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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MARY LI and REBECCA KENNEDY;
STEPHEN KNOX, M.D., and ERIC
WARSHAW, M.D.; KELLY BURKE and
DOLORES DOYLE; DONNA POTTER and
PAMELA MOEN; DOMINICK VETRI and
DOUGLAS DEWITT; SALLY SHEKLOW
and ENID LEFTON; IRENE FARRERA and
NINA KORICAN; WALTER FRANKEL and
CURTIS KIEFER; JULIE WILLIAMS and
COLEEN BELISLE; BASIC RIGHTS
OREGON; and AMERICAN CIVIL
LIBERTIES UNION OF OREGON,

Plaintiffs,

vs.

STATE OF OREGON; THEODORE
KULONGOSKI, in his official capacity as
Governor of the State of Oregon, HARDY
MYERS, in his official capacity as Attorney
General of the State of Oregon; GARY
WEEKS, in his official capacity as Director of
the Department of Human Services of the
State of Oregon; and JENNIFER
WOODWARD, in her official capacity as
State Registrar of the State of Oregon,

Defendants.

No. 0403-03057

COMPLAINT

**(Uniform Declaratory Judgments
Act; in the alternative, APA
Review of Order; in the
alternative, Petition for Writ of
Mandamus)**

**(Not subject to mandatory
arbitration)**

For their complaint, plaintiffs Mary Li and Rebecca (Becky) Kennedy, Stephen
(Steve) Knox, M.D., and Eric Warshaw, M.D., Kelly Burke and Dolores Doyle, Donna
(Katie) Potter and Pamela (Pam) Moen, Dominick (Dom) and Douglas (Doug) DeWitt, Sally
Sheklow and Enid Lefton, Irene Farrera and Nina Korican, Walter Frankel and Curtis Kiefer,
Julie Williams and Coleen Belisle, Basic Rights Oregon (BRO), and American Civil
Liberties Union of Oregon (ACLU of Oregon) allege as follows:

1 NATURE OF THE ACTION

2 1.

3 Marriage is the established social structure in which two people commit to a shared
4 life. When two people enter into a marriage, they express their commitment in a way that is
5 universally honored as a commitment of the highest order. Moreover, when two people enter
6 into a marriage, they and their children are assured uniform recognition as a family unit.

7 2.

8 Marriage is also a complex legal structure that reflects the extraordinary commitment
9 made by married couples. Laws concerning property and finance reflect the understanding
10 that two people who make the commitment at the heart of marriage function generally not as
11 two individuals but as one couple. Laws concerning decision making in times of medical
12 crisis reflect the understanding that, when a married person is incapacitated, it is generally his
13 or her spouse who is in the best position to know what he or she would want for himself or
14 herself. And laws concerning death and dying reflect the understanding that the person most
15 central in a married person's life is generally his or her spouse. These are but a few of the
16 hundreds of ways in which laws have been built up around marriage to protect married
17 couples and their children.

18 3.

19 In the past, marriage was a much more exclusive and restrictive institution than it is
20 today. Marriage equality was selectively denied to disfavored groups based on disability,
21 religion, class, and race. The history of the nation includes laws prohibiting epileptics from
22 marrying and laws restricting interfaith marriage. It also includes prohibitions on marriages
23 of slaves and indentured servants. And, little more than half a century ago, laws prohibiting
24 interracial marriages were still on the books in thirty states. Moreover, as a historical matter,
25 marriage was far from an equal partnership. Married women were legally incapable in
26 matters of property and finance, and married men were legally less capable in matters of

1 child rearing. The historical subordination of women to men within the institution of
2 marriage was further reflected in laws ranging from the marital exception to rape, to the
3 inability to sue for loss of consortium, to the inability to retain a maiden name. Both socially
4 and legally, marriage has evolved to redress such exclusions, restrictions, and inequalities.

5 4.

6 The Oregon statutory code does not permit marriages of lesbian and gay couples. It is
7 this selective denial of marriage equality to this disfavored group that has led to this action.

8 5.

9 Plaintiffs include nine Oregon lesbian and gay couples who seek to protect
10 themselves and their children by availing themselves of marriage, the social validation that it
11 confers, and the hundreds of rights, responsibilities, benefits, and obligations that it affords.
12 Their life stories present only snapshots of the discrimination that lesbian and gay families
13 throughout Oregon confront because lesbian and gay couples are not permitted to marry. But
14 their life stories are representative of the needs – acute and chronic, numerous and various –
15 of the tens of thousands of lesbian and gay families throughout Oregon, all of which flow
16 from the exclusion of lesbian and gay couples from marriage. As plaintiffs’ life stories
17 demonstrate, these needs range from access to health insurance, to the right to hospital
18 visitation, to the security of death benefits. Indeed, the exclusion of lesbian and gay couples
19 from marriage necessarily excludes them from over 500 rights, responsibilities, benefits, and
20 obligations that are predicated on marriage under the laws of Oregon. These include
21 protections such as the exception that permits the spouse of a Medicaid beneficiary to keep
22 his or her house when the state seeks to foreclose on the house to recoup the cost of the
23 Medicaid beneficiary’s long-term care, the safeguard of intestate succession when a spouse
24 dies without a valid will, and the ability of one spouse to sue for the wrongful death of the
25 other spouse. Above and beyond such tangible harms, there is an immeasurable dignitary
26 harm to lesbian and gay couples and their children when the laws of their state make their

1 families strangers to society. The exclusion of lesbian and gay couples from marriage
2 stigmatizes them and their children as second-class citizens.

3 6.

4 Article I, section 20 of the Oregon constitution does not tolerate such unjustified
5 discrimination against a disfavored class. The exclusion of lesbian and gay couples from
6 marriage violates this most basic constitutional guarantee of equality of privileges and
7 immunities for all Oregonians.

8 **JURISDICTION AND VENUE**

9 7.

10 The Court has jurisdiction over this action pursuant to ORS 28.010, ORS 183.484(1),
11 and ORS 34.120(1).

12 8.

