Erik Strindberg (Bar No. 4154)
Lauren I. Scholnick (Bar No. 7776)
Kathryn Harstad (Bar No. 11012)
Rachel E. Otto (Bar No. 12191)
STRINDBERG & SCHOLNICK, LLC
675 East 2100 South, Ste. 350
Salt Lake City, UT 84106
Telephone: (801) 359-4169
Facsimile: (801) 359-4313
erik@utahjobjustice.com
lauren@utahjobjustice.com
kass@utahjobjustice.com
rachel@utahjobjustice.com

John Mejia (Bar No. 13965)
Leah M. Farrell (Bar No. 13696)
ACLU of Utah
355 North 300 West
Salt Lake City, Utah 84103
Telephone: (801) 521-9862
Facsimile:
jmejia@acluutah.org
lfarrell@acluutah.org

Joshua A. Block*
ACLU LGBT Project
125 Broad Street, Floor 18
New York, New York, 10004
Telephone: (212) 549-2593
Facsimile: (212) 549-2650
jblock@aclu.org

Attorneys for Plaintiffs

**Pro hac vice* motion to follow

IN THE THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST JORDAN DEPARTMENT

JONELL EVANS, STACIA IRELAND, MARINA GOMBERG, ELENOR HEYBORNE, MATTHEW BARRAZA, TONY MILNER, DONALD JOHNSON, and **CARL FRITZ SHULTZ,** Plaintiffs, vs. **STATE OF UTAH, GOVERNOR GARY HERBERT**, in his official capacity; and **ATTORNEY SEAN REYES**, in his official capacity, Defendants.	**COMPLAINT** **TIER 2** Case No. Judge

Plaintiffs JoNell Evans, Stacia Ireland, Marina Gomberg, Elenor Heyborne, Matthew Barraza, Tony Milner, Donald Johnson and Carl Fritz Shultz (collectively referred to as the

"Plaintiffs") by and through their undersigned attorneys, hereby file this Complaint against the State of Utah, Governor Gary Herbert ("Governor Herbert") and Attorney General Sean Reyes ("Attorney General Reyes") (Defendants will collectively be referred to as "Defendants" or "State of Utah"):

NATURE OF THE CLAIMS

1. Plaintiffs are four same-sex couples who were legally married in Utah between December 20, 2013, and January 6, 2014, the period from the day a federal district court in *Kitchen v. Herbert* enjoined Utah from enforcing its statutory and constitutional bans on allowing same-sex couples to marry to the day that injunction was stayed pending appeal. The moment Plaintiffs solemnized their marriages in accordance with Utah law, they immediately obtained vested rights in the validity and recognition of their marriages under Utah law. Those vested rights are protected by the Due Process Clauses of the Utah and United States Constitutions and must be recognized regardless of the ultimate outcome of the *Kitchen* litigation.

2. In violation of those constitutional protections, the State of Utah has unilaterally decided to place recognition of these valid marriages "on hold." By retroactively stripping Plaintiffs' marriages of legal recognition, the State of Utah has put these couples and their families in legal limbo and prevented legally married same-sex couples from accessing critical protections for themselves and their children.

3. Plaintiffs seek to have the Court declare that their valid marriages must be given immediate and ongoing recognition by the State of Utah and grant all injunctive relief necessary to ensure that recognition.

BACKGROUND FACTS

4. In 1977, the Utah Legislature amended Section 30-1-2 of the Utah Code to "prohibit[] and declare[] void" marriages "between persons of the same sex" (the "Marriage Limitation Statute").

5. In 2004, the Utah Legislature added Section 30-1-1.4 to the Utah Code, which reads "the policy of this state [is] to recognize as marriage only the legal union of a man and a woman," and "this state will not recognize, enforce, or give legal effect to any law creating any legal status, rights, benefits, or duties [to same sex-couples] that are substantially equivalent to those provided under Utah law to a man and woman because they are married" (the "Marriage Recognition Statute").

6. Also in 2004 the Utah Legislature passed a "Joint Resolution of Marriage" proposing to amend the Utah Constitution by adding Article I, Section 29, to read: "(1) Marriage consists of only the legal union between a man and a woman. (2) No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect."

7. This proposed amendment, known as "Amendment 3," was on the ballot in the November 2, 2004 general election. Amendment 3 passed and became effective on January 1, 2005.

8. On March 25, 2013, three same-sex couples living in Utah filed a lawsuit in the Federal District Court for the District of Utah against Governor Gary Herbert, then-Utah Attorney General John Swallow, and Salt Lake County Clerk Sherrie Swensen, all acting in their

official capacities. *See Kitchen v. Herbert*, 2:13-cv-217 RJS (D. Utah) (referred to herein as *Kitchen*).

9. The plaintiffs in *Kitchen* asserted that Amendment 3 and the Marriage Limitation and Recognition Statutes violated the Equal Protection and Due Process Clauses of the U.S. Constitution. The plaintiffs sought declaratory relief that Amendment 3 and the Marriage Limitation and Recognition Statutes are unconstitutional under the Constitution. The parties filed cross-motions for summary judgment.

10. On December 20, 2013, the U.S. District Court in *Kitchen* denied the defendants' motion for summary judgment, granted plaintiffs' motion for summary judgment, and issued a permanent injunction barring Utah officials from enforcing Amendment 3 and the Marriage Limitation and Recognition Statutes. (Attached as Ex. A).

11. The Memorandum Decision and Order by the *Kitchen* court concluded as follows:

> The court hereby declares that Amendment 3 is unconstitutional because it denies the Plaintiffs their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution. The court hereby enjoins the State from enforcing Sections 30-1-2 and 30-1-4.1 of the Utah Code and Article I, § 29 of the Utah Constitution to the extent these laws prohibit a person from marrying another person of the same sex.

