

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

WHITEWOOD, *et al.*,

Plaintiffs,

v.

WOLF, *et al.*,

Defendants.

Civil Action

No. 13-1861-JEJ

**PLAINTIFFS' STATEMENT OF
UNCONTESTED MATERIAL FACTS**

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PX-02	Expert report of Lenore F. Carpenter, J.D.	Carpenter
PX-03	Expert report of George Chauncey, Ph.D.	Chauncey
PX-04	Expert report of Nancy F. Cott, Ph.D.	Cott
PX-05	Expert report of Michael E. Lamb, Ph.D.	Lamb
PX-06	Expert report of Letitia Anne Peplau, Ph.D.	Peplau
PX-07	Declaration of Deborah Whitewood with exhibits PX-07-A through PX-07-F	D. Whitewood
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PX-09	Declaration of Fredia Hurdle	F. Hurdle
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PX-11	Declaration of Edwin Hill with exhibits PX-11-A through PX-11-C	Hill

¹Information subject to Federal Rule of Civil Procedure 5.2 and other confidential information relating to Plaintiffs and third parties has been redacted from the exhibits to Plaintiffs' declarations (PX-07 through PX-31). Unredacted versions of these documents were produced to Defendants in discovery, and Plaintiffs will provide unredacted versions to the Court upon request.

Exhibit No.	Description	Text Reference
PX-12	Declaration of David Palmer	Palmer
PX-13	Declaration of Heather Poehler with exhibits PX-13-A through PX-13-H	H. Poehler
PX-14	Declaration of Kath Poehler	K. Poehler
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PX-16	Declaration of Len Rieser	Rieser
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PX-18	Declaration of Diana Polson	Polson
PX-19	Declaration of Angela Gillem with exhibits PX-19-A through PX-19-D	Gillem
PX-20	Declaration of Gail Lloyd	Lloyd
PX-21	Declaration of Helena Miller	Miller
PX-22	Declaration of Dara Raspberry with exhibits PX-22-A through PX-22-H	Raspberry
PX-23	Declaration of Ron Gebhardtsbauer	Gebhardtsbauer
PX-24	Declaration of Gregory Wright with exhibits PX-24-A through PX-24-D	Wright
PX-25	Declaration of Julia Lobur with exhibits PX-25-A through PX-25-J	Lobur

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PX-40	Response of the Pennsylvania Department of Public Welfare to Plaintiffs' Subpoena to Produce Documents (Dec. 17, 2013)	
PX-41	Form PA-40, 2012 Pennsylvania Income Tax Return	
PX-42	Pennsylvania Department of Revenue, <i>Pennsylvania Personal Income Tax Return</i>	
PX-43	Certificate of Death	
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PX-45	1996 Pa. Legislative Journal (House), at 2016-2035 (June 28, 1996)	
PX-46	1996 Pa. Legislative Journal (Senate), at 2452-2454 (Oct. 1, 1996)	
PX-47	1996 Pa. Legislative Journal (House), at 2186-2187 (Oct. 7, 1996)	
PX-48	1996 Pa. Legislative Journal (House), at 2193-2194 (Oct. 7, 1996)	
PX-49	1990 Pa. Legislative Journal (House), at 1202-1212 (June 26, 1990)	
PX-50	2006 Pa. Legislative Journal (Senate), at 1771-1782 (June 21, 2006)	

Exhibit No.	Description	Text Reference
PX-51	2006 Pa. Legislative Journal (House), at 1139-1159 (June 6, 2006)	
PX-52-A	Complaint, <i>Egolf v. Seneca</i> , No. 2004-03160 (C.P. Bucks County, Pa., May 13, 2004)	
PX-52-B	Opinion, <i>Egolf v. Seneca</i> , No. 2004-03160 (C.P. Bucks County, Pa. Oct. 19, 2004)	
PX-53	Jeff Hawkes, <i>To Boyd, Marriage “Completes You” – Unless You’re Gay</i> , LancasterOnline.com (Jan. 24, 2006).	
PX-54	PEBTF, <i>Benefit News for Active Members</i> (Spring 2009)	
PX-55	Marc Levy, <i>It’s Just the Right Thing to Do</i> , NBC10.com (May 15, 2009)	
PX-56	Mauriello, <i>Early Returns</i> , Pitt. Post-Gazette (Jun. 29, 2009), <i>quoted in</i> The Hotline (June 30, 2009), <i>available at</i> 2009 WLNR 14846542	
PX-57	Marc Levy and Karen Araiza, <i>Same Sex Partners Can Celebrate</i> , NBC10.com (July 1, 2009)	
PX-58	Notice of Intervention, <i>Kern v. Taney</i> , No. 09-10738 #2 (C.P. Berks County, Pa., Feb. 11, 2010)	
PX-59	Viewpoint Newsletter of the Pennsylvania Catholic Conference (Spring 2010)	
PX-60	Mollie Reilly, <i>Brian Sims, Pennsylvania Lawmaker, Silenced on DOMA</i> , Huffington Post (June 27, 2013)	
PX-61	Letter from Adrian R. King, Jr., First Deputy Attorney General to James D. Schultz, General Counsel (July 30, 2013)	

Exhibit No.	Description	Text Reference
PX-62	Interview with Governor Thomas Corbett, WHP-TV (Oct. 4, 2013)	
PX-63	John L. Micek, <i>Corbett Apologizes For Remarks About Same-Sex Couples</i> , PennLive (Oct. 4, 2013)	
PX-65	Stipulation of Facts Between Plaintiffs and Defendants Meuser and Wolf (Apr. 21, 2014)	Stipulation

Pursuant to Rule 56.1 of the Local Rules of the Middle District of Pennsylvania, Plaintiffs Deb Whitewood and Susan Whitewood, Fredia Hurdle and Lynn Hurdle, Edwin Hill and David Palmer, Heather Poehler and Kath Poehler, Fernando Chang-Muy and Len Rieser, Dawn Plummer and Diana Polson, Angela Gillem and Gail Lloyd, Helena Miller and Dara Raspberry, Ron Gebhardtsbauer and Greg Wright, Marla Cattermole and Julia Lobur, Sandy Ferlanie and Christine Donato, Maureen Hennessey, and A.W. and K.W. (“Plaintiffs”) hereby submit this Statement of Uncontested Material Facts in support of their Motion for Summary Judgment.

INTRODUCTION

1. Plaintiffs are eleven same-sex couples, one widow, and two minor children of one of the couples who are challenging Pennsylvania’s laws excluding same-sex couples from marrying and voiding in Pennsylvania the marriages of same-sex couples entered into in other states.

2. Fredia and Lynn Hurdle, Fernando Chang-Muy and Len Rieser, Dawn Plummer and Diana Polson, and Sandy Ferlanie and Christine Donato are lesbian and gay couples, residing in Pennsylvania, who wish to be married in Pennsylvania for the same reasons so many other couples get married—to declare their love and commitment before family, friends and community, and to give one another the security and protections that only marriage provides. Each couple satisfies all legal

requirements to be married in Pennsylvania except that they are of the same sex. *See* Stipulation ¶¶ 1, 12, PX-64.

3. Deb and Susan Whitewood, Edwin Hill and David Palmer, Heather and Kath Poehler, Helena Miller and Dara Raspberry, Marla Cattermole and Julia Lobur, Angela Gillem and Gail Lloyd, and Ron Gebhardtsbauer and Greg Wright, are lesbian and gay couples, residing in Pennsylvania, and are already married, having lawfully wed in other states pursuant to the laws of those respective states. They wish to have their marriages recognized in their home state of Pennsylvania. Each couple satisfies all legal requirements to have their marriage recognized in Pennsylvania except that they are of the same sex. *See id.* ¶ 2.

4. Maureen Hennessey is a widow who lost her spouse after 29 years together. Solely because her spouse was a woman, their marriage is not recognized by Pennsylvania. *See id.* ¶ 3.

5. A.W. and K.W. are Deb and Susan Whitewood's teenage daughters, and the girls' parents' marriage is not recognized solely because their parents are of the same sex. *See id.* ¶¶ 1, 3.

6. The obstacle to Plaintiffs getting married or having their valid out-of-state marriages recognized (the "Marriage Exclusion") is a 1996 Amendment to Pennsylvania's Marriage Laws, commonly referred to as Pennsylvania's Defense of Marriage Act ("DOMA"), which limits marriage to "one man and one woman,"

23 Pa. C.S. § 1102, and makes “void in this Commonwealth” any “marriage between persons of the same sex . . . entered into in another state or foreign jurisdiction, even if valid where entered into.” 23 Pa. C.S. § 1704.² See Stipulation ¶ 6 (“Pennsylvania’s practices, policies, and laws prohibiting marriage and recognition of marriage for same-sex couples are codified at 23 Pa.C.S. §§ 1102 and 1704.”), PX-64.

7. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief. Specifically, Plaintiffs seek: (a) a declaration that (i) the Commonwealth’s prohibition of marriage for same-sex couples, and (ii) its refusal to recognize marriages of same-sex couples validly entered into outside of the Commonwealth violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution; and (b) a permanent injunction (i) preventing Defendants from denying the plaintiff couples and all other same-sex couples otherwise eligible to marry the right to marry in the Commonwealth of Pennsylvania, and (ii) directing defendants to recognize the marriages of the plaintiff couples and other same-sex couples validly entered into

²Reference to Pennsylvania’s DOMA and all other laws, regulations, and practices that prohibit same-sex couples from marrying in Pennsylvania or having their out-of-state marriages recognized in Pennsylvania will be referred to collectively hereafter as the “Marriage Exclusion.”

outside of Pennsylvania. (Pls.' First Am. Compl., Prayer for Relief, Dkt. 64, at 56-57.)

8. Plaintiffs argue that the Commonwealth's discriminatory treatment of Plaintiffs is subject to heightened scrutiny because it burdens the fundamental right to marry and because it discriminates based on sex and sexual orientation.

Plaintiffs urge this Court to decide the appropriate level of scrutiny, but underscore that the Marriage Exclusion is unconstitutional under any level of scrutiny because it does not rationally further any legitimate government interest and serves only to disparage and injure lesbian and gay couples and their families. (Pls.' First Am. Compl., Dkt. 64, ¶¶ 15, 140-178.)

9. The parties have completed over five months of discovery, which has included the exchange of documents, identification of expert witnesses and submission of their reports, and the opportunity for both sides to depose all lay and expert witnesses. Defendants have deposed all twenty-three adult Plaintiffs.

10. Plaintiffs press for summary judgment based on declarations submitted by the Plaintiffs, which include supporting documents; Defendants' responses to interrogatories and requests for production of documents; Commonwealth documents produced from several agencies in response to discovery requests; a stipulation between the parties; and expert witness testimony.

11. Plaintiffs rely on the reports of six expert witnesses. Plaintiffs’

experts are:

- a. **Michael Lamb, Ph.D.**, is a Professor of Psychology at Cambridge University in England. His testimony, based on forty years of research in the field of developmental psychology, concerns the factors that predict healthy child adjustment, the well-being of children raised by same-sex parents, and how allowing same-sex couples to marry and have their marriages recognized benefits the children of those couples. His report, to which a CV is appended, is marked as Exhibit PX-05 (hereinafter “Lamb”).
- b. **Letitia Anne Peplau, Ph.D.**, has been a professor of psychology at the University of California, Los Angeles, since 1973. Her testimony concerns the immutability of sexual orientation; whether being gay or lesbian has a bearing on an individual’s ability to contribute to society; the ability of same-sex couples to form committed, loving relationships just like heterosexual couples; the range of social and other benefits afforded by marriage and, thus, the harm that the exclusion from marriage causes to same-sex couples; the stigmatizing effect of the marriage exclusion; and the absence of any impact on opposite-sex couples’ relationships of allowing marriage for same-sex couples. Her report, to which a CV is appended, is marked as Exhibit PX-06 (hereinafter “Peplau”).
- c. **George Chauncey, Ph.D.**, is the Samuel Knight Professor History and American Studies at Yale University. His research and scholarly work has concentrated, *inter alia*, on the history of discrimination against lesbians and gay men in the United States, and his report focuses on this history of discrimination, with attention to Pennsylvania. His report, to which a CV is appended, is marked as Exhibit PX-03 (hereinafter “Chauncey”).
- d. **Nancy F. Cott, Ph.D.**, is the Jonathan Trumbull Professor of American History at Harvard University. Professor Cott’s testimony concerns the history of marriage, including the purposes of marriage; the changes in marriage over time that

removed inequalities that were once considered essential to marriage, e.g., the doctrine of “coverture” through which wives ceded their legal and economic independence to their husbands upon marrying, and laws restricting interracial marriages; the removal of gender-based distinctions in the roles of husbands and wives; and the many government benefits and other consequences arising from marriage. Her report, to which a CV is appended, is marked as Exhibit PX-04 (hereinafter “Cott”).

