DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202	
Plaintiffs: G. Kristian McDaniel-Miccio and Nan McDaniel-Miccio, Sandra Abbott and Amy Smart, Wendy Alfredsen and Michelle Alfredsen, Kevin Bemis and Kyle Bemis, Tommy Craig and Joshua Wells, James Davis and Christopher Massey, Sara Knickerbocker and Jessica Ryann Peyton, Jodi Lupien and Kathleen Porter, and Tracey MacDermott and Heather Shockey v. **Defendants:** State of Colorado; John W. Hickenlooper, Jr., in his official capacity as Governor for the state of Colorado; Debra Johnson, in her official capacity as Clerk and Recorder for the City and County of Denver.	▲ **COURT USE ONLY** ▲ Case No. Division/Courtroom:
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COMPLAINT FOR DECLARATORY JUDGMENT, PERMANENT INJUNCTION AND REQUEST FOR SPEEDY HEARING PURSUANT TO C.R.C.P. 57(m)	

Plaintiffs, G. Kristian and Nan McDaniel-Miccio, Sandra Abbott and Amy Smart, Wendy and Michelle Alfredsen, Kevin and Kyle Bemis, Tommy Craig and Joshua Wells, James Davis and Christopher Massey, Sara Knickerbocker and Jessica Ryann Peyton, Jodi Lupien and Kathleen Porter, and Tracey MacDermott and Heather Shockey state and allege as follows:

INTRODUCTION

1. Colorado law creates two classes of citizens: those free to marry the person they love, and those denied that fundamental right. Same-sex couples in Colorado are relegated to a second-class level of citizenship that denies their relationships the full panoply of rights enjoyed by married opposite-sex couples. Even same-sex couples who have been validly married in other states are stripped of their marital status when they enter the state of Colorado. This denial of equal protection, due process, and basic fairness violates the Constitution of the United States of America.

2. Plaintiffs bring this action to challenge the constitutionality of Colorado's laws that prohibit same-sex couples from marrying and that refuse to recognize the marriages of same-sex couples lawfully entered into in other jurisdictions. *See* Colo. Const. art. II § 31; C.R.S. § 14-2-104(1)(b), C.R.S. § 14-2-104(2). Colorado's refusal to allow same-sex couples to marry within the state, as well as its refusal to recognize the validity of out-of-state marriages of same-sex couples violates multiple guarantees of the United States Constitution. Colorado's recognition instead of second-class and unequal relationship recognition through civil unions does not cure these violations. Plaintiffs respectfully request that this Court declare Colorado's prohibition of same-sex marriage and refusal to recognize valid out-of-state marriages of same-sex couples unconstitutional and issue an injunction requiring defendants (a) to issue marriage licenses to the unmarried plaintiffs, and (b) to recognize the existing marriages of the plaintiffs lawfully married in other states.

3. Plaintiffs Tracey MacDermott and Heather Shockey, Wendy and Michelle Alfredsen, Tommy Craig and Joshua Wells, Jodi Lupien and Kathleen Porter, and Christopher Massey and James Davis (the "Unmarried Plaintiffs"), are unmarried same-sex couples in committed relationships who desire to marry. Each couple wishes to publicly declare their love and commitment before their family, friends, and community; to join their lives together and enter into a legally binding commitment to one another, on equal footing with any opposite-sex couple in Colorado; and to share in the protections and security marriage provides.

4. Like many other couples with a life-long commitment, the Unmarried Plaintiffs are spouses in every sense, except that Colorado law will not allow them to marry, instead only offering them the second-class and unequal option of civil unions.

5. Plaintiffs Amy Smart and Sandra Abbott, Kevin and Kyle Bemis, G. Kristian ("Kris") and Nan McDaniel-Miccio, and Sara Knickerbocker and Jessica Ryann Peyton (the "Married Plaintiffs") are legally married same-sex couples, having wed in other states. In their home state of Colorado, however, their valid marriages are reduced to second-class and unequal civil unions, which do not afford them the same rights, protections and security as marriage.

6. The Married Plaintiffs are lawfully married under the laws of sister states, but Colorado refuses to honor or recognize their marriages, instead demoting their lawful marriages to the status of civil unions whenever they are in Colorado. Unilaterally and by operation of law alone, Colorado has denigrated their legal status and their rights and responsibilities as married people.

7. Plaintiffs are productive members of society, with diverse backgrounds, educations, and professions. They are administrators, educators, a legal assistant and recruiter, a technical writer, a psychotherapist, an aerospace engineer, and a volunteer, among other things. They work in the medical, legal and financial fields and the pharmaceutical industry, among others. One plaintiff served as a police officer for the city of Arvada. Four of the couples are raising children together. The situations faced by these couples are similar to those faced by many other same-sex couples in Colorado who are denied the basic rights, privileges, and protections of marriage for themselves and their children.

8. Under a 2006 amendment to the Colorado Constitution, "[o]nly a union of one man and one woman shall be valid or recognized as a marriage in this state." Colo. Const. art. II § 31. This provision bars same-sex couples from marrying and also precludes recognition of same-sex couples' existing and valid out-of-state marriages.

9. Colorado's exclusion of same-sex couples from the institution of marriage has adversely impacted the plaintiffs and other Colorado same-sex couples in real and significant ways.

10. Colorado's exclusion of same-sex couples from marriage and refusal to respect existing marriages undermines the plaintiff couples' ability to achieve their life goals and dreams, interferes with their families, disadvantages them financially, and denies them "dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). Further, they and their children are stigmatized and relegated to a second-class status by being barred from the institution of marriage and forced into a separate and lesser status of civil unions. In Colorado, same-sex couples cannot properly refer to one another as spouses; they cannot properly represent that they are married. Instead, they are merely "partners" or "unionized." The parents among the plaintiffs struggle to explain to their children why they have been relegated to this lesser status, why they cannot be married like their friends' parents. They struggle for an explanation because there is no valid justification for such an unconstitutional classification.

11. Colorado's exclusion of same-sex couples from marriage and refusal to recognize the marriages of legally married same-sex couples "tell[] those couples, and all the world, that their [relationships] are unworthy" of recognition. *Windsor*, 133 S. Ct. at 2694. By singling out same-sex couples and their families and excluding them from marriage, those laws also "humiliate[] the . . . children now being raised by same-sex couples" and "make[] it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id.*

12. In the not-so-distant past, the majority of states, including Colorado, had laws prohibiting marriage between people of different races. Until 1957, Colorado law barred marriages between whites and blacks. *See* former 35 C.S.A. vol. 4, ch. 107, § 2 (repealed 1957); *see also* L. Colo. Ter. 1864 p. 108; *Jackson v. City and County of Denver*, 124 P.2d 240 (Colo. 1942) (ruling Colorado's anti-miscegenation laws were constitutional). The Supreme Court held such exclusions from marriage to be unconstitutional in *Loving v. Virginia*, 388 U.S. 1, 12 (1967), declaring: "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men" and women. This principle is equally applicable to same-sex couples.