12. The county clerks for Salt Lake County and Washington County began to issue marriage licenses to same-sex couples that same day, in accordance with the *Kitchen* court's injunction. Many same-sex couples promptly obtained marriage licenses and solemnized their marriages that same day.

13. Governor Herbert and the acting Utah Attorney General then filed motions with the U.S. District Court and with the U.S. Court of Appeals for the Tenth Circuit to stay the district court's order, pending appeal.

14. On December 22, 2013, the U.S. Court of Appeals for the Tenth Circuit denied Governor Herbert and the acting Utah Attorney General's motion for a stay without prejudice for failing to "meet the requirements of the Federal or local appellate rules."

15. On December 23, 2013, Governor Herbert and the acting Utah Attorney General filed a second motion to stay the U.S. Court of Appeals for the Tenth Circuit. The Tenth Circuit denied the second motion the same day.

16. On December 23, 2013, the U.S. District Court also denied defendants' motion for a stay of the December 20 injunction. The District Court stated in its written Order denying the motion that "The court's Order [of December 20] specifically mentioned Sections 30-1-2 and 30-1-4.1 of the Utah Code and Article I, § 29 of the Utah Constitution. The court's Order also applies to any other Utah laws that prohibit same-sex couples from marrying."

17. On December 23, 2013, following the U.S. District Court's denial of a stay, Governor Herbert and the acting Utah Attorney General filed a third motion with the U.S. Court of Appeals for the Tenth Circuit to stay the district court's order.

18. As of December 23, 2013, officials in seven counties in Utah had either closed their offices or were publicly refusing to issue marriage licenses to same-sex couples, while officials in the other 22 counties publicly stated that they would. (*See* Utah counties split on issuing same-sex marriage licenses, Salt Lake Trib., Dec. 23, 2013, accessible at http://www.sltrib.com/sltrib/news/57302939-78/counties-county-couples-issuing.html.csp.)

19. On December 24, 2013, Governor Herbert's office sent an email to his cabinet with the following directive: "Where no conflicting laws exist you should conduct business in compliance with the federal judge's ruling until such time that the current district court decision is addressed by the 10th Circuit Court." (Attached as Ex. B.)

20. Also on December 24, 2013, a spokesman for the Utah Attorney General's Office publicly stated that county clerks who did not issue licenses could be held in contempt of the court and the law. (*See* Denying same-sex marriage licenses illegal, says A.G. office, Salt Lake Trib., Dec. 24, 2013, accessible at http://www.sltrib.com/sltrib/news/57306295-78/county-sex-marriage-office.html.csp.)

21. Later that day, also on December 24, 2013, the U.S. Court of Appeals for the Tenth Circuit for the third time denied Governor Herbert and the acting Utah Attorney General's motion for a stay.

22. By December 26, 2013, officials in 28 of Utah's 29 counties stated that they would issue marriage licenses to same-sex couples. (*See* Same-sex couples shatter marriage records in Utah, Salt Lake Trib., Dec. 26, 2013, accessible at http://www.sltrib.com/sltrib/mobile/57310957-68/marriages-sex-county-total.html.csp.)

23. An official in Piute County, the one county that was not making public statements on December 26, 2013 about whether it would issue licenses, later stated that the county had decided to issue same-sex licenses on December 24, 2013, but had received no applications. (Utah issues hundreds of marriage licenses to gay couples, Associated Press, Dec. 28, 2013, accessible at http://www.krextv.com/story/utah-issues-hundreds-of-marriage-licenses-to-gay-couples-20131228.)

24. Governor Herbert and Attorney General Reyes waited until December 31, 2013 to file a request for a stay of the district court's order with the U.S. Supreme Court.

25. Between December 20, 2013 and January 6, 2014, it is estimated that over 1,300 same sex couples were issued Utah marriage licenses. (Same-sex couples denied Utah marriage licenses in court order's wake, Salt Lake Trib., Jan. 6, 2014, accessible at http://www.sltrib.com/sltrib/news/57357867-78/county-marriage-couple-sex.html.csp.)

26. While there are no reported counts of how many of those granted licenses solemnized their marriages before January 6, 2014, on information and belief, over 1,000 same-sex couples solemnized their marriages before that date. It is reported that all but seven counties in Utah issued at least one marriage license to a same-sex couple during that period. (*Id.*)

27. On January 6, 2014, the United States Supreme Court ruled on Governor Herbert and Attorney General Reyes's motion in *Kitchen* and issued the following Order:

> "The application for stay presented to Justice Sotomayor and by her referred to the Court is granted. The permanent injunction issued by the United States District Court for the District of Utah, case No. 2:13-cv-217, on December 20, 2013, is stayed pending final disposition of the appeal by the United States Court of Appeals for the Tenth Circuit."

28. The Supreme Court's Order staying the *Kitchen* court's decision did not address the legal status of the marriages that same-sex couples entered into in Utah between December 20, 2013, and January 6, 2014.

29. That same day, January 6, 2014, Attorney General Reyes issued a statement that reads in part, "Utah's Office of Attorney General is carefully evaluating the legal status of the marriages that were performed since the District Court's decision and will not rush to a decision that impacts Utah citizens so personally." (Attached as Ex. C.)

30. On January 8, 2014, Governor Herbert's chief of staff issued an email to the Governor's cabinet members instructing them to refuse to grant recognition to same-sex couples married pursuant to Utah marriage licenses (the "Directive"). (Attached as Ex. D.)

