

GARDEN STATE EQUALITY; DANIEL WEISS and JOHN GRANT; MARSHA SHAPIRO and LOUISE WALPIN; MAUREEN KILIAN and CINDY MENEGHIN; SARAH KILIAN-MENEGHIN, a minor, by and through her guardians; ERICA and TEVONDA BRADSHAW; TEVERICO BARACK HAYES BRADSHAW, a minor, by and through his guardians; MARCYE and KAREN NICHOLSON-McFADDEN; KASEY NICHOLSON-McFADDEN, a minor, by and through his guardians; MAYA NICHOLSON-McFADDEN, a minor, by and through her guardians; THOMAS DAVIDSON and KEITH HEIMANN; MARIE HEIMANN DAVIDSON, a minor, by and through her guardians; GRACE HEIMANN DAVIDSON, a minor, by and through her guardians; ELENA and ELIZABETH QUINONES; DESIREE NICOLE RIVERA, a minor, by and through her guardian; JUSTINE PAIGE LISA, a minor, by and through her guardian; PATRICK JAMES ROYLANCE, a minor, by and through his guardian; and ELI QUINONES, a minor, by and through his guardians,

Plaintiffs,

- VS -

PAULA DOW, in her official capacity as Attorney General of New Jersey; JENNIFER VELEZ, in her official capacity as Commissioner of the New Jersey Department of Human Services, and MARY E. O'DOWD, in her official capacity as Commissioner of the New Jersey Department of Health and Senior Services,

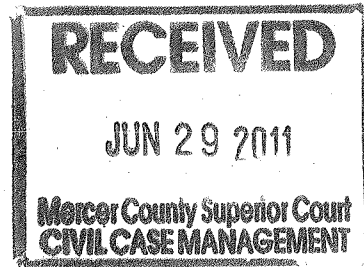
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

Docket No. _____

Civil Action

**- COMPLAINT for Declaratory and
Injunctive Relief**



INTRODUCTION

1. Plaintiffs, Garden State Equality ("GSE"), which is the state's largest organization

advocating for lesbian, gay, bisexual and transgender (“LGBT”) rights; and committed same-sex couples and their minor children Daniel Weiss and John Grant; Marsha Shapiro and Louise Walpin; Maureen Kilian and Cindy Meneghin and their daughter, Sarah Kilian-Meneghin; Erica Bradshaw and Tevonda Hayes Bradshaw and their son Teverico Barack Hayes Bradshaw; Marcye and Karen Nicholson-McFadden and their son, Kasey Nicholson-McFadden, and daughter, Maya Nicholson-McFadden; Thomas Louis Davidson and William Keith Heimann and their daughters Marie Frances Pan Xiao Jai Heimann Davidson and Grace Louise Chen Rong Kai Heimann Davidson; and Elena and Elizabeth Quinones and their children Desiree Nicole Rivera, Justine Paige Lisa, Patrick James Roylance, and Eli Quinones, seek a declaration that their exclusion from the institution of civil marriage violates Article I, Paragraph 1 of the New Jersey Constitution of 1947 and the Fourteenth Amendment to the Constitution of the United States, and that for those couples who are legally married in another jurisdiction, it is unconstitutional for the Defendants to deny recognition of marriages validly entered in other jurisdictions by same-sex couples. Plaintiffs also seek an injunction preventing the Defendants from denying them access to civil marriage, and from maintaining the separate and unequal legal status of “civil union” solely for same-sex couples, and for those same-sex couples who are legally married in another jurisdiction, enjoining the Defendants from denying recognition of those marriages.

2. Today, New Jersey shunts lesbian and gay couples into the novel and inferior status of “civil union,” while reserving civil marriage only for heterosexual couples. As the Plaintiffs’ experience shows, the relegation of lesbian and gay couples to civil unions, and their exclusion from civil marriage, and thereby from the legal status of “marriage” and “spouse,” violates the guarantee of equal protection under Article I, Paragraph 1 of the New Jersey

Constitution of 1947. Specifically, the separate and inherently unequal statutory scheme singles out lesbians and gay men for inferior treatment on the basis of their sexual orientation and sex, and also has a profoundly stigmatizing effect on them, their children, and on other lesbian and gay New Jerseyans. As the Supreme Court of New Jersey made clear, the equal protection guarantee forbids “the unequal dispensation of rights and benefits to committed same-sex partners[.]” *Lewis v. Harris*, 188 N.J. 415, 423 (2006). This exclusion also violates the Fourteenth Amendment to the Constitution of the United States.

3. The denial of access to the legal status of “marriage” and “spouse” has caused the Plaintiff couples, couples who are members of GSE, and other same-sex couples and their children concrete harms. Because of the novel legal construct to which they have been consigned, they face a persistent and widespread lack of recognition of their rights in civic and commercial dealings. They are denied workplace benefits and protections equal to those accorded to married couples. They are blocked from seeing their loved ones during medical emergencies. Their exclusion from marriage deprives them of certainty in their legal rights and status, and burdens them and their families with the resulting financial consequences. Their separate status is a badge that requires that they reveal their sexual orientation whether they wish to or not, in situations such as job interviews and jury service, invading their privacy and exposing them to additional discrimination. The segregation of lesbian and gay couples into a novel legal status, like other classifications unrelated to a person’s ability to perform or contribute to society, also wrongly enshrines in the law the view that lesbian and gay individuals are not as worthy or deserving as others, causing dignitary and psychic harms. This inequality contravenes the Supreme Court of New Jersey’s directive that “the unequal dispensation of rights and benefits to committed same-sex partners can no longer be tolerated under our State

Constitution.” *Lewis v. Harris*, 188 N.J. at 423. This treatment also violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

4. Further, the exclusion of lesbian and gay individuals from civil marriage violates the constitutional imperative that in the absence of compelling justification, the government may not infringe the rights of individuals to marry, as protected for “all persons” by the New Jersey Constitution of 1947, Article I, Paragraph 1, and by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. The Plaintiff couples and couples who are members of GSE here seek only the freedom for lesbian and gay individuals to enter into the established, highly venerated institution of civil marriage with the person of their choosing, just as heterosexuals may do. Today, however, same sex couples may attain formal recognition of their family relationships through “civil union” only, a novel and unfamiliar legal construct that lacks the universal legal, economic, historical, and social meaning of civil marriage. This limitation violates the State’s due process obligations to Plaintiffs and other same-sex couples.

PARTIES

Plaintiffs

5. Garden State Equality Educational Fund (“GSE”) is New Jersey’s largest organization advocating for LGBT civil rights. It has more than 82,000 members, both LGBT individuals and their allies. Many members are in a committed, same-sex relationship, and a large number are raising children with a committed, same-sex partner. Numerous members of GSE are in a civil union and would like to marry, but are barred from doing so because New Jersey does not allow same-sex couples to marry. Some have declined to enter a civil union due to their objection to its second-class status, but likewise would marry if they could. Through sponsorship of programs for LGBT-headed families and LGBT youth, and through its educational outreach activities, Plaintiff Garden State Equality has become thoroughly familiar

with the challenges, inequality, and harms facing same-sex couples and their children, as a result of New Jersey denying those couples access to marriage and instead providing them only the novel status of civil union, which places same-sex couples and their children in a second-class status in relation to families where parents are allowed to marry. Furthermore, GSE, through its participation in anti-bullying initiatives in New Jersey and its program of identifying resources for children who require support services to address the negative impact of discrimination against LGBT people, is familiar with the difficulties and stigmatization facing LGBT youth in New Jersey, which are compounded by the state-sponsored discrimination inherent in the relegation of same-sex couples to the separate and unequal status of civil union.

