

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court
Civil Action No.

SANDRA and ROBERTA COTE-WHITACRE,
AMY ZIMMERMAN and TANYA WEXLER,
MARK PEARSALL and PAUL TRUBEY,
KATRINA and KRISTIN GOSSMAN,
JUDITH and LEE MCNEIL-BECKWITH,
WENDY BECKER and MARY NORTON
MICHAEL THORNE AND JAMES THEBERGE, and
EDWARD BUTLER and LESLIE SCHOOF

Plaintiffs

v.

DEPARTMENT OF PUBLIC HEALTH,
CHRISTINE C. FERGUSON, in her official capacity as Commissioner
of the Department of Public Health,
REGISTRY OF VITAL RECORDS AND STATISTICS, and
STANLEY E. NYBERG, in his official capacity as Registrar of Vital Records
and Statistics,

Defendants

**VERIFIED COMPLAINT
SEEKING DECLARATORY AND INJUNCTIVE RELIEF
AND MANDAMUS**

Introduction

In Goodridge v. Dep't of Public Health, 440 Mass. 309 (2003), the Supreme Judicial Court ruled that excluding gay and lesbian couples from civil marriage violated the liberty and equality mandates of the Massachusetts Constitution. The Court authorized the issuance of marriage licenses to same-sex couples beginning May 17, 2004. In advance of this deadline, Defendants prepared a training for city and town clerks to explain changes in the state's marriage procedures. Defendants directed city and town clerks not to issue marriage licenses to same-sex

couples from other states that intended to continue residing outside of Massachusetts, relying on an antiquated, previously unenforced statute. In accordance with this position, Defendants created and provided to clerks a list of impediments to marriage that excluded all non-resident same-sex couples from obtaining marriage licenses in Massachusetts. Most municipal clerks followed this directive, denying gay and lesbian applicants from other states the ability to file Notices of Intention of Marriage. A small number of clerks exercised their longstanding discretion to allow such couples to file for marriage licenses. Governor Mitt Romney asked for copies of all filings by non-resident same-sex couples, stating that any resulting marriages were void and would not be registered by the state. The Governor referred the paperwork of these couples to Attorney General Thomas Reilly, who then issued a cease and desist order to the cities and towns that had been issuing the licenses. Consequently, no same-sex couple that resides and intends to continue residing in another state is presently able to apply for a marriage license in Massachusetts despite the SJC's unequivocal mandate that the state may no longer deny marriage rights to gay and lesbian couples. The Plaintiff couples who either have had the validity of their marriage called into question or have been barred from obtaining a marriage license seek declaratory and injunctive relief that Defendants' extreme and overbroad application of G.L. c. 207, § 11 violates the equality and liberty protections of the Massachusetts Constitution, as well as the Privileges and Immunities Clause of the United States Constitution, and the terms of the statute itself.

Parties

1. Plaintiffs Roberta and Sandra Cote-Whitacre are residents of Essex Junction, Vermont.
2. Plaintiffs Amy Zimmerman and Tanya Wexler are residents of New York, New York.

3. Mark Pearsall and Paul Trubey are residents of Lebanon, Connecticut.
4. Plaintiffs Katrina and Kristin Gossman are residents of Meriden, Connecticut.
5. Plaintiffs Judith and Lee McNeil-Beckwith are residents of Providence, Rhode Island.
6. Plaintiffs Wendy Becker and Mary Norton are residents of Providence, Rhode Island.
7. Plaintiffs Michael Thorne and James Theberge are residents of Cape Elizabeth, Maine.
8. Plaintiffs Edward Butler and Leslie Schoof are residents of Hart's Location, New Hampshire.
9. Defendant Department of Public Health is a department of the executive branch of the Commonwealth of Massachusetts established and governed by G.L. cc. 17 and 111.
10. Defendant Christine C. Ferguson is the Commissioner of Public Health.
11. Defendant Registry of Vital Statistics is the division of Defendant Department of Public Health charged with enforcing all laws relative to the registry and return of marriages.
12. Defendant Stanley E. Nyberg is the Registrar of Vital Records and Statistics.

