

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

M. KENDALL WRIGHT, Individually, and JULIA E. WRIGHT, Individually and M. Kendall Wright and Julia E. Wright by, for and on behalf of their son, G.D.W., and their daughter, P.L.W., RHONDA L. EDDY and TREBA L. LEATH, CAROL L. OWENS and RANEE J. HARP, NATALIE WARTICK and TOMMIE J. WARTICK, KIMBERLY M. KIDWELL and KATHRYN E. SHORT, JAMES BOONE and WESLEY GIVENS, KIMBERLY M. ROBINSON and FELICITY L. ROBINSON, LINDA L. MEYERS and ANGELA K, SHELBY, GREGORY A. BRUCE and WILLIAM D. SMITH, JR., MONICA L. LOYD and JENNIFER L. LOCHRIDGE, JENNIFER D. MOORE and MANDY A. LYLES

PLAINTIFFS

V.

THE STATE OF ARKANSAS, the Governor of the State of Arkansas, MICHAEL D. BEEBE, in his official capacity, and his successors in office, the Attorney General of the State of Arkansas, DUSTIN McDANIEL, in his official capacity, and his successors in office, NATHANIEL SMITH, MD, MPH, Interim Director, of the Arkansas Department OF Health, 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 his official capacity, and her successors in office, Saline County Clerk, DOUG CURTIS, in his official capacity, and his successors in office, Faulkner County Clerk, MELINDA REYNOLDS. in her official capacity, and her successors in office,

DEFENDANTS

COMPLAINT

Comes the Plaintiffs, M. KENDALL WRIGHT, Individually, and JULIA E. WRIGHT, Individually and M. Kendall Wright and Julia E. Wright by, for and on behalf of their son, G.D.W., and their daughter, P.L.W., RHONDA L. EDDY and TREBA L. LEATH, CAROL L. OWENS and RANEE J. HARP, NATALIE WARTICK and TOMMIE J. WARTICK, KIMBERLY M. KIDWELL and KATHRYN E. SHORT, JAMES BOONE and WES GIVENS, LINDA L. MEYERS and ANGELA K. SHELBY, GREGORY A. BRUCE and WILLIAM D. SMITH, JR., MONICA L. LOYD and JENNIFER L. LOCHRIDG, and JENNIFER D. MOORE and MANDY A. LYLES, by and through their attorney, Cheryl K. Maples, and for their Complaint for Declaratory and Injunctive Relief against Defendants, THE STATE OF ARKANSAS, the Governor of the State of Arkansas, MICHAEL D. BEEBE, in his official capacity, and his successors in office, the Attorney General of the State of Arkansas, DUSTIN McDANIEL, in his official capacity, and his successors in office, NATHANIEL SMITH, MD, MPH, Interim Director of the Arkansas Department Of Health, 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 interest, Saline County Clerk, DOUG CURTIS, in his official capacity, and his successors in interest. Faulkner County Clerk, Melinda Reynolds, state:

I

INTRODUCTION AND NATURE OF DISPUTE

1. In *Loving v. Virginia*, 388 U. S. 1, 12 (1967) the Supreme Court of the United States recognized marriage to be "one of the 'basic civil rights

of man,' fundamental to our very existence and survival." That was thirty six years ago.

2. Even though the Arkansas Constitution is more protective of an individual's rights than the Constitution of the United States, in 1997 the Arkansas General Assembly enacted

"an act to amend Arkansas Code § 9-11-208 to clarify that Arkansas does not issue marriage licenses to persons of the same sex and does not recognize marriages between members of the same sex and they are not entitled to the benefits of marriage; and for other purposes."

This Act 146 of 1997 is codified today as, but not limited to, amended Arkansas Code § 9-11-208 and impacts many other statutes, including § 9-11-107(b).

3. In 2002, in its finding that the sodomy law was unconstitutional, the Arkansas Supreme Court examined the rights granted to the citizens of Arkansas by their Constitution in *Jegley v. Picado*, 349 Ark.600, 80 S.W.3d 332 (2002). The Court found that the citizens are guaranteed:

"certain inherent and inalienable rights, including the enjoyment of life and liberty and the pursuit of happiness: All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness."

