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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Nelda Majors; Karen Bailey; David Larance; Kevin Patterson; George Martinez; Fred McQuire; Michelle Teichner; Barbara Morrissey; Kathy Young; Jessica Young; Kelli Olson; Jennifer Hoefle Olson; Kent Burbank; Vicente Talanquer; C.J. Castro-Byrd; Jesús Castro-Byrd; Patrick Ralph; and Josefina Ahumada; and Equality Arizona

Plaintiffs,

v.

Michael K. Jeanes, in his official capacity as Clerk of the Superior Court of Maricopa County, Arizona; Will Humble, in his

No. 2:14-cv-00518-JWS

CONSOLIDATED REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

–AND-

RESPONSE TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

official capacity as Director of the Department of Health Services; and David Raber, in his official capacity as Director of the Department of Revenue,

Defendants.

INTRODUCTION

The Ninth Circuit has confirmed that Arizona's ban on marriage for same-sex couples violates Plaintiffs' rights under the U.S. Constitution. In *Latta v. Otter*, Nos. 14-35420, 14-35421, 12-17668, 2014 WL 4977682 (9th Cir. Oct. 7, 2014), the Ninth Circuit recently held that substantively identical laws and constitutional provisions excluding same-sex couples from marriage and denying them recognition as married in Idaho and Nevada violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.[1] The decision in *Latta* requires that Arizona's discriminatory marriage ban be struck down as unconstitutional. Plaintiffs request that the Court grant Plaintiffs' Motion for Summary Judgment [Doc. 59] and deny Defendants' Cross-Motion for Summary Judgment [Doc. 82] without further delay.[2]

ARGUMENT

I. THE NINTH CIRCUIT'S DECISION IN *LATTA* REQUIRES THAT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT BE GRANTED.

The Ninth Circuit has now joined an ever-lengthening list of federal courts deciding that there is no "gay exception" to our U.S. Constitution's guarantees of liberty

[1] While Justice Kennedy initially ordered a stay of the Ninth Circuit's mandate, *see Otter v. Latta*, 14A374, 2014 WL 4996356 (U.S. Oct. 8, 2014), the Supreme Court has since denied the application for stay and vacated the initial orders entered by Justice Kennedy, *see Otter v. Latta*, 14A374, 2014 WL 5094190 (U.S. Oct. 10, 2014). The Ninth Circuit has since dissolved its own stay, effective as of 9:00 a.m. October 15, 2014 (Oct. 13, 2014) (Doc. 196).

[2] The Ninth Circuit's decision followed the U.S. Supreme Court's rejection of petitions for certiorari concerning the Fourth, Seventh and Tenth Circuits' decisions invalidating discriminatory marriage bans in Virginia, Indiana, Wisconsin, Utah and Oklahoma. *See, e.g.*, *Schaefer v. Bostic*, 14-225, 2014 WL 4230092 (U.S. Oct. 6, 2014); *Bogan v. Baskin*, 14-277, 2014 WL 4425162 (U.S. Oct. 6, 2014); *Walker v. Wolf*, 14-278, 2014 WL 4425163 (U.S. Oct. 6, 2014); *Herbert v. Kitchen*, 14-124, 2014 WL 3841263 (U.S. Oct. 6, 2014); *Smith v. Bishop*, 14-136, 2014 WL 3854318 (U.S. Oct. 6, 2014).

and equality for all, including the freedom to celebrate love, commitment, and family with the person of one's choice in marriage.[3] The unanimous Ninth Circuit panel in *Latta* held that *Baker v. Nelson*, 409 U.S. 810 (1972) (mem.), did not preclude review of the plaintiffs' constitutional claims, that heightened scrutiny was the applicable standard of review, and that Idaho and Nevada's discriminatory marriage bans violate the Equal Protection Clause. *Latta*, 2014 WL 4977682, at *2-11. The *Latta* decision is controlling, and requires that Defendants be permanently enjoined from enforcing Arizona's similarly discriminatory marriage laws.

