

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

Court File No. 14–CV–_____
Case Type: Civil Rights / § 1983

Jennie and Nancy Rosenbrahn;

Jeremy Coller and Clay Schweitzer;

Lynn and Monica Serling-Swank;

Krystal Cosby and Kaitlynn Hoerner;

Barbara and Ashley Wright; and

Greg Kniffen and Mark Church,

Plaintiffs,

vs.

Dennis Dugaard, in his official capacity as
Governor;

Marty Jackley, in his official capacity as
Attorney General;

Doneen Hollingsworth, in her official
capacity as Secretary of Health;

Trevor Jones, in his official capacity as
Secretary of Public Safety;

Donna Mayer, in her official capacity as
Pennington County Register of Deeds;

Carol Sherman, in her official capacity as
Brown County Register of Deeds;

Defendants.

**COMPLAINT FOR PERMANENT
INJUNCTION AND
DECLARATORY RELIEF**

INTRODUCTORY FACTS

1. During the infancy of the United States, John Adams, James Madison, Alexis de Tocqueville, and others, warned of “tyranny of the majority.” Concerned that a direct democracy would allow a simple majority to stampede the rights and dignity of minorities, our nation’s founders created a constitutional representative democracy, establishing a system of government with several super-majoritarian checks on simple majorities and myriad institutional checks and balances pursuant and subordinate to the Constitution.

2. In 1898, South Dakota became the first State in the nation to allow a simple majority of its voting-eligible citizens¹ to initiate and enact constitutional amendments. Since that time, and particularly in the last half century, our country has seen an explosion in the use of such statewide popular votes to circumvent the traditional legislative process and to override the judiciary — often in a manner that tramples on the dignity and equality of minorities.

3. In 1992, a 53% majority of Colorado voters approved a ballot measure that added Amendment 2 to the Colorado Constitution. The amendment prohibited every county, city, and town within Colorado from protecting gay and lesbian individuals from discrimination. In 1996, the United States Supreme Court reviewed the amendment in Romer v. Evans, 517 U.S. 620 (1996). In the Court’s opinion, Justice Kennedy wrote, “laws of the kind... raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected,” and concluded that the ballot measure

¹ South Dakota did not allow women to vote until 1918.

² The Proposal, YouTube (May 21, 2014), <http://youtu.be/7Kk8MnIxWnU>

was born of a “bare... desire to harm a politically unpopular group.” *Id.* at 634. The Court added, “[i]f the constitutional conception of equal protection of the laws means anything, it must at the very least mean that a bare... desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.” *Id.* (emphasis in original) (internal citations omitted).

4. With the adoption of the Fourteenth Amendment in 1868, our Constitution provided not only a more expansive definition of citizenship, but also the framework for assuring our Founders’ “self-evident” truth of liberty and equality: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

5. Guided by this framework, the United States Supreme Court has declared the right to marry as “fundamental” and one of the “basic civil rights of man.” *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Its decisions have made clear that “the freedom of personal choice in matters of marriage and family life is one of the liberties” protected by the Fourteenth Amendment. *Zablocki v. Redhail*, 434 U.S. 374, 393 (1978).

6. In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the Supreme Court repeatedly emphasized that although the States may generally define and regulate marriage, that such laws, “of course, must respect the constitutional rights of persons.” *Id.* at 2691. In striking down Section 3 of the Defense of Marriage Act, the Court recognized that “the avowed purpose and practical effect of the law... [was] to impose a

disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages...” Id. at 2693.

7. Recognizing that the “liberty protected by the Fifth Amendment’s Due Process Clause contains within in the prohibition against denying to any person the equal protection of the laws,” the Court added that, “the equal protection guarantee of the Fourteenth Amendment makes the Fifth Amendment right all the more specific and all the better understood and preserved.” Id. at 2695.

8. In 2006, in response to the recognition of same-sex couples by the other States and jurisdictions, a group of South Dakotans sought to “protect marriage” by denying same-sex couples the right to marry in the State by restricting the definition of marriage to “a man and a woman” in the South Dakota Constitution via “Amendment C.” The amendment, which passed by approximately 12,000 votes on November 7, 2006, didn’t stop at denying loving and committed same-sex South Dakotan couples the right to marry; it also refuses to allow the South Dakota government the authority to recognize marriages, civil unions, domestic partnerships, and “all other quasi-martial unions” performed in other States and jurisdictions. The avowed purpose—and the practical effect—of Amendment C’s ratification was born of a bare desire to impose a disadvantage, a separate status, a stigma, and a harm upon a politically unpopular group.

9. South Dakota passed Amendment C despite the fact that in 1996 the South Dakota legislature had already banned same-sex marriage by enacting changes to Title 25 of its Codified Laws. These changes — intended as a response to court decisions indicating that Hawaii might allow same-sex couples to marry — included language that

prohibited marriage of same-sex couples and voided same-sex marriages from other jurisdictions. By way of example, Title 25 of South Dakota Codified Law provides:

(a) Marriage is a personal relation, between a man and a woman, arising out of a civil contract to which the consent of the parties capable of making it is necessary. Consent alone does not constitute a marriage; it must be followed by a solemnization.

S.D. Codified Laws § 25-1-1.

(c) Any marriage contracted outside the jurisdiction of this state, except a marriage contracted between two persons of the same gender, which is valid by the laws of the jurisdiction in which such marriages was contracted, is valid in this state.

S.D. Codified Laws § 25-1-38.

10. Via the Constitution and the statutory bans (“hereinafter collectively referred to as “the marriage bans”), South Dakota refuses to confer the rights and responsibilities of marriage upon same-sex couples, and refuses to recognize same-sex marriages performed in other jurisdictions; by doing so, South Dakota has given effect to the private biases of a simple majority. Without any legitimate governmental interest, South Dakota has targeted a minority of individuals for discrimination on the basis of sexual orientation. By this Complaint, Plaintiffs seek to end that unlawful discrimination.

11. The above-named loving and committed couples ask this Court to hold that the State of South Dakota cannot discriminate against same-sex couples who seek the right to marry; and, they ask this Court to hold that South Dakota cannot discriminate against same-sex marriages in choosing whether or not to recognize marriages performed out of state.

12. Named Plaintiffs Nancy and Jennie Rosenbrahn and Named Plaintiffs Clay Schweitzer and Jeremy Coller are individuals living in the State of South Dakota. They are loving and committed same-sex couples who wished to marry while living in South Dakota and applied for marriage licenses in South Dakota but were denied on the basis of their same-sex partnerships. As a result, both couples were forced to travel hundreds of miles, across State lines, and to another time zone in order for other States to confer upon them the dignity and respect that is deserved by all loving and committed couples under the law. These Plaintiffs wish for the State of South Dakota to now respect and recognize their lawfully obtained marriages, and for this Court to declare South Dakota's refusal to recognize their lawfully obtained out-of-state marriages as unconstitutional.

13. Named Plaintiffs Krystal Cosby and Kaitlynn Hoerner are individuals in a female same-sex relationship; they are presently living in the State of South Dakota and seek the right to marry in South Dakota. They applied for a marriage license in South Dakota but were denied on the basis of their same-sex partnership. These Plaintiffs seek the right to marry in South Dakota, and for this Court to declare South Dakota's refusal to do so as unconstitutional.

14. Named Plaintiffs Lynn and Monica Serling-Swank are individuals in a same-sex marriage who are presently living in the State of South Dakota but who were living outside of South Dakota when they were lawfully unionized by another State. South Dakota refused to recognize their union when they traveled and moved into the State. They wish for the State of South Dakota to now respect and recognize their

lawfully obtained marriage and for this Court to declare South Dakota's refusal to do so as unconstitutional.