13 Venue is proper pursuant to ORS 14.050(2) because defendant Woodward executes
14 her duties in Multnomah County.

15 **PLAINTIFFS**

16 **Mary Li and Becky Kennedy**

17 9.

18 Li and Kennedy reside in Portland in Multnomah County.

19 10.

20 On March 3, 2004, having received a marriage license, Li and Kennedy were married
21 by former Oregon Supreme Court Justice Betty Roberts, becoming the first same-sex couple
22 to marry in Oregon.

23 11.

24 But for the fact that Li and Kennedy are a same-sex couple, the State of Oregon
25 would recognize their marriage. Neither has another living wife or a living husband. They
26

1 are not first cousins or any nearer of kin to each other. Neither is incapable for want of legal
2 age or sufficient understanding. They consented freely to marry each other.

3 12.

4 Li and Kennedy met in 2000. They intend to spend the rest of their lives together. At
5 an early stage in their relationship, they knew that they wanted to start a family and raise
6 children. They now have a daughter Ava, born in 2003.

7 13.

8 Li and Kennedy married both to reflect their lifetime commitment to each other and
9 to protect their own family in light of the legal protections that married couples and their
10 children enjoy.

11 14.

12 Li is the sole source of financial support for her family. Kennedy and Ava receive
13 health benefits through her employer, which offers domestic partner as well as spousal health
14 benefits. In the past, Li knew that, if she were ever to leave her employer for another one,
15 she would risk an employer that provided health benefits for spouses but not domestic
16 partners. Moreover, after Ava was born, Li and Kennedy had to retain a lawyer to assist
17 them through adoption proceedings to establish a legally recognized parent-child relationship
18 between Li and Ava. These are just two examples of the worries that they had because they
19 were not married and thereby recognized as a family unit.

20 15.

21 Li and Kennedy recognize that there are other less tangible but no less important
22 benefits of marriage. Their family will benefit from the social recognition that comes with
23 marriage, which will allow them to participate in society to the same extent as other families.

24 16.

25 Li understands what it is like to experience discrimination as a person of color, a
26 woman, and a lesbian. Li's father, who is Chinese, married her mother, who is white, in

1 1963, before the United States Supreme Court finally said that it is unconstitutional for any
2 state to bar marriages between people of different races. She cannot help but to think of her
3 parents and that era when she thinks of her own marriage to Kennedy.

4 **Kelly Burke and Dolores Doyle**

5 17.

6 Burke and Doyle reside in Portland in Multnomah County.

7 18.

8 Burke and Doyle are college sweethearts who, having received a marriage license,
9 married in Multnomah County on March 3, 2004. The timing of their wedding ceremony
10 marked their sixteen-year anniversary.

11 19.

12 But for the fact that Burke and Doyle are a same-sex couple, the State of Oregon
13 would recognize their marriage. Neither has another living wife or a living husband. They
14 are not first cousins or any nearer of kin to each other. Neither is incapable for want of legal
15 age or sufficient understanding. They consented freely to marry each other.

16 20.

17 Burke and Doyle own a home together and have a son Avery. Burke is a stay-at-
18 home mom and a licensed massage therapist. Doyle is an apprentice electrician and provides
19 the sole financial support for her family.

20 21.

21 Burke and Doyle met in 1987 when they were students at Lewis & Clark College. On
22 Christmas Eve of 1991, they registered as domestic partners in Berkeley. It was a declaration
23 of commitment to each other and of their intention to be a family. On their tenth anniversary,
24 they celebrated their relationship with a ceremony in Portland. Over one hundred friends and
25 family members attended the ceremony to endorse and celebrate their union.
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11 22.

Avery was born in 2001. Because Burke and Doyle were not married, Doyle had to initiate adoption proceedings to ensure that she would be legally recognized as a parent to her child. Burke and Doyle became acutely aware of how vulnerable their family was when, a few days after the birth, Burke was admitted to the hospital for possible blood clots in her leg. Because there was no legally recognized parent-child relationship between Doyle and Avery at the time, even as Burke and Doyle were coping with the medical concern, Burke had to write a hasty statement of her intentions regarding the care and guardianship of Avery if she were to become incapacitated. In this way, the medical concern quickly escalated into a threat to their family's security and future, which exacerbated what was already a time of crisis.

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22 23.

As a stay-at-home mom, Burke has no employer-sponsored health insurance. Through her employer, Doyle participates in a group health insurance plan that offers coverage to members of an employee's family at no additional charge. In 2003, Doyle formally petitioned her employer for domestic partner health benefits for Burke. The petition was denied because her employer does not recognize domestic partners as family members. As a result, Burke and Doyle have had to pay a significant monthly premium so that Burke can have individual health insurance. This past year, when Doyle was laid off for sixteen weeks due to the poor economy, the struggle to pay for continuing family medical coverage for Doyle and Avery was made much worse by their need to pay for individual health insurance for Burke.

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24
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26 24.

Burke and Doyle want to live with the confidence that, if one of them unexpectedly dies or becomes disabled or sick, the other will have all of the protections that marriage affords. Although they have tried to make arrangements to maximize economic and legal

1 protections for their family's well-being, marriage affords greater security in light of the
2 many legal benefits that are reserved for spouses.

3 25.

4 Burke and Doyle need the benefits of marriage to protect themselves and their son
5 from economic hardship and discrimination.

6 **Katie Potter and Pam Moen**

7 26.

8 Potter and Moen reside in Portland in Multnomah County.

9 27.

10 Having received a marriage license, Potter and Moen married in Multnomah County
11 on March 3, 2004 in the presence of family and friends. Other than bringing their two
12 children into the world, their marriage was the most significant event of their shared life.

13 28.

14 But for the fact that Potter and Moen are a same-sex couple, the State of Oregon
15 would recognize their marriage. Neither has another living wife or a living husband. They
16 are not first cousins or any nearer of kin to each other. Neither is incapable for want of legal
17 age or sufficient understanding. They consented freely to marry each other.

18 29.

19 Potter and Moen met in the workplace in 1990, fell in love, and have been together in
20 a loving, committed partnership ever since. They are raising two daughters together,
21 McKenzie and Madison.

