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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

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

18 Plaintiffs,

19 and

20 MULTNOMAH COUNTY,

21 Intervenor-Plaintiff,

22 v.

23 STATE OF OREGON; THEODORE
24 KULONGOSKI, in his official capacity as
25 Governor of the State of Oregon, HARDY
26 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,

and

Case No. 0403-03057

DEFENDANTS' ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIM
(In Response to Intervenor-Plaintiff Multnomah
County's Claims in Intervention)

1 DEFENSE OF MARRIAGE COALITION,
2 CECIL MICHAEL THOMAS, NANCY JO
3 THOMAS, DAN MATES and DICK
4 OSBORNE,

5
6 Intervenor-Defendants.

7 Intervenor-plaintiff Multnomah County (“the County”) has asserted and incorporated by
8 reference the allegations in plaintiffs’ First Amended Complaint. In response, defendants allege
9 as follows:

10 1.

11 Defendants admit the allegations of paragraphs 7, 8, 9, 17, 26, 35, 41, 46, 54, 64, 73, 80,
12 82, 86, 87, 88, 89, 90, 91, 95, 96, 97, 99, 105, 106, 111, 112, 117, 118, 123, 124, 130, and 132.

13 2.

14 Defendants deny the allegations of paragraphs 6, 114, 115, 120, 121, 126, 127, 134, 135,
15 and each and every allegation not expressly admitted herein.

16 3.

17 Defendants lack sufficient knowledge to admit or deny the allegations in the following
18 paragraphs, and, on that basis, deny them: paragraphs 5;10-16; 18-25; 27-34; 36-40; 42-45; 47-
19 53; 55-63; 65-72; 74-79; 81; 83-85; 102; and 104.

20 4.

21 Paragraphs 113, 119, 125, and 133 characterize Article I, section 20 of the Oregon
22 Constitution. Defendants allege that that provision speaks for itself.

23 5.

24 In response to paragraph 1, defendants admit that “marriage” can be described in the
25 ways alleged; defendants deny that that is the only way to describe marriage.
26

1 6.

2 In response to paragraph 2, defendants admit that married persons have certain rights,
3 benefits and protections specified in Oregon statutes, which speak for themselves.

4 7.

5 In response to paragraph 3, defendants admit that, historically, there have been
6 restrictions on the right to marry and the rights associated with marriage; such restrictions are
7 fully described in those historical laws, which speak for themselves.

8 8.

9 Defendants admit the first sentence of paragraph 4 and deny the remainder of that
10 paragraph.

11 9.

12 In response to paragraph 92, defendants admit that (1) Multnomah County counsel issued
13 a legal opinion on the subject matter of this case; (2) the opinion speaks for itself; (3) Multnomah
14 County began issuing marriage licenses to same-sex couples on or about March 3, 2004; and
15 (4) that action was apparently taken at the direction of the Chair of the Board of County
16 Commissioners for Multnomah County. Defendants deny the remainder of paragraph 92.

17 10.

18 Defendants admit the first sentence of paragraph 93; defendants lack sufficient
19 knowledge to admit or deny the remaining allegations of paragraph 93, and, on that basis, deny
20 them.

21 11.

22 In response to paragraph 94, defendants admit that Attorney General Hardy Myers issued
23 a legal opinion on March 12, 2004, that addresses the subject matter of this case. That opinion
24 speaks for itself.

25

26

1 12.

2 In response to paragraph 98, defendants admit that (1) the Board of County
3 Commissioners for Benton County initially indicated that Benton County would begin issuing
4 marriage licenses to same-sex couples; and (2) Benton County thereafter decided not to proceed
5 with that course of action after the Governor and Attorney General urged Benton County to
6 abide by current statutory requirements until there was a definitive court ruling on the issue.
7 Defendants deny paragraph 98 to the extent inconsistent with the foregoing.

8 13.

9 In response to paragraph 100, defendants admit that Attorney General Hardy Myers sent
10 letters addressed to all Oregon counties on or about March 18, 2004. Those letters speak for
11 themselves.

12 14.

13 In response to paragraph 101, defendants admit that Attorney General Hardy Myers
14 issued a press release on or about March 19, 2004; that press release speaks for itself.