15. Named Plaintiffs Barbara and Ashley Wright and Named Plaintiffs Greg Kniffen and Mark Church are individuals residing in South Dakota who are also in loving, committed, same-sex relationships. These couples wished for the right to be married while living in the State of South Dakota but could not do so due to South Dakota's discriminatory laws. Accordingly, these couples lawfully married outside the State of South Dakota and now seek South Dakota's respect and recognition of their marriages.

16. Marriage plays an important role in our society. In addition to being the celebration and hallmark of a couple's commitment to build their lives and family together, it confers dignity, status, rights, and responsibilities. Plaintiffs have formed or want to form enduring bonds worthy of the respect that the State affords to different-sex couples through marriage. Yet, the State has deprived gay and lesbian South Dakotans of the right to marry their chosen partners and declines to recognize lawful marriages entered in other jurisdictions based on sexual orientation and sex. The State's discriminatory "marriage bans" are enshrined in South Dakota statutes and in South Dakota Constitution Article 21, § 9, which limits marriage to couples composed of "a man and a woman."

17. The marriage bans inflict serious and irreparable harms upon same-sex couples and their children that cannot be explained by reference to any legitimate governmental interest.

18. Same-sex couples are identical to different-sex couples in all characteristics relevant to marriage.

19. Same-sex couples make the same commitment to each other as different-sex couples. Like different-sex couples, same-sex couples fall in love, build their lives together, plan their futures together, hope to grow old together, and seek to make decisions about end of life and post-life planning together. Like different-sex couples, same-sex couples support each other emotionally and financially, and take care of each other when faced with injury or illness.

20. Same-sex couples seek to marry for the same emotional and romantic reasons and the same reasons of dignity as different-sex spouses. They desire to declare their love and commitment before their families, friends, and community, and to obtain the status, security, protections, and responsibilities of marriage.

21. Like some different-sex couples, some same-sex couples, including Named Plaintiffs Krystal Cosby and Kaitlynn Hoerner and Named Plaintiffs Barbara and Ashley Wright, are parents raising children together. These couples and their children are equally worthy of the tangible rights and responsibilities, as well as the respect, dignity, and legitimacy, that access to marriage confers on different-sex couples and their children. For the many children born to or being raised by same-sex couples, the tangible resources and societal esteem that marriage confers are no less necessary and precious than for children of different-sex couples.

22. Our courts and our society have discarded, one by one, marriage laws that violated the United States Constitution's mandate of equality and liberty, such as anti-

miscegenation laws and laws that denied married women independence and the right to make their own decisions. History teaches us that the vitality of marriage does not depend on maintaining discriminatory laws, and that eliminating unconstitutional restrictions on marriage has enhanced the institution. Indeed, in 17 states and the District of Columbia, same-sex couples are legally marrying and the institution of marriage continues to thrive.

JURISDICTION AND VENUE

23. This action arises from a dispute involving the Constitution and the laws of the United States. This Court, therefore, has federal question subject matter jurisdiction pursuant to Title 28 United States Code §§ 1331 and 1343.

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as all Defendants reside within this State and District and a substantial part of the events that gave rise to Plaintiffs' claims took place in this State and District.

25. This Court has personal jurisdiction over Defendants because they are residents of, and domiciled in, this State and District.

26. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

PARTIES

A. Named Plaintiffs

27. Plaintiffs are each individual "persons" within the meaning of 42 U.S.C. § 1983.

Jennie and Nancy Rosenbrahn

28. Named Plaintiffs Nancy Rosenbrahn, age 68, and Jennie Rosenbrahn, age 72, are adult individuals in a female same-sex relationship. They reside in Rapid City, South Dakota. Together, the couple owns and manages a mobile home park in Rapid City and provides foster housing for rescued dogs.

29. A native of Milwaukee, Wisconsin, Nancy settled in Rapid City in 1973. She subsequently operated a drive-in near Keystone, South Dakota and a roller skating rink in Rapid City.

30. Jennie grew up in rural Louisiana and also moved to Rapid City in the mid 1970's. In the early 1980's, Jennie became the owner of the land containing the Ash Mobile Home Park.

31. Nancy and Jennie first met at a friend's home for lunch in 1983. Following four years of courtship, they fell in love and began their relationship in 1987, with the couple driving to Kay Jewelers in the old Rapid City Mall and buying rings to signify their love and commitment to each other.

32. For the past three decades, Nancy and Jennie have lived together as a couple and have brought their families together. Between the two of them, they have four children, which in turn have given Nancy and Jennie six beautiful grandchildren.

33. Ethan, one of their grandsons, was a curious nine-year-old boy when one day a couple years ago, Nancy recalls Ethan asking her how she felt about the fact that her and Grandma Jennie couldn't get married like his parents. The question pulled at

Nancy's heartstrings, as it was evident to Nancy that Ethan was sad and confused as to why his grandmothers were treated differently by society.

34. Despite being together for so long, due to South Dakota's installment of laws that deny them recognition as a couple, many South Dakotans do not realize that Nancy and Jennie are in a relationship. That hurts Nancy and Jennie, who show the kind of love and dedication for each other that so many dream of having; yet, they are often assumed to be sisters.

35. As Nancy and Jennie began making end-of-life planning decisions, they were forced to recognize that South Dakota, the State in which they've spent nearly 30 years building a life together and wish to remain for their lives' durations, refuses to recognize their relationship. That refusal has numerous negative consequences for the couple; for example, under South Dakota law, if Jennie were to pass away, Nancy would have no stake in the mobile home park they operate together.

36. In light of all of the above, in 2013, after hearing the story of Edith Windsor and Thea Spyer, and after reading the Supreme Court decision, Nancy asked Jennie to marry her, and Jennie happily agreed.

37. On March 10, 2014, Nancy and Jennie applied for a marriage license at the Pennington County Register of Deeds in Rapid City. An agent for Defendants Dennis Daugaard, Marty Jackley, Doneen Hollingsworth, and Donna Mayer denied this loving and committed couple of 27 years a marriage license simply because they are both females.

38. Nancy and Jennie wanted to marry in South Dakota for several reasons, including to be recognized by their State as a loving and committed couple without having to explain their relationship to others. They wanted to protect the life they had built together and be sure that end of life planning decisions, including the transfer of assets, available survivorship benefits, etc., would be protected.

39. As parents and grandparents, they wanted to be recognized as a family equal to others. As evidenced by Ethan's question, their grandchildren are old enough to understand that their grandparents were not married and are not treated the same as other families by the government, and he struggles to understand why. Ethan wanted Nancy and Jennie to be married like many of his friends' parents and grandparents. Nancy and Jennie found it painful that they couldn't fulfill his wish in South Dakota.

40. On April 26, 2014, pursuant to a lawfully obtained marriage license issued by the State of Minnesota, Nancy and Jennie were married at the Community of Christ Church in Minneapolis, Minnesota.

41. Minneapolis Mayor Betsy Hodges officiated the couple's ceremony. Mayor Hodges said, "Knowing that marriage even so is a powerful bond when recognized by the law and therefore by your community, in a new way, do you, Jennie, now choose marriage to Nancy under the law? And do you, Nancy, now choose marriage to Jennie under the law?" With tearful joy, both enthusiastically answered, "yes."

42. After the ceremony, the couple celebrated with their closest family and friends. Their daughter baked what is arguably the world's most delicious cake.

43. Prior to being married in Minnesota, the couple had different last names. When they were married, they combined their last names of “Robrahn” and “Rosenkranz” into “Rosenbrahn,” as indicated on their Minnesota marriage license. After their wedding ceremony, the couple traveled back to South Dakota, where the State refuses to recognize their marriage and still sees them as “Nancy Robrahn” and “Jennie Rosenkranz,”

44. On May 8, 2014, Nancy and Jennie went to the Rapid City licensing station to change their name in light of their marriage. An agent for Defendants Daugaard and Jackley and Defendant Trevor Jones denied the couple the right to change their name, handing them a form that said, “**Marriage certificates for same sex couples aren’t valid in this State.**” (emphasis in original).

