

IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

APRIL AARON-BRUSH and GINGER AARON-BRUSH,

Plaintiffs,

vs.

ROBERT BENTLEY in his official capacity as Governor of Alabama; LUTHER STRANGE in his official capacity as Attorney General of Alabama; JULIE MAGEE in her official capacity as Commissioner of Revenue of the State of Alabama; Colonel HUGH B. McCALL in his official capacity as Director of the Alabama Department of Public Safety,

Defendants.

Civil Action No.

COMPLAINT

1. Plaintiffs are a same-sex couple who were lawfully married outside the State of Alabama. They sue to challenge the constitutionality of Section 36.03 of the Alabama Constitution and Ala. Code § 30-1-19 (referred to collectively as the “Alabama Marriage Prohibitions”) which prohibit the State of Alabama from recognizing the marriages of same-sex couples entered into in other jurisdictions. Alabama, like other states,

encourages and regulates marriage through hundreds of laws that provide benefits to and impose obligations on married couples. In exchange, Alabama receives the well-established benefits that marriage brings: stable, supportive families that contribute to both the social and economic well-being of the State. It is because of the well-recognized benefits of marriage that Alabama has traditionally recognized lawful marriages performed in other states.

2. Alabama's refusal to recognize Plaintiffs' marriage unlawfully denies them many of the legal protections available to different-sex couples, including, but not limited to, the right to make medical decisions for an incapacitated spouse, access to health insurance and retirement benefits, property protections, and inheritance.

3. The refusal to recognize Plaintiffs' marriage undermines the couples' ability to achieve their life goals and dreams, threatens their mutual economic stability, and denies them "a dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). They and their family are stigmatized and relegated to a second-class status by being barred from marriage, a bar that serves no legitimate state interest. The exclusion "tells [same-sex] couples and all the world

that their otherwise valid relationships are unworthy” of recognition. *Id.* at 2694. And it “humiliates ... children now being raised by same-sex couples” and “makes 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.*

4. Alabama’s exclusion of married same-sex couples from the protections and responsibilities of marriage violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This discriminatory treatment directly affects the fundamental right to marry and serves no compelling state interest.

5. Alabama’s refusal to recognize the marriages of same-sex couples discriminates against such couples on the basis of sexual orientation and sex.

6. The State’s discrimination against Plaintiffs and other married same-sex couples not only serves no compelling state interest, but also is not substantially related to an important state interest. It is not rationally related to the furtherance of *any* legitimate state interest.

7. Under 42 U.S.C. § 1983, Plaintiffs seek: (a) a declaration that Alabama's refusal to recognize the marriages of same-sex couples validly entered into outside of the State violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution where Alabama refuses to treat same-sex couples legally married in other jurisdictions the same as different-sex couples; and (b) a permanent injunction directing Defendants to legally recognize Plaintiffs' marriage and the marriages of other same-sex couples validly entered into outside of Alabama.

JURISDICTION AND VENUE

8. Plaintiffs sue under 42 U.S.C. § 1983 for violations of civil rights under the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction over all claims for relief pursuant 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this district.

PLAINTIFFS

10. Plaintiffs April Aaron-Brush and Ginger Aaron-Brush were married in Massachusetts in June 2012. They have been together for 17 years and reside in Jefferson County, Alabama. April works for the Social Security Administration in Birmingham. As a federal employee, April's marriage to Ginger is recognized by her employer and she has access to all employee benefits enjoyed by married couples. Ginger is a tenured elementary school teacher decorated for excellence as a classroom teacher. Because of Alabama's Marriage Prohibitions, Ginger does not enjoy the same entitlement and respect for her marriage by her employer; her employer, as an Alabama public entity, denies the very existence of her marriage.

11. April and Ginger have a seven year old daughter they are raising together equally. They always wanted to be parents and adopted a child to provide a nurturing and loving home. Because of Alabama's prohibition on marriage, only one of them could adopt and now Ginger is a legal stranger to their daughter. But for Alabama's Marriage Prohibitions, Ginger would be entitled to adopt their daughter. *See* Ala. Code § 26-10A-27 (“[A]ny person may adopt his or her spouse’s child

according to the provisions of this chapter”). Their concern for their daughter is the driving force behind April’s and Ginger’s resolve to bring this civil action.

