

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

**CASIE JO MCGEE and SARA ELIZABETH
ADKINS; JUSTIN MURDOCK and WILLIAM
GLAVARIS; and NANCY ELIZABETH
MICHAEL and JANE LOUISE FENTON,
Individually and as next friends of A.S.M.,
minor child,**

Plaintiffs,

v.

Civil Action No. 3:13-24068

**KAREN S. COLE, in her official capacity as
CABELL COUNTY CLERK; and VERA J.
MCCORMICK, in her official capacity as
KANAWHA COUNTY CLERK,
Defendants.**

and

**STATE OF WEST VIRGINIA,
Defendant-Intervenor.**

**STATE OF WEST VIRGINIA'S
ANSWER TO PLAINTIFFS' COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

The State of West Virginia submits the following Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief (Doc. 8). The Court has dismissed all claims in the Complaint related to West Virginia Code § 48-2-603 for lack of standing. Therefore, no response set forth herein should be construed as applicable to any claim or request for relief related to West Virginia Code § 48-2-603, as no response is required. Otherwise, all allegations not expressly admitted are denied.

INTRODUCTION

1. In response to Paragraph 1 of the Complaint, the State denies that Plaintiffs have standing to challenge Section 48-2-104(c) of the West Virginia Code and denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution. Sections 48-2-104 and 48-2-401 of the West Virginia Code otherwise speak for themselves. The State admits that Plaintiffs have brought the above-styled action, which purports to be pursuant to 42 U.S.C. § 1983 and seeks declaratory and injunctive relief. To the extent the paragraph alleges a legally cognizable constitutional injury or makes other legal arguments, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations.

2. The State admits that the Plaintiffs seek to have same-sex marriage recognized by the State, including the "protections, obligations and benefits conferred upon married couples and upon their children under state and federal law." The State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution. To the extent the paragraph alleges a legally cognizable constitutional injury or makes other legal arguments, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs.

3. The State denies the allegations contained in Paragraph 3 of the Complaint.

4. The State denies the allegations contained in Paragraph 4 of the Complaint.

5. The State admits the allegations contained in Paragraph 5 of the Complaint only insofar as marriage plays a unique role in society. The State denies the remaining allegations.

6. The “legal protections” referenced in Paragraph 6 of the Complaint speak for themselves, though the State admits that certain legal benefits and obligations are provided to married couples and their children. To the extent the paragraph alleges a legally cognizable constitutional injury or makes other legal arguments, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an irreparable injury or for purposes of standing an injury-in-fact, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State denies the allegations contained in Paragraph 6 of the Complaint.

7. The Supreme Court decisions referenced in Paragraph 7 of the Complaint speak for themselves. To the extent the paragraph alleges a legally cognizable constitutional injury or makes other legal arguments, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State denies the allegations contained in Paragraph 7 of the Complaint.

8. The State admits that in *Loving v. Virginia*, the U.S. Supreme Court stated that “[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” 388 U.S. 1, 12 (1967). To the extent the

paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State denies the allegations contained in Paragraph 8.

JURISDICTION AND VENUE

9. The State admits that Plaintiffs purportedly bring this action under 42 U.S.C. §§ 1983 and 1988. The Fourteenth Amendment to the Constitution and 42 U.S.C. §§ 1983 and 1988 speak for themselves. The State otherwise denies the allegations contained in Paragraph 9 of the Complaint.

10. The State admits Paragraph 10 of the Complaint.

11. In response to Paragraph 11 of the Complaint, the State admits that the Southern District of West Virginia, Huntington Division, is a proper venue. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations contained in Paragraph 11 of the Complaint.

12. In response to Paragraph 12 of the Complaint, the Federal Rules of Civil Procedure and the United States Code speak for themselves. The State denies that this Court has the authority to enter a declaratory judgment, an injunction, or any other relief in this case against the State because of the State's sovereign immunity under the Eleventh Amendment.

13. In response to Paragraph 13 of the Complaint, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations.

PARTIES

A. Plaintiffs

14. Any laws, contracts, or legal documents referenced in Paragraph 14 of the Complaint speak for themselves, though the State admits that certain legal benefits and obligations are provided to married couples and their children. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is otherwise without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 14 of the Complaint.

15. To the extent Paragraph 15 of the Complaint alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is otherwise without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 15 of the Complaint.

16. Any laws, contracts, or legal documents referenced in Paragraph 16 of the Complaint speak for themselves, though the State admits that certain legal benefits and obligations are provided to married couples and their children. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to

which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is otherwise without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations contained in Paragraph 16 of the Complaint.

