

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT IN THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

CASE NO: 09-CA-411-K

JOAN HIGGS and SANDRA CARLILE.)
JAVIER REYNALDOS and TIM SHEEHAN.)
WILLIAM HAZELTON and GARY GETHEN,)
CHARLES W. MARTIN and TIMOTHY)
BRYAN CARPENTER, JANE MANNIX-)
LACHNER and VICTORIA BARBER,)
STEVEN ROBINSON and REVEREND)
GEOFF LEONARD, and EQUALITY)
FLORIDA.)
)
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Plaintiffs.)
)
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vs.)
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STATE OF FLORIDA,)
)
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Defendant.)
)
_____)

COMPLAINT FOR DECLARATORY RELIEF

GENERAL ALLEGATIONS

1. Plaintiffs Joan Higgs and Sandra Carlile, Javier Reynaldos and Tim Sheehan, William Hazelton and Gary Gethen, Charles W. Martin and Timothy Bryan Carpenter, Jane Mannix-Lachner and Victoria Barber, Steven Robinson and Reverend Geoff Leonard, and Equality Florida (collectively, "Plaintiffs") allege as follows.

2. Plaintiffs in this action are six same-sex couples who wish to marry but who have been denied marriage licenses by the State of Florida, and Equality Florida, the state-wide advocacy group for lesbian, gay, bisexual, and transgender people in Florida. Many of Equality Florida's members are same-sex couples who live in Florida and who wish to marry their same-sex partners but have been denied the right to do so.

3. Each of the individual Plaintiffs is an unmarried male or an unmarried female over the age of eighteen years who is not otherwise disqualified from eligibility for marriage and who is capable of consenting to marriage. Each of the couples attempted to obtain a marriage license in Florida and each couple was denied.

4. Excluding same-sex couples from marriage denies those couples hundreds of rights and obligations that automatically are conferred on spouses under state law and more than a thousand rights and obligations that automatically are conferred on spouses under federal law. These rights and obligations include such things as: decision-making authority for funeral arrangements and disposition of remains; the right to inherit a partner's estate if the partner dies without a will; the right to file a wrongful death suit if a partner is wrongfully killed; the right to bereavement leave in the event of a partner's death; parental rights and responsibilities; access to family courts in the event of dissolution; evidentiary privileges; the right to transfer property or to inherit a partner's 401(k) or comparable account without incurring tax penalties; the right to file joint income taxes; the right to file a joint bankruptcy petition; the right to share a room with one's partner in an assisted living facility; death benefits for surviving partners of firefighters and police officers; responsibility to disclose certain conflicts-of-interest; joint assessment of income for determining eligibility for public assistance and benefit programs; the right to social security survivor benefits; and the right to take family medical leave to care for a sick or injured partner.

5. In addition to the loss of tangible rights and obligations caused by the exclusion of same-sex couples from the right to marry, denying two people in a loving, committed relationship the right to marry each other, solely because they are a same-sex couple, deprives each individual in that couple of the significant personal and social advantages conferred by marriage. Excluding same-sex couples from marriage deprives them of the opportunity to enter into a relationship that is widely recognized as a symbol of love and commitment and that is automatically afforded great societal respect. Being excluded from this valued institution brands same-sex couples and their families with

a stigma of inferiority. Moreover, because this stigma is imposed by the government, it sends a powerful message that discrimination against lesbian and gay people and their families is acceptable, thereby encouraging private discrimination and bias as well. The negative impact of this stigmatization on same-sex couples and their children is profound.

6. Accordingly, Plaintiffs respectfully ask this Court to declare that the provisions of the Florida marriage statutes that exclude otherwise qualified same-sex couples from the right to marry in Florida are void and unenforceable because such exclusion violates the state constitutional rights of same-sex couples and of individuals who are members of same-sex couples.

PARTIES

Petitioners

7. Plaintiffs Joan Higgs and Sandra (Sandee) Carlile are a same-sex couple who have been in a committed relationship of mutual care and support for the past 22 years. Joan is the Assistant Community Health Nursing Director for the Monroe County Health Department. Sandee is the County Finance Director under the direction of the Monroe County Clerk of Court. Together, Joan and Sandee raised Joan's two children from a previous marriage. Currently, Joan and Sandee live together in Key West, Florida, along with Joan's 82 year-old mother and 86 year-old step-father. As government employees, both Joan and Sandee participate in the Florida retirement system. Because they are not married, if one of them dies, the surviving partner will not be entitled to the deceased partner's pension benefits. Joan and Sandee want to marry in their home state of Florida.

