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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SUSAN LATTA and TRACI EHLERS, *et al.*,

Plaintiffs,

v.

C.L. “BUTCH” OTTER, as Governor of the
State of Idaho, in his official capacity, *et al.*,

Defendants,

and

STATE OF IDAHO,

Defendant-Intervenor.

Case No. 1:13-cv-00482-CWD

**STATEMENT OF
MATERIAL FACTS IN
SUPPORT OF PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Local Civil Rule 7.1 (b)(1), Plaintiffs submit the following separate statement of material facts, in support of their motion for summary judgment. As set forth herein, the Plaintiffs and their children are harmed on a daily basis by Idaho's discriminatory marriage ban.

Susan Latta and Traci Ehlers

1. Susan Latta ("Sue") is 47 years old and has lived in Idaho for 22 years. Declaration of Susan Latta ("Latta Dec.") at ¶ 2. In 1994, she graduated from Boise State University with a Bachelor of Fine Arts in photography and in 2007, earned a Master of Fine Arts also from Boise State. *Id.* at ¶ 3.

2. Sue is a professional artist. *Id.* at ¶ 4. She is also an adjunct faculty member at Boise State University for the past seven years and has taught in the Art Department, the Engineering Department and the Foundational Studies Program. *Id.* She also owns an art related business, The Sculpture Studio. *Id.*

3. Sue has two grown children and two grandchildren. *Id.* at ¶¶ 7, 13. Her daughter A. was born in June 1989, and a son, J., was born in Oct. 1993. *Id.* at ¶ 7. Sue's daughter A. has two children, M. and L. Latta Dec. ¶ 13.

4. Traci Ehlers ("Traci") is 50 years old and had lived in Idaho for 38 years. Declaration of Traci Ehlers ("Ehlers Dec.") at ¶ 2. Traci co-owns a small local business, Western Trophy & Engraving, Inc. *Id.* at ¶ 4.

5. Traci and Sue began dating in 2003. *Id.* at ¶ 6; Latta Dec. at ¶ 9.

6. On August 4, 2008, they married in California. Latta Dec. at ¶ 12, Ehlers Dec. at ¶ 10.

7. Traci and Sue have been harmed by Idaho's failure to recognize their marriage, which has created complications for them and is demeaning in many meaningful respects. Latta Dec. at ¶¶ 14-17; Ehlers Dec. at ¶¶ 11-18.

8. For example, when Sue and Traci file their federal taxes this year as a married couple, they must also file separate income tax returns in Idaho, under the fiction that they aren't married. Latta Dec. at ¶ 14; Ehlers Dec. at ¶ 15. Due to the added complexities the State of Idaho has imposed on them as same-sex couple, they will need professional tax assistance. *Id.* In addition to the extra and unnecessary complexity and expense, it is demeaning to Sue and Traci to continue to be required by law to sign an official government legal document that labels them each as "single" when that statement is untrue. *Id.*

9. The property that Sue and Traci have acquired together since their marriage in 2008 has not become community property as a result of their marriage, as it would have if Idaho marriage recognized their marriage. Latta Dec. at ¶ 15; Ehlers Dec. at ¶ 16. In January 2014, Sue and Traci filed a quitclaim deed with the Ada County Recorder transferring the title to their home from joint property to marital community property, with the right of survivorship—a form of property ownership that is limited to legally married couples and that means that if one spouse were to die, the property would pass directly to the surviving spouse, without need of probate. *Id.* Although the Ada County Recorder accepted the deed for filing, under current Idaho law the form of ownership specified in the deed transfer may not be enforceable because Sue and Traci are a same-sex couple and Idaho refuses to recognize their marriage. *Id.*

10. As Traci and Sue get older, they are more and more concerned with the ramifications of their marriage not being legally recognized by Idaho. Latta Dec. at ¶ 16; Ehlers Dec. at ¶ 17. Many issues are implicated, including taxes, inheritance, social security benefits, hospital visitation rights, and medical decision-making. *Id.* In so many ways, Idaho's non-recognition of their marriage means they are not protected equally under the law. *Id.*

11. Further, Traci feels it is painful knowing Idaho law does not recognize her as the grandparent of her grandchildren, M. and L. and considers her to be a legal stranger to them. Ehlers Dec. at ¶ 13. Traci does not want her grandchildren to grow up experiencing pain from the fact that the law does not fully recognize or respect their family. *Id.*

12. On a personal level, it is painful for both Traci and Sue that the state they love, the place that they have made their home, where they vote and pay taxes, where they have businesses, where they participate, and volunteer, and donate, treats them as second-class citizens. Latta Dec. at ¶ 17; Ehlers Dec. at ¶ 18. Traci and Sue believe Idaho sees their family as less important than other families and somehow undeserving of equal protection under the law. *Id.*

Lori and Sharene Watsen

13. Lori Watsen ("Lori") is 39 years old and lives in Boise, Idaho.
Declaration of Lori Watsen ("Lori Watsen Dec.") at ¶ 1.

