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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

MARILYN RAE BASKIN and ESTHER FULLER; BONNIE EVERLY and LINDA JUDKINS; DAWN LYNN CARVER and PAMELA RUTH ELEASE EANES,

Plaintiffs,

v.

PENNY BOGAN, in her official capacity as BOONE COUNTY CLERK; KAREN M. MARTIN, in her official capacity as PORTER COUNTY CLERK; MICHAEL A. BROWN, in his official capacity as LAKE COUNTY CLERK; GREG ZOELLER, in his official capacity as INDIANA ATTORNEY GENERAL,

Defendants.

**1 : 14 -cv- 0355 TWP -MJD**  
Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Marilyn Rae Baskin and Esther Fuller, Bonnie Everly and Linda Judkins, and Dawn Lynn Carver and Pamela Ruth Elease Eanes, by and through their attorneys, file this Complaint against Defendants Boone County Clerk Penny Bogan, Porter County Clerk Karen M. Martin, Lake County Clerk Michael A. Brown, and Indiana Attorney General Greg Zoeller, and allege as follows:

**INTRODUCTION**

1. Marilyn Rae Baskin (“Rae”) and Esther Fuller; Bonnie Everly and Linda (“Lyn”) Judkins; and Dawn Lynn Carver and Pamela (“Pam”) Ruth Elease Eanes (collectively, “Plaintiffs”) are three loving and committed lesbian couples who reside in Indiana. They bring this action to challenge Defendants’ discriminatory denial of the freedom to marry in the State of Indiana (“the State”) solely because the Plaintiff couples are of the same sex. Plaintiffs seek

declaratory and injunctive relief for the violation of their guarantees of liberty and equal protection under the Fourteenth Amendment to the United States Constitution as a result of Indiana statutes that expressly deny same-sex couples—including Plaintiffs—the freedom to marry. *See* I.C. § 31-11-1-1 (hereinafter the “marriage ban” or “the ban”).

2. Plaintiffs seek the freedom to marry the one unique and irreplaceable person each loves, and thereby to assume the responsibilities and obtain the myriad protections, obligations, and benefits conferred upon married couples under state and federal law.

3. The right to marry the person of one’s choice and to direct the course of one’s life in this intimate realm without undue government interference is one of the fundamental liberty interests protected for all by the Due Process Clause of the United States Constitution. The State’s exclusion of Plaintiffs and other same-sex couples from marriage violates their fundamental right to marry.

4. The State also has deprived Plaintiffs of their guarantee of equality under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by denying Plaintiff couples—as well as other lesbian and gay Indiana residents—the right to marry the person of their choice based solely on their sexual orientation and sex.

5. Marriage plays a unique role in society as the universally recognized and celebrated hallmark of a couple’s commitment to build family life together. It confers upon couples a dignity and status of immense import. Through the marriage ban and through Defendants’ enforcement of the ban, the State sends a message that it views lesbians, gay men, and their children as second-class citizens who are undeserving of the legal sanction, respect, protections, and support that different-sex couples and their children receive automatically through marriage.

6. The marriage ban inflicts serious and irreparable harms upon Plaintiffs and other same-sex couples and their children across the State. The ban excludes them from the security and support available to married couples and their children, and from the myriad legal protections available to spouses and their children under state and federal law.

7. The marriage ban penalizes Plaintiffs' self-determination in the most intimate sphere of their lives. The Supreme Court has stated that marriage is the most important relation in life, as well as an expression of emotional support and public commitment, and a far-reaching legal acknowledgement of the intimate relationship between two people. The marriage ban deprives Plaintiffs and other same-sex couples of dignity, and humiliates children of same-sex couples by branding their families as inferior and unworthy of the legitimacy, recognition, and respect accorded to other families.

8. The freedom to marry is one of the vital personal rights essential to the orderly pursuit of happiness by free men and women. Plaintiffs seek equal access to the freedom to marry for same-sex couples as the only means to secure their rights to due process and equal protection of the law, and to eliminate the myriad serious harms inflicted on Plaintiffs by the marriage ban and Defendants' enforcement of it.

#### **JURISDICTION AND VENUE**

9. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

10. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.

11. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

12. This Court has personal jurisdiction over Defendants because they are domiciled in the State and/or have otherwise made and established contacts with the State sufficient to permit the exercise of personal jurisdiction over them.

