

[Attorneys for Plaintiffs listed on signature page]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

ANGELA ROLANDO and TONYA ROLANDO; CHASE WEINHANDL and BENJAMIN MILANO; SUSAN HAWTHORNE and ADEL JOHNSON; and SHAUNA GOUBEAUX and NICOLE GOUBEAUX,

Plaintiffs,

v.

TIM FOX, in his official capacity as Attorney General of the State of Montana; MICHAEL KADAS, in his official capacity as the Director of the Montana Department of Revenue; and FAYE McWILLIAMS, in her official capacity as Clerk of Court of Cascade County.

Defendants.

Cause No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs Angela Rolando and Tonya Rolando, Chase Weinhandl and Benjamin Milano, Susan Hawthorne and Adel Johnson, and Shauna Goubeaux and Nicole Goubeaux (collectively "Plaintiffs") file this Complaint for Declaratory and Injunctive Relief against Defendants Tim Fox, Michael Kadas, and Faye McWilliams (collectively "Defendants"), and allege as follows:

I. INTRODUCTION

1. Plaintiffs are all loving, committed, same-sex couples who reside in Montana. Plaintiffs bring this action pursuant to section 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution to challenge the validity of Art. XIII, § 7 of the Montana Constitution and related statutory provisions that bar marriage between two people of the same sex or preclude recognition of such marriages validly entered into in another state. Plaintiffs challenge any and all Montana statutes that refer to marriage as a relationship between a “husband” and “wife” or “man” and “woman” to the extent such provisions operate as a statutory ban on marriage for same-sex couples.

2. Marriage is universally recognized and celebrated as the hallmark of a couple’s love for and commitment to each other. When two people marry, they commit personally and publicly to build a life together, and they ask their families, friends, communities, and government to respect, honor, and support that commitment. Marriage has long been recognized and valued for its beneficial contribution to the welfare of society and to individual happiness. The paramount significance of marriage to lesbian and gay couples in Montana is no different than it is to different-sex couples. Yet, Montana law specifically singles out same-sex couples for exclusion from this important right. This has the effect not only of

denying same-sex couples the freedom and dignity afforded to other Montanans, but also the legal protections, duties, and benefits that marriage affords under federal and Montana law.

3. Montana's exclusion of same-sex couples from the institution of marriage and all that marriage signifies and bestows contrasts sharply with the State's long history of respect for individual liberty. This history of respect is most eloquently set forth in the Montana Constitution, which was itself established "to improve the quality of life, equality of opportunity, and to secure the blessings of liberty" for all Montanans. (Mont. Const. Preamble.) The Constitution's Declaration of Rights declares that "[a]ll persons are born free and have certain inalienable rights," including "the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties . . . , and seeking their safety, health and happiness in all lawful ways." (Mont. Const. Art. II. Sec. 3.) The Constitution declares that the "dignity of the human being is inviolable." (Mont. Const. Art. II. Sec. 4.)

4. The marriage ban—singling out a minority of Montanans to deny them a fundamental right enjoyed by all other Montanans—cannot be squared with the State's history or with its culture.

5. Marriage laws are changing across the United States, reflecting a growing understanding that marriage is a deeply personal, important, and

fundamental right for all Americans. At various points in our history, states have prohibited marriage among slaves, marriage between two people of different races, and even marriage between two people of different faiths. State laws also made a woman the subordinate partner in a marriage, legally barred from controlling her own finances and property. Now, through the actions of legislatures and courts, 19 states and the District of Columbia have extended the freedom to marry to same-sex couples.

6. The Plaintiffs in this action are same-sex couples who seek the freedom to marry in Montana, or who seek to have the State of Montana recognize marriages that were legally contracted in another jurisdiction. Montana's denial of the freedom to marry has harmed these couples and their families in numerous ways, including suffering the stigma that comes from the State's denigration of their relationships as unworthy of recognition. Through the State's marriage ban and Defendants' enforcement of that ban, Defendants send a purposeful message that they view lesbians, gay men, and their children as second-class citizens who are undeserving of the legal sanction, respect, protections, and support that heterosexual couples and their families are able to enjoy through marriage.