- e. **M.V. Lee Badgett, Ph.D.**, is a Professor of Economics at the University of Massachusetts Amherst, and is the Williams Distinguished Scholar at the Williams Institute for Sexual Orientation Law and Public Policy at UCLA School of Law. Her testimony concerns the economic impacts on lesbian and gay couples and their families, especially in Pennsylvania, arising from Pennsylvania’s refusal to allow them to marry or to recognize their marriages; and the economic impacts on the Commonwealth of Pennsylvania, including the government, taxpayers and businesses, arising from Pennsylvania’s refusal to allow or recognize marriages for same-sex couples. Her report, to which a CV is appended, is marked as Exhibit PX-01 (hereinafter “Badgett”).
- f. **Leonore F. Carpenter** is an Assistant Professor at Temple University’s James E. Beasley School of Law. Her specialization includes sexual orientation, gender identity and the law. Her testimony discusses the lack of legal protections available to lesbian and gay couples, and the range of harms to same-sex couples and their families due to their inability to access the legal protections and be subject to the legal obligations of marriage. Her report, to which a CV is appended, is marked as Exhibit PX-02 (hereinafter “Carpenter”).

12. Defendants have identified *no experts* for presentation on the foregoing topics or on any other issues.

I. PARTIES

A. Plaintiffs

Maureen Hennessey (Philadelphia)

13. Maureen Hennessey is a 53-year-old life-long Philadelphian who lost her partner of 29 years, Mary Beth McIntyre, on May 18, 2013. In August 2009, Mary Beth was diagnosed with inoperable Stage 4 lung cancer that had spread to her brain and bones. After Mary Beth fell ill, Maureen left her job as a substitute teacher in the Philadelphia School District to care for Mary Beth and help run Mary Beth's business, which was the family's primary source of income. The couple wed in 2011 in Massachusetts. But because Pennsylvania does not recognize their marriage, Maureen had to pay a 15% inheritance tax on the property that Mary Beth left to Maureen, including property they owned jointly, and under current law, Maureen will be ineligible to receive Mary Beth's Social Security benefits upon retirement. Pennsylvania's refusal to recognize Maureen and Mary Beth's marriage also caused Maureen additional pain while she was grieving because Mary Beth's death certificate stated that Mary Beth was "never married," and did not name Maureen as Mary Beth's "surviving spouse," leaving this section blank instead. (Decl. of Maureen Hennessey, PX-29; *see also* Video of Mary Beth McIntyre and Maureen Hennessey, PX-29-G, *available at* <http://www.aclupa.org/>.)

Deb and Susan Whitewood and A.W. and K.W. (Pittsburgh)

14. Deb Whitewood, age 45, and Susan Whitewood, age 49, have been together for 22 years. Deb and Susan are devout Christians, and celebrated their commitment to one another in 1993 with a holy union ceremony at their church. At that time, they both changed their last name to Whitewood, a combination of their surnames. They live in Pittsburgh with their two teenage daughters, Plaintiffs A.W. and K.W., and their three-year-old son, L.W., who they adopted after first serving as his foster parents through a placement by the Allegheny County Department of Children and Youth Services. Susan is an executive at BNY Mellon and the family's sole breadwinner, and Deb is a stay-at-home mom who is actively involved with the kids' school and activities. On October 19, 2013, Deb and Susan traveled to Maryland to marry. Although they wanted to wait to marry in their own community, the important protections they gain under federal law were too important to pass on, and the ability to file federal taxes jointly as a married couple would save them thousands of dollars each year that they could put towards their daughters' upcoming college expenses. A.W. and K.W. want Pennsylvania to recognize their moms' marriage and treat their family the same as their friends' families. (Decl. of Deb Whitewood, PX-07; Decl. of Susan Whitewood, PX-08; Decl. of A.W., PX-30.)

Lynn and Fredia Hurdle (Bridgeville, Allegheny County)

15. Lynn Hurdle, a 44-year-old nurse, and Fredia Hurdle, a 50-year-old newspaper delivery driver, met 23 years ago when Lynn helped Fredia, the driver of the Greyhound bus she was on, with directions. They have been together ever since. During the more than twenty years they've lived in Pittsburgh, their home has always been filled with extended family and open to anyone in need of a place to stay, with several friends and relatives living with the couple for many years. In 2009, Fredia and Lynn had a commitment ceremony in a local church before 200 loved ones. They have wanted to marry for many years, but the only place they want to do it is Pennsylvania. In the 1990s, Fredia underwent emergency gallbladder surgery. Because Lynn and Fredia were not married or blood relatives, the hospital staff refused to give Lynn any information about Fredia, and Fredia woke up from her surgery alone and very afraid. Pennsylvania's discriminatory treatment of the couple is particularly painful for Fredia, an African American woman in an interracial relationship who was born in segregated Virginia before the Supreme Court struck down bans on interracial marriage. She notes that "now being black doesn't keep me from marrying Lynn. Being a woman who loves another woman does." (Decl. of Lynn Hurdle, PX-10; Decl. of Fredia Hurdle, PX-09.)

Fernando Chang-Muy and Len Rieser (Philadelphia)

16. Fernando Chang-Muy, 59, and Len Rieser, 65, are both lawyers and professors who have dedicated their careers to the public interest. They have lived together in Philadelphia in a committed relationship since 1982. They have a daughter named Isabel, now 22, whom they adopted when she was an infant. They raised Isabel to adulthood together, and structured their life around ensuring that Isabel had the same sense of security that any other child gets from being part of a loving family. They both feel that if marriage had been available to them, a major barrier to their acceptance and wellbeing as a family would have been removed. Fernando and Len entered into a civil union in Vermont in 2004. Because Fernando and Len are lawyers, they are particularly aware of how vulnerable they are by being excluded from the many protections that go along with marriage, even though they have done everything that lawyers can do to try to protect themselves in the absence of marriage. (Decl. of Fernando Chang-Muy, PX-15; Decl. of Len Rieser, PX-16.)

Julia Lobur and Marla Cattermole (Harrisburg)

17. Julia Lobur, 59, and Marla Cattermole, 55, are both long-time employees of the Commonwealth of Pennsylvania. Julia and Marla met in 1983 in the Army, during basic training. Julia was discharged from the Army when her sexual orientation was revealed to her superiors, but Marla continued to serve in

active duty until 1986, and served in the Army Reserve until 1995. Julia and Marla have lived together in Harrisburg since 1986. In 2009, after they had been together for 24 years, they traveled to Marla's hometown in Iowa to marry. They wanted to marry in Pennsylvania but Julia's mother and sister had already passed away, and the couple was worried that if they waited for Pennsylvania law to change, they might lose other family members before they could legally marry here. After they married, they registered as Domestic Partners with the Commonwealth of Pennsylvania in order to obtain family medical leave and health insurance benefits through their employer, but Pennsylvania would not accept their marriage certificate as evidence of their committed relationship; they had to prove their relationship further by proving their joint ownership of a house and common address, and submitting notarized copies of their powers of attorney and other paperwork they had drawn up to protect their relationship. (Decl. of Julia Lobur, PX-25; Decl. of Marla Cattermole, PX-26.)

Dawn Plummer and Diana Polson (Pittsburgh)

18. Dawn and Diana are both 37 years old, and both work for nonprofit organizations dedicated to helping poor and working families. They have been together since 2000. In 2007, when they lived in New York and before the state allowed same-sex couples to marry, they had a commitment ceremony in the Catskills in front of 50 of their friends and family members. Dawn gave birth to

their son E.P. in 2007, and they completed a costly second-parent adoption for E.P. so that Diana would also be recognized as his parent. In 2011, they moved to Pittsburgh, which they knew would be a wonderful place to raise their children. The move was a homecoming for Dawn, who grew up in Camp Hill, Pennsylvania, and whose family members mostly live in Pennsylvania. Diana gave birth to their second son, J.P., in 2012. Dawn and Diana are currently saving money to complete a second-parent adoption for J.P., which they understand will cost at least \$2,500. Until they can afford to complete the second-parent adoption process, Dawn has no legal tie to J.P., which is deeply troubling to them. (Decl. of Dawn Plummer, PX-17; Decl. of Diana Polson, PX-18.)

Dara Raspberry and Helena Miller (Philadelphia)

19. Dara Raspberry, a 43-year-old emergency medicine physician, and Helena Miller, a 40-year-old education consultant, officially joined their families together in 2010 when they married in Connecticut. They moved from New York to Philadelphia in 2011 to be closer to family in the state because they were hoping to have children soon. Their dream to start their own family came true on May 28, 2013, when Helena gave birth to their daughter, Z.R. But because Pennsylvania does not recognize their marriage, Dara was not recognized as one of Z.R.'s parents at her birth. They had to go through an expensive and lengthy second-parent adoption process that was not completed until Z.R. was about three months

old. They hope that their marriage will be recognized by Pennsylvania before Z.R. is old enough to be aware that the Commonwealth does not consider her family to be deserving of the same status and protection afforded to other Pennsylvania families. (Decl. of Dara Raspberry, PX-22; Decl. of Helena Miller, PX-21.)

Ron Gebhardtsbauer and Greg Wright (State College, Centre County)

20. Ron Gebhardtsbauer, age 61, and Greg Wright, age 57, have been together since 1994 and are still madly in love. They moved to State College, Pennsylvania, in 2008 when Ron took a job teaching actuarial science at Penn State University. Greg owns and operates a small acupuncture practice in State College. They are both active members of the University Baptist & Brethren Church. Ron and Greg registered as domestic partners in State College in 2011, when it first became possible to do so. Though they would have preferred to marry in Pennsylvania in their church, on November 27, 2013, they were married in a small civil ceremony in Rockville, Maryland, attended by Ron's 90-year-old mother, sister, and brother. As an actuary who is familiar with Social Security, Ron knows that unless Pennsylvania law changes, if Ron passed away, Greg would be denied access to Ron's Social Security benefits, which would be larger than Greg's. (Decl. of Gregory Wright, PX-24; Decl. of Ron Gebhardtsbauer, PX-23.)

Sandra Ferlanie and Christine Donato (Swarthmore, Delaware County)

21. Sandy Ferlanie, 46, and Christine Donato, 45, are lifelong Pennsylvanians who have been together for 17 years. They decided to make their home in Swarthmore, Pennsylvania, because they found an accepting community there, close to their families. Because Pennsylvania will not allow them to marry, Sandy and Christine had to complete a long, expensive second-parent-adoption process that included a home study and criminal records check, which felt humiliating, just to establish legal ties between both parents and their son H.F. H.F. is now five years old and has begun to ask Sandy and Christine questions about why they are not married. They worry that telling him that they are not allowed to get married will make him feel that his family is inferior to other families. Last year, the couple felt the pain of not being able to marry particularly acutely after Sandy was diagnosed with life-threatening cancer. They worried that Christine might be precluded from making medical decisions for Sandy if necessary in spite of the powers of attorney that they had hired a lawyer to draft. Sandy and Christine want to marry in their home state, in the Episcopal church that they attend, with all of their family and friends as witnesses. Marrying out of state is not a meaningful option for them because travel is difficult for their elderly parents—particularly Christine’s mother, who is confined to a wheelchair and in

fragile health. (Decl. of Christine Donato, PX-28; Decl. of Sandra Ferlanie, PX-27; Decl. of Veronica Donato, PX-31.)

Heather and Kath Poehler (Downingtown, Chester County)

22. Heather Poehler, 44, and Kath Poehler, 42, married in Massachusetts in 2005, and Heather changed her last name to share Kath's. They relocated to Pennsylvania when Heather was offered a job here in 2007, during difficult economic times. Heather now works at a healthcare auditing firm, and Kath owns her own dog-training and dog-walking business. Although they love their life in Downingtown and are part of a vibrant roller derby community there, going from being recognized as a family to being treated as legal strangers in Pennsylvania has been hard for the couple. They have had trouble preparing tax returns and completing mortgage paperwork in Pennsylvania because accountants and bank officials were unsure how to describe the couple's marital status, and Heather and Kath both feel it is wrong to identify themselves as "single" since they are married. And they spend more on health insurance than they would if their marriage were recognized because they pay taxes on the health insurance for Kath that Heather obtained through her employer, which they would not have to pay if their marriage were recognized in Pennsylvania. (Decl. of Heather Poehler, PX-13; Decl. of Kath Poehler, PX-14.)

Angela Gillem and Gail Lloyd (Philadelphia)

23. Angela Gillem, a 61-year-old clinical psychologist and professor, and Gail Lloyd, a 55-year-old artist, have been together since 1996, and have lived in the house they bought jointly in the Mount Airy neighborhood of Philadelphia since 1998. They married in Washington, DC, in 2013. As an artist, Gail does not draw a steady paycheck to contribute to Social Security, and Pennsylvania's refusal to recognize their marriage means that Gail could not collect Angela's Social Security survivor benefits if Angela dies first. Angela and Gail have taken every step possible to ensure Gail's financial security in the event that Angela were to die, but they have been advised that, when one of them dies, the other one could owe over \$100,000 in estate taxes to the Commonwealth because it does not recognize their marriage. Having to pay an estate tax of 15% of the value of their house would be particularly demeaning and painful since they both devoted substantial amounts of money and years of hard work to building, renovating, and maintaining the beautiful home together. (Decl. of Angela Gillem, PX-19; Decl. of Gail Lloyd, PX-20.)