31. The Directive begins by stating that soon after the December 20, 2013 injunction, "this office sent an email to each of you soon after the district court decision, directing compliance" with that order. (*Id.*)

32. The Directive explained that the Supreme Court had stayed the *Kitchen* order and stated that "[b]ased on counsel from the Attorney General's Office regarding the Supreme Court decision, state recognition of same-sex marital status is ON HOLD until further notice." (*Id.*)

33. The Directive then stated that its recipients should "understand this position is not intended to comment on the legal status of those same-sex marriages – that is for the courts to decide. The intent of this communication is to direct state agency compliance with current laws that prohibit the state from recognizing same-sex marriages." (*Id.*)

34. The Directive went on to give the following instruction to state agencies:

> Wherever individuals are in the process of availing themselves of state services related to same-sex marital status, that process is on hold and will stay exactly in that position until a final court decision is issued. For example, if a same-sex married couple previously changed their names on new drivers licenses, those licenses should not be revoked. If a same-sex couple seeks to change their names on drivers licenses now, the law does not allow the state agency to recognize the marriage therefore the new drivers licenses cannot be issued. (*Id.*)

35. On January 9, 2014, Attorney General Reyes issued a letter to county attorneys and county clerks which states that he seeks to provide "legal clarification about whether or not to mail or otherwise provide marriage certificates to persons of the same sex whose marriage

ceremonies took place between December 20, 2013 and January 6, 2014, prior to the issuance of the stay by the U.S. Supreme Court." (Attached as Ex. E.)

36. Attorney General Reyes continued that "[a]lthough the State of Utah cannot currently legally recognize marriages other than those between a man and a woman, marriages between persons of the same sex were recognized in the state of Utah between the dates of December 20, 2013 until the stay on January 6, 2014. *Based on our analysis of Utah law, the marriages were recognized at the time the ceremony was completed*." (*Id.*, emphasis added.)

37. Attorney General Reyes further indicated that the State of Utah would not challenge the validity of those marriages for the purposes of recognition by the federal government or other states, nonetheless "the validity of the marriages in question must ultimately be decided by the legal appeals process presently working its way through the courts." (*Id.*)

38. Attorney General Reyes also explained that "the act of completing and providing a marriage certificate for all couples whose marriage was performed prior to the morning of January 6, 2014, is administrative and consistent with Utah law" and "would allow, for instance, same-sex couples who solemnized their marriage prior to the stay to have proper documentation in states that recognize same-sex marriage." (*Id.*)

39. On January 15, 2014, the Utah State Tax Commission issued a notice stating that same-sex couples "may file a joint return if they [were] married as of the close of the tax year" for 2013 because "[a]s of December 31, 2013, the Supreme Court had not yet issued its stay of the District Court's injunction." (Attached as Ex. F.)

40. The notice further states: "This notice is limited to the 2013 tax year. Filing information for future years will be provided as court rulings and other information become available." (*Id.*)

PLAINTIFFS

Marina Gomberg and Elenor Heyborne

41. Plaintiffs Marina Gomberg and Elenor Heyborne were both born and raised in Utah. Ms. Gomberg was raised in a Jewish family in Ogden, and Ms. Heyborne comes from an LDS family in Salt Lake City.

42. Ms. Gomberg and Ms. Heyborne met nine years ago through mutual friends, and have been in a committed relationship ever since.

43. Ms. Gomberg and Ms. Heyborne both work in communications and Ms. Heyborne is a State employee.

44. Ms. Gomberg and Ms. Heyborne had a commitment ceremony in May 2009 but the State did not recognize their union or afford them any of the rights of married couples.

45. For the last couple of years they have been contemplating having a baby, but they are worried about protecting their family because the State will only allow one of them to be a legal parent to any children they have together. They had hoped being legally married would resolve this concern.

46. Within an hour of learning of the *Kitchen* decision, Ms. Gomberg and Ms. Heyborne rushed to the Salt Lake County building to obtain their marriage license and solemnized their marriage that same day. They were thrilled that their State was finally going to sanction their union and recognize their marriage.

47. Although they have supportive and loving family and friends, once they were legally married, Ms. Gomberg and Ms. Heyborne realized how anxious they had been in what the State considered a second-class relationship. The disadvantageous tax status, lack of guaranteed hospital visitation, and inability to both be legal guardians of their future children had created an enormous emotional weight, which was lifted by their legal marriage.

48. The State's refusal to continue to recognize their marriage raises again all their concerns and anxiety.

49. Despite the fact that Ms. Gomberg and Ms. Heyborne feel disregarded and insulted by the State, it rankles them when people suggest they move elsewhere. They are committed to their community in Utah – they have jobs, family, and friends here. They are hoping to raise a family in the State they grew up in and continue to love.

Matthew Barraza and Tony Milner

50. Plaintiffs Matthew Barraza and Tony Milner have been in a committed and loving relationship for nearly 11 years.

51. Mr. Barraza is an attorney and Mr. Milner is the executive director of a non-profit organization serving homeless families.

52. Mr. Barraza and Mr. Milner are lifelong Utahns. Mr. Milner was born and raised in an LDS family in West Jordan. Mr. Barazza, one of six siblings, was born in California but his family, who are also LDS, moved to Ogden when he was one year old.

53. In 2007, Mr. Barraza and Mr. Milner held a religious commitment ceremony officiated by their pastor, Erin Gilmore of Holladay United Church of Christ, and have since referred to themselves as husbands and married. But this commitment was not recognized by the

State of Utah.

54. Mr. Barraza and Mr. Milner had been contemplating starting a family when, in 2009, a struggling couple they knew who were expecting a baby approached them and asked if they would consider adopting the child. Mr. Barraza and Mr. Milner were overjoyed by the prospect of welcoming a child into their family. They attended all of the birth mother's prenatal appointments with her and attended the birth, where Mr. Milner got to cut their son's umbilical cord.

