

**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 CROSS MOTION FOR
SUMMARY JUDGMENT, OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT, AND INDEXED EXHIBITS**

Pursuant to Federal Rule of Civil Procedure 56, the State of West Virginia moves this court to grant summary judgment in its favor and to deny Plaintiffs' Motion for Summary Judgment, Doc. No. 40. As described in the State's separate memorandum, there are no genuine issues of material fact in dispute and the State is entitled to judgment as a matter of law.

Pursuant to Local Rule 7.1(a)(1), this motion includes the exhibits upon which the State relies. The following is an index to these exhibits.

INDEX TO STATE EXHIBITS

I. STATE EXECUTIVE MATERIALS

A. State Materials for County Clerks

Exhibit 1. West Virginia Department of Health and Human Resources,
Application for Marriage License (1 page)¹

B. State Registrar

Exhibit 2. Vital Registration Office: Application for Certified Marriage
Certificate (2014) (1 page)

Exhibit 3. State Registrar's Website on Vital Registration Records of
Marriages in West Virginia (2014) (23 pages)

C. Secretary of State

Exhibit 4. Secretary of State's Application to be placed on the Statewide
Registry of Persons Authorized to Perform Marriages in West
Virginia (2014) (4 pages)

Exhibit 5. Secretary of State's Website for the Statewide Registry of Persons
Authorized to Perform Marriages in West Virginia (2014) (1 page)

II. STATE LEGISLATIVE MATERIALS

A. Historical State Laws

Exhibit 6. 10 William Waller Henning, Statutes At Large 361-62 (1822),
reprinting "An act what shall be a lawful marriage" (Va. 1780)
(3 pages)

¹ In accordance with this Court's preferences, the State omits a paper courtesy copy of these filings and instead indicates the length of each exhibit.

Exhibit 7. Va. Code ch. 106 (1819) (historical state laws codifying marriage)
(7 pages)

Exhibit 8. Va. Code §§31-108-2, 31-196-1(1860) (historical state laws
governing marriage and bigamy) (6 pages)

Exhibit 9. 1861 Va. Acts c. 20, § 1, p. 43 (historical state laws governing
marriage licenses) (3 pages)

Exhibit 10. W. Va Code §§ 69-1 *et seq.* (1878) (historical state laws governing
divorce) (5 pages)

Exhibit 11. W. Va Code §§ 70-1 *et seq.* (1878) (historical state laws governing
dower) (6 pages)

Exhibit 12. W. Va Code §§ 103-1 *et seq.* (1879) (historical state laws
governing illegitimate children) (3 pages)

Exhibit 13. W. Va Code §§ 121-1 *et seq.* (1879) (historical state laws
governing marriages, births, and deaths) (7 pages)

Exhibit 14. W. Va Code §§ 122-1 *et seq.* (1879) (historical state laws
governing the rights of married women) (5 pages)

Exhibit 15. W. Va Code §§ 48-1-1 *et seq.* (1999) (historical state laws
governing marriage) (15 pages)

Exhibit 16. W. Va Code §§ 48-2-1 *et seq.* (1999) (historical state laws
governing divorce) (13 pages)

B. S. 146, 74th Leg. (2000 Regular Session) (*prohibiting recognition of same-sex
marriages*) (passed into law), codified at W. Va. Code §§ 48-2-104, 48-2-603

Exhibit 17. Legislative History and Drafts of S. 146 (5 pages)

- Exhibit 18. Excerpts from Journal of Senate for S. 146 (16 pages)
- Exhibit 19. Excerpts from Journal of House of Delegates for S. 146 (11 pages)
- C. H.B. 4089, 74th Leg. (2000 Regular Session) (*establishing that marriage is designed to be a union between a woman and a man*) (not enacted)
- Exhibit 20. Legislative History and Drafts of H. B. 4089 (6 pages)
- D. S. 422, 74th Leg. (2000 Regular Session) (*relating to civil rights violation for purposes of criminal liability*) (not enacted)
- Exhibit 21. Legislative History and Drafts of S. 422 (6 pages)
- E. H.B. 2199, 75th Leg. (2001 Regular Session) (*reenacting and recodifying the domestic relations laws of the state*) (passed into law), codified in part at W. Va. Code § 48-2-401
- Exhibit 22. Legislative History and Drafts of H.B. 2199 (1,365 pages)
- Exhibit 23. Excerpts from Journal of House of Delegates for H.B. 2199 (62 pages)
- Exhibit 24. Excerpts from Journal of Senate for H.B. 2199 (53 pages)
- F. S. 600, 78th Leg. (2008 Regular Session) (*adding certain terms to Human Rights Act and Fair Housing Act*) (passed Senate)
- Exhibit 25. Legislative History and Drafts of S. 600 (86 pages)
- G. S. 238, 79th Leg. (2009 Regular Session) (*prohibiting discrimination based on age or sexual orientation*) (passed Senate)
- Exhibit 26. Legislative History and Drafts of S. 238 (60 pages)

