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U.S. DISTRICT COURT  
DISTRICT OF UTAH

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**ATTORNEYS FOR PLAINTIFFS**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH CENTRAL DIVISION

**J. BRONSON,**  
**G. LEE COOK and**  
**D. COOK,**

Plaintiffs,

vs.

**SHERRIE SWENSEN,** Salt Lake County  
Clerk,

Defendant.

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**PLAINTIFFS' STATEMENT**  
**OF UNDISPUTED FACTS**

Case No. 02:04-CV-0021 TS

Plaintiffs, J. BRONSON, G. LEE COOK and D. COOK, by and through counsel, Brian M. Barnard of the Utah Legal Clinic as cooperating attorneys for the Utah Civil Rights & Liberties Foundation, Inc. present the following STATEMENT OF FACTS in support of the forthcoming MOTION FOR SUMMARY JUDGMENT:

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## JURISDICTION AND VENUE

1. This Court has jurisdiction over plaintiffs' federal claims pursuant to 28 U.S.C. §§1331 and 1343(3), as deprivations of rights created under the United States Constitution. Cmpl. ¶2 (Docket #1); Aff. D. Cook ¶3 (Docket #4); Aff. G. Lee Cook ¶3 (Docket #3); Aff. J. Bronson ¶3 (Docket #2).
2. Pursuant to 28 U.S.C. § 1391, venue properly lies in the District of Utah and its Central Division, where the events underlying the plaintiffs' claims took place and where the defendant maintains her place of business. Cmpl. ¶3; Aff. D. Cook ¶4; Aff. G. Lee Cook ¶4; Aff. J. Bronson ¶4.

## PARTIES

3. J. BRONSON is an adult citizen and resident of Utah. As set forth herein, she seeks a marriage license from defendant. Cmpl. ¶4; Aff. D. Cook ¶6; Aff. G. Lee Cook ¶5 ; ¶6; Aff. J. Bronson ¶5.
4. G. LEE COOK is an adult citizen and resident of Utah. He is legally married to plaintiff, D. COOK. As set forth herein, he seeks a marriage license from defendant. Cmpl. ¶5; Aff. D. Cook ¶6; Aff. G. Lee Cook ¶1; ¶7; Aff. J. Bronson ¶15.
5. D. COOK is an adult citizen and resident of Utah. She is legally married to plaintiff, G. LEE COOK. As set forth herein, she approves and agrees to the issuance of the marriage license requested from defendant. Cmpl. ¶6; Aff. D. Cook ¶1; ¶5; Aff. G. Lee Cook ¶7.
6. Defendant SHERRIE SWENSEN is the duly elected and serving Salt Lake County Clerk.

She is the supervisor of Rasmussen and Tafoya and has ordered, trained and instructed them to conduct themselves as complained of in this action. Cmplt. ¶7; Stip. of Facts ¶1 (Docket # 5); Aff. G. Lee Cook ¶8; Aff. J. Bronson ¶6.

7. Val Rasmussen is a duly appointed and serving Deputy Salt Lake County Clerk in the Marriage Division. Cmplt. ¶8; Aff. G. Lee Cook ¶9; Aff. J. Bronson ¶7.

8. Lorie Tafoya is a duly appointed and serving Deputy Salt Lake County Clerk serving as a supervisor in the Marriage Division. Cmplt. ¶9; Aff. G. Lee Cook ¶10; Aff. J. Bronson ¶8.

9. All of the actions taken by the employees of the Salt Lake County Clerk's Office referred to in Plaintiff's Complaint were taken by those employees based upon direct instructions by Sherrie Swensen and with her full knowledge of their actions. Their conduct was in full conformance with the policies and procedures of the Salt Lake County Clerk's Office. Based upon her position as Salt Lake County Clerk. Sherrie Swensen is personally responsible for and ratifies the conduct of her employees as set forth in Plaintiff's Complaint. Stip. of Facts ¶4.

10. The defendant administers and enforces statutes of the State of Utah with regard to applications for and the issuance of marriages licenses in Salt Lake County, Utah. Cmplt. ¶10; Stip. of Facts ¶2; Aff. G. Lee Cook ¶11; Aff. J. Bronson ¶9.

11. At all times pertinent to this action, defendant was acting under color of state law, with power and authority vested in her by Salt Lake County and the State of Utah. Cmplt. ¶11; Stip. of Facts ¶3; Aff. G. Lee Cook ¶12; Aff. J. Bronson ¶10.

