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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

Celia CASTLE and Brenda Bauer; Pamela Coffey and Valerie Tibbett; Gary Murell and Michael Gyde; Christina Gamache and Judith Fleissner; Kevin Chestnut and Curtis Crawford; Jeff Kingsbury and Alan Fuller; Lauri Conner and Leja Wright; Allan Henderson and John Berquist; Marge Ballack and Diane Lantz; Tom Duke and Phuoc Lam; and Kathy and Karrie Cunningham,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

No.

COMPLAINT FOR
DECLARATORY RELIEF

Plaintiffs Celia Castle and Brenda Bauer, Pamela Coffey and Valerie Tibbett, Gary Murell and Michael Gyde, Christina Gamache and Judith Fleissner, Kevin Chestnut and Curtis Crawford, Jeff Kingsbury and Alan Fuller, Lauri Conner and Leja Wright, Allan Henderson and John Berquist, Marge Ballack and Diane Lantz, Tom Duke and Phuoc Lam, and Kathy and Karrie Cunningham (collectively the "Plaintiffs") allege as follows:

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I INTRODUCTION

1. Plaintiffs are eleven couples who wish to wed in Washington or to have their marriages recognized under Washington law. The State of Washington legally bars Plaintiffs from marrying, based on Plaintiffs' gender and sexual orientation. The State also refuses to recognize legal marriages performed in other jurisdictions based on Plaintiffs' gender and sexual orientation. This arbitrary and prejudicial prohibition, in turn, deprives Plaintiffs of the full array of rights, benefits, and privileges available to other Washington married couples. Accordingly, Plaintiffs respectfully request this Court to nullify the State's discriminatory marriage restrictions and enforce the constitutional protections of liberty, equality, privacy, autonomy and human dignity guaranteed to all Washington residents.

II PARTIES

13 2. Celia Castle and Brenda Bauer are residents of King County, Washington. Celia and Brenda have been together as a couple for sixteen years. Celia is a firefighter, and Brenda is an attorney. They are the parents of two daughters, ages 8 and 11. Although they were married in Portland, Oregon on March 16, 2004, Brenda would not be treated as Celia's survivor under Washington law if Celia were to die in the line of duty as a firefighter. Celia and Brenda want Washington to recognize that they are married. In the alternative, Celia and Brenda want to be married in Washington.

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20 3. Kevin Chestnut and Curtis Crawford are residents of King County, Washington. Kevin and Curtis have been together for nineteen years, and were married in British Columbia, Canada on October 23, 2003. Kevin is an executive at a software company, and Curtis is a freelancer in photography and film. When Kevin's appendix burst a few years ago, the hospital would not let Curtis make emergency health care decisions for him without obtaining verification from Kevin's mother on the east coast. And though Curtis can get health benefits through Kevin's employer, Kevin is taxed on

1 these benefits whereas his co-workers in opposite-sex marriages are not. Even though
2 they are now married, Kevin and Curtis continue to face uncertainty regarding whether
3 their relationship will be respected in medical and other settings. Kevin and Curtis want
4 Washington to recognize that they are married.

5 4. Pamela Coffey and Valerie Tibbett are residents of San Juan County,
6 Washington. They have been in a committed, sustaining, loving relationship for thirty-
7 two years. Valerie is a retired Administrative Law Judge, and Pamela is a photographer.
8 Pamela and Valerie have incurred considerable expense drafting legal documents intended
9 to protect their relationship, yet continue to be treated differently from married couples.
10 For example, when Pamela was recently airlifted to a hospital on the mainland, she and
11 Valerie faced anxiety and uncertainty because they did not have copies of documents
12 confirming their relationship. Pamela and Valerie want to be married in Washington.

13 5. Gary Murell and Michael Gyde are residents of Grays Harbor County,
14 Washington. Gary and Michael have been together as a couple for twenty-five years.
15 Gary is a professor, and Michael is an antiques dealer. Gary and Michael want to marry in
16 order to ensure that they will be able to take care of each other and that they will be
17 adequately protected as they get older. Gary and Michael want to be married in
18 Washington.