6. Daniel (“Danny”) Weiss, 46, and John Grant, 46, reside in Asbury Park, New Jersey. Danny runs a small law firm specializing in immigration law, and John, until a devastating accident, worked as controller of the Michael J. Fox Foundation for Parkinson’s Research. They have been together four years, and entered into a civil union on May 17, 2009. In October 2010, John was critically injured when he was struck by a car. Despite their civil union, doctors and hospital staff did not recognize their legal relationship, and did not acknowledge Danny’s authority to make decisions for John’s critical care. Discussions with doctors and other hospital staff about what a civil union meant, and whether it was “like a Massachusetts marriage,” took place as John was suffering a brain hemorrhage, and John’s sister was summoned in the middle of the night from Delaware to participate in treatment decisions. After lifesaving surgical procedures, John is on a long road of rehabilitation. Danny has reworked his entire schedule to organize and attend John’s appointments with neurologists, neurosurgeons, physiatrists, and other health care professionals and to monitor John’s progress and setbacks. The couple traveled to Connecticut to be married in December 2010, as soon as

John was strong enough to make the drive, because they had learned through painful experience that a civil union would not protect them when they were most vulnerable. They wish to be recognized as a married couple in New Jersey, where they work and make their home, which New Jersey law does not now allow because it limits marriage to different-sex couples and demotes marriages from other jurisdictions to civil unions.

7. Marsha Shapiro, 56, and Louise Walpin, 57, reside in South Brunswick, New Jersey. They have been a couple for twenty-two years. Marsha is a social worker, and Louise is a nurse. They have raised four children together, including Marsha's biological son Aaron, who had severe cognitive and physical disabilities and died just before his twenty-first birthday in 2008. In addition to Aaron, they have raised Louise's three biological children, now adults. Marsha and Louise have sought to celebrate and legalize their relationship in every manner afforded them in New Jersey. In 1992, they committed to each other in a ceremony performed by a rabbi. Their ketubah, or Jewish wedding vow and contract, hangs in their home as a daily reminder of their love and commitment. In 2003, they entered a civil union in Vermont. When New Jersey began offering domestic partnership in 2004, Marsha and Louise entered into a domestic partnership. On February 23, 2007, they entered into a civil union in New Jersey. However, for the reasons set forth below, they seek to enter civil marriage in order to realize the full panoply of rights, benefits, status, and recognition that civil marriage affords, and which they are currently denied. Marsha and Louise are eligible to marry in New Jersey but for the fact that they are a same-sex couple; they have not sought to obtain a marriage license in New Jersey, because to do so would be futile in light of New Jersey's prevailing law.

8. Maureen Kilian, 53, and Cindy Meneghin, 53, reside in Butler, New Jersey. They met in high school and have been in a committed relationship for more than thirty-five years.

They have two children, Joshua Kilian-Meneghin, 18, and Sarah Kilian-Meneghin, 16. They are very active in their church, the Episcopal Church of the Redeemer in Morristown, and in their children's school activities. They have long sought legal equality for their relationship and family, first as plaintiffs in *Lewis v. Harris*, and now in this action. They sought to obtain a New Jersey marriage license in 2002, and were refused because they are a same-sex couple. They entered into a civil union on February 24, 2007, and celebrated with a crowd of more than 300 people at their church. However, they have found that their civil union does not protect them in the way that they had hoped. In emergency medical situations both before and after having a civil union, Maureen has been denied access to Cindy, and the ability to direct her treatment. Because they feel vulnerable, and because they do not want the State to continue to send the message to their children that their family is not legitimate, or is less valid than other families, they continue to seek the right to enter civil marriage. Cindy and Maureen are eligible to marry in New Jersey but for the fact that they are a same-sex couple; they have not sought to obtain a marriage license in New Jersey since 2002, because to do so would be futile in light of New Jersey's prevailing law.

9. Sarah Kilian-Meneghin ("Sarah"), a minor child, is represented in this action by and through her guardians, Cindy and Maureen. R. 4:26-2(a). She asks that her parents be allowed to marry so that her family no longer carries the confusing, stigmatizing, and inferior label of "civil union," rather than marriage. She faces a loss of dignity and legitimacy, in her own eyes, the eyes of many others, and under law, from her parents' not having the freedom to marry one another. Cindy and Maureen fear that she will internalize the message that she receives from the State that her family is not as worthy as other families, and that she and her brother and parents do not deserve the support and respect other families receive.

10. Tevonda Hayes Bradshaw and Erica Bradshaw, both 36, reside in North Plainfield, New Jersey. They have been in a committed relationship since 2007. Both commute to New York City: Tevonda is a disability analyst at the Office of Temporary and Disability Assistance in New York City, and Erica is a teaching artist with ENACT, a group that helps New York City public school students learn social, emotional and behavioral skills through creative drama and drama therapy techniques. Erica also sells real estate in New Jersey, at Century 21 in Scotch Plains, New Jersey. Tevonda and Erica have an infant son, Teverico Barack Hayes Bradshaw, born April 8, 2011. Aware of and deeply concerned about the disregard for and confusion about civil unions that has negatively affected other lesbian and gay couples in New Jersey, the Bradshaws have expended time, energy, and money to execute multiple additional documents to attempt to protect their relationship. Most recently, on June 17, 2011, they concluded adoption proceedings in court for Erica to adopt Teverico, though he is a child of their civil union and should be regarded as her son. In order to adopt her own child, Erica had to undergo court-related examination of her background, including being fingerprinted, which she found extremely offensive.

11. Teverico ("Teverico"), a minor child, is represented in this action by and through his guardians, Tevonda and Erica, in his claim that his parents be allowed to marry so that his family no longer carries the confusing, stigmatizing and inferior label of "civil union," rather than marriage. *R. 4:26-2(a)*. Because the State does not allow Tevonda and Erica to marry, their child does not have the benefit of the rights, obligations, cost savings, and benefits conferred on married parents under New Jersey law, nor of the rights and status conferred on children of married parents by New Jersey law, that help and provide security to other New Jersey children in good times and bad. For example, Tevonda and Erica would have preferred but were unable

to save or invest the money that they paid in adoption-related legal fees and expenses to secure Erica's parent-child relationship with Teverico toward their child's future education instead. Teverico also faces a loss of dignity and legitimacy, in his own eyes, the eyes of many others, and under law, from his parents not having the freedom to marry one another. Tevonda and Erica fear that their son will internalize the message that he receives from their government that his family is not as worthy as other families, and that he and his parents do not deserve the support and respect that other families receive.

12. Karen and Marcye Nicholson-McFadden reside in Aberdeen, New Jersey. They have been in a committed relationship for twenty-one years. Together they run an executive search firm. They have two children, Kasey Nicholson-McFadden, 11, and Maya Nicholson-McFadden, 8, and have supported each other through the ups and downs of life. They have long sought legal equality for their relationship and family, first as plaintiffs in *Lewis v. Harris*, and now in this action. They continue to press for marriage equality, because they want the full rights, benefits, and recognition that other married couples and their families receive. They also do not want to have their children taught that their parents' relationship or their family is of lesser importance than any other family in New Jersey. They sought to obtain a New Jersey marriage license in 2002, and were refused because they are a same-sex couple. They entered a civil union in April, 2007; Karen and Marcye are eligible to marry in New Jersey but for the fact that they are a same-sex couple; they have not sought to obtain a marriage license in New Jersey since 2002, because to do so would be futile in light of New Jersey's prevailing law.

