

Plaintiffs Jan Donaldson and Mary Anne Guggenheim, Mary Leslie and Stacey Haugland, Gary Stallings and Rick Wagner, Kellie Gibson and Denise Boettcher, John Michael Long and Richard Parker, Nancy Owens and MJ Williams, and Casey Charles and David Wilson (collectively “Plaintiffs”) bring this action against Defendant the State of Montana, and allege as follows:

INTRODUCTION

1. Plaintiffs are fourteen lesbian, gay, or bisexual individuals who comprise seven couples in committed, intimate, same-sex relationships. Plaintiffs are residents of the State of Montana who have fallen in love with life partners, and, with those partners, established families that provide Plaintiffs with long-term mutual emotional and economic support and a stable environment for raising children. Plaintiffs are highly accomplished and productive citizens who, in their desire to protect their family relationships, in no way differ from their heterosexual neighbors, co-workers, and fellow community members.

2. The State of Montana offers committed, intimate, different-sex couples the ability to obtain numerous protections, rights, and benefits, as well as to undertake numerous duties, responsibilities, and obligations toward one another, in the form of a statutory structure that is accessible through the legal status of marriage. The significant protections and obligations provided to different-sex couples through this statutory structure not only strengthen different-sex couples’ ability to support each other and their children, but also help facilitate for different-sex couples and their families the life challenges that all families may face, including those surrounding illness, death, or separation.

3. Regardless of their commitment to their life partners or their desire and need to protect their familial relationships, under current Montana law, same-sex couples cannot obtain the significant relationship and family protections and obligations automatically provided to similarly-situated different-sex couples who marry. Under the Montana Constitution, same-sex couples are barred from entering into the legal status of marriage in Montana. Nor does Montana provide any alternative statutory structure such as the domestic partnership or civil union systems adopted by a number of other states that would permit similarly-situated same-sex couples the ability to obtain the numerous relationship and family protections and obligations that are available to different-sex couples through the legal status of marriage.

4. Plaintiffs are not challenging the legality of the “marriage amendment,” Article XIII, Section 7 of the Montana Constitution, which defines “marriage” as being between a man and a woman. By this suit, Plaintiffs do not seek the opportunity to marry nor do they seek the designation of “marriage” for their relationships. While the marriage amendment precludes Plaintiffs from marrying, it does not abrogate the fundamental rights shared by all Montanans, including Plaintiffs, under Article II of the Montana Constitution. Plaintiffs simply seek the same opportunity to obtain the statutory protections and obligations that are offered by the State to different-sex couples and their families through the legal status of marriage.

5. All Montanans, including Plaintiffs, are guaranteed the right to equal protection of the law under Article II, Section 4 of the Montana Constitution. The categorical exclusion of Montanans such as Plaintiffs from the protections and obligations afforded similarly-situated different-sex couples who have the opportunity to marry deprives Plaintiffs and their families of equal protection under the law in that the exclusion constitutes unconstitutional discrimination based on sexual orientation and unconstitutionally burdens the Plaintiffs’ fundamental rights to privacy, dignity, and the pursuit of life’s basic necessities.

6. The exclusion of Plaintiffs from any legally recognized and protected same-sex relationship and family status violates the fundamental rights of same-sex couples, including Plaintiffs, by burdening and interfering with their rights to privacy, dignity, and the pursuit of life’s basic necessities, which are guaranteed under Article II, Sections 10, 4, and 3 of the Montana Constitution, respectively.

7. The exclusion of Plaintiffs from any legally recognized and protected same-sex relationship and family status is arbitrary and therefore denies Plaintiffs’ right to due process in violation of Article II, Section 17 of the Montana Constitution.

8. Plaintiffs seek a declaratory judgment declaring that the State’s failure to provide them and their families the opportunity to access the statutory protections and obligations that the State offers to similarly-situated different-sex couples and their families denies Plaintiffs equal protection and violates their rights to privacy, dignity, the pursuit of life’s basic necessities, and due process under the Montana Constitution.

9. Plaintiffs also seek an injunction prohibiting the State from continuing to deny Plaintiffs and their families the ability to obtain the numerous relationship and family protections and obligations available to different-sex couples and their families through marriage, and

requiring the State to offer same-sex couples and their families a legal status and statutory structure that confers the protections and obligations that the State offers to different-sex couples who marry, but not the status or designation of marriage.

PARTIES

Jan Donaldson and Mary Anne Guggenheim

10. Plaintiffs Jan Donaldson and Mary Anne Guggenheim are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Helena, Montana.