55. Their son, "J.," is now four years old. Although Mr. Barraza and Mr. Milner have raised J. from birth, only one of them was able to adopt J. and establish legal parentage under Utah law. Mr. Barraza is the adoptive parent, which means that Mr. Milner is treated as a legal stranger to their son, and if something were to happen to Mr. Barraza, J. could potentially be placed in foster care.

56. In 2010, Mr. Barraza and Mr. Milner traveled to Washington, D.C., to get married. Although they were legally married in D.C., Amendment 3 prevented them from having their marriage recognized in Utah.

57. Even though that marriage was not recognized by the State, they chose to remain in Utah where they have tremendous family and community support. They want to continue to live, work and raise their son here.

58. When they heard that Amendment 3 was ruled unconstitutional, Mr. Barraza and Mr. Milner were thrilled to finally have all of the legal protections that come with marriage. Most importantly, their marriage would allow Mr. Milner to establish legal parentage with J. through a second-parent adoption. They wanted to give J. the security of having two legal

parents, and they wanted the peace of mind knowing that if something were to happen to Mr. Barraza, J. would have another legally recognized parent who could care and provide for him.

59. On December 20, 2013, Mr. Barraza and Mr. Milner obtained a Utah marriage license and were married by Pastor Tom Nordberg of Holladay United Church of Christ that same day.

60. Immediately after Christmas, on December 26, 2013, Mr. Barraza and Mr. Milner initiated proceedings in the court for Mr. Milner to adopt their son. They received a hearing date of January 10, 2014.

61. On January 9, 2014, however, the court contacted Mr. Barraza and Mr. Milner and informed them that because of the stay in *Kitchen*, and because of Governor Herbert's and Attorney General Reyes's announcements to State agencies to not recognize same-sex marriages, the court had decided that it should provide notice of the adoption proceedings to the Attorney General's office so that the Attorney General could intervene.

62. Faced with the potential that the State could attempt to thwart J.'s adoption, Mr. Barraza and Mr. Milner requested that the court continue the hearing to January 31, 2014.

63. At this point, Mr. Barraza and Mr. Milner will have to put the proceedings completely on hold until they are sure that Mr. Milner can adopt J. without State interference.

64. The State's refusal to recognize their legal marriage has again destroyed the peace of mind they would have received by providing J. two legal parents.

JoNell Evans and Stacia Ireland

65. Plaintiffs JoNell Evans, 61 years old, and Stacia Ireland, 60 years old, have been in a committed relationship for 13 years.

66. Ms. Ireland taught math to junior high and high school students for 30 years before semi-retiring. She now works part-time at a community college helping students with disabilities.

67. Ms. Evans is an artist and a human resources director for a non-profit organization.

68. Ms. Evans and Ms. Ireland have lived in Utah their entire adult lives. Their home is located on property in West Valley City that has been in Ms. Evans's family for generations. Much of their family lives in the same neighborhood.

69. In 2007, Ms. Evans and Ms. Ireland affirmed their commitment with a religious marriage ceremony at the Unitarian Church in Salt Lake City. But their commitment was not recognized by the State of Utah.

70. In 2008, Ms. Evans and Ms. Ireland had wills and medical powers of attorney drawn up. They knew other same-sex couples who had been treated as legal strangers by hospitals, and they wanted to ensure this would not happen to them, should either of them be hospitalized.

71. In 2010, Ms. Ireland suffered a heart attack. Before they left for the hospital, Ms. Evans scrambled to locate a copy of Ms. Ireland's power of attorney. With documents in hand, the hospital tolerated Ms. Evans's insistence that she stay by Ms. Ireland's side during her treatment, but the hospital did not treat Ms. Evans like it would a spouse. As Ms. Evans describes it, "It felt like I wasn't even in the room."

72. On December 20, 2013, Ms. Evans learned of the *Kitchen* decision. She rushed to the Salt Lake County building and called Ms. Ireland to meet her there. After standing in line for

a few hours, the couple received their marriage license, and Salt Lake City Mayor Ralph Becker solemnized their marriage. They were surrounded by other couples and friends, all there to celebrate the right of same-sex couples to finally marry. The only downside to the whirlwind wedding was that their families could not make it there to witness their ceremony.

73. On January 1, 2014, Ms. Evans again had to rush Ms. Ireland to the emergency room because Ms. Ireland was experiencing severe chest pains. Prior to their visit, Ms. Ireland had informed the hospital that she had married Ms. Evans and during their stay in the hospital, Ms. Evans was afforded all the courtesies and rights given to the married spouse of a patient. For example, the hospital allowed Ms. Evans to sign paperwork for Ms. Ireland and consulted with her on all aspects of Ms. Ireland's treatment.

74. On the day after Governor Herbert directed State agencies to no longer recognize the marriages of same-sex couples in Utah, Ms. Ireland had to return to the hospital for a follow-up procedure. Once again, they had to face uncertainty and anxiety that the hospital would treat Ms. Evans like a non-entity instead of a spouse.

75. Ms. Evans and Ms. Ireland now worry that during any future emergency hospital visits, and even during routine care, they will no longer be afforded the same protections as other married couples.

Donald Johnson and Carl Fritz Shultz

76. Plaintiffs Donald Johnson and Carl Fritz Shultz met in 1992, and have been "best friends and partners" for over 21 years.

77. Mr. Johnson was born and raised in Utah, attended the University of Utah, and has taught special education high school juniors and seniors in the same school district for 37

years.

78. Mr. Shultz was raised in southern Idaho and attended Idaho State University. He came to Utah to begin his career in retail sales.