13. Kasey Nicholson-McFadden ("Kasey") and Maya Nicholson-McFadden ("Maya"), minor children, are represented in this action by and through their guardians, Karen and Marcye. R. 4:26-2(a). They ask that their parents be allowed to marry so that their family

no longer carries the stigmatizing and inferior label of “civil union,” rather than marriage. Kasey and Maya are unperturbed that their parents are lesbians, but are troubled that their parents are unmarried, because the State will not allow it. Maya has raised with her classroom teacher and classmates her concern that her parents are unable to marry. Because the State does not allow Karen and Marcy to marry, their children do not have the benefit of all of the rights, obligations, cost savings, and benefits conferred on married parents under New Jersey law, nor of the rights and status conferred on children of married parents by New Jersey law, that help and provide security to other New Jersey children in good times and bad. Kasey and Maya face a loss of dignity and legitimacy, and their parents worry that their children will internalize the State’s message that their family is not as worthy or deserving as others.

14. Thomas Louis Davidson (“Tom”), 49, and William Keith Heimann (“Keith”), 53, reside in Shrewsbury, New Jersey. They have together adopted two daughters, Grace Louise Chen Rong Kai Heimann Davidson, age 8, and Marie Frances Pan Xiao Jai Heimann Davidson, age 11. Tom and Keith will celebrate their twenty-fifth anniversary as a couple in January 2012. They were married on July 31, 2008 in California, and entered a civil union in New Jersey on February 23, 2007. The family is very active in their church, the Methodist Church of Red Bank, where Keith has taught Sunday school. Tom recently lost his job as a visual designer of merchandise displays at Food Emporium, when his employer downsized. Keith, who has taught at Brookdale Community College since 2001, has for ten years maintained Tom and their children on his health insurance policy. During a recent statewide audit in New Jersey, the state contractor questioned whether they had adequate documentation of their relationship, and cancelled health care coverage for Tom and the children. It took months to reinstate the policy, because the insurance auditor did not recognize “civil union” as a legally valid relationship.

Keith and Tom want to have the status of being married under New Jersey law because marriage has a universally understood meaning, and one that reflects their family structure.

15. Grace Heimann Davidson ("Grace") and Marie Heimann Davidson ("Marie"), minor children, are represented in this action by and through their guardians, Tom and Keith. *R. 4:26-2(a)*. The girls greatly dislike having to repeatedly offer lengthy explanations of civil unions to other children who are curious about their family. They ask that their parents be allowed to marry so that their family no longer carries the confusing, stigmatizing, and inferior label of "civil union," rather than marriage. Because the State does not recognize Keith and Tom as married, their children do not have the benefit of the rights, obligations, cost savings, and benefits conferred on married parents under New Jersey law, that help and provide security to other New Jersey children in good times and bad. The children's loss of health care coverage last summer illustrates one of the concrete effects of their status, resulting from the fact that they are the children of a civil union instead of a marriage. The children also face a loss of dignity and legitimacy, in their own eyes, the eyes of many others, and under law, from their parents not having the freedom to marry one another.

16. Elena and Elizabeth ("Liz") Quinones reside in Phillipsburg, New Jersey. Elena works at a bank in Hoboken, and Liz is a security sergeant at Farleigh Dickinson University. They have been together nine years and sought legal recognition of their committed and loving relationship by entering a civil union in February 2007, as soon as they could set the date to celebrate. Elena and Liz have a two-year-old son, Eli, and also raise Elena's three children: Desiree Nicole Rivera, 17 ("Desiree"); Justine Paige Lisa, 15 ("Justine"); and Patrick James Roylance, 12 ("Patrick"). Elena and Liz were initially optimistic that entering a civil union would provide them the same rights and benefits as marriage, and celebrated their civil union

with a ceremony and gala reception for friends and family, including Elena's stepfather, who checked himself out of the hospital for the day to celebrate with the couple. But Elena and Liz have found that the construct of "civil union" fails to offer them the same protection as marriage would. Elena and Liz are eligible to marry in New Jersey but for the fact that they are a same-sex couple; they have not sought to obtain a marriage license in New Jersey, because to do so would be futile in light of New Jersey's prevailing law.

17. Justine, Desiree, Patrick, and Eli, all minor children, are represented in this action by and through their guardians, Elena and Liz Quinones. R. 4:26-2(a). They ask that their parents be allowed to marry, so that their family no longer carries the confusing, stigmatizing and inferior label of "civil union," rather than marriage. Because the State does not allow Elena and Liz to marry, their children do not have the benefit of the rights, obligations, cost savings and protections conferred on married parents under New Jersey law, nor of the rights and status conferred on married parents and their children by New Jersey law that help and provide security to other New Jersey children in good times and bad. Justine, Desiree, Patrick, and Eli are harmed by the ill-understood civil union status of their parents, which causes their parents to incur additional expenses to protect familial relationships, beyond those that are needed by families headed by married couples. For example, they paid additional adoption-related legal fees and expenses to secure Liz's parent-child relationship with Eli, and could not save or invest that money toward their children's future education. The children also face a loss of dignity and legitimacy, in their own eyes, the eyes of many others, and under the law, as a result of their parents not having the freedom to marry one another. To avoid the unequal status and confusion engendered by the label "civil union," the children often use the term "marriage" with regard to Elena and Liz, but doing so is uncomfortable, because their children are painfully aware that in

reality Elena and Liz are barred from legal marriage by the State. Elena and Liz fear that their children will internalize the message that they receive from their government that their family is not as worthy as other families, and that they and their parents do not deserve the support for their relationships to each other that other children and their parents receive.

Defendants

18. Defendant Paula T. Dow, as the Attorney General of the State of New Jersey, is the chief law enforcement officer of the State. In this constitutional role, *see N.J. Const. Art. V, § IV, ¶ 3*, she is responsible for enforcing the laws that exclude Plaintiff couples, couples who are members of GSE, and other same-sex couples from civil marriage.

19. The Legislature has delegated to Defendant Jennifer Velez, as the Commissioner of the New Jersey Department of Human Services, the power to adopt rules and regulations necessary to effectuate the marriage statutes, *N.J.S.A. 37:1-12.3*, and as such she is responsible for maintaining the exclusion of same-sex couples from civil marriage.

20. The Legislature has delegated to Defendant Mary E. O'Dowd, as the Commissioner of the New Jersey Department of Health and Senior Services, the power, pursuant to *N.J.S.A. 37:1-29* and *37:1-35*, to adopt rules and regulations necessary to implement the Civil Union Act, including those addressing "the issue of how partners in a civil union couple may legally answer questions on forms, governmental and private, concerning their status as partners in a civil union couple." *N.J.S.A. 37:1-35*. Also as Commissioner of the Department of Health and Senior Services, Commissioner O'Dowd oversees the New Jersey Registrar of Vital Statistics, which maintains records of marriages and civil unions in the state, and provides the forms for marriage and civil union licenses, *N.J.S.A. 37:1-8*. In these capacities, she is responsible for maintaining the separate legal construct of "civil union" for committed same-sex couples.

VENUE

21. Venue is proper in Mercer County because the cause of action arises there, where Defendants enforce the Civil Union Act and deny Plaintiffs the right to enter civil marriage. R. 4:3-2(a)(2). This action is properly brought in the Law Division because the relief sought herein is primarily legal. R. 4:3-1(a)(4).

STATEMENT OF FACTS

22. Civil marriage provides tangible and intangible benefits to its participants and their families in legal, economic, cultural, historical, emotional, psychological, and social dimensions.

23. New Jersey permits only different-sex couples to enter into civil marriage. As noted by the Supreme Court in *Lewis v. Harris*, the civil marriage statutes, *N.J.S.A.* 37:1-1 to 37:2-41, limit marriage to heterosexual couples. 188 *N.J.* at 436-37. According to information on a website maintained by the Department of Health and Senior Services, Vital Statistics and Registry, in order for two people to establish a marriage in the State, it “shall be necessary that they . . . [b]e of the opposite sex[.]”

