

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

VERNITA GRAY and PATRICIA EWERT,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:13-cv-8449
	)	
DAVID ORR, in his official capacity as	)	Hon. Judge
COOK COUNTY CLERK,	)	Magistrate Judge
	)	
	)	
Defendant.	)	

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This civil rights case challenges as unconstitutional the statutes excluding lesbian and gay couples from marriage in Illinois, 750 ILCS 5/212(a)(5); 750 ILCS 5/201; 750 ILCS 5/203(2), and 750 ILCS 5/213.1 (collectively, the “marriage ban”), which, absent relief from this Court, will remain in effect until June 1, 2014. Plaintiffs VERNITA GRAY (“Vernita”) and PATRICIA EWERT (“Pat”) (together, “Plaintiffs”) are two women that have been in a long-term committed relationship for more than five years, and in 2011 entered into a civil union when civil unions became available in Illinois. Vernita suffers from terminal breast cancer that has metastasized to her bones and brain. Vernita may only have weeks left to live. Vernita and her long-time partner, Pat, wish to be married in the State of Illinois before Vernita passes away.

2. An immediate injunction prohibiting enforcement of the Illinois marriage ban is the only way to ensure that Plaintiffs’ hope of being legally married will be realized during their lifetimes. Although the Illinois legislature recently enacted a law that will allow same-sex couples to marry, S.B. 10, Ill. 98th Gen. Assemb., First Reg. Sess. (Ill. 2013), that law does not go into effect until June 1, 2014. This delay of more than six months effectively bars Vernita

and Pat from marriage altogether in violation of the guarantees of Equal Protection and Due Process in the United States Constitution. Allowing Vernita and Pat to marry now is the only way to avoid denying them their constitutionally guaranteed right to marry, and the benefits and protections that accrue to a surviving spouse.

3. Plaintiffs seek a temporary restraining order, preliminary injunction, and permanent injunction that prohibits Defendant DAVID ORR from enforcing the Illinois marriage ban as applied to Vernita and Pat, requires ORR to issue a marriage license to Vernita and Pat upon their application and satisfaction of all legal requirements for a marriage in Cook County except for the requirement that they be of different sexes, and requires ORR to register their solemnized marriage as is presently required for all other marriages. Plaintiffs further seek a declaration that the marriage ban is unconstitutional.

#### **JURISDICTION AND VENUE**

4. Plaintiff brings this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

5. Jurisdiction over the federal claims is conferred on this Court by 28 U.S.C. § 1331 and § 1343(a)(3) and (a)(4). Jurisdiction to grant the declaratory relief requested is provided under 28 U.S.C. § 2201. Venue is proper under 28 U.S.C. § 1391.

#### **PARTIES**

6. Plaintiff VERNITA GRAY is a citizen of the United States. She resides in Cook County, Illinois. She is in a long-term, committed relationship with PATRICIA EWERT.

7. Plaintiff PATRICIA EWERT is a citizen of the United States. She resides in Cook County, Illinois. She is in a long-term, committed relationship with VERNITA GRAY.

8. Defendant DAVID ORR (“COOK COUNTY CLERK”) is sued in his official capacity as COOK COUNTY CLERK and has offices at 50 West Washington Street, Chicago, Illinois 60602. The COOK COUNTY CLERK is authorized and required by law to issue marriage licenses and certificates for marriage licenses in Cook County. 750 ILCS 5/203.

9. Parties to a prospective marriage in Cook County may apply for and obtain a marriage license from the COOK COUNTY CLERK. 750 ILCS 5/203.

10. If all legal requirements for a marriage in Cook County are met by applicants for a marriage license, the COOK COUNTY CLERK “shall issue a license to marry and a marriage certificate.” 750 ILCS 5/203.

11. A license to marry is effective the day after issuance and permits a marriage to be solemnized only in the county in which it was issued. 750 ILCS 5/207.

12. The marriage certificate for marriage in Cook County must be completed within ten days after the marriage is solemnized, and returned to the COOK COUNTY CLERK. 750 ILCS 5/209.

13. The COOK COUNTY CLERK must register solemnized marriages and “make to the [Illinois] Department of Public Health a return of such marriage” by forwarding required forms and data to the Department. 750 ILCS 5/209, 5/210, 5/211; 410 ILCS 535/23.

14. Applicants for a marriage license for a Cook County marriage must furnish the COOK COUNTY CLERK with “satisfactory proof that the marriage is not prohibited.” 750 ILCS 5/203.

