

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

ANGELIA FRAZIER-HENSON,

KATHERINE HENSON,

MARKETT HUMPHRIES and

DIANNA CHRISTY

PLAINTIFFS

VS.

CASE NO. _____

LARRY WALTHER, Director of the
Arkansas Department of Finance and Administration,
in his official capacity, and his successors in office,

ASA HUTCHINSON, Governor of the State of Arkansas
in his official capacity, and

LESLIE RUTLEDGE, Attorney General of the State of Arkansas
in her official capacity

DEFENDANTS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Comes the Plaintiffs, Angelia Frazier-Henson, Katherine Henson, Markett Humphries, and Dianna Christy, by and through their attorney, Cheryl K. Maples, and for their Complaint for Declaratory and Injunctive Relief, state:

INTRODUCTORY STATEMENT

1. Plaintiffs, Angelia Frazier-Henson, Katherine Henson, Markett Humphries and Dianna Christy are two same-sex couples who were lawfully married in the State of Arkansas on May 12, 2014 in Pulaski County Arkansas and who are being denied the benefits, privileges, recognition and dignity associated with marriage and to which they are entitled under the law.

2. On May 9, 2014 the Hon. Chris Piazza, Second Division, Pulaski County Circuit Judge found Amendment 83 to the Arkansas Constitution and Ark. Code Anno.

§§ 9-11-208, 9-11-107 and 9-11-109 in violation of the United States and Arkansas Constitutions.

3. Amendment 83 defines marriage as consisting “only of the union of one man and one woman.” Ark. Code Ann. § 9-11-109 restates Amendment 83’s definition of marriage as “between a man and a woman” and declares all marriages of same-sex couples to be void. Ark. Code Ann. § 9-11-208 provides that the State only recognizes the marital union of “man and woman” and forbids clerks from issuing marriage licenses to same-sex couples.

4. Defendant, Larry Walther, as Director of the Arkansas Department of Finance and Administration and successor in interest to former director, Richard Weiss, was permanently enjoined from enforcing Arkansas’s constitutional and statutory bans on marriage of same-sex couples.

5. On May 16, 2014 the Arkansas Supreme Court stayed enforcement of the Injunction pending its decision in the appeal of *Wright, et al v. Smith, et al* (Arkansas Supreme Court CV-14-427).

6. Prior to the Arkansas Supreme Court’s stay, Plaintiffs and nearly 600 other couples were married in accordance with Arkansas law and as a result were immediately vested with all rights due all married couples under Arkansas law.

7. Plaintiffs’ marriages and their rights, privileges, protections and recognition are protected by Arkansas law, the Arkansas Constitution and the 14th Amendment to the Constitution of the United States and are valid marriages regardless of the outcome of *Wright* or the pending federal case of *Jernigan v. Crane* currently pending appeal in the 8th Circuit Court of Appeals.

8. In violation of Arkansas law and constitutional protections, the Plaintiffs’ entitlement to marital benefits and rights provided to all other married couples in the State of Arkansas are being denied to them by Defendants.

9. The actions of Defendants threaten the financial security, health, well-

being and dignity of Plaintiffs.

10. Plaintiffs respectfully request declaratory and injunctive relief requiring the State of Arkansas to give immediate and ongoing recognition to the validity of their marriages and access to critical protections and benefits that are enjoyed by all other married Arkansas citizens.

JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant to Ark. Code Ann. § 16-13-201(a).

12. Venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-103(3).

PARTIES

13. Plaintiff, Angelia Frazier-Henson, is the spouse of Plaintiff, Katherine Henson, and is a resident of Pulaski County, Arkansas and did so reside at the time of the happening of the events described herein.

14. Plaintiff, Katherine Henson, is the spouse of Plaintiff, Angelia Frazier-Henson and is a resident of Pulaski County, Arkansas and did so reside at the time of the happening of the events described herein.

15. Plaintiff, Markett Humphries, is the spouse of Plaintiff, Dianna Cristy, and is a resident of Pulaski County, Arkansas and did so reside at the time of the happening of the events described herein.

16. Plaintiff, Dianna Christy, is the spouse of Plaintiff, Markett Humphries, and is a resident of Pulaski County, Arkansas and did so reside at the time of the happening of the events described herein.

