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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

Eugene Division

**DEANNA L. GEIGER and JANINE M.
NELSON, ROBERT DUEHMIG and
WILLIAM GRIESAR,**

Plaintiff,

v.

JOHN KITZHABER, in his official capacity as
Governor of Oregon, **ELLEN ROSENBLUM**,
in her official capacity as Attorney General of
Oregon, **JENNIFER WOODWARD**, in her
official capacity as State Registrar, Center of
Health Statistics, Oregon Health Authority, and
RANDY WALRUFF, in his official capacity as
Multnomah County Assessor,

Defendants.

Civil Nos.

6:13-CV-01834-MC (Lead Case)
6:13-cv-02256-MC (Trailing Case)

DEFENDANT RANDY WALRUFF'S
RESPONSE TO MOTIONS FOR
SUMMARY JUDGMENT FILED IN
THE *GEIGER* AND *RUMMELL*
CASES

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JUDGMENT FILED IN THE *GEIGER* AND *RUMMELL* CASES

Multnomah County supports equality and inclusion for all minorities and opposes illegal discrimination of any kind. (Declaration of Marissa Madrigal ¶ 10). The *Geiger* and *Rummell* lawsuits seek to secure the rights of all Oregonians to wed, regardless of sexual orientation. Multnomah County joins the Plaintiffs of both cases in asking this Court to carefully consider the constitutionality of Oregon laws prohibiting same-sex marriage and then strike them down.

For many years Multnomah County has taken the position that state laws excluding same-sex couples from marrying are discriminatory and unconstitutional. For this reason, Multnomah County issued more than 3000 marriage licenses to same-sex couples in 2004 before opponents raised legal challenges and passed a statewide referendum that made issuing marriage licenses to same-sex couples plainly illegal under Oregon law. (Madrigal Declaration ¶¶ 12-14).

The County is proud to have stood firm on this core civil rights issue a decade ago when backing marriage rights for all was neither easy nor politically safe. Fortunately, in only one short decade, public opinion has shifted dramatically in our state and in our country in support of marriage equality. While Multnomah County may not issue marriage licenses to same-sex couples under current Oregon law, the County agrees with the Plaintiffs' assertion that the United States Constitution guarantees same-sex couples the right to marry. The County also urges this Court to resolve the conflict between federal and state law by joining other federal courts in recognizing this most fundamental right.

Multnomah County now finds itself in the unavoidable position of being subject to suit for currently failing to issue marriage licenses to same-sex couples, despite its commitment to issuing marriage licenses to same sex-couples. None of Oregon's 36 counties issue marriage licenses to same-sex couples because the Oregon Supreme Court's ruling in *Li et al. v State* and

the prohibition on same-sex marriage contained in Article 15 § 5a of the Oregon Constitution are still Oregon law.

In her Answer in the *Rummell* case, Oregon Attorney General Ellen Rosenblum stated that she will not defend these suits, but will continue to enforce the ban on same sex-marriage in Oregon. (State Defendants' Answer and Affirmative Defenses to the *Rummell* Amended Complaint ¶ 28). Recently Attorney General Eric Holder has stated that State Attorneys General are not obligated to defend lawsuits challenging same-sex marriage bans, but has remained silent on whether they should continue to enforce the ban. (Declaration of Katharine von Ter Stegge ¶ 2, Exhibit A).

Multnomah County will begin issuing marriage licenses to same-sex couples as soon as it receives clear direction from the courts, the voters, the Legislature, or the Attorney General of Oregon that it is legal to do so.

POSITION

Like the Plaintiffs in these lawsuits, Multnomah County recognizes that the marriage laws currently in effect in the State of Oregon conflict with freedoms secured to all Americans by the United States Constitution.

Multnomah County agrees with the following assertions and legal analysis set forth in Plaintiffs' Motions for Summary Judgment:

- Article 15 § 5a of the Oregon Constitution prohibits same-sex couples from marrying lawfully in Oregon.
- Oregon Domestic Partnerships do not extend protections to same-sex couples equal to those extended to opposite-sex couples who may marry under current Oregon law.

- Denying same-sex couples the right to marry is harmful to same-sex couples and their children.
- Same-sex couples are no less capable of entering into long-term committed relationships and successfully parenting children than opposite-sex couples.
- Under the reasoning set forth in *SmithKline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471 (9th Cir. January 21, 2014), this Court should use a heightened scrutiny standard of review in deciding whether or not Oregon laws prohibiting same-sex marriage violate the Equal Protection guarantees of the United States Constitution.
- Oregon’s exclusionary marriage laws will fail to pass this heightened standard of review because they are motivated chiefly by fear, misunderstanding, and a desire to exclude; as such, they violate the Equal Protection Clause.
- Marriage is a fundamental right guaranteed by the Due Process Clause of the United States Constitution; restrictions on marriage are similarly subject to a heightened level of scrutiny under the Due Process Clause as set forth in *Witt v. Dep’t of the Air Force*, 527 F.3d 806 (9th Cir. 2008).
- Oregon’s exclusionary marriage laws will likewise fail to pass this heightened standard of review; because they are motivated chiefly by fear, misunderstanding, and a desire to exclude, they violate the Equal Protection Clause.
- Oregon’s exclusionary marriage laws cannot even pass a rational basis review if this Court employs a lesser standard of review in considering the constitutionality of the laws.
- As individuals who are impacted by the existence of Oregon’s discriminatory same-sex ban, Plaintiffs have standing to bring this suit.

CONCLUSION

The law should not be used to draw needless and hurtful classifications between equally capable, equally valuable members of our society. Current Oregon law discriminates against same-sex couples seeking to marry. The guarantees of the United States Constitution, however, extend to all Oregonians, regardless of whom they choose to love and with whom they choose to make a life. Oregon’s exclusionary marriage laws should be struck down because they violate

both the Equal Protection and Due Process Clauses of the United States Constitution. If this Court makes such a declaration, Multnomah County will swiftly begin issuing marriage licenses to same-sex couples.

DATED this 4th day of March, 2014.

Respectfully submitted,

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/s/ Katharine von Ter Stegge

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