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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, an
Oregon not-for-profit corporation; and
AMERICAN CIVIL LIBERTIES UNION
OF OREGON, an Oregon not-for-profit
corporation,

Plaintiffs,

MULTNOMAH COUNTY, a political
subdivision of the state of Oregon,

Intervenor-Plaintiffs,

v.

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,

- and -

DEFENSE OF MARRIAGE COALITION,

Case No. 0403-03057

INTERVENOR-DEFENDANT
DEFENSE OF MARRIAGE
COALITION'S ANSWER IN
INTERVENTION AND
COUNTERCLAIMS

*(Declaratory Judgments Act - Declaratory
and Injunctive Relief; Attorney Fees)*

1 an assumed business name of OREGON)
FAMILY COUNCIL, an Oregon not-for-)
2 profit corporation; CECIL MICHAEL)
THOMAS; NANCY JO THOMAS; DAN)
3 MATES; and DICK JORDAN OSBORNE,)
Intervenor-Defendants.)

5 **INTRODUCTION**

6 Defendant-Intervenors Defense of Marriage Coalition (hereinafter “DOMC”) is a newly
7 formed umbrella organization opposed to both the process and the substance of the actions taken
8 by Multnomah County in issuing same sex marriage licenses in violation of ORS Chapter 106.
9 DOMC filed suit on March 5, 2004 and a petition for Mandamus on March 9, 2004 in opposition
10 to such actions, and now intervenes in this case for the same reasons.

11 DOMC seeks declarations from this Court that 1) the marriage statutes contained in ORS
12 Chapter 106 properly are interpreted as referring to a union between one man and one woman; 2)
13 that these statutes are not unconstitutional, since they represent a “clear historical exception” to
14 any reading of the Equal Privileges and Immunities Clause of Article I, Section 20 that would
15 suggest the statutes violate that Clause, such as Plaintiffs and Multnomah County offer in this
16 case. Marriage, as understood at common law and under the Oregon Territorial Statutes, would
17 naturally and obviously have been excepted from any reading of Article I section 20 that suggests
18 that such traditional definitions of marriage could conflict with that provision of the Constitution.
19 *See, e.g., State v. Henry*, 302 Or. 510, 523, 732 P.2d 9 (1987) (free expression right under Article
20 I, Section 8 and discussing historical exceptions); *State v. Robertson*, 293 Or. 402, 412, 649 P.2d
21 569 (1982) (same); *City of Nyssa v. Dufloth*, 184 Or. App. 631, 57 P.3d 161 (2002) (same); *State*
22 *ex rel. Hathaway v. Hart*, 300 Or. 231, 708 P.2d 1137 (1985) (jury trial right under Article I,
23 Section 17 and historical exceptions). Alternatively, DOMC seeks a declaration that traditional
24 notions of marriage are rooted in biological differences between men and women and therefore
25 do not conflict with Article 1 Section 20.

26 DOMC further seeks 3) a declaration that the actions of Multnomah County and its Chair

1 were outside their constitutional authority under Article I section 10, since a county only has
2 jurisdiction over matters of countywide concern, and marriage is a matter of statewide concern as
3 evidenced by the state's preemption of the subject through Chapter 106 of the Oregon Revised
4 Statutes, and 4) a declaration that the Multnomah County Chair was outside her authority in
5 changing County policy unilaterally. Finally, DOMC 5) seeks a declaration that the Multnomah
6 County Commissioners violated the Oregon Open Meetings Law in reaching the decision to issue
7 same sex marriage licenses. DOMC seeks injunctive relief in accordance with all their requests
8 for declaratory relief.

9 **ANSWER**

10 Defense of Marriage Coalition and Individual Intervenor-Defendants Admit, Deny, and
11 Allege As Follows:

12 1.