24. Individuals in committed same-sex relationships may attain legal recognition of their relationship only through “civil union.” This legal status was created by the Civil Union Act, *N.J.S.A.* 37:1-28, *et seq.*, enacted on December 21, 2006, and effective February 19, 2007. *L. 2006 c. 103*. By its terms, the Civil Union Act applies only to same-sex couples. *N.J.S.A.* 37:1-29. Different-sex couples may not enter into a civil union.

25. Civil unions were introduced in New Jersey as a result of the decision of the Supreme Court of New Jersey in *Lewis v. Harris*, 188 *N.J.* 415 (2006), which required, as a matter of State constitutional law, that the benefits and obligations of marriage be made available on equal terms to same- and different-sex couples. 188 *N.J.* at 423. *See N.J.S.A.* 37:1-28(e)

(Civil Union Act adopted purportedly in order “to comply with the constitutional mandate set forth” in *Lewis*).

26. Rather than allowing same-sex couples access to the longstanding, venerated institution of civil marriage, the Legislature chose instead to relegate same-sex couples to a separate legal category — that of “civil union” — for the purpose of distributing rights and benefits purportedly equal to those available to couples in civil marriage. *See L. 2006 c. 103* (enacted Dec. 21, 2006 and effective Feb. 19, 2007), *codified at N.J.S.A. 37:1-28 et seq.*

27. In recognition of the possibility that civil unions might fail to provide equality, as required by the Constitution and as recognized by *Lewis*, the Legislature, in the same Act, also created the Civil Union Review Commission, *see N.J.S.A. 37:1-36*, which it charged with studying the effectiveness of civil unions, *N.J.S.A. 37:1-36(c)(1)* and (3), and of providing “civil unions rather than marriage” to same-sex couples, *N.J.S.A. 37:1-36(c)(5)* and (6). The Legislature asked the Commission to report its findings, *N.J.S.A. 37:1-36(g)*, which it did provisionally on February 19, 2008, *see N.J. Civ. Union Rev. Comm., First Interim Report*, and finally on December 10, 2008, *see N.J. Civ. Union Rev. Comm., Final Report*. The Commission unanimously found that “the separate categorization established by the Civil Union Act invites and encourages unequal treatment[,]” resulting in a lack of equality for same-sex couples and their children in multiple facets of civic and social dealings, such that “the provisioning of the rights of marriage through the separate status of civil unions perpetuates the unequal treatment of committed same-sex couples.”

28. Three years after passage of the Civil Union Act, and with the benefit of the findings of the Civil Union Review Commission, the Legislature considered a bill that would have made civil marriage available to all consenting and otherwise qualified couples, regardless

of sexual orientation. The text of this bill, known in the Senate as S. 1967, The Freedom of Religion and Equality in Civil Marriage Act, recognized that “[a]lthough same-sex couples may enter into civil unions, nonetheless New Jersey’s discriminatory exclusion of these couples from marriage further harms same-sex couples and their families by denying them unique public recognition and affirmation.” This bill was approved by the Senate Judiciary Committee on December 7, 2009, but defeated by the full Senate on January 7, 2010.

29. Although the Civil Union Act purported to provide same-sex couples “all the rights and benefits that married heterosexual couples enjoy,” *N.J.S.A. 37:1-28(d)*, in practice this novel legal category is an inferior legal status, and one that stigmatizes its participants. Plaintiffs are harmed by the exclusion from civil marriage in many ways, as set forth below.

Unequal Treatment and Lack of Recognition in Public Accommodations and Civic Life

30. The Plaintiffs are harmed because the novel legal status of “civil union” to which they are relegated is largely unknown, unfamiliar, and not recognized, both in New Jersey and outside the State. This means that in daily transactions from the mundane to the momentous, same-sex couples and their children experience a lack of recognition of their legal status, which results in a denial of civil rights in a variety of public accommodations and facets of civic life.

31. The Plaintiff couples, couples who are members of GSE, and other same-sex couples have been denied access to their family members by medical providers in a variety of contexts, from life-threatening emergency situations to routine medical visits, by both public and private health care providers. Specifically, the Plaintiff couples, couples who are members of GSE, and other same-sex couples have found that many nurses, doctors, and other health care workers and staff are unfamiliar with the term “civil union” or “civil union partner.” Hospital forms, including computerized programs utilized during hospital intake procedures, do not

provide for such a designation, and recognize instead only “spouse.” The Plaintiff couples, couples who are members of GSE, and other same-sex couples have found that their relationships have been described as “other,” “friend,” “roommate,” or “unknown” — designations that are inaccurate, diminishing, and accord no legal status, access, or decision-making authority in medical settings.

a. For example, in October 2010, John Grant was struck by a car in New York City. His skull shattered, he was rushed to a local hospital. Police called the last number listed in his cell phone and reached his civil union partner, Danny Weiss, who rushed to his side. Despite their civil union, doctors and hospital staff did not recognize their legal relationship. Desperate to demonstrate their connection when the civil union failed, Danny at one point tried to show hospital personnel that he and John were wearing matching rings. Discussions with doctors and other hospital staff about what a civil union meant, and whether it was “like a Massachusetts marriage,” took place as John was suffering a brain hemorrhage. Confused about Danny’s authority to make medical decisions, hospital staff had John’s sister summoned in the middle of the night from Delaware to participate in treatment decisions.

b. When Tevonda Bradshaw went into labor this April, she and her civil union partner Erica Bradshaw went to the hospital, and Tevonda forgot to bring her wallet containing her identification. While Tevonda was in labor, hospital staff sent Erica home to retrieve the wallet so Tevonda could sign their infant out of the hospital afterwards; though Erica had her own identification with her, and the couple had pre-registered as parents at the hospital, Erica was not recognized as Tevonda’s parent, as a married spouse would have been.

c. On February 8, 2011, Marsha Shapiro brought her civil union partner, Louise Walpin, to the emergency room at Princeton Medical Center, because Louise was experiencing gastrointestinal pain. The hospital registrar did not recognize the term “civil union partner,” and insisted on listing Louise as “single,” leaving them with no legally recognized relationship for purposes of allowing Marsha to make medical decisions on Louise’s behalf. Louise, who works as a nurse at Children’s Specialized Hospital, is familiar with the widely-used medical record-keeping system “Meditech.” This computerized system has no way of registering “civil union partner.”

d. Prior to having a civil union, Cindy Meneghin experienced a medical emergency when she came down with meningitis. In the emergency room, her partner, Maureen Kilian, was denied access until she was ultimately able to assert that she had a valid advance directive for Cindy. Their relationship was no more recognized after their civil union, when Cindy again had to go to the emergency room with suspected appendicitis. Cindy told a nurse there that her civil union partner, Maureen, would soon be arriving, but the nurse did not know what a civil union partner was, and kept insisting that “it’s not a marriage,” and that therefore Maureen did not have any rights of access or voice in Cindy’s treatment.

32. Because of the way in which their relationships are labeled differently by the State, the Plaintiff couples, couples who are members of GSE, and other same-sex couples must disclose their sexual orientation in their civic dealings, in a manner that is discriminatory, unfair and violates their privacy. This forced disclosure impinges on the couples’ activities in the public sphere, including in the quintessential civic duty of jury service. Prospective jurors are routinely asked their marital status. Because civil union partners cannot truthfully respond that

they are single or married or describe their same-sex partners as legal “spouses,” their answers to these questions, which require that they attempt to educate the judge, court staff, and all jurors present about civil union, revealing their sexual orientation. For example, in 2010 Plaintiff Louise Walpin was called to jury service at the Middlesex County Courthouse. In court, in front of court staff and other jurors, the judge asked questions about her marital status. Answering truthfully, that she lived with her “civil union partner,” exposed her sexual orientation to everyone in the room. Had she been able to answer that she was married and lived with her “spouse,” she would not have been in that position, and nor would she have to wonder whether discrimination based on her sexual orientation was a factor in her dismissal from jury service that day.

