UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARILYN RAE BASKIN and ESTHER FULLER; BONNIE EVERLY and LINDA JUDKINS; DAWN LYNN CARVER and PAMELA RUTH ELEASE EANES; HENRY GREENE and GLENN FUNKHOUSER, individually and as parents and next friends of C.A.G.; NIKOLE QUASNEY, and AMY SANDLER, individually and as parents and next friends of A.Q.-S. and M.Q.-S.,	)	
Plaintiffs,	)	
vs.	)	1:14-cv-00355-RLY-TAB
PENNY BOGAN, in her official capacity as BOONE COUNTY CLERK; KAREN M. MARTIN, in her official capacity as PORTER COUNTY CLERK; MICHAEL A. BROWN, in his official capacity as LAKE COUNTY CLERK; PEGGY BEAVER, in her official capacity as HAMILTON COUNTY CLERK; WILLIAM C. VANNESS II, M.D., in his official capacity as the COMMISSIONER, INDIANA STATE DEPARTMENT OF HEALTH; and GREG ZOELLER, in his official capacity as INDIANA ATTORNEY GENERAL,	)	
Defendants.	)	

MIDORI FUJII; MELODY LAYNE and TARA BETTERMAN; SCOTT and Rodney MOUBRAY-CARRICO; MONICA WEHRLE and HARRIET MILLER; GREGORY HASTY and CHRISTOPHER VALLERO; ROB MACPHERSON and STEVEN STOLEN, individually and as parents and next friends of L. M.-C. and A. M.-S.,

Plaintiffs,

vs. 1:14-cv-00404-RLY-TAB

GOVERNOR, STATE OF INDIANA, in his official capacity; COMMISSIONER, INDIANA STATE DEPARTMENT OF HEALTH, in his official capacity; COMMISSIONER, INDIANA STATE DEPARTMENT OF REVENUE, in his official capacity; CLERK, ALLEN COUNTY, INDIANA, in her official capacity; CLERK, HAMILTON COUNTY, INDIANA, in her official capacity,

Defendants.

OFFICER PAMELA LEE, CANDACE BATTEN-LEE, OFFICER TERESA WELBORN, ELIZABETH J. PIETTE, BATALLION CHIEF RUTH MORRISON, MARTHA LEVERETT, SERGEANT KAREN VAUGHN-KAJMOWICZ, TAMMY VAUGHN-KAJMOWICZ, and J. S. V., T. S. V., T. R. V., by their parents and next friends SERGEANT KAREN VAUGHN-KAJMOWICZ and TAMMY VAUGHN-KAJMOWICZ,

Plaintiffs,	)	
	)	
vs.	)	1:14-cv-00406-RLY-MJD
	)	
MIKE PENCE, in his official capacity as GOVERNOR OF THE STATE OF INDIANA; BRIAN ABBOTT, CHRIS ATKINS, KEN COCHRAN, STEVE DANIELS, JODI GOLDEN, MICHAEL PINKHAM, KYLE ROSEBROUGH, and BRET SWANSON, in their official capacities as members of the Board of Trustees of the Indiana Public Retirement System; and STEVE RUSSO, in his official capacity as Executive Director of the Indiana Public Retirement System,	)	
Defendants.	)	

ENTRY ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The court has before it three cases, *Baskin v. Bogan*, *Fujii v. Pence*, and *Lee v. Pence*. All three allege that Indiana Code Section 31-11-1-1 ("Section 31-11-1-1"), which defines marriage as between one man and one woman and voids marriages between same-sex persons, is facially unconstitutional. Plaintiffs in the *Baskin* and *Fujii* cases challenge the entirety of Section 31-11-1-1, while Plaintiffs in the *Lee* case challenge only Section 31-11-1-1(b). Plaintiffs, in all three cases, allege that Section 31-11-1-1 violates their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution. In each case, Plaintiffs seek declaratory and injunctive relief against the respective Defendants. Also in each case, Plaintiffs and Defendants have moved for summary judgment, agreeing that there are no issues of

material fact. For the reasons set forth below, the court finds that Indiana's same sex

> (b) A marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it is solemnized. (hereinafter "Section B")

