IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: The Marriage of
SONYA LYNN GOSSARD,
Petitioner,
and
MARY COLLEEN BURNS,
Respondent.
_____/

FAMILY DIVISION
CASE NO.

VERIFIED PETITION FOR DISSOLUTION OF MARRIAGE/CIVIL UNION, AND/OR DECLARATORY JUDGMENT TO DETERMINE PARENTAGE AND OTHER RELATED RELIEF

The Petitioner/Mother, Sonya Lynn Gossard, by and through her undersigned counsel, hereby files this Petition for Dissolution of Marriage/Civil Union, Declaratory Judgment, for Determination of Parentage and for Related Relief, and states and follows:

1. This is an action for dissolution of marriage and to pursuant Fl. St. sec 742.011[1], 742.11[2], 742.13[3] to establish parenthood and to determine parental responsibility, timesharing, and child support and other relief.

[1]Fla. Stat. Ann. § 742.011 Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the child when paternity has not been established by law or otherwise.

[2] Fla. Stat. Ann. § 742.11 provides (1) Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by the means of artificial or in vitro insemination is irrebuttably presumed to be the child of the husband and wife, provided that both husband and wife have consented in writing to the artificial or in vitro insemination

[3] Fla. Stat. Ann. § 742.13 (2) provides: "Commissioning couple" means the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents.

PARTIES

2. The parties are two women who were in a committed familial relationship for 14 years, from 2001-2014. They traveled to Vermont and entered a Civil Union in 2005 in order to formalize their commitment to each other and in anticipation of expanding their family to include a child whom they would raise as equal co-parents. Pursuant to that decision, the parties jointly paid for and participated in efforts to become pregnant through artificial insemination with donor sperm. Respondent gave birth to child, S.W.B., in mid-2006.

3. The Petitioner, Sonya Gossard, is sui juris and has been a resident of the State of Florida for more than six (6) months before filing this Petition.

4. The Respondent's is sui juris and is a resident of the Palm Beach County , Florida.

5. Until on or about December 17, 2014, when she vacated the home in which the parties had resided together, Respondent resided with Petitioner and the minor child S.W.B.

6. The parties are legally joined by civil union under Vermont law on March 29, 2005 the parties were joined by a civil union.

7. The marriage/union of the parties is irretrievably broken.

8. The child, S.W.B., who is an eight year old boy, was conceived by in vitro fertilization during the civil union of the parties.

9. Neither party is a member of the military.

10. On December 17, 2014, the parties separated and Respondent removed the eight year old child, S.W.B. from the home the parties had shared.

11. A completed Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit, Florida Supreme Court Approved Family Law Form 12.902(d), is filed contemporaneously with this Petition.

12. The minor child's residence was with both parties from his birth through December 17, 2014.

THE VERMONT CIVIL UNION

13. On March 29, 2005 the parties were joined by a civil union, authorized by the state of Vermont under their domestic relations laws. See Vermont Law Chapter 23, section 3, 15 V.S.A. sec. 1201 et seq. Some of the legislative findings of the general assembly of the state of Vermont, H.847[4] appear in the footnote below.

14. In 2005 Civil union was the only form of legal relationship afforded to same sex couples in Vermont.

15. Vermont Civil unions established prior to September 1, 2009 remain in full force and effect. Vermont Law Chapter 23, section 3, 15 V.S.A. sec. 1201 et seq.

16. Vermont has conferred all the benefits and obligations and protections of a spouse of marriage on couples who entered into a civil union. Vermont Law Chapter 23, section 3, 15 V.S.A. sec. 1204.

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[4] 1. LEGISLATIVE FINDINGS
(3) legal recognition of civil marriage by the state is the primary, and, in a number of instances, the exclusive source of numerous benefits, responsibilities and protections under the laws of the state for married persons and their children....(7) the state has a strong interest in promoting stable and lasting families, including families based upon a same-sex couple....(11)...Extending the benefits and protections of marriage to same sex couples through a system of civil unions preserves the fundamental constitutional rights of each ....".

17. An individual who is party to an undissolved Vermont civil union cannot marry another person. Vermont Law Chapter 23, section 3, 15 V.S.A. sec. 1202 and 1203(c)

18. According to Vermont statute sec 1204(f):

> The rights of parties to a civil union, with respect to a child of whom either becomes a natural parent during the term of the civil union, shall be the same as those of a married couple, with respect to a child of whom either spouse becomes a natural parent during the marriage.

19. Vermont civil unions have been recognized as the equivalent of marriage in Florida as well as other states. See e.g., *Brassner v Lade*, Case No. 13-012058 (37) (by Judge Dale C. Cohen: recognizing the validity of the Vermont civil union on December 8, 2014 by Order Granting Petitioner's Motion for Declaratory Judgment and also determining Florida Constitution Article 1, section 27 and Fl. St. 741.212 void and unenforceable as violating due process and equal protection clauses) Attached as Exhibit1, *Elia-Warnken v Elia*, 463 Mass 29 (2012) and *Debra H., v Janice R.*, 930 N.E.2d 184 (NY 2010).

20. The civil union of the parties is entitled to legal recognition by this court and by the State of Florida.

21. The Circuit Court in Broward County, Judge Dale Cohen, recognized the validity of and dissolved a Vermont civil union – exactly what these parties have- on December 18, 2014. (*Brassner v Lade*, Case No. 13-012058 (37))

22. The civil union of the parties is entitled to full faith and credit from this Court, pursuant to Article IV, Section 1 of the Constitution of the United States.

23. On the basis of comity the civil union of the parties is entitled to recognition by this court. See e.g., *Elia-Warnken v Elia*, 463 Mass 29 (2012) and *Debra H., v Janice R.*, 930 N.E.2d 184 (NY 2010).

24. The current status of the law supports the application of chapter 61 and 742 equally to same sex couples. Only to the extent that this Court may interpret the law as not applying in a gender neutral manner would purport to deny Petitioner the legal right to parent her minor child and to obtain a dissolution of her marriage, Article I, section 27 of the Fl. Constitution and Fl. St. 741.212 are unconstitutional and violate the due process and equal protection clauses of the United States Constitution. *Brenner v Scott*, 999 F.Supp, 1278, 1290 (N.D.Fla 2014), and *Brenner v Scott* 2015 WL 44260 (January 1, 2015), *Maxwell v Stephens Maxwell,* Case # 502014DF010428XXXXMB, division FD, Order Granting Petition to Determine Parenthood and Related Relief Final Judgment Recognizing Marriage of Lisa Marina Maxwell and Christine Stephens-Maxwell and Determining that Lisa Maxwell is the parent of [omitted name of minor child] dated January 21, 2015. Attached as Exhibit 2. To the extent Fl. St. 742.011 would purport to deny the Petitioner the right to bring this action it is unconstitutional, and *Brassner, supra.*

25. Brenner has declared Article I, section 27 of the Fl. Constitution and Fl. St. sec. 741.212 as requiring a gender neutral application. Therefore only should

this Court fail to recognize the validity of the Vermont Civil union with its statutory rights, protections and obligations, as the equivalent of a Florida marriage do they violate the equal protection and due process clauses of the U.S. Constitution, *Brassner v Lade, supra,* as well as the full faith and credit provisions of Article IV, Section 1 of the Constitution of the United States.

