

IN THE CIRCUIT COURT OF THE 9th JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

CODY TAYLOR, the Clerk of Holmes County,)
KEYS CHAPEL ORTHODOX PRESBYTERIAN)
CHURCH, CHARLES ALESHIRE, SUSAN)
ALESHIRE, HECTOR ANDUIZA, and TERESA)
KNOX,)

Plaintiffs,)

v.)

JAMES EDWARD MERRITT, JR., ALBERT)
KNIGHT LEACH, JR., ALVIE E. BECKHAM,)
and MACK D. WRIGHT,)

Defendants.)

Case No. *04-CA-6673*
Division *39*



COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs CODY TAYLOR, the Clerk of Holmes County, KEYS CHAPEL ORTHODOX PRESBYTERIAN CHURCH, CHARLES ALESHIRE, SUSAN ALESHIRE, HECTOR ANDUIZA, and TERESA KNOX (collectively, "Plaintiffs"), by and through their undersigned counsel, do hereby allege as follows:

INTRODUCTION

1. This is a civil action whereby Plaintiffs seek Declaratory Judgment as to the constitutionality of Florida's Marriage laws, including Florida Statutes §§ 741.04 and 741.212, that define marriage as between one man and one woman.

JURISDICTION

2. This Court has original jurisdiction to order declaratory relief pursuant to Florida Statute § 86.011.

VENUE

3. Venue properly lies in Orange County, where the validity of Florida's marriage laws have been questioned. *See Fla. Stat. §194.17(1)*.

PARTIES

4. Plaintiff CODY TAYLOR is the Clerk of Holmes County, and was at all times relevant herein, an individual and resident of Holmes County, Florida.

5. Plaintiff KEYS CHAPEL ORTHODOX PRESBYTERIAN CHURCH is and was at all times relevant herein, a body corporate, organized, established and existing as a non-profit religious corporation under the laws of the State of Florida, recognized as a church body by the United States Internal Revenue Service, and is currently located in Monroe County, Florida.

6. Plaintiff CHARLES ALESHIRE, is and was at all times relevant herein an individual and resident of Broward County, Florida.

7. Plaintiff SUSAN ALESHIRE, is and was at all times relevant herein an individual and resident of Broward County, Florida.

8. Plaintiff HECTOR ANDUIZA, is and was at all times relevant herein an individual and resident of Broward County, Florida.

9. Plaintiff TERESA KNOX is and was at all times relevant herein an individual and resident of Orange County, Florida.

10. On information and belief, Defendant JAMES EDWARD MERRITT, JR., is a plaintiff in the lawsuit *Merritt, et al., v. Gardner*, filed in the Circuit Court of the 9th Judicial Circuit in and for Orange County, Florida, case no. 04-CA-5823.

11. On information and belief, Defendant ALBERT KNIGHT LEACH, JR., is a plaintiff

in the lawsuit *Merritt, et al., v. Gardner*, filed in the Circuit Court of the 9th Judicial Circuit in and for Orange County, Florida, case no. 04-CA-5823.

12. On information and belief, Defendant ALVIE E. BECKHAM, is a plaintiff in the lawsuit *Merritt, et al., v. Gardner*, filed in the Circuit Court of the 9th Judicial Circuit in and for Orange County, Florida, case no. 04-CA-5823.

13. On information and belief, Defendant MACK D. WRIGHT, is a plaintiff in the lawsuit *Merritt, et al., v. Gardner*, filed in the Circuit Court of the 9th Judicial Circuit in and for Orange County, Florida, case no. 04-CA-5823.

FACTS

14. Florida law bans same-sex marriage.

15. Florida's Defense of Marriage Act (hereinafter "DOMA") states:

(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or locations, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.

(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceedings of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.

(3) 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.

See Fla. St. §741.212.

16. Florida Statute §741.04(1) states,

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, providing the social security numbers or any other available identification numbers of each party, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; **and unless one party is a male and the other party is a female....**

See id. (emphasis added).

17. Florida Statute §741.212 defines marriage to mean “only a legal union between one man and one woman as husband and wife”

18. Pursuant to Florida Statute §741.04(1), “No county court judge or clerk of the circuit court in this state shall issue for the marriage of any person ... unless one party is a male and the other party is a female.”

