

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Katherine Bradacs and Tracie Goodwin,)	
)	Civil Action No.:3:13-CV-02351-JMC
)	
Plaintiffs,)	
)	
vs.)	
)	
Nimrata (“Nikki”) Randhawa Haley, in her official capacity as Governor of South Carolina; Alan M. Wilson, in his official capacity as Attorney General of South Carolina,)	<u>VERIFIED AMENDED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF</u>
)	
Defendants.)	

I. NATURE OF ACTION

1. Plaintiffs bring this action to challenge the constitutionality of South Carolina’s laws and constitutional provisions that deny legal recognition in South Carolina to the marriages of same-sex couples who are married in one of the many states and numerous foreign countries where same-sex marriages are legal. S.C. Const. Art. XVII, § 15; S.C. Code 1976 § 20-1-15.

2. Plaintiff Katherine Bradacs and Tracie Goodwin were legally married in the District of Columbia on April 6, 2012. The marriage of the Plaintiffs is legally recognized in the District of Columbia, and their marriage is legally recognized by the federal government by virtue of the decision in *United States v. Windsor*, 133 S. Ct. 2675 (U.S., June 23, 2013), but they are treated as legal strangers in their home state of South Carolina. Meanwhile, the marriages of opposite-sex couples that are legal in other

states but would not be accepted in South Carolina (e.g., marriages of first cousins or a young partner) are routinely accepted in South Carolina if those marriages are legal in the jurisdiction where they are celebrated. This recognition of opposite-sex marriages but rejection of same-sex marriages that do not meet the South Carolina criteria for marriage violates the rights secured to the Plaintiffs by the United States Constitution and the Constitution of South Carolina.

3. The State of South Carolina's exclusion of same-sex couples from marriage adversely impacts the Plaintiffs and same-sex couples across South Carolina by excluding them from the many legal protections available to spouses: For example, when one partner dies, the surviving partner may face serious financial hardship, including the loss of her home, because she is denied the inheritance tax exemption provided to widows. Lesbian and gay police officers, firefighters and other first responders are denied the peace of mind of knowing that if they make the ultimate sacrifice, their partner will be taken care of through the financial support available to help those who lost their spouses in service to the community. Because of South Carolina's refusal to allow or recognize their marriages, same-sex couples are also denied many federal protections afforded to married couples such as the ability to take time off work to care for a sick spouse under the Family Medical Leave Act and access to a spouse's social security retirement benefits.

4. The exclusion from marriage undermines the Plaintiff couple's ability to achieve their life goals and dreams, threatens their mutual economic stability, and denies them "a dignity and status of immense import." *United States v. Windsor, supra*,

133 S. Ct. at 2681. Moreover, they and their children are stigmatized and relegated to a second class status by being barred from marriage. The exclusion "tells [same-sex couples and all the world that their relationships are unworthy" of recognition, *id.* at 22-23, and it "humiliates the ... children now being raised by same-sex couples" and "makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id.*, 133 S.Ct. at 2694.

5. South Carolina's exclusion of same-sex couples from marriage infringes on the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Constitution of South Carolina. This discriminatory treatment is subject to heightened scrutiny because it burdens the fundamental right to marry and because it discriminates based on sex and sexual orientation. It cannot stand under any level of scrutiny because the exclusion does not rationally further any legitimate government interest. It serves only to disparage and injure lesbian and gay couples and their families. *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L. Ed.2d 508 (2003) (holding that a statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the "right of privacy" guaranteed by the Due Process Clause of the Fourteenth Amendment).

6. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief against Defendants. Specifically, Plaintiffs seek: (a) a declaration that the State of South Carolina's prohibition of marriage for same-sex couples and its refusal to recognize marriages of same-sex couples validly entered into outside of the State of South Carolina violate the Due Process Clause and the Equal Protection

Clause of the Fourteenth Amendment to the United States Constitution and of the Constitution of the State of South Carolina; and (b) a permanent injunction directing Defendants to recognize the marriages of the Plaintiff couple and same-sex couples validly entered into outside of South Carolina.

7. There is no adequate remedy at law. The Plaintiffs are suffering irreparable injury. There is no harm to the state or local governments by granting an injunction and prohibiting enforcement of the challenged statute and South Carolina Constitution. The harm to the Plaintiffs is severe. The public interest is clearly served by this Court acting to order recognition in South Carolina of same-sex marriages celebrated in other jurisdictions consistent with the manner in which South Carolina treats similarly situated opposite-sex couples. Only prompt action by this Court ordering declaratory and injunctive relief will serve the public interest.