33. The Plaintiff couples, couples who are members of GSE, and other same-sex couples have experienced confusion about and disregard for their civil union status when seeking government and private-sector services that require they accurately fill out required forms, as the forms fail to acknowledge “civil union” as a family or legal structure. These experiences occur frequently, in a wide variety of contexts including at their children’s schools, in medical offices they visit for routine appointments, and with an array of other service providers. In other aspects of public life, the Plaintiff couples, couples who are members of GSE, and other same-sex couples and their children are burdened by a need to explain and justify their legal relationship, as a direct consequence of their exclusion from civil marriage and segregation into the category of “civil union.”

a. For example, Marsha Shapiro and Louise Walpin’s extreme sorrow at the time of their son Aaron’s death in 2008 was increased because the funeral home with which they were dealing did not recognize the term “civil union.” While picking out a

casket for Aaron, and arranging for official forms to accompany his burial, the funeral home insisted that Marsha produce documentation of her relationship to Louise, even though she had already stated that they had a civil union.

b. Marcye Nicholson-McFadden recently dealt with her car insurance carrier, who questioned her about whether she was married, and when Marcye explained her civil union status, informed Marcye that she should just be able to state that she was married, and that the civil union designation was “silly.”

c. Last month Karen Nicholson-McFadden went to a new dentist, and again she created her own box for “civil union” on a form that did not contain the option. The staff person to whom she gave the form suggested altering her response to say “married,” so that it would be recognized by the health insurance system.

34. When they travel, the Plaintiff couples, couples who are members of GSE, and other same-sex couples and their children are harmed by the denial of access to civil marriage. “Civil union,” which currently exists in only one other state, is not a well-understood term with a fixed meaning, as is marriage. Therefore, when traveling outside of New Jersey, the Plaintiff couples, couples who are members of GSE, and other same-sex couples and their children are again unable to convey the nature of their relationship and unable to access the set of rights and privileges that marriage provides. Even when traveling in states that do recognize marriages of same-sex couples, the relationships of Plaintiff couples, couples who are members of GSE, and other New Jersey same-sex couples and their children are regarded as less than equal.

35. Furthermore, many states, including regional neighbors such as Maryland, New York (which next month will allow same-sex couples to marry), and Rhode Island, recognize marriages of same-sex couples validly performed in other jurisdictions. But civil-union partners

have had to litigate in order to have their status recognized, and in many areas and jurisdictions, civil union recognition remains an open question. Thus, in many jurisdictions civil union status denies these couples and their children the same basis to claim rights and responsibilities that is given to married couples and their children in jurisdictions that currently respect the marriages of same-sex couples, because “civil union,” as the Civil Union Act makes clear, is not the same as “marriage,” and thus has no cognate in the laws of those states.

Unequal Workplace Benefits and Protections

36. The Plaintiff couples, couples who are members of GSE, and other same-sex couples and their children are denied workplace benefits equivalent to those afforded married spouses, because of the novel nomenclature that New Jersey has created to define their legal relationships. Although under *N.J.S.A. 37:1-32(e)*, insurance carriers covered by state law are supposed to provide equal benefits to civil union partners and spouses, in practice this frequently does not occur. Civil union partners and their children are not automatically covered by employee benefit plans or collectively bargained agreements that provide benefits for, or extend coverage to, the married spouse of an employee. In many instances, this difference means that same-sex couples are denied the same level of benefits provided to married spouses, or are forced to pay more money to attain the same benefits afforded others.

37. In other jurisdictions, such as Connecticut, the District of Columbia, Iowa, Massachusetts, New Hampshire, and Vermont, where same-sex couples may enter civil marriage, employers commonly extend benefits to same-sex spouses on the same terms as to other married spouses, even if current federal law would allow them to discriminate. However, in New Jersey, where same-sex couples are designated by a separate term and are never recognized as married (because even if they have married in another jurisdiction, New Jersey

demotes their valid marriages and recognizes them only as civil unions), they are not viewed as “spouses,” and employers therefore often deny benefits to civil union partners. Often, the Plaintiff couples, couples who are members of GSE, and other civil-unioned same-sex couples are forced to curtail their employment options or incur additional expenses to provide health insurance for their partners and children, because they lack the legal status of married spouses — even if married elsewhere. For example, Plaintiff Louise Walpin provides health insurance for her family because her partner, Marsha Shapiro, is self-employed. Their family’s need for health insurance has historically been high, as their deceased son Aaron had profound special needs, and another son required special schooling and care. The family’s expenses associated with their children’s care have been so high that Marsha and Louise had to take out second and third mortgages on their home. Louise has had to limit her employment to jobs that offer benefits to civil union partners. In November 2009, the human resources department at her current nursing job, which she loves, notified her that, because of financial circumstances, the company was reevaluating whether it would continue to offer benefits to civil union partners of employees. The same consideration was not given to eliminating spousal benefits. The employer subsequently advised that benefits for Marsha would continue, but for one year only. Another one-year extension for civil union partner coverage was issued in 2011, with the express caveat that the commitment again is only for the current year. Such uncertainty, and the great anxiety and worry that it creates for the couple, would not exist if they could marry.

Lack of Family Law Protection

38. A critical aspect of marriage is the protection it affords families and spouses in the event of separation or divorce. Obviously the Plaintiff couples seek to marry, not divorce, but it is the case that family law protections available to same-sex couples seeking to divorce in New

Jersey are unequal with respect to access to the courts if, as could occur for some same-sex as well as different-sex couples, the relationship becomes troubled. Significantly, the statute providing for dissolution of marriage upon the grounds of “irreconcilable differences” does not clearly apply to civil union. This ground for divorce absolves either party of the need to allege bad faith or specific acts on the part of the other party, and as a result makes divorce proceedings significantly less litigious, and therefore less expensive. Although the Civil Union Act provided that “[t]he laws of domestic relations, including . . . divorce . . . shall apply to civil union couples[.]” *N.J.S.A.* 37:1-31(c), the later-enacted statute creating no-fault divorce did not mention civil unions. *See L. 2007 c. 6*. Family Part judges remain confused about the applicability of this provision to civil union dissolution, as do family law practitioners. At the very least, it is a question that must be answered in each and every civil union dissolution proceeding, at the litigants’ expense.

39. Furthermore, same-sex couples who have been married in other jurisdictions face uncertainty in the event of dissolution. The State has opposed the ability of such couples to receive a divorce, as opposed to a dissolution, leaving these couples and third parties uncertain as to whether their marriage remains in effect in other jurisdictions. The current Family Part Case Information Statement which must accompany every filing in the Superior Court, Family Part, including a dissolution of civil union, uses the nomenclature of “marriage,” asking litigants to report “date of marriage.” It does not mention “civil union.”

40. The legal status of out-of-state marriages of same-sex couples is characterized by uncertainty in other respects as well. Although the Attorney General issued an opinion that such marriages should be recognized as civil unions for purposes of New Jersey law, the State also created the process of “reaffirmation,” whereby same-sex couples may formally apply to have

their out-of-state marriages recognized as civil unions. Marriages between different-sex people do not require any such formal conversion, as they are automatically granted recognition. The existence of the “reaffirmation” process both indicates the level of confusion about what civil unions are and creates confusion about the status of valid marriages of same-sex couples entered into in other jurisdictions. This confusion arises because of the State-created civil union status to which same-sex couples in New Jersey have been consigned.