In addition, Plaintiffs broadly challenge other Indiana statutes that have the effect of carrying out the marriage ban (hereinafter, collectively, with Section 31-11-1-1, referred to as "Indiana's marriage laws"). On April 10, 2014, the court granted a temporary restraining order (Filing No. 51) prohibiting the Baskin Defendants from enforcing Section B against Nikole Quasney and Amy Sandler. The parties in Baskin agreed to fully brief their motions for preliminary injunction and summary judgments for a combined hearing held on May 2, 2014. The court granted a preliminary injunction extending the temporary restraining order (Filing No. 65). The court now considers the cross motions for summary judgment in the three cases.

B. Indiana's Marriage Laws

In order to marry in the State of Indiana, a couple must apply for and be issued a marriage license. See Ind. Code § 31-11-4-1. The couple need not be residents of the state. See Ind. Code § 31-11-4-3. However, the two individuals must be at least eighteen years of age or meet certain exceptions. See Ind. Code § 31-11-1-4; Ind. Code § 31-11-1-5. An application for a marriage license must include information such as full name, birthplace, residence, age, and information about each person's parents. See Ind. Code § 31-11-4-4.[2] The application only has blanks for information from a male and female applicant. See Marriage License Application, available at

[2] The State Department of Health is charged under Ind. Code § 31-11-4-4 with developing a uniform application for marriage licenses.

www.in.gov/judiciary/2605.htm. It is a Class D Felony to provide inaccurate information in the marriage license or to provide inaccurate information about one's physical condition.[3] See Ind. Code § 31-11-11-1; Ind. Code § 31-11-11-3. The clerk may not issue a license if an individual has been judged mentally incompetent or is under the influence of alcohol or drugs. See Ind. Code § 31-11-4-11.

The marriage license serves as the authority to solemnize a marriage. See Ind. Code § 31-11-4-14. The marriage may be solemnized by religious or non-religious figures. See Ind. Code § 31-11-6-1. If an individual attempts to solemnize a marriage in violation of Indiana Code Chapter 31-11-1, which includes same-sex marriages, then that person has committed a Class B Misdemeanor. See Ind. Code § 31-11-11-7.

In addition to prohibiting same-sex marriages, Indiana prohibits bigamous marriages and marriages between relatives more closely related than second cousins unless they are first cousins over the age of sixty-five. See Ind. Code § 31-11-1-2 (cousins); see Ind. Code § 31-11-1-3 (polygam th

location performed.

Prior to discussing the merits of the summary judgment motions, the court must decide several threshold issues. First, the court must determine whether Defendants Attorney General Zoeller, Governor Pence, and the Commissioner of the Indiana State Department of Revenue ("Department of

A. Defendant Zoeller

Ex Parte Young, 209 U.S. at 157. Therefore, the court DENIES the Attorney General's motion for summary judgment on that ground. (Filing No. 55).

B. Governor Pence

Governor Pence is sued in the Fujii and Lee cases. As the court found in Love v. Pence, another case challenging the constitutionality of Section 31-11-1-1, the Governor is not a proper party because the Plaintiffs' injuries are not fairly traceable to him and cannot be redressed by him. (Love v. Pence, No. 4:14-cv-15-RLY-TAB, Filing No. 32 (S.D. Ind. June 24, 2014). Therefore, the court GRANTS the Governor's motions for summary judgment. (Fujii Filing No. 44) (Lee Filing No. 41).

C. Commissioner of the Indiana State Department of Revenue

The Fujii Plaintiffs also brought suit against the Department of Revenue Commissioner. The Commissioner claims she is the wrong party because any harms caused by him do not constitute a concrete injury. The court disagrees and finds that Plaintiffs have alleged a concrete injury by having to fill out three federal tax returns in order to file separate returns for Indiana. See e.g. Harris v. City of Zion, Lake County, Ill., 927 F.2d 1401, 1406 (7th Cir. 1991) ("[a]n identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation."). The court finds that this is an identifiable trifle. Therefore, the court DENIES the Department of Revenue Commissioner's motion for summary judgment on that ground. (Fujii Filing No. 44).