13 Intervenor-Defendants Defense of Marriage Coalition, an Assumed Business Name of
14 Oregon Family Council, an Oregon Not-for-profit Corporation; Cecil Michael Thomas; Nancy Jo
15 Thomas; Dan Mates; and Dick Jordan Osborne (hereinafter collectively referred to as "DOMC"
16 or "Intervenor-Defendants"), admit paragraphs 1 through 4 of Plaintiffs' complaint. Intervenor-
17 Defendants had filed several actions against the Multnomah County Commissioners and the
18 County, and had initial hearing dates pending, when they agreed to voluntarily relinquish those
19 actions to participate in this lawsuit. The intervention of Intervenor-Defendants in this case was
20 based on specific agreement and stipulation by all parties and intervenors to this litigation that
21 the Intervenor-Defendants had "an interest" in this suit sufficient to permit intervention under
22 ORCP 33C.

23 2.

24 Intervenor-Defendants are without information sufficient to admit or deny paragraph 5 of
25 Plaintiffs' complaint.

26 3.

1 Intervenor-Defendants deny paragraph 6 of Plaintiffs' complaint, as a bald legal
2 conclusion.

3 4.

4 Intervenor-Defendants deny that this court has jurisdiction under ORS 34.120(1), as
5 Plaintiffs have not filed a valid mandamus action. Otherwise, Intervenor-Defendants admit the
6 remainder of paragraph 7 of Plaintiffs' complaint.

7
8 5.

9 Intervenor-Defendants admit the legal conclusion contained in paragraph 8 of Plaintiffs'
10 complaint.

11 6.

12 Intervenor-Defendants are without information sufficient to admit or deny paragraphs 9
13 through 85 of Plaintiffs' complaint. To the extent that these paragraphs make any conclusions of
14 law, Intervenor-Defendants object to these statements.

15 7.

16 Intervenor-Defendants admit paragraphs 86 through 89 of Plaintiffs' complaint.

17 8.

18 Intervenor-Defendants deny the legal conclusion in paragraph 90 of Plaintiffs' complaint
19 that Defendant Woodward has a duty to record all marriages licensed and solemnized in the state
20 of Oregon, regardless of the legality of the marriages or the validity of the licenses.

21 9.

22 Intervenor-Defendants admit the legal conclusion contained in paragraph 91 of Plaintiffs'
23 complaint.

24
25 10.

26 Intervenor-Defendants deny that issuing marriage licenses to heterosexual couples only

1 presents any constitutional violation for reasons set forth below. Intervenor-Defendants deny that
2 Diane Linn had any authority whatsoever to rule on the constitutionality of a statewide statute
3 and deny that she had the authority under the Multnomah County Home Rule Charter to direct a
4 change in procedure for issuing marriage licenses. Intervenor-Defendants admit the remainder of
5 the factual allegations contained in paragraph 92 of Plaintiffs' complaint.

6 11.

7 Intervenor-Defendants are without information sufficient to admit or deny paragraph 93
8 of Plaintiffs' complaint.

9 12.

10 Intervenor-Defendants admit paragraphs 94 through 97 of Plaintiffs' complaint.

11 13.

12 Intervenor-Defendants are without information sufficient to admit or deny paragraphs 98
13 through 109 of Plaintiffs' complaint.

14 14.

15 Intervenor-Defendants admit paragraphs 111 and 112 of Plaintiffs' complaint and deny
16 paragraphs 113 through 116.

17 15.

18 Intervenor-Defendants admit paragraphs 118 and 119 of Plaintiffs' complaint and deny
19 paragraphs 120 through 123.

20 16.

21 Intervenor-Defendants are without information sufficient to admit or deny paragraphs 125
22 and 126 and deny paragraphs 127 through 130.

23 17.

24 Intervenor-Defendants are without information sufficient to admit or deny paragraphs 132
25 through 134 and deny paragraphs 135 through 138.

26

1 18.

2 Intervenor-Defendants have “an interest” in these proceedings and have intervened
3 permissively under ORCP 33C.
4

5 **FOR A FIRST AFFIRMATIVE DEFENSE AND COUNTERCLAIM**
6 **Against Plaintiffs’ First, Second, and Third Claims for Relief,**
7 **and against Intervenor-Plaintiff Multnomah County**
8 **DECLARATORY AND INJUNCTIVE RELIEF — CONSTITUTIONALITY OF ORS CHAPTER 106**

9 **COUNT ONE — WELL-ESTABLISHED HISTORICAL EXCEPTION**

10 19.

