

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES DARBY and PATRICK BOVA, *et al.*,
Plaintiffs,

v.

DAVID ORR, in his official capacity as
Cook County Clerk,
Defendant.

TANYA LAZARO and ELIZABETH "LIZ"
MATOS, *et al.*,
Plaintiffs,

v.

DAVID ORR, in his official capacity as
Cook County Clerk,
Defendant.

STATE OF ILLINOIS, *ex rel.* Lisa
Madigan, Attorney General of the
State of Illinois,
Intervenor,

CHRISTIE WEBB, in her official capacity
as Tazewell County Clerk, and KERRY
HIRTZEL, in his official capacity as
Effingham County Clerk, DANIEL S.
KUHN, in his official capacity as Putnam
County Clerk, PATRICIA LYCAN, in her
official capacity as Crawford County Clerk,
BRENDA BRITTON, in her official
capacity as Clay County Clerk,
Intervenors.

Case No. 12 CH 19718
The Honorable Judge Sophia Hall

Case No. 12 CH 19719
The Honorable Judge Sophia Hall

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CIRCUIT COURT OF COOK
COUNTY ILLINOIS
CHANCERY DIVISION

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs James Darby and Patrick Bova, *et al.* (“Darby Plaintiffs”), by their attorneys from Kirkland & Ellis LLP and Lambda Legal Defense and Education Fund, Inc., and Plaintiffs Tanya Lazaro and Liz Matos, *et al.* (“Lazaro Plaintiffs,” and collectively with Darby Plaintiffs, “Plaintiffs”), by their attorneys from Mayer Brown LLP and the Roger Baldwin Foundation of ACLU, Inc., respectfully submit this Motion for Summary Judgment pursuant to 735 ILCS 5/2-1005 on all counts. Plaintiffs concurrently submit herewith a Memorandum in Support, and a Statement of Undisputed Material Facts, including Affidavits from all Plaintiffs and from ten experts. In support of this Motion, Plaintiffs state as follows:

1. Plaintiffs comprise twenty three same-sex couples who have been in loving committed relationships for periods ranging from 7 to 49 years, and who seek to marry in their home state of Illinois, in addition to two same-sex couples who seek legal recognition of the marriages they entered into in Canada. Illinois statutes deny all Plaintiffs these most basic freedoms by barring them from civil marriage. *See* 750 ILCS 5/201 (authorizing marriages only “between a man and a woman”); 750 ILCS 5/212(a)(5) (prohibiting marriages “between 2 individuals of the same sex”); 750 ILCS 5/213.1 (marriages of same-sex couples are “contrary to the public policy of this State”); 750 ILCS 5/216(a) (denying respect to marriages of same-sex couples entered into in other jurisdictions) (collectively, the “marriage ban”).

2. On May 30, 2011 the Darby Plaintiffs and the Lazaro Plaintiffs filed Complaints seeking declaratory and injunctive relief. In their Complaints, Plaintiffs allege that the marriage ban violates the Illinois Constitution’s Due Process Clause (Art. I § 2) and Privacy Clause (Art. I § 6) (Count I of the *Darby* Complaint and Counts I and IV, respectively in the *Lazaro* Complaint); the Equal Protection Clauses (Art. I §§ 2, 18) (Count II of the *Darby* Complaint and

Counts II and III of the *Lazaro* Complaint); and the Guarantee Against Special Legislation (Art. I § 13) (Count III of the *Darby* Complaint).

3. There are no genuine issues of material fact in this case, and Plaintiffs are entitled to judgment as a matter of law on all counts.

4. Plaintiffs' claims under the Due Process Clause and the Privacy Clause are subject to heightened scrutiny because the marriage ban denies Plaintiffs their fundamental right to marry the person of their choice.

5. Plaintiffs' claims under the Equal Protection and Special Legislation Clauses are also subject to heightened scrutiny. The marriage ban is a facial classification based on sex and also impermissibly mandates conformity with sex stereotypes, and therefore must be reviewed under strict scrutiny. The ban also constitutes a classification on the basis of sexual orientation, and warrants heightened scrutiny for this reason as well.

6. The marriage ban fails any level of constitutional review. The ban does not bear even a rational relationship — much less a substantial or necessary one — to any legitimate state interest, let alone an important or compelling one. Additionally, the marriage ban reflects an illegitimate purpose, and is unconstitutional for this reason alone.

WHEREFORE, for the reasons set forth above and in the Plaintiffs' accompanying Memorandum, Plaintiffs respectfully request that this Court grant their Motion for Summary Judgment on all counts, and grant the following relief:

- (a) entry of a declaratory judgment that the marriage ban violates the Illinois Constitution by barring Defendants from issuing a marriage license to Plaintiffs, preventing Plaintiffs from lawfully marrying in the State of

Illinois, and preventing the recognition of Plaintiffs' marriages lawfully entered into outside of the State;

- (b) entry of a permanent injunction ordering Defendants to grant marriage licenses to the Plaintiffs who have not already married and to register their marriages after they have been solemnized, fully recognize Plaintiffs' marriages lawfully entered outside Illinois, no longer infringe in any other ways upon Plaintiffs' right to marry, and treat them no differently from different-sex couples with respect to access to and recognition of marriage;
- (c) award Plaintiffs the costs and expenses of this action together with reasonable attorneys' fees; and
- (d) enter such other and further relief as deemed appropriate by the Court.

Alternatively, the Court should identify any remaining disputes of fact and thus narrow the scope of evidence the Court wishes to receive at trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served on July 10, 2013, on the following via First Class U.S. Mail:

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A handwritten signature in blue ink, appearing to read "Jason R. Craddock", is written over a horizontal line.