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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH
6

7 MARY LI and REBECCA KENNEDY;
8 STEPHEN KNOX, M.D., and ERIC
9 WARSHAW, M.D.; KELLY BURKE and
10 DOLORES DOYLE; DONNA POTTER and
11 PAMELA MOEN; DOMINICK VETRI and
12 DOUGLAS DEWITT; SALLY SHEKLOW
and ENID LEFTON; IRENE FARRERA and
NINA KORICAN; WALTER FRANKEL and
CURTIS KIEFER; JULIE WILLIAMS and
COLEEN BELISLE; BASIC RIGHTS
OREGON; and AMERICAN CIVIL
LIBERTIES UNION OF OREGON,

13 Plaintiffs,

14 and

15 MULTNOMAH COUNTY,

16 Intervenor-Plaintiff,

17 v.

18 STATE OF OREGON; THEODORE
19 KULONGOSKI, in his official capacity as
Governor of the State of Oregon, HARDY
20 MYERS, in his official capacity as Attorney
General of the State of Oregon; GARY
21 WEEKS, in his official capacity as Director of
the Department of Human Services of the
State of Oregon; and JENNIFER
22 WOODWARD, in her official capacity as
State Registrar of the State of Oregon,
23

24 Defendants,

25 and
26

Case No. 0403-03057

DEFENDANTS' ANSWER AND AFFIRMATIVE
DEFENSES

1 DEFENSE OF MARRIAGE COALITION,
2 CECIL MICHAEL THOMAS, NANCY JO
3 THOMAS, DAN MATES and DICK
4 OSBORNE,

5
6 Intervenor-Defendants.

7
8 For their answer to plaintiffs' complaint, defendants allege as follows:

9 1.

10 Defendants admit the allegations of paragraphs 7, 8, 9, 17, 26, 35, 41, 46, 54, 64, 73, 80,
11 82, 86, 87, 88, 89, 90, 91, 95, 96, 97, 99, 105, 106, 111, 112, 118, 119, 125, 126, 132, and 134.

12 2.

13 Defendants deny the allegations of paragraphs 6, 114, 115, 116, 121, 122, 123, 128, 129,
14 130, 136, 137, 138, and each and every allegation not expressly admitted herein.

15 3.

16 Defendants lack sufficient knowledge to admit or deny the allegations in the following
17 paragraphs, and, on that basis, deny them: paragraphs 5;10-16; 18-25; 27-34; 36-40; 42-45; 47-
18 53; 55-63; 65-72; 74-79; 81; 83-85; 102; and 104.

19 4.

20 Paragraphs 113, 120, 127, and 135 characterize Article I, section 20 of the Oregon
21 Constitution. Defendants allege that that provision speaks for itself.

22 5.

23 In response to paragraph 1, defendants admit that "marriage" can be described in the
24 ways alleged; defendants deny that that is the only way to describe marriage.

25 6.

26 In response to paragraph 2, defendants admit that married persons have certain rights,
benefits and protections specified in Oregon statutes, which speak for themselves.

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7.

In response to paragraph 3, defendants admit that, historically, there have been restrictions on the right to marry and the rights associated with marriage; such restrictions are fully described in those historical laws, which speak for themselves.

8.

Defendants admit the first sentence of paragraph 4 and deny the remainder of that paragraph.

9.

In response to paragraph 92, defendants admit that (1) Multnomah County counsel issued a legal opinion on the subject matter of this case; (2) the opinion speaks for itself; (3) Multnomah County began issuing marriage licenses to same-sex couples on or about March 3, 2004; and (4) that action was apparently taken at the direction of the Chair of the Board of County Commissioners for Multnomah County. Defendants deny the remainder of paragraph 92.

10.

Defendants admit the first sentence of paragraph 93; defendants lack sufficient knowledge to admit or deny the remaining allegations of paragraph 93, and, on that basis, deny them.

11.

In response to paragraph 94, defendants admit that Attorney General Hardy Myers issued a legal opinion on March 12, 2004, that addresses the subject matter of this case. That opinion speaks for itself.

12.

In response to paragraph 98, defendants admit that (1) the Board of County Commissioners for Benton County initially indicated that Benton County would begin issuing marriage licenses to same-sex couples; and (2) Benton County thereafter decided not to proceed with that course of action after the Governor and Attorney General urged Benton County to

1 abide by current statutory requirements until there was a definitive court ruling on the issue.
2 Defendants deny paragraph 98 to the extent inconsistent with the foregoing.