7. Plaintiffs ask that the Court to ensure that Plaintiffs are afforded the fundamental freedoms that the Constitution of the United States guarantees. Montana's marriage ban denies those freedoms. Plaintiffs therefore ask this Court

to declare unconstitutional and enjoin enforcement of Article XIII, § 7, of the Montana Constitution and all provisions of Montana law that limit or could be construed as limiting marriage to different-sex couples, on the grounds that such laws violate the Equal Protection and Due Process Clauses of the United States Constitution (U.S. Const. amend. xiv, § 1).

II. JURISDICTION AND VENUE

8. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress deprivations of rights, privileges, and immunities secured by the Constitution of the United States under color of State law. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b). Defendants reside and have offices within the district, and all Defendants reside in the State of Montana. Also, events giving rise to Plaintiffs' claims occurred, and will occur, in this district.

10. This case is appropriately filed in the Great Falls Division because two of the Plaintiffs reside in, and events giving rise to their claims occurred in, Cascade County, such that venue would be proper in Cascade County.

III. PARTIES

The Plaintiffs

11. Plaintiffs Angela Rolando and Tonya Rolando reside in Great Falls, Montana. They are a loving, committed, same-sex couple, and they wish to marry in Montana. They would marry in Montana but for the marriage ban.

12. Plaintiffs Chase Weinhandl and Benjamin Milano reside in Bozeman, Montana. They are a loving, committed, same-sex couple legally married under the laws of Hawaii. They wish to have their Hawaii marriage recognized by the State of Montana.

13. Plaintiffs Susan Hawthorne and Adel Johnson reside in Helena, Montana. They are a loving, committed, same-sex couple legally married under the laws of the State of Washington. They wish to have their Washington marriage recognized by the State of Montana.

14. Plaintiffs Shauna Goubeaux and Nicole Goubeaux reside in Billings, Montana. They are a loving, committed, same-sex couple legally married under the laws of Iowa. They wish to have their Iowa marriage recognized by the State of Montana.

The Defendants

15. Defendant Tim Fox is sued in his official capacity as Attorney General of the State of Montana. Fox is a person within the meaning of 42 U.S.C. § 1983, and he is, was, and will be acting under color of state law at all times relevant to this Complaint. In his capacity as Attorney General, Fox serves as the chief legal officer of the State. His office represents and provides legal advice to State agencies, including those that act to enforce the marriage ban.

16. Defendant Faye McWilliams is sued in her official capacity as Cascade County Clerk of Court. McWilliams is a person within the meaning of 42 U.S.C. § 1983, and she is, was, and will be acting under color of state law at all times relevant to this Complaint. As Clerk of Court for Cascade County, McWilliams has the authority to issue or withhold a marriage license, and to ensure compliance with laws that prohibit the issuance of a marriage license to a same-sex couple.

17. Defendant Michael Kadas is sued in his official capacity as Director of the Montana Department of Revenue. Kadas is a person within the meaning of 42 U.S.C. § 1983, and he is, was, and will be acting under color of state law at all times relevant to this Complaint. As Director of the Montana Department of Revenue, Kadas has the authority to enforce the revenue code of Montana,

including its provisions related to the treatment for revenue purposes of marriages contracted in Montana and in other jurisdictions.

**IV.
GENERAL ALLEGATIONS**

18. Plaintiffs all are residents of Montana who experience the same joys and the same challenges of family life as their heterosexual neighbors, co-workers, and other community members who are free to marry. Plaintiffs are productive, contributing members of society who support their committed partners, but must do so without the same protections and respect afforded by the State to other families through access to the universally understood and celebrated status of marriage.

19. Montana law would allow Plaintiffs Angela Rolando and Tonya Rolando to marry but for the fact that they are a same-sex couple. They are not related to one another by blood or marriage. Neither is married to anyone else, and both are over the age of 18. They have the capacity to consent to marry and want to be married.

20. Montana law would recognize the marriages of the other Plaintiff couples but for the fact that they are same-sex couples. Each couple was legally married in another state.