IN VITRO FERTILIZATION

26. During the union of the parties they jointly decided to have a child and both consented to the in vitro insemination of the Respondent in writing.

27. The couple tried insemination multiple times in two states.

28. The Respondent became pregnant with S.W.B. by virtue of in vitro fertilization performed at their request and paid for in part by Petitioner.

29. The donor was picked who had similar characteristics to Petitioner.

30. The Petitioner and Respondent were the "commissioning couple" as that term is used in Florida statutes chapter 742.11 and 742.13 and interpreted by *DMT v TMH*, 129 So.3d 320, 342-343 (Fla. 2013) (which deemed as unconstitutional a failure to apply it to same sex couples). To the extent those statutes do not include same sex couples, they are unconstitutional.

31. Petitioner contributed to Respondent's living, medical and birthing expenses before and during the pregnancy.

THE BIRTH OF THE MINOR CHILD

32. In mid 2006 the parties' son, S.W.B. was born to the Respondent.

33. Under Vermont law there is no question but that S.W.B. is the child of the parties. Vermont Law Chapter 23, section 3, 15 V.S.A. sec. 1204(f). See also, e.g., *Debra H., v Janice R., 930 N.E.2d 184 (NY 2010)* (finding the non biological parent in a same sex Vermont Civil union to be the parent of the parties child conceived via in vitro fertilization considering a factually analogous situation).

34. S.W.B. is a child born in the wedlock of the parties by in vitro fertilization with the joint written consent of the parties and should be irrefutably presumed to be the child of the parties.

35. During the pregnancy, the parties jointly prepared wills and trusts on or about June 13, 2006, that provided, *inter alia*, in the event of Respondent's death or incapacity the Petitioner would be the guardian for S.W.B. (at that time same sex adoption was not legal in Florida).

36. Only to the extent that Fl. St. 742.011. 742.11 and 742.13 would fail to accord S.W.B. legitimacy as the child of a married couple and would delegitimize the child, there is no rational basis to do so and that statute, as applied to this case, is unconstitutional. See, e.g., *Maxwell v Stephens Maxwell*, case # 502014DF010428XXXXMB, division FD, Order Granting Petition to Determine Parenthood and Related Relief Final Judgment Recognizing Marriage of Lisa Marina Maxwell and Christine Stephens-Maxwell and Determining that Lisa Maxwell is the Parent of [child's name] dated January 21, 2015.

37. It is well recognized that the right to parent and to familial association are fundamental. See e.g. *TMH v DMT, supra.*

38. It is also well recognized in accordance with the public policy of the state of Florida that:

> [T]he State would be hard pressed to find a reason why a child would not be better off having two loving parents in [his] life, regardless of whether those parents are of the same sex, than [he] would by having only one parent. D.M.T. v. T.M.H., 129 So. 3d 320, 344 (Fla. 2013), reh'g denied (Dec. 12, 2013).

FACTS SUPPORTING PARENTAGE, PARENTAL RESPONSIBILITY AND TIMESHARING

39. The parties sent out joint birth announcements welcoming their "Little Slugger". See attached Exhibit 3.

40. The parties jointly picked the child's name.

41. On December 2, 2006 the parties had S.W.B. christened and the Minister certified that he was the child of both parties. See attached Exhibit 4.[5]

42. During S.W.B.'s lifetime, the parties have jointly held themselves out as his parents on medical forms and school related documents.

43. Throughout S.W.B.'s lifetime, both parties have co-parented him and until Respondent left with S.W.B. on or about December 17, 2014, prior thereto his only legal residence has been with both parties.

44. During S.W.B.'s lifetime, Respondent fostered a parent child relationship between S.W.B. and the minor child.

45. Petitioner provides and pays for medical insurance for S.W.B. on her policy.

[5] The hospital refused to list Petitioner on the birth certificate.

46. Petitioner has provided support to S.W.B. through the date of the parties separation.

47. Throughout his life S.W.B. has called Petitioner "Mommy" and Respondent "Momma". The child understands the Petitioner and Respondent to be his parents.

48. During his lifetime Petitioner has been S.W.B.'s primary caregiver. Petitioner is the parent who helps S.W.B. with his homework and school projects, cooks the child's meals, packs his school lunches, acts as the room parent (this school year she is the snack and treasure box parent in school) is a PTA member, volunteered at school events, cuts the child's nails, takes S.W.B. clothes shopping, and attended (with the Respondent) the child's medical appointments.[6]

49. Petitioner has stood *in loco parentis* to S.W.B.

50. Petitioner has demonstrated a full commitment to parent S.W.B., accepting both the rights and obligations of parenthood.

51. Petitioner stands ready to continue to provide support, including health insurance, to S.W.B.

52. Petitioner is anxious to commence overnight equal timesharing and it is in the best interest of the child for him to commence regular timesharing with Petitioner.

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[6] As of the drafting of this petition, on February 3, 2015, Petitioner has learned that respondent has removed her access to the child's school records. On February 4, 2015 Petitioner was notified that the Respondent terminated her ability to even volunteer in S.W.B.'s classroom, thus terminating her ability to have contact with him.

53. Petitioner relied on the representations of the Respondent that they would have a child together and raise him together and has changed her position in reliance to her detrimentally.

DETRIMENT TO THE MINOR CHILD

54. As their relationship was becoming unsteady, Respondent has increasingly attempted to assert more control over S.W.B. and attempting to cut the Petitioner out of S.W.B. 's life and attempting to alienate him from his Mommy to the detriment of the child's well-being.

55. Respondent did not inform Petitioner of her new residential address after she left and has not to date.

56. Respondent has interfered with S.W.B.'s relationship with his Mommy, the Petitioner, and has limited S.W.B.'s access to Petitioner since she vacated the home in which they previously jointly resided. These actions have caused detrimental harm to S.W.B.

57. S.W.B. has not been able to have any meaningful timesharing (more than a few hours or at school) with Petitioner since Christmas 2014 and S.W.B has not had any overnight timesharing with Petitioner despite Petitioner's request therefore. Respondent ignores Petitioner's requests for contact and communication with S.W.B.

58. Petitioner has the bedroom and playroom of the child ready for his return for overnight timesharing.

59. During the decline of their relationship but still during the parties' joint residency, if she was annoyed with Petitioner, Respondent would threaten Petitioner with filing false and unfounded kidnapping charges when she knew full well the location of the child and his Mommy (i.e. a visit to Chuck E Cheese).

60. Petitioner is genuinely concerned that at any time that she has S.W.B. with her that Respondent will make a false allegation of kidnapping against her.

61. Respondent has also threatened other false and unfounded allegation against Petitioner's family members in an attempt to alienate Petitioner and the minor child against Petitioner's family.