19. Pursuant to Florida Statute §741.01, County Clerks are authorized to issue marriage licenses.

20. Pursuant to Florida Statute §741.05, a County Clerk is guilty of a misdemeanor of the first degree if he grants a marriage license in violation of Florida Marriage law, sections, 741.03 and 741.04.

21. Pursuant to Florida Statute §741.07, any ordained minister may solemnize the rights of a matrimonial contract.

22. Pursuant to Florida Statute §741.08, a marriage cannot be solemnized unless the parties present a marriage license.

23. Pursuant to Florida Statute §741.09, the County Clerk “shall keep a correct record of all marriage licenses issued, with the names of the parties and the date of issuing, and upon the return

of the license and certificate shall enter therein the name of the person solemnizing the marriage and the date of marriage.”

24. On July 12, 2004, a lawsuit was filed in the Circuit Court for Orange County, seeking a declaration that the Florida DOMA, and Florida Statute §741.04 that preserves marriage as between one man and one woman are unconstitutional. (*Merritt v. Gardner*, case no. 04-CA-5823).

25. Due to the multiple lawsuits that have been filed throughout Florida, and the United States, the status of Florida’s laws banning same-sex marriage are in doubt.

26. CODY TAYLOR is the County Clerk for Holmes County, Florida.

27. As County Clerk, Taylor is responsible for issuing marriage licenses within Holmes County, and filing marriage licenses.

28. If Taylor issues a marriage license in violation of Florida law, he could be subject to criminal prosecution.

29. Taylor has an immediate and direct interest in preserving Florida’s marriage laws as he is responsible for issuing marriage licenses in Holmes County.

30. If same-sex marriages are declared valid in Florida, Taylor could be subjected to lawsuits and threats of lawsuits if he does not issue the licenses.

31. These lawsuits could cost Holmes County thousands of dollars in attorneys fees and costs.

32. Taylor is personally opposed to issuing marriage licenses to same-sex couples, and thus same-sex marriages will run afoul with Taylor’s sincerely held religious convictions and constitutional rights.

33. KEYS CHAPEL ORTHODOX PRESBYTERIAN CHURCH (“KCOPC”) has a

direct and immediate interest in preserving Florida's marriage laws through their members and constituents.

34. To become a member of the KCOPC, one must agree with its statement of faith as contained in the Westminster Confession of Faith. Pursuant to Article XXIV of the Westminster Confession of Faith, "Marriage is to be between one man and one woman: neither is it lawful for any man to have more than one wife, nor for any woman to have more than one husband, at the same time. Marriage was ordained for the mutual help of husband and wife, for the increase of mankind with legitimate issue, and of the church with an holy seed; and for preventing of uncleanness."

35. If Florida's laws banning same sex marriage are declared unconstitutional, the KCOPC could be approached by a same-sex couple, seeking for the church to solemnize their matrimonial rights, in contravention of the church's statement of faith.

36. If same-sex marriages are permitted in Florida, KCOPC could be subjected to threats of lawsuits, forcing it to solemnize matrimonial rights of same-sex couples.

37. KCOPC is an employer.

38. If Florida's laws banning same sex marriage are declared invalid, KCOPC could be forced to provide benefits to the spouse of a same-sex union, if such a situation arises within the church.

39. Within the KCOPC membership are business owners with businesses in Monroe County.

40. They want to be able to run their businesses in accord with Biblical principles, including promoting traditional marriage.

41. If Florida's laws banning same-sex marriage are declared unconstitutional, then the

business owners will be forced to either forgo providing benefits to spouses, or to violate their religious beliefs by directly supporting same-sex marriages by providing benefits to same-sex couples.

42. TERESA KNOX (hereinafter "Knox") is a Florida notary, residing in Orange County and owner of A Beautiful Ceremony.

43. As a notary, Knox is authorized to perform wedding ceremonies and solemnize marriages.

44. As owner of A Beautiful Ceremony, Knox offers wedding services to couples who desire to marry, including solemnization of their weddings.

45. Knox has performed wedding ceremonies throughout Florida, including in Orange, Seminole, Osceola, Brevard and Lake Counties.