11. Jan, who is 66, and Mary Anne, who is 74, met in the early 1980s and have been together as a couple for twenty-seven years. Jan and Mary Anne each have a son and daughter from previous marriages. When the couple moved to Montana together in 1983, they lived with two of the children, raising the children together and making parenting decisions together. Two of Jan's and Mary Anne's children now have children of their own, and Jan and Mary Anne have been or will be proud and supportive grandparents to four grandchildren, one of whom died at birth and one of whom is due in August. Jan and Mary Anne visit their grandchildren as often as they can.

12. Mary Anne is a retired pediatric neurologist. Before she moved to Montana, Mary Anne was a professor of pediatric neurology at the University of Colorado; on moving to Montana, she opened her own practice with Jan, a registered nurse. The joint practice thrived, and was in operation for over twelve years, running child neurology clinics in Billings, Great Falls, and Kalispell. In 1998, Mary Anne was elected to the Montana House of Representatives as the representative for District 55, Lewis and Clark County. During the term she served in the state legislature, Mary Anne sponsored a bill that was passed in the 1999 legislative session that bars genetic discrimination by health insurance companies.

13. Mary Anne now serves as a medical consultant to the Montana Disability Determination Services and to the federal Vaccine Injury Compensation Program, and as a board member for the Montana Board of Medical Examiners and the Helena/Lewis and Clark County Consolidated Planning Board. After she retired from medical practice, Jan served as Executive Director of the Montana Chapter, American Academy of Pediatrics for five years, and she recently started a job as an outreach coordinator for a nonprofit organization that works to provide family support and education services for children with developmental delays or

disabilities. Jan is also the President of the Board of Montana Shares, a partnership of Montana-based nonprofit groups devoted to improving the quality of life in communities throughout Montana.

14. Jan and Mary Anne own their home together in joint tenancy with rights of survivorship and contribute equally to the mortgage. They have a joint bank account and share all living expenses. They have executed wills and powers of attorney and they have named each other as beneficiaries on retirement accounts. Unlike a different-sex married couple, however, state law does not automatically protect their interests in each others' property and they remain concerned that the legal steps they have taken will be inadequate to protect the remaining partner when one of them dies.

15. Jan and Mary Anne have committed to taking care of one another in sickness and in health, but they also worry that they when that commitment is most important, the law will prevent them from fulfilling it. Although the couple has executed health care directives and are careful to try to bring copies wherever they go, they are worried that such precautions may not matter in an emergency. This concern was borne out recently during Mary Anne's hip replacement surgery when a doctor's assistant refused to speak with Jan because the assistant did not have the appropriate release in his possession. Even though she had been in a committed relationship with Mary Anne for over twenty-five years, Jan was treated like a stranger.

16. Jan and Mary Anne feel that they have committed to one another "in sickness and in health and for richer or for poorer" – like any long-term, different-sex married couple. Yet they feel vulnerable, knowing that they do not have the opportunity to access the significant protections offered to different-sex couples who marry.

Mary Leslie and Stacey Haugland

17. Plaintiffs Mary Leslie and Stacey Haugland are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Bozeman, Montana.

18. Stacey, who is 44 and a certified professional midwife, and Mary, who is 47 and a manager of the Meat/Seafood Department at the Community Food Co-op, have been together as a couple for twelve years. In 2003, the couple held a commitment ceremony at Emerson Hall in Bozeman to celebrate their relationship with over two hundred friends and family members. At the ceremony, all the guests signed a document in which Mary and Stacey declared their lifelong

commitment to one another, and that document, now framed, hangs prominently on their living room wall.

19. Stacey and Mary own their home together in joint tenancy with rights of survivorship and contribute equally to the mortgage. They have completely merged their finances since the commitment ceremony, and have executed wills, powers of attorney and health care powers of attorney, and they have named each other as beneficiaries on retirement accounts. Stacey also has health insurance through Mary's job at the Co-op, which provides benefits for domestic partners.

20. Based on Mary's past experience, however, Stacey and Mary worry that their lack of a state-recognized relationship will leave them unprotected in times of greatest need. In 1995, Mary moved to Montana with her former partner, so that they could work as ski instructors at Big Sky Ski Resort. On their eighth anniversary, Christmas Day in 1996, Mary's former partner was killed in a tragic accident on Lone Peak, involving an avalanche control explosive. Although Mary and her former partner had, like Stacey and Mary have, taken legally available steps to try to protect their relationship, Mary found herself powerless in a number of essential ways following her former partner's death.

