

James H. Goetz
Benjamin J. Alke
Goetz, Baldwin & Geddes, P.C.
35 North Grand (zip code 59715)
P.O. Box 6580
Bozeman, Montana 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144
E-mail: jim@goetzlawfirm.com; balke@goetzlawfirm.com

Jon Ellingson, Legal Director
American Civil Liberties Union of Montana Foundation
241 E. Alder (zip code 59802)
P. O. Box 9138
Missoula, MT 59807
Ph: (406) 830-3009
E-mail: JonE@aclumontana.org

Ruth N. Borenstein (*Admitted Pro Hac Vice*)
Stuart C. Plunkett (*Pro Hac Vice Pending*)
Emily Friesen Regier (*Pro Hac Vice Pending*)
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
Ph: (415) 268-7000
Fax: (415) 268-7522
Email: rborenstein@mofocom; splunkett@mofocom;
eregier@mofocom

Ariel F. Ruiz (*Pro Hac Vice Pending*)
Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104
Ph: (212) 468-8000
Fax: (212) 468-7900
Email: aruiz@mofocom

Elizabeth O. Gill (*Admitted Pro Hac Vice*)
LGBT & AIDS Project
American Civil Liberties Union Foundation
39 Drumm Street
San Francisco, CA 94111
Ph: (415) 621-2493, Ext. 437
Fax: (415) 255-8437
Email: EGill@aclunc.org

ATTORNEYS FOR PLAINTIFFS

provided to different-sex married couples. State statutes also categorically exclude Plaintiffs from protections designed to support couples and their families in life challenges that all families may face, including those surrounding illness, death, or separation.

2. Montana statutes categorically exclude Plaintiffs from receiving financial protections provided to police officers and their spouses (§§ 19-9-804(2)(a), MCA, 19-9-903(2), MCA, and 19-9-1101, MCA); from designating their partner as their beneficiary for worker's compensation (§ 39-71-116(4), MCA); from financial protections provided to surviving spouses (§§ 72-2-111-113, MCA, 72-2-221(1), MCA, 27-1-513, MCA, 72-2-412, MCA, 72-2-413, MCA, 72-2-414, MCA, and 72-3-502, MCA); from priority in having authority over end-of-life decisions (§§ 50-9-106(2)(a), MCA, 72-5-312(2)(b), MCA, 72-5-410(1)(c), MCA, and 37-19-904(2)(c), MCA); from financial protections during illness (§§ 15-30-2131(1)(c)(i)(C), MCA, 15-30-2366, MCA, and 2-18-601(15), MCA); from financial protections for disabled or non-working spouses (§§ 39-30-201(1)(a), MCA and 15-30-2114(2)(b), MCA); and from dissolution-of-relationship protections (§§ 40-4-121(1), MCA, 40-4-202, MCA, 40-4-203, MCA, and 40-4-204, MCA).

3. Montana Code Section 40-1-401(4) further casts uncertainty on Plaintiffs' ability to protect their partners and their relationships and also stigmatizes their relationships, by declaring in the context of a statutory ban on same-sex couples' marrying that "[a] contractual relationship entered into for the purpose of achieving a civil relationship that is prohibited . . . is void as against public policy." The statute's vague language fails to provide Montana citizens, and Plaintiffs in particular, notice as to what conduct is prohibited and fails to provide meaningful standards to those applying the law.

4. Plaintiffs are categorically excluded from the above-listed statutory protections because the statutes provide protections only to spouses and Montana law prohibits Plaintiffs from entering into marriage. *See* Section 40-1-401(1)(d), MCA; Mont. Const. art. XIII, § 7. By this suit, Plaintiffs do not seek the opportunity to marry; nor do they seek the designation of “marriage” for their relationships. Plaintiffs simply seek statutory protections that are offered by the State to similarly situated different-sex couples and their families through the legal status of marriage.

5. All Montanans, including Plaintiffs, are guaranteed the right to equal protection of the law pursuant to Article II, Section 4 of the Montana Constitution. The categorical exclusion of Montanans such as Plaintiffs from statutory protections afforded to similarly situated different-sex couples who have the opportunity to marry deprives Plaintiffs and their families of equal protection under the law in that the exclusion constitutes unconstitutional discrimination based on sexual orientation and unconstitutionally burdens Plaintiffs’ fundamental rights to privacy, dignity, and the pursuit of life’s basic necessities.

6. All Montanans, including Plaintiffs, also are guaranteed the right to due process under the law under Article II, Section 17 of the Montana Constitution. The uncertainty and harm created by § 40-1-401(4), MCA deprive Plaintiffs of due process under the law because the statute fails to provide notice of what conduct is prohibited, fails to provide standards for enforcement, and infringes upon and chills the exercise of fundamental rights.

7. Plaintiffs seek a declaratory judgment that the above-listed statutes that provide protection solely to spouses unconstitutionally deny Plaintiffs equal protection and violate their fundamental rights to privacy, dignity, and the pursuit of life’s basic necessities, under the

Montana Constitution. Additionally, Plaintiffs seek a declaratory judgment that § 40-1-401(4), MCA is void for vagueness.

8. Plaintiffs also seek an injunction prohibiting the State from continuing to deny Plaintiffs the rights and protections provided solely to opposite-sex married couples by the above-listed statutes, and requiring the State to ensure that Plaintiffs receive the same rights and protections that these statutes afford to opposite-sex married couples.

PARTIES

Jan Donaldson and Mary Anne Guggenheim

9. Plaintiffs Jan Donaldson, 69, and Mary Anne Guggenheim, 77, have been in a committed, same-sex relationship for over thirty years. They have lived together as domestic partners in Helena, Montana, since 1983. Each has two children from previous marriages, and they raised two of their children together in Helena. Today, Jan and Mary Anne are the proud and involved grandparents of four grandchildren.

10. Upon settling in Montana, Mary Anne opened her own pediatric neurology practice with Jan, a registered nurse. Together, they ran child neurology clinics in Helena, Billings, Great Falls, and Kalispell for over twelve years. In 1998, Mary Anne was elected to the Montana House of Representatives as a representative for Lewis and Clark County. Now in retirement, the couple serves the community through leadership roles in multiple health outreach initiatives.

11. Jan and Mary Anne are deeply committed to one another “in sickness and in health and for richer or for poorer”—like any long-term, different-sex married couple. Yet they worry that their lack of access to the significant protections offered to different-sex couples who marry may prevent them from fulfilling what they see as their eternal bond.

12. Beginning in the early 1980s, Jan and Mary Anne have consulted attorneys, incurred expenses, and taken numerous steps to attempt to protect each other and their relationship. They own their home and other property jointly. They have named each other as beneficiaries on their retirement accounts, and Mary Anne has willed a large portion of her account to Jan. Their wills also name one another as personal representatives, and they have executed healthcare powers of attorney and directives in an attempt to ensure they are able to make medical and end-of-life decisions for one another.

13. Despite these diligent attempts to craft lasting protections for their relationship and each other, there are numerous protections the couple has been unable to replicate by creating legal documents. Indeed, notwithstanding their health care documents designating each other to make medical decisions for the other, several years ago Jan was denied the ability to speak for Mary Anne by a physician assistant in the days following Mary Anne's hip replacement surgery. Because Jan and Mary Anne are not afforded the statutory protections that Montana provides to different-sex couples who are married, such as having priority to make end-of-life decisions for a spouse, they fear that they may again be deprived of the ability to care for each other in times of need.

Kellie Gibson and Denise Boettcher

14. Plaintiffs Kellie Gibson, 49, and Denise Boettcher, 48, have been in a committed, same-sex relationship for eleven years and live together as domestic partners in Laurel, Montana. Denise is a middle school science teacher and basketball coach, as well as the organist at the couple's Lutheran congregation. Kellie grew up in Great Falls, Montana, and worked in juvenile justice for many years, until she was diagnosed with a rare brain condition in 2003, and had to go

on disability. She currently works part time for Big Brothers Big Sisters of Yellowstone County when her health allows.

15. Kellie and Denise view their relationship as sacred, and celebrated their union in a commitment ceremony attended by friends and family in 2001. Today, they are committed not only to each other but also to raising two children together—Kellie’s four-year-old nephew, whom they have legally adopted, and her sixteen-year-old daughter from a previous marriage. Kellie’s nephew moved in with the couple several years ago after his parents’ rights were terminated due to sustained methamphetamine abuse.

16. In an effort to protect their family and their relationship, Denise has named Kellie the beneficiary of her retirement account, and they have given each other health care powers of attorney, an especially critical concern given Kellie’s fragile health—she has had dozens of brain surgeries and spinal taps since her diagnosis ten years ago, and the couple is constantly anxious that their relationship will not be recognized in the case of a medical emergency. In one incident, a radiologist refused to perform a medical procedure that Kellie needed after she asked for her partner to be present for the question and answer briefing beforehand.

17. Since then, Kellie’s significant health issues have caused her to leave the work force, and Denise now balances a full-time job with caring for her ill partner. Because they are in a same-sex relationship, Denise and Kellie are excluded from the statutory financial protections provided to different-sex, married couples in which one spouse is disabled or not working, such as the spousal exemption for a non-working spouse available to a married taxpayer who files separately. The two also face daily anxiety over what would happen to Kellie and the children if Denise were no longer able to provide for them. They wish they had the

security their different-sex peer couples have in knowing that their commitment will be honored, and are harmed because their relationship is not legally recognized.

18. This point was driven home several years ago when Kellie's father died and Denise sought bereavement leave to support Kellie in her time of need. While state law grants spouses ten days of bereavement leave for an immediate family member's death, it provides no such accommodation covering same-sex couples. As such, Denise's employer was free to deny her request, which it did.

19. Before she went on disability, Kellie also faced prejudice at her workplace based on her sexual orientation. In one incident, the morning after Kellie spoke at a rally in honor of Matthew Shepard, a University of Wyoming student who had been tortured and killed in a notorious gay bashing, the county commissioner summoned Kellie to his office and told her that gay people are dangerous and unfit to work in a juvenile detention facility, as she was doing. In fact, Kellie ultimately felt forced to leave Great Falls in order to escape the harassment she faced there.

20. Today, Kellie and Denise regularly visit and provide emotional support for Kellie's mother, who lives several blocks away from the couple in Laurel, and they plan to continue doing so as her needs escalate. However, because Montana does not extend to same-sex couples the financial safety net and legal protections it gives to different-sex couples who care for an ill partner's family member, Kellie and Denise will be deprived of this assistance should Kellie's mother become ill, solely because Kellie and Denise are in a same-sex relationship.