A. *Baker v. Nelson* Does Not Foreclose Review of Plaintiffs' Claims.

The Ninth Circuit has expressly held that the U.S. Supreme Court's summary dismissal for want of a substantial federal question in *Baker* is not controlling precedent that precludes consideration of equal protection and due process challenges to bans on marriage for same-sex couples. *Latta*, 2014 WL 4977682, at *2-3. Observing the landmark opinions in *United States v. Windsor*, 133 S.Ct. 2675 (2013), *Lawrence v. Texas*, 539 U.S. 558 (2003), and *Romer v. Evans*, 517 U.S. 620 (1996), the *Latta* court reasoned that "subsequent decisions of the Supreme Court not only suggest but make clear that the claims before us present substantial federal questions." *Id*. at *3 (citation and internal

[3] *See*, *e.g.*, *Latta*, 2014 WL 4977682, at *11(invalidating Idaho's and Nevada's marriage bans); *Baskin v. Bogan*, Nos. 14-2386, 14-2387, 14-2388, 14-2526, 2014 WL 4359059, at *21 (7th Cir. Sept. 4, 2014) (invalidating Indiana's and Wisconsin's marriage bans), *cert. denied*, 2014 WL 4425162 (U.S. Oct. 06, 2014), *and* 2014 WL 4425163 (U.S. Oct. 06, 2014); *Bostic v. Schaefer*, 760 F.3d 352, 384 (4th Cir. 2014) (invalidating Virginia's marriage ban), *cert. denied*, 2014 WL 4230092 (U.S. Oct. 06, 2014); *Bishop v. Smith*, 760 F.3d 1070, 1096 (10th Cir. 2014) (invalidating Oklahoma's marriage ban), *cert. denied*, 2014 WL 3854318 (U.S. Oct. 06, 2014); *Kitchen v. Herbert*, 755 F.3d 1193, 1230 (10th Cir. 2014) (invalidating Utah's marriage ban), *cert. denied*, 2014 WL 3841263 (U.S. Oct. 06, 2014); *Hamby v. Parnell*, No. 3:14-cv-00098-TMB, 2014 WL 5089399 (D. Alaska Oct. 12, 2014) (invalidating Alaska's marriage ban); *Gen. Synod of the United Church of Christ v. Resinger*, No. 3:14-CV-00213, 2014 WL 5092288 (W.D. N.C. Oct. 10, 2014) (invalidating North Carolina's marriage ban); *Burns v. Hickenlooper*, No. 14-CV-01817-RM-KLM, 2014 WL 3634834 (D. Colo. July 23, 2014) (granting preliminary injunction against Colorado's marriage ban); *Love v. Beshear*, 989 F.Supp.2d 536, 550 (W.D. Ky. 2014) (invalidating Kentucky's marriage ban); *Geiger v. Kitzhaber*, 994 F.Supp.2d 1128, 1147-48 (D. Or. 2014); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 775 (E.D. Mich. 2014) (invalidating Michigan's marriage ban); *De Leon v. Perry*, 975 F. Supp. 2d 632, 647-49 (W.D. Tex. 2014) (invalidating Texas' marriage ban).

quotation marks omitted); *see also Hicks v. Miranda*, 422 U.S. 332, 344 (1975) (summary dismissals for lack of substantial federal question preclude review until "doctrinal developments indicate otherwise"). In so holding, the Ninth Circuit affirmed this Court's interpretation of *Baker*[4] and joined the unbroken line of federal courts that have so held after *Windsor*. *See, e.g.*, *Bostic*, 760 F.3d at 372-75; *Kitchen*, 755 F.3d at 1204-08; *Baskin*, 2014 WL 4359059, at *7 ("*Baker* was decided in 1972—42 years ago and the dark ages so far as litigation over discrimination against homosexuals is concerned.").