Disparate and Unfair Financial Burdens

41. Because they are denied access to civil marriage and its universally recognized meaning, the Plaintiff couples, couples who are members of GSE, and other same-sex couples incur additional costs to ensure that their property rights, family relationships, and tax obligations are properly understood, enforceable, and protected in light of their separate categorization. Access to civil marriage would reduce or obviate the need for specialized legal services for same-sex couples.

42. Many of the Plaintiff couples, couples who are members of GSE, and other same-sex couples have executed health-care proxies, in the event that their civil unions are not recognized in a medical emergency. For example, Danny Weiss carries copies of such documents on paper and on a keychain flash drive everywhere he goes, and Liz Quinones carries a binder of family documents in her car.

43. Several of the Plaintiff couples, as well as many couples who are members of GSE, and other same-sex couples have pursued and paid for court proceedings to adopt their own children, because they are deeply concerned that the presumption of parenthood will not be applied to them, as members of a civil union.

44. Many of the Plaintiff couples, couples who are members of GSE, and other same-

sex couples experience complications and confusion when filing their taxes, because tax professionals often do not understand “civil union.” Elena and Liz Quinones, for example, had trouble getting their taxes handled properly at the New Jersey office of a national chain of tax professionals unfamiliar with civil union.

45. Relegating same-sex couples to civil unions hinders their ability to seek marriage-based benefits when Section 3 of the Defense of Marriage Act, 1 U.S.C. § 7 (“DOMA”) is no longer operative. The United States Government Accountability Office has catalogued 1,138 federal statutory provisions that distinguish between married and unmarried individuals and couples. In several states that allow same-sex couples to marry, those couples are challenging the denial of marriage-related federal benefits such as Social Security benefits, pension rights, taxation exemptions (and, conversely, penalties), educational loans, and inheritance rights. Indeed, the President and the Department of Justice have concluded that Section 3 of DOMA is unconstitutional and are refusing to defend it in court, *see* Letter from Attorney General to Congress on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011), *available at* <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html> (last accessed June 28, 2011); several federal courts have held DOMA to be unconstitutional and enjoined its enforcement, *see Gill v. Office of Pers. Mgmt.*, 699 F.Supp.2d 374 (D. Mass. 2010); *Massachusetts v. Dep’t of Health & Human Servs.*, 689 F. Supp.2d 234 (D. Mass. 2010); *In re Balas*, No. 2:11-bk-17831, 2011 Bankr. LEXIS 2157 (C.D. Cal. June 13, 2011); and another federal court has denied a motion to dismiss a complaint challenging DOMA’s constitutionality, *see Dragovich v. U.S. Dep’t of the Treasury*, No. 10-01564, 2011 U.S. Dist. LEXIS 4859 (N.D. Cal. Jan. 18, 2011). The viability of DOMA is in serious doubt. Yet New Jersey bars same-sex couples from marriage, so Plaintiff couples, couples who are members of GSE, and other same-sex couples are

hindered from engaging in marriage-based challenges to DOMA and its discriminatory effects, and will not gain the rights and benefits that will be available after the repeal or striking down of DOMA: under New Jersey law, they are not married spouses, but rather civil union partners, a term that has no established legal meaning in relation to marriage-based federal benefits.

Encouraging Discrimination by Private Individuals

46. By labeling the relationships of lesbian and gay couples as different from those of heterosexual couples, the State ratifies and legitimizes the notion that lesbian and gay individuals are worthy of lesser stature in society and encourages discrimination against lesbian and gay people. The State's exclusion of same-sex couples from marriage and creation of a separate institution for them triggers and fuels social stigma, harassment, discrimination, and even violence against people who are lesbian and gay and their children.

47. State-created civil unions enable discrimination by forcing the Plaintiff couples, couples who are members of GSE, and other same-sex couples to disclose their sexual orientation in order to realize benefits to which they are legally entitled. Because same-sex couples are denied access to the legal status of "marriage" and "spouse," they must reveal their sexual orientation in situations where otherwise they might not choose to, or where they could not legally be forced — or even asked — to do so. For instance, this invasion of privacy occurs when a civil union partner must ask his or her current employer about benefits for civil union partners that would automatically be extended to married spouses, or must inquire whether a prospective employer will extend benefits to a civil union partner. Louise Walpin, who would not otherwise discuss her sexual orientation at a job interview, felt compelled to inquire whether her prospective employers offered benefits to civil union partners when looking for a nursing job in New Jersey. Prospective employers often did not know what a "civil union" was, or would

not provide benefits for civil union partners. Louise wonders whether some employers discriminated against her and did not hire her because her inquiries disclosed her sexual orientation.

Stigmatization, Psychological Harm, and Dignitary Harm

48. By distinguishing between the relationships of lesbians and gay men, in contrast to those of heterosexuals, the government labels lesbians and gay men, their partners, and their children with a badge of inferiority. Exclusion of same-sex couples from marriage also perpetuates false and harmful stereotypes about lesbian and gay individuals, such as that they are promiscuous, incapable of forming lasting bonds, and sub-optimal parents.

49. Social science and medical literature establishes that repeated stigmatization and exposure to discrimination has consequences that go beyond mere passing indignity. Such stigmatization and discrimination can impose lasting and even permanent physical, emotional, and psychological harm.

Additional Specific Harms to Children

50. Furthermore, the Civil Union Act has failed to remedy the unconstitutional circumstance in which “inequities” are “borne by [the] children” of same-sex couples, 188 *N.J.* at 450. As before, the law of the State “visit[s] on these children a flawed and inferior scheme directed at their parents,” *id.* at 453. In addition to affording less protection to households headed by same-sex couples while at the same time disproportionately imposing financial burdens upon such households, the unequal treatment of lesbian and gay relationships causes direct and indirect dignitary harm to the children of same-sex couples, and to lesbian and gay youth.

51. Children in households headed by same-sex couples are harmed by the fact that their parents are excluded from marriage. They suffer from stigma directed at their parents as a

consequence of their State-imposed second-class status, and they are denied the same level of security and legal protection afforded their peers with married parents.

52. The Plaintiff couples, couples who are members of GSE, and other same-sex couples in New Jersey cannot invoke the status of marriage in order to communicate to their children and others the depth and permanence of the couples' commitment in terms that society, and even young children, readily understand and respect. Their children are left to grow up with the State-sponsored message that their parents and families are inferior to others and that they and their parents do not deserve the same societal recognition and support as families headed by different-sex couples do.

53. The benefits of marriage are needed as much by children in homes headed by same-sex couples as they are by children reared in the homes of different-sex couples. Marriage is as likely to benefit the minor Plaintiffs, children of couples who are members of GSE, and children of other same-sex couples emotionally, economically, and legally as it does other children, and would secure greater dignity and social legitimacy for them and their families.

54. Minor Plaintiffs, children of couples who are members of GSE, and children of other same-sex couples have the same needs for emotional, legal, and economic security; personal dignity; familial stability; and social acceptance and legitimacy for their families and themselves as do children of different-sex couples, including the need for clearly defined and readily recognized legal relationships with both parents. Children whose parents cannot access or afford adoption would, in particular, benefit from access to, and ready recognition of, the automatic parent-child ties that matrimonial law clearly provides to children born into a marriage.

55. Such clear definition of the parent-child relationship is especially important

during times of crisis, such as medical emergencies or the death of a parent. Secure legal ties can assure continuity in the child's relationship with the surviving parent and minimize the risk of claims by others for custody. Likewise, should parents separate, secure legal ties make it unlawful for one parent arbitrarily to seek to cut off the other parent-child relationship. Marriage, in this way and others set forth herein, increases the overall economic resources available to children, whether the marriage continues or ends by death or divorce. Confusion regarding legal status, as is commonly experienced in connection with civil unions, thus threatens the well-being of the minor Plaintiffs and the children of couples who are members of GSE.