62. The Respondent has refused to provide her current address to the Petitioner and the Petitioner does not know if the Respondent plans to take the child and leave the jurisdiction of this Court. During the breakdown of their relationship the Respondent removed the child from the state for prolonged periods of time without the consent of advance notice to Petitioner. Petitioner is genuinely concerned that at any time S.W.B. may disappear with Respondent prior to being able to establish their legal relationship in this state, the only Court with jurisdiction over the parties and the child. That would irreparably harm both the Petitioner and the minor child and there is no adequate remedy at law. Petitioner believes that she has a likelihood of success on the merits in this matter.

63. It is detrimental to S.W.B. to be separated from his Mommy and for his Mommy not to be accorded parental rights and responsibilities.

64. S.W.B. is a young child and should have frequent contact with both parents. He should not have to suffer by losing a parent because his Mommy and Momma have stopped living together.

65. It is not in S.W.B.'s best interest to have his contact limited or cut with his Mommy, the Petitioner.

66. Petitioner and S.W.B. developed a strong mother- child bond during his eight years. It is detrimental to S.W.B. to have his relationship, interaction, time and conversation with his Mommy, who has been his primary caregiver and confidant during his life, curtailed.

67. It is in the minor child's best interest for him to have two legal loving parents.

68. The bond between a child and a parent, particularly when it is a secure attachment relationship, is a unique and profoundly important bond in the development of a child (Rutter, Kreppner, & Sonuga-Barke, 2009, Emanuel Miller lecture: Attachment insecurity, disinhibited attachment, and attachment disorders: Where do research findings leave the concepts? *Journal of Child Psychology and Psychiatry, 50(5),* 529-543). This type of bond is considered a necessary building block for healthy child development. Petitioner has been S.W.B.'s primary caretaker and therefore likely his primary, and at very least his co-primary, secure attachment figure.

69. Loss of an attachment figure in childhood leads to grief, sometimes disabling grief. Particularly between the ages of five and approximately eight, loss

of a loved parent may even predict clinical depression in adulthood (Coffino, 2009, The role of childhood parent figure loss in the etiology of adult depression: Findings from a prospective longitudinal study. *Attachment & Human Development, 11(5),* 445-470). The consequences of loss of a parent have been found to include far ranging effects on childhood and adult development including maladaptive responses to stress, problems in social relationships, problems with emotional regulation, including mental health disorders such as depression and anxiety, and even structural changes in the brain (Benetti, Arulanantham, De Sanctis, McGuire, & Philip Mechelli, 2010, Attachment style, affective loss and gray matter volume: A voxel-based morphometry study. *Human Brain Mapping, 31(10),* 1482-1489; Lieberman & Knorr, 2007, The impact of trauma: A development framework for infancy and early childhood. *Psychiatric Annals, 37(6),* 416-422; Schore, 2010, Relational trauma and the developing right brain: The neurobiology of broken attachment bonds. In T. Baradon (Ed.), Relational trauma in infancy: *Psychoanalytic, attachment and neuropsychological contributions to parent–infant psychotherapy* (pp. 19-47). New York, NY: Routledge/Taylor & Francis Group).

70. Based on knowledge that is now considered fundamental fact in developmental science, children suffer from the negative consequences of a traumatic stress, which is the sudden separation from a parent. In developmental psychology, it is considered fact that losing a loved adult, or a secure attachment figure, constitutes a deeply traumatic loss to a child, particularly a child of S.W.B.'s age (Lieberman, Chu, Van Horn, & Harris, 2011, Trauma in early

childhood: Empirical evidence and clinical implications. *Development and Psychopathology*, 23(2), 397-410; Shaver & Fraley, 2008, Attachment, loss, and grief: Bowlby's views and current controversies. In *J. Cassidy*, P. R. Shaver (Eds.), Handbook of attachment: Theory, research, and clinical applications (2nd ed.) (pp. 48-77). New York, NY: Guilford Press). The loss of her as a mother has likely constituted a significant trauma to S.W.B. As a consequence of this loss, it is likely that S.W.B. will be significantly harmed by experiencing symptoms of trauma and be at risk for both short and long term negative effects of this trauma that may affect every area of his development.

REQUEST FOR DECLARATORY JUDGMENT

71. The allegation set forth in paragraphs 1-69 are reaverred and realleged as is fully set forth herein.

72. To the extent this Court may not interpret chapter 61, 741.12 and chapter 742 as gender neutral, as the undersigned believes is required by *Brennan*, supra, or fails to recognize the civil union as a marriage as the Court has already done in *Brassner*, supra, there is a bona fide actual and present practical need for the declaratory relief requested as the minor child and the Petitioner are currently being deprived of their constitutional right to enjoy their parent child relationship and Florida is the only state with jurisdiction over the parties and child. This deprivation is damaging to both the minor child and to the Petitioner. Additionally, Petitioner requires a dissolution of her marriage/union to the Respondent and,

again, to the extent they are not considered gender neutral as required by Brennen, the Petitioner's constitutional rights are adversely impacted.

73. The forgoing facts sufficiently allege the present controversy which necessitates this declaration- the need to afford the Petitioner the right to have her civil union/marriage with Respondent (recognized and then) dissolved and equitable distribution of marital assets and liabilities, to obtain as timesharing with the minor child, be declared his legal parent and to ensure the child's needs, financial, psychological, and emotional, are being met and are legally enforceable. The Respondent is interfering with the Petitioner and child's familial rights and limiting their interaction and access to each other.

74. The Petitioner's rights are dependent upon this Court's recognition of her fundamental rights to be recognized as the legal spouse of the Respondent and the legal parent of S.W.B. and to familial association which requires this Court to recognize the Vermont civil union and her rights to legally parent the child under Florida law.

75. The Respondent and the state of Florida, attorney general may have an actual present and adverse interest in the subject matter. However, under *Brennen, supra,* the marriage should be recognized as valid. Therefore, the constitutionality of the statutes should only be in question to the extent this Court determines the law should not be applied in a gender neutral manner as the Courts have done in *Maxwell and Brassner* or if the parties union is not legally recognized.

76. The Petitioner will properly provide service and notice to the state attorney general and respondent upon filing this petition.

77. The Petitioner is requesting relief based upon the actual controversy that exists and not for the purpose of legal advice or seeking answers to questions propounded by virtue of mere curiosity.

78. Respondent should be estopped from denying Petitioner is the parent of S.W.B.

PARENTAL RESPONSIBILITY TIMESHARING CHILD SUPPORT AND EQUITABLE DISTRIBUTION AND OTHER RELIEF

79. The allegation set forth in paragraphs 1-70 and 78 are reaverred and realleged as is fully set forth herein.

80. **Parental responsibility.** It is in the child's best interest that the Court determine parental responsibility. The Petitioner requests shared parental responsibility of S.W.B.

81. **Timesharing**: It is in the best interest of the minor child that the Petitioner be afforded equal timesharing with the minor child.

82. **Child Support**: The Petitioner requests the Court to determine the parties' child support obligations, both temporary and permanent, in accordance with Florida Statutes including, but not limited to, the child's health insurance.