- H. S. 226, 80th Leg. (2011 Regular Session) (*prohibiting discrimination based on age or sexual orientation*) (not enacted)

Exhibit 27. Legislative History and Drafts of S. 226 (30 pages)

- I. H.B. 2045, 80th Leg. (2011 Regular Session) (*prohibiting discrimination based on age or sexual orientation*) (not enacted)

Exhibit 28. Legislative History and Drafts of H.B. 2045 (30 pages)

- J. H.B. 4605, 80th Leg. (2012 Regular Session) (*reenacting the traditional definition of marriage and providing a premarital education option to applicants for marriage licenses*) (passed into law), codified in part at W. Va. Code §§ 48-2-104

Exhibit 29. Legislative History, Fiscal Note, and Drafts for H.B. 4605 (72 pages)

Exhibit 30. Excerpts from Journal of House of Delegates for H.B. 4605 (36 pages)

Exhibit 31. Excerpts from Journal of Senate for H.B. 4605 (20 pages)

- K. H.B. 4569, 80th Leg. (2012 Regular Session) (*creating a state recognized status for civil unions*) (not enacted)

Exhibit 32. Legislative History and Drafts of H.B. 4569 (14 pages)

- L. S. 14, 80th Leg. (2012 Regular Session) (*prohibiting discrimination based on age or sexual orientation*) (not enacted)

Exhibit 33. Legislative History and Drafts of S. 14 (31 pages)

- M. H.B. 2045, 80th Leg. (2012 Regular Session) (*prohibiting discrimination based on age or sexual orientation*) (not enacted)

Exhibit 34. Legislative History and Drafts of H.B. 2045 (30 pages)

- N. H.B. 2856, 81st Leg. (2013 Regular Session) (*prohibiting discrimination based on age or sexual orientation*) (not enacted)

Exhibit 35. Legislative History and Drafts of H.B. 2856 (30 pages)

- O. S. 472, 81st Leg. (2014 Regular Session) (*prohibiting discrimination in housing or employment based on age or sexual orientation*) (pending)

Exhibit 36. Legislative History and Drafts of S. 472 (30 pages)

- P. H.B. 2054, 81st Leg. (2014 Regular Session) (*prohibiting bullying in the workplace based on sexual orientation*) (pending)

Exhibit 37. Legislative History and Drafts of H.B. 2054 (10 pages)

- Q. H.B. 2856, 81st Leg. (2014 Regular Session) (*prohibiting discrimination based on age or sexual orientation*) (pending)

Exhibit 38. Legislative History and Drafts of H.B. 2856 (30 pages)

III. STATE JUDICIAL MATERIALS

- A. *Link v. King*, No. 04-0475 (W. Va. Supreme Court of Appeals 2004).

Exhibit 39. Order Denying Writ of Mandamus (Apr. 1, 2004) (2 pages)

Exhibit 40. Petition for Writ of Mandamus (Mar. 5, 2004) (1 page)

Exhibit 41. Brief of Petitioners in Support of Their Petition for Writ of Mandamus (Mar. 22, 2004) (30 pages)

Exhibit 42. Respondents' Rule 14 Response to Original Jurisdiction Petition (Mar. 23, 2004) (20 pages)

Exhibit 43. Order Denying Intervention to State Legislators (Apr. 1, 2004) (2 pages)

IV. DECLARATION

Exhibit 44. Declaration of Authenticity by Elbert Lin (Feb. 12, 2014)
(2 pages)

Respectfully submitted,

**PATRICK MORRISEY
ATTORNEY GENERAL**

s/ Elbert Lin

Elbert Lin (WV Bar Number: 12171)

Solicitor General

Julie Ann Warren (WV Bar Number: 9789)

Julie Marie Blake (WV Bar Number 12271)

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

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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 Cross Motion For Summary Judgment, Opposition To Plaintiffs' Motion For Summary Judgment, And Indexed Exhibits* 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