79. Mr. Johnson and Mr. Shultz started dating around Labor Day in 1992. After having to spend Thanksgiving apart that year, they both realized that they wanted to spend their lives together. When Mr. Shultz returned from his family trip, Mr. Johnson proposed to him. They have celebrated the Sunday after Thanksgiving as their anniversary ever since.

80. Mr. Johnson and Mr. Shultz have been a vital and important part of their close-knit neighborhood for many years. They describe themselves as the "neighbors who lend a hand" when it is needed. They love taking care of their neighbors' dogs, and keeping an eye on neighbors' houses when they go on vacation. Mr. Johnson and Mr. Shultz are always pitching in to shovel neighbors' walks and mow lawns.

81. On the Saturday morning after the *Kitchen* decision, Mr. Johnson and Mr. Schultz were sitting at breakfast when Mr. Shultz reached over the table, took Mr. Johnson's hand, and suggested they get married.

82. Mr. Johnson and Mr. Shultz had been considering going to California to marry, but were elated to be able to marry in their home state.

83. On December 22, 2013, Mr. Johnson got up at midnight, put on a suit, and went to stand in line at the Salt Lake County building at 2 a.m. Mr. Shultz joined him at 6 a.m. They finally got their marriage license at around 10 a.m. on December 23, 2013, and solemnized their marriage immediately.

84. For Mr. Johnson, being able to stand in front of his classroom of high school

juniors and seniors and tell them that he had married his partner of 21 years over the holidays and that "yes, indeed, [he] was a gay man" meant he no longer had to hide who he is and made him immensely proud and happy. When he told them, Mr. Johnson's students burst into applause for him.

85. Now that the State of Utah has refused to continue to recognize same-sex marriages, Mr. Johnson and Mr. Shultz feel that they have again been relegated to second-class citizenship in their own state.

86. Mr. Johnson is 61 years old, and Mr. Shultz is 58 years old. Mr. Johnson researched insurance coverage for himself and Mr. Shultz and discovered that they could have access to savings of approximately $8,000 per year on health insurance that they will lose without State recognition of their marriage.

FIRST CAUSE OF ACTION
(*Deprivation of Plaintiffs' Property and Liberty Interests without Due Process in Violation of the Utah Constitution*)

87. Plaintiffs reallege and incorporate by reference the allegations set forth above.

88. After the December 20, 2013 *Kitchen* ruling, Plaintiffs and other same-sex couples were legally permitted to marry in the State of Utah.

89. To perfect that legal right, Plaintiffs completed each step required by the state of Utah under Utah Code Title 30 Chapter 1: They acquired valid marriage licenses from a county clerk and solemnized their marriages before an authorized person who then returned the license and marriage certificate to the county clerk. Upon information and belief, the county clerk then filed and preserved the license and certificate.

90. The validity of those marriages was contemporaneously recognized by the State of Utah as evidenced by an email from Governor Herbert's office to his cabinet dated December 24, 2013, in which his office directed them to comply "with the federal judge's ruling until such time that the current district court decision is addressed by the 10th Circuit Court." The State of Utah's contemporaneous recognition of these marriages is further evidenced by a statement made by the Attorney General's Office that same day warning county officials that denying same sex couples marriage licenses could constitute contempt of the court and the law.

91. The validity of those marriages, including Plaintiff's marriages at the time they were solemnized, was further recognized by the State of Utah in another email from Governor Herbert's office to his cabinet dated January 8, 2014, in which his office stated, in part, "[a]fter the district court decision was issued on Friday, December 20th, some same-sex couples availed themselves of the opportunity to marry and to the status granted by the state to married persons. This office sent an email to each of you soon after the district court decision, directing compliance."

92. The validity of those marriages, including Plaintiffs' marriages, was also recognized and acknowledged the next day when Attorney General Reyes directed the county clerks to provide a marriage certificate to all couples whose marriage was performed between December 20, 2013, and January 6, 2014.

93. Further recognition of those marriages, including Plaintiffs' marriages, occurred on January 15, 2013, when the Utah State Tax Commission issued a notice that same-sex couples could file as married for the 2013 tax year if they were married as of December 31, 2013.

94. By properly availing themselves of their legal right to marry and completing the necessary steps to solemnize their marriages, Plaintiffs – like any legally married different-sex couples – acquired certain property and liberty interests under Utah law attendant upon and arising from their marriages.

95. Those interests are fundamental and encompass a panoply of rights. These interests have been described by the U.S. Supreme Court, in discussing the liberty interest protected by the U.S. Constitution, as the right to establish a home, raise children, and enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free persons. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

96. Plaintiffs' vested rights in the recognition of their marriages do not depend on the ultimate outcome of the *Kitchen* litigation in federal court. Whether or not the U.S. District Court's decision in *Kitchen* is ultimately affirmed, Plaintiffs obtained vested rights in the validity and recognition of their marriages once those marriages were solemnized in accordance with Utah law.

97. Article I, Section 7 of the Utah Constitution guarantees that "[n]o person shall be deprived of life, liberty or property, without due process of law." Because those liberty and property interests and rights vested once the Plaintiffs were married, they are subject to the protections of Article 1, Section 7 and thereafter, the State of Utah could not interfere with those rights, or otherwise interfere in the Plaintiffs' marriages.

98. Nonetheless, on January 7, 2014, Governor Herbert, on advice of Attorney General Reyes, directed his Cabinet to place "on hold" recognition of same-sex marriages,

including those of Plaintiffs, who had already completed the legal requirements required by the State of Utah and therefore were validly married under then-existing law.

99. By taking this action, and retroactively stripping Plaintiffs' marriages of legal recognition, the State of Utah acted without legal authority and deprived Plaintiffs, and all other same-sex couples who had been legally married, of those liberty and property rights and interests protected by Article 1, Section 7 of the Utah Constitution.

