

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUL 15 2013

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

**RITA AND PAM JERNIGAN; BECCA
AND TARA AUSTIN; AND RANDY AND
GARY EDDY-MCCAIN**

JAMES W. McCORMACK, CLERK
By: J. Brown
DEP. CLERK

PLAINTIFFS

v.

4:13-CV-410

**LARRY CRANE, IN HIS OFFICIAL CAPACITY
AS CIRCUIT AND COUNTY CLERK FOR
PULASKI COUNTY, ARKANSAS;
GOVERNOR MIKE BEEBE, IN HIS OFFICIAL
CAPACITY AS GOVERNOR AND CHIEF
EXECUTIVE OFFICER FOR THE STATE OF
ARKANSAS; AND DUSTIN McDANIEL, IN
HIS OFFICIAL CAPACITY AS ATTORNEY
GENERAL FOR THE STATE OF ARKANSAS**

This case assigned to District Judge Holmes
and to Magistrate Judge Kearney

DEFENDANTS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, for their Complaint for Declaratory and Injunctive Relief, state:

I. NATURE OF THE ACTION

1. Plaintiffs bring this action to challenge the constitutionality of Arkansas's laws excluding same-gender couples from marriage and forbidding recognition of legitimate same-gender marriages entered into in other states. Arkansas Constitution, Amendment 83; Ark. Code Ann. § 9-11-208; and Ark. Code Ann. § 9-11-107(b).

2. Plaintiffs seek a declaration that Amendment 83 and the referenced statutes violate the right to equal protection and due process of law under the Fourteenth Amendment to the United States Constitution. Plaintiffs also seek an injunction prohibiting the State of Arkansas, and all political subdivisions thereof, from enforcing Amendment 83 or the referenced statutes. Declaratory relief is sought under

the United States Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and Federal Rule of Civil Procedure 57. Injunctive relief is sought pursuant to Federal Rule of Civil Procedure 65.

II. PARTIES

A. Plaintiffs

3. Plaintiffs Becca and Tara Austin and Rita and Pam Jernigan are lesbian couples who wish to marry for the same reasons so many other couples get married—to publicly declare their love and commitment for each other before their family, friends and community, and to give one another the security and protections that only marriage provides.

4. Plaintiffs Becca and Tara Austin have been in a committed relationship for over nine (9) years. Becca and Tara are both employees at the University of Arkansas for Medical Sciences, where They have twins—a boy and a girl—who are four and a half (4½) years old. Tara is the biological mother of the children. Because Becca is not a biological parent to the children and cannot legally marry Tara, Becca is not considered a parent to the twins under Arkansas law. The fact that Becca and Tara Austin are not permitted to marry harms them in other material ways, including reducing family resources and stigmatizing the Austins and their children by denying them family social recognition and respect. When their children were born, Becca was denied family leave time to spend with the twins at home after they were born because she and Tara were not married and the children were not legally her dependents. Tara wanted to stay home after the children were born but had to return to work full time in order to have health insurance for her and the children. Becca could not carry Tara and the children

on a family health insurance plan because she and Tara were not (and could not *be*) married and the children were not her legal dependents.

5. Plaintiff Rita Jernigan retired after teaching math in the Little Rock School District for over twenty-eight (28) years. She participated in the Arkansas Teacher Retirement System (ATRS) while employed and currently receives retirement pay from ATRS. Amendment 83 to the Arkansas Constitution prohibits Rita's life partner, Pam, from receiving surviving spouse benefits under ATRS in the event of Rita's death.

6. Plaintiffs Randy and Gary Eddy-McCain are a gay couple who are already married under New York law. They have been in a committed relationship for twenty-one (21) years. They were married in 2012 in the State of New York, which recognizes same-sex marriage. A copy of Randy and Gary Eddy-McCain's New York State Marriage License is attached as **Exhibit 1**. Although Randy and Gary Eddy-McCain are legally married, they are treated as legal strangers in their home state of Arkansas.