Jurisdiction

13. This Court has jurisdiction pursuant to G.L. c. 212, § 4, G.L. c. 214, § 1, G.L. c. 231A, §§ 1 and 2, G.L. c. 249, §5, and 42 U.S.C.A. § 1983.
14. The Attorney General is charged to appear for the Commonwealth, its departments and officers in cases in which the Commonwealth is interested or in which the acts and doings of the departments and officers are called into question pursuant to G.L. c. 12, § 3, and to be notified of cases seeking a declaration where a question of unconstitutionality is involved. G.L. c. 231A, § 8. The Attorney General has been or shortly will be served with a copy of this action.

Facts As to the Plaintiff Couples

Sandra (Sandi) and Roberta (Bobbi) Cote-Whitacre

15. Plaintiffs Sandi and Bobbi Cote-Whitacre live in Essex Junction, Vermont. Sandi, 57, and Bobbi, 56, have been a committed couple for over thirty-six years, having met in the Women's Army Corps in 1967.

16. Sandi works as a Management Analyst for the U.S. Department of Homeland Security. Bobbi works as an Administrative Supervisor for a Vermont state agency.

17. Sandi and Bobbi have long taken steps to secure their relationship in every way possible, having obtained a civil union in 2000. They wanted to marry because they have shared their lives for over thirty-six years and have long desired to also have a legal relationship to one another. They were both brought up to believe that people should not just live together, but formalize their relationship in a marriage.

18. As they have gotten older, Sandi and Bobbi have confronted situations around health care in which their relationship has not been respected the way it would have had they been married. When Sandi was misdiagnosed with cancer, she was by herself and could not fully understand the information the doctor was giving her. She and Bobbi had filed copies of their medical powers of attorney with the doctor, and Sandi asked him to talk with both of them about her diagnosis and treatment. The doctor refused, on the grounds that the power of attorney only became effective if Sandi became incapacitated. Despite taking steps to protect one another legally, the documents fell short when needed.

19. They are also concerned about what will happen when one of them dies. Although it would still be very difficult for them, the only way the survivor could possibly make ends meet

without the other's financial support is if they could share Social Security and the pension benefits they hope to accrue before retirement.

20. Sandi and Bobbi filed their Notice of Intention of Marriage in Provincetown, Massachusetts on May 17, 2004. They obtained a waiver of the three-day waiting period at Barnstable Probate Court the same day.

21. On May 18, 2004, they returned to Provincetown Town Hall, and picked up their Certificate of Marriage. A Justice of the Peace solemnized their marriage, and the Provincetown City Clerk recorded the marriage the same day.

Amy Zimmerman and Tanya Wexler

22. Plaintiffs Amy Zimmerman, 31, and Tanya Wexler, 33, live in New York, New York. They have been a committed couple for over twelve years. They met as college students in 1991.

23. Amy is an at-home mother for their three young children, ages four, three, and eleven months. Tanya is an independent film director.

24. They filed their Notice of Intention of Marriage in Somerville, Massachusetts on May 17, 2004.

25. Amy and Tanya want to be married to ensure that they and their children would be protected in all circumstances- financial, medical, and social. Beyond legal security, they want to ensure that their children do not feel in any way that they and their family are second-class.

26. Amy was born and raised in Massachusetts, and she and Tanya looked forward to being able to marry surrounded by friends and family at Amy's father's home in Andover, Massachusetts. Being able to marry in Massachusetts felt like "coming home" to Amy, and

when the SJC issued its ruling in Goodridge, she and Tanya called their friends and family and told them to “save the date.”

27. Concerned that they might not be able to receive their Certificate of Marriage at the end of the three-day waiting period due to the Governor’s having requested copies of the Notices of Intention filed in Somerville by out-of-state couples, Amy and Tanya applied for a waiver of the three-day waiting period at Middlesex Probate Court on May 19, 2004.

28. The court granted them a Marriage Without Delay waiver, and Tanya and Amy returned to Somerville City Hall, received their Marriage Certificate, and had their marriage solemnized by a family friend who is a minister at a church in Lowell.

