



Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and other relief.

3. Article 15, section 16 of the Kansas Constitution (referred to as amendment) defines marriage as it has been universally understood and practiced as far back as civilization has been recorded as follows: "Marriage shall be constituted by one man and one woman only. All other marriages are declared to be contrary to the public policy of this state and are void." (hereafter referred to as marriage) See *Bible*, Genesis 2:24 and *United States v. Windsor*, 133 S. Ct. 2689 (2013). That is why the amendment was passed by 70% of the Kansas voters and similar laws have been established in many states (30 state constitutional amendments, as alleged in paragraph 71 of Plaintiffs' Complaint). No same sex couple has ever been issued a marriage license in Kansas, so the amendment did not change anything.

4. The same sex relationship Plaintiffs have differs fundamentally from marriage because in that relationship it is impossible to produce a child from sexual intercourse with one another. Of the two kinds of relationships marriage is the only one that provides both a mother and father for child rearing.

5. The exclusive ability of a man and women to have a child from sexual intercourse with one another is a key rational basis for marriage being recognized as distinct from a same sex relationship, rooted in nature, understood by common knowledge with plenty of reasons for protection.

6. Principles of equality regarding the marriage relationship and the same sex relationship do not apply as the two relationships differ as apples and oranges.

7. The Unruhs invested in a marriage contract (K.S.A. 23-2501)between themselves by making a life long commitment to one another and choosing Kansas as their home.

8. Clearly the Plaintiffs seek to redefine the marriage word the Unruhs and thousands like them in Kansas use to describe their relationship in order to extend

marriage to them. If Plaintiffs are successful marriage will no longer be as it has been defined. In fact the Court decision upon which Plaintiffs rely, *Kitchen v. Herbert*, 755 F.3d 1193 (10<sup>th</sup> Cir.), leaves the word marriage undefined. Can a word exist without a definition? What is marriage after the *Kithcen* Court's fundamental restructuring of the concept? Can the rule of law survive the dismantling of key words like marriage? Should the proper application of principals of equality have such a result?

9. Plaintiff's are not content to behave as they wish or to find their own name for their relationship without taking the name Unruhs use for their relationship. The Unruhs do not want to share the marriage name and neither did 70% of the Kansans when they voted to pass the amendment, not because of who Plaintiffs are but what marriage is.

10. The Unruhs have a inalienable property right in their marriage that is protected by the 5<sup>th</sup> Amendment of the United States Constitution, the Kansas Constitution and related Kansas Statutes. "nor shall any person ..... be deprived of life, liberty, or property, without due process of law...". 5<sup>th</sup> Amendment to the United States Constitution.

11. If the Plaintiffs are successful in their causes of action the meaning of marriage will be so fundamentally and profoundly changed that the Unruh's will experience a taking of their property rights in marriage without due process of law.

12. The Unruhs claim a property right in marriage that is the subject of this action and is so situated that disposing of this action may as a practical matter impair or impede Unruhs' ability to protect their interest in the institution of marriage that forms the substance of their relationship unless the Unruhs are permitted to represent that interest. Fed. R. Civ. P. 24 (a)

13. A decision to declare the Kansas amendment and applicable statutes unconstitutional would violate the equal rights and due process protection clauses of the fourteenth amendment to the United States Constitution with respect to the Unruhs not Plaintiffs in that:

a) The Unruhs and other married people would be singled out for a solution to the

problems Plaintiffs complain result from their choice of a same sex relationship.

b) The extension of marriage to same sex relationships inflicts profound harm on the Unruhs. For the courts to say that from this day forward marriage in Kansas must be extended to a same sex couple is and for ever will be deeply disturbing to the Unruhs and undoubtedly to those that cared enough to pass an amendment to protect it, a departure from the joy and celebration normally associated with the word marriage. Disturbed, not because of bigotry, but out of solemn respect for what marriage is, what it has meant to them and to society in general. Marriage is perhaps the single most valuable institution society has ever had. The standards established by marriage and its exclusive nature enjoyed by the Unruhs can not be ignored or impaired without fundamental civil rights of the Unruhs being disturbed and married people being discriminated against.

c) The Kansas amendment is rationally related to many legitimate and compelling governmental purposes including: responsible procreation, effective parenting, and the desire to proceed cautiously in this evolving area. Page 1, dissenting opinion of Circuit Judge Kelly in *Kitchen*.

14. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. §1983, provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, §1. A ruling extending marriage to same sex relationships would deprive the Unruhs of a property right without due process of law under the 14<sup>th</sup> amendment of the United States Constitution.

15. A ruling extending marriage to same sex relationships would violate the Unruhs’ right to equal protection under the law by the Court’s failure to protect marriage and support the right of Kansas citizens to codify its implicit meaning.

16. The Plaintiffs case targets marriage to solve the ills associated with their choice of relationships based on the sex of married couples and thus discriminates against marriage couples based on sex.

17. In support of their motion the Unruhs incorporate by reference the arguments and authorities set forth in the dissenting opinion of Circuit Judge Kelly in *Kitchen*, copy attached as exhibit #1.

18. Unruhs' defenses present questions of law and fact that are common to this action yet unique. Fed. R. Civ. P. 24 (b)

19. To the best of Unruhs' knowledge the issues before this Court have been argued in jurisdictions by individuals advocating extension of marriage to same sex relationships, and States defending their laws but never by individuals defending their marriage. The Unruhs would submit that an injustice would be done by leaving out the very individuals whose marriage is affected by the marriage laws and decisions regarding their constitutionality.

20. Justice would be better served by the Unruhs being permitted to intervene.

WHEREFORE, the Unruhs request the Court to sustain their motion.

Respectfully submitted,

/s/ Phillip W. Unruh

Phillip W. Unruh, KS SC#09217

1216 Central

Harper, Kansas 67058

(620) 896-7301

(620) 896-7954

unruhlaw@att.net

Attorney for movants

Phillip W. Unruh and Sandra L. Unruh

CERTIFICATE OF SERVICE

I certify that on, October 22, 2014, the foregoing document was served by e-mail on the following: Stephen Douglas Bonney, [dbonney@aclukansas.org](mailto:dbonney@aclukansas.org) , Mark P. Johnson, [Mark.johnson@dentons.com](mailto:Mark.johnson@dentons.com) , Joshua A. Block, [jblock@aclu.org](mailto:jblock@aclu.org) ,attorneys for plaintiffs, Jeffrey A. Chanay, Chief Deputy Attorney General for the State of Kansas, [jeff.chanay@ksag.org](mailto:jeff.chanay@ksag.org) , Defendant Douglas A. Hamilton, Clerk of the Douglas County District Court, [dhamilton@douglas-county.com](mailto:dhamilton@douglas-county.com) , and Defendant Bernie Lumbreras, Clerk of the Sedgwick County District Court, [blumbrer@dc18.org](mailto:blumbrer@dc18.org).

/s/ Phillip W. Unruh\_\_\_\_\_