B. Heightened Scrutiny is the Applicable Standard of Review.

Defendants attempt to avoid controlling Ninth Circuit precedent requiring that sexual orientation classifications be subjected to heightened equal protection review. *See SmithKline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471, 483–84 (9th Cir. 2014), *en banc review denied*, 2014 WL 2862588 (9th Cir. 2014, June 24, 2014). Under heightened scrutiny, the harm inflicted by state action that discriminates based on sexual orientation must be justified and overcome by a sufficiently strong government interest, which the court assesses by carefully examining the actual purposes of the law or other state action, rather than hypothesizing conceivable justifications. *Id*. at 480-83.

The *Latta* court squarely held that *SmithKline* controls and applies to marriage bans like those challenged here. *See Latta*, 2014 WL 4977682, at *4 ("We proceed by applying the law of our circuit regarding the applicable level of scrutiny. Because Idaho and Nevada's [statutes and enacted constitutional amendments preventing same-sex couples from marrying and refusing to recognize same-sex marriages validly performed elsewhere] discriminate on the basis of sexual orientation, that level is heightened scrutiny.").[5]

[4] As this Court recognized in its Order temporarily restraining Defendants from enforcing Arizona's discriminatory marriage laws against Plaintiff Fred McQuire and his now deceased husband George Martinez, "*Baker* is not an impediment." [Doc 75 at 4]

[5] Plaintiffs also agree with Judge Berzon that heightened scrutiny is warranted as well because the marriage ban classifies Arizonans based on gender. *Latta*, 2014 WL 4977682, at *14-23 (Berzon, J., concurring) ("The same-sex marriage bars constitute gender discrimination both facially and when recognized, in their historical context, both as resting on sex stereotyping and as a vestige of the sex-based legal rules once imbedded in the institution of marriage. They must be subject to intermediate scrutiny.").

C. Arizona's Ban on Marriage and Recognition of Out-of-State-Marriages of Same-Sex Couples Violates the Equal Protection Clause.

Arizona excludes same-sex couples from marriage not to advance compelling interests, but to make them and their families unequal to everyone else. Doing so offends the Fourteenth Amendment's Equal Protection Clause. *See Windsor*, 133 S. Ct. at 2675; *Romer*, 517 U.S. at 634-35. The Supreme Court observed that, when government relegates same-sex couples' relationships to a "second-tier" status, it "demeans the couple," "humiliates . . . children being raised by same-sex couples," deprives these families of equal dignity, and "degrade[s]" them, while also causing countless tangible harms, all in violation of "basic due process and equal protection principles." 133 S. Ct. at 2693-95. Plaintiffs' experiences starkly confirm the truth of these observations. Arizona's marriage ban deprives Plaintiffs and their children of equal dignity and autonomy in the most intimate sphere of their lives and brands them as inferior to other Arizona families, inviting discrimination in innumerable daily interactions in medical settings, on the job, at school, and in the benefits and family recognition designed to compensate for work, military service and a lifetime of mutual caring.

Defendants advance three familiar arguments, each of which Plaintiff has addressed in prior briefs, and each of which was specifically rejected in *Latta*. First, the State's assertions notwithstanding, Arizona's marriage ban does not advance a compelling state interest in binding children to their biological parents. While Arizona certainly has a compelling interest in the welfare of children in this state, nothing in Arizona's laws allowing assisted reproduction, adoption, and divorce indicates a primacy of genetic ties over other parental qualities, such as household stability, parenting commitment and skill, and adequate resources. Indeed, this "argument is, fundamentally, non-responsive to plaintiffs' claims to *marriage* rights; instead it is about the suitability of same-sex couples, married or not, as parents, adoptive or otherwise." *Latta*, 2014 WL 4977682, at *8. At any rate, "asserted preference for opposite-sex parents does not, under heightened scrutiny, come close to justifying unequal treatment on the basis of sexual orientation." *Id*. at *9.