21. Grief-stricken after the accident, Mary was denied access to her former partner's remains, as the coroner explained that she had no legal relationship to her partner. Big Sky Ski Resort refused to give Mary bereavement leave. Because Mary's former partner did not leave a will and the state law that protects spouses in the event of intestacy could not apply, the family of Mary's former partner was able to take almost all of the partner's possessions, including half of the balance of a mutual fund account to which the couple had jointly contributed. The family also received the partner's Worker's Compensation Death benefits – money that by law goes to spouses, but not to the domestic partners of committed, intimate, same-sex couples. In addition, the family, unlike Mary, was able to seek damages against the ski resort through a wrongful death suit, a legal recourse that was not available to Mary even though she had been in a committed, intimate relationship with her partner for eight years. Without the cushion set up by the state to protect spouses in just these kinds of circumstances, Mary was forced for financial reasons to sell the condominium she had owned with her former partner in a joint tenancy.

22. Stacey and Mary feel very lucky to have found one another and to be together, and their relationship makes them feel safe, loved, and supported. They wish that the State of

Montana would recognize their commitment to one another the way they and their family and friends have recognized it, and offer them the protections and obligations that are offered to different-sex couples who marry.

Gary Stallings and Rick Wagner

23. Plaintiffs Gary Stallings and Rick Wagner are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Butte, Montana.

24. Gary, who is 59, and Rick, who is 54, have been together as a couple for 21 years, and they have lived in Montana since 1994. Rick has a Masters in social work, and for the past thirteen years, he has been a Mental Health Crisis Response Therapist at the Western Montana Mental Health Center. Gary worked in the insurance business for 23 years, until he contracted HIV and became too sick to work in the mid-1990s. Rick and Gary were very involved in raising Gary's three children from a previous marriage, and he and Rick regularly visit Gary's daughter and her children – their grandchildren. When he is well enough, Gary volunteers with the Butte AIDS Support Services, and he and Rick both received Governor's awards for their work with the statewide Community Planning Group for HIV prevention, an organization with which they have been affiliated for over ten years.

25. Gary and Rick own their home together in joint tenancy with rights of survivorship, and they equally contribute to the annual property taxes, having paid off the mortgage. Gary and Rick also have a joint checking account and share all their living expenses. Rick has medical power of attorney for Gary, but the couple worries about being able to take care of each other in an emergency. Gary's health has been extremely precarious over the years – he was given six weeks to live at one point in 1995 – and although Gary is stable now, Rick was diagnosed with a serious spinal condition a few years ago, and the fear of a life-threatening medical emergency is a real and constant concern for the couple.

26. In 1997, Gary and Rick had a commitment ceremony at Freedom Point Pavilion in Sheep's Head Forest, which is north of Butte. They invited family and friends, and the ceremony was performed by the minister at the United Church of Christ church they attend every week in Butte. They now say of each other that they "are one" and "joined at the hip." Because the state does not recognize their relationship, however, Gary and Rick do not feel secure that they will be able to be there for each other when their support and love is most needed.

Kellie Gibson and Denise Boettcher

27. Plaintiffs Kellie Gibson and Denise Boettcher are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Laurel, Montana.

28. Kellie, 46, and Denise, 45, have been together as a couple for eleven years, and they celebrated their union in a commitment ceremony in 2001. Kellie, who grew up in Great Falls, Montana, worked in juvenile justice until she was diagnosed with a rare brain condition and had to go on social security disability in 2003. Denise is a middle school physical sciences teacher and basketball coach, as well as the organist at the couples' Lutheran congregation.

29. Kellie and Denise are living with and parenting two children together – Kellie's four-year old nephew and Kellie's sixteen-year old daughter from a previous marriage – and the couple is also close to Kellie's twenty-year old daughter, who lives with Kellie's ex-husband in Billings. Kellie's nephew moved in with the couple almost two years ago, after his parents, who both struggle with methamphetamine addiction, were sent to prison for forging checks and had their parental rights terminated. Late last year, Kellie and Denise jointly adopted Kellie's nephew on the recommendation of the Child and Family Services Division of the Montana Department of Public Health and Human Services, and, after years of neglect, their son is now doing well in a happy and stable home environment.

30. Denise has named Kellie as the beneficiary on her retirement account, and they have each other's health care power of attorney. Given Kellie's very fragile health, however – she has had 56 brain surgeries and over 300 spinal taps since her diagnosis ten years ago – they are constantly anxious about how they will be treated in a medical emergency. Their fear – that their relationship will not be recognized when it matters the most – was made very real for the couple in April of this year, when Kellie's father died and Denise's request for bereavement leave was denied. Under state law, spouses are granted ten days of bereavement leave for a family member's death, but because the state does not recognize Kellie's and Denise's relationship, Denise's employer did not have to grant her request.