22 30.

23 Potter and Moen are both Portland police officers. Moen has taken on more of the
24 financial responsibility for their family so that Potter can spend more time at home with their
25 children.

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11 31.

12 Moen's position brings her into contact with potentially violent situations. Potter has
13 chosen an off-street position while working part-time to reduce the risk of on-the-job death or
14 disability, a vulnerability of which her family is aware every day given the nature of police
15 work. Potter and Moen's family would suffer a sudden, substantial, and permanent reduction
16 of income should either of them be killed in the line of duty. There are state benefits
17 available to the surviving spouses of police officers killed in the line of duty that serve to
18 stabilize families in just such a tragic circumstance. They include an immediate \$25,000
19 death benefit, along with health, education, and mortgage benefits. These state benefits are
20 not available to surviving domestic partners of police officers killed in the line of duty.

21 32.

22 Potter and Moen had to retain a lawyer to protect their rights as parents; Moen had to
23 adopt the children they had planned together to ensure that she could keep their children if
24 something were to happen to Potter. They prepared wills as rights of inheritance did not
25 exist for them. They prepared advance directives as the ability to make medical decisions for
26 each other was not assured for them.

33.

34 Potter and Moen's status as registered domestic partners has not provided them full
equality with married couples, either in terms of tangible rights and benefits or in terms of
social recognition that they seek for themselves and their daughters.

35 34.

36 Potter and Moen are concerned that the exclusion of same-sex couples from marriage
sends a message to their daughters that their family is unworthy. They want their daughters
to be able to feel like they fully belong in the community because their family has a value
equal to those of their friends.

1 Steve Knox, M.D., and Eric Warshaw, M.D.

2 35.

3 Knox and Warshaw reside in Portland in Multnomah County.

4 36.

5 On March 3, 2004, having received a marriage license, Knox and Warshaw became
6 the second same-sex couple to marry in Oregon. Presiding over this personally momentous
7 event was former Oregon Supreme Court Justice Betty Roberts. Among those present at
8 their wedding ceremony were their three children, Adam, Isaac, and Tillie.

9 37.

10 But for the fact that Knox and Warshaw are a same-sex couple, the State of Oregon
11 would recognize their marriage. Neither has another living husband or a living wife. They
12 are not first cousins or any nearer of kin to each other. Neither is incapable for want of legal
13 age or sufficient understanding. They consented freely to marry each other.

14 38.

15 Knox and Warshaw, both physicians, were in a committed relationship for over ten
16 years prior to their marriage. They have supported each other financially, including a three-
17 year period when Warshaw supported Knox while Knox completed a second residency.
18 They own a home together. They practice a common faith. They have adopted three
19 children together.

20 39.

21 Although Knox and Warshaw have the commitment of a married couple, they and
22 their children lack the legal protections that come with marriage.

23 40.

24 Prior to the marriage, Adam began inquiring whether “Dad” and “Daddy” were
25 married. Knox and Warshaw had to explain to him that they were “almost” married in that
26 they share their love, home, and family, but had to acknowledge to him that they lacked “the

1 piece of paper” that he knew that married couples have. In light of their marriage, Knox and
2 Warshaw can now tell their children that they no longer lack “the piece of paper.” Their
3 hope is that their children no longer need to feel that their family is less worthy in the eyes of
4 others for lack of “the piece of paper.”

5 **Dom Vetri and Doug DeWitt**

6 41.

7 Vetri and DeWitt reside in Brownsville in Linn County.

8 42.

9 But for the fact that Vetri and DeWitt are a same-sex couple, the State of Oregon
10 would permit them to marry. Neither has a living husband or a living wife. They are not
11 first cousins or any nearer of kin to each other. Neither is incapable for want of legal age or
12 sufficient understanding.

13 43.

14 Vetri, 65, is a professor of law at the University of Oregon School of Law. DeWitt,
15 53, is a fitness trainer. They have been in a committed, caring, and loving relationship
16 together for over 26 years.

17 44.

18 Vetri and DeWitt understand that they do not have the many benefits and protections
19 that married couples enjoy. One important example is that, while Vetri works as a law
20 professor, DeWitt is eligible to participate in the group health insurance program of the State
21 Board of Higher Education just as a marital partner would be. But, upon Vetri’s retirement,
22 DeWitt, unlike a marital partner, will not be eligible to participate in the group health
23 insurance plan under the Public Employees Retirement System unless his income is such as
24 to qualify him as a tax dependent.

1 45.

2 Vetri and DeWitt have not sought a marriage license from Multnomah County or any
3 other county in Oregon. They want to have the option of marrying in the future if they
4 decide that that is the right course for themselves.

5 **Sally Sheklow and Enid Lefton**

6 46.

7 Sheklow and Lefton reside in Eugene in Lane County.

8 47.

9 But for the fact that Sheklow and Lefton are a same-sex couple, the State of Oregon
10 would permit them to marry. Neither has a living wife or a living husband. They are not
11 first cousins or any nearer of kin to each other. Neither is incapable for want of legal age or
12 sufficient understanding.

13 48.

14 Sheklow and Lefton have been in a committed, caring, loving relationship since 1987.
15 They received the William Sloat Memorial Valued Family Award in 1995 in recognition of
16 their strong example of a loving, same-sex couple. They share a passion for theater and
17 community activism and also share a Jewish heritage. Together, they have deepened their
18 spiritual connection to Judaism and have come to embrace more thoroughly the values of
19 their faith, which teaches them to dedicate their lives to making the world a better place for
20 everyone.

21 49.

22 In 1998, Sheklow and Lefton planned a wedding ceremony. In anticipation, they met
23 with their rabbi over a period of five months to prepare themselves for marriage. They, along
24 with their family and friends, participated in a religious wedding ceremony on June 21, 1998.
25
26

1 50.

2 Because Sheklow and Lefton are not legally married, Lefton cannot cover Sheklow
3 through her employer-sponsored health plan. Sheklow, a self-employed writer and part-time
4 teacher, is currently uninsured.

