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Commonwealth of Kentucky  
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CR 4.02; CR Official Form 1



CIVIL SUMMONS

Case No. 04-CI-01537  
Court  Circuit  District  
County Franklin

PLAINTIFF

CHARLOTTE WOOD,  
WILLIE THOMAS BODDIE, JR. and  
REV. ALBERT M. PENNYBACKER

VS.

DEFENDANT

COMMONWEALTH OF KY  
Ex rel. TREY GRAYSON, Secretary of  
State in his official Capacity

Service of Process Agent for Defendant:

GREGORY STUMBO,

Attorney General

The Capitol, Suite 110

Frankfort, KY 40601

THE COMMONWEALTH OF KENTUCKY  
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a legal action has been filed against you in this Court demanding relief as shown on the document delivered to you with this Summons. Unless a written defense is made by you or by an attorney on your behalf and filed in the Clerk's Office within 20 days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

Date: 11.16, 2007

By: Jamie Marshall  
Jin Cunn

Clerk

D.C.

Proof of Service

This Summons was served by delivering a true copy and the Complaint (or other initiating document) to:

this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

Served by: \_\_\_\_\_

Title

RECEIVED  
NOV 16 2004  
FRANKLIN CIRCUIT COURT  
JANICE MARSHALL, CLERK

COMMONWEALTH OF KENTUCKY  
FRANKLIN COUNTY CIRCUIT COURT  
DIVISION NO. IV  
CIVIL ACTION NO. 04-CI- 01537

CHARLOTTE WOOD,  
WILLIE THOMAS BODDIE, JR.,  
And  
REV. ALBERT M. PENNYBACKER

PLAINTIFFS

FILED

NOV 16 2004

v.

COMMONWEALTH OF KENTUCKY,  
*Ex rel.* Trey Grayson, Secretary of State,  
In his official capacity

FRANKLIN CIRCUIT COURT  
JANICE MARSHALL, CLERK

DEFENDANT

Serve: Gregory Stumbo,  
Attorney General  
The Capitol, Suite 110  
Frankfort, KY 40601

VERIFIED COMPLAINT

\* \* \* \* \*

The Plaintiffs, complaining of the Defendant, allege and state as follows:

Introduction

This is an election contest brought pursuant to KRS 120.280 seeking to have Constitutional Amendment Number 1, which was on the ballot of the 2004 General Election, declared void as a matter of law. This action requests that this Court declare the amendment, new §233A, unconstitutional because it contains a single amendment that deals with more than one unrelated subject matter.

The amendment thus violates § 256 of the Kentucky Constitution that requires that voters be allowed to vote on proposed amendments separately and one at a time. In addition, the amendment is fatally flawed, because the language for the question that was

adopted by the General Assembly and that was placed on the ballot was misleading in that it addressed only a vague definition of marriage and thus had the effect of unfairly attempting to influence voters. Accordingly, the ballot language by which the amendment was presented to the Kentucky electorate deprived voters of their right to an effective vote in violation of the Kentucky Constitution and Kentucky law.

All Kentuckians are entitled to be governed only by those provisions that have been enacted through a constitutionally prescribed statutory procedure consistent with Kentucky Constitutional and statutory requirements concerning how proposed constitutional amendments must be drawn and how proposed constitutional amendments are to be presented on the ballot.

Thus, this action lawsuit addresses matters that affect public rights, common to all citizens in this Commonwealth.

#### PARTIES AND VENUE

1. The Plaintiff, Charlotte Wood, is a citizen and resident of Fayette County, Kentucky. The Plaintiff is a qualified and registered elector, and lawfully voted at the 2004 General Election held on November 2, 2004. At that election and at her polling place, the Plaintiff cast a vote on the ballot question on the adoption of Constitutional Amendment No. 1. The Plaintiff is a board member of the Kentucky Fairness Alliance, and Secretary of its Bluegrass Chapter.

2. The Plaintiff, Willie Thomas Boddie, Jr., is a citizen and resident of Franklin County, Kentucky. The Plaintiff is a qualified and registered elector, and lawfully voted at the 2004 General Election held on November 2, 2004. At that election

and at his polling place, the Plaintiff cast a vote on the ballot question on the adoption of Constitutional Amendment No. 1.