31. Kellie and Denise describe their relationship as sacred, and after all they have been through with respect to Kellie's health, they view every day with each other and their children as a gift. Kellie and Denise only wish that the state would recognize the strong and

stable family unit they have created, as their extended family and church already have, and provide them with the protections and obligations afforded to different-sex couples who marry.

John Michael Long and Richard Parker

32. Plaintiffs John Michael (“Mike”) Long and Richard (“Rich”) Parker are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Bozeman, Montana.

33. Mike and Rich have been together as a couple for eight years. Mike, 56, grew up in Big Timber Montana, has a degree in microbiology, and has been a lab supervisor at Bozeman Deaconess Hospital for five years. Rich, 40, received a degree in mechanical engineering after a six-year stint in the Navy (from which he was honorably discharged) and is now an engineer for the Bozeman Public Schools.

34. Together, Mike and Rich are raising Mike’s seventeen-year old son from a previous marriage who plays offensive guard and defensive tackle for his high school football team, loves playing the guitar, and is taking confirmation classes at the local Lutheran church. Mike and Rich make all of their parenting decisions together, and together attend parent-teacher conferences. Both are involved in the day-to-day aspects of their son’s life, but Rich describes himself more as the disciplinarian, especially when it comes to topic of homework. Rich attended every one of their son’s football games last year.

35. Mike and Rich own their home together in joint tenancy with rights of survivorship, and they contribute equally to the mortgage out of a joint checking account they maintain for big expenses. They have named each other as beneficiaries on their retirement accounts, and Rich has health insurance through Mike’s job at the hospital, which provides benefits for domestic partners. Mike and Rich worry, though, that if something happens to one of them, the legal steps they have taken will be insufficient to protect their relationship and their relationship with their son.

36. Mike and Rich describe their relationship as being like “Ozzie and Harriet.” Mike and Rich want nothing more than for the state to recognize the stable family unit they already have – allowing them to support each other and raise their son with the same security provided to different-sex couples who marry.

Nancy Owens and MJ Williams

37. Plaintiffs Nancy Owens and MJ Williams are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Basin, Montana.

38. Nancy and MJ met in Helena in the early 1980s, and then started dating in the early 1990s; they have been together as a couple for almost eighteen years. Nancy, who has Ph.D. in Anthropology, teaches part time at the Graduate College, Union Institute and University. MJ, a professional jazz trombone player, owns and runs a small music production company and a mural painting company, she has been a volunteer firefighter, and she continues to be involved in the Montana Artists Refuge, a community of professional artists that sponsors art exhibitions, live performances and workshops, and fosters community awareness and participation in the arts, which she started over seventeen years ago. Nancy and MJ are also now proud grandparents to Nancy's son's four children.

39. Nancy and MJ own their home together in joint tenancy with rights of survivorship, and they each contribute to the mortgage. They have executed health care directives, but they are very concerned that the paperwork they have filled out will be insufficient for hospital access in emergencies and end-of-life decision-making. In 2001, Nancy was diagnosed with breast cancer. While she was undergoing treatment, Nancy was concerned that the hospital might not share her information with MJ – even though they had been in an intimate, committed relationship for over ten years at the time. Although Nancy was able to convince the hospital to share her information with MJ, the couple worries that another hospital could easily take a different approach. Nancy and MJ also worry about what would happen if Nancy passed away before MJ, and whether MJ would be able to afford to stay in their home.

40. Nancy and MJ both feel very lucky to have each other and to be together. Given their long-term commitment to one another, they feel the state should recognize them as a family and offer them the protections and obligations offered to different-sex couples who marry.

Casey Charles and David Wilson

41. Plaintiffs Casey Charles and David Wilson are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Missoula, Montana.

42. Casey, 58, who has both a law degree and a Ph.D. in English Literature, is a Professor of English at the University of Montana. David, 52, who is originally from Kalispell, Montana, is both an accomplished painter who has regular shows at two galleries and a high

school Spanish teacher. Casey and David have been together as a couple for eleven years. For the past ten years, the couple has had joint custody with David's ex-wife of David's daughter, Azulie, who is currently a dance major at the University of Montana. Azulie lived with David and Casey every other week, and along with David's ex-wife, David and Casey together made all parenting decisions about Azulie.