5 51.

6 Sheklow and Lefton are not eligible for the same spousal retirement and social
7 security benefits as legally married couples. They also fear what might happen when one of
8 them dies. They do not have the legal protections that legally married couples enjoy with
9 respect to such matters as bereavement leave.

10 52.

11 On March 22, 2004, Sheklow and Lefton presented a completed application and the
12 license fee to and asked for a marriage license from Lane County. They were refused a
13 license because they are a same-sex couple. The supervisor of the office that issues licenses
14 explained that licenses could not issue for the reasons in the Lane County Counsel's opinion
15 and provided a copy of it. In part, that opinion advises that ORS 106.010 should be read as
16 requiring marriage between a man and a woman and notes that the conclusion of the
17 Multnomah County Attorney and the Oregon Attorney General on the statute are the same.

18 53.

19 Sheklow and Lefton want their relationship to be recognized as a legal marriage. It is
20 important to them that they obtain their marriage license from Lane County, just as other
21 Lane County couples do. They do not want to go to Multnomah County or any other
22 jurisdiction. They feel that they should not have to do so. They live in Lane County. They
23 pay taxes in Lane County. They want a marriage license from Lane County, something that
24 has been denied to them solely because they are a same-sex couple and because of an
25 existing state statute, ORS 106.010.

26

1 Irene Farrera and Nina Korican

2 54.

3 Farrera and Korican reside in Eugene in Lane County.

4 55.

5 But for the fact that Farrera and Korican are a same-sex couple, the State of Oregon
6 would permit them to marry. Neither has a living wife or a living husband. They are not
7 first cousins or any nearer of kin to each other. Neither is incapable for want of legal age or
8 sufficient understanding.

9 56.

10 Farrera and Korican began their relationship in 1992. In 1993, Ferrera and Korican
11 decided to share all aspects of their lives with each other, and began sharing a home in
12 Eugene.

13 57.

14 On September 4, 1994, they celebrated their wedding with family members and
15 friends. Their ceremony was based on Jewish tradition and was officiated by their rabbi's
16 wife. The rabbi of Eugene's largest synagogue attended and gave them a blessing, the first
17 time he had ever blessed a same-sex couple. Their relationship gained legitimacy in the eyes
18 of their families, their friends, and their community. It was the happiest day of their shared
19 life.

20 58.

21 From 1993 to 2003, Farrera and Korican worked together in their own business,
22 Farrera as a touring musician and Korican as her agent and manager. All of their time,
23 energy, and resources went into the success of Farrera's music career. They traveled the
24 world together as a couple, but Farrera also did many tours alone. Often, Farrera worried
25 about what would happen if she were hospitalized far away from home. She knew that,
26 whatever recognition of their relationship they enjoyed in Eugene would serve as no

1 guarantee of recognition elsewhere. She worried about Korican's ability to make medical
2 decisions on her behalf, or to visit her in the hospital.

3 59.

4 In 2003, Korican went to work for Temple Beth Israel in Eugene, and Farrera began
5 doing freelance interpreting and translating along with her music. Now that Korican has
6 employer-sponsored benefits, Farrera and Korican would like for Farrera to have the same
7 benefits options as those of the spouses of Korican's married co-workers. And, as they near
8 retirement, they have concerns about retirement and social security benefits. Marriage would
9 help them feel more financially secure.

10 60.

11 Farrera and Korican believe that, by not permitting or recognizing marriages of same-
12 sex couples, the state sends a stigmatizing message that they are less worthy than other
13 Oregonians and that their relationship is inferior to those of other Oregonians.

14 61.

15 Farrera was born and raised in Venezuela and moved to the United States in 1971.
16 During many of those years, Farrera lived illegally in the United States. At the time, she was
17 in a long-term relationship with a former partner. They would have gotten married if it had
18 been an option. But, because they were a same-sex couple, it was not an option. Unlike
19 heterosexual bi-national couples who fall in love, they did not have the benefit of marriage to
20 initiate the citizenship process. And so Farrera lived in fear of being deported and separated
21 from her then partner. In addition, Farrera could not travel to Venezuela to visit her family
22 for fear of not being able to return to her home and her then partner.

23 62.

24 On March 22, 2004, Farrera and Korican presented a completed application and the
25 license fee to and asked for a marriage license from Lane County. They were refused a
26 license because they are a same-sex couple. The supervisor of the office that issues licenses

1 explained that licenses could not issue for the reasons in the Lane County Counsel's opinion
2 and provided a copy of it. In part, that opinion advises that ORS 106.010 should be read as
3 requiring marriage between a man and a woman and notes that the conclusion of the
4 Multnomah County Attorney and the Oregon Attorney General on the statute are the same.

5 63.

6 Farrera and Korican want to get married in Lane County because it is where they live.
7 It is their community, to which they both have contributed much. They pay taxes in Lane
8 County, they volunteer for organizations in Lane County, and they are active citizens in Lane
9 County. They feel that, by not being allowed to obtain a marriage license in their hometown
10 solely because they are a same-sex couple and because of an existing state statute, ORS
11 106.010, they are being treated like second-class citizens.

12 **Walter Frankel and Curtis Kiefer**

13 64.

14 Frankel and Kiefer reside in Corvallis in Benton County.

15 65.

16 But for the fact that Frankel and Kiefer are a same-sex couple, the State of Oregon
17 would permit them to marry. Neither has a living husband or a living wife. They are not
18 first cousins or any nearer of kin to each other. Neither is incapable for want of legal age or
19 sufficient understanding.

20 66.

21 Frankel and Kiefer met in 1981 and have been a committed, loving couple ever since.

22 67.

23 Frankel is 65, and Kiefer is 52. They love each other very much, want to grow old
24 with each other, and intend to spend the rest of their lives together.

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68.

Frankel was a librarian for 36 years. He retired from the Corvallis-Benton County Public Library in 2000. Kiefer has been employed by the Corvallis-Benton County Public Library for ten years.

69.

