

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

OREN ADAR, individually and as parent and next friend of J.C.A.-S., a minor, and **MICKEY RAY SMITH**, individually and as parent and next friend of J.C.A.-S., a minor,

CIVIL ACTION

versus

NO. 07-6541

DARLENE W. SMITH, in her official capacity as State Registrar and Director, Office of Vital Records and Statistics, State of Louisiana Department of Health and Hospitals.

**SECTION: A
JUDGE: HON. JAY C. ZAINEY**

**MAGISTRATE NO. 4
MAGISTRATE KAREN ROBY**

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PARTIES

1. Plaintiffs Oren Adar (“Oren”) and Mickey Ray Smith (“Mickey”) are citizens and residents of the State of California. Adar and Smith each appears individually and as parent and next friend of J.C.A.-S. (“J”), a minor.

2. Defendant Darlene W. Smith (“Smith”) is sued in her official capacity as State Registrar and Director, Office of Vital Records and Statistics, State of Louisiana Department of

Health and Hospitals. Smith is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

JURISDICTION AND VENUE

3. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. Jurisdiction to grant the declaratory relief requested is provided under 28 U.S.C. § 2201.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the defendant resides and offices within the district and a substantial portion of the events giving rise to plaintiffs' claims occurred in this district.

FACTS

6. Oren and Mickey currently live in San Diego, California. Oren and Mickey are the parents of J, who was born in Shreveport, Louisiana, in 2005. Oren and Mickey jointly adopted J in New York and obtained an Order of Adoption issued by the Ulster County Family Court dated April 27, 2006.

7. Whenever a person born in Louisiana is adopted in a court of proper jurisdiction in any other state, the state registrar of vital records is the State official authorized, pursuant to R.S. 40:34 D and R.S. 40:76, to create a new record of birth and issue a new original birth certificate in accordance with a final decree of adoption.

8. Oren and Mickey sought from the Louisiana Office of Public Health, Vital Records Registry, a new original birth certificate for J, with the original birth certificate being sealed, from the State of Louisiana that properly identifies both of them as J's legal parents.

9. In a letter to Oren and Mickey dated April 27, 2007, Smith rejected the request to issue a birth certificate listing Oren and Mickey as J's parents.

10. In her letter, Smith stated, "The Vital Records Registrar is not required to accept an out-of-state adoption judgment which names two unmarried persons as the adoptive parents." Smith's position is based upon her belief that "Louisiana is not required to accept such an out-of-state judgment under the Full Faith and Credit Clause of the United States Constitution if it violates public policy."

11. To this day, Oren and Mickey have been unable to obtain an accurate birth certificate for their child, J.

FIRST CLAIM FOR RELIEF
Full Faith and Credit

12. Plaintiffs repeat and reallege paragraphs 1 through 11 as if set forth in full.

13. Plaintiffs are a same-sex couple who jointly parent their child as legal parents. Their child was adopted in a final adoption order entered outside the State of Louisiana.

14. The Full Faith and Credit Clause, Article IV, Section 1 of the United States Constitution, provides that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

15. Adoption orders by a state court of competent jurisdiction are judgments that must be given full faith and credit under the Constitution by every other state in the nation. There is no roving public policy exception to the full faith and credit due judgments.

16. By her own admission, Smith categorically rejects a class of out-of-state adoptions decrees (judgments that name two unmarried persons as the adoptive parents) and, thereby, violates the Full Faith and Credit Clause of the United States Constitution.

17. Because Smith denies full faith and credit to plaintiffs' valid adoption decree by refusing to issue a new original birth certificate for J, with the original birth certificate being sealed, naming both Oren and Mickey and J's legal parents, she violates plaintiffs' federal constitutional rights.

SECOND CLAIM FOR RELIEF
Equal Protection

18. Plaintiffs repeat and reallege paragraphs 1 through 17 as if set forth in full.

19. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall deny any person the equal protection of the laws.

20. Smith, acting in her capacity as Vital Records Registrar, recognizes and treats as valid adoptions by individuals or by married couples from any other state and issues accurate amended birth certificates for their adopted children born in Louisiana. Yet, Smith denies the legal benefit of an accurate birth certificate to a subset of children who are adopted by unmarried same-sex couples. In so doing, Smith has subjected J to adverse treatment because the child's parents are an unmarried gay couple.

21. The disparate treatment of children of unmarried parents based on the conduct or status of their parents violates the Equal Protection Clause.

22. Singling out unmarried same-sex couples and their adoptive children for unequal treatment for the improper purpose of making them unequal to everyone else reflects moral disapproval and antipathy toward unmarried gay couples and their parental status, serves no legitimate government interests and is, therefore, invalid under any form of scrutiny.

23. By refusing to recognize and give effect to J's adoption in birth records and otherwise while recognizing and giving effect to the adoptions of similarly situated married different-sex couples and individuals, Smith impairs deeply personal relationships, deprives plaintiff parents of their fundamental rights of parental autonomy and deprives Oren, Mickey and J of their fundamental right of family autonomy and integrity on a discriminatory basis.

24. Smith's refusal to issue an accurate birth certificate for J does not serve any compelling, substantial or otherwise sufficient government interest, nor does it serve such interests in an adequately tailored manner. Accordingly, her conduct violates the Equal Protection Clause of the United States Constitution.

RELIEF SOUGHT

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that Defendant Darlene W. Smith's refusal to respect Plaintiffs' out-of-state adoption decree and refusal to issue a new original birth certificate for J, with the original birth certificate being sealed, violates the Full Faith and Credit Clause of Article IV, Section 1 of the United States Constitution and Plaintiffs' rights thereunder;

B. Declaring that Defendant Darlene W. Smith's refusal to respect plaintiffs' out-of-state adoption decree and refusal to issue a new original birth certificate for J, with the original birth certificate being sealed, violates the plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

C. Entering an injunction requiring Defendant Darlene W. Smith, in her official capacity as State Registrar and Director, Office of Vital Records and Statistics, State of Louisiana Department of Health and Hospitals Smith, to issue a new original birth certificate for J.C. A.-S.,

with the original birth certificate being sealed, identifying Oren Adar and Mickey Ray Smith as the child's parents;

- D. Awarding plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
- E. Granting such other and further relief as the Court deems just and proper.

Respectfully Submitted,

MARTZELL & BICKFORD

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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