II. PARTIES

8. The Plaintiff Katherine Bradacs is a citizen and resident of the State of South Carolina, County of Lexington.

9. The Plaintiff Tracie Goodwin is a citizen and resident of the State of South Carolina, County of Lexington.

10. The Plaintiffs were lawfully married in the District of Columbia on April 6, 2012 (**Exhibit 1-Marriage License from the District of Columbia**).

11. The Defendant Nikki Haley is the Governor of the State of South Carolina. In her official capacity, she is the Chief Executive Officer of the State and is, pursuant to Article IV, Section 15 of the South Carolina Constitution, responsible for the faithful

execution of the laws of the State of South Carolina, including the laws that exclude same-sex couples from marrying or having their marriages recognized.

12. The Defendant Alan Wilson is the Attorney General of the State of South Carolina. He is sued in his official capacity pursuant to Chapter 7 of Title 1 of the Code of Laws of South Carolina.

III. JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343(3) and (4), because the suit raises federal questions under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution.

14. Venue is proper in the District of South Carolina under 28 U.S.C. § 1391(b) because Defendants Haley and Wilson reside in this District.

IV. FACTUAL BACKGROUND

15. South Carolina's Marriage Laws, Title 20, Chapter 1, Article 1, governs marriages in South Carolina. In 1996, the Marriage Law was amended to expressly prohibit marriage for same-sex couples, and to prevent the recognition of valid same-sex marriages contracted elsewhere. S.C. Code § 20-1-15, "Prohibition of same sex marriage," provides, "A marriage between persons of the same sex is void ab initio and against the public policy of this State." As a result, by declaring that a marriage between persons of the same sex is both (a) void ab initio and (b) against the public policy of this State, marriage is legally available only to opposite-sex couples. Same-sex couples may not marry in South Carolina, and if they are married elsewhere, their marriages are not recognized in South Carolina.

16. The South Carolina Constitution was amended in 2007 to expressly prohibit marriage for same-sex couples, and to prevent the recognition of valid same-sex marriages contracted elsewhere. S.C. Const. Art. XVII, § 15, provides: "A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State. This State and its political subdivisions shall not create a legal status, right, or claim respecting any other domestic union, however denominated. This State and its political subdivisions shall not recognize or give effect to a legal status, right, or claim created by another jurisdiction respecting any other domestic union, however denominated. Nothing in this section shall impair any right or benefit extended by the State or its political subdivisions other than a right or benefit arising from a domestic union that is not valid or recognized in this State. This section shall not prohibit or limit parties, other than the State or its political subdivisions, from entering into contracts or other legal instruments." As a result, marriage is legally available only to opposite-sex couples. Same-sex couples may not marry in South Carolina, and if they are married elsewhere, their marriages are not recognized in South Carolina.

V. DENIAL OF EQUAL PROTECTION AND DUE PROCESS OF LAW

17. The Supreme Court has called marriage "the most important relation in life," *Zablocki u. Redhail*, 434 U.S. 374, 384 (1978) (internal quotation marks omitted), and an "expression[] of emotional support and public commitment." *Turner v. Safley*, 482 U.S. 78, 95 (1987). It is "a far-reaching legal acknowledgement of the intimate relationship between two people...." *United States v. Windsor, supra*, 133 S.Ct. at 2692. This is as true for same-sex couples as it is for opposite-sex couples.

18. Same-sex couples such as the Plaintiff couple are identical to opposite-sex couples in all of the characteristics relevant to marriage.

19. By refusing to recognize their marriages from other states, South Carolina law deprives them of numerous legal protections that are available to opposite-sex couples. More than 1,000 federal benefits, privileges, and responsibilities are impacted by marital status. Numerous South Carolina benefits are also impacted by marital status. By way of example only:

A. A married person is exempt from tax on property left to him by an opposite-sex spouse, including the spouse's share of the couple's home, and, thus, protected against economic distress or loss of a home because of an estate tax bill. S.C. Code Ann. §§ 12-6-1630, 12-37-220, 12-37-265 (2007 & Cum. Supp.) A same-sex surviving spouse or partner is denied this exemption.