83. **Equitable Distribution.** During their marriage the parties acquired assets and liabilities which the Court should distribute in accordance with Florida

Law. The Court should set aside the Petitioner's non-marital/pre-marital property as her sole and non-marital property.

84. **Attorney's Fees, Suit Monies and Costs**: The Petitioner was required to retain the services of the undersigned firm. The Respondent should be responsible for her own attorney's fees and she should likewise be responsible for the Petitioner's attorney's fees, costs, and suit money to the extent that she causes any unnecessary litigation and other all other applicable bases.

WHEREFORE, Petitioner, Sonya Gossard, respectfully requests this Honorable Court to enter an order:

a. Taking jurisdiction of the parties and the subject matter;

b. Dissolving the marriage/union of the parties.

c. Interpreting Fl. St. chapter 61, and sections 742.011, 742.11 and 742.13 of the Florida statutes as gender neutral or determine same are unconstitutional in this case;

d. Establishing parentage of the minor child;

e. Establishing parental responsibility, temporary and permanent timesharing and establishment of a parenting plan for timesharing between the Petitioner and the minor child;

f. Appointing the Legal Aid Society-Juvenile Advocacy Project (JAP) attorney ad litem for the child if necessary;

g. Entering an order prohibiting the Respondent from removing the child from the jurisdiction of this Court during the pendency of these proceedings;

h. Determining the child support obligations of the parties as requested herein, including but not limited to medical insurance coverage for the minor child;

i. Determining the real and personal property rights, as well as debts and liabilities and distribute same by and between the parties as requested herein; and

j. Granting such other relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to a licensed process server for service upon Ms. Mary Colleen Burns, *Pro Se/Respondent,* 1908 Capeside Circle, Wellington, FL 33414 and by U.S. Certified Mail to Ms. Pamela Jo Bondi, Attorney General, Office of the Attorney General PL - 01, Capitol Building, Tallahassee, FL 32399-0010 on this 4 day of February, 2015.

LAW OFFICE OF GEORGIA T. NEWMAN
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By: _____
Georgia T. Newman
Florida Bar No. 351751
Kristen L. Stone
Florida Bar No. 89589

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Verified Petition and that the facts stated in it are true and correct to the extent of my knowledge and belief.

Dated: 2/4/15.

SONYA LYNN GOSSARD

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to or affirmed and signed before me on this 4 day of February, 2015 by SONYA LYNN GOSSARD.

GEORGIA T. NEWMAN
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE079803
Expires 5/23/2015

NOTARY PUBLIC or DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or clerk.]

___ Personally known
_X_ Produced identification Drivers Licence
Type of identification produced

GEORGIA T. NEWMAN
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE079803
Expires 5/23/2015

IN THE CIRCUIT COURT OF THE SEVENTEENTH
JUDICIAL CIRCUIT IN AND FOR BROWARD
COUNTY, FLORIDA

IN RE THE MARRIAGE OF: CASE NO. 13-012058 (37)

HEATHER BRASSNER,
Petitioner

And

MEGAN E. LADE,
Respondent.

_____/

ORDER GRANTING PETITIONER'S MOTION FOR DECLARATORY JUDGMENT

This cause came before this Court on Petitioner's Motion For Declaratory Judgment. The Court, having reviewed the motion, having considered the arguments of counsel and The State of Florida, and being otherwise fully advised in the premises, hereby finds as follows:

I. Introduction

Petitioner, who entered into a civil union in the State of Vermont in 2002, now seeks to have that union dissolved in Broward County Florida where she currently resides. This Court can only grant that petition were the law of the State of Florida to recognize out-of-state same-sex civil unions. As a result, Petitioner challenges Florida's prohibition on same-sex marriage, as set forth in Article I, § 27 of the Florida Constitution and Florida Statute § 741.212. The Petitioner contends that Florida's ban on

same-sex marriage, or refusal to recognize her out-of-state union, violates her rights to due process and equal protection under the law as required by the Fourteenth Amendment of the Constitution.

The Supreme Court in United States v. Windsor, U.S. , 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013), recently held that the federal government cannot refuse to recognize a valid state-sanctioned same-sex marriage with regard to federal legislation. This Court is now called upon to decide whether the Windsor decision applies to state law that prohibits same-sex marriage or civil unions. The issue before this Court is thus whether the State of Florida's definition of marriage is in violation of the United States Constitution. After applying the law and considering all the issues, this Court finds that Florida's ban on same-sex marriage violates the guarantees of due process and equal protection under the laws. Florida's prohibition on same-sex marriage denies some citizens, based on their sexual orientation, the fundamental right to marry, and does so without a legitimate state purpose. This Court finds these laws are unconstitutional and GRANTS the Petitioner's Motion For Declaratory Relief, declaring Florida's ban on same-sex marriage unconstitutional.

With a full understanding of the politically and emotionally charged sentiments behind the issue of same-sex marriage, this Court's analysis of the law and its ruling is based solely on the law, independent of bias, personal feelings or beliefs, which is the role of the judiciary. Judges are bound to rule with impartially and neutrality, while applying the law to the facts in any controversy before them. Protecting citizens from unequal treatment under the law is constitutionally mandated and is the cornerstone of our Constitution and this Nation.

II. Petitioner

Petitioner, Heather Brassner, and Respondent, Megan E. Lade, were joined by civil union in Vermont on July 6, 2002. At that time, civil union was the only form of legal relationship afforded same-sex couples in Vermont. The law changed in Vermont in 2009 when same-sex marriage was sanctioned. Vermont law provides for dissolving civil unions, which requires both parties to agree and execute requisite forms. Petitioner sought to locate Respondent in order to execute the forms but has been unable to locate her after a diligent search, which included employing a private investigator.

Petitioner seeks to dissolve the Vermont civil union and has filed a Petition For Dissolution of Marriage in this Court. As a result Petitioner seeks to have this Court recognize her out-of-state civil union. She seeks to marry her current partner, but cannot do so without the legal dissolution of her civil union with Respondent. Petitioner has been a resident of the State of Florida for 14 years.

III. Petitioner's Right To Relief

The State correctly points that Petitioner must show a bona fide, actual and present practical need for declaratory relief. Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991). The State also argues that the respondent is absent and that all adverse parties interests must appear before the court, that the petitioner cannot seek relief without the presence of the respondent. Id. at 1170. Petitioner finds herself in court in Florida and not in Vermont because the respondent is unavailable and not locatable. She is seeking relief for a dissolution of her civil union with a partner she has not had contact with in many years. Petitioner seeks this Court declare Florida's ban on same-sex marriage unconstitutional so that she can avail herself of the same rights that all citizens

in Florida have with regard to recognizing their out of state marriages. She has a bona fide, actual and present practical need to have the ban on same-sex marriage declared unconstitutional so that she can have her civil union dissolved in Florida.