17. Any laws, contracts, or legal documents referenced in Paragraph 17 of the Complaint speak for themselves, though the State admits that certain legal benefits and obligations are provided to married couples and their children. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is otherwise without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations contained in Paragraph 17 of the Complaint.

B. Defendants

18. In response to Paragraph 18 of the Complaint, the State admits that Plaintiffs purport to sue Defendant Karen S. Cole, in her official capacity as Cabell County Clerk. The authority, duties, and responsibilities assigned by West Virginia law to Ms. Cole, as the Cabell County Clerk, speak for themselves. The remaining allegations call for a legal conclusion to which no response is required.

19. In response to Paragraph 19 of the Complaint, the State admits that Plaintiffs purport to sue Defendant Vera J. McCormick, in her official capacity as Kanawha County Clerk. The authority, duties, and responsibilities assigned by West Virginia law to Ms. McCormick, as the Kanawha County Clerk, speak for themselves. The remaining allegations call for a legal conclusion to which no response is required.

20. To the extent Paragraph 20 of the Complaint alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State denies that Plaintiffs are entitled to any relief.

STATEMENT OF FACTS

A.

21. Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other laws referenced in Paragraph 21 of the Complaint, speak for themselves. To the extent a further response is required, the State is otherwise without knowledge or information sufficient to form an opinion or belief concerning the allegations contained in Paragraph 21 of the Complaint.

22. The State is without knowledge or information sufficient to form an opinion or belief concerning the allegations contained in Paragraph 22 of the Complaint.

23. The State is without knowledge or information sufficient to form an opinion or belief concerning the allegations contained in Paragraph 23 of the Complaint.

24. The State is without knowledge or information sufficient to form an opinion or belief concerning the allegations contained in Paragraph 24 of the Complaint.

B.

25. In response to Paragraph 25 of the Complaint, Sections 48-2-104 and 48-2-401 of the West Virginia Code speak for themselves. The State otherwise denies the allegations.

26. In response to Paragraph 26 of the Complaint, Plaintiffs' claims related to W. Va. Code § 48-2-603 have been dismissed for lack of standing and no response is required.

C.

27. Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as the other federal, state, and local laws referenced in Paragraph 27 of the Complaint, speak for themselves, though the State admits that certain legal benefits and obligations are provided to married couples and their children. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 27 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

28. In response to Paragraph 28, Plaintiffs' claims related to W. Va. Code § 48-2-603 have been dismissed for lack of standing and no response to the allegations relating to Section 603 is required. Sections 48-2-104 and 48-2-401, as well as any other federal, state, and local laws referenced in Paragraph 28, speak for themselves, though the State admits that certain legal benefits and obligations are provided to married couples and their children. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal

conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 28 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

29. In response to Paragraph 29 of the Complaint, the State admits that marriage may carry with it unique social recognition. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 29 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

30. In response to Paragraph 30 of the Complaint, the State admits that marriage may have stabilizing effects on married couples. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief

about the truth of the allegations contained in Paragraph 30 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

31. The laws relating to civil marriage referenced in Paragraph 31 of the Complaint speak for themselves, though the State admits that certain legal benefits and obligations are provided to married couples and their children. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs, which has the effect of a denial. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 31 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

32. To the extent Paragraph 32 of the Complaint alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 32 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

33. Any laws referenced in Paragraph 33 of the Complaint speak for themselves, though the State admits that certain legal benefits and obligations are provided to married

couples and their children. The State further admits that marriage can have a strengthening effect on married couples. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 33 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

34. To the extent Paragraph 34 of the Complaint alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 34 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

35. In response to Paragraph 35 of the Complaint, Sections 48-2-104 and 48-2-401 of the West Virginia Code speak for themselves. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is

required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 35 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

36. In response to Paragraph 36 of the Complaint, Sections 48-2-104 and 48-2-401 of the West Virginia Code speak for themselves. To the extent the paragraph alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 36 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

D.

37. The State denies the allegations in Paragraph 37 of the Complaint to the extent they suggest that the challenged laws do not further a legitimate or important state interest. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations.

38. In response to Paragraph 38 of the Complaint, the State admits that marriage is a vital and enduring institution, and that some laws in some States relating to marriage have changed over time. These laws and any relevant court decisions speak for themselves. The State denies the allegations in Paragraph 38 of the Complaint to the extent they suggest that the challenged laws do not further a legitimate or important state interest.

39. In response to Paragraph 39 of the Complaint, the referenced U.S. Supreme Court precedent speaks for itself.

40. The State denies the allegations in Paragraph 40 of the Complaint to the extent they suggest that the challenged laws do not further a legitimate or important state interest. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations.