15. On or about November 20, 2013, Pat called the office of the COOK COUNTY CLERK located at 50 West Washington, Chicago, Illinois 60602. Pat stated to an employee of the COOK COUNTY CLERK that she and Vernita wished to marry each other before June 2014, and wished to apply for a marriage license. An employee of Defendant COOK COUNTY CLERK informed Pat that the office of the COOK COUNTY CLERK could not issue a marriage license to Plaintiffs until June 2014 solely because each is a lesbian person who seeks to marry a person of the same sex.

## **FACTS**

### **A. Vernita Gray’s Background**

16. VERNITA GRAY, 64, has lived in Illinois all her life. Vernita received her undergraduate degree in Creative Writing from Columbia College in Chicago. Vernita has been active in the LGBT community in Chicago since her time at Columbia College.

17. Vernita has dedicated her professional life to public service. Vernita spent 20 years working as a victims’ advocate in the Cook County court systems. Vernita served as the LGBT liaison in the Cook County State’s Attorney’s Office. In recognition of her work to combat hate crimes, Vernita was invited to the White House in 2009 for the signing of The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249. Vernita feels very fortunate to have served Cook County and the LGBT community.

**B. Pat Ewert's Background**

18. PATRICIA EWERT, 65, has been a resident of Cook County since 1980. Pat currently works as the community outreach coordinator for Illinois State Representative Kelly Cassidy. She was previously the Executive Director of a nonprofit organization, Lives on Target. Pat is a breast cancer survivor.

**C. Pat and Vernita's Introduction**

19. Vernita and Pat have been a committed couple for more than five years. They met at an event hosted by the Cook County State's Attorney's Office. Pat attended as a representative of the Chicago Foundation for Women's Lesbian Leadership Council. At their first meeting, Vernita invited Pat to join the State's Attorney's contingent at the Chicago Pride Parade.

20. While attending the Pride Parade, Vernita and Pat became acquainted and bonded over a mutual love of community activism and politics. They attended a second political event together and then decided to go on their first date. Vernita and Pat spent their first date enjoying a play at the Chicago Shakespeare Theater. After their first date they became inseparable.

**D. Pat's and Vernita's Engagement and Commitment**

21. Neither Vernita nor Pat expected to fall in love quickly, but they both realized early on that they had found their match in one another. They began a committed relationship of mutual love and support that continues to this day.

22. Vernita knew she wanted to spend the rest of her life with Pat and decided to propose at Christmas in 2009. Vernita surprised Pat with an engagement ring and they solidified their lifelong commitment to one another.

23. Vernita and Pat have participated in several commitment ceremonies but are eager to have their relationship recognized as marriage. On June 2, 2011, Vernita and Pat were among the first 29 couples to participate in a civil union ceremony in Millennium Park. Then, on August 13, 2011, Vernita and Pat exchanged vows in a religious ceremony.

**E. Vernita's Illness**

24. Vernita is currently battling breast cancer that has metastasized to her bones and brain.

25. Vernita was first diagnosed with breast cancer in 1996 and she underwent a lumpectomy as well as chemotherapy and radiation to fight the cancer. Vernita's cancer returned seven years later, and in 2003 Vernita had a bilateral mastectomy and surgery to remove her ovaries. Eventually the cancer required Vernita to have a full hysterectomy.

26. In 2009, Vernita went to a doctor complaining of chest pain. After a biopsy, it was determined that her breast cancer had returned and had metastasized to the breast bone, and that, because of its proximity to her heart, the cancer was inoperable.

27. In 2010, Vernita developed an untreatable cough. The cancer spread to the lymph nodes behind her lungs and she was subsequently treated with radiation.

28. In 2012, the cancer spread to the lymph nodes under her left arm and she required surgery to remove them.

29. In June 2013, after being taken to the hospital in an ambulance, Vernita and Pat learned the devastating news that Vernita's cancer had spread to her brain. On June 11, 2013, Vernita underwent brain surgery to remove a golf ball-sized tumor from her cerebellum. As a

result of this surgery, Vernita has undergone extensive rehabilitation therapy to re-learn how to walk and read and perform other basic functions that came easily before her surgery.

30. The brain surgery left Vernita almost completely debilitated and she has had to work very hard to regain her strength and energy. Vernita and Pat know that, as a result of her brain cancer, Vernita's final decline, when it happens, will be swift, and she may have only days or weeks left to live as of the date of filing this Complaint.

31. Throughout Vernita's battle with cancer, Pat has been a constant source of love and support. Vernita relies on Pat to help her make small and large decisions about her health. Vernita and Pat have faced tremendous challenges throughout their relationship as a result of Vernita's struggle with breast cancer, but their love and commitment has never wavered. Vernita and Pat truly understand what it means to love someone "in sickness and in health."