13. Venue is proper in this district under 28 U.S.C. § 1391(b) because all Defendants reside within the State of Indiana, Defendant Boone County Clerk Penny Bogan and Defendant Greg Zoeller reside and have offices within the district, and/or because a substantial part of the events that gave rise to Plaintiffs Rae Baskin and Esther Fuller's claims occurred, and will occur, in this district.

## **PARTIES**

### **A. Plaintiffs**

#### ***Rae Baskin and Esther Fuller***

14. Rae Baskin (age sixty) and Esther Fuller (age seventy-eight) are a lesbian couple living in Whitestown, Indiana. Rae and Esther have been in a committed relationship for nearly twenty-four years. Rae and Esther would marry in Indiana but for the marriage ban.

15. Esther was born in Indianapolis, Indiana and has lived in Indiana her whole life, except for a year attending college in Missouri. Rae has been a resident of Indiana for twenty-four years. Esther holds a degree from Purdue University Krannert School of Management and worked as a pharmacist but is currently retired. Rae graduated from Syracuse University in 1975, where she majored in Poverty & Urban Affairs, and New York Law School in 1978. After graduating from law school, Rae owned her own company for twenty years.

16. The marriage ban frustrates Rae and Esther's dream of being able to marry. Rae wishes to marry Esther because absent marriage, their relationship is viewed as having less dignity and legitimacy by the state and in the eyes of others. Esther wants to ensure that Rae is protected and secure, even if Esther should pass away, and that Rae receives spousal protections including social security benefits for surviving spouses. Esther had breast cancer in 2008 and broke her hip in 2009. Regarding Esther, Rae said "She's the world's biggest mush, she loves me unconditionally, and . . . I can't imagine life without her."

***Bonnie Everly and Lyn Judkins***

17. Bonnie Everly (age fifty-six) and Lyn Judkins (age fifty-seven) are a lesbian couple living in Chesterton, Indiana. Bonnie and Lyn have been in a loving committed relationship for more than thirteen years. Bonnie and Lyn would marry in Indiana but for the marriage ban.

18. Bonnie was born in Gary, Indiana, and raised in Michigan City, Indiana. Bonnie and Linda are both divorced from prior marriages they entered into long ago before they were able to acknowledge their sexual orientation to themselves or others. Bonnie and Lyn each have a child, and they live with Bonnie's son, David, age twenty-one. David is supportive of their relationship. Bonnie was employed at a factory where she operated machines and later became an independent driver for the news dispatch in Michigan City, Indiana. Lyn was a secretary and a school bus driver. In 2002, Bonnie and Lyn were struck by a drunk driver and both suffer from mobility related disabilities.

19. The marriage ban frustrates Bonnie's and Lyn's dreams of being able to marry. Unable to marry in Indiana, in April 2002, Bonnie and Lyn held a private religious ceremony on a beach in Michigan City. Lyn describes Bonnie as her "rock and

security.” “[Bonnie] keeps me laughing and she is the reason I get up in the morning. To be able to be legally wed to her would be a dream come true. I would do anything for Bonnie.” Bonnie describes Lyn as “a breath of fresh air.” “[Lyn] is what keeps me going. I want to make her my wife because I’ve never had that feeling for anyone else. I want to make my life complete by putting a ring on her finger knowing it will be there forever.”

***Dawn Carver and Pam Eanes***

20. Dawn Carver (age forty-one) and Pam Eanes (age fifty) are a lesbian couple living in Munster, Indiana. They have been in a loving committed relationship for seventeen years. Dawn and Pam would marry in Indiana but for the marriage ban.

21. Dawn was born in Griffith, Indiana and has lived in Indiana most of her life. Dawn is a patrol officer for the Oak Park Police Department and has been working there for ten years. Pam is a Captain in the Calumet City Fire Department, and has worked there for twenty-six years. Pam and Dawn are active in their local community. Pam has two children from prior relationships, and both children view both Pam and Dawn as their mothers. The children are supportive of their relationship.

22. The marriage ban frustrates Pam and Dawn’s dream of being able to marry. Pam and Dawn have an Illinois Civil Union. But this civil union is not recognized in Indiana. Because Indiana’s marriage ban has prevented them from marrying, they are not fully protected in the event that either of them is seriously injured from the inherent dangers of their work.