3 13.

4 In response to paragraph 100, defendants admit that Attorney General Hardy Myers sent
5 letters addressed to all Oregon counties on or about March 18, 2004. Those letters speak for
6 themselves.

7 14.

8 In response to paragraph 101, defendants admit that Attorney General Hardy Myers
9 issued a press release on or about March 19, 2004; that press release speaks for itself.

10 15.

11 In response to paragraph 103, defendants admit that, on or about March 22, 2004, Benton
12 County Board of County Commissioners decided not to proceed to issue marriage licenses to
13 same-sex couples. The statements issued by Benton County and by Attorney General Hardy
14 Myers referenced in paragraph 103 speak for themselves.

15 16.

16 Defendants admit the first sentence of paragraph 107 and deny the remainder of that
17 paragraph.

18 17.

19 In response to paragraph 108, defendants admit that Oregon counties other than
20 Multnomah County have continued to follow the statutory requirements that do not currently
21 permit issuing marriage licenses to same-sex couples. Defendants deny the remaining
22 allegations of paragraph 108.

23 18.

24 Defendants admit the first two sentences of paragraph 109 and deny the remaining
25 allegations of that paragraph.

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19.

Paragraphs 110, 117, 124, and 131 incorporate by reference the allegations of paragraphs 1 through 109 of the complaint. In response, defendants incorporate by reference their responses to paragraphs 1 through 109.

FIRST AFFIRMATIVE DEFENSE

(Legislative Remedy)

20.

If this court determines that Oregon’s current statutory provisions governing civil marriage violate Article I, section 20 in any respect, the court’s judgment should maintain the present statutory provisions for civil marriage and declare that Multnomah County must comply with current statutes governing civil marriage until the Oregon legislature has had an opportunity in its next regular session to fashion appropriate remedial legislation, or until another remedy is ordered by the court.

SECOND AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction—Fourth Claim)

21.

This court lacks subject matter jurisdiction to decide plaintiffs’ fourth claim for relief (mandamus) because other legal remedies are available to plaintiffs.

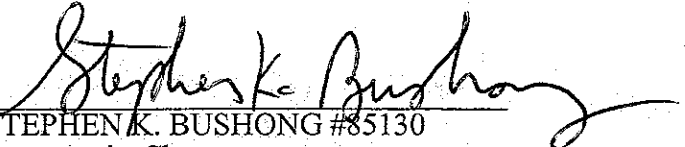
WHEREFORE, having fully responded to plaintiffs’ complaint, defendants pray for entry of judgment as follows: (1) declaring whether Oregon’s current statutes governing civil marriage violate Article I, section 20 in any respect; (2) affirming defendants’ actions that were taken in compliance with current statutory requirements pending remedial legislation and/or final resolution of this case; (3) if Oregon’s statutory provisions governing civil marriage are found to be unconstitutional in any respect, maintaining the current statutory provisions governing civil marriage for a reasonable time, ordering Multnomah County to comply with those provisions, and giving the Oregon legislature a reasonable opportunity during its next regular session to

1 fashion appropriate remedial legislation before any other remedy is ordered by the court;
2 (4) denying any other relief on the claims asserted by plaintiffs; and (5) awarding defendants
3 their costs and disbursements incurred herein.

4 DATED this 5th day of April, 2004.

5 Respectfully submitted,

6 HARDY MYERS
7 Attorney General

8 
9 STEPHEN K. BUSHONG #85130
10 Attorney-in-Charge
11 Trial Attorney
12 Of Attorneys for Defendants
13 1162 Court Street NE
14 Salem, OR 97301-4096
15 (503) 378-6313

CERTIFICATE OF SERVICE

I certify that on April 5, 2004, I served the foregoing DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES upon the parties hereto by the method indicated below, and addressed to the following:

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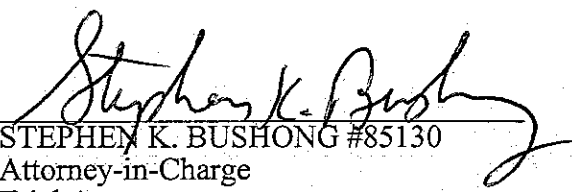
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