As the *Latta* court noted—and as was explained in *SmithKline*, 740 F.3d at 482—"*Windsor* makes clear that the defendants' explicit desire to express a preference for opposite-sex couples over same-sex couples is a categorically inadequate justification for discrimination. Expressing such a preference is precisely what they *may not do*." *Id.* The *Latta* court flatly rejected similar arguments by Idaho and Nevada, which both permit adoption by lesbians and gay men: "To allow same-sex couples to adopt children and then to label their families as second-class because the adoptive parents are of the same sex is cruel as well as unconstitutional. Classifying some families, and especially their children, as of lesser value should be repugnant to all those in this nation who profess to believe in 'family values.'" *Latta*, 2014 WL 4977682, at *9.

Defendants next contend that "fewer fathers will commit to their children's mothers and jointly raise their children" if same-sex couples are permitted to marry. [Doc. 82 at 23] This argument fails because avoiding hypothetical future consequences of equality is not grounds for discrimination. After hearing it, the *Latta* court determined that "[t]his proposition reflects a crass and callous view of parental love and the parental bond that is not worthy of response. We reject it out of hand." *Latta*, 2014 WL 4977682, at *5; *accord Kitchen*, 755 F.3d at 1223 ("[I]t is wholly illogical to believe that state recognition of the love and commitment between same-sex couples will alter the most intimate and personal decisions of opposite-sex couples."); *Windsor v. United States*, 699 F.3d 169, 188 (2d Cir. 2012); *Golinski v. Office of Pers. Mgmt.*, 824 F.Supp.2d 968, 998 (N.D. Cal. 2012); *Perry v. Schwarzenegger*, 704 F.Supp.2d 921, 972 (N.D. Cal. 2010).

Defendants also claim that different-sex couples, especially those with children, will opt less frequently or enthusiastically to participate in an institution that allows same-sex couples to participate, and that the existence of married lesbian and gay couples would communicate that marriage exists primarily to approve romantic bonds, causing a wholesale increase in marital instability. [Doc. 82 at 25-26] Once again, the *Latta* court specifically rejected this argument, holding that "the fear that an established institution will be undermined due to private opposition to its inclusive shift is not a legitimate basis

for retaining the status quo." *Latta*, 2014 WL 4977682, at *6. Furthermore, "[g]iven that the discriminatory impact on individuals because of their sexual orientation is so harmful to them and their families, such unsupported speculation cannot justify the indefinite continuation of that discrimination." *Id.* at *5 n.10; *see also id.* at *11 ("Heightened scrutiny . . . demands more than speculation and conclusory assertions, especially when the assertions are of such little merit."); *Kitchen*, 755 F.3d at 1223.

Third, Defendants' contend that the discriminatory marriage laws "protect" Arizonans' right to define marriage for themselves. Even if that were true, "a primary purpose of the Constitution is to protect minorities from oppression by majorities." *Latta*, 2014 WL 4977682, at *9. Judge Posner's riposte on this point is more blunt: "Minorities trampled on by the democratic process have recourse to the courts; the recourse is called constitutional law." *Baskin*, 2014 WL 4359059, at *19. The *Windsor* court made clear that "state laws defining and regulating marriage, of course, must respect the constitutional rights of persons." 133 S.Ct. at 2691 (citing *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967)). For that reason, "considerations of federalism cannot carry the day for defendants." *Latta*, 2014 WL 4977682, at *9.

Defendants offer nothing beyond arguments specifically rejected by the Ninth Circuit. *Latta* is binding Ninth Circuit precedent and requires that Arizona's discriminatory marriage ban be struck down as unconstitutional.

II. ARIZONA'S MARRIAGE BAN CANNOT WITHSTAND EVEN RATIONAL BASIS EQUAL PROTECTION REVIEW.

Because Arizona's marriage ban consigns same-sex couples and their families to a stigmatized and second-class status based on sexual orientation, it cannot be squared with the basic dictates of the Equal Protection Clause even under rational basis review. Indeed, the Seventh Circuit unanimously rejected the arguments that Defendants advance here when concluding that the marriage bans of Indiana and Wisconsin violated same-sex couples' equal protection rights even under rational basis review. *Baskin*, 2014 WL 4359059 at *9-11, 19.