14. Lori is a Licensed Clinical Social Worker in the State of Idaho and employed by Boise State University, where she is an Associate Field Director for the Boise State University School of Social Work. *Id.* at ¶ 2. Lori graduated from Reed

College with a B.A. in Psychology in 1996, and was awarded her Masters of Social Work by Boise State University in May of 2002. *Id.* at ¶ 7.

15. Sharene Watsen (“Sharene”) is 34 years old and lives in Boise, Idaho. Declaration of Sharene Watsen (“Sharene Watsen Dec.”) at ¶ 1.

16. Sharene is a Physician Assistant with St. Luke's in an outpatient endocrinology clinic. Sharene Watsen Dec. at ¶ 2. Sharene graduated from Gustavus Adolphus College in 2002 with a B.A. in Biology and Religion. *Id.* at ¶¶ 3, 5. In 2005, she was awarded a Masters of Physician Assistant Studies from Oregon Health Science University in Portland, Oregon. *Id.* at ¶ 5.

17. Lori and Sharene met through friends in November 2009, began dating, and have been together ever since. *Id.* at ¶ 9; Lori Watsen Dec. ¶ at 13.

18. In October 2011 Sharene and Lori married in New York. Sharene Watsen Dec. ¶ at 12; Lori Watsen Dec. at ¶ 15.

19. In 2013 Sharene gave birth to their child, a boy. Sharene Watsen Dec. at ¶ 14; Lori Watsen Dec. at ¶ 22.

20. During Sharene’s pregnancy, Sharene and Lori decided to merge their last names to create a new family name that they could share with their child. Sharene Watsen Dec. at ¶ 15; Lori Watsen Dec. at ¶ 24. Sharene changed her name from Elizabeth Gossen to Sharene Elizabeth Watsen. *Id.* Lori changed her name from Lori Watts to Lori Watsen. *Id.*

21. Lori and Sharene have been harmed by Idaho’s failure to recognize their marriage which has created complications for them and is demeaning in several respects. Sharene Watsen Dec. at ¶¶ 14, 17-24; Lori Watsen Dec. at ¶¶ 20, 25-35.

22. Filling out the birth certificate form at the hospital after the birth of their son was frustrating as was no way to accurately represent their family, as the form allowed only one line for “mother” and a second line for “father.” Sharene Watsen Dec. at ¶ 14; Lori Watsen Dec. at ¶ 27. They wrote in the margins a special request that Lori be listed as a second parent on this document, however, the birth certificate arrived in the mail with only Sharene's name on it. *Id.* If Idaho had recognized their marriage, then Lori would have been presumed to be the parent of her son at his birth, without the need for an adoption. *Id.*

23. During the summer of 2013, Sharene and Lori incurred the expense of hiring an attorney to assist them with an adoption petition in state court in Ada County, so that Lori could legally adopt their son through a second-parent adoption. Sharene Watsen Dec. at ¶ 17; Lori Watsen Dec. at ¶ 28. The adoption petition was supported by both of their extended families, and included extensive documentation. *Id.* On August 29, 2013, a magistrate judge dismissed the petition summarily, without a hearing, holding that under Idaho law Lori did not have legal standing to file a petition to adopt their child because Sharene and Lori are not considered married under Idaho law. *Id.*

24. The denial of adoption by the Idaho court in August 2013 has been very difficult for Lori and Sharene. Sharene Watsen Dec. at ¶ 19; Lori Watsen Dec. at ¶ 30. They are an intentional, carefully planned, intact, and loving family. *Id.* It is demeaning and degrading to them and to the dignity of their family for Lori not to be legally recognized as a parent to their son. *Id.*

25. If Idaho were to recognize Lori and Sharene's marriage, Lori would be able to and would file a petition to adopt as a step-parent, which would allow the judge to

approve the adoption without the need for a costly home study that is required for other adoptions. Sharene Watsen Dec. at ¶ 18; Lori Watsen Dec. at ¶ 29.