3. The Plaintiff, Rev. Albert M. Pennybaker, is a citizen and resident of Fayette County, Kentucky. The Plaintiff is a qualified and registered elector, and lawfully voted at the 2004 General Election held on November 2, 2004. At that election and at his polling place, the Plaintiff cast a vote on the ballot question on the adoption of Constitutional Amendment No. 1. The Plaintiff is a minister of the Christian Church (Disciples of Christ).

4. The Defendant Trey Grayson is the duly elected Secretary of State for the Commonwealth of Kentucky, is the chief election officer for the Commonwealth, and is charged with the proper administration of the election laws of the Commonwealth. He is sued in his official capacity only.

5. Jurisdiction and venue for actions premised on KRS 120.280 exclusively lies in the Circuit Court of Franklin County.

#### Facts

6. In the 2004 Session of the General Assembly, SB 245 was introduced. It sought to provide a new §233A of the Kentucky Constitution that seeks to define a variety of relationships by and between adults.

7. The exact language of the Bill was:

Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.

8. As allowed by KRS 118.415 (1) & (2), the statute which implements §256 of the Constitution, the General Assembly stated the form of the question to be printed on the ballot for the decision of the electorate on whether to amend the Constitution as proposed. The question stated:

Are you in favor of amending the Kentucky Constitution to provide that only a marriage between one man and one woman shall be a marriage in Kentucky, and that a legal status identical to or similar to marriage for unmarried individuals shall not be valid or recognized?

9. SB 245 (2004) passed both houses, 33-4-1 in the Senate, and 85-11 in the House.

10. Following its passage, the Kentucky Secretary of State undertook his statutory duties set out in KRS 118.415 of publication and certification of the question. Specifically, Secretary Grayson caused the publication of the question and that it would be on the November 2004 ballot in a newspaper of general circulation published in the Commonwealth, the Lexington Herald-Leader, prior to August 2, 2004; and, Secretary Grayson certified the substance of the amendment, as stated and certified by the General Assembly in SB 245 (2004), to the 120 county clerks prior to September 9, 2004.

11. Following the certification by the Secretary of State, the 120 county clerks undertook their statutory duties in KRS 118.415(3) concerning the placement of the question on the ballot on the voting machines for the consideration of the electorate.

12. On November 2, 2004, the electorate approved the ballot question amending the Constitution titled "Constitutional Amendment No. 1" by a vote of 1,217,236 "yes" to 415,209 "no".

13. At the time of the filing of this action, November 16, 2004, the State Board of Elections had not met to certify the election results pursuant to KRS 118.425.

14. The question drafted and certified by the General Assembly in SB 245 (2004) and whose substance was then certified by the Secretary of State and which appeared on the ballot in the 120 counties on November 2, 2004, was fatally flawed by failing to inform the electorate of the substance of the amendment, so that the subsequent approval of the question is, therefore, void.

15. There are approximately 130 instances where “marriage” or “spouse” is contained in the revised statutes of the Commonwealth of Kentucky.

16. There are religious institutions in Kentucky that conduct blessings, recognitions, or actual marriages of couples that are deemed civil unions, partnerships, or marriages.

17. According to the 2000 Census, there are a variety of family partnerships in Kentucky both same-sex and heterosexual unions.

18. There are numerous businesses and private education institutions operating in Kentucky that afford employment benefits to same-sex partners, unmarried heterosexual partners, and re-married heterosexual partners.

#### Claims for Relief

##### I - Ballot Question

19. Plaintiffs incorporate as if fully set forth paragraphs 1-18 of the Complaint.

20. The question on Constitutional Amendment No. 1 which appeared on the ballot at the 2004 General Election held on November 2, 2004, was not calculated, and did not, inform the electorate of the substance of the amendment contained in SB 245 (2004).

21. The requirement that a question on the amendment of the Kentucky Constitution be calculated to inform the electorate of the substance of the amendment is a jurisdictional prerequisite.