13. Our courts and society have discarded, one by one, marriage laws that violated the mandate of equality guaranteed by the Constitution. History has taught that the legitimacy and vitality of the institution of marriage does not depend on upholding discriminatory laws. On the contrary, eliminating unconstitutional barriers to marriage further enhances the institution and society. In seventeen states and the District of Columbia, same-sex couples are marrying, and the institution of marriage continues to thrive.

14. Marriage contributes to the happiness, security, and peace of mind of countless couples and their families, and to the stability and wellbeing of society. Colorado, like other states, encourages and regulates marriage through hundreds of laws that provide benefits to and impose obligations on married couples. In exchange, Colorado receives the well-established benefits that marriage brings: stable, supportive families that contribute to both the social and economic well-being of Colorado. "The institution of marriage lies at the foundation of our civilization. It is the safeguard of education . . . , the promoter of public and private morals, and the conservator of social order. Public policy favors the continuance of the marriage relation . . . ." *Gilpin v. Gilpin*, 21 P. 612, 614 (Colo. 1889). "The State of Colorado has an interest in marriage, and marriage is favored over less formalized relationships which exist without the benefit of marriage." *Newman v. Newman*, 653 P.2d 728, 731 (Colo. 1982). By withholding a marriage license from a same-sex couple or refusing to recognize a same-sex couple's valid marriage from another jurisdiction, Colorado: (i) circumscribes an individual's basic life choices, (ii) classifies persons in a discretionary manner that denies them the public recognition and myriad benefits of marriage, (iii) prevents couples from making a legally binding commitment to one another equal to the commitment made by opposite-sex couples, or effectively undoes legally binding commitments made in other states, and prevents them from being treated by the government and by others as a family rather than as unrelated individuals, and (iv) harms society by burdening and disrupting committed families and preventing same-sex couples from being able to fully protect and assume responsibility for one another and their children.

15. Plaintiffs bring this suit pursuant to the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 for declaratory and injunctive relief against the defendants. Specifically, plaintiffs seek: (a) a declaration that (i) Colorado's prohibition of marriage for same-sex couples, and (ii) its refusal to recognize the marriages of same-sex couples validly entered into outside of Colorado both violate the Due Process, and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution; and (b) a permanent injunction

(i) preventing defendants from denying the Unmarried Plaintiffs the right to marry, and (ii) directing defendants to recognize the marriages of the Married Plaintiffs that were validly entered into in states outside Colorado.

PARTIES

A. The Unmarried Plaintiffs

Tracey MacDermott and Heather Shockey

16. Plaintiffs Tracey MacDermott and Heather Shockey have been in a committed relationship for over 18 years and reside in Denver, Colorado, where they own a home together. Tracey works for a medical school and Heather works for a non-profit, helping local businesses with human resource and other employment issues. Approximately seven years ago, Tracey and Heather registered as Domestic Partners for insurance purposes. Tracey and Heather do not wish to enter into a civil union because they find the second-class status of that institution offensive and insulting to their relationship, which is as loving and committed as any relationship between a couple of different genders. Tracey and Heather discussed getting married in another state and then having a reception in Colorado, but their families were hurt because many of them would not be able to afford the expense of traveling to an out-of-state wedding. Because Tracey and Heather want all of their friends and family to witness their marriage, on February 18, 2014, the couple appeared in person at the Office of the City and County Clerk of Denver to apply for a marriage license. Despite believing that these laws are unconstitutional, defendant Johnson, in her official capacity and through her authorized deputy, refused their marriage license application because they are both women. They meet all of Colorado's qualifications for issuance of a marriage license, except that they are both women. Tracey and Heather wish to marry in the state of Colorado where they live, and they have been harmed by Colorado's refusal to allow them to do so.

Wendy and Michelle Alfredsen

17. Plaintiffs Wendy and Michelle Alfredsen have been in a committed relationship for four years and reside in Arvada, Colorado, where they own a home together. Wendy works in logistics for a tissue and organ transport company and Michelle is a legal talent recruiter and assistant for a Denver-based law firm. On June 4, 2013, Michelle gave birth to O., Wendy and Michelle's first child together. Both Wendy and Michelle's names appear on O.'s birth certificate, and the couple entered into a civil union in May of 2013 to ensure the maximum legal protection available to same-sex parents in Colorado for their child. In addition to O., together they parent three adult children from prior relationships. Wendy also has a 10-year-old daughter with her prior partner. Because Colorado refused to allow Wendy and her prior partner to marry, Wendy's partner was able to take their child, without notice or Wendy's permission, to Norway. After a long and hard-fought legal battle, Wendy only recently won recognition of her parental rights to her 10-year-old daughter. Before Colorado offered civil unions, Wendy and Michelle registered as domestic partners in Colorado. That process was informative regarding the difference between marriage and any other relationship recognition. Wendy and Michelle were

treated rudely when they accidently stood in the line meant for couples seeking a marriage license. Similarly, while the clerk's office celebrated with each couple receiving a marriage license (including by taking their picture), Wendy and Michelle were simply informed of the extremely limited rights available to them. There was no picture. They meet all of Colorado's qualifications for issuance of a marriage license, except that they are of the same sex. On February 18, 2014, the couple appeared in person at the Office of the City and County Clerk of Denver to apply for a marriage license. Despite believing that these laws are unconstitutional, defendant Johnson, in her official capacity and through her authorized deputy, refused their marriage license application because they are both women. Wendy and Michelle wish to marry in the state of Colorado where they live, and they and their child have been harmed by Colorado's refusal to allow them to do so.

Tommy Craig and Joshua Wells

18. Plaintiffs Tommy Craig and Joshua Wells have been in a committed relationship for approximately 13 years and reside in Littleton, Colorado, where they own a home together. Tommy is a dean at a middle school and Joshua is an aerospace engineer. In 2004, they held a commitment ceremony in front of their families and friends, expressing their love and commitment to each other, though the State of Colorado refused to extend any legal recognition to their union. On May 1, 2013, Tommy and Joshua were the first couple to be issued a civil union in Arapahoe County. However, because of doubts about recognition of a self-certified civil union even in the few states that recognize civil unions, Tommy and Joshua paid an extra $100 and had to go to the courthouse to have their civil union certified by a judge. They meet all of Colorado's qualifications for issuance of a marriage license, except that they are of the same sex. On February 18, 2014, the couple appeared in person at the Office of the City and County Clerk of Denver to apply for a marriage license. Despite believing that these laws are unconstitutional, defendant Johnson, in her official capacity and through her authorized deputy, refused their marriage license application because they are both men. Tommy and Joshua wish to marry in the state of Colorado where they live so they can finally have the legal right to refer to each other as husband, and they have been harmed by Colorado's refusal to allow them to do so.