23. Pam and Dawn want to express the love and commitment to each other that only marriage can convey. They want to grow old with one another; they mean everything to each other. Pam states, “Dawn is everything to me, she’s my world, she’s my best friend, she’s my

partner, she's my confidante, she's my everything. My life is so much better because I have Dawn in it, I really look forward to going into old age together."

**B. Defendants**

24. DEFENDANT PENNY BOGAN is sued in her official capacity as the Boone County Clerk. Bogan's duties include accepting marriage applications, issuing marriage licenses, and maintaining records relating to marriage licenses. Bogan must ensure compliance through all of these functions with relevant Indiana laws, including those that exclude same-sex couples from marriage, and forbid the filing of records relating to marriages of same-sex couples that take place in other states. Bogan 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.

25. DEFENDANT KAREN M. MARTIN is sued in her official capacity as the Porter County Clerk. Martin's duties include accepting marriage applications, issuing marriage licenses, and maintaining records relating to marriage licenses. Martin must ensure compliance through all of these functions with relevant Indiana laws, including those that exclude same-sex couples from marriage, and forbid the filing of records relating to marriages of same-sex couples that take place in other states. Martin 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.

26. DEFENDANT MICHAEL A. BROWN is sued in his official capacity as the Lake County Clerk. Brown's duties include accepting marriage applications, issuing marriage licenses, and maintaining records relating to marriage licenses. Brown must ensure compliance through all of these functions with relevant Indiana laws, including those that exclude same-sex couples from marriage, and forbid the filing of records relating to marriages of same-sex couples that take place in other states. Brown 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. Collectively,

DEFENDANTS BOGAN, MARTIN, and BROWN are referred herein as the DEFENDANT CLERKS.

27. DEFENDANT GREG ZOELLER is sued in his official capacity as the ATTORNEY GENERAL OF INDIANA. Zoeller 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. In his capacity as Attorney General, Zoeller has the authority to enforce the statutes of the State of Indiana, including its provisions related to the marriage ban, and has the duty to defend the constitutionality of the enactments of the Indiana Legislature.

28. All of the above Defendants, and those subject to their supervision, direction, and control, intentionally performed, participated in, aided and/or abetted in some manner the acts alleged herein, proximately caused the harm alleged herein, and will continue to injure Plaintiffs irreparably if not enjoined.

#### **STATEMENT OF FACTS**

**A. The Plaintiff Couples Are Banned from Marrying Solely Because They Are of the Same Sex.**

29. But for the fact that they are of the same sex, each Plaintiff couple is legally qualified to marry under the laws of Indiana and wishes to marry in the State. Each Plaintiff is over the age of eighteen, and no Plaintiff is precluded from marriage as a result of having another spouse or being closely related to her life partner.

30. Each Plaintiff couple is ready and willing to undertake all steps required to obtain a marriage license from the County Clerk of their respective counties.

31. Because of Indiana's statutory prohibition on marriage for same-sex couples, the DEFENDANT CLERKS are required to refuse to issue a marriage licenses to same-sex couples. *See* I.C. § 31-11-1-1(a) ("Only a female may marry a male. Only a male may marry a female.");



§ 31-11-4-12 (“If it appears that two (2) individuals do not have a right to a marriage license, the clerk of the circuit court shall refuse to issue the license.”). Thus, DEFENDANT CLERKS are statutorily required to refuse to issue a marriage license to Plaintiffs and all other same-sex couples.

**B. Indiana’s Marriage Ban Singles Out Same-Sex Couples and Excludes Them from Marriage.**

32. Indiana has enacted a statute that excludes same-sex couples from marriage. *See* I.C. §§ 31-11-1-1. This statute cannot be explained by reference to legitimate public policies that could justify the disadvantages the marriage bans impose on same-sex couples who wish to marry. Rather, the history of its enactment and its own text demonstrates that interference with the equal dignity of same-sex couples was more than a mere side effect of this enactment—it was its essence.