As more fully briefed in Plaintiffs' Motion for Summary Judgment [Doc. 59], there is no rational connection between Arizona's marriage ban and any asserted state interests in encouraging heterosexual couples to have children responsibly within marriage, or in encouraging the raising of children by supposedly optimal parents—which Defendants characterize as married, biological, different-sex and gender-differentiated. *See, e.g.*, *Bostic*, 760 F.3d at 383-84; *Varnum v. Brien*, 763 N.W.2d 862, 900 (Iowa 2009).

Arizona law does not condition the right to marry on a couple's abilities or intentions for having or raising children. "Just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse, it demeans married couples—especially those who are childless—to say that marriage is simply about the capacity to procreate." *Latta*, 2014 WL 4977682, at *7 (citation and internal quotation marks omitted). Further, children being raised by different-sex couples are unaffected by whether same-sex couples can marry. *See Kitchen*, 755 F.3d at 1223. And then there are the children with same-sex parents, who also warrant the concern of courts and policymakers. *See Baskin*, 2014 WL 4359059, at *6; *Bostic*, 760 F.3d at 383-84.

The *Latta* court rejected substantively identical arguments from Idaho and Nevada:

> In extending the benefits of marriage only to people who have the capacity to procreate, while denying those same benefits to people who already have children, Idaho and Nevada materially harm and demean same-sex couples and their children. Denying children resources and stigmatizing their families on this basis is illogical and unjust. It is counterproductive, and it is unconstitutional.

Latta, 2014 WL 4977682, at *8 (citations and internal quotation marks omitted).

Moreover, the overwhelming scientific consensus, based on decades of peer-reviewed scientific research, shows unequivocally that children raised by same-sex couples are just as well-adjusted as those raised by heterosexual couples. *See, e.g.*, *DeBoer*, 973 F. Supp. 2d at 760-68 (finding that testimony adduced at trial overwhelmingly supported conclusion that there are no relevant differences between the children of same-sex couples and the children of different-sex couples).

Likewise, there is no rational relationship between Arizona's marriage ban and the

State's asserted interest in preventing speculative and unproven adverse social consequences over time. As Judge Posner explained,

> [t]he state's second argument is: 'go slow'. . . . One would expect the state to have provided *some* evidence, *some* reason to believe, however speculative and tenuous, that allowing same-sex marriage will or may 'transform' marriage. . . . [T]he state's lawyer conceded that he had no knowledge of any study underway to determine the possible effects on heterosexual marriage in Wisconsin of allowing same-sex marriage.

Baskin, 2014 WL 4359059, at *19. The Ninth Circuit also found the same arguments Arizona has advanced here to be entirely lacking. *Latta*, 2014 WL 4977682, at *5 ("It would seem that allowing couples who want to marry so badly that they have endured years of litigation to win the right to do so would reaffirm the state's endorsement, without reservation, of spousal and parental commitment. From which aspect of same-sex marriages, then, will opposite-sex couples intuit the destructive message defendants fear? Defendants offer only unpersuasive suggestions.").

Arizona's marriage ban irrationally targets lesbians and gay men for exclusion from the right to marry and to in-state recognition of their valid out-of-state marriages. Because the grounds advanced by Defendants for its discriminatory laws are not only conjectural, but also totally implausible, Arizona's marriage ban fails to satisfy even rational basis review and should be struck down as unconstitutional.

III. ARIZONA'S MARRIAGE BAN VIOLATES PLAINTIFFS' FUNDAMENTAL RIGHTS UNDER THE DUE PROCESS CLAUSE.

The State's main error in its due process analysis is defining the right to marry too narrowly. The fundamental right to marriage, repeatedly recognized by the Supreme Court, *see, e.g.*, *Loving*, 388 U.S. at 12, *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978), is "properly understood as including the right to marry an individual of one's choice."[6] *Latta*, 2014 WL 4977682, at *12 (Reinhardt, J. concurring); *see also id.* (noting that such "right [to marry] applies to same-sex marriage just as it does to opposite sex-marriage").