Especially as they age, Frankel and Kiefer want the legal protections that married couples enjoy. Among them are right of a surviving spouse to be the beneficiary of a deceased spouse's pension and Social Security benefits; the right of a surviving spouse to dispose of a deceased spouse's remains; the right of a well spouse to visit a sick spouse in the hospital; the right of a well spouse to make medical decisions for an incapacitated spouse; and the rights of inheritance and exemption from certain taxation that spouses enjoy.

70.

Frankel is not permitted to name Kiefer as the beneficiary of several of his retirement accounts because Kiefer is not considered a family member.

71.

Kiefer's mother lived with Frankel and Kiefer for thirteen years. Together, they cared for her. Yet, when she was dying in the intensive care unit, Frankel was not considered a part of her family for purposes of visitation. Kiefer had to explain to the hospital Frankel's relationship to Kiefer's mother. This is something a spouse would not have had to explain. In light of this experience, Frankel is now apprehensive about Frankel and Kiefer having access to one another during a medical emergency.

72.

Frankel and Kiefer would have sought a marriage license from Benton County if it had not reversed its decision to issue marriage licenses to same-sex couples. It is important to them that they receive their marriage license from Benton County. They feel strongly about their community and the equal treatment of same-sex couples that they expect from it.

1 Julie Williams and Coleen Belisle

2 73.

3 Williams and Belisle reside in Corvallis in Benton County.

4 74.

5 But for the fact that Williams and Belisle are a same-sex couple, the State of Oregon
6 would permit them to marry. Neither has a living wife or a living husband. They are not
7 first cousins or any nearer of kin to each other. Neither is incapable for want of legal age or
8 sufficient understanding.

9 75.

10 Williams and Belisle met in 1999 and soon entered into a committed, loving
11 relationship.

12 76.

13 Williams teaches health and physical education at Corvallis High School. She has
14 been an employee of the school district for over seventeen years. Belisle is a home health
15 registered nurse.

16 77.

17 Williams and Belisle seek for themselves the legal protections that married couples
18 enjoy. They know that, if they were married, they would have a greater sense of security,
19 safety, and equality.

20 78.

21 Williams and Belisle would have sought a marriage license from Benton County if it
22 had not reversed its decision to issue marriage licenses to same-sex couples. It is important
23 to them to receive a marriage license from Benton County, as longtime members of the
24 Corvallis community. Indeed, Williams grew up in Corvallis, attended Corvallis High
25 School, and has lived in Corvallis for 41 years. She wants to obtain a marriage license from
26 the county where she has roots and lives.

1 79.

2 Moreover, Williams and Belisle want Williams' parents, who also live in Benton
3 County, to be present when they obtain their marriage license. Williams's parents both have
4 serious health problems, and Williams and Belisle have become their primary caretakers. It
5 would be a considerable burden on them and their family if they were forced to travel to
6 obtain a marriage license.

7 **Basic Rights Oregon**

8 80.

9 BRO is a statewide civil rights organization dedicated to advocacy for equal rights,
10 including equal marriage rights, for lesbian, gay, bisexual, and transgender Oregonians.

11 81.

12 BRO has a strong interest in marriage equality for lesbian and gay couples. Over the
13 past several years, BRO has devoted a considerable amount of its resources to educating Oregon
14 communities and their leaders about why same-sex couples need and deserve equal marriage
15 rights. The fact that Multnomah County is now issuing marriage licenses to same-sex couples
16 and same-sex couples are now getting married is a reflection of years of work by BRO.

17 **American Civil Liberties Union of Oregon**

18 82.

19 The ACLU of Oregon is a statewide organization dedicated to defending the civil
20 liberties and advancing the civil rights of all Oregonians, including lesbian and gay
21 Oregonians. The ACLU of Oregon is a non-profit, non-partisan affiliate of the American
22 Civil Liberties Union, a nationwide, non-profit, non-partisan organization with a membership
23 in the hundreds of thousands.

24 83.

25 The ACLU of Oregon exclusively dedicates its efforts to preserving and advancing
26 the rights guaranteed by the federal and state constitutions and by federal, state, and local

1 civil rights and civil liberties laws. The ACLU of Oregon has appeared as counsel or amicus
2 curiae in dozens of cases in federal and state courts involving the Oregon constitution,
3 Oregon statutes, and the legal rights of lesbians and gay men.

4 84.

5 The ACLU of Oregon has over 7,500 members. They include same-sex couples who
6 either have marriage licenses and are married, or seek to have marriage licenses and be
7 married.

8 85.

9 The ACLU of Oregon has a strong interest in marriage equality for lesbian and gay
10 couples. In its estimation, the Oregon constitution guarantees lesbian and gay couples equal
11 treatment with respect to laws concerning marriage.

12 **DEFENDANTS**

13 86.

14 Defendant State of Oregon is a state organized and existing under the Oregon
15 constitution.

16 87.

17 Defendant Kulongoski is sued in his official capacity as Governor of the State of
18 Oregon. Defendant Kulongoski has a duty to execute the laws of the State of Oregon.

19 88.

20 Defendant Myers is sued in his official capacity as Attorney General of the State of
21 Oregon. Defendant Myers has a duty to enforce the laws of the State of Oregon.

22 89.

23 Defendant Weeks is sued in his official capacity as Director of the Department of
24 Human Services of the State of Oregon. Among other duties, Defendant Weeks has a duty to
25 oversee the Center for Health Statistics.

26

1 90.

2 Defendant Woodward is sued in her official capacity as State Registrar of the State of
3 Oregon. Among other duties, Defendant Woodward has a duty to record marriages that are
4 licensed and solemnized in Oregon.

5 **GENERAL ALLEGATIONS**

6 91.

7 The Oregon statutory code does not permit marriages of same-sex couples. In
8 particular, ORS 106.010 provides that “[m]arriage is a civil contract entered into in person by
9 males at least 17 years of age and females at least 17 years of age, who are otherwise
10 capable, and solemnized in accordance with ORS 106.150.”

11 92.