7. Plaintiffs come from various walks of life and occupations—a nurse practitioner, an executive assistant, a retired schoolteacher, a minister, an artist, and the owner of a pet-sitting service. All of the Plaintiffs are homeowners and reside in Pulaski County, Arkansas. They are involved in their communities and have been in committed relationships with one another for many years. The situations faced by these couples are similar to those faced by thousands of same-sex couples in the State of Arkansas who are being denied the basic rights that are afforded by marriage. They have cared for one another, supported each other, sacrificed for each other, and made plans for the future with each other. They have gone through hardships, illness, joy and success during the course of their relationships. As with other couples that have made a lifetime

commitment to each other, the Plaintiff couples are spouses in every sense, except that Arkansas law says they cannot marry and, even if they are legally married under the laws of another state, Arkansas law says that their marriages are not honored here.

8. On June 26, 2013, the United States Supreme Court affirmed the decision of the Second Circuit Court of Appeals in *United States v. Windsor*, 133 S. Ct. 2675, Case No. 12-307, Slip Op. (June 26, 2013), and invalidated Section 2 of the federal “Defense of Marriage Act” (DOMA), where Congress defined “marriage” for purposes of all federal laws to only include marriage of opposite-sex couples. The Supreme Court held that this law served no legitimate purpose other than targeting a certain class of people for unlawful discrimination based on sexual preference. The Supreme Court found that Section 2 of DOMA violated the Equal Protection and Due Process clauses of the Fifth Amendment to the United States Constitution.¹

9. In *Windsor*, the Supreme Court stated “State laws defining and regulating marriage, of course, must respect the constitutional rights of persons.” *Windsor*, Slip Op. at 18. As authority for this statement, the Court cited the 1967 case of *Loving v. Virginia*, 388 U.S. 1, where the Court held that it was unconstitutional for states to prohibit individuals of different races from marrying. *Loving* also found that “the freedom to marry has long been recognized as one of the vital personal rights essential to the

¹ *Windsor* was analyzed under the Equal Protection and Due Process clauses of the Fifth Amendment to the United States Constitution because it involved actions of the federal government. These same Constitutional protections were extended to actions of the States by the Fourteenth Amendment to the U.S. Constitution. This case involves state action rather than federal action, so references are to the Fourteenth Amendment rather than the Fifth Amendment. The analysis, however, is the same. See *Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (“Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.”); *Town of Tonawanda v. Lyon*, 181 U.S. 389, 21 S. Ct. 609, 45 L. Ed. 908 (1901) (“The purpose of [the Fourteenth] Amendment is to extend to the citizens and residents of the states the same protection against arbitrary state legislation affecting life, liberty, and property, as is afforded by the 5th Amendment against similar legislation by Congress.”)

orderly pursuit of happiness by free men.” *Loving*, 388 U.S. at 12. In *Windsor*, the Court echoed the same principles set forth in *Loving* forty-six (46) years earlier, finding that such discrimination “demeans the couple, whose moral and sexual choices the Constitution protects.” *Windsor*, Slip Op. at 23 (citing *Lawrence v. Texas*, 539 U.S. 558 (2003)). The Court went on to state that the discriminatory treatment “humiliates tens of thousands of children now being raised by same-sex couples” and that “the law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.” *Id.*

10. Although *Windsor* invalidated only federal law refusing to recognize legitimate same-sex marriages performed in states where such marriages are lawful, the reasoning in *Windsor* is equally applicable to Arkansas’s refusal to allow same-sex marriages and refusal to recognize same-sex marriages performed in other states. Even Justice Scalia, in his vigorous dissent in *Windsor* stated that “the view that *this* Court will take of state prohibition of same-sex marriage is indicated beyond mistaking by today’s opinion.” *Id.* Scalia, J., dissent, at 22. Justice Scalia even stated: “How easy it is, indeed how inevitable, to reach the same conclusion with regard to state laws denying same-sex couples marital status.” *Id.* at 23.

