



4. Paul is the “surviving spouse” and therefore should receive proceeds from a wrongful death action that now is pending in this Court.

5. Certain provisions of Alabama law and the Alabama Constitution prevent this result, however.

6. Proceeds from a wrongful death action in Alabama must be distributed pursuant to the

the surviving spouse.

7. But Ala. Code § 30-1-19 (“Marriage Protection Act”) and Ala. Const. Amend. No. 774

what the Sanctity Laws do: they single out same-sex marriages and deny to those marriages the same rights and dignity that Alabama affords other marriages.

11 In defining the Sanctity Laws as the right to equal protection and due process

Governor Bentley maintains, and has exercised, enforcement authority in connection with the Sanctity Laws. As an example, he announced in September 2013 that he would not permit the Alabama National Guard to provide benefits to same-sex spouses, despite a federal directive to do so. According to news reports, Governor Bentley stated: "When they're under my command we will obey Alabama state law." The Governor maintains an office and official residence in Montgomery. Governor Bentley is sued in his official capacity.

17. Defendant *Luther Johnson Strange, III* is the Attorney General of the State of Alabama.

States, in any case in which the state may be interested in the result." See Ala. Code § 36-15-

certificates of death, and retains the power to amend death certificates that contain errors. *See* Ala. Code §§ 22-9A-3; 22-9A-2; 22-9A-14(a); Alabama Admin. Code r. 420-7-1-17. Ms. Donald therefore has an enforcement connection to the Sanctity Laws because she has the power to correct David Fancher's death certificate, which incorrectly indicates that David was "Never Married" at the time of his death, and that he had no surviving spouse. Ms. Donald is sued in her official capacity.

19. *Steven L. Reed* is the probate judge for the County of Montgomery. In Case No. 12-00288, the Probate Court of Montgomery County admitted David's will into the County record and issued Certified Letters Testamentary to Richard Lohr, II appointing him the Personal Representative of David's estate. Judge Reed has jurisdiction over certain matters related to David Fancher's estate, including the power to determine whether Paul is a surviving spouse for

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**FACTUAL BACKGROUND**

21. David and Paul met on July 4th, 2004 for a first date. They became a couple soon thereafter. Throughout their time together, David occasionally asked Paul to marry him. Paul demurred at first, but Paul eventually, and enthusiastically, agreed to marry David and the couple was lawfully married on a beach on Cape Cod in Massachusetts on May 20, 2011. A copy of

the marriage certificate is attached as Exhibit A.

22. The wedding ceremony featured a loving cup ceremony, adopted from their shared Scottish heritage. The cup is engraved with quotation from the Song of Solomon: "I am by

beloved's and my beloved is mine." The tradition is to drink from the cup on the wedding day and on every anniversary, each drinking three times, to the love that was, the love that is, and the love that will be.

23. Paul testified that David said "I am by beloved's and my beloved is mine." The tradition is to drink from the cup on the wedding day and on every anniversary, each drinking three times, to the love that was, the love that is, and the love that will be.

28. The complaint in the wrongful death case pending in this Court states that defendants in that case, truck drivers and a shipping company, were

traveling North on Interstate 65 . . . in rural Autauga County, Alabama. Defendants' vehicle negligently and wantonly collided with another vehicle causing Defendants'

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the name of the "Surviving Spouse." When Paul saw the inaccurate information, he asked that it be changed, but the funeral director refused. A copy of the Death Certificate, signed by

Defendant Catherine M. Donald and registered with the State of Alabama, is attached as Exhibit

B.