"The rights granted by our constitution are guaranteed to all citizens equally. Article 2, Section 3, provides: "The equality of all persons before the law is recognized, and shall ever remain inviolate; 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." Ark. Const.art. 2 § 3. "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.” Ark. Const. art. 2 § 18.”

Jegley at 627-628.

4. Yet, two years later in an apparent response to the *Jegley* ruling, the Arkansas Constitution was amended. This amendment in direct conflict with the equal rights provisions existing in the Constitution. Amendment 83 of 2004 (hereinafter “Amendment 83”) denies homosexual couples the fundamental right to establish a familial institution with the protections and benefits enjoyed by heterosexual couples. This unconstitutional amendment still stands.

5. This action is brought pursuant to violations of the right to equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983 and a denial of fundamental rights in violation of Due Process Clause of the Arkansas Constitution and of the Fourteenth Amendment to the Constitution of the United States of all Plaintiffs.

6. That Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are unconstitutional as violative of Plaintiffs’ fundamental rights, including the right to privacy and their due process and equal protection rights under both federal and state constitutional law.

7. That Plaintiffs seek a declaratory judgment finding the unequal treatment of homosexuals as set forth in Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) to be unconstitutional and facially invalid due to their narrow focus of only denying the class of homosexuals the right to be married and/or the right to have their legal marriage recognized by the State of Arkansas.

8. That Plaintiffs additionally seek a declaratory judgment finding Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) to be in violation of the Article IV, Section 1 of the United States Constitution, known familiarly as the "Full Faith and Credit Clause", which 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.

9. That Plaintiffs seek an injunction against future enforcement of Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b)

II

JURISDICTION AND VENUE

10. That this Court has jurisdiction pursuant to Ark. Code Ann. § 16-13-201(a).

11. That venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-103(3).

III

PARTIES

Plaintiffs:

M. KENDALL WRIGHT, INDIVIDUALLY, AND JULIA WRIGHT, INDIVIDUALLY, AND M. KENDALL WRIGHT AND JULIA WRIGHT BY, FOR AND ON BEHALF OF THEIR SON, G.D.W. AND BY, FOR AND ON BEHALF OF THEIR DAUGHTER, P.L.W.

12. Plaintiffs M. Kendall Wright and Julia Wright, both individually, and by, for and on behalf of G.D.W., their son, and P.L.W., their daughter are residents of White County, Arkansas.

13. Plaintiffs M. Kendall Wright, aged 35, and Julia Wright, aged 38, are a lesbian couple who have a long-standing, devoted relationship. M. Kendall Wright is a military veteran and currently a fulltime college student. Julia Wright has been employed in the meat service industry for 20 years.

14. Said Plaintiffs have attempted to establish a familial institution on several occasions for the benefit of themselves and their two children born during their relationship.

15. That on March 8, 2008 a ceremony was conducted at an Arkansas Open Door Church.

16. That on September 14, 2008 a son, G.D.W., was born to the parties.

17. That in March of 2011 the City of Eureka Springs, Arkansas officially recognized Plaintiffs' relationship and commitment to each other by including them in the Domestic Partnership Registry.

18. That on December 31, 2012 another child was born to this union, a daughter, P.L.W.

19. That on March 8, 2013, on the anniversary of their initial formal commitment to each other, M. Kendall Wright and Julia Wright became legally married in Des Moines, Iowa.

20. That in spite of the deep commitment as evidenced by three events solemnizing their relationship, including a valid marriage in Iowa, due to Amendment 83 to the Arkansas Constitution and to Act 146 of 1997, as codified, Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

21. That G.D.W. and P.L.W., the minor children of this union, are deprived legitimacy and benefits afforded all other children of known parents.

22. That M. Kendall Wright and Julia Wright are members of a separate and identifiable class. That Act 146 and Amendment 83 are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

23. That said Plaintiffs were legally married in the State of Iowa. That Arkansas' Act 146 and Amendment 83 are in direct violation of Article IV, Section 1 of the United State Constitution, commonly referred to as the "Full Faith and Credit Clause".