29. They had a religious ceremony as scheduled on May 20, 2004 at Amy’s father’s home.

Mark Pearsall and Paul Trubey

30. Plaintiffs Mark Pearsall, 37, and Paul Trubey, 41, live in Lebanon, Connecticut. They have been a committed couple for fifteen years, having met as students at the University of Lowell.

31. Mark is a high school teacher. Paul works as a social worker with Connecticut VNA. They both have graduate degrees from Boston University and have held their current positions for ten years.

32. Mark and Paul sought to marry because marriage provides the legal structure and reflects the mutual responsibility that best defines their relationship. They hope it will provide them more protection and security as they age and allow them to share retirement benefits. In addition, Mark and Paul also married in fulfillment of Mark’s mother’s wishes. In the week before her death, she gave them her engagement ring and wedding ring in the hope that they

would some day be treated as a married couple equal to Mark's siblings in law just as they were in her eyes.

33. Prior to their marriage, Mark and Paul were denied the right to be by each other's side during a medical crisis. About six years ago, a drunk driver hit the car Paul was driving. After Mark rode in the ambulance with Paul to the hospital, followed by a female friend who Mark was with when he got the news, the hospital staff assumed the female friend was Paul's spouse or girlfriend and wanted to discuss his condition with her. When Mark explained that he was Paul's partner, the hospital staff were not sure how to proceed. They asked for Paul's parent's phone number, and they would not allow Mark in to see Paul. Mark waited over an hour before he was able to learn anything more about Paul's condition. He was not allowed to be with Paul until Paul was alert and specifically requested to see Mark. Mark and Paul wanted to marry to ensure that they will automatically be able to be together at such vulnerable moments.

34. They filed their Notice of Intention of Marriage in Worcester, Massachusetts on May 17, 2004.

35. They returned to Worcester City Hall on May 21, 2004, obtained their Certificate of Marriage, and had their marriage solemnized by Worcester City Clerk David Rushford.

36. Mark and Paul wanted to marry in Massachusetts because they were both born and raised in the Commonwealth. Mark was born and grew up in Lowell, and Paul was born in Lowell, but grew up in Westford. They both have many family members residing in throughout Massachusetts. They are planning a wedding celebration at Paul's brother's home in Massachusetts on June 19, 2004 because it was important to them to get married where they were raised and where their families live.

Katrina (Katy) and Kristin Gossman

37. Plaintiffs Katy and Kristin Gossman live in Meriden, Connecticut. Katy, 40, and Kristin, 38, have been a committed couple for five years, having met at a softball tournament in Houston, Texas.

38. Katy works as a Special Agent for the Federal Bureau of Investigation. Kristin works part-time at a hospital while completing a one-year program in echocardiography.

39. Kristin has many ties to Massachusetts, having spent much of her childhood in the state. She also attended Springfield College and spent two years working in Massachusetts after she graduated in 1992.

40. Katy and Kristin wanted to marry because they love each other and wanted to assume the fullest extent of legal responsibility for one another. While they have felt married in their hearts and to their friends and family since a commitment ceremony in 2000, they know that, as a legal matter, without marriage, they were simply two people sharing an address.

41. Before they married, Katy was denied access to spousal moving benefits when she was transferred from Texas to Connecticut. They struggled to find health insurance for Kristin -- a student -- who could not be on Katy's health insurance at work. They have been frustrated with their tax status, as Katy has been Kristin's financial support without being able to access spousal tax status. Given Katy's job in law enforcement, she is often in dangerous situations, but cannot be certain that Kristin will be allowed to be by her side if she is injured, or that Kristin will have the benefits otherwise available to spouses of FBI agents killed in the line of duty.

42. Katy and Kristin filed their Notice of Intention of Marriage in Worcester, Massachusetts on May 17, 2004.

43. They returned to Worcester City Hall on May 20, 2004 to pick up their Certificate of Marriage. City Clerk David Rushford solemnized their marriage in his office, witnessed by Kristin's parents.

