

STATE OF MINNESOTA	FILED PSL	DISTRICT COURT
COUNTY OF HENNEPIN	10 MAY 11 AM 11:23	FOURTH JUDICIAL DISTRICT
Douglas Benson, Duane Gajewski, Jessica Dykhuis, Lindzi Campbell, Sean Campbell, Thomas Trisko and John Rittman,	BY _____ HENNEPIN COUNTY COURT CLERK	Court File No. <u>10-11697</u> 27 CV
Plaintiffs,		Case Type: Other Civil
v.		<b>COMPLAINT</b>
Jill Alverson, in her official capacity as the Hennepin County Local Registrar		
Defendant.		

Plaintiffs Douglas Benson, Duane Gajewski, Jessica Dykhuis, Lindzi Campbell, Sean Campbell, minor child of Lindzi Campbell and Jessica Dykhuis, Thomas Trisko, and John Rittman, Plaintiffs, for their Complaint against Defendant Jill Alverson, in her official capacity as Hennepin County Local Registrar ("Registrar"), state and allege as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiffs Douglas Benson, Duane Gajewski, Jessica Dykhuis, Lindzi Campbell, Sean Campbell, Thomas Trisko, and John Rittman, are six gay and lesbian Minnesotans who comprise three committed, same-sex couples. Plaintiff Sean Campbell is the minor child of Lindzi Campbell and Jessica Dykhuis. Plaintiffs bring this action to challenge Defendant's wrongful and unconstitutional denial of their applications for marriage licenses in

Hennepin County solely because each of the plaintiff couples are comprised of individuals of the same sex.

2. Plaintiffs Douglas Benson ("Doug"), age 56, and Duane Gajewski (Duane), age 46, are a gay couple residing in Robbinsdale, Minnesota, in Hennepin County. Doug and Duane have been together as a same-sex couple in a loving, committed relationship for 19 years. **[BIOGRAPHICAL INFORMATION]** Duane Gajewski (46) and Doug Benson (56) were both born and raised in Duluth, St. Louis County, now living in Robbinsdale, Hennepin County. Duane has a Bachelor's Degree from the College of St. Scholastica and a Master's Degree from the University of Minnesota, Duluth. He is an actuary. Doug has a Bachelor's Degree from the University of Minnesota, Duluth and is the Executive Director of a Minnesota non-profit. They met and began their life together as a loving, committed, same-sex couple in 1990, in Duluth. Doug and Duane are close to their families of origin and have been accepted and treated by their families as a married couple, as any of their heterosexual siblings and respective spouses are treated, from the beginning of their relationship. They attend family holiday gatherings, as a couple, with their families, hectically traveling between celebrations to spend time with both families. The couple's basset hound, Simon, is a favorite with the men's nieces and nephews at celebrations. Both Doug and Duane are community minded, founding the Northland Gay Men's Center in Duluth in 1992, with the goal of providing support and affirmation to gay men in a chemical-free environment while building community. The organization exists to this day. Doug and

Duane have considered themselves to be married since near the beginning of their relationship. Heterosexual friends have told the couple that their relationship serves as a model for their own marriages. In 1993 Doug and Duane applied for a marriage license in St. Louis County to express their commitment to one another and challenge laws that kept them from experiencing the respect, recognition, security and obligations offered to different-sex couples through legal marriage. The application was rejected by the County Attorney. Publicity surrounding the application resulted in death threats to the couple, but this only served to strengthen their commitment to one another. During this period, Duane was a graduate student, Teaching Assistant at UMD, maintaining part time hours at his father's store while Doug provided the bulk of the family income at this time as a full time school bus driver with Duluth Public Schools. In 1995 Duane was offered his first actuarial position. It was in Montpelier, Vermont. Duane and Doug left their jobs and their home town so Duane could pursue his career. While in Vermont, Duane volunteered as the treasurer of the state's largest gay and lesbian rights organization. Doug took temporary positions as a bus driver and administrative assistant. In 1998, the couple returned to Minnesota, in another career move for Duane. They bought a home in Robbinsdale under joint tenancy, where they have resided together for the past eleven years. The home purchase was their first. Doug was appointed, by the mayor of Robbinsdale, to the Robbinsdale Human Rights Commission in 2000, where he served for seven years, including a term as chairman. In the year 2000, when