12. Because of Alabama’s Marriage Prohibitions, Ginger and April Aaron-Brush were unable to file joint tax returns and paid twice as much in 2014 for preparation of their federal and state tax returns as they would have if they had filed joint returns for both the state and federal governments. Also because of Alabama’s Marriage Prohibitions, both Ginger and April Aaron-Brush had to take additional steps beyond what an individual in a different-sex marriage must take to effectuate a name change on their Alabama driver’s licenses, incurring financial expenses and a time commitment significantly beyond what would be required of an individual changing her name because of a different-sex marriage.

13. Plaintiffs April Aaron-Brush and Ginger Aaron-Brush have been, and continue to be, harmed by Alabama’s Marriage Prohibitions which deny the validity of their marriage and all the benefits and obligations of their marriage.

DEFENDANTS

14. Robert Bentley is the duly elected Governor of the State of Alabama. He holds the “supreme executive power” of the state and is charged to “take care that the laws be faithfully executed.” *See* Ala. Const. §§ 113, 120. By virtue of his position, Governor Bentley maintains, and has exercised, enforcement authority in connection with the Alabama Marriage Prohibitions. As an example, he announced in September 2013 he would not permit the Alabama National Guard to provide benefits to same-sex spouses, despite a federal directive to do so. According to news reports, Governor Bentley stated: “When they’re under my command we will obey Alabama state law.”

15. When he was a candidate, Governor Bentley stated,

I will ensure that Alabama does not follow the trend of allowing gay marriages or civil unions, and I will protect our state's right to define marriage as between one man and one woman. I support the Defense of Marriage Act, affirming the right of states not to recognize same-sex marriages licensed in other states. Alabamians should work together to protect traditional marriage. The two-parent family provides the best environment of stability, discipline, responsibility, and character.

Robert Bentley for Governor 2010 – Family & Social Values “The Issues”
(copy attached as Exhibit A).

16. After the *U.S. v. Windsor* decision in the U.S. Supreme Court, Governor Bentley reaffirmed his belief that “marriage is between a man and woman,” and went on to compare marriage between same-sex couples with plural marriage. “VIDEO: Governor Bentley shares his views on gay marriage,” *South Union Street*, June 28, 2013, <http://goo.gl/8p9Jmr> (last visited on June 10, 2014).

17. Gov. Bentley resides in Tuscaloosa and has his office in Montgomery. He is sued in his official capacity only.

18. Luther Strange is the duly elected Attorney General of the State of Alabama. Attorney General Strange is the state officer who “shall appear in the courts of ... the United States, in any case in which the state may be interested in the result.” Ala. Code § 36-15-1(2). He maintains enforcement authority regarding the Alabama Marriage Prohibitions and their application to conduct of the State and its subdivisions and court system. He resides in Jefferson County and has his office in Montgomery. He is sued in his official capacity only.

19. Julie Magee is Commissioner of Revenue. The Commissioner of Revenue serves as the chief executive officer of the Alabama Department of Revenue. The Department of Revenue collects all income taxes due to

the State of Alabama. She has her office in Montgomery County, Alabama. The Department has taxpayer service centers throughout the state, including the Northern District of Alabama. She is sued in her official capacity only.

20. Hugh B. McCall is the Director of the Alabama Department of Public Safety. His office is in Montgomery County, Alabama. The Department has offices throughout the state, including the Northern District of Alabama. He is sued in his official capacity only.

FACTUAL BACKGROUND

21. In 1983, Attorney General Charles Graddick issued an advisory opinion (Ala. A.G. Op. No. 83-206) to Probate Judge Wallace Wyatt stating

it is the opinion of the Attorney General that because Alabama has no statutory definition of marriage, marriage must be defined according to its common usage as a legal union between a man and a woman and therefore, persons of the same sex cannot enter into marriage in Alabama. Furthermore, a license issued for the marriage of persons of the same sex would be null and void.