Edwin Hill and David Palmer (Bangor, Northampton County)

24. Edwin Hill, 67, is a veteran of the Navy who worked for the Department of Veterans' Affairs for twenty years. David Palmer, 66, worked for thirty years for the Newark Museum, an arts and natural sciences museum in

Newark, New Jersey. Ed and David met in 1988 at the Kirkridge Retreat, a nondenominational Christian retreat center in Bangor, Pennsylvania. Eight years later, they bought their home overlooking the very spot where they first met. They operated a bed and breakfast there until they retired in 2008. They married in Maine in May 2013. After 25 years together, neither of them expected that being married would change the way they felt about their relationship, but it did, and it continues to pain the couple to become unmarried every time they cross the state line returning to Pennsylvania. As seniors on fixed incomes, they have planned and drawn up legal documents to protect one another, but Pennsylvania's refusal to recognize their marriage threatens their security. They have had to set aside savings to ensure that after one of them passes away, the other will not have to sell their home in order to pay the 15% inheritance tax that they will be subject to unless Pennsylvania recognizes their marriage. (Decl. of Edwin Hill, PX-11; Decl. of David Palmer, PX-12.)

B. Defendants

25. Plaintiffs' action originally named as defendants Thomas W. Corbett, Governor of the Commonwealth of Pennsylvania; Michael Wolf, the Commonwealth's Secretary of Health; Kathleen Kane, the Commonwealth's Attorney General; Mary Jo Poknis, the Washington County Register of Wills; and

Donald Petrille, Jr., the Buck's County Register of Wills and Clerk of the Orphans' Court. (*See* Pls.' Compl., Dkt. 1.)

26. Shortly after Plaintiffs commenced this action, Attorney General Kane announced that she had made a "legal determination . . . that the Marriage Law violates the due process and equal protection provisions of the U.S. Constitution and Pennsylvania Constitution and, therefore, is not defensible." Letter from Adrian R. King, Jr., First Deputy Attorney General to James D. Schultz, General Counsel (July 30, 2013), PX-61. Exercising authority under the Commonwealth's Attorney's Act, she declined to defend the Commonwealth Defendants named in the case and delegated that responsibility to the Governor's Office of General Counsel. *Id.*

27. Subsequent to filing this action, Plaintiffs voluntarily dismissed, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), Defendants Poknis (Dkt. 56), Kane (Dkt. 58), and Corbett (Dkt. 59). The dismissal of Governor Corbett included a stipulation that, in exchange for dismissing the Governor and Attorney General, Plaintiffs would add, in addition to Secretary of Health Wolf, Secretary of Revenue Dan Meuser. (*Id.* ¶¶ 3, 4.) The stipulation also stated that Secretary Meuser would join the pending motions to dismiss filed by Wolf and Corbett and that both Secretaries agreed to be bound by the Court's ruling. (*Id.* ¶ 9.) *See also* Stipulation ¶ 7, PX-64. The Court thereafter denied all outstanding motions to

dismiss (Dkt. 67), leaving as defendants Messrs. Petrille, Wolf and Meuser. The Court subsequently approved a stipulation excusing, but not dismissing, Defendant Petrille from further participation in this litigation on the condition that he agrees to be bound by the Court's decision. (Dkt. 102, 105.) Petrille thus remains a defendant, along with Secretaries Wolf and Meuser.

Donald Petrille, Bucks County Register of Wills and Clerk of Orphans' Court

28. Defendant Donald Petrille, Jr., is the Register of Wills and Clerk of Orphans' Court of Bucks County, Pennsylvania. By law, his office is responsible for issuing marriage licenses in that county. (Dkt. 102, ¶ 4.) *See* 23 Pa. C.S. §§ 1301(a), 1302(a) (providing that “[n]o person shall be joined in marriage in this Commonwealth until a marriage license has been obtained,” and “[n]o marriage license shall be issued except upon written and verified application made by both of the parties intending to marry”).

29. On July 1, 2013, invoking the Commonwealth's Marriage Exclusion, Mr. Petrille's office refused to issue a marriage license to Plaintiffs Angela Gillem and Gail Lloyd because they are a same-sex couple. (Dkt. 102, ¶ 8.)

30. On November 6, 2013, invoking the Commonwealth's Marriage Exclusion, Mr. Petrille's office refused to issue a marriage license to Plaintiffs Sandy Ferlanie and Christine Donato because they are a same-sex couple. (Dkt. 102, ¶ 9.)

31. Defendant Petrille is sued in his official capacity and at all relevant times has been, and is, acting under color of state law.

Michael Wolf, Secretary of Health, Commonwealth of Pennsylvania

32. Defendant Michael Wolf is the Secretary of Health of the Commonwealth of Pennsylvania and, as such, serves as the head of the Pennsylvania Department of Health. Stipulation ¶ 5, PX-64.

33. Secretary Wolf enforces Pennsylvania's practices, policies, and laws prohibiting marriage and recognition of marriage for same-sex couples, including 23 Pa. C.S. §§ 1102 and 1704, with respect to his role related to preparing marriage license applications and license forms and death certificate forms.

34. Pursuant to 23 Pa. C.S. §§ 1104 and 1306, the Department of Health oversees the preparation and approval of the marriage license application and marriage license forms used in county offices across the Commonwealth. Consistent with the Marriage Law, the marriage license application and marriage license forms prescribed by the Department of Health describe the applicants and licensees as "bride" and "groom." Stipulation ¶ 8, PX-64.

35. Pursuant to 23 Pa. C.S. § 1106, the Department of Health is charged with receiving reports of marriage licenses issued from individual counties and with publishing statistics derived from those reports. *Id.* ¶ 9.

36. Under Article II of the Vital Statistics Law of 1953, the Department of Health oversees the creation of forms for certificates of death, including the issuance, maintenance and amendments to certificates of death. *Id.* ¶ 10; *see, e.g.*, 35 P.S. §§ 450.201, 450.202, 450.204.

37. The “certificate of death” form prescribed by the Department of Health requires a declaration of the “marital status at time of death” and “surviving spouse’s name” of the deceased, if there is one. Stipulation ¶ 11, PX-64; *see* Certificate of Death, PX-43. Because of the Marriage Exclusion, an individual with a same-sex spouse who has died cannot have his or her out-of-state marriage acknowledged, or his or her name listed as the decedent’s spouse, on the certificate of death. Stipulation ¶ 11, PX-64. The Marriage Exclusion also precludes an amendment to a previously issued certificate of death to reflect a deceased person’s marriage to an individual of the same sex. *Id.* Consequently, because of the Marriage Law, the Death Certificate Registration Manual published by the Department of Health does not allow a same-sex spouse or partner to be identified under item 11, which lists the “surviving spouse’s name.” *Id.*; *see* Pa. Dep’t of Health, *2012 Death Certificate Registration Manual* 11 (Mar. 13, 2013) (stating in emphasized bold-face text that “[t]he name of partner or companion is **not acceptable**” for the identity of “Surviving Spouse’s Name” (emphasis in original)), PX-44.

38. Secretary Wolf is sued in his official capacity and at all relevant times has been, and is, operating under color of state law.

Dan Meuser, Secretary of Revenue, Commonwealth of Pennsylvania

39. Defendant Dan Meuser is the Secretary of Revenue of the Commonwealth of Pennsylvania and, as such, serves as head of the Pennsylvania Department of Revenue. Stipulation ¶ 16, PX-64.

40. Secretary Meuser enforces Pennsylvania's practices, policies, and laws prohibiting marriage and recognition of marriage for same-sex couples, including 23 Pa. C.S. §§ 1102 and 1704, with respect to his role in preparing state tax forms. *See id.* ¶¶ 7, 17.

41. The Department of Revenue prescribes the forms necessary for the assessment and collection of state taxes, including state income taxes. Stipulation ¶ 17, PX-64; *see, e.g.*, 72 P.S. § 207 (“The Department of Revenue shall prepare, promulgate, and distribute such forms as may be necessary to persons, associations, corporations, public officers, and other debtors, required by law to make and file reports or returns with the department.”); 72 P.S. § 7332 (“The [D]epartment [of Revenue] shall prescribe by regulation the place for filing and return, declaration, statement, or other document required pursuant [to Article III of the Tax Reform Code of 1971 (relating to personal income tax)] and for payment of any tax.”); 72 P.S. § 7335(a) (“The [D]epartment [of Revenue] may

prescribe by regulation for the keeping of records, the content and form of returns, declarations, statements and other documents and the filing of copies of Federal income tax returns and determinations.”); 61 Pa. Code § 117.9 (“Persons filing returns should use the envelopes and preaddressed prescribed forms furnished to them by the Department [of Revenue].”).

42. The personal income tax return form set forth by the Department of Revenue (*i.e.*, form PA-40) requires a current resident filer to check a box and declare his or her filing status as “S Single,” “J Married, Filing Jointly,” or “M Married, Filing Separately.” Stipulation ¶ 18, PX-64; *cf.* 72 P.S. § 7331 (relating to returns of married individuals, deceased or disabled individuals and fiduciaries); 61 Pa. Code § 117.2 (relating to returns of married individuals). Because of 23 Pa. C.S. § 1704, however, married same-sex couples may not file as “Married, Filing Jointly” or “Married, Filing Separately,” but, instead, each individual must separately file as “Single.” Stipulation ¶ 20, PX-64.

43. Secretary Wolf is sued in his official capacity and all relevant times has been, and is, operating under color of state law.

II. Pennsylvania’s Marriage Laws and the History of Pennsylvania’s DOMA

44. In 1996, through what was referred to at the time as the “Egolf Amendment,” Pennsylvania’s laws governing marriage were amended to expressly prohibit marriage for same-sex couples and recognition of same-sex couples’

marriages from other states. *See* 1996 Pa. Legislative Journal (House), at 2016-2035 (June 28, 1996), PX-45; 1996 Pa. Legislative Journal (Senate), at 2452-2454 (Oct. 1, 1996), PX-46; 1996 Pa. Legislative Journal (House), at 2186-2187 (Oct. 7, 1996), PX-47; 1996 Pa. Legislative Journal (House), at 2193-2194 (Oct. 7, 1996), PX-48.

45. Specifically, the Egolf Amendment defined marriage as “[a] civil contract by which one man and one woman take each other for husband and wife.” 23 Pa. C.S. § 1102. And, in a departure from Pennsylvania’s usual recognition of marriages validly entered into in other states, the Egolf Amendment made “void in this Commonwealth” any “marriage between persons of the same sex . . . entered into in another state or foreign jurisdiction, even if valid where entered into.” 23 Pa. C.S. § 1704.

46. The Legislative Journals show that the Egolf Amendment’s proponents within the General Assembly described marriages of same-sex couples as “repugnant to the public policy of Pennsylvania” and “so-called marriages,” and expressed their “moral opposition” to them. 1996 Pa. Legis. J. (House), at 2017, PX-45.

47. For example, Representative Allen Egolf, the primary sponsor, made the following statements:

In the case of marriage, the exception [to the Full Faith and Credit clause] allows States not to recognize

marriages if they are repugnant to the public policy of the home State.

Id.

This amendment introduced by Representative Maitland and myself specifically states what our policy is and always has been - that these so-called marriages are contrary to our public policy and will not be recognized in Pennsylvania.

Id.

It is simply an expression of Pennsylvania's traditional and longstanding policy of moral opposition to same-sex marriages . . . and support of the traditional family unit.

Id.

[The legitimate legislative end that this amendment serves] is the moral and economic . . . aspect

Id. at 2018.

It is designed to benefit the vast majority of Pennsylvanians, because the large majority do not want our traditional marriage institution and our state of morals to be changed.

Id. at 2019.

48. While Representative Egolf noted that “part” of his concern was “with the effect on businesses, not with the effect on homosexuals,” he stated that the law is needed “to protect the institution of marriage as we have it now.” *Id.* at 2018.

49. Representative Ronald “Huck” Gamble, a co-sponsor of the Amendment, stated:

Just to sum it up, I just thank God I am going back to Oakdale, where men are men and women are women, and believe me, boys and girls, there is one heck of a difference.

Id. at 2022.

50. Another legislator, Representative Jerry A. Stern, stated:

I believe that it is imperative that we in Pennsylvania should stand up for traditional marriage for the benefit of families and children in the Commonwealth and our future.

Id.

In this day and age, we hear much rhetoric and discussion on family values. This is a vote about family values and traditional beliefs, and we should all support the Egolf amendment.

Id.

51. In 2004, twelve of the legislation's co-sponsors and other representatives continued their support for and defense of the 1996 law by suing two gay men who had sought a marriage license from the Bucks County Register of Wills, but had been denied the license and had not appealed. Representatives Egolf, Maitland, Stern, and nine other legislators sued the two men in a declaratory judgment action filed in the Bucks County Court of Common Pleas, arguing that they have an interest to "see that the will of the Legislature be upheld" by enforcing the law they co-sponsored, the Pennsylvania DOMA. Compl. ¶ 9, *Egolf*

v. Seneca, No. 2004-03160, *2 (C.P. Bucks County, Pa., May 13, 2004), PX-52-A.

The complaint states, among other things, that:

Marriage should be restricted to opposite-sex couples in order to promote prosperity. . . . Societies that restricted sexual relationships to one man and one woman in marriage have prospered. Societies that relax those restrictions have suffered decline within three generations.

(*Id.* ¶ 27.)