[6] It also is established that the freedom to marry necessarily includes the freedom to remain married. *Loving*, 388 U.S. at 1.

The State relies heavily on *Washington v. Glucksberg*, 521 U.S. 702 (1997), for the proposition that fundamental rights must be "carefully described." [Doc. 82 at 12] But "'[c]areful' does not mean "'cramped.'" *Latta*, 2014 WL 4977682, at *12 (Reinhardt, J. concurring). To illustrate, in *Loving* and *Zablocki* "the Supreme Court referred to . . . the general right of people to marry, rather than a narrower right defined in terms of those who sought the ability to exercise it." *Latta*, 2014 WL 4977682, at *12 (Reinhardt, J. concurring). Here, the State argues that the right-to-marry cases "plainly demonstrate[] that the right to marry is the right to enter into a gendered relationship," thus narrowly and erroneously defining the fundamental right to marry in terms of who is entitled to exercise it. [Doc. 82 at 13] This "cramped" interpretation of the fundamental right to marry is inconsistent with the Supreme Court's guidance that "the right to marry is of fundamental importance for all individuals."[7] *Zablocki*, 434 U.S. at 384.

Similarly, the Fourth and Tenth Circuits have concluded that the marriage bans of Virginia, Oklahoma, and Utah deprive same-sex couples of due process. *See, e.g.*, *Bostic*, 760 F.3d at 376-78; *Bishop*, 760 F.3d at 1096; *Kitchen v*, 755 F.3d at 1219-22. *Bostic* and *Kitchen* confirm that the long-established fundamental right to marry is defined by neither the sexual orientation nor the sex of either fiancé or spouse. *Bostic*, 760 F.3d at 377 ("If courts limited the right to marry to certain couplings, they would effectively create a list of legally preferred spouses, rendering the choice of whom to marry a hollow choice indeed."); *Kitchen*, 755 F.3d at 1208-18 (noting that "the importance of marriage is based in great measure on 'personal aspects' including the 'expression[] of emotional support and public commitment'" and that the Supreme Court's "pronouncements on the freedom to marry . . . focus on the freedom to choose one's spouse" (quoting *Turner v. Safley*, 482

[7] The State's concern that defining the right to marry too broadly would "threaten other well-established limitations on marriage" is unfounded. Fundamental rights, of course, may sometimes be abridged where the laws burdening them are narrowly tailored to a compelling state interest. And "it is not difficult to envision that states could proffer substantially more compelling justifications for such laws than have been put forward in support of the same-sex marriage bans at issue here." *Latta*, 2014 WL 4977682, at *12 n.2 (Reinhardt, J. concurring).

U.S. 78 (1987), and other cases)); *id.* ("Simply put, fundamental rights are fundamental rights. They are not defined in terms of who is entitled to exercise them." (citation and internal quotation marks omitted)). Moreover, "the fundamental right to marry necessarily includes the right to remain married." *Kitchen*, 755 F.3d at 1213.

Arizona's marriage ban unconstitutionally denies Plaintiffs the fundamental right to marry the person each has chosen and to have their valid out-of-state marriages respected in Arizona, and also burdens their protected liberty interests, including interests in association, integrity, autonomy, and self-definition. As outlined above, Defendants cannot articulate *any* legitimate interest—let alone a compelling one—for abrogating the fundamental rights of same-sex couples in this manner. *See, e.g.*, *Bostic*, 760 F.3d at 377; *Geiger*, 2014 WL 2054264, at *14; *De Leon*, 975 F. Supp. at 653.

IV. A STAY IS NOT WARRANTED IN THIS CASE.

Defendants have failed to establish that a stay is warranted in this case, as they are unlikely to succeed on the merits if they appeal, they will not suffer irreparable harm in the absence of relief, the balance of equities tips against them, and a stay is not in the public interest. *See Humane Soc. of U.S. v. Gutierrez*, 558 F.3d 896, 896 (9th Cir. 2009).