IV. The Effect of Baker v. Nelson

Defendants argue that this case is barred by *Baker v. Nelson*. In *Baker*, the United States Supreme Court dismissed an appeal from the Supreme Court of Minnesota for want of a substantial federal question. 409 U.S. at 810. The Supreme Court of Minnesota held that: (1) the absence of an express statutory prohibition against same-sex marriages did not mean same-sex marriages were authorized, and (2) state authorization of same-sex marriages is not required by the United States Constitution. *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), *aff'd*, 409 U.S. 810 (1972).

The parties agree that the Supreme Court's ruling has the effect of a ruling on the merits. *See Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 182-83 (1979).

517 U.S. 620 (1996), *Lawrence v. Texas*, 539 U.S. 558 (2003), and *United States v. Windsor*, 133 S. Ct. 2675 (2013), and thus, this Court no longer must adhere to *Baker*.

The Supreme Court decided *Baker* at a different time in the country's equal protection jurisprudence. The following are examples of the jurisprudence at and around the time of *Baker*. The Court struck down a law for discriminating on the basis of gender for the first time only one year before *Baker*. *Reed v. Reed*, 404 U.S. 71 (1971). Moreover, at the time *Baker* was decided, the Court had not yet recognized gender as a quasi-suspect classification. Regarding homosexuality, merely four years after *Baker*, the Supreme Court granted a summary affirmance in a case challenging the constitutionality of the criminalization of sodomy for homosexuals. *Doe v. Commonwealth's Attorney for City of Richmond*, 425 U.S. 901 (1976). Thus, the Supreme Court upheld the district court's finding that "[i]t is enough for upholding the legislation that the conduct is likely to end in a contribution to moral delinquency." *Doe v. Commonwealth's Attorney for City of Richmond*, 403 F. Supp. 1199, 1202 (E.D. Va. 1975), *aff'd* 425 U.S. 901 (1976). Nine years later in 1985, the Eleventh Circuit found that particular summary affirmance was no longer binding. *Hardwick v. Bowers*, 760 F.2d 1202 (11th Cir. 1985), *rev'd* 478 U.S. 186 (1986). However, on review, the Supreme Court held that states were permitted to criminalize private, consensual sex between adults of the same-sex based merely on moral disapproval. *See Bowers v. Hardwick*, 478 U.S. 186 (1986), *overruled by Lawrence*, 539 U.S. at 578. For ten more years, states were free to legislate against homosexuals based merely on the majority's disapproval of such conduct.

Ct. 6252 (2013). These developments strongly suggest, if not compel, the conclusion that *Baker* is no longer controlling and does not bar the present challenge to Indiana's laws. *See Windsor v. United States*, 699 F.3d 169, 178 (2d Cir. 2012) ("*Baker* was not controlling as to the constitutionality of DOMA, reasoning that "[i]n the forty years after *Baker*, there have been many and significant changes to the Supreme Court's equal protection jurisprudence" and that "[e]ven if *Baker* might have had resonance . . . in 1971, it does not today").

The court acknowledges that this conclusion is not shared with all other district courts that have considered the issue post-*Windsor*. *See Wolf v. Walker*, No. 3:14-cv-00064-bbc, 2014 WL 2558444, ** 3-6 (W.D. Wisc. June 6, 2014); *Whitewood v. Wolf*, No. 1:13-cv-1861, 2014 WL 2058105, *4-6 (M.D. Penn. May 20, 2014); *Geiger v. Kitzhaber*, No. 6:13-cv-01834-MC, 2014 WL 2054264, *1 n. 1 (D. Or. May 19, 2014); *Latta v. Otter*, 1:13-cv-482-CWD, 2014 WL 1909999, ** 7-10 (D. Idaho May 13, 2013); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 773 n. 6 (E.D. Mich. 2014); *DeLeon v. Perry*, 975 F. Supp. 2d 632, 648 (W.D. Tex. 2014) (order granting preliminary injunction); *Bostic v. Rainey*, 970 F. Supp. 2d 456, 469-70 (E.D. Va. 2014); *Bishop v. U.S. ex rel. Holder*, 962 F. Supp. 2d 1252, 1274-77 (N.D. Okla. 2014); *McGee v. Cole*, No. 3:13-cv-24068, 2014 WL 321122, ** 8-10 (S.D.W. Va. Jan. 29, 2014); *Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1195 (D. Utah 2013). Finding that *Baker* does not bar the present action, the court turns to the merits of Plaintiffs' claims.