Judith (Judi) and Lee McNeil-Beckwith

44. Plaintiffs Judi and Lee McNeil-Beckwith live in Providence, Rhode Island. Judi, 52, and Lee, 41, have been a committed couple for over six years, having met through work at the University of Massachusetts Medical Center in Worcester in 1994.

45. Judi presently works as a registered nurse in Rhode Island. She is licensed to practice nursing in both Massachusetts and Rhode Island, having graduated from St. Vincent's Hospital School of Nursing in Worcester, and having worked at University of Massachusetts Medical Center for over twenty years. Lee is employed as a nurse at University of Massachusetts Medical Center. She is a licensed registered nurse in Massachusetts, having graduated from the University of Massachusetts in Boston and having obtained a nursing degree from Quinsigamond College in Worcester.

46. Judi and Lee wanted to marry because they have very traditional values and believe in marriage as a protective umbrella for the deepest possible commitment. They consider themselves "for-better or for-worse" kind of people and wanted to publicly and privately affirm that they love and adore each other, and to erase any ambiguity about the nature of their commitment to each other.

47. Without being able to marry, they struggled to protect their family relationship. As they look ahead to retirement, they are concerned because, without marriage, Judi could not designate Lee as a surviving spouse on her pension from UMass. They each have retirement plans and

accounts, but are unable to have them benefit each other upon death without incurring significant, immediate tax consequences.

48. As health care professionals, Judi and Lee have seen first-hand the hard edges of the medical system and know that one member of a same-sex couple can be denied access to his or her partner, or information about his or her partner's condition, or the right to control the disposition of remains. They want to ensure that they choose who will be by their side in life and in times of crisis. They want to guarantee that the person who knows their heart best will be making decisions around end-of-life issues.

49. Judi and Lee filed their Notice of Intention of Marriage in Worcester, Massachusetts on May 17, 2004.

50. They obtained their Certificate of Marriage on May 20, 2004 and had their marriage solemnized by Worcester City Clerk David Rushford, accompanied by Judi's daughter.

51. Judi and Lee came to marry in Massachusetts because they both have significant ties to the Commonwealth. Judi was born in Northbridge, Massachusetts. Lee was born in Norwood, Massachusetts. They met and fell in love in Massachusetts, and have lived and worked here for most of their lives.

Wendy Becker and Mary Norton

52. Plaintiffs Wendy Becker, 43, and Mary Norton, 44, live in Providence, Rhode Island. They have been a committed couple for sixteen years, having met through mutual friends in 1985.

53. Wendy teaches in the Social Work Department at Rhode Island College. She has a Masters in Social Work and is finishing her dissertation in a PhD Program in Law, Policy and

Society at Northeastern University. Mary is the Director of Research Administration for Brown University Division of Biology and Medicine.

54. Wendy and Mary want to marry to demonstrate their commitment to their family. They want their four-year-old daughter and their one-year-old foster son to know they are growing up in a family with as much love as all of the married families they know. They want to provide each other and their children with the legal and social protections only marriage affords.

55. Because they were not married, Wendy and Mary faced a difficult experience a few years ago when they were traveling with their daughter. They were stopped in the line as they were waiting to board a plane by airline personnel who wanted to know what their relationship was to their daughter and where the father was. They showed their daughter's birth certificate and her adoption decree, and were made to wait in the corner while the airline decided whether they could get on the plane. They were ultimately allowed to board, but they are concerned about this kind of event recurring, and how to explain to their children the disrespect conveyed to their family. They have been working to put in place all of the documentary protections that they can for their family, but they know that even with those documents, they do not have the security that only marriage can provide.

56. Without marriage, Wendy and Mary worry about their family's legal and financial security. Although each of them has retirement plans and accounts, they know that tax burdens will pose significant obstacles to the financial welfare of whichever of them survives the other.

57. Wendy's parents will be celebrating their fiftieth wedding anniversary this summer and Wendy and Mary were looking forward to celebrating their marriage with them.

58. Wendy and Mary filed their Notice of Intention of Marriage in Attleboro, Massachusetts on May 21, 2004. They were planning to finish their blood tests and return to pick up their

Certificate of Marriage, but one of their children became very ill and had to be hospitalized for four days. They received a phone call on May 26, 2004 from the Attleboro Clerk's Office informing them that they could not issue Wendy and Mary a Certificate of Marriage.