Jodi Lupien and Kathleen Porter

19. Plaintiffs Jodi Lupien and Kathleen Porter have been in a committed relationship for three-and-a-half years and reside in Denver, Colorado where they own a home together. Jodi works in the medical pharmaceutical industry. Kathleen, a former Arvada police officer, works as a paralegal at a Denver-based law firm. They raise a five-year-old son together, K., whom Kathleen adopted from Haiti in 2010 shortly after the country was hit by a massive earthquake. On November 12, 2013, Kathleen and Jodi entered into a civil union in Colorado to protect Jodi's parental rights over their son. They meet all of Colorado's qualifications for issuance of a marriage license, except that they are of the same sex. On February 18, 2014, the couple appeared in person at the Office of the City and County Clerk of Denver to apply for a marriage license. Despite believing that these laws are unconstitutional, defendant Johnson, in her official capacity and through her authorized deputy, refused their marriage license application because

they are both women. Jodi and Kathleen wish to marry in the state of Colorado where they live, and they and their child have been harmed by Colorado's refusal to allow them to do so.

Christopher Massey and James Davis

20. Plaintiffs Christopher Massey and James Davis have been in a committed relationship for almost seven years and reside in Denver, Colorado where they own a home together. Christopher is a senior vice president at a financial institution and serves on the board of directors for one of the largest charitable foundations in Colorado. James, a former AmeriCorps volunteer, does development consulting for public and private organizations in Colorado. In 2008, they entered a domestic partnership for health insurance benefits. In 2013, Christopher and James began the surrogacy process and are expecting their first child together in July, 2014. They meet all of Colorado's qualifications for issuance of a marriage license, except that they are of the same sex. On February 14, 2014, the couple appeared in person at the Office of the City and County Clerk of Denver to apply for a marriage license. Despite believing that these laws are unconstitutional, defendant Johnson, in her official capacity and through her authorized deputy, refused their marriage license application because they are both men. Christopher and James wish to marry in the state of Colorado where they live, and they and their future child have been harmed by Colorado's refusal to allow them to do so.

B. The Married Plaintiffs

Amy Smart and Sandra Abbott

21. Plaintiffs Amy Smart and Sandra Abbott were married in New York, New York on October 7, 2011, less than three months after same-sex marriages became legal in the state. They currently live in Lafayette, Colorado, where they own a home together. Amy is a psychotherapist working on getting her PhD. Sandra is a technical writer, working for an emergency services technology firm. Together they parent two children, one adult and one minor. They split custody of their younger child with Amy's former partner, to whom Amy pays child support. Their older child is an EMT and is studying to be a paramedic. Their legal, New York state marriage would be recognized in the state of Colorado except for the fact that they are both women. Instead, Colorado degrades their relationship by deeming them to be in a second-class civil union whenever they are in Colorado. They wish to have their marriage recognized in the state of Colorado, and they and their children have been harmed by Colorado's refusal to recognize their lawful marriage, instead reducing the legal status of their relationship to a civil union.

Kevin and Kyle Bemis

22. Plaintiffs Kevin and Kyle Bemis have been in a committed relationship for approximately 12 years and were married in Washington state on February 16, 2013. They reside in Lone Tree, Colorado where they own a home together. Kevin is a lawyer at a law firm in Denver and Kyle is a finance director at a large Colorado-based company. On July 16, 2005, Kevin and Kyle held a commitment ceremony in Breckenridge, Colorado before their family and

friends. Though they considered themselves married, the State of Colorado refused to grant their relationship any legal recognition. Because they could not get married, Kevin had to expend significant money and time to have his last name changed. In June and December 2013, Kevin had to take extensive time off from work because of a serious medical condition. Kyle used up all of his vacation and sick time to care for Kevin. Because Colorado refuses to recognize their marriage, however, Kyle's job and group health benefits were not protected by the Family Medical Leave Act when he was caring for Kevin. Their legal, Washington state marriage would be recognized in the state of Colorado except for the fact that they are both men. Instead, Colorado degrades their relationship by deeming them to be in a second-class civil union whenever they are in Colorado. They wish to have their marriage recognized in the state of Colorado, and they have been harmed by Colorado's refusal to recognize their lawful marriage, instead reducing the legal status of their relationship to a civil union.

Kris and Nan McDaniel-Miccio

23. Plaintiffs Kris and Nan McDaniel-Miccio were married in New York on November 30, 2013 and reside in Denver, Colorado where they own a home together. Kris is a professor of law at the University of Denver Sturm College of Law where she has taught for over 12 years. Nan works part time for a county elections department and for an accounting firm during tax season, as well as volunteering with a local county mediation service. Their legal, New York state marriage would be recognized in the state of Colorado except for the fact that they are both women. Instead, Colorado degrades their relationship by deeming them to be in a second-class civil union whenever they are in Colorado. They wish to have their marriage recognized in the state of Colorado, and they have been harmed by Colorado's refusal to recognize their lawful marriage, instead reducing the legal status of their relationship to a civil union.

Sara Knickerbocker and Ryann Peyton

24. Plaintiffs Sara Knickerbocker and Jessica Ryann ("Ryann") Peyton were married in Iowa state on February 26, 2010. They currently reside in Denver, Colorado, where they own a home together. Sara is an administrator at a Montessori school and Ryann is a lawyer at a law firm in Denver. On November 26, 2011, Sara gave birth to their first child, A. Though they wanted to get married in Colorado where Sara grew up and Ryann was born—because of Colorado's refusal to issue them a marriage license, they were married in Iowa, and later held a ceremony with family and friends in Breckenridge, Colorado. Because of uncertainty surrounding the civil union bill and, in particular, how the change in their relationship status would work in practice, they filled out the paper work to have an official civil union license from the state in July of 2013. Their legal, Iowa state marriage would be recognized in the state of Colorado except for the fact that they are both women. Instead, Colorado degrades their relationship by deeming them to be in a second-class civil union whenever they are in Colorado. They wish to have their marriage recognized in the state of Colorado and they and their child have been harmed by Colorado's refusal to recognize their lawful marriage, instead reducing the legal status of their relationship to a civil union.

C. The Defendants

25. Defendant the State of Colorado is a state with its capital in Denver, Colorado. The State of Colorado has enacted ordinances and policies that extend protections and benefits based upon, or otherwise recognize, marital status; however, relying on Article II, section 31 of the Colorado Constitution and Colorado Revised Statutes sections 14-2-104(1)(b), and 14-2-104(2), the State of Colorado does not allow same-sex couples to marry or recognize the marriages of same-sex couples.

