
UNITED STATES DISTRICT COURT
for the

Eastern District of Louisiana

Jonathan P. Robicheaux
Plaintiff/Petitioner

v.

Civil Action No. 13-CV-05090

James D. Caldwell in his official capacity as the Louisiana Attorney General
Defendant/Respondent

AMENDED COMPLAINT FOR DELARATORY AND INJUNCTIVE RELIEF

NOW INTO COURT, through undersigned counsel, comes **JONATHAN P. ROBICHEAUX**, a person of full age and majority who is a resident of Orleans Parish, residing in the United States District Court, Eastern District of Louisiana's district, and respectfully represents:

THE PARTIES

1.

Made defendant herein is James D. Caldwell in his official capacity as Attorney General for the State of Louisiana, thereby meeting notice requirements under Federal Rule 5.1 for this constitutionality challenge.

2.

The Plaintiff, Jon Robicheaux, is a man residing in Louisiana who was legally married to his Husband, Derek Robicheaux in Clayton County, Iowa on September 23, 2012 after having been in a committed relationship together since 2005 commingling funds, living together and holding themselves out as monogamous partners that are living together as one union.

JURISDICTION AND VENUE

3.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 because the suit raises federal questions under 42 U.S.C. § 1983, and the United States Constitution, including without limitation the Fourteenth Amendment.

4.

Venue is proper in the United States District Court for the Eastern District of Louisiana under 28 U.S.C. § 1391(b) because the Defendant performs his official duties in this district.

FACTUAL BACKGROUND

5.

The State of Louisiana prevents any official or court of the State of Louisiana from recognizing a valid marriage from another State or Country that is between a same-sex couple, thus depriving a legally married same-sex couple from securing any benefits of marriage within the State of Louisiana and stripping them of any rights to which a same-sex couple was vested prior to residing in the State of Louisiana.

The State Laws at Issue

6.

On September 18, 2004 by popular vote, an amendment was made to the Louisiana Constitution that reads as follows:

Section 15. Marriage in the state of Louisiana shall consist only of the union of one man and one woman. No official or court of the state of Louisiana shall construe this constitution or any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized. No official

or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of one man and one woman.

7.

Article 3520 of the Louisiana Civil Code reads as follows:

Art. 3520. Marriage

A. A marriage that is valid in the state where contracted, or in the state where the parties were first domiciled as husband and wife, shall be treated as a valid marriage unless to do so would violate a strong public policy of the state whose law is applicable to the particular issue under Article 3519.

B. A purported marriage between persons of the same sex violates a strong public policy of the state of Louisiana and such a marriage contracted in another state shall not be recognized in this state for any purpose, including the assertion of any right or claim as a result of the purported marriage.

Acts 1991, No. 923, §1, eff. Jan. 1, 1992; Acts 1999, No. 890, §1.

**Same-Sex and Opposite-Sex Couples Are
Similarly Situated for Purposes of Marriage Benefits**

8.

The United State Supreme Court has called marriage “the most important relation in life,” *Zablocki v. Redhail*, 434 U.S. 374,384 (1978) (internal quotation marks omitted), and an “expression of emotional support and public commitment.” *Turner v. Safely*, 482 U.S. 78, 95 (1987). It is “a far-reaching legal acknowledgement of the intimate relationship between two people....” *United States v. Windsor*, No. 12-307, Slip Op., at 20 (U.S. June 26, 2013). This is as true for same-sex couples as it is for opposite-sex couples.

9.

Same-sex couples such as Plaintiff and his Husband are identical to opposite-sex couples in all of the characteristics relevant to marriage.

10.

Same-sex couples make the same commitment to one another as opposite-sex couples. Like opposite-sex couples, same-sex couples build their lives together, plan their futures together and hope to grow old together. Like opposite-sex couples, same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness

11.

Same-sex couples who marry are just as willing and able as opposite-sex couples to assume the obligations of marriage.

12.

The Plaintiff and his Husband and other same-sex couples in Louisiana, if their marriages in other states in which marriage is legal were recognized, would benefit no less than opposite-sex couples from the many legal protections and the social recognition afforded to married couples.

13.

There was a time when an individual's sex was relevant to his or her legal rights and duties within the marital relationship. For example, husbands had a duty to support their wives but not vice versa and husbands had legal ownership of all property belonging to their wives. But these legal distinctions have all been removed such that the legal rights and duties of husbands and wives are now identical.

14.

The exclusion from marriage undermines the Plaintiff's ability to achieve the life goals and dreams with his Husband, Derek Penton; threatens their mutual economic stability; and denies them "a dignity and status of immense import." *United States v. Windsor*, No. 12-307, Slip Op., at 18 (U.S. June 26, 2013).

**The Exclusion of Same-Sex Couples from the Recognition of Marriage
and the Benefits of Marriage Causes Substantial Harm to Couple and Their Families**

15.