IV. Recognition of Out-Of-State Marriage or Civil Union

Petitioner is seeking that this Court dissolves her out-of-state civil union so that she can legally marry her new partner. In a case cited by Petitioner, the Massachusetts Supreme Court held that a civil union is the equivalent of marriage, and that the state must recognize the legal union pursuant to full faith and credit, just as other out-of-state and foreign marriages are recognized. Elia-Warnken v. Elia, 463 Mass. 29 (2012). The State of Florida, in its memorandum in opposition, argues that no Florida court has ruled that a civil union is the same as a marriage. The State is correct in stating the obvious, that no court in Florida has held as such, however, no appellate court has ruled that a civil union is not the equivalent of a marriage, rendering this issue one of first impression. Cases of first impression occur with regularity in courts all over the State of Florida and the United States.

This issue is analogous to Florida's recognition of common law marriage from other states. In Florida, a common law marriage occurring after 1968 is not recognized. Anderson v. Anderson, 577 So. 2d 658, 660 (Fla. 1st DCA 1991). However, out-of-state common law marriages that are sanctioned in the states where the marriages were formed are recognized. Smith v. Anderson, 821 So. 2d 323, 325 (Fla. 2d DCA 2002). Out-of-state marriages are recognized in Florida pursuant to the full faith and credit clause of the Constitution. Petitioner seeks to avail herself of the same legal rights that opposite-sex married couples have in the recognition of their out-of-state marriages or civil unions.

Further, in Brenner v. Scott, the federal court, ruling on the validity of out-of state same sex marriages, criticized the State's argument that Florida has a right to invoke their own laws governing marriage, which must be given deference. 999 F. Supp 1278, 1287 (N.D. Fla. 2014). However, where out-of-state marriages are concerned Florida refuses to give deference to those valid and lawful unions entered into in those states. Id.

V. The Merits

The State of Florida, pursuant to Article I, § 27 of the Florida Constitution and §741.212, Fla. Stat., prohibits recognition of same-sex civil unions performed in other states. The United States Supreme Court in Windsor recently addressed the issue of whether the federal government's legislation regarding marriage rights must also recognize same-sex marriages. 133 S. Ct. at 2693. The Windsor Court held that state sanctioned same-sex married couples must be treated the same as opposite-sex married couples with regard to federal legislation such as the Defense of Marriage Act. Id. at 2693. Notably, the Windsor Court held that out-of-state same-sex marriage recognition is a protected right under the Constitution, but fell short of clarifying whether out-of-state marriage recognition is a fundamental right. Id. at 2696.

In Brenner v. Scott, the court, relying on the U.S. Supreme Court's decision in Windsor and other federal decisions interpreting that ruling, held that Florida's refusal to allow same-sex marriages or to recognize same-sex marriages was unconstitutional. 999 F. Supp 2d. 1278 (N.D. Fla. 2014). In its ruling the court stated:

> The Supreme Court struck down part of the federal Defense of **Marriage** Act last year. *United States v. Windsor*, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013). Since that decision, 19 different federal courts, now including this one, have ruled on the constitutionality of state bans on same-**sex marriage**. The result: 19 consecutive victories for those challenging the bans. Based on these decisions, gays and lesbians, like all other adults, may choose a life partner and

> dignify the relationship through **marriage**. To paraphrase a civil-rights leader from the age when interracial **marriage** was first struck down, the arc of history is long, but it bends toward justice.

Id. at 1281. The Brenner court held that marriage is a fundamental right "requiring the Fourteenth Amendment's Due Process and Equal Protection Clauses," and that "Florida's same–sex marriage provisions ... must be reviewed under strict scrutiny, and that, ... the provisions are unconstitutional." Id. at 1281-1282. The court cited several recent Federal Circuit decisions and found those to be controlling. See, Bostic v. Schaefer, 760 F.3d 352 (4th Cir. July 28, 2014); Bishop v. Smith, 760 F.3d 1070 (10th Cir. July 18, 2014); and Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 2014).

By failing to recognize Petitioner's out-of-state union her constitutional right to due process and equal protection under the law is violated. Florida's refusal to recognize Petitioner's union is tantamount to banning her from marrying someone of the same sex. Accordingly, Florida's ban on same-sex marriage and refusal to recognize out-of-state same-sex marriages violates Petitioner's fundamental right to marry under the due process clause and discriminates based on sexual orientation, which violates the equal protection clause.

VI. Due Process Challenge

1. Fundamental Right To Marry

The due process clause of the Fourteenth Amendment guarantees that all citizens have certain fundamental rights. See, Planned Parenthood v. Casey, 505 U.S. 833, 846-47, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992). Petitioner contends that the right to marry is a fundamental right. The United States Supreme Court has held that marriage is a fundamental right protected by the Constitution. Turner v. Safley, 482 U.S. 78, 95,

(1987); Loving v. Virginia, 388 U.S. 1, 12 (1967). The due process clause of the Fourteenth Amendment protects ones liberty, which includes the fundamental right to marry. The Supreme Court has ruled on numerous occasions that the right to marry is a central part of the liberty protected by the due process clause. Meyer v. Nebraska, 262 U.S. 390, 399, (1923). Also see, Turner, 482 U.S. at 95 ("[T]he decision to marry is a fundamental right."); Zablocki v. Redhail, 434 U.S. 374, 98 S. Ct. 673, 54 L. Ed. 2d 618 (1978) ("[T]he right to marry is of fundamental importance for all individuals."); Cleveland Bd. of Educ. v. La Fleur, 414 U. S. 632, 639-40 (1974) (the Court recognizes freedom of personal choice in matters of marriage and family life as a liberty protected by the due process clause.); United States v. Kras, 409 U. S. 434, 446 (1973); Maynard v. Hill, 125 U. S. 190, 206 and 211 (1888) (marriage is the "most important relation in life" and "the foundation of the family and of society"); Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (the Court lists fundamental rights and marriage is the first one).

2. Standard of Review

The states regulate fundamental rights, such as marriage, however the states cannot violate those protected rights. Windsor, 113 S. Ct. 2675, 2680, 2691 (2013); Loving , 388 U. S. at 7. The Supreme Court has held that when a statutory classification prohibits an individual's fundamental rights, the statute must be supported by an important state interest and must be closely tailored to those interests. Zablocki, 434 U.S. at 388. The Supreme Court has also held that regulating a constitutionally protected decision, such as whom one shall marry, must be predicated on legitimate state concerns. Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990) (marriage is a matter of individual choice); Roberts v. U.S. Jaycees, 468 U.S. 609, 620,

104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984) ("[T]he Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse.") Accordingly, the standard of review is strict scrutiny as the ban on same-sex marriage involves a restriction on the fundamental right to marriage.