24. That Arkansas' Act 146 and Amendment 83 impinge on fundamental liberties of M. Kendall Wright, Julia Wright, G.D.W. and P.L.W. denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

25. That M. Kendall Wright, Julia Wright, G.D.W. and P.L.W. have all been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b). There has resulted in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by M. Kendall Wright and Julia Wright's inability to have their marriage recognized by the State of Arkansas and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

RHONDA L. EDDY AND TREBA L. LEATH

26. Plaintiffs Rhonda L. Eddy and Treba L. Leath are residents of Lonoke County, Arkansas.

27. Plaintiffs Rhonda L. Eddy, aged 54, and Treba L. Leath, aged 38, are a lesbian couple who have a long-standing, devoted relationship.

28. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, William "Larry" Clarke, Lonoke County Clerk. Same was denied because they are a homosexual couple.

29. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

30. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

31. That Rhonda L. Eddy and Treba L. Leath are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

32. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Rhonda L. Eddy and Treba L. Leath. denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

33. That Rhonda L. Eddy and Treba L. Leath have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and

Arkansas Code § 9-11-107(b) that has resulted in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

CAROL L. OWENS AND RANEE J. HARP

34. Plaintiffs Carol L. Owens and Ranee J. Harp are residents of Pulaski County, Arkansas.

35. Plaintiffs Carol L. Owens, aged 51, and Ranee J. Harp, aged 58, are a lesbian couple who have a long-standing, devoted relationship.

31. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. Same was denied because Plaintiffs are a homosexual couple.

32. Plaintiffs have attempted to establish a familial institution for their personal and financial benefit and are unable to do so.

33. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

34. Carol L. Owens and Ranee J. Harp are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

35. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b). impinge on fundamental liberties of Carol L. Owens and Rane J. Harp, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

36. That Carol L. Owens and Rane J. Harp have been irreparably injured by Act 146 and Amendment 83 that has resulted in the ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

NATALIE WARTICK AND TOMMIE J. WARTICK

37. Plaintiffs Natalie Wartick, aged 32, and Tommie J. Wartick, aged 38, are a lesbian couple who have a long-standing, devoted relationship. Both Plaintiffs are residents of Saline County, Arkansas.

38. Said Plaintiffs have attempted to establish a familial institution on several occasions.

39. That on August 9, 2010, Natalie Wartick and Tommie Jean Wartick legally married in the State of Iowa.

40. That in spite of the deep commitment as evidenced by their valid marriage in Iowa, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

41. That Natalie Wartick and Tommie J. Wartick are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code

§ 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

42. That said Plaintiffs were legally married in the State of Iowa. That Arkansas' Act 146 and Amendment 83 are in direct violation of Article IV, Section 1 of the United State Constitution, commonly referred to as the "Full Faith and Credit Clause".

43. That Arkansas' Act 146 and Amendment 83 impinge on fundamental liberties of Natalie Wartick and Tommie Jean Wartick denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

44. That Natalie Wartick and Tommie Jean Wartick have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by Natalie Wartick and Tommie Jean Wartick's inability to have their marriage to the person they love recognized and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

KIMBERLY M. KIDWELL AND KATHRYN E. SHORT

45. Plaintiffs Kimberly M. Kidwell and Kathryn E. Short are residents of Pulaski County, Arkansas.

46. Plaintiffs Kimberly M. Owens and Kathryn E. Short are a lesbian couple who have a long-standing, devoted relationship.

47. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. Same was denied because Plaintiffs are a homosexual couple.

48. Plaintiffs have attempted to establish a familial institution for their benefit and are unable to do so.

49. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

50. Kimberly M. Kidwell and Kathryn Short are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

51. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Kimberly M. Kidwell and Kathryn Short, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

52. That Kimberly M. Kidwell and Kathryn Short have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society

allow their relationship and family the same respect and dignity afforded heterosexual relationships.