Marriage should be restricted to opposite-sex couples in order to promote relationships where there is physical complementarity in order to reduce health problems and the spread of disease. . . . Anal sex can cause tearing, bleeding, and other complications. Anal sex also promotes the spreading of disease. Even a woman who has sex with another woman is at substantial risk for sexually transmitted diseases.

(*Id.* ¶ 28.) The court dismissed the action, citing the legislators' lack of standing. Order and Opinion, at 4-6, *Egolf*, No. 2004-03160 (Oct. 19, 2004), PX-52-B.

52. Pennsylvania continues to enforce the Marriage Exclusion.

III. The Similarity Between Same-Sex And Opposite-Sex Couples For Purposes Of Marriage

53. The Census Bureau counted 22,336 same-sex couples living together in Pennsylvania in 2010. Same-sex couples comprised at least 0.4% of all households in Pennsylvania. (Badgett ¶ 30.)

54. Same-sex couples, such as the Plaintiff couples, resemble opposite-sex couples in all of the characteristics relevant to marriage. (*See* Peplau ¶ 12.)

55. Same-sex couples make the same commitment to one another as opposite-sex couples. Like their heterosexual counterparts, lesbian, gay, and bisexual individuals form loving, long lasting relationships with a spouse or partner. (*Id.* ¶ 12.)

56. Like opposite-sex couples, same-sex couples build their lives together, plan their futures together, and hope to grow old together. (*Id.* ¶¶ 34-37; Badgett ¶¶ 32-33.)

57. Like opposite-sex couples, same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness. (Badgett ¶¶ 32-33.)

58. Like some opposite-sex couples, some same-sex couples raise children together. In fact, approximately 16% of same-sex couples in Pennsylvania are raising children under the age of 18. (*Id.* ¶ 30.) Approximately 3.1% of adopted children in Pennsylvania live with a lesbian or gay parent. (*Id.* ¶ 31.)

59. The Pennsylvania Department of Public Welfare (“DPW”) is an administrative agency of the Commonwealth government that is responsible by law to oversee the child welfare system in Pennsylvania. Agencies that are

licensed and regulated by DPW may and do place children in foster and adoptive placements with both heterosexual couples and same-sex couples. Stipulation ¶ 22, PX-64; *see* Pls.' Subpoena to Produc. Docs. Directed to Custodian of Records, Pa. Dep't of Pub. Welfare, PX-39; Resp. of Pa. Dep't of Pub. Welfare to Pls.' Subpoena to Produc. Docs., at 3, PX-40.

60. Like opposite-sex couples, same-sex couples seeking to marry or have their marriages recognized are just as able and willing as opposite-sex couples to assume the obligations of marriage. (Peplau ¶¶ 34-37.)

61. The Plaintiff couples and other same-sex couples in Pennsylvania, if permitted to marry or have their marriages recognized, would benefit no less than opposite-sex couples from the many legal protections and the social recognition afforded to married couples. (Peplau ¶ 49; Badgett ¶¶ 18-28, 34-62.)

IV. The Marriage Exclusion's Effect on Same-Sex Couples

62. The exclusion from marriage harms same-sex couples and their families in numerous ways, both tangible and intangible.

63. No single list can adequately articulate or capture all of the different ways that marriage impacts a given couple, or that the denial of marriage impacts a given same-sex couple.

A. Social, Dignitary, and Other Intangible Harms Arising from the Marriage Exclusion

64. The Marriage Exclusion reflects and perpetuates stigma against lesbians, gay men, and same-sex couples. The stigma and discrimination perpetuated by Pennsylvania's exclusion harm not only same-sex couples, but gay men, lesbians, and bisexuals as a group. (Peplau ¶ 14.)

65. Singling out same-sex couples for different treatment under the marriage laws is demeaning to those couples and their families. The indignity of being treated differently from families headed by opposite-sex couples is felt by every one of the Plaintiffs.

Pennsylvania's refusal to allow us to marry means, to me, that the state considers our relationship—regardless of the degree of commitment we have brought to it—to be less genuine, less significant, and less worthy than the relationships of opposite-gender couples.

(Rieser ¶ 7.)

Marrying Angela has had a profound impact on me—much more than I expected after 18 years together. It means more than I can say to finally have our love and commitment treated with respect. And it hurts to realize that my home state, of all places, still does not do that.

(Lloyd ¶ 4; *see also* D. Whitewood ¶ 14; S. Whitewood ¶ 13; A.W. ¶ 5; F. Hurdle ¶ 5; L. Hurdle ¶ 8; Hill ¶¶ 5, 6; Palmer ¶ 5; H. Poehler ¶¶ 5, 6, 8; K. Poehler ¶ 5; Chang-Muy ¶ 12; Plummer ¶¶ 14, 16; Polson ¶ 5; Gillem ¶¶ 2, 10; Miller ¶ 5; Raspberry ¶ 13; Gebhardtsbauer ¶ 5; Cattermole ¶ 5; Lobur ¶ 9; Ferlanie ¶ 5;

Donato ¶ 5; Hennessey ¶ 13; *see also* Polson Dep. 23:14-18, PX-32; D. Whitewood Dep. 53:10-14, PX-33; F. Hurdle Dep. 74:1-16, PX-34.)

66. Marriage is an esteemed institution and has profound social significance both for the couple that gets married and the family, friends and community that surround them. The terms “married” and “spouse” have universally understood meanings that command respect for a couple’s relationship and the commitment they have made. (Peplau ¶ 42-48.) Among the important benefits of marriage for children and families is the social legitimacy associated with marriage. (Lamb ¶ 48.) The Marriage Exclusion harms couples and their families by denying them the social recognition that comes with marriage. (Peplau ¶¶ 42, 45, 48, 54-56.)

67. The Marriage Exclusion sends the message to the children of lesbian and gay couples that these children’s families are less worthy and valued than families headed by opposite-sex couples. The Marriage Exclusion harms the children of Deb and Susan Whitewood, Fernando Chang-Muy and Len Rieser, Dawn Plummer and Diana Polson, Christine Donato and Sandy Ferlanie, and Dara Raspberry and Helena Miller.

[T]he state’s refusal to recognize our marriage . . . sends the message to our children that their family is less deserving of respect and support than other families. . . . We want our kids to see that their moms’ relationship is respected in the same way that their friends’ moms and dads are respected by the law.

(D. Whitewood ¶ 14.)

[Marriage recognition] is important not only for Deb and me, but so that the kids know and understand that our relationship is just as worthy as that of their friends' opposite-sex parents.

(S. Whitewood ¶ 13.)

We know that it is wrong and unfair that our family is treated differently. We are a family just like any other and think we should be treated the same as other families. . . . If my parents' marriage were recognized by the state, it would help to prove what we already know: that we, a family with two moms, are just like any other family. It would encourage others to accept my family and treat us with the same respect that my friends' families receive.

(A.W. ¶¶ 5, 8.)

If we could marry, it would . . . mean a lot to Isabel, who would like us to be married to each other. . . . When Isabel was growing up, it was important to Len and me that Isabel have the same sense of security that any other child gets from being part of a loving family. . . . [W]e feel that if marriage had been available to us, a major barrier to our acceptance and well-being as a family would have been removed.

(Chang-Muy ¶¶ 8-10.)

I . . . find it difficult to explain to our five-year-old son, E.P., why his parents are not married. I hope that we will be able to marry in Pennsylvania before our younger son, J.P., is old enough to ask the same questions.

(Polson, PX-18, ¶ 5.)

Pennsylvania's refusal to allow my family to be treated like other families is an injustice to my children.

(Plummer, PX-17, ¶ 16.)

H.F. is now old enough that he has begun to ask questions about why we are not married and we have had to explain to him that we are not allowed to get married. I worry that this may make him feel that his family is somehow inferior to other families.

(Donato, PX-28, ¶ 5.)

I hope that my marriage will be recognized by Pennsylvania before Z.R. is old enough to be aware that the Commonwealth does not consider her family to be deserving of the same status and respect afforded to other Pennsylvania families.

(Raspberry ¶ 18.)

68. For some same-sex couples in Pennsylvania, being excluded from marriage because of their sexual orientation brings to mind the stigma of race discrimination:

[A]s a black woman who grew up in Virginia, this has been especially hard for me. As a child, I lived in a segregated state where black people were discriminated against. I went to a segregated elementary school. Then the Supreme Court ruled that a Virginia law that made it illegal for a black person to marry a white person was unconstitutional So now being black doesn't keep me from marrying Lynn, being a woman who loves another woman does. That's wrong. I love Lynn.

(F. Hurdle ¶ 5.)

69. Marriage provides a range of social and other benefits and protections to spouses that contribute to enhanced psychological well-being, physical health, and longevity among married individuals. These benefits and protections from marriage are denied to same-sex couples. (Peplau ¶ 13.)

70. Many married same-sex couples in Pennsylvania get to briefly experience the well-being that comes from legal recognition of their marriage when they travel out of state, only to lose that sense of well-being when they return home:

Recently, we went to Baltimore for a weekend and while we were waiting for our table at dinner, we realized we didn't know whether we were considered married in Maryland. We Googled it, and were happy to learn that Maryland does recognize our marriage. But this just underscored that Pennsylvania doesn't, and that we have to leave our home state to be recognized again as the married couple that we are.

(H. Poehler ¶ 6.)

[W]e recently visited the state of Washington where our marriage was recognized by entities as mundane as the car rental company. Marla and I were just simply both able to drive the rental car—no extra fees, no extra paperwork. When our marriage is acknowledged like that when we travel, I feel joyful and free. I feel the loss of that freedom every time I return home to Pennsylvania.

(Lobur ¶ 16.)

I am always aware, when we travel, that our marriage is respected and acknowledged when we are away from home. Every single time we cross the Delaware River to come home, my heart drops a little as I remember that here, in our home, we are not married. I don't think we deserve that.

(Palmer ¶ 4.)

71. Maureen Hennessey's late spouse, Mary Beth McIntyre, lived out her final years without that additional sense of well-being derived from the legal protection of marriage. While Mary Beth was suffering the physical and emotional pain of end-stage cancer, she had the additional burden of worrying about how Maureen would manage financially after she was gone because of all the inheritance taxes Maureen would have to pay and benefits Maureen would not be able to receive because Pennsylvania does not recognize their marriage.

(Hennessey ¶ 8.) *See also* Video of Mary Beth McIntyre and Maureen Hennessey, PX-29-G (Mary Beth explaining to Maureen, before she passed away, that, if their marriage were recognized, it would mean "the freedom to know that you would be taken care of. . . [a]nd that's something that I worry about every single day").

72. One of the ways the Marriage Exclusion stigmatizes and demeans same-sex couples is by denying them the right to be identified as a surviving spouse on a deceased spouse's certificate of death. This refusal to recognize the marriages of same-sex couples denies them dignity, and injures them at one of the most vulnerable periods of life, when they are grieving for the loss of their spouse. (Peplau ¶ 56; *see also, e.g.*, Lobur ¶ 13; Hill ¶ 13.) *See also* Stipulation ¶ 13 (all married Plaintiff couples, upon their deaths, want their own and their spouse's respective death certificates to reflect their marriage and the name of the surviving spouse, but the Marriage Exclusion does not permit such recognition), PX-64.

73. Maureen Hennessey suffers this indignity of having her marriage denied on her spouse's death certificate. As Maureen describes the experience:

Mary Beth told the undertaker that she wanted it noted on her death certificate that we were married, and wanted me listed as her surviving spouse. He explained to us that we wouldn't be able to do that because Pennsylvania doesn't recognize me as Mary Beth's wife. This upset Mary Beth a lot. But I'm not sure she was as upset as I was after she passed when I got to hold that death certificate and see that there was a space for me, but I can't go in it. Mary Beth's death certificate listed her as "never married," and the "surviving spouse" part of the form was left blank. I was listed as the "informant." I shouldn't be listed as the informant. That sounds like a person who made a telephone call. I want to be recognized as Mary Beth's surviving spouse.

(Hennessey ¶¶ 12-13.) *See also* Stipulation ¶ 14, PX-64.

74. The Marriage Exclusion not only denies same-sex couples state recognition of their marriages and places them in a different status from similarly situated opposite-sex couples, but actually commands them to publicly deny their own relationships and marriages and declare themselves to be "Single" under penalty of perjury, *i.e.*, on tax documents, even though they are not. This aspect of the Marriage Exclusion imposes additional dignitary harm on each of the married Plaintiffs:

Checking the 'Single' box feels terrible . . . It feels like we are losing something, something important.

(Hill ¶ 12.)

Susan and I have loved each other for a long time, and every time I have to fill out a form where I can't check a box that says spouse or identify as married, it cuts like a knife, reminding me that my relationship is not as respected as those of other couples. And those cuts occur hundreds of times throughout the year.

(D. Whitewood ¶ 14; *see also* Palmer ¶ 6; H. Poehler ¶ 9; Plummer ¶ 14; Gillem ¶ 11; Lloyd ¶ 5; Raspberry ¶ 16; Gebhardtsbauer ¶ 6; Wright ¶ 11; Lobur ¶ 12.)