**F. Illinois Prohibits Marriage of Same-Sex Couples Until June 1, 2014**

32. Illinois law excludes lesbian and gay couples from marriage. The Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/201 (the "Marriage Act") authorizes marriages "between a man and a woman," 750 ILCS 5/201, expressly prohibits marriage "between 2 individuals of the same sex," 750 ILCS 5/212(a)(5), and states that marriages of same-sex couples are "contrary to the public policy of this state," 750 ILCS 5/213.1. The provisions of the Marriage Act that individually and collectively exclude lesbian and gay couples from marriage are referred to herein as the "marriage ban."

33. The Marriage Act further states that any marriage contracted in another jurisdiction that would be prohibited if solemnized in Illinois "shall be null and void for all purposes in this state with the same effect as though such prohibited marriage had been entered

into in this state.” 750 ILCS 5/216(a). A marriage between persons of the same-sex legally entered into in another jurisdiction is recognized in Illinois solely as a civil union. 750 ILCS 75/60.

34. To be valid under the Illinois statutes, a marriage must be “licensed, solemnized, and registered” in accordance with the Marriage Act. 750 ILCS 5/207.

35. Plaintiffs are unable to enter into a legally sanctioned civil marriage in Illinois without a marriage license. Common law marriages are not valid in Illinois. 750 ILCS 5/214.

36. Civil marriage plays a unique role in society as the universally recognized and celebrated hallmark of a couple’s commitment to build family life together. Although civil unions provide substantially similar legal responsibilities and legal rights to same-sex couples under Illinois law, differences remain between the two statuses. Because of these differences, coupled with the stigma of exclusion and of having their families branded as inferior by their government, same-sex couples suffer both tangible and dignitary harms due to the currently still-in-effect marriage ban, all of which are of constitutional dimension.

37. The status of marriage has unique social significance and recognition. Without access to the familiar language and label of marriage, Plaintiffs are unable instantly or adequately to communicate to others the depth or permanence of their commitment, or to obtain respect for that commitment as others do simply by invoking their married status.

38. Plaintiffs’ exclusion from marriage frustrates their life goals and dreams, their ability to fulfill their personal values, their happiness and self-determination. For Plaintiffs,

marriage is a deeply held value. Vernita wants to be married in Illinois, her home state. Vernita was born in Illinois and has lived in Illinois for her entire life.

39. There is no social or cultural institution, legal mechanism, or status that can substitute for legal marriage and provide Vernita and Pat what marriage would provide them. Civil unions are a novel status in Illinois without the same expressive value or communicative weight and significance as marriage. Many people encountered by Plaintiffs express confusion, or otherwise indicate that they do not understand what the term “civil union” means, or what legal protections and responsibilities should accrue to members of a civil union. Plaintiffs must explain and defend their family relationship in numerous contexts.

40. Further, the federal government does not accord the same recognition and corresponding rights, benefits, obligations, and privileges to couples united in a civil union that it gives to married couples. For example, under the federal Family and Medical Leave Act, eligible employees may take unpaid, job-protected leave for specified family and medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. *See* 29 U.S.C. § 2614(c)(1). However, to qualify as a spouse for purposes of this benefit, federal guidance currently requires a couple to be married under the law of “the state *where the employee resides.*” *See* 29 C.F.R. § 825.102 (emphasis added); <http://www.dol.gov/whd/regs/compliance/whdfs28f.htm> (last viewed Nov. 18, 2013). The marriage ban in Illinois prevents couples in civil unions from meeting this requirement, as couples in civil unions are not married in the state where they reside, and even if they were to marry in another state, they still would remain ineligible for this federal benefit, which is of particular importance to couples facing serious health concerns. *See* <http://www.dol.gov/whd/regs/compliance/whdfs28f.htm> (last viewed Nov. 18, 2013). Couples

who are in civil unions, but not married, also will be denied spousal tax benefits, including exemption from certain estate tax obligations. *See United States v. Windsor*, 133 S.Ct. 2675 (2013); *see also* [http://www.irs.gov/irb/2013-44\\_IRB/ar10.html](http://www.irs.gov/irb/2013-44_IRB/ar10.html) (last viewed Nov. 19, 2013) (for federal tax purposes, the terms spouse, husband, and wife, do not include individuals who have entered into a civil union, but refer only to those who are validly married under state law).

41. The government's ongoing enforcement of the marriage ban encourages and leads to discrimination by others. Bearing the imprimatur of the government, the State of Illinois marriage ban, which relegates same-sex couples to the lesser status of civil union, not only causes confusion regarding the legal rights of same-sex couples, but also invites others to follow the government's example in discriminating against them. Vernita and Pat fear that they will face discrimination in health care settings and elsewhere as a result of their inability to marry, and confusion concerning their civil union status.