26. Defendant John W. Hickenlooper, Jr., is Governor of the State of Colorado. Article IV, section 2 of the Colorado Constitution states: "The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed." He is responsible for upholding and ensuring compliance with the state constitution and statutes prescribed by the legislature, including Colorado's laws barring same-sex couples from marriage and refusing to recognize the valid out-of-state marriages of same-sex couples. Governor Hickenlooper also bears the authority and responsibility for the formulation and implementation of policies of the executive branch. Governor Hickenlooper is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint. Governor Hickenlooper's official residence is in the City and County of Denver, Colorado. He is being sued in his official capacity.

27. Defendant Debra Johnson is the Clerk and Recorder for the City and County of Denver. Article XIV, section 8 of the Colorado Constitution establishes the position of county clerk. Under Colorado law, when a completed application has been submitted and the appropriate fees paid, "the county clerk shall issue a license to marry and a marriage certificate form upon being furnished" proof that the applicants meet the age requirement and proof that the marriage is not prohibited under C.R.S section 14-2-110. *See* C.R.S § 14-2-106(1)(a). Debra Johnson is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint, though contrary to her beliefs regarding the constitutionality of these laws. Debra Johnson's official residence is in the City and County of Denver, Colorado. She is being sued in her official capacity.

28. Defendants Hickenlooper and Johnson, through their respective duties and obligations, are responsible for enforcing Colorado's laws barring same-sex couples from marriage and refusing to recognize the valid out-of-state marriages of same-sex couples. The defendants, and those subject to their supervision and control, have caused the harms alleged, and will continue to injure plaintiffs if not enjoined. Accordingly, the relief requested is sought against the defendants, as well as all persons under their supervision and control, including their officers, employees and agents.

JURISDICTION AND VENUE

29. Plaintiffs bring this action under 42 U.S.C. § 1983, C.R.S. §§ 13-51-105 and 13-51-106, and Colo. R. Civ. P. 57 to redress the deprivation under color of state law of rights secured by the United States Constitution.

30. This Court has subject matter jurisdiction under C.R.S. §§ 13-51-105 and 13-51-106.

31. This Court has personal jurisdiction over Defendants because they are residents of the City and County of Denver, Colorado.

32. Venue is proper in this district under Colo. R. Civ. P. 98.

33. This Court has authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Colorado Rules of Civil Procedure and C.R.S. §§ 13-51-105 and 13-51-106.

GENERAL ALLEGATIONS

A. History of Discrimination Against Homosexuals

34. There is a long history of discrimination against homosexuals both nationally and specifically in Colorado.

35. In the 1920s, the State of New York prohibited theaters from staging plays with lesbian or gay characters.

36. In the 1930s and 1940s, many states prohibited gay people from being served in bars and restaurants.

37. In 1952, Congress prohibited homosexuals (whom it called "psychopaths") from entering the country.

38. In 1953, President Eisenhower issued an executive order requiring the discharge of homosexual employees from federal employment, civilian or military. The ban on gay federal employees was not lifted until 1975 and such discrimination was not prohibited until the late 1990s.

39. President Eisenhower's executive order prohibiting federal employment for homosexuals also required contractors and other private corporations with federal contracts to ferret out and discharge their homosexual employees. Many other private employers, without federal contracts adopted the federal government's policy by refusing to hire gay people.

40. After World War II, known homosexual service members were denied GI Bill benefits and later, when other people with undesirable discharges had their benefits restored, the Veterans Administration refused to restore them to gay people.

41. Until the 1960s, all states penalized sexual intimacy between men. Some states continued this discrimination until the United States Supreme Court found these laws unconstitutional in 2003. *See Lawrence v. Texas*, 539 U.S. 558 (2003).

42. The 1990s saw a dramatic upswing in discriminatory legislation specifically targeting homosexuals.

43. In 1992, Colorado passed Amendment II, which prohibited "all legislative, executive or judicial action at any level of state or local government designed to protect . . . gays and lesbians." *Romer v. Evans*, 517 U.S. 620, 624 (1996). The purpose of Amendment II was "not to further a proper legislative end but to make [homosexuals] unequal to everyone else." *Id.* at 635.

44. The military's long-standing ban on homosexual service members was reinforced in 1993, when Congress passed 10 U.S.C. § 654 ("Don't Ask, Don't Tell"). *See* 10 U.S.C. § 654(a)(13) (repealed 2010) ("The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service."). Don't Ask, Don't Tell also required separation from the armed forces for any member who "stated that he or she is a homosexual or bisexual, or words to that effect . . . ." *Id.* § 654(b)(2). Enforcement of Don't Ask, Don't Tell officially ended on September 20, 2011.

45. In 1996, Congress enacted the "Defense of Marriage Act" ("DOMA"), which, for the first time, created a federal definition of marriage, limited to "a legal union between one man and one woman." 1 U.S.C. § 7. The "essence" of DOMA was the "interference with the equal dignity of same-sex marriages . . . ." *Windsor*, 133 S.Ct. at 2693. DOMA sprung from a "bare congressional desire to harm a politically unpopular group . . . ." *Id.* DOMA's "principal effect [was] to identify a subset of state-sanctioned marriages and make them unequal." *Id.* at 2694. In 2013, the Supreme Court ruled the federal definition of marriage aspect of DOMA unconstitutional because it "violate[d] the basic due process and equal protection principles" in the U.S. Constitution. *Id.* at 2693.

46. Since 1998, 30 states have passed constitutional amendments banning same-sex marriage.

47. On February 11, 2014, the Kansas House of Representatives overwhelmingly approved a bill that would have allowed private and government employees to refuse to "[p]rovide any services, accommodations, advantages, facilities, goods . . . or provide employment" to anyone in or "related to the celebration of" a same-sex marriage "domestic partnership, civil union or similar arrangement . . . ." H.B. 2453, § 1(a), 2014 Leg. (Kan. 2014). If passed the bill would have, for example, allowed a police officer to refuse to respond to a 9-1-1 call from a same-sex couple.

B. Colorado's Laws Barring Same-Sex Couples from Marriage and Refusing to Recognize the Valid Out-of-State Marriages of Same-Sex Couples.

48. Historically, Colorado has not questioned the legitimacy of marriages from other states that are valid under the other state's laws. Until 2000, Colorado recognized all "foreign" marriages if they were lawful under the laws of the other jurisdiction. *Payne v. Payne*, 214 P.2d 495, 497 (Colo. 1950) ("[W]e have repeatedly held that a marriage contracted in a jurisdiction

other than Colorado, which was valid under the laws of the jurisdiction in which it was performed, is a valid marriage.").

49. In 1973, Colorado confirmed this longstanding practice by enacting C.R.S. § 14-2-112, which states:

> All marriages contracted within this state prior to January 1, 1974, or outside this state that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

50. In 2000, however, the Colorado legislature amended C.R.S. § 14-2-104 to ban marriage by same-sex couples and to deny recognition to same-sex marriages validly performed outside of Colorado. H.B. 00-1249Colo. Legis. Serv. Ch. 233. In relevant parts, the statute now provides:

> (1) . . . [A] marriage is valid in this state if: (a) It is licensed, solemnized, and registered as provided in this part 1; and (b) It is only between one man and one woman. (2) Notwithstanding the provisions of section 14-2-112, any marriage contracted within or outside this state that does not satisfy paragraph (b) of subsection (1) of this section shall not be recognized as valid in this state.