45. Nancy and Jennie want their drivers’ licenses to carry their jointly held last name. Unlike different-sex couples, who simply present a marriage certificate in order to do so, Nancy and Jennie are required to go through the onerous, time-consuming, and cost-involved process of asking a court to issue an order allowing them to change their names.

Jeremy Coller and Clay Schweitzer

46. Named Plaintiffs Clay Schweitzer and Jeremy Coller are adult individuals in a male same-sex relationship. The couple resides in Rapid City, South Dakota. Jeremy is a Registered Nurse and Clay is the nursing director at the Theres A Hart Assisted Living Facility.

47. Clay was born in Aberdeen, South Dakota and moved to Rapid City when he was two years old. Raised in Rapid City, Clay grew up in a loving home with a family that has always fully supported him in life and in love. Clay went to nursing school in Rapid City and is now a geriatric nurse, which he considers his passion. Clay grew up believing in the American Dream; for as long as he can remember, he's always wanted to fall in love, get married, have kids, and build a life centered around strong family values. Now that Clay has found Jeremy, the love of his life, he wants to continue building that dream.

48. Jeremy was born in Rapid City and raised in Kadoka, South Dakota and Custer, South Dakota. Jeremy earned his bachelor's degree in business hospitality from Northern Arizona University and subsequently moved to Denver, Colorado, where he began his career with a leading hotel chain. In 2009, Jeremy's stepfather was diagnosed with cancer; Jeremy saw it as a calling to move back home and help care for his parents. He decided South Dakota is where he belonged, and he went back to school. Jeremy then completed the nursing program at the University of South Dakota. And, while he was there, in 2010, he met Clay through mutual friends. Soon thereafter, he fell in love.

49. Clay and Jeremy share an affinity for animals and the outdoors; their joint hobbies include camping, gardening, playing with their two dogs and four cats, and building their home together. Clay and Jeremy have always wanted to be married and to have children together.

50. On August 8, 2013, surrounded by friends and family in the Black Hills, Clay proposed to Jeremy in a beautiful surprise engagement. The engagement was captured on video and preserved online.²

51. On April 23, 2014, Clay and Jeremy applied for a marriage license at the Pennington County Courthouse in Rapid City. An agent for Defendants Daugaard, Jackley, Hollingsworth, and Mayer denied the couple a marriage license simply because they are both male.

52. The couple wanted a lawful marriage, which South Dakota would not allow. Accordingly, Clay and Jeremy chose to be married in Iowa since it was closer to Clay's brother's home. On May 14, 2014, they were married in Sioux City, Iowa before a few close friends and family. In September 2014, Clay and Jeremy plan to have a ceremony and reception in the Black Hills to celebrate with the rest of their friends and family in South Dakota.

53. Having their marriage recognized in their home state of South Dakota is important to Clay and Jeremy, especially as they prepare for having children. Clay and Jeremy want to be sure that adequate legal protections are available for their family. The State's refusal to recognize their marriage hurts them and burdens their family in many ways. For example, unlike different-sex couples, since their Rapid City home is in Jeremy's name, if he were to pass away, Clay would not be considered family and wouldn't be eligible under the State's intestacy laws to inherit the home or any portion of Jeremy's assets. Clay and Jeremy also worry about having children in South Dakota

² The Proposal, YouTube (May 21, 2014), <http://youtu.be/7Kk8MnIxWnU>

because of the stigma and lack of protections they and their children will face due to South Dakota's refusal to recognize their marriage.

Lynn and Monica Serling-Swank

54. Named Plaintiffs Lynn Serling-Swank and Monica Serling-Swank are adult individuals in a female same-sex relationship. They reside in Brandon, South Dakota. They have been together for over 12 years. They both work at the same credit card company in Sioux Falls, South Dakota, where they get to see each other every day. They enjoy the same music, the same food, and the same hobbies. The couple loves animals. They have three cats and two dogs, and although Lynn wants more pets, Monica has drawn the line.

55. Monica was raised in Sioux Falls, and after graduating high school, she joined the United States Navy in October 1982. Monica vividly remembers the day she left South Dakota to enlist. Her mother told her, "Whatever happens, don't let them turn you into a lesbian."

56. While in the Navy, amidst further pressures to conform to stereotypical gender roles and behaviors, Monica struggled to understand and accept her sexual orientation. She was written up for wanting to join an all-women's softball team because she would be "associated with the lesbians." With the help of Navy friends, who encouraged her to do some soul searching in order to more fully understand and accept herself, Monica eventually recognized and accepted that she was a lesbian. Concerned about choosing between her career in the Navy and choosing to seek a loving and

committed relationship with a woman, Monica completed her initial four years in the Navy, was honorably discharged, and moved forward with her life.

57. Lynn grew up just outside of New York City. Her family, including her mother, father, and brother, all loved her unconditionally. Around the third grade, Lynn began to recognize that she had attractions to women. After graduating high school, Lynn went to Simmons College in Boston, where she received her bachelor's degree in marketing. After college, Lynn married a man. When that relationship ended a year and a half later, Lynn decided it was time to be more authentic to her true self. She took a job with Starbucks, moved to Connecticut, and in 2002 while managing the Newtown, Connecticut Starbucks, Lynn met Monica, who was also working for Starbucks.

58. Monica and Lynn quickly fell in love with each other. They eventually moved in together and continued to forge an ever-stronger bond. Approximately four years after meeting, while living in Connecticut, Monica and Lynn decided they wanted to get married. They wanted to get married because of their unconditional love for each other and their desire to spend the rest of their lives together. Although marriage wasn't an option for them at that time, they lawfully obtained a civil union license from the State of Connecticut. And, on June 4, 2006, in front of over 100 family and friends, the couple had a ceremony and party at one of their favorite places, the Stony Hill Inn in Bethel, Connecticut. There, on a gazebo overlooking a beautiful summer lawn and fountain pond, Monica and Lynn expressed their vows of lifelong love and commitment to each other, danced, ate, and generally celebrated their relationship with those that meant so much to them.

59. Recognizing that she had been away from her family for over 20 years, and wanting to go back to South Dakota to help her parents run their family business, Monica discussed her concerns with Lynn. Lynn immediately decided that, for the love of her life, it was worth traveling across the country and moving to a place she had never been. Together they developed a plan to move to South Dakota and start new lives.

60. When the couple moved to South Dakota in 2007, it was clear they had traveled to a State that was not as welcoming to them; their lawfully obtained civil union was considered worthless. Monica and Lynn immediately felt the effects of the discriminatory laws in South Dakota's society. Even after their civil union was converted to a marriage by Connecticut in 2010, Monica and Lynn are routinely greeted with hostility, awkwardness, and confusion when they tell people in South Dakota that they are wives.

61. From constantly being asked if they want separate tabs at dinner, to Lynn being denied access to Monica while she was in the hospital, the couple is frustrated that South Dakota has ratified their treatment as second-class citizens. Unlike different-sex couples, for example, Monica and Lynn have had to go to great lengths to ensure that their assets are protected in the event that one of them were to pass away and to ensure that their doctors know who each other are and won't treat the other as a stranger in the event that one of them is in the hospital.

62. The couple is frustrated that they have to spend thousands of extra dollars and immeasurable extra energy compared to different-sex couples in an effort to provide protection for their relationship under the law—only to end up with less such protection.

63. In short, Monica and Lynn want their Connecticut marriage to be treated with the same dignity and respect that is afforded to different-sex couples in South Dakota.

Krystal Cosby and Kaitlynn Hoerner

64. Krystal Cosby and Kaitlynn Hoerner are adult individuals in a female same-sex relationship. They reside in Aberdeen, South Dakota. On April 24, 2014, the couple was thrilled to welcome their daughter, K.C., into the world.

