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U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

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7  
8 U.S. DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SOUTHERN DIVISION

11 **ARTHUR BRUNO SMELT and**  
12 **CHRISTOPHER DAVID HAMMER,**

CASE NO. SACV04-1042 GLT (MLGx)

13 Plaintiffs,

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

14 vs.

15 **COUNTY OF ORANGE,**  
16 **CALIFORNIA; COUNTY CLERK**  
17 **for the COUNTY OF ORANGE;**  
18 **MICHAEL RODRIAN, in his official**  
19 **capacity as State Registrar of Vital**  
20 **Statistics, California Department of**  
21 **Health Services, and DOES 1 through**  
22 **10, inclusive,**

23 Defendants.

24 **INTRODUCTION**

25 1. Original federal question jurisdiction of this Court is proper pursuant  
26 to 28 U.S.C. §§ 1331 and 1343. Jurisdiction for declaratory and injunctive relief is  
27 proper under 28 U.S.C. §§ 2201 and 2202, and Rule 65 Fed. R. Civ. Proc.  
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STATEMENT OF FACTS

2. Plaintiffs are a same-sex couple who desire and intend to marry but have not been able to do so. Each of the plaintiffs are a single male over the age of eighteen years who are not otherwise disqualified from eligibility for marriage and who are capable to consenting to and consummating the marriage. On Two Occasions, Plaintiffs submitted their application to the Clerk for the County of Orange. Each time the Clerk refused to accept Plaintiffs' applications solely because Plaintiffs are of the same gender. In every other respect, Plaintiffs qualify for the issuance of a marriage license

3. Plaintiffs attempted to secure a marriage license from the County Clerk of Orange County, California, on February 26, 2004. and on or about March 2, 2004.

4. Refusal to allow the Plaintiffs to marry results in the denial of hundreds of state law rights, benefits and responsibilities, and more than a thousand federal rights, benefits, and responsibilities, that are automatically bestowed upon opposite-gender couples who marry.

5. Some of these automatic rights, benefits and responsibilities are: The right to social security survivor benefits; decision-making authority for funeral arrangements and disposition of the body; the right to bereavement leave in the event of a partner's death; the presumption that both spouses are the legal parents of a child born during marriage; and, the right to community property, and a share of separate property, upon the death of a partner who dies intestate.

6. Denial of the marriage license caused Plaintiffs to suffer severe emotional distress, humiliation, mental anguish. a loss of liberty and the pursuit of happiness, a denial of equal protection of the laws, a denial of due process of law, a denial of the exercise of freedom of speech, a denial of freedom of association, a denial of privacy rights, and a denial of the right to travel to establish residency anywhere in the United States with full recognition of the legality of Plaintiffs' marriage.



1 affection for one another, Plaintiffs applied for and received a Declaration of  
2 Domestic Partnership from the State of California dated January 10, 2000. Plaintiffs  
3 reside in Orange County, California.

4 13. Defendants are the County Clerk of Orange County, the County of  
5 Orange, California, Michael Rodrian in his official capacity as State Registrar of  
6 Vital Records for the California Department of Health Services, and the California  
7 Department of Health Services. Defendant Michael Rodrian is the State Registrar of  
8 Vital Statistics and is charged with the statutory responsibility of regulating,  
9 supervising, prescribing and furnishing vital statistics forms related to marriage,  
10 including marriage license forms, for use throughout the State of California. The  
11 State Registrar is, by statute, responsible for arranging, and preserving all registered  
12 vital statistics licenses, including marriage licenses, providing instructions related to  
13 marriage licenses, and record keeping protocols related to marriages, and the  
14 issuance of marriage licenses, to local Registrars and Clerks throughout the State of  
15 California. [See California Health and Safety Code Sections 102100, 102105,  
16 102130, 102135 102140. The State Registrar is an entity of the California  
17 Department of Health Services. Defendants refuse to issue Plaintiffs a marriage  
18 license solely based on gender.

19 14. Plaintiffs are ignorant of the true names and capacities, whether  
20 individual, corporate, associate or otherwise of Defendants sued herein as DOES 1  
21 through 10, inclusive, and therefore sues said Defendants by such fictitious names  
22 and will amend this Complaint to show their true names and capacities when  
23 ascertained.

24 15. Plaintiffs are informed and believe and thereon allege that at all times  
25 herein mentioned, Defendants, and each of them, were agents, servants, and  
26 employees of each of the remaining Co-defendants and were acting within the course  
27 and scope of said agency and employment and with the consent and permission of  
28 each of the remaining Co-defendants.



1 by the State of California, violates the individual constitutional rights as prescribed  
2 by the United States Constitution, to wit: Violation of the Equal Protection and Due  
3 Process Clauses and violation of the Right to Life, Liberty and the Pursuit of  
4 Happiness. The prohibition further violates the right to be free from an undue  
5 invasion of the Right of Privacy; and violates the Ninth Amendment Right of  
6 Reservation of all Rights not Enumerated to the People, and the Right to Travel, and  
7 The Right of Free Speech,

8 23. The Codes violate the liberty interests protected by the Due Process  
9 Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

10 24. The Codes discriminate on the basis of gender in violation of the Equal  
11 Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

12 25. The Codes discriminate on the basis of sexual orientation in violation  
13 of the Equal Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

14 26. The Codes violate the privacy interests protected by the Right to  
15 Privacy (Griswold v. Connecticut, 381 U.S. 479 (1965)).

16 27. Section 308.5 additionally violates the Full Faith and Credit Clause of  
17 Article Five of the United States Constitution (28 U.S.C. § 1738).

