

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARA PALLADINO and ISABELLE
BARKER

Plaintiffs,

v.

THOMAS W. CORBETT, in his official
capacity as Governor of Pennsylvania, and his
successors in office; and KATHLEEN KANE,
in her official capacity as Attorney General of
Pennsylvania, and her successors in office

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs bring this action to challenge the constitutionality of a statutory provision of Pennsylvania's marriage law, 23 Pa. Cons. Stat. § 1704, to the extent that it bars the recognition of legally valid marriages of same-sex couples that were entered into in other states.

2. Furthermore, to the extent that the Pennsylvania statute purports to be authorized by federal law, specifically, Section 2 of the Defense of Marriage Act, 28 U.S.C. § 1738C ("DOMA"), Plaintiffs similarly challenge the constitutionality of Section 2 of DOMA. The United States Supreme Court already has ruled unconstitutional Section 3 of DOMA, which, like the Pennsylvania statute challenged herein, purported to ban the recognition of legally valid marriages of same-sex couples for the purpose of determining entitlements to benefits under federal laws.

3. Plaintiffs, Cara Palladino and Isabelle Barker, are Pennsylvania residents who were legally married in the Commonwealth of Massachusetts while Massachusetts residents. They relocated to Pennsylvania in August 2005 and have since resided continuously in Pennsylvania.

4. In thirteen states (California, Connecticut, Iowa, Massachusetts, Delaware, New York, Maryland, Minnesota, New Hampshire, Rhode Island, Vermont, Washington, and Maine) and the District of Columbia, same-sex couples may marry legally. Pennsylvania, however, specifically forbids same-sex marriage by statutory decree. Although Plaintiffs and countless others consider Pennsylvania's refusal to marry same-sex couples to be discriminatory and unconstitutional, this action does not challenge that aspect of Pennsylvania law.

5. Plaintiffs are already lawfully married and do not seek to be married again in a new ceremony or process in Pennsylvania. Rather, they seek the protections afforded by the United States Constitution to decrees, licenses, orders and judgments entered by other states.

Specifically, they demand that their marriage license and decree, which were issued in Massachusetts, be given full faith and credit by Pennsylvania in accordance with the mandate of the Constitution. Additionally, they demand that their right to travel between the states and to enjoy the full privileges bestowed upon them in Massachusetts not be abridged by Pennsylvania law.

6. The Pennsylvania statute states in pertinent part that “[a] marriage between persons of the same sex which was entered into in another state or foreign jurisdiction, even if valid where entered into, shall be void in this Commonwealth.” As a result, the marriage that Plaintiffs entered into lawfully in Massachusetts is not recognized as valid in Pennsylvania. Pennsylvania treats the marriage as a nullity and instructs Plaintiffs’ four-and-a-half year old child, who was born to two lawfully married persons and who has lived continuously with two loving and committed parents, that so long as his family resides here, his parents will be labeled and treated as unmarried.

7. As residents of Pennsylvania, lawfully married couples such as Plaintiffs are denied the basic rights that were conferred on them by another sovereign state, solely because of a discriminatory, arbitrary and irrational distinction that infringes on their own constitutional rights, and the rights of other sovereign states to recognize and sanction marriages of their own citizens.

8. Pennsylvania’s refusal to recognize and respect the legal effects of valid same-sex marriages from other states adversely impacts Plaintiffs and same-sex couples across Pennsylvania in significant ways. It excludes them from the many rights and legal protections available to spouses and denies them many federal protections afforded to married couples, such as those provided under the Family Medical Leave Act and the Social Security Act. In addition,

Plaintiffs are denied many Pennsylvania-specific protections, such as the ability to file joint state tax returns.

9. Pennsylvania's refusal to recognize those legal same-sex marriages entered into outside of Pennsylvania also infringes on the fundamental right to travel, including the right of United States citizens to migrate between states, in violation of the Fourteenth Amendment to the United States Constitution and the Full Faith and Credit Clause of the United States Constitution. This treatment is subject to heightened scrutiny because it burdens the exercise of fundamental rights and denies Plaintiffs their rights to recognition guaranteed under the Constitution.

10. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief against Defendants. Specifically, Plaintiffs seek (a) a declaration that Pennsylvania's refusal to recognize marriages of same-sex couples validly entered into in sovereign states other than Pennsylvania violates the Full Faith and Credit Clause of the United States Constitution; (b) a declaration that Pennsylvania's refusal to recognize marriages of same-sex couples validly entered into outside of Pennsylvania violates the fundamental right to travel, including the right to migrate between states, which is protected by the United States Constitution; (c) a declaratory judgment that 23 Pa. Cons. Stat. § 1704 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution; (d) a declaratory judgment that 23 Pa. Cons. Stat. § 1704 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; (e) a declaration that Section 2 of DOMA violates the Full Faith and Credit Clause of the United States Constitution; and (f) a permanent injunction directing Defendants and Pennsylvania to recognize the marriage of the Plaintiffs and the marriages of other same-sex couples validly entered into in states outside of Pennsylvania.

THE PARTIES

Plaintiffs

11. Plaintiffs Cara Palladino and Isabelle Barker met while living in New York City, New York and have been in a committed relationship since 1998.

12. Because their lives were commingled and they intended to remain in their committed relationship, Cara and Isabelle registered for Domestic Partnership Status in the State of New York in 2002.

13. In early 2004, Cara and Isabelle relocated to Massachusetts to take advantage of employment and educational opportunities.

14. In May 2004, Massachusetts passed legislation that recognized the right of same-sex couples to enter into legally binding marriages. On February 10, 2005, Cara and Isabelle were married in Northampton, Massachusetts. At the time, both Cara and Isabelle were citizens of Massachusetts, residing in Northampton, Massachusetts. Cara and Isabelle expected at the time of their marriage that they would remain residents of Massachusetts and enjoy the protections of Massachusetts law.

15. After completion of her doctoral studies, Isabelle was unable to find employment within the Commonwealth of Massachusetts. As a result, Isabelle accepted a postdoctoral fellowship with Bryn Mawr College in Bryn Mawr, Pennsylvania. In August 2005, Cara and Isabelle moved to Pennsylvania.

16. In 2005, in order for Cara to be included on Isabelle's health insurance benefits and since their marriage was not recognized, Isabelle's employer required Plaintiffs to submit an Affidavit of Domestic Partnership.

17. In 2007, in order for Isabelle to be included on Cara's health insurance benefits and since their marriage was not recognized, Cara's employer required Plaintiffs to submit an Affidavit of Domestic Partnership.

18. Isabelle became pregnant in 2008 through in vitro fertilization. As soon-to-be parents of a newborn child, Cara and Isabelle recognized the need to engage in estate and family planning. Because their marriage is not recognized under the laws of Pennsylvania, they could not rely on the legal presumptions about inheritance, succession and family rights that attach as a matter of law to couples whose marriages are recognized in Pennsylvania. Accordingly, in September 2008, Cara and Isabelle had to undertake the expense and burden of retaining legal counsel to prepare Pennsylvania estate and family planning documents that would have been unnecessary had their lawful Massachusetts marriage been recognized here.

19. Pennsylvania does not consider Cara and Isabelle to be spouses and, therefore, they are denied the legal presumption authorizing them to make decisions for each other in the event of sickness or infirmity. To ensure that in the event of an emergency or personal tragedy they would be afforded the privileges that are bestowed automatically on couples whose marriages are recognized by Pennsylvania, Cara and Isabelle had to rely on privately retained lawyers to execute durable powers of attorney, wills and letters of instructions that would be unnecessary for opposite-sex married couples.

20. On January 30, 2009, Isabelle gave birth to their son, W.P., in Delaware County, Pennsylvania.

21. The Pennsylvania Department of Health, Vital Records issued the birth record for W.P., but refused to list Isabelle's spouse, Cara, as the other parent—despite the fact that under Pennsylvania law, children born to lawfully married couples are presumed to be the children of

that marriage. Instead, the Pennsylvania Department of Health, Vital Records, processed the birth certificate as if W.P. had been born to a single parent—Isabelle.

22. The fact that his parents' marriage is not recognized within Pennsylvania harms W.P. materially by reducing family resources, and "humiliates" him, as the Supreme Court recognized in *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013), by denying his family the social recognition and respect that it would enjoy if his parents' lawful out-of-state marriage was recognized.

23. In an attempt to minimize some of this state-sponsored stigmatization of their newborn son, Cara and Isabelle decided to proceed with a second-parent adoption that allowed Cara to become a lawful parent of W.P., even though in the eyes of Pennsylvania, W.P.'s parents were unmarried. On April 7, 2009, Cara and Isabelle filed a Petition for Adoption in the Court of Common Pleas of Philadelphia County.