11 Intervenor-Defendants reallege paragraphs 1 through 18, above and incorporate as
12 admitted and denied the facts as set forth above and in Plaintiff’s complaint.

13 20.

14 Marriage existed prior to 1859 as a statutory provision of the Oregon Territory. Marriage
15 under common law and Oregon territorial law consisted exclusively as the union of one man and
16 one woman.

17 21.

18 The Oregon Constitution was ratified in 1859 and Oregon became a state of the Union in
19 that year. Article I, Section 20 was part of the original Oregon Constitution.

20 22.

21 The institution of marriage—understood and codified at common law and the territorial
22 statutes as between one man and one woman—was encompassed entirely by Oregon territorial
23 law on marriage that existed at the time of entering statehood.

24 23.

25 Laws existing at statehood that might otherwise arguably contradict a plain reading of a
26 Oregon constitutional provision are considered “historical exceptions” to the provision and are
properly exempt from any hyper-technical reading of a provision of the Oregon Constitution.

1 See, e.g., *State v. Henry*, 302 Or. 510, 523, 732 P.2d 9 (1987) (free expression right under Article
2 I, Section 8); *State v. Robertson*, 293 Or. 402, 412, 649 P.2d 569 (1982) (same); *City of Nyssa v.*
3 *Dufloth*, 184 Or. App. 631, 57 P.3d 161 (2002) (same); *State ex rel. Hathaway v. Hart*, 300 Or.
4 231, 708 P.2d 1137 (1985) (jury trial right under Article I, Section 17).

5 24.

6 For reasons set out in paragraphs 45 through 47, below, Intervenor-Defendants pray for a
7 declaration that ORS 106.010 be interpreted as requiring that marriages be between only one man
8 and one woman, and that such an interpretation is constitutional under Article I, Section 20 of the
9 Oregon Constitution.

10 25.

11 Intervenor-Defendants further pray for an injunction prohibiting Intervenor-Plaintiff
12 Multnomah County from interpreting ORS 106.010 as unconstitutional under Article I, Section
13 20. Intervenor-Defendants also pray this Court for an order voiding *ab initio* the actions of
14 Intervenor-Plaintiff Multnomah County, as they relate to issuing marriage licenses to pairs of
15 individuals of the same sex, and as they relate to any subsequent ceremonies by which such
16 individuals purported to be married.

17 26.

18 If successful on this claim for relief, Intervenor-Defendants pray this Court for reasonable
19 attorney fees pursuant to the rule of *Deras v. Myers*.

20
21 **COUNT TWO — FUNDAMENTAL BIOLOGICAL DIFFERENCES**

22 27.

23 Intervenor-Defendants reallege paragraphs 1 through 18, above and incorporate as
24 admitted and denied the facts as set forth above and in Plaintiff's complaint.

25 28.

26 Marriage is the basic social and biological institution of society, and has throughout

1 Western history been structured on the fundamental biological differences between men and
2 women. Therefore, marriage as defined statutorily as a union between one man and one woman
3 as husband and wife “reflects specific biological differences between men and women,” *Hewitt v.*
4 *SAIF*, 294 Or. 33, 46, 653 P.2d 970 (1982), and cannot be unconstitutional under Article I,
5 Section 20 of the Oregon Constitution.

6 29.

7 Intervenor-Defendants pray for a declaration that ORS 106.010 be interpreted as requiring
8 that marriages be between only one man and one woman, and that such an interpretation is
9 constitutional under Article I, Section 20 of the Oregon Constitution.

10 30.

11 Intervenor-Defendants further pray for an injunction prohibiting Intervenor-Plaintiff
12 Multnomah County from interpreting ORS 106.010 as unconstitutional under Article I, Section
13 20. Intervenor-Defendants also pray this Court for an order voiding *ab initio* the actions of
14 Intervenor-Plaintiff Multnomah County, as they relate to issuing marriage licenses to pairs of
15 individuals of the same sex, and as they relate to any subsequent ceremonies by which such
16 individuals purported to be married.