A. Angela Rolando and Tonya Rolando

21. Angela Rolando, 37, and Tonya Rolando, 33, are in a loving, committed, same-sex relationship. They live together in Great Falls, Montana, and have been a couple for more than 5 years. Angela is a training and development specialist for the Montana Department of Child and Family Services. Tonya is a retired E-4 Senior Airman from the United States Air Force. She currently works as an EMT at the Pondera Medical Center in Conrad, Montana. Tonya earned several awards in the Air Force and was honorably discharged.

22. Angela was raised in Butte, Montana, and Tonya moved to Montana 12 years ago with the Air Force. Angela and Tonya expressed their love and commitment during a ceremony on October 16, 2009, in Whitefish, Montana. However, it was with great disappointment and sadness that they could not marry in Montana, the state each has called home for many years.

23. Together, the couple helps raise Angela's 16-year-old son from a prior marriage, Matthew, and Tonya's 10 year-old son from a prior marriage, Tyler. Angela and Tonya spend much of their time supporting their children, including attending school programs, football games, tennis matches, and band concerts. They also enjoy watching baseball, playing softball, and traveling, and they are proud supporters of Montana State University Bobcat Football.

24. Angela and Tonya are deeply committed to each another. Describing Tonya, Angela says, “my every day is her.” They want to be married in Montana and describe themselves as “one united front,” determined to earn the right to marry and to express to each other the commitment marriage represents.

25. Angela and Tonya also want the same legal and practical security that marriage provides to different-sex couples. For example, Tonya still feels the sting of an employer making it difficult for her to obtain leave to attend the funeral of Angela’s brother. Although the employer ultimately approved the leave, it was unpaid since Tonya was not considered a member of Angela’s family. As a result of incidents like this, the couple worries about what would happen if, for example, one of their sons had a medical emergency. Angela and Tonya strongly believe that their relationship is no different than any other committed, loving relationship and that they are entitled to the same protections and benefits obligations as married different-sex couples receive.

26. On May 19, 2014, Angela and Tonya went to the office of the Cascade County Clerk of Court. They asked to apply for a marriage license, but were denied because they are a same-sex couple. The Cascade County Clerk of Court is managed by, and under the control of, Defendant Faye McWilliams. The Clerk of Court is the person responsible under Montana law for issuing marriage licenses.

B. Chase Weinhandl and Benjamin Milano

27. Plaintiffs Chase Weinhandl, 29, and Benjamin (“Ben”) Milano, 30, are in a loving, committed, same-sex relationship. They live together in Bozeman, Montana. Chase is a manager at the local Costco, where over the past ten years he worked his way up from pushing carts and bagging groceries. Ben telecommutes from the home that Chase and Ben recently built in Bozeman. Ben is a senior account manager for the Chicago-based brand marketing firm, Brandmuscle, where he has worked for the past four years.

28. Both men are proud Montanans. Chase was born in Great Falls, Montana, and raised in the small town of Charlo, Montana, earning his undergraduate degree in business management from Montana State University. Ben moved to Montana full time in 2006, having spent his summers in the state since he was a teenager. Chase and Ben met in 2007. They decided to express their love and commitment to one another by entering a civil union in Chicago in September 2011. Earlier this year, Chase and Ben traveled to Hawaii and legally married in that state.

29. Outside of work, Chase and Ben are inseparable. They spend their free time working on their new house and working in the yard alongside their three dogs, although they also love getting away to more remote parts of the state on hiking and camping trips. Chase and Ben share a love of travel and adventure.

30. The couple believes that marriage was the most important step to demonstrate their love and devotion to each other and their commitment to spend the rest of their lives together. Yet, Montana will not recognize their marriage, solely because they are of the same sex. Beyond the community recognition bestowed by marriage, they also wish for the legal and practical security it provides. They worry, for example, that if one of them were injured or worse, they would have no assurance that their relationship would be honored.