**C. Plaintiffs Are Injured by the Marriage Ban.**

33. Barring same-sex couples from marriage disqualifies them from critically important rights and responsibilities under state law that different-sex couples rely upon to secure their commitment to each other and to safeguard their families. By way of example only, same-sex couples are denied:

- a. The benefit of the presumption that both spouses are parents to a child born during the marriage, and the ability of a couple to confer legitimacy on their children by marrying;
- b. Family health insurance coverage, including spousal health benefits, retirement benefits, and surviving spouse benefits for public employees;
- c. Family leave for an employee to care for a spouse;

- d. The ability to safeguard family resources under an array of laws that protect spousal finances;
- e. The ability to make caretaking decisions for one another in times of death and serious illness, including the priority to make medical decisions for an incapacitated spouse, the automatic right to make burial decisions, and other decisions concerning disposition and handling of remains of deceased spouses.
- f. The right to inheritance under the laws of intestacy and the right of a surviving spouse to an elective share;
- g. Benefits for spouses and dependent children of members of the military and veterans;
- h. In the event that a couple separates, access to an orderly dissolution process for terminating the relationship, assuring an equitable division of the couple's assets and debts, and adjudication of issues relating to custody, visitation, and support with respect to any children the couple may have.

34. The marriage ban not only denies Plaintiffs and other same-sex couples and their children access to protections, benefits, rights, and responsibilities afforded to married persons and their children under state law, it also denies them eligibility for a host of federal rights and responsibilities that span the entire United States Code and federal regulations. Unmarried couples are denied recognition for virtually all purposes throughout the more than 1,000 statutes and numerous federal regulations relating to marriage—including laws that pertain to Social Security benefits, housing, taxes, criminal sanctions, copyrights, and veterans' benefits. Couples validly married in another jurisdiction and living in Indiana may qualify for some federal benefits and protections, but the language of certain statutes and regulations, such as veterans'

spousal benefits and Social Security survivor benefits, references couples married under the law of their state of residence or domicile. Many of these deprivations drain family economic resources, causing financial harm not only to same-sex couples but to their children as well.

35. In addition to causing the tangible harms listed above, Plaintiffs are denied the unique social recognition that marriage conveys. Without access to the familiar language and legal label of marriage, Plaintiffs are unable instantly or adequately to communicate to others the depth and permanence of their commitment or to obtain respect for that commitment as others do simply by invoking their married status.

36. Although the Plaintiff couples are in committed relationships, they and other same-sex couples are denied the stabilizing effects of marriage, which help keep couples together during times of crisis or conflict.

37. The substantive and dignitary inequities imposed on committed same-sex couples include particular harms for same-sex couples' children, who are equally deserving of the stability, permanence, and legitimacy that children of different-sex spouses enjoy. The marriage ban denies children of same-sex couples the dignity, legitimacy, rights, benefits, support, security, and obligations conferred on children whose parents are married. Children of same-sex couples must combat the common assumption, reinforced by Indiana law, that as members of a family headed by an unmarried couple, their bonds are impermanent, insubstantial, and unworthy of equal dignity and legitimacy because the couple has not made a marital commitment and taken on the obligations of marriage. Civil marriage affords official sanctuary to the family unit, offering parents and children a familiar and public means of demonstrating to third parties a legal basis for the parent-child relationship. By denying same-sex couples access to marriage, the State reinforces the view, held by some, that the family bonds that tie same-sex parents and their

children are less consequential, enduring, and meaningful than those of different-sex parents and their children. Same-sex parents raising children in Indiana cannot invoke their status as married in order to communicate to their own children and others the depth and permanence of their commitment to each other in terms that society, and even young children, readily understand. Consequently, children of same-sex couples are left to grow up with the message that their parents and families are inferior to others and that they and their parents do not deserve the same societal recognition and respect.

38. Because same-sex parents and their children thus are deprived of the family security that inheres in a ready and familiar method of communicating to others the significance and permanence of their familial relationships, they must live with the vulnerability and stress inflicted by the ever-present possibility that others may question their familial relationships—in social, educational, and medical settings and in moments of crisis—in a way that spouses and their children can avoid by simple reference to being married.

39. Children of same-sex couples are less legally secure and economically situated than children whose parents are able to marry, including because of expenses incurred in attempting to create legal protections that approximate some of those that are automatic through marriage, protections that are far inferior to the legal protections afforded through marriage, and because their families are denied the strengthening effect that marriage can provide to their parents' relationships.