65. Krystal was born and raised near Hot Springs, Arkansas. She attended high school in Jessieville, Arkansas, where she joined the Army Reserve Officers' Training Corps. In 2007, Krystal enlisted in the Army as a Private First Class. After basic training in South Carolina, she was stationed in Tacoma, Washington, where Krystal worked as a dental technician and lived just over the border in Idaho.

66. In 2011, Krystal's company was preparing to be part of the last deployment to Iraq. During pre-deployment preparations, Krystal was severely injured and was unable to deploy. So, Krystal finished out her enlistment and was honorably discharged. Krystal then moved to South Dakota to help her disabled family care for Krystal's grandmother. Shortly after moving to South Dakota, Krystal met Kaitlynn, who was born and raised in western South Dakota and later moved to Aberdeen to be near family and friends.

67. In 2012, Krystal and Kaitlynn met through mutual friends and initially became friends themselves. They quickly became closer and established a relationship. Together, the couple enjoys doing many activities, including going to the park, hosting

social gatherings, and viewing and making art. They live together in a quiet Aberdeen neighborhood next to Kaitlynn's mom.

68. The couple has always wanted children. After discussing it among themselves and with their friends and family, Krystal underwent in vitro fertilization, and on April 25, 2014, their world changed when they welcomed K.C. into the world at St. Luke's hospital in Aberdeen. When K.C. was born, the couple was crushed to discover that the State of South Dakota would not allow Kaitlynn to be listed as a parent on K.C.'s birth certificate. They must now go through the onerous process of Kaitlynn attempting to adopt K.C. as a second parent, and it is unclear whether that will even be allowed under South Dakota law. See S.D. Codified Laws § 25-6 *et seq.* It would not be unclear, however, if Kaitlynn and Krystal were able to marry, or if South Dakota treated them as they treat different-sex couples.

69. If they are not allowed to marry or to get a court to allow Kaitlynn to adopt as a second parent, Kaitlynn will lack any recognition as a parent of her own child — a status that could automatically be granted to persons in different-sex relationships immediately upon the child's birth. The lack of legal recognition that Kaitlynn is a parent of her and Krystal's own child exposes the couple and their child to unacceptable risks that deprives them of a host of critical legal protections should any health emergencies or other problems arise.

70. Krystal and Kaitlynn want to marry to express their devotion to each other and to obtain the dignity and legitimacy of marriage for them and K.C. Krystal and Kaitlynn worry that as K.C. gets older, she will realize that her friends' parents are

married, while the law treats their parents as “less than.” Krystal and Kaitlynn do not want K.C. to carry a sense of uncertainty, inferiority, or shame because she knows her parents cannot secure their relationship through marriage. Krystal and Kaitlynn also worry about what might happen in the event of a medical emergency, especially if Kaitlynn’s relationship to K.C. is questioned.

71. Krystal and Kaitlynn are legally qualified to marry under South Dakota law, but for the fact that they are the same sex. They are of sound mind and capable of consent. They are over the age of 18. They have no living spouse of a previous undissolved marriage. They are not related to their prospective spouses within the prohibited degrees of blood or marriage. They are willing to provide the information to receive a marriage license and to pay the required fee. They are able and eager to assume the responsibilities of marriage.

72. On May 22, 2014, Krystal and Kaitlynn tried to apply for a marriage license at the Brown County Register of Deeds. An agent for Defendants Daugaard, Jackley, Hollingsworth, and Defendant Carol Sherman, denied the couple a marriage license simply because they are both female. The agent said, “We don’t do that here in South Dakota.”

Barbara and Ashley Wright

73. Barbara (“Barb”) and Ashley Wright are adult individuals in a female same-sex relationship. The Wrights live in Aberdeen, South Dakota with their six children from previous relationships. Ashley is four months pregnant with their next

child, which they are excited to welcome in Fall 2014. Barb works as a truck diver and Ashley is a CN for Bethesda Senior Living Center in Aberdeen.

74. Barb and Ashley met in 2012 when they were both working at Aberdeen Health and Rehabilitation Center. They were both single divorced mothers working two jobs each to care for their children. Given their common interests and passion for caring for others, they quickly fell in love.

75. Barb was born and raised in Buffalo, Minnesota, where she went on to work as a prison guard in Appleton, Minnesota and raised her children. Barb would often bring her children camping to Storybook Land near Aberdeen. She enjoyed the area so much that she decided she wanted to move there and raise her children in Aberdeen. When Barb met Ashley, she quickly knew she wanted to spend her life with her.

76. Ashley was born in Reno, Nevada and was raised in Orlando, Florida. Ashley had family in South Dakota and lived in the State briefly while she was younger. And, when she had her first daughter, Ashley and her ex-partner made the decision to move to South Dakota because Ashley felt it was a better place to raise children.

77. After her divorce, Ashley met Barb in 2012 when they were both divorced single mothers working at Aberdeen Health and Rehabilitation Center. They discovered their common interests and immediately began spending as much time together as possible. The couple fell madly in love, and on September 20, 2013, they were lawfully married in the State of Minnesota. The couple talked about having a child together, and in early 2014, Ashley underwent in vitro fertilization. Ashley is now sixteen weeks pregnant and the couple is expecting their first child in Fall 2014.

78. Barb and Ashley frequently take their children to Storybook Land, have barbeques, spend time outside playing with the children, go fishing and swimming, and enjoy spending time with friends. They feel Aberdeen is a safe and quiet place to raise their children, and they want to remain there. It pains them, however, that their family is not seen as equal by the State.

79. According to the laws of South Dakota, different-sex married couples who conceive a child using in vitro fertilization are able to take advantage of the statutory presumption that both spouses are the parents of a child born during a marriage. Different sex couples therefore are not required to take any additional steps in order to obtain legal recognition for both of them as the parents of the child they decided to have together. Because the State of South Dakota does not recognize Barb and Ashley's marriage, however, Barb cannot benefit from that marital presumption. If they are not able to use any such steps to confirm that both are the legal parents of the child, Barb will lack any recognition as a parent of her own child — a status that automatically would be granted to any different-sex spouse immediately upon the child's birth. The lack of automatic legal recognition that Barb is a parent of her and Ashley's own child exposes the couple and their child to unacceptable risks that deprives them of a host of critical legal protections should any health emergencies or other problems arise during or shortly after the birth of their child.

80. When Barb and Ashley married, Barb took Ashley's last name. Because the State of South Dakota refuses to recognize their marriage, however, the State of South Dakota refuses to issue Barb a drivers license in her married name. A few weeks after her

marriage, Barb went to the Aberdeen Drivers' Licensing station and attempted to have her name changed. An agent for Defendants Daugaard, Jackley, and Jones denied her. The hostile agent told Barb to leave the licensing station and for her and her family to "move back to Minnesota." This has caused significant problems for Barb, who is a truck driver and is subject to strict background checks and drivers licensing rules. When Barb applied for her most recent driving position, she almost didn't get the job when she presented her social security card and drivers license and the last names appeared differently. Barb had to go home and get a copy of her marriage certificate and spend a significant amount of time and energy explaining the situation to her employer.

Greg Kniffen and Mark Church

81. Greg Kniffen and Mark Church are adult individuals in a male same-sex relationship. The couple presently lives in Sioux Falls, South Dakota and has been together for 11 years. Both are natives of South Dakota; Greg was born and raised in Tyndall and Mark was born and raised Aberdeen. Mark is a pharmacy technician at CIGNA Healthcare. Greg, a former business owner who has twice ran for South Dakota's House of Representatives, recently made a career change and is presently attending pharmacy school.

82. Living in rural South Dakota towns that were hours away from each other, Greg and Mark first met online in Fall 2000. For two full years, they talked about life, love, travel, music, careers, and more. They discussed what it was like living as gay men in small towns and spoke about their experiences of being raised in Catholic families.