24. On March 13, 2009, attorneys for Cara and Isabelle were required to submit a letter to Cara's employer proving that an adoption action was pending so that W.P. could be added to the family health insurance plan through Cara's employer.

25. On June 12, 2009, the second-parent adoption of W.P. was finalized.

26. Currently, Cara, Isabelle, and W.P. live in Philadelphia County, Pennsylvania. Cara has since accepted employment in the fundraising department of Bryn Mawr College. Isabelle is currently an Assistant Dean at Bryn Mawr College.

27. As residents of Pennsylvania, Cara and Isabelle have been denied the dignity and status that Pennsylvania accords to married couples, including similarly situated opposite-sex couples who are married in other states and then move to Pennsylvania. The legal significance of a valid public act, to which Cara, Isabelle and the Commonwealth of Massachusetts are

parties, has been denied to Plaintiffs. The benefits and privileges given to an opposite-sex couple have been withheld from Cara and Isabelle. Their family has been stigmatized and denied the protections that the United States Constitution affords to out-of-state decrees, licenses and judgments and to travelers between states, solely because Pennsylvania has opted to treat a certain class of citizens, i.e., same-sex couples who were validly married in other states, differently from the way it treats opposite-sex couples who were also validly married in other states.

28. In doing so, Pennsylvania has refused to extend full faith and credit to a legally binding marriage decree issued by another sovereign state. Pennsylvania has also infringed upon the right to travel, which includes the right to migrate freely to any state in the union, guaranteed to all United States citizens.

Defendants

29. Defendant Thomas W. Corbett is the Governor of Pennsylvania, and he is being sued in his official capacity as the chief executive officer of Pennsylvania. Pursuant to Article IV, Section 2 of the Pennsylvania Constitution, Governor Corbett and his successors are responsible for the faithful execution of the laws of Pennsylvania, including the laws that exclude same-sex couples from having their marriages recognized within Pennsylvania, 23 Pa. Cons. Stat. § 1704.

30. Defendant Kathleen G. Kane is the Attorney General of Pennsylvania. She and her successors are sued in their official capacity pursuant to the Commonwealth Attorneys Act, 71 P.S. § 732-204.

31. Defendants are, and at all relevant times have been, acting under color of state law, and are sued solely in their official capacities.

JURISDICTION AND VENUE

32. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 because the suit raises federal questions under 42 U.S.C. § 1983, Article IV of the United States Constitution and the Fourteenth Amendment to the United States Constitution.

33. Venue is proper in the Eastern District of Pennsylvania under 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2) because both Defendants are residents of Pennsylvania and conduct the business of the Pennsylvania within this District, and because a substantial part of the events and omissions giving rise to this case occurred in this District.

FACTUAL BACKGROUND

Pennsylvania's Failure to Recognize Marriage for Legally Married Same-Sex Couples

34. Pennsylvania's Marriage Law, 23 Pa. C.S. §§ 1101 et seq., governs marriages in Pennsylvania. In a stark departure from Pennsylvania's usual recognition of marriages entered into in other states, the Marriage Law made "void in this Commonwealth" any "marriage between persons of the same sex . . . entered into in another state or foreign jurisdiction, even if valid where entered into." 23 Pa. Cons. Stat. § 1704.

35. As a result, even if same-sex couples were and remain legally married elsewhere, their marriages are not recognized in Pennsylvania and are treated as a nullity for all purposes involving access to state-sanctioned benefits, rights and privileges.

The Exclusion of Same-Sex Married Couples from Recognition of their Marriages Causes Substantial Harm to Such Couples and Their Families.

36. There are more than 600 Pennsylvania-specific benefits available to legally married couples. By refusing to recognize the marriages of same-sex couples from other states, Pennsylvania law deprives them of numerous state protections that are available to opposite-sex married couples in Pennsylvania by virtue of their marriages, including the right to file joint state

tax returns, the ability to own property in joint tenancy by the entirety, and the ability to inherit a spouse's estate without being taxed.

37. Some of the federal protections for married couples are only available to couples if their marriages are legally recognized in the states in which they live. *See, e.g.*, 42 U.S.C. § 416(h)(1)(A)(i) (spouses's eligibility for Social Security benefits based on law of state where couple resides at time of application); 29 C.F.R. § 825.122(b) (same for Family Medical Leave Act). Thus, Plaintiffs, who are already married, cannot access such federal protections as long as Pennsylvania refuses to recognize their existing marriage.

