

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DIVISION OF ALABAMA**

KELVIN HATHCOTE, and JOSEPH HILL,)
)

Plaintiffs,)

v.)

CIVIL ACTION NO.:

CHRIS GREEN, PROBATE JUDGE OF BLOUNT COUNTY, ALABAMA, in his official capacity,)
)

Defendant.)

BILL OF COMPLAINT

COME NOW the Plaintiffs, Kelvin Hathcote and Joseph Green, by and through the undersigned counsel, and assert the following:

1. Blount County Probate Courts deny the issuance of marriages licenses to same-sex couples, and refuses to recognize the marriages of same-sex couples lawfully entered in other jurisdictions. In so doing, Blount County violates the guarantees of the Fourteenth Amendment to the Constitution of the United States.

2. Plaintiffs are a same-sex couple who live in Blount County.

3. Blount County, like other counties, encourages and controls marriage through regulations that provide benefits to and impose obligations upon married couples. In exchange, Blount County receives the well-established benefits that marriage brings: stable, supportive families that create loving homes for children and contribute to both the social and economic well-being of Blount County.

4. Defendant’s refusal to permit the Plaintiff’s to marry violates the Due Process and Equal Protection Clauses of the United States Constitution. This Court should so declare and issue an injunction requiring Defendant to issue marriage licenses to Plaintiffs without regard to their status as a same-sex couple, and to recognize the existing marriages of same-sex couples for all purposes under state law.

5. Plaintiffs Kelvin Hathcote and Joseph Hill are an unmarried same-sex couple in a committed relationship who live in Blount County and desire to marry in the county in which

they were raised. Plaintiffs meet all the requirements Blount County imposes for the issuance of marriage licenses except that they are same-sex couples.

6. Plaintiffs wish to publicly declare their love and commitment before their family, friends, and community; to join their lives together and to enter into a legally binding commitment to one another; and to share in the protections and security that marriage provides. Plaintiffs have strong ties to Blount County and getting married in their home county is of immense personal importance to them. Plaintiffs are spouses in every sense except for their inability to obtain a marriage license in Blount County.

7. Defendant's exclusion of same-sex couples from marriage and refusal to respect the marriages of legally married same-sex couples adversely impact the Plaintiff couple in real and significant ways. When Defendant withholds a marriage license from a same-sex couple, or refuses to recognize a same-sex couple's valid marriage, it circumscribes the affected individuals' basic life choices, classifies the affected individuals and couples in a manner that denies them the public recognition and myriad benefits of marriage, prevents the couple from making a legally binding commitment to one another and from being treated by the government and by others as a family rather than as unrelated individuals, and harms society by burdening and disrupting committed families and preventing couples from being able to fully protect and assume responsibility for one another and their children.

8. Defendant's exclusion of same-sex couples from marriage and refusal to respect existing marriages undermines the Plaintiff couples' ability to achieve their life goals and dreams, disadvantages them financially, and denies them "dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). Defendant's disparate treatment of same-sex couples "tells those couples and all the world that their [relationships] are unworthy" of recognition. *Windsor*, 133 S. Ct. at 2694.

9. Defendant's exclusion of same-sex couples from marriage and its refusal to respect the marriages of same-sex couples deprive the Plaintiffs of their fundamental right to marry and infringe upon their constitutionally protected interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

10. Defendant's treatment of the Plaintiff couple is subject to strict scrutiny because it burdens fundamental constitutional rights. Defendant's treatment of the Plaintiff couple and other same-sex couples cannot survive any level of constitutional scrutiny, however, because

it does not rationally further any legitimate government interest, but serves only to injure and humiliate same-sex couples and their families.

11. Plaintiffs seek a declaration from this Court that the denial to issue marriage licenses to same-sex couples violate the Fourteenth Amendment to the United States Constitution, and a judgment permanently enjoining the enforcement of those actions.