B. Economic Harms and Denial of Legal Protections Arising from the Marriage Exclusion

75. The Marriage Exclusion deprives same-sex couples of numerous legal protections and economic benefits that are available to opposite-sex married couples in Pennsylvania. Some of these legal protections apply to all or most married couples (*e.g.*, inheritance tax protections, intestacy rights, and health care decision-making) and others affect couples in specific situations (*e.g.*, spouses of veterans). The following are selected examples of the legal protections denied to same-sex couples and their families through the Marriage Exclusion.

Inheritance Tax

76. A married person is exempt from inheritance tax on property left to him by an opposite-sex spouse, including the spouse's share of the couple's home, and, thus, protected against economic distress or loss of a home because of an inheritance tax bill. 72 P.S. § 9116(a)(1.1)(ii). A same-sex surviving spouse or partner is denied this exemption and must pay a 15% tax, the highest rate, which applies to non-family members. 72 P.S. § 9116(a)(3). Regardless of their estate

planning attempts, same-sex couples cannot protect themselves against potentially huge and devastating economic losses from paying such taxes, which often are due at a time when the surviving spouse or partner is most vulnerable (*e.g.*, older and potentially out of the workforce, as well as dealing with loss of their spouse or partner). (Badgett ¶ 28; Carpenter ¶¶ 50-56.)

77. For an example of how the inheritance tax affects same-sex couples, if a same-sex couple owns a home worth \$147,100 (the median home price in Pennsylvania) jointly with rights of survivorship, and one spouse or partner dies, the survivor would inherit \$73,550 in value. Applying the 15% tax rate, the surviving partner would owe the Commonwealth \$11,032.50 (or \$10,480.87 with the early payment discount) just for the value of their shared home. (Badgett ¶ 41.)

78. It is estimated that the average inheritance tax paid to Pennsylvania by the surviving spouse or partner of a same-sex couple is \$21,000, which would be fully exempt from taxation if same-sex couples were treated as married. (Badgett ¶ 42.)

79. Julia Lobur and Marla Cattermole understand from a financial advisor that their inheritance tax bill could be up to \$50,000. (Lobur ¶ 14.)

80. Advisors to Angela Gillem and Gail Lloyd have told them that the inheritance tax bill could be over \$100,000. (Gillem ¶ 9.) Gail described the unfairness of this situation:

When we bought our home in 1998, it needed a lot of work. Angela and I put a lot of money and time into renovating the house and making it into a beautiful place to live. It feels particularly hurtful that when one of us dies, the other will have to pay tens of thousands of dollars in taxes just to stay in the home we built together.

(Lloyd ¶ 6.)

81. Maureen Hennessey and her wife Mary Beth McIntyre owned their home jointly with rights of survivorship. When Mary Beth passed away, Maureen inherited half the value of the house, as well as Mary Beth's other property. Because Pennsylvania treats Maureen and Mary Beth as legal strangers, in February 2014, Maureen paid an inheritance tax of 15% on Mary Beth's property, including assets they owned together, half of their joint bank accounts, and half the value of the home they bought together and shared together. Maureen had to use a substantial amount of Mary Beth's life insurance and retirement savings to pay the estate tax bill—a bill that would have been \$0 if Pennsylvania just acknowledged them as a married couple. (Hennessey ¶ 14.)

82. The inheritance tax can be even harsher for couples where only one spouse is on the deed. For example, only Susan Whitewood is named as the owner of their home; Deb is not listed on the deed because it would cost them 1% of the value of the house to add her. (*See infra* ¶ 88 (discussing real estate transfer tax).) If Susan passes away before Deb, Deb will be deemed to have inherited the entire value of the home, and will be taxed 15% on the *entire* value of the home, rather

than the 0% she would pay if their marriage were recognized. (S. Whitewood ¶ 7.) To mitigate the various financial penalties that would harm the Whitewoods because Pennsylvania does not recognize their marriage, the Whitewoods purchased unique insurance and annuity products to protect their financial position should anything happened to Susan, the sole breadwinner, since her assets would not pass directly to Deb without serious tax consequences. (*Id.* ¶ 11.)

Medical Proxy

83. If an opposite-sex spouse becomes incapacitated, her spouse is automatically authorized to make decisions regarding her care. 20 Pa. C.S. § 5461(d)(1)(i). This protection does not extend to a same-sex spouse or partner.

84. Several of the Plaintiff couples have experienced stress because of the lack of protection. (*E.g.*, D. Whitewood ¶ 13 (“Susan passed out on the subway and was taken to the hospital. . . [M]y first thought was that I needed my power of attorney in case the hospital wouldn’t share information about Susan’s condition with me or even allow me to see her. Being able to say I’m Susan’s wife should eliminate that problem in hospitals, but not until Pennsylvania recognizes marriages between same-sex couples.”); *see also* H. Poehler ¶ 8; Raspberry ¶ 15.)

85. Lynn Hurdle was not able to get any information about Fredia’s condition after Fredia was unexpectedly taken to surgery. Because they were not married, Lynn was not considered family and the hospital staff would not tell her

what had happened to Fredia or where she was. (L. Hurdle ¶ 7.) And Fredia woke up “terrified and all alone. I needed someone with me and the person I most wanted there, Lynn, wasn’t there because they didn’t recognize our relationship.” (F. Hurdle ¶ 4.)

86. While her spouse Mary Beth was dying of cancer, Maureen Hennessey found it particularly hard to advocate for Mary Beth and communicate with Mary Beth’s caregivers without the benefit of a recognized marital relationship. As Maureen explained:

As the tumors spread through Mary Beth’s brain, it became more difficult for her to speak So I made a lot of phone calls on Mary Beth’s behalf to insurance companies, doctors, and hospice workers to make sure she was getting the care she needed. With every call I had to explain our relationship. Since Pennsylvania treats Mary Beth and me as legal strangers, I was at the mercy of the person on the other end of the phone. I worried with every phone call that I would be told I had no right to speak for Mary Beth. I had to keep lists of which individuals at various companies recognized me as Mary Beth’s spouse and would talk to me. If Pennsylvania recognized our marriage, it would have been much easier to protect Mary Beth before she died.

(Hennessey ¶ 11.)

Tax Returns

87. Same-sex couples are unable to file tax returns jointly in Pennsylvania. Stipulation ¶ 20, PX-64. This inability to file jointly as a married couple not only causes the dignitary harm of spouses effectively having to disavow

their marriages and declare themselves single, but also denies married same-sex couples the very filing option that the Department of Revenue states is provided as a matter of “convenience” for married couples and which can save married filers additional costs by preparing just one return instead of two. Pa. Dep’t of Revenue, *2012 Pennsylvania Personal Income Tax Return* 7, PX-42. All of the married Plaintiff couples want to be able to file their Pennsylvania tax returns jointly. Stipulation ¶¶ 19-20, PX-64. (*See also* D. Whitewood ¶ 15; S. Whitewood ¶ 9; Hill ¶ 12; Palmer ¶ 6; H. Poehler ¶ 9; K. Poehler ¶ 6; Gillem ¶ 11; Lloyd ¶ 5; Miller ¶ 6; Raspberry ¶ 16; Gebhardtsbauer ¶ 6; Wright ¶ 11; Cattermole ¶ 7; Lobur ¶ 12.)

Real Estate Transfer Tax

88. The Marriage Exclusion also causes certain real estate transactions between same-sex spouses or partners to be taxed at 1% of the value of the real estate. If one spouse or partner were to transfer half the value of their home to the other, assuming the median home price in Pennsylvania of \$147,100, the transfer would result in a tax of \$736. This is a cost that opposite-sex married couples do not have to pay and that same-sex couples would not have to pay if they could be married or have their marriage recognized. (Badgett ¶ 45.) Deb and Susan Whitewood have avoided placing Deb Whitewood on the deed to their home

precisely because of the cost due to the Pennsylvania realty transfer tax. (S. Whitewood ¶ 7.)

Presumption of Parentage

89. A child born to a married couple is legally presumed to be the child of both spouses, thus protecting both the child and the parents. However, same-sex couples are entitled to no such presumption, thus denying the child legal ties with one of his or her parents unless and until a second-parent adoption may be completed. (Carpenter ¶¶ 59-62.)

90. Deb and Susan Whitewood, Dara Raspberry and Helena Miller, and Christine Donato and Sandy Ferlanie have all had to undergo an expensive and lengthy second-parent adoption process in Pennsylvania in order to ensure that their children have a legal relationship with both parents because they could not be married or have their marriages recognized in Pennsylvania. (*See* S. Whitewood ¶ 6; Raspberry ¶¶ 12, 14; C. Donato ¶¶ 8-11.)

91. Dawn Plummer and Diana Polson completed a second-parent adoption in New York for their first child, E.P., and they are currently saving money so that they can afford to complete a second-parent adoption for their second child, one-year-old J.P. (Plummer ¶¶ 8-9.) They have been told it will cost about \$2,500. Until they can afford to complete this process for J.P., Dawn has no

legal relationship to him and may not be able to make emergency medical decisions for him or otherwise be treated as his parent. (*Id.* ¶¶ 9-10.)

92. For Christine Donato and Sandy Ferlanie, the second-parent adoption process for their son, H.F., was particularly invasive and “humiliating.”

In addition to paying our attorney, we had to pay to have a social worker come to our house to interview us, we had to be fingerprinted, we had to have medical tests, and we had to get letters of recommendation. If the Commonwealth of Pennsylvania had allowed us to get married, we would not have had to do any of those things.

(C. Donato, PX-28, ¶ 10.)

Health Insurance Costs

93. The Marriage Exclusion makes health insurance more difficult and costly to obtain for same-sex spouses and partners. Some same-sex spouses and partners of employees may not be eligible at all for employer-sponsored health insurance. (L. Hurdle ¶ 6.) When same-sex couples are able to obtain employer-sponsored partner health benefits, they are forced to pay higher costs to obtain the health insurance due to the treatment of benefits for same-sex spouses and partners as taxable income, whereas spousal benefits are not taxed. (Badgett ¶ 50.) For example, in 2012, the Whitewoods paid more than \$1,600 in taxes on the health insurance for Deb that they obtained through Susan’s employer. (S. Whitewood ¶ 10; *see also* H. Poehler ¶ 5; Badgett ¶ 54 (a 2007 study shows that the average person receiving domestic partner benefits is taxed \$1,069 in additional federal

income and payroll taxes.) Some same-sex partners therefore end up paying for insurance on the open market, which can be more expensive and offer fewer benefits than insurance obtained through a spouse or partner’s employer-sponsored plan. (Badgett ¶¶ 49-51; cf. Plummer ¶ 13 (“Shortly after moving to Pittsburgh, our family was refused a ‘family’ health insurance plan [by an open-market insurer], meaning that Diana and I had to purchase separate insurance plans.”)).

Additional Protections for Married Couples Under Pennsylvania Law

94. There are hundreds of other legal protections under Pennsylvania law extended to married couples that the Marriage Exclusion denies to same-sex couples. By way of example, same-sex couples are excluded from legal protections related to:

- a. Intestacy: A widow or widower of an opposite-sex spouse is entitled to 50% to 100% of his or her deceased spouse’s estate if the spouse died without a will. 20 Pa. C.S. § 2102. A same-sex surviving spouse or partner in this situation receives nothing.
- b. Property Rebates: Property tax rebates or rent rebates are available under Pennsylvania law to certain people over the age of 50 who are widows and widowers of opposite-sex spouses. 53 P.S. §§ 6926.1303-6926.1306. They are not available to same-sex surviving spouses or partners.
- c. Veterans: Opposite-sex widows and widowers of military personnel and veterans are eligible for numerous assistance programs for the spouses of personnel killed in active combat or who are veterans of specific conflicts, and for families who need emergency financial assistance as a result of their family member’s military service. *E.g.*, 51 Pa. C.S. §§ 3502, 7319, 8502; 51 P.S. §§ 20010, 20046, 20096, 20125, 20305. These

programs are not available to same-sex surviving spouses or partners of military personnel and veterans.

- d. Military Widows: “Gold Star Family” license plates are available to the opposite-sex widows and widowers of service members killed on active military duty. 75 Pa. C.S. § 1365. Surviving same-sex spouses or partners are not eligible for license plates recognizing their loved one’s sacrifice.
- e. First Responders: Opposite-sex widows and widowers of firefighters, police officers, and other first responders killed in the line of duty are provided financial assistance. 53 P.S. § 891(d) (\$100,000 payment to surviving spouse of a firefighter, ambulance or rescue squad member, hazardous material response team member, law enforcement officer, or National Guard member who died in the line of duty). This assistance is not provided to same-sex surviving spouses or partners of first responders.
- f. Workers’ Compensation: Under the workers’ compensation laws, the opposite-sex spouse of someone who dies or is injured in the workplace is entitled to damages and may bring suit. 77 P.S. §§ 431 *et seq.* Same-sex spouses or partners have no legal standing to sue over their spouse or partner’s workplace injury.
- g. Financial Support Obligation: The Commonwealth requires opposite-sex spouses to support one another financially. 23 Pa. C.S. § 4603(a)(1)(i). There is no support obligation for same-sex spouses or partners.
- h. Divorce: Same-sex couples who separate are denied access to the mechanism of divorce, which enables couples to fairly and efficiently sort out their affairs (*e.g.*, divide assets and determine support and child custody arrangements). (Carpenter ¶¶ 81-92.)