19 6. Christina Gamache and Judith Fleissner are residents of King County,
20 Washington. Chris and Judy, who have been together as a couple for fourteen years, were
21 married in Portland, Oregon on March 19, 2004. They are the parents of two children.
22 Judy is a police officer and Chris is an attorney. Judy is not treated the same as her
23 fellow police officers. For example, Judy was also not able to use family leave like other
24 officers when their daughter was born, and Chris would not be considered her spouse if
25 Judy were to die in the line of duty. Judy and Chris want Washington to recognize that
they are married. In the alternative, Judy and Chris want to be married in Washington.

1 7. Jeff Kingsbury and Alan Fuller are residents of Thurston County,
2 Washington. They have been together as a couple for twelve years. Jeff is the operator of
3 a community theatre in Olympia, and Alan is a banker. Although Jeff and Alan's
4 relationship is respected and affirmed by each other and by their families and friends, they
5 desire to have their relationship recognized by the State, and to make that option available
6 to all couples regardless of their gender and sexual orientation. Jeff and Alan want to be
7 married in Washington.

8 8. Lauri Conner and Leja Wright are residents of King County, Washington.
9 They have been together for three years. Conner is a high school English teacher in
10 Seattle, and Leja is a medical assistant. They intend to have children together, and want
11 those children to be part of a loving family with two married parents. As an interracial
12 couple, Conner and Leja are particularly concerned that the State not impose any legal
13 stigma on their relationship. Conner and Leja want to be married in Washington.

14 9. Allan Henderson and John Berquist are residents of King County,
15 Washington. Allan and John have been together for twenty-three years. Allan is a
16 consultant focusing on hunger, health, and development in the third world. John is a
17 nurse. Although Allan and John have incurred considerable legal expenses in drafting
18 wills and other documents intended to memorialize and protect their relationship, those
19 efforts cannot substitute for the unique recognition, obligations, and benefits that are
20 automatically extended to married couples. Allan and John want to be married in
21 Washington.

22 10. Marge Ballack and Diane Lantz are residents of Spokane County,
23 Washington. Marge and Diane have shared their lives together for twenty-five years.
24 Marge is a designer and Diane works at a publishing company. They were married in
25 British Columbia, Canada on July 21, 2003. Marge and Diane are treated as married by

1 their children and grandchildren, but not by their government. Marge and Diane want
2 Washington to recognize that they are married.

3 11. Plaintiffs Tom Duke and Phuoc Lam are residents of Jefferson County,
4 Washington. Tom and Phuoc have been together for six years, and operate a business
5 together in Port Townsend. Tom is also a clinical psychologist. Tom is a veteran who
6 served in Vietnam as an interpreter for the Navy, while Phuoc came to the United States
7 as a Vietnamese refugee. Tom and Phuoc love each other, and believe that the State
8 should not limit marriage on the basis of race, gender, or sexual orientation. Tom and
9 Phuoc want to be married in Washington.

10 12. Kathy Cunningham and Karrie Cunningham are residents of Pierce
11 County, Washington. The Cunninghams have been together for eleven years, and have
12 raised Kathy's 18 year old son together. They are a family. In February 2004, Kathy and
13 Karrie were married in San Francisco, California. The Cunninghams want Washington to
14 recognize that they are married. In the alternative, Kathy and Karrie want to be married in
15 Washington.

16 13. Defendant, State of Washington, is responsible for enforcing and defending
17 the laws of the State of Washington including the Washington Constitution.

18 III JURISDICTION AND VENUE

19 14. This Court has jurisdiction over the parties to and the subject matter of this
20 action, and venue is proper in Thurston County, Washington.

21 15. Pursuant to RCW 7.24.110, Plaintiffs have arranged for timely service of
22 process on the Washington State Attorney General.