3. The State of Florida may not infringe on an individual's fundamental rights

The State has argued that the same-sex marriage ban is supported by history and tradition. That is not a legitimate state concern. Many courts have held that tradition alone does not constitute a rational basis for any law. Pareto v. Ruvin, Case No. 14-1661 CA 24 (11th Cir. Ct. July 25, 2014); Brenner v. Scott, 999 F. Supp 2d 1278, 1289 (N.D. Fla. 2014); Lawrence v. Texas, 539 U.S. 558, 602, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003); De Leon v. Perry, 975 F. Supp at 655 (W.D. Texas 2014). The Pareto Court held that denying same-sex couples the right to marry based on history and tradition is neither compelling nor a legitimate governmental interest. Pareto, at 19. Also see, Golinski v. U. S., Office of Pers. Mgmt., 824 F. Supp. 2d 968 (N.D. Cal. 2012) (the argument that marriage as defined is set in stone is not a rational justification); Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 967 (N.D. Cal. 2010) (states must have an interest other than the fact of tradition); Williams v. Illinois, 399 U.S. 235, 239, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970) ("Neither the antiquity of a practice nor the fact of steadfast legislative and judicial adherence to it through the centuries insulates it from constitutional attack."); Bostic v. Schaefer, 760 F.3d 352 (4th Cir. July 28, 2014); Bishop v. Smith, 760 F.3d 1070 (10th Cir. July 18, 2014); and Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 2014).

The State has argued that the ban on same sex marriage protects children. Florida Adoption Law recognizes the right of same-sex couples to adopt and raise children. The court in Fla. Dept. of Children & Families v. Adoption of X.X.G., noted that there was a plethora of research on the issue of childrearing by same-sex couples and the research indicates that there were no differences in the parenting of homosexuals and heterosexuals. 45 So. 3d 79, 86-87 (Fla. 3d DCA 2010). Additionally, the State argues that the same–sex marriage ban furthers responsible and natural procreation. However, all states allow infertile individuals, elderly people, and those who choose not to procreate to get married. Brenner v. Scott, 999 F. Supp at 1289. Pareto, at 21-22; De Leon, 975 F. Supp. 2d at 654. In applying strict scrutiny to this burden on liberty interests, restricting same-sex marriage does not serve a legitimate state interest in promoting procreation or childrearing and therefore is not rationally related to that interest. Perry, 704 F. Supp. 2d at 972. Further, the ban nullifies the legal import of same-sex out-of-state marriages, which can stigmatize the children of same-sex couples. De Leon, 975 F. Supp at 655.

The ban on marriage recognition of same-sex couples denies Petitioner's fundamental right to marry. The ban is not supported by any state interest, and certainly not by any "sufficiently important" interest that would justify the restriction. Zablocki, 434 U. S. at 388. Florida's ban on same-sex marriage is unconstitutional as it violates the due process clause of the Fourteenth Amendment. Every federal court to address this issue since the Supreme Court's decision in Windsor, as well as several recent decisions in the Florida Circuit Courts, has found that denying same-sex couples the fundamental right to marry violates due process. Bostic v. Schaefer, 760 F.3d 352 (4th Cir. July 28,

2014); Bishop v. Smith, 760 F.3d 1070 (10th Cir. July 18, 2014); Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 2014); Wolf v. Walker, 986 F. Supp. 2d 982 (2014); De Leon v. Perry, 975 F. Supp. 2d 632 (W. D. Tex. 2014); Love v. Beshear, 989 F. Supp 2d 536 (W.D. Ken. 2014); Baskin v. Bogan, 766 F. 3d 648 (7 Cir. 2014); Whitewood v. Wolf, 992 F. Supp 2d 410 (M.D. Penn. 2014); Geiger v. Kitzhaber, 2014 U.S. App. LEXIS 68171 ; Latta v. Otter, 2014 U.S. App. LEXIS 66417; DeBoer v. Snyder, 973 F. Supp 2d 757, 632, 647-49 (W. D. Tex. 2014; Obergefell v. Wymyslo, 962 F. Supp. 2d 968 (S. D. Ohio 2013). Pareto v. Ruvin, Case No. 14-1661 CA 24 (11th Cir. Ct. July 25, 2014); Hunstman v. Heavlin, Case No. 2014-CA-305-K (16th Cir. Ct. July 17, 2014).

4. Equal protection

Just as the states cannot deprive individual liberty pursuant to the Fourteenth Amendment, the states cannot deny any person the equal protection of the laws. The equal protection clause commands that no state laws shall deny any person the equal protection of the laws. See, U. S. Const. amend. XIV, § 1. The equal protection clause requires states to treat all persons equal regardless of his or her status. Essentially, all laws must be equal in operation to all people. City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985); Cruzan v. Director, Missouri Dep't of Health, 497 U.S. 261 (1990); Railway Express Agency v. People of State of New York, 336 U.S. 106 (1949). Equal protection under the laws means that all persons similarly situated should be treated alike. City of Cleburne, Tex., 473 U.S. at 439 (1985).

5. Standard of Review

The standard of review for equal protection claims is generally one of rational basis review; however, the Supreme Court has applied a heightened standard of review

for suspect classifications such as race, alienage, and national origin. Massachusetts Board of Retirement v. Murgia, 427 U. S. 307 (1976). When strict scrutiny review applies the government must show that the classification is "narrowly tailored" to further a "compelling" [State] interest. Parents Involved in Community Schools v. Seattle School District 1; 551 U. S. 701, 720 (2007). The Supreme Court has also applied an intermediate scrutiny for certain classifications, such as those based on sex. These are "quasi-suspect" classifications, and the review is an intermediate scrutiny, whereby the classifications must be "substantially related" to the achievement of an "important governmental objective." United States v. Virginia, 518 U. S. 515, 524 (1996).

In the recent decision in Wolf the Federal Court applied a "quasi-suspect" intermediate review pursuant to the Plaintiffs' claims that the ban on same-sex marriage discriminated based on sexual orientation. 986 F. Supp at 86-87. Other federal courts and state courts have applied a heightened level of scrutiny as well. See, Baehr v. Lewin, 852 P. 2d 44, 67 (1993); Golinski, 824 F. Supp. 2d at 985-90; Griego v. Oliver, 316 P. 3d 865, 884 (N.M. 2013); Obergefell, 962 F. Supp at 986-991; SmithKline Beecham Corp., v. Abbott Labs, 740 F. 3d 471, 481 (9th Cir. 2014); Windsor v. U. S., 699 F. 3d 169, 185 (2d Cir. 2012); also see, Kerrigan v. Comm'r of Pub Health, 957 A. 2d 407, 432 (Conn. 2008); Varnum v. Brien, 763 N. W. 2d 862, 885-96 (Iowa 2009).

The Supreme Court in Windsor found that failing to recognize out-of-state marriages and denying federal benefits to same-sex couples married under the laws of states that allow same-sex marriages unfairly discriminates against same-sex couples. 133 S. Ct. 2675. Other courts have interpreted the review standard applied by the Supreme Court in Windsor as one that was "unquestionably higher than rational basis review."

SmithKline Beecham Corp., 740 F. 3d at 481. Some courts found the standard of review to not be heightened, such as De Leon v. Perry, but nonetheless found that the state's interest did not pass even a rational basis test. 975 F. Supp at 652.