the State of Vermont became the first state in the union to institute "civil unions" for same-sex couples, Doug and Duane traveled to Vermont to take advantage of the opportunity to have their committed relationship recognized by government. They opted for a courthouse ceremony to make their marriage seem as official as possible, while knowing their "civil union" would not be legally recognized in their home state. Because of the long distance, none of either Doug's or Duane's family members were able to attend. Doug's sister, Christine, surprised the couple by picking up the tab for their reception at a Montpelier restaurant, via telephone. In 2003, Doug and Duane drove to Thunder Bay, Ontario, Canada to get legally married, again in spite of knowing that their marriage would not be "officially" recognized when they got home. Because Doug does not now have a paid position and is dependent on Duane for support, the couple's household operates as a traditional married couple where one stays at home. While Doug was working, he built up an IRA, but because the couple's marriage is not legally recognized, they are not allowed by law to continue contributing to Doug's IRA, whereas different-sex couples are allowed to contribute to the IRA of an unemployed spouse. Also, because the couple is not allowed to file a joint tax return, as any different-sex married couple would be allowed to, the couple pays thousands of dollars in extra taxes each year. Doug receives healthcare coverage through Duane's employer as Duane's "domestic partner," but because the couple's marriage is not legally recognized in Minnesota, the couple has to pay taxes on that coverage, whereas Duane's heterosexual coworkers do not have to pay taxes on their spouse's

coverage. They also worry that if one of them becomes hospitalized the other may not be able to visit and comfort the other in time of need and make necessary medical decisions. The couple would like to have their marriage legally recognized so they can experience the same benefits and protections afforded any other married couple.

3. Plaintiffs Jessica Dykhuis ("Jesse"), age 34, and Lindzi Campbell ("Lindzi"), age 32, are a lesbian couple residing in Duluth, Minnesota, in St. Louis County. Jesse and Lindzi have been together as a same-sex couple in a loving, committed relationship for 2 years. Lindzi Campbell (age 32) and Jesse Dykhuis (age 34) are a lesbian couple residing in Duluth MN where Lindzi, a Twin Ports native – born and raised on Park Point - is a firefighter and Jesse, a Minneapolis transplant, is a Doula. Lindzi and Jesse live in Duluth's Lincoln Park neighborhood and are actively raising two sons Jackson (age 9) and Sean (born 10/19/2009) together. Lindzi and Jesse met in 2003 and have been in a same sex, committed, and loving relationship since 2007. Jesse is the co-chair of the Duluth-Superior Pride committee and an avid gardener and music fan. Lindzi enjoys fundraising for the MDA and plays volleyball, hockey and broomball. The couple and their children go camping, hiking, kayaking and skiing throughout the State of Minnesota. Lindzi and Jesse are registered domestic partners in Duluth MN, although that status confers absolutely no rights to the couple. Jesse is currently without health insurance and Lindzi's employer does not extend its health coverage to domestic partners, only married couples. When Lindzi went into labor with Sean 6 weeks early, the

couple had to hurriedly complete and have notarized piles of legal paperwork including durable power of attorney for health care and guardianship transfer designations between labor contractions to make sure Jesse had some amount of legal support for their relationship and her relationship to the baby since the rights and protections of marriage are not afforded to same sex couples in Minnesota. Lindzi and Jesse's parents and friends are very supportive of their relationship and honor their commitment as a couple. However, attending weddings of heterosexual friends and family is always bittersweet, as a couple Lindzi and Jesse are invited to and expected to celebrate in a tradition that they are unsure they will ever be able to participate in themselves.