JAMES BOONE AND WESLEY GIVENS

53. Plaintiffs James Boone and Wesley Givens are residents of Conway County, Arkansas.

54. Plaintiffs James Boone, aged 53, and Wesley Givens, aged 52, are a gay couple who have a long-standing, devoted relationship.

55. That Plaintiff James Boone is retired from the United States Navy. That the benefits and privileges available as a spouse of a retired veteran are denied to James Boone's life partner, Wesley Givens, due to Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b).

56. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Debbie Hartman, Conway County Clerk. Same was denied because Plaintiffs are a homosexual couple.

57. Plaintiffs have attempted to establish a familial institution for their benefit and are unable to do so.

58. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

59. James Boone and Wesley Givens are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18

and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

60. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of James Boone and Wesley Givens, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs' right to due process under the law.

61. That James Boone and Wesley Givens have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

KIMBERLY M. ROBINSON AND FELICITY L. ROBINSON

62. Plaintiffs Kimberly M. Robinson, aged 30, and Felicity L. Robinson, aged 32, are a lesbian couple who have a long-standing, devoted relationship. Both are residents of Lonoke County, Arkansas.

63. Said Plaintiffs have attempted to establish a familial institution on several occasions.

64. That on December 14, 2012, Kimberly M. Robinson and Felicity L. Robinson were legally married in Des Moines, Iowa.

65. That in spite of the deep commitment as evidenced by their valid marriage in Iowa, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by

Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

66. That Kimberly M. Robinson and Felicity L. Robinson are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

67. That said Plaintiffs were legally married in the State of Iowa. That Arkansas' Act 146 and Amendment 83 are in direct violation of Article IV, Section 1 of the United State Constitution, commonly referred to as the "Full Faith and Credit Clause".

68. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b). impinge on fundamental liberties of Kimberly M. Robinson and Felicity L. Robinson denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

69. That Kimberly M. Robinson and Felicity L. Robinson have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial and stigma caused by Kimberly M. Robinson and Felicity L. Robinson's inability to have their marriage to the person they love recognized by the State of Arkansas and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

LINDA L. MEYERS AND ANGELA K. SHELBY

70. Plaintiffs Linda L. Meyers and Angela K. Shelby are residents of Faulkner County, Arkansas.

71. Plaintiffs Linda L. Meyers, aged 47, and Angela K. Shelby, aged 47, are a gay couple who have a long-standing, devoted relationship.

72. That Plaintiff Linda L. Meyers is employed with Heifer International in communications and Angela K. Shelby is a registered nurse at a Pulaski County hospital.

73. That in 2012 the City of Eureka Springs, Arkansas officially recognized Plaintiffs' relationship and commitment to each other by including them in the Domestic Partnership Registry.

74. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Melinda Reynolds, Faulkner County Clerk. Same was denied because Plaintiffs are a homosexual couple.

75. Plaintiffs have attempted to establish a familial institution for their benefit and are unable to do so.

76. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

77. Linda L. Meyers and Angela K. Shelby are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

78. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Linda L. Meyers and Angela K. Shelby, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

79. That Linda L. Meyers and Angela K. Shelby have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

GREGORY A. BRUCE AND WILLIAM D. SMITH, JR.

80. Plaintiffs Gregory A. Bruce and William D. Smith, Jr. are residents of Pulaski County, Arkansas.

81. Plaintiffs Gregory A. Bruce, aged 35, and William D. Smith, Jr., aged 52, are a gay couple who have a long-standing, devoted relationship.

82. That Plaintiffs Gregory A. Bruce and William D. Smith, Jr. are successful businessmen who own a pool and patio business.

83. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Larry Crane, Pulaski Circuit/County Clerk. Same was denied because Plaintiffs are a homosexual couple.

84. Plaintiffs have attempted to establish a familial institution for their benefit and are unable to do so.

85. That in spite of their deep commitment to each other, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the

benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

86. Gregory A. Bruce and William D. Smith, Jr. are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

87. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Gregory A. Bruce and William D. Smith, Jr., denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

88. That Gregory A. Bruce and William D. Smith, Jr. have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

MONICA L. LOYD AND JENNIFER L. LOCHRIDGE

89. Plaintiffs Monica L. Loyd and Jennifer L. Lochridge are residents of Faulkner County, Arkansas.

90. Plaintiffs Monica L. Loyd, aged 40, and Jennifer L. Lochridge, aged 32, are a gay couple who have a long-standing, devoted relationship.