C. Susan Hawthorne and Adel Johnson

31. Plaintiffs Susan (“Sue”) Hawthorne, 49, and Adel Johnson, 44, are in a loving, committed, same-sex relationship. They have been together for 17 years and currently reside in Helena, Montana. Sue, who recently retired with the rank of Sergeant First Class, served 28 years on active duty in the U.S. Army, in the Army Reserves and Montana Army National Guard. Her military duties took her to Germany, North Carolina, Michigan, and ultimately Montana, where she has lived since 1991. As a Human Resource Sergeant and Operations Sergeant in the Guard, Sue focused on personnel issues and coordinated training operation and readiness for deploying soldiers. Her retirement was in part due to a disability she suffered from a car accident on active duty.

32. Adel, who was born and raised in Philipsburg and is a lifelong resident of Montana, is a full-time federal employee with 12-years of experience in

the Department of Military Affairs' Environmental Office and is a Major with 14-years of service in the Army National Guard. Adel's current posts are Environmental Protection Specialist and Preventive Medicine Officer, roles in which she focuses on environmental regulatory compliance and protecting soldiers from preventable diseases and injuries.

33. Sue and Adel, who had met two years earlier, reconnected at a golf event and began dating. Together, they enjoy hiking, backpacking, and mountain biking in the summer, and skiing and snowshoeing in the winter. They are constant, active companions.

34. Sue and Adel were legally married in Washington earlier this year, but they know that Montana will not recognize that marriage because they are a same-sex couple. They worry that without the legal status of marriage, their relationship will not be recognized in the event of a medical emergency or some other important life event.

D. Shauna Goubeaux and Nicole Goubeaux

35. Plaintiffs Shauna Goubeaux, 43, and Nicole Goubeaux, 35, are in a loving, committed, same-sex relationship, and are the proud parents of their 1-year-old son, Aden, whom they adopted when he was an infant. They have been together for 11 years and currently live in Billings, Montana. Nicole is a night

shift nurse at Advanced Care Hospital in Billings. Shauna is also a nurse and provides homecare work for Interim, a nurse staffing agency in Billings.

36. Shauna and Nicole met in 2003 while they were working at the same hospital in Wyoming. The couple went on one date and they have been together ever since, describing it as “the longest first date ever.”

37. Shauna and Nicole expressed their love and commitment to each other when they were legally married in August 2011 in Iowa. Shauna changed her last name to Goubeaux. After they were married, Shauna and Nicole moved to Billings. The couple purchased a home together in Billings in 2013.

38. Montana will not recognize Shauna and Nicole’s marriage, solely because they are of the same sex. The couple wants Montana to recognize their marriage, first and foremost, to protect their son. Shauna and Nicole do not want Aden to grow up feeling that his family is different or less than any other family. Additionally, Shauna and Nicole want the same legal and practical security marriage provides to different-sex couples. For example, although the couple was able to file their federal taxes as a married couple, they were forced to file their state taxes separately. Detangling their finances for the purposes of filing state taxes was an exacting process that took at least 40 hours. The couple was particularly shocked when they had to divide their expenses with regard to Aden, given that they jointly provide his support.

E. Montana's Discriminatory Marriage Ban

39. Montana's discriminatory marriage ban, which has been enshrined in the State's constitution since 2004, provides that "[o]nly a marriage between one man and one woman shall be valid or recognized as a marriage in this state."

Mont. Const. Art. XIII, § 7. Montana Code Annotated § 40-1-401(d) also prohibits "marriage between persons of the same sex," and Montana Code Annotated § 40-1-103 defines marriage in Montana as "a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential."

40. On its face, Montana's marriage ban expressly bars marriage between two people of the same sex and precludes recognition of valid marriages lawfully entered into between same-sex couples in other jurisdictions. As a result, on its face, Montana's marriage ban does not permit Plaintiffs to marry, and prohibits the recognition of Plaintiffs' out-of-state marriages.

F. Substantial Harm to Plaintiffs and Other Same-Sex Couples

41. Denying two people in a loving, committed relationship the freedom to marry denies them the opportunity to express and legally embody their commitment in the most serious way that society provides. It denies them the opportunity to enter into a relationship that is universally respected and recognized

as a symbol of love and commitment and withholds from them the reverence and recognition associated only with marriage.