43. Since they have been together, Casey and David have merged their finances, and pay all household expenses out of a joint checking account to which they both contribute. Although both Casey and David have executed wills naming each other beneficiary, as well as health care directives, they worry that if something were to happen to Casey, David's interest in the life they have built together would not sufficiently be protected, and he might be forced to move out of their home.

44. Casey and David have also struggled with the lack of respect shown to their relationship. Casey and David were very close to Casey's mother, who passed away in February of this year in her 90s. David took leave from his school to attend her funeral, but he felt he could not tell the school whose funeral he was really attending because the law does not recognize Casey's mother as part of David's "immediate family," as Casey and David's relationship is not legally recognized.

45. Casey and David describe their long-term commitment to one another as providing security, intimacy, friendship, and a loving space in which to pursue their own interests. They feel that they are in the kind of stable, committed, and intimate relationship that the state's marriage laws were designed to protect, and that it is therefore unfair that they do not have the opportunity to access a safety net like that provided to different-sex couples who marry.

Defendant

46. The Defendant is the State of Montana.

JURISDICTION AND VENUE

47. This Court has jurisdiction over this action pursuant to the Montana Declaratory Judgments Act. Mont. Code Ann. §§ 27-8-101 *et seq.* and 27-19-101 *et seq.*

48. Venue in this action is appropriate in Lewis and Clark County pursuant to Mont. Code Ann. §§ 25-2-126.

GENERAL ALLEGATIONS

The History of Discrimination Against Gay, Lesbian, and Bisexual Montanans

49. Montana has a long history of purposefully subjecting gay, lesbian, and bisexual Montanans to unequal treatment under state law. Although gay, lesbian, and bisexual Montanans and their political allies have attempted to remedy this discrimination through the political process, they have been largely unsuccessful. With the exception of a single non-discrimination ordinance that passed in Missoula in April 2010, no law has been enacted anywhere in the State of Montana that explicitly prohibits discrimination on the basis of sexual orientation.

50. Indeed, members of the State Legislature have made hostile and disparaging public statements about lesbian, gay, and bisexual Montanans, and taken affirmative efforts to deny them equal treatment under Montana's laws. For example, in 1997 the Montana Supreme Court declared unconstitutional the section of the Montana criminal code which made same-sex sexual relations a felony. Three "house-keeping" bills were subsequently introduced in the State Legislature to take the voided law off the books in 1999, 2001, and 2003. Yet, despite the fact that the law was declared unconstitutional and thus unenforceable, all three of these bills failed, two in committee and the other on the floor of the House. State representative Verdell Jackson of Kalispell publicly stated that he opposed the 2001 bill because keeping the criminal law on the books "protects me from propositions on the street."

51. Further, the Montana State Legislature has failed to pass eight separate bills that would have added sexual orientation to the anti-discrimination protections under Montana's Human Rights Act. The Montana State Legislature also failed to pass nine separate bills that would have added sexual orientation to the hate crimes law in Montana. In almost every instance, the proposed legislation did not even reach the House or Senate floors, instead failing to make it out of either the House or Senate Judiciary Committee.

52. Testimony submitted during the hearings for legislation pertaining to the rights of lesbian, gay, and bisexual Montanans is replete with misinformation, negative stereotyping, and outright animus against lesbian, gay, and bisexual people. For example, unsubstantiated testimony on the association between homosexuality and violent sexual crime has been presented in a number of the hearings. The sponsor of a 1995 bill to extend anti-discrimination protections to those targeted on the basis of sexual orientation had to explain that he wrote a definition of sexual orientation into the bill because "some individuals are trying to confuse or add in pedophilia as part of sexual orientation."

Montana's Unequal Relationship and Family Protection Scheme

53. Through the officially recognized family status of marriage, the State of Montana offers to different-sex couples and their families a wide array of statutory protections, rights, and benefits, as well as duties, responsibilities, and obligations.

54. Montana law prohibits Plaintiffs from entering into either a solemnized or common law marriage. The Montana Code prohibits “a marriage between persons of the same sex.” Mont. Stat. Ann. § 40-1-401(d). In 2004, the Montana electorate also approved Constitutional Initiative 96, which added the following provision to the Montana Constitution: “[o]nly a marriage between one man and one woman shall be valid or recognized as marriage.” Mont. Const. Art. XIII, § 7.

55. Current Montana law provides some limited protections for couples in committed and intimate same-sex relationships and their families, including that State employees and employees of the County and City of Missoula may obtain health insurance benefits for their same-sex domestic partners. Under Montana parenting law, a same-sex partner who is participating in the parenting of his or her partner’s biological child may also have a legally recognized relationship with that child.