11. In view of the *Windsor* decision, the Austins and the Jernigans applied for marriage licenses with the Pulaski County Circuit and County Clerk on July 11, 2013. The Pulaski County Clerk rejected their applications on the basis of Amendment 83 and Ark. Code Ann. §9-11-208. The Austins’ and Jernigans’ marriage applications are attached as **Exhibits 2** and **3**. The Pulaski County Circuit Clerk also wrote letters to the

Austins and the Jernigans in connection with their rejected marriage applications. These letters are attached as **Exhibits 4 through 7**.

12. The Jernigans intend to marry in November 2013 in the State of Washington, where same-sex marriage is legal. Because the State of Arkansas will not allow them to marry, they must incur expense and inconvenience in traveling to another state to marry. Even after they marry, Arkansas will not recognize their marriage as legal. Rita Jernigan has already been told by the ATRS that even after the planned Washington marriage, ATRS will not allow Rita to name Pam as her surviving spouse on her ATRS retirement plan.

13. Because the State of Arkansas refuses to allow Plaintiffs to marry, or to have their legitimate marriages in other states recognized in Arkansas, Plaintiffs are being denied the right to equal protection of the law. Arkansas law confers countless benefits and privileges that apply only to married couples. Examples include: Ark. Code Ann. §§ 20-9-602 (allowing spouse or parent to consent to medical treatment for spouse and child); 28-6-204 (preference to spouse or person related by blood in guardianship proceedings); 16-61-102 (right to prosecute and defend civil actions in spouse's name), 24-7-710 (teacher retirement benefits); 24-4-406 (public employee benefits before retirement); 11-9-812 (workers' compensation benefits); 23-83-108 (group life insurance policies and annuities); 23-79-128 (life insurance); Arkansas Probate Code (Ark. Code Ann. §28-1-101 *et seq.* (rights to dower/curtesy for widow/widower of deceased spouse, rights to certain statutory allowances for surviving spouse, homestead rights, right to inherit from deceased spouse, right of children to inherit from legal parent); and Arkansas Rule of Evidence 504 (Husband-Wife testimonial privilege). Married couples

may also take advantage of the right to file joint state and federal tax returns and may receive numerous other tax benefits available to married couples and their families. These are just a few of the many of sections of the Arkansas Code that draw distinctions in treatment based on whether one is a "spouse."

B. Defendants

14. Defendant Larry Crane is sued in his official capacity as Circuit/County Clerk for Pulaski County, Arkansas. Arkansas Code Ann. § 9-11-203 requires that the County Clerk issue a marriage license if application is made and the requirements of the Code section are met. The Austins and the Jernigans applied for marriage licenses on July 11, 2013, but Mr. Crane's office refused to issue them marriage licenses because Ark. Code Ann. § 9-11-208 and Amendment 83 prohibit the Clerk from issuing a marriage license to persons of the same gender.

15. Defendant Mike Beebe is Governor of the state of Arkansas and is sued in that capacity. Under Article 6, Section 2 of the Arkansas Constitution, the "supreme executive power" of the State of Arkansas is vested in the Governor. He thus is responsible for assuring that the laws of the State, including the provisions of Amendment 83 and the statutes challenged herein, are administered.

16. Defendant Dustin McDaniel is the Attorney General of the State of Arkansas and is sued in that capacity. His office is created by Article 6, Section 1 of the Arkansas Constitution. His duties include both enforcing the law and advising officials within the State of the requirements of the law, including Amendment 83 and the challenged statutes. He is specifically authorized by Arkansas law to "maintain and defend the interests of the State in matters before . . . federal courts" and he is the

“legal representative of all state officers, boards, and commissioners in all litigation where the interests of the state are involved.” Ark. Code Ann. § 25-16-703.