They became close friends despite the distance and, in 2002, Mark moved from Aberdeen to Sioux Falls.

83. On an October evening in 2002, Mark was seated in the audience at a church in Sioux Falls; he had come to watch Greg—who he had yet to meet in person—perform in a play. After the play, Greg invited Mark to go out with some friends. Mark felt a spark. They exchanged phone numbers and eventually began dating.

84. After falling in love, in October 2003, Mark and Greg moved in together. Since that time, they've enjoyed experiencing life and the world together. They love to travel and meet new people, enjoy time on the lake jet skiing, participating in Pride events in Sioux Falls, enjoy discussing politics, enjoy spending time with their friends, and adore their friends' young children.

85. Greg and Mark followed the story of Edith Windsor. After reading the Supreme Court's opinion in June 2013, Greg proposed to Mark. Knowing that they couldn't marry in South Dakota, the couple married in Minnesota on October 11, 2013.

86. Greg and Mark want their marriage to be recognized in South Dakota for several reasons, including to be recognized by their State as a loving and committed couple without having to explain their relationship to others. They want to protect the life they are building together and be sure that end of life planning decisions, including the transfer of assets, available survivorship benefits, and all of the other rights, benefits, protections, and responsibilities available by law for marriage are protected.

B. Defendants

87. Each Defendant is an individual “person” within the meaning of 42 U.S.C. § 1983. Each Defendant, at all times relevant to this Complaint, was and is acting in the color and scope of their official capacity as an employee of the government of the State of South Dakota. Each individual Defendant is sued in their official capacity.

88. Defendant Dennis Daugaard is the Governor of South Dakota. In his official capacity, the Governor is the chief executive officer of the State of South Dakota. It is his responsibility to ensure that the laws of the State are properly enforced. The Governor maintains an office in Pierre, South Dakota. The Governor oversees, directs, and enforces each of the acts, omissions, duties, and responsibilities of every other named Defendant. The Governor enforces and executes the laws of the State of South Dakota, including the laws banning marriage and recognition of same-sex marriage and civil unions.

89. Defendant Marty Jackley is the Attorney General of the State of South Dakota. In his official capacity, the Attorney General is the chief legal officer of the State of South Dakota. It is his duty to see that the laws of the State are uniformly and adequately enforced. The Attorney General maintains an office in Pierre, South Dakota. The Attorney General enforces each of the acts, omissions, duties, and responsibilities of every other named Defendant. The Attorney General enforces and executes the laws of the State of South Dakota, including the laws banning marriage and recognition of same-sex marriage and civil unions.

90. Defendant Doneen Hollingsworth is the Secretary of Health. In her official capacity as Secretary of Health, Secretary Hollingsworth is responsible for overseeing the

Division of Administration, the State's vital records registration system, and the Register of Deeds' office. This includes the registration, collection, preservation, amendment, and certification of vital records, including certificates of marriage, birth, and death. Secretary Hollingsworth's duties also include directing, supervising, and issuing instructions for administration and staff activities of the Division of Administration, and promoting uniformity of policy and procedures throughout the State in these matters. Secretary Hollingsworth must ensure compliance through all of these functions with relevant State laws, including those that exclude same-sex couples from marriage and from having lawful out-of-state marriages recognized.

91. Defendant Trevor Jones is the Secretary of Public Safety. In his official capacity as Secretary of Public Safety, Secretary Jones is responsible for overseeing the Division of Licensing and Inspection. The Division of Licensing and Inspection is the division of the Department of Public Safety that operates the Driver Licensing service centers throughout the State of South Dakota. In his official capacity, Secretary Jones is responsible for overseeing the issuance of drivers licenses in South Dakota, including the development and enforcement of policies and procedures for updating those records to reflect South Dakota residents' marriages.

92. Defendant Donna Mayer is the Pennington County Register of Deeds. In her official capacity, Ms. Mayer's duties include issuing marriage licenses. Ms. Mayer must ensure compliance through this function with relevant State laws, including those that exclude same-sex couples from marriage.

93. Defendant Carol Sherman is the Brown County Register of Deeds. In her official capacity, Ms. Sherman's duties include issuing marriage licenses. Ms. Sherman must ensure compliance through this function with relevant State laws, including those that exclude same-sex couples from marriage.

FURTHER FACTUAL BACKGROUND

94. Plaintiffs incorporate the allegations set forth in each of the preceding paragraphs of this Complaint as if fully set forth herein.

95. Gay and lesbian individuals have faced a long and painful history of societal and government-sponsored discrimination in this country. Although their sexual orientation bears no relation to their ability to contribute to society, gay men and lesbians have been singled out for discriminatory treatment. They have faced unconstitutional criminal penalties for private sexual conduct between consenting adults, harassment, hate crimes, and discrimination in employment and many other areas. They have even been the subject of laws stripping them of rights afforded to all other citizens.

96. South Dakota has been among the states that have enacted laws stripping gay men and lesbians of rights afforded to all other citizens. Gay men and lesbians also have been the subject of hate crimes in South Dakota.

97. Plaintiffs are residents of South Dakota who experience the same joys and challenges of family life as their heterosexual neighbors, co-workers, and other community members who may marry under South Dakota law or whose lawful out-of-state marriages are recognized by South Dakota. Plaintiffs are productive, contributing citizens who support their families and nurture their children, but the State of South

Dakota does not afford them the legal protections, dignity, and respect provided to other families through access to the status of marriage. By excluding Plaintiffs from marriage and from recognition of their lawful out-of-state marriages, the State subjects Plaintiffs to legal vulnerability, unequal financial burdens, and related stress, while depriving them and their children of equal dignity and security. South Dakota's marriage bans send a purposeful message that the State views lesbians and gay men and their children as second-class members of society who do not deserve the same legal sanction, legal protection, respect, support, responsibilities, and obligations as different-sex spouses and their families.

98. Barring same-sex couples from marriage or from recognition of their lawful out-of-state marriage disqualifies them from rights and responsibilities that different-sex couples rely on to secure their commitment to each other, and to safeguard their families. By way of example, South Dakota's marriage bans deny same-sex couples:

(a) The ability to celebrate a "marriage" through a state-approved ceremony, which symbolizes the binding together of two lives and two families, and creates relationships and memories that couples, families, and friends cherish for a lifetime. S.D. Codified Laws § 25-1-5.

(b) The rights and responsibilities flowing from a spouse's statutory obligation toward each other of mutual respect, fidelity, and support. S.D. Codified Laws § 25-2-1

(c) The rights and responsibilities to support oneself and their spouse out of their property or by their labor. S.D. Codified Laws § 25-7-1

(d) The ability to safeguard family resources under an array of laws that include, for example, the exemption from taxable income of the value of health insurance coverage that one spouse receives through the other's employment and the homestead tax exemption for disabled veterans or their surviving spouse. S.D. Codified Laws §§ 10-4; 43-31; 43-45; 29A-2-402.

(e) The ability to make caretaking decisions and exercise other rights in times of death and disaster, including first preference in making medical decisions for an incapacitated spouse, S.D. Codified Laws § 34-12C-3; the ability to authorize autopsy or dissection of one's deceased spouse, S.D. Codified Laws § 34-26-4; the ability to consent to an autopsy, S.D. Codified Laws § 34-26-2; priority to control disposition of a deceased spouse's remains and to make burial arrangements, S.D. Codified Laws §§ 34-26-5; 34-26-16; priority to make anatomical gifts of a decedent's body, S.D. Codified Laws § 34-26-5; exclusive priority of benefit in wrongful death actions for wrongful death of a spouse, S.D. Codified Laws § 21-5-5; and the ability to recover workers' compensation benefits for a spouse killed on the job, S.D. Codified Laws § 63-2 *et seq.*

(f) The ability to support each other in end-of-life circumstances, such as being assured privacy for visits with a spouse in a nursing home and the right to share a room with a spouse if both reside in the same nursing home. S.D. Codified Laws § 34-12-13, S.D. Admin. R. 44:04:17:08.

