

Plaintiffs Jan Donaldson and Mary Anne Guggenheim, Mary Leslie and Stacey Haugland, Gary Stallings and Rick Wagner, Kellie Gibson and Denise Boettcher, John Michael Long and Richard Parker, Nancy Owens and MJ Williams, and Casey Charles and David Wilson (collectively “Plaintiffs”) bring this action against Defendant the State of Montana, and allege as follows:

INTRODUCTION

1. Plaintiffs are fourteen lesbian, gay, or bisexual individuals who comprise seven couples in committed, intimate, same-sex relationships. Plaintiffs are residents of the State of Montana who have fallen in love with life partners, and, with those partners, established families that provide Plaintiffs with long-term mutual emotional and economic support and a stable environment for raising children. Plaintiffs are highly accomplished and productive citizens who, in their desire to protect their family relationships, in no way differ from their heterosexual neighbors, co-workers, and fellow community members.

2. The State of Montana offers committed, intimate, different-sex couples the ability to obtain numerous protections, rights, and benefits, as well as to undertake numerous duties, responsibilities, and obligations toward one another, in the form of a statutory structure that is accessible through the legal status of marriage. The significant protections and obligations provided to different-sex couples through this statutory structure not only strengthen different-sex couples’ ability to support each other and their children, but also help facilitate for different-sex couples and their families the life challenges that all families may face, including those surrounding illness, death, or separation.

3. Regardless of their commitment to their life partners or their desire and need to protect their familial relationships, under current Montana law, same-sex couples cannot obtain the significant relationship and family protections and obligations automatically provided to similarly-situated different-sex couples who marry. Under the Montana Constitution, same-sex couples are barred from entering into the legal status of marriage in Montana. Nor does Montana provide any alternative statutory structure such as the domestic partnership or civil union systems adopted by a number of other states that would permit similarly-situated same-sex couples the ability to obtain the numerous relationship and family protections and obligations that are available to different-sex couples through the legal status of marriage.

4. Plaintiffs are not challenging the legality of the “marriage amendment,” Article XIII, Section 7 of the Montana Constitution, which defines “marriage” as being between a man and a woman. By this suit, Plaintiffs do not seek the opportunity to marry nor do they seek the designation of “marriage” for their relationships. While the marriage amendment precludes Plaintiffs from marrying, it does not abrogate the fundamental rights shared by all Montanans, including Plaintiffs, under Article II of the Montana Constitution. Plaintiffs simply seek the same opportunity to obtain the statutory protections and obligations that are offered by the State to 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 under Article II, Section 4 of the Montana Constitution. The categorical exclusion of Montanans such as Plaintiffs from the protections and obligations afforded 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 the Plaintiffs’ fundamental rights to privacy, dignity, and the pursuit of life’s basic necessities.

6. The exclusion of Plaintiffs from any legally recognized and protected same-sex relationship and family status violates the fundamental rights of same-sex couples, including Plaintiffs, by burdening and interfering with their rights to privacy, dignity, and the pursuit of life’s basic necessities, which are guaranteed under Article II, Sections 10, 4, and 3 of the Montana Constitution, respectively.

7. The exclusion of Plaintiffs from any legally recognized and protected same-sex relationship and family status is arbitrary and therefore denies Plaintiffs’ right to due process in violation of Article II, Section 17 of the Montana Constitution.

8. Plaintiffs seek a declaratory judgment declaring that the State’s failure to provide them and their families the opportunity to access the statutory protections and obligations that the State offers to similarly-situated different-sex couples and their families denies Plaintiffs equal protection and violates their rights to privacy, dignity, the pursuit of life’s basic necessities, and due process under the Montana Constitution.

9. Plaintiffs also seek an injunction prohibiting the State from continuing to deny Plaintiffs and their families the ability to obtain the numerous relationship and family protections and obligations available to different-sex couples and their families through marriage, and

requiring the State to offer same-sex couples and their families a legal status and statutory structure that confers the protections and obligations that the State offers to different-sex couples who marry, but not the status or designation of marriage.

PARTIES

Jan Donaldson and Mary Anne Guggenheim

10. Plaintiffs Jan Donaldson and Mary Anne Guggenheim are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Helena, Montana.

11. Jan, who is 66, and Mary Anne, who is 74, met in the early 1980s and have been together as a couple for twenty-seven years. Jan and Mary Anne each have a son and daughter from previous marriages. When the couple moved to Montana together in 1983, they lived with two of the children, raising the children together and making parenting decisions together. Two of Jan's and Mary Anne's children now have children of their own, and Jan and Mary Anne have been or will be proud and supportive grandparents to four grandchildren, one of whom died at birth and one of whom is due in August. Jan and Mary Anne visit their grandchildren as often as they can.

12. Mary Anne is a retired pediatric neurologist. Before she moved to Montana, Mary Anne was a professor of pediatric neurology at the University of Colorado; on moving to Montana, she opened her own practice with Jan, a registered nurse. The joint practice thrived, and was in operation for over twelve years, running child neurology clinics in Billings, Great Falls, and Kalispell. In 1998, Mary Anne was elected to the Montana House of Representatives as the representative for District 55, Lewis and Clark County. During the term she served in the state legislature, Mary Anne sponsored a bill that was passed in the 1999 legislative session that bars genetic discrimination by health insurance companies.

13. Mary Anne now serves as a medical consultant to the Montana Disability Determination Services and to the federal Vaccine Injury Compensation Program, and as a board member for the Montana Board of Medical Examiners and the Helena/Lewis and Clark County Consolidated Planning Board. After she retired from medical practice, Jan served as Executive Director of the Montana Chapter, American Academy of Pediatrics for five years, and she recently started a job as an outreach coordinator for a nonprofit organization that works to provide family support and education services for children with developmental delays or

disabilities. Jan is also the President of the Board of Montana Shares, a partnership of Montana-based nonprofit groups devoted to improving the quality of life in communities throughout Montana.