23 IV FACTS

24 16. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

25 17. Under Washington law, married couples enjoy a myriad of benefits, rights,
and privileges derived from their marital status, including but not limited to: community

1 property rights, including the right to intestate spousal inheritance; evidentiary privileges;
2 access to state family courts; parental rights, including the right to make educational and
3 health care decisions for their children; joint assessment of income and needs for
4 determination of state assistance programs; access during health care emergencies and the
5 ability to participate in health care decisions; and, authority to make decisions regarding
6 funeral arrangements.

7 18. The State's refusal to permit Plaintiffs to marry and to recognize Plaintiffs'
8 legal marriages in other jurisdictions because of their gender and sexual orientation
9 stigmatizes Plaintiffs and their relationships, and relegates Plaintiffs to a status as second-
10 class citizens. Thus, Plaintiffs cannot enjoy full and equal rights unless they are permitted
11 to marry in Washington, or entitled to recognition of their marriages legally performed in
12 other jurisdictions.

13 19. RCW 26.04.010 (1), however, currently provides that:

14 Marriage is a civil contract between a male and a female
15 who have each attained the age of eighteen years, and who
16 are otherwise capable.

17 20. RCW 26.04.020(c) prohibits marriage "[w]hen the parties are other than a
18 male and a female."

19 21. Washington law further prohibits the recognition of marriages legally
20 performed in other jurisdictions if the parties are other than a male and a female.

21 22. Those couples, such as Plaintiffs, that the State prohibits from marrying or
22 whose legal marriages in other jurisdictions are not recognized by the State are, therefore,
23 unconstitutionally denied benefits, rights, and privileges derived from the legal status of
24 marriage.

25 V CAUSE OF ACTION: DECLARATORY JUDGMENT

23. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

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CONST. ART. I, § 3

32. Const. Art. I, § 3 provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.”

33. State restrictions that deny the right to marry or the right to have a legal marriage performed in other jurisdictions recognized based upon gender and sexual orientation deny due process of law under Const. Art. I, § 3.

34. Because the State’s marriage restrictions violate Const. Art. I, §3, Plaintiffs are entitled to a judgment declaring such restrictions unconstitutional and void.

CONST. ART. I, § 7

35. Const. Art. I, § 7 provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

36. State restrictions that deny a right to marry or a right to have a legal marriage performed in other jurisdictions recognized based upon gender and sexual orientation infringe upon rights of privacy protected by Const. Art. I, § 7.

37. Because the State’s marriage restrictions violate Const. Art. I, §7, Plaintiffs are entitled to a judgment declaring such restrictions unconstitutional and void.

CONST. ART. I, § 30

38. Const. Art. I, § 30 provides that “[t]he enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.”

39. State restrictions that deny the right to marry or the right to have a legal marriage performed in other jurisdictions recognized based upon gender and sexual orientation infringe upon rights identified and protected by Const. Art. I, § 30.

40. Because the State’s marriage restrictions violate Const. Art. I, §30, Plaintiffs are entitled to a judgment declaring such restrictions unconstitutional and void.

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CONST. ART. I, § 32

41. Const. Art. I, § 32 provides that a “frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.”

42. State restrictions that deny the right to marry or the right to have a legal marriage performed in other jurisdictions recognized based upon gender and sexual orientation infringe upon rights identified and protected by Const. Art. I, § 32.

43. Because the State’s marriage restrictions violate Const. Art. I, §32, Plaintiffs are entitled to a judgment declaring such restrictions unconstitutional and void.

VI ENTITLEMENT TO DECLARATORY RELIEF

44. For reasons including but not limited to those stated herein, an actual dispute exists between Plaintiffs and the State, which parties have genuine and opposing interests, which interests are direct and substantial, and of which a judicial determination will be final and conclusive.

45. Plaintiffs’ application for marriage licenses in their respective counties would be futile.

46. Plaintiffs are, therefore, entitled to a declaratory judgment that the State’s marriage restrictions based on gender and sexual orientation are unconstitutional, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

VII PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for the following relief:

47. Entry of a declaratory judgment that the State’s marriage restrictions based on gender and sexual orientation violate Article I, §§ 3, 7, 12, 30, and 32 and Article XXXI, § 1 of Washington Constitution;

1 48. Entry of a declaratory judgment that and the State's marriage restrictions
2 based on gender and sexual orientation are void;

3 49. Such other and further relief as may follow from the entry of a declaratory
4 judgment;

5 50. Reasonable attorney's fees, expenses and costs, to the fullest extent
6 allowed by law and equity; and

7 51. Any further relief as this Court may deem necessary and proper.