40. Children from a young age understand that marriage signifies an enduring family unit and, likewise, understand when the State has deemed a class of families as less worthy than other families, undeserving of marriage, and not entitled to the same societal recognition and support as other families. The State has no adequate interest to justify marking the children of

same-sex couples with a badge of inferiority that invites disrespect in school, on the playground, and in every other sphere of their lives.

41. The government is a powerful teacher of discrimination to others. By decreeing that the relationships of same-sex couples must be ignored in Indiana and enforcing that policy, the State and Defendants inform all persons with whom same-sex couples interact, including those couples' own children, that their relationships are less worthy than others. Bearing the imprimatur of the government, the State's marriage ban, which relegates same-sex couples and their children to a lesser status, encourages others to follow the government's example in discriminating against them.

42. The State's marriage ban, and Defendants' enforcement of it, causes many private entities such as banks, insurers, and even health clubs to define "family" for purposes of an array of benefits and protections in ways that exclude same-sex couples and their children from important safety nets, such as private employer-provided health insurance for family members. The State also encourages disrespect of committed same-sex couples and their children, including Plaintiffs, by others in workplaces, schools, businesses, and other major arenas of life in ways that would be less likely to occur and more readily corrected if marriage were available to same-sex couples.

**D. The Marriage Ban Is Not Even Rationally Related to a Legitimate Government Purpose, Let Alone Substantially Related to an Important Government Purpose or Narrowly Tailored to a Compelling Governmental Purpose.**

43. No legitimate—let alone important or compelling—interest exists to exclude same-sex couples from marriage. An individual's capacity to establish a loving and enduring relationship does not depend upon sexual orientation or his or her sex in relation to his or her committed life partner, nor is there any legitimate interest in preventing same-sex couples and

their children from belonging to families headed by a married couple or in denying them the spousal protections marriage provides.

44. Neither history nor tradition can justify the marriage ban. Marriage has remained a vital and enduring institution despite undergoing significant changes over time to meet changing social and ethical needs, including by the elimination of many former requirements of marriage that we now recognize as discriminatory or otherwise impermissible—such as race-based entry requirements and gendered restrictions that historically were considered integral aspects of marriage. Indiana is not confined to historic notions of equality, and no excuse for the State’s discriminatory restriction can be found in the pedigree of such discrimination.

45. The Supreme Court has made clear that the law cannot, directly or indirectly, give effect to private biases, and expressly rejected moral disapproval of lesbian and gay relationships as a legitimate justification for a law.

46. Excluding same-sex couples from marriage does nothing to protect or enhance the rights of different-sex couples. Different-sex couples will continue to enjoy the same rights and status conferred by marriage regardless of whether same-sex couples may marry.

47. Although the State has a valid interest in protecting the public fiscally, it may not pursue that interest by making invidious distinctions between classes of its citizens without adequate justification. Moreover, the State has no fiscal justification here for denying same-sex couples the freedom to marry because the State would generate additional revenues by allowing same-sex couples to marry and to be recognized as married.

48. The State’s interest in child welfare is affirmatively harmed—not furthered—by the marriage ban. The marriage ban injures same-sex couples’ children without offering any benefit to other children.

49. Barring same-sex couples from marriage does not prevent same-sex couples from raising children together. Same-sex couples in Indiana can and do bear children through use of reproductive technology that is available to same-sex couples and different-sex couples alike, and bring children into their families through foster care and adoption. Procreation is not a requirement of marriage, and many married people choose not to have children while many unmarried people procreate. Indiana has never restricted marriage to those capable of or intending to procreate, nor would it be constitutionally permissible to do so.

50. There is no valid basis for the State to assert a preference for parenting by different-sex couples over same-sex couples. Based on more than thirty years of research, the scientific community has reached consensus that children raised by same-sex couples are just as well-adjusted as children raised by different-sex couples. This consensus has been recognized by every major professional organization dedicated to children's health and welfare, including the American Academy of Pediatrics, the American Psychological Association, the American Medical Association, the National Association of Social Workers, and the Child Welfare League of America.