17 31.

18 If successful on this claim for relief, Intervenor-Defendants pray this Court for reasonable
19 attorney fees pursuant to the rule of *Deras v. Myers*.

20
21 **COUNT THREE — MARRIAGE ITSELF NOT A PRIVILEGE OR IMMUNITY**

22 32.

23 Intervenor-Defendants reallege paragraphs 1 through 18, above and incorporate as
24 admitted and denied the facts as set forth above and in Plaintiff’s complaint.

25 33.

26 Alternatively, the institution of marriage itself is not a “privilege or immunity” of the

1 State. Only the benefits and detriments appurtenant to the institution of marriage, as recognized
2 by the State, are privileges and immunities. Therefore, the statutory institution of “marriage,”
3 defined as the union between one man and one woman as husband and wife, is not implicitly or
4 explicitly unconstitutional under Article I, Section 20 of the Oregon Constitution.

5 34.

6 Intervenor-Defendants pray for a declaration that ORS 106.010 be interpreted as requiring
7 that marriages be between only one man and one woman, and that such an interpretation is
8 constitutional under Article I, Section 20 of the Oregon Constitution.

9 35.

10 Intervenor-Defendants further pray for an injunction prohibiting Intervenor-Plaintiff
11 Multnomah County from interpreting ORS 106.010 as unconstitutional under Article I, Section
12 20. Intervenor-Defendants also pray this Court for an order voiding *ab initio* the actions of
13 Intervenor-Plaintiff Multnomah County, as they relate to issuing marriage licenses to pairs of
14 individuals of the same sex, and as they relate to any subsequent ceremonies by which such
15 individuals purported to be married.

16 36.

17 If successful on this claim for relief, Intervenor-Defendants pray this Court for reasonable
18 attorney fees pursuant to the rule of *Deras v. Myers*.

19

20 **COUNT FOUR — MARRIAGE OPEN TO ALL; NO “RIGHT” TO MARRY PARTICULAR PERSON**

21

37.

22 Intervenor-Defendants reallege paragraphs 1 through 18, above and incorporate as
23 admitted and denied the facts as set forth above and in Plaintiff’s complaint.

24

38.

25 Marriage is open to each of the Plaintiffs within the terms of the statute. The institution
26 of marriage does not exclude any individual Plaintiff, but only the Plaintiffs *vis a vis* one another.

1 Therefore the traditional understanding of marriage does not exclude any of the Plaintiffs from
2 participation in the institution, it only limits their choice of spouse to a member of the opposite
3 sex, above age 17, and outside the statutory limits of consanguinity.

4 39.

5 Just as there is no right to marry anyone outside the other statutory requirements of age
6 and consanguinity, there is no right to marry outside of the opposite sex of each individual
7 Plaintiff.

8 40.

9 Intervenor-Defendants pray for a declaration that ORS 106.010 be interpreted as requiring
10 that marriages be between only one man and one woman, and that such an interpretation is
11 constitutional under Article I, Section 20 of the Oregon Constitution.

12 41.

13 Intervenor-Defendants further pray for an injunction prohibiting Intervenor-Plaintiff
14 Multnomah County from interpreting ORS 106.010 as unconstitutional under Article I, Section
15 20. Intervenor-Defendants also pray this Court for an order voiding *ab initio* the actions of
16 Intervenor-Plaintiff Multnomah County, as they relate to issuing marriage licenses to pairs of
17 individuals of the same sex, and as they relate to any subsequent ceremonies by which such
18 individuals purported to be married.

19 42.

20 If successful on this claim for relief, Intervenor-Defendants pray this Court for reasonable
21 attorney fees pursuant to the rule of *Deras v. Myers*.

22 ////

23 ////

24 ////

25 ////

26 ////

1 to issue marriage licenses to same-sex pairs.

2 47.