**G. Illinois Recently Amended the Illinois Marriage Act to Allow Marriage of Same-Sex Couples**

42. On November 5, 2013, both houses of the Illinois General Assembly passed Senate Bill 10, which amends the Illinois Marriage Act to allow same-sex couples to be legally married in Illinois. S.B. 10, Ill. 98th Gen. Assemb., First Reg. Sess. (Ill. 2013). This amendment, however, does not become effective until June 1, 2014.

43. On June 1, 2014, Defendant DAVID ORR will be required to accept applications to marry from same-sex couples who are of lawful age, are not married to any other person, are prepared to pay all applicable fees, and who otherwise meet all legal requirements to marry.

44. Because Senate Bill 10 was passed after May 31, it cannot “become effective prior to June 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date.” Ill. Const. art. IV, § 10. The General Assembly did not provide for an earlier effective date and therefore, without action from this Court, the Illinois marriage ban will continue to be enforced until June 1, 2014.

45. The passage of Senate Bill 10 removes any remaining doubt that, as a matter of policy, there is no legitimate governmental interest served by denying same-sex couples the ability to marry. Because, however, that law does not take effect until June 1, 2014, Vernita and Pat will experience ongoing deprivation of their constitutional right to marry in the interim, and this delay may constitute an absolute bar to marrying, preventing them ever from being married.

#### **H. Need for Temporary Restraining Order and Preliminary Injunction**

46. Vernita and Pat have been in love for more than five years. They very much want the world to officially remember and record their relationship as the union of a married couple.

47. Unfortunately, Vernita may pass away in the near future. Unless this Court acts, Vernita and Pat will be permanently denied the benefits, both tangible and dignitary, of legal marriage. For example, unless Plaintiffs are allowed to legally marry, they may face discrimination in hospital settings, an estate tax burden, and other harms, including challenges establishing eligibility for social security benefits as a surviving spouse. Given Vernita’s extensive medical expenses, the additional cost of being denied access to legal marriage is particularly burdensome.

48. Because the Illinois Marriage Act prohibits marriages between two individuals of the same sex, Defendant DAVID ORR is required to deny a marriage license to two persons of

the same sex who wish to be legally married. The Illinois marriage ban is unconstitutional and Defendant should be enjoined from enforcing the ban as applied to Plaintiffs.

49. There is no adequate remedy at law. Vernita and Pat are suffering irreparable harm as described herein. There is no harm to the State of Illinois by granting a temporary restraining order and preliminary injunction prohibiting enforcement of the challenged statute as applied to the Plaintiffs with respect to the issuance of a marriage license. The harm to Plaintiffs is severe. The public interest is clearly served by this Court acting to order Defendant to immediately stop enforcing the Illinois marriage ban as applied to Plaintiffs. Only prompt action by this federal court ordering injunctive relief will serve the public interest.

#### **CLAIM FOR RELIEF**

50. Because Defendant is prohibited by the marriage ban from issuing marriage licenses to Plaintiffs, Defendant, acting under color of law, has violated, and continues to violate, the rights secured to Plaintiffs by the Fourteenth Amendment to the United States Constitution, including the right to due process of law and the right to equal protection under the law.

#### **COUNT ONE: DENIAL OF DUE PROCESS**

51. Plaintiffs reallege and incorporate all prior allegations made in this Complaint into this Count as if fully restated herein.

52. The United States Constitution's Due Process Clause, U.S. Const. amend. XIV, § 1, provides that no State shall "deprive any person of life, liberty, or property without due process of law."

53. The right to marry the unique person of one's choice and to direct the course of one's life in this intimate realm without undue government restriction is one of the fundamental liberty interests protected for all by the United States Constitution. The guarantees of liberty, privacy, dignity, and autonomy contained in this Clause protect each individual's rights to family integrity and association, and to make decisions about personal relationships and about whether and when to create a family free of unwarranted government interference.

54. The inability of Defendant to issue marriage licenses to Plaintiffs because the Illinois Marriage Act prohibits marriages between two individuals of the same sex has harmed Plaintiffs.

55. Ongoing enforcement of the marriage ban interferes directly and substantially with Plaintiffs' choice of whom to marry, interfering with a core, life-altering, and intimate personal choice.

56. Ongoing enforcement of the marriage ban interferes directly and substantially with each Plaintiff's deeply intimate, personal, and private decisions regarding family life, and precludes them from obtaining full liberty, dignity, integrity, autonomy, and security for themselves and their family.

