

GITANJALI DEANE and LISA * IN THE
POLYAK, et al. * CIRCUIT COURT
Plaintiffs, * FOR
v. * BALTIMORE CITY
FRANK CONAWAY, et al. * Case No.: 24-C-04-005390
Defendants. *

* * * * *

ANSWER

Come now Defendants, by undersigned counsel, and for answer to Plaintiffs' Complaint state the following:

1. Paragraphs 1 through 4 of the complaint consist of rhetorical argument to which neither admission nor denial is required. To the extent that factual allegations are included, defendants deny same.

2. Defendants admit that Maryland Family Law Code Ann. §2-201 provides that “[o]nly a marriage between a man and a woman is valid in this State.” The remaining portion of paragraph 5 consists of rhetorical statements to which neither admission nor denial is required.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 relating specifically to plaintiffs. The remaining portion of paragraph 6 consists of rhetorical statements to which neither admission nor denial is required.

4. Defendants deny that Md. Family Law Code Ann. § 2-201 violates the Maryland Constitution. The remaining portions of paragraph 7 consist of rhetorical statements to which neither admission nor denial is required.

5. Defendants admit the allegations of paragraphs 8 and 9.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraphs 10 through 119. To the extent these paragraphs contain legal argument and rhetorical statements, neither admission nor denial is required.

7. Defendants deny the factual allegations of paragraphs 120 through 124 to the extent those paragraphs allege that plaintiffs are “qualified couples” entitled to marriage licenses under Maryland law. Defendants admit that they are authorized to issue marriage licenses in accordance with the requirements of Title 2, Subtitle 4 of the Md. Family Law Code Ann.

8. Defendants admit the allegations of paragraph 125.

9. Defendants are without knowledge or information sufficient to admit or deny that the named plaintiffs made application for a marriage license on the dates and in the manner specified in paragraphs 126 through 135. Further, defendants note, as a matter of law, that “[u]ntil a license is issued, a clerk may not disclose the fact that an application for a license has been made except to the parent or guardian of a party to be married.” Md. Family Law Code Ann. §2-402(f). Defendants admit that Maryland law effectively prohibits the issuance of such licenses, and deny any

remaining factual allegations in paragraphs 126 through 135.

10. Paragraph 136 consists of rhetorical statements to which neither admission nor denial is required. To the extent any factual allegations are included in this paragraph, defendants deny same.

Count I

11. Defendants incorporate by reference their answers to paragraphs 1 through 136 as if repeated entirely herein.

12. Defendants admit that they will not issue marriage licenses to same sex couples as such is prohibited by law, but are without information or knowledge sufficient to form a belief as to the truth of the remaining allegation of paragraph 138, to the extent it asserts that plaintiffs are otherwise qualified to obtain a marriage license.

13. Defendants admit that Maryland statutes do not permit the issuance of a license to same sex couples, as alleged in paragraph 139, but deny that such couples are similarly situated to opposite sex couples who wish to marry.

14. Paragraph 140 consists of rhetorical statements and legal argument to which neither admission nor denial is required.

15. Defendants admit the allegations of paragraph 141.

16. Paragraphs 142 and 143 consist of legal argument to which neither admission nor denial is required. To the extent that any factual allegations are included therein, such allegations are denied.

17. Paragraph 144 consists of plaintiffs' request for relief to which neither admission nor denial is required.

Count II

18. Defendants incorporate by reference their answers to paragraphs 1 through 144 as if repeated entirely herein.

19. Defendants admit that they will not issue marriage licenses to same sex couples as such is prohibited by law, but are without information or knowledge sufficient to form a belief as to the truth of the remaining allegation of paragraph 146, to the extent it asserts that plaintiffs are otherwise qualified to obtain a marriage license.

20. Defendants admit that the Maryland statutory code does not permit the issuance of a license to same sex couples, as alleged in paragraph 147, but deny that such couples are similarly situated to opposite sex couples who wish to marry.

21. Paragraph 148 consists of rhetorical statements and legal argument to which neither admission nor denial is required.

22. Paragraph 149 consists of legal argument to which neither admission nor denial is required. To the extent that any factual allegations are included therein, such allegations are denied.