42. Barring same-sex couples from marriage also disqualifies them from critically important protections under Montana state law that different-sex couples rely upon to secure their commitment to each other, and to safeguard their families. Plaintiffs in *Donaldson v. State of Montana*, Case No. BVD-2010-702, a case pending in Montana state court, challenge this discrimination under state equal protection law. The State has taken the position in *Donaldson* that the discriminatory treatment of same-sex couples is justified by the Montana Constitution's ban on same-sex marriage.

43. The marriage ban also makes it impossible for same-sex couples to receive the protections currently provided only to married couples under federal law. After the Supreme Court's ruling in *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), the federal Defense of Marriage Act ("DOMA") no longer excludes same-sex couples from access to federal marriage protections. Same-sex couples unable to marry in Montana cannot receive these benefits. Even couples married in other states are denied some of the federal marital protections that are only available if the marriage is recognized in a couple's state of residence—*e.g.*, veteran and family medical leave protections.

44. The state and federal protections denied Plaintiffs and other same-sex couples in Montana include, by way of example only:

- (a) The right to solemnize their relationships through a state-sanctioned ceremony.
- (b) The right to safeguard family resources under an array of laws that protect spousal finances, including, for example, the exemption of taxes on the property of widows and widowers.
- (c) The right to secure legal recognition for parent-child bonds through the mechanisms afforded to spouses, including joint adoption, adoption of a spouse's child as a stepparent, and the presumption of parentage for children born into a marriage.
- (d) The right to make caretaking decisions in times of death or disaster, including priority to make medical decisions for an incapacitated spouse, and the automatic right and priority to make anatomical gifts of a decedent's body.
- (e) The right to inherit under the laws of intestacy, and rights in the family residence pending final determination of the estate.
- (f) The right to receive exemptions for state income tax purposes.
- (g) The right to receive certain tax deductions for medical insurance expenses for a spouse.

- (h) The right to receive certain tax deductions for long term care insurance for a spouse.
- (i) The right to seek damages for loss of society and companionship in case of wrongful death.
- (j) The right to be afforded the presumption of confidentiality for communications with health insurers about a spouse's medical condition.
- (k) In the event that a couple separates, the right to access an orderly dissolution process for terminating the relationship and assuring an equitable division of the couple's assets and debts.
- (l) The right to assert the privilege not to testify against one another as to matters protected by spousal privilege.
- (m) The right to receive certain retirement benefits that only available to the spouse of a police officer or firefighter.
- (n) The right to receive certain worker's compensation benefits that are only available to a spouse.
- (o) The right to receive certain financial protections for disabled or non-working spouses.

45. In addition to the tangible harms it causes, the marriage ban also perpetuates discrimination against lesbian and gay Montanans. The ban sends a

powerful message to same-sex couples, their families, and the public that these couples are not good enough for marriage and their relationships are undeserving of the respect and dignity associated with marriage alone.

46. The substantive and dignitary inequities imposed on committed same-sex couples include particular harms to same-sex couples' children, who are equally deserving of the stability and legitimacy that are enjoyed by children of different-sex couples who marry. 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 marriage, Montana reinforces the view held by some that the family bonds that unite 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 accordingly 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.

47. Children from a young age understand that marriage signifies an enduring family unit, and likewise understand that Montana has deemed a class of

families as less worthy than other families, undeserving of marriage, and not entitled to the same societal recognition and support as other families. The marital ban marks the children of same-sex couples with a badge of inferiority that will invite disrespect in school, on the playground, and in every other sphere of their lives.

G. Montana's Discriminatory Marriage Ban Does Not Serve Any Compelling, Important, or Even Legitimate Government Interest

48. The Ninth Circuit recently held that classifications based on sexual orientation are subject to heightened scrutiny. *See SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471 (9th Cir. 2014). Under this level of scrutiny, Montana's marriage ban must be struck down unless it serves some legitimate state interest that justifies the harm it inflicts on Plaintiffs and other same-sex couples. No legitimate, let alone important or compelling, interest exists to exclude same-sex couples from the historic and highly venerated institution of marriage. An individual's capacity to establish a loving and enduring relationship does not depend upon that person's sexual orientation or gender in relation to his or her life partner, nor is there even a legitimate interest in justifying same-sex couples' exclusion from marriage and the spousal protections it provides.