4. Plaintiffs Thomas Trisko ("Tom"), age 65, and John Rittman ("John"), age 68, are a gay couple residing in Minneapolis, Minnesota, in Hennepin County. Tom and John have been together as a same-sex couple in a loving, committed relationship for 36 years. Tom was born in Minneapolis and grew up in Hopkins and Saint Cloud. He is descended from families that have been citizens of Minnesota for seven generations since the mid-Nineteenth Century. Tom graduated with a BA in Economics from Saint John's University in Collegeville and with an MA in Political Science from the University of Minnesota. He also studied at Georgetown University in Washington, D.C. on a doctoral fellowship in Government. Tom has held positions such as Corporate Economist, Government Affairs Director, Finance Director and Chief Financial Officer at companies and non-profit organizations such as Dayton Hudson Corporation (now Target), Medtronic, Minnesota Multiple Sclerosis Society, and

The Bridge for Runaway Youth. He retired in 2006. In retirement, he volunteers as the Treasurer of the Wells Memorial Foundation and serves on the altar as a Eucharistic Minister at their church, Saint Mark's Episcopal Cathedral in Minneapolis. He has also served on the Finance Committees and/or as Treasurer of Philanthrofund Foundation, Calhoun Isles Condominium Association and the Twin Cities Gay Men's Chorus. John was born and raised in Anderson, Indiana and graduated from Ball State University in Muncie, Indiana with a BA degree in Business Education and an MA degree in History. John served as an officer in the US Air Force after graduation at Wright Patterson AFB. He was posted to the University of Minnesota in 1972 where he was a professor of military history in the AFROTC program. After leaving the Air Force John worked as an engineering personnel recruiter for Rosemount Engineering in Eden Prairie. He returned to college to graduate as a Registered Nurse in 1985 and thereafter provided nursing services at facilities such as Mt. Sinai Hospital, Walker Methodist and the Courage Center. In 1994, he became a nursing home, home health care and hospital Inspector for the Minnesota Department of Health. He retired in 2005. In retirement, he volunteers for the Twin Cities Gay Men's Chorus and OutFront Minnesota, as well as serving as an usher and on the Gay and Lesbian Ministry Committee at Saint Mark's Episcopal Cathedral.

Tom and John met December 21, 1973 at their apartment building in Roseville and have been committed to each other in a loving relationship ever since. They moved in together in March 1975 at Tom's condominium in Little Canada.

They bought a townhouse together as joint tenants in Minneapolis in 1981 and bought their current home in southwest Minneapolis as joint tenants in 2000. They registered as domestic partners with the City of Minneapolis in 1991 and the University of Minnesota in 1996. They were religiously married in their church, Saint Mark's Episcopal Cathedral in Minneapolis on May 1, 1999 in front of friends and relatives. They were legally married in Winnipeg, Manitoba, Canada on May 27, 2005. Even with all this evidence of their commitment, when they are faced with stating on an official form whether they are "Married" or "Single," they don't know for sure which to choose when they are at home in Minnesota. Tom and John feel increasingly vulnerable as legally unmarried partners in their home state of Minnesota as they grow older. They are worried about the practical and dignitary harms they have suffered and may suffer in the future from being denied the right to marry in Minnesota. Although they have completed many partial measures such as Medical and Financial Powers of Attorney Wills, Beneficiary statements, etc. they still do not have the 515 legal protections, rights, obligations, cost/tax savings and benefits that come with marriage in Minnesota. When they travel, they must carry all these documents with them in case of accident, illness or death. They have witnessed several of their friends have legal difficulties claiming the body of their deceased partner, participating in health care decisions, and inheriting assets and pension benefits. This particularly concerns Tom who has no brothers or sisters, whose parents are deceased, and who has no close relatives. Tom and John have known they were gay since childhood and have

always felt like second class citizens in their own country because the federal and Minnesota Bill of Rights have not been interpreted to mean what they say when it comes to gay and lesbian citizens and couples. They have utilized every avenue open to them to demonstrate and legally cement their commitment to each other over the past 36 years. Legal marriage is the normal way to do this. Therefore, Tom and John wish to marry in Minnesota and have it recognized throughout the United States.

