

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Colleen Therese Condon and)
Anne Nichols Bleckley,)
)
 Plaintiffs,)
)
 -v-)
)
 Nimrata (Nikki) Randhawa Haley, in her)
 official capacity as Governor of South)
 Carolina; Alan Wilson, in his official)
 capacity as Attorney General; and Irvin G.)
 Condon in his official capacity as)
 Probate Judge of Charleston County,)
)
 Defendants.)
 _____)

Civil Action No.: 2:14-cv-04010-RMG

COMPLAINT

(Declaratory and injunctive relief)

(Non-jury)

NATURE OF THE CASE

1. In defiance of the mandates of the U.S. Constitution and the rule of law, Defendants will not allow same-sex couples, including Plaintiffs Colleen Therese Condon and Anne Nichols Bleckley, to exercise their fundamental right to marry. The United States Court of Appeals for the Fourth Circuit has ruled that same-sex couples have a fundamental right to marry which cannot be denied or infringed absent a compelling state interest, and has rejected all justifications put forward by the Commonwealth of Virginia to exclude same-sex couples from marriage. *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014). Now that the U.S. Supreme Court on October 6, 2014 denied all petitions for *certiorari* in *Bostic*, and the Fourth Circuit has issued its mandate, controlling law prohibits Defendants from imposing any further barriers to same-sex couples' exercise of this right in South Carolina.

2. The law in this Circuit is now clear:

The choice of whether and whom to marry is an intensely personal decision that alters the course of an individual's life. Denying same-sex couples this choice prohibits them from participating fully in our society, which is precisely the type of segregation that the Fourteenth Amendment cannot countenance.

3. Despite this unequivocal and binding Fourth Circuit authority, which expressly recognized that the laws of all of the states in this Circuit, including South Carolina, “have similar bans,” Defendants and the State of South Carolina (“State”) are denying same-sex couple Colleen Therese Condon and Anne Nichols Bleckley (“Plaintiffs”) their fundamental right to marry each other in their home state.

4. Despite the recognition from a uniform chorus of courts and state officials in the Fourth Circuit that the Constitution of the United States prohibits a State or its officials from interfering with the right of individuals to marry the person of their choice, Defendants Governor Nikki Haley and Attorney General Alan Wilson stand alone in their continued attempt to systematically and illegally discriminate against individuals exercising their fundamental right to marry. By stepping in to institute proceedings to stop probate courts from issuing marriage licenses to same-sex couples, Wilson is violating Plaintiffs’ constitutional rights and refusing to follow the law in this jurisdiction. Justice requires this Court act swiftly to restrain the unconstitutional acts of Defendants and to command Defendant Probate Judge Irvin G. Condon to issue the requested marriage license. Fortunately, there is no conflict between the state and federal courts, as the South Carolina Supreme Court has precluded the issuance of marriage licenses to same-sex couples but specifically is looking to the United States District Court for the District of South Carolina to decree whether those licenses must be issued.

VENUE AND JURISDICTION

5. Plaintiff Colleen Therese Condon (“Condon”) is a resident of the County of Charleston, State of South Carolina.

6. Plaintiff Anne Nichols Bleckley (“Bleckley”) is a resident of the County of Charleston, State of South Carolina.

7. Defendant Nimrata a/k/a Nikki Randhawa Haley (“Haley”) is the elected 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 execution of the laws of the State of South Carolina. Haley is sued in her official capacity.

8. Defendant Alan Wilson (“Wilson”) is the elected attorney general of the State of South Carolina. In his official capacity, the Attorney General is the chief legal officer of the State of South Carolina. It is his duty to see that the laws of the State are uniformly and adequately enforced. The Attorney General maintains an office in Columbia, South Carolina. Wilson is sued in his official capacity pursuant to Chapter 7 of Title 1 of the Code of Laws of South Carolina.

9. Defendant Judge Irvin G. Condon is the elected probate judge for the County of Charleston, State of South Carolina. Judge Condon’s duties include issuing marriage licenses and maintaining records relating to marriage licenses, including records of marriages that take place in states other than South Carolina where one or both parties to the marriage are South Carolina residents. When performing these functions Judge Condon must ensure compliance with relevant South Carolina as well as federal laws.

10. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to challenge Defendants’ deprivation under color of state law of Plaintiffs’ rights secured by the United States Constitution, by (a) Defendants Haley and Wilson’s interference with Plaintiffs’ constitutional right to marry by, among other things, improperly instituting proceedings to enforce a state ban on marriage by same-sex couples, when such laws have already been declared unconstitutional by the Fourth Circuit; and (b) Defendant Judge Condon’s withholding of the marriage license to which Plaintiffs are entitled.

11. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.

12. Venue is proper in this Court under 28 U.S.C. § 1391(b) because all of the events that gave rise to Plaintiffs’ claims took place within the District of South Carolina.

Further, Plaintiff Condon and Plaintiff Bleckley reside within the Charleston Division of the District of South Carolina, and a substantial part of the events that gave rise to all Plaintiffs' claims took place within the Charleston Division.