49. Neither history nor tradition can legally justify Montana's discriminatory exclusion of same-sex couples from marrying or having their out-

of-state marriages recognized. Marriage has remained vital and enduring because of, not despite, its resiliency in response to a dynamic society, for example as society and the courts have cast off prior restrictions on interracial marriage. Montana is not confined to historic notions of equality, and no excuse for the State's discriminatory restriction can be found in the pedigree of such discrimination.

50. The exclusion of same-sex couples from marriage does not further any interest relating to the well-being of children. The Montana Supreme Court, in *Kulstad v. Maniaci*, 220 P.3d 595 (Mont. 2009), has already found that the State has no legitimate interest related to protection of children that could justify discriminating against same-sex couples. The court held that "children of same-sex parents fare just as well as their peers physically, psychologically, emotionally, cognitively, and socially."

51. Furthermore, there is no rational connection between excluding lesbian and gay couples from marriage and encouraging different-sex couples to have children within marriage. Nor does the exclusion rationally promote any particular type of family setting for children since same-sex and different-sex couples have children whether or not same-sex couples are permitted to marry. Excluding same-sex couples from marriage serves only to harm the children raised by lesbian and gay couples.

52. The Montana Supreme Court has recognized the lack of any legitimate government interest in policies that discriminate between same-sex and different-sex couples. *See Snetsinger v. Montana Univ. Sys.*, 104 P.3d 445 (Mont. 2004). In *Snetsinger*, the court held there was no legitimate interest in the state university system's denial of dependent health insurance coverage to same-sex couples, concluding that the differential treatment between same- and different-sex couples was a clear violation of equal protection. The marriage ban is similarly devoid of any legitimate interest justifying the harm it inflicts. Denying same-sex couples the esteem and universal recognition of marriage can only be explained as an effort to denigrate lesbian and gay couples. Labeling lesbian and gay couples as inferior is not a legitimate governmental interest.

53. The State deprives same-sex couples of these freedoms for no other reason than their sexual orientation and their sex.

**V.
CLAIMS FOR RELIEF**

**COUNT I:
Deprivation of the Fundamental Right to Marry
in Violation of the Due Process Clause of the
Fourteenth Amendment to the United States Constitution
(U.S. Const. Amend. XIV and 42 U.S.C. § 1983)**

54. Plaintiffs re-allege the foregoing paragraphs of this Complaint as though fully set forth herein.

55. Amendment XIV, § 1 of the United States Constitution provides that no State shall “deprive any person of life, liberty, or property, without due process of law”

56. The Due Process Clause protects the fundamental right to marry the person of one’s choice and related constitutional rights to liberty, dignity, autonomy, family integrity, and association.

57. Montana’s marriage ban does not permit same-sex couples to marry nor does it permit the recognition of the marriages of same-sex couples lawfully entered into outside of Montana.

58. There is no adequate justification for the exclusion of Plaintiffs from marriage or the refusal to recognize Plaintiffs’ marriages. Moreover, the exclusion of same-sex couples from marriage is neither narrowly tailored to, nor the least restrictive means to further, a compelling or important government interest.

59. Defendants’ duties and actions to ensure compliance with the marriage ban preventing Plaintiffs from lawfully marrying in the State of Montana, and preventing the recognition of Plaintiffs’ marriages lawfully entered into outside Montana, deprive Plaintiffs of the fundamental right to marry and their constitutional rights to liberty, autonomy, family integrity, and association without due process of law.