III. JURISDICTION AND VENUE

17. Amendment 83 and the challenged statutes purport to be valid state laws existing under color of state law. By implementing and enforcing the unconstitutional Amendment and statutes, the individual defendants have deprived Plaintiffs of rights guaranteed by the United States Constitution, as more specifically described below, thereby violating and threatening to violate 42 U.S.C. § 1983.

18. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 as this is a civil action arising under the United States Constitution and the laws of the United States, namely the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

19. Venue is proper under 28 U.S.C. §1391(b) in that the Federal Judicial District for the Eastern District of Arkansas is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. Venue is also proper under 28 U.S.C. § 1391(a) because one or more of the named Defendants reside in the District.

IV. CLAIMS FOR RELIEF

A. COUNT I: Deprivation of the Fundamental Right to Marry in Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

20. The right to marry is a fundamental right.

21. “The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” *Loving v.*

Virginia, 388 U.S. 1, 12 (1967). Marriage has further been described by the United States Supreme Court as one of the “basic civil rights of man” and as a “fundamental freedom.” *Id.* A law is most likely to be held unconstitutional when it “inhibits personal relationships.” *Lawrence v. Texas*, 539 U.S. 558, 580 (2003)(O’Connor, J., concurring).

22. “Liberty,” as referred to in the Fourteenth Amendment, includes the right of an individual to marry. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). “[T]his liberty may not be interfered with, under the guise of protecting the public interest,” by legislation lacking a sufficient rationale. *Id.* at 399–400. The Supreme Court has specifically found that the right to marry is “one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.” *Cleveland Board of Education v. Laflour*, 414 U.S. 632, 639–40 (1974). *See also Windsor*, Slip Op. at 18 (recognizing marriage as conferring a “dignity and status of immense import” and “an essential part of the liberty protected by” the U.S. Constitution).

23. The sponsor of Amendment 83 was the Arkansas Marriage Amendment Committee. The sponsor of this Committee, Jerry Cox, who is also the head of a Christian organization known as the “Family Council,” spoke out as to the purpose of the Amendment prior to its passage. He stated that the purpose of the Amendment was to preserve marriage and families, arguing that locations in which a child has both a mother and a father are areas in which crime is lower and education is better, while locations in which single-parent households were common are higher-crime areas. Laura Kellams, *Foes Use Family, Fairness in Amendment 3 Debate: It Limits Marriage to Union of Man, Woman*, ARK. DEMOCRAT-GAZETTE, Sep. 5, 2004, at 1A. Mr. Cox did not explain how a comparison of crime rates in “single parent neighborhoods” and

“mother/father neighborhoods” relates to crime rates in “same-sex parent neighborhoods.” Indeed, it is unlikely that there are any statistics on crime rates in “same-sex parent neighborhoods”—if such neighborhoods even exist.

24. There is no credible evidence that banning same-sex marriage serves in any way to “preserve marriage and families.” As the American Psychological Association (APA) stated in the *amicus* brief filed with the Supreme Court in *Windsor*:

[s]cientific evidence strongly supports the conclusion that homosexuality is a normal expression of human sexuality; that most gay, lesbian, and bisexual adults do not experience their sexual orientation as a choice; that gay and lesbian people form stable, committed relationships that are equivalent to heterosexual relationships in essential respects; and that same-sex couples are no less fit than heterosexual parents to raise children and their children are no less psychologically healthy and well-adjusted than children of heterosexual parents. In short, the claim that legal recognition of marriage for same-sex couples undermines the institution of marriage and harms their children is inconsistent with scientific evidence.

Windsor, Case No. 12-307, Brief of American Psychological Association, at 4–5 (Mar. 1, 2013). The APA is the world’s largest professional association of psychologists. The American Medical Association, the American Academy of Pediatrics, the American Psychiatric Association, and the National Association of Social Workers joined in the APA *amici curiae* brief in *Windsor*. The American Medical Association is the Nation’s largest organization of doctors and medical students in the United States. The American Academy of Pediatrics is the largest professional organization of pediatricians in the United States. The American Psychiatric Association is the Nation’s largest organization of physicians specializing in psychiatry. And the National Association of Social Workers is the Nation’s largest association of professional social workers.