12 In light of a legal opinion rendered by her counsel, the Chair of the Board of County
13 Commissioners of Multnomah County realized that her execution of county practices
14 concerning the issuance of marriage licenses was in clear violation of the Oregon
15 constitution. Specifically, she realized that county practices denying marriage licenses to
16 same-sex couples were a form of clearly unconstitutional discrimination between same-sex
17 and different-sex couples. In light of her oath to uphold the Oregon constitution, she
18 recognized that she had a constitutional obligation to ensure that such clearly unconstitutional
19 discrimination ceased. Accordingly, on March 3, 2004, she took executive action to ensure
20 the issuance of marriage licenses to same-sex and different-sex couples on equal terms by
21 Multnomah County.

22 93.

23 Since March 3, 2004, Multnomah County has issued marriage licenses to thousands
24 of same-sex couples, including plaintiffs Li and Kennedy, Knox and Warshaw, Burke and
25 Doyle, and Potter and Moen. Many, if not most, of these same-sex couples, including
26

1 plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and Moen, have
2 entered into solemnized marriages.

3 94.

4 On March 12, 2004, in response to the issuance of marriage licenses to same-sex and
5 different-sex couples on equal terms by Multnomah County, defendant Myers issued a legal
6 opinion that confirmed that the Oregon statutory code prohibits marriages of same-sex
7 couples. Specifically, defendant Myers “conclude[d] that existing Oregon statutes authorize
8 issuance of a marriage license only to one man and one woman.”

9 95.

10 On March 12, 2004, defendant Kulongoski accepted the legal opinion of defendant
11 Myers.

12 96.

13 At a press conference on March 12, 2004, defendants Kulongoski and Myers
14 confirmed that the Oregon statutory code does not permit marriages of same-sex couples.
15 Defendants Kulongoski and Myers urged all Oregon counties to refuse to issue marriage
16 licenses to same-sex couples because the Oregon statutory code does not permit marriages of
17 same-sex couples. Defendant Kulongoski directed, and defendant Myers counseled, all
18 Oregon agencies, including the Center for Health Statistics, to refuse to recognize marriages
19 of same-sex couples.

20 97.

21 On March 15, 2004, defendant Kulongoski issued a press release in which he
22 confirmed that he “[had] directed all state agencies to adhere to current statutes, which do not
23 recognize same-sex marriages.”

24 98.

25 On March 16, 2004, the Board of County Commissioners of Benton County took
26 legislative action to ensure the issuance of marriage licenses to same-sex and different-sex

1 couples on equal terms by Benton County beginning on March 24, 2004. Thereafter,
2 defendants Kulongoski and Myers began to pressure the Board of County Commissioners of
3 Benton County to reverse its legislative action and to refuse to issue marriage licenses to
4 same-sex couples because the Oregon statutory code does not permit marriages of same-sex
5 couples. Defendants Kulongoski and Myers went so far as to threaten aggressive litigation
6 against Benton County.

7 99.

8 On March 17, 2004, the County Counsel of Lane County issued a legal opinion that
9 confirmed that the Oregon statutory code prohibits marriages of same-sex couples.
10 Consistent with the urgings of defendants Kulongoski and Myers, the Chief Deputy County
11 Clerk of Lane County accepted the legal opinion of her counsel and refused to issue marriage
12 licenses to same-sex couples because the Oregon statutory code does not permit marriages of
13 same-sex couples.

14 100.

15 On March 18, 2004, defendant Myers sent letters to all Oregon counties in which he
16 confirmed that he “[had] analyzed our state’s marriage statutes and concluded that current
17 law defines marriage as a union between a male and a female.” Defendant Myers further
18 confirmed that “state agencies will not recognize the validity of same-sex marriages until and
19 unless directed to do so by the judicial branch.” Defendant Myers went on to specify that
20 “[a] document purporting to be a record of the marriage of a man and a man or a woman and
21 a woman would not be a record of a ‘marriage’ performed in this state which the Registrar
22 would be required to register, because existing law does not authorize the ‘marriage’ of a
23 man and a man or a woman and a woman.”

24 101.

25 On March 19, 2004, defendant Myers issued a press release in which he confirmed
26 that he “[had] [written] to the clerks of each of Oregon’s 36 counties to inform them that the

1 State Registrar would not accept for registration any marriage certificate for a same-sex
2 marriage,” and in which he “urged every county, including Benton County, to defer issuing
3 any marriage licenses to same-sex couples at least until the Multnomah County Circuit Court
4 can rule on the constitutional issues” in this action.

5 102.

6 On March 22, 2004, plaintiffs Sheklow and Lefton, and Farrera and Korican, who for
7 personal reasons seek marriage licenses from Lane County in particular, properly tendered to
8 the office of the County Clerk of Lane County all of the paperwork and fees necessary to
9 obtain marriage licenses. Consistent with the urgings of defendants Kulongoski and Myers,
10 the office of the County Clerk of Lane County refused to issue marriage licenses to plaintiffs
11 Sheklow and Lefton, and Farrera and Korican for the sole reason that they are same-sex
12 couples. The office of the County Clerk of Lane County offered the legal opinion issued by
13 the County Counsel of Lane County as its sole justification.

14 103.

15 On March 22, 2004, defendants Kulongoski and Myers succeeded in pressuring the
16 Board of County Commissioners of Benton County to reverse its legislative action and to
17 refuse to issue marriage licenses to same-sex couples because the Oregon statutory code does
18 not permit marriages of same-sex couples. In reversing its legislative action, the Board of
19 County Commissioners of Benton County “voted unanimously to temporarily postpone
20 issuing marriage licenses to couples, regardless of sexual orientation, pending a resolution by
21 the State Courts on the constitutional challenge to Oregon statutes regarding marriage”
22 beginning on March 24, 2004. It indicated that “[t]he action was subsequent to a request by
23 the State’s Attorney General Hardy Myers to temporarily postpone issuing marriage licenses
24 to same-sex couples.” In response, Defendant Myers issued a statement in which he stated
25 that “[t]he decision ensures that marriage licenses will not be issued in violation of Oregon
26 statutes in Benton County.”