26. Because the state court has denied Lori's petition to adopt their son, they have the added expense and inconvenience of having to create a new Medical Power of Attorney every six months, so that Lori can also consent to their son's medical treatment and take him to doctor appointments. Sharene Watsen Dec. at ¶ 20; Lori Watsen Dec. at ¶ 31.

27. But this in no way creates the full legal parent-child relationship that should be recognized and protected. *Id.* Idaho's refusal to recognize their marriage has prevented Lori from being recognized as a legal parent, which harms their son in many direct and indirect ways, including depriving him of the irreplaceable legal, social and emotional security of having two legal parents. *Id.*

28. Lori and Sharene do not want their son to grow up and think that there is something wrong with his family or have difficulty understanding the integrity or closeness of his family because Idaho does not recognize their marriage. *Id.* If Idaho recognized their marriage at the time of their son's birth, then Lori would have automatically been recognized her son's parent. *Id.*

29. Idaho's refusal to recognize their marriage and to regard Lori as a legal parent to their son also harms both Lori and Sharene. Sharene Watsen Dec. at ¶ 21; Lori Watsen Dec. at ¶ 32. Lori cannot provide parental consent for their son in legal, educational or medical settings. *Id.* This creates a burden upon their family as they do not have the benefit of both parents sharing numerous and important parental responsibilities. *Id.*

30. Sharene and Lori intend to file a joint federal tax return this year. Sharene Watsen Dec. at ¶ 22; Lori Watsen Dec. at ¶ 33. But because Idaho does not respect their marriage, they must also file income tax returns separately in Idaho, under the fiction that they aren't married, when, in fact, they are. *Id.* While in the past they have prepared tax returns without the assistance of a tax preparation professional, due to the added complexities the State of Idaho has imposed on married, same-sex couples, they must now obtain professional tax assistance. *Id.* In addition to the extra complexity and expense, it is demeaning and morally offensive to sign an official government legal document that labels them as "single" when they know that is a false statement. *Id.*

31. Sharene and Lori also have not historically been able to obtain spousal coverage on each other's health insurance or other benefit plans at their places of employment, although they hope to in the near future. Sharene Watsen Dec. ¶ 23; Lori Watsen Dec. ¶ 34. They also have advance directives in place to cover end of life decision-making for one another, although there is no guarantee that their wishes will be honored since Idaho does not recognize their marriage. *Id.* They are in the process of having new wills drafted, to ensure that they have as much protection as possible in place for each another and for their son. *Id.*

32. Since their marriage in 2011, the property Lori and Sharene have acquired since that time is separate property. Sharene Watsen Dec. at ¶ 24; Lori Watsen Dec. at ¶ 35. It is not considered community property as a result of their marriage, as it would be if Idaho recognized their marriage. *Id.*

33. In January 2014, Lori filed a quitclaim deed with the Ada County Recorder transferring the title to their home from her separate property to marital

community property with the right of survivorship. Lori Watsen Dec. at ¶ 35.

Community property, with the right of survivorship is a form of property ownership limited to legally married couples. *Id.* If one spouse dies, property held as community property with the right of survivorship passes directly to the surviving spouse. *Id.*

Although the Ada County Recorder accepted the deed for filing, under current Idaho law the form of ownership specified in the deed transfer may not be enforceable because Sharene and Lori are a same-sex couple. *Id.*

34. Likewise, in January 2014, Sharene filed a quitclaim deed with the Ada County Recorder transferring the title to a rental property she owns from her name to marital community property, with the right of survivorship. Sharene Watsen Dec. at ¶ 24. Although the Ada County Recorder accepted the deed for filing, under current Idaho law the form of ownership specified in the deed transfer may not be enforceable because Sharene and Lori are a same-sex couple. *Id.*

Andrea Altmayer and Shelia Robertson

35. Andrea Altmayer (“Andrea”) is 44 years old and lives in Boise, Idaho. Declaration of Andrea Altmayer (“Altmayer Dec.”) at ¶ 1.

36. In 2004 Andrea received a B.S. in Health Sciences from Boise State University. *Id.* at ¶ 3. She is a certified massage therapist, having attended the Idaho Institute of Wholistic Studies in 1996-1997. *Id.*

37. Shelia Robertson is 43 years old and lives in Boise, Idaho. Declaration of Shelia Robertson (“Shelia Robertson Dec.”) at ¶ 1.