(g) The right to inheritance under the laws of intestacy, S.D. Codified Laws § 29A-2-101(a); S.D. Codified Laws § 29A-2-102.; the right to a lump sum

allowance for the surviving spouse and children, S.D. Codified Laws § 29A-2-403; the right to take an elective-share of the augmented estate in lieu of the will's provision for the spouse, S.D. Codified Laws §§ 29A-2-202; preference for appointment as an administrator of the deceased spouse's estate, S.D. Codified Laws § 29A-3-203; and various survivor benefits, including benefits for a spouse and children of law enforcement officers, firefighters, and other emergency personnel killed in the line of duty, S.D. Codified Laws § 13-55-22.

(h) The ability to secure legal recognition for parent-child bonds, including presumptive parentage and equal entitlement to a child's custody, service, and earnings in the case of unwed birth. S.D. Codified Laws §§ 25-5-3; 25-7-30; 25-5-7.

(i) The ability to access a child's healthcare records and the right to be listed as a parent on all such records. S.D. Codified Laws § 25-5-7.3

(j) The right to take leave under the Family Medical Leave Act ("FMLA") to care for a same-sex spouse. Under the FMLA, 29 U.S.C. §§ 2601 *et seq.*, employees are entitled to 12 weeks of unpaid leave in a 12-month period to care for a spouse with a serious medical condition, or 26 weeks to care for an eligible military service-member spouse with a serious injury or illness. Moreover, the spouses of service-members on covered active duty or who have been notified of an impending call or order to covered active duty may take FMLA leave to address short-notice deployment issues, for military events and ceremonies, to make or update financial or legal arrangements, for counseling, and other

exigencies caused by a call to service, 29 C.F.R. § 825.126. Because by regulation the employee's state of residence determines whether a person is considered a spouse under the FMLA, see 29 C.F.R. § 825.102, same-sex spouses residing in South Dakota are not considered spouses and would not be entitled to FMLA leave.

(k) Rights and responsibilities under more than 1,000 federal statutes and regulations involving marriage, including laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans' benefits. Couples lawfully married in other jurisdictions and living in South Dakota may qualify for some federal benefits and protections, but may be denied others, such as veteran's spousal benefits and Social Security survivor benefits. Many of these deprivations drain family financial resources, causing harm not only to same-sex couples but also to their children.

99. In addition to these tangible harms, the State's marriage bans deny Plaintiffs the unique social recognition that marriage conveys. Without access to the familiar language and legal label of marriage, Plaintiffs are unable to immediately or adequately communicate to others the depth and permanence of their commitment, or to obtain respect for that commitment simply by invoking their married status.

100. The inequities imposed on committed same-sex couples include harms specific to their children and grandchildren, who are equally deserving of the stability, permanence, and legitimacy enjoyed by children and grandchildren of different-sex spouses. Civil marriage affords official sanctuary to the family unit, offering parents and

children critical means to secure legal parent-child bonds and a familiar, public way of demonstrating those bonds to third parties. By denying same-sex couples access to marriage, the State reinforces the view held by some that the family bonds that tie same-sex parents and their children are less consequential, enduring, and meaningful than those of different-sex parents and their children. Same-sex couples and their children must live with the vulnerability and stress inflicted by a lack of access to the same mechanisms for securing their legal relationships, and the ever-present possibility that others may question their familial relationship — in social, legal, educational, and medical settings and in moments of crisis — in a way that spouses can avoid by simple reference to being married.

101. Children understand from an early age that marriage signifies an enduring family unit, and likewise understand that the State has deemed a class of families less worthy than others, undeserving of marriage, and not entitled to the same societal recognition and support as other families. The State has no adequate interest to justify marking the children of same-sex couples, including the children and grandchildren of Named Plaintiffs, with a badge of inferiority that will invite disrespect in school, on the playground, and in every other sphere of their lives.

102. The government is a powerful teacher of discrimination. By decreeing that same-sex relationships should be ignored in South Dakota and enforcing that decree, the State and Defendants instruct all persons who interact with same-sex couples, including those couples' own children and grandchildren, that their relationships are less worthy than others. Bearing the imprimatur of the government, the State's marriage bans and

Defendants' enforcement of them communicate a view that same-sex couples and their children are unfit for the dignity, respect, and stature afforded to different-sex couples and their children. This encourages others in workplaces, schools, businesses, and other arenas of life to follow the government's example in discriminating against same-sex couples — and, in turn, lesbians and gay men.

103. Many private entities defer to the State's pronouncement of marital status in defining "family" for purposes of benefits, often resulting in the exclusion of same-sex couples and their children from safety nets such as private employer-provided health insurance for family members, including to some of the Named Plaintiffs in this matter.

104. There is no legitimate interest, let alone an important or compelling one, in excluding same-sex couples from the institution of marriage.

105. Neither history nor tradition can justify the exclusion of same-sex couples from marriage. Marriage has remained vital and enduring because of its resilience in response to a dynamic society, as society and the courts have cast off restrictions on, for example, interracial marriage and coverture.

106. As the Supreme Court has made clear, the law cannot, directly or indirectly, give effect to private biases. Liberty and equality, not moral disapproval, must be the guiding framework for a state's treatment of its citizens.

107. Excluding same-sex couples from marriage does nothing to protect or enhance the rights of different-sex couples. Different-sex spouses will continue to enjoy the same rights and status conferred by marriage, unimpaired by the acknowledgment that this freedom belongs equally to same-sex couples.

108. Although the State has a valid interest in protecting the public fisc, it may not pursue that interest by making invidious distinctions between classes of its citizens without adequate justification.

109. The State's interest in child welfare is harmed rather than furthered by excluding same-sex couples from marriage. That exclusion injures same-sex couples' children without offering any conceivable benefit to other children.

110. Barring same-sex couples from marriage does not affect which couples raise children together. Same-sex couples in South Dakota can and do bear children through reproductive technology that is available to different-sex couples, and also bring children into their families through foster care and adoption. Marriage has never been the sole province of couples who are or who may become parents. Neither South Dakota nor any other state has ever restricted marriage to those capable of or intending to procreate.

111. There is no valid basis for the State to assert a preference for parenting by different-sex couples over same-sex couples. Based on more than 30 years of research, the scientific community has reached a consensus that children raised by same-sex couples are as well-adjusted as children raised by different-sex couples. This consensus has been recognized by every major professional organization dedicated to children's health and welfare, including the American Academy of Pediatrics, the American Medical Association, the American Psychological Association, the National Association of Social Workers, and the Child Welfare League of America.

112. Other courts have found, after trials involving expert testimony, that there is no rational basis for favoring parenting by heterosexual couples over lesbian and gay

couples. See, e.g., DeBoer v. Snyder, No. 12-CV-10285, 2014 WL 1100794, at *14 (E.D. Mich. Mar. 21, 2014) (finding that children’s outcomes do not depend on the sex or sexual orientation of their parents); Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 980 (N.D. Cal. 2010) (finding that the research supporting the conclusion that “[c]hildren raised by gay or lesbian parents are as likely as children raised by heterosexual parents to be healthy, successful and well-adjusted” is “accepted beyond serious debate in the field of developmental psychology”), aff’d sub nom. Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012), vacated for lack of standing sub nom. Hollingsworth v. Perry, 133 S. Ct. 2652 (2013); In re Adoption of Doe, 2008 WL 5006172, at *20 (Fla. Cir. Ct. Nov. 25, 2008) (“based on the robust nature of the evidence available in the field, this Court is satisfied that the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of children are not preserved by prohibiting homosexual adoption”), aff’d sub nom. Florida Dep’t of Children & Families v. Adoption of X.X.G., 45 So.3d 79 (Fla. Dist. Ct. App. 2010); Howard v. Child Welfare Agency Review Bd., Nos. 1999-9881, 2004 WL 3154530, at *9 and 2004 WL 3200916, at *3-4 (Ark. Cir. Ct. Dec. 29, 2004) (holding that “there was no rational relationship between the [exclusion of gay people from becoming foster parents] and the health, safety, and welfare of the foster children.”), aff’d sub nom. Dep’t of Human Servs. v. Howard, 238 S.W.3d 1 (Ark. 2006).

