

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIEL HERNANDEZ and NEVIN COHEN,
LAUREN ABRAMS and DONNA FREEMAN-
TWEED, MICHAEL ELSASSER and DOUGLAS
ROBINSON, MARY JO KENNEDY and JO-ANN
SHAIN, and DANIEL REYES and CURTIS
WOOLBRIGHT,

Plaintiffs,

- against -

VICTOR L. ROBLES, in his official capacity as
CITY CLERK of the City of New York,

Defendant.

Index No. 103434/2004

First Amended Complaint

Plaintiffs Daniel Hernandez and Nevin Cohen, Lauren Abrams and Donna Freeman-Tweed, Michael Elsasser and Douglas Robinson, Mary Jo Kennedy and Jo-Ann Shain, and Daniel Reyes and Curtis Woolbright (“Plaintiffs”), by their attorneys, Lambda Legal Defense and Education Fund and Kramer Levin Naftalis & Frankel LLP, for their first amended complaint, allege as follows:

Preliminary Statement

1. Plaintiffs are members of five committed New York City same-sex couples who wish to enter into civil marriage in the State of New York with their chosen life partners. Plaintiffs bring this action to challenge the discriminatory denial to them of licenses to marry in the State of New York.

2. Plaintiffs seek to enter into the institution of civil marriage and thereby bear the responsibilities of, and avail themselves of the myriad benefits conferred by, the marital contract. Plaintiffs seek no more than what is presently available under New York State law for

heterosexual couples in committed relationships. They want to express their love and commitment to one another through the unique bond of marriage. They seek the recognition and respect from family and community that come with marriage. They seek the security and protections that flow from a legal marriage union for themselves and for any children they may have, and the structure and support for their emotional and economic bonds that marriage provides.

3. The right to marry is one of the deeply personal liberty and privacy interests protected by the due process clause of the New York State Constitution, Art. I, section 6. The exclusion of Plaintiffs and other same-sex couples from legal marriage violates this fundamental right.

4. The right to equal protection of the laws under the New York State Constitution, Art. I, section 11, also prohibits the State's discriminatory marriage scheme, which, by drawing impermissible distinctions based on sexual orientation and sex, denies all same-sex couples access to this extraordinarily significant legal institution.

5. Plaintiffs seek (i) a declaration that New York's Domestic Relations Law ("DRL") is unconstitutional insofar as it denies marriage licenses and access to civil marriage to same-sex couples, and (ii) an injunction requiring Defendant Victor L. Robles, in his official capacity as City Clerk of the City of New York ("City Clerk"), to grant them marriage licenses and access to civil marriage on the same terms and conditions available to different-sex couples.

The Parties

6. Plaintiffs Daniel Hernandez, age 46, and Nevin Cohen, age 41, live in New York City. They are gay men who have been together in a loving, committed relationship for five years. They rent their Manhattan apartment together and share financial responsibility for their expenses and for one another's needs. They want to adopt a child, whom they wish to raise in a home where they are married and have the legal protections for their family that come with marriage.

7. Daniel and Nevin are both employed in New York City and pay taxes here. Daniel is a real estate developer at Jonathan Rose Companies, where he works on urban redevelopment projects. His work focuses on revitalizing low-income urban neighborhoods and developing affordable housing. Nevin, a native New Yorker, is an environmental planner who worked extensively on New York City's recycling legislation. He teaches courses on environmental planning at the New School and has taught at Pratt Institute as well.

8. Daniel, a Mexican-American, learned from his parents' courage in the face of prejudice and discrimination the importance of leading a life of dignity and self-respect even when society withholds the respect one deserves. Daniel has seen how his parents' marriage of 58 years has sustained them and given their children a loving, stable foundation. It is his dream to enter with Nevin into the same bond and have the same security for his family.

9. More than a decade ago, Nevin lost his partner of 10 years to AIDS. As he cared for his partner, Nevin had to struggle with the lack of protections in times of sickness on which married couples rely. While a spouse could be at the bedside of his loved one, Nevin was often told to sit in the waiting room. Time and again he had to explain anew to hospital staff in

emergency rooms and on hospital wards the nature of his relationship to his ill partner and why he needed to communicate about important medical information for his partner's care.