41. In response to Paragraph 41 of the Complaint, the State admits that it has a valid interest in protecting the public fiscally. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations contained in Paragraph 41 of the Complaint.

42. In response to Paragraph 42 of the Complaint, the State admits that it has an interest in child welfare. The State denies the allegations to the extent they suggest that the challenged laws do not further a legitimate or important state interest. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations.

43. In response to Paragraph 43 of the Complaint, Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as all historical laws and constitutional provisions referenced, speak for themselves. Upon information and belief, the State admits that some same-sex couples bear children through use of reproductive technology or bring children into their families through foster care and adoption. The State further admits upon information and belief that married people may choose not to have children and unmarried people may procreate. The State further admits that West Virginia law does not require married couples to procreate. The State denies

the allegations to the extent they suggest that the challenged laws do not further a legitimate or important state interest.

44. In response to Paragraph 44 of the Complaint, the alleged research studies and referenced “professional organizations” speak for themselves. The State denies the allegations to the extent they suggest that the challenged laws do not further a legitimate or important state interest.

45. In response to Paragraph 45, the cited court decisions speak for themselves.

46. To the extent Paragraph 46 of the Complaint alleges a legally cognizable constitutional injury, the allegations call for a legal conclusion to which no response is required. To the extent that Plaintiffs allege an injury-in-fact for purposes of standing, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations, including facts personal to Plaintiffs. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 46 of the Complaint, but denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children.

47. The State denies the allegations in Paragraph 47 of the Complaint to the extent they suggest that the challenged laws do not further a legitimate or important state interest. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations.

48. In response to Paragraph 48 of the Complaint, the State admits that it has an interest in the welfare of all children in the State. The State denies the allegations to the extent they suggest that the challenged laws do not further a legitimate or important state interest.

49. The State denies the allegations in Paragraph 49 of the Complaint to the extent they suggest that the challenged laws do not further a legitimate or important state interest. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the remaining allegations.

CLAIMS FOR RELIEF

COUNT I: Due Process Clause of the Fourteenth Amendment

50. In response to Paragraph 50 of the Complaint, the State incorporates by reference and reaffirms its answers contained in Paragraphs 1 to 49 of this Answer as though fully set forth herein.

51. In response to Paragraph 51 of the Complaint, the State admits that Plaintiffs are pursuing declaratory and injunctive relief against the Defendants in their official capacity. The State denies that any relief is appropriate. The State further denies that this Court has the authority to enter a declaratory judgment, an injunction, or any other relief in this case against the State because of the State's sovereign immunity under the Eleventh Amendment.

52. In response to Paragraph 52 of the Complaint, the Fourteenth Amendment to the Constitution and 42 U.S.C. § 1983 speak for themselves.

53. In response to Paragraph 53 of the Complaint, the State admits that under the precedents of the Supreme Court of the United States, the Fourteenth Amendment to the U.S. Constitution protects certain fundamental rights and liberties relating to marriage. These precedents speak for themselves. The State denies there is a fundamental liberty interest under the Due Process Clause of the Fourteenth Amendment to same-sex marriage.

54. In response to Paragraph 54 of the Complaint, Plaintiffs' claims related to W. Va. Code § 48-2-603 have been dismissed for lack of standing and no response to the allegations

relating to Section 603 is required. The State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other challenged state laws, violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution.

55. In response to Paragraph 55 of the Complaint, the Supreme Court's precedents speak for themselves. The State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other challenged state laws, violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution.

56. In response to Paragraph 56 of the Complaint, the authority, duties, and responsibilities assigned by West Virginia law to Ms. Cole and Ms. McCormick speak for themselves. The State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other challenged state laws, violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution.

57. In response to Paragraph 57 of the Complaint, the State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other challenged state laws, violate a fundamental liberty interest protected by the Fourteenth Amendment of the U.S. Constitution.

58. The State denies the allegations contained in Paragraph 58 of the Complaint.

COUNT II: Equal Protection Clause of the Fourteenth Amendment

59. In response to Paragraph 59 of the Complaint, the State incorporates by reference and reaffirms its answers contained in Paragraphs 1 to 58 of this Answer as though fully set forth herein.

60. In response to Paragraph 60 of the Complaint, the State admits that Plaintiffs are pursuing declaratory and injunctive relief against the Defendants in their official capacity. The State denies that any relief is appropriate. The State further denies that this Court has the

authority to enter a declaratory judgment, an injunction, or any other relief in this case against the State because of the State's sovereign immunity under the Eleventh Amendment.

