

STATE OF INDIANA]
]
COUNTY OF MARION]

IN THE MARION SUPERIOR COURT
CIVIL DIVISION
CAUSE NO.

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

Plaintiffs,]

vs.]

FRANK O'BANNON, in his official]
capacity as Governor of the State of]
Indiana, SARAH M. TAYLOR, in her]
official capacity as Clerk of the Marion]
Circuit Court and SHARON DUGAN,]
in her official capacity as Clerk of the]
Hendricks Circuit Court]

Defendants.]

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. In the alternative, the Plaintiffs seek a declaration of their status as spouses under Indiana law. Each of the Plaintiff couples legally formalized their relationship by entering into civil unions in the State of Vermont. As a result, by Act of the Vermont legislature they are lawful spouses.

Under Indiana law, that Act of the Vermont legislature must receive full faith and credit in Indiana. The Plaintiffs are therefore entitled to all legal rights and must bear all responsibilities arising from a spousal relationship in Indiana.

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 Frank O'Bannon ("Gov. O'Bannon") is the the duly elected Governor of the State of Indiana and is charged with executing the laws of the State.
9. Defendant Sarah M. Taylor ("Ms. Taylor") 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.
10. 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

11. Ms. Morrison and Ms. Stephens live in Indianapolis as spouses in a long-term, intimate, committed relationship.
12. 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.
13. 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.
14. Ms. Morrison and Ms. Stephens would marry one another in the State of Indiana if same-sex marriage was not prohibited.
15. 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.

16. 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

17. 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.
18. 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.
19. 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.
20. Mr. Wene and Mr. Squire would marry one another in the State of Indiana if same-sex marriage was not prohibited.
21. 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.
22. 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

23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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

29. Pursuant to Indiana Code Section 31-11-1-1, only a female may marry a male and only a male may marry a female.

30. The effect of I.C. §31-11-1-1 is to prevent the Plaintiffs from marrying solely because they are same-sex couples.
31. Defendants Ms. Taylor and Ms. Dugan will not, and cannot, issue marriage licenses to the Plaintiff couples because they are same-sex couples.
32. 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.
33. The right of two people to choose to enter into civil marriage with one another is protected by the Indiana Constitution.
34. 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.
35. 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.
- 36.** 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.

Civil Union

37. A civil union is a formalized, legal relationship pursuant to which the parties are subject to the responsibilities of spouses and are entitled to the benefits and protections provided to spouses. *See*, 15 V.S.A. §§1201(2), 1204(a).

38. Parties to a civil union are included within the definition of “spouse” and other terms which denote the spousal relationship. *See*, 15 V.S.A. §1204(b).
 39. In order to establish a civil union, the parties cannot already be party to a civil union or marriage, they must be of the same gender, they must be at least eighteen (18) years old and competent and they cannot be closely related to one another. *See*, 15 V.S.A. §§1202, 1203, 18 V.S.A. §5163.
 40. Parties must obtain a license to establish a civil union. *See*, 18 V.S.A. §5160, *et seq.*
 41. Dissolution of civil unions is accomplished through the same procedures and is subject to the same rights and obligations that are involved in the dissolution of marriage. *See*, 15 V.S.A. §1206.
 42. Although a civil union is virtually identical to a civil marriage, only opposite sex couples may establish a marriage. *See*, 15 V.S.A. §1201(4).
 43. A civil union is a means of establishing a spousal relationship in addition to marriage.
- Spousal Relationships in Indiana
44. Indiana has an interest in encouraging stable, caring families and in maintaining the economic security and general well-being of all family members.
 45. In order to promote these interests, Indiana statutes and common law rules provide numerous protections, responsibilities and benefits to spouses 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.
 46. In addition to protections, responsibilities and benefits conferred by the State as a result of the spousal relationship, the availability of private protections and benefits, such as employee benefits, often depend upon the existence of a lawful spousal relationship.

47. On information and belief, Defendant Gov. O'Bannon, in executing Indiana law, currently does not recognize the Plaintiffs' civil unions as having created spousal relationships and does not provide the Plaintiffs with the responsibilities, protections and benefits afforded spousal relationships under Indiana law.
48. On information and belief, Defendant Gov. O'Bannon does not refuse to recognize the spousal relationships of opposite-sex couples entered into in the State of Vermont under its statutes governing marriage and provides those couples with the responsibilities, protections and benefits afforded spousal relationships under Indiana law.
49. The gender of the parties is the only substantive difference between the Plaintiff couples and similarly situated, opposite sex couples who enter into spousal relationships in the State of Vermont and return to Indiana.
50. The Defendant's refusal to provide the Plaintiffs' with the benefits, protections and responsibilities arising from their spousal relationships is not reasonably related to the inherent characteristic which distinguishes the Plaintiff couples from similarly situated, opposite sex couples.
51. Each of the Plaintiffs has a present interest in the declaration of their status as lawful spouses under Indiana law. In addition to the comfort and peace of mind which will result from knowing the legal status of their spousal relationships, a declaration of the Plaintiffs' legal status as spouses will determine the responsibilities to which they are subject and the protections and benefits to which they and their children are entitled under Indiana law.

52. The Plaintiffs also wish to hold themselves out as spouses for a variety of purposes, including dealing with creditors, financial institutions, state tax authorities, service providers and the like. The Plaintiffs must definitively know their spousal status in order to avoid making any fraudulent misrepresentations.
53. As a result of the foregoing, a controversy exists between Plaintiffs and Defendant and the status of Plaintiffs' relationships should be decided in order to safeguard their interests under Indiana law.

Claims for Relief

First Claim for Relief

54. 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.
55. 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

56. Article I, Section 12 of the Indiana Constitution guarantees the privacy of Indiana's citizens, which includes the right to marry.
57. 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

58. Article I, Section 23 of the Indiana Constitution guarantees Indiana's citizens equal privileges.

59. 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.

Fourth Claim for Relief

60. Pursuant to Indiana Code §34-38-2-2, the Act of the Vermont Legislature declaring that parties to a civil union are included in the term “spouse” is entitled to full faith and credit in Indiana. Accordingly, Plaintiffs should be subjected to the responsibilities of and provided the benefits and protections of spouses under Indiana law.
61. The refusal to recognize the Plaintiffs as spouses is in violation of I.C. §34-38-2-2.
62. The refusal to recognize the Plaintiffs as spouses is in violation of Article I, Section 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. Taylor and Ms. Dugan to issue marriage licenses to the Plaintiff couples.
2. In the alternative, enter a declaratory judgment that the Plaintiffs, having entered into civil unions in the State of Vermont, are spouses and they are therefore subject to the responsibilities, benefits and protections afforded spouses under Indiana law.
3. Award all other just and proper relief.

Sean C. Lemieux (#16778-49)

Kenneth J. Falk (#6777-49)

Jacquelyn Bowie Sues (#17241-53A)

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