17. Defendant, Larry Walther, is the Director of the Arkansas Department of Finance and Administration and in such capacity is responsible for the policy and procedures of and administration of the Arkansas Office of Income Tax Administration and Arkansas Employee Benefits Division. He and his successors are sued in their official capacity only.

18. Defendant, Asa Hutchinson, is the Governor of the State of Arkansas. In this official capacity, the Governor is the chief executive officer of the State of Arkansas. He is responsible to ensure that the laws of the state and the Arkansas Constitution are properly enforced. He and his successors are sued in their official capacity only.

19. Defendant, Leslie Rutledge, is the Attorney General of the State of Arkansas. In this official capacity, the Attorney General is the chief legal officer of the State of Arkansas. It is her duty to uniformly and adequately enforce the laws of the State of Arkansas and the Arkansas Constitution. She and her successors are sued in their official capacity only.

FACTS

20. On July 1, 2013 M. Kendal Wright and, ultimately, 43 other plaintiffs, brought a lawsuit against, ultimately, the State of Arkansas, Nathaniel Smith, MD, MPH, Interim Director of the Arkansas Department of Health, in his official capacity, and his successors in office, Richard Weiss, Director of the Arkansas Department of Finance and Administration, in his official capacity, and his successors in office, Pulaski Circuit/County Clerk, Larry Crane, in his official capacity, and his successors in interest, White County Clerk, Cheryl Evans, in her official capacity, and her successors in interest, Lonoke County Clerk, William “Larry” Clarke, in his official capacity, and his successors in interest, Conway County Clerk, Debbie Hartman, in her official capacity, and her successors in office, Saline County Clerk, Doug Curtis, in his official capacity, and his successors in office, and Washington County Clerk, Becky Lewallen, in her official capacity, and her successors in office challenging the constitutionality of Amendment 83 and Ark Code Anno. §§ 9-11-107, 9-11-109 and 9-11-208.

21. Arkansas Code Anno. § 9-11 107 states:

Validity of foreign marriages.

- (a) All marriages contracted outside this state that would be valid by the laws of the state or country in which the marriages were consummated and in which the parties

then actually resided shall be valid in all courts in this state.

- (b) This section shall not apply to a marriage between persons of the same sex.

22. Arkansas Code Anno. § 9-11-109 states:

Marriage shall be only between a man and a woman. A marriage between persons of the same sex is void.

23. Arkansas Code Anno. § 9-11-208 provides in pertinent part:

9-11-208. License not issued to persons of the same sex.

(a) (1) (A) It is the public policy of the State of Arkansas to recognize the marital union only of man and woman. (B) A license shall not be issued to a person to marry another person of the same sex, and no same-sex marriage shall be recognized as entitled to the benefits of marriage.

(2) Marriages between persons of the same sex are prohibited in this state. Any marriage entered into by a person of the same sex, when a marriage license is issued by another state or by a foreign jurisdiction, shall be void in Arkansas, and any contractual or other rights granted by virtue of that license, including its termination, shall be unenforceable in the Arkansas courts.

24. Arkansas Constitutional Amendment 83 of 2004 states:

Section 1: Marriage.

Marriage consists only of the union of one man and one woman.

Section 2: Marital Status

Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common-law marriage from another state between a man and a woman.

Section 3: Capacity, rights, obligations, privileges, and immunities

The Legislature has the power to determine the capacity of persons to marry, subject to this amendment, and the legal rights, obligations, privileges, and immunities of marriage.

25. On May 9, 2014 the Hon. Chris Piazza declared Amendment 83 and the above cited statutes to be in violation of the Arkansas and United States Constitutions and issued a permanent injunction against state and county officials from enforcing same. Judge Piazza did not stay implementation of his order.

26. On May 10, 2014 the first same-sex marriage licenses were issued and filed in Carroll County, Arkansas. The following Monday, May 12, 2014, Pulaski County, Washington County and other counties in the State of Arkansas began issuing and filing marriage licenses for same-sex couples.

27. On May 15, 2014 the defendants in *Wright* filed a notice of appeal and the following day filed a motion requesting an emergency stay. The Arkansas Supreme Court granted the stay on May 16, 2014.