15 15.

16 In response to paragraph 103, defendants admit that, on or about March 22, 2004, Benton
17 County Board of County Commissioners decided not to proceed to issue marriage licenses to
18 same-sex couples. The statements issued by Benton County and by Attorney General Hardy
19 Myers referenced in paragraph 103 speak for themselves.

20 16.

21 Defendants admit the first sentence of paragraph 107 and deny the remainder of that
22 paragraph.

23 17.

24 In response to paragraph 108, defendants admit that Oregon counties other than
25 Multnomah County have continued to follow the statutory requirements that do not currently
26

1 permit issuing marriage licenses to same-sex couples. Defendants deny the remaining
2 allegations of paragraph 108.

3 18.

4 Defendants admit the first two sentences of paragraph 109 and deny the remaining
5 allegations of that paragraph.

6 19.

7 In response to paragraph 131, defendants admit that defendant Woodward has not filed or
8 registered the marriage licenses issued by Multnomah County to plaintiffs Li and Kennedy;
9 Knox and Warshaw; Burke and Doyle; and Potter and Moen. Defendants deny the remaining
10 allegations of paragraph 131.

11 20.

12 Paragraphs 110, 116, 122, and 128 incorporate by reference the allegations of
13 paragraphs 1 through 109 of the complaint. In response, defendants incorporate by reference
14 their responses to paragraphs 1 through 109.

15 **FIRST AFFIRMATIVE DEFENSE**

16 (Legislative Remedy)

17 21.

18 If this court determines that Oregon's current statutory provisions governing civil
19 marriage violate Article I, section 20 in any respect, the court's judgment should maintain the
20 present statutory provisions for civil marriage and declare that Multnomah County must comply
21 with current statutes governing civil marriage until the Oregon legislature has had an opportunity
22 in its next regular session to fashion appropriate remedial legislation, or until another remedy is
23 ordered by the court.

24

25

26

1 the County has a continuing obligation to enforce Oregon's marriage license statutes in
2 accordance with their terms pending final resolution of this case.

3 27.


4 There is a present justiciable controversy between defendants and the County regarding
5 the continued enforcement of Oregon's marriage license statutes and the issuance of marriage
6 licenses to same-sex couples until the constitutionality of those statutes is finally resolved by the
7 Oregon courts. Pursuant to ORS 28.010 *et seq.*, declaratory relief is appropriate to resolve this
8 controversy.

9 WHEREFORE, having fully responded to Multnomah County's claim in intervention,
10 defendants pray for entry of judgment as follows: (1) declaring whether Oregon's current
11 statutes governing civil marriage violate Article I, section 20 in any respect; (2) affirming
12 defendants' actions that were taken in compliance with current statutory requirements pending
13 remedial legislation and/or final resolution of this case; (3) if Oregon's statutory provisions
14 governing civil marriage are found to be unconstitutional in any respect, maintaining the current
15 statutory provisions governing civil marriage for a reasonable time, ordering Multnomah County
16 to comply with those provisions, and giving the Oregon legislature a reasonable opportunity
17 during its next regular session to fashion appropriate remedial legislation before any other
18 remedy is ordered by the court; (4) denying any other relief on the claims asserted by Multnomah
19 County; and (5) awarding defendants their costs and disbursements incurred herein.

20 DATED this 12th day of April, 2004.

21 Respectfully submitted,

22 HARDY MYERS
23 Attorney General

24 
25 STEPHEN K. BUSHONG #85130
26 Attorney-in-Charge
Trial Attorney
Of Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on April 12, 2004, I served the foregoing DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM (In Response to Intervenor-Plaintiff Multnomah County's Claims in Intervention) upon the parties hereto by the method indicated below, and addressed to the following:

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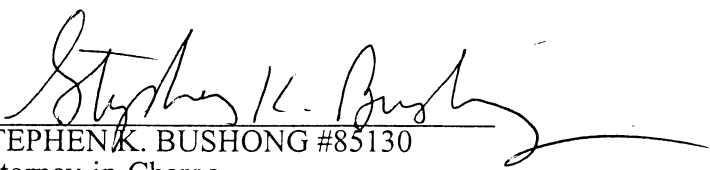
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