

David S. Buckel, Esq.  
Adam Aronson, Esq.  
Ruth E. Harlow, Esq.  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
120 Wall Street, Suite 1500  
New York, New York 10005  
(212) 809-8585

Lawrence S. Lustberg, Esq.  
Jennifer Ching, Esq.  
GIBBONS, DEL DEO, DOLAN,  
GRIFFINGER & VECCHIONE  
A Professional Corporation  
One Riverfront Plaza  
Newark, New Jersey 07102-5497  
(973) 596-4500  
Attorneys for Plaintiffs

MARK LEWIS and DENNIS WINSLOW; SAUNDRA HEATH and  
CLARITA ALICIA TOBY; CRAIG HUTCHISON and CHRIS  
LODEWYKS; MAUREEN KILIAN and CINDY MENEGHIN;  
SARAH and SUYIN LAEL; MARILYN MANEELY and DIANE  
MARINI; and KAREN and MARCYE NICHOLSON-MCFADDEN,

Plaintiffs,

v.

GWENDOLYN L. HARRIS, in her official capacity as Commissioner  
of the New Jersey Department of Human Services; CLIFTON R.  
LACY, in his official capacity as the Commissioner of the New Jersey  
Department of Health and Senior Services; and JOSEPH  
KOMOSINSKI, in his official capacity as Acting State Registrar of  
Vital Statistics of the New Jersey State Department of Health and  
Senior Services,

Defendants.

SUPERIOR COURT OF  
NEW JERSEY  
LAW DIVISION:  
HUDSON COUNTY

DOCKET NO. L-00-4233-02

Civil Action

**AMENDED COMPLAINT**  
**FOR INJUNCTIVE AND**  
**DECLARATORY RELIEF**  
**AND IN LIEU OF**  
**PREROGATIVE WRITS**

## PRELIMINARY STATEMENT

1. Plaintiffs bring this action to challenge the State's discrimination in civil marriage and win the freedom to marry. Plaintiffs are seven gay or lesbian couples. Each couple seeks to enter into the legal institution of marriage. Each couple seeks the legal support, commitment, and responsibilities of civil marriage for the same reasons as any other couple planning to wed. They seek the security and protection that come from a legal union both for themselves and any children they may have; they seek the recognition and respect from family and community that come with marriage; they seek the structure and support for their emotional and economic bonds that marriage provides. Yet New Jersey's marriage law expressly and as applied excludes these same-sex couples, barring them from access to this important legal structure.

2. The right to marry is one of the deeply personal privacy interests protected vigorously for all New Jerseyans by the New Jersey Constitution of 1947. The exclusion of Plaintiffs and other same-sex couples from legal marriage violates that right.

3. The right to equal protection of the laws under the State Constitution also prohibits the discriminatory marriage scheme, which leaves all same-sex couples without access to this extraordinarily significant legal institution.

4. The Plaintiffs seek an injunction requiring Defendants to grant them marriage licenses and access to marriage on the same terms and conditions as any other couple.

## PARTIES

### **PLAINTIFFS**

Mark Lewis and Dennis Winslow

5. Plaintiffs Mark Lewis, 42, and Dennis Winslow, 52, live at [ ] Union City, New Jersey.

6. They have been together as a couple for 10 years, and they wish to marry.

7. Both men are Episcopal pastors. Mark is a pastor at the Church of our Saviour in Secaucus, and Dennis is a pastor at St. Peter's Chelsea in New York City.

Karen and Marcye Nicholson-McFadden

8. Plaintiffs Karen Nicholson-McFadden, 36, and Marcye Nicholson-McFadden, 38, live at [ ], Aberdeen, New Jersey.

9. They have been together as a couple for 12 years, and they wish to marry. They have a two-year-old son, Kasey.

10. Karen and Marcye are small business owners, having launched the Nicholson McFadden Group for executive recruiting.

Sandra Heath and Clarita Alicia Toby

11. Plaintiffs Sandra Heath, 48, and Clarita Alicia Toby, 39, live at [ ], Newark, New Jersey.

12. They have been together as a couple for 13 years, and they wish to marry.

13. Sandra is a dispatcher for Federal Express. Clarita Alicia, who uses her second name Alicia, is an Outreach Coordinator and HIV Educator for an HIV prevention program.