38. Shelia graduated from Utah State University with a B.S. in elementary education in 1993, and was awarded her Masters degree in Communicative Disorders in

1995. *Id.* at ¶ 3. In 2008, Shelia received her national certification as a sign language interpreter. *Id.* She is the 62nd interpreter in the United States to be certified with a National Interpreter Certification-Advanced Certification. *Id.* Shelia is a Teacher of the Deaf in the public schools in Meridian, Idaho in Joint School District No. 2 and also works part time at Sorenson Communications as a Video Relay Interpreter. *Id.* at ¶ 4.

39. Shelia and Andrea were introduced through a mutual friend over sixteen years ago. *Id.* at ¶ 8; Altmayer Dec. at ¶ 6. They have known each other for over sixteen years and have been in a committed, exclusive relationship since that time. Shelia Robertson Dec. at ¶¶ 8-9; Altmayer Dec. at ¶ 6.

40. Shelia and Andrea are life partners. Shelia Robertson Dec. at ¶¶ 9, 15; Altmayer Dec. at ¶ 6. They want to spend the rest of their lives together, and wish to marry in Idaho. *Id.*

41. In 2009, Andrea gave birth to their child, a boy. Shelia Robertson Dec. at ¶ 10; Altmayer Dec. at ¶ 7.

42. Andrea and Shelia have been harmed by Idaho's marriage ban in many significant ways. Shelia Robertson Dec. at ¶¶ 11-12, 15-18; Altmayer Dec. at ¶¶ 8-12.

43. Because Idaho law excludes Shelia and Andrea from marriage, as a same-sex couple, their son and they are denied the security, recognition and protection that Idaho law provides to married opposite sex couples and their children. Shelia Robertson Dec. at ¶ 12; Altmayer Dec. at ¶ 9. Had Shelia and Andrea been permitted to be married at the time of their son's birth, Shelia would have been presumed one of their son's parents, without need of any court proceedings. *Id.* Instead, Shelia is not recognized as their son's parent. *Id.* This has sweeping ramifications in legal, educational and medical

settings and is detrimental to him and them as a family. *Id.* For example, Shelia cannot consent to medical treatment for him. *Id.*

44. It also creates a burden upon them as a family because Shelia cannot share numerous important parental responsibilities with Andrea. *Id.* Andrea and Shelia do not want their son to grow up thinking that there is something wrong with his family or to have difficulty understanding the integrity or closeness of his family because they cannot get married. *Id.*

45. Not having the right to marry one another negatively impacts their family in many additional ways. Shelia Robertson Dec. at ¶ 18; Altmayer Dec. ¶ 11. For example, neither their son nor Andrea can obtain health insurance coverage through Shelia's employer. *Id.* Shelia has no recognized legal relationship to their son, even though she supported Andrea through her pregnancy and has raised him with Andrea since his birth. *Id.* They do not have the right to visit one another, or direct one another's care, if either needs medical care and becomes incapacitated. *Id.* They cannot file their taxes jointly, and the property they have acquired together is not considered community property. *Id.* They also have to take additional and costly legal steps to protect one another and their son in the event either one of them were to die. *Id.*

46. On November 6, 2013, Shelia and Andrea went to the Ada County Recorder at the Ada County Clerk's Office in Boise to apply for a marriage license. Shelia Robertson Dec. at ¶ 17; Altmayer Dec. at ¶ 12. Other than the fact that Shelia and Andrea are both women, they meet all the legal requirements for marriage in Idaho. *Id.* The Recorder's office did not issue them a license, and the experience of being denied a

license was demeaning to Andrea and Shelia. *Id.* The Recorder's office employee stated that it would be contrary to Idaho Code, and they were turned away. *Id.*

Amber Beierle and Rachael Robertson

47. Amber Beierle ("Amber") is 33 years old and has lived in Idaho since her birth. Declaration of Amber Beierle ("Beierle Dec.") at ¶ 1.

48. In 2004, Amber earned her B.A. in History, Secondary Education at Boise State University. *Id.* at ¶ 4. She completed her graduate degree in Applied Historical Research in 2007, and served as the first City Historian for the City of Boise. *Id.*

49. Since 2009, Amber has been the Education Specialist and Visitor Services Coordinator at the Old Idaho Penitentiary, an Idaho historic site. *Id.* at ¶ 5.