Michael (Mike) Thorne and James (Jim) Theberge

59. Plaintiffs Mike Thorne, 51, and Jim Theberge, 46, live in Cape Elizabeth, Maine. They have been a committed couple for twenty-one years, having met through mutual friends in Boston in 1983.

60. They have a two-year-old son whom they adopted through an open adoption process in Massachusetts. Their son is named for Mike's father, who was dying of cancer at the time of his birth.

61. Mike has had various positions in financial services over the years, including twelve years with Bank of Boston and then Fleet Bank. He had a vice president level position when he left to take care of their son full time. Jim was an internist at Harvard Vanguard Medical Associates in Braintree and West Roxbury, Massachusetts for approximately fifteen years, before moving to Maine. He is presently practicing internal medicine at Mercy Hospital in Portland, Maine.

62. Jim was born in Northbridge, Massachusetts, went to college and medical school in Massachusetts, and lived in Massachusetts for over forty-five years. Mike moved to Massachusetts at age twenty-nine and lived in the Commonwealth for twenty-two years. They moved to Maine one year ago to be near Mike's family. Jim and Mike have a camp in Fryeburg, Maine and spend a good deal of time there. They still feel very connected to Massachusetts, however, where they met and fell in love, and established a life together.

63. To Mike and Jim, marriage is imperative now that they are parents. They hope it will provide them all with a full complement of legal rights, and they are most concerned that their son be seen as fully legitimate. Even in the last year, without marriage, Mike was worried about whether the surgeon would talk to him when Jim was in surgery after an accident. They have struggled to find health insurance for Mike as a stay-at-home parent. They worry about their ability to plan for their future as a couple, and their ability to provide financial security for one another, given the legal burdens posed on their retirement plans and accounts.

64. They went to Somerville City Hall on June 10, 2004 to file their Notice of Intention of Marriage. They completed and signed the Notice, and presented it along with their Premarital Medical Certificate Forms, to the city clerk's office. They swore an oath as to the accuracy of the information they had provided. The clerk examined the forms and consulted with a colleague before returning them to Mike and Jim. The clerk stated that the office refused to accept the forms on the basis of their Maine residence.

Edward (Ed) Butler and Leslie (Les) Schoof

65. Plaintiffs Ed Butler, 54, and Les Schoof, 52, live in Hart's Location, New Hampshire. They have been a committed couple for twenty-six years, having met at the Charles Playhouse in Boston in 1974.

66. They jointly run the Notchland Inn in Hart's Location, New Hampshire. They are very involved in their small town, with Ed serving as chair of the Town Planning Board, and Les serving as Town Moderator.

67. Ed and Les began their relationship in Boston. Ed moved to Boston in 1967, and pursued his nursing degree at Boston University. Les moved to Boston in 1973, and they lived there until 1978, when they moved to New York. They moved to New Hampshire in 1993.

68. Ed and Les want to marry because marriage would reflect their loving partnership. They know that their relationship with each other will not change with a marriage certificate, but their sense of themselves and their relationship with society will change.

69. Because they are not married, Ed and Les are concerned about their ability to care for one another if one of them were to die. Although Les has one small pension account, most of their assets are in their Inn.

70. Without marriage, Ed and Les were denied the right to be together in the face of a medical crisis. They were visiting in New York City about five years ago when Ed experienced a heart arrhythmia. Les was stopped at the door of the emergency room and told he could not be with Ed. Les had no way to find out what was happening. They had executed a power of attorney, but did not have the papers with them, and the hospital staff would allow only legal relatives in without documentation. Ed and Les want to marry to make sure they are never denied access to one another in such vulnerable and critical circumstances.

71. They went to Somerville City Hall on June 16, 2004 to file their Notice of Intention of Marriage. They completed and signed the Notice, and presented it along with their Premarital Medical Certificate Forms, to the city clerk's office. They swore an oath as to the accuracy of the information they had provided. The clerk examined the forms before returning them to Ed and Les, refusing to accept them on the basis of their New Hampshire residence, which they had indicated on the forms.