25. Amendment 83 and the challenged statutes cannot survive rational basis review, much less the “strict scrutiny” review accorded to laws affecting fundamental rights, where such laws must be narrowly tailored to specifically achieve the purpose behind the law.

26. The relationship between preservation of marriage and excluding same-sex couples is tenuous at best. Legalization of same-sex marriage has not negatively affected heterosexual marriage rates in the states that have legalized same-sex marriage or in other countries where it is legal. Banning such marriages is not rationally related to the interest of protecting marriage.

27. The relationship between “preserving families” appears to relate to procreation. But this is illogical because procreation and marriage do not necessarily go hand in hand. A requirement of procreation is not a prerequisite to marriage and many heterosexual couples who marry choose not to have children. On the other hand, pregnancies between couples who are unwed are commonplace. Therefore, because having children is not presumed for couples who marry and because marriage is not necessary for couples to produce children, the relationship between banning same-sex marriage and the interest of promoting procreation is not rational.

28. The purported purposes of Amendment 83 are, in reality, merely a ruse to do what was forbidden by the Supreme Court in *Windsor*—to carry out a “desire to harm a politically unpopular group.” *Windsor*, Slip Op. at 20.

29. Arkansas law denies Plaintiffs and other same-sex couples the fundamental right to marry by denying them access to the state-recognized institution of marriage and refusing to recognize the marriages they entered into in other states.

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

31. The State's prohibition of marriage between persons of the same sex and its refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates the Due Process Clause.

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

B. COUNT II: Discrimination on the Basis of Sexual Orientation in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

33. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint as if set forth word for word herein.

34. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall...deny to any person within its jurisdiction the equal protection of the laws."

35. By denying the Plaintiff couples and other lesbian and gay couples the ability to marry and to have their out-of-state marriages recognized, the State, through the actions of Defendants, discriminates against gay and lesbian couples on the basis of their sexual orientation. It denies them significant legal protections. It "degrade[s] and demean[s] them by instruct[ing]...all persons with whom same-sex couples interact, including their own children," that their relationship is "less worthy" than the relationships of others. *Windsor*, Slip Op. at 23.

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

37. Classifications based on sexual orientation demand heightened scrutiny for a number of reasons. These include:

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

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

c. Sexual orientation is a core, defining trait that is so fundamental to one's identity that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment. Sexual orientation is not something over which the vast majority of gay and lesbian people feel they have any choice. "[C]linical interventions that purport to change sexual orientation from homosexual to heterosexual...have not been shown to be effective or safe." *Windsor*, Case No. 12-307, Brief of American Psychological Association, at 10. "In 2009, a review of the scientific literature by an APA task force concluded that "sexual orientation change efforts are unlikely to succeed and indeed can be harmful." *Id.* (citations omitted). No mainstream professional mental health organization approves interventions that attempt to change sexual identity. In fact, the American Psychological Association and the

American Psychiatric Association have both issued policy statements cautioning professionals and the public about these treatments.

d. Prejudice against lesbians and gay men continues to seriously curtail the operation of the political process and prevents this group from obtaining redress through legislative means. The group lacks statutory protection under the law against discrimination in employment, public accommodations, and housing at the federal level and in more than half the states, including Arkansas. Lesbians and gay men have far fewer civil rights protections at the state and federal level than women and racial minorities had when sex and race classifications were declared to be suspect or quasi-suspect. They have been stripped of the right to marry through constitutional amendments or other laws in thirty (30) states and have been targeted through the voter initiative process more than any other group.

37. For the reasons set forth above, classification based on sexual orientation should be reviewed under heightened scrutiny. But the classification involved in this case cannot survive under any level of Constitutional scrutiny. The exclusion of same-sex couples from marriage is not related to *any* legitimate governmental interest. All this classification does is disparage and injure lesbian and gay couples and their children.