Craig Hutchison and Chris Lodewyks

14. Plaintiffs Craig Hutchison, 51, and Chris Lodewyks, 52, live at [ ], Pompton Lakes, New Jersey.

15. They have been together as a couple for 30 years, and they wish to marry.

16. Chris is retired from management in the plastics industry; Craig works as an asset manager for Fahnestock Asset Management in Summit.

Maureen Kilian and Cindy Meneghin

17. Plaintiffs Maureen Kilian, 44, and Cindy Meneghin, also 44, live at [ ], Butler, New Jersey.

18. They have been together as a couple for 27 years, and they wish to marry. They have a son Josh, 9, and a daughter Sarah, 7.

19. Maureen works part-time as a parish administrator for Christ Church in Pompton Lakes, and Cindy works as Director of Web Services at Montclair State University.

Marilyn Mancely and Diane Marini

20. Marilyn Mancely, 52, and Diane Marini, 49, live at [ ], Haddonfield, New Jersey.

21. They have been together as a couple for 11 years, and they wish to marry. Of five children in their family, the youngest, Mary, age 17, is still at home.

22. Marilyn is a nurse in perinatal homecare for Jefferson Home Care in Philadelphia. Diane is an owner of two businesses, an Adirondack and picture frame store in Haddonfield, and a design business for kitchen/bath construction.

Sarah and Suyin Lael

23. Sarah Lael, 39, and Suyin Lael, 42, live at [ ], Franklin Park, New Jersey.

24. They have been together as a couple for 12 years, and they wish to marry. They have a daughter, Zenzali, 4.

25. Sarah is a speech therapist for children, and Suyin conducts training programs for people who work with the developmentally disabled.

**DEFENDANTS**

26. Gwendolyn L. Harris is sued in her official capacity as the Commissioner of the

New Jersey Department of Human Services, responsible for implementing the State's statutory requirements relating to marriage.

27. Clifton R. Lacy is sued in his official capacity as the Commissioner of the New Jersey Department of Health and Human Services, responsible for overseeing the office and duties of the State Registrar of Vital Statistics.

28. Joseph Komosinski is sued in his official capacity as Acting State Registrar of Vital Statistics of the New Jersey State Department of Health and Senior Services, responsible for supervision of local registrars and the registration of vital records relating to marriage.

## FACTS

### Plaintiffs' Attempts to Marry

29. Except for the fact that they are of the same sex, each Plaintiff couple, and each Plaintiff individually, is legally qualified to marry under the laws of New Jersey. Each individual is over the age of eighteen, not married, and, at the time of applying for a license, not adjudicated mentally incompetent or infected with a venereal disease in a communicable phase.

30. To secure a marriage license, each Plaintiff couple appeared before the appropriate licensing office in the municipality where they reside, prepared to tender the fee of twenty-eight dollars (\$28) and accompanied by a witness over the age of eighteen.

31. On June 14, 2002, Sandra Heath and Alicia Toby went to the Newark City Clerk's Office and requested an application for a marriage license. A clerk informed them that it is not legal in the state of New Jersey for same-sex couples to apply for a marriage license.

32. On June 17, 2002, Mark Lewis and Dennis Winslow went to the City Clerk of Union City and requested an application for a marriage license. The clerk responded by saying

no, explaining that the clerk's office was not allowed to give licenses to "same-sex people."

33. On June 17, 2002, Marilyn Maneely and Diane Marini went to the office of the Registrar of Vital Statistics in Haddonfield and requested an application for a marriage license. The clerk responded by saying the office could not do that.

34. On June 17, 2002, Karen and Marcye Nicholson-McFadden went to the office of the Registrar of Vital Statistics in Aberdeen and requested an application for a marriage license. The clerk responded by making a phone call, during which she stated "I have a same-sex couple here asking for an application for a marriage license," and "Can I give them one?" After concluding the call, the clerk stated that under the law in New Jersey she could not give the couple an application.