38. Refusing to recognize legal marriages of same-sex couples also harms those couples and their children by denying them the social recognition that comes with marriage. Marriage has profound social significance both for the couple that gets married and the family, friends and community that surround them. The terms "married" and "spouse" have universally understood meanings that command respect for a couple's relationship and the commitment they have made.

39. The refusal to recognize their inclusion within the institution of marriage demeans and stigmatizes same-sex married couples and their children by sending the message that they are less worthy and valued than families headed by opposite-sex married couples.

40. The impact of the exclusion from recognition of marriages of same-sex married couples and their families is extensive and real. Plaintiffs recognize that marriage entails both benefits to and obligations on each other and they welcome both.

**Refusing to Recognize the Legal Marriages of Same-Sex Couples Is Not
Rationally Related to a Legitimate Government Interest
and Cannot Withstand Heightened Scrutiny.**

41. Pennsylvania's refusal to recognize the legal marriage of same-sex couples who were married in other jurisdictions but now domiciled in Pennsylvania is neither rational nor

justified. It is intended specifically to demean and impose inequality on a group of citizens who are entitled to the protections of the United States Constitution, telling others throughout Pennsylvania that Plaintiffs' otherwise lawful and valid marriage is unworthy of recognition merely because of their sexual orientation. Moreover, like Section 3 of DOMA, which was declared to be unconstitutional, it makes it more difficult for children such as W.P. to understand and appreciate the integrity and closeness of their families.

42. When Pennsylvania enacted the 1996 amendment prohibiting marriage for same-sex couples, legislators in favor of the amendment purported to rely on “support of the traditional family unit.” 1996 Pa. Legis. J. (House), at 2017; *see also id.* at 2019 (“[T]he large majority [of Pennsylvanians] do not want our traditional marriage institution and our state of morals to be changed.”); *id.* at 2022 (“This is a vote about family values and traditional beliefs.”). Some legislators said there was a need to protect against a financial burden on businesses and taxpayers. *Id.* at 2018 (“[I]f we are forced to recognize same-sex marriages, this would put an unfunded mandate on our businesses, another burden on our taxpayers, and so on.”); *id.* at 2017 (“Social Security, tax and other benefits presently conferred on spouses would have to be expanded to include married partners of the same sex. The financial costs imposed on society by the forced recognition of same-sex marriage cannot even be calculated at this time.”). And, it was argued, “it is imperative that we in Pennsylvania should stand up for traditional marriage for the benefit of families and children in the Commonwealth and our future.” *Id.* at 2022.

43. These purported justifications—and any other explanations that might now be offered—cannot pass constitutional muster because they are intended to demean, rather than protect, the rights of citizens.

Moral Opposition to Marriage for Same-Sex Couples and Support of the Traditional Family

44. Neither tradition nor fading moral disapproval of same-sex relationships offers a rational or compelling basis to warrant impinging on the fundamental rights of validly married same-sex couples under the law.

45. Pennsylvania does not apply moral standards to its recognition of opposite-sex marriages. Pennsylvania law does not scrutinize or question the commitment, love, dignity, or status of men and women who marry in other states. It does not ask whether opposite-sex couples who married in other states were old enough to marry, mentally competent, loving, decent, moral or committed to child rearing. It does not ask whether they have known each other long enough and treated each other with respect and compassion. On the contrary, it recognizes their marriage licenses and contracts without qualification or question.

46. It is only with regard to same-sex couples who have married in other states that Pennsylvania injects a “moral,” albeit antiquated and discriminatory, set of judgments into the recognition of the couples’ legal status. No matter how loving and committed the same-sex couple is who married in another state, no matter how long they have lived in harmony and functioned with their children as a strong and viable family unit, and no matter how legally solid their marriage was determined to be in the state where they wed, Pennsylvania rejects their out of state marriage licenses and contracts based on a single, pernicious, and unyielding criterion.

47. As with all United States citizens, the United States Constitution guarantees the plaintiff couple (and other validly married same-sex couples) the right to enter and leave another state without encumbrance or penalty.