## FACTS

12. The sincere and deeply held religious beliefs of J. Bronson, D. Cook and G. Lee Cook are that the doctrine of plural marriage, *i.e.*, a man having more than one wife, is ordained of God and is to be encouraged and practiced. Cmpl. ¶12; Aff. D. Cook ¶8; Aff. G. Lee Cook ¶14; Aff. J. Bronson ¶12.

13. A sincere and deeply held religious major tenet of the beliefs of J. Bronson, D. Cook and G. Lee Cook is the practice of plural marriage similar to that practiced in the Church of Jesus Christ of Latter-day Saints in Utah prior to 1890. Cmpl. ¶13; Aff. D. Cook ¶9; Aff. G. Lee Cook ¶15; Aff. J. Bronson ¶13. The doctrinal basis for those beliefs is set out in part in the attached exhibit.

14. For more than one hundred (100+) years, forebears of plaintiffs and others who hold religious beliefs similar to those of plaintiffs have practiced plural marriage in Utah based upon sincere and deeply held religious beliefs. Cmpl. ¶14; Aff. G. Lee Cook ¶16; Aff. J. Bronson ¶14.

15. J. Bronson, D. Cook and G. Lee Cook sought a marriage license from the defendant for the purpose of entering in to a plural marriage. Cmpl. ¶15; Aff. D. Cook ¶10; Aff. G. Lee Cook ¶17; Aff. J. Bronson ¶15.

16. Under most circumstances, unless a marriage license is issued, a marriage in the State of Utah is not legal. Absent a marriage license, plaintiffs cannot enter into a legal marriage. Cmpl. ¶16; Stip. of Facts ¶5; Aff. G. Lee Cook ¶18; Aff. J. Bronson ¶16.

17. Ut. Code Ann. § 30-1-7 (1953 as amended) provides:

No marriage may be solemnized without a license issued by the county clerk of any county of the state of Utah not more than 30 days prior to the date of solemnization of the marriage.

Cmplt. ¶17; Stip. of Facts ¶6; Aff. G. Lee Cook ¶19; Aff. J. Bronson ¶17.

18. On Monday, December 22, 2003 at approximately ~2:40 p.m., the plaintiffs went to the Marriage Division of the Salt Lake County Clerk's Office at 2001 South State Street, Salt Lake City, Utah. Cmplt. ¶18; Stip. of Facts ¶7; Aff. D. Cook ¶11; Aff. G. Lee Cook ¶20; Aff. J. Bronson ¶18.

19. G. Lee Cook and J. Bronson were seeking a license to enter into a marriage between them. Cmplt. ¶19; Stip. of Facts ¶8; Aff. D. Cook ¶10; Aff. G. Lee Cook ¶21; Aff. J. Bronson ¶19.

20. At said time and place, the plaintiffs G. Lee Cook and J. Bronson paid fifty dollars (\$50.00) to Salt Lake County and completed an application form for the purpose of securing a marriage license. Cmplt. ¶20; Stip. of Facts ¶9; Aff. G. Lee Cook ¶22; Aff. J. Bronson ¶20.

21. That application indicated that G. Lee Cook was legally married. He orally informed the agents of defendant that he wanted to legally marry a second wife. Cmplt. ¶21; Stip. of Facts ¶10; Aff. D. Cook ¶12; Aff. G. Lee Cook ¶23; Aff. J. Bronson ¶21.

22. Plaintiffs G. Lee Cook and J. Bronson explained to Rassmussen that G. Lee Cook was legally married to D. Cook. Plaintiffs G. Lee Cook and Bronson explained to Rassmussen that the two of them, with the consent of D. Cook, were seeking a marriage license for the purpose of entering into a plural marriage, and that Bronson would become the second wife of G. Lee Cook. Cmplt. ¶22; Stip. of Facts ¶11; Aff. D. Cook ¶12; Aff. G. Lee Cook ¶24; Aff. J. Bronson ¶22.

23. Rasmussen told plaintiffs that she could not issue the requested marriage license and that plural marriage in Utah was illegal. Cmplt. ¶23; Stip. of Facts ¶12; Aff. D. Cook ¶13; Aff. G. Lee Cook ¶25; Aff. J. Bronson ¶23.

24. Rasmussen's supervisor, Lorie Tafoya was informed of plaintiffs' request and application. Tafoya confirmed that plural marriages as proposed by plaintiffs were illegal and that the requested marriage license could not be issued. Cmplt. ¶24; Stip. of Facts ¶12; Aff. D. Cook ¶14; Aff. G. Lee Cook ¶26; Aff. J. Bronson ¶24.