35. On June 17, 2002, Sarah and Suyin Lael went to the office of the Registrar of Vital Statistics in Franklin and requested an application for a marriage license. The clerk informed them that the office could not comply with their request, and that it was not allowed in New Jersey. She pointed to the application form's references to a male and a female, and said calling the State Registrar would not do any good.

36. On June 17, 2002, Maureen Kilian and Cindy Meneghin went to the office of the Registrar of Vital Statistics in Butler and requested an application for a marriage license. The clerk informed them the office was not sure if they could give them an application, and that they would consult with the state office and call the couple the next day. On June 18, 2002, the clerk called and stated that "Same-sex marriage is prohibited in the State of New Jersey." On June 19, 2002, Cindy called the clerk back and was informed that the State Registrar's office had been the source of the information.

37. On June 18, 2002, Craig Hutchison and Chris Lodewyks went to the office of the

Registrar of Vital Statistics in Pompton Lakes and requested an application for a marriage license. The clerk informed them that that could not happen in New Jersey.

### The Harms From The State's Exclusion Of Plaintiffs From Marriage

38. Each Plaintiff couple wants to say to each other and to the world that “we’re married” and thus instantly communicate the depth, commitment, and legal nature of their relationship. But the State bars Plaintiffs from this institution that plays a central role in our society.

39. By denying Plaintiffs access to marriage, the State forbids them from making the legal commitment to one another that marriage entails and deprives them of the comprehensive legal structure for couples that marriage provides.

40. The State harms Plaintiffs by excluding them from a broad array of statutory protections, benefits, and mutual responsibilities. Indeed, marriage is so integrally entwined in the relationships among the State, its citizens and society that the words “husband,” “wife,” “spouse,” or some form of the words “marriage” or “marry” appear in 850 provisions in New Jersey’s statutes.

41. In addition, because many private parties rely on the State’s conferral of marriage and definition of a “spouse,” Plaintiffs suffer the denial of benefits and protections from employers, banks, and insurers, and can further suffer from lack of appropriate recognition and respect for their families in their neighborhoods, workplaces, children’s schools, and in other areas of their everyday lives.

42. While it is impossible here to catalog the totality of the harms that Plaintiffs suffer from the State’s exclusion of them from marriage, an illustrative sample of those harms includes

denial of protections relating to the incapacitation or death of a spouse, denial of support for family finances, denial of other public and private safety nets, and denial of the responsibilities imposed on married partners to each other and to third parties.

*Denial of Protections Upon Incapacitation or Death of a Spouse*

43. By denying Plaintiffs access to marriage, the State denies Plaintiffs protections at the time when such protections would be most important upon the incapacitation or death of one member of the couple. For example, the State bars Plaintiffs access to:

- the right to priority over all others to become the court-appointed guardian for a partner who becomes mentally incompetent;
- intestacy rights to automatically inherit a deceased partner's estate if there are no parents or issue, and to at least half the estate otherwise, or to elect the minimum one-third share of the deceased's estate even if there is a will;
- the right to file a wrongful death lawsuit when a partner is killed;
- the protections and compensation extended to the spouses of victims of criminal homicide;
- the right to bury and control the disposition of the remains of partners after they die.

44. In addition, employees directly or indirectly (through their employers) pay insurance premiums for workers' compensation benefits to provide protections to the employees and their families if they are injured or killed on-the-job. Although Plaintiffs pay precisely the same taxes and insurance premiums as their work colleagues, the State denies Plaintiffs the right to file for the Workers' Compensation death benefit that a "husband" or a "wife" is entitled to file for. Likewise, the State denies Plaintiffs access to the right to file a claim for the disability benefits owed to a deceased spouse.

*Denial of Support For Family Finances*

45. The State's exclusion of Plaintiffs from marriage can add to their financial struggles because they are viewed as individuals rather than as a unit. For example, there are numerous spousal rights under the State's tax law. Among the tax benefits denied to Plaintiffs

are claiming partners as “dependents” for state income-tax purposes; filing jointly to reduce tax liability, simplify tax returns, and reduce tax preparation expenses; and electing spousal exemptions -- including the exemption from taxes on the transfer of property at death.