48. Further, the United States Constitution grants every United States citizen the right to migrate to and become a resident of another state and, in so doing, the right to be treated equally to other residents of that state in the enjoyment of the privileges and benefits afforded by

the law of the state of domicile. Pennsylvania's marriage law, and 23 Pa. Cons. Stat. §1704,, specifically the section targeting out-of-state lawful marriages, impermissibly infringes upon that right by (1) deterring migration by same-sex married couples to new states and (2) penalizing same-sex married couples who enter and choose to reside in states such as Pennsylvania that refuse to recognize their marriages.

Protection of Children

49. Pennsylvania's refusal to recognize the legal marriages of same-sex couples is not rationally related to child welfare concerns. The government has a vital interest in protecting the well-being of children, but the exclusion of same-sex couples from marriage bears no relation to this interest. To the contrary, it harms children in Pennsylvania.

50. Pennsylvania law recognizes that neither sexual orientation nor gender has any bearing on a couple's ability to rear children successfully and, thus, treats same-sex couples the same as opposite couples with respect to adoption and recognition as parents through the *in loco parentis* doctrine. Pennsylvania courts routinely grant adoptions to same-sex couples, recognizing that the adoptions are in the best interest of the children. Any assertion that Pennsylvania does not consider same-sex couples equally effective parents cannot be credited, given Pennsylvania's willingness to cast aside the kind of stereotypical bias that led to the enactment of the challenged Pennsylvania statute, 23 Pa. Cons. Stat. § 1704, and permit same-sex couples to adopt children.

51. Moreover, there is no valid basis for Pennsylvania to assert a preference for child rearing by opposite-sex couples over same-sex couples. There is a consensus within the scientific community, based on over thirty years of research, that children raised by same-sex couples are just as well adjusted as children raised by opposite-sex couples. This is 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.

52. Other courts have found, after trials involving expert testimony, that there is no rational basis for favoring parenting by opposite-sex couples over same-sex couples. *See, e.g., 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*, 133 S. Ct. 2652 (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 same-sex parents that “there was no rational relationship between the [exclusion of same-sex 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).

53. Refusing to recognize the legal marriages of same-sex couples who were married in other states but are now domiciled in Pennsylvania has no conceivable benefit to children of

opposite-sex couples. Such refusal does not encourage opposite-sex couples who have children to marry or stay married for the benefit of their children. And the children of opposite-sex spouses will continue to enjoy the same benefits and protections that flow from their parents' marriages.

54. Refusing to recognize the legal marriages of same-sex couples who were married in other states but are now domiciled in Pennsylvania serves only to harm the children raised by such same-sex couples by denying their families significant benefits and by branding their families as inferior and less deserving of respect and, thus, encouraging private bias and discrimination. According to the 2010 United States Census, there are over 6,000 same-sex couples raising children in Pennsylvania. Pennsylvania's interest in the welfare of children of same-sex parents is or should be as great as its interest in the welfare of other children.

55. Pennsylvania's irrational and discriminatory statute may also cause unintended violations of other laws, including those that prohibit bigamy. If, by way of example, a same-sex couple is married in Massachusetts or any of the growing number of jurisdictions that permit such unions, and, without divorcing, one of those individuals relocates to Pennsylvania, that person would then be permitted to enter into an opposite-sex marriage in Pennsylvania. Because Pennsylvania does not recognize the prior same-sex marriage and considers it void, there would be no barrier to the second marriage. Should that opposite-sex married couple then travel to Massachusetts or any other state that recognizes the original same-sex marriage, they would be bigamists. No public interest is served by such an irrational patchwork of inconsistent schemes that would treat such a couple as lawfully married in one state but as criminal bigamists in another.

CLAIMS FOR RELIEF

COUNT I

**Violation of Full Faith and Credit Clause of the United States Constitution
(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 are a same-sex couple who are legally married under the laws of Massachusetts.

58. Plaintiffs have been issued a marriage license and certificate as a result of a public act and decree of another sovereign state.

59. Defendants refuse to recognize Plaintiffs' valid marriage from another sovereign state and, thus, refuse to give effect to a valid and legally binding public act and decree issued in Massachusetts.

60. As set forth above, Defendants have no basis for this refusal aside from outright discrimination based on a highly suspect and invalid classification. This discriminatory treatment cannot withstand any level of scrutiny because the exclusion does not rationally further any legitimate government interest, but serves only to disparage and injure same-sex couples and their families.