22. In August 1996, Gov. Fob James issued Executive Order 1996-24 which

declare[d] that same-sex marriage is against the public policy and laws of the State of Alabama; that it is and shall remain

the public policy of this State that only a marriage between a man and a woman, who are both otherwise qualified by law to marry, is valid in this State A marriage in another state or foreign jurisdiction between persons of the same sex, regardless of when such marriage took place, shall not be recognized as a valid marriage in this state and shall produce no civil effects nor confer any of the benefits , burdens or obligations of marriage under the laws of the State of Alabama.

23. Governor James's Executive Order further asserted his authority to issue the Order as follows:

WHEREAS, the Constitution mandates that the Governor shall see that the laws of the State are faithfully executed; and

WHEREAS, the Constitution vests in the Executive Department the whole of the executive power which, in turn, is vested in the Governor; and

WHEREAS, the executive power includes the power to administer and enforce the laws as enacted by the legislature and as interpreted by the courts; and

WHEREAS, the Governor, as chief executive, is given the authority and it is his duty to act to enforce the laws, duly and constitutionally enacted, in every portion of the State, so that every citizen and all property will have the protection of the laws

24. In 2000, Senator Bobby Denton asked Attorney General Bill Pryor for an opinion on the effect of the then-proposed law authorizing "civil unions" in Vermont. Attorney General Pryor stated that civil unions

were homosexual marriages in all but name and against the public policy of Alabama. Therefore,

the State of Alabama, its subdivisions, businesses doing business in the State, and the citizens of Alabama would not be required to recognize the proposed “civil unions” of homosexual couples currently under consideration in the General Assembly of the State of Vermont. The Alabama Marriage Protection Act clearly expresses the State’s legitimate public policy not to recognize such “civil unions.”

Ala. A.G. Op. No. 2000-129.

25. The Alabama Legislature adopted Ala. Code § 30-1-19 in 1998.

The statute provides as follows:

- (a) This section shall be known and may be cited as the “Alabama Marriage Protection Act.”
- (b) Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting the unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.
- (c) Marriage is a sacred covenant, solemnized between a man and a woman, which, when the legal capacity and consent of both parties is present, establishes their relationship as husband and wife, and which is recognized by the state as a civil contract.
- (d) No marriage license shall be issued in the State of Alabama to parties of the same sex.

- (e) The State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any jurisdiction regardless of whether a marriage license was issued.

26. In 2006 the Legislature proposed an amendment to the state Constitution. It was approved by the people in an election on June 6, 2006, and proclaimed ratified June 28, 2006, as Amendment 774. Now designated as Section 36.03 of the Recompiled Constitution, the Section reads as follows:

- (a) This amendment shall be known and may be cited as the Sanctity of Marriage Amendment.
- (b) Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting this unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.
- (c) Marriage is a sacred covenant, solemnized between a man and a woman, which, when the legal capacity and consent of both parties is present, establishes their relationship as husband and wife, and which is recognized by the state as a civil contract.
- (d) No marriage license shall be issued in the State of Alabama to parties of the same sex.
- (e) The State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any

jurisdiction regardless of whether a marriage license was issued.

- (f) The State of Alabama shall not recognize as valid any common law marriage of parties of the same sex.
- (g) A union replicating marriage of or between persons of the same sex in the State of Alabama or in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state as a marriage or other union replicating marriage.

27. As a result, marriage in Alabama is legally available only to different-sex couples. Same-sex couples may not marry in Alabama, and if they are married elsewhere, their marriages are not recognized in Alabama for any purpose.

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

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

30. Alabama's refusal to recognize the marriages of same-sex couples denies those couples numerous protections afforded to different-sex married couples. For example, among married couples, only married same-sex couples are denied the benefits and protections of the following Alabama statutes:

a. "A husband or a wife ... may insure the life of his or her spouse for the benefit of himself or herself, or for the benefit of himself or herself and any child or children of the marriage; or a husband or a wife may insure his or her own life for the benefit of his or her spouse, or for the benefit of his or her spouse and children, or for the benefit of their children ... ; and such insurance and the proceeds and avails thereof ... is exempt from liability for the debts or engagements of the insured, or for the torts of the insured, or for any penalty or damages recoverable of the insured." Ala. Code § 6-10-8.

