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| DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO<br><br>Adams County Justice Center<br>1100 Judicial Center Drive<br>Brighton, CO 80601   | DATE FILED: December 9, 2013 6:50 PM<br>FILING ID: 28383EEC5D26F<br>CASE NUMBER: 2013CV32572                     |
| <hr/> Plaintiffs: REBECCA BRINKMAN AND MARGARET BURD,<br><br>v.<br><br>Defendants: KAREN LONG, in her official capacity as Clerk and Recorder of Adams County.<br><br><hr/> ADAMS COUNTY ATTORNEY'S OFFICE<br>Heidi M. Miller # 33923<br>County Attorney<br>Michelle T. Michel #36930<br>Assistant County Attorney<br>4430 South Adams County Parkway<br>5 <sup>th</sup> Floor, Suite C5000B<br>Brighton, CO 80601-8206<br>Phone: 720-523-6116<br>Fax: 720-523-6114<br>hmiller@adcogov.org<br>mtyler@adcogov.org | <hr/> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> Case No.: 13CV032572<br><br>Division: C |
| <p style="text-align: center;"><b>MOTION TO DISMISS FOR FAILURE TO JOIN NECESSARY PARTY<br/>PURSUANT TO C.R.C.P. 19</b></p>  |  |

Defendant Karen Long, Adams County Clerk and Recorder, through counsel Heidi M. Miller, County Attorney, and Michelle Tyler Michel, Assistant County Attorney, move the Court to dismiss this action and as grounds therefore, state as follows:

1. Pursuant to C.R.C.P. 121 § 1-15(8), undersigned counsel has conferred with Plaintiffs' counsel, Thomas Russell, regarding the relief sought herein. Undersigned counsel expressed that it is Defendant's position that the State of Colorado is an indispensable party to this action. Plaintiffs' counsel disagrees.

2. C.R.C.P. 19(a) mandates that:

a person who is properly subject to service of process in the action shall be joined as a party in the action if: (1) In his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may: (A) As a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

3. This case challenges the constitutionality of Article II, Section 31 of the Colorado Constitution and C.R.S. § 14-2-104(1)(b). (Complaint, ¶¶ 33 and 52). Plaintiffs seek an injunction against enforcement of these laws and a declaration that these laws are unconstitutional. (*Id.*).

4. Defendant believes that the State of Colorado is a necessary party pursuant to C.R.C.P. 19(a) because any order of this court would address the constitutionality of state law and would affect the interests of the entire State. The State clearly has an interest in whether state law is declared unconstitutional. *See*, C.R.C.P. 57(j) and C.R.S. § 13-51-115 (recognizing that the attorney general of the state must be served and is entitled to be heard when a statute is alleged to be unconstitutional).

5. Further, there is great risk of multiple or inconsistent rulings if this action goes forward without the involvement of the State. If Plaintiffs prevail, the Adams County Clerk and Recorder could be ordered to take action that is different from every other county in the state.

6. There is no allegation of wrongdoing on the part of the Adams County Clerk and Recorder. The Adams County Clerk and Recorder is only named because her office properly implemented Colorado law. The statute and constitutional section at issue in this case are Colorado laws. Although the Clerk and Recorder is obligated to follow state laws, she is not obligated to defend their constitutionality. The Adams County Clerk and Recorder does not plan to actively defend this case and will ultimately file a disclaimer of interest. If the State of Colorado is not a participant, there will be no active defense of this action.

7. The Attorney General has been served in this case, but the State is not a party. (See November 22, 2013 Certificate of Compliance from Plaintiffs). The County Attorney's Office has attempted on multiple occasions to consult with the Attorney General's Office regarding its intent to intervene in this case. To date, the Attorney General's Office has not responded to inquiries.

8. Since this case cannot effectively be resolved without the involvement of the State, Defendant seeks an order from this Court dismissing the action unless the State is made a party. "Since a declaratory judgment action cannot bind non-parties, any entity or person with an existing or potential interest in the outcome should be named as a party in order to fully and finally resolve the controversy at issue." *Constitution Assocs. v. New Hampshire Ins. Co.*, 930 P.2d 556, 562 (Colo. 1996).

**WHEREFORE**, for the reasons set forth above, Defendant Karen Long, Adams County Clerk and Recorder, seeks an order dismissing this action for failure to join a necessary party, or in the alternative, ordering Plaintiffs to amend their Complaint to name the State of Colorado as a Defendant, and for such other and further relief as the Court deems necessary.

Dated this 9<sup>th</sup> day of December 2013.

Respectfully submitted,

s/ Heidi M. Miller, #33923  
Adams County Attorney

#### CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was served via ICCES, this 9<sup>th</sup> day of December 2013, addressed to the following:

Ralph Ogden – [Irishcorky@aol.com](mailto:Irishcorky@aol.com)

Thomas Russell – [tdrlaw@comcast.net](mailto:tdrlaw@comcast.net)

s/Heidi Miller

Pursuant to C.R.C.P. 121 Section 1-26(7), a scanned copy of the original signed foregoing document is retained at the Adams County Attorney's Office and is available for inspection upon request.