By refusing to recognize same-sex marriage marriages from others states, the State's laws deprive same-sex couples married in other states of numerous legal protections that are available to opposite-sex couples in Louisiana by virtue of their marriages. By way of example only: The State provides that a living spouse is entitled to benefits upon the death of his or her spouse should the decedent die intestate. Louisiana Civil Code Art. 890. There is no protection for the widow or widower for same-sex spouses married in another State in which they were legally and properly married.

16.

Same-sex married couples are excluded from this and many other legal protections provided for married couples under Louisiana law.

17.

The exclusion of same-sex couples from marriage also denies them eligibility for numerous federal protections afforded to married couples including in the areas of immigration and citizenship, taxes, and social security. Some of the federal protections for married couples are only available to couples if their marriages are legally recognized in the state in which they

live. See, e.g., 42 U.S.C. § 416(h)(1)(A)(i) (marriage for eligibility for social security benefits based on law of state where couple resides at time of application); 29 C.F.R. § 825.122(b) (same for Family Medical Leave Act). Thus, even Plaintiff and his Husband, who are already married, cannot access such federal protections as long as Louisiana refuses to recognize their existing marriage.

18.

The exclusion from marriage also harms same-sex couples and their families in less tangible ways.

19.

Although the Plaintiff is in a long-term committed relationship, he, his Husband and other same-sex couples are denied the stabilizing effects of marriage, which helps keep couples together during times of crisis or conflict.

20.

Excluding same-sex married couples from recognizing their marriages also harms couples and their children by denying them the social recognition that comes with marriage. Marriage has profound social significance both for the couple that gets married and the family, friends and community that surround them. The terms "married" and "spouse" have universally understood meanings that command respect for a couple's relationship and the commitment they have made.

21.

The exclusion from the esteemed institution of marriage also demeans and stigmatizes lesbian and gay couples and their children by sending the message that they are less worthy and valued than families headed by opposite-sex couples.

22.

The impact of the exclusion from marriage on same-sex couples and their families is extensive and real. The denial of the right to marry causes these couples and their families to suffer significant emotional, physical, and economic hardships.

23.

The plaintiff recognizes that marriage entails both benefits to and obligations on the partners and welcomes both.

**Excluding Same-Sex Couples from the Recognition and Benefits of Marriage Is Not
Rationally Related to a Legitimate Government Interest -
Let Alone Able to Withstand Heightened Scrutiny**

24.

As the evidence will show, the prohibition against recognition of marriage for same-sex couples in Louisiana is not closely tailored to serve an important government interest or substantially related to an exceedingly persuasive justification. In fact, as the evidence also will show, the prohibition fails any level of constitutional scrutiny. It is not even rationally related to any legitimate justifications that were offered in support of it when the Constitution was amended in 2004 or to any legitimate interest of the State that Defendants might now offer as a basis for denying same-sex married couples recognition in Louisiana.

25.

The Supreme Court has made clear that the law cannot, directly or indirectly, give effect to private biases and has expressly rejected moral disapproval of marriage for same-sex couples as a legitimate basis for discriminatory treatment of lesbian and gay couples. *Windsor*, Slip Op., at 21 (an "interest in protecting traditional moral teachings reflected in heterosexual-only marriage laws" was not a legitimate justification for federal Defense of Marriage Act).

**The State of Louisiana Is Not Entitled to Ignore the Constitution of the United States
by Amending its Constitution and Enacting Laws to Enshrine
Its Prejudices That Have No Legitimate State Interest**

26.

As stated by Chief Justice Marshall in *McCulloch v. Maryland*, 17 US 316:

This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge; that principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise so long as our system shall exist. In discussing these questions, the conflicting powers of the General and State Governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

If any one proposition could command the universal assent of mankind, we might expect it would be this -- that the Government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, [p406] "this Constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land," and by requiring that the members of the State legislatures and the officers of the executive and judicial departments of the States shall take the oath

of fidelity to it. The Government of the United States, then, though limited in its powers, is supreme, and its laws, when made in pursuance of the Constitution, form the supreme law of the land, "anything in the Constitution or laws of any State to the contrary notwithstanding."

CLAIMS FOR RELIEF

COUNT I:

**Deprivation of the Fundamental Right to Marry in
Violation of the Due Process Clause of the
Fourteenth Amendment to the United States Constitution
(42 U.S.C. § 1983)**

27.

Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

28.

The Fourteenth Amendment to the United States Constitution precludes any State from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Governmental interference with a fundamental right may be sustained only upon a showing that the legislation is closely tailored to serve an important governmental interest.

29.

The Supreme Court has long recognized that marriage is a fundamental right and that choices about marriage, like choices about other aspects of family, are a central part of the liberty protected by the Due Process Clause.

30.

Louisiana law denies the Plaintiff and other individuals in same-sex marriages this fundamental right by denying them access to the state-recognized institution of marriage and refusing to recognize the marriages they entered into in other states and countries.

31.

The State can demonstrate no important interest to justify denying the Plaintiff this fundamental right. Indeed, it cannot demonstrate that the denial is tailored to any legitimate interest at all.

32.