28. Between May 10, 2014 and May 16, 2014, in full compliance with Ark. Code Anno. §§ 9-11-201 to 207, almost 600 couples, including Plaintiffs, were issued marriage licenses, had marriages performed and properly filed their executed marriage licenses in the State of Arkansas.

29. To this date there has not been a finding that the same-sex marriages performed in May 2014 are not valid. Defendants refuse to recognize these marriages.

30. Upon information and belief, until these marriages were performed, the Defendants have **never** refused to recognize any marriage license that was properly issued pursuant to Ark. Code Anno. §§ 9-11-201 to 207, performed and filed of record pursuant to Ark. Code Anno. §§ 9-11-213, et seq.

PLAINTIFFS ANGELIA FRAZIER-HENSON AND KATHERINE HENSON

31. Plaintiffs Angelia Frazier-Henson and Katherine Henson are Plaintiff-Appellees in *Wright, et al v. Smith, et al*. As such, they have fought long and hard for

the right to marry. Both are long-time residents of the State of Arkansas. Angelia and Katherine are both licensed master social workers. They have a long-term devoted relationship and were thrilled when Judge Piazza's decision was announced. They were at the Pulaski County Courthouse when the doors opened on the first day of issuance of marriage licenses following the decision.

32. The first indication the couple had that they were going to have difficulty with the recognition of their marriage was when Angelia Buford wished to take her spouse's name as her own. She was refused this privilege that automatically is afforded to all other spouses in marriages performed in the State of Arkansas. Angelia was forced to go to the time and expense of having to file a cause of action to have her name legally changed.

33. Now the couple faces having to file separately as single individuals for purposes of Arkansas State Income Taxes. Defendant, Larry Walther, as Director of the Arkansas Department of Finance and Administration, has directed that all same-sex married couples must file as single individuals. Due to the Federal and Arkansas Supreme Court's stays, it is understandable that same-sex couples married in states other than Arkansas would be subject to this requirement. Arkansas Code Anno. §§ 9-11-208 and 9-11-107, as stated above, specifically excludes recognition of same-sex marriages performed in other states or foreign countries. However, there is no statute that addresses same-sex marriages legally performed in the State of Arkansas.

34. The effect of the stays issued by the Arkansas Supreme Court and the U. S. District Court permitted the continued enforcement of the existing Arkansas laws that had been found unconstitutional. It did not create new law stating that legally performed Arkansas issued marriage licenses to same-sex couples would not be recognized. All heterosexual marriages similarly performed on May 12, 2014 are recognized by said defendant.

35. The position and declaration of Defendant, Larry Walther, in his

capacity as Director of the Arkansas Department of Finance and Administration, denying Angelia and Katherine the financial benefit of filing jointly only because they are a same-sex couple is a violation of said Plaintiffs' Equal Protection and Due Process rights under the Arkansas and United States Constitutions.

36. The Form 2014 AR1000 issued by the Arkansas Department of Finance and Administration for the filing of individual income tax returns states:

“PLEASE SIGN HERE: Under penalties of perjury, I declared that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete.”

37. Pursuant to Ark. Code Anno. § 5-53-102, perjury is a Class C felony, punishable by imprisonment and/or fine.

38. The United States of America has recognized the validity of Plaintiffs' marriage and thus, Plaintiffs are able to file their federal income tax under the status of “married.” In comparison, Defendants require Plaintiffs to perjure themselves, thereby committing a Class C felony in order to comply with Arkansas law requiring the filing of individual income taxes.

39. Both Angelina Frazier-Henson and Katherine Henson hold professional licenses issued by the State of Arkansas. Defendants' requirement that said Plaintiffs perjure themselves could have an adverse impact on their continued licensing.

40. In addition to causing the suffering of financial losses and possible criminal charges for perjury in the filing of state individual income tax returns, Defendants, by their refusal to recognize Plaintiffs' lawful marriage, subject Plaintiffs to demeaning treatment and deny them the security provided by marriage in the event of death, illness, incapacity, etc. in violation of their constitutional rights. The harm to

Plaintiffs is real, immediate and should not continue.

MARKETT HUMPHRIES AND DIANNA CRISTY

41. Plaintiffs Markett Humphries and Dianna Cristy are longtime residents of the State of Arkansas. Markett Humphries is a criminal investigator with the Arkansas State Police. Dianna Cristy is currently unemployed. They have a long-term devoted relationship and were thrilled when Judge Piazza's decision was announced. They were at the Pulaski County Courthouse on the first day of issuance of marriage licenses following the decision.