8. Plaintiffs Javier Reynaldos and Tim Sheehan are a same-sex couple who have been in a committed relationship of mutual care and support for the past six years. Javier is a Certified Public Accountant and the Chief Financial Officer of Bay Adventures, an adventure travel company. Tim is a Human Resources manager for a call center company. Tim plans to begin law school at the University of Miami in August 2004. Javier is also the Chair of Save-Dade, a human rights group working to achieve equality for gay, lesbian, bisexual and transgender people. Javier is the son of

Cuban immigrants, and Tim was born in Berlin, Germany to a German mother and an American father. Growing up, Tim learned from his mother the dangers of living in a society where certain groups of people are singled out as unworthy of equal rights. Three years ago, Tim went back to school full time and Javier was the primary financial provider for the family. If they had been married, they could have filed jointly and would have received significant tax savings. Javier and Tim want to be legally married as soon as possible. Currently, they both wear wedding bands as engagement rings and hope that their commitment to each other will soon be legally recognized.

9. Plaintiffs William (Bill) Hazelton and Gary Gethen are a same-sex couple who have been in a committed relationship of mutual care and support for over 26 years. When Bill and Gary first met in 1977, it was love at first sight. In 1979, they held a commitment ceremony to memorialize their relationship. Until they moved to Key West several years ago, Bill and Gary ran a perennial plant nursery together in Wisconsin. Bill was appointed by the Governor to serve on the Lower Wisconsin State Riverway Board and was elected as Town Supervisor for two terms in Richwood Township, Richland County, Wisconsin. Bill has now retired. Gary founded and now runs a landscape maintenance business. Bill and Gary want the right to marry legally to help ensure that they will be able to take care of each other in times of emergency. During the past few years, Bill has had several health crisis's and Gary has essentially become the primary financial provider. Gary was devastated by almost losing Bill and after nearly 26 years together, Bill and Gary want to be married in Florida.

10. Plaintiffs Charles W. Martin and Timothy Bryan (Bryan) Carpenter are a same-sex couple who have been in a committed relationship of mutual care and support for almost 10 years. Charles is the Executive Director of an HIV/AIDS organization that focuses on outreach to Key West's minority communities. Bryan is a licensed Real Estate agent and also works at a local restaurant as a bartender and host. Charles and Bryan have wanted to get married for several years. Charles and Bryan hoped to marry on their 10th anniversary this June. When Charles' father passed

away a few weeks ago. Charles and Bryan were reminded of all the ways in which they are denied important rights and protections because they are not married – they are not granted hospital visitation rights, the ability to make health care decisions on each other’s behalf, the ability to make funeral decisions and arrangements, the right to bring a wrongful death suit, the right to be informed about a partner’s care and treatment in a nursing home, the right to share a room with a partner if both are residents of the same assisted living facility, or automatic inheritance rights.

11. Plaintiffs Jane Mannix-Lachner and Victoria Barber are a same-sex couple who have been in a committed relationship of mutual care and support for the past six years. Jane is working as a Health Services Administrator and Victoria is a massage therapist. Jane and Victoria are co-parenting three children with Jane’s former partner. Their children consider Jane and Victoria to be married, but they realize that the government and others do not recognize their relationship because the law does not permit them to be legally married. Jane and Victoria would like to marry in Florida.

12. Plaintiffs Steven Robinson and Reverend Geoff Leonard are a same-sex couple who have been in a committed relationship of mutual care and support for over three years. Geoff is a Reverend at the Metropolitan Community Church. Steven is a ticket agent at American Airlines. Steven’s parents were married for 45 years before his father passed away and Geoff’s parents just celebrated their 46th wedding anniversary this year. Both Geoff and Steven are inspired by their parents’ marriages. They want the same enduring commitment and legal recognition for their relationship. Although Geoff is covered under Steven’s domestic partnership policy at work, unlike a married spouse, Steven must pay taxes on the value of those benefits. When Steven’s father passed away recently, Steven and Geoff became more intensely aware of many other inequities they face because they are not married. After his father’s death, Steven’s mom, who was a homemaker most of her life, was able to collect his father’s Navy pension and social security benefits. Although Steven and Geoff pay taxes like every other citizen, they realized that they will not be entitled to each other’s pension and social security benefits because they are not married. Steven and Geoff would like to

marry in Florida.