Defendants' Obligations Regarding Marriage Licensing

72. Defendant Department of Public Health (“Department”) and Defendant Ferguson, as Commissioner of Public Health (“Commissioner”) are charged with supervising the Registrar’s enforcement of the marriage recording laws, G.L. c. 17, § 4; with providing a list of all impediments to marriage to the municipal clerks, G.L. c. 207, § 37; with preparing and submitting statistics from the marriage records submitted to the state by the municipal clerks, with causing the marriage records to be bound and indexed, and with retaining their custody. G.L. c. 111, § 2.

73. Defendant Registry of Vital Records and Statistics (“Registry”) and Defendant Stanley E. Nyberg, as Registrar of Vital Records and Statistics (“Registrar”), are mandated to enforce all laws relative to the registry and return of marriages, and may prosecute any violations of those laws. G.L. c. 17, § 4. They are also charged with providing the city and town clerks with Notice of Intention and Certificate of Marriage forms, G.L. c. 207, § 20; and receiving original records of marriage from the clerks, G.L. c. 46, § 17A.

Defendants' Marriage Policy Changes after *Goodridge*

74. After the SJC’s ruling in Goodridge, Defendants amended the Notice of Intention form, instructing city and town clerks to ascertain both where the parties reside, and, if non-Massachusetts residents, where the parties intend to reside.

75. In trainings conducted for city and town clerks, Defendants explained that the forms ask for residence and intended residence because of G.L. c. 207, § 11.

76. Defendants explained to clerks that § 11 prevents non-resident couples from marrying in Massachusetts if they cannot legally get married in their home state.

77. Prior to the Goodridge ruling, Defendants had long provided to clerks a one-page list of impediments to marriage under Massachusetts law, which clerks are required by statute to post in their office.

78. Just prior to the implementation of the Goodridge decision in May 2004, Defendants issued a new guide to legal impediments to marriage. For the first time, this list of impediments set forth lists of alleged impediments in each of the 49 states and United States territories.

79. According to the new list of impediments provided by Defendants, marriage between couples of the same-sex is either “void and prohibited” or “not permitted” in each of the 49 states and all of the territories.

80. Based on the new list of impediments, Defendants instructed city and town clerks not to accept Notices of Intention of Marriage from any same-sex couples residing and intending to continue residing outside of Massachusetts.

81. Despite this directive, a small number of clerks exercised their longstanding discretion to allow such couples to file Notices of Intention of Marriage, receive Certificates of Marriage, and record such marriages after they were solemnized.

82. On information and belief, on or about May 18, 2004, a lawyer in Governor Romney’s office, asked the clerks who had been issuing marriage licenses to non-resident same-sex couples to send copies of all Notices of Intention of Marriage filed by such couples on May 17 and 18, 2004 to Defendants.

83. On information and belief, Defendants forwarded certain of these forms to the Office of the Attorney General, including those of Plaintiffs Zimmerman and Wexler, Cote-Whitacre, Pearsall and Trubey, Gossman, and McNeil-Beckwith.

84. Governor Romney has stated that Defendants will not register such marriages at the state level, claiming the marriages to be void.

85. On information and belief, Defendants have not registered the marriages of Plaintiffs Zimmerman and Wexler, Cote-Whitacre, Pearsall and Trubey, Gossman, and McNeil-Beckwith at the state level.

86. On May 21, 2004, the Office of the Attorney General wrote to counsel for Provincetown, Somerville, Worcester, and Springfield, directing the clerks to cease and desist from issuing marriage licenses to non-resident same-sex couples who did not intend to reside in Massachusetts.

87. On information and belief, the Office of the Attorney General subsequently contacted counsel for Attleboro by telephone, directing the clerk to cease and desist from issuing marriage licenses to non-resident same-sex couples who did not intend to reside in Massachusetts.

88. Based on these directives from the Attorney General, the clerks who had been issuing marriage licenses to non-resident same-sex couples temporarily suspended accepting Notices of Intention of Marriage from such couples.