23. Paragraphs 150 and 151 consist of legal argument to which neither admission nor denial is required. To the extent that any factual allegations are included therein, such allegations are denied.

24. Paragraph 152 consists of plaintiffs' request for relief to which neither admission nor denial is required.

Count III

25. Defendants incorporate by reference their answers to paragraphs 1 through 152 as if repeated herein.

26. Defendants admit that they will not issue marriage licenses to same sex couples as such is prohibited by law, but are without information or knowledge sufficient to form a belief as to the truth of the remaining allegation of paragraph 154, to the extent it asserts that plaintiffs are otherwise qualified to obtain a marriage license.

27. Defendants admit that the Maryland statutory code does not permit the issuance of a license to same sex couples, as alleged in paragraph 155, but deny that such couples are similarly situated to opposite sex couples who wish to marry.

28. Paragraph 156 consists of rhetorical statements and legal argument to which neither admission nor denial is required.

29. Paragraphs 157 and 158 consist of rhetorical statements and legal argument to which neither admission nor denial is required. To the extent that any factual allegations are included therein, such allegations are denied.

30. Defendants deny the allegations of paragraph 159.

31. Paragraph 160 consists of plaintiffs' request for relief to which neither admission nor denial is required.

Count IV

32. Defendants incorporate by reference their answers to paragraphs 1 through 160 as if set forth in their entirety in response to paragraph 161.

33. Defendants admit that they will not issue marriage licenses to same sex couples as such is prohibited by law, but are without information or knowledge sufficient to form a belief as to the truth of the remaining allegation of paragraph 162, to the extent it asserts that plaintiffs are otherwise qualified to obtain a marriage license.

34. Defendants admit the allegations of paragraph 163.

35. Paragraph 164 consists of rhetorical statements and legal argument to which neither admission nor denial is required.

36. Paragraphs 165 and 166 consist of rhetorical statements to which neither admission nor denial is required. To the extent that any factual allegations are included therein, such allegations are denied.

37. Defendants deny the allegations of paragraph 167.

38. Paragraph 168 consists of plaintiffs' request for relief to which neither admission nor denial is required.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The federal Defense of Marriage Act, 28 USC § 1738C, bars and preempts

the extension of marital rights to same sex couples as to federal benefits and programs including, but not limited to, immigration status and Medicaid.

THIRD AFFIRMATIVE DEFENSE

The right to marry a person of the same sex is not fundamental and is neither deeply rooted in the history and tradition of this State nor fundamental to the concept of constitutionally ordered liberty.

FOURTH AFFIRMATIVE DEFENSE

Md. Family Law Code Ann. §2-201, limiting the validity of marriage to that between a man and a woman, does not impermissibly burden a constitutional right.

FIFTH AFFIRMATIVE DEFENSE

Md. Family Law Code Ann. §2-201 is supported by a constitutionally sufficient government interest.

SIXTH AFFIRMATIVE DEFENSE

The Maryland Constitution protects the right of the State to formulate, retain, or modify its own public policy regarding the legal recognition of same sex unions.

WHEREFORE, Defendants pray that Plaintiffs take nothing by their complaint, and request that the court enter an order,

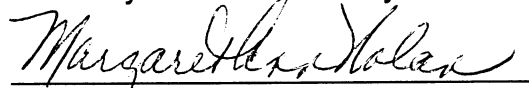
- a) denying the injunctive relief sought, and
- b) declaring that:

- i) Maryland Family Law Code Ann. §2-201 is constitutional under

- Articles 46 and 24 of the Maryland Declaration of Rights,
- ii) the absence of Maryland statutory authority permitting same sex couples to obtain a marriage license is not unjustified discrimination based on sex,
 - iii) the absence of Maryland statutory authority permitting same sex couples to obtain a marriage license is not unjustified discrimination based on sexual orientation;
 - iv) the absence of Maryland statutory authority permitting same sex couples to obtain a marriage license does not constitute an unjustified, disparate deprivation of fundamental rights; and
 - v) the absence of Maryland statutory authority permitting same sex couples to obtain a marriage license does not constitute an unjustified burden on the exercise of fundamental rights; and
- c) such other relief as is proper in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of September, 2004, a copy of the foregoing Answer was served via first-class mail, postage pre-paid, on:

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