12. Specifically, Plaintiffs seek: (a) a declaration that Defendant's prohibition of marriage for same-sex couples violates the Due Process and Equal Protection Clauses of the United States Constitution; (b) a declaration that Defendant's refusal to recognize the marriages of same-sex couples under state law violates the Due Process and Equal Protection Clauses of the United States Constitution; and (c) a temporary restraining order and/or preliminary injunction, as well as a permanent injunction, (i) preventing Defendant from denying Plaintiffs the right to marry, (ii) directing Defendant Davis to issue marriage licenses to Plaintiffs; and (iii) directing Defendant to recognize the marriages of Plaintiffs validly entered into pursuant to those licenses.

13. Plaintiffs further seek attorney fees pursuant to 42 U.S.C. § 1988.

14. Plaintiffs state the below causes of action against Defendant's in his official capacities for purposes of seeking declaratory and injunctive relief.

JURISDICTION AND VENUE

15. This action arises under the Constitution and laws of the United States, including Article III, Section 1, of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. Jurisdiction supporting Plaintiffs' claims for attorneys' fees is conferred by 42 U.S.C. § 1988.

16. Venue is proper in the Northern District of Alabama pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Alabama, and all of the parties are and were residents of Alabama at all relevant times.

PARTIES

17. Plaintiffs Kelvin Hathcote and Joseph Hill, who reside in Blount County, Alabama applied for a marriage license in that county but were denied a license because of Blount County Probates prohibitions on marriage for same-sex couples.

18. Defendant Chris Green is Probate Judge of Blount County, Alabama. Under Alabama law, his administrative duties include issuance of marriage licenses. His duties in issuing marriage licenses are ministerial in nature, and not part of any judicial or discretionary function. Defendant Green was acting under color of state law at all times relevant to this complaint. He is sued in his official capacity.

19. Defendant, through his respective duties and obligations, are responsible for Blount County's policy of refusing to recognize the valid marriages of same-sex couples.

GENERAL ALLEGATIONS

20. The Plaintiff couple are residents of Blount County who experience the same joys and challenges of family life as their neighbors, co-workers, and other community members who may marry freely and whose legal marriages are respected under Blount County law. The Plaintiffs are productive, contributing citizens who are denied the same legal shelter, dignity, and respect afforded by Blount County to other families through access to the universally celebrated status of marriage.

21. Defendant's exclusion of the Plaintiffs from marriage, and Defendants' enforcement of that exclusion, as well as Defendant's refusal to respect the marriages of legally married same-sex couples, subject the Plaintiff couple to an inferior "second class" status as Blount County citizens relative to the rest of the community. These laws deprive the Plaintiff couple of equal dignity, security, and legal protections afforded to other Blount County families.

22. In addition to stigmatizing an entire class of Blount County's population as second-class citizens, Defendant's prohibition on marriage by same-sex couples, and its refusal to recognize valid marriages from other jurisdictions, deprive same-sex couples of critically important rights and responsibilities that married couples rely upon to secure their marriage commitment and safeguard their families.

23. In reliance on Alabama's Southern District Court's orders of January 23, 26, and 28, 2015, which declared Alabama's laws excluding same-sex couples from marriage unconstitutional and made clear that the federal Constitution requires Blount County officials to issue marriage licenses to same-sex couples and to recognize the valid marriages of same-sex couples for all purposes.

24. The Plaintiff Hill called the offices of Defendant Green on February 9, 2015, ask when they could travel to the probate court to apply for a marriage license. Plaintiff Hill initially spoke to an unknown female worker, who then passed his call on to Chris Green, Blount County Probate Judge.

25. During the conversation, Hill asked Defendant if he would be able to marry his same-sex partner.

26. Defendant said there would be no same-sex marriages licenses given, only heterosexual couple could receive a marriage license.

27. Defendant told Plaintiff Hill that if he showed up to Blount County Probate Court, he and his partner would be denied a marriage license.

28. On Tuesday, February 10, 2015, Plaintiff Hill again called to the Blount County Probate Office. Again, he talked to Judge Green, who told him that he is not issuing any marriage licenses to anyone through his office.

29. On Wednesday, February 11, 2015, Plaintiff Hill again called to the Blount County Probate Office on several occasions. Plaintiff Hill was told by unknown female office staff that Judge Green was unavailable. He was offered an application for a marriage license. He was told, though, that he could only fill it out but would not be allowed to marry.