B. A widow or widower of an opposite-sex spouse is entitled to 50% to 100% of his or her deceased spouse's estate if the spouse died without a will depending upon whether there are issue of the opposite couple. S.C. Code Ann. § 62-2-102 (1986 & Cum. Supp.). A same-sex surviving spouse or partner in this situation receives nothing in this scenario.

C. A widow or widower of an opposite-sex spouse is entitled to claim an elective share of the net probate estate of the deceased spouse even if the deceased spouse did not nominate the surviving spouse as a beneficiary under his or her will. S.C. Code Ann. §62-2-201. A same-sex surviving spouse or partner in this situation receives nothing.

D. If an opposite-sex spouse becomes incapacitated, her spouse is automatically authorized to make decisions regarding her care. S.C. Code Ann. § 62-5-301(b) (1986 & Cum. Supp.). This protection does not extend to a same-sex spouse or partner under this scenario.

E. Under the workers' compensation laws, the opposite-sex spouse of someone who dies or is injured in the workplace is entitled to damages and may bring suit. S.C. Code Ann. §§ 42-9-110, 42-9-290, and 42-9-320 (1976 & Cum. Supp.). Same-sex spouses or partners have no legal standing to sue over their spouse or partner's workplace injury.

F. South Carolina requires opposite-sex spouses to support one another financially. S.C. Code Ann. §§ 20-3-130 and 20-3-140 (1979 & Cum. Supp.). There is no support obligation for same-sex spouses or partners.

G. South Carolina laws promote the stability of marriages through rules such as mandatory waiting periods prior to divorce by mutual consent. S.C. Code Ann. §§ 20-3-10 (2), (5) and 20-3-80 (1979 & Cum. Supp.). The divorce laws, including these provisions, do not apply to same-sex spouses or partners.

H. Opposite-sex widows and widowers of military personnel and veterans are eligible for numerous assistance programs 10 U.S.C.A. §1408; 10 U.S.C.A. §1450; 38 U.S.C.A. §101. These programs are not available to same-sex surviving spouses or partners of military personnel and veterans.

I. Opposite-sex widows and widowers of public employees in the South Carolina are eligible to receive various pensions and survivor benefits

upon their spouse's death. S.C. Code Ann. §9-8-110 ; S.C Code Ann. §9-11-140; S.C. Code Ann. §12-37-220(receipt of police officer's spouse's pension by surviving spouse); (tax exemption of public employee's spouse's retirement allowance); (lifetime survivor benefits for spouse of retired pensioner); (receipt of fireman's pension by surviving spouse);(exemption from ad valorem taxation for surviving spouse of permanently and totally disabled law enforcement officer, firefighter, or veteran). These benefits are not provided to surviving same-sex spouses or partners of public employees.

J. Opposite-sex public employees in the State of South Carolina are eligible to nominate and receive health insurance coverage for their spouse. S.C. Code Ann. §38-71-170. These benefits are not provided to same-sex spouses or partners of public employees.

K. Opposite-sex widows and widowers of firefighters, police officers, and other first responders killed in the line of duty are provided financial assistance. S.C. Code Ann. § 1-11-730(A)(5), (B)(5) (2008) (spouse of person covered by state health plans who is killed in the line of duty is eligible for continued coverage under the plans); S.C. Code Ann. § 12-37-220(B)(1)(b), (e)(iii) (1976 & Cum. Supp.) (providing exemption for ad valorem taxes on a house owned by a qualified surviving spouse of a law enforcement officer or firefighter who died in the line of duty); S.C. Code Ann. § 23-6-100 (1997) (providing the SC Highway Patrol Division shall transfer the service sidearm of an active duty state trooper killed in the line of duty to that trooper's surviving spouse upon request at no charge once the sidearm is rendered permanently

inoperable). This assistance is not provided to same-sex surviving spouses or partners of first responders.

L. Property tax exemptions are available under South Carolina law to certain people age 65 or over who are widows and widowers of opposite-sex spouses. S.C. Code Ann. §12-37-250 (1976). They are not available to same-sex surviving spouses or partners.

M. Opposite-sex spouses are eligible for a “two wage earner” credit for state tax purposes under certain circumstances. S.C. Code Ann. §12-6-3330 (1995 & Cum. Supp.) Same-sex married couples would not be eligible under any circumstances for the state tax credit.