b. Various provisions of Alabama law provide for survivors' benefits to be paid to the surviving spouse. *E.g.*, Ala. Code §§ 11-40-17, -18, -18.1.

c. A spouse is in the line of priority to act as surrogate for deciding matters relating to life-sustaining treatment (where no advance directive for health care has been made). Ala. Code § 22-8A-11. Alabama allows banks to turn over small accounts (up to \$5,000) to a surviving spouse. Ala. Code § 5-5A-38.

d. There is a right of action for damages for injuries or death of employee "for the exclusive benefit of the surviving spouse and next of kin." Ala. Code § 25-5-31.

e. A surviving spouse has a right to the balance of payments for the deceased spouse's disability, under certain circumstances. Ala. Code § 25-5-57.

f. "[A]ny person may adopt his or her spouse's child according to the provisions of this chapter ..." Ala. Code § 26-10A-27.

g. State employees or retirees may cover a spouse under their health insurance plan, Ala. Code § 36-29-7.

h. Alabama provides compensation for the death or disability of peace officers and firemen to such person's dependents, including spouse. Ala. Code, Sec. 36-30-1.

i. Any income earned by the spouse of a member of the Armed Forces of the United States killed in action in a United States Department of Defense designated combat zone shall be exempt from Alabama income tax during the taxable year in which the individual is declared deceased by the Armed Forces. Ala. Code § 40-9-37.

j. In the event one dies without a will, the surviving spouse may receive all, or a portion, of the estate as set out in Ala. Code § 43-8-41.

k. If real estate is sold in a foreclosure, Alabama law allows the spouse of the debtor and the spouse of the mortgagor (among others) to redeem the property. Ala. Code § 6-5-248.

l. Damages against a health care provider for lost future earnings (to be paid in periodic payments) are payable to the surviving spouse or both. Ala. Code 6-5-543.

m. After death of an employee, compensation for exposures to hazards of occupational disease are payable to a surviving spouse

(and personal representative, parents, dependents, next of kin). Ala. Code §§ 25-5-118, 25-5-194.

n. A spouse of a married incapacitated person may appoint by will a guardian of the incapacitated person. Ala. Code § 26-2A-100(b).

o. Notice must be given to a spouse in a proceeding to appoint a guardian of an incapacitated person. Ala. Code § 26-2A-103.

p. A spouse is first in line to be appointed guardian of an incapacitated person. Ala. Code § 26-2A-104.

q. A spouse has a right to obtain life or disability insurance upon the other spouse. Ala. Code § 27-14-6.

r. Same-sex spouses are excluded from all of Alabama's provisions for divorce and alimony, Ala. Code Title 30, Chapter 2, and all matters of Child Custody and Support, Title 30, Chapter 3.

s. A spouse may receive educational benefits for a deceased or totally disabled veteran or prisoner of war (Ala. Code § 31-6-5) or a partially disabled veteran (§ 31-6-6).

t. A spouse may retain certain license plates after the death of the other spouse: medal of honor recipient or prisoner of war (§ 32-

6-254), “retired military” (§ 32-6-292), “retired educator” (§ 32-6-302), and “Alabama Gold Star Family” for the spouse of a person who died while on active military duty (§ 32-6-630).

u. Alabama provides health insurance for the spouse of an officer or employee of Alabama state docks, Ala. Code § 33-1-5.2.

v. The surviving spouse of a licensed funeral director may make application for examination to become a funeral director, Ala. Code § 34-13-74.

w. The spouse of a law enforcement officer or firefighter killed or totally disabled in the line of duty is entitled to educational benefits, Ala. Code § 36-21-102.

x. Alabama allows a spouse and dependents of a person covered under the State Employees Insurance Board (SEIB) health insurance plan killed in the line of duty or who dies because of any injury received in the line of duty to continue to be covered under the SEIB plan, with the cost to be paid from the State Treasury. Ala. Code Section 36-29-19.9.

y. Alabama allows local unit participants (e.g., any county, city, town or quasi-public organization of the state) to extend their

