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U.S. DISTRICT COURT  
DISTRICT OF UTAH  
**ATTORNEYS FOR PLAINTIFFS**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH CENTRAL DIVISION

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<b>J. BRONSON,</b>	:	
<b>G. LEE COOK and</b>	:	
<b>D. COOK,</b>	:	
Plaintiffs,	:	<b><u>PLAINTIFFS' MOTION</u></b>
	:	<b><u>FOR SUMMARY JUDGMENT</u></b>
vs.	:	
<b>SHERRIE SWENSEN,</b> Salt Lake County	:	
Clerk,	:	Case No. 02:04-CV-0021 TS
	:	
Defendant.	:	(Judge Ted Stewart)
	:	

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PLAINTIFFS, by and through counsel, move this Court to enter a summary judgment in their favor and against defendant granting plaintiffs the relief sought in their complaint. That motion is supported by the pleadings and papers filed in this action including the Complaint (Doc. # 1), the Affidavit of J. Bronson (Doc. # 2), the Affidavit of G. Lee Cook (Doc. # 3), the Affidavit of D. Cook (Doc. # 4), the Stipulation of Facts (Doc. # 5), Plaintiffs' Statement of Undisputed Facts (Doc. # 7) and a Memorandum of even date. Based upon these papers, no

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material issues of fact are in substantial dispute and this case may be resolved as a matter of law.

This action seeks a judicial determination as to the unconstitutionality of two (2) provisions of Utah law and one (1) of federal law that make criminal the religious practice of polygamy.<sup>1</sup> Plaintiffs applied for a marriage license from defendant Sherrie Swensen, the Salt Lake County Clerk. Defendant refused to issue that license because the proposed marriage of G. Lee Cook to J. Bronson would have violated the challenged statutes because G. Lee Cook was already legally married to D. Cook. Based upon that refusal, this action was filed.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Fed.R.Civ.P. 56(c).

#### RELIEF SOUGHT

This court should grant summary judgment on plaintiffs' constitutional claims, because no material facts are in dispute. Plaintiffs sought a marriage license and defendant refused to issue one because Utah law prohibits plural marriages. The challenged state provisions should be declared unconstitutional as: 1) they violate plaintiffs' constitutionally protected right to privacy in the conduct of their most intimate relationships; 2) they violate plaintiffs' constitutional right to association; 3) the statutes are not neutral and do not survive strict scrutiny; 4) the State has no

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<sup>1</sup> Ut. Code Ann. § 76-7-101 (1953 as amended), Utah Constitution, Art. III, § 1 and the Utah Enabling Act (Act of July 16, 1894, ch. 138, 28 Statutes at Large 107) Section Three.

compelling state interest in restricting plaintiffs' constitutionally protected rights; 5) the statutes violate plaintiffs' right to freely practice their religion and simultaneously their right to association; and, 6) the offending laws stigmatize plaintiffs as criminals because of their religious based choice of marital relationship.

Dated this 23<sup>rd</sup> day of APRIL 2004.

UTAH LEGAL CLINIC  
Attorneys for Plaintiffs

By   
BRIAN M. BARNARD

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT to:

JULIE V. LUND  
MARK SHURTLEFF  
JERROLD S. JENSEN  
UTAH ATTORNEY GENERAL'S OFFICE  
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on the 23<sup>rd</sup> day of APRIL 2004, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC  
Attorneys for Plaintiffs

By   
BRIAN M. BARNARD