113. Excluding same-sex couples from marriage harms their children by, among other things, branding their families as inferior and less deserving of respect, and encouraging private bias and discrimination. Denying same-sex couples the dignity and status of marriage humiliates the children raised by those couples, and makes it more

difficult for the children to understand the integrity and closeness of their own families and its concord with other families in their community.

114. Excluding same-sex couples from marriage will not make the children of different-sex spouses more secure. The children of different-sex spouses will continue to enjoy the benefits that flow from their parents' marriages regardless of whether same-sex couples are permitted to marry. The marriage bans have no conceivable effect on the choices different-sex couples make about such profound issues as whether to marry, whether to have children, and whether to raise their children in wedlock.

115. The State's interest in the welfare of children parented by same-sex couples is as great as its interest in the welfare of any other children. The family security that comes from the State's official recognition and support is no less important for same-sex parents and their children than it is for different-sex parents and their children.

CAUSES OF ACTION

Count I:

Deprivation of Equal Protection

Fourteenth Amendment to the United States Constitution

116. Plaintiffs incorporate the allegations set forth in each of the preceding paragraphs of this Complaint as if fully set forth herein.

117. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

118. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to Title 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

119. As described throughout this Complaint, same-sex couples such as Plaintiffs are identical to different-sex couples in all characteristics relevant to marriage.

120. South Dakota's adoption of Amendment C and its implementation into South Dakota Constitution Article 21 § 9, Title 25 of South Dakota Codified Laws, and all other sources of South Dakota law that preclude marriage for same-sex couples or prevent recognition of their marriages violate the equal protection guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs. Defendants' conduct in enforcing these laws violates Plaintiffs' right to equal protection by discriminating impermissibly on the basis of sexual orientation and sex. Moreover, by enshrining discrimination in the State's Constitution, Amendment C has deprived lesbian and gay South Dakotans of the equal protection of the laws by locking them out of the political process and making it uniquely more difficult to secure legislation on their behalf.

121. As the Secretary of Health, Defendant Hollingsworth enforces the marriage bans by, among other things, prescribing, furnishing, and distributing forms that prohibit same-sex couples from marrying, and forms that prohibit same-sex couples from having their lawful out-of-state marriages recognized on birth and death certificates. These actions violate Plaintiffs' constitutional rights to equal treatment, without regard to sexual orientation or sex, under the Fourteenth Amendment to the United States Constitution. This includes the rights of Plaintiffs who wish to marry or have their existing marriages recognized, such as Named Plaintiffs Jennie and Nancy Rosenbrahn, Named Plaintiffs Jeremy Coller and Clay Schweitzer, Named Plaintiffs Lynn and Monica Serling-Swank, Named Plaintiffs Greg Kniffen and Mark Church, and Named Plaintiffs Barbara and

Ashley Wright, some of whom want to be listed as parents on the birth certificates of their planned children.

122. As Secretary of Public Safety, Defendant Jones enforces marriage bans by, among other things, prescribing, furnishing, and distributing forms that prohibit same-sex couples lawfully married in other jurisdictions from having their marriage recognized on their drivers licenses. These actions violate the constitutional rights to equal treatment of Named Plaintiffs and others.

123. As Attorney General, Defendant Jackley has enforced marriage bans by enforcing, directing, and defending the bans.

124. As Governor, Defendant Daugaard has enforced marriage bans by overseeing and directing each of the Defendants and their acts, omissions, duties, and responsibilities.

125. The State's marriage bans, and Defendants' actions to enforce them, deny same-sex couples equal dignity and respect, and deprive their families of a critical safety net of rights and responsibilities. The marriage bans brand lesbians and gay men and their children as second-class citizens through government-imposed stigma and promote private bias and discrimination by instructing that same-sex relationships are less worthy than others. The marriage bans reflect moral disapproval and antipathy toward lesbians and gay men.

Discrimination Based on Sexual Orientation.

126. The State's marriage bans target lesbian and gay South Dakotans as a class for exclusion from marriage and discriminate against Plaintiffs based on their sexual orientation, both facially and as applied.

127. The exclusion of Plaintiffs from marriage based on their sexual orientation subjects Defendants' conduct to strict or at least heightened scrutiny. Defendants' conduct cannot withstand this scrutiny because the exclusion does not serve any legitimate governmental interests, let alone any important or compelling interests, and does not serve any interests in an adequately tailored manner.

128. Lesbians and gay men have suffered a long and painful history of discrimination in South Dakota and across the United States.

129. Sexual orientation bears no relation to an individual's ability to perform in or contribute to society.

130. Sexual orientation is a core, defining trait that is 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.

131. Sexual orientation generally is fixed at an early age and highly resistant to change through intervention. No credible evidence supports the notion that interventions are effective or safe; indeed, they often are harmful and damaging. No mainstream mental health professional organization approves interventions intended to change sexual orientation, and almost all of them have adopted policy statements cautioning professionals and the public against these treatments.

132. Prejudice against gay men and lesbians continues to curtail the operation of political processes that might ordinarily be relied upon to protect minorities. Lesbians and gay men have fewer civil rights protections at the state and federal level than racial minorities and women had when race and sex-based classifications were declared to be suspect and quasi-suspect, respectively.

133. 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, including South Dakota. They are systematically under-represented in federal, state, and local democratic bodies. They have been denied the right to marry through 30 state constitutional amendments and currently are not permitted to marry in 33 states.

Discrimination Based on Sex.

134. The State's marriage bans discriminate against Plaintiffs on the basis of sex, both facially and as applied, barring Plaintiffs from marriage or from recognition of their lawful marriages solely because each Plaintiff wants to be married to or married a spouse of the same sex. The sex-based restriction is plain on the face of the State's marriage bans, which restrict marriage to a "man and woman" and deny recognition of relationships involving people of "the same gender."

135. Because of these sex-based classifications, South Dakota prohibited Named Plaintiffs Jennie and Nancy Rosenbrahn and Named Plaintiffs Jeremy Coller and Clay Schweitzer—and is presently prohibiting Named Plaintiffs Krystal Cosby and Kaitlynn Hoerner—from marrying their devoted life partners because they are the same sex;

individually, if these Plaintiffs were the opposite sex, they could marry their partner in South Dakota. Named Plaintiffs Jennie and Nancy Rosenbrahn, Named Plaintiffs Jeremy Coller and Clay Schweitzer, Named Plaintiffs Lynn and Monica Serling-Swank, Named Plaintiffs Barbara and Ashley Wright, and Named Plaintiffs Greg Kniffen and Mark Church are precluded from having their marriages recognized as valid because they are not the opposite sex of their partners; individually, if these Plaintiffs were the opposite sex, South Dakota would recognize their lawful marriages.

136. The State's marriage bans also serve the impermissible purpose of enforcing and perpetuating sex stereotypes by excluding Plaintiffs from marriage or from being recognized as lawfully married because Plaintiffs have failed to conform to sex-based stereotypes that men should marry women, and women should marry men.

137. Because there are no longer legal distinctions between the duties of husbands and wives, there is no basis for the sex-based eligibility requirements for marriage.

