

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
3RD DIVISION**

M. KENDALL WRIGHT, et al

PLAINTIFF

VS.

NO. 60cv-13-2662

THE STATE OF ARKANSAS, et al

DEFENDANTS

MOTION TO DISMISS AND ANSWER

Comes now the Separate White, Lonoke, Washington, & Conway County Clerk Defendants, White County Clerk Cheryl Evans, Lonoke County Clerk William “Larry” Clarke, Washington County Becky Lewallen, and Conway County Clerk Debbie Hartman, in their official capacities (referred to collectively herein as the “Separate White, Lonoke, Washington, & Conway County Clerk Defendants”), and for their Motion to Dismiss and Answer to Plaintiff’s Second Amended Complaint, do state the following:

MOTION TO DISMISS

The Separate White, Lonoke, Washington, & Conway County Clerk Defendants hereby adopt and incorporate herein by reference, as if set forth herein word for word, the Motion to Dismiss filed by the State Defendants in this case.

ANSWER

1. The Separate White, Lonoke, Washington & Conway County Clerk Defendants affirmatively state that the laws and constitutions of Arkansas and the United States of America speak for themselves and that the Plaintiffs’ Second Amended Complaint speaks for itself (the Separate White, Lonoke, Washington, & Conway County Clerk Defendants deny the allegations of the Plaintiffs’ Second Amended Complaint, as set forth herein), but deny, as stated, the remainder of the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 of the Plaintiff’s Second Amended Complaint.

2. The Separate White, Lonoke, Washington, & Conway County Clerk Defendants affirmatively state that the laws and constitutions of Arkansas and the United States of America speak for themselves, but are without sufficient knowledge or information to admit or deny the remainder of the allegations in paragraphs 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,

41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, and 202 of the Plaintiffs' Second Amended Complaint and, therefore, deny the same.

3. The Separate White, Lonoke, Washington, & Conway County Clerk admit that Mike Beebe is the Governor of Arkansas, that Dustin McDaniel is the Arkansas Attorney General, that Dr. Nathaniel Smith is the Interim Director the Arkansas Department of Health, that Larry Crane is the Puaski County Circuit/County Clerk, that Cheryl Evans is the White County Clerk, that William "Larry" Clarke is the Lonoke County Clerk, that Debbie Hartman is the Conway County Clerk, that Doug Curtis is the Saline County Clerk, that Melinda Reynolds is the Faulkner County Clerk, and that Becky Lewallen is the Washington County Clerk, and affirmatively state that Arkansas law, including, but not limited to the law prescribing the duties of the Defendant officials, speaks for itself, but deny, as stated, the remainder of the allegations in paragraphs 203, 204, 25, 206, 207, 208, 209, 210, 211, 212, and 213 of the Plaintiffs' Second Amended Complaint.

4. The Separate White, Lonoke, Washington, & Conway County Clerk Defendants affirmatively state that the laws and constitutions of Arkansas and the United States of America speak for themselves, but deny, as stated, the remainder of the allegations in paragraphs 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, and 245 of the Plaintiffs' Second Amended Complaint.

5. The Separate White, Lonoke, Washington, & Conway County Clerk Defendants deny Plaintiffs' entitlement to any relief, including, but not limited to the relief requested the unnumbered "Wherefore clause" of Plaintiffs' Second Amended Complaint.

6. The Separate White, Lonoke, Washington, & Conway County Clerk Defendants

specifically and expressly deny each and every allegation in Plaintiff's Second Amended Complaint not specifically and expressly admitted herein.

7. The Separate White, Lonoke, Washington, & Conway County Clerk Defendants assert and reserve the right to file an amended answer or other appropriate pleadings and to allege any affirmative defense that might be available to him after he has had a reasonable opportunity to investigate the allegations set forth in Plaintiff's Complaint

AFFIRMATIVE DEFENSES

8. The Plaintiffs fail to state facts and claims upon which relief can be granted.

9. The Separate White, Lonoke, Washington, & Conway County Clerk Defendants are obligated by their oaths of office to follow the law of the State of Arkansas and will continue to do so in its present form or as it may be amended or modified.

10. All applicable immunities are asserted by the Separate White, Lonoke, Washington, & Conway County Clerk Defendants, including, but not limited to tort/negligence immunity, statutory tort/negligence immunity, qualified immunity, punitive damages immunity, sovereign immunity, and functional sovereign immunity.

11. The Plaintiffs have failed to join indispensable parties.

12. The Plaintiffs, in whole or in part, lack standing and/or have not raised a ripe or justiciable allegation/case or controversy and/or have raised moot allegations as the Plaintiffs have not all sought marriage licenses from all of the Separate White, Lonoke, Washington, & Conway County Clerk Defendants and/or have not been denied any benefits, rights, or other entitlements by the Defendants herein.

13. As applicable, the Plaintiffs failed to properly serve the Second Amended Complaint and/or made defective service.

14. The Separate White, Lonoke, Washington, & Conway County Clerk Defendants avail themselves of all applicable defenses under Rule 8(c) and 12 of the Arkansas Rules of Civil Procedure.

WHEREFORE, premises considered, the Separate White, Lonoke, Washington, & Conway

County Clerk Defendants pray that the Court dismiss this action and grant them all other appropriate relief, including for their costs and attorney's fees.

Respectfully submitted,

White County Clerk Cheryl Evans, Lonoke County Clerk William "Larry" Clarke, Conway County Clerk Debbie Hartman, Faulkner County Clerk Melinda Reynolds, and Washington County Clerk Becky Lewallen, and their successors in interest, in their official capacities,

Separate White, Lonoke, Washington, & Conway County Clerk Defendants

RAINWATER, HOLT & SEXTON, P.A.

P.O. Box 17250

6315 Ranch Drive

Little Rock, Arkansas 72222-7250

Telephone (501) 868-2500

Telefax (501) 868-2505

[email:owens@rainfirm.com](mailto:owens@rainfirm.com)

By: /s/ Jason E. Owens
Michael R. Rainwater, #79234
Jason E. Owens, #2003003

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of August 2013, I electronically filed the foregoing with the Clerk of the Court using the Arkansas Judiciary Electronic Filing system, and I am mailing a copy by U.S. Mail, postage prepaid to the following:

Ms. Cheryl K. Maples
PO Box 1504
Searcy, AR 72145

Mr. David Fuqua
425 W. Capitol, Suite 400
Little Rock, AR 72201

Mr. Jack Waggoner III
1320 Brookwood, Suite E
Little Rock, AR 72202

Mr. David Hogue
c/o Faulkner County Judge's Office
801 Locust Street
Conway, AR 72034

/s/ Jason E. Owens
Jason E. Owens
Attorney for Defendants
RAINWATER, HOLT & SEXTON, P.A.
P.O. Box 17250
6315 Ranch Drive
Little Rock, Arkansas 72222-7250
Telephone (501) 868-2500