10. Both Daniel's and Nevin's parents are close to their sons and supportive of their loving relationship. Daniel and Nevin make an annual Christmas trip to Daniel's parents in California.

11. Daniel and Nevin have committed to spend their lives together. They have built a life together; they want to marry as a public symbol of their commitment and for access to legal rights and protections for their family.

12. Plaintiffs Lauren Abrams, age 39, and Donna Freeman-Tweed, age 43, are lesbians in a committed same-sex relationship. They have been a couple for six years. They live together in an apartment in Park Slope, Brooklyn, with their three-year-old son. Lauren is the biological mother, and Donna, in accordance with New York law, became their son's adoptive mother. He calls both his parents "Mommy" and also has a special name for Donna, "Mama Ba." Lauren and Donna are expecting the couple's second child, another boy, in late May 2004. Lauren is carrying the baby, and the couple will soon begin the process under New York law for Donna to adopt their second child. Both pregnancies were conceived through anonymous alternative insemination.

13. Lauren grew up on Long Island, New York, where her parents still live. She is a midwife at Mt. Sinai Hospital, serving low-income women. Donna, a naturalized U.S. citizen, was born on the Caribbean island of St. Kitts. When she was thirteen she moved to New York, where her mother, who had come to this city seeking work, is a home attendant living in the Bronx. Donna is a physician assistant at Brooklyn College Health Clinic. Lauren and Donna

have arranged their work schedules so that one of them can be with their son most days after he gets out of pre-school. Lauren's parents also visit the family every week and help baby-sit for their grandson. Donna's mother is close and supportive as well, calling Lauren her "daughter-in-law."

14. Lauren and Donna have registered as domestic partners in New York City and have gone to great lengths and expense to have Donna adopt their son and to protect their family relationship through legal documents. Nevertheless, they worry because they lack the security for their family that comes with marriage. Among other things, they are concerned that until Donna adopts their second child, their baby will not have a protected legal relationship with both his parents. Lauren and Donna love each other and have created a family together. They want their family to have the recognition and protections that the families of heterosexuals have. They want to be able to say to their children, "Your parents are married."

15. Plaintiffs Michael Elsasser, age 49, and Douglas Robinson, age 52, two gay men, have been a committed couple for 17 years. Douglas is an assistant vice president and technical project manager at Citibank, where he works in the company's Long Island City office. Michael is a woven textile stylist and technician at a Manhattan-based company. They live on the upper west side of Manhattan with their two sons, an 18-year-old high school senior and a 15-year-old high school freshman. Douglas adopted their sons from the New York City foster care system when they were babies.

16. Both men are involved members of their community. Douglas has served on the New York City Public School District 2 School Board for the past eight years, has been an active PTA parent, and is the President of the Friends of Morningside Park. Michael has been a

board officer for four years and is currently the vice-president of the co-op board in the building where Douglas and Michael jointly own their home. Michael co-founded Brooklyn Perinatal Bereavement Services, a nonprofit program for parents who have experienced the loss of a pregnancy or early infant death.

17. Douglas and Michael have raised two teen-aged sons together, built a family, and contributed to their community. They are devoted to one another and want the public recognition of their commitment and the legal protections for their family that come with marriage.

18. Plaintiffs Mary Jo Kennedy, age 48, and Jo-Ann Shain, age 51, are lesbians in a committed life-partnership. They have been a couple for 22 years. They live in Ditmas Park, Brooklyn, with their 15-year-old daughter. Mary Jo is the medical director of a family health center in Sunset Park, Brooklyn. She is a family practice physician, providing community health care services to a largely Latino and Arab-American patient base, many of who are low income. Jo-Ann is editor of medical publications for Lexis/Nexis Matthew Bender.