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104.

Plaintiffs Frankel and Kiefer, and Williams and Belisle, who for personal reasons seek marriage licenses from Benton County in particular, would have properly tendered to the office of the County Clerk of Benton County all of the paperwork and fees necessary to obtain marriage licenses had the Board of County Commissioners of Benton County not reversed its legislative action.

105.

Consistent with the urgings of defendants Kulongoski and Myers, most Oregon counties have refused to issue marriage licenses to same-sex couples because the Oregon statutory code does not permit marriages of same-sex couples. For example, Washington County has posted on its website a notice that "Oregon state law does not allow a marriage license to be issued to parties of the same gender."

106.

On March 23, 2004, in response to the directive of defendant Kulongoski and the counsel of defendant Myers, defendants Weeks and Woodward issued final agency orders refusing to file and register the marriage records of plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and Moen because the Oregon statutory code does not permit marriages of same-sex couples.

107.

At this time, defendants have confirmed that the Oregon statutory code does not permit marriages of same-sex couples. The fact that the Oregon statutory code does not permit marriages of same-sex couples has the practical effect of directly and substantially harming all plaintiff couples in that it excludes them from marriage, the social validation that it confers, and the hundreds of rights, responsibilities, benefits, and obligations that it affords.

1
2 Defendants Kulongoski and Myers have also succeeded in pressuring Oregon
3 counties to refuse to issue marriage licenses to same-sex couples because the Oregon
4 statutory code does not permit marriages of same-sex couples. The fact that Benton County
5 has refused to issue marriage licenses to same-sex couples as a result of defendants' actions
6 and in light of the Oregon statutory code has the practical effect of directly and substantially
7 harming plaintiffs Frankel and Kiefer, Williams and Belisle, and Vetri and DeWitt.
8 Similarly, the fact that Lane County has refused to issue marriage licenses to same-sex
9 couples as a result of defendants' actions and in light of the Oregon statutory code has the
10 practical effect of directly and substantially harming plaintiffs Sheklow and Lefton, Farrera
11 and Korican, and Vetri and DeWitt. These plaintiff couples are excluded from marriage, the
12 social validation that it confers, and the hundreds of rights, responsibilities, benefits, and
13 obligations that it affords.

14
15 Furthermore, defendants Kulongoski and Myers have directed and counseled Oregon
16 agencies, including the Center for Health Statistics, to refuse to recognize marriages of same-
17 sex couples because the Oregon statutory code does not permit marriages of same-sex
18 couples. As a result, defendants Weeks and Woodward have issued final agency orders
19 refusing to file and register the marriage records of plaintiffs Li and Kennedy, Knox and
20 Warshaw, Burke and Doyle, and Potter and Moen because the Oregon statutory code does
21 not permit marriages of same-sex couples. These final agency orders have the practical
22 effect of directly and substantially harming these plaintiffs couples in that they deny them the
23 benefit of ensuring that their marriages records are publicly available for official
24 confirmation of the existence of their marriages, a benefit that they need to eliminate any
25 — doubt about the validity of their marriages.

1 **FIRST CLAIM FOR RELIEF**

2 **(Uniform Declaratory Judgments Act;**
3 **all plaintiff couples against all defendants)**

4 110.

5 Paragraphs 1-109 of this complaint are incorporated by reference.

6 111.

7 The Oregon statutory code does not permit marriages of same-sex couples.

8 112.

9 Defendants Kulongoski, Myers, Weeks, and Woodward have confirmed that the
10 Oregon statutory code does not permit marriages of same-sex couples, and have asserted the
11 Oregon statutory code as the basis for their conduct in urging Oregon counties to refuse to
12 issue marriage licenses to same-sex couples and in directing and counseling Oregon agencies
13 to refuse to recognize marriages of same-sex couples.

14 113.

15 Article I, section 20 of the Oregon constitution prohibits the unjustified denial of a
16 privilege or immunity based on sexual orientation or gender.

17 114.

18 Moreover, the substantive due process guarantees of the Oregon constitution prohibit
19 an unjustifiable burden on the fundamental right to privacy and autonomy, including the
20 fundamental right to enter into an intimate relationship.

21 115.

22 The failure to permit marriages of same-sex couples constitutes an unjustified denial
23 of a privilege based on sexual orientation and gender, and an unjustifiable burden on the
24 fundamental right to privacy and autonomy, including the fundamental right to enter into an
25 intimate relationship. It therefore constitutes a violation of the Oregon constitution.
26

1 116.

2 Plaintiffs are entitled to attorney fees and costs pursuant to Deras v. Myers,
3 272 Or 47, 66 (1975) (court's inherent power to award fees), ORS 28.100 (costs under the
4 Declaratory Judgments Act), and ORCP 68 B.

5 **SECOND CLAIM FOR RELIEF**

6 **(Uniform Declaratory Judgments Act;
7 all plaintiff couples against all defendants)**

8 117.

9 Paragraphs 1-109 of this complaint are incorporated by reference.

10 118.

11 The Oregon statutory code does not permit marriages of same-sex couples.

12 119.

13 Because the Oregon statutory code does not permit marriages of same-sex couples,
14 defendants Kulongoski, Myers, Weeks, and Woodward have refused to file and register the
15 marriage records of same-sex couples licensed and solemnized in Oregon, including those of
16 plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and Moen.

17 120.

18 Article I, section 20 of the Oregon constitution prohibits the unjustified denial of a
19 privilege or immunity based on sexual orientation or gender.

20 121.

21 Moreover, the substantive due process guarantees of the Oregon constitution prohibit
22 an unjustifiable burden on the fundamental right to privacy and autonomy, including the
23 fundamental right to enter into an intimate relationship.

24 122.

25 The refusal to record the marriages of same-sex couples licensed and solemnized in
26 Oregon, including those of plaintiffs Li and Kennedy, Knox and Warshaw, Burke and Doyle,

1 and Potter and Moen, constitutes an unjustified denial of a privilege based on sexual
2 orientation and gender, and an unjustifiable burden on the fundamental right to privacy and
3 autonomy, including the fundamental right to enter into an intimate relationship. It therefore
4 constitutes a violation of the Oregon constitution.