20. In this case and by way of example, Plaintiff Bradacs is a public employee. Because her marriage to Plaintiff Goodwin is not recognized in the State of South Carolina, she cannot nominate her spouse, nor her biological children, on her health insurance policy through the State of South Carolina just as opposite-sex couples whose marriage is recognized in the State of South Carolina can.

21. Plaintiff Goodwin is 80% disabled from the United States Air Force and receives disability from the Veterans Administration. If her marriage to Plaintiff Bradacs was recognized in the State of South Carolina, not only could Plaintiff Bradacs be entitled to make a claim as a surviving beneficiary on Plaintiff Goodwin’s VA benefits, but Plaintiff Goodwin would be entitled to receive more in disability from the VA if her marriage to Plaintiff Bradacs was recognized in the State of South Carolina. Plaintiffs Bradacs and Goodwin cannot claim being married as a standard exemption on their

federal tax returns while residing in the State of South Carolina because their marriage is not recognized, among many of the other federal benefits they each would be entitled to if their marriage was recognized in South Carolina.

22. The exclusion of same-sex couples from marriage also denies them eligibility for numerous federal protections afforded to married couples including in the areas of immigration and citizenship, taxes, and social security. Some of the federal protections for married couples are only available to couples if their marriages are legally recognized in the state in which they live. See, e.g., 42 U.S.C. § 416(h)(1)(A)(i) (marriage for eligibility for social security benefits based on law of state where couple resides at time of application); 29 C.F.R. § 825.122(b) (same for Family Medical Leave Act). Thus, Plaintiffs, though legally married, cannot access such federal protections as long as South Carolina refuses to recognize their existing marriage.

23. Although the Plaintiff couple is in a long-term committed relationship, this couple and other same-sex couples are denied the stabilizing effects of marriage, which helps keep couples together during times of crisis or conflict.

24. Excluding same-sex couples from marriage also harms couples and their children by denying them the social recognition that comes with marriage. Marriage has profound social significance both for the couple that gets married and the family, friends and community that surround them. The terms "married" and "spouse" have universally understood meanings that command respect for a couple's relationship and the commitment they have made.

VI. EXCLUDING SAME-SEX COUPLES FROM MARRIAGE IS NOT RATIONALLY RELATED TO A LEGITIMATE GOVERNMENT INTEREST, AND IS NOT ABLE TO WITHSTAND HEIGHTENED SCRUTINY.

25. The prohibition against marriage for same-sex couples in South Carolina and the prohibition against recognition of marriage validly contracted outside South is not closely tailored to serve an important government interest or substantially related to an exceedingly persuasive justification. The prohibition fails any level of constitutional scrutiny. It is not rationally related to any legitimate justifications that were offered in support of it when the Marriage Law was amended in 1996 or when the Constitution was amended in 2007. None of the justifications offered in support of these measures, or any other justification that might now be offered, passes constitutional muster.

26. Neither tradition nor moral disapproval of same-sex relationships or marriage for lesbian and gay couples is a legitimate basis for unequal treatment of same-sex couples under the law. The fact that a discriminatory law is longstanding does not immunize it from constitutional scrutiny. The Supreme Court has made clear that the law cannot, directly or indirectly, give effect to private biases and has expressly rejected moral disapproval of marriage for same-sex couples as a legitimate basis for discriminatory treatment of lesbian and gay couples. *United States v. Windsor, supra*, 133 S.Ct. at 2693 (an "interest in protecting traditional moral teachings reflected in heterosexual-only marriage laws" was not a legitimate justification for federal Defense of Marriage Act).

VII. CLAIMS

FIRST CLAIM: 42 U.S.C. § 1983, DUE PROCESS UNDER THE UNITED STATES CONSTITUTION

27. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

28. The Fourteenth Amendment to the United States Constitution precludes any State from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Governmental interference with a fundamental right may be sustained only upon a showing that the legislation is closely tailored to serve an important governmental interest.

29. The Supreme Court has long recognized that marriage is a fundamental right and that choices about marriage, like choices about other aspects of family, are a central part of the liberty protected by the Due Process Clause.

30. South Carolina law denies the Plaintiff couple and other same-sex couples this fundamental right by denying them access to the state-recognized institution of marriage and refusing to recognize the marriages they entered into in other states and foreign countries where such marriages are legal.