Mary Leslie and Stacey Haugland

21. Plaintiffs Mary Leslie, 50, and Stacey Haugland, 47, have been in a committed, same-sex relationship for the past twelve years. They live together as domestic partners in Bozeman, Montana, where Stacey works as a professional midwife. Mary was a manager at the Community Food Co-op until she recently lost her job. In 2003, the couple held a commitment ceremony to celebrate their relationship, which over two hundred friends and family members attended. All their guests signed a document in which Mary and Stacey declared their lifelong commitment to one another, and that document, now framed, hangs prominently on their living room wall.

22. Mary and Stacey have done their best to ensure recognition for their status as a couple. They own their home together and have completely merged their finances. They have also executed wills naming one another as personal representatives, as well as health care and financial powers of attorney giving each the authority to make critical health care and financial decisions for the other. Further, they have named each other as the beneficiaries of their retirement accounts, and have taken out life insurance policies naming one another as beneficiaries, as well.

23. However, Mary, especially, fears that their lack of a state-recognized relationship will leave them unprotected in times of greatest need. Mary has firsthand experience in this regard, having moved to Montana with a former partner years ago, to take jobs together as ski instructors. When Mary's partner was killed in a tragic avalanche accident on their eight-year anniversary, Mary found that although she and her partner had taken legally available steps to protect their relationship as she and Stacey have done, she was denied access to her partner's

remains, denied bereavement leave to mourn, and deprived of almost all of her partner's possessions, which went to Mary's partner's blood relatives.

24. Mary was also denied her former partner's Worker's Compensation Death benefits, which, pursuant to Montana statutory directive, go to surviving spouses but not to the surviving domestic partners of committed, same-sex couples. Nor was Mary able to file a wrongful death suit against the ski resort, again due to the State's failure to legally recognize same-sex couples. Mary's past experience causes Mary and Stacey great concern, as both have family histories of health problems.

25. The couple feels very lucky to have found one another, and their relationship makes them feel safe, loved, and supported, which is especially significant for them given the discrimination they have faced in the community. For instance, when Stacey moved back to Montana after working in women's health and state politics in Illinois for several years, she found herself rejected from job after job, despite what potential employers acknowledged were impressive credentials. She believes this was due to her status as a lesbian and the work experience with lesbian and gay social services listed on her resume.

26. Mary and Stacey wish they could count on the State of Montana to recognize their commitment in the way their friends and family do. However, despite their conscientious attempts to craft lasting protections for their relationship and each other, there are numerous statutory protections they are unable to replicate in addition to the above, such as those providing financial protections for a non-working or disabled spouse, or for a spouse who must retain in-home care for an ill spouse in order to maintain employment.

Gary Stallings and Rick Wagner

27. Plaintiffs Gary Stallings, 59, and Rick Wagner, 54, have been in a committed, same-sex relationship for twenty-one years. They live together as domestic partners in Butte, Montana, where Rick was a Mental Health Crisis Response Therapist at the Western Montana Mental Health Center for many years, until he recently lost his job. Rick now relies on unemployment and disability. Gary, an honorably-discharged veteran, worked in the insurance business for many years, until he contracted HIV and became too sick to work in the mid-1990s. His income now comes solely from disability payments.

28. In 1997, Gary and Rick held a commitment ceremony in Sheep's Head Forest, north of Butte, Montana. They invited family and friends, and the ceremony was performed by the minister at the United Church of Christ that they attend every week. They say of each other that they "are one" and "joined at the hip."

29. In an effort to protect each other and their relationship, Gary and Rick own their home together, have completely merged their finances, and have executed wills as well as health care powers of attorney giving each the authority to make critical medical decisions for the other.

30. However, the couple's exclusion from the statutory protections automatically afforded to different-sex married couples—assuring them, for example, authority regarding each other's end-of-life decision making and financial protections to a surviving spouse—still creates much anxiety for the two. The threat of a serious medical emergency is a real and constant concern for both of them. Gary's health has been extremely precarious over the years—he was given six weeks to live at one point in 1995—and Rick was diagnosed with a serious spinal condition a few years ago.

John Michael Long and Richard Parker

31. Plaintiffs John Michael (“Mike”) Long, 59, and Richard (“Rich”) Parker, 43, have been in a committed, same-sex relationship for eleven years. They live together as domestic partners in Bozeman, Montana, where Mike is the lab manager at Bozeman Deaconess Hospital and Rich, who served six years in the United States Navy’s nuclear program, is today an engineer for the Bozeman public schools. Together the couple raised Mike’s son from a previous marriage. The son recently left for college. Both were involved parents, with Rich attending every one of Mike’s son’s football games last year.

32. Mike and Rich describe their relationship as like “Ozzie and Harriet,” and they want nothing more than for the State to recognize the stable family unit they have built, allowing them to support each other and Mike’s son with the same security provided to different-sex couples who marry.

33. In an effort to protect each other and their relationship, Mike and Rich own their home and all their property together and have merged their finances. They have named each other as beneficiaries on their retirement accounts, and Mike has named Rich as his personal representative in his will, in which he has divided his estate equally between Rich and his son. Mike and Rich have also each executed durable powers of attorney authorizing the other to make critical health care decisions on his behalf. Despite these diligent attempts to craft lasting protections for their relationship and each other, however, they remain harmed in many ways because their relationship is not legally recognized. For instance, because Montana does not give priority for same-sex couples to be appointed as each other’s guardians or conservators, as it does for different-sex married couples, Mike and Rich must live with the fact that despite their

commitment to one another, when one of them needs it the most, their relationship may not be honored.

Nancy Owens and MJ Williams

34. Plaintiffs Nancy Owens, 68, and MJ Williams, 68, have been in a committed, same-sex relationship for twenty years. They met in Helena, Montana, in the early 1980s, and started dating in the early 1990s. Today, they reside together as domestic partners in Basin, Montana. Nancy, who has a Ph.D. in Anthropology, is retired from her university teaching job. MJ, a professional jazz vocalist and trombone player, continues to be involved in a community of professional artists. Nancy and MJ are the proud grandparents of Nancy's son's four children.

35. The couple is deeply invested in their community. Both have served on the Basin Volunteer Fire Department, while Nancy also led the effort to have Basin's crumbling sidewalks rebuilt and was instrumental in creating Basin's town park. Despite these contributions, they have not always felt welcome in the community. In the 1980s, a vigilante group began a campaign of intimidation and harassment against lesbians in the Basin area, which drew considerable media attention and caused a number of lesbians to move out of the area. Nancy and MJ stayed in Basin, but they worry that such prejudice could recur.

36. Nancy and MJ both feel very lucky to have each other and plan to live out their lives together. Given their long-term commitment to one another, they feel the State should recognize them as a family and offer them the protections and obligations offered to different-sex couples who marry.

37. In an effort to protect each other and their relationship under the current circumstances, Nancy and MJ own their home and other property together and have merged their finances. They have also executed wills naming each other as personal representatives and have

given each other health care powers of attorney. Still, Nancy and MJ are very concerned that the steps they have taken will be insufficient for hospital access in emergencies and end-of-life decision-making.

38. The couple is also keenly aware that were Nancy's cancer to recur, requiring MJ to incur expenses in taking care of her, they would not receive the financial protections Montana provides to different-sex married couples when one must care for the other. The couple also worries about what would happen if Nancy passed away before MJ, and whether MJ would even be able to afford to stay in their home given her limited means.

Margaret Ash and Kelly Hurston

39. Plaintiffs Margaret ("Peggy") Ash, 48, and Kelly Hurston, 53, have been in a committed, same-sex relationship for nearly three years. They live together as domestic partners in Belgrade, Montana (a suburb of Bozeman). Peggy grew up in Missoula and later moved to Bozeman, where she has served as an officer in the Bozeman Police Department since 1994. In 2010, Peggy met Kelly, who had a home and a massage therapy business in Butte. After one and a half years of commuting between their homes, the two decided that Kelly would sell her house to move to Belgrade and live with Peggy. Kelly still commutes to Butte once a week to see her massage therapy clients there.

40. Peggy finds meaning in life by making Kelly happy. Kelly is equally committed to Peggy, describing Peggy as "the one I want to spend my life with." The two have taken steps to protect their relationship and each other as best they can. Kelly put the proceeds from her house toward paying off Peggy's car loan and bought Investment Retirement Accounts for both of them, on which they have listed each other as beneficiaries. Peggy has executed a power of

attorney and healthcare power of attorney authorizing Kelly to make important life decisions for her, and a will naming Kelly as her primary beneficiary. Kelly plans to do the same with Peggy.

41. Peggy and Kelly are deeply troubled by what they see as the State's failure to treat them fairly—as loving, committed partners, like those in any different-sex couple—which has required them to incur extra expense and stress to approximate the protections different-sex couples enjoy automatically under Montana law. Despite Peggy's having served the citizens of Bozeman as a police officer for nearly twenty years, the retirement and death benefits available to her and Kelly are dramatically different than those afforded to similarly situated officers and their spouses in different-sex marriages. For example, Montana statutes provide that a retired police officer is entitled to receive a monthly retirement benefit payment for life and that an officer's surviving spouse is entitled to receive that same monthly payment for life. In sharp contrast, even though Peggy has designated Kelly as her beneficiary, if Kelly survives Peggy after Peggy's retirement, Kelly would not be entitled to receive the same monthly retirement benefit that Peggy received. Instead, Kelly would only be entitled to receive whatever funds Peggy had contributed to her retirement account, less whatever retirement benefits Peggy had received before death. Peggy and Kelly are adamant that they do not seek special treatment, only fair and equal treatment.

Defendant

42. The Defendant is the State of Montana.

JURISDICTION AND VENUE

43. This Court has jurisdiction over this action pursuant to the Montana Declaratory Judgments Act. Sections 27-8-101, MCA *et seq.* and 27-19-101, MCA *et seq.*

44. Venue in this action is appropriate in Lewis and Clark County pursuant to § 25-2-126, MCA.

GENERAL ALLEGATIONS

45. Through the officially recognized family status of marriage, the State of Montana affords different-sex couples and their families a wide array of statutory protections, rights, and benefits, as well as duties, responsibilities, and obligations. Those statutory protections, rights, and benefits, as well as duties, responsibilities, and obligations are available only to married couples and their families.

46. Plaintiffs are categorically excluded from the statutory protections, rights, and benefits, as well as the duties, responsibilities, and obligations, that the State affords different-sex couples and their families through the status of marriage, because Montana law prohibits Plaintiffs from entering into either a solemnized or common law marriage. The Montana Code prohibits “a marriage between persons of the same sex.” Section 40-1-401(1)(d), MCA. In 2004, the Montana electorate also approved Constitutional Initiative 96, which added the following provision to the Montana Constitution: “Only a marriage between one man and one woman shall be valid or recognized as a marriage.” Mont. Const. art. XIII, § 7.