61. The Pennsylvania statute is not and cannot be authorized by Section 2 of DOMA. Under the Full Faith and Credit Clause of the United States Constitution, Congress may by general laws prescribe the manner in which the acts, records, and proceedings of a state shall be proved and given effect for purposes of full faith and credit, but may not prescribe that the acts, records, and proceedings of one state shall be given no effect in another.

62. Defendants overtly deny full faith and credit to Plaintiffs' valid marriage by enforcing Pennsylvania statute, 23 Pa. Cons. Stat. § 1704 and thereby violating the constitutional

rights of Plaintiffs in violation of Article IV of the United States Constitution and 42 U.S.C. § 1983.

Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

COUNT II
Deprivation of the Fundamental Right of Travel in
Violation of the United States Constitution
(42 U.S.C. § 1983)

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

64. The United States Constitution, including the Due Process Clause, protects the liberty of individuals to travel throughout the nation, uninhibited by statutes, rules, or regulations that unreasonably burden or restrict their movement.

65. This right guards against interference with citizens' rights "to migrate, resettle, find a new job, and start a new life." *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

66. The right to travel prohibits both laws that affirmatively interfere with or prevent a citizen's travel, and also laws that "penalize[e] those who choose to" migrate to another state. *Id.* at 629–30. The right extends not only to temporary visits to other states, but also to becoming a permanent resident of another state.

67. Pennsylvania resident couples that have been married lawfully outside of Pennsylvania, whether same sex or opposite sex, are similarly situated for purposes of marriage. However, out-of-state marriages of opposite-sex residents are recognized as valid in Pennsylvania whereas the valid marriages of same-sex couples are considered void in this Pennsylvania.

68. Pennsylvania's distinction between same-sex and opposite-sex marriages constitutes an impermissible infringement on the constitutionally protected right to travel held by all citizens of the United States, which includes the right to migrate freely and, upon choosing to reside in another state, to receive the rights, benefits and privileges afforded to others who reside in that other state.

69. Pennsylvania's distinction between these similarly situated groups unjustifiably infringes upon the right to travel by (1) deterring same-sex couples from exercising their right to migrate to Pennsylvania and (2) penalizing new residents who choose to migrate to Pennsylvania. *See Saenz v. Roe*, 526 U.S. 489, 498 (1999).

70. Pennsylvania's distinction between same-sex and opposite-sex marriages also impermissibly infringes upon the right to travel by creating separate classes of citizens in violation of the guarantee of equal protection for citizens of the United States who have moved to other states. *See Attorney-General of N.Y. v. Soto-Lopez*, 476 U.S. 898, 905 (1986).

71. A law that has the effect of imposing a penalty on the exercise of the right to travel is subject to strict scrutiny and may be upheld only upon a showing that the restriction is narrowly tailored to advance a compelling government interest. Defendants cannot satisfy this requirement; indeed, the challenged statutes are not even rationally related to the furtherance of a legitimate government interest.

72. Defendants have no rational or compelling justification to impinge upon Plaintiffs' right to travel and/or migrate to Pennsylvania. *See id.* at 904 (burdens on the right to migrate require "the State to come forward with a compelling justification [for the challenged law].").

73. Pennsylvania's refusal to give effect to legally binding and valid marriages sanctioned by other states cannot survive the requisite level of constitutional scrutiny.

74. Accordingly, Pennsylvania's refusal to recognize the marriages of same-sex couples entered into elsewhere in the United States violates the fundamental right to travel, including the right of all United States citizens to migrate and establish residency in any state.

75. Defendants, acting under color of state law, are depriving Plaintiffs of the right to travel, including the right to migrate, as guaranteed by the United States Constitution.

76. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

COUNT III
Violation of the Due Process Clause of the
Fourteenth Amendment to the United States Constitution
(42 U.S.C. § 1983)

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

78. The Fourteenth Amendment to the United States Constitution precludes any State from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Governmental interference with a fundamental right may be sustained only upon a showing that the legislation is closely tailored to serve an important governmental interest.

79. The Supreme Court has long recognized that marriage is a fundamental right and that choices about marriage, like choices about other aspects of family, are a central part of the liberty protected by the Due Process Clause.

80. The Due Process Clause of the United States Constitution also protects fundamental liberty interests in choices that lie at the core of personal dignity, privacy, and autonomy, including each person's right to family integrity and intimate association.