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

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

C. COUNT III: Discrimination on the Basis of Gender in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

40. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as if set forth word for word herein.

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

42. Arkansas Code Ann. § 9-11-101 provides that marriage is a civil contract. But under the authority of Amendment 83’s definition of marriage as consisting “only of the union of one man and one woman,” numerous Arkansas statutes were revised after Amendment 83 was enacted in 2004. Ark. Code Ann. § 9-11-109 restates the Amendment 83 definition of marriage as “between a man and a woman” and declares all same-sex marriages to be void. Ark. Code Ann. §9-11-17 provides for recognition of marriages from other states or countries, but excludes marriages from persons of the same sex. Ark. Code Ann. §9-11-208 provides that the State only recognizes the marital union of “man and woman” and forbids the Clerk from issuing a marriage license to same-sex couples.

43. By defining marriage as only between a man and a woman, the State of Arkansas discriminates on the basis of sex. For example, Becca Austin is not legally

permitted to marry Tara Austin because Tara is female. But if Tara was male, the couple would be free to marry.

44. In addition, Amendment 83 and the various statutes enacted pursuant to its authority preclude the recognition of legitimate marriages performed under the laws of other states or countries. For example, Ark. Code Ann. § 9-11-107(b) specifically states that the statute, which otherwise recognizes all legitimate marriages contracts formed in foreign countries or other states, does not apply to marriages "between persons of the same sex."

45. The New York marriage of Randy and Gary Eddy-McCain, for example, is denied recognition solely because they are both men.

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

47. Given that the law no longer recognizes legal distinctions between the duties of husbands and wives, there is no basis for these sex-based eligibility requirements for marriage.

48. In 2013, Defendants can demonstrate no exceedingly persuasive justification for this discrimination based on sex.

49. Arkansas laws prohibiting marriage and recognition of marriage for same-sex couples thus violates the Equal Protection Clause.

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

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Enter a declaratory judgment that Amendment 83 to Arkansas' Constitution and all other Arkansas statutes that prevent same-sex couples from marrying, or from having their legitimate marriages entered into in other states recognized in Arkansas, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

2. Enter a declaratory judgment that Amendment 83 to Arkansas' Constitution and all other Arkansas statutes that prevent same-sex couples from marrying, or from having their legitimate marriages entered into in other states recognized in Arkansas, violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution;

3. Enter a permanent injunction enjoining defendants from denying Plaintiffs and all other same-sex couples the right to marry in Arkansas and directing the Defendants to recognize marriages validly entered into by the Eddy-McCains and other same-sex couples outside of Arkansas. This should include mandatory injunctive relief requiring Defendant Mike Beebe, as the chief executive officer of the State of Arkansas, to instruct all state counties and their employees and agents accordingly;

4. Award costs of this suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and

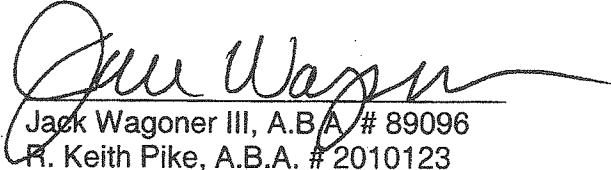
5. Order all other appropriate relief to which it determines Plaintiffs are entitled.

Dated: July 15, 2013

Respectfully submitted,

WAGONER LAW FIRM, P.A.