13. Equality Florida is the state-wide advocacy group for lesbian, gay, bisexual, and transgender people in Florida. Many of Equality Florida's members wish to marry their same-sex partners. Equality Florida and its members play an important role in educating thousands of same-sex couples throughout the State of Florida about the rights and responsibilities that same-sex couples are denied by being excluded from marriage.

Defendant

14. Plaintiffs allege that Defendant the State of Florida is a state organized and existing under the Constitution of the State of Florida.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the parties to and the subject matter of this action, and venue is proper in Monroe County, Florida.

NATURE OF DISPUTE

16. Denying same-sex couples the right to marry causes them to suffer great legal, financial, social, and psychological harms. They are denied important legal rights, benefits, and responsibilities that help married couples stay together, care for one another, and protect one another and their children. They are denied the legal protections that provide married couples with financial and legal shelter in times of old age, sickness, disability, and death. They are denied the social recognition and respect that marriage bestows on a relationship. They are denied the psychological benefits of marriage, as well as the psychological benefits of being treated as an equal member of one's society and of having the freedom to choose to exercise what has long been recognized as one of our society's most cherished human rights.

17. Florida Statutes, Section 741.04(1) provides: "No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person . . . unless one party is a male and the other party is a female."

18. Florida Statutes, Section 741.212(3) provides: “For purposes of interpreting any state statute or rule, the term ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the term ‘spouse’ applies only to a member of such a union.”

19. Florida Statutes, Section 741.212(1) provides: “Marriages between persons of the same sex entered into in any jurisdiction . . . are not recognized for any purpose in this state.”

20. These laws have been and are now in full force and effect in the State of Florida.

FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF

(By All Plaintiffs Against Defendant)

21. Petitioners refer to and incorporate by reference herein the allegations of paragraphs 1 through 20, inclusive.

22. To resolve this controversy, Petitioners request that, pursuant to Florida Statutes, Section 86.021, this Court declare that the provisions of the Florida marriage statutes that exclude otherwise qualified same-sex couples from the right to marry in Florida are void and unenforceable because such exclusion violates the state constitutional rights of same-sex couples and of individuals who are members of same-sex couples, in that, among other things, such exclusion:

(a) impermissibly discriminates on the basis of sex in violation of the Equal Protection Clause of the Florida Constitution (Article 1, section 2);

(b) impermissibly discriminates on the basis of sexual orientation in violation of the Equal Protection Clause of the Florida Constitution (Article 1, section 2);

(c) violates liberty interests protected by the Equal Protection and Due Process Clauses of the Florida Constitution (Article 1, section 2 and Article 1, section 9); and

(d) violates privacy interests protected by the Privacy Clause of the Florida Constitution (Article 1, section 23) and by the Due Process Clause of the Florida Constitution

(Article 1, section 9).

23. For reasons including, but not limited to those stated herein, an actual dispute exists between Plaintiffs and the State, which parties have genuine and opposing interests, which interests are direct and substantial, and of which a judicial determination will be final and conclusive.

24. Plaintiffs' application for marriage licenses have been and will continue to be futile.

25. Plaintiffs are, therefore, entitled to a declaratory judgment that the State's marriage restrictions based on gender and sexual orientation violate the Florida Constitution, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. A declaration that the provisions of the Florida marriage statutes that exclude otherwise qualified same-sex couples from the right to marry in Florida are void and unenforceable because such exclusion:

(a) impermissibly discriminates on the basis of sex in violation of the Equal Protection Clause of the Florida Constitution (Article 1, section 2);

(b) impermissibly discriminates on the basis of sexual orientation in violation of the Equal Protection Clause of the Florida Constitution (Article 1, section 2);

(c) violates liberty interests protected by the Equal Protection and Due Process Clauses of the Florida Constitution (Article 1, section 2 and Article 1, section 9); and

(d) violates privacy interests protected by the Privacy Clause of the Florida Constitution (Article 1, section 23) and by the Due Process Clause of the Florida Constitution

(Article 1, section 9).

2. Costs, including but not limited to attorneys' fees; and
3. For such other and further relief as the Court may deem just and proper.

Dated: April 15, 2004

Respectfully submitted,

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