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January 8, 2014

Attorney General Reyes
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
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Attorney General Reyes,

We write this letter to respectfully offer your office our voice on the issue of the validity of the marriages that same-sex couples entered into in reliance on Utah licenses issued between December 20, 2013 and January 6, 2014. You have recently stated that your office is “carefully evaluating” the “legal status” of those marriages, and that you will not “rush to a decision that impacts Utah citizens so personally.” You have also suggested that marriages performed under these licenses are now in “legal limbo.”

While we appreciate your commitment to thoughtful analysis and your recognition of the vital importance of these marriages, there is no uncertainty here. In short, these marriages are valid and have vested the married couples with rights that the state and federal governments must recognize. Utah and the federal government should thus accord same-sex spouses who married in Utah all of the same protections and obligations that married couples of the opposite sex receive. We further submit that any efforts to retroactively invalidate those licenses would fail because these marriages are protected by the due process guarantees of the Utah and United States Constitution.

While the precise issue presented here has not yet been answered by any court, several courts have ruled on analogous facts and found that marriages cannot be retroactively invalidated. In *Strauss v. Horton*, 46 Cal. 4th 364, 207 P.3d 48, 12, 93 Cal. Rptr. 3d 591, 680 (2009), the California Supreme Court was asked to answer a very similar question. As background, in May 2008, the California Supreme Court ruled that the California Constitution required that same sex couples be granted the freedom to marry. Later, in November, 2008, voters passed Proposition 8, a California constitutional amendment excluding same-sex couples from marriage. Between May and November, about 18,000 same sex couples were married in California. In *Strauss*, the California Supreme Court was asked whether Proposition 8 should be applied to retroactively invalidate the marriages of same-sex couples.

The *Strauss* Court ruled that “Proposition 8 should be interpreted to apply prospectively and not to invalidate retroactively the marriages of same-sex couples performed prior to its effective date.” *Id.* at 470. In support of this ruling, the Court reasoned that “same-sex couples who married after [the May 2008 decision] was rendered, and before Proposition 8 was adopted, *acquired vested property rights as lawfully married spouses with respect to a wide range of subjects*, including, among many others, employment benefits, interests in real property, and inheritances.” *Id.* at 473, emphasis added. The Court further pointed out that:

These couples' reliance upon this court's final decision in [May 2008] was entirely legitimate. A retroactive application of the initiative would disrupt thousands of actions taken in reliance on the [May 2008 decision] by these same-sex couples, their employers, their creditors, and many others, throwing property rights into disarray, destroying the legal interests and expectations of thousands of couples and their families,

and potentially undermining the ability of citizens to plan their lives according to the law as it has been determined by this state's highest court...

Under these circumstances, we conclude that interpreting Proposition 8 to apply retroactively would create a serious conflict between the new constitutional provision and the protections afforded by the state due process clause.

Id. at 473-74.

As in *Strauss*, about 1,000 same-sex couples have entered into marriages in Utah in reliance on Judge Shelby's ruling of December 20, 2013. As in *Strauss*, when those couples married in Utah, they acquired vested rights that Utah and the federal government are now bound to honor. Further, attempting to retroactively strip these newly married couples of their rights by refusing to recognize their marriages would put the state in conflict with the couples' due process rights.

Other state courts have similarly found that marriages performed prior to changes in state marriage laws could not be retroactively invalidated because the married persons had vested rights in their marriages. See *Cook v. Cook*, 209 Ariz. 487, 104 P.3d 857, 866 (Ariz. App. Ct. 2005) (holding that married first cousins had a "vested right in the validity of [their] marriage" which could not be retroactively invalidated by legislation declaring marriage between first cousins void as contrary to public policy) and *Stackhouse v. Stackhouse*, 862 A.2d 107, 108 (Pa. Super. Ct. 2004) (holding that "rule announced abolishing common law marriages can be applied only prospectively" because retroactive application would deprive couples of "vested rights arising from the marriage").

Utah itself has already recognized before the Supreme Court that attempting to "unwind" the marriage of same-sex Utahns would cause them "and their children... dignitary and financial losses." (Utah's Brief in Support of Stay Motion to Supreme Court at p. 21.)

It is for these reasons that your office should conclude that the 1,000 or so Utah same sex couples have marriages that are valid and enforceable, and that your office should not make any attempt to invalidate them. Thank you for your time and consideration. If you have any questions, we would be glad to discuss this with you further.

Best regards,

A handwritten signature in black ink, appearing to read "John Mejia". The signature is written in a cursive, slightly slanted style. A horizontal line is drawn across the middle of the signature, and a vertical line extends downwards from the left side of the signature.

John Mejia
Legal Director