51. In 2006, although Colorado's statutes already barred marriage by same-sex couples and denied recognition to marriages of same-sex couples who legally married out of state, Colorado amended its Constitution to do so as well.

52. Amendment 43, the "Definition of Marriage Act," amended the Colorado Constitution by adding a new section, Section 31, to Article II which said, "Only a union of one man and one woman shall be valid or recognized as a marriage in this state."

53. Voters were told that Amendment 43 was "necessary to avoid court rulings that expand marriage beyond one man and one woman in Colorado. In Massachusetts, a statutory definition was not sufficient to prevent a court from requiring the state to recognize same-sex marriages." Colo. Leg. Council, Colo. Blue Book, Amendment 43: Marriage 13 (2006).

54. Besides their status as same-sex couples, the Married Plaintiffs meet all of the requirements Colorado imposes for recognition of their out-of-state marriages.

C. The Unmarried Plaintiffs Are Otherwise Qualified to Marry in Colorado.

55. Besides the opposite-gender requirement, Colorado only limits issuing marriage licenses based on age (C.R.S. § 14-2-106(I)); current marital status (C.R.S. § 14-2-110(a)); and blood-relationship (C.R.S. § 14-2-110(b)-(c)).

56. Colorado does not place any other restrictions on the ability of opposite-sex couples to marry. For example, with respect to issuing marriage licenses, Colorado does not require opposite-sex couples to:

a. Comply with any particular public or private moral code.

b. Comply with any particular religious view of marriage.

c. Be able, willing and/or agree to procreate.

d. Be able, willing and/or agree to raise any children in any particular manner or "optimal environment," including by agreeing not to divorce or otherwise separate after having children.

e. Comply with any particular fidelity requirements.

57. Besides their status as same-sex couples, the Unmarried Plaintiffs meet all requirements Colorado imposes for the issuance of marriage licenses.

D. Colorado's Second-Class and Unequal Civil Unions

58. In 2013, Colorado enacted C.R.S. § 14-15-102, *et seq.* (the "Civil Unions Act"). The Civil Unions Act created a separate category of relationship recognition in Colorado called civil unions.

59. Partners in a civil union have the same state rights and obligations with respect to their children as married couples. C.R.S. § 14-15-107(4).

60. Partners in a civil union are treated the same under Colorado's adoption laws and procedures as married couples. C.R.S. § 14-15-107(5)(g).

61. Through the Civil Unions Act and other laws, Colorado encourages same-sex couples to have children, either through child birth or through adoption. *See* C.R.S. §§ 14-15-107(1); 14-15-107(5)(g), 25-2-112 (allowing same-sex parents to be listed on their child's birth certificate); §§ 14-15-107(5)(g); 19-5-202(4) (allowing same-sex couples to jointly adopt); §§ 14-15-107(6); 19-5-203 (allowing second parent adoptions for same-sex couples).

62. While opposite-sex couples can choose to have Colorado recognize their relationship either through marriage or through a civil union, same-sex couples are only eligible for civil unions, not marriage.

63. The Civil Unions Act deems the Married Plaintiffs to be in civil unions but not married upon entry into Colorado. C.R.S. § 14-15-116.

64. The Civil Unions Act attempted to make civil unions equal to marriage. *See* C.R.S. § 14-15-102 ("[T]he purpose of this Article is to provide eligible couples the opportunity

to obtain the benefits, protections, and responsibilities afforded by Colorado law to spouses consistent with the principles of equality under law and religious freedom embodied in both the United States Constitution and the Constitution of this State."). It did not achieve this goal.

65. For example, the vast majority of federal rights and benefits extended to married couples are not extended to couples in civil unions, unless those couples are validly married in another state. For example:

a. The Internal Revenue Service only recognizes marriages for tax purposes and does not recognize civil unions.

b. The U.S. Department of State only recognizes marriages when determining spousal eligibility for immigration purposes and does not recognize civil unions.

c. The Office of Personnel Management excludes civil union partners from employee benefits.

d. The Department of Defense and the Wage and Hour Division of the Department of Labor have stated that they will extend benefits only to married same-sex couples and not couples in civil unions.

66. Couples in civil unions who are not validly married in another state are not allowed to file their Federal or Colorado tax returns jointly. C.R.S. § 14-15-117(1)-(2).

67. Civil unions do not have the same social recognition or status as marriage.

68. Civil unions are not recognized as a legal relationship in the majority of states. In those states, Colorado couples who are in civil unions would be deemed legal strangers to each other.

E. Colorado's Laws Barring and Refusing to Recognize Same-Sex Marriages Harm the Plaintiffs

69. Colorado's exclusion of plaintiffs from marriage, and defendants' enforcement of that exclusion, as well as Colorado's refusal to respect the marriages of legally married same-sex couples from other states, subject plaintiffs to an inferior "second class" status as Coloradans relative to the rest of the community. These laws deprive them and their children of equal dignity, security, and legal protections afforded to other Colorado families.

70. On February 14, 2014, plaintiffs Christopher Massey and James Davis applied for a marriage license in Denver County, Colorado. On February 18, 2014, plaintiffs Tracey MacDermott and Heather Shockey, Wendy and Michelle Alfredsen, Tommy Craig and Joshua Wells, and Jodi Lupien and Kathleen Porter applied for marriage licenses in Denver County, Colorado. Despite believing that these laws are unconstitutional, defendant Johnson, through her authorized agent, refused their marriage license applications because they are same-sex couples.

71. Plaintiffs Amy Smart and Sandra Abbott were married in New York on October 8, 2011; plaintiffs Kevin and Kyle Bemis were married in Washington on February 16, 2013; plaintiffs Kris and Nan McDaniel-Miccio were married in New York on November 30, 2013; and plaintiffs Sara Knickerbocker and Jessica Ryann Peyton were married in Iowa on February 6, 2010. All of these couples would be recognized as married under Colorado law but for the fact that they are same-sex couples. Instead, they are "deemed" to be in civil unions.

72. In addition to stigmatizing a portion of Colorado's population as second-class citizens, Colorado's prohibition on marriage by same-sex couples, and its refusal to recognize valid marriages from other jurisdictions, deprive same-sex couples of critically important rights and responsibilities that married couples rely upon to secure their marriage commitment and safeguard their families. By way of example, and without limitation, same-sex couples who are denied the right to marry in Colorado are:

a. Denied the right to file joint state and federal tax returns as a married couple.

b. Taxed for health benefits provided by employers to their same-sex partner, thus significantly raising the cost of health care for the families. 26 U.S.C. § 106.

c. Denied a host of federal rights and responsibilities that pertain to married couples, including but not limited to those related to the Family Medical Leave Act, immigration, federal employee benefits, and spousal rights under ERISA. There are "over 1,000 federal laws in which marital or spousal status is addressed as a matter of federal law." *Windsor*, 133 S. Ct. at 2683.

d. The ability to move about the country and internationally secure in the knowledge that their Colorado relationship status, if any, will be recognized and respected by other states or foreign countries.