Redhail, 434 U.S. 374, 384 (1978) ("[D]ecisions of this Court confirm that the right to marry is of fundamental importance for all individuals."); United States v. Kras, 409 U.S. 434, 446 (1973) (concluding the Court has come to regard marriage as fundamental); Loving, 388 U.S. at 12 ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."); Skinner v. Okla. ex. rel. Williamson, 316 U.S. 535 (1942) (noting marriage is one of the basic civil rights of man fundamental to our existence and survival); Maynard v. Hill, 125 U.S. 190, 205 (1888) (characterizing marriage as "the most important relation in life" and as "the foundation of the family and society, without which there would be neither civilization nor progress."). Additionally, the parties agree that the right to marry necessarily entails the right to marry the person of one's choice. See Lawrence, 539 U.S. at 574 (2003) ("Our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education.").

Defendants, relying on Glucksberg, argue that the fundamental right to marry should be limited to its traditional definition of one man and one woman because fundamental rights are based in history. The concept of same-sex marriage is not deeply rooted in history; thus, according to Defendants, the Plaintiffs are asking the court to recognize a new fundamental right. Plaintiffs counter that Defendants' reliance on Glucksberg is mistaken because the Supreme Court has repeatedly defined the fundamental right to marry in broad terms.

The court agrees with Plaintiffs. "Fundamental rights, once recognized, cannot be denied to particular groups on the ground that those groups have historically been denied those rights." In re Marriage Cases, 183 P.3d 384, 430 (Cal. 2008) (superseded by constitutional amendment). In fact, "the history of our Constitution . . . is the story of the extension of constitutional rights and protections to people once ignored or excluded." United States v. Virginia, 518 U.S. 515, 557 (1996). The reasoning in Henry v. Himes is particularly persuasive on this point:

> The Supreme Court has consistently refused to narrow the scope of the fundamental right to marry by reframing a plaintiff's asserted right to marry as a more limited right that is about the characteristics of the couple seeking marriage. . . [T]he Court consistently describes a general 'fundamental

because the nation's history was replete with statutes banning interracial marriages between Caucasians and African Americans. Notably, the Court did not frame the issue of interracial marriage as a "new" right, but recognized the fundamental right to marry regardless of that "traditional" classification.

Unfortunately, the courts have failed to recognize the breadth of our Due Process rights before in cases such as Bowers, 478 U.S. at 186, overruled by Lawrence, 539 U.S. at 578. There, the court narrowly framed the issue as "whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy . . ." Id. at 190. Not surprisingly, with the issue framed so narrowly and applying only to a small classification of people, the Court found that there was no fundamental right at issue because our history and tradition proscribed such conduct. Id. at 192-94. In 2003, the Supreme Court recognized its error and reversed course. Lawrence, 539 U.S. at 567 (finding that the Bowers Court's statement of the issue "discloses the Court's own failure to appreciate the extent of the liberty interest at stake."). The Court found that the sodomy laws violated plaintiffs' Due Process right to engage in such conduct and intruded into "the personal and private life of the individual." Id. at 578. Notably, the Court did not limit the right to a classification of certain people who had historical access to that right.

Here, Plaintiffs are not asking the court to recognize a new right; but rather, "[t]hey seek 'simply the same right that is currently enjoyed by heterosexual individuals: the right to make a public commitment to form an exclusive relationship and create a family with a partner with whom the person shares an intimate and sustaining emotional

bond.'" Bostic, 970 F. Supp. 2d at 472 (quoting Kitchen, 961 F. Supp. 2d at 1202-03). The courts have routinely protected the choices and circumstances defining sexuality, family, marriage, and procreation. As the Supreme Court found in Windsor, "[m]arriage is more than a routine classification for purposes of certain statutory benefits," and "[p]rivate, consensual intimacy between two adult persons of the same sex . . . can form 'but one element in a personal bond that is more enduring.'" Windsor, 133 S. Ct. at 2693 (quoting Lawrence, 539 U.S. at 567). The court concludes that the right to marry should not be interpreted as narrowly as Defendants urge, but rather encompasses the ability of same-sex couples to marry.