25. Plural marriages are illegal in Utah based upon  
Ut. Code Ann. § 76-7-101. Bigamy - Defense.

(1) A person is guilty of bigamy when, knowing he has a husband or wife or knowing the other person has a husband or wife, the person purports to marry another person or cohabits with another person.

(2) Bigamy is a felony of the third degree.

(3) It shall be a defense to bigamy that the accused reasonably believed he and the other person were legally eligible to remarry.

Cmplt. ¶25; Stip. of Facts ¶13; Aff. G. Lee Cook ¶27; Aff. J. Bronson ¶25.

26. Plural marriages are illegal in Utah based upon

Utah Constitution, Art. III, § 1:

Perfect toleration of religious sentiment is guaranteed. No inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship; but polygamous or plural marriages are forever prohibited.

This constitutional provision was mandated by the Enabling Act (Act of July 16, 1894, ch. 138, 28 Statutes at Large 107) Section Three, which allowed Utah to become a member of the Union provided "That polygamous or plural marriages are forever prohibited." Cmplt. ¶26; Stip. of

Facts ¶14; Aff. G. Lee Cook ¶28; Aff. J. Bronson ¶26.

27. Swensen, Rassmussen and Tafoya were and are mandated by Utah law not to issue a marriage license to a person, such as plaintiff G. Lee Cook, who is already and currently legally married. Cmplt. ¶27; Stip. of Facts ¶16; Aff. G. Lee Cook ¶29; Aff. J. Bronson ¶27.

28. Plural marriages are prohibited in Utah based upon Utah Code Ann. § 30-1-2:

The following marriages are prohibited and declared void: (1) When there is a husband or wife living, from whom the person marrying has not been divorced:

Stip. of Facts ¶15.

29. Ut. Code Ann. § 30-1-16 (1953 as amended) provides:

Every clerk or deputy clerk who knowingly issues a license for any prohibited marriage shall be punished by confinement in the state prison for a term not exceeding two years, or by fine in any sum not exceeding \$1,000, or by both such fine and imprisonment, and upon conviction shall be removed from his office by the judgment of the court before which his conviction is had; and if he willfully issues a license contrary to his duty as herein prescribed, he shall be fined not exceeding \$1,000.

Cmplt. ¶28; Stip. of Facts ¶17; Aff. G. Lee Cook ¶30; Aff. J. Bronson ¶28.

30. Other than the statues cited above, Rassmussen and Tafoya gave no other reason to the plaintiffs for their refusal to issue the requested marriage license. Cmplt. ¶29; Stip. of Facts ¶18; Aff. D. Cook ¶15; Aff. G. Lee Cook ¶31; Aff. J. Bronson ¶29.

31. Rassmussen and Tafoya refunded the fifty dollar (\$50.00) application fee to the plaintiffs. Cmplt. ¶30; Stip. of Facts ¶19; Aff. G. Lee Cook ¶32; Aff. J. Bronson ¶30.

32. As a result of defendant's conduct, the plaintiffs suffered harm in that they are unable to legally enter into a plural marriage. Cmplt. ¶31; Aff. D. Cook ¶16; Aff. G. Lee Cook ¶33; Aff. J.

Bronson ¶31.

33. As a result of defendant's conduct, the plaintiffs suffered harm for which they seek nominal damages (\$1.00). Cmplt. ¶32; Aff. D. Cook ¶17; Aff. G. Lee Cook ¶34; Aff. J. Bronson ¶32.

34. Plaintiffs have incurred attorney fees and court costs in this action for which they seek reimbursement under 42 U.S.C. §§ 1983 and 1988. Cmplt. ¶33; Aff. D. Cook ¶18; Aff. G. Lee Cook ¶35; Aff. J. Bronson ¶33.

35. Plaintiffs seek a review and the overturning of Reynolds v. United States, 98 U.S. 145, 25 L. Ed. 244 (1879) in light of more recent decisions by the United States Supreme Court. Cmplt. ¶35; Aff. D. Cook ¶19; Aff. G. Lee Cook ¶36; Aff. J. Bronson ¶34.

DATED this 8<sup>th</sup> day of March 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' STATEMENT OF UNDISPUTED FACTS to:

MARK SHURTLEFF  
JERROLD JENSEN  
JULIE LUND  
Attorneys General  
State of Utah  
160 East 3<sup>rd</sup> South, Fifth Floor  
Salt Lake City, Utah 84114

on the 8<sup>th</sup> day of March 2004, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC  
Attorneys for Plaintiffs

By   
BRIAN M. BARNARD

Exhibits/  
Attachments  
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Please see the  
case file.