5. Defendant Jill Alverson is the Local Registrar of Hennepin County, a county located in the State of Minnesota. In her capacity as such, Ms. Alverson is charged by Minn. Stat. § 517.07 with the authority to issue marriage licenses in Hennepin County, or to appoint designees to carry out this task.

6. The District Court of the State of Minnesota has jurisdiction over all of the claims set forth in this Complaint because it raises questions related to the constitutionality of a Minnesota statute. Venue is appropriate in Hennepin County because the events giving rise to Plaintiffs' claims occurred in Hennepin County.

#### **FACTUAL ALLEGATIONS**

7. The legal status of being married or unmarried determines numerous rights, obligations, and legal statuses under Minnesota law.

8. Pursuant to Minn. Stat. § 517.01, before a valid civil marriage can take place in Minnesota, a couple must obtain a marriage license. Such

licenses are issued in each individual county by the county's local registrar.  
Minn. Stat. § 517.07.

9. To obtain a marriage license, a couple must fill out and submit to the registrar an application containing the information specified in Minn. Stat. § 517.08 and must pay an application fee.

10. The qualifications required by Minnesota law for a couple to be eligible to marry are set forth in Minn. Stat. §§ 517.01-.03. These include restrictions on bigamy, marriages between close relatives, marriages involving minors, and marriages involving developmentally disabled persons. The law also requires that the marriage be solemnized by a minister, judge, or other person authorized to solemnize marriages pursuant to Minn. Stat. § 517.04.

11. Pursuant to Minn. Stat. §§ 517.01 & 517.03, subd. 1(a)(4), Minnesota law also prohibits marriages between persons of the same sex.

12. On or about March 6, 2009, Plaintiffs Douglas Benson and Duane Gajewski appeared in person at the office of the Hennepin County local registrar and submitted an application for a marriage license and the required application fee. Except for the fact that they are of the same sex, Plaintiffs Douglas Benson and Duane Gajewski are otherwise qualified to marry under Minnesota law. An agent or employee of the Registrar refused to permit Plaintiffs Douglas Benson and Duane Gajewski to apply for a marriage license solely because they are of the same sex.

13. On or about March 6, 2009, Plaintiffs Jessica Dykhuis and Lindzi Campbell appeared in person at the office of the Hennepin County local

registrar and submitted an application for a marriage license and the required application fee. Except for the fact that they are of the same sex, Plaintiffs Jessica Dykhuis and Lindzi Campbell are otherwise qualified to marry under Minnesota law. An agent or employee of the Registrar refused to permit Plaintiffs Jessica Dykhuis and Lindzi Campbell to apply for a marriage license solely because they are of the same sex.

14. On or about March 6, 2009, Plaintiffs Thomas Trisko and John Rittman appeared in person at the office of the Hennepin County local registrar and submitted an application for a marriage license and the required application fee. Except for the fact that they are of the same sex, Plaintiffs Thomas Trisko and John Rittman are otherwise qualified to marry under Minnesota law. An agent or employee of the Registrar refused to permit Plaintiffs Thomas Trisko and John Rittman to apply for a marriage license solely because they are of the same sex.

15. The Registrar and her agents and employees denied the Plaintiff couples the opportunity to apply for and obtain marriage licenses solely because each Plaintiff wished to marry a person of the same sex.

16. By denying the Plaintiff couples to right to marry solely because they are of the same sex, Minnesota law violates the due process, equal protection, freedom of conscience, and freedom of peaceful association provisions contained in Article I, Sections 7, 2, and 16 of the Minnesota Constitution.

**COUNT I****VIOLATION OF DUE PROCESS PROVISION OF ARTICLE I, SECTION 7 OF  
THE MINNESOTA CONSTITUTION**

17. Plaintiffs hereby incorporate the allegations contained in all previous paragraphs as though those allegations were fully set forth herein.

18. Article I, Section 7 of Minnesota Constitution contains a Due Process Clause which provides that "no person shall . . . be deprived of life, liberty, or property without due process of law."

19. Among the personal interests protected by Minnesota's Due Process Clause are the fundamental right to marry the person of one's choice and the fundamental right to privacy concerning a person's intimate choices of a deeply personal nature, such as one's choice of a spouse.