Employee Retirement System (or State Retirement System) health insurance plan to their retirees and to the surviving spouses of active employees of the local units receiving benefits from the retirement system insurance coverage. Ala. Code §§ 36-34-1 and 2.

z. Alabama law provides for a monthly payment to the surviving spouse of any official who died before reaching 60 years of age, but who otherwise qualified to be appointed a supernumerary official. Under Ala. Code § 40-6-3, the official must be “survived by a spouse lawfully married to the official at the time of his or her death.”

aa. The surviving spouse of a tax collector, tax assessor, revenue commissioner, license commissioner, or other elected official charged with the assessment or collection, or both, of any ad valorem taxes of the county receives a payments due to the deceased under Ala. Code § 40-6-4.

bb. To form a family limited liability entity, eighty percent or more of the profits and capital interests must be directly or constructively owned by an individual and the members of the individual’s family, with family being defined as including a spouse. Ala. Code § 40-14A-1. A family including same-sex spouses would not

qualify for this benefit because Alabama law refuses to recognize such a marriage.

cc. Normally, the basis of property for tax purposes is the cost of the property, but if the property was acquired from a spouse or former spouse in a transaction in which a gain or loss was determined, then the basis shall be determined under 26 U.S.C. § 1041, which provides favorable treatment for a spouse to, or for the benefit of, a spouse. Ala. Code § 40-18-6.

dd. Although generally, upon the sale or exchange of property, the entire gain or loss determined under Section 40-18-7 must be recognized, the gain or loss on transferring property to a spouse or former spouse is determined more favorably under 26 U.S.C. § 1041. Ala. Code § 40-18-8.

ee. The threshold for filing an Alabama tax return is more if a person is married and lives with his or her spouse than if the person is single and living with someone else. Ala. Code § 40-18-25.1.

ff. Alabama law allows favorable tax treatment to the surviving spouse of a taxpayer who at the time of his or her death owned a catastrophe savings account. Ala. Code § 40-18-312.

gg. Under 41-9-902, the Alabama Insurance Board may negotiate for and establish a health insurance plan for residents of the State of Alabama. Any insured electing this coverage may include his or her spouse and dependent children in the coverage if the insured pays for dependent coverage. Ala. Code § 41-9-904.

hh. The devolution of a decedent's estate is subject to the elective share of a surviving spouse. Ala. Code § 43-2-830(c).

ii. A surviving spouse, whether provided for in a will or not, can take an elective share of the decedent's estate as set out in Ala. Code § 43-8-70.

jj. Regardless of whether he or she elects to take an elective share, a surviving spouse is entitled to a homestead allowance (§ 43-8-110), exempt property (§ 43-8-111), and family allowance (§ 43-8-112). Ala. Code § 43-8-74.

kk. If a testator fails to provide by will for his or her surviving spouse who married the testator after the execution of the will, with certain exceptions, the omitted spouse shall receive the same share of the estate he or she would have received if the decedent left no will. Ala. Code § 43-8-90.

ll. The surviving spouse may retain possession of the dwelling house where the surviving spouse resided with the decedent, with the offices and buildings appurtenant thereto and the plantation connected therewith until homestead is assigned, free from the payment of rent. Ala. Code § 43-8-114.

mm. Whenever an employee dies intestate and is owed wages or salary, the employer may pay the amount due to the surviving spouse, and the money received will be treated as part of the exempt property, and, if the amount exceeds \$3,500.00 the excess shall be part of the family allowance. Ala. Code § 43-8-115.

31. Similarly, various departments and/or agencies of the State of Alabama have enacted policies or procedures that prohibit same-sex couples from enjoying the benefits of marriage that different-sex couples enjoy. For example, after the Supreme Court's decision in *U.S. v. Windsor*, Defendant Julie Magee, in her official capacity as Commissioner of Revenue of the State of Alabama, issued a document entitled "Tax Guidance: Alabama Income Tax Filing Status for Same-Sex Couples" (available at <http://revenue.alabama.gov/incometax/Tax-Guidance.pdf>) (last visited June 10, 2014). A copy of the Tax Guidance is

attached as Exhibit B. Under the Tax Guidance, same-sex couples married in another state may not file a joint return in Alabama, because Alabama refuses to recognize their marriages.