100. By placing recognition of their marriages "on hold," the State of Utah has placed the legal status of all same-sex married couples, including Plaintiffs and their families and children, in legal limbo and created uncertainty as to their rights and status in virtually all areas of their lives. For example, they may be unable to obtain health insurance for their spouses and children, may not be able to make medical decisions about their spouses and family members if the need arises, may not complete stepparent adoptions to protect the legal status of their families, and if the biological parent of their child or children dies, may not be able to retain custody of their children, who may be placed into foster care.

101. This uncertainty leaves Plaintiffs in a constant state of insecurity and uncertainty that is emotionally devastating. And because their marriages are valid and must be recognized regardless of the outcome of the *Kitchen* appeal, and because the Directive is indefinite in nature, this state of insecurity may last for years.

102. The State of Utah's actions also imposed immediate dignitary harm on married same-sex couples and their families, including Plaintiffs, by creating second-class marriages in Utah that do not enjoy the rights and privileges of different-sex marriages. Like the law struck down in *United States v. Windsor*, 133 S. Ct. 2675 (2013), the State of Utah's decision to place

same-sex couples' marriages "on hold" "deprive[s] some couples married under the laws of their State, but not other couples, of both rights and responsibilities." *Id.* at 2694. "By this dynamic [the Governor's Directive] undermines both the public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of [Utah's] recognition. This places same-sex couples in an unstable position of being in a second-tier marriage. . . .And it humiliates [the] children now being raised by same-sex couples." *Id.*

103. As a result, Plaintiffs have been injured and are entitled to declaratory, injunctive, and equitable relief as set forth in the Prayer for Relief.

SECOND CAUSE OF ACTION
(*Deprivation of Plaintiffs' Property and Liberty Interests Protected by The United States Constitution in Violation of 42 U.S.C. § 1983 – Against Defendants Governor Herbert and Attorney General Reyes*)

104. Plaintiffs reallege and incorporate by references the paragraphs set forth above.

105. After the December 20, 2013, ruling Plaintiffs were legally permitted to marry in Utah.

106. To perfect that legal right, Plaintiffs completed each step required by the State of Utah under Utah Code Title 30 Chapter 1: They acquired valid marriage licenses from a county clerk; solemnized their marriages before an authorized person who then returned the license and marriage certificate to the county clerk; and, upon information and belief, the county clerk then filed and preserved the license and certificate.

107. The validity of those marriages, including Plaintiffs' marriages, was recognized by the State of Utah as evidenced by an email from Governor Herbert's office to his cabinet

dated December 24, 2013, in which his office directed them to comply "with the federal judge's ruling until such time that the current district court decision is addressed by the 10th Circuit Court." It was further evidenced by a statement made by the Utah Attorney General's Office that same day that warned county clerks denying same sex couples marriage licenses could constitute contempt of the court and the law.

108. The validity of those marriages, including Plaintiffs' marriages, at the time they were solemnized, was further recognized by the State in another email from Governor Herbert's office to his cabinet dated January 8, 2014, in which his office stated, in part, "[a]fter the district court decision was issued on Friday, December 20th, some same-sex couples availed themselves of the opportunity to marry and to the status granted by the state to married persons. This office sent an email to each of you soon after the district court decision, directing compliance."

109. Further recognition of the validity of those marriages, including Plaintiffs' marriages, also occurred the next day when Attorney General Reyes directed the county clerks to provide a marriage certificate to all couples whose marriage was performed between December 20, 2013, and January 6, 2014.

110. Further recognition of those marriages, including Plaintiffs' marriages, occurred on January 15, 2013, when the Utah State Tax Commission issued a notice that same-sex couples could file as married for the 2013 tax year if they were married as of December 31, 2013.

111. By properly availing themselves of their legal right to marry and completing the necessary steps to solemnize their marriages, Plaintiffs – like any legally married different-sex couples – acquired certain property and liberty interests under Utah law attendant upon and arising from their marriages.

112. Those interests are fundamental and encompass a panoply of rights. These have been described by the U.S. Supreme Court, in discussing the liberty interest protected by the U.S. Constitution, as the right to establish a home, raise children, and enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free persons. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

113. Plaintiffs' vested rights in the recognition of their marriages do not depend on the ultimate outcome of the *Kitchen* litigation in federal court. Whether or not the U.S. District Court's decision in *Kitchen* is ultimately affirmed, Plaintiffs obtained vested rights in the validity and recognition of their marriages once those marriages were solemnized in accordance with Utah law.

114. The due process clause of the Fourteenth Amendment of the United States Constitution provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend XIV, § 1.

115. Nonetheless, on January 7, 2014, Governor Herbert, on advice of Attorney General Reyes, directed his Cabinet place "on hold" recognition of same-sex marriages, including those of Plaintiffs and not to afford them any of the protections that the State will continue to afford to different-sex couples who were married during the same period.

116. By taking this action, and retroactively stripping Plaintiffs' marriages of legal recognition, the State of Utah acted without legal authority and deprived Plaintiffs, who had been legally married, of those liberty and property rights and interests protected by the Due Process Clause of the Fourteenth Amendment.

117. By placing recognition of their marriages "on hold," the State of Utah has placed the legal status of Plaintiffs' families, including their children, in legal limbo and created uncertainty as to their rights and status in virtually all areas of their lives. For example, they may be unable to obtain health insurance for their spouses and children, will not be able to make medical decisions about their spouses and family members if the need arises, may not complete stepparent adoptions to protect their families, and if the biological parent of their child or children dies, may not be able to retain custody of their children, who may be placed into foster care.