61. In response to Paragraph 61 of the Complaint, the Fourteenth Amendment to the Constitution and 42 U.S.C. § 1983 speak for themselves.

62. In response to Paragraph 62 of the Complaint, Plaintiffs' claims related to W. Va. Code § 48-2-603 have been dismissed for lack of standing and no response to the allegations relating to Section 603 is required. The State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other challenged state laws, violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution.

63. In response to Paragraph 63 of the Complaint, the authority, duties, and responsibilities assigned by West Virginia law to Ms. Cole and Ms. McCormick speak for themselves. The State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other challenged state laws, violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution.

64. The State denies the allegations contained in Paragraph 64 of the Complaint.

65. The State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations contained in Paragraph 65 of the Complaint. To the extent a further response is required, the allegations are denied.

66. Upon information and belief, the State admits that some same-sex couples are raising children.

67. In response to Paragraph 67 of the Complaint, the State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other challenged state laws, violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution. The State further

denies that the Constitution prohibits distinguishing between different-sex and same-sex couples for purposes of access to marriage.

68. In response to Paragraph 68 of the Complaint, the State denies that Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as any other challenged state laws, violate Plaintiffs' rights under the Fourteenth Amendment of the U.S. Constitution.

69. The State denies the allegations contained in Paragraph 69 of the Complaint.

70. In response to Paragraph 70 of the Complaint, the State denies that the challenged laws constitute unlawful discrimination.

71. In response to Paragraph 71 of the Complaint, the State admits upon information and belief that homosexual individuals contribute to society. The State denies that the challenged laws inhibit an individual's ability to contribute to society.

72. In response to Paragraph 72 of the Complaint, the State denies that there is a fundamental liberty interest under the Fourth Amendment to same-sex marriage. To the extent a further response is required, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations. To the extent a further response is required, the State denies that the allegations are relevant to a rule of decision in this case.

73. In response to Paragraph 73 of the Complaint, the State is without knowledge or information sufficient to form an opinion or belief about the truth of the allegations. To the extent a further response is required, the State denies that the allegations are relevant to a rule of decision in this case.

74. In response to Paragraph 74 of the Complaint, the State denies that sexual orientation is a class entitled to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

75. In response to Paragraph 75 of the Complaint, Sections 48-2-104 and 48-2-401 of the West Virginia Code, as well as all other federal, state, and local laws referenced in the paragraph, speak for themselves. The State denies that lesbians and gay men have been “stripped” of an existing right to marry. The State is without knowledge or information sufficient to form an opinion or belief concerning the representation of lesbians and gay men in federal, state, and local democratic bodies, or the statistics relevant to voter initiatives across the country, but denies that any underrepresentation is “systematic[.]”

76. In response to Paragraph 76 of the Complaint, Plaintiffs’ claims related to W. Va. Code § 48-2-603 have been dismissed for lack of standing and no response to the allegations relating to Section 603 is required. The State further asserts that Sections 48-2-104 and 48-2-401 of the West Virginia Code speak for themselves. The State denies the remaining allegations.

77. In response to Paragraph 77 of the Complaint, the State denies that the challenged laws unlawfully discriminate on the basis of sex.

78. The State denies the allegations contained in Paragraph 78 of the Complaint.

79. The State denies the allegations contained in Paragraph 79 of the Complaint.

80. The State denies the allegations contained in Paragraph 80 of the Complaint.

81. The State denies the allegations contained in Paragraph 81 of the Complaint.

COUNT III: DECLARATORY AND INJUNCTIVE RELIEF

82. In response to Paragraph 82 of the Complaint, the State incorporates by reference and reaffirms its answers contained in Paragraphs 1 to 81 of its Answer as though fully set forth herein.

83. In response to Paragraph 83 of the Complaint, the State denies that the challenged laws inflict a legal injury on Plaintiffs, other same-sex couples, or their children. The State

further denies that Plaintiffs are entitled to any relief. The State further denies that this Court has the authority to enter a declaratory judgment, an injunction, or any other relief in this case against the State because of the State's sovereign immunity under the Eleventh Amendment.

84. In response to Paragraph 84 of the Complaint, the State admits that Plaintiffs seek preliminary and/or permanent injunctive relief. The State denies that Plaintiffs are entitled to any relief. The State further denies that this Court has the authority to enter a declaratory judgment, an injunction, or any other relief in this case against the State because of the State's sovereign immunity under the Eleventh Amendment.

85. The State denies the allegations contained in Paragraph 85 of the Complaint.

PRAYER FOR RELIEF

The State denies that Plaintiffs are entitled to any relief whatsoever, including the relief requested in paragraphs (A) through (C) of Plaintiffs' prayer for relief.

