had no established parental rights before an expensive adoption in California sometime later. Years afterward, upon learning that her parents could not marry, this daughter was shocked and started to cry, exclaiming "You're not married?" 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 they and their children face from DAWN and JEN being unable to express their commitment to one another through marriage and have led them to pay for alternate, but still inadequate protections such as costly adoptions and powers of attorney for health care. They must remember to carry important legal documents wherever they go. 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 DAVID TWOMBLEY (“DAVID”), 64, and LAWRENCE HOCH (“LARRY”), 63, are a gay couple residing in Urbandale, Polk County, Iowa. Both men are retired schoolteachers after 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 and will teach Sunday School next year. DAVID is active in the Disciples of Christ Church, a member of the choir and co-chairperson of the Worship Committee next year. 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 “less than” 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 over 4 years, obtained a civil union in a private ceremony in Vermont in 2002, and wish to marry in Iowa.

8. Plaintiffs JASON MORGAN (“JASON”), 35, and CHARLES SWAGGERTY (“CHUCK”), 33, 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. Last year, 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 8 years, and they wish to marry in Iowa.

9. Plaintiffs WILLIAM M. MUSSER (“BILL”), 47, and OTTER DREAMING (“OTTER”), 48, 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 and modeling the seriousness and responsibility of their commitment to their children. Now, when people ask BILL if he is married, he can answer only "Sort of" or "Not legally" or "I *feel* as though I am." BILL now 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 4 years, obtained a civil union in Vermont in 2002, and wish to marry in Iowa.

10. Plaintiffs INGRID OLSON ("INGRID"), 27, and REVA EVANS ("REVA"), 31, are a lesbian couple residing in Council Bluffs, Pottawattamie County, Iowa. 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 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, their relationship and the children they hope to have in the future will have much less shelter, and they will have to continue to cobble together as many partial measures as possible to protect themselves and their family, such as wills, adoptions and powers of attorney. INGRID and REVA have been together as a same-sex couple in a loving, committed relationship for 8 years and wish to marry in Iowa.

11. 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

12. 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).

13. 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

14. 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.

15. 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.”

16. On or about the 2<sup>nd</sup> day of December, 2005, Plaintiffs KATE VARNUM and 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.

17. On or about the 23<sup>rd</sup> 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.

18. On or about the 29<sup>th</sup> 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.

19. On or about the 29<sup>th</sup> 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.

20. On or about the 5<sup>th</sup> day of December, 2005, Plaintiffs BILL MUSSER and OTTER DREAMING informed the office of the Polk County Recorder by telephone that they intended to drive to Polk County in order to submit an application to marry in the State of Iowa in person. At that time, an agent or employee of Defendant BRIEN told them that, even if they did so, the office would refuse to accept their application on the ground that people of the same sex legally cannot marry in the State of Iowa.

21. On or about the 30<sup>th</sup> 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.

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

23. Defendant BRIEN, and his agents and employees denied the Plaintiffs the opportunity to apply for and obtain marriage licenses solely because each Plaintiff wished to marry a partner of the same sex.

#### The Harms of Iowa's Marital Discrimination

24. Plaintiffs and their families are harmed in numerous respects by their exclusion from the right to marry in Iowa.

25. The marital exclusion, privileging as it does the relationships of different-sex partners, penalizes plaintiffs' self-determination in the most intimate sphere of their lives. It does so even though, as lesbians and gay men, they 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.

26. Plaintiffs are prohibited from participating in the highly respected institution of marriage, which 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.

27. As a result of their exclusion from the civil institution of marriage, plaintiffs, their relationships and their families are stigmatized and made more vulnerable, and plaintiffs are unable instantly to communicate the depth and permanence of their commitment to one another as others do by invoking the status of being legally married.

28. Plaintiffs and their children 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 and their family members 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 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; the right to an allowance or to occupy the 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.

(b) Partners of plaintiff employees are denied the right to file for or receive workers' compensation death benefits on the same basis as a surviving spouse, even though the employee pays 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 deprived of numerous spousal rights under 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/or continuation of coverage provided to spouses of deceased public employees;

(e) Plaintiffs and their children or future children may be denied the full benefit of laws that determine custody, visitation, support and parentage, and of the many legal rights and benefits that depend on a legally recognized parent-child relationship;

(f) 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 deceased spouse's organs and tissues;

(g) 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 and their children 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, children's schools, and in other areas of their everyday lives.

29. By denying plaintiffs access to marriage in Iowa, Defendant BRIEN forbids them from making the legal commitment to one another that marriage entails, placing plaintiffs, their relationships, and their children 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**

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

31. 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.

32. 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), 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.

33. 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.

## COUNT II

### **DENIAL OF EQUAL PROTECTION: GOVERNMENTAL DISCRIMINATION IN ACCESS TO MARRIAGE**

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

35. 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.”

36. 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.

37. 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. This prohibition draws impermissible distinctions based on sex and sexual orientation, and in the exercise of fundamental rights, all in violation of the equal protection guarantee of the Iowa Constitution, Article I, § 6.

#### DECLARATORY JUDGMENT AND SUPPLEMENTAL RELIEF

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

39. 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.

40. 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 they cannot marry their partners.

41. Once the Court enters the requested declaratory relief, plaintiffs’ right to a marriage license is clear and Defendant has a mandatory obligation to accept and honor plaintiffs’ applications for marriage licenses. The extraordinary circumstances also merit waiver

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

(d) 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 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 immediately valid marriage licenses to 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: December 13, 2005



Dennis W. Johnson (PK 0002613)  
Amy M. Bjork (PK 18363)  
DORSEY & WHITNEY LLP  
801 Grand Ave., Suite 3900  
Des Moines, IA 50309-2790  
Tel: (515) 283-1000  
Fax: (515) 283-1060

Camilla B. Taylor \*  
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

\* Motions for Admission *Pro Hac Vice* Pending

**ATTORNEYS FOR PLAINTIFFS**