47. As illustrated below, Plaintiffs and their families have been and will be harmed in numerous respects as a result of their exclusion from the statutory protections, rights, and benefits, as well as the duties, responsibilities, and obligations, that are afforded exclusively to married couples and their families.

Exclusion from Financial Protections for Police Officers:

48. Montana statutes provide retirement benefits to police officers who retire from service or become disabled while serving. Sections 19-9-804, MCA, 19-9-903, MCA.

Retirement benefits are paid monthly for life and are calculated based on years of service and final average compensation. These statutes also afford financial benefits and other protections to the surviving spouse of a police officer. Upon the death of a police officer receiving a retirement benefit, the officer's "surviving spouse" is entitled to receive a benefit "equal" to the police officer's benefit at the time of death. Sections 19-9-804(2)(a), MCA, 19-9-903(2), MCA. Similar protections are provided to Montana firefighters and their surviving spouses. Sections 19-13-704(3), MCA, 19-13-803(2), MCA.

49. Montana statutes also provide automatic preretirement death benefits to the "surviving spouse" of a police officer who dies while on active duty. Section 19-9-1101, MCA. Upon the death of an active duty police officer, a surviving spouse is entitled to benefits equal to one-half of the member's final average compensation. *Id.* If the deceased officer had completed over 20 years of service, this benefit would be even greater. *Id.*; *see also* § 19-13-902, MCA (similar protections for firefighters).

50. These statutes provide financial protections only to a "surviving spouse." As a result, although a surviving spouse from a different-sex married couple will automatically be afforded these protections solely as a result of the couple's relationship, because Plaintiffs Peggy Ash, a police officer, and Kelly Hurston are in a same-sex relationship, Kelly would not be afforded any of these protections upon Peggy's death.

51. If a police officer dies without a "surviving spouse" or dependent child, Montana statutes provide that retirement and preretirement death benefits may be paid to a "designated beneficiary." Section 19-9-1102, MCA; *see also* § 19-13-903, MCA (identical provision for firefighters). The benefit paid to a "designated beneficiary," however, is dramatically less than the benefit that would be provided to a "surviving spouse"—and in some circumstances, a

“designated beneficiary” would receive nothing. With respect to retirement benefits, unlike the statutes that provide a “surviving spouse” the same benefit that the deceased officer was entitled to, § 19-9-1102, MCA limits a designated beneficiary’s benefits to the police officer’s “accumulated contributions minus the total of any benefits already paid from the member’s account.” Section 19-9-1102, MCA. Thus, rather than the life-time monthly payment afforded to a surviving spouse, a designated beneficiary can receive no more than the amount the officer had contributed to his or her retirement account, less any retirement benefits the officer had received.

52. An example set forth in the Montana Municipal Police Officers’ Retirement System Member Handbook illustrates this inequality. *See* PUBLIC EMPLOYEES’ RETIREMENT BOARD, MONTANA MUNICIPAL POLICE OFFICERS’ RETIREMENT SYSTEM MEMBER HANDBOOK (2009), <http://impera.mt.gov/docs/HDBK-MPORS.pdf> (hereinafter “Retirement Handbook”). As shown in that example, a police officer retiring after 20 years of service, with compensation of \$3,000 per month and a retirement account balance of \$35,450, will receive a retirement benefit of \$1,500 per month for the rest of his or her life. *Id.* at 23-24. If the officer dies two years after retirement, his or her surviving spouse would receive a benefit “equal” to the police officer’s benefit—*i.e.*, \$1,500 per month. *Id.*; *see* § 19-9-804(2)(a), MCA. By contrast, if that same police officer had a “designated beneficiary,” such as a surviving same-sex partner, the beneficiary would receive nothing. That is because the police officer would have been paid a total of \$36,000 in the two years of retirement prior to his or her death, which is more than the officer’s total contribution of \$35,450 to his or her retirement account, and a designated beneficiary may only receive the police officer’s “accumulated contributions minus the total of any benefits already paid from the member’s account.” Section 19-9-1102, MCA. Thus, in this

scenario, a surviving opposite-sex spouse would receive the full benefit of \$1,500 per month whereas a surviving same-sex partner would receive nothing. If the surviving spouse lived another 30 years after the officer's death, the surviving spouse would receive total benefits of \$540,000. Kelly, on the other hand, like any other surviving same-sex partner in this example, would receive nothing.

53. The same inequality occurs with respect to preretirement death benefits. As explained in the Retirement Handbook, the surviving spouse of a police officer who dies while still an active member is entitled to a monthly benefit equal to one-half of the officer's final average compensation. *See* Retirement Handbook at 31. Using the above example in which the officer's compensation was \$3,000 per month, the surviving spouse would be entitled to monthly payments of \$1,500. If the deceased officer had served more than 20 years, the amount of the monthly benefit would increase for each additional year of service. *See id.*; *see also* § 19-9-1101, MCA. By contrast, if that same police officer had a "designated beneficiary," such as a surviving same-sex partner, rather than a "surviving spouse," the beneficiary would not receive a monthly benefit but would instead receive a lump sum payment in the amount of the officer's "accumulated contributions minus the total of any benefits already paid from the member's account." Section 19-9-1102, MCA. In the scenario above, the beneficiary would receive a lump sum payment of \$35,450, the amount of the officer's contributions. A surviving spouse's benefit, on other hand, would exceed this lump sum amount in just two years of receiving monthly payments of \$1,500 per month. If the surviving spouse lived another 30 years, his or her total benefits would be \$540,000, whereas a surviving same-sex partner like Kelly would receive only \$35,450.

54. Pursuant to these statutes, Peggy's only option for attempting to ensure that Kelly receives benefits if she survives Peggy is to designate Kelly as a beneficiary of her retirement and preretirement death benefits. However, the Montana statutes provide unequal financial protection for designated beneficiaries such as surviving same-sex partners. If Peggy were in a different-sex marriage, in the event of her death after retirement her surviving spouse would be entitled to receive benefits "equal" to her retirement benefits. Kelly, on the other hand, would be entitled to less, and possibly to nothing, as demonstrated by the above example. Kelly's benefits in the event of Peggy's death while still an active duty police officer would also be substantially less than the benefits provided to a surviving spouse. This unequal treatment is harmful to Peggy and Kelly, who have no way of ensuring that in the event of Peggy's untimely death Kelly will receive the financial protections that would automatically be provided to a surviving opposite-sex spouse of a police officer. The harm to Peggy and Kelly from this unequal treatment is particularly acute since as a police officer, Peggy puts herself in harm's way to serve and protect her community. The risk of Peggy's untimely death is greater than if she were in another profession.

55. This unequal treatment has caused and threatens to cause significant harm to any person who is in a committed, same-sex relationship upon the death of his or her partner who is an active or retired police officer.

Exclusion from Worker's Compensation Benefits:

56. The Worker's Compensation Act provides numerous protections for employees and their dependents if the employee is killed or injured on the job. Like employees who are in different-sex relationships and have married, Plaintiffs who are currently employed pay

insurance premiums for worker's compensation benefits. Plaintiffs may pay precisely the same insurance premiums as their co-workers in different-sex, married relationships.

57. The Act provides in part that "the beneficiary" of an employee who dies as a result of a work-related injury is entitled to compensation benefits. Section 39-71-721(1)(a), MCA. However, the Act limits the definition of "beneficiary" to a "surviving spouse" or a dependent relative (child, parent, or sibling). Section 39-71-116(4), MCA.

58. As a result, although a surviving spouse from a different-sex married couple will automatically be afforded these benefits upon the work-related death of his or her spouse, the surviving partner from any of the similarly situated Plaintiff couples will be excluded from these benefits upon the work-related death of his or her partner.

59. This unequal treatment has caused and threatens to cause harm to the surviving partner of any employee who is in a committed, same-sex relationship and dies as a result of a work-place injury.

60. Plaintiff Mary Leslie suffered without this statutory protection when her former partner of eight years was killed in a tragic accident while working as a ski instructor in 1996. Notwithstanding their long-term committed relationship, Mary was not recognized as a beneficiary under the Worker's Compensation Act and she was not eligible to receive benefits under the Act because she was not a "surviving spouse" or dependent relative. Indeed, since Mary's former partner left no surviving spouse nor dependent relative, she was seen as leaving "no beneficiary," as stated in § 39-71-721(4), MCA, and thus her parents received a lump sum of \$3,000, while Mary received nothing. All Plaintiffs who are currently employed fear that their partners will suffer without this statutory protection in the event of a death caused by a work-related injury. Their partners have a corresponding fear that they will not be entitled to this

statutory protection in the event of such a death. These fears are especially acute for John Michael (“Mike”) Long and Richard (“Rich”) Parker and for Kellie Gibson and Denise Boettcher. Mike’s job regularly exposes him to pathogens, Rich regularly works with heavy machinery, and Denise is a science teacher who often works with volatile chemicals, placing each at risk of a fatal, work-related injury.

Exclusion from Financial Protections for Surviving Spouses:

61. Upon the death of one of the members of a different-sex, married couple, a number of Montana statutes afford financial benefits and other protections to the surviving spouse:

a. In the absence of a will, the surviving spouse has the highest priority for a share of the estate. Sections 72-2-111—113, MCA.

b. The surviving spouse is entitled to an elective share of the estate based on the length of the marriage. Section 72-2-221(1), MCA.

c. In the absence of a will, the surviving spouse has the highest priority to bring a wrongful death action to recover damages for the decedent’s death. Section 27-1-513, MCA (personal representative of estate may bring wrongful death suit); § 72-3-502, MCA (surviving spouse has highest priority in absence of will to be personal representative).

d. The surviving spouse is entitled to a homestead allowance of \$20,000, which is exempt from and has priority over all claims against the estate. Section 72-2-412, MCA.

e. The surviving spouse also is entitled to up to \$10,000 worth of property from the estate, which is exempt from and has priority over all claims against the estate. Section 72-2-413, MCA.

f. The surviving spouse and any minor children are entitled to a reasonable allowance from the estate for maintenance during the period of administration, which is exempt from and has priority over all claims against the estate except the homestead allowance. Section 72-2-414, MCA.

62. By the terms of these statutes, these protections are available to a “surviving spouse.” As a result, although a surviving spouse from a different-sex married couple will automatically be afforded these protections upon the death of his or her spouse solely as a result of the couple’s relationship, because Plaintiffs are in same-sex relationships, no surviving partner from any of the similarly situated Plaintiff couples will be automatically afforded any of these protections upon the death of his or her partner based on the couple’s relationship.

63. This unequal treatment has caused and threatens to cause significant harm to any person who is in a committed, same-sex relationship upon the death of his or her partner.

