

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

VERONICA ROMERO, individually and as )  
parent and next friend of B.Y.R. and I.R., )  
and MAYRA YVETTE RIVERA )

Plaintiffs, )

v. )

Civil Action No. 2:14-cv-0325

MICHAEL A. BROWN, in his official )  
capacity as LAKE COUNTY CLERK; )  
WILLIAM C. VANNESS II, M.D., in his )  
official capacity as the COMMISSIONER, )  
INDIANA STATE DEPARTMENT OF )  
HEALTH; and GREG ZOELLER, in his )  
official capacity as INDIANA ATTORNEY )  
GENERAL, )

Defendants. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Veronica Romero (“Veronica”), Mayra Yvette Rivera (“Mayra”), B.Y.R., and I.R. (collectively, “Plaintiffs”), by and through their attorneys<sup>1</sup>, file this Complaint against Defendants Lake County Clerk Michael A. Brown, Indiana State Department of Health Commissioner William C. VanNess II, and Indiana Attorney General Greg Zoeller (collectively, “Defendants”), and allege as follows:

**INTRODUCTION**

1. Veronica and Mayra are a committed same-sex couple (“adult Plaintiffs”) residing in Indiana with their two minor children, B.Y.R. and I.R. (“child Plaintiffs”). Plaintiffs bring this

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<sup>1</sup> The undersigned counsel hereby provides notice to the Court that this action is being taken on behalf of Mayra Yvette Rivera to avoid imminent and irreparable harm pursuant to Rule 1.14 of the Indiana Rules of Professional Conduct.

action pursuant to 42 U.S.C. § 1983 seeking declaratory and preliminary and permanent injunctive relief for Defendants' violation of Plaintiffs' rights — the guarantees of liberty and equal protection under the Fourteenth Amendment to the United States Constitution — caused by the discriminatory exclusion of same-sex couples from the right to marry and refusal to recognize marriages lawfully entered by same-sex couples in other jurisdictions pursuant to the laws of the State of Indiana (“State”). *See* Indiana Code § 31-11-1-1.

2. 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. The adult Plaintiffs have formed committed, enduring bonds equally worthy of the respect afforded by the State to different-sex couples through marriage. Yet, the State, without any adequate justification, has enacted, interpreted, and enforced its laws in ways that single out lesbian and gay couples in Indiana by excluding them from the freedom to marry and by refusing to recognize and respect lawful marriages from other jurisdictions, based solely on their sexual orientation and their sex.

3. Through Defendants' adherence to and enforcement of Indiana Code Section 31-11-1-1 and their interpretation and enforcement of the State's other laws to preclude same-sex couples from marrying or having their marriages lawfully entered into other jurisdictions recognized in Indiana, the State and Defendants send a message that lesbians, gay men, and their children are 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. This discrimination (referred to herein as the State's “marriage ban”) is established in the State's statutes, which prevent same sex couples from entering into a civil marriage in the State and

prohibit the State from honoring a civil marriage validly entered by a same-sex couple in another jurisdiction.

4. The marriage ban inflicts serious and irreparable harm on same-sex couples and their children. Veronica and Mayra married in another jurisdiction, but are treated as legal strangers in the state they call home — a hurtful invalidation of their relationship, which deprives them of the protections that a legally-recognized marriage most securely provides. I.R. and B.Y.R. seek the protections, security, support, and benefits conferred upon the children of married parents, and to end the stigma, shame, and humiliation imposed upon children of lesbian and gay parents by the law's refusal to permit them to belong to families with married parents and designation of their families as inferior to others and unworthy of marriage.

5. 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 Fourteenth Amendment to the United States Constitution. The State's exclusion of Veronica and Mayra and other same-sex couples from marriage violates their fundamental right to marry. The State also interferes with the constitutionally protected liberty and privacy interest in familial association and integrity of B.Y.R. and I.R. and other children of same-sex couples without any compelling, important, or even legitimate justification.

6. The State also has deprived Plaintiffs of their guarantee of equality under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by denying Veronica and Mayra and other lesbian and gay Indiana residents the right to marry the person of their choice based solely on their sexual orientation and sex. Likewise, the State denies B.Y.R. and I.R. and other children of same-sex couples equal access to dignity,

legitimacy, protections, benefits, support, and security conferred on children of married parents under state and federal law. The marriage ban penalizes Veronica's and Mayra's self-determination in the most intimate sphere of their lives. The United States 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 Veronica and Mayra 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.

7. Because the freedom to marry is one of the vital personal rights essential to the orderly pursuit of happiness by free men and women, Veronica and Mayra seek equal access to the freedom to marry for same-sex couples and recognition of legal marriages performed in other states 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**

8. 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.