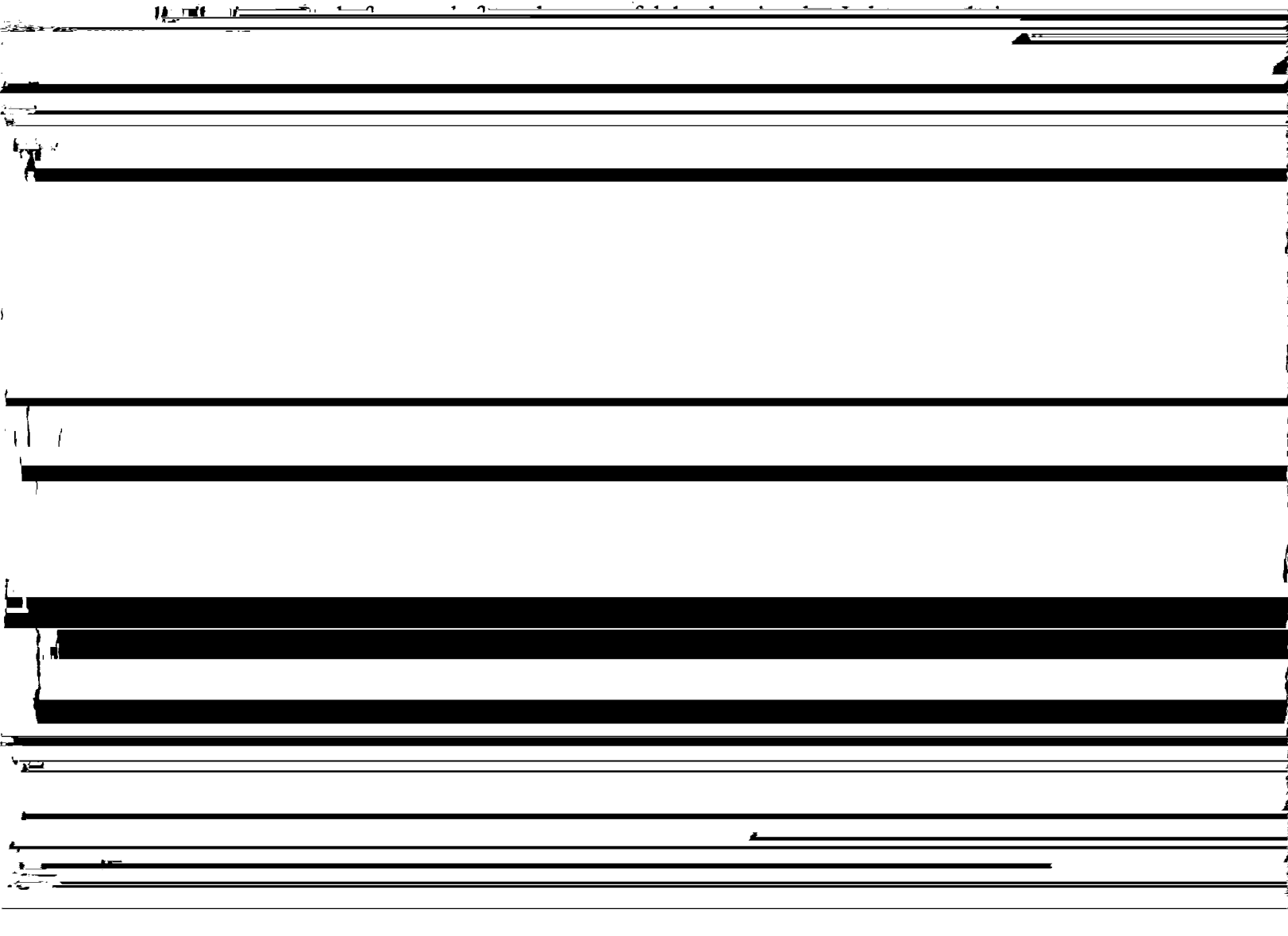
that no provision of the U.S. Constitution would require a different result. *See* Ala. Op. Att’y Gen. 2000-129 (Ala. A.G. 2000).

56. Notwithstanding the Attorney General’s opinion that the Marriage Protection Act adequately protected Alabama from out-of-state same-sex unions, the legislature took additional action just years later to further safeguard Alabama from the specter of same-sex unions.

state.

62 The U.S. Supreme Court has addressed the constitutionality of a similar restriction

67. There exists an actual controversy between Plaintiff Paul Hard, on one hand, and the Defendants on the other, regarding the constitutionality of those provisions of the Sanctity Laws that purport to prevent recognition of Paul as David's "surviving spouse" and to prevent



prosecuting.

68. On information and belief, the Defendants apart from Lohr contend that these provisions are consistent with the U.S. Constitution.

69. On information and belief, Defendant Lohr takes no position on the constitutionality of the marriage restrictions, but understands that they preclude him from recognizing Paul as a "surviving spouse" or from distributing to Paul any proceeds from the wrongful death action

Lohr now is prosecuting

resulting from their treating out-of-state marriages of all Alabama citizens equally. Granting injunctive relief will not disserve the public interest.

**COUNT I**

**(Declaratory and Injunctive Relief Pursuant to the Declaratory Judgment Act – Violation of Equal Protection – Fourteenth Amendment)**

74. Plaintiff incorporates all prior paragraphs.

75. [REDACTED]

purposes under state law, including under the laws of intestate succession.

76. Solely because Plaintiff is gay and married a person of the same sex, the Sanctity Laws treat his marriage as a legal nullity, unconstitutionally creating a second-tier class of citizens and marriages.

77. Defendants' failure to recognize marriages of same-sex couples validly entered in other jurisdictions is unconstitutional under the Equal Protection Clause because it categorically denies

81. The Sanctity Laws are invalid for lack of any legitimate purpose that could overcome the

and dignity under law.

82. The Sanctity Laws similarly harm Plaintiff and other married, same-sex couples by





as “surviving spouse,” and without regard to the Marriage Protection Act or the Sanctity of Marriage Amendment;

- (d) Issue an injunction pursuant to 28 U.S.C. § 2202 that Catherine M. Donald correct David Fancher’s death certificate to indicate that David was married at the time of death and that Paul Hard is his surviving spouse;
- (e) Award costs and fees as permitted by law; and
- (f) Provide such further relief as the Court deems proper.

December 16, 2013

Respectfully submitted,

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\*Application for admission *pro hac vice* forthcoming

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