91. That Plaintiffs Monica L. Loyd and Jennifer L. Lochridge are responsible, full-time employed, tax paying residents of the State of Arkansas.

92. That prior to the filing of this matter, said Plaintiffs requested a marriage license from the office of Defendant, Melinda Reynolds, Faulkner County Clerk. Same was denied because Plaintiffs are a homosexual couple.

93. Plaintiffs have attempted to establish a familial institution for their benefit and are unable to do so.

94. That in spite of their deep commitment to each other, due to Amendment 83, Arkansas Constitution and to Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

95. Monica L. Loyd and Jennifer L. Lochridge are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

96. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Monica L. Loyd and Jennifer L. Lochridge, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

97. That Monica L. Loyd and Jennifer L. Lochridge have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in humiliation, emotional

distress, pain, suffering, psychological harm, financial loss and stigma caused by their inability to marry the person they love and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

JENNIFER D. MOORE AND MANDY A. LYLES

98. Plaintiffs Jennifer D. Moore and Mandy A. Lyles are residents of Lonoke County, Arkansas.

99. Plaintiffs Jennifer D. Moore, aged 29 and Mandy A. Lyles, aged 33, are a lesbian couple who have a long-standing, devoted relationship. Jennifer D. Moore is a veteran, having spent nine years in the United State Air Force and is employed as a law enforcement officer. Mandy A. Lyles is currently seeking a nursing degree to be a registered nurse and works part-time at a nursing and rehabilitation facility.

100. Said Plaintiffs have attempted to establish a familial institution for the personal and financial benefits and privileges such an institution provides.

101. That on December 14, 2012 Jennifer D. Moore and Mandy A. Lyles became legally married in Des Moines, Iowa.

102. That in spite of their deep commitment as evidenced by legal marriage in the State of Iowa, due to Amendment 83 to the Arkansas Constitution, Act 146 of 1997, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), Plaintiffs are denied the benefits and privileges enjoyed by all other classes of individuals who are competent to enter into a contract, as required by Arkansas Code Annotated § 9-11-101, only because they are a homosexual couple.

103. That Jennifer D. Moore and Mandy A. Lyles are members of a separate and identifiable class. That Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are in clear violation of

said Plaintiffs guarantee of equal protection under Arkansas Constitution, Article 2 § 18 and under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United State and protected pursuant to 42 U.S.C. § 1983.

104. That said Plaintiffs were legally married in the State of Iowa. That Arkansas' Act 146 and Amendment 83 are in direct violation of Article IV, Section 1 of the United State Constitution, commonly referred to as the "Full Faith and Credit Clause".

105. That Arkansas' Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) impinge on fundamental liberties of Jennifer D. Moore and Mandy A. Lyles, denying them the same dignity, stature and respect afforded officially recognized heterosexual family relationships, all in violation of Plaintiffs right to due process under the law.

106. That Jennifer D. Moore and Mandy A. Lyles have been irreparably injured by Act 146, Amendment 83, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) resulting in ongoing humiliation, emotional distress, pain, suffering, psychological harm, financial loss and stigma caused by Jennifer D. Moore and Mandy A. Lyles' inability to have their marriage to the person they love recognized by the State of Arkansas and have society allow their relationship and family the same respect and dignity afforded heterosexual relationships.

Defendants

107. Defendant, the State of Arkansas, is responsible for enforcing and defending the laws of the State of Arkansas, the Arkansas Constitution and the United States Constitution, including through its Courts.

108. Defendant, Michael D. Beebe, 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 this

state and the Arkansas Constitution are properly enforced. He and his successors are sued in their official capacity only.

109. Defendant, Dustin McDaniel, 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 his duty to uniformly and adequately enforce the laws of the State of Arkansas and the Arkansas Constitution. He and his successors are sued in their official capacity only.