51. There is not even a rational basis for favoring parenting by heterosexual couples over gay and lesbian couples. *See, e.g., De Leon v. Perry*, —F. Supp. 2d—, 2014 WL 715741, at \*14 (W.D. Tex. Feb. 26, 2014) (finding no “evidentiary support for [defendants’] assertion that denying marriage to same-sex couples positively affects childrearing,” and “agree[ing] with other district courts that have recently reviewed this issue and conclud[ing] that there is no rational connection between Defendants’ assertion and the legitimate interest of successful childrearing.”); *see also id.* (concluding that Texas’s same-sex marriage ban “causes needless stigmatization and humiliation for children being raised by the loving same-sex couples being

targeted.”); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 980 (N.D. Cal. 2010) (finding that the research supporting the conclusion that “[c]hildren raised by gay or lesbian parents are as likely as children raised by heterosexual parents to be healthy, successful and well-adjusted” is “accepted beyond serious debate in the field of developmental psychology”), *aff’d sub nom, Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *vacated for lack of standing sub nom, Hollingsworth v. Perry*, No. 12-144, 2013 WL 3196927 (U.S. June 26, 2013); *In re Adoption of Doe*, 2008 WL 5006172, at \*20 (Fla. Cir. Ct. Nov. 25, 2008) (“[B]ased on the robust nature of the evidence available in the field, this Court is satisfied that the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of children are not preserved by prohibiting homosexual adoption.”), *aff’d sub nom, Florida Dep’t of Children & Families v. Adoption of X.X.G.*, 45 So.3d 79 (Fla. Dist. Ct. App. 2010); *Howard v. Child Welfare Agency Review Bd.*, Nos. 1999-9881, 2004 WL 3154530, at \*9 and 2004 WL 3200916, at \*3-4 (Ark. Cir. Ct. Dec. 29, 2004) (holding based on factual findings regarding the well-being of children of gay parents that “there was no rational relationship between the [exclusion of gay people from becoming foster parents] and the health, safety, and welfare of the foster children.”), *aff’d sub nom, Dep’t of Human Servs. v. Howard*, 238 S.W.3d 1 (Ark. 2006).

52. Excluding same-sex couples from marriage harms their children, including by branding their families as inferior and less deserving of respect and by encouraging private bias and discrimination. Denying same-sex couples the equal dignity and status of marriage humiliates the children now being raised by same-sex couples, and makes it 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.



53. Excluding same-sex couples from civil marriage will not make the children of different-sex spouses more secure. Different-sex spouses' children will continue to enjoy the benefits that flow from their parents' marriage, regardless of whether same-sex couples are permitted to marry. The marriage ban has no effect on the choices different-sex couples make about such profound issues as whether to marry, whether to have children, or whether to raise their children within marriage.

54. The State's interest in the welfare of children parented by same-sex couples is as great as its interest in the welfare of any other children. The family security that comes from the State's official recognition and support is no less important for same-sex parents and their children than it is for different-sex parents and their children.

55. Excluding same-sex couples from marriage does nothing to protect or enhance the rights of different-sex spouses. Different-sex spouses will continue to enjoy the same rights and status conferred by marriage, regardless of whether same-sex couples may marry, unimpaired by the acknowledgment that this freedom belongs equally to lesbians and gay men.

**CLAIMS FOR RELIEF**

**COUNT I:  
Deprivation of Due Process  
U.S. Const. Amend. XIV  
(42 U.S.C. § 1983)**

56. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

57. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

58. The Fourteenth Amendment to the United States Constitution, enforceable 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.

59. The right to marry the unique and irreplaceable person of one’s choice and to direct the course of one’s life in this intimate realm without undue government restriction is one of the fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment. Indeed, the essence of the fundamental right to marry is freedom of personal choice in selecting one’s spouse.

60. I.C. §§ 31-11-1-1(a), 31-11-1-1-(b), and all other sources of Indiana law that preclude marriage for same-sex couples or prevent recognition of their marriages violate the due process guarantee of the Fourteenth Amendment, both facially and as applied. Defendants’ actions to enforce the marriage ban directly and impermissibly infringe on Plaintiffs’ choice of whom to marry, interfering with a core, life-altering, and intimate personal choice.

61. The Due Process Clause also protects choices central to personal dignity and autonomy, including each individual’s rights to family integrity and association. Defendants’ actions to enforce the marriage ban directly and impermissibly infringe on Plaintiffs’ deeply intimate, personal, and private decisions regarding family life and preclude Plaintiffs from obtaining full liberty, dignity, and security for themselves and their families.

