

STATE OF INDIANA]
]
COUNTY OF MARION]

IN THE MARION SUPERIOR COURT
CIVIL DIVISION
CAUSE NO. 49D13-0211-PL-1946

RUTH MORRISON and
TERESA STEPHENS, DAVID WENE]
and DAVID SQUIRE, CHARLOTTE]
EGLER and DAWN EGLER]

Plaintiffs,]

vs.]

DORIS ANN SADLER, in her]
official capacity as Clerk of the Marion]
Circuit Court, SHARON DUGAN,]
in her official capacity as Clerk of the]
Hendricks Circuit Court,]

Defendants.]

and]

STEVE CARTER, in his official capacity]
as Attorney General for the State of]
Indiana,]

Intervenor.]

SECOND AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Come now Plaintiffs Ruth Morrison and Teresa Stephens, David Wene and David Squire, Charlotte Egler and Dawn Egler and for their Complaint against the Defendant allege as follows:

Introductory Statement

1. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgment Act (Indiana Code §34-14-1-1 *et seq.*) to challenge Indiana's discrimination in civil marriage. The Plaintiffs are three same-sex couples who wish to enter into civil marriage to secure the

protections and support which marriage provides and to formally accept the responsibilities marriage imposes. Indiana Code Section 31-11-1-1 specifically prohibits marriage between persons of the same gender. The Plaintiffs seek a declaration that Indiana Code Section 31-11-1-1 violates the Indiana Constitution and they seek an injunction directing the Defendants to issue them marriage licenses.

Parties

2. Plaintiff Ruth Morrison (“Ms. Morrison”), an adult, is a resident of the City of Indianapolis, County of Marion, State of Indiana.
3. Plaintiff Teresa Stephens (“Ms. Stephens”), an adult, is a resident of the City of Indianapolis, County of Marion, State of Indiana.
4. Plaintiff David Wene (“Mr. Wene”), an adult, is a resident of the City of Indianapolis, County of Marion, State of Indiana.
5. Plaintiff David Squire (“Mr. Squire”), an adult, is a resident of the City of Indianapolis, County of Marion, State of Indiana.
6. Plaintiff Charlotte Egler, an adult, is a resident of the Town of Camby, County of Hendricks, State of Indiana.
7. Plaintiff Dawn Egler, an adult, is a resident of the Town of Camby, County of Hendricks, State of Indiana.
8. Defendant Doris Ann Sadler (“Ms. Sadler”) is the duly elected Clerk of the Marion Circuit and Superior Courts and is charged, among other things, with issuing marriage licenses to Marion County residents.
9. Defendant Sharon Dugan (Ms. Dugan) is the duly elected Clerk of the Hendricks Circuit

and Superior Courts and is charged, among other things, with issuing marriage licenses to Hendricks County residents.

Facts

Ms. Morrison's and Ms. Stephens' Relationship

10. Ms. Morrison and Ms. Stephens live in Indianapolis as spouses in a long-term, intimate, committed relationship.
11. Ms. Morrison and Ms. Stephens share joint finances, including financial accounts. They share the expenses of their home and they have jointly purchased and jointly own various personal property.
12. Ms. Morrison and Ms. Stephens consider themselves to be spouses and hold themselves out to their families, friends and community as spouses in a committed, loving relationship.
13. Ms. Morrison and Ms. Stephens would marry one another in the State of Indiana if same-sex marriage was not prohibited.
14. Except for the fact that they are of the same sex, Ms. Morrison and Ms. Stephens are legally qualified to marry one another under the laws of Indiana. Each is over the age of eighteen (18), each is mentally competent, they are not related to each other by blood and neither is married to anyone else.
15. In order to formalize their commitment to one another and to acknowledge their desire to accept the full responsibilities of a spousal relationship, Ms. Morrison and Ms. Stephens established a civil union in the State of Vermont on October 30, 2000.

Mr. Wene's and Mr. Squire's Relationship

16. Mr. Wene and Mr. Squire have been a couple for more than four (4) years. They live in

Indianapolis as spouses in a long-term, intimate, committed relationship.

17. Mr. Wene and Mr. Squire share joint finances, including financial obligations and the expenses of their home. For a period of approximately one year, Mr. Wene financially supported Mr. Squire so that Mr. Squire could serve as a full time volunteer at a church.
18. Mr. Wene and Mr. Squire consider themselves to be spouses and hold themselves out to their families, friends and community as spouses in a committed, loving relationship.
19. Mr. Wene and Mr. Squire would marry one another in the State of Indiana if same-sex marriage was not prohibited.
20. Except for the fact that they are of the same sex, Mr. Wene and Mr. Squire are legally qualified to marry one another under the laws of Indiana. Each is over the age of eighteen (18), each is mentally competent, they are not related to each other by blood and neither is married to anyone else.
21. In order to formalize their commitment to one another and to acknowledge their desire to accept the full responsibilities of a spousal relationship, Mr. Wene and Mr. Squire established a civil union in the State of Vermont on December 13, 2000.