ADDITIONAL AND AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief may be granted.
2. Plaintiffs have failed to join indispensable parties.
3. Plaintiffs lack standing.
4. Plaintiffs' claims are unripe.
5. No government action occurred in relation to Plaintiffs' claims against W. Va. Code §§ 48-2-104(c) and 48-2-603.
6. Sovereign immunity under the Eleventh Amendment bars any judgment against the State, including injunctive relief, declaratory relief, damages, attorneys' fees, or costs under 42 U.S.C. § 1988.
7. Plaintiffs are not entitled to attorneys' fees and /or costs under 42 U.S.C. § 1988.

8. Plaintiffs' claims are contrary to the sovereign interests of the State under the Tenth Amendment.

9. The State reserves the right to assert any additional and further defenses as may be revealed by discovery or otherwise.

Respectfully submitted,

PATRICK MORRISEY
ATTORNEY GENERAL

s/ Elbert Lin

Elbert Lin (WV Bar Number: 12171)

Solicitor General

Julie Marie Blake (WV Bar Number 12271)

Julie Ann Warren (WV Bar Number: 9789)

Assistant Attorneys General

Office of the Attorney General

State Capitol Building 1, Room E-26

Charleston, WV 25305

Telephone: (304) 558-2021

Fax: (304) 558-0140

E-mail: elbert.lin@wvago.gov

Counsel for the State of West Virginia

Dated: February 12, 2014

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

**CASIE JO MCGEE and SARA ELIZABETH
ADKINS; JUSTIN MURDOCK and WILLIAM
GLAVARIS; and NANCY ELIZABETH
MICHAEL and JANE LOUISE FENTON,
Individually and as next friends of A.S.M.,
minor child,**

Plaintiffs,

v.

Civil Action No. 3:13-24068

**KAREN S. COLE, in her official capacity as
CABELL COUNTY CLERK; and VERA J.
MCCORMICK, in her official capacity as
KANAWHA COUNTY CLERK,**

Defendants.

and

**STATE OF WEST VIRGINIA,
Defendant-Intervenor.**

CERTIFICATE OF SERVICE

I, Elbert Lin, counsel for the Movant, hereby certify that on February 12, 2014, I electronically filed the foregoing *State of West Virginia's Answer to Plaintiffs' Complaint for Declaratory and Injunctive Relief* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

Camilla B. Taylor
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
Suite 2600
105 West Adams
Chicago, IL 60603
Email: ctaylor@lambdalegal.org

Elizabeth L. Littrell
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
Suite 1070
730 Peachtree Street, NE
Atlanta, GA 30308-1210
Email: blittrell@lambdalegal.org

Heather Foster Kittredge
THE TINNEY LAW FIRM
P. O. Box 3752
Charleston, WV 25337-3752
Email: heather@tinneylawfirm.com

Karen L. Loewy
LAMBDA LEGAL DEFENSE &
EDUCATION FUND, INC.
19th Floor
120 Wall Street
New York, NY 10005-3904
Email: kloewy@lambdalegal.org

Lindsay C. Harrison
JENNER & BLOCK
Suite 900
1099 New York Avenue, NW
Washington, DC 20001-4412

Luke C. Platzer
JENNER & BLOCK
Suite 900
1099 New York Avenue, NW
Washington, DC 20001-4412
Email: lplatzer@jenner.com

Paul M. Smith
JENNER & BLOCK
Suite 900
1099 New York Avenue, NW
Washington, DC 20001-4412
Email: psmith@jenner.com

R. Trent McCotter
JENNER & BLOCK
Suite 900
1099 New York Avenue, NW
Washington, DC 20001-4412
Email: rmccotter@jenner.com

John H. Tinney, Jr.
THE TINNEY LAW FIRM
P. O. Box 3752
Charleston, WV 25337-3752
Email: jacktinney@tinneylawfirm.com

Lee Murray Hall
JENKINS FENSTERMAKER
P. O. BOX 2688
Huntington, WV 25726-2688
Email: lmh@jenkinsfenstermaker.com

Sarah A. Walling
JENKINS FENSTERMAKER
P. O. Box 2688
Huntington, WV 25726-2688
Email: saw@jenkinsfenstermaker.com

Charles R. Bailey
BAILEY & WYANT
P. O. Box 3710
Charleston, WV 25337-3710
Email: cbailey@baileywyant.com

Michael W. Taylor
BAILEY & WYANT
P. O. Box 3710
Charleston, WV 25337-3710
Email: mtaylor@baileywyant.com

s/ Elbert Lin

Elbert Lin