32. Spouses filing a joint federal income tax return will generally file a joint state income tax return, as a matter of convenience and the avoidance of paying to prepare two sets of returns – one joint and one separate. For instance, Ginger and April Aaron-Brush have paid twice as much in 2014 for preparation of their federal and state tax returns as they would have if they had filed joint returns for both the state and federal governments. But for Defendant Magee's policy, Ginger and April would have filed joint returns.

33. Defendant Hugh B. McCall, in his official capacity as Director of the Alabama Department of Public Safety, refuses to recognize name changes made as a matter of law through marriage in other states. Plaintiffs Ginger and April Aaron-Brush had to take additional steps beyond what an individual in a different-sex marriage must take to effectuate a name change on their Alabama driver's licenses, incurring financial expenses and a time commitment significantly beyond what

would be required of an individual changing her name because of a different-sex marriage.

34. Plaintiffs are harmed in numerous ways by excluding same-sex couples from the freedom to have an out-of-state marriage recognized and protected.

35. Marriage plays a unique and central social, legal, and economic role in American society. Being married reflects the commitment that a couple makes to one another, and represents a public acknowledgement of the value, legitimacy, depth, and permanence of the married couple's private relationship. Marriage is the sole legal institution in Alabama through which couples can create a complete family unit that the state recognizes and protects.

36. Conversely, denial to some couples of the status of being married in the eyes of the State conveys the State's view that the couple's private relationship is of lesser value and unworthy of legal recognition and support. This public rejection of what is among the Plaintiffs' most significant relationships damages them and their children, invites and facilitates private discrimination against them, and promotes the view

their relationships and families are inferior to those of other committed couples.

37. Plaintiffs have suffered, and will continue to suffer, harm because of Alabama's laws and policies regarding same-sex couples. Plaintiffs have no adequate remedy at law because the denial of their constitutional rights cannot be remedied through legal relief.

38. The Supreme Court has called marriage "the most important relation in life," *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (internal quotation marks omitted), and an "expression[] of emotional support and public commitment." *Turner v. Safley*, 482 U.S. 78, 95 (1987); *see also Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free [people]."). It is "a far-reaching legal acknowledgement of the intimate relationship between two people" *Windsor*, 133 S. Ct. at 2692. This is as true for same-sex couples as it is for different-sex couples.

39. Same-sex married couples such as Plaintiffs are similarly situated to different-sex married couples in all of the characteristics relevant to the recognition of their legal marriages.

40. When they marry, same-sex couples make the same commitment to one another as different-sex couples do. Like married different-sex couples, married same-sex couples build their lives together, plan their futures together, and hope to grow old together. Like married different-sex couples, married same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness.

41. Like many married different-sex couples, many married same-sex couples – such as Plaintiffs April and Ginger Aaron-Brush – are parents raising children together.

42. Plaintiffs have accepted and will assume the legal obligations that would flow from having their marriages recognized under Alabama law.

43. Plaintiffs were married legally under the laws of Massachusetts, and their marriage would be recognized by the State of Alabama but for the fact that they are married to a person of the same sex.

44. Refusing to recognize the marriages of same-sex couples harms the children raised by lesbian and gay couples – including the child of

Plaintiffs April and Ginger Aaron-Brush – by denying their families significant benefits and by branding their families as inferior to families headed by different-sex couples and less deserving of respect, thereby encouraging private bias and discrimination.

45. By refusing to recognize the legal marriages of same-sex couples, Alabama excludes those couples from the myriad of protections the State affords other married couples.

46. Section 36.03 of the Alabama Constitution and Ala. Code § 30-1-19 have the “purpose and effect to disparage and injure” lesbian and gay couples. *Windsor*, 133 S. Ct. at 2696.

CLAIMS FOR RELIEF

COUNT I

DEPRIVATION OF THE FUNDAMENTAL RIGHT TO MARRY IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

47. Plaintiffs incorporate by reference paragraphs 1-46 of this Complaint as though fully set forth herein.

48. The Fourteenth Amendment to the United States Constitution precludes any State from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

Governmental interference with a fundamental right may be sustained only upon a showing the legislation is closely tailored to serve an important governmental interest.