46. The State’s discriminatory marriage law also excludes Plaintiffs from many education-related financial benefits, which the State provides to ease the burdens of educational expenses. For example, the State provides certain subsidized education loans and tuition-free education based on the spousal relationship.

*Denial of Workplace and Private Sector Safety Nets*

47. The State’s exclusion of Plaintiffs from marriage can result in denial of family health insurance plans (leaving some family members uninsured or forced to buy a second plan and pay double deductibles), or denial of family medical leave to take care of a partner.

48. That exclusion can also result in a bar to hospital visitation rights with a partner and to denial of the ability to make healthcare decisions when a partner cannot.

49. Similarly, the State’s discrimination in marriage can result in harms elsewhere in the private sector where there is reliance on the legal definition of a spouse, for example with banks, insurers, and social service programs.

*Denial of Reciprocal Responsibilities and Responsibilities to Third Parties*

50. The State denies Plaintiffs access to the lifetime responsibilities that married persons have to one another. For example, a married person is responsible for the “necessary expenses” of an insolvent spouse, such as medical expenses. Moreover, married couples have joint responsibilities to third parties, such as certain creditors.

51. For married persons, many important responsibilities and protections continue even in the unfortunate and unforeseen event that the relationship ends. The divorce process and the

equitable results it seeks are available only to married couples. For example, a spouse may apply to a court for financial support if the relationship dissolves. The State's legal structure also assists separating married couples on other financial issues and in resolving parenting matters.

#### CLAIMS FOR RELIEF

52. Article I, paragraph 1 of the New Jersey Constitution of 1947 provides as follows:

All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness. N.J.S.A. Const. Art. I, ¶ 1.

53. Under Article I, paragraph 1, New Jerseyans have the right to equal protection of the law and the right to privacy, which includes the right to marry.

#### First Count

(Denial of the Right to Privacy: Governmental Interference With The Right To Marry)

54. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

55. The right to marry involves one of life's most intimate choices, of a deep personal nature. It is protected for "all persons" by the New Jersey Constitution of 1947, Article I, paragraph 1.

56. The State's statutory framework for marriage on its face and in implementation precludes two individuals of the same sex from exercising the right to marry each other, interfering with a core personal choice.

57. The State's statutory framework for marriage, insofar as it bars Plaintiffs from marriage because they wish to marry a partner of the same sex, violates the State Constitutional right to marry.

## Second Count

(Denial of Equal Protection: Governmental Discrimination In Access to Marriage)

58. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

59. The State's statutory framework for marriage on its face and in implementation discriminates against individuals in same-sex couples because they wish to marry a life partner of the same sex, allowing access to marriage only for different-sex couples.

60. The State's statutory framework for marriage bars all lesbian or gay couples from marriage.

61. The State's statutory framework for marriage, insofar as it discriminates against Plaintiffs and other same-sex couples, violates the State Constitutional right to equal protection.

### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. Based on the rights to privacy and equal protection under Article I, paragraph 1 of the New Jersey Constitution of 1947, a declaration that Plaintiff couples' rights to marry and to equality have been violated, and that they are entitled to treatment by Defendants equal to the treatment of other couples regarding access to marriage and to the rights that flow from marriage.

2. Enjoin Defendants to grant marriage licenses to Plaintiff couples and otherwise to infringe no longer upon Plaintiff couples' right to marry, and to treat Plaintiff couples no differently than other couples regarding access to marriage and to the rights that flow from marriage.

3. Grant Plaintiffs such further relief as the Court deems just and proper.

Respectfully submitted,

GIBBONS, DEL DEO, DOLAN,  
GRIFFINGER & VECCHIONE  
A Professional Corporation

By: \_\_\_\_\_  
Lawrence S. Lustberg, Esq.  
Jennifer Ching, Esq.

LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
David S. Buckel, Esq.  
Adam Aronson, Esq.  
Ruth E. Harlow, Esq.

Dated: October 8, 2002