64. Plaintiff Mary Leslie suffered without these statutory protections when her former partner of eight years passed away without a will. Due to the tragic circumstances of her former partner’s death, which was caused by an avalanche-control explosive used at her partner’s workplace, Mary considered filing a wrongful death claim against her partner’s employer. However, because Mary was excluded from the protections afforded to a surviving spouse under § 72-3-502, MCA, her former partner’s blood relatives were able to file a wrongful death action instead. In addition, because Mary was excluded from the statutory protections for surviving spouses in the event of intestacy, the blood relatives of Mary’s former partner were able to take almost all of

her partner's possessions, including half of the balance of a mutual fund account to which the couple had jointly contributed. Mary was denied the financial cushion that protects all different-sex married couples in Montana, even though she had been in a committed, intimate relationship with her former partner for eight years.

65. Because they are excluded from the automatic statutory protections available to different-sex married couples, in order to protect their partners, Plaintiffs must at a minimum undertake all the steps and incur the expense necessary to prepare and execute a carefully drafted will—including hiring a lawyer, determining their assets and how they want them to be handled upon their death, and appointing their partner as their personal representative.

66. Even those Plaintiffs who have taken the steps and incurred the expense of creating wills face uncertainty and the possibility that their documents will be challenged and ultimately invalidated in whole or in part. The uncertainty that Plaintiffs face as to whether their efforts to use wills to protect their partners will be effective is heightened by the existence of § 40-1-401(4), MCA, which prohibits contractual relationships entered into for the purpose of achieving certain prohibited civil relationships, including same-sex marriages. In the event that a Plaintiff's will is not honored, the surviving partner would be deprived of the assets bequeathed to him or her. Moreover, the surviving partner would not be able to fall back on the automatic statutory protections afforded to different-sex surviving spouses, such as the homestead and property allowances that §§ 72-2-412 and 413, MCA provide.

Exclusion from Authority over End-of-Life Decisions:

67. Montana statutes provide protections to members of different-sex married couples to make crucial decisions about their spouses during a period of incapacitation and at death, including the following:

a. Section 50-9-106(2)(a), MCA gives priority to a spouse in consenting to the withholding or withdrawal of medical treatment from a terminally ill person.

b. Under § 72-5-312(2)(a), (b) MCA, the spouse of an incapacitated person has priority for appointment as his or her guardian in the absence of a guardian nominated by the incapacitated or protected person through an “intelligent” choice.

c. Under § 72-5-410(1)(b), (c), MCA, the spouse of a protected person has priority for appointment as conservator in the absence of a fiduciary appointed by the court or a conservator nominated by the protected person through an “intelligent” choice.

d. Under § 37-19-904(2)(c), MCA, the spouse of a deceased person has priority in controlling the disposition of the decedent’s remains if the decedent had not identified another person for this role.

68. By the terms of these statutes, these protections are available to a “spouse.” As a result, although a spouse from a different-sex married couple will automatically be afforded these protections solely as a result of the couple’s relationship, because Plaintiffs are in same-sex relationships, no partner from any of the similarly situated Plaintiff couples will be afforded any of these protections based on the couple’s relationship.

69. Because they are not eligible for any of the automatic statutory protections available to different-sex married couples, Plaintiffs must take steps and incur expenses to create and execute documents to authorize their partners to make decisions for them when they are unable to do so and to have their partners control the disposition of their remains.

70. This unequal treatment has caused and threatens to cause harm to any person who is in a committed, same-sex relationship in which one partner becomes incapacitated or is at the end of his or her life.

71. Although Plaintiffs have taken some steps and incurred expenses in an attempt to protect themselves and their partners through written legal documents such as powers of attorney and health care directives that authorize their partners to make decisions for them when they themselves are unable to do so, Plaintiffs fear that such precautions will not be honored during medical emergencies, if they become incapacitated, or at the end of their lives. Plaintiffs have experienced such fears, as several of them have faced serious and potentially life-threatening medical conditions or have worked or work now in high-risk occupations.

72. Plaintiffs fear that their wishes will not be respected in part based on the lack of clarity and certainty as to what documents, if any, would be viewed as sufficient when the need to use them arises and they are presented to whoever will have the power to determine whether the documents should be honored. While different-sex married couples can rely on their status as spouses to establish their entitlement to statutory rights, Plaintiffs have no officially-recognized status and no one-size-fits-all document that they can be assured will be recognized and honored in whatever circumstances they may face. As a result, different Plaintiffs have different types of documents that they have found through a variety of sources, including on the Internet or through word of mouth. Moreover, Plaintiffs may not always have their documents in their possession when the need for them arises.

73. Plaintiffs also fear that their wishes will not be respected if the person who has the power to determine whether their documents should be honored has personal biases that may cause him or her not to honor the documents, such as a belief that a parent or some other blood relative should have priority over a same-sex partner in making decisions for a patient during a medical emergency.

74. Although Plaintiffs Jan Donaldson and Mary Anne Guggenheim have executed health care powers of attorney that authorize each to make decisions for the other, they have already experienced problems in having those documents honored. When Mary Anne had hip replacement surgery in late 2009, a doctor's assistant refused to speak with Jan about the surgery, and treated Mary Anne's partner of nearly thirty years as if she were a complete stranger to Mary Anne.

75. Plaintiff Mary Leslie was denied access to her prior partner's remains after her sudden, tragic death, depriving Mary of the chance to view the body and say goodbye.

76. The uncertainty that Plaintiffs face as to whether their documents authorizing their partners to make decisions for them will be honored is heightened by the existence of § 40-1-401(4), MCA, which prohibits contractual relationships entered into for the purpose of achieving certain prohibited civil relationships, including same-sex marriages.

Exclusion from Financial Protections During Illness:

77. Montana statutes provide a financial safety net and legal protections allowing different-sex couples who marry to care for an ill partner and/or an ill partner's family member:

a. Under § 15-30-2131(1)(c)(i)(C), MCA, an individual may deduct, subject to certain limitations, expenses for the care of a spouse who is unable to care for himself or herself because of a physical or mental illness.

b. Under § 15-30-2366, MCA, an individual may take a tax credit for the expense of caring for elderly family members related by blood or marriage.

c. Under § 2-18-601(15), MCA, "sick leave" for state employees means a leave of absence with pay due to the employee's sickness or the sickness or death of a member of the employee's immediate family.

78. By the terms of these statutes, these protections are provided for illness of a “spouse,” or “family members related by blood or marriage,” or “immediate family.” As a result, although different-sex married couples will automatically be afforded these protections solely as a result of the couple’s relationship, because Plaintiffs are in same-sex relationships, the similarly situated Plaintiff couples are excluded from these protections.

79. This unequal treatment has caused and threatens to cause harm to any person who is in a committed, same-sex relationship and needs to care for an ill partner or a member of his or her partner’s family.

80. Plaintiffs fear that they will suffer financial burdens when taking care of their ill partners or their partners’ relatives— burdens that will not be mitigated by the statutory protections available only to married different-sex couples. Denise Boettcher will presumably carry the burden of financing Kellie Gibson’s upcoming medical costs since Kellie’s significant health issues will likely keep her from returning to work. Unlike their similarly situated different-sex married counterparts, Denise will carry this burden without any government assistance in the form of deductions or sick leave, simply because they are in a same-sex relationship. Gary Stallings and Rick Wagner also fear that they will be unable to benefit from tax deductions that different-sex couples are afforded pursuant to Montana law, if either has to take care of the other, as a result of Gary’s HIV or Rick’s serious spinal condition.

Exclusion from Financial Protections for Disabled or Non-Working Spouse:

81. Montana statutes provide financial protections to different-sex married couples in which one spouse is disabled or is not working:

a. Under § 39-30-201(1)(a), MCA, a public employer will give an initial hiring preference to an applicant with a disability or an applicant with an eligible disabled spouse.

b. Under § 15-30-2114(2)(b), MCA, an individual may take a spousal exemption for a non-working spouse if they are filing separately.

82. By the terms of these statutes, these protections are available to a “spouse.” As a result, although a spouse from a different-sex married couple will automatically be afforded these protections solely as a result of the couple’s relationship, because Plaintiffs are in same-sex relationships, the similarly situated Plaintiff couples are excluded from these protections.

83. This unequal treatment has caused and threatens to cause harm to couples in a committed, same-sex relationship in which a partner is disabled or is not working.

84. Some Plaintiffs have a partner who is disabled and/or is not working and have been deprived of the protections that similarly situated different-sex married couples receive. For example, Kellie Gibson is disabled and is unable to work. Denise Boettcher is unable to take a spousal exemption for her non-working partner pursuant to § 15-30-2114(2)(b), MCA, simply because they are in a same-sex relationship. The same is true for Plaintiffs Mary Leslie and Stacey Haugland since Mary is now without a job. Further, although Kellie is disabled, her partner Denise would be denied the initial hiring preference automatically provided by public employers under § 39-30-201(1)(a), MCA to a similarly situated, different-sex spouse.

85. Other Plaintiffs fear that they will be unable to use the financial cushion provided by the State in the form of exemptions if their partners become unable to work.

Exclusion from Dissolution-of-Relationship Protections:

86. Montana statutes provide numerous protections for married different-sex couples and their children through regulation of the separation and divorce process, including orders requiring financial support to spouses and their children upon dissolution of the marriage:

a. Under § 40-4-121(1), MCA, in a proceeding for dissolution of marriage or for legal separation, either party may get a temporary order for maintenance or support from his or her former spouse.

b. Under § 40-4-202, MCA, in a proceeding for dissolution of marriage or for legal separation, either party may get an equitable division of property.

c. Under § 40-4-203, MCA, in a proceeding for dissolution of marriage or for legal separation, upon making the required showing, either party may get a maintenance order to care for their reasonable needs.

d. Under § 40-4-204, MCA, in a proceeding for dissolution of marriage or for legal separation or maintenance, either or both parents may be ordered to pay reasonable child support.

87. By the terms of these statutes, these protections are available only in a proceeding for legal separation or dissolution of a marriage. As a result, different-sex married couples will automatically be afforded these protections if they decide to end their relationship, and similarly situated Plaintiff couples would be excluded from these protections in the event that they ended their same-sex relationships.

88. This unequal treatment has caused and threatens to cause harm to couples who end a committed, same-sex relationship.

89. The Plaintiff couples are all in stable, committed relationships. But it is a reality that some couples break up. In the event any of the Plaintiff couples ended their relationships, its members would go unprotected by Montana's dissolution laws, solely because they were in a same-sex relationship.

90. Even if Plaintiffs were to make agreements as to division of property or financial support in the event they ended their relationships, they would face uncertainty as to whether those agreements would be enforceable, due to the existence of § 40-1-401(4), MCA, which prohibits contractual relationships entered into for the purpose of achieving certain prohibited civil relationships, including same-sex marriages.