Same-sex couples who are validly married in another jurisdiction, but deemed to be in a civil union in Colorado are nevertheless denied:

a. Rights as a spouse under the Family Medical Leave Act. 29 C.F.R. § 825.122(b).

b. Rights as a "widow" or "widower" under the Copyright Act. 17 U.S.C. § 101.

c. State recognition of their status as a married couple.

73. Further, while many federal agencies have announced they will recognize marriages validly performed in a state regardless of where the married couple lives, those announcements are subject to change and the marital status of the Married Plaintiffs for federal purposes are thus subject to the vagaries of agency policy under different administrations. Further, on January 9 and February 14, 2014, bills were introduced in the U.S. House of

Representatives and U.S. Senate, respectively, which would require the federal government to defer to the laws of a person's state of legal residence in determining marital status. *See* H.R. 3829, 113th Cong. § 3 (2014) (for Federal purposes "the term 'marriage' shall not include any relationship that the state, territory, or possession [where the couple resides] does not recognize as a marriage"); S.2024, 113th Cong. (2014) ("A bill to amend chapter 1 of title 1 of the United States Code, with regard to the definition of 'marriage' and 'spouse' for Federal purposes and to ensure respect for State regulation of marriage.").

74. Like many other couples, same-sex couples are often parents raising children together. Indeed, four of the plaintiff couples are in fact raising children together and one is expecting a child.

75. Plaintiffs 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 opposite-sex couples and their children. For the many children being raised by same-sex couples, the tangible resources and societal esteem that marriage confers on families is no less precious than for children of opposite-sex couples.

76. The only way to secure plaintiffs due process and equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution is to extend the venerable institution of marriage to them.

77. These harms are visited upon the Plaintiffs on a daily basis. A long proceeding in this Court will only continue these harms. Accordingly, it is in the interests of all Parties to have a speedy hearing on this declaratory judgment action and to advance this action on the calendar, pursuant to C.R.C.P. 57(m).

CLAIMS FOR RELIEF

First Claim for Relief: Colorado's Ban on Marriage by Same-Sex Couples Deprives the Unmarried Plaintiffs of their Rights to Due Process

78. Plaintiffs incorporate by reference all preceding allegations in paragraphs 1-77.

79. Plaintiffs state this cause of action against defendant Colorado directly and against defendants Hickenlooper and Johnson in their official capacities for purposes of seeking declaratory and injunctive relief.

80. The Fourteenth Amendment to the United States Constitution, directly enforceable against defendant Colorado and enforceable against defendants Hickenlooper and Johnson pursuant to 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.

81. The Colorado Constitution, article II section 31; Colorado Revised Statutes sections 14-2-104(1)(b) and 14-2-104(2), and all other sources of state law that preclude

marriage for same-sex couples violate the due process guarantee of the Fourteenth Amendment both facially and as applied to plaintiffs.

82. The right to marry the person of one's choice and to direct the course of one's life without undue government restriction is one of the fundamental rights protected by the Due Process Clause of the Fourteenth Amendment. A person's choices about marriage implicate the heart of the right to liberty that is protected by the Fourteenth Amendment. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious discriminations. Defendants' actions to enforce the marriage ban directly and impermissibly infringe upon plaintiffs' choice of whom to marry, interfering with a core, private and intimate personal choice.

83. The right to marry is intertwined with the rights to privacy, family integrity and intimate association, and an individual's choices related to marriage are protected by the Due Process Clause because they are integral to a person's dignity and autonomy. Defendants' actions to enforce the marriage ban directly and impermissibly infringe upon plaintiffs' deeply intimate, personal, and private decisions regarding family life, and preclude them from obtaining full liberty, dignity, privacy, and security for themselves, their family, and their parent-child bonds, including the right to have those parent-child bonds recognized in the first place.

84. Colorado's ban on same-sex marriages and its provision of unequal civil unions impairs the Unmarried Plaintiffs' fundamental right to travel. The Unmarried Plaintiffs' civil unions are not recognized as valid in the vast majority of states. The Unmarried Plaintiffs are limited in their ability to travel and preserve even the limited protections afforded under their civil unions.

85. As Colorado's Governor and chief executive officer, defendant Hickenlooper's duties and actions to enforce Colorado's exclusion of same-sex couples from marriage, including those actions taken pursuant to his responsibility for the policies and actions of the executive branch relating to, for example and without limitation, health insurance coverage, vital records, tax obligations, and state employee benefits programs, violate plaintiffs' fundamental right to marry; fundamental interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association; and the fundamental right to travel under the Fourteenth Amendment to the United States Constitution.

86. As the Denver County Clerk and Recorder, defendant Johnson ensures compliance with Colorado's exclusion of same-sex couples from marriage by, for example, refusing to issue marriage licenses to same-sex couples, despite believing that these laws are unconstitutional. This violates the plaintiffs' fundamental right to marry; fundamental interest in liberty, dignity, privacy, autonomy, family integrity, and intimate association; and fundamental right to travel under the Fourteenth Amendment to the United States Constitution.

87. Defendants cannot satisfy the requirements of the Due Process Clause because Colorado's exclusion of same-sex couples from marriage is not rationally related to any legitimate governmental interest and thus cannot survive even rational basis review.

Second Claim for Relief:
Colorado's Failure to Recognize the Marriages of the Married Plaintiffs Violates Their Right to Due Process

88. Plaintiffs incorporate by reference all preceding allegations in paragraphs 1-87.

89. Plaintiffs state this cause of action against defendant Colorado directly and against defendant Hickenlooper in his official capacity for purposes of seeking declaratory and injunctive relief.

90. The Fourteenth Amendment to the United States Constitution, directly enforceable against defendant Colorado and enforceable against defendant Hickenlooper pursuant to 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.

91. Married plaintiffs Amy Smart and Sandra Abbot and plaintiffs Kris and Nan McDaniel-Miccio are lawfully married under laws of the state of New York.

92. Married plaintiffs Kevin and Kyle Bemis are lawfully married under the laws of the state of Washington.

93. Married plaintiffs Sara Knickerbocker and Jessica Ryann Peyton are lawfully married under the laws of the state of Iowa.

94. When a marriage is authorized by a state, numerous rights, responsibilities, benefits, privileges, and protections attach to that status under state and federal law.