By:



Jack Wagoner III, A.B.A. # 89096

R. Keith Pike, A.B.A. # 2010123

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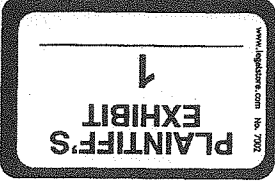
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M-2012-4

THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
MARRIAGE LICENSE BUREAU

License Number
M-2012-19952

Certificate of Marriage Registration

This Is To Certify That **RANDALL A MCCAIN JR** New Surname : **EDDY-MCCAIN**

residing at **6012 Buffalo River Road , North Little Rock, AR 72116, United States**

born on **06/07/1956** at **Walnut Ridge Arkansas United States**

and **GARY DEAN EDDY** New Surname : **EDDY-MCCAIN**

residing at **6012 Buffalo River Road , North Little Rock, AR 72116, United States**

born on **08/04/1954** at **Rapid City South Dakota United States**

Were Married

on **08/09/2012** at **CENTRAL PARK**
By **JAMIE BAKKER** at **RAMBLE**
NEW YORK, NY
United States

as shown by the duly registered license and certificate of marriage of said persons on file in this office.

CERTIFIED THIS DATE AT THE CITY CLERK'S OFFICE

Manhattan August 10, 12 20
N. Y.

PLEASE NOTE: Facsimile Signature
and seal are printed pursuant
to Section 11-A, Domestic
Relations Law of New York.



Michael McSweeney
Michael McSweeney
City Clerk of the City of New York

CET-F

M0038819

Notice of Intent to Wed Application

Groom

Please Print

Bride

Full Name: Tara Lynn Austin

Address: 2110 S. Summit
Little Rock AR 72202 Pulaski
City State Zip County

Phone: 501-416-0786

SSN: 431 69 4309 DOB: 6-10-76

What State where you born in: AR Or Country _____

(Genealogy Optional)

Father's Name: Bill Austin

(Genealogy Optional)

Mother's First and Maiden Name: Deborah Williamson

Type of ID: DL , ID _____, Military ID _____, Passport _____, Other _____

What State Issued ID: AR , Other _____

Bride

Please Print

Full Name: Becca Carol Carle Austin

Is the Last Name above your Maiden Name? Yes _____

If no, what is your Maiden Name: Carle

Address Same as Above, Yes

Address: _____

Phone: 501-416-5997
City State Zip County

SSN: 431-49-9891 DOB: 10-10-80

What State where you born in: AR Or Country _____

(Genealogy Optional)

Father's Name: Kenneth Carle

(Genealogy Optional)

Mother's First and Maiden Name: Martha Hampton

Type of ID: DL , ID _____, Military ID _____, Passport _____, Other _____

What State Issued ID: AR , Other _____

PLAINTIFF'S EXHIBIT
2

Notice of Intent to Wed Application

Groom

Please Print

Bride

Full Name: Rita Jo Jernigan

Address: 12 Oakwood Rd.

Little Rock AR 72202 Pulaski

City State Zip County

Phone: 501-920-1940

SSN: 430-02-5685 DOB: 2-11-53

What State where you born in: Arkansas Or Country _____

(Genealogy Optional)

Father's Name: Marvin Ray Jernigan

(Genealogy Optional)

Mother's First and Maiden Name: Monica Brown

Type of ID: DL , ID _____, Military ID _____, Passport _____, Other _____

What State Issued ID: AR , Other _____

Bride

Please Print

Full Name: PAMELA LEE JERNIGAN

Is the Last Name above your Maiden Name? Yes No

If no, what is your Maiden Name: PAMELA LEE LANGFORD

Address Same as Above, Yes

Address: 12 OAKWOOD RD.

LITTLE ROCK AR 72202 PULASKI

City State Zip County

Phone: 501-454-8500

SSN: H18-96-6095 DOB: 11/21/59

What State where you born in: PENNSYLVANIA Or Country _____

(Genealogy Optional)

Father's Name: LARRY K. LANGFORD

(Genealogy Optional)

Mother's First and Maiden Name: VIRGINIA HOFFMAN

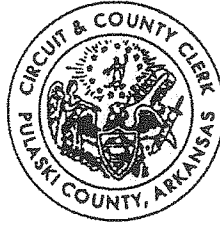
Type of ID: DL , ID _____, Military ID _____, Passport _____, Other _____