30. On Thursday, February 12, 2015, Plaintiff Hill again called to the Blount County Probate Office on several occasions. Plaintiff Hill was told by unknown female office staff that Judge Green was unavailable.

31. The Plaintiffs were unable to obtain a license.

CLAIMS FOR RELIEF

First Claim for Relief: Defendant's Ban on Marriage by Same-Sex Couples Deprives Plaintiffs of Their Fundamental Right to Marry under the Due Process and Equal Protection Clauses of the United States Constitution

32. Plaintiffs incorporate by reference and re-allege all of the preceding paragraphs of this complaint as though fully set forth herein.

33. The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides that no "State [shall] deprive any person of life, liberty, or property,

without due process or law.” U.S. CONST. AMEND. XIV § 1. The Due Process Clause protects individuals from arbitrary government intrusion into life, liberty, and property.

34. Under the Due Process and Equal Protection Clauses of the United States Constitution, those who wish to marry a person of the same sex are entitled to exercise the same fundamental right as is recognized for persons who wish to marry a person of the opposite sex; accordingly Blount County Probate’s regulations, policies, and practices that excludes same-sex couples from marriage do not withstand constitutional scrutiny.

35. As Probate Judge of Blount County, Defendant Green currently ensures compliance with Blount County’s exclusion of same-sex couples from marriage by, for example, refusing to issue marriage licenses to same-sex couples. This violates Plaintiffs’ fundamental right to marry and fundamental interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

36. Defendants cannot satisfy the requirements of due process because Defendant’s exclusion of same-sex couples from marriage is not rationally related to any legitimate governmental interest and thus cannot survive even rational basis review, much less the strict level of scrutiny that applies to deprivation of the fundamental right to marry and interference with fundamental interests in liberty, dignity, privacy, autonomy, family integrity, and intimate association.

37. The Equal Protection Clause is essentially a direction that all persons similarly situated should be treated alike. There is no relevant distinction between same-sex couples and opposite-sex couples with respect to marriage.

38. Defendant’s exclusion of same-sex couples from marriage is subject to heightened scrutiny under the Equal Protection Clause because it discriminates on the basis of sexual orientation and gender, and because it selectively deprives a class of persons of fundamental rights.

39. Defendant cannot satisfy the requirements of equal protection because Defendant’s exclusion of same-sex couples from marriage is not rationally related to any legitimate governmental interest and thus cannot survive even rational basis review, much less the heightened level of scrutiny that applies.

40. Defendant's regulation, policy, and practices that excludes same-sex couples from marriage violate the Due Process and Equal Protection guarantees of the United States Constitution, both facially and as applied to the Plaintiff couple.

41. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm, and Plaintiffs are entitled to declaratory and injunctive relief on this basis.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- A. Declaring that the provisions of and enforcement by Defendants of excluding same-sex couples from marriage violates Plaintiffs' rights under the Due Process and Equal Protection Clauses of the United States Constitution;
- B. Declaring that the practice, by Defendant and his subordinates, of refusing to recognize the marriages of same-sex couples violates Plaintiffs' rights under the Due Process and Equal Protection Clauses of the United States Constitution;
- C. Declaring that any marriage entered into by Plaintiffs pursuant to any injunction issued by this Court are valid in the State of Alabama;
- D. Temporarily, preliminarily, and permanently enjoining enforcement by Defendants of Blount County policy and practice that exclude Plaintiffs from marriage or that refuse recognition of the marriages of Plaintiffs;
- E. Requiring Defendant to issue marriage licenses to Plaintiffs, pursuant to the same restrictions and limitations applicable to opposite-sex couples, and without regard to the gender or sexual orientation of the applicants, and to recognize the marriages thereby validly entered into;
- F. Awarding plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, inter alia, 42 U.S.C. § 1988 and other applicable laws;
- G. Awarding pre- and post-judgment interest at the lawful rate as allowed by law; and
- H. Granting such other and further relief as the Court deems just and proper and any other relief as allowed by law.

Respectfully submitted this 16th day of February, 2015.

/s/Leroy Maxwell, Jr.

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