Notwithstanding the above analysis, when determining the proper standard for review in this case this Court is bound by the Florida Supreme Court decision in D.M.T. v. T. M. H., which held that under the Florida Constitution gender is recognized as a specific class, but sexual orientation is not. 129 So. 3d 320, 341-342 (Fla. 2013). Accordingly, the Court did not apply a heightened scrutiny to Florida's equal protection clause. Id. As a result this Court is bound to follow Florida law and cannot review the Petitioner's equal protection claim under a "quasi-suspect" standard but must do so under a rational basis review. Also See, Pareto at 28. Notably, in Pareto the court suggested that the question of level of scrutiny to be applied to the claim of equal protection as it applies to sexual orientation should be revisited on appeal, this court agrees. Id. at 31.

6. The State of Florida cannot deny equal protection under the law

In reviewing the previous arguments that have been espoused by the State in other similar cases, and as mentioned previously in this order, even under a rational basis review the same-sex marriage ban and refusal to recognize out-of-state same-sex marriage violates equal protection as it does not rationally further any legitimate state interest. In evaluating the previously stated state interests of protecting children and procreation, this Court finds no rational relation to those interests. Instead the ban discriminates against same-sex couples by questioning their skill in parenting while the law does not question opposite sex couples abilities to parent. See, Perry v. Schwarzenegger, 704 F. Supp. at 967 ("Like opposite-sex couples, same-sex couples

have happy, satisfying relationships and form deep emotional bonds and strong commitments to their partners."); Varnum v. Brien, 763 N.W. 2d at 899 (noting that there is abundant evidence proposing that the interests of children are served equally by same-sex and opposite-sex parents). Further, so long as opposite sex couples can marry without government analysis of their right to procreate, then so can same-sex couples marry without an analysis of their right to procreate. See, Golinski, 824 F. Supp 2d at 993 ("The ability to procreate cannot and has never been a precondition to marriage.").

In the instant case the Petitioner seeks to have her out-of-state civil union recognized. In Windsor, the Supreme Court invalidated the Defense of Marriage Act (DOMA), a law that prohibited federal recognition of same-sex marriages authorized under state law. 133 S. Ct. 2675 (2013). The Court repeatedly emphasized throughout the opinion that DOMA imposes a disability on same-sex couples, is demeaning to same-sex couples and violates their dignity while lowering their status. 133 S. Ct. at 2692, 2695. The Supreme Court held that state-sanctioned same-sex married couples cannot be treated differently than state-sanctioned opposite-sex married couples. 133 S. Ct at 2693.

In Brenner, the Florida Federal Court held that the ban on same-sex marriage in Florida violates Due Process and Equal Protection and held that out-of-state same-sex marriages must be recognized. Also See, De Leon v. Perry, 975 F. Supp 632 (W. D. Tex. 2014) (court held that Texas law, which refuses to recognize out-of-state same-sex marriage, violates due process and the equal protection clause of the Constitution); Obergefell v. Wymyslo, 962 F. Supp. 2d 968 (S. D. Ohio 2013).

There are tangible benefits of being married that same-sex couples can enjoy in the states that recognize their marriage. There are legal, social and financial benefits that

arise from having a marriage license, and these benefits are significant. Denying those tangible benefits to same-sex couples deprives them of the same rights afforded to opposite-sex couples without sufficient grounds to do so. Florida in essence is failing to recognize Petitioner's Vermont civil union and as such she does not have the right to dissolve a legal union that holds her back from marrying another. The same-sex marriage ban denies her the right to dissolve her marriage, a right that is not denied to opposite-sex couples who were married out-of-state.

Florida cannot define marriage in a way that denies its citizens the right to make the choice as to whom to marry, nor may it deny equal status and dignity to each citizen's decision. Windsor, 133 S. Ct. at 2689. As such, this Court finds that Article I, § 27 of the Florida Constitution, and Fla. Sta. § 741.212, which bans same-sex couples from marrying in Florida and fails to recognize out-of-state same-sex unions, violates the due process protections of the Fourteenth Amendment and also violates the federal constitutional guarantee of equal protection. As such, these laws are void and unenforceable.

The State argues that the decision in Baker v. Nelson, 409 U.S. 810 (1972), precludes this Court from ruling that the same-sex ban is unconstitutional. However, several federal courts including the Florida court in Brenner have concluded that intervening doctrinal developments have all but abated the precedence of Baker. Brenner, 999 F. Supp at 1290-91, citing, Hicks v. Miranda, 422 U.S. 332, 344-45 (1975).

Conclusion

This Court's Order in declaring the same-sex marriage ban unconstitutional is the result of legal analysis of the laws of the federal government and the State of Florida. The

decision is a result of applying the United States Constitution and all Florida laws binding on this Court to the facts. The ruling is thus based on the law as applied to the facts. The Court is well aware of the emotionally charged environment behind this important issue. However, politics and emotionality cannot rule, it is the laws of our government that create the free society that we enjoy. The judicial role is to rule by applying the law to the facts with neutrality and impartiality.

This Court finds that the issue here is not whether there is a right to same-sex marriage but instead whether there is a right to marriage from which same-sex couples can be excluded. The State of Florida cannot ignore the status and dignity afforded to opposite-sex couples, who were married out-of-state, and not extend those same rights, dignities and benefits to same-sex couples similarly situated.

The Court's decision does not speak to the views of society on traditional beliefs about marriage, religious beliefs about marriage, or morality. The decision is based on legal precedents regarding whether the State of Florida can intrude without a legitimate purpose on the fundamental right to marry and the right to have an out-of-state same-sex civil union recognized. This Court addresses the issues of liberty and equality and finds that without a rational relation to a legitimate state interest, Florida cannot impose inequality under the Constitution.

Our country has evolved each generation, and the generation before is often baffled at the changes. Setting aside personal biases, feelings, beliefs and anxieties, and embracing change is often difficult but essential to ensuring that all people are treated fairly under our Constitution. Our country has always strived to recognize the rights of all people. Equality is the cornerstone of our nation. In pursuit of that ideal comes the

often-uncomfortable feeling of change. We have learned that over time change becomes apart of what this great nation is all about.

The tides are turning on the issue of same-sex marriage throughout this country. Since the 2013 ruling of the Supreme Court in Windsor, there have been numerous decisions of courts throughout this country and none have found that same-sex marriage bans pass constitutional muster. To deny same-sex couples the right to enjoy the same laws, benefits and protections of opposite-sex couples without a rational governmental interest unduly violates their due process rights and their equal protection under the laws. To discriminate based on sexual orientation, to deny families equality, to stigmatize children and spouses, to hold some couples less worthy of legal benefits then others based on their sexual orientation, to deny individuals tax credits, marital property rights, the ability to dissolve their unions from other jurisdictions is against all that this country holds dear, as it denies equal citizenship. Marriage is a well-recognized fundamental right, all people should be entitled to enjoy its benefits.

Accordingly, it is hereby ORDERED and ADJUDGED that:

1. Florida's same-sex marriage bans violate the Due Process and Equal Protection Clauses of the United States Constitution. The Plaintiff's Motion for Declaratory Judgment is GRANTED.

2. Florida's explicit failure to recognize legal out of state civil unions, without any rational basis, violates the Due Process and Equal Protection Clauses of the United States Constitution.