Prohibition Against Certain Contractual Civil Relationships:

91. Section 40-1-401(4), MCA deems "void as against public policy," any "contractual relationship entered into for the purpose of achieving a civil relationship that is prohibited under subsection (1)," including a same-sex marriage. *See* § 40-1-401(1)(d), MCA (prohibiting marriage "between persons of the same sex").

92. The prohibition of contracts that are intended to "achieve" a same-sex marriage is unconstitutionally vague. The prohibition is not clearly defined and fails to provide notice to those subject to the law, including Plaintiffs, of what conduct is forbidden. The statute fails to provide explicit standards and thus impermissibly delegates policy matters to judges, juries, and others who may be called upon to apply the law. As a result of the statute's vague prohibition, Plaintiffs do not know which contracts that they have entered into or may enter into will be enforceable and which will be deemed prohibited and thus void under Section 40-1-401(4), MCA.

93. By voiding contracts that are entered into to achieve a same-sex marriage, § 40-1-401(4), MCA appears to be a restatement of the prohibition against same-sex couples' entering into a marriage, as expressly contained in § 40-1-401(1)(d), MCA, as well as in the Marriage Amendment, Mont. Const. art. XIII, § 7. As stated above, by this suit, Plaintiffs do not seek the opportunity to marry, nor do they seek the designation of "marriage" for their relationships.

94. However, to the extent that § 40-1-401(4), MCA can be interpreted to prohibit same-sex couples from entering into contracts with each other to achieve something other than marriage, such as contracts in which couples voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples, then § 40-1-401(4), MCA is unconstitutional.

95. Committed different-sex couples who are eligible to enter into a marriage but choose not to do so are free under Montana law to enter into contracts with each other to voluntarily assume some or all of the protections that Montana law affords to married different-sex couples, such as obligations of mutual respect, fidelity, and support set forth in § 40-2-101, MCA. *See* § 40-1-401(4), MCA (as to different-sex couples, deeming void as against public policy only those contractual relationships entered into for the purpose of achieving a civil relationship that is prohibited because one or both partners are already married or the partners are in specified degrees of consanguinity); *see also* § 40-1-401(1)(a)-(c), MCA.

96. This unequal treatment has caused and threatens to cause harm to same-sex couples who are in a committed, same-sex relationship.

97. To the extent that § 40-1-401(4), MCA can be interpreted to prohibit same-sex couples from entering into contracts with each other to voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples, the statute

creates uncertainty for Plaintiffs as to what contractual relationships and protections are available to them and whether the documents they have executed and the contracts that they enter into with their partners will be honored and enforced or instead will be deemed void and ineffective. As a result of that uncertainty, Plaintiffs suffer anxiety and stress as to what they can do to protect their partners and their relationships and whether the costly and timely precautions they have taken will be honored. Moreover, Plaintiffs will suffer harm if the contractual relationships they have entered into are deemed void and unenforceable.

98. Further, by prohibiting same-sex couples from entering into contractual civil relationships that are available to similarly situated, unmarried different-sex couples, the State perpetuates and fosters the social stigma and prejudice long suffered by lesbian, gay, and bisexual individuals in Montana, that they and their relationships are inferior to heterosexual individuals and heterosexual relationships, and also encourages discrimination against lesbian, gay, and bisexual Montanans by private actors.

99. The uncertainty that Plaintiffs face as to whether the precautions they have taken to protect their partners and ensure their relationships will be honored, and the resulting stress and anxiety, is heightened by the stigma and prejudice that § 40-1-401(4), MCA fosters. In the absence of a judicial declaration that § 40-1-401(4), MCA does not invalidate agreements and other documents executed by same-sex couples to achieve something other than marriage, persons who harbor a bias against same-sex couples may invoke the statute as a pretense for not honoring the documents. Indeed, even persons who do not harbor a personal bias may, in light of § 40-1-401(4), MCA's discriminatory treatment of same-sex couples, interpret the statute to invalidate or at least call into question the validity of such documents. In many instances, it will be critical that Plaintiffs' documents be honored when presented—such as in a medical

emergency—and any subsequent adjudication that their documents are valid will have come too late to have protected Plaintiffs in that time of crisis, when they and their partners were most vulnerable.

VIOLATIONS OF THE MONTANA CONSTITUTION
FIRST CAUSE OF ACTION
For Denial Of Equal Protection Based On Sexual Orientation
Pursuant To Article II, Section 4, Of The Montana Constitution
(Exclusion from Financial Protections for Police Officers)
(By Peggy Ash and Kelly Hurston)

100. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

101. Article II, Section 4, of the Montana Constitution provides that “[n]o person shall be denied the equal protection of the laws.”

102. Although the marriage amendment, Article XIII, Section 7, of the Montana Constitution, precludes Plaintiffs from marrying, it does not abrogate their right to equal protection of the laws under Article II, Section 4, of the Montana Constitution.

103. By granting benefits only to a “surviving spouse,” Sections 19-9-804(2)(a), MCA, 19-9-903(2), MCA, and 19-9-1101, MCA categorically exclude Plaintiffs Peggy Ash and Kelly Hurston from financial benefits and other protections provided to different-sex surviving partners of police officers, based on Plaintiffs’ sexual orientation.

104. But for their sexual orientation and being in committed relationships with a same-sex partner, Plaintiffs are similarly situated in every material respect to different-sex, married couples who are afforded the opportunity to receive financial protections upon the death of a partner who served as a police officer.

105. Consequently, the State subjects Plaintiffs to unequal treatment based solely on

their sexual orientation in violation of Article II, Section 4, of the Montana Constitution.

106. Such discrimination on account of sexual orientation is suspect and demands a heightened level of scrutiny under the Montana Constitution. Lesbian, gay, and bisexual persons historically have suffered unjust and discriminatory treatment in law and society, and have been relegated to a position of political powerlessness solely on the basis of their sexual orientation. Montana has a long history of such discriminatory treatment, including allowing a statute criminalizing same-sex sexual relations to remain in the Montana Criminal Code for sixteen years after the Montana Supreme Court declared the statute unconstitutional and thus unenforceable, and failing to take affirmative steps to protect lesbian, gay, and bisexual persons. Sexual orientation, however, bears no relation to lesbian, gay, and bisexual persons' ability to perform in or contribute to society.

107. The discriminatory denial of financial protections upon the death of a partner who served as a police officer cannot survive the heightened level of scrutiny required under the Montana Constitution. Nor is it rationally related to the furtherance of any legitimate state interest. Accordingly, under any standard of scrutiny, the categorical exclusion of committed same-sex couples from the statutory protections of §§ 19-9-804(2)(a), MCA, 19-9-903(2), MCA, and 19-9-1101, MCA violates Plaintiffs' right to equal protection under the law as guaranteed by the Montana Constitution.

SECOND CAUSE OF ACTION
For Denial Of The Fundamental Rights To Privacy, Dignity, And Pursuit Of
Life's Basic Necessities Pursuant To Article II, Sections 3, 4, And 10,
Of The Montana Constitution
(Exclusion from Financial Protections for Police Officers)
(By Peggy Ash and Kelly Hurston)

108. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

109. Article II, Section 10, of the Montana Constitution provides that “the right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.”

110. Article II, Section 4, of the Montana Constitution provides that “[t]he dignity of the human being is inviolable.”

111. Article II, Section 3, of the Montana Constitution provides that “[a]ll persons are born free and have certain inalienable rights. They include . . . the rights of pursuing life’s basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.”

112. Although the marriage amendment, Article XIII, Section 7, of the Montana Constitution, precludes Plaintiffs from marrying, it does not abrogate their fundamental rights to privacy, dignity, and the pursuit of life’s basic necessities under Article II, Sections 3, 4, and 10, of the Montana Constitution.

113. Each Plaintiff has the reasonable and actual expectation that the State will not unlawfully burden or interfere with her or his decision to enter into an intimate and committed relationship and establish a family with the person of her or his choosing, and that the State will

not unlawfully burden or interfere with her or his decisions about how to structure family relationships.

114. The State's exclusion of Plaintiffs Peggy Ash and Kelly Hurston from financial protections upon the death of a partner who served as a police officer based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners infringes each Plaintiff's personal autonomy and her fundamental right to privacy and intimate association, in violation of the privacy guarantee in Article II, Section 10, of the Montana Constitution.

115. In choosing to enter into intimate and committed relationships with same-sex partners and to establish families with their partners, Plaintiffs have pursued and are enjoying lives that are of meaning and value to them as individuals.

116. The State's exclusion of Plaintiffs from financial protections upon the death of a partner who served as a police officer, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs' fundamental rights to basic human dignity as guaranteed by Article II, Section 4, of the Montana Constitution.

117. Plaintiffs' committed and intimate relationships with their same-sex partners and the families they have established with their partners are a way for them to pursue love, enjoyment, and happiness in their lives. As described above, Plaintiffs' ongoing safety, health, and happiness now significantly depend on their relationships with their partners and on whether those relationships are legally recognized.

118. The State's exclusion of Plaintiffs from financial protections upon the death of a partner who served as a police officer, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs' fundamental rights to pursue life's basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health, and happiness in all lawful ways, in violation of Article II, Section 3 of the Montana Constitution.

119. The State's exclusion of Plaintiffs from financial protections upon the death of a partner who served as a police officer, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, is not narrowly tailored to further a compelling government interest. Nor is it rationally related to the furtherance of any legitimate state interest. Thus, under any standard, the categorical exclusion of committed same-sex couples from the financial protections of §§ 19-9-804(2)(a), MCA, 19-9-903(2), MCA, and 19-9-1101, MCA violates Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under the law as guaranteed by the Montana Constitution.

THIRD CAUSE OF ACTION
For Denial Of Equal Protection Based On Sexual Orientation
Pursuant To Article II, Section 4, Of The Montana Constitution
(Exclusion from Worker's Compensation Benefits)
(By Mary Leslie and Stacey Haugland, Kellie Gibson and Denise Boettcher,
John Michael Long and Richard Parker, and
Peggy Ash and Kelly Hurston)

120. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

121. By limiting the definition of “beneficiary” in the Worker’s Compensation Act to either a surviving spouse, or a dependent child, parent, or sibling, § 39-71-721(1)(a), MCA and § 39-71-116(4)(a)-(f), MCA categorically exclude Plaintiffs from the opportunity to file for and obtain worker’s compensation benefits upon the death of a partner, based on Plaintiffs’ sexual orientation.

122. But for their sexual orientation and being in committed relationships with a same-sex partner, Plaintiffs are similarly situated in every material respect to different-sex, married couples who are afforded the opportunity to file for or receive worker’s compensation upon the death of a partner.

123. Consequently, the State subjects Plaintiffs to unequal treatment based solely on their sexual orientation, in violation of Article II, Section 4, of the Montana Constitution.