18 28. The Federal Definition of Marriage Act (28 U.S.C. 1738c), if  
19 concluded to exclude same-gender couples, violates the individual constitutional,  
20 rights as prescribed by the United States Constitution.

21 29. The Act violates the liberty interests protected by the Due Process  
22 Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

23 30. The Act discriminates on the basis of gender in violation of the Equal  
24 Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

25 31. The Act discriminates on the basis of sexual orientation in violation of  
26 Equal Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

27 32. The Act violates the privacy interests protected by the Right to Privacy  
28 (Griswold v. Connecticut, 381 U.S. 479 (1965)).

1           33. Federal law providing that “no state . . . of the United States . . . may be  
2 required to give effect to any public act, record, or judicial proceeding of any other  
3 state . . . respecting a relationship between persons of the same sex that is treated as a  
4 marriage under the laws of such other state . . . arising from such relationship” (28  
5 U.S.C. § 1738c) is unconstitutional violating Due Process Clause (42 U.S.C. § 1983),  
6 the Equal Protection Clause (42 U.S.C. § 1983), and the Right to Privacy (Griswold  
7 v. Connecticut, 381 U.S. 479 (1965)) of the same-gender couple, and the Full Faith  
8 and Credit Clause of the United States Constitution (28 U.S.C. § 1738).

9  
10           WHEREFORE, Plaintiffs pray, and respectfully request that the Court enter  
11 judgment:

12  
13           1. Declaring that Section 300 of the California Family Law Code violates  
14 the Due Process, Equal Protection and Right to Privacy of the United States  
15 Constitution;

16           2. Declaring that Section 301 of the California Family Law Code violates  
17 the Due Process, Equal Protection and Right to Privacy of the United States  
18 Constitution;

19           3. Declaring that Section 308.5 of the California Family Law Code  
20 violates the Due Process, Equal Protection, Right to Privacy and Full Faith and  
21 Credit of the United States Constitution;

22           4. Declaring that the Federal Definition of Marriage Act violates the Due  
23 Process, Equal Protection and Right to Privacy of the United States Constitution;

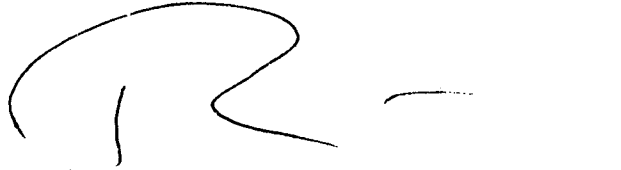
24           5. Declaring that 28 U.S.C. § 1738c violates the Full Faith and Credit of  
25 the United States Constitution;

26           6. Mandating the use of gender-neutral terms and issuing a marriage  
27 license to Plaintiffs;

28           7. Costs, including but not limited to attorneys’ fees; and

1           8.     Granting such other and further relief as the Court deems just and  
2 proper.

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4 DATED: September 22, 2004



RICHARD C. GILBERT, ESQ.  
State Bar No. 85912

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U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA



BY \_\_\_\_\_

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR, OR, PLAINTIFF OR DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER

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ARTHUR BRUNO SMELT and  
ATTORNEYS FOR: CHRISTOPHER DAVID HAMMER

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARTHUR BRUNO SMELT and  
CHRISTOPHER DAVID HAMMER

Plaintiff(s),

CASE NUMBER

SACV 04-1042 GLT (MLGx)

COUNTY OF ORANGE, CALIFORNIA;  
COUNTY CLERK for the COUNTY OF ORANGE;  
MICHAEL RODRIAN, in his official  
capacity as State Registrar of Defendant(s)

CERTIFICATION AND NOTICE  
OF INTERESTED PARTIES  
(Local Rule 7.1-1)

Vital Statistics, California Department of Health Services, and DOES 1  
TO: THE COURT AND ALL PARTIES APPEARING OF RECORD: through 10, inclusive,

The undersigned, counsel of record for PLAINTIFFS, ARTHUR BRUNO SMELT & CHRISTOPHER DAVID HAMMER (or party appearing in pro per), certifies that the following listed party (or parties) has (have) a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal. (Use additional sheet if necessary.)

PARTY

CONNECTION

(List the names of all such parties and identify their connection and interest.)

|   |           |
|---|-----------|
| ARTHUR BRUNO SMELT  | PLAINTIFF |
| CHRISTOPHER DAVID HAMMER  | PLAINTIFF |
| COUNTY OF ORANGE, CALIFORNIA  | DEFENDANT |
| COUNTY CLERK for the COUNTY OF ORANGE   | DEFENDANT |
| MICHAEL RODRIAN, State Registrar of Vital<br>Statistics, California Dept.<br>of Health Services | DEFENDANT |

SEPTEMBER 23, 2004

Date

Sign

RICHARD C. GILBERT

Attorney of record for or party appearing in pro per

NOTICE OF INTERESTED PARTIES

NAME, ADDRESS & TELEPHONE NUMBER OF ATTORNEY(S) FOR, OR, PLAINTIFF OR DEFENDANT IF PLAINTIFF OR DEFENDANT IS PRO PER

ATTORNEYS FOR:

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CASE NUMBER

v. Plaintiff(s)  
  
Defendant(s)

**CERTIFICATION AND NOTICE  
OF INTERESTED PARTIES  
(Local Rule 7.1-1)**

TO: THE COURT AND ALL PARTIES APPEARING OF RECORD:

The undersigned, counsel of record for \_\_\_\_\_  
(or party appearing in pro per), certifies that the following listed party (or parties) has (have) a direct, pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal. (Use additional sheet if necessary.)

**PARTY**

**CONNECTION**

(List the names of all such parties and identify their connection and interest.)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sign

\_\_\_\_\_  
Attorney of record for or party appearing in pro per