56. Allowing same-sex couples to marry is in the best interests of and will benefit children being raised by same-sex couples and the couples themselves, without having any detrimental effect on different-sex couples or their children.

57. Lesbian and gay youth — whether they have or had different-sex, same-sex or single parents — are also harmed by the exclusion of same-sex couples from marriage. These youth receive the message that they, and their future relationships, are not worthy of the esteemed institution of marriage, and that they are therefore not valued equally by their government and communities. Such discrimination and stigmatization compounds psychological harm and contributes to disproportionate rates of substance abuse, victimization, bullying, depression, and suicide.

No Valid Justification for Exclusion

58. The continued exclusion of lesbians and gay men from the institution of civil marriage is consistent with the historical practice of marginalizing and demeaning disfavored groups by excluding them from the most favored legal status. Classifications based on sexual

orientation have a history of fueling invidious discrimination. In New Jersey and nationwide, lesbians and gay men have been the subject of marginalization and discrimination.

59. In other areas of its law, New Jersey has recognized that lesbians and gay men are subject to discrimination, and that such discrimination is harmful and should be illegal. For example, New Jersey has brought sexual orientation within ambit of the Law Against Discrimination. *N.J.S.A.* 10:5-12(a); *Lewis*, 188 *N.J.* at 444-48 (discussing commitment of New Jersey to eliminating sexual orientation discrimination).

60. Even in maintaining a separate system of civil union for same-sex couples, the State recognizes that same-sex couples form lasting relationships for the purposes of mutual support and love, and evinces its state interest in promoting the durability and stability of these relationships. *N.J.S.A.* 37:1-28(a), (b).

61. The State also recognizes, and medical, psychological, and social science literature supports, that sexual orientation has no bearing on an individual or couple's ability to successfully raise children. *See Lewis*, 188 *N.J.* at 444-45. Thus, the State, which has disavowed reliance upon procreation and child-rearing considerations as justifications for excluding lesbian and gay individuals from marriage, *Lewis*, 188 *N.J.* at 429 n.6, 432, recognizes the right of lesbian and gay parents to raise their own children, and places foster children in same-sex parent homes through the Division of Youth and Family Services.

62. The State previously sought to justify its exclusion of same-sex couples from civil marriage in part by reference to its "interest in uniformity with other states' laws." 188 *N.J.* at 453. To the extent that the State would still assert an interest in uniformity, interim developments have rendered New Jersey's treatment of same-sex relationships an anomaly. In the region surrounding New Jersey, the States of Connecticut, Maryland, Massachusetts, New

Hampshire, New York, Rhode Island, and Vermont all provide or recognize marriages of same-sex couples. Today, because New Jersey designates the relationships of same-sex couples as something other than marriage, it is increasingly out-of-step with the majority of surrounding states, and denies same-sex relationships the stature accorded them in many neighboring jurisdictions — even in those that do not themselves issue marriage licenses to same-sex couples.

63. The State has no legitimate interest in denying same-sex couples access to civil marriage. Indeed, the State has an interest in promoting the stability of same-sex relationships and in promoting positive outcomes for children raised by lesbian and gay parents. The categorization of lesbian and gay relationships as less than, different from, and inferior to the relationships of heterosexual people undermines these interests.

CLAIMS FOR RELIEF

64. The Plaintiff couples, couples who are members of GSE, and other same-sex couples are harmed by the stigmatizing, separate-but-unequal system of “civil union” maintained by New Jersey. The exclusion of the Plaintiff couples, couples who are members of GSE, and other same-sex couples from civil marriage is at best irrational, and at worst, an intentional signal of governmental disapproval of lesbian and gay relationships and an invitation to discriminate against lesbians and gay men and their children.

65. Though the exclusion of lesbian and gay couples from civil marriage lacks even a rational basis, the State’s exclusion must be subjected to a heightened standard of review, because it is a classification based on sexual orientation and sex, and because it impinges upon fundamental rights.

**Claim One: Denial of Equal Protection Mandated by Article I, Paragraph 1 of the
New Jersey Constitution**

66. Plaintiffs reallege and incorporate by reference the preceding allegations as if fully set forth herein.

67. Article I, Paragraph 1 of the New Jersey Constitution provides that every person possesses the “unalienable rights” to enjoy life, liberty, and property, and to pursue happiness, and protects against the unequal treatment of those who should be treated alike.

68. By imposing civil unions on same-sex couples only, New Jersey harms Plaintiff same-sex couples and their children, who are similarly situated to different-sex couples and their children with respect to the formation of loving and familial bonds, barring them from civil marriage for no legitimate purpose or countervailing public need.

69. Furthermore, the state’s exclusion is unconstitutional under the decision in *Lewis v. Harris*, in which the New Jersey Supreme Court recognized that a “parallel statutory structure” could be permissible under the New Jersey Constitution only if it provided for equal rights and benefits. *Lewis*, 188 N.J. at 423. “[T]he unequal dispensation of rights and benefits to committed same-sex partners can no longer be tolerated under our State Constitution.” *Id.*

70. As set forth above, the institution of “civil union” is unequal and inferior to the institution of marriage, which is a legal relationship that is universally understood and recognized. A civil union does not even provide all of the tangible rights and benefits of marriage. Furthermore, it effectively invites and sanctions discrimination on the basis of sexual orientation by government officials and private individuals and entities.

71. Civil unions also do not and cannot provide the intangible and symbolic rights and benefits attendant to marriage, and the deprivation of these benefits constitutes a cognizable constitutional harm for the Plaintiff couples, couples who are members of GSE, and other same-

sex couples and their children. The state reserves civil marriage, the most socially valued form of relationship, for different-sex couples, and has created an inferior legal relationship for lesbian and gay people and their children in the eyes of the law and the community, denying them equal rights on the basis of the adults' sexual orientation and their sex and impermissibly classifying their children on the bases of their parents' sexual orientation, sex and marital status.

72. The State cannot demonstrate that there is a "public need" to exclude Plaintiffs from civil marriage sufficient to outweigh the harm to Plaintiffs caused by the manifest inequality and inferiority of civil union status relative to marriage. *See Lewis*, 188 N.J. at 443. This is especially true given that the State recognizes the right and ability of same-sex couples to raise children, *Lewis*, 188 N.J. at 429 n.6, 432, and has further acknowledged the necessity of "promoting stable and durable relationships" between same-sex couples, and "eliminating obstacles and hardships these couples may face." N.J.S.A. 37:1-28(b).

73. The State's imposition of civil unions and denial of access to marriage violate the equal protection of the laws guaranteed by Article I, Paragraph 1 of the New Jersey Constitution.

Claim Two: Denial of the Fundamental Right to Marry
Protected by Article I, Paragraph 1 of the New Jersey Constitution

74. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if set forth fully herein.

75. The right to marriage is recognized as fundamental and is accordingly protected by Article I, Paragraph 1 of the New Jersey Constitution. *Lewis*, 188 N.J. at 435.

76. Denying the Plaintiff couples, couples who are members of GSE, and other same-sex couples the right to enter civil marriages, which is the primary and preferred State-sanctioned family relationship, and instead relegating them to the separate status of civil unions deprives them and their families of the fundamental liberties protected by Article I, Paragraph 1 of the

New Jersey Constitution. Through this denial, the State stigmatizes lesbian and gay New Jerseyans, as well as their children and families, and denies them the same autonomy, dignity, respect, and status afforded married people, in violation of the New Jersey Constitution.