Replicating Some of Married Couples’ Protections

95. Same-sex couples in Pennsylvania can and do attempt to replicate some of the legal protections of marriage. For example, they create wills to leave

property to a spouse or partner, create health care proxies to authorize medical decision-making in the event the spouse or partner is incapacitated, and obtain second-parent adoptions to secure legal parental rights. Some couples in Pennsylvania pay for legal name changes so that their family will share a last name. (*E.g.*, S. Whitewood ¶ 6; L. Hurdle ¶ 6.) All of the Plaintiff couples have paid lawyers to create or update some or all of these documents to protect themselves and their families. (S. Whitewood ¶ 8; L. Hurdle ¶ 6; Hill ¶ 8; H. Poehler ¶ 5; Chang-Muy ¶ 11; Plummer ¶ 12; Gillem ¶ 8; Raspberry ¶ 15; Wright ¶ 12; Lobur ¶ 10; C. Donato ¶ 12; Hennessey ¶ 9.) For some Plaintiffs, paying lawyers and advisors to create or update these legal documents is a regular part of their family life:

Because the law does not recognize our marriage, we are fortunate that we have the resources to hire lawyers and financial advisors to help emulate some of the protections that come with marriage. . . . Almost immediately after we found out we were pregnant with A.W. and K.W., we hired a lawyer to handle the second-parent adoptions We have also updated our estate documents every time we have had a life event, like a new child in the family. . . . We have also updated our POA's to reflect the statutory changes passed by HIPAA Every time we have updated our legal documents, or just looked into taking additional measures to protect ourselves, it has cost us fees for lawyers. Over the years, we have paid lawyers several thousand dollars—probably over \$10,000—to update legal documents that would not be necessary if the state recognized our marriage.

(S. Whitewood ¶¶ 6, 8.)

96. These alternative mechanisms for establishing some legal rights that come with marriage are more costly than if these couples could rely upon the Commonwealth's recognition of their marriage and are, thus, out of reach for many couples. (Badgett ¶ 28; Carpenter ¶ 21.) For example, Dawn Plummer and Diana Polson are currently saving for a second-parent adoption for their one-year-old son, J.P. *See supra* ¶ 18.

97. Moreover, only a fraction of marital protections can be replicated by contract. (Badgett ¶ 28; Carpenter ¶ 21.) The Marriage Exclusion imposes substantial economic harms on same-sex couples residing in Pennsylvania that they cannot avoid through the creation of any legal documents, such as inheritance taxes and denial of or more expensive health care benefits. (Badgett ¶ 9.)

Because Len and I are lawyers, we are particularly aware of how vulnerable we are by being excluded from the many legal protections that go along with marriage. We have done everything that lawyers can do to protect ourselves in the absence of marriage, such as drawing up wills and powers of attorney. But we know that there is nothing we can do to access most of the protections and benefits available to married couples.

(Chang-Muy ¶ 11.)

Federal Protections Afforded to Married Couples

98. The Marriage Exclusion also impacts same-sex couples' ability to obtain federal rights and benefits available to married couples. This results in increased financial costs, through, among other things, (a) an increased federal tax

burden on unmarried couples; (b) inability to access one's spouse or partner's Social Security benefits; (c) decreased Medicaid protections; and (d) denial of Family Medical Leave Act (FMLA) rights to care for one's spouse or partner. Some of those federal benefits (*e.g.*, Social Security and FMLA protections) are not even available to same-sex spouses who are married if they reside in a state like Pennsylvania that does not recognize their marriage. (Badgett ¶ 52.)

99. As an actuary who has professional experience with Social Security, Ron Gebhardtsbauer is particularly aware of the fact that, unless Pennsylvania law changes to recognize his marriage, if he is a Pennsylvania resident when he dies, the Social Security Administration would not provide his husband, Greg, with access to his Social Security benefits. (Gebhardtsbauer ¶ 7.)

100. For families where one spouse earns substantially more than the other spouse, the risk that the primary breadwinner will pass away first and the survivor will be unable to obtain Social Security survivor benefits is particularly serious.

Gail is an artist, so she does not draw a steady paycheck to contribute to social security. . . . Pennsylvania's refusal to recognize our marriage might mean that Gail cannot collect my social security benefits if I die first. I live every day with the fear that the steps I have taken will not be enough to protect Gail if something should happen to me.

(Gillem ¶¶ 8-9.)

If Pennsylvania does not recognize our marriage, I will not be eligible to receive Mary Beth's Social Security

benefits when I retire. This is particularly tough for me because Mary Beth was the primary breadwinner in the family and her Social Security benefit would be much higher than mine. Not only do I have to figure out how to live without the love of my life by my side, but I also have to figure out how to manage financially on my own without the security of the Social Security benefits that Mary Beth worked for decades to earn.

(Hennessey ¶ 15.)

V. The History of Marriage in America

101. Since the founding of the colony by William Penn, marriage in Pennsylvania has been regarded as a civil contract embodying a couple's free consent to join in long-lasting intimate and economic union. In authorizing marriage, the Commonwealth (and every other state in the United States) confers legal status on a couple's decision to marry in an effort both to protect the couple's bond and to advance general social and economic welfare. Throughout U.S. history, states have valued marriage as a means to benefit society. (Cott ¶ 11.)

102. Marriage has served numerous complementary public purposes. While the private, subjective experience of "being married" may vary as much as individuals vary and thus resists description, historians can describe and document how the institution of marriage has been defined by law and the purposes it has served. Among these purposes are: to facilitate the state's regulation of the population and its health and welfare; to create stable households; to foster social order; to increase economic welfare and minimize public support of the indigent or

vulnerable; to legitimate children by tying them to a family unit; to assign providers to care for dependents; to facilitate the ownership and transmission of property; and to define the households that compose the body politic. These public purposes have long been recognized in American law. (Cott ¶ 13.)

103. Seeing multiple purposes in marriage, Pennsylvania and other states have encouraged maritally-based households as advantages to public good, whether or not minor children are present. (Cott ¶ 14.)

104. The individual's ability to consent to marriage is the mark of the free person in possession of basic civil rights. This is compellingly illustrated by the history of slavery and emancipation in the United States. Slaves could not enter into valid marriages. They did not have the ability—the freedom—to consent to the obligations and duties that marriage entailed. After the Civil War, former slaves leapt at the new chance to marry legally. (Cott ¶ 15.)

105. Marriage rules in several instances in the past enforced inequalities among inhabitants of the United States. (Cott ¶ 16.)

106. Racially-based restrictions on marriage in Pennsylvania during the 18th century colonial era (and in a large majority of states for much of the nation's history) prohibited, voided, or criminalized marriages between white people and people of color. The U.S. Supreme Court, in *Loving v. Virginia*, 388 U.S. 1

(1967), ended the nearly 300-year history of discriminatory race-based legislation on marriage. (Cott ¶ 17(b).)

107. Men and women were treated unequally and asymmetrically in marriage under eighteenth-century common law. According to the doctrine of coverture or marital unity, the married couple formed a single entity represented by the husband. The wife, upon marriage, ceded her legal and economic identity to her husband and was “covered” by him. A married woman could not own property, represent herself in court, sign a contract, or keep any money she earned. This inequality, seen as essential to marriage for centuries, was eliminated in response to changing values and the demands of economic modernization. Today, Pennsylvania and federal law treat both spouses in an opposite-sex couple equally and in gender-neutral fashion with respect to marriage, and the U.S. and Pennsylvania Supreme Courts have confirmed that such gender-neutral treatment for marital partners is constitutionally required. (Cott ¶ 17(a).)

108. Another change in marriage that would have been unthinkable at the time of the founding of the United States was the introduction of no-fault divorce. Divorce grounds were few in early America. Pennsylvania allowed more liberal grounds for divorce than in many states, but everywhere divorce was an adversarial process, requiring one spouse to sue on the basis of the other’s marital fault. Over time, Pennsylvania and other states expanded grounds for divorce, and eventually

enacted “no-fault” divorce laws now in place, which recognize that the married couple themselves can best assess the sufficiency or breakdown of their marriage. (Cott ¶ 17(c).)

109. Prohibitions against interracial marriage, the doctrine of coverture, and restrictive grounds for divorce were once considered essential to marriage. Eliminating these restrictions on marriage has enhanced the vitality of marriage. (Cott ¶¶ 59-62, 77, 96.)

110. While marriage has changed throughout the centuries, it retains its basis in voluntary consent of two individuals to join in marital union, mutual love and support, and economic partnership. The institution has lasted over centuries because it has been flexible, capable of being adjusted by courts and legislatures in accordance with changing ethical and moral standards. (Cott ¶ 20.)

111. The changes observable over time have moved marriage toward equality between the partners and gender-neutrality in marital roles, with spouses themselves rather than the state defining the marital roles. Marriage restrictions meant to deny groups of citizens the freedom to marry partners of their choice have been eliminated. (Cott ¶ 21.)

112. The exclusion from marriage of same-sex couples stands at odds with the direction of historical change in the institution of marriage in the United States. Contemporary public policy assumes that marriage is a public good. Excluding

some citizens from marriage, or marking some as unfit on the basis of their marriage choices, does not accord with public policy regarding the benefit of marriage. (Cott ¶ 22.)

VI. The Suspect Classification Factors

A. The History of Discrimination Suffered by Lesbians and Gay Men

113. Dr. Chauncey, Plaintiffs' expert on the history of discrimination against lesbian and gay people in America, testifies in his report that lesbian and gay people have been subject to widespread and significant discrimination and hostility in the United States. (Chauncey ¶ 6.) Although lesbian and gay people have made clear gains in civil rights, especially over the past thirty years, these legal protections vary substantially from region to region and are still subject to the vicissitudes of public opinion. (*Id.* ¶ 10.) And, like other minority groups, they often must rely on judicial decisions to secure equal rights. (*Id.*)

114. Throughout the twentieth century, lesbians and gay men suffered under the weight of:

- a. medical theories that treated their desires as a disease or disorder (*id.* ¶¶ 13, 27, 28);
- b. penal laws that condemned their consensual adult sexual behavior as a crime, which did not end nationwide until 2003 when the U.S. Supreme Court handed down *Lawrence v. Texas* (*id.* ¶¶ 12, 21, 22);
- c. police practices that suppressed their ability to associate and socialize publicly, (*id.* ¶¶ 12, 29, 30, 50, 54-56, 66, 91);

- d. censorship codes that prohibited their depiction on the stage, in the movies, and on television (*id.* ¶¶ 12, 13, 32-35, 49), which did not begin to decline until the 1960s (*id.* ¶ 62);
- e. federal, state, and local laws and regulations that discriminated against them on the basis of their homosexual status (*id.* ¶¶ 12, 36-38), including federal bans on service in the military, which lasted through the era of “Don’t Ask Don’t Tell” until just recently (*id.* ¶¶ 39-41, 79-80), and a ban on immigration of lesbian and gay foreigners (*id.* ¶ 47); and
- f. bans and other restrictions on lesbian and gay people’s ability to adopt children, serve as foster parents, or even gain custody of their own children (*id.* ¶¶ 81-84).

115. This official harassment and discrimination helped foment demonic stereotypes that lesbian and gay people were child molesters, perverts, deviants, and psychopaths who could not be trusted generally, and around children in particular (*id.* ¶¶ 51-53), or that they were diseased (*id.* ¶¶ 13, 28, 71). Even after the gay rights movement began to emerge in the 1960s and 1970s (*id.* ¶¶ 57-65), a series of successes provoked a backlash that increased the discrimination, harassment and demonization in the late 1970s (*id.* ¶¶ 66-73). Anti-gay rights advocates drew on pernicious stereotypes developed in previous decades to argue that enacting gay rights laws, permitting gay people to teach, and even simply allowing gay characters to appear on television sitcoms threatened the security of children and the stability of the family. (*Id.* ¶ 67.)

116. One very visible and successful campaign, launched in 1977 by a prominent singer and spokeswoman for the Florida citrus growers named Anita

Bryant, was called “Save Our Children” and fought to repeal newly enacted civil rights protections for gay men and lesbians in Dade County, Florida. (*Id.* ¶¶ 68-69.) The Save Our Children campaign had far-reaching effects. (*Id.*) The day after the Dade County gay rights ordinance was repealed, the governor of Florida signed into law a ban on adoption by lesbians and gay men. (*Id.*)

117. These government policies and ideological messages worked together to create and reinforce the belief that lesbian and gay persons comprised an inferior class to be shunned by other Americans. (*Id.* ¶ 7.) Some high-level Pennsylvania elected officials have demonstrated, and continue to demonstrate to the present day, hostility toward lesbian and gay people. (*Id.* ¶¶ 7, 89, 98, 102-104.)

118. In 1990, Pennsylvania state legislators condemned homosexuality as a “perversion” and a danger to society during the floor debate in the Pennsylvania House of Representatives over a bill that would have extended hate crime protection to include sexual orientation. (*Id.* ¶ 89.) *See generally* 1990 Pa. Legis. J. (House), at 1202-1212 (June 26, 1990), PX-49. Representative A. Carville Foster, Jr., of York County, for instance, contended that the bill tried “to equate perversion with ethnicity, religious background, or race,” and asked:

[D]o you think that homosexuality is something that we can be proud of and we can elevate in our society and hold out to our children as a fine way of life in America? That is what this bill is all about, plain and simple. It is simply an attempt to elevate perversion to a status that is totally—totally—out of place.