50. Rachael Robertson ("Rachael") is 31 years old, lives in Boise, Idaho, and manages a plumbing wholesale warehouse. Declaration of Rachael Robertson ("Rachael Robertson Dec.") at ¶ 2. Except for her military service, she has lived in Idaho her entire life. *Id.*

51. Rachael joined the Idaho Army National Guard as a fulltime soldier in April 2003. *Id.* at ¶ 5. From June 2004 to November 2005, she served in Iraq in Operation Iraqi Freedom III. *Id.* As a soldier of the 116th Cavalry Brigade Combat Team, she drove a Humvee in a convoy in a platoon, which provided personal security for a Brigadier General. *Id.* This convoy was attacked by enemy fire, after which she received the Army Combat Metal. *Id.* During that tour of duty, she was also awarded a Soldier Good Conduct Medal. *Id.* Rachael was honorably discharged from the military in June 2008. *Id.*

52. After her military service, Rachael returned home to Idaho and found employment in the banking industry. *Id.* at ¶ 6. She was abruptly laid off in July 2010. *Id.* She asked her supervisor why she had been terminated, and her manager said she made some staff uncomfortable because of rumors about her, which Rachael understood to be a reference to her sexual orientation. *Id.*

53. Amber and Rachael met through mutual friends in 2006, and began dating in 2010. Beierle Dec. at ¶¶ 10-11; Rachael Robertson Dec. at ¶¶ 9-10. They have been in a committed, exclusive relationship since Valentine's Day 2011. Beierle Dec. at ¶ 11; Rachael Robertson Dec. at ¶ 10.

54. Amber and Rachael want to spend the rest of their lives together, and wish to marry in Idaho. Beierle Dec. at ¶¶ 13-15; Rachael Robertson Dec. at ¶¶ 12, 14.

55. Amber and Rachael have been harmed by Idaho's marriage ban in many significant ways. Rachael Robertson Dec. at ¶¶ 10-11, 13, 15-16; Beierle Dec. at ¶¶ 11-18.

56. Amber and Rachael have started planning their family and look forward to having children. Rachael Robertson Dec. at ¶ 10; Beierle Dec. at ¶ 11. They would like to get married before they have children. *Id.* Neither Amber or Rachael want their children growing up thinking that there is something wrong with their family or to have difficulty understanding the integrity or closeness of their family because their parents cannot get married. *Id.*

57. Both Amber and Rachael deeply wish to experience the unique bond that marriage makes possible, as well as the safety net of benefits and responsibilities that

allow legally married couples to take care of one another and function as legal family unit. Rachael Robertson Dec. at ¶ 14-15; Beierle Dec. at ¶ 14.

58. Amber and Rachael bought a house together in December 2012. Rachael Robertson Dec. at ¶ 13; Beierle Dec. at ¶¶ 16. They attempted to get a mortgage through the Veteran's Administration because of Rachael's status as a veteran, but the agency indicated that it would not allow Amber to be on the mortgage with Rachael. *Id.* Instead, they took out a traditional loan, in Amber's name. *Id.* Amber then filed a Quit Claim deed transferring the property to both of them, to ensure Rachael's was also on the title to their home. *Id.*

59. If Rachael and Amber were allowed to marry, Amber could provide health insurance coverage for Rachael on her state employee plan. Rachael Robertson Dec. at ¶ 15; Beierle Dec. at ¶ 17. They would like the property they have acquired together to be community property. *Id.* They would like to file joint tax returns, and to be considered as one another's spouse for visitation purposes at medical institutions and to be able to make decisions for one another, in the event either were incapacitated. *Id.*

60. Should Rachael die, she wants Amber to receive spousal veteran benefits, including both financial benefits and the right for them to be buried together at the Idaho Veterans Cemetery. Rachael Robertson Dec. at ¶ 15. It is Rachael's understanding that while the spouses of veterans can be buried together at that cemetery, the cemetery currently refuses this right to same-sex couples. *Id.*

61. On November 6, 2013, Rachael and Amber went to the Ada County Recorder at the Ada County Clerk's Office in Boise to apply for a marriage license. Rachael Robertson Dec. at ¶ 16; Beierle Dec. at ¶ 18. Other than the fact that Rachael

and Amber are both women, they meet all the legal requirements for marriage in Idaho.

Id. The Recorder's office did not issue them a license, and the experience of being denied a license was demeaning to both Amber and Rachael. *Id.* The Recorder's office employee stated that it would be contrary to Idaho Code, and they were turned away. *Id.*

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Respectfully submitted,

_____/s/_____
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