46. A Beautiful Ceremony is a for-profit, non-religious corporation.

47. In the Governor's Manual for Florida Notaries, it states "a notary should never exercise his or her authority in a discriminatory manner."

48. Knox has a sincere religious belief against same-sex marriages.

49. If same-sex marriages were valid in Florida, Knox would be forced to provide wedding ceremonies to same-sex couples, against her sincere religious beliefs.

50. CHARLES ALESHIRE, SUSAN ALESHIRE, and HECTOR ANDUIZA, are residents of Broward County, Florida. They are the three shareholders of Debon Air Mechanical (hereinafter "Debon Air"), a corporation located in Miami-Dade County.

51. DebonAir has over ten employees working in Miami-Dade County and Monroe County.

52. Debon Air serves clientele in Miami-Dade County, Broward County, and Monroe County.
53. In performing their duties, employees for Debon Air regularly work in Miami-Dade County, Broward County, and Monroe County.
54. Debon Air is a growing company, and one day could have offices in Broward County, as well.
55. Debon Air provides benefits to its employees and their spouses.
56. All three strongly support marriage as a union between one man and one woman.
57. They believe that if marriage in Florida were to be fundamentally changed to include same-sex marriage, that decision should be made by the people, and not the courts.
58. As citizens of Florida and as business owners, the Debon Air owners have a right to operate their business according to Biblical standards.
59. Debon Air is an outreach of themselves, and their beliefs.
60. The Debon Air owners conduct their business affairs consistent with Biblical teachings and Biblical standards.
61. As business owners, the Debon Air owners object to same-sex marriage being declared valid in Florida.
62. The Debon Air owners object to same-sex marriage based on their sincerely-held religious and moral beliefs, as well as their financial concerns of providing employment benefits to "spouses" of same-sex couples.
63. If same-sex marriages were to be declared valid in Florida, the Debon Air owners would be forced to provide employment benefits to "spouses" of same-sex marriages on the same

basis as they provide benefits to spouses in a one man, one woman, marriage.

64. As business owners, if they are forced to provide benefits to the spouses of same-sex marriages, then they will be affirmatively promoting same-sex marriage by giving benefits based on the formation of a marriage which they believe to be against their religious beliefs.

65. The Debon Air owners will be directly impacted by the change in Florida's marriage laws. If Florida's marriage laws are found unconstitutional, it will deprive them as business owners from operating the business according to a Biblical model, and in making the moral and financial decision to not provide benefits to "spouses" of same-sex marriages.

COUNT I - CAUSE OF ACTION FOR DECLARATORY RELIEF THAT FLORIDA'S MARRIAGE LAWS PROHIBIT SAME SEX MARRIAGE.

66. Plaintiffs incorporate paragraphs 1-65 as if fully set forth herein.

67. Florida's marriage laws, including the Florida DOMA and Fla. St. § 741.04, prohibit same sex marriages from being entered into, or from being recognized or enforced in Florida.

68. There is a bona fide, actual, present, and practical need for a declaration that Florida's marriage laws prohibit same sex marriages from being entered into, recognized or enforced in Florida.

69. There is a present controversy as to whether Florida's marriage laws can legally prohibit same sex marriages from being entered into, recognized, or enforced in Florida.

70. Plaintiffs' rights and privileges are dependent upon the continued validity of Florida's marriage laws that preserve marriage as only between one man and one woman.

71. Defendants have an actual, present, adverse and antagonistic interest in this lawsuit.

72. Florida's marriage laws reflect the intent and will of the Florida legislature.

73. In the history of Florida, and the United States, no legislature has ever allowed for same-sex marriages.

74. A Florida marriage license is available to all sexes.

75. Florida's marriage laws do not prohibit a homosexual or a lesbian from obtaining a marriage license, but would prevent them or anyone else regardless of the person's sexual preferences, from marrying a person of the same sex.

76. Florida's marriage laws do not discriminate against any class of persons.

77. Florida's marriage laws do not discriminate based on sex as marriage is open to both male and females equally.

78. Florida's marriage laws have a rational basis.

79. Florida's marriage laws serve a compelling governmental interest.

80. Florida's marriage laws are narrowly tailored.

COUNT II - CAUSE OF ACTION FOR DECLARATORY RELIEF THAT FLORIDA'S MARRIAGE LAWS, INCLUDING THE FLORIDA DOMA AND FLORIDA STATUTE SECTION 741.212 ARE CONSTITUTIONAL UNDER THE FLORIDA CONSTITUTION.