20. As a result of the Registrar's enforcement of Minnesota law prohibiting same sex marriage, the Plaintiff couples have been denied their right to marry and their right to privacy under the Due Process Clause contained in the Minnesota Constitution.

21. The Plaintiff couples have been denied their fundamental due process rights through the Registrar's refusal to grant them marriage licenses solely because they wish to marry a person of the same sex.

22. There exists no compelling governmental interest which justifies Minnesota's statutory prohibition on same sex marriage.

23. There exists no rational basis or legitimate government purpose for Minnesota's statutory prohibition on same sex marriage.

**COUNT II****VIOLATION OF SINGLE SUBJECT PROVISION AT  
ARTICLE IV, SECTION 17 OF THE MINNESOTA CONSTITUTION**

24. Plaintiffs hereby incorporate the allegations contained in all previous paragraphs as though those allegations were fully set forth herein.

25. The State's Defense Of Marriage Act, Laws of Minnesota 1997, Chapter 203, Article 10, which prohibits marriages between persons of the same-sex and the recognition of same-sex marriages performed in other states or foreign jurisdictions is void because it was passed in violation of the "single subject" requirement of the Minnesota Constitution at Minn. Const. Art. IV, Section 17.

**COUNT III****VIOLATION OF  
EQUAL PROTECTION PROVISION  
OF ARTICLE I, SECTION 2 OF THE MINNESOTA CONSTITUTION**

26. Plaintiffs hereby incorporate the allegations contained in all previous paragraphs as though those allegations were fully set forth herein.

27. While the Minnesota Constitution does not contain an explicit Equal Protection Clause, Minnesota Courts have declared that Article I, Section 2 of the Minnesota Constitution should be construed to embody the notion of equal protection.

28. Minnesota's statutory prohibition on marriages between persons of the same sex impermissibly discriminates against individuals in same sex relationships because they wish to marry a person of the same sex.

29. Minnesota's statutory prohibition on marriages between persons of the same sex draws impermissible distinctions based on a person's sex and a person's sexual orientation.

30. Minnesota's statutory prohibition on marriages between persons of the same sex also discriminates against the children of same sex couples, denying these children the legitimacy, security, and legal protections available to children whose parents are married.

31. There exists no compelling governmental interest which justifies Minnesota's statutory prohibition on same sex marriage.

32. There exists no rational basis or legitimate government purpose for Minnesota's statutory prohibition on same sex marriage.

33. As a result of the Registrar's enforcement of Minnesota law prohibiting same sex marriage, the Plaintiff couples have been denied their right to equal protection under the Minnesota Constitution.

#### **COUNT IV**

#### **VIOLATION OF FREEDOM OF CONSCIENCE PROVISION**

#### **OF ARTICLE I, SECTION 16 OF THE MINNESOTA CONSTITUTION**

34. Plaintiffs hereby incorporate the allegations contained in all previous paragraphs as though those allegations were fully set forth herein.

35. The statutory prohibition on same-sex marriage favors religions that refuse to marry same-sex couples while disfavoring religions that strongly believe in providing this sacrament to their parishioners.

36. The statutory prohibition on same-sex marriage infringes the nonviolent, peaceful exercise of freedom of conscience of persons whose deeply held spiritual belief, deeply held religious beliefs, and/or faith communities approve or sanctify same-sex marriages, in violation of Article I, Section 16 of the Minnesota Constitution, where there is no rational basis for such infringement and where there is no compelling state interest that the state prohibition is narrowly tailored to serve.

#### **COUNT V**

#### **VIOLATION OF**

#### **FREEDOM OF ASSOCIATION PROVISIONS OF ARTICLE I,**

#### **SECTIONS 1, 2, AND 16 OF THE MINNESOTA CONSTITUTION**

37. Plaintiffs hereby incorporate the allegations contained in all previous paragraphs as though those allegations were fully set forth herein.