3. Article 1, section 27 of Florida's Constitution is void and unenforceable.

4. Florida Statute 741.212 is void and unenforceable.

DONE and ORDERED in Chambers, Fort Lauderdale, Broward County, Florida on December 8, 2014.

DALE C. COHEN

DEC 0 8 2014

A TRUE COPY

Dale C. Cohen
Circuit Court Judge

Copies to:
Nancy Brodzki, Esq.
Adam Tanenbaum, Esq.

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

LISA MARINA MAXWELL,
Petitioner,

and

CHRISTINE STEPHENS-MAXWELL,
Respondent.
_____/

CASE NO: 502014DR010428XXXXMB
DIVISION: FD

FILED
15 JAN 21 AM 9:16
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
FAMILY COURT

ORDER GRANTING AMENDED PETITION TO DETERMINE PARENTHOOD AND FOR RELATED RELIEF AND FINAL JUDGMENT RECOGNIZING THE MARRIAGE OF LISA MARINA MAXWELL AND CHRISTINE STEPHENS-MAXWELL AND DETERMINING THAT LISA MAXWELL IS THE PARENT OF SATORI JOANN MAXWELL

ORDER

THIS MATTER came before the Court on November 25, 2014 for an evidentiary hearing and on January 13 and 21, 2015 for uncontested hearings on the Petition to Determine Parenthood and for Related Relief, as amended. The Court notes that Florida Attorney General Pamela Jo Bondi has been notified that the constitutionality of certain Florida Statutes and constitutional provisions is challenged in this case, but has not sought to intervene. The Court has reviewed the verified pleadings, has heard the testimony of the parties and the argument of their counsel, and otherwise been fully advised in the premises.

Findings of Fact

The Court finds that:

1. Petitioner Lisa Marina Maxwell and Respondent Christine Stephens-Maxwell were lawfully married in New York, New York on November 20, 2012.
2. Under title 10 of the New York Domestic Relations Code, marriage is a public act.
3. During the marriage, with the written consent of Petitioner and Respondent,

EXHIBIT
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Respondent became pregnant by in vitro fertilization of donated male, genetic material.

4. During the marriage, Respondent gave birth to a daughter, Satori ~~Joann~~ JoAnn Maxwell, on December 8, 2014 in West Palm Beach, Florida.
5. Throughout the parties' marriage, Petitioner has paid for Respondent's living expenses and provided for her medical needs.
6. Petitioner proved all the elements of section 742.11 and created an irrebuttable presumption that she is a parent of Satori, a child born in Florida during the parties' marriage.

Analysis

The Petition requests that (i) the parties' marriage be recognized and receive full faith and credit in Florida and (ii) Petitioner's parenthood of Satori be established as a matter of law under section 742.11, Florida Statutes. Because Petitioner was not listed as a parent on Satori's birth certificate, at the hearing on January 13, 2015, the parties requested that Satori's birth certificate be amended to acknowledge Petitioner as her parent.

Section 741.212, Florida Statutes purports to prohibit this Court from recognizing the parties' marriage because both spouses are women. Article I, § 27 of the Florida Constitution, invalidating and refusing to recognize same sex marriage, and section 741.212, Florida Statutes, prohibiting the recognition in Florida of same sex marriages which are lawfully performed in other states, are unconstitutional; they violate the Due Process and Equal Protection clauses of the United States Constitution. *Brenner v. Scott,* 999 F. Supp. 2d 1278, 1290 (N.D. Fla. 2014). Section 741.212, Florida Statutes also violates Article IV, section 1 of the United States Constitution, which mandates that each state give full faith and credit to the laws and public acts of every other sovereign state. *See Brenner v. Scott,* 999 F. Supp. 2d at 1287 ("defendants do not

explain why, if a state's laws on marriage are indeed entitled to such deference, the State of Florida is free to ignore the decisions of equally sovereign states, including New York, Iowa and Massachusetts").

Section 742.011, Florida Statutes permits women who are pregnant or have given birth to a child, men who believe they might have fathered a child, and children to bring an action to determine paternity. Section 742.11, Florida Statutes, provides "except in the case of gestational surrogacy, any child born within wedlock is irrebuttably presumed to be the child of the *husband and wife*, provided that both husband and wife have consented in writing to the artificial or in vitro insemination. (emphasis added). Neither statute provides a vehicle for a woman, like Petitioner, whose wife has borne a child during their marriage, to establish her parental relationship to their child. Neither affords Petitioner, who was lawfully married in New York State, the protection of the laws of Florida to which she is entitled, and neither gives full faith and credit to the parties' marriage, a public act of the State of New York that Article IV, Section 1 of the United States Constitution guarantees and requires.

To afford the constitutional protections to which Petitioner is entitled, the Court interprets "husband" in section 742.11, Florida Statutes to mean the spouse of the child-bearing wife. This interpretation is supported by the holding of the Florida Supreme Court in *D.M.T. v. T.M.H.*, 129 So. 3d 320, 343 (Fla. 2013) that "[c]onsistent with equal protection, a same-sex couple must be afforded the equivalent chance as a heterosexual couple to establish their intentions in using assisted reproductive technology to conceive a child." Satori is far "better off having two loving parents in her life, regardless of whether [they] are of the same sex, than she would be by having only one parent" empowered by Florida law to care and provide for her. *See id.* at 344. The United States Supreme Court has stated, "in a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due

Process Clause includes the righ[t] ... to direct the education and upbringing of one's children." *Id.* at 337 (quoting *Washington v. Glucksberg,* 521 U.S. 702, 720, 117 S. Ct. 2258, 138 L.Ed.2d 772 (1997)).

"The United States Constitution 'provides heightened protection against government interference with certain fundamental rights and liberty interests," including the right 'to have children.'" *D.M.T.,* 129 So. 3d at 339-40 (quoting *Glucksberg,* 521 U.S. at 720, 117 S. Ct. at 2258). "The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection in appropriate cases." *D.M.T.,* 129 So. 3d at 327 (quoting *Lehr v. Robertson,* 463 U.S. 248, 256, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983)). Petitioner has proven that this is an appropriate case. Therefore, it is ORDERED and ADJUDGED that the Petition, as amended, is GRANTED.

FINAL JUDGMENT

Final Judgment is hereby entered as follows:

1. The marriage of Lisa Marina Maxwell and Christine Stephens-Maxwell shall be recognized in Florida for all purposes.
2. Satori ~~Joann~~ JoAm (55) Maxwell irrefutably is the child of Petitioner Lisa Marina Maxwell and Respondent Christine Stephens-Maxwell.
3. Because the Florida Bureau of Vital Statistics is not a party in this case, the Court shall not order it to issue a new birth certificate for Satori, naming Petitioner and Respondent as her parents. However, this Judgment empowers the parties to apply for an amended birth certificate, listing Lisa Marina Maxwell as Satori's parent and Christine Stephens-Maxwell as Satori's birth mother.

4. The Court reserves jurisdiction to enforce its Order and Final Judgment.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida, this 21st day of January, 2015.

HONORABLE LISA SMALL
Circuit Judge

Copies furnished to:

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