COUNT II:
Discrimination on the Basis of Sexual Orientation
in Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution
(U.S. Const. Amend. XIV and 42 U.S.C. § 1983)

60. Plaintiffs re-allege the foregoing paragraphs of this Complaint as though fully set forth herein.

61. Amendment XIV, § 1 of the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

62. Same-sex couples in committed relationships who wish to marry are similarly situated in every material respect to different-sex couples in committed relationships who wish to marry. Same-sex couples who have lawfully married outside of Montana are similarly situated in every material respect to different-sex couples who have lawfully married outside of Montana.

63. Montana’s marriage ban does not permit same-sex couples to marry nor does it permit the recognition of the marriages of same-sex couples lawfully entered into outside of Montana. It therefore discriminates against Plaintiffs and other lesbian and gay couples on the basis of sexual orientation.

64. Discrimination on the basis of sexual orientation demands a heightened level of scrutiny under the United States Constitution since the marriage ban and Defendant’s actions in administering and enforcing it

purposefully single out a minority group (lesbians and gay men) that historically has suffered discriminatory treatment and, thus, been relegated to a position of political powerlessness, solely on the basis of their sexual orientation—a characteristic that bears no relation to their ability to contribute to society and is immutable in that it is central to their core identity.

65. There is no adequate justification for the exclusion of Plaintiffs from marriage or the refusal to recognize their marriages. Moreover, the exclusion of same-sex couples from marriage is neither narrowly tailored to, nor the least restrictive means to further, a compelling or important government interest. The marriage ban is not even rationally related to any legitimate government interest.

66. Defendants' duties and actions to ensure compliance with the marriage ban preventing Plaintiffs from lawfully marrying in the State of Montana, and preventing the recognition of Plaintiffs' marriages lawfully entered into outside Montana, deprive Plaintiffs of the equal protection of the laws based on their sexual orientation.

COUNT III:
Discrimination on the Basis of Sex
in Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution
(U.S. Const. Amend. XIV and 42 U.S.C. § 1983)

67. Plaintiffs re-allege the foregoing paragraphs of this Complaint as though fully set forth herein.

68. Amendment XIV, § 1 of the United States Constitution provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

69. The Montana marriage ban discriminates based on gender because it permits a man and woman to marry, but does not allow a man to marry a man, or a woman to marry a woman, and because it permits different-sex marriages lawfully entered into outside of Montana to be recognized but does not allow the marriages of same-sex couples lawfully entered into outside of Montana to be recognized.

70. Discrimination on the basis of sex demands heightened scrutiny under the United States Constitution.

71. There is no adequate justification for the exclusion of Plaintiffs from marriage or the refusal to recognize Plaintiffs’ marriages. Moreover, the exclusion of same-sex couples from marriage is neither narrowly tailored to, nor the least restrictive means to further, a compelling or important government interest. The marriage ban is not even rationally related to any legitimate government interest.

72. Defendants’ duties and actions to ensure compliance with the marriage ban preventing Plaintiffs from lawfully marrying in the State of Montana, and preventing the recognition of Plaintiffs’ marriages lawfully entered into outside Montana, deprive Plaintiffs of the equal protection of the laws based on their gender.

VI.
PRAYER FOR RELIEF

73. WHEREFORE, Plaintiffs request that this Court enter judgment:

(A) declaring that Article XIII, § 7 of the Montana Constitution and all provisions of Montana statutes that ban same-sex marriage or refer to marriage as a relationship between a “husband” and “wife” or “man” and “woman” and operate as a statutory ban on marriage for same-sex couples violate the Due Process Clause and the Equal Protection Clause of the United States Constitution (Amendment XIV, § 1) by preventing Plaintiffs and other same-sex couples from lawfully marrying in the State of Montana and by preventing the recognition of the marriages of Plaintiffs and other same-sex couples lawfully entered into outside of the State;

(B) permanently enjoining all Defendants from enforcing Article XIII, § 7 and any other sources of state law that operate to exclude same-sex couples from marriage or to deny recognition of the marriages of same-sex couples validly contracted in another jurisdiction;

(C) awarding Plaintiffs the costs and expenses of this action together with reasonable attorneys’ fees; and

(D) entering such other and further relief as deemed appropriate by the Court.

DATED this 21st day of May, 2014.

/s/ Ben Alke

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