95. Once a couple enters into a valid marriage in a state, the couple has a liberty interest in their marital status that is protected by the Due Process Clause of the Fourteenth Amendment, regardless of where the married couple chooses to live within the United States.

96. The Married Plaintiffs have a protected liberty interest in their lawful marital status and in the comprehensive protections and obligations that marriage provides.

97. The Married Plaintiffs also have a protected property interest in their lawful marital status and in the comprehensive protections and obligations that marriage provides.

98. The Married Plaintiffs also have a fundamental right to preserving their lawful marital status as they travel in and out of Colorado.

99. By operation of Article II, section 31 of the Colorado Constitution, C.R.S. § 14-2-104(2) and C.R.S. § 14-15-116, the Married Plaintiffs are stripped of their status as a lawfully married couple and are "deemed" to be in civil unions upon entry to Colorado. Colorado law strips these plaintiffs of a valuable and fundamental legal status that has been conferred on them by a sister state and deems them to be in a second-class, unequal relationship.

100. Accordingly, Colorado's refusal to recognize the valid-out-of-state marriages of these plaintiffs impermissibly deprives them of their fundamental liberty and property interest in their marriages and comprehensive protections afforded by marriage in violation of the Fourteenth Amendment's Due Process Clause.

101. Colorado's refusal to recognize the valid out-of-state marriages of the Married Plaintiffs also impermissibly burdens and interferes with their exercise of the fundamental right to marry in violation of the Fourteenth Amendment's Due Process Clause.

102. Moreover, Colorado's refusal to recognize the valid out-of-state marriages of the Married Plaintiffs also impermissibly burdens and interferes with their exercise of their fundamental right to travel in violation of the Fourteenth Amendment's Due Process Clause.

103. Defendants' deprivation of these plaintiffs' constitutional rights under color of state law violates the Fourteenth Amendment and 42 U.S.C. § 1983.

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

105. The Married Plaintiffs are entitled to declaratory and injunctive relief on this basis.

Third Claim for Relief:
Colorado's Ban on Marriage by Same-Sex Couples Deprives the Unmarried Plaintiffs of Their Rights to Equal Protection of the Laws

106. Plaintiffs incorporate by reference all preceding allegations in paragraphs 1-105.

107. Plaintiffs state this cause of action against defendant Colorado directly and against defendants Hickenlooper and Johnson in their official capacities for purposes of seeking declaratory and injunctive relief.

108. The Fourteenth Amendment to the United States Constitution, directly enforceable against defendant Colorado and enforceable against defendants Hickenlooper and Johnson pursuant to 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.

109. The Colorado Constitution, article II section 31; Colorado Revised Statutes sections 14-2-104(1)(b) and 14-2-104(2), and all other sources of state law that preclude marriage for same-sex couples violate the equal protection guarantee of the Fourteenth Amendment both facially and as applied to plaintiffs. The conduct of defendants in enforcing these laws violates the right of plaintiffs to equal protection by discriminating impermissibly on the basis of sexual orientation and gender.

110. As Colorado's Governor, defendant Hickenlooper is charged as its chief executive officer with duties and actions to enforce Colorado's exclusion of same-sex couples from

marriage, including without limitation those actions taken pursuant to his responsibility for the policies and actions of the executive branch relating to, for example, vital records, tax obligations and state employee benefits programs. Such enforcement of Colorado's exclusion of same-sex couples from marriage violates the Unmarried Plaintiffs' constitutional rights to equal treatment, without regard to sexual orientation or sex, under the Fourteenth Amendment to the United States Constitution.

111. As the Denver County Clerk and Recorder, defendant Johnson ensures compliance with Colorado's laws barring same-sex couples from marriage by, for example, denying same-sex couples marriage licenses, despite believing that these laws are unconstitutional. This violates the constitutional rights to equal treatment for the Unmarried Plaintiffs.

112. Colorado's exclusion of same-sex couples from marriage, and defendants' actions to enforce that exclusion, deny same-sex couples equal dignity and respect and deprive their families of a critical safety net of rights and responsibilities. These laws brand same-sex couples and their children as second-class citizens through government-imposed stigma. They foster private bias and discrimination, and suggest to all persons with whom same-sex couples interact, including their own children, that their relationships and families are less worthy than others. Colorado's exclusion of same-sex couples from marriage and defendants' actions reflect moral disapproval and animus towards same-sex couples.

113. Same-sex couples such as the Unmarried Plaintiffs are similar to opposite-sex couples in all of the characteristics relevant to marriage. Committed same-sex couples make the same commitment to one another as other couples. They build their lives together, plan their futures together, and hope to grow old together, caring for one another physically, emotionally and financially.

114. The Unmarried Plaintiffs seek to marry for the same types of reasons, and to provide the same legal shelter to their families, as different-sex spouses.

i. Discrimination Based on Sexual Orientation

115. Colorado's laws barring same-sex couples from marriage target same-sex Colorado couples as a class by excluding them from marriage on the basis of sexual orientation.

116. Laws that discriminate based on sexual orientation should be subjected to heightened equal protection scrutiny for numerous reasons.

117. Lesbians and gay men have suffered a long and painful history of discrimination in Colorado and across the United States. Sexual orientation bears no relation to an individual's ability to perform in or contribute to society. Sexual orientation is a core, defining trait that is so fundamental to one's identity and autonomy that a person may not legitimately be required to abandon or change it (even if that were possible) as a condition of equal treatment under the law.

118. Lesbian, gay and bisexual persons are a discrete and insular minority, and strong ongoing prejudice against them continues to seriously curtail the political process that might ordinarily be relied upon to protect them.

119. The exclusion of same-sex couples from marriage based on sexual orientation cannot survive heightened scrutiny under the Equal Protection Clause because the State of Colorado cannot offer an exceedingly persuasive showing (or any showing) that the exclusion is substantially related to the achievement of any important governmental objective. Moreover, because the exclusion of same-sex couples from marriage does not serve any legitimate government interest, the exclusion violates the Equal Protection Clause even under rational basis review.

ii. Discrimination Based on Gender

120. Colorado's exclusion of same-sex couples from marriage discriminates against plaintiffs on the basis of gender, barring plaintiffs from marriage solely because each of the plaintiffs wishes to marry a life partner of the same gender. The gender-based restriction is plain on the face of Colorado laws, which restrict marriage to "a man and a woman." Colo. Const., art. II section 31.

121. Because of these gender-based classifications, Tracey MacDermott is precluded from marrying Heather Shockey, her devoted life partner, because Heather is a woman and not a man; were Heather a man, Tracey and Heather could marry. Likewise, Wendy Alfredsen is unable to marry Michelle Alfredsen because Michelle is a woman rather than a man. Tommy Craig is unable to marry Joshua Wells because Joshua is a man rather than a woman. Jodi Lupien is also unable to marry Kathleen Porter only because Kathleen is a woman rather than a man. Christopher Massey is unable to marry James Davis because James is a man rather than a woman.