31. South Carolina can demonstrate no important interest to justify denying the Plaintiff couple this fundamental right. Indeed, it cannot demonstrate that the denial is tailored to any legitimate interest at all.

32. South Carolina's prohibition of marriage between persons of the same sex and its refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates the Due Process Clause.

33. Defendants, acting under color of state law, are depriving Plaintiff of rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

SECOND CLAIM: 42 U.S.C. § 1983, EQUAL PROTECTION UNDER THE UNITED STATES CONSTITUTION ON THE BASIS OF SEXUAL ORIENTATION

34. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

35. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall ...deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

36. By denying the Plaintiff couple and other lesbian and gay couples the ability to marry and to have their out-of-state marriages recognized, South Carolina, through Defendants, disadvantages lesbian and gay people on the basis of their sexual orientation. It denies them significant legal protections. It "degrade[s] [and] demean[s]" them by "instruct[ing] ...all persons with whom same-sex couples interact, including their own children," that their relationship is "less worthy" than the relationships of others. *United States v. Windsor, supra*, 133 S.Ct. at 2696.

37. Same-sex couples and opposite-sex couples are similarly situated for purposes of marriage.

38. Classifications based on sexual orientation demand heightened scrutiny.

39. South Carolina's prohibition of marriage for same-sex couples and its refusal to recognize the marriages of same-sex couples entered into elsewhere violates the Equal Protection Clause.

40. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM: 42 U.S.C. § 1983, EQUAL PROTECTION UNDER THE UNITED STATES CONSTITUTION ON THE BASIS OF SEX

41. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

42. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall ...deny to any person within its jurisdiction the equal protection of the laws.'" U.S. Const. amend. XIV, § 1.

43. S.C. Const. Art. XVII, § 15, provides: "A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State."

44. By defining marriage in this way, South Carolina discriminates on the basis of sex.

45. The Supreme Court has made clear that perpetuation of traditional gender roles is not a legitimate government interest. Given that there are no longer legal distinctions between the duties of husbands and wives, there is no basis for the sex-based eligibility requirements for marriage.

46. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

FOURTH CLAIM: 42 U.S.C. § 1983, DUE PROCESS AND EQUAL PROTECTION UNDER THE UNITED STATES CONSTITUTION, BY FAILING TO HONOR THE FULL FAITH AND CREDIT CLAUSE

47. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

48. Article IV, Section 1 of the United States Constitution states: “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.”

49. 28 USC § 1738 reads: “The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto. The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United

States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.”

50. State law prohibits marriage between persons of the same sex, and marriage between a man and a woman is the only marriage the State will recognize.

51. By prohibiting the Courts and officials of the State of South Carolina from recognizing marriage contracted in another state, the State is violating the Full Faith and Credit Clause of the United States Constitution.

52. Defendants, acting under color of state law, by refusing to honor the Full Faith and Credit Clause, are depriving Plaintiffs of rights secured by the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

FIFTH CLAIM: DUE PROCESS AND EQUAL PROTECTION UNDER THE CONSTITUTION OF SOUTH CAROLINA

53. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

54. South Carolina Constitution, Art. I, § 3, provides: “The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

55. However, South Carolina Constitution, Art. XVII, § 15 provides, “A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State.”

56. Same-sex couples and opposite-sex couples are similarly situated for purposes of marriage.

57. Marriage is a fundamental right secured under the United States Constitution and the South Carolina Constitution.

58. South Carolina's prohibition of marriage between persons of the same sex and its refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates the due process clause and the equal protection clause of South Carolina Constitution, Art. 1, § 3.

VIII. PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs request this Court:

A. To issue a declaratory judgment that the statute and South Carolina constitutional provision at issue in this case, as applied to Plaintiffs, violate the constitutional and statutory rights of Plaintiffs;

B. To issue a preliminary and permanent injunction against the Defendants and all those acting in concert prohibiting enforcement of the laws, as applied, at issue in this action, enjoining these Defendants from denying the Plaintiff couple and all other same-sex couples the right to marry, and directing the Defendants to recognize marriages validly entered into by the Plaintiff couple and other same-sex couples outside the State of South Carolina;

C. To award to Plaintiffs reasonable costs, expenses, and attorneys' fees;
and

D. To award such other and further relief as this Court shall deem just and reasonable.

February 21, 2014

Respectfully submitted,

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