What State Issued ID: AR , Other _____

PLAINTIFF'S EXHIBIT 3

LARRY CRANE
PULASKI CIRCUIT/COUNTY CLERK

401 WEST MARKHAM STREET, SUITE 100
LITTLE ROCK, ARKANSAS 72201



July 10, 2013


Tara Lynn Austin
2110 S. Summit
Little Rock, AR 72202

Re: Notice of Intent to Wed Application

Dear Miss Austin:

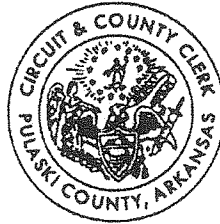
Thank you for visiting our office. With regard to the Notice of Intent to Wed Application you presented, we regret to inform you that, pursuant to the provisions of Amendment 83 to the Arkansas Constitution, and Arkansas Code Annotated §9-11-203 (a), our office is currently not authorized to issue a marriage license to you.

Sincerely,


Larry Crane
Pulaski County Clerk

LARRY CRANE
PULASKI CIRCUIT/COUNTY CLERK

401 WEST MARKHAM STREET, SUITE 100
LITTLE ROCK, ARKANSAS 72201



July 10, 2013

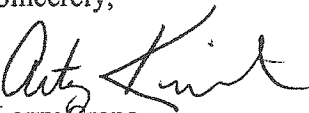
Becca Carol Carle Austin
2110 S. Summit
Little Rock, AR 72202

Re: Notice of Intent to Wed Application

Dear Miss Austin:

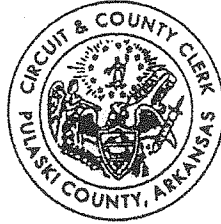
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Sincerely,


Larry Crane
Pulaski County Clerk

LARRY CRANE
PULASKI CIRCUIT/COUNTY CLERK

401 WEST MARKHAM STREET, SUITE 100
LITTLE ROCK, ARKANSAS 72201



July 10, 2013


Rita Jo Jernigan
12 Oakwood Rd
Little Rock, AR 72202

Re: Notice of Intent to Wed Application

Dear Miss Jernigan:

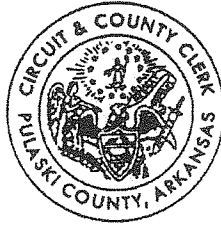
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Sincerely,


Larry Crane
Pulaski County Clerk

LARRY CRANE
PULASKI CIRCUIT/COUNTY CLERK

401 WEST MARKHAM STREET, SUITE 100
LITTLE ROCK, ARKANSAS 72201



July 10, 2013


Pamela Lee Jernigan
12 Oakwood Rd
Little Rock, AR 72202

Re: Notice of Intent to Wed Application

Dear Miss Jernigan:

Thank you for visiting our office. With regard to the Notice of Intent to Wed Application you presented, we regret to inform you that, pursuant to the provisions of Amendment 83 to the Arkansas Constitution, and Arkansas Code Annotated §9-11-203 (a), our office is currently not authorized to issue a marriage license to you.

Sincerely,


Larry Crane
Pulaski County Clerk

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Rita and Pam Jernigan, Becca and Tara Austin, Randy and Gary Eddy-McCain

(b) County of Residence of First Listed Plaintiff Pulaski County, Arkansas
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Wagoner Law Firm, P.A.
 1320 Brookwood Drive, Suite D, Little Rock, AR 72202
 (501) 663-5225

DEFENDANTS
 Circuit and County Clerk for Pulaski County, Arkansas, Larry Crane, Clerk; State of Arkansas, Attorney General Dustin McDaniel, Mike Beebe, as Governor and Chief Executive Officer

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	Habeas Corpus:	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 463 Alien Detainee		<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 530 General	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/Accommodations	Other:		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 555 Prison Condition			<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

Brief description of cause:
Arkansas's laws excluding same-sex couples from marriage violate the 14th Amendment of the U.S. Constitution

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 07/15/2013 SIGNATURE OF ATTORNEY OF RECORD: Jane Wagoner

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____