Defendants claim that "binding precedent . . . requires a stay of any decision enjoining enforcement of" Arizona's discriminatory marriage ban relies on outdated orders of the Ninth Circuit and the Supreme Court. [Doc. 82 at 30] Indeed, Defendants are not likely to succeed on the merits, as demonstrated by the Supreme Court's recent denial of review of decisions in the Fourth, Seventh and Tenth Circuits. *See, e.g., Baskin*, 2014 WL 4359059, *cert. denied*, 2014 WL 4425162 (U.S. Oct. 06, 2014), *and* 2014 WL 4425163 (U.S. Oct. 06, 2014); *Bostic*, 760 F.3d 352, *cert. denied*, 2014 WL 4230092 (U.S. Oct. 06, 2014); *Bishop*, 760 F.3d 1070, *cert. denied*, 2014 WL 3854318 (U.S. Oct. 06, 2014); *Kitchen*, 755 F.3d 1193, *cert. denied*, 2014 WL 3841263 (U.S. Oct. 06, 2014). Furthermore, the Ninth Circuit's controlling decision in *Latta* requires that Arizona's marriage ban be struck down. *See Latta*, 2014 WL 4977682, at *11. This is further supported by the Supreme Court's recent order vacating Justice Kennedy's temporary stay

of *Latta* mandate. *See Otter v. Latta*, 14A374, 2014 WL 5094190 (U.S. Oct. 10, 2014).

Defendants have not established how they would be irreparably harmed absent a stay, or that the balance of equities tips in their favor. Although "[t]he public has an important interest in the faithful discharge of duties imposed on Arizona's public officials by Arizona law," there is also "an important interest in those same officials' compliance with the highest law of the land . . . . Where discharging state law runs afoul of the United States Constitution, the interest of the public necessarily lies in compliance with the higher law." [Doc 75 at 13]

A stay is unwarranted in this case. Plaintiffs respectfully request that the court promptly issue an injunction permanently enjoining Arizona, its political subdivisions, and its officers, employees, and agents, from enforcing any constitutional provision, statute, regulation, or policy preventing otherwise qualified same-sex couples from marrying, or denying recognition to marriages celebrated in other jurisdictions which, if the spouses were not of the same sex, would be valid under the laws of the state.[8]

CONCLUSION

For two adults who have fallen in love, found joy and comfort with each other, and pledged to support and sustain each other through years of entwined lives, being denied the freedom to marry creates a deep and abiding sense of loss. Arizona's exclusion of Plaintiffs from marriage, and refusal to honor the true marital status of those who have married elsewhere, has caused all of them and their children myriad tangible as well as dignitary harms—injuries that cannot be justified under the Equal Protection and Due Process Clauses of our federal Constitution. For all the reasons set forth in Plaintiffs' moving papers, the Court should grant Plaintiffs the relief requested.

[8] With the filing of this brief, briefing on Plaintiffs' Motion for Summary Judgment is complete. Given defense counsel's opportunity in *Connolly v. Roche* to address *Latta* in a supplemental brief, and especially in light of the ongoing abridgement of Plaintiffs' constitutional rights, Plaintiffs respectfully request that the Court rule on Plaintiffs' motion when it rules in *Connolly*. If the Court rules as indicated is likely when it granted the temporary restraining order in this case [Doc. 75 at 13], and when it ordered supplemental briefing in *Connolly* [Doc. 85], Defendants' motion and additional briefing on that motion will be moot.

Dated: October 14, 2014

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CERTIFICATE OF SERVICE

☒ I hereby certify that on October 14, 2014, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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☒ I hereby certify that on October 14, 2014, I served the attached document by first class mail on Honorable John W. Sedwick, United States District Court, Federal Building and United States Courthouse, 222 West 7th Avenue, Box 32, Anchorage, Alaska 99513-9513.

s/S. Neilson