Id. at 1206. Representative Dennis E. Leh of Berks County warned:

These people whom we are going to give this privileged minority status to are not simply the gentlemen who like to walk around holding hands. They do have an agenda. Their agenda is to turn our society upside down. . . . This bill will turn our society upside down. This bill will require us to remove the slogan “America Starts Here” to “America Ends Here,” because sodomy has always resulted in the collapse of a civilization.

Id. Representative Howard L. Fargo said the bill promoted “sexual perversion” and “will legitimize a further deterioration of the traditional family and its values.”

Id. at 1209.

119. Marriage emerged as the new flashpoint in debates over civil rights for lesbians and gay men in the 1990s. (Chauncey ¶ 16.) The marriage issue first reached the national stage in 1993, when Hawaii’s Supreme Court ruled that the state’s ban on marriages between same-sex couples violated the state constitution. (*Id.* ¶ 97.) In reaction to the Hawaii decision, the United States Senate passed the federal DOMA in 1996, prohibiting federal recognition of the marriages of same-sex couples. (*Id.*)

120. Pennsylvania was one of fourteen states in 1996 to pass state-level DOMA laws. (*Id.* ¶ 98.) Even more recently, Pennsylvania legislators have sponsored bills to enshrine the state’s prohibition on marriage for same-sex couples in the Pennsylvania Constitution during every regular session of the General Assembly since 2006. (*Id.* ¶ 102.)

121. In supporting bills to amend the state constitution to exclude same-sex couples from marriage, Pennsylvania elected officials have repeatedly expressed their antipathy to lesbian and gay citizens of the Commonwealth. During the debate over the 2006 proposed constitutional amendment, several Pennsylvania legislators warned that failing to exclude same-sex couples from marriage would lead to the legalization of incest and bestiality. (*Id.* ¶ 103.) *See also* 2006 Pa. Legislative Journal (Senate), at 1771-1782 (June 21, 2006), PX-50; 2006 Pa. Legislative Journal (House), at 1139-1159 (June 6, 2006), PX-51; Jeff Hawkes, *To Boyd, Marriage “Completes You” – Unless You’re Gay*, LancasterOnline.com (Jan. 24, 2006), PX-53.

122. In 2009, Senator John Eichelberger of Blair County, who introduced the proposed 2010 constitutional amendment, called homosexual relationships “dysfunctional” and equated marriage for same-sex couples with pedophilia. (Chauncey ¶ 103.) *See* Mauriello, *Early Returns*, Pitt. Post-Gazette (Jun. 29, 2009), quoted in *The Hotline* (June 30, 2009), *available at* 2009 WLNR 14846542, PX-56.

123. In 2010, then Attorney General, now Governor, the Honorable Thomas J. Corbett intervened in an action pending in the Berks County Court of Common Pleas to prevent a lesbian couple that had been lawfully married in another state from obtaining a divorce decree from a Pennsylvania court.

(Chauncey ¶ 103.) See Notice of Intervention, *Kern v. Taney*, No. 09-10738 #2 (C.P. Berks County, Pa., Feb. 11, 2010), PX-58.

124. Also in 2010, during his gubernatorial campaign, Governor Corbett stated his support for an amendment to the Pennsylvania Constitution to define marriage as the union between one man and one woman because a “Constitutional amendment would help safeguard marriage against an alternative agenda.”

(Chauncey ¶ 103.) See Pennsylvania Primary Election, 25 Viewpoint Newsletter of the Pa. Catholic Conference 1, at 5 (May 18, 2010), PX-59.

125. In June 2013, several state lawmakers prevented Representative Brian K. Sims, an openly gay lawmaker from Philadelphia, from speaking on the House floor about the U.S. Supreme Court’s decision in *Windsor v. United States*.

(Chauncey ¶ 103.) See Mollie Reilly, *Brian Sims, Pennsylvania Lawmaker, Silenced on DOMA by Colleagues Citing “God’s Law,”* Huffington Post (June 27, 2013), PX-60. One of the lawmakers later explained that he did so because “I did not believe that as a member of that body that I should allow someone to make comments such as he was preparing to make that ultimately were just open rebellion against what the word of God has said, what God has said, and just open rebellion against God’s law.” *Id.*

126. Even as recently as last fall, in October of 2013, Governor Corbett, Pennsylvania’s top elected official, compared marriage for same-sex couples to

incest, telling a news reporter that an appropriate analogy to same-sex couples seeking marriage rights are brothers and sisters seeking marriage rights. (Chauncey ¶ 104.) *See* Interview with Governor Thomas Corbett, WHP-TV (Oct. 4, 2013), PX-62. The Governor subsequently apologized for his comment. *See* John L. Micek, *Corbett Apologizes for Remarks About Same-Sex Couples*, PennLive (Oct. 4, 2013), PX-63.

B. Sexual Orientation as an Immutable Characteristic

128. Sexual orientation refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. Most adults are attracted to and form relationships with members of only one sex. (Peplau ¶ 10.)

129. When lesbians and gay men are asked by researchers about their sexual orientation, the vast majority report that they experienced no choice or very little choice about their sexual orientation. (*Id.* ¶ 25.)

130. Efforts to change a person's sexual orientation through religious or psychotherapy interventions have not been shown to be effective and can cause psychological harm to those who participate in such interventions. (*Id.* ¶¶ 10, 26.)

131. No major mental health professional organization has approved interventions to attempt to change sexual orientation, and virtually all of them have adopted policy statements cautioning professionals and the public about these treatments. These include the American Psychiatric Association, American

Psychological Association, American Counseling Association, National Association of Social Workers, American Academy of Pediatrics and Pan American Health Organization (the World Health Organization's regional office for the Americas). (*Id.* ¶ 27.)

C. Lesbian and Gay People's Ability to Contribute to Society

132. It is well established that homosexuality is a normal expression of human sexuality. It is not a mental illness. (Peplau ¶ 11; *see also* Chauncey ¶ 61 (the American Psychiatric Association removed homosexuality from its list of mental disorders in 1973, and the American Psychological Association soon followed suit).)

133. Being gay or lesbian has no inherent association with a person's ability to lead a happy, healthy, and productive life or to contribute to society. (Peplau ¶ 11.)

134. People in same-sex couples are active contributors to Pennsylvania's economy, culture, and future. (Badgett ¶ 31.)

D. The Ability of Lesbian and Gay People and Same-Sex Couples to Adequately Protect Themselves Through the Political Process

135. Gay people remain a highly stigmatized minority group. (Peplau ¶¶ 22, 55; Chauncey ¶¶ 7, 13, 28, 51-53, 66-77.)

136. A legacy of the long history of discrimination against lesbians and gay men has been the inability to enact legislative protections against discrimination and prevent the passage of discriminatory laws. (Chauncey ¶ 9.)

137. Gay people have been particularly vulnerable to discriminatory ballot initiatives to roll back protections they have secured in the legislature or prevent such protections from ever being extended. (*Id.* ¶¶ 74, 76, 97, 100-101.)

138. Recent advances for gay people pale in comparison to the political progress of women at the time that classifications based on sex were first recognized as quasi-suspect in *Frontiero v. Richardson*, 411 U.S. 677 (1974). By that time, Congress had already passed Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963, both of which protect women from discrimination in the workplace.

139. In contrast, there is still no express federal ban on sexual orientation discrimination in employment, housing, or public accommodations, and more than half of the states, including Pennsylvania, have no such state-wide protections either. (Chauncey ¶¶ 77, 80.)

140. And gay men and lesbians are still prohibited from marrying in the vast majority of states in this country today. (*Id.* ¶ 95.)

141. The legacy of discrimination is also evident in the demeaning stereotypes and inflammatory rhetoric used by anti-gay organizations and public

officials as they campaign to enact further measures meant to erode gay people's civil rights and diminish their status as full citizens of the United States— campaigns that are very often successful. (*Id.* ¶ 9.)

142. Pennsylvania's political landscape demonstrates the difficulty of achieving equality for lesbians and gay men . Pennsylvania's elected officials, to the present day, have repeatedly shown hostility to lesbian and gay people, not only by way of passing DOMA, refusing to extend anti-discrimination protections, and advocating for a constitutional amendment banning same-sex marriage, but also through invective during legislative debates and in the press. (*Id.* ¶¶ 7, 89, 98, 102-104.) *See supra* ¶¶ 121-26.

143. The legacy of and continued discrimination against lesbian and gay people impairs their ability to adequately protect themselves through the political process. (*See generally* Chauncey ¶ 104.)

144. Like other minority groups, lesbians and gay men often must rely on judicial decisions to secure equal rights (*id.* ¶¶ 9, 12, 17, 49, 54, 60, 76, 81, 97, 100, 105), a phenomenon we are seeing play out across the country with judges being the ones to declare marriage bans unconstitutional and elected officials persisting in fighting those decisions and pressing appeals.

VII. The Commonwealth's Asserted Justifications for the Marriage Exclusion

144. Plaintiffs' interrogatories asked the Commonwealth to "identify and describe with particularity each and every state interest that you contend is advanced by 23 Pa.C.S. §§ 1102 and 1704" (*i.e.*, Pennsylvania's DOMA). (*See* Defs.' Resp. to Pls.' First Set of Interrogs., Interrog. No. 1, PX-35.) Interrogatory Nos. 2-5 requested additional details. (*Id.*)

145. The Commonwealth identified four interests that the General Assembly "conceivably might [have] consider[ed] . . . served by the legislation" (*i.e.*, Pennsylvania's DOMA): (i) "promotion of procreation"; (ii) "child rearing and the well-being of children"; (iii) "tradition"; and (iv) "concern that redefining marriage would bring about adverse economic consequences." (*Id.*, Interrog. Nos. 1 and 2.)

146. The only evidentiary support for these interests advanced by the Commonwealth Defendants was "the legislative history of the Pennsylvania Marriage Statutes and all amendments to those laws." (*Id.*, Interrog. Nos. 1-4; Defs.' Resp. to Pls.' First Set of Reqs. for Produc. of Docs., PX-36.) In response to Plaintiffs' subsequent interrogatories and document requests, Defendants failed to adduce any additional evidence, claiming:

Defendants do not have knowledge or information reasonably available to them regarding the facts, documents, treatises, memoranda, or communications

upon which the Office of the Governor or the General Assembly might have relied when 23 Pa.C.S. §§ 1102 and 1704 were enacted in 1996.

(Defs.' Resp. to Pls.' Second Set of Interrogs., Interrog. No. 6, PX-37; Defs.' Resp. to Pls.' Second Set of Reqs. for Produc. of Docs., Req. No. 12, PX-38.)

147. The four interests identified by the Commonwealth Defendants to purportedly justify Pennsylvania's Marriage Exclusion are addressed below.

A. The Commonwealth's Asserted Interests in Procreation and "Child-Rearing and the Well-Being of Children"

148. Pennsylvania has no requirement, either in its law or in practice, that married couples or applicants for marriage licenses procreate or have any intention or ability to procreate, biologically or otherwise. 23 Pa. C.S. § 1304 (legal requirements for marriage in Pennsylvania are that each person must be at least sixteen years of age, or get court approval; anyone under eighteen years of age must have permission from a custodial parent or guardian; and the parties must be legally competent, cannot be under influence of drugs or alcohol at the time of application, and cannot have a relationship that is within certain "prohibited degrees of consanguinity."). (*See also* Cott ¶¶ 41-42.)

149. Pennsylvania law allows same-sex couples to adopt and to serve as foster parents. *Adoption of R.B.F.*, 803 A.2d 1195 (Pa. 2002); Stipulation ¶¶ 21-22, PX-64.

150. The Pennsylvania Department of Public Welfare, which oversees Pennsylvania's child welfare system, has no policy that requires an agency to prefer placement with a heterosexual couple over a same-sex couple. The Department prescribes forms for prospective adoptive and foster parents that are gender neutral, identifying applicants as "Partner # 1" and "Partner # 2." Stipulation ¶ 22, PX-64. Agencies that are licensed and regulated by DPW place children in foster and adoptive placements with both heterosexual couples and same-sex couples. *Id.* ¶ 22.

151. Same-sex couples are forming families with children across the United States, including in states in which they are permitted to marry. The 2010 Census reported over 3,500 such families in Pennsylvania. (Lamb ¶¶ 15, 47.)

152. Marriage can yield important benefits for children and families, including state and federal legal protections, economic resources, family stability, and social legitimacy. These benefits are equally advantageous for children and adolescents in families headed by same-sex and different-sex couples. Allowing same-sex couples to have equal access to those benefits afforded through marriage is in the best interests of the children in these families. (*Id.* ¶ 48.)

153. It is a matter of scientific consensus that the factors that account for the adjustment of children and adolescents are (a) the quality of children's or adolescents' relationships with their parents or parent figures; (b) the quality of the

relationships between the parents or significant adults in the youths' lives (conflict between them is associated with maladjustment while harmonious relationships between the adults support healthy adjustment); and (c) the availability of adequate economic and social resources (poverty and social isolation are associated with maladjustment, and adequate resources support healthy adjustment). These factors affect adjustment in traditional and nontraditional families, including families headed by same-sex parents. (*Id.* ¶¶ 18-19, 21-23.)