122. Colorado's exclusion of same-sex couples from marriage also serves the impermissible purpose of enforcing and perpetuating gender stereotypes by excluding plaintiffs from marriage, because plaintiffs have failed to conform to a gender-based stereotype that women should be attracted to, form intimate relationships with, and marry men, not other women, and that men should be attracted to, form intimate relationships with, and marry women, not other men.

123. Given that there are no longer legal distinctions between the duties of husbands and wives under Colorado law, there is no basis for the gender-based eligibility requirements for marriage.

124. The exclusion of plaintiffs from marriage based on their gender and the enforcement of gender-based stereotypes cannot survive the heightened scrutiny required for gender-based discrimination, nor is it rationally related to any legitimate governmental purpose.

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

125. Colorado's exclusion of same-sex couples from marriage discriminates against plaintiffs with respect to the exercise of the fundamental right to marry the person of one's choice, with respect to their liberty interests in personal autonomy and family integrity, association and dignity, and with respect to their fundamental right to travel. Such discrimination is subjected to heightened scrutiny. Colorado's exclusion of same-sex couples cannot survive such scrutiny, and indeed cannot survive even rational basis review.

Fourth Claims for Relief:
Colorado's Failure to Recognize the Marriages of the Plaintiffs Who Are Lawfully Married in Other States Violates Their Rights to Equal Protection of the Laws

126. Plaintiffs incorporate by reference all preceding allegations in paragraphs 1-125.

127. Plaintiffs state this cause of action against defendant Colorado directly and against defendant Hickenlooper in his official capacity for purposes of seeking declaratory and injunctive relief.

128. The Fourteenth Amendment to the United States Constitution, directly enforceable against defendant Colorado and enforceable against defendant Hickenlooper pursuant to 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.

129. Colorado has a long history of respecting and recognizing marriages that were validly entered into in other states, and affording those marriages all of the rights and privileges of a Colorado marriage, regardless of whether that marriage could have been performed in Colorado. But in 2000, and again in 2006, Colorado singled out the legal marriages of same-sex couples in order to exclude them from recognition and to deny the spouses in such marriages any of the rights, protections, and responsibilities of marriage.

130. Colorado's refusal to recognize the lawful marriages of the Married Plaintiffs discriminates against a class of legally married persons and also discriminates against the Married Plaintiffs based on sexual orientation and gender. It also discriminates against them with respect to the exercise of the fundamental right to marry the person of one's choice, fundamental liberty interests in personal autonomy, dignity, privacy, family integrity, and intimate association, and the fundamental right to travel.

131. Colorado's laws singling out legally married same-sex couples in order to exclude their marriages from recognition cannot survive heightened scrutiny under the Equal Protection Clause because the State of Colorado cannot offer an exceedingly persuasive showing (or any showing) that those laws are substantially related to the achievement of any important government objective. Moreover, because excluding legally married same-sex couples from

recognition does not serve any legitimate government interest, those laws violate the Equal Protection Clause even under rational basis review.

132. While the states have traditionally had the authority to regulate marriage, that authority "must respect the constitutional rights of persons" and is "subject to those [constitutional] guarantees," *see Windsor*, 133 S. Ct. at 2691.

133. The principal purpose and effect of Colorado's non-recognition laws is "to identify a subset of state-sanctioned marriages and make them unequal." *Windsor*, 133 S. Ct. at 2694. These laws "impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of [other] States." *Id.* at 2693.

134. Colorado's laws excluding legally married same-sex couples from recognition are subject to heightened scrutiny. But even under rational basis review, a purpose to harm a minority class of persons cannot justify disparate treatment of that group, as this is not a legitimate governmental interest. *Romer*, 517 U.S. at 635; *Windsor*, 133 S. Ct. at 2693.

135. Accordingly, the enforcement of Colorado laws that refuse to recognize the lawful marriages of the Married Plaintiffs, relegating them to a second and unequal class of relationships in the Civil Unions Act, violates the equal protection rights of those plaintiffs.

Fifth Claim for Relief:
Declaratory and Injunctive Relief

136. Plaintiffs incorporate by reference all preceding allegations in paragraphs 1-135.

137. This case presents an actual controversy because defendants' present and ongoing violations of plaintiffs' rights to due process and equal protection subject plaintiffs to serious and immediate harms, warranting the issuance of a declaratory judgment pursuant to C.R.S. §§ 13-51-105 and 13-51-106 and Rules 57 and 65 of the Colorado Rules of Civil Procedure.

138. Plaintiffs seek injunctive relief to protect their constitutional rights and to avoid the injuries described above. A favorable decision enjoining defendants from further constitutional violations would redress and prevent irreparable injuries to plaintiffs which have been identified, and for which plaintiffs have no adequate remedy at law or in equity.

139. All necessary parties under C.R.C.P. 57(j) have been named in this action.

140. Pursuant to C.R.C.P. 57(m), Plaintiffs respectfully request that the Court order a speedy hearing of this declaratory judgment and injunctive relief action and advance it on the calendar.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter judgment:

1. Declaring that the provisions of and enforcement by defendants of Colorado's laws excluding same-sex couples from marriage, including Article II, section 31 of Colorado's Constitution, Colorado Revised Statutes sections 14-2-104(1)(b) and 14-2-104(2), and all other sources of state law that exclude same-sex couples from marrying, violate the Unmarried Plaintiffs' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United State Constitution;

2. Declaring that the provisions of and enforcement by defendants of Colorado's laws barring recognition of the valid out-of-state marriages of same-sex couples, including Article II, section 31 of Colorado's Constitution, Colorado Revised Statutes sections 14-2-104(1)(b) and 14-2-104(2), and all other sources of state law that bar recognition of valid out-of-state marriages entered into by same-sex couples, violate the Married Plaintiffs' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

3. Permanently enjoining enforcement by defendants of Article II, section 31 of Colorado's Constitution, Colorado Revised Statutes sections 14-2-104(1)(b) and 14-2-104(2), and all other sources of state law that exclude Unmarried Plaintiffs from marriage or refuse to recognize the marriages of the Married Plaintiffs;

4. Requiring defendants Hickenlooper and Johnson in their official capacities to permit issuance of marriage licenses to the Unmarried Plaintiffs, pursuant to the same restrictions and limitations applicable to opposite-sex couples, and to recognize the out-of-state marriages validly entered into by the Married Plaintiffs;

5. Awarding plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

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

7. The declaratory and injunctive relief requested in this action is sought against each defendant; against each defendant's officers, employees, and agents; and against all persons acting in active concern or participation with any defendant, or under any defendant's supervision, direction, or control.

DATED this 19th day of February, 2014.

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Pursuant to C.R.C.P. 121, Section 1-26, a printed copy of this document with original signatures will be maintained by Reilly Pozner LLP and made available for inspection upon request.