8 DATED this 1st day of April, 2004.

9 Respectfully submitted,

10 PRESTON GATES & ELLIS LLP

 DAVIS WRIGHT TREMAINE LLP

11
12 By _____
13 Paul J. Lawrence, WSBA # 13557
14 Matthew J. Segal, WSBA # 29797
 Attorneys for Plaintiffs
 On behalf of the ACLU of Washington

 By _____
 Roger A. Leishman, WSBA # 19971
 Jennifer K.T. Warner, WSBA # 32910
 Attorneys for Plaintiffs
 On behalf of the ACLU of Washington

15 AMERICAN CIVIL LIBERTIES UNION OF
16 WASHINGTON

 STOKES LAWRENCE PS

17
18 By _____
19 Aaron H. Caplan, WSBA # 22525
 Attorney for Plaintiffs
 On behalf of the ACLU of Washington

 By _____
 Karolyn A. Hicks, WSBA # 30418
 Attorney for Plaintiffs
 On behalf of the ACLU of Washington

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
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Celia CASTLE and Brenda Bauer; Pamela Coffey and Valerie Tibbett; Gary Murell and Michael Gyde; Christina Gamache and Judith Fleissner; Kevin Chestnut and Curtis Crawford; Jeff Kingsbury and Alan Fuller; Lauri Conner and Leja Wright; Allan Henderson and John Berquist; Marge Ballack and Diane Lantz; Tom Duke and Phuoc Lam; and Kathy and Karrie Cunningham,

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I INTRODUCTION

1. Plaintiffs are eleven couples who wish to wed in Washington or to have their marriages recognized under Washington law. The State of Washington legally bars Plaintiffs from marrying, based on Plaintiffs' gender and sexual orientation. The State also refuses to recognize legal marriages performed in other jurisdictions based on Plaintiffs' gender and sexual orientation. This arbitrary and prejudicial prohibition, in turn, deprives Plaintiffs of the full array of rights, benefits, and privileges available to other Washington married couples. Accordingly, Plaintiffs respectfully request this Court to nullify the State's discriminatory marriage restrictions and enforce the constitutional protections of liberty, equality, privacy, autonomy and human dignity guaranteed to all Washington residents.

II PARTIES

13 2. Celia Castle and Brenda Bauer are residents of King County, Washington. Celia and Brenda have been together as a couple for sixteen years. Celia is a firefighter, and Brenda is an attorney. They are the parents of two daughters, ages 8 and 11. Although they were married in Portland, Oregon on March 16, 2004, Brenda would not be treated as Celia's survivor under Washington law if Celia were to die in the line of duty as a firefighter. Celia and Brenda want Washington to recognize that they are married. In the alternative, Celia and Brenda want to be married in Washington.

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1 these benefits whereas his co-workers in opposite-sex marriages are not. Even though
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8 Pamela and Valerie have incurred considerable expense drafting legal documents intended
9 to protect their relationship, yet continue to be treated differently from married couples.
10 For example, when Pamela was recently airlifted to a hospital on the mainland, she and
11 Valerie faced anxiety and uncertainty because they did not have copies of documents
12 confirming their relationship. Pamela and Valerie want to be married in Washington.