42. Immediately after their marriage the couple attempted to take financial benefit of employee programs. At that time both Markett and Dianna were employed and each were paying for individual health insurance policies. They were denied the right to have only one policy for the family. As a result, Markett and Dianna have had the financial burden of having to carry two individual policies.

43. Recently, Dianna became unemployed and her health insurance was terminated. As an employee of the State of Arkansas, Markett Humphries has health insurance through the State Employees Benefits administered by Defendant, Larry Walther, in his capacity as Director of the Arkansas Department of Finance and Administration. Said Defendant has refused to recognize these Plaintiffs' lawful marriage and has refused to permit Dianna Cristy's enrollment on her spouse's health insurance plan. Dianna Cristy is currently uninsured.

44. Like the other Plaintiffs, this couple faces having to file separately as single individuals for purposes of Arkansas State Income Taxes. Defendant, Larry Walther, as Director of the Arkansas Department of Finance and Administration, has directed that all same-sex married couples must file as single individuals. Due to the Federal and Arkansas Supreme Court's stays, it is understandable that same-sex couples married in states other than Arkansas would be subject to this requirement. Arkansas Code Anno. §§ 9-11-208 and 9-11-107, as stated above, specifically excludes recognition

of same-sex marriages performed in other states or foreign countries. There is no statute that addresses same-sex marriages legally performed in the State of Arkansas.

45. The effect of the stays issued by the Arkansas Supreme Court and the U. S. District Court permitted the continued enforcement of existing Arkansas law that had been found unconstitutional. It did not create new law stating that legally performed, Arkansas issued marriage licenses to same-sex couples would not be recognized. All heterosexual marriages similarly performed on May 12, 2014 are recognized by said defendant.

46. The position and declaration of Defendant, Larry Walther, in his capacity as Director of the Arkansas Department of Finance and Administration, denying Markett and Dianna the financial benefit of filing jointly only because they are a same-sex couple is a violation of said Plaintiffs' Equal Protection and Due Process rights under the Arkansas and United States Constitutions.

47. The Form 2014 AR1000 issued by the Arkansas Department of Finance and Administration for the filing of individual income tax returns states:

“PLEASE SIGN HERE: Under penalties of perjury, I declared that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete.”

48. Pursuant to Ark. Code Anno. § 5-53-102, perjury is a Class C felony, punishable by imprisonment and or fine.

49. The United States of America has recognized the validity of Plaintiffs marriage and thus, Plaintiffs are able to file their federal income tax under the status of “married.” In comparison, Defendants require Plaintiffs to commit a Class C felony in order to comply with Arkansas law requiring the filing of individual income taxes.

50. Markett Humphries is a law enforcement officer. Committing perjury

could result in the loss of her employment.

51. In addition to suffering financial losses, no spousal health insurance coverage and possible criminal charges for perjury in the filing of state individual income tax returns, Defendants, by their refusal to recognize Plaintiffs' lawful marriage, subject Plaintiffs to demeaning treatment and deny them the security provided by marriage in the event of death, illness, incapacity, etc. in violation of their constitutional rights. The harm to Plaintiffs is real, immediate and should not continue.

CAUSES OF ACTION

52. Pursuant to 42 U.S.C. § 1983 state actors are liable at law or equity for their acts or omissions undertaken under color of law which deprive any person of the rights secured by the Constitution and laws of the United States.

53. Defendants are state actors and, at all times relevant to this Complaint, were acting or failing to act, are acting or failing to act, or will act or failed to act under color of law.

COUNT ONE

SUBSTANTIVE DUE PROCESS

54. Defendants by their actions have violated the due process clauses of the Arkansas Constitution and the 14th Amendment to the United States Constitution.

55. It has long been recognized that the Due Process Clauses guarantee more than fair process; they require heightened protection against governmental interference with certain fundamental rights and liberty interests.