2. Level of Scrutiny

The level of scrutiny describes how deeply the court must review the Defendants' proffered reasons for a law. Scrutiny ranges from rational basis (the most deferential to the State) to st

For strict scrutiny to be appropriate, the court must find: (1) there is a fundamental right, and (2) the classification significantly interferes with the exercise of that right. Id. First, as stated above, the court finds that fundamental right to marry includes the right of the individual to marry a person of the same sex. Second, Section 31-11-1-1 significantly interferes with that right because it completely bans the Plaintiffs from marrying that one person of their choosing. Therefore, Indiana's marriage laws are subject to strict scrutiny. See Bostic, 970 F. Supp. 2d at 473.

3. Application

Section 31-11-1-1, classifying same-sex couples, "cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." Zablocki, 434 U.S. at 388. Here, Defendants proffer that the state's interest in conferring the special benefit of civil marriage to only one man and one woman is justified by its interest in encouraging the couple to stay together for the sake of any unintended children that their sexual union may create. The court does not weigh whether or not this is a sufficiently important interest, but will assume that it is.

Defendants have failed to show that the law is "closely tailored" to that interest. Indiana's marriage laws are both over- and under-inclusive. The marriage laws are under-inclusive because they only prevent one subset of couples, those who cannot naturally conceive children, from marrying. For example, the State's laws do not consider those post-menopausal women, infertile couples, or couples that do not wish to have children. Additionally, Indiana specifically allows first cousins to marry once they reach the age that procreation is not a realistic possibility. See Ind. Code § 31-11-1-2.

On the other hand, Indiana's marriage laws are over-inclusive in that they prohibit some opposite-sex couples, who can naturally and unintentionally procreate, from marriage. For example, relatives closer in degree than second cousins can naturally and unintentionally procreate; however, they still may not marry.[4] Most importantly, excluding same-sex couples from marriage has absolutely no effect on opposite-sex couples, whether they will procreate, and whether such couples will stay together if they do procreate. Therefore, the law is not closely tailored, and the Defendants have failed to meet their burden.

The state, by excluding same-sex couples from marriage, violates Plaintiffs' fundamental right to marry under the Due Process Clause. *See Wolf*, 2014 WL 2558444, at * 21; *Lee v. Orr*, No. 1:13-cv-08719, 2014 WL 6836802 (N.D. Ill. Feb. 21, 2014) ("This Court has no trepidation that marriage is a fundamental right to be equally enjoyed by all individuals of consenting age regardless of their race, religion, or sexual orientation."); *Whitewood*, 2014 WL 2058105 at ** 8-9; *Latta*, 2014 WL 1909999 at * 13; *DeLeon*, 975 F. Supp. 2d at 659; *Bostic*, 970 F. Supp. 2d at 488; *Kitchen*, 961 F. Supp. 2d at 1204.

B. Equal Protection Clause

Plaintiffs also argue that Section 31-11-1-1 violates the Fourteenth Amendment's Equal Protection Clause. The Equal Protection Clause "commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is

[4] The court does not evaluate the constitutionality of such laws, but merely uses this example to show that the present law would be over-inclusive in regard to Defendants' stated reason for marriage.

essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Center, Inc.

court stated above, the right to marry is about the ability to form a partnership, hopefully lasting a lifetime, with that one special person of your choosing. Additionally, although Indiana previously defined marriage in this manner, the title of Section 31-11-1-1 – "Same sex marriages prohibited" – makes clear that the law was reaffirmed in 1997 not to define marriage but to prohibit gays and lesbians from marrying the individual of their choice. Thus, the court finds that Indiana's marriage laws discriminate based on sexual orientation.