57. Ongoing enforcement of the marriage ban thus denies and abridges Plaintiffs' fundamental right to marry, fundamental right of privacy, and guarantee of personal liberty, and penalizes Plaintiffs' self-determination in the most intimate sphere of their lives.

58. Ongoing enforcement of the marriage ban has no compelling or otherwise sufficient justification, especially considering the passage of Senate Bill 10, which removes any

remaining doubt that, as a matter of policy, there is no legitimate governmental interest served by denying Plaintiffs the ability to marry. Defendant's actions as a result of the marriage ban violate Plaintiffs' right of substantive due process under the United States Constitution, Amendment XIV, § 1.

### **COUNT TWO: DENIAL OF EQUAL PROTECTION**

59. Plaintiffs reallege and incorporate all prior allegations made in this Complaint into this Count as if fully restated herein.

60. The United States Constitution's Equal Protection Clause, U.S. Const. amend. XIV, § 1, provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

61. Ongoing enforcement of the marriage ban violates Plaintiffs' right to equal protection of the laws by discriminating impermissibly on the basis of sexual orientation and sex.

62. The Illinois marriage ban violates the equal protection guarantee of the United States Constitution, amend. XIV, § 1, both facially and as applied to Plaintiffs.

63. Plaintiffs are similarly situated to different-sex spouses in every relevant respect. Plaintiffs are as worthy of respect, dignity, social acceptance, and legitimacy as different-sex spouses and their children. The emotional, romantic, and dignitary reasons Plaintiffs seek to marry are similar to those of different-sex couples who choose to marry.

64. Ongoing enforcement of the marriage ban has harmed the Plaintiffs.

65. The Illinois marriage ban denies Plaintiffs equal dignity and respect and relegates them to a status that is demonstrably inferior. The Illinois marriage ban brands lesbians and gay

men as members of less worthy families through a message of government-imposed stigma, and causes private bias and discrimination.

66. The Illinois marriage ban reflects animus, moral disapproval, and antipathy toward lesbians and gay men.

67. The Illinois marriage ban targets lesbian and gay Illinoisans as a class for exclusion from marriage and discriminates against Plaintiffs based on their sexual orientation and sex both facially and as applied.

68. The Illinois marriage ban also discriminates against Plaintiffs in the enjoyment of equal liberties and equal exercise of fundamental rights.

69. Regardless of the level of scrutiny applied, Defendant's inability to issue Plaintiffs a marriage license lacks even a rational justification, let alone an important or compelling one, especially considering the passage of Senate Bill 10, which removes any remaining doubt that, as a matter of policy, there is no legitimate governmental interest served by denying same-sex couples the ability to marry. There is no rational justification for denying Plaintiffs the equal right to marry now, which for them is the only meaningful time when they may be able to exercise that right. Defendant's actions, as required by the Illinois marriage ban, violate Plaintiffs' right of equal protection under the United States Constitution, Amendment XIV, § 1.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs request that this Court:

70. Declare that Defendant's inability to issue a marriage license to Plaintiffs violates the due process and equal protection guarantees of the United States Constitution.

71. Issue a temporary restraining order, followed by preliminary and permanent injunctions, against Defendant and all those acting in concert enjoining Defendant from enforcing the Illinois marriage ban as applied to Plaintiffs.

72. Award to Plaintiffs reasonable costs, expenses, and attorney fees.

73. Award such other and further relief as this Court shall deem just and reasonable.

Respectfully submitted,

/s/ Jordan M. Heinz

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Dated: November 22, 2013

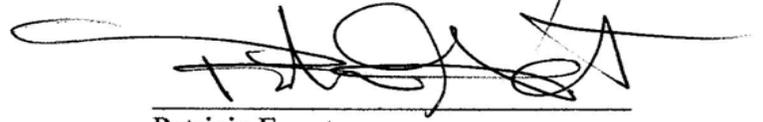
**VERIFICATION**

We, Vernita Gray and Patricia Ewert, are Plaintiffs in this action. We have read the foregoing Verified Complaint and are familiar with its contents. We declare under penalty of perjury under the laws of the United States that all of the factual statements contained in the foregoing Verified Complaint are true and accurate to the best of our belief and are based upon personal knowledge, except where expressly indicated otherwise.

Dated: November 20, 2013

  
Vernita Gray

Dated: November 20, 2013

  
Patricia Ewert

**CERTIFICATE OF SERVICE**

I, Jordan M. Heinz, an attorney, certify that on November 22, 2013, I caused the foregoing document to be served via same-day messenger on the following counsel:

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