118. This uncertainty leaves Plaintiffs in a constant state of insecurity and uncertainty which is emotionally devastating, and which is likely to significantly and negatively impact them, their spouses, and their children in a multitude of ways. And because these marriages are valid and must be recognized regardless of the outcome of the *Kitchen* appeal, and because the Directive is indefinite in nature, this state of insecurity may last for years.

119. The State of Utah's actions also imposed immediate dignitary harm on married same sex couples and their families by creating second-class marriages that do not enjoy the rights and privileges of different-sex marriages. Like the law struck down in *United States v. Windsor*, 133 S. Ct. 2675 (2013), Utah's decision to place same-sex couples' marriages "on hold" "deprive[s] some couples married under the laws of their State, but not other couples, of both rights and responsibilities." *Id.* at 2694. "By this dynamic [the Governor's Directive] undermines both the public and private significance of state-sanctioned same-sex marriages; for it tells those couples, and all the world, that their otherwise valid marriages are unworthy of

[Utah's] recognition. This places same-sex couples in an unstable position of being in a second-tier marriage. . . .And it humiliates [the] children now being raised by same-sex couples." *Id.*

120. At all times, the Defendants were acting under color of state law when committing the complained of acts. In addition, the Governor is the final policy making authority for the State of Utah and exercised that authority in violating Plaintiffs' constitutional rights.

121. As a result, Plaintiffs have been injured and are entitled to declaratory, equitable, and injunctive relief pursuant to 42 U.S.C. § 1983. Plaintiffs are also entitled to recover their attorney's fees and costs incurred in bringing this action pursuant to 42 U.S.C. § 1988.

THIRD CAUSE OF ACTION
(Relief under Rule 65B)

122. Plaintiffs reallege and incorporate by reference the paragraphs set forth above.

123. Rule 65B of the Utah Rules of Civil Procedure allows a person to seek extraordinary relief from acts involving the wrongful use of public authority, or when a governmental official has failed to perform an act required by law, "where no other plain, speedy and adequate relief is available."

124. More specifically, under subpart (c)(2)(A) of Rule 65B, relief may be granted when a government employee engages in the wrongful use of his public authority. This includes "where a person usurps, intrudes into, or unlawfully holds or *exercises* a public office . . ." (emphasis added).

125. Appropriate relief may also be granted under subpart (d)(2): "(B) where an inferior court, administrative agency, corporation, or persons has failed to perform an act required by law as a duty of office, trust or station . . . "

126. As set forth above, each of Plaintiff couples obtained marriage licenses as required by, and in conformance with, Utah Code Ann. § 30-1-7. Thereafter, each Plaintiff couple had their marriages solemnized within 30 days in front of a person authorized by statute to solemnize their marriage, and otherwise fully complied with, Utah Code Ann.§ 30-1-6.

127. Each of Plaintiffs' marriages was complete and valid and they were thereafter entitled to all of the rights, benefits and privileges afforded to married couples, as well as being subject to all obligations and responsibilities attendant upon married couples.

128. The validity of those marriages was recognized by the State of Utah as evidenced by an email from the Governor to his cabinet dated December 24, 2013; in another email dated January 8, 2014; when the Attorney General directed the county clerks to provide marriage certificates to Plaintiffs and other same-sex couples; and when the Utah State Tax Commission issued a notice that same-sex couples could file as married for the 2013 tax year if they were married as of December 31, 2013.

129. Notwithstanding that Plaintiffs have fully complied with the requirement of Utah Code Ann.§ 30-1-1, *et seq.*, and are now validly married under the laws of Utah, the State of Utah now refuses to "recognize" those marriages, or provide Plaintiffs with any of the protections and responsibilities attendant upon and to all other valid marriages.

130. By placing recognition of their marriages "on hold," the State of Utah has placed the legal status of Plaintiffs' families, including their children, in legal limbo, which creates

uncertainty as to their rights and status in virtually all areas of their lives. For example, they may be unable to obtain health insurance for their spouses and children, will not be able to make medical decisions about their spouses and family members if the need arises, and if the biological parent of their child or children dies, may not be able to retain custody of their children, who may be placed into foster care.

131. This uncertainty leaves Plaintiffs in a constant state of insecurity and uncertainty which is emotionally devastating, and which is likely to significantly and negatively impact them, their spouses, and their children in a multitude of ways. And because these valid marriages must be recognized regardless of the outcome of the *Kitchen* appeal, and because the Directive is indefinite in nature, this state of insecurity may last for years.

132. By taking this action, and retroactively stripping plaintiffs' marriages of legal recognition, the State of Utah acted without legal authority, arbitrarily and capriciously, and deprived Plaintiffs, and all other same-sex couples who had been legally married, of those liberty and property rights and interests protected by Article 1, Section 7 of the Utah Constitution and the Due Process Clause of the Fourteenth Amendment.

133. Plaintiffs and their families have been injured by the illegal conduct of the Defendants, and will continue to be injured until the State of Utah recognizes their marriages. Plaintiffs are accordingly entitled to the relief detailed in the Prayer for Relief.

134. Plaintiffs have no other plain, speedy, and adequate remedy available as to the issues raised in this Complaint because Plaintiffs' vested rights in the recognition of their marriages do not depend on the ultimate outcome of the *Kitchen* litigation in federal court. Whether or not the U.S. District Court's decision in *Kitchen* is ultimately affirmed, Plaintiffs

obtained vested rights in the validity and recognition of their marriages once those marriages were solemnized in accordance with Utah law.

135. Plaintiffs request that if this Court cannot resolve this matter based on the pleadings that it issue an order requiring the parties to appear at an expedited hearing on the merits as provided for under Rule 65B(d)(3).

