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**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION**

PAUL RUMMELL and BENJAMIN WEST;  
LISA CHICKADONZ and CHRISTINE TANNER;  
BASIC RIGHTS EDUCATION FUND,

*Plaintiffs,*

v.

JOHN KITZHABER, in his official  
capacity as Governor of Oregon; ELLEN  
ROSENBLUM, in her official capacity as Attorney  
General of Oregon; JENNIFER WOODWARD, in  
her official capacity as State Registrar, Center for  
Health Statistics, Oregon Health Authority, and  
RANDY WALDRUFF, in his official capacity as  
Multnomah County Assessor,

*Defendants.*

No. 6:13-cv-02256-TC

**MEMORANDUM IN SUPPORT OF  
MOTION TO CONSOLIDATE**

Pursuant to Fed. R. Civ. P. 42

By Plaintiffs Paul Rummell,  
Benjamin West, Lisa Chickadonz,  
Christine Tanner, and  
Basic Rights Education Fund

DEANNA L. GEIGER and JANINE M. NELSON;  
ROBERT DUEHMIG and WILLIAM GRIESAR,,

No. 6:13-cv-01834-MC

*Plaintiffs,*

v.

JOHN KITZHABER, in his official  
capacity as Governor of Oregon; ELLEN  
ROSENBLUM, in her official capacity as Attorney  
General of Oregon; JENNIFER WOODWARD, in  
her official capacity as State Registrar, Center for  
Health Statistics, Oregon Health Authority, and  
RANDY WALDRUFF, in his official capacity as  
Multnomah County Assessor,

*Defendants.*

Plaintiffs Paul Rummell, Benjamin West, Lisa Chickadonz, Christine Tanner, and Basic Rights Education Fund respectfully request that the Court consolidate the action captioned *Rummel et al. v. Kitzhaber et al.*, No. 6:13-cv-02256-TC, with the previously-filed action captioned *Geiger et al. v. Kitzhaber et al.*, No. 6:13-cv-01834-MC.

### **BACKGROUND**

Plaintiffs Deanna L. Geiger, Janine M. Nelson, Robert Duehmig, and William Griesar initiated an action on October 15, 2013, against defendants John Kitzhaber, Ellen Rosenblum, Jennifer Woodward, and Randy Wuldruff, all named in their official capacities, pursuant to 42 U.S.C. § 1983, alleging that the state of Oregon's exclusion of same-sex couples from civil marriage violates their rights to due process and equal protection under the Fourteenth Amendment of the United States Constitution. These plaintiffs are represented by attorneys Lake Perrigey and Lea Ann Easton. On December 4, 2013, they filed an amended complaint. Defendants Kitzhaber, Rosenblum, and Woodward, all state officials represented by the Oregon

Department of Justice, filed their answer on December 13, 2013. Defendant Randy Wuldruff has not yet appeared or answered.

Yesterday, on December 19, 2013, plaintiffs Paul Rummell, Benjamin West, Lisa Chickadonz, Christine Tanner, and Basic Rights Education Fund initiated a separate action raising substantially similar claims against the same defendants. They are represented by attorneys from Perkins Coie LLP in Portland, Johnson Johnson & Schaller PC in Eugene, the ACLU Foundation of Oregon, Inc., and the national American Civil Liberties Union Foundation. With this motion, plaintiffs Rummell, West, Chickadonz, Tanner, and Basic Rights Education Fund seek consolidation of the two actions.

## DISCUSSION

### **I. Consolidation is Warranted For Actions Before the Same Court Involving Common Questions of Law and Fact**

Federal Rule of Civil Procedure 42 provides: “If actions before the court involve a common question of law or fact, the court may ... consolidate the actions.” Fed. R. Civ. P. 42(a)(2). “The purpose of consolidation is to streamline and economize pretrial proceedings so as to avoid duplication of effort, and to prevent conflicting outcomes in cases involving similar legal and factual issues.” *In re TMI Litigation*, 193 F.3d 613, 724 (3d Cir. 1999) (internal quotation omitted). “[C]onsolidation of separate actions presenting a common issue of law or fact is permitted under Federal Rule 42 as a matter of convenience and economy in judicial administration.” 9A Wright & Miller, *Federal Practice & Procedure* § 2383 (3d ed. 2013). “The district court is given broad discretion to decide whether consolidation under Rule 42(a) would be desirable ....” *Id.* Further, “[t]he consent of the parties is not required by the rule to accomplish the consolidation. Rather, it is for the district court to weigh the saving of time and effort that consolidation under Rule 42(a) would produce against any inconvenience, delay, or expense that it would cause for the litigants and the trial judge.” *Id.*

Civil rights cases brought by separate plaintiffs alleging the same or similar constitutional violations against common defendants are often appropriate for consolidation. For instance, in *Midwest Community Council, Inc. v. Chicago Park Dist.*, 98 F.R.D. 491 (N.D. Ill. 1983), the district court sua sponte consolidated two actions both charging racial discrimination in allocation of public park resources, despite that one of the actions also asserted a claim for employment discrimination in the park district and one of the parties opposed consolidation. *Id.* at 499-500. Courts have also consolidated civil rights actions brought by separate prisoners alleging similar violations arising from improper prison conditions. *E.g.*, *Anderson v. Spizziota*, No. 11-5663, 2012 WL 1268346, \*1-3 (E.D.N.Y. Apr. 10, 2012); *Lynch v. DeMarco*, No. 11-2602, 2012 WL 1429211, \*1-2 (E.D.N.Y. Jan. 23, 2012).

Here, consolidation is appropriate because the cases involve common issues of law and fact. The plaintiffs in the *Geiger* and *Rummel* actions have sued the same defendants for the same legal claims arising from substantially similar facts. In both cases, two same-sex couples seek the same relief: the freedom to marry in Oregon. It would certainly “streamline and economize pretrial proceedings,” “avoid duplication of effort,” and “prevent conflicting outcomes,” *TMI Litigation*, 193 F.3d at 724, if these actions are consolidated. Further, consolidation will not prejudice any party. In the *Geiger* action, the plaintiffs filed their complaint just two months ago, amended their complaint just 16 days ago, the state-official defendants filed their answer just last week, and defendant Wuldruff has not yet filed an answer. To date, no issues in that action have been litigated or adjudicated. Thus, the two actions can easily proceed on the same schedule in one consolidated proceeding.

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## CONCLUSION

For these reasons, plaintiffs Paul Rummell, Benjamin West, Lisa Chickadonz, Christine Tanner, and Basic Rights Education Fund respectfully request that the Court consolidate the *Geiger* and *Rummel* actions.

DATED: December 20, 2013

*s/ Thomas R. Johnson*

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