14. Jan and Mary Anne own their home together in joint tenancy with rights of survivorship and contribute equally to the mortgage. They have a joint bank account and share all living expenses. They have executed wills and powers of attorney and they have named each other as beneficiaries on retirement accounts. Unlike a different-sex married couple, however, state law does not automatically protect their interests in each others' property and they remain concerned that the legal steps they have taken will be inadequate to protect the remaining partner when one of them dies.

15. Jan and Mary Anne have committed to taking care of one another in sickness and in health, but they also worry that they when that commitment is most important, the law will prevent them from fulfilling it. Although the couple has executed health care directives and are careful to try to bring copies wherever they go, they are worried that such precautions may not matter in an emergency. This concern was borne out recently during Mary Anne's hip replacement surgery when a doctor's assistant refused to speak with Jan because the assistant did not have the appropriate release in his possession. Even though she had been in a committed relationship with Mary Anne for over twenty-five years, Jan was treated like a stranger.

16. Jan and Mary Anne feel that they have 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 feel vulnerable, knowing that they do not have the opportunity to access the significant protections offered to different-sex couples who marry.

Mary Leslie and Stacey Haugland

17. Plaintiffs Mary Leslie and Stacey Haugland are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Bozeman, Montana.

18. Stacey, who is 44 and a certified professional midwife, and Mary, who is 47 and a manager of the Meat/Seafood Department at the Community Food Co-op, have been together as a couple for twelve years. In 2003, the couple held a commitment ceremony at Emerson Hall in Bozeman to celebrate their relationship with over two hundred friends and family members. At the ceremony, all the 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.

19. Stacey and Mary own their home together in joint tenancy with rights of survivorship and contribute equally to the mortgage. They have completely merged their finances since the commitment ceremony, and have executed wills, powers of attorney and health care powers of attorney, and they have named each other as beneficiaries on retirement accounts. Stacey also has health insurance through Mary's job at the Co-op, which provides benefits for domestic partners.

20. Based on Mary's past experience, however, Stacey and Mary worry that their lack of a state-recognized relationship will leave them unprotected in times of greatest need. In 1995, Mary moved to Montana with her former partner, so that they could work as ski instructors at Big Sky Ski Resort. On their eighth anniversary, Christmas Day in 1996, Mary's former partner was killed in a tragic accident on Lone Peak, involving an avalanche control explosive. Although Mary and her former partner had, like Stacey and Mary have, taken legally available steps to try to protect their relationship, Mary found herself powerless in a number of essential ways following her former partner's death.

21. Grief-stricken after the accident, Mary was denied access to her former partner's remains, as the coroner explained that she had no legal relationship to her partner. Big Sky Ski Resort refused to give Mary bereavement leave. Because Mary's former partner did not leave a will and the state law that protects spouses in the event of intestacy could not apply, the family of Mary's former partner was able to take almost all of the partner's possessions, including half of the balance of a mutual fund account to which the couple had jointly contributed. The family also received the partner's Worker's Compensation Death benefits – money that by law goes to spouses, but not to the domestic partners of committed, intimate, same-sex couples. In addition, the family, unlike Mary, was able to seek damages against the ski resort through a wrongful death suit, a legal recourse that was not available to Mary even though she had been in a committed, intimate relationship with her partner for eight years. Without the cushion set up by the state to protect spouses in just these kinds of circumstances, Mary was forced for financial reasons to sell the condominium she had owned with her former partner in a joint tenancy.

22. Stacey and Mary feel very lucky to have found one another and to be together, and their relationship makes them feel safe, loved, and supported. They wish that the State of

Montana would recognize their commitment to one another the way they and their family and friends have recognized it, and offer them the protections and obligations that are offered to different-sex couples who marry.

Gary Stallings and Rick Wagner

23. Plaintiffs Gary Stallings and Rick Wagner are individuals who are in a committed, intimate, same-sex relationship and who reside together as domestic partners in Butte, Montana.

24. Gary, who is 59, and Rick, who is 54, have been together as a couple for 21 years, and they have lived in Montana since 1994. Rick has a Masters in social work, and for the past thirteen years, he has been a Mental Health Crisis Response Therapist at the Western Montana Mental Health Center. Gary worked in the insurance business for 23 years, until he contracted HIV and became too sick to work in the mid-1990s. Rick and Gary were very involved in raising Gary's three children from a previous marriage, and he and Rick regularly visit Gary's daughter and her children – their grandchildren. When he is well enough, Gary volunteers with the Butte AIDS Support Services, and he and Rick both received Governor's awards for their work with the statewide Community Planning Group for HIV prevention, an organization with which they have been affiliated for over ten years.

25. Gary and Rick own their home together in joint tenancy with rights of survivorship, and they equally contribute to the annual property taxes, having paid off the mortgage. Gary and Rick also have a joint checking account and share all their living expenses. Rick has medical power of attorney for Gary, but the couple worries about being able to take care of each other in an emergency. Gary's health has been extremely precarious over the years – he was given six weeks to live at one point in 1995 – and although Gary is stable now, Rick was diagnosed with a serious spinal condition a few years ago, and the fear of a life-threatening medical emergency is a real and constant concern for the couple.

26. In 1997, Gary and Rick had a commitment ceremony at Freedom Point Pavilion in Sheep's Head Forest, which is north of Butte. They invited family and friends, and the ceremony was performed by the minister at the United Church of Christ church they attend every week in Butte. They now say of each other that they "are one" and "joined at the hip." Because the state does not recognize their relationship, however, Gary and Rick do not feel secure that they will be able to be there for each other when their support and love is most needed.