62. The DEFENDANT CLERKS’ duties and actions to ensure compliance with Indiana’s discriminatory marriage ban by, for example, denying same-sex couples marriage licenses violate Plaintiffs’ fundamental right to marry and the rights protected under the Fourteenth Amendment to the United States Constitution to liberty, dignity, autonomy, family integrity, association, and due process of Plaintiffs. As the Indiana Attorney General,

DEFENDANT GREG ZOELLER is responsible for enforcing and/or defending Indiana's laws, including Indiana's discriminatory marriage ban. Enforcement and/or defense of the marriage ban violates Plaintiffs' fundamental right to marry and the rights protected under the Fourteenth Amendment to the United States Constitution to liberty, dignity, autonomy, family integrity, association, and due process of Plaintiffs.

63. Defendants cannot satisfy the Due Process Clause's decree that government's denial of a fundamental right or substantial infringement of a liberty interest may be sustained only upon a showing that the burden is narrowly tailored to serve a compelling, or even important governmental interest, as the marriage ban is not even tailored to further any legitimate interest at all.

64. Thus, 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.

**COUNT II:  
Deprivation of Equal Protection  
U.S. Const. Amend. XIV  
(42 U.S.C. § 1983)**

65. Plaintiffs incorporate by reference and re-allege all of the preceding paragraphs of this Complaint as though fully set forth herein.

66. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

67. The Fourteenth Amendment to the United States Constitution, enforceable 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.

68. I.C. §§ 31-11-1-1(a), 31-11-1-1(b), and all other sources of Indiana law that preclude marriage for same-sex couples or prevent recognition of marriages violate the equal protection guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs.

69. THE DEFENDANT CLERKS' duties and actions to ensure compliance with Indiana's discriminatory marriage ban by, for example, denying same-sex couples marriage licenses, violates the right of Plaintiffs to equal protection by discriminating impermissibly on the basis of Plaintiffs' sexual orientation and sex. Indiana Attorney General DEFENDANT GREG ZOELLER's duties and actions to enforce and defend Indiana's discriminatory marriage ban violates the right of Plaintiffs to equal protection by discriminating impermissibly on the basis of Plaintiffs' sexual orientation and sex.

70. Same-sex couples, such as the Plaintiff couples, are identical to different-sex couples in all of the characteristics relevant to marriage.

71. Same-sex couples make the same commitment to one another as different-sex couples. Like different-sex couples, same-sex couples fall in love, build their lives together, plan their futures together, and hope to grow old together. Like different-sex couples, same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness. Plaintiff couples seek to marry for the same emotional, romantic, and dignitary reasons and to provide the same legal shelter to their families as different-sex spouses.

72. **Discrimination Based on Sexual Orientation.** The marriage ban targets lesbian and gay Indiana residents as a class for exclusion from marriage and discriminates against each Plaintiff based on his or her sexual orientation, both facially and as applied.

73. The exclusion of Plaintiffs from marriage based on Plaintiffs' sexual orientation subjects Defendants' conduct to strict or at least heightened scrutiny, which Defendants' conduct cannot withstand because the exclusion does not even serve any legitimate governmental interests, let alone any important or compelling interests, nor does it serve any such interests in an adequately tailored manner.

74. Lesbians and gay men have suffered a long and painful history of discrimination in Indiana and the United States.

75. Sexual orientation bears no relation to an individual's ability to contribute to society.

76. Sexual orientation is a core, defining trait that is so fundamental to one's identity and conscience that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment.

77. Sexual orientation generally is fixed at an early age and highly resistant to change through intervention. No credible evidence supports the notion that such interventions are either effective or safe; indeed, they often are harmful and damaging. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and virtually all of them have adopted policy statements cautioning professionals and the public about these treatments.

78. Lesbians and gay men are a discrete and insular minority, and ongoing prejudice against them continues seriously to curtail the operation of those political processes that might ordinarily be relied upon to protect minorities.

