

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

BRENDA LEE and LEE EDWARDS;)
PATRICIA TUCKER and INGRID SWENSON;)
ELVIE JORDAN and CHALLIS GIBBS;)
RONALD DORFMAN and KENNETH ILIO,)
on behalf of themselves and all others similarly)
situated,)

Case No. 1:13-cv-8719

)
Plaintiffs,)

Hon. Judge Sharon J. Coleman

v.)

DAVID ORR, in his official capacity as)
COOK COUNTY CLERK,)

Defendant.)

_____)
STATE OF ILLINOIS, *ex rel.* Lisa Madigan,)
Attorney General of the State of Illinois,)

Intervenor.)

PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Named Plaintiffs Brenda Lee and Lee Edwards, and Patricia Tucker and Ingrid Swenson (“Plaintiffs”), by their attorneys from Kirkland & Ellis LLP, Lambda Legal Defense and Education Fund, Inc., the Roger Baldwin Foundation of ACLU, Inc., and Miller, Shakkman, and Beem LLP, respectfully submit this Motion for Summary Judgment on all counts pursuant to Federal Rule of Civil Procedure 56. Plaintiffs concurrently submit herewith a Memorandum in Support and a Rule 56.1 Statement of Undisputed Material Facts.

1. Plaintiffs are four same-sex couples who have brought this lawsuit on behalf of themselves and a class of all same-sex couples in Illinois who apply to marry, but who are barred from doing so solely because they wish to marry a person of the same sex. Currently-effective Illinois statutes deny Plaintiffs some of their most basic freedoms by barring them from civil

marriage. *See* 750 ILCS 5/201 (authorizing marriages only “between a man and a woman”); 750 ILCS 5/212(a)(5) (prohibiting marriages “between 2 individuals of the same sex”); 750 ILCS 5/213.1 (marriages of same-sex couples are “contrary to the public policy of this State”) (collectively, the “marriage ban”). These statutes have been amended or repealed, but the amendments and repeals are not scheduled to become effective until June 1, 2014. *See* Illinois General Assembly Senate Bill 10 (amending 750 ILCS 5/201, and repealing 750 ILCS 5/212(a)(5) and 750 ILCS 5/213.1, without specifying an effective date), and Ill. Const. art. IV, § 10 (providing for an effective date of June 1 the following year for all legislation enacted after May 31, unless a different effective date is provided by a three-fifths vote).

2. On December 6, 2013, Plaintiffs filed a Class Action Complaint seeking declaratory and injunctive relief. In their Complaint, Plaintiffs allege that the marriage ban violates the United States Constitution’s Due Process Clause (Art. XIV § 1) (Class Action Complaint Count 1) and Equal Protection Clause (Art. XIV § 1) (Class Action Complaint Count 2).

3. There are no genuine issues of material fact in this case, and Plaintiffs are entitled to judgment as a matter of law on all counts.

4. Plaintiffs’ claim under the Equal Protection Clause should be subject to heightened scrutiny. Plaintiffs are similarly situated to non-gay couples with respect to the purposes of marriage. The marriage ban discriminates on the basis of sexual orientation and therefore warrants heightened scrutiny. Nevertheless, because the Illinois Legislature has repealed the marriage ban, and thus disavowed any prior purported governmental justification for excluding lesbian and gay couples from marriage, the level of scrutiny is irrelevant.

5. Plaintiffs' claim under the Due Process Clause should be subject to heightened scrutiny because the marriage ban denies Plaintiffs their fundamental right to marry the person of their choice. Nevertheless, because the Illinois Legislature has repealed the marriage ban, and thus disavowed any prior purported governmental justification for excluding lesbian and gay couples from marriage, the level of scrutiny is irrelevant.

6. The marriage ban fails any level of constitutional review, because the Illinois Legislature itself has determined that there is no legitimate governmental interest served by denying same-sex couples the ability to marry.

WHEREFORE, for the reasons set forth above and in the Plaintiffs' accompanying Memorandum, Plaintiffs respectfully request that this Court grant their Motion for Summary Judgment on all counts and grant the following relief:

- (a) entry of a declaratory judgment that the Defendant's inability to issue a marriage license to Plaintiffs and the class violates the Due Process and Equal Protection guarantees of the United States Constitution;
- (b) entry of a permanent injunction for the benefit of all Plaintiffs and the class enjoining Defendant and all those acting in concert from enforcing the Illinois marriage ban;

enter such other and further relief as deemed appropriate by this Court.

Respectfully submitted,

/s/ Jordan M. Heinz

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CERTIFICATE OF SERVICE

I, Jordan M. Heinz, an attorney, certify that on December 24, 2013, I caused the foregoing document to be served via ECF, email, and U.S. Mail on the following counsel:

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