b. Level of Scrutiny

The Seventh Circuit applies rational basis review in cases of discrimination based on sexual orientation. See Schroeder v. Hamilton Sch. Dist., 282 F.3d 946, 950-51 (7th Cir. 2002) ("Homosexuals are not entitled to any heightened protection under the Constitution."). The Seventh Circuit relied on *Bowers* and *Romer* for this conclusion. Plaintiffs argue that since *Bowers* has since been overruled, the court is no longer bound by *Schroeder*. The court disagrees and believes it is bound to apply rational basis because one of the cases the Court relied on in *Schroeder*, *Romer*, is still valid law. The court agrees with Plaintiffs that it is likely time to reconsider this issue, especially in light of the Ninth Circuit's decision in *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 481 (9th Cir. 2014) (interpreting *Windsor* to mean that gay and lesbian persons constitute a suspect class). However, the court will leave that decision to the Seventh Circuit, where this case will surely be headed. The court will, therefore, apply rational basis review.

c. Application

Defendants rely on *Johnson v. Robison* for the proposition that "when . . . the inclusion of one group promotes a legitimate governmental purpose, and the addition of other groups would not, we cannot say that the statute's classification of beneficiaries and nonbeneficiaries is invidiously discriminatory." 415 U.S. 361, 383 (1974). According to Defendants, *Johnson* means that they must only show that there is a rational reason to provide the right of marriage to opposite-sex couples, not that there is a rational basis to exclude. In essence, Defendants assert that opposite-sex couples have distinguishing characteristics, the ability to naturally and unintentionally procreate as a couple, that allow the State to treat them differently from same-sex couples.

Plaintiffs, on the other hand, allege that the primary purpose of the statute is to exclude same-sex couples from marrying and thus the Defendants must show a rational basis to exclude them. The court agrees with Plaintiffs. According to Plaintiffs, the purpose is evident by the timing of the statute, which was passed in an emergency session near the time that DOMA was passed and immediately after and in response to a Hawaiian court's pronouncement in

assert they are similar in all relevant aspects to opposite-sex couples seeking to marry–they are in long-term, committed, loving relationships and some have children.

The Johnson case concerned a challenge brought by a conscientious objector seeking to declare the educational benefits under the Veterans' Readjustment Benefits Act of 1966 unconstitutional on Equal Protection grounds. 415 U.S. at 364. In reviewing whether or not the classification was arbitrary, the Court looked to the purpose of that Act and found that the legislative objective was to (1) make serving in the Armed Forces more attractive and (2) assist those who served on active duty in the Armed Forces in "readjusting" to civilian life. See id. at 376-377. The Court found that conscientious objectors were excluded from the benefits that were offered to the veterans because the benefits could not make service more attractive to a conscientious objector and the need to readjust was absent. See id. The Supreme Court found that the two groups were not similarly situated and thus, Congress was justified in making that classification. See id. at 382-83.

The court agrees with Plaintiffs that they are similarly situated in all relevant aspects to opposite-sex couples for the purposes of marriage. Also of great importance is the fact that unlike the statute at issue in Johnson, "[m]arriage is more than a routine classification for purposes of certain statutory benefits." Windsor, 133 S. Ct. at 2693. In fact having the status of "married" comes with hundreds of rights and responsibilities under Indiana and federal law. See 514 Reasons Why Marriage Equality Matters in Indiana, Fujii, Filing No. 46-2). As the court in Kitchen stated in analyzing the Equal Protection claim before it:

> [T]he State poses the wrong question. The court's focus is not on whether extending marriage benefits to homosexual couples serves a legitimate governmental interest. None disputes that marriage benefits serve not just legitimate, but compelling governmental interests, which is why the Constitution provides such protection to an individual's fundamental right to marry. Instead, courts are required to determine whether there is a rational connection between the challenged statute and a legitimate state interest. Here, the challenged statute does not grant marriage benefits to opposite-sex couples.[5] The effect of [Utah's marriage ban] is only to disallow same-sex couples from gaining access to these benefits. The court must therefore analyze whether the State's interests in responsible procreation and optimal child-rearing are furthered by prohibiting same-sex couples from marrying.

961 F. Supp. 2d at 1210-11 (reference and footnote added). Like Utah's laws, the effect of Indiana's marriage laws is to exclude certain people from marrying that one special person of their choosing. This is evident by the title of Section 31-11-1-1 – "Same sex marriages prohibited." Consequently, the question is whether it is rational to treat same-sex couples differently by excluding them from marriage and the hundreds of rights that come along with that marriage. See e.g. City of Cleburne, Tex., 473 U.S. at 449.