77. Moreover, denying same-sex couples the right to enter civil marriages and relegating lesbians and gay men to civil unions also infringes the fundamental rights of same-sex couples to autonomy and privacy in their relationships, as guaranteed by Article I, Paragraph 1 of the New Jersey Constitution of 1947. The right of privacy includes the right to nondisclosure of confidential or personal information and protects against unwarranted disclosure of one's sexual orientation. As set forth above, by labeling the relationships of same-sex couples differently from the relationships of different-sex couples, the state forces lesbian and gay individuals in committed relationships to disclose their sexual orientation in a variety of public situations.

78. Civil unions and the exclusion of Plaintiffs and other same-sex couples from civil marriage deprive the Plaintiff couples, couples who are members of GSE, and other same-sex couples of the due process guaranteed by Article I, Paragraph 1 of the New Jersey Constitution.

Claim Three: Denial of Equal Protection Mandated by the Fourteenth Amendment to the United States Constitution, in Violation of 42 U.S.C. § 1983

79. Plaintiffs reallege and incorporate by reference the preceding allegations as if fully set forth herein.

80. The Fourteenth Amendment to the Constitution of the United States provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

81. Denying the Plaintiff couples, couples who are members of GSE, and other same-sex couples the ability to marry, and instead shunting them to civil unions, violates the Equal Protection Clause of the Fourteenth Amendment. The State improperly distinguishes between heterosexual New Jerseyans on the one hand and lesbian and gay New Jerseyans on the other,

and excludes only lesbians and gay men from the institution of civil marriage, with harmful consequences to those families defined by civil unions.

82. In their familial relationships, lesbian and gay individuals and their children are similarly situated to heterosexual individuals and their children in every way relevant to the State-sponsored institution of civil marriage. The State thus discriminates between similarly situated individuals on the basis of the adults' sexual orientation and their sex, and impermissibly classifies their children on the bases of their parents' sexual orientation, sex, and marital status.

83. There is no legitimate governmental object to be attained by treating the relationships of lesbian and gay individuals differently and as inferior to the relationships of heterosexuals. Rather, given that the State has already conceded that "[S]tate law and policy do not support the argument that limiting marriage to heterosexual couples is necessary for either procreative purposes or providing the optimal environment for raising children," *Lewis*, 188 *N.J.* at 432, and that the State has determined that same-sex relationships should be accorded a legal status that provides "all the rights and benefits that married heterosexual couples enjoy[.]" *N.J.S.A.* 37:1-28(d), the maintenance of a separate legal status for same-sex couples has no purpose other than to preserve and perpetuate discrimination. It does just that.

84. The legislative classification embodied in the Civil Union Act does not serve even a legitimate and rational government purpose and cannot satisfy any standard of review. Moreover, it was enacted to single out for disfavored status a politically vulnerable minority that has historically been targeted for discrimination based on immutable characteristics unrelated to the ability to contribute to society. Thus, heightened scrutiny of the legislative classification embodied in the Civil Union Act, and of the exclusion of lesbians and gay men from civil marriage, is warranted because the State places lesbians and gays in a separate category with

of same-sex couples of the right to equal protection of the law secured by the Fourteenth Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983.

Claim Four: Denial of Substantive Due Process Protected by the Fourteenth Amendment to the United States Constitution in Violation of 42 U.S.C. § 1983

89. Plaintiffs reallege and incorporate by reference the preceding allegations as if fully set forth herein.

90. The Fourteenth Amendment to the Constitution of the United States precludes any State from “depriv[ing] any person of life, liberty, or property, without due process of law[.]” *U.S. Const.* amend. XIV, § 1. The Due Process Clause dictates that governmental interference with a fundamental right may be sustained only upon a showing that the burdening legislation is narrowly tailored to serve a compelling governmental interest.

91. This due process guarantee protects choices central to personal dignity and autonomy and provides individuals the right to demand respect for conduct protected by the substantive guarantee of liberty.

92. Federal law recognizes that marriage is a personal, fundamental right, and the substantive liberty protected by the Due Process Clause protects personal decisions relating to marriage. Civil marriage is a singular and unitary institution denied to the Plaintiff couples, couples who are members of GSE, and other same-sex couples by the State of New Jersey. The Civil Union Act thus prevents the Plaintiff couples, couples who are members of GSE, and other same-sex couples from exercising a fundamental liberty interest by denying them access to the universally recognized institution of marriage.

93. Civil unions do not fulfill New Jersey’s due process obligations to the Plaintiff couples, couples who are members of GSE, and other same-sex couples. This legal status is distinct and inferior, and serves only to discriminate against individuals in same-sex

relationships, who are denied access to civil marriage. Thus, the exclusion of lesbians and gay men from marriage and the imposition of the Civil Union Act, on its face and as applied to Plaintiffs, violates the Due Process Clause.

94. Insofar as they are excluding the Plaintiff couples, couples who are members of GSE, and other same-sex couples from civil marriage, Defendants, acting under color of state law, are depriving and will continue to deprive Plaintiffs of the right to due process of the law secured by the Fourteenth Amendment to the Constitution of the United States, in violation of 42 U.S.C. § 1983.

PRAYER FOR RELIEF

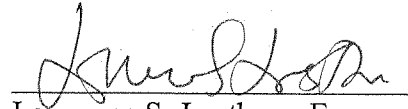
WHEREFORE, Plaintiffs prays that the Court enter an Order:

1) Declaring that denying the Plaintiff couples, couples who are members of GSE, and other same-sex couples the right to marry and relegating them to civil unions violates their rights and their children's rights under Article I, Paragraph 1 of the New Jersey Constitution and the Fourteenth Amendment to the Constitution of the United States, and for those couples who are legally married in another jurisdiction, declaring that it is unconstitutional for the Defendants to deny recognition of marriages validly entered in other jurisdictions by same-sex couples, as marriages;

2) Permanently enjoining Defendants from denying the Plaintiff couples, couples who are members of GSE, and other same-sex couples the right to enter civil marriages in New Jersey or from limiting them to civil unions, and for those same-sex couples who are legally married in another jurisdiction, enjoining Defendants from denying recognition of the marriages;

- 3) Awarding Plaintiffs legal fees and costs; and
- 4) Any other relief as is deemed just and warranted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Lawrence S. Lustberg", is written over a horizontal line. To the right of the signature is a small, handwritten circled mark that looks like "b7c".

Lawrence S. Lustberg, Esq.

Eileen M. Connor, Esq.

GIBBONS P.C.

One Gateway Center

Newark, New Jersey 07103

(973) 596-4753

Hayley J. Gorenberg, Esq.*

LAMBDA LEGAL

125 Wall Street

Suite 1500

New York, New York 10005

**pro hac vice admission pending*

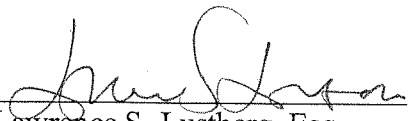
Dated: June 29, 2011

CERTIFICATION OF NO OTHER ACTIONS

The undersigned hereby certifies pursuant to R. 4.5-1(b)(2) that the matter in controversy is not the subject of any other action pending in any other court or a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, the undersigned knows of no other parties that should be made a part of this lawsuit. In addition, the undersigned recognizes the continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: Newark, New Jersey
June 29, 2011

By:


Lawrence S. Lustberg, Esq.
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4731

DESIGNATION OF TRIAL COUNSEL

In accordance with R. 4:5-1(c), Plaintiffs hereby designate Lawrence S. Lustberg as trial counsel in this matter.

Dated: Newark, New Jersey
June 29, 2011

Respectfully submitted,

By:

 (L)

Lawrence S. Lustberg

Eileen M. Connor

GIBBONS P.C.

One Gateway Center

Newark, New Jersey 07102-5310

(973) 596-4731

Hayley J. Gorenberg*

Lambda Legal

120 Wall Street, Suite 1500

New York, New York 10005

(212) 809-8585

Attorneys for Plaintiffs

** pro hac vice application pending*