19. Jo-Ann is their daughter's biological mother, and Mary Jo legally adopted their daughter in 1996. Mary Jo's health insurance provided through her employer covers her dependent daughter, but the family pays for Jo-Ann's separate health insurance at greater expense than if they were married. Jo-Ann and Mary Jo registered as New York City domestic partners and have paid to obtain wills and other life planning documents, but these measures do not provide nearly the protections for their family that would flow from marriage.

20. Mary Jo and Jo-Ann love one another and have sought to build a loving, joyful, and secure home for their daughter. They want to express their love and commitment

through civil marriage and secure the legal rights and protections for their family that come from marriage. Their daughter, too, wants to see her mothers marry and for their loving relationship to be accorded the same respect and recognition as those of her friends' married parents. Years ago Mary Jo and Jo-Ann celebrated their tenth anniversary together with a party for family and friends. They plan to celebrate their twenty-fifth anniversary in just a few years and fervently wish to do so as a married couple.

21. Plaintiff Daniel Reyes, age 30, and Curtis Woolbright, age 36, are gay men in a committed life-partnership. They have been devoted to one another since they met three years ago and have shared a home for the past two and a half years, where they live with their two dogs. They want to have children someday. They are both parties to the lease of the apartment they sublet together in Harlem and pool their finances, with joint bank and credit card accounts. Like many other couples at this point in their relationship, they want to take the next step and publicly and legally convey their love and life commitment through marriage. Yet because they are a same-sex couple they are prevented from doing so.

22. Daniel is the director of an emergency food assistance program in East Harlem, serving needy members of that area's largely Latino community. Latino himself, Daniel is dedicated to participating in the betterment of New York's communities of color. Curtis is a waiter at a midtown restaurant and an aspiring voice-over artist. During a stretch when Daniel was between jobs, Curtis supported them both. The two work hard to try to make ends meet. They pay more for health and car insurance than they would if they were a married couple. They would like to retain a lawyer to prepare wills and other legal documents to give them some of the protections they would get automatically if they could marry, but they cannot afford to do that now.

23. Daniel's father passed away when he was nine, leaving his mother, until then a stay-at-home parent, to provide for Daniel and his three siblings. As the family went through difficult financial times, they pulled closer together to protect and support one another. Daniel learned the strength that comes from family and the importance of providing as much security as possible to shelter the family should tragedy strike. He wants to marry to best protect Curtis and the children they plan to raise.

24. Curtis's parents were an inter-racial couple that had to struggle to marry before anti-miscegenation laws were finally declared unconstitutional by the U.S. Supreme Court in 1967. His father, an African-American from Texas, met his mother, a white woman, when he was in the army stationed in Iowa in the 1960's. With many states, including Texas, then still outlawing inter-racial marriage, the couple moved to California, the first state whose courts declared such laws unconstitutional, and married there in 1966. Because of New York's discriminatory laws, Curtis must now stand up for his right to marry the love of his life, just as his parents had to a generation before.

25. Both their fathers are deceased, and Daniel and Curtis remain close to their mothers and siblings, taking turns spending Thanksgiving and Christmas with them as a couple. Daniel and Curtis dream of the day when they can have a legal wedding celebration, surrounded by family and friends, in their New York home.

26. Defendant Victor L. Robles is the City Clerk for the City of New York. The City Clerk is the administrator of the Marriage License Bureau and has responsibility under New York law for the issuance and recording of marriage licenses and the solemnization of civil marriages in New York City.

Plaintiffs' Attempts to Marry

27. Except for the fact that they are same-sex partners, each Plaintiff couple is legally qualified to marry under the laws of New York. Each Plaintiff couple seeks and intends to have its marriage licensed and solemnized in New York.

28. On the following dates, both members of each Plaintiff couple appeared together in person to apply for a marriage license at the Office of the City Clerk in Manhattan: Daniel Reyes and Curtis Woolbright on March 4, 2004; Daniel Hernandez and Nevin Cohen on March 5, 2004; Michael Elsasser and Douglas Robinson, and Mary Jo Kennedy and Jo-Ann Shain on March 10, 2004; and Lauren Abrams and Donna Freeman-Tweed on March 19, 2004. Each of the Plaintiff couples was ready and able to (i) pay the \$35 fee for a marriage license by means of a money order, (ii) present valid forms of identification, and (iii) complete a marriage application.