9. 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.

10. 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.

11. 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.

12. Venue is proper in this district under 28 U.S.C. § 1391(b) because all Defendants reside within the State of Indiana, Defendant Brown resides and has offices within the district, and/or because a substantial part of the events that gave rise to Plaintiffs' claims occurred, and will occur, in this district.

### **PARTIES**

#### **A. Plaintiffs Mayra Yvette Rivera and Veronica Romero with minor daughters, B.Y.R. and I.R.**

13. Veronica and Mayra are a lesbian couple living in Whiting, Lake County, Indiana. They have been in a loving and committed relationship for over twenty-seven years. Mayra and Veronica were married in the State of Illinois on March 7, 2014.

14. Veronica has known Mayra her entire life. They grew up across the street from each other. Mayra was a classmate and friend of Veronica's brothers and sisters. When Veronica was 19, she ran into Mayra one evening after work. They immediately rekindled their friendship and exchanged telephone numbers. Less than a month later, they were officially dating. After another six months, Mayra and Veronica moved in together as a romantic couple.

15. Sometime around September 1996, Veronica learned that her sister was seven months pregnant. Her sister was not able to raise another child on her own. Mayra and Veronica both love children and had planned to start a family of their own. It was an easy decision for them to raise the child as their own. On November 11, 1996, B.Y.R. was born. Mayra and Veronica took B.Y.R. home from the hospital and have loved and cared for her ever since. B.Y.R. thinks of both Mayra and Veronica as her mothers.

16. On January 3, 2006, Veronica gave birth to I.R. Mayra, Veronica, B.Y.R. and I.R. were living together as a happy family and things were as good as they had ever been.

17. Beginning sometime in late May 2011, Mayra began complaining of back pain and bloating in her stomach. Over the next few weeks, the pain and discomfort kept getting worse. Veronica finally convinced Mayra that she needed to see a doctor. On June 6, 2011, Veronica took Mayra to the emergency room at St. Catherine's Hospital in East Chicago, Indiana. After performing a CT scan, the doctors broke the terrible news: Mayra had Stage 3C ovarian cancer.

18. Mayra was admitted to the hospital immediately and underwent a full hysterectomy and debulking surgery to remove not only her ovaries but also her uterus, cervix, fallopian tubes, and as much of the cancer as possible. Mayra has had to use a colostomy bag ever since.

19. After four months of intensive chemotherapy, Mayra's doctors told her that she was in remission. Mayra and Veronica were filled with joy. But in November 2011, Veronica had to take Mayra back to the hospital because she was unable to use the bathroom. The doctors told them that Mayra had scar tissue from the original surgery that was causing a blockage. Mayra needed another surgery. After surgery, Mayra was put on another round of chemotherapy. After she completed this second round of chemotherapy, her doctors once again told the couple that Mayra was back in remission. Less than a month later, however, she was back in the hospital. Mayra's cancer had returned and it was spreading throughout her body. This time around, the doctors told Mayra that she would have to take chemotherapy three to five times a week, for the rest of her life.

20. For the past three years, Mayra's life has been an overwhelming battle with

ovarian cancer, and Veronica has been her caretaker since the initial diagnosis of terminal cancer. The chemotherapy has taken a devastating toll on Mayra's body. In June of this year, her kidneys began to fail because they were essentially being choked by her cancer. Mayra had to have a stent placed in her kidneys to keep the urine from backing up inside her. By July, her cancer had spread even more and was wrapping itself around her intestines. The doctors had to give Mayra an ileostomy to move waste out of her body because her colon simply would not work anymore.

21. On July 22, 2014, doctors sent Mayra home and placed her on hospice care. There is nothing else they can do for her. At this point, the goal is simply to keep Mayra as comfortable as possible.

22. Mayra and Veronica are legally married in Illinois. Yet just a few miles away, they are considered strangers under the laws of Indiana. This is deeply hurtful and makes their family feel like second-class citizens.

**B. Defendants**

23. DEFENDANT MICHAEL A. BROWN ("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 the laws 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.

24. DEFENDANT WILLIAM C. VANNESS II, M.D. ("VanNess") is sued in his official capacity as the COMMISSIONER, INDIANA STATE DEPARTMENT OF HEALTH.

VanNess 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. The Indiana State Department of Health (“ISDH”) is required to develop the form for applications for marriage licenses, including the requirement to list one “Male Applicant” and one “Female Applicant.” The ISDH also prescribes the information to be contained on state certificates, including death certificates.