110. Defendant, Nathaniel Smith, MD, MPH, Interim Director of the Arkansas Department of Health. In this official capacity, he is the State Registrar of Vital Statistics. It is his duty to maintain the marriage records, prescribe and furnish forms for application of the marriage laws to the several counties and said counties are mandated to report their marriages to his office. He and his successors are sued in their official capacity only.

111. Defendant, Larry Crane, is the Pulaski Circuit/County Clerk. In this official capacity, he is responsible for maintaining vital records of marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

112. Defendant, Cheryl Evans, is the White County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

113. Defendant, William "Larry" Clarke, is the Lonoke County Clerk. In this official capacity, he is responsible for maintaining vital records of marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

114. Defendant, Debbie Hartman, is the Conway County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

115. Defendant, Doug Curtis, is the Saline County Clerk. In this official capacity, he is responsible for maintaining vital records of marriages and issuing marriage licenses. He and his successors are sued in their official capacity only.

116. Defendant, Melinda Reynolds, is the Faulkner County Clerk. In this official capacity, she is responsible for maintaining vital records of marriages and issuing marriage licenses. She and her successors are sued in their official capacity only.

IV

STATEMENT OF FACTS

ACT 146 OF 1997

117. Act 146 of 1997 of the Arkansas General Assembly states in pertinent part:

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE ' 9-11-208 TO CLARIFY THAT ARKANSAS DOES NOT ISSUE MARRIAGE LICENSES TO PERSONS OF THE SAME SEX AND DOES NOT RECOGNIZE MARRIAGES BETWEEN MEMBERS OF THE SAME SEX AND THEY ARE NOT ENTITLED TO THE BENEFITS OF MARRIAGE; AND FOR OTHER PURPOSES."

Subtitle

"TO CLARIFY THAT ARKANSAS DOES NOT ISSUE MARRIAGE LICENSES TO PERSONS OF THE SAME SEX NOR RECOGNIZE MARRIAGES BETWEEN MEMBERS OF THE SAME SEX."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code ' 9-11-208 is amended to read as follows:

"9-11-208. License not issued to persons under age or to persons of the same sex.

(b) It shall be the declared public policy of the State of Arkansas to recognize the marital union only of man and woman. No license shall be issued to persons to marry another person of the same sex and no same-sex marriage shall be recognized as entitled to the benefits of marriage.

(c) Marriages between persons of the same sex are prohibited in this state. Any marriage entered into by persons of the same sex, where 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."

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

ARKANSAS CODE ANNOTATED § 9-11-208

118. Arkansas Code § 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.

ARKANSAS CODE ANNOTATED § 9-11-107

119. Arkansas Code § 9-11 107 states:

9-11-107. 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.

AMENDMENT 83 TO THE ARKANSAS CONSTITUTION

120. Arkansas Constitutional Amendment 83 of 2004 states:

Marriage.

Section:

- 1. Marriage.
- 2. Marital status.
- 3. Capacity, rights, obligations, privileges, and immunities.

1. Marriage.

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

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.

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.

V

CLAIMS FOR RELIEF

CLAIM ONE: DENIAL OF DUE PROCESS

121. Plaintiffs incorporate by reference Paragraphs 1-120, *supra*, as if fully set forth herein.

122. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11 208 and Arkansas Code § 9-11-107(b) violate

fundamental liberties that are protected by both the federal and state Due Process Clause, both on their face and as they are applied to Plaintiffs.

123. Even under the lower level of protection afforded Plaintiffs' fundamental rights in the Constitution of the United States, "(m)arriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

124. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) were enacted for the sole purpose of denying Plaintiffs and others in their situation this fundamental right.

125. For this reason, Plaintiffs ask this Court to declare Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) to be unconstitutional and to enjoin, preliminarily and permanently all enforcement of these and any other Arkansas statute that seeks to exclude gays and lesbians from civil marriages, denying them the same dignity, respect and stature afforded heterosexual family relationships.