FOURTH CAUSE OF ACTION
(Declaratory Judgment)

136. Plaintiffs reallege and incorporate by reference the paragraphs set forth above.

137. Pursuant to Utah Code Ann. § 78B-6-401(1) this Court has the authority to issue a declaratory judgment that determines the "rights, status and other legal relations within its respective jurisdiction." Further, that declaration may be either affirmative or negative in form and effect. Utah Code Ann. § 78B-6-401(2).

138. A person whose rights, status, and legal relations are affected by a statute may also request that "the district court to determine any question of construction or validity arising under that . . . statute" and "obtain a declaration of rights, status or other legal relations." Utah Code Ann. § 78B-6-401(2).

139. Importantly, the Utah Legislature has mandated that the declaratory judgment act must be liberally construed. Utah Code Ann. § 78B-6-412 reads as follows:

> This chapter is to be remedial. Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

140. As set forth above, Plaintiffs fully complied with the requirements of Utah law regarding marriage, and therefore have valid marriages according to Utah law. In addition, the State of Utah recognized those marriages as valid at the time they were performed.

141. Notwithstanding the validity of those marriages and the prior recognition given to them by the State of Utah, the State of Utah has now unilaterally declared that it will no longer recognize those marriages or afford Plaintiffs the protections and responsibilities that it legally affords to all other married couples.

142. By placing recognition of their marriages "on hold," the State of Utah has placed the legal status of Plaintiffs' families, including their children, in legal limbo, which creates uncertainty as to their rights and status in virtually all areas of their lives. For example, they may be unable to obtain health insurance for their spouses and children, will not be able to make medical decisions about their spouses and family members if the need arises, and if the biological parent of their child or children dies, may not be able to retain custody of their children, who may be placed into foster care.

143. This uncertainty leaves Plaintiffs in a constant state of insecurity and uncertainty which is emotionally devastating, and which is likely to significantly and negatively impact them, their spouses, and their children in a multitude of ways. And because these valid marriages must be recognized regardless of the outcome of the *Kitchen* appeal, and because the Directive is indefinite in nature, this state of insecurity may last for years.

144. By taking this action, and retroactively stripping plaintiffs' marriages of legal recognition, the State of Utah acted without legal authority, arbitrarily and capriciously, and deprived Plaintiffs and all other same-sex couples who had been legally married of those liberty

and property rights and interests protected by Article 1, Section 7 of the Utah Constitution and the Due Process Clause of the Fourteenth Amendment.

145. Plaintiffs seek a declaration from the Court that because their marriages are valid under Utah Code Ann. § 30-1-1, *et seq.*, and have been previously recognized by the State of Utah, that:

a. The State of Utah must continue to recognize the marriages by all same-sex couples entered into pursuant to Utah marriage licenses issued between December 20, 2013, and January 6, 2014, including Plaintiffs' marriages, and afford those couples and their families with all of the protections and responsibilities given to married couples under Utah law.

b. The State must withdraw its Directive not to recognize the marriages by all same-sex couples entered into pursuant to Utah marriage licenses issued between December 20, 2013, and January 6, 2014, including Plaintiffs' marriages, and must in all respects treat and recognize them as married.

c. The reimplementation of Amendment 3, the Marriage Limitation Statute, the Marriage Recognition Statute, and any other statute preventing same-sex couples from marrying does not retroactively strip recognition from the same-sex marriages entered into pursuant to Utah marriage licenses issued between December 20, 2013 and January 6, 2014, or otherwise impair the protections and responsibilities that such marriages are subject to under Utah law.

146. Plaintiffs also request that the court award them the costs they incurred in bringing this action, pursuant to Utah Code Ann. § 78B-6-411.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

A. A declaratory judgment stating that because the marriages by same-sex couples entered into pursuant to Utah marriage licenses issued between December 20, 2013, and January 6, 2014, including Plaintiffs' marriages, are valid under U.C.A. §30-1-1, et seq., and have been previously recognized by the State of Utah, that the State of Utah must continue to recognize those marriages, and afford those couples, including Plaintiffs, and their families with all of the protections and responsibilities given to all married couples under Utah law.

B. An injunction ordering the State of Utah to withdraw any of its officials' instructions, such as the Directive, not to recognize the marriages by same-sex couples entered into pursuant to Utah marriage licenses issued between December 20, 2013, and January 6, 2014, including Plaintiffs' marriages, and must in all respects treat them as married.

C. A declaratory judgment stating that the reimplementation of Amendment 3, the Marriage Limitation Statute, the Marriage Recognition Statute, and any other statute preventing same sex couples from marrying does not retroactively strip recognition from the marriages by same-sex couples entered into pursuant to Utah marriage licenses issued between December 20, 2013 and January 6, 2014, including Plaintiffs'

marriages, or otherwise impair the protections and responsibilities that such marriages are subject to under Utah law.

D. An order pursuant to Rule 65B of the Utah Rules of Civil Procedure directing State officials as follows: to immediately recognize the marriages by same-sex couples entered into pursuant to Utah marriage licenses issued between December 20, 2013, and January 6, 2014, including Plaintiffs' marriages, as valid marriages; to afford all such couples, including Plaintiffs, and their families with all of the protections and responsibilities given to all married couples under Utah law; and to cease making representations that the federal appellate courts will decide whether their current refusals are lawful in the *Kitchen* suit.

E. Attorneys' fees and costs related to the litigation of this action.

F. Any other relief the court deems just and proper.

DATED this 21st day of January, 2014.

STRINDBERG & SCHOLNICK, LLC

/s/ Erik Strindberg

Erik Strindberg
Lauren Scholnick
Kathryn Harstad
Rachel Otto

Attorneys for Plaintiffs