56. Montana has not, however, extended fuller protections to committed and intimate same-sex couples and their families, such as the domestic partnership, civil union, or other systems currently or formerly in place in California, Colorado, Hawaii, Maine, Nevada, New Hampshire, New Jersey, Oregon, Washington, and Wisconsin, as well as numerous local governments. In 2005 and 2009, bills were introduced in the Montana State Legislature that would have established a legally recognized family status for same-sex couples, in the form of civil unions or domestic partnerships. The bill introduced in 2005 provided that “parties to a civil union have all the same benefits, protections, and responsibilities under law, whether they derive from status, administrative rule, court rule, policy, common law, or any other source of civil law, that are granted to spouses in a marriage.” The bill introduced in 2009 extended certain relationship and family protections and responsibilities conferred on different-sex couples who marry to same-sex couples who register as domestic partners. Both bills failed to make it out of committee.

The Harms of Montana’s Unequal Relationship and Family Protection Scheme

57. Plaintiffs and their families are harmed in numerous respects by their exclusion from the statutory protections, rights, and benefits, as well as duties, responsibilities, and

obligations afforded under current Montana state laws exclusively to individuals in different-sex couples who marry and their families.

58. Plaintiffs are denied specific protections and obligations relating to, among other things, the incapacitation or death of a spouse, support for family finance, and other public safety nets and responsibilities attached to the status marriage, including the following:

a. Plaintiffs are denied protections afforded married couples upon the death of a spouse, such as intestacy rights permitting the surviving spouse to inherit automatically from the deceased spouse's estate; the ability of the surviving spouse to elect a minimum percentage of the deceased's estate based on the length of the marriage even if there is a will; the right of the surviving spouse to a homestead allowance; the right of the surviving spouse to file a wrongful death lawsuit when a spouse is killed; and presumptions benefiting spouses in the absence of a designated beneficiary for death and disability benefits and life insurance policies.

b. Plaintiffs are denied protections afforded employee spouses to file for or receive worker's compensation death benefits, even though as employees, they pay insurance premiums for workers' compensation benefits intended to provide protections to employees and their dependents if the employee is injured or killed on the job, and may pay precisely the same taxes and insurance premiums as their co-workers.

c. Plaintiffs are denied the financial safety net provided to spouses under numerous tax laws, including the right to file jointly to reduce tax liability or to take a spousal exemption for a non-working spouse if filing separately; tax benefits related to the ownership of real or personal property; and the ability to make greater tax deductible contributions to a Family Education Savings Trust.

d. Plaintiffs are denied family health insurance coverage and Plaintiffs may be denied continuation of coverage provided to spouses of deceased public employees.

e. Plaintiffs may be denied sick leave afforded to spouses to tend to sick family members or to attend a family member's funeral.

f. Plaintiffs may be denied the full benefit of dissolution laws that regulate the separation and divorce process, protect the rights of both spouses, and determine custody, visitation, support and other matters.

g. Plaintiffs are denied the automatic right afforded to married couples to make health care decisions for a spouse when the spouse cannot, including the right to withhold or withdraw life-sustaining procedures and the right to donate a spouse's organs and tissues, and Plaintiffs are denied the right afforded to spouses to have priority over all others to become the court-appointed guardian for a spouse who becomes mentally incompetent.

h. Plaintiffs are denied the automatic right afforded to married couples to make burial decisions and other decisions concerning the disposition and handling of remains of deceased spouses.

i. Plaintiffs are denied the opportunity to obtain hunting and fishing licenses for their partners, a right afforded to spouses under fish and game laws.

59. Additionally, many private entities in defining family members who are eligible for valuable benefits be reference to the State's statutory scheme, which provides relationship and family protections and obligations for different-sex couples who marry but not for similarly-situated same-sex couples. As a result, solely because they are in same-sex relationships, Plaintiffs may be excluded from other important family protections and obligations, such as employer-provided health insurance for family members.

60. By excluding Plaintiffs and their families from the kind of comprehensive relationship and family recognition and protection offered to different-sex couples through marriage, the State perpetuates the social stigma and prejudice long-suffered by lesbian, gay, and bisexual individuals in Montana, that they and their relationships are inferior to heterosexual individuals and heterosexual relationships.

61. This exclusion also encourages discrimination against lesbian, gay, and bisexual Montanans, by both public and private actors. As described above, Plaintiffs suffer distinct dignitary harms when they are forced to plead for recognition of their committed relationship, which is automatically granted to different-sex couples who marry. Even when Plaintiffs do contractually bind themselves to one another (through such vehicles as powers of attorney), these limited legal bonds are routinely ignored and disrespected.