89. Since receiving this letter, these clerks have turned away qualified same-sex couples from other states who wished to marry in Massachusetts, including Plaintiffs Becker and Norton, Thorne and Theberge, and Butler and Schoof.

90. An actual controversy exists between and among the parties.

Claims for Relief

COUNT I – VIOLATIONS OF MASSACHUSETTS CONSTITUTIONAL GUARANTEES OF EQUALITY AND DUE PROCESS

91. Plaintiffs repeat, re-allege and incorporate in this paragraph all of the allegations set forth above, as if fully set forth herein.

92. Defendants' application of G.L. c. 207, § 11 to deny marriage licenses to, to refuse to register the marriages of, or to otherwise deny marriage rights to qualified same-sex couples who reside and intend to continue residing outside of Massachusetts violates the laws of the Commonwealth of Massachusetts, including but not limited to their rights under the Declaration of Rights, articles I, VI, VII, and X, as amended.

COUNT II – VIOLATION OF PRIVILEGES AND IMMUNITIES

93. Plaintiffs repeat, re-allege and incorporate in this paragraph all of the allegations set forth above, as if fully set forth herein.

94. Defendants' application of G.L. c. 207, § 11 under color of state law to exclude all otherwise qualified same-sex couples who reside and intend to continue residing outside of Massachusetts from exercising full and equal marriage rights in Massachusetts violates the Privileges and Immunities Clause, Article IV, § 2, of the United States Constitution.

COUNT III – STATUTORY CONSTRUCTION

95. Plaintiffs repeat, re-allege and incorporate in this paragraph all of the allegations set forth above, as if fully set forth herein.

96. Defendants' exclusion of all otherwise qualified same-sex couples who reside and intend to continue residing outside of Massachusetts from exercising full and equal marriage rights in

Massachusetts regardless of the non-existence of any laws in the couples' home states declaring such marriages to be void violates the terms of G.L. c. 207, § 11.

COUNT IV – RECORDING OF MARRIAGES

97. Plaintiffs repeat, re-allege and incorporate in this paragraph all of the allegations set forth above, as if fully set forth herein.

98. Massachusetts law charges the Commissioner of Public Health with causing the records of marriages in Massachusetts to be bound and indexed. G.L. c. 111, § 2.

99. This duty is mandatory and not discretionary.

100. Defendants have failed to carry out this duty with regard to the certificates of marriage granted to non-resident same-sex couples in violation of G.L. c. 111, § 2.

Prayer for Relief

WHEREFORE, the plaintiffs respectfully request that this Honorable Court order the following relief:

1. Preliminarily and permanently enjoin Defendants from applying G.L. c. 207, § 11 to deny qualified non-resident same-sex couples marriage licenses;

2. Enter a declaratory judgment that Defendants' reliance on G.L. c. 207, § 11 to exclude otherwise qualified non-resident same-sex couples from obtaining marriage licenses violates Massachusetts law;

3. Enter a declaratory judgment that Defendants' exclusion of qualified non-resident same-sex couples from access to marriage licenses violates the Privileges and Immunities Clause of the United States Constitution;

4. Enjoin the use of the list of impediments to marriage in each of the other forty-nine states and territories regarding the sex of the parties issued by Defendant Department of Public Health to city and town clerks;

5. In the alternative, if Defendants' application of G.L. c. 207, § 11 is found to be constitutional, enter a declaratory judgment that these statutes apply only to exclude couples from states where their marriages are explicitly void by statute or case law;

6. Order Defendants to record the marriages of qualified non-resident same-sex couples licensed by city and town clerks at the state Registry of Vital Records and Statistics;

7. Award reasonable costs and attorney's fees, as provided in 42 U.S.C.A. § 1988; and

8. Grant such other relief as is just and appropriate.

THE PLAINTIFFS,
Sandra and Roberta Cote-Whitacre
Amy Zimmerman and Tanya Wexler
Mark Pearsall and Paul Trubey
Katrina and Kristin Gossman
Judith and Lee McNeil-Beckwith
Wendy Becker and Mary Norton
Michael Thorne and James Theberge
Edward Butler and Leslie Schoof

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