25. DEFENDANT GREG ZOELLER (“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.

26. 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**

27. Veronica and Mayra are both residents of Indiana who experience the same joys and shoulder the same challenges of family life as their heterosexual neighbors, co-workers, and other community members who are free to marry. Veronica and Mayra are contributing members of society who support their committed partners and nurture their children, but must do so without the same dignity and respect afforded by the State to other families through access to the universally understood and celebrated status of marriage. The State’s refusal to recognize their lawful out-of-state marriage, subjects Veronica and Mayra to legal vulnerability and related stress, while depriving them and their children of equal dignity and security. Through its



marriage ban, the State sends a purposeful message that the State views lesbian and gay men and their children as second-class members of society who are undeserving of the legal sanction, respect, and support that different-sex spouses and their families enjoy.

**A. Veronica and Mayra’s Illinois Marriage.**

28. Veronica and Mayra were validly married in Illinois and seek through this suit to end the State’s current denial of recognition of their marriage on the ground that it is a marriage entered by two individuals of the same sex.

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

29. Indiana has enacted a statute that excludes same-sex couples from marriage. *See* Indiana Code § 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.**

30. Refusing to recognize same-sex marriage recognition disqualifies same-sex couples 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; and
  - 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.

31. 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.

32. 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.

33. Although the Mayra and Veronica are in a committed relationship, they and other same-sex couples are denied the stabilizing effects of marriage, which help keep couples together during times of crisis or conflict.

34. 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, the child Plaintiffs and other 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.**

40. No legitimate — let alone important or compelling — interest exists to refuse to recognize same-sex marriages. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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. Indeed, Indiana permits first cousins to marry *only after* they are provably infertile.

47. 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.

48. There is not even a rational basis for favoring parenting by heterosexual couples over gay and lesbian couples. *See, e.g., De Boer v. Snyder*, No. 12-CV-10285, slip op. at 24 (E.D. Mich. Mar. 21, 2014) (finding “no logical connection between banning same-sex marriage and providing children with an ‘optimal environment’ or achieving ‘optimal outcomes’”); *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).



49. 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.

50. 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.

51. 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.

52. 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.

**E. Veronica and Mayra's Need for a Temporary Restraining Order and/or Preliminary Injunction.**

53. Veronica and Mayra have been in a long-term committed relationship for over twenty-seven years. They were married in the State of Illinois on March 7, 2014.

54. Mayra has Stage IV ovarian cancer that she has battled for over three years, including suffering the pain and experience of multiple surgeries, countless hospital visits, and aggressive chemotherapy treatment. Indeed, Mayra is at home in Hospice Care because the doctors have ceased chemotherapy. Unless this Court acts, Mayra and Veronica will likely be permanently denied the benefits — both tangible and dignitary — of recognition of their legal marriage. For example, unless their marriage is recognized, they may face discrimination in hospital settings, denial of a death certificate listing Veronica as Mayra's spouse, challenges accessing safety nets for a surviving spouse, and other harms, including difficulty establishing eligibility for Social Security benefits as a surviving spouse. In addition, Mayra and Veronica have two young children. If this Court does not act, Mayra and Veronica's family will never be recognized where they live as formally united under State law, and the financial security of their two children will remain uncertain.

55. The Indiana marriage ban is unconstitutional. Defendants should be immediately enjoined from enforcing the ban as applied to Mayra and Veronica because they have an urgent need to have their marriage recognized due to extraordinary circumstances: Mayra's life-threatening illness.

56. Mayra and Veronica are suffering irreparable harm as a result of the State failing to recognize their legal marriage, and there is thus no adequate remedy at law. There is no harm to the State of Indiana from granting a temporary restraining order and/or a preliminary injunction prohibiting enforcement of the marriage ban as applied to Mayra and Veronica; conversely, as detailed above, the harm to Mayra and Veronica is severe. Prompt action by this Court ordering Defendants immediately to stop enforcing the Indiana marriage ban as applied to Mayra and Veronica will serve the public interest.

**CLAIMS FOR RELIEF**

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

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

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

59. 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.

60. Indiana Code Sections 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.

61. DEFENDANT BROWN’S and DEFENDANT VANNESS’ 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 adult Plaintiffs’ sexual orientation and sex, and on the bases of the child Plaintiffs’ parents’ sex, sexual orientation, and marital status, denying such children the dignity, legitimacy, security, support, and protections available to children whose parents can marry. Indiana Attorney General DEFENDANT 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 adult Plaintiffs' sexual orientation and sex, and on the bases of the child Plaintiffs' parents' sex, sexual orientation, and marital status.

62. Same-sex couples are identical to different-sex couples in all of the characteristics relevant to marriage.

63. 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. Veronica and Mayra 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.

