

FILED

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

2005 APR 21 AM 9:30

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AMERICAN CIVIL LIBERTIES UNION OF  
TENNESSEE, on behalf of itself and its members,  
TENNESSEE EQUALITY PROJECT, on behalf  
of itself and its members, THE HONORABLE  
LARRY TURNER, THE HONORABLE  
BEVERLY ROBISON MARRERO, THE  
HONORABLE TOMMIE BROWN, BRUCE  
BARRY, SCOTT HINES and JON HINES,  
RENEE KASMAN and NINA PACENT,

Plaintiffs,

v.

RILEY C. DARNELL, in his official capacity as  
Tennessee Secretary of State, BROOK K.  
THOMPSON, in his official capacity as  
Coordinator of Elections, PAUL G. SUMMERS,  
in his official capacity as Attorney General,  
JOHN S. WILDER, in his official capacity as  
Speaker of the Senate, and JAMES O. NAIFEH,  
in his official capacity as Speaker of the House,

Defendants.

Docket No. 05-1010-IV

COMPLAINT

Introduction

1. This civil action is brought by the American Civil Liberties Union of Tennessee, the Tennessee Equality Project, a group of Members of the Tennessee General Assembly, and by several individual citizens of the State of Tennessee. Plaintiffs seek declaratory relief and an injunction to prevent the Tennessee Secretary of State and the Tennessee State Division of Elections from placing on the ballot in 2006 the proposed "Marriage Protection Amendment" to Article XI of the Tennessee Constitution contained in Senate Joint Resolution 31 because of serious

*M&L*

procedural deficiencies.

2. Pursuant to the clear language of Article XI, Section 3, there are two methods for amending the Tennessee Constitution.

3. The General Assembly may put on the ballot at any general election the question of whether a limited constitutional convention should be called for the purpose of considering amendments to certain specified provisions of the constitution. If the voters approve this in a statewide election they then, at the next statewide election, elect delegates to this convention. This body then meets and makes its recommendations. These recommendations can be voted on in any election, and need only pass by a majority of those casting votes. This method can not be employed more often than once every six years.

4. The General Assembly may also propose amendments directly. A proposed amendment must first be passed by a majority of the membership of each house during one term of the General Assembly. The Tennessee Constitution then specifically requires that the proposed amendment be published six months prior to the election of the next General Assembly. Then, during the next General Assembly term, each house must pass the amendment by a two-thirds majority vote. The amendment must then be put on the statewide ballot, but only at a time when an election for governor is also being held. The amendment must receive over half of the total votes cast in the gubernatorial election in order to be ratified. It is by this method that the General Assembly has proposed the so-called "Marriage Protection Amendment" that is at issue herein.

5. According to the Tennessee Attorney General, the purpose of the Article XI, Section 3 publication requirement is notice. The electorate is notified of the full language of the proposed amendment six months prior to the election of the General Assembly that will decide whether to submit the amendments to the people. In this way, the proposed amendment becomes

an important consideration for the electorate in determining whom to elect and re-elect. Late publication of the full amendment necessarily leads to a less informed public, thereby tainting the election of members to the General Assembly charged with the critical task of deciding whether to submit the proposed amendment to the people. The Constitution spells out the method of amendment. The provisions of the Constitution are there for a purpose and must not be ignored.

6. The proposed amendment embodied in Senate Joint Resolution 31 was not published in compliance with Article XI, Section 3 and such failure to meet the six-month publication requirement renders Senate Joint Resolution 31 unconstitutional and invalidates the amending process.

7. All Tennesseans are entitled to be governed by only those constitutional amendments that have been enacted through a constitutionally valid procedure consistent with the Tennessee Constitution's clear requirements concerning how proposed amendments must be drawn.

#### **Jurisdiction and Venue**

8. The jurisdiction of this Court is invoked pursuant to Tenn. Code Ann. § 16-11-101 (Equity) and Tenn. Code Ann. § 29-14-102 (Declaratory Judgment Act).

9. Venue is proper in Davidson County, as this is the county where the defendants are located.

#### **Parties**

10. The American Civil Liberties Union ("ACLU") of Tennessee is a private, non-profit membership organization with its principal offices in Nashville. It has more than 2700 members in the State of Tennessee, many of whom were registered voters in the November 2, 2004 election. The mission of the ACLU of Tennessee includes a mandate to defend and advance the rights and protections guaranteed by the Constitution of the State of Tennessee through lobbying and other

advocacy efforts.

11. The ACLU of Tennessee and its members actively lobbied against the passage of House Joint Resolution 990 and Senate Joint Resolution 31. The ACLU of Tennessee spent considerable time and resources in these efforts. However, because House Joint Resolution 990 was not published in compliance with the procedural mandates of Article XI, Section 3, the ACLU of Tennessee and its members were hindered in their lobbying efforts because their ability to engage an informed electorate was compromised.

12. Plaintiff ACLU of Tennessee has members who are gay and who wish to marry in the State of Tennessee. Efforts by these members, and by the ACLU of Tennessee on their behalf, to protect or advocate for their right to be married in the State of Tennessee will be further compromised, as they will be required to seek a change in the state constitution, rather than a legislative change.