The State's refusal to recognize marriages entered into by same-sex couples in other jurisdictions and prohibition for the courts and officials of the State from doing so violates the Due Process Clause.

33.

The Defendant, acting under color of state law, is depriving Plaintiffs of rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

COUNT II:
Discrimination on the Basis of Sexual Orientation in
Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution
(42 U.S.C. § 1983)

34.

Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

35.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

36.

By denying the Plaintiff and his Husband and other lesbian and gay couples the ability have their out-of-state marriages recognized, the State, through Defendant, disadvantages lesbian and gay people on the basis of their sexual orientation. It denies them significant legal protections. And it "degrade[s] [and] demean[s]" them by "instruct[ing] ...all persons with whom same-sex couples interact, including their own children," that their relationship is "less worthy" than the relationships of others. *Windsor*, Slip Op., at 25.

37.

Same-sex couples and opposite-sex couples are similarly situated for purposes of marriage.

38.

The evidence will show that classifications based on sexual orientation demand heightened scrutiny.

39.

Lesbians and gay men are members of a discrete and insular minority that has suffered a history of discrimination in the State and across the United States.

40.

Sexual orientation bears no relation to an individual's ability to perform or contribute to society.

41.

Sexual orientation is a core, defining trait that is so fundamental to one's identity that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment. Sexual orientation generally is fixed at an early age and highly resistant to change through intervention. Efforts to change a person's sexual orientation through interventions by medical professionals have not been shown to be effective. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and many—including the American Psychological Association and the American Psychiatric Association—have adopted policy statements cautioning professionals and the public about these treatments.

42.

Prejudice against lesbians and gay men continues to seriously curtail the operation of the political process preventing this group from obtaining redress through legislative means. Lesbians and gay men lack statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half of the states, including Louisiana. Lesbians and gay men have far fewer civil rights protections at the state and federal level than women and racial minorities had when sex and race classifications-were declared to be suspect or quasi suspect.

43.

For all these reasons, classification based on sexual orientation should be reviewed under heightened scrutiny, but this one cannot survive under any level of constitutional scrutiny. The State's exclusion of same-sex couples from marriage is not rationally related to any legitimate governmental interest. All it does is disparage and injure lesbian and gay couples and their children.

44.

The State's prohibition of marriage for same-sex couples and its refusal to recognize the marriages of same-sex couples entered into elsewhere violates the Equal Protection Clause.

45.

Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**COUNT III:
Discrimination on the Basis of Sex in
Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution
(42 U.S.C. § 1983)**

46.

Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

47.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

48.

State law defines marriage as ". . . the union of one man and one woman" and "No official or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of one man and one woman." Section 15 of the Louisiana Constitution.

49.

By defining marriage in this way, the State discriminates on the basis of sex. The only reason that the legal marriage is prohibited is the sex of the partners.

50.

The marriage of Plaintiff and his Husband, for example, is denied recognition solely because they are both men.

51.

The Supreme Court has made clear that perpetuation of traditional gender roles is not a legitimate government interest.

52.

Given that there are no longer legal distinctions between the duties of husbands and wives, there is no basis for the sex-based eligibility requirements for the recognition of a legal marriage performed in another state.

53.

The Defendants can demonstrate no exceedingly persuasive justification for this discrimination based on sex.

54.

State law prohibiting marriage and recognition of marriage for same-sex couples thus violates the Equal Protection Clause.

55.

Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

CLAIMS FOR RELIEF
COUNT IV:
Deprivation of the Full Faith and Credit Clause
of the United States Constitution

56.

Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

57.

Article IV, Section 1 of the United States Constitution states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

58.

28 USC § 1738 reads:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within

the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

59.

State law defines marriage as ". . . the union of one man and one woman" and "No official or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of one man and one woman." Section 15 of the Louisiana Constitution.

60.

By prohibiting the courts and officials of the State of Louisiana from recognizing marriage contracted in another state, the State is violating the Full Faith and Credit Clause of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter a declaratory judgment that Section 18 of the Louisiana Constitution and Louisiana Civil Code Article 3520 B (1) violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
2. Enter a declaratory judgment that Section 18 of the Louisiana Constitution and Louisiana Civil Code Article 3520 B (1) violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

3. Enter a declaratory judgment that Section 18 of the Louisiana Constitution and Louisiana Civil Code Article 3520 B (1) violate the Full Faith and Credit Clause of the United States Constitution.
4. Enter a permanent injunction enjoining Defendants from denying the Plaintiff and his Husband and all other same-sex couples the benefits of marriage and to recognize marriages validly entered into by the Plaintiff and his Husband and other same-sex couples outside of the State of Louisiana;
5. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
6. Enter all further relief to which Plaintiffs may be justly entitled.

Respectfully submitted:



SCOTT J. SPIVEY (#25257)
815 Dauphine St, Ste D
New Orleans, LA 70116
(504) 684-4904 (office phone)
(888) 502-3935 (office fax)
Scott@SpiveyESQ.com
Attorney for Plaintiff, Jon Robicheaux