79. Lesbians and gay men lack express statutory protection against discrimination in employment, public accommodation, and housing at the federal level and in more than half the

states, including Indiana; are systematically underrepresented in federal, state, and local democratic bodies; have been stripped of the right to marry through numerous state constitutional amendments and are currently not permitted to marry in more than 30 states; and have been targeted across the nation through the voter initiative process more than any other group.

80. **Discrimination Based on Sex.** Indiana's marriage ban discriminates against Plaintiffs on the basis of their sex, both facially and as applied, barring Plaintiffs from marriage or from being recognized as validly married solely because each of the Plaintiffs wishes to marry a life partner of the same sex. The sex-based restriction is plain on the face of Indiana's laws, which stipulate that "[o]nly a female may marry a male. Only a male may marry a female," I.C. § 31-11-1-1(a), and prohibit recognition of marriages in other states "between persons of the same gender," I.C. § 31-11-1-1(b).

81. Because of these sex-based classifications, Marilyn Rae Baskin, for example, is precluded from marrying Esther Fuller because Rae is a woman and not a man; were Rae a man, she could marry Esther.

82. Indiana's marriage ban also impermissibly enforces conformity with sex stereotypes by excluding Plaintiffs from marrying the one person each Plaintiff loves because Plaintiffs have failed to conform to the sex-based stereotypes that men should marry women and that women should marry men.

83. The exclusion of Plaintiffs from marriage based on their sex, and the marriage ban's requirement that Plaintiffs behave in conformity with sex-based stereotypes as a condition of being able to marry, cannot survive the heightened scrutiny required for sex-based classifications.

84. **Discrimination With Respect to Fundamental Rights and Liberty Interests Secured by the Due Process Clause.** The marriage ban discriminates against Plaintiffs based on sexual orientation and sex with respect to access to the fundamental right to marry and with respect to their liberty interests in dignity, autonomy, and family integrity and association. Differential treatment with respect to exercise of fundamental rights and liberty interests subjects Defendants' conduct to strict or at least heightened scrutiny, which Defendants' conduct cannot withstand.

**DECLARATORY AND INJUNCTIVE RELIEF**

**28 U.S.C. §§ 2201 and 2202; Federal Rules of Civil Procedure 57 and 65**

85. Plaintiffs incorporate by reference and re-allege all of the preceding paragraphs of this Complaint as though fully set forth herein.

86. This case presents an actual controversy because Defendants' present and ongoing denial of equal treatment and liberty to Plaintiffs subjects them to serious and immediate harms, warranting the issuance of a declaratory judgment.

87. Plaintiffs seek preliminary and/or permanent injunctive relief to protect their constitutional rights and avoid the injuries described above. A favorable decision enjoining Defendants would redress and prevent the irreparable injuries to Plaintiffs identified herein, for which Plaintiffs have no adequate remedy at law or in equity.

88. The State will incur little to no burden in allowing same-sex couples to marry, whereas the hardship for Plaintiffs of being denied equal protection and liberty is severe, subjecting them to an irreparable denial of their constitutional rights. The balance of hardships thus tips strongly in favor of Plaintiffs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that the provisions and enforcement by Defendants of I.C. §§ 31-11-1-1(a), 31-11-1-1(b), and any other sources of Indiana law that exclude same-sex couples from marriage or from recognition of marriages entered into in another jurisdiction violate Plaintiffs' rights under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

B. Permanently enjoining enforcement by Defendants of I.C. §§ 31-11-1-1(a), 31-11-1-1(b), and any other sources of state law that exclude same-sex couples from marriage or refuse recognition to the marriages of same-sex couples entered into in another jurisdiction;

C. Requiring DEFENDANT CLERKS in their official capacities to accept applications and issue marriage licenses to same-sex couples on the same terms as different-sex couples and to record the valid marriages of same-sex couples from other jurisdictions on the same terms as the valid marriages of different-sex couples from other jurisdictions;

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

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

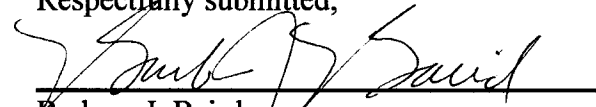
F. The declaratory and injunctive relief requested in this action is sought against each Defendant; each Defendant's officers, employees, and agents; and against all persons acting in cooperation with any Defendant or under a Defendant's supervision, direction, or control.

\* \* \*



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Respectfully submitted,



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