3 Intervenor-Defendants further pray for an injunction prohibiting Intervenor-Plaintiff
4 Multnomah County from interpreting ORS 106.010 as unconstitutional under Article I, Section
5 20. Intervenor-Defendants also pray this Court for an order voiding *ab initio* the actions of
6 Intervenor-Plaintiff Multnomah County, as they relate to issuing marriage licenses to pairs of
7 individuals of the same sex, and as they relate to any subsequent ceremonies by which such
8 individuals purported to be married.

9

10 **FOR A THIRD AFFIRMATIVE DEFENSE AND COUNTERCLAIM**
11 **Against Plaintiffs' First, Second, and Third Claims for Relief,**
12 **and against Intervenor-Plaintiff Multnomah County**
13 **DECLARATORY AND INJUNCTIVE RELIEF — NO CHARTER AUTHORITY FOR CHAIR TO CHANGE**
14 **MULTNOMAH COUNTY POLICY**

15 48.

16 Intervenor-Defendants reallege paragraphs 1 through 18, above and incorporate as
17 admitted and denied the facts as set forth above and in Plaintiff's complaint.

18 49.

19 The declaration and instruction to issue same-sex marriage licenses by Multnomah
20 County Chair Diane Linn enacted "a future rule of conduct" for the county, changing
21 longstanding county policy while violating ORS Chapter 106. Chair Linn also declared the
22 historical and uniform interpretation of Oregon's marriage statutes unconstitutional, and directed
23 County officials to take new action, allegedly pursuant to her constitutional opinion, all without
24 passage of an ordinance or a declaration by any court.

25 50.

26 MCHRC Section 6.10 sets out the powers granted to the Multnomah County Council
Chair. Establishment, reversal, or creation of new Multnomah County policy to ignore or violate
state statutes is not one of the powers granted to the Multnomah County Council Chair. Chair

1 Linn had no authority to change policy or enact legislation except through the means established
2 in the MCHRC.

3 51.

4 Chair Linn has publicly asserted—an evidentiary admission of a party opponent—that
5 her authority to enact the change in policy was based on her administrative authority under the
6 MCHRC. Chair Linn has no authority to enact ordinances or alter Multnomah County policy
7 unilaterally under the MCHRC. Chair Linn acted *ultra vires* the authority granted her as Chair
8 under the MCHRC, and her actions are void *ab initio*.

9 52.

10 Intervenor-Defendants pray for a declaration that Defendant Linn had no authority to
11 unilaterally change the policy of Multnomah County in issuing marriage licenses.

12 53.

13 Intervenor-Defendants further pray for an injunction prohibiting Intervenor-Plaintiff
14 Multnomah County from issuing same-sex marriage licenses under the instruction from Chair
15 Linn. Intervenor-Defendants also pray this Court for an order voiding *ab initio* the actions of
16 Intervenor-Plaintiff Multnomah County, as they relate to issuing marriage licenses to pairs of
17 individuals of the same sex, and as they relate to any subsequent ceremonies by which such
18 individuals purported to be married.

19 54.

20 If successful on this claim for relief, Intervenor-Defendants pray this Court for reasonable
21 attorney fees pursuant to the rule of *Deras v. Myers*.

22 ////

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26 ////

1 voiding *ab initio* the actions of Intervenor-Plaintiff Multnomah County, as they relate to issuing
2 marriage licenses to same sex pairs, and as they relate to any subsequent ceremonies by which
3 such individuals purported to be married.

4 58.

5 If successful on this claim for relief, Intervenor-Defendants pray this Court for reasonable
6 attorney fees pursuant to the rule of *Deras v. Myers*.

7

8 **FOR A FIFTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM**
9 Against Plaintiffs' First, Second, and Third Claims for Relief,
10 and against Intervenor-Plaintiff Multnomah County
11 PUBLIC MEETINGS LAW — ACTION TAKEN IN VIOLATION OF PUBLIC MEETINGS LAW IS
12 VOIDABLE OR VOID

11 59.

12 Intervenor-Defendants reallege paragraphs 1 through 18, above and incorporate as
13 admitted and denied the facts as set forth above and in Plaintiff's complaint.