VIOLATIONS OF THE MONTANA CONSTITUTION

COUNT I

Denial of Equal Protection Based on Sexual Orientation

Pursuant to Article II, Section 4 of the Montana Constitution

62. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

63. Article II, Section 4 of the Montana Constitution provides that “[n]o person shall be denied the equal protection of the laws.”

64. Although the marriage amendment, Article XIII, Section 7 of the Montana Constitution, precludes Plaintiffs from marrying, it does not abrogate their right to equal protection of the laws under Article II, Section 4 of the Montana Constitution.

65. As described above, although the State offers to different-sex couples the opportunity to access a statutory structure that provides relationship and family protections, rights, benefits, duties, responsibilities, and obligations through the legal status of marriage, the State denies access to similar protections and obligations to similarly-situated same-sex couples and their families.

66. But for their sexual orientation and being in committed relationships with a same-sex partner, Plaintiffs are similarly situated in every material respect to the different-sex couples who are afforded the opportunity to access the significant relationship and family protections and obligations currently associated exclusively with the legal status of marriage.

67. The State’s exclusion of Plaintiffs from the relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State offers to similarly-situated different-sex couples through the legal status of marriage impermissibly subjects Plaintiffs to unequal treatment based solely on each Plaintiff’s sexual orientation.

68. As described above, gay, lesbian, and bisexual Montanans have been historically and purposefully subjected to unequal treatment and 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 perform in or contribute to society – and this State discrimination on the basis of sexual orientation is suspect and demands a heightened level of scrutiny.

69. The State’s exclusion of same-sex couples from the relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State offers to

similarly-situated different-sex couples through the legal status of marriage violates Plaintiffs' fundamental rights of privacy, dignity, and the pursuit of life's basic necessities and demands a heightened level of scrutiny.

70. The State's exclusion of Plaintiffs from the of relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State offers to similarly-situated different-sex couples through the legal status of marriage is not even rationally related to the furtherance of any legitimate state interest, let alone narrowly tailored to further a compelling government interest, and thus violates the right to equal protection under the law as guaranteed by the Montana Constitution.

COUNT II

Denial of the Rights to Privacy, Dignity, and Pursuit of Life's Basic Necessities Pursuant to Article II, Sections 3, 4, and 10 of the Montana Constitution

71. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

72. Article II, Section 10 of the Montana Constitution provides "the right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

73. Article II, Section 4 of the Montana Constitution provides "the dignity of the human being is inviolable."

74. Article II, Section 3 of the Montana Constitution provides "[a]ll persons are born free and have certain inalienable rights. They include . . . the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities."

75. Although the marriage amendment, Article XIII, Section 7 of the Montana Constitution, precludes Plaintiffs from marrying, it does not abrogate their rights to privacy, dignity, and the pursuit of life's basic necessities under Article II, Sections 3, 4, and 10 of the Montana Constitution.

76. Each Plaintiff has the reasonable and actual expectation that the State will not unlawfully burden or interfere in his or her decision to enter into an intimate and committed

relationship and establish a family with the person of his or her choosing, and the State will not unlawfully burden or interfere with decisions about how to structure family relationships.

77. The State's exclusion of Plaintiffs from the opportunity to access the relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State provides to different-sex couples who marry based solely on Plaintiffs entering into intimate and committed relationships and establishing families with same-sex partners violates each Plaintiff's personal autonomy and his or her right to privacy and intimate association in violation of the privacy guarantee in Article II, Section 10 of the Montana Constitution.

78. In choosing to enter into intimate and committed relationships with same-sex partners and to establish families with their partners, Plaintiffs have pursued and are enjoying lives that are of meaning and value to them as individuals.

79. The State's exclusion of Plaintiffs from the opportunity to access the relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State provides to different-sex couples who marry based solely on Plaintiffs entering into intimate and committed relationships and establishing families with same-sex partners degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs' rights to basic human dignity as guaranteed by Article II, Section 4 of the Montana Constitution.

80. Plaintiffs' committed and intimate relationships with their same-sex partners and the families they have established with their partners are a way for them to pursue love, enjoyment, and happiness in their lives. As described above, Plaintiffs' ongoing safety, health, and happiness now significantly depend on their relationships with their partners and whether those relationships are legally recognized.