29. The Office of the City Clerk denied Plaintiffs' requests for marriage licenses, providing each couple with a letter stating that New York State law does not authorize the City Clerk to grant marriage licenses to same-sex couples.

Plaintiffs Are Harmed by Their Exclusion From the Institution of Civil Marriage

30. Plaintiffs want to marry, among other reasons, to communicate the depth and commitment of their relationship instantly and publicly and to participate in an institution that plays a central role in our society.

31. By denying Plaintiffs access to marriage, New York State law forbids them from making the public and legal commitment to one another that marriage entails and

deprives them of the comprehensive legal structure for couples and their families that marriage provides. In addition, because many private parties rely on the State's conferral of civil marriage and the definition of a "spouse," Plaintiffs suffer the denial of privately provided benefits and protections from employers, insurers, and others. They may further suffer from lack of appropriate recognition and respect for their families in their neighborhoods, workplaces, children's schools, hospitals, and in other areas of their everyday lives.

32. Plaintiffs are harmed by their exclusion from a broad array of statutory protections, benefits, and mutual responsibilities afforded by New York's marriage law. These include, among others, the spousal obligation of mutual support; certain parental rights and obligations; the right to own real property as tenants in the entirety, which provides greater protection for the family home than other forms of property ownership; rules requiring that confidences between spouses be recognized as privileged and thus protected from disclosure in judicial proceedings; access to the legal framework for the division of property and obligations of continuing support should a marriage end in divorce; the right to bring a wrongful death action should a spouse be killed by another's negligence; and inheritance rights and death benefits for surviving spouses.

33. Beyond these harms, Plaintiffs suffer additional hardships and stigma by their exclusion from this vital civil institution. Marriage is an institution that uniquely affirms the loving commitment of two people. To say "I am married" and hold oneself out as a spouse conveys a universally understood and respected status that requires no further explanation or elaboration. By denying Plaintiffs the right to participate in this cherished institution, the State demeans their relationships and families, and relegates them to a second-class status.

Claims For Relief

First Count

(Denial of the Right to Due Process: Governmental Interference With The Right To Marry)

34. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

35. Article I, section 6 of New York State's Constitution provides: "No person shall be deprived of life, liberty or property without due process of law." Among the personal liberty interests protected by the New York State Constitution's due process clause is the right to privacy, which includes one's ability to make intimate choices of a deeply personal nature, including whom to marry.

36. The State's statutory framework for marriage precludes two individuals of the same sex from exercising the right to marry each other, interfering with a core personal choice.

37. The State's statutory framework for marriage bars Plaintiffs from marriage because they wish to marry a partner of the same sex. This exclusion, without sufficient government justification, violates Plaintiffs' state constitutional due process rights.

Second Count

**(Denial of Equal Protection:
Governmental Discrimination In Access to Marriage)**

38. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

39. Article I, section 11 of New York’s Constitution provides: “No person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

40. The State’s statutory framework for marriage discriminates against individuals in same-sex relationships because they wish to marry a person of the same sex, allowing access to marriage only for different-sex couples.

41. The State’s statutory framework for marriage discriminates against Plaintiffs and members of other same-sex couples on the basis of both sexual orientation and sex, without sufficient government justification, in violation of Plaintiffs’ state constitutional right to equal protection.

Prayer For Relief

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. Declare, based on the rights to due process and equal protection provided under the New York State Constitution, that the DRL’s denial of access to marriage for same-sex couples violates Plaintiffs’ rights to liberty and equality and that Plaintiffs are constitutionally entitled to treatment equal to the treatment of different-sex couples regarding the issuance of marriage licenses and access to civil marriage.

2. Enjoin Defendant to grant marriage licenses to Plaintiffs, otherwise to infringe no longer upon Plaintiffs' right to marry, and to treat Plaintiffs no differently than different-sex couples regarding access to the legal institution of civil marriage and to the rights that flow from marriage.

3. Grant Plaintiffs such further relief as the Court deems just and proper.

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