124. The discriminatory denial of beneficiary status and the attendant opportunity to file for and obtain worker’s compensation upon the death of a partner cannot survive the heightened level of scrutiny required under the Montana Constitution. Nor is it rationally related to the furtherance of any legitimate state interest. Accordingly, under any standard of scrutiny, the categorical exclusion of committed same-sex couples from the statutory protections of § 39-71-721(1)(a), MCA and § 39-71-116(4)(a)-(f), MCA violates Plaintiffs’ right to equal protection under the law as guaranteed by the Montana Constitution.

FOURTH CAUSE OF ACTION
For Denial Of The Fundamental Rights To Privacy, Dignity, And Pursuit Of
Life's Basic Necessities Pursuant To Article II, Sections 3, 4, And 10
Of The Montana Constitution
(Exclusion from Worker's Compensation Benefits)
(By Mary Leslie and Stacey Haugland, Kellie Gibson and Denise Boettcher,
John Michael Long and Richard Parker, and
Peggy Ash and Kelly Hurston)

125. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

126. The State's exclusion of Plaintiffs from statutory protections to file for or receive worker's compensation benefits upon the death of a partner, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners:

a. Infringes each Plaintiff's personal autonomy and her or his fundamental right to privacy and intimate association, in violation of the privacy guarantee in Article II, Section 10, of the Montana Constitution;

b. Degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs' fundamental rights to basic human dignity as guaranteed by Article II, Section 4, of the Montana Constitution; and

c. Denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs' fundamental rights to pursue life's basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health, and happiness in all lawful ways, in violation of Article II, Section 3, of the Montana Constitution.

127. The State's exclusion of Plaintiffs from statutory protections to file for or receive worker's compensation upon the death of a partner, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, is not

narrowly tailored to further a compelling government interest. Nor is it rationally related to the furtherance of any legitimate state interest. Thus, under any standard, the categorical exclusion of committed same-sex couples from the statutory protections of § 39-71-116(4)(a)-(f), MCA and § 39-71-721(1)(a), MCA violates Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under the law as guaranteed by the Montana Constitution.

FIFTH CAUSE OF ACTION
For Denial Of Equal Protection Based On Sexual Orientation
Pursuant To Article II, Section 4, Of The Montana Constitution
(Exclusion from Financial Protections for Surviving Spouses)
(By All Plaintiffs)

128. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

129. By granting benefits to a "surviving spouse," §§ 72-2-111–113, MCA, § 72-2-221(1), MCA, § 27-1-513, MCA, § 72-3-502, MCA, § 72-2-412, MCA, § 72-2-413, MCA, and § 72-2-414, MCA categorically exclude Plaintiffs from financial benefits and other protections provided to different-sex surviving partners, based on Plaintiffs' sexual orientation.

130. But for their sexual orientation and being in committed relationships with a same-sex partner, Plaintiffs are similarly situated in every material respect to different-sex, married couples who are afforded financial benefits and other protections upon the death of a partner.

131. Consequently, the State subjects Plaintiffs to unequal treatment based solely on their sexual orientation, in violation of Article II, Section 4, of the Montana Constitution.

132. Such discrimination on account of sexual orientation cannot survive the heightened level of scrutiny required under the Montana Constitution. Nor is it rationally related to the furtherance of any legitimate state interest. Accordingly, under any standard of scrutiny, the categorical exclusion of committed same-sex couples from the statutory protections of §§ 72-

2-111–113, MCA, § 72-2-221(1), MCA, § 27-1-513, MCA, § 72-3-502, MCA, § 72-2-412, MCA, § 72-2-413, MCA, and § 72-2-414, MCA violates Plaintiffs’ right to equal protection under the law as guaranteed by the Montana Constitution.

SIXTH CAUSE OF ACTION
For Denial Of The Fundamental Rights To Privacy, Dignity, And The Pursuit Of
Life’s Basic Necessities Pursuant To Article II, Sections 3, 4, And 10,
Of The Montana Constitution
(Exclusion from Financial Protections for Surviving Spouses)
(By All Plaintiffs)

133. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

134. The State’s exclusion of Plaintiffs from financial benefits and other protections upon the death of a partner, based solely on Plaintiffs’ entering into intimate and committed relationships and establishing families with same-sex partners:

- a. Infringes each Plaintiff’s personal autonomy and her or his fundamental right to privacy and intimate association, in violation of the privacy guarantee in Article II, Section 10, of the Montana Constitution;
- b. Degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs’ fundamental rights to basic human dignity as guaranteed by Article II, Section 4, of the Montana Constitution; and
- c. Denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs’ fundamental rights to pursue life’s basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health, and happiness in all lawful ways, in violation of Article II, Section 3, of the Montana Constitution.

135. The State’s exclusion of Plaintiffs from financial benefits and other protections

upon the death of a partner, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, is not narrowly tailored to further a compelling government interest. Nor is it rationally related to the furtherance of any legitimate state interest. Thus, under any standard, the categorical exclusion of committed same-sex couples from the statutory protections of §§ 72-2-111–113, MCA, § 72-2-221(1), MCA, § 27-1-513, MCA, § 72-3-502, MCA, § 72-2-412, MCA, § 72-2-413, MCA, and § 72-2-414, MCA, violates Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under the law as guaranteed by the Montana Constitution.

SEVENTH CAUSE OF ACTION
For Denial Of Equal Protection Based On Sexual Orientation
Pursuant To Article II, Section 4, Of The Montana Constitution
(Exclusion from Authority over End-of-Life Decisions)
(By All Plaintiffs)

136. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

137. By authorizing a “surviving spouse,” § 50-9-106, MCA, § 72-5-312, MCA, § 72-5-410, MCA, and § 37-19-904(2)(b), MCA categorically exclude Plaintiffs from the authority provided to members of different-sex, married couples to make crucial decisions about their partners during a period of incapacitation and at death, based on Plaintiffs' sexual orientation.

138. But for their sexual orientation and being in committed relationships with same-sex partners, Plaintiffs are similarly situated in every material respect to different-sex, married couples who are authorized to make crucial decisions about their spouses during a period of incapacitation and at death.

139. Consequently, the State subjects Plaintiffs to unequal treatment based solely on their sexual orientation, in violation of Article II, Section 4, of the Montana Constitution.

140. Such discrimination on account of sexual orientation cannot survive the heightened level of scrutiny required under the Montana Constitution. Nor is it rationally related to the furtherance of any legitimate state interest. Accordingly, under any standard of scrutiny, the categorical exclusion of committed same-sex couples from the statutory protections of § 50-9-106, MCA, § 72-5-312, MCA, § 72-5-410, MCA, and § 37-19-904(2)(b), MCA violates Plaintiffs' right to equal protection under the law as guaranteed by the Montana Constitution.

EIGHTH CAUSE OF ACTION
For Denial Of The Fundamental Rights To Privacy, Dignity, And The Pursuit Of
Life's Basic Necessities Pursuant To Article II, Sections 3, 4, And 10,
Of The Montana Constitution
(Exclusion from Authority over End-of-Life Decisions)
(By All Plaintiffs)

141. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

142. The State's exclusion of Plaintiffs from the authorization provided to members of different-sex, married couples to make crucial decisions about their spouses during periods of incapacitation and at death, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners:

- a. Violates each Plaintiff's personal autonomy and her or his fundamental right to privacy and intimate association, in violation of the privacy guarantee in Article II, Section 10, of the Montana Constitution;
- b. Degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs' fundamental rights to basic human dignity as guaranteed by Article II, Section 4, of the Montana Constitution; and
- c. Denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs' fundamental

rights to pursue life's basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health, and happiness in all lawful ways, in violation of Article II, Section 3, of the Montana Constitution.

143. The State's exclusion of Plaintiffs from the authorization provided to members of different-sex, married couples to make crucial decisions about their spouses during periods of incapacitation and at death, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, is not narrowly tailored to further a compelling government interest. Nor is it rationally related to the furtherance of any legitimate state interest. Thus, under any standard, the categorical exclusion of committed same-sex couples from the statutory protections of § 50-9-106, MCA, § 72-5-312, MCA, § 72-5-410, MCA, and § 37-19-904(2)(b), MCA violates Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under the law as guaranteed by the Montana Constitution.

NINTH CAUSE OF ACTION
For Denial Of Equal Protection Based On Sexual Orientation
Pursuant To Article II, Section 4, Of The Montana Constitution
(Exclusion from Financial Protections During Illness)
(By All Plaintiffs)

144. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

145. By providing protections to a "spouse" under § 15-30-2131(1)(c)(i)(C), MCA, or to a "family member . . . related . . . by blood or marriage" under § 15-30-2366(2)(a), MCA, or to "immediate family" under § 2-18-601(15), MCA, the State categorically excludes Plaintiffs from the financial safety net and legal protections provided to different-sex, married couples to care for an ill partner and/or a partner's ill family member, based on Plaintiffs' sexual orientation.

146. But for their sexual orientation and being in committed relationships with a same-sex partner, Plaintiffs are similarly situated in every material respect to different-sex, married couples who are afforded a financial safety net and legal protections to care for an ill spouse and/or a spouse's ill family member.

147. Consequently, the State subjects Plaintiffs to unequal treatment based solely on their sexual orientation, in violation of Article II, Section 4, of the Montana Constitution.

148. Such discrimination on account of sexual orientation cannot survive the heightened level of scrutiny required under the Montana Constitution. Nor is it rationally related to the furtherance of any legitimate state interest. Accordingly, under any standard of scrutiny, the categorical exclusion of committed same-sex couples from the statutory protections of § 15-30-2131(1)(c)(i)(C), MCA, § 15-30-2366, MCA, and § 2-18-601(15), MCA violates Plaintiffs' right to equal protection under the law as guaranteed by the Montana Constitution.

TENTH CAUSE OF ACTION
For Denial Of The Fundamental Rights To Privacy, Dignity, And The Pursuit Of
Life's Basic Necessities Pursuant To Article II, Sections 3, 4, And 10,
Of The Montana Constitution
(Exclusion from Financial Protections During Illness)
(By All Plaintiffs)

149. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

150. The State's exclusion of Plaintiffs from the financial safety net and legal protections provided different-sex, married couples to care for an ill partner and/or a partner's ill family member, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners:

a. Infringes each Plaintiff's personal autonomy and her or his fundamental right to privacy and intimate association, in violation of the privacy guarantee in Article II, Section 10, of the Montana Constitution;

b. Degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs' fundamental rights to basic human dignity as guaranteed by Article II, Section 4, of the Montana Constitution; and

c. Denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs' fundamental rights to pursue life's basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health, and happiness in all lawful ways, in violation of Article II, Section 3, of the Montana Constitution.