5 123.

6 Plaintiffs are entitled to attorney fees and costs pursuant to Deras v. Myers, 272 Or
7 47, 66 (1975) (court's inherent power to award fees), ORS 28.100 (costs under the
8 Declaratory Judgments Act), and ORCP 68 B.

9 **THIRD CLAIM FOR RELIEF**

10 **(alternative APA Review of Order; plaintiffs Li and**
11 **Kennedy, Knox and Warshaw, Burke and Doyle, and**
Potter and Moen against defendants Weeks and Woodward)

12 124.

13 Paragraphs 1-109 of this complaint are incorporated by reference.

14 125.

15 In an other than contested case, defendants Weeks and Woodward issued final agency
16 orders refusing to file and register the marriage records of plaintiffs Li and Kennedy, Knox
17 and Warshaw, Burke and Doyle, and Potter and Moen.

18 126.

19 Defendants Weeks and Woodward did so as directed by defendant Kulongoski and
20 counseled by defendant Myers because the Oregon statutory code does not permit marriages
21 of same-sex couples.

22 127.

23 Article I, section 20 of the Oregon constitution prohibits the unjustified denial of a
24 privilege or immunity based on sexual orientation or gender.

1 128.

2 Moreover, the substantive due process guarantees of the Oregon constitution prohibit
3 an unjustifiable burden on the fundamental right to privacy and autonomy, including the
4 fundamental right to enter into an intimate relationship.

5 129.

6 The refusal to record the marriages of plaintiffs Li and Kennedy, Knox and Warshaw,
7 Burke and Doyle, and Potter and Moen constitutes an unjustified denial of a privilege based
8 on sexual orientation and gender, and an unjustifiable burden on the fundamental right to
9 privacy and autonomy, including the fundamental right to enter into an intimate relationship.
10 It therefore constitutes a violation of the Oregon constitution.

11 130.

12 Plaintiffs are entitled to attorney fees and costs pursuant to ORS 183.497 and ORCP
13 68 B.

14 **FOURTH CLAIM FOR RELIEF**

15 **(alternative Petition for Writ of Mandamus**
16 **of all plaintiffs against defendant Woodward)**

17 131.

18 Paragraphs 1-109 of this complaint are incorporated by reference.

19 132.

20 Defendant Woodward has a non-discretionary duty to file and register marriage
21 records of marriages that are licensed and solemnized in Oregon.

22 133.

23 Defendant Woodward has failed to perform her non-discretionary duty to file and
24 register marriage records of marriages that are licensed and solemnized in Oregon.
25 Specifically, defendant Woodward has failed to perform her non-discretionary duty to file
26 and register the marriage records of marriages of same-sex couples that are licensed and

1 solemnized in Oregon, including those of plaintiffs Li and Kennedy, Knox and Warshaw,
2 Burke and Doyle, and Potter and Moen.

3 134.

4 Defendant Woodward has failed to do so consistent with the directive of defendant
5 Kulongoski and the counsel of defendant Myers because the Oregon statutory code does not
6 permit marriages of same-sex couples.

7 135.

8 Article I, section 20 of the Oregon constitution prohibits the unjustified denial of a
9 privilege or immunity based on sexual orientation or gender.

10 136.

11 Moreover, the substantive due process guarantees of the Oregon constitution prohibit
12 an unjustifiable burden on the fundamental right to privacy and autonomy, including the
13 fundamental right to enter into an intimate relationship.

14 137.

15 The failure to perform the non-discretionary duty to record marriages of same-sex
16 couples that are licensed and solemnized in Oregon, including those of plaintiffs Li and
17 Kennedy, Knox and Warshaw, Burke and Doyle, and Potter and Moen, constitutes an
18 unjustified denial of a privilege based on sexual orientation and gender, and an unjustifiable
19 burden on the fundamental right to privacy and autonomy, including the fundamental right to
20 enter into an intimate relationship. It therefore constitutes a violation of the Oregon
21 constitution.

22 138.

23 Plaintiffs are entitled to attorney fees and costs pursuant to ORS 34.210 and ORCP 68 B.
24
25
26

1 WHEREFORE, plaintiffs respectfully ask the Court to grant judgment in favor of
2 plaintiffs and against defendants as follows:

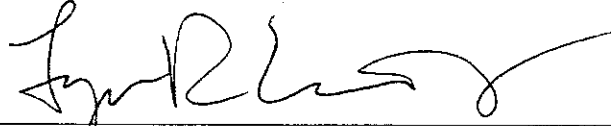
- 3 (a) Declaring that the failure of the Oregon statutory code to permit marriages
4 of same-sex couples violates Article I, section 20 of the Oregon
5 constitution;
- 6 (b) Enjoining defendants from urging Oregon counties to refuse to issue
7 marriage licenses to same-sex couples, or directing or counseling Oregon
8 agencies, including the Center for Health Statistics, to refuse to recognize
9 marriages of same-sex couples;
- 10 (c) Declaring that the failure of defendants to file and register the marriage
11 records of marriages of same-sex couples licensed and solemnized in
12 Oregon, including those of plaintiffs Li and Kennedy, Knox and Warshaw,
13 Burke and Doyle, and Potter and Moen, violates Article I, section 20 of the
14 Oregon constitution;
- 15 (d) Enjoining defendants from refusing to file and register the marriage records
16 of marriages of same-sex couples licensed and solemnized in Oregon,
17 including those of plaintiffs Li and Kennedy, Knox and Warshaw, Burke
18 and Doyle, and Potter and Moen;
- 19 (e) Awarding plaintiffs their costs and reasonable attorney's fees incurred in
20 the prosecution of this action; and
- 21
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1 (g) Awarding such other relief as the Court may deem just and proper.

2 DATED this 24th day of March, 2004.

3 MARKOWITZ, HERBOLD, GLADE
4 & MEHLHAF, P.C.

5
6 By:



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8 Cooperating Attorney
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