14 60.

15 The change in longstanding Multnomah County and State policy and practice, and the
16 decision not to abide by the provisions of ORS Chapter 106, described in paragraph 10 (and by
17 incorporation paragraph 92 of Plaintiffs' complaint), above, is a "decision" within the meaning of
18 ORS 192.610(1). *Legislation* is defined generally, in pertinent part as "[f]ormulation of rule for
19 the future." Black's Law Dictionary 899 (6th ed. 1990). *Rule* is defined generally, in part, as a
20 "principle or regulation set up by authority, prescribing or directing action or forbearance[.]" *Id.*
21 at 1331. Under the Multnomah County Home Rule Charter (MCHRC), Section 5.10, all
22 legislative actions of the Multnomah County Council are to occur through the passage of
23 ordinances. (A copy of the relevant sections from the MCHRC is attached as Exhibit 1 for the
24 Court's reference.) Section 5.30 generally requires two readings on different days at least six
25 days apart to enact bills into ordinances.

26 ////

1 61.

2 Four members of the Multnomah County Council—a quorum of that governing body—
3 reached the decision described in paragraph 10, above, without any public meeting, Council vote,
4 or notice of executive session. A quorum making a decision without a public meeting is a *prima*
5 *facie* violation of the Oregon Public Meetings Law.

6 62.

7 On information and belief, Plaintiffs further allege that a quorum of the Multnomah
8 County Council, in the persons of at least three of the four Multnomah County Commissioners,
9 sequentially or contemporaneously discussed this matter via telephone, electronic means of
10 communication, or otherwise, and thereby jointly “deliberated” toward the decision described in
11 paragraphs 4 and 6, above, as the phrase “deliberation” is used in ORS 192.630(2). Electronic
12 communication—oral or written—among a quorum of a governing body is a “meeting” under
13 ORS 192.610(5) and ORS 192.670. Such a meeting or deliberation as occurred among
14 Defendant Commissioners was contrary to the policy and provisions of the Oregon Public
15 Meetings Law, ORS 192.610 to ORS 192.695.

16 63.

17 Additionally, by raising a matter of important public policy with one or more of the other
18 Defendant Commissioners, Chair Linn effectively instituted one or more unauthorized and
19 unannounced executive sessions on this matter, or called one or more special meetings without
20 the legally required notice to all members of the Multnomah County Council, the news media , or
21 the general public. These meetings occurred contrary to the provisions of the Oregon Public
22 Meetings Law, ORS 192.610 to ORS 192.695. Multnomah County Commissioners deliberated
23 toward the decision described in paragraphs 4 and 6, above, at or as a result of these improper
24 executive sessions or special meetings.

25 64.

26 As a final independent violation of the Oregon Public Meetings Law, the conduct of

1 Multnomah County Commissioners wholly abrogated the policy set forth in ORS 192.620, which
2 states, “The Oregon form of government requires an informed public aware of the deliberations
3 and decisions of governing bodies and the information upon which such decisions were made. It
4 is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly.”
5 Such abrogation of the public meeting policy is a further violation of the Oregon Public Meetings
6 Law, ORS 192.610 to ORS 192.695.

7 65.

8 Pursuant to ORS 192.680(1), the decision of the Defendant Commissioners, as described
9 in paragraph 10, above, and taken in knowing defiance of the specific provisions of the Oregon
10 Public Meetings Law is voidable *ab initio*.

11 66.

12 Plaintiffs assert, on information and belief, that these violations of the Oregon Public
13 Meetings Law were made with intentional disregard or through willful misconduct by Defendant
14 Commissioners. If these violations were the result of intentional disregard or willful misconduct,
15 the decision of the Defendant Commissioners, as described in paragraph 10, above, is void *ab*
16 *initio* and may not be reinstated under ORS 192.680(3) (“the court shall void the decision of the
17 governing body”).

18 67.

19 The Oregon Public Meetings Law allows a court to impose preliminary injunctive relief,
20 such as a preliminary or permanent injunction, upon a *prima facie* showing of a violation of the
21 Public Meetings Law. Intervenor-Defendants have made such a showing in this counterclaim.