The Eglers' Relationship

22. Charlotte Egler and Dawn Egler have been a couple for more than five (5) years. They live in Camby, Indiana as spouses in a long-term, intimate, committed relationship.
23. They own their home together and share joint expenses and joint finances, including financial accounts. They have jointly purchased and they jointly own various personal property.
24. Charlotte Elger and Dawn Egler consider themselves to be spouses and hold themselves

- out to their families, friends and community as spouses in a committed, loving relationship.
25. They have decided to bear a child together and to raise that child as co-parents. Charlotte Egler gave birth to their child in May 2002. The child was conceived by the fertilization of Dawn Egler's egg through an anonymous sperm donor, which was then implanted in Charlotte Egler who carried the child to term.
 26. Charlotte Egler and Dawn Egler would marry one another in the State of Indiana if same-sex marriage was not prohibited. Except for the fact that they are of the same sex, Charlotte Egler and Dawn Egler are legally qualified to marry one another under the laws of Indiana. Each is over the age of eighteen (18), each is mentally competent, they are not related to each other by blood and neither is married to anyone else.
 27. In order to formalize their commitment to one another and to acknowledge their desire to accept the full responsibilities of a spousal relationship, Charlotte Egler and Dawn Egler established a civil union in the State of Vermont on July 5, 2000.

Restrictions on Marriage Under Indiana Law

28. Pursuant to Indiana Code Section 31-11-1-1, only a female may marry a male and only a male may marry a female.
29. The effect of I.C. §31-11-1-1 is to prevent the Plaintiffs from marrying solely because they are same-sex couples.
30. Defendants Ms. Sadler and Ms. Dugan will not, and cannot, issue marriage licenses to the Plaintiff couples because they are same-sex couples.
31. Because the State prohibits the Plaintiff couples from marrying one another and thereby prevents them from making the legal commitment to one another which marriage entails,

the Plaintiffs suffer harm because they are denied the comprehensive legal structure for couples which is provided by marriage.

32. The right of two people to choose to enter into civil marriage with one another is protected by the Indiana Constitution.
33. Denying each member of the Plaintiff couples the right to marry the person of his or her choice because they are the same gender interferes with a right protected by the Indiana Constitution and such interference is not rationally related to any legitimate state interest.
34. Denying the Plaintiff couples the right to marry one another because they are the same gender is not necessary to advance the peace, safety and well-being of the State's citizens.
35. Denying the Plaintiff couples the right to marry one another because of their gender is not reasonably related to the inherent characteristic which distinguishes the Plaintiff couples from similarly situated, opposite sex couples.
36. Indiana has an interest in encouraging stable, caring families and in maintaining the economic security and general well-being of all family members.
37. In order to promote these interests, Indiana statutes and common law rules provide numerous protections, responsibilities and benefits to married couples and their children. For example, Indiana law provides for spousal duties of financial support, entitlement to financial support, authority to make medical decisions and rights to intestate succession.
38. In addition to protections, responsibilities and benefits conferred by the State as a result of the marital relationship, the availability of private protections and benefits, such as employee benefits, often depend upon the existence of a lawful marital relationship.
39. Each of the Plaintiffs is suffering irreparable harm for which there is no adequate remedy

at law.

Claims for Relief

First Claim for Relief

40. Article I, Section 1 of the Indiana Constitution protects the right of citizens to pursue happiness, which includes the right to enter into civil marriage with one another.
41. The statutory prohibition of same-sex marriages, I.C. § 31-11-1-1, interferes with this right and is not necessary to further the peace, safety and well-being of the State's citizens. The prohibition violates Art. I, Sec. 1 of the Indiana Constitution.

Second Claim for Relief

42. Article I, Section 12 of the Indiana Constitution guarantees the privacy of Indiana's citizens, which includes the right to marry.
43. The statutory prohibition of same-sex marriages, I.C. § 31-11-1-1, unnecessarily invades this zone of privacy and is not rationally related to any legitimate State interest. The prohibition violates Art. I, Sec. 12 of the Indiana Constitution.

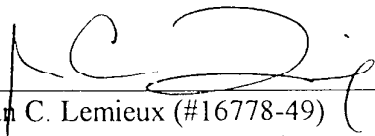
Third Claim for Relief

44. Article I, Section 23 of the Indiana Constitution guarantees Indiana's citizens equal privileges.
45. The statutory prohibition of same-sex marriages, I.C. § 31-11-1-1, is not reasonably related to the inherent characteristic which distinguishes the Plaintiff couples from similarly situated, opposite sex couples. The prohibition violates Art. I, Sec. 23 of the Indiana Constitution.

Request for Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter a declaratory judgment that I.C. §31-11-1-1 prohibiting marriage between persons of the same gender is unconstitutional in violation of Article I, Sections 1, 12 and 23 of the Indiana Constitution and issue an injunction directing Defendants Ms. Sadler and Ms. Dugan to issue marriage licenses to the Plaintiff couples.
3. Award all other just and proper relief.


Sean C. Lemieux (#16778-49)
Kenneth J. Falk (#6777-49)
Jacquelyn Bowie Suess (#17241-53A)

Attorneys for Plaintiffs
INDIANA CIVIL LIBERTIES UNION
1031 East Washington Street
Indianapolis, Indiana 46202
317-635-4059
317-635-4105 FAX

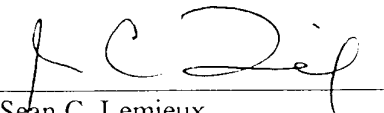
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via United States mail, first class postage prepaid, this 3rd day of January, 2003, on the following counsel of record:

Thomas M. Fisher
Office of Attorney General
ICGS, 5th Floor
402 West Washington Street
Indianapolis, Indiana 46204

Anthony Overholt
Office of Corporation Counsel
1601 City-County Building
200 East Washington Street
Indianapolis, Indiana 46204

Gregory E. Steuerwald
Deckard & O'Brien
106 N. Washington Street
P.O. Box 503
Danville, Indiana 46122


Sean C. Lemieux