151. The State's exclusion of Plaintiffs from the financial safety net and legal protections provided to different-sex, married couples to care for an ill partner and/or a partner's ill family member, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, is not narrowly tailored to further a compelling government interest. Nor is it rationally related to any legitimate state interest. Thus, under any standard, the categorical exclusion of committed same-sex couples from the statutory protections of § 15-30-2131(1)(c)(i)(C), MCA, § 15-30-2366, MCA, and § 2-18-601(15), MCA violates Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under the law as guaranteed by the Montana Constitution.

ELEVENTH CAUSE OF ACTION
For Denial Of Equal Protection Based On Sexual Orientation
Pursuant To Article II, Section 4, Of The Montana Constitution
(Exclusion from Financial Protections for Disabled or Non-Working Spouse)
(By Mary Leslie and Stacey Haugland and Kellie Gibson and Denise Boettcher)

152. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

153. By granting financial protections to a “spouse,” § 39-30-201(1)(a), MCA and § 15-30-2114(2)(b), MCA categorically exclude Plaintiffs from the financial protections provided to different-sex, married couples in which one spouse is disabled or is not working, based on Plaintiffs’ sexual orientation.

154. But for their sexual orientation and being in committed relationships with same-sex partners, Plaintiffs are similarly situated in every material respect to different-sex, married couples who are afforded financial protections when one spouse is disabled or is not working.

155. Consequently, the State subjects Plaintiffs to unequal treatment based solely on their sexual orientation, in violation of Article II, Section 4, of the Montana Constitution.

156. Such discrimination on account of sexual orientation cannot survive the heightened level of scrutiny required under the Montana Constitution. Nor is it rationally related to the furtherance of any legitimate state interest. Accordingly, under any standard of scrutiny, the categorical exclusion of committed same-sex couples from the statutory protections of § 39-30-201(1)(a), MCA and § 15-30-2114(2)(b), MCA violates Plaintiffs’ right to equal protection under the law as guaranteed by the Montana Constitution.

TWELFTH CAUSE OF ACTION
For Denial Of The Fundamental Rights To Privacy, Dignity, And The Pursuit Of
Life's Basic Necessities Pursuant To Article II, Sections 3, 4, And 10,
Of The Montana Constitution

(Exclusion from Financial Protections for Disabled or Non-Working Spouse)
(By Mary Leslie and Stacey Haugland and Kellie Gibson and Denise Boettcher)

157. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

158. The State's exclusion of Plaintiffs from financial protections provided to different-sex, married couples in which one spouse is disabled or is not working, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners:

- a. Infringes each Plaintiff's personal autonomy and her or his fundamental right to privacy and intimate association, in violation of the privacy guarantee in Article II, Section 10, of the Montana Constitution;
- b. Degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs' fundamental rights to basic human dignity as guaranteed by Article II, Section 4, of the Montana Constitution; and
- c. Denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs' fundamental rights to pursue life's basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health, and happiness in all lawful ways, in violation of Article II, Section 3, of the Montana Constitution.

159. The State's exclusion of Plaintiffs from financial protections provided to different-sex, married couples in which one spouse is disabled or is not working, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with

same-sex partners, is not narrowly tailored to further a compelling government interest. Nor is it rationally related to a legitimate state interest. Thus, under any standard, the categorical exclusion of committed same-sex couples from the statutory protections of § 39-30-201(1)(a), MCA and § 15-30-2114(2)(b), MCA violates Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under the law as guaranteed by the Montana Constitution.

THIRTEENTH CAUSE OF ACTION
For Denial Of Equal Protection Based On Sexual Orientation
Pursuant To Article II, Section 4 Of The Montana Constitution
(Exclusion from Dissolution-of-Relationship Protections)
(By All Plaintiffs)

160. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

161. By providing protections based on the status of "marriage," § 40-4-121(1), MCA, § 40-4-202, MCA, § 40-4-203, MCA, and § 40-4-204, MCA categorically exclude Plaintiffs from numerous protections provided to different-sex, married couples and their children upon separation and/or divorce, based on Plaintiffs' sexual orientation.

162. But for their sexual orientation and being in committed relationships with a same-sex partner, Plaintiffs are similarly situated in every material respect to different-sex, married couples who are afforded protections for themselves and their children through the State's regulation of the separation and divorce process.

163. Consequently, the State subjects Plaintiffs to unequal treatment based solely on their sexual orientation, in violation of Article II, Section 4, of the Montana Constitution.

164. Such discrimination on account of sexual orientation cannot survive the heightened level of scrutiny required under the Montana Constitution. Nor is it rationally related

to the furtherance of any legitimate state interest. Accordingly, under any standard of scrutiny, the categorical exclusion of committed same-sex couples from the statutory protections of § 40-4-121(1), MCA, § 40-4-202, MCA, § 40-4-203, MCA, and § 40-4-204, MCA violates Plaintiffs' right to equal protection under the law as guaranteed by the Montana Constitution.

FOURTEENTH CAUSE OF ACTION
For Denial Of The Fundamental Rights To Privacy, Dignity, And The Pursuit Of
Life's Basic Necessities Pursuant To Article II, Sections 3, 4, And 10,
Of The Montana Constitution
(Exclusion from Dissolution-of-Relationship Protections)
(By All Plaintiffs)

165. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

166. The State's exclusion of Plaintiffs from numerous protections provided to married different-sex couples and their children through its regulation of the separation and divorce process, including orders requiring financial support to spouses and their children upon the dissolution of marriage, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners:

- a. Infringes each Plaintiff's personal autonomy and her or his fundamental right to privacy and intimate association, in violation of the privacy guarantee in Article II, Section 10, of the Montana Constitution;
- b. Degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs' fundamental rights to basic human dignity as guaranteed by Article II, Section 4, of the Montana Constitution; and
- c. Denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs' fundamental rights to pursue life's basic necessities, enjoy and defend their lives and liberties, acquire,

possess and protect property, and seek their safety, health, and happiness in all lawful ways, in violation of Article II, Section 3, of the Montana Constitution.

167. The State's exclusion of Plaintiffs from numerous protections provided to married different-sex couples and their children through its regulation of the separation and divorce process, including orders requiring financial support to spouses and their children upon the dissolution of marriage, based solely on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, is not narrowly tailored to further a compelling government interest. Nor is it rationally related to any legitimate state interest. Thus, by any standard, the categorical exclusion of committed same-sex couples from the statutory protections of § 40-4-121(1), MCA, § 40-4-202, MCA, § 40-4-203, MCA, and § 40-4-204, MCA violates Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under the law as guaranteed by the Montana Constitution.

FIFTEENTH CAUSE OF ACTION
For Denial Of Due Process
Pursuant To Article II, Section 17, Of The Montana Constitution
(MCA § 40-1-401(4))
(By All Plaintiffs)

168. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

169. Article II, Section 17, of the Montana Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law.”

170. The Due Process Clause of the Montana Constitution requires a statute's prohibitions to be clearly defined to provide notice to those subject to the law of what conduct is forbidden so that she or he may act accordingly. The Due Process Clause of the Montana Constitution also requires a statute to provide explicit standards to avoid impermissibly

delegating policy matters to those who apply the law, including law enforcement officers, judges, and juries. Statutes that fail to meet these standards are void for vagueness under the Due Process Clause.

171. Although the marriage amendment, Article XIII, Section 7, of the Montana Constitution, precludes Plaintiffs from marrying, it does not and cannot abrogate their right to due process under Article II, Section 17 of the Montana Constitution.

172. Section 40-1-401(4), MCA is unconstitutionally vague both as applied to the Plaintiffs in this case and on its face. The statute's prohibitions are not clearly defined and fail to give notice of what conduct is prohibited. The statute prohibits a "contractual relationship entered into for the purpose of achieving a civil relationship that is prohibited under subsection (1)," including "a marriage between persons of the same sex." Section 40-1-401(4), MCA; 40-1-401(1)(d), MCA. The statute, however, fails to provide guidance to assist those subject to the law in determining which contracts are prohibited and which are lawful and thus enforceable. It is not clear from the face of the statute what types of contracts will be deemed prohibited for having the "purpose" of "achieving" a same-sex marriage. The statute thus fails to provide fair notice to Montana citizens, and to Plaintiffs in particular, of what contemplated conduct is forbidden.

173. Nor does the statute provide any standards to courts, juries, or others who might be asked to construe the law, for determining whether a particular contract is prohibited for having the "purpose" to "achieve" a same-sex marriage. The statute thus impermissibly delegates policy matters to courts, juries, and others, and invites resolution of disputes on an *ad hoc* and subjective basis.

174. Because it is vague and contains no standards, § 40-1-401(4), MCA creates uncertainty and forces Plaintiffs to act at their peril. Plaintiffs have no way to know which contractual relationships and protections are available to them in Montana. Specifically, Plaintiffs have no way to know whether the contractual relationships and protections they have already entered into or established are subject to § 40-1-401(4), MCA's prohibition and are thus void. Plaintiffs also have no way to know whether contractual relationships and protections they want to enter into and establish are subject to § 40-1-401(4), MCA's prohibition and are thus void. As a result, Plaintiffs cannot know what steps are available to them to protect themselves, their partners, and their relationships. Plaintiffs have no way of knowing whether, and to what extent, they may enter into contractual relationships and establish protections available to unmarried different-sex couples.

175. Section 40-1-401(4), MCA threatens to chill the exercise of Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities because the statute's vague prohibitions make it impossible for Plaintiffs to know which contractual relationships will and will not be honored. Plaintiffs, and other same-sex couples seeking to enter into contractual relationships in order to protect themselves, their partners, and their relationships, may choose not to exercise their fundamental rights given the uncertainty and stress created by the vague language of the statute.

176. Section 40-1-401(4), MCA cannot survive the heightened level of scrutiny required under the Montana Constitution. Section 40-1-401(4), MCA is void for vagueness both as applied and on its face under the Due Process Clause of the Montana Constitution.

SIXTEENTH CAUSE OF ACTION
For Denial Of Equal Protection Based On Sexual Orientation
Pursuant To Article II, Section 4, Of The Montana Constitution
(MCA § 40-1-401(4))
(By All Plaintiffs)

177. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

178. To the extent that § 40-1-401(4), MCA can be interpreted to prohibit same-sex couples from entering into contracts with each other to achieve something other than marriage, such as contracts in which couples voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples, § 40-1-401(4), MCA harms Plaintiffs by creating uncertainty as to which contractual relationships and protections are available to them and whether the documents they have executed and the contracts they may enter into with their partners will be honored and enforced or instead will be deemed void and ineffective. As a result of this uncertainty, Plaintiffs suffer anxiety and stress as to what they can do to protect themselves, their partners, and their relationships and whether the costly and time-consuming precautions they have taken will be enforced.