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17 adequately protected as they get older. Gary and Michael want to be married in
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24 officers when their daughter was born, and Chris would not be considered her spouse if
25 Judy were to die in the line of duty. Judy and Chris want Washington to recognize that
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1 7. Jeff Kingsbury and Alan Fuller are residents of Thurston County,
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3 a community theatre in Olympia, and Alan is a banker. Although Jeff and Alan's
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5 desire to have their relationship recognized by the State, and to make that option available
6 to all couples regardless of their gender and sexual orientation. Jeff and Alan want to be
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9 They have been together for three years. Conner is a high school English teacher in
10 Seattle, and Leja is a medical assistant. They intend to have children together, and want
11 those children to be part of a loving family with two married parents. As an interracial
12 couple, Conner and Leja are particularly concerned that the State not impose any legal
13 stigma on their relationship. Conner and Leja want to be married in Washington.

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18 wills and other documents intended to memorialize and protect their relationship, those
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24 Marge is a designer and Diane works at a publishing company. They were married in
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2 Washington to recognize that they are married.

3 11. Plaintiffs Tom Duke and Phuoc Lam are residents of Jefferson County,
4 Washington. Tom and Phuoc have been together for six years, and operate a business
5 together in Port Townsend. Tom is also a clinical psychologist. Tom is a veteran who
6 served in Vietnam as an interpreter for the Navy, while Phuoc came to the United States
7 as a Vietnamese refugee. Tom and Phuoc love each other, and believe that the State
8 should not limit marriage on the basis of race, gender, or sexual orientation. Tom and
9 Phuoc want to be married in Washington.

10 12. Kathy Cunningham and Karrie Cunningham are residents of Pierce
11 County, Washington. The Cunninghams have been together for eleven years, and have
12 raised Kathy's 18 year old son together. They are a family. In February 2004, Kathy and
13 Karrie were married in San Francisco, California. The Cunninghams want Washington to
14 recognize that they are married. In the alternative, Kathy and Karrie want to be married in
15 Washington.

16 13. Defendant, State of Washington, is responsible for enforcing and defending
17 the laws of the State of Washington including the Washington Constitution.

18 III JURISDICTION AND VENUE

19 14. This Court has jurisdiction over the parties to and the subject matter of this
20 action, and venue is proper in Thurston County, Washington.

21 15. Pursuant to RCW 7.24.110, Plaintiffs have arranged for timely service of
22 process on the Washington State Attorney General.

23 IV FACTS

24 16. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

25 17. Under Washington law, married couples enjoy a myriad of benefits, rights,
and privileges derived from their marital status, including but not limited to: community

1 property rights, including the right to intestate spousal inheritance; evidentiary privileges;
2 access to state family courts; parental rights, including the right to make educational and
3 health care decisions for their children; joint assessment of income and needs for
4 determination of state assistance programs; access during health care emergencies and the
5 ability to participate in health care decisions; and, authority to make decisions regarding
6 funeral arrangements.

7 18. The State's refusal to permit Plaintiffs to marry and to recognize Plaintiffs'
8 legal marriages in other jurisdictions because of their gender and sexual orientation
9 stigmatizes Plaintiffs and their relationships, and relegates Plaintiffs to a status as second-
10 class citizens. Thus, Plaintiffs cannot enjoy full and equal rights unless they are permitted
11 to marry in Washington, or entitled to recognition of their marriages legally performed in
12 other jurisdictions.

13 19. RCW 26.04.010 (1), however, currently provides that:

14 Marriage is a civil contract between a male and a female
15 who have each attained the age of eighteen years, and who
16 are otherwise capable.

17 20. RCW 26.04.020(c) prohibits marriage "[w]hen the parties are other than a
18 male and a female."

19 21. Washington law further prohibits the recognition of marriages legally
20 performed in other jurisdictions if the parties are other than a male and a female.

21 22. Those couples, such as Plaintiffs, that the State prohibits from marrying or
22 whose legal marriages in other jurisdictions are not recognized by the State are, therefore,
23 unconstitutionally denied benefits, rights, and privileges derived from the legal status of
24 marriage.

25 **V CAUSE OF ACTION: DECLARATORY JUDGMENT**

23. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

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CONST. ART. I, § 3

32. Const. Art. I, § 3 provides that “[n]o person shall be deprived of life, liberty, or property, without due process of law.”

33. State restrictions that deny the right to marry or the right to have a legal marriage performed in other jurisdictions recognized based upon gender and sexual orientation deny due process of law under Const. Art. I, § 3.