22 68.

23 Plaintiffs are entitled to reasonable attorney fees from Intervenor-Plaintiff Multnomah
24 County under ORS 192.680.

25 ////

26 ////

1 recovery on the theory of an independent right to privacy or personal autonomy under the Oregon
2 Constitution.

3
4 **WHEREFORE**, Intervenor-Defendants pray for judgment as follows:

5 1. Against all of Plaintiffs' claims, that they take nothing from this action, and that
6 their claims fail in their entirety;

7 2. For a declaration from this Court that ORS Chapter 106—interpreted as allowing
8 marriage only between one man and one woman—is constitutional under Article I, Section 20,
9 for an order voiding *ab initio* all actions taken pursuant to any contrary interpretation, and for an
10 injunction against Intervenor-Plaintiff Multnomah County preventing it from reinstating a policy
11 of issuing or authorizing the issuance of marriage licenses to pairs of individuals of the same
12 sex;

13 3. For a declaration of this Court that Intervenor-Plaintiff Multnomah County acted
14 in violation of Article VI, Section 10 of the Oregon Constitution in presuming to decide the
15 constitutionality of ORS Chapter 106 and to issue same-sex marriage licenses, an order and an
16 injunction against Intervenor-Plaintiff Multnomah County from issuing or authorizing the
17 issuance of marriage licenses to pairs of individuals of the same sex, and an order that the actions
18 of Intervenor-Plaintiff Multnomah County are void *ab initio*;

19 4. For a declaration that the Multnomah County Council Chair does not have the
20 authority to create prospective rules for governing the County other than through the meeting
21 procedure established in the Multnomah County Home Rule Charter, a declaration that the
22 Multnomah County Council Chair does not have the power to alter policy under her
23 administrative authority to violate State statutes, and for an order declaring the actions of
24 Defendant Linn are void *ab initio*;

25 5. For a declaration that the statutory definition of marriage is only of a union
26 between one male and one female as husband and wife, for an injunction prohibiting Defendants

1 from violating ORS 106.010 to issue licenses to pairs of individuals of the same sex, and for an
2 order that makes any action taken by Defendants pursuant to their interpretation of ORS 106.010
3 void *ab initio*;

4 6. For a declaration of this Court that Intervenor-Plaintiff Multnomah County acted
5 in violation of the Oregon Public Meetings Law, a restraining order and an injunction against
6 Intervenor-Plaintiff Multnomah County from issuing or authorizing the issuance of marriage
7 licenses to pairs of individuals of the same sex, and an order that the actions of Intervenor-
8 Plaintiff Multnomah County are void *ab initio*;

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1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing Answer, Affirmative Defenses and
3 Counterclaims upon:

4 Lynn R. Nakamoto, Esq.
5 Kenneth Y. Choe, Esq.
6 MARKOWITZ HERBOLD, et al
1211 SW 5th Avenue, Suite 3000
Portland, OR 97204

7 Of Attorneys for the Plaintiff

8 Agnes Sowle, Esq.
9 Christopher Crean, Esq.
10 Office of the Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214

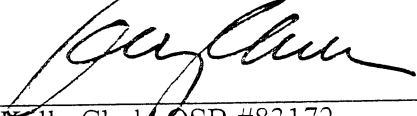
11 Of Attorneys for Intervenor-Plaintiff

12 Hardy Myers, Esq.
13 Stephen Bushong, Esq.
14 Department of Justice
Attorney General's Office
1162 Court Street, NE
15 Salem, OR 97301

16 Of Attorneys for Defendant

17 by mailing a copy thereof, contained in a sealed envelope, with postage thereon prepaid,
18 addressed to said attorney, and deposited in the United States Post Office at Portland, Oregon on
19 the 29th day of March, 2004.

20 O'DONNELL & CLARK, LLP

21 

22 Kelly Clark, OSB #83172
23 Kristian Roggendorf, OSB #01399
24 Of Attorneys for Intervenor-Defendant
25
26

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