138. The exclusion of Plaintiffs from marriage based on their sex and the enforcement of gender-based stereotypes cannot survive the heightened scrutiny required for sex-based classifications in laws.

***Discrimination with Respect to Fundamental Rights and Liberty Interests Secured by
the Due Process Clause.***

139. The State's marriage bans discriminate against Plaintiffs based on sexual orientation and sex with respect to the exercise of the fundamental right to marry and their liberty interests in dignity, autonomy, and family integrity and association.

Differential treatment of Plaintiffs’ exercise of fundamental rights and liberty interests based on their sexual orientation and sex subjects Defendants’ conduct to strict or at least heightened scrutiny, which Defendants’ conduct cannot withstand.

Count II:
Deprivation of Due Process
Fourteenth Amendment to the United States Constitution

140. Plaintiffs incorporate the allegations set forth in each of the preceding paragraphs of this Complaint as if fully set forth herein.

141. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking injunctive and declaratory relief.

142. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to Title 42 U.S.C. § 1983, provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

143. South Dakota’s adoption of Amendment C and its implementation into South Dakota Constitution Article 21 § 9, Title 25 of South Dakota Codified Laws, and all other sources of South Dakota law that preclude marriage for same-sex couples or prevent recognition of their marriages violate the due process guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs.

144. 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 Fourteenth Amendment. Defendants’ enforcement of the marriage bans impermissibly

infringes on Plaintiffs' choice of whom to marry and their ability to have their marriages recognized, interfering with a core, life-altering, and constitutionally protected choice.

145. The Due Process Clause also protects choices central to privacy, personal dignity, and autonomy, including each individual's rights to family integrity and association. Defendants' enforcement of the marriage bans impermissibly infringes Plaintiffs' intimate, personal, and private decisions about family life, and precludes Plaintiffs from obtaining full liberty, dignity, and security for themselves, their family, and their parent-child bonds.

146. As the Secretary of Health, Defendant Hollingsworth enforces the marriage bans by, among other things, prescribing, furnishing, and distributing forms that prohibit same-sex couples from marrying and forms that prohibit same-sex couples from having their lawful out-of-state marriages recognized on birth and death certificates. These actions violate Plaintiffs' fundamental rights with respect to marriage and constitutional rights to liberty, dignity, autonomy, family integrity, association, and due process under the Fourteenth Amendment to the United States Constitution. This includes the rights of Plaintiffs who wish to marry and to have their existing marriages recognized, such as Named Plaintiffs Barbara and Ashley Wright, who both want to be listed as parents on the birth certificates of their planned children.

147. As Registers of Deeds for Brown and Pennington Counties, Defendants Mayer and Sherman ensure compliance with the marriage bans by, for example, denying same-sex couples marriage licenses. These actions violate the fundamental right to marry and the rights, protected under the Fourteenth Amendment to the United States

Constitution, to liberty, dignity, autonomy, family integrity, association, and due process of Named Plaintiffs Krystal Cosby and Kaitlynn Hoerner.

148. As Attorney General, Defendant Jackley has enforced marriage bans by enforcing, directing, and defending the bans.

149. As Governor, Defendant Daugaard has enforced marriage bans by overseeing and directing each of the Defendants and their acts, omissions, duties, and responsibilities.

150. Defendants cannot satisfy the Due Process Clause's decree that governmental interference with a fundamental right or liberty interest may be sustained only upon a showing that the burden is narrowly tailored to serve a compelling or important governmental interest, because the marriage bans are not even tailored to any legitimate interest.

Count III:
Deprivation of Fundamental Right To Travel
Fourteenth Amendment to the United States Constitution

151. Plaintiffs incorporate the allegations set forth in each of the preceding paragraphs of this Complaint as if fully set forth herein.

152. The Fourteenth Amendment protects the liberty of individuals to travel throughout the nation, uninhibited by statuses, rules, or regulations that unreasonably burden or restrict their movement. This right guards against interference with citizens' rights "to migrate, resettle, find a new job, and start a new life." Shapiro v. Thompson, 394 U.S. 618, 629 (1969). The right to travel prohibits both laws that affirmatively interfere with or prevent a citizen's travel, and also laws that "penalize[e] those who

choose to” migrate to another state. Id. at 631. The right extends not only to temporary visits to other States, but also to becoming a permanent resident of another State. Id.

153. Defendants’ refusal, under color of State law, to respect the valid out-of-state marriages of Plaintiffs and other same-sex couples unconstitutionally burdens and infringes on Plaintiffs’ right to travel throughout the nation and to resettle and make a new home in South Dakota. By conditioning Plaintiffs’ move to South Dakota on relinquishment of all rights, benefits, and responsibilities of their marriages lawfully celebrated in other States, the State has imposed a penalty on Plaintiffs’ exercise of their constitutionally protected right to travel. Defendants’ actions therefore constitute a “deprivation of the liberty of the person,” Windsor, 133 S. Ct. at 2695, protected by the Fourteenth Amendment. For this reason, South Dakota’s adoption of Amendment C and its implementation into South Dakota Constitution Article 21 § 9, Title 25 of South Dakota Codified Laws, and all other sources of South Dakota that preclude recognition of marriages performed in other States or jurisdictions, are unconstitutional on their face and as applied to Plaintiffs.

154. A law that has the effect of imposing a penalty on the exercise of the right to travel is subject to strict scrutiny and may be upheld only upon a showing that the restriction is narrowly tailored to advance a compelling government interest. Defendants cannot satisfy this requirement; indeed, the challenged statutes are not even rationally related to the furtherance of a legitimate government interest.

155. Plaintiffs have no adequate remedy at law to dress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

156. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

Declaratory and Injunctive Relief
Title 28 U.S.C. §§ 2201 and 2202;
Fed. R. Civ. P., Rules 57 and 65

157. This case presents an actual controversy because Defendants' present and ongoing denial of due process, equal protection, and privileges or immunities subjects Plaintiffs to serious and immediate harms, warranting the issuance of a declaratory judgment.

158. Named Plaintiffs seek injunctive relief to protect their constitutional rights and avoid the injuries described above. A decision enjoining Defendants would redress and prevent irreparable injuries to Plaintiffs, for which Plaintiffs have no adequate remedy at law or in equity.

159. The State will incur little to no burden in allowing same-sex couples to marry and in recognizing the lawful marriages of same-sex couples from other jurisdictions on the same terms as different-sex couples, while the hardship to Plaintiffs of being denied due process, equal protection, and privileges or immunities is severe, subjecting them to an irreparable denial of their constitutional rights. The balance of hardships thus tips strongly in favor of Plaintiffs.

PRAYER FOR RELIEF

Plaintiffs request that this Court enter judgment:

A. Declaring that the provisions of and enforcement by Defendants of Amendment C, South Dakota Constitution Article 21 § 9, Title 25 of South Dakota

Codified Laws, and all other sources of South Dakota law that prohibit same-sex couples from marrying or refuse recognition to South Dakota out-of-state marriages of same-sex spouses violate Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution;

B. Permanently enjoining enforcement by Defendants of Amendment C, South Dakota Constitution Article 21 § 9, Title 25 of South Dakota Codified Laws, and all other sources of South Dakota law that exclude same-sex couples from marriage or that refuse recognition to lawful out-of-state marriages of same-sex couples;

C. Requiring Defendants in their official capacities to permit issuance of marriage licenses to same-sex couples and to recognize lawful out-of-state marriages of same-sex couples, subject to the same restrictions and limitations applicable to different-sex couples;

D. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to Title 42 U.S.C. § 1988 and other applicable laws; and

E. Granting such other and further relief as the Court deems just and proper.

F. The requested declaratory and injunctive relief is sought against each Defendant; each Defendant's officers, employees, and agents; and all persons acting in concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

Respectfully submitted this 22nd day of May, 2014,

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* *Pro hac vice application forthcoming*

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