22. There are actual, potential, and unknown deleterious effects of the amendment set out in SB 245 (2004) on the rights, privileges, and religious beliefs of persons, both gay/lesbian and heterosexual, living in the Commonwealth.

23. The failure of the General Assembly and the Secretary of State to adequately inform the electorate that the substance of this amendment would have such deleterious effects, both known and unknown, on the rights and privileges of thousands of their fellow citizens renders SB 245 (2004) void under §256 of the Constitution.

24. The failure of the General Assembly and the Secretary of State to prepare and certify a ballot question that was calculated to inform the electorate of the substance of the proposed amendment was misleading and inconsistent, and effectively deceived the electorate into approving a secret law.

25. The election approving the proposed constitutional amendment contained in SB 245 (2004) failed to meet the jurisdictional prerequisite of a ballot question calculated to inform the electorate of the substance of the amendment.

26. All voters and citizens throughout the Commonwealth of Kentucky have the right to be governed by only those proposed amendments to their Constitution that are

presented on the ballot in an objective and non-partisan manner that does not mislead voters with regard to the scope of the amendment.

27. By failing to meet the jurisdictional prerequisites of KRS 118.415 and §256 of the Constitution, Constitutional Amendment No. 1, as approved by a deceived electorate, is void.

## II – Multiple and Unrelated Subject Matters

28. Plaintiffs incorporate as if fully set forth paragraphs 1-18 of the Complaint.

29. SB 245 (2004) purports to propose an amendment to the Constitution by setting forth a limited definition of marriage that will be recognized as lawful in the Commonwealth of Kentucky. The second sentence also purports to regulate a wide range of legal and contractual relationships between unmarried persons.

30. The impairment of existing contractual rights is a subject matter unrelated to the purported subject matter contained in SB 245 (2004).

31. Plaintiffs, as citizens and voters, have the right under the Kentucky Constitution to be governed only by those amendments to our Constitution that relate to a single subject matter or legitimately related subject matters. This is a right that is guaranteed to each and every Kentucky citizen and voter, and is therefore a matter of public right, common to all members of the public in this Commonwealth.

32. SB 245 (2004) impermissibly combined multiple unrelated subject matters and, on November 2, 2004, forced voters to make an unfair and, by virtue of the single subject rule, a constitutionally improper choice. Those voters who wished to vote in favor of constitutionally defining marriage as the union of man and woman, but who also

wished to vote against that part of the amendment which states “a legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized”, were faced with the improper choice that the single-subject rule is designed to prevent.

33. The oversimplification and breadth of the amendment contained in SB 245 (2004) violates the requirement of §256 of the Constitution that the amendment relate to a single subject matter or to related subject matters.

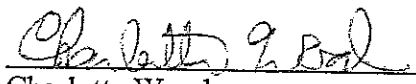
34. By failing to meet the jurisdictional prerequisites of §256 of the Constitution, Constitutional Amendment No. 1 is void.

WHEREFORE, the Plaintiff respectfully demands that the Circuit Court of Franklin County:


1. Enter an order declaring that the election on Constitutional Amendment No.1 approved by the electorate on November 2, 2004, is void for failing to satisfy the jurisdictional prerequisites contained in KRS 118.415 and §256 of the Constitution;
2. For the taxable costs incurred in prosecuting this election contest;
3. For such other relief that the Court deems just and proper.

Verification

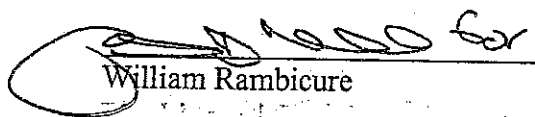
I, Charlotte Wood, after first being sworn, do verify under oath that those matters set out for which I have personal knowledge are true, and those matters that are not within my personal knowledge, I believe to be true.

  
Charlotte Wood

The affiant Charlotte Wood appeared before me this 16 day of November, 2004.

  
Notary Public *in state at large*  
My Commission Expires on: Oct 28, 2007

This the 16<sup>th</sup> day of November 2004.

  
William Rambicure  
Counsel for Plaintiffs  
219 East High Street  
Lexington, KY 50507  
859-253-6713