CLAIM TWO: DENIAL OF EQUAL PROTECTION

126. Plaintiffs incorporate by reference Paragraphs 1-125, *supra*, as if fully set forth herein.

127. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) violate the Equal Protection Clauses of the Arkansas Constitution and the Fourteenth Amendment to the United States Constitution in that they restrict the performance of civil marriages and the recognizing of legal civil marriages from other states to those of heterosexual couples. Only gay and lesbian couples are denied this fundamental liberty.

128. As a direct result of Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-

11-107(b), all of the tangible benefits and privileges afforded to all other individuals with the capacity to contract are denied to homosexual couples.

129. Gays and Lesbians are a distinct group, singled out due to their sexual orientation to be denied rights enjoyed by all other adult groups. They are unequal in the eyes of the State of Arkansas and their families are denied the same respect as officially sanctioned families of opposite-sex individuals.

130. The Equal Protection Clauses of the federal and state governments do not permit discrimination on the basis of sex. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) blatantly distinguish between couples made up of a man and woman and couples made up of two men or two women. A man who wishes to marry a man cannot do so – because he is a man. A woman who wishes to marry a woman cannot do so – because she is a woman. This discrimination is a clear violation of Equal Protection and 42 U.S.C. § 1983, both on their face and as they are applied to Plaintiffs.

CLAIM THREE: VIOLATION OF FULL FAITH AND CREDIT

131. Plaintiffs incorporate by reference Paragraphs 1-130, *supra*, as if fully set forth herein.

132. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) violate Article IV, Section 1 of the United States Constitution, known familiarly as the "Full Faith and Credit Clause", which 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."

133. Plaintiffs, M. Kendall Wright, Julia E. Wright, Natalie Wartick,

Tommie J. Wartick, Kimberly M. Robinson, Felicity L. Robinson, Jeniffer D. Moore and Mandy Ann Lyles, were legally married in another state. The act of marriage is a state sanctioned, public act, maintained in state records, and enforced or dissolved by judicial proceeding.

134. Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) forbid Full Faith and Credit to be given to lawful marriages of only homosexual couples.

CLAIM FOUR: IRREPARABLE INJURY

135. Plaintiffs incorporate by reference Paragraphs 1-134, *supra*, as if fully set forth herein.

136. Plaintiffs, and all of them are severely and irreparably injured by Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) due to their violation of federal and state Due Process and Equal Protection Clauses. Plaintiffs' continuing and increasing injuries include, but are not limited to, the deprivation of fundamental rights Constitutionally guaranteed, severe humiliation, stigma, emotional distress, psychological harm, financial loss, pain and suffering, all caused by their denial of the right to be married to the person of their choice and have their familial relationship accorded the same dignity and respect as that received by heterosexual families.

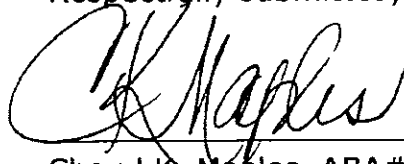
137. The severe and irreparable injuries to Plaintiffs, and all of them, can only be redressed by this Court's finding that Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) are unconstitutional and enjoining all Defendants from enforcing same.

138. An actual and judicially cognizable controversy exists between Plaintiffs and Defendants on the issues of the violation of the Due Process and Equal Protection Clauses and the violation of the Full Faith and Credit Clause of the United State Constitution. All Defendants are currently

enforcing Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) to the detriment of all Plaintiffs.

WHEREFORE, Plaintiff pray this Court find Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) to be unconstitutional due to their violation of Plaintiffs' rights to due process and equal protection and due to the direct conflict of Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b) with the Bill of Rights contained in the Arkansas Constitution; for a preliminary and permanent injunction barring enforcement of Act 146 of 1997, Amendment 83 to the Arkansas Constitution, Arkansas Code § 9-11-208 and Arkansas Code § 9-11-107(b), for Plaintiffs costs and attorney fees as set forth in 42 U.S.C. § 1983 and otherwise; and for all other relief to which they may be entitled.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cheryl K. Maples", is written over a horizontal line.

Cheryl K. Maples ABA# 87109

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