154. It is a matter of scientific consensus that children and adolescents raised by same-sex parents are as likely to be well-adjusted as children raised by different-sex parents, including biological parents. Numerous studies of youths raised by same-sex parents conducted over the past 30 years by respected researchers and published in peer-reviewed academic journals conclude that children and adolescents raised by same-sex parents are as successful psychologically, emotionally, and socially as children and adolescents raised by different-sex parents, including biological parents. The studies, which employed a range of methodologies, including both intensive examination of small convenience samples and large-scale representative surveys, meet the standards for research in the field of developmental psychology and psychology generally. (*Id.* ¶¶ 32-34, 38-39.)

155. The social science literature overwhelmingly rejects the notion that there is an optimal gender mix of parents. It is well established that both men and women have the capacity to be good parents, and that having parents of both genders does not enhance children's adjustment. While there are average differences in the parenting styles of mothers and fathers, which largely reflect differences in the parental roles the parents adopt (*i.e.*, primary or secondary parent), this does not apply to all men or to all women, nor is it harmful when parents do not assume traditional gender roles with respect to parenting styles. The greater risk of maladjustment for children in single parent families is due not to the absence of a male or female parent, but rather, to the reduced resources often available when there is just one parent and the disruptive effects of and conflict associated with parental separation, which often precedes single-parent family life. (*Id.* ¶¶ 25-31, 40-41.)

156. A study that opponents of marriage for same-sex couples often claim shows poorer child outcomes in same-sex parent families—Mark Regnerus, *How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study*, Social Science Research 41 (2012) 752-770—has been thoroughly discredited and does not allow for any conclusions about the impact of growing up in a same-sex parent family because it did not actually assess individuals raised from birth by same-sex parents. Rather, it

assessed individuals who were born into prior heterosexual unions that broke up (a well-known predictor of poorer child outcomes) and whose parent subsequently had a same-sex relationship. (Lamb ¶ 36.) *See DeBoer v. Snyder*, No. 12-10285, 2014 WL 1100794, at *7 (E.D. Mich. Mar. 21, 2014), *appeal docketed* No. 14-1341 (6th Cir. Mar. 21, 2014) (finding Dr. Regnerus’s testimony “entirely unbelievable and not worthy of serious consideration” in part because his study “failed to measure the adult outcomes of children who were actually raised in same-sex households”).

157. Every major professional organization representing mental health and child welfare professionals has issued a statement confirming that same-sex parents are as effective as different-sex parents in raising well-adjusted children and adolescents. These organizations include the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, the American Psychiatric Association, the American Psychological Association, the National Association of Social Workers, the Child Welfare League of America, the North American Council on Adoptable Children, and the American Academy of Family Physicians. (*Id.* ¶ 35.)

158. The practice of forming families in which the children are not biologically related to one or both parents is not unique to same-sex couples. Many heterosexual couples become parents through adoption or the use of assisted

reproduction involving donor sperm or ova. Indeed, most couples who have donor-conceived children are heterosexual couples. (*Id.* ¶ 43.)

159. Scientific research refutes the notion that children do best in families with two biological parents. Children adopted early in life (as opposed to children who were adopted later, often after difficult early life experiences) have outcomes similar to those of children raised by their biological parents. And children conceived through the use of donor sperm or ova (whether to different-sex or same-sex parents) fare no differently than children raised by two biological parents. (*Id.* ¶ 44.) Poorer average outcomes found among children in step-families are not due to the lack of biological relatedness to the step-parent, but rather the fact that children in step-families have experienced family disruption. (*Id.* ¶ 45.)

160. Eligibility to marry is not limited to those demographic groups whose children are most likely to have good outcomes. For example, studies consistently show that, on average, children in low-income families have significantly poorer outcomes than children in higher income families; children of parents who are less educated fare worse than children whose parents went to college; and children in some racial and ethnic groups have poorer outcomes than their peers. Not only are adults in these groups permitted to marry, but because marriage offers families

important resources and support, significant efforts have been made to *encourage* marriage in these groups in order to help ameliorate the disparities. (*Id.* ¶ 49.)

B. The Commonwealth’s Asserted Interest in “Tradition”³

161. The Commonwealth Defendants have declined, in response to pointed discovery requests, to elaborate on what they mean by “tradition.”

162. The institution of marriage has undergone many different changes over time and there is no static, unchanging definition of marriage. (Cott ¶¶ 17(a)-(c), 59-93 (identifying numerous changes to the institution of marriage, including elimination of anti-miscegenation and coverture laws and the introduction of no-fault divorce).) *See also supra* ¶¶ 101-12.

163. Allowing same-sex couples to marry has no negative impact on different-sex marriages. The factors that affect the quality, stability, and longevity of different-sex relationships are not affected by marriages of same-sex couples. (Peplau ¶ 15.)

164. In states in which same-sex couples are permitted to marry, this has not reduced the marriage rate or increased the divorced rate. (*Id.* ¶¶ 61-63.)

³Tradition, by itself, does not constitute “an independent and legitimate legislative end” for purposes of rational-basis review. (*See* Pls.’ Br. in Supp. of Mot. for Summ. J., Argument Section IV.C.) Plaintiffs nevertheless address it here.

C. The Commonwealth's Asserted Interest in Preventing Potential Adverse Economic Consequences⁴

165. The statements in the legislative history regarding the supposed economic consequences that the Commonwealth would experience in the absence of a statute banning marriage for same-sex couples have no empirical support. (Badgett ¶ 13.)

166. Two legislators spoke regarding potential economic impacts arising from Pennsylvania recognizing marriage rights for same-sex couples.

Representative Egolf stated:

In addition, this amendment serves many other practical purposes for the Commonwealth of today and the future.

For example, legalizing same-sex marriages would place another unfunded mandate on our business community. Any existing pension or insurance program providing benefits to a spouse would now have to include an entirely new supply of so-called spouses. The providers of these benefits would have to assume a liability they never conceived when the promise was made. To avoid these new liabilities, providers would have to cancel and rewrite the agreements, and future agreements might even delete the coverage of spouse and family that Pennsylvania workers have come to depend on.

⁴Saving money or resources is not a legitimate justification for excluding a group from a government benefit without an independent rationale for why the cost savings ought to be borne by the particular group being denied the benefit. (*See* Pls.' Br. in Supp. of Mot. for Summ. J., Argument Section IV.B.) Plaintiffs nevertheless present undisputed facts concerning this asserted interest.

The burden on the public sector could be great as well. In recognizing same-sex marriages, courts would also have to hear all same-sex divorce suits. This will only compound the backlog of cases in our judicial system. Social Security, tax, and other benefits presently conferred on spouses would have to be expanded to include married partners of the same sex. The financial costs imposed on society by the forced recognition of same-sex marriage cannot even be calculated at this time.

1996 Pa. Legis. J. (House), at 2017, PX-45.

167. Senator Afflerbach stated:

Marriage has longstanding been considered a civil contract. The fact that it is now defined that way in this bill does not change the way it has been for the last hundreds of years, and that civil contract confers obligations, responsibilities, and benefits upon two individuals who fulfill that legal contract.

I daresay that if we begin to redefine marriage as same gender, there will be many people who will suddenly realize that they can achieve the benefits of a married couple, whether it is in taxes, inheritances, property ownership, whatever it may be, that will be a clear economic advantage that is in fact enjoyed by married people of different genders. It has nothing to do with gender preference or sexual preference; it has everything to do with economic gain or loss.

I think there will be economic dislocations that would occur if were to permit same-gender marriages that we have not even begun to conceive at this point, and until we are able to ascertain what those dislocations will be and who in fact will be picking up the costs of those dislocations, we need to move forward with legislation such as this. I am not so certain that we need to do it as precipitously as this bill has been done, but certainly we need to establish a base from which to work and from which to conduct a study. This bill permits us the

opportunity to do that by settling the issue until such time as such a study may be completed.

1996 Legis. J. (Senate), at 2454, PX-46.

168. Senator Afflerbach, who expressed concern over supposed economic impacts to the state, acknowledged that such impacts had not been calculated.

1996 Legis. J. (Senate), at 2454, PX-46. There is no evidence in the record of any empirical support for Representative Egolf's and Senator Afflerbach's statements.

(Badgett ¶ 13.)

169. Nor has Pennsylvania produced any evidence that in the intervening eighteen years since the adoption of the Marriage Exclusion, Pennsylvania has conducted the "study" that Senator Afflerbach referred to as being necessary to determine the economic impacts arising from allowing or recognizing marriages of same-sex couples.(Defs.' Resp. to Pls.' Second Set of Interrogs., PX-37; Defs.'

Resp. to Pls.' Second Set of Reqs. for Produc. of Docs.), PX-38.)

170. To the contrary, the reality is that the net economic impact to the state would be positive if it would allow and recognize marriage for same-sex couples.

(Badgett ¶ 13.)

171. The marriage exclusion imposes substantial costs on Pennsylvania itself, and its counties and cities. First, the state and local subdivisions lose significant tax and fee revenue that, but for the marriage exclusion, would accrue as a result of weddings of same-sex couples. Second, denial of marriage to same-

sex partners results in additional state spending on Temporary Assistance for Needy Families (“TANF”) and Medical Assistance. (Badgett ¶ 10.)

172. Because of the marriage exclusion, over the next three years, the Commonwealth’s economy will lose an estimated \$65-\$99 million in wedding-related business. (*Id.* ¶¶ 12, 64-69.)

173. Pennsylvania also will lose an estimated \$4.2-\$5.8 million in tax revenue over the next three years that would have accrued as a result of weddings by same-sex couples. (*Id.* ¶¶ 12, 69.)

174. Each year the state will pay an estimated \$1.8 million in additional Medicaid expenses and \$1.9 million in additional TANF costs. (*Id.* ¶¶ 12, 76-78.)

175. The losses the Commonwealth and its businesses will continue to suffer outweigh any revenue gains the Commonwealth is currently experiencing as a result of taxing same-sex couples differently, estimated to be \$4.1 million per year. (*Id.* ¶¶ 91-92.) Moreover, these figures do not include the widely-recognized but more difficult to quantify economic losses, such as the loss of highly skilled workers and the additional expenses and administrative inefficiencies for businesses that try to remediate this problem by providing domestic partner benefits to their employees. (*Id.* ¶¶ 12, 79-85.)

176. In its role as an employer, the Commonwealth provides domestic partnership benefits, such as medical, dental, prescription drug, vision, hearing aid,

long-term care, and life insurance benefits. PEBTF, *Benefit News for Active Members*, at 1 (Spring 2009), PX-54; Marc Levy, *It's Just the Right Thing to Do*, NBC10.com (May 15, 2009), PX-55; Marc Levy and Karen Araiza, *Same-Sex Partners Can Celebrate*, NBC10.com (July 1, 2009), PX-57.

177. In 2010, Christy Leo, the Communications Director for the Pennsylvania Employee Benefits Trust Fund, which administers the benefits to all state employees and retirees, stated: “We basically want to become competitive with other employers. . . . A lot of other employers do provide such a benefit, so in order to be competitive we thought we needed to extend benefits to domestic partners.” Levy, PX-55; *see also* Levy and Araiza, PX-57.

178. PEBTF also reported at the time it enacted domestic partnership medical benefits:

Many employers allow employees to extend benefits to cover domestic partners. A majority of Fortune 500 companies, including Chevron, Coca-Cola, Eastman Kodak, Google, Home Depot, AT&T Inc., Nike and The Walt Disney Co., extend such benefits. A dozen significant Pennsylvania companies do so. Among them are Aramark, CIGNA, Comcast, Erie Insurance, Lincoln National, Mellon Financial, PNC Financial Group, Unisys and Rite Aid. And, with this program, Pennsylvania joins 15 states - Alaska, Arizona, California, Connecticut, Illinois, Iowa, Maine, Montana, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington - in allowing employees to extend health benefits to domestic partners.

PEBTF, at 1, PX-54.

179. The Marriage Exclusion also has implications for Pennsylvania's business communities through harms associated with difficulty recruiting and retaining highly productive workers, and forcing businesses that do provide domestic partnership benefits to do so at the cost of increased payroll taxes, shares of which are often paid by both employees and employers. (Badgett ¶ 11.)

180. Hundreds of employers have publicly stated that giving same-sex couples the right to marry is important to their ability to recruit and retain highly productive workers and to foster an optimal and more productive work environment. Pennsylvania's marriage exclusion undermines those efforts by Pennsylvania businesses. (*Id.* ¶ 79 (citing public positions of Google, Apple, Verizon, Walt Disney, Viacom, Nike, Morgan Stanley, and Microsoft).)

Dated: April 21, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2014, that I caused the foregoing Plaintiffs' Statement of Uncontested Material Facts and the exhibits thereto to be filed electronically using the Court's electronic filing system, and that the filing is available to counsel for all parties for downloading and viewing from the electronic filing system.

On the same date, a copy of the foregoing Statement of Uncontested Material Facts and the exhibits thereto was also served via Federal Express on the following:

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