13. Tennessee Equality Project ("TEP") is a private, non-profit membership organization with its principal offices in Nashville. It has about 170 members in the State of Tennessee, many of whom were registered voters in the November 2, 2004 election. TEP's mission is to promote, protect, and sustain the rights of gay, lesbian, bisexual, and transgendered persons in the State of Tennessee through the establishment of fair and equitable laws and the elimination of laws that seek to counter this effort.

14. Plaintiff TEP and its members actively lobbied against the passage of Senate Joint Resolution 31. TEP spent considerable time and resources in these efforts. However, because House Joint Resolution 990 was not published in compliance with the procedural mandates of Article XI, Section 3, TEP and its members were hindered in their lobbying efforts because their ability to engage an informed electorate was compromised.

15. Plaintiff TEP has members who are gay and who wish to marry in the State of Tennessee. Efforts by these members, and by TEP on their behalf, to protect or advocate for their right to be married in the State of Tennessee will be further compromised, as they will be required to seek a change in the state constitution, rather than a legislative change.

16. Larry Turner is a resident of Shelby County, a citizen of the State of Tennessee, a registered voter in the November 2, 2004 election, and is the duly elected Representative to the Tennessee House of Representatives for District 85.

17. Beverly Robison Marrero is a resident of Shelby County, a citizen of the State of Tennessee, a registered voter in the November 2, 2004 election, and is the duly elected Representative to the Tennessee House of Representatives for District 89.

18. Tommie Brown is a resident of Hamilton County, a citizen of the State of Tennessee, a registered voter in the November 2, 2004 election, and is the duly elected Representative to the Tennessee House of Representatives for District 28.

19. Plaintiffs Turner, Marrero, and Brown, as duly-elected representatives to the Tennessee House of Representatives, have an affirmative obligation to support the Constitution of the State of Tennessee. As such, they have an obligation to ensure that legislation passed by the House of Representatives meets all procedural mandates of the state constitution, and they have a right to seek redress for harms caused by a violation of such procedural mandates.

20. Plaintiffs Turner, Marrero, and Brown opposed House Joint Resolution 990 and Senate Joint Resolution 31. They further sought to persuade fellow legislators and the voting public to do the same. However, because House Joint Resolution 990 was not published in compliance with the procedural mandates of Article XI, Section 3, Plaintiffs Turner, Marrero, and Brown were hindered in their lobbying efforts because their ability to engage an informed electorate

was compromised.

21. Bruce Barry is a resident of Davison County, a citizen of the State of Tennessee, and was a registered Tennessee voter in the November 2, 2004 election. Plaintiff Barry was present in the state of Tennessee in May 2004, when House Joint Resolution 990 was required to be published. However, Plaintiff Barry was out of the state on June 20, 2004 when the notice was actually published.

22. Scott Hines and Jon Hines are residents of Davison County, citizens of the State of Tennessee, and were registered Tennessee voters in the November 2, 2004 election.

23. Plaintiffs Scott and Jon Hines wish to be married in the State of Tennessee. Scott and Jon are a loving couple who solemnized their relationship in a civil union ceremony last year and have recently adopted a son. Their efforts to protect or advocate for their right to be married in the State of Tennessee will be further compromised, as they will be required to seek a change in the state constitution, rather than a legislative change.

24. Plaintiffs Scott and Jon Hines fear that the proposed amendment to the constitution will threaten other legal and social rights for them and their child. They would have lobbied more, and participated further in the political process regarding this amendment had they been provided proper notice of the contents of House Joint Resolution 990.

25. Renee Kasman and Nina Pacent are residents of Davidson County, citizens of the State of Tennessee, and were registered Tennessee voters in the November 2, 2004 election.

26. Plaintiffs Renee Kasman and Nina Pacent wish to be married in the State of Tennessee. Renee and Nina are a loving couple who have been in a committed relationship for 20 years, and have been registered domestic partners in New York since 1993. Their efforts to protect or advocate for their right to be married in the State of Tennessee will be further compromised, as

they will be required to seek a change in the state constitution, rather than a legislative change.

27. Plaintiff Renee Kasman also fears that the proposed amendment will threaten her current health insurance coverage, which she receives through Nina Pacent's employer.

28. Defendant Riley C. Darnell is the Secretary of State for the State of Tennessee. Defendant Darnell is being sued in his official capacity.

29. Defendant Brook K. Thompson is the Coordinator of Elections in the Elections Division of the Office of the Secretary of State. Defendant Thompson is being sued in his official capacity.

30. Defendant Paul G. Summers is the Attorney General of the State of Tennessee. Defendant Summers is being sued in his official capacity.

31. Defendant John S. Wilder is the Speaker of the Senate for the 104<sup>th</sup> Tennessee General Assembly. Defendant Wilder was the Speaker of the Senate for the 103<sup>rd</sup> Tennessee General Assembly. He is being sued in his official capacity.