81. Additionally, as the United States Supreme Court set forth in *Windsor*, (1) a same-sex couple who has entered into a valid marriage has a liberty interest in its marital status that is protected by the due process guarantees of the federal Constitution, and (2) governmental refusal to recognize a same-sex couple's existing marital status denies that protected liberty interest. *Windsor*, 133 S.Ct. at 2695.

82. Pennsylvania regularly recognizes the out-of-state marriages of opposite-sex couples domiciled in Pennsylvania.

83. Defendants' actions infringe Plaintiffs' constitutionally protected interests in liberty by penalizing Plaintiffs' constitutionally-protected choices in the most intimate and personal areas of their lives.

84. Pennsylvania law denies Plaintiffs and other same-sex couples of their fundamental rights by refusing to recognize the marriages into which they entered in other states.

85. Because government interference with this fundamental liberty interest triggers strict scrutiny, Pennsylvania's refusal to recognize Plaintiffs' valid Massachusetts marriage may be upheld only upon a showing that the restrictions are narrowly tailored to advance a compelling government interest. Defendants cannot satisfy this requirement; indeed, the Pennsylvania statute is not even rationally related to the furtherance of a legitimate government interest.

86. Pennsylvania's refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates the Due Process Clause of the United States Constitution.

87. 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.

88. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

COUNT IV
Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution
(42 U.S.C. § 1983)

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

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

91. Same-sex and opposite-sex married couples are similarly situated for the purposes of marriage.

92. The Pennsylvania law at issue in this case that refuses to recognize marriages of same-sex couples validly celebrated in another jurisdiction is unconstitutional on its face and as applied to Plaintiffs because it violates equal protection guarantees by categorically depriving Plaintiffs of their rights on the basis of an irrational, punitive and unjustifiable classification.

93. As a result of such discrimination, Plaintiffs are deprived of the many benefits afforded opposite-sex couples. Pennsylvania’s refusal to recognize Plaintiff’s valid marriage denies Plaintiffs equal dignity and respect, treats them and their child as second class citizens and their legal marriage as second-class marriage.

94. This second-class status invites private bias and discrimination by instructing all persons with whom Plaintiffs interact, including their own child, that their marriage is less worthy than the marriages of others. Pennsylvania statute 23 Pa. Cons. Stat. § 1704 reflects moral disapproval and animus toward Plaintiffs.

95. The impermissible classifications created by a Pennsylvania statute that refuses to recognize marriages of same-sex couples validly celebrated in another jurisdiction violate equal protection guarantees both facially and as applied to Plaintiffs.

96. Pennsylvania's refusal to recognize the valid Massachusetts marriage of Plaintiffs does not sufficiently advance any important or compelling government interest to survive heightened scrutiny. This categorical deprivation is not rationally related to the furtherance of any legitimate government interest, let alone narrowly tailored to substantially advance any compelling or important government interest.

97. Pennsylvania's refusal to recognize the marriages of same-sex couples entered into elsewhere violates the Equal Protection Clause.

98. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

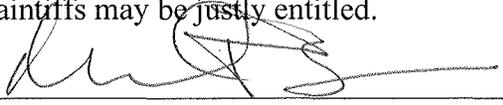
99. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter a declaratory judgment that 23 Pa. Cons. Stat. § 1704 violates the Full Faith and Credit Clause embodied in Article IV, § 1 of the United States Constitution;

2. Enter a declaratory judgment that 23 Pa. Cons. Stat. § 1704 violates the right to travel, including the right to migrate and establish residence in any state, guaranteed by the United States Constitution;
 3. Enter a declaratory judgment that 23 Pa. Cons. Stat. § 1704 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
 4. Enter a declaratory judgment that 23 Pa. Cons. Stat. § 1704 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
 5. Enter a declaratory judgment that Section 2 of DOMA violates the Full Faith and Credit Clause of the United States Constitution and is null and void;
 6. Enter a permanent injunction directing Defendants to recognize the Massachusetts marriage of Cara Palladino and Isabelle Barker;
 7. Enter a permanent injunction directing Defendants to recognize the marriages validly entered into outside of Pennsylvania by other similarly situated same-sex couples;
 8. Award costs of suit, including reasonable attorneys' fees, under 42 U.S.C. § 1988;
- and
9. Enter all further relief to which Plaintiffs may be justly entitled.

By: 

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