49. Marriage is a fundamental right, and the choice about whom to marry is a central part of the liberty protected by the Due Process Clause.

50. Alabama law denies Plaintiffs and other same-sex couples this fundamental right by refusing to recognize the lawful marriages they entered into in other jurisdictions.

51. Alabama's refusal to recognize Plaintiffs' marriage and the marriages of other same-sex couples entered into in other jurisdictions serves no compelling state interest.

52. Alabama's refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates the Due Process Clause.

53. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

54. As a result, Plaintiffs have been and will continue to be harmed and therefore seek the relief set forth in the Request for Relief below.

COUNT II

DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

55. Plaintiffs incorporate by reference paragraphs 1-46 of this Complaint as though fully set forth herein.

56. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “no State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

57. Same-sex married couples and different-sex married couples are similarly situated for purposes of marriage.

58. By refusing to respect the marriage of Plaintiffs who married out-of-state, the State of Alabama discriminates against lesbians and gay men on the basis of their sexual orientation and denies them significant legal protections.

59. Classifications based on sexual orientation demand heightened scrutiny.

60. Lesbians and gay men are members of a discrete and insular minority that has suffered a history of discrimination in Alabama and across the United States.

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

62. Prejudice against lesbians and gay men continues to seriously curtail the operation of the political process, preventing this group from obtaining redress through legislative means. Lesbians and gay men lack statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half of the states, including Alabama. They have been stripped of the right to marry through 30 state constitutional amendments and have been targeted through the voter initiative process more than any other group.

63. Alabama's refusal to recognize Plaintiffs' marriage and the marriages of other same-sex couples entered into in other jurisdictions serves no compelling state interest.

64. Alabama's refusal to recognize Plaintiffs' marriage and the marriages of other same-sex couples entered into in other jurisdictions is not substantially related to an important state interest.

65. Alabama's refusal to recognize Plaintiffs' marriage and the marriages of other same-sex couples entered into in other jurisdictions is not rationally related to any legitimate state interest.

66. Alabama's refusal to recognize Plaintiffs' marriage and the marriages of other same-sex couples entered into in other jurisdictions violates the Equal Protection Clause.

67. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

68. As a result, Plaintiffs have been and will continue to be harmed and therefore seek the relief set forth in the Request for Relief below.

COUNT III

DISCRIMINATION ON THE BASIS OF SEX IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION (42 U.S.C. § 1983)

69. Plaintiffs incorporate by reference paragraphs 1-46 of this Complaint as though fully set forth herein.

70. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall ... deny to

any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

71. The marriage bans discriminate against Plaintiffs on the basis of sex, barring Plaintiffs’ marriage from being recognized, solely because Plaintiffs have married a person of the same sex.

72. But for the sex of each plaintiff’s spouse, their marriage would be recognized under Alabama law.

73. The State’s unequal treatment of Plaintiffs based on their sex is not substantially related to an important state interest. State law prohibiting recognition of marriage for same-sex couples violates the Equal Protection Clause.

74. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

75. As a result, Plaintiffs have been and will continue to be harmed and therefore seek the relief set forth in the Request for Relief below.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

1. Enter a declaratory judgment that Ala. Code § 30-1-19 and Ala. Constitution §36.03 violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution insofar as they refuse to treat same-sex couples legally married in other jurisdictions the same as different-sex couples;

2. Enter a declaratory judgment that Ala. Code § 30-1-19 and Ala. Constitution §36.03 violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution insofar as they refuse to treat same-sex couples legally married in other jurisdictions the same as different-sex couples;

3. Enter a permanent injunction directing Defendants to recognize marriages validly entered into by Plaintiffs and other same-sex couples outside of the State of Alabama;

4. Enter a permanent injunction enjoining Defendants' enforcement of Ala. Code § 30-1-19 and Ala. Constitution §36.03 insofar as they refuse to treat same-sex couples legally married in other jurisdictions the same as different-sex couples;

5. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and

6. Enter all further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

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* Application for admission
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