34. Because the State’s marriage restrictions violate Const. Art. I, §3, Plaintiffs are entitled to a judgment declaring such restrictions unconstitutional and void.

CONST. ART. I, § 7

35. Const. Art. I, § 7 provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

36. State restrictions that deny a right to marry or a right to have a legal marriage performed in other jurisdictions recognized based upon gender and sexual orientation infringe upon rights of privacy protected by Const. Art. I, § 7.

37. Because the State’s marriage restrictions violate Const. Art. I, §7, Plaintiffs are entitled to a judgment declaring such restrictions unconstitutional and void.

CONST. ART. I, § 30

38. Const. Art. I, § 30 provides that “[t]he enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.”

39. State restrictions that deny the right to marry or the right to have a legal marriage performed in other jurisdictions recognized based upon gender and sexual orientation infringe upon rights identified and protected by Const. Art. I, § 30.

40. Because the State’s marriage restrictions violate Const. Art. I, §30, Plaintiffs are entitled to a judgment declaring such restrictions unconstitutional and void.

1 **CONST. ART. I, § 32**

2 41. Const. Art. I, § 32 provides that a “frequent recurrence to fundamental
3 principles is essential to the security of individual right and the perpetuity of free
4 government.”

5 42. State restrictions that deny the right to marry or the right to have a legal
6 marriage performed in other jurisdictions recognized based upon gender and sexual
7 orientation infringe upon rights identified and protected by Const. Art. I, § 32.

8 43. Because the State’s marriage restrictions violate Const. Art. I, §32,
9 Plaintiffs are entitled to a judgment declaring such restrictions unconstitutional and void.

10 **VI ENTITLEMENT TO DECLARATORY RELIEF**

11 44. For reasons including but not limited to those stated herein, an actual
12 dispute exists between Plaintiffs and the State, which parties have genuine and opposing
13 interests, which interests are direct and substantial, and of which a judicial determination
14 will be final and conclusive.

15 45. Plaintiffs’ application for marriage licenses in their respective counties
16 would be futile.

17 46. Plaintiffs are, therefore, entitled to a declaratory judgment that the State’s
18 marriage restrictions based on gender and sexual orientation are unconstitutional, as well
19 as such other and further relief as may follow from the entry of such a declaratory
20 judgment.

21 **VII PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully pray for the following relief:

23 47. Entry of a declaratory judgment that the State’s marriage restrictions based
24 on gender and sexual orientation violate Article I, §§ 3, 7, 12, 30, and 32 and Article
25 XXXI, § 1 of Washington Constitution;

1 48. Entry of a declaratory judgment that and the State's marriage restrictions
2 based on gender and sexual orientation are void;

3 49. Such other and further relief as may follow from the entry of a declaratory
4 judgment;

5 50. Reasonable attorney's fees, expenses and costs, to the fullest extent
6 allowed by law and equity; and

7 51. Any further relief as this Court may deem necessary and proper.

8 DATED this 1st day of April, 2004.

9 Respectfully submitted,

10 PRESTON GATES & ELLIS LLP

DAVIS WRIGHT TREMAINE LLP

11
12 By _____
13 Paul J. Lawrence, WSBA # 13557
14 Matthew J. Segal, WSBA # 29797
15 Attorneys for Plaintiffs
16 On behalf of the ACLU of Washington

By _____
17 Roger A. Leishman, WSBA # 19971
18 Jennifer K.T. Warner, WSBA # 32910
19 Attorneys for Plaintiffs
20 On behalf of the ACLU of Washington

21 AMERICAN CIVIL LIBERTIES UNION OF
22 WASHINGTON

STOKES LAWRENCE PS

23
24 By _____
25 Aaron H. Caplan, WSBA # 22525
 Attorney for Plaintiffs
 On behalf of the ACLU of Washington

By _____
 Karolyn A. Hicks, WSBA # 30418
 Attorney for Plaintiffs
 On behalf of the ACLU of Washington