179. Furthermore, § 40-1-401(4), MCA perpetuates and fosters the social stigma and prejudice long suffered by lesbian, gay, and bisexual individuals in Montana. Section 40-1-401(4), MCA invites persons who harbor a bias against same-sex couples to invoke the statute in order not to honor Plaintiffs' contractual relationships. Even where persons do not harbor a bias against same-sex couples, § 40-1-401(4), MCA, at minimum, invites interpretations that may call into question Plaintiffs' contractual relationships and protections.

180. Plaintiffs will suffer harm if the contractual relationships they have entered into are deemed invalid.

181. But for their sexual orientation and being in committed relationships with same-sex partners, Plaintiffs are similarly situated in every material respect to different-sex couples who are not prohibited from entering into contractual relationships to voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples.

182. Consequently, to the extent that § 40-1-401(4), MCA can be interpreted to prohibit same-sex couples from entering into contracts with each other to achieve something other than marriage, such as contracts in which couples voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples, the State subjects Plaintiffs to unequal treatment based solely on their sexual orientation, in violation of Article II, Section 4, of the Montana Constitution.

183. Such discrimination on account of sexual orientation cannot survive the heightened level of scrutiny required under the Montana Constitution. Nor is it rationally related to the furtherance of any legitimate state interest. Accordingly, under any standard of scrutiny, § 40-1-401(4), MCA's categorical exclusion of committed same-sex couples from the ability to enter into civil contracts to achieve a civil relationship akin to marriage violates Plaintiffs' right to equal protection under the law as guaranteed by the Montana Constitution.

SEVENTEENTH CAUSE OF ACTION
For Denial Of The Fundamental Rights To Privacy, Dignity, And The Pursuit Of
Life's Basic Necessities Pursuant To Article II, Sections 3, 4, And 10,
Of The Montana Constitution
(MCA § 40-1-401(4))
(By All Plaintiffs)

184. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

185. To the extent that § 40-1-401(4), MCA can be interpreted to prohibit same-sex couples from entering into contracts with each other to achieve something other than marriage—

such as contracts in which couples voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples—the State’s treatment of contractual relationships between same-sex couples as being against public policy creates uncertainty as to which contractual relationships and protections are available to Plaintiffs, based solely on Plaintiffs’ entering into intimate and committed relationships and establishing families with same-sex partners. Such an interpretation also perpetuates and fosters the social stigma and prejudice long suffered by lesbian, gay, and bisexual persons, and thus:

- a. Infringes each Plaintiff’s personal autonomy and her or his fundamental right to privacy and intimate association, in violation of the privacy guarantee in Article II, Section 10, of the Montana Constitution;
- b. Degrades, demeans, debases, and trivializes the life choices Plaintiffs have made, thereby interfering with and burdening Plaintiffs’ fundamental rights to basic human dignity as guaranteed by Article II, Section 4, of the Montana Constitution; and
- c. Denies Plaintiffs the opportunity to protect and take responsibility for their partners and their families, thereby interfering with and burdening Plaintiffs’ fundamental rights to pursue life’s basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health, and happiness in all lawful ways, in violation of Article II, Section 3, of the Montana Constitution.

186. To the extent that § 40-1-401(4), MCA can be interpreted to prohibit same-sex couples from entering into contracts with each other to achieve something other than marriage—such as contracts in which couples voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples—the State’s treatment of contractual relationships between same-sex couples as being against public policy, based solely

on Plaintiffs' entering into intimate and committed relationships and establishing families with same-sex partners, is not narrowly tailored to further a compelling government interest. Nor is it rationally related to any legitimate state interest. Thus, by any standard, § 40-1-401(4), MCA violates Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under the law as guaranteed by the Montana Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

(1) A declaration that Montana statutes that categorically exclude Plaintiffs from receiving financial protections provided to police officers and their spouses (§§ 19-9-804(2)(a), MCA, 19-9-903(2), MCA, and 19-9-1101, MCA); from designating their partner as their beneficiary for worker's compensation (§§ 39-71-721(1)(a), MCA and 39-71-116(4)(a)-(f), MCA); from financial protections provided to surviving spouses (§§ 72-2-111—113, MCA, 72-2-221(1), MCA, 27-1-513, MCA, 72-3-502, MCA, 72-2-412, MCA, 72-2-413, MCA, and 72-2-414, MCA); from priority in having authority over end-of-life decisions (§§ 50-9-106, MCA, 72-5-312, MCA, 72-5-410, MCA, and 37-19-904(2)(b), MCA); from financial protections during illness (§§ 15-30-2131(1)(c)(i)(C), MCA, 15-30-2366, MCA, and 2-18-601(15), MCA); from financial protections for disabled or non-working spouses (§§ 39-30-201(1)(a), MCA and 15-30-2114(2)(b), MCA); and from dissolution-of-relationship protections (§§ 40-4-121(1), MCA, 40-4-202, MCA, 40-4-203, MCA, and 40-4-204, MCA) violate Plaintiffs' right to equal protection under Article II, Section 4 of the Montana Constitution.

(2) A declaration that Montana statutes that categorically exclude Plaintiffs from receiving financial protections provided to police officers and their spouses (§§ 19-9-804(2)(a), MCA, 19-9-903(2), MCA, and 19-9-1101, MCA); designating their partner as their beneficiary for worker's compensation (§§ 39-71-721(1)(a), MCA and 39-71-116(4)(a)-(f), MCA); from

financial protections provided to surviving spouses (§§ 72-2-111—113, MCA, 72-2-221, MCA, 27-1-513, MCA, 72-3-502, MCA, 72-2-412, MCA, 72-2-413, MCA, and 72-2-414, MCA); from priority in having authority over end-of-life decisions (§§ 50-9-106, MCA, 72-5-312, MCA, 72-5-410, MCA, and 37-19-904(2)(b), MCA); from financial protections during illness (§§ 15-30-2131(1)(c)(i)(C), MCA, 15-30-2366, MCA, and 2-18-601(15), MCA); from financial protections for disabled or non-working spouses (§§ 39-30-201(1)(a), MCA and 15-30-2114(2)(b), MCA); and from dissolution-of-relationship protections (§§ 40-4-121(1), MCA, 40-4-202, MCA, 40-4-203, MCA, and 40-4-204, MCA) violate Plaintiffs' fundamental rights to privacy, dignity, and the pursuit of life's basic necessities under Article II, Sections 3, 4, and 10, of the Montana Constitution.

(3) A declaration that § 40-1-401(4), MCA cannot be applied to invalidate contracts between same-sex partners entered into to achieve something other than marriage, including but not limited to contracts in which same-sex partners voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples. *See* Article II, Sections 3, 4, and 10, of the Montana Constitution.

(4) A declaration that the prohibition in § 40-1-401(4), MCA concerning contractual relationships with the purpose of achieving a same-sex marriage is void for vagueness both as applied and on its face under the Due Process Clause of the Montana Constitution.

(5) An order enjoining the State from continuing to deny Plaintiffs the right to obtain financial protections provided to surviving spouses (§§ 72-2-111—113, MCA, 72-2-221(1), MCA, 27-1-513, MCA, 72-3-502, MCA, 72-2-412, MCA, 72-2-413, MCA, and 72-2-414, MCA), the right to priority in having authority over their partners' end-of-life decisions (§§ 50-9-106, MCA, 72-5-312, MCA, 72-5-410, MCA, and 37-19-904(2)(b), MCA), the right to obtain

financial protections during illness (§§ 15-30-2131(1)(c)(i)(C), MCA, 15-30-2366, MCA, and 2-18-601(15), MCA), and the right to obtain dissolution-of-relationship protections (§§ 40-4-121(1), MCA, 40-4-202, MCA, 40-4-203, MCA, and 40-4-204, MCA), and requiring the State to provide to Plaintiffs the same rights and protections afforded to opposite-sex married couples by these statutes.

(6) An order enjoining the State from continuing to deny Plaintiffs Peggy Ash and Kelly Hurston the right to obtain the financial protections provided to surviving spouses of police officers (§§ 19-9-804(2)(a), MCA, 19-9-903(2), MCA, and 19-9-1101, MCA) and requiring the State to treat Kelly as a spouse within the meaning of these statutes so as to ensure Peggy and Kelly the same rights and protections afforded to opposite-sex married couples.

(7) An order enjoining the State from continuing to deny Plaintiffs Mary Leslie and Stacey Haugland, Kellie Gibson and Denise Boettcher, John Michael Long and Richard Parker, and Peggy Ash and Kelly Hurston the right to obtain beneficiary status and the attendant opportunity to file for and obtain worker's compensation benefits upon the death of a partner (§ 39-71-116(4)(a)-(f), MCA and § 39-71-721(1)(a), MCA) and requiring the State to treat Plaintiffs as spouses within the meaning of these statutes so as to ensure Plaintiffs the same rights and protections afforded to opposite-sex married couples.

(8) An order enjoining the State from continuing to deny Plaintiffs Mary Leslie and Stacey Haugland and Kellie Gibson and Denise Boettcher financial protections for disabled or non-working spouses (§§ 39-30-201(1)(a), MCA and 15-30-2114(2)(b), MCA) and requiring the State to treat Plaintiffs as spouses within the meaning of these statutes so as to ensure Plaintiffs the same rights and protections afforded to opposite-sex married couples.

(9) An order enjoining the State from invalidating contracts between Plaintiffs entered into to achieve something other than marriage, including but not limited to contracts in which Plaintiffs voluntarily assume some or all of the protections and obligations that Montana law affords to different-sex married couples (§ 40-1-401(4), MCA) and requiring the State to honor and enforce such contractual relationships.

(10) An order awarding Plaintiffs their costs and their reasonable attorneys' fees.

(11) An order awarding such other and further relief as the Court deems just and proper.

DATED this 15th day of July, 2013.

GOETZ, BALDWIN & GEDDES, P.C.

By: B-AIL
James H. Goetz
Benjamin J. Alke

and

AMERICAN CIVIL LIBERTIES UNION
OF MONTANA FOUNDATION
Jon Ellingson

MORRISON & FOERSTER LLP
Ruth N. Borenstein
Stuart C. Plunkett
Ariel F. Ruiz
Emily Friesen Regier

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Elizabeth O. Gill

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the following counsel of record, by the means designated below, this 15th day of July, 2013.

- U.S. Mail
- Federal Express
- Hand-Delivery
- Via Fax: (406) 444-3549
- E-mail: mblack@mt.gov

Tim Fox, Attorney General
Michael G. Black, Assistant Attorney General
Montana Department of Justice
P.O. Box 201401
Helena, MT 59620-1401
Attorneys for the State of Montana

B - AIL

James H. Goetz
Benjamin J. Alke