32. Defendant James O. Naifeh is the Speaker of the House of Representatives for the 104<sup>th</sup> Tennessee General Assembly. Defendant Naifeh was the Speaker of the House of Representatives for the 103<sup>rd</sup> Tennessee General Assembly. He is being sued in his official capacity.

#### **Factual Allegations**

33. Article XI, Section 3 of the Tennessee Constitution provides for a specific procedure in amending the constitution:

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays thereon, and referred to the General Assembly then next to be chosen; and *shall be published six months previous to the time of making such choice*; and if in the General Assembly then next chosen as aforesaid, such proposed amendment or

amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people at the next general election in which a governor is to be chosen. ... [emphasis added]

34. On May 6, 2004, in the House, and on May 19, 2004, in the Senate, the 103<sup>rd</sup>

Tennessee General Assembly passed House Joint Resolution 990, which reads in pertinent part:

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED THIRD GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that a majority of all the members of each house concurring, as shown by the yeas and nays entered on their journals, that it is proposed that Article XI of the Constitution of the State of Tennessee be amended by adding the following language as a new, appropriately designated section:

SECTION \_\_\_. The historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state. Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one man and one woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee. If another state or foreign jurisdiction issues a license for persons to marry and if such marriage is prohibited in this state by the provisions of this section, then the marriage shall be void and unenforceable in this state.

BE IT FURTHER RESOLVED, that the foregoing amendment be referred to the One Hundred Fourth General Assembly and that this resolution proposing such amendment be published by the Secretary of State in accordance with Article XI, Section 3, of the Constitution of the State of Tennessee.

BE IT FURTHER RESOLVED, that the Clerk of the Senate is directed to deliver a copy of this resolution to the Secretary of State.

35. On June 20, 2004, as commanded by House Joint Resolution 990, the Tennessee Secretary of State published the resolution in at least six newspapers in Tennessee, at a cost of over \$17,000.

36. The election of the General Assembly took place on November 2, 2004.

37. The June 20, 2004 publication was not in compliance with the constitutional mandate that all proposed amendments to the state constitution be published six months prior to the election of the General Assembly next chosen.

38. On February 28, 2005, in the Senate, and on March 17, 2005, in the House, the 104<sup>th</sup> Tennessee General Assembly passed Senate Joint Resolution 31, which reads in pertinent part:

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED FOURTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, That a two-thirds majority of all the members of each house concurring, as shown by the yeas and nays entered on their journals, that it is proposed that Article XI of the Constitution of the State of Tennessee be amended by adding the following language as a new, appropriately designated section:

SECTION \_\_. The historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state. Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one man and one woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee. If another state or foreign jurisdiction issues a license for persons to marry and if such marriage is prohibited in this state by the provisions of this section, then the marriage shall be void and unenforceable in this state.

BE IT FURTHER RESOLVED, That, in accordance with Article XI, Section 3, of the Constitution of the State of Tennessee, the foregoing amendment shall be submitted to the people at the next general election in which a Governor is to be chosen, the same being the 2006 November general election, and the Secretary of State is directed to place such amendment on the ballot for that election.

BE IT FURTHER RESOLVED, That the Clerk of the Senate is directed to deliver a copy of this resolution to the Secretary of State.

39. Senate Joint Resolution 31 violates the state constitution by commanding the Secretary of State, Defendants Darnell and Thompson, to place the proposed amendment on the ballot in 2006. Because the proposed amendment was not published in compliance with Article XI, Section 3, the amending process was invalidated.

40. Amending the Constitution of the State of Tennessee is a serious matter, and as such, the people of this State are entitled to have that decision made in compliance with the important procedural safeguards of Article XI, Section 3.

**Claim for Relief**

41. Plaintiffs are entitled to have this Court declare that Senate Joint Resolution 31 is unconstitutional and void on the grounds that procedural mandates of Article XI, Section 3 of the Tennessee Constitution were not followed.

42. Plaintiffs are entitled to the issuance of a permanent injunction, enjoining Defendants from placing the proposed amendment on the ballot in 2006.

43. Plaintiffs are entitled to have this Court hear and decide their claims on an expedited basis in order to resolve the controversy between Plaintiffs and Defendants, because this case presents issues of great public importance and because Defendants otherwise will act to place the proposed amendment on the ballot in 2006 as directed by Senate Joint Resolution 31 unless enjoined.

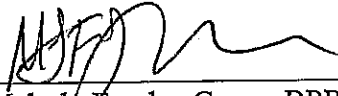
**Prayer for Relief**

Wherefore, Plaintiffs pray that this Court:

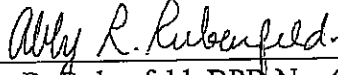
- (a) grant a declaratory judgment declaring that Senate Joint Resolution 31 is unconstitutional and void because the procedural mandates of Article XI, Section 3 were not met, and the amendment process was, therefore, invalidated;
- (b) issue a permanent injunction enjoining the Defendants from placing the proposed amendment on the ballot during the 2006 general election;
- (c) award Plaintiffs costs and attorneys fees; and
- (c) grant such other relief as this Court deems just and proper.

Respectfully submitted,

Respectfully submitted,

  
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April 21, 2005