The court finds that there is no rational basis to exclude same-sex couples. The purpose of marriage – to keep the couple together for the sake of their children – is served by marriage regardless of the sexes of the spouses. In order to fit under Johnson's

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[5] Section 30–1–4.1 of the Utah Code, provides:
(1) (a) It is the policy of this state to recognize as marriage only the legal union of a man and a woman as provided in this chapter.
(b) Except for the relationship of marriage between a man and a woman recognized pursuant to this chapter, this state will not recognize, enforce, or give legal effect to any law creating any legal status, rights, benefits, or duties that are substantially equivalent to those provided under Utah law to a man and woman because they are married.
Amendment 3 provides: "(1) Marriage consists only of the legal union between a man and a woman.
(2) No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect."

rationale, Defendants point to the one extremely limited difference between opposite-sex and same-sex couples, the ability of the couple to naturally and unintentionally procreate, as justification to deny same-sex couples a vast array of rights. The connection between these rights and responsibilities and the ability to conceive unintentionally is too attenuated to support such a broad prohibition. See Romer, 517 U.S. at 635. Furthermore, the exclusion has no effect on opposite-sex couples and whether they have children or stay together for those children. Defendants proffer no reason why excluding same-sex couples from marriage benefits opposite-sex couples. The court concludes that there simply is no rational link between the two. See Tanco, 2014 WL 997525 at * 6; see also Bishop, 962 F. Supp. 2d at 1290-93 (finding there is no rational link between excluding same-sex marriages and "steering naturally procreative' relationships into marriage, in order to reduce the number of children born out of wedlock and reduce economic burdens on the State"); see also DeBoer, 973 F. Supp. 2d at 771-72 (noting that prohibiting same-sex marriage "does not stop [gay men and lesbian women] from forming families and raising children. Nor does prohibiting same-sex marriage increase the number of heterosexual marriages or the number of children raised by heterosexual parents.").

VI. Recognition of Out-of-state Marriages

Defendants concede that whether Indiana can refuse to recognize out-of-state, same-sex marriages turns entirely on whether Indiana may enforce Section A. Because the court finds that Indiana may not exclude same-sex couples from marriage, the court also finds it cannot refuse to recognize out-of-state, same-sex marriages. See e.g. Loving,

388 U.S. at 4, 11. Nevertheless, the court finds that Section B violates the Equal Protection Clause independent of its decision regarding Section A.

void out-of-state, same-sex marriages. Therefore, Part B violates the Fourteenth Amendment's Equal Protection Clause. See Tanco v. Haslam, No. 3:13-cv-01159, 2014 WL 997525 (M.D. Tenn. Mar. 14, 2014); see also Bourke, 2014 WL 556729.

VII. Conclusion

The court has never witnessed a phenomenon throughout the federal court system as is presented with this issue. In less than a year, every federal district court to consider the issue has reached the same conclusion in thoughtful and thorough opinions – laws prohibiting the celebration and recognition of same-sex marriages are unconstitutional. It is clear that the fundamental right to marry shall not be deprived to some individuals based solely on the person they choose to love. In time, Americans will look at the marriage of couples such as Plaintiffs, and refer to it simply as a marriage – not a same-

3. The Baskin Plaintiffs' motion to consolidate preliminary injunction proceedings with final trial on the merits (No. 1:14-cv-355, Filing No. 37) and the Baskin Defendants' motion for stay of the preliminary injunction (No. 1:14-cv-355, Filing No. 68) are DENIED as moot.
4. The Fujii Plaintiffs' motion for summary judgm

Specifically, this permanent injunction requires the following, and the court ORDERS the following:

1. The Defendant Clerks, their officers, agents, servants, employees and attorneys, and all those acting in concert with them, are PERMANENTLY ENJOINED from denying a marriage license to a couple because both

and all those acting in concert with them, are

This Order does not apply to Governor Pence, who the court found was not a proper party. This Order takes effect on the 25th day of June 2014.

SO ORDERED this 25th day of June 2014.

RICHARD L. YOUNG, CHIEF JUDGE

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