81. Plaintiffs incorporate paragraphs 1-65 as if fully set forth herein.

82. Florida's marriage laws prohibiting same sex marriages, including the Florida DOMA and Florida Statute § 741.04 are constitutional under the Florida Constitution.

83. There is a bona fide, actual, present, and practical need for a declaration that Florida's marriage laws preserving marriage as only between one man and one woman, are constitutional under the Florida constitution.

84. There is a present controversy as to whether Florida's marriage laws preserving

marriage as only between one man and one woman is constitutional under the Florida Constitution.

85. Plaintiffs' rights and privileges are dependent upon the continued validity of Florida's marriage laws that preserve marriage as only between one man and one woman.

86. Defendants have an actual, present, adverse and antagonistic interest in this lawsuit.

87. Florida's marriage laws reflect the intent and will of the legislature.

88. In the history of Florida, and the United States, no legislature has ever allowed for same-sex marriages.

89. A Florida marriage license is available to all sexes.

90. Florida's marriage laws do not prohibit a homosexual or a lesbian from obtaining a marriage license, but would prevent them or anyone else regardless of the person's sexual preferences, from marrying a person of the same sex.

91. Florida's marriage laws do not discriminate against any class of persons.

92. Florida's marriage laws do not discriminate based on sex as marriage is open to both male and females equally.

93. Florida's marriage laws have a rational basis.

94. Florida's marriage laws serve a compelling governmental interest.

95. Florida's marriage laws are narrowly tailored.

COUNT III - CAUSE OF ACTION FOR DECLARATORY RELIEF THAT FLORIDA'S MARRIAGE LAWS, INCLUDING THE FLORIDA DOMA AND FLORIDA STATUTE SECTION 741.212 ARE CONSTITUTIONAL UNDER THE UNITED STATES CONSTITUTION.

96. Plaintiffs incorporate paragraphs 1-65 as if fully set forth herein.

97. Florida's marriage laws prohibiting same sex marriages, including the Florida DOMA

and Florida Statute § 741.04 are constitutional under the United States Constitution.

98. There is a bona fide, actual, present, and practical need for a declaration that Florida's marriage laws preserving marriage as only between one man and one woman, are constitutional under the United States Constitution.

99. There is a present controversy as to whether Florida's marriage laws preserving marriage as only between one man and one woman is constitutional under the United States Constitution.

100. Plaintiffs' rights and privileges are dependent upon the continued validity of Florida's marriage laws that preserve marriage as only between one man and one woman.

101. Defendants have an actual, present, adverse and antagonistic interest in this lawsuit.

102. Florida's marriage laws reflect the intent and will of the legislature.

103. In the history of Florida, and the United States, no legislature has ever allowed for same-sex marriages.

104. A Florida marriage license is available to all sexes.

105. Florida's marriage laws do not prohibit a homosexual or a lesbian from obtaining a marriage license, but would prevent them or anyone else regardless of the person's sexual preferences, from marrying a person of the same sex.

106. Florida's marriage laws do not discriminate against any class of persons.

107. Florida's marriage laws do not discriminate based on sex as marriage is open to both male and females equally.

108. Florida's marriage laws have a rational basis.

109. Florida's marriage laws serve a compelling governmental interest.

110. Florida's marriage laws are narrowly tailored.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

- A. That this Court issue a declaratory judgment that Florida's marriages laws prohibit same sex marriages from being entered into, recognized, or enforced in Florida;
- B. That this Court issue a declaratory judgment that Florida's marriages laws preserving marriage as between only one man and one woman, including the Florida DOMA and Florida Statute § 741.04(1), are constitutional under the Florida Constitution;
- C. That this Court issue a declaratory judgment that Florida's marriages laws preserving marriage as between only one man and one woman, including the Florida DOMA and Florida Statute § 741.04(1), are constitutional under the United States Constitution;
- D. That this Court adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment;
- E. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order;
- F. That this Court award Plaintiffs the reasonable costs and expenses of this action, including attorney's fees; and
- G. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Respectfully Submitted,



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