81. The State's exclusion of Plaintiffs from the opportunity to access the relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State provides to different-sex couples who marry based solely on Plaintiffs entering into intimate and committed relationships and establishing families with same-sex partners denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs' rights to pursue life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking

their safety, health and happiness in all lawful ways in violation of Article II, Section 3 of the Montana Constitution.

82. The State’s exclusion of Plaintiffs from the opportunity to access the relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State provides to different-sex couples who marry based solely on Plaintiffs entering into intimate and committed relationships and establishing families with same-sex partners is not narrowly tailored to further a compelling government interest, and thus violates the rights to privacy, dignity, and the pursuit of life’s basic necessities under the law as guaranteed by the Montana Constitution.

COUNT III

Denial of Right to Due Process

Pursuant to Article II, Section 17 of the Montana Constitution

83. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

84. Article II, Section 17 of the Montana Constitution provides “[n]o person shall be deprived of life, liberty and property without due process of law.”

85. Although the marriage amendment, Article XIII, Section 7 of the Montana Constitution, precludes Plaintiffs from marrying, it does not abrogate their right to due process of the law under Article II, Section 17 of the Montana Constitution.

86. The State’s exclusion of Plaintiffs from the opportunity to access the relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State provides to different-sex couples who marry based solely on Plaintiffs entering into intimate and committed relationships and establishing families with same-sex partners is arbitrary and violates Plaintiffs’ right to due process in violation of Article II, Section 17 of the Montana Constitution.

87. The State’s exclusion of Plaintiffs from the opportunity to access the relationship and family protections, rights, benefits, duties, responsibilities, and obligations that the State provides to different-sex couples who marry – based solely on Plaintiffs having entered into intimate and committed relationships and established families with same-sex partners – is not rationally related to the furtherance of any state interest, let alone narrowly tailored to further a compelling government interest, and thus violates the right to Due Process under the law as guaranteed by the Montana Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

(1) A declaration that the State's failure to offer same-sex couples equal opportunity to obtain the protections and obligations that are available to different-sex couples through the legal status of marriage violates Plaintiffs' right to equal protection under Article II, Section 4 of the Montana Constitution.

(2) A declaration that the State's exclusion of same-sex couples from the opportunity to obtain the protections and obligations the State provides to different-sex couples who marry violates Plaintiffs' right to privacy under Article II, Section 10 of the Montana Constitution.

(3) A declaration that the State's exclusion of same-sex couples from the opportunity to obtain the protections and obligations the State provides to different-sex couples who marry violates Plaintiffs' right to dignity under Article II, Section 4 of the Montana Constitution.

(4) A declaration that the State's exclusion of same-sex couples from the opportunity to obtain the protections and obligations the State provides to different-sex couples who marry violates Plaintiffs' right to pursue life's basic necessities under Article II, Section 3 of the Montana Constitution.

(5) A declaration that State's exclusion of same-sex couples from the opportunity to obtain the protections and obligations the State provides to different-sex couples who marry violates Plaintiffs' right to due process under Article II, Section 17 of the Montana Constitution.

(6) An order enjoining the State from continuing to deny Plaintiffs and their families access to a legal status and statutory structure that confers the protections and obligations the State provides to different-sex couples who marry.

(7) An order requiring the State to offer same-sex couples and their families a legal status and statutory structure that confers the protections and obligations that the State provides to different-sex couples who marry, but not the status or designation of marriage.

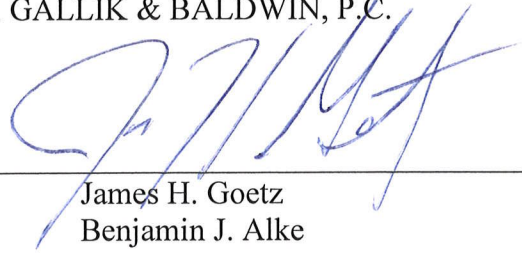
(8) An order awarding Plaintiffs their costs and their reasonable attorneys' fees.

(9) An order awarding such other and further relief as the Court deems just and proper.

Dated this 22nd day of July, 2010.

GOETZ, GALLIK & BALDWIN, P.C.

By: _____

A handwritten signature in blue ink, appearing to be 'JHGA', is written over a horizontal line. The signature is stylized and cursive.

James H. Goetz
Benjamin J. Alke

and

MORRISON & FOERSTER LLP

Ruth N. Borenstein

Philip T. Besirof

Neil D. Perry

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION, LGBT & AIDS Project

Elizabeth O. Gill

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION

Betsy Griffing, Legal Program Director of Montana

ATTORNEYS FOR PLAINTIFFS