56. The liberty interests protected by the Arkansas and United States constitutions include the right to marry. They include protection from unwarranted governmental intrusion into family and in the intimate and personal choices people make in their lives that are central to their personal dignity and autonomy. They protect the Plaintiffs from laws that demean their private lives, deny them dignity as free persons and protect their rights to enjoy privileges long recognized at common law as

essential to the orderly pursuit of happiness by free persons.

57. Regardless of the ultimate outcome of *Jernigan v. Crane* and *Wright v. Smith*, the due process clauses of the Arkansas and United States Constitutions protect Plaintiffs' marriages, legal and valid under Arkansas law when they were entered into, from being retroactively invalidated by the state. Defendants violate, have violated, and/or would violate Plaintiffs' due process rights by refusing to recognize their marriages and by denying Plaintiffs dignity, privileges and benefits that all legally married couples deserve and are entitled to under the law.

COUNT TWO

EQUAL PROTECTION

58. Article 2, Section 3 of the Arkansas Constitution states:

“The equality of all persons before the law is recognized, and shall ever remain in violate; nor shall any citizen ever be deprived of any right, privilege or immunity; nor exempted from any burden or duty, on account of race, color or previous condition.”

59. Article 2, Section 18 of the Arkansas Constitution states:

the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.”

60. The 14th Amendment to the United States Constitution also provides that the state shall not “deny to any person within its jurisdiction the equal protection of the laws.”

61. Equal Protection requires that all persons similarly situated should be treated alike. Under a rational-basis standard of review, unequal treatment is more

likely to be struck down as unconstitutional when it inhibits or impairs personal relationships. A heightened level of scrutiny applies where the classification intrudes upon a fundamental right.

62. Defendants' actions in denying same-sex couples (a disfavored group, and only that disfavored group) legal protections and benefits or a designation that carries significant societal meaning and benefits is in violation of both the Arkansas and United States Due Process Clauses.

63. Marriage is a fundamental right. Marital status is a far-reaching legal acknowledgment of the intimate relationship between two people, a relationship worthy of dignity in the community equal with all other marriages. Defendants, as state officials, refuse to treat Plaintiffs as they treat all other legally married couples. Plaintiffs are denied recognition, benefits, rights and privileges that are an essential part of married life.

64. Defendants' actions announce to these couples and to the world that their otherwise valid marriages are unworthy of state recognition.

RELIEF REQUESTED

Plaintiffs request that this court;

- a. enter judgment in favor of Plaintiffs against Defendants;
- b. Declare that Amendment 83; Ark. Code Anno. § 9-22-107, Ark. Code Anno. § 9-22-109 and Ark. Code Anno. § 9-22-208 are unconstitutional as applied to the marriages of all couples, including Plaintiffs, who are legally married in Arkansas in May 2014 and whose marriages were valid at the time they were entered into;
- c. Declare that Defendants' refusal to recognize the marriages of couples, including Plaintiffs, who were legally married in Arkansas in May 2014, and whose marriages were valid at the time they were entered into, and refusal to afford those couples and their families, including plaintiffs, with all benefits, rights and privileges given to other legally married couples and their families under Arkansas law,

on account of those couples being of the same sex, violates the rights of those couples and their families, including Plaintiffs, to due process of law and equal protection of the laws as guaranteed by the Arkansas Constitution and the 14th Amendment to the United States Constitution;

d. Provide preliminary and permanent injunctive relief to enjoin defendants from enforcing Amendment 83; Ark. Code Anno. § 9-22-107, Ark. Code Anno. § 9-22-109 and Ark. Code Anno. § 9-22-208 against couples, including Plaintiffs, who were legally married in Arkansas in May 2014 and whose marriages were valid at the time they were entered into;

e. Provide preliminary and permanent injunctive relief to enjoining defendants from refusing to recognize the marriages of couples, including Plaintiffs, who were legally married in Arkansas in May 2014 and whose marriages were valid at the time they were entered into, and from refusing to afford those couples and their families, including Plaintiffs, with all the benefits, rights and privileges given to other legally married couples and their families under Arkansas law, on account of those couples being of the same sex;

f. Award Plaintiffs costs and reasonable attorney fees pursuant to Arkansas law and 42 U.S.C. § 1988; and

g. Provide any other relief deemed just and equitable.

WHEREFORE, Plaintiffs pray this court grant the relief requested.

Respectfully submitted,

/s/ Cheryl K. Maples

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