64. **Discrimination Based on Sexual Orientation.** The marriage ban targets lesbian and gay Indiana residents as a class for exclusion from marriage and discriminates against Veronica and Mayra based on their sexual orientation, both facially and as applied.

65. The exclusion of Veronica and Mayra from marriage based on their sexual orientation subjects Defendants' conduct to strict or at least heightened scrutiny, which Defendants' conduct cannot withstand because the discrimination against same-sex couples is irrational and does not serve any legitimate governmental interests, let alone any important or compelling interests.

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

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

68. 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.

69. There is little doubt that sexual orientation is an immutable characteristic that is fixed at an early age, if not during fetal development. There is no credible evidence that supports the notion that psychotherapy or interventions are effective in altering sexual orientation; 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.

70. 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.

71. 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.

72. **Discrimination Based on Sex.** Indiana's marriage ban discriminates against Veronica and Mayra on the basis of their sex, both facially and as applied, barring them from marriage or from being recognized as validly married solely because Veronica and Mayra wish 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).

73. Because of these sex-based classifications, Veronica is precluded from marrying Mayra because Mayra is a woman and not a man; were Mayra a man, Mayra could marry Veronica.

74. Indiana’s marriage ban also impermissibly enforces conformity with sex stereotypes by excluding Veronica and Mayra from marrying the one person each loves because they have failed to conform to the sex-based stereotypes that men should marry women and that women should marry men.

75. The exclusion of Veronica and Mayra from marriage based on their sex, and the marriage ban’s requirement that they 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.

76. **Discrimination Based on Parental Status.** The marriage ban impermissibly classifies children, including B.Y.R. and I.R., on the bases of their parents’ sex, sexual orientation, and marital status, denying such children the dignity, legitimacy, security, support, and protections available to children whose parents can marry. The State’s differential treatment of children based upon their parents’ sex, sexual orientation, and marital status cannot survive the heightened scrutiny required for classifications based on parental status.

77. **Discrimination With Respect to Fundamental Rights and Liberty Interests Secured by the Due Process Clause.** The marriage ban discriminates against Veronica and Mayra based on sexual orientation and sex with respect to access to the fundamental right to

marry and against all Plaintiffs 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.

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

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

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

80. 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.

81. 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.

82. Indiana Code Sections 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

adult Plaintiffs' choice of whom to marry, interfering with a core, life-altering, and intimate personal choice.

83. 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 Veronica's and Mayra's deeply intimate, personal, and private decisions regarding family life and preclude Veronica and Mayra from obtaining full liberty, dignity, and security for themselves and their families.

84. DEFENDANT BROWN'S and DEFENDANT VANNESS' duties and actions to ensure compliance with Indiana's discriminatory marriage ban by, for example, denying same-sex couples marriage licenses, violate Veronica's and Mayra's 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. As the Indiana Attorney General, DEFENDANT 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 Veronica's and Mayra's 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.

85. 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.



86. 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.

**DECLARATORY AND INJUNCTIVE RELIEF**

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

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

88. 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.

89. Plaintiffs seek preliminary and/or permanent injunctive relief to protect their constitutional rights and avoid the injuries described above. In addition, Veronica and Mayra seek a temporary restraining order and/or a preliminary injunction against the Defendants. 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.

90. The State will incur little to no burden in allowing same-sex couples to marry and recognizing out-of-state marriages, 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 Indiana Code Sections 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. Preliminarily and permanently enjoining enforcement by Defendants of Indiana Code Sections 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 the DEFENDANT COMMISSIONER OF INDIANA STATE DEPARTMENT OF HEALTH to change all appropriate forms, certificates, policies, and instructions in order to recognize marriage applications and marriages of same-sex couples.

D. Issuing a temporary restraining order and/or preliminary injunction against Defendants for the benefit of Plaintiffs Veronica Romero and Mayra Yvette Rivera:

- i. enjoining Defendants and all those acting in concert from enforcing Indiana's laws prohibiting recognition of Plaintiffs Mayra Yvette Rivera and Veronica Romero's legal out-of-state marriage;
- ii. should Plaintiff Mayra Yvette Rivera pass away in Indiana, ordering DEFENDANT COMMISSIONER OF INDIANA STATE DEPARTMENT OF HEALTH and all those acting in concert to issue to Plaintiff Veronica Romero a death certificate that records Mayra Yvette Rivera's marital status as "married" or "widowed" and that lists Veronica Romero as the "surviving spouse;" said order shall include a requirement that Defendant VanNess issue directives to local health departments, funeral homes, physicians, coroners, medical examiners, and others who assist with the completing of Indiana death certificates explaining their duties under the order of this Court;

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

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

G. 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.

DATED: September 8, 2014

Respectfully submitted,

/s/ J. Michael Hearon

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