38. The statutory prohibition on same-sex marriage infringes the nonviolent, peaceful exercise of freedom of association of persons whose deeply held spiritual belief, deeply held religious beliefs, and/or faith communities approve or sanctify same-sex marriages, in violation of Article I, Section 16 of the Minnesota Constitution.

39. The statutory prohibition on same-sex marriage infringes upon the nonviolent, peaceful freedom of familial association rights of Jessica Dykhuis

and Lindzi Campbell to raise Sean Campbell in a two-parent, caring committed family household, where there is no rational basis for such infringement and where there is no compelling state interest that the state prohibition is narrowly tailored to serve.

40. The statutory prohibition on same-sex marriage infringes upon the nonviolent, peaceful freedom of familial association rights of Sean Campbell, to be raised in a home with two caring, committed parents who love him unconditionally, and who are caring and committed unto each other, where there is no rational basis for such infringement and where there is no compelling state interest that the state prohibition is narrowly tailored to serve.

#### **REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

41. Plaintiffs hereby incorporate the allegations contained in all previous paragraph as though those allegations were fully set forth herein.

42. A real and genuine dispute exists between the parties relative to the constitutionality of Chapter 517 of Minnesota Statutes, inasmuch as Chapter 517 seeks to forbid marriage between two otherwise qualified persons solely because they are of the same sex.

43. The Court has authority to construe the rights and obligations of the parties under the Uniform Declaratory Judgment Act, Minn. Stat. § 555.01, *et seq.*

44. This matter is also appropriate for injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure.

45. Absent injunctive relief, the Plaintiff couples will suffer irreparable harm for which there is no adequate remedy at law, namely the continued stigma and humiliation of being unable to marry their chosen partners and the continued denial of the myriad of legal protections offered to married couples under Minnesota law.

**WHEREFORE**, Plaintiffs pray for judgment against Defendant as follows:

1. Declaring that Minnesota's prohibitions on marriages by same sex couples, including those prohibitions contained in Minnesota Statutes, Chapter 517, are invalid and unconstitutional under Minnesota Constitution Article I, Sections 1, 2, 7, and 16;

2. Declaring that same sex couples otherwise qualified to marry each other pursuant to Minnesota law, including the Plaintiff couples, may not be denied marriage license applications, marriage licenses, or marriage certificates, or in any other way prevented from exercising their right to civil marriage by virtue of their decision to marry a partner of the same sex;

3. Declaring that any further provision of Minnesota law relating to who may marry, who is a spouse, husband, or wife, who receives the benefits and/or obligations of marriage, and similar provision are to be interpreted in a gender-neutral manner, without distinction between opposite sex couples and same sex couples.

4. Entry of Declaratory Judgment under Chapter 555 of the Minnesota Statutes that the Minnesota Defense of Marriage Act, Laws of Minnesota 1997,

Chapter 203, Article 10 is unconstitutional under Minnesota Constitution Article IV, Section 17.

5. Injunction against further operation and enforcement of the Minnesota Defense of Marriage Act.

6. Enjoining the Registrar to stop refusing to accept applications for marriage from same sex couples and to grant marriage licenses to otherwise qualified same sex couples, including the Plaintiff couples named in this lawsuit, and to in all other respects recognize the validity of marriages between persons of the same sex;

7. Issuing a Writ of Mandamus requiring the Registrar to immediately issue valid marriage licenses to the Plaintiff couples upon receipt of their completed marriage application;

8. Awarding to Plaintiffs their reasonable attorney's fees, costs, and disbursements incurred herein.

9. For such other and further relief as the Court deems just and proper.

**PETER J. NICKITAS LAW OFFICE,  
L.L.C.**

Date: 7 May, 2010

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**ATTORNEY FOR PLAINTIFFS**

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that pursuant to Minn. Stat. 549.211, monetary and other sanctions may be imposed if the Court should find that the undersigned has violated Minn. Stat. 549.211, Subd. 2, by presenting a position which is unwarranted or for an improper purpose, as more fully defined in that statute.

Dated: 7 May, 2010

By: *Peter J. Nickitas*  
Peter J. Nickitas (212313)

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