13. This Court has the authority to enter a declaratory judgment and to provide declaratory and injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

14. This Court has personal jurisdiction over Defendants because they are domiciled in the State.

15. Plaintiffs seek declaratory and injunctive relief for the violation of their guarantees of liberty and equal protection under the Fourteenth Amendment to the United States Constitution as a result of a South Carolina Constitutional Amendment and statutes that expressly deny same-sex couples, including Plaintiffs, the freedom to marry, See S.C. Const. Art. XVII, § 15 and S.C. Code Ann. §§ 20-1-10 (as amended to deny marriage by same-sex couples) and 20-1-15 (collectively hereinafter the "marriage ban" or "the ban").

FACTS

16. Plaintiffs Condon and Bleckley are a loving and committed same-sex couple ("Plaintiffs" or "Plaintiff couple").

17. Plaintiff Condon is a lawyer and an elected member of Charleston County Council since 2005. She earned her undergraduate degree in political science from the College of Charleston and her juris doctor from the University of North Carolina at Chapel Hill. She has a son who is 15.

18. Plaintiff Bleckley has worked in customer service for the same private employer for the last 12 years. She earned her a bachelor's degree in English from Winthrop College.

19. In *Bostic*, the United States Court of Appeals for the Fourth Circuit held that the fundamental right to marry encompasses the right of all individuals to marry the person of their choice, including the right to marry a same-sex spouse. See *Bostic*, 760 F.3d at 376 ("the

fundamental right to marry encompasses the right to same-sex marriage”). The *Bostic* court specifically identified S.C. Const. art. XVII, § 15, S.C. Code Ann. §§ 20-1-10 (as amended) and 20-1-15 (“marriage bans”) as “similar” to that at issue and one of “a series of statutory and constitutional mechanisms” that States have “employed to prohibit legal recognition for same-sex relationships.” *Bostic*, 760 F.3d at 367, FN 1.

20. On the morning of Wednesday, October 8, 2014, Condon and Bleckley applied for a marriage license at the Charleston County Probate Court and paid the requisite filing fee. Defendant Judge Condon accepted Condon and Bleckley’s application and filing fee.

21. Later the same day, October 8, 2014, Defendant Wilson (acting as South Carolina’s Attorney General) filed a Petition for Original Jurisdiction and Motion for a Temporary Injunction and Administrative Order with the South Carolina Supreme Court to stop Judge Condon from issuing Plaintiffs and other same-sex couples a marriage license. In so doing, Wilson committed the quintessential act that empowers federal courts to enjoin state officials, as “clothed with some duty in regard to the enforcement of the laws of the State,” he proceeded “to commence an action, . . . to enforce an unconstitutional state statute” and thus “may be enjoined from so doing by a Federal court.” *Ex Parte Young*, 209 U.S. 123, 156 (1908) (enjoining state attorney general).

22. Upon information and belief, Wilson acted at the direction of Haley in petitioning the South Carolina Supreme Court to stop Judge Condon from issuing marriage licenses to the Plaintiffs and other eligible same-sex couples on and after October 9, 2014.

23. On October 9, 2014, Plaintiff Bleckley was present at the Charleston County Probate Court’s office to pick up the Plaintiff couple’s marriage license. Defendant Judge Condon declined to issue the license for the sole reason that the proceedings instituted by Defendant Wilson resulted in an order from the South Carolina Supreme Court forbidding the issuance of marriage licenses to same-sex couples before an order requiring such issuance had been entered by the United States District Court for the District of South Carolina.

24. But for the fact that they are of the same sex as one another, Plaintiffs are legally qualified to marry under the laws of South Carolina and wish to marry each other in the State. Each Plaintiff is over the age of 18, and neither Plaintiff is precluded from marriage as a result of having another spouse or being closely related to her life partner.

25. The marriage ban frustrates Plaintiff Condon and Plaintiff Bleckley's dreams of being able to marry each other before their friends and families in South Carolina, as well as demeans their relationship in the eyes of society and their community. The ban also causes them economic injury and financial stress. Because Condon and Bleckley have been unable to secure their family relationships through marriage, they have paid for alternate, but inadequate and inferior protections such as wills and powers of attorney for health care.

26. Condon and Bleckley also are concerned about the dignitary harm that Condon's teenage son may suffer from the couple's inability to marry, especially now that he already understands that South Carolina law relegates Condon and Bleckley to being, in his words, "just partners," and bars him from being part of a family with married parents. Plaintiffs fear that he will internalize the message he receives from his government that his family is not as worthy as other families and that he and his parents do not deserve the support for their relationships that other children and their parents receive. Additionally, because South Carolina bars Condon and Bleckley from marrying, they lack the financial safety net available to married couples and their children. For example, because Condon and Bleckley are not married, Bleckley is not eligible to receive Condon's Social Security survivor benefits, and Condon is not eligible for insurance benefits through Bleckley's employer.

27. Plaintiffs each seek the freedom to marry the one unique and irreplaceable person each loves, and thereby to assume the responsibilities and obtain the myriad protections, obligations and benefits conferred upon married couples and upon their children under state and federal law. The right to marry the person of one's choice, and to direct the course of one's life in this intimate realm without undue government interference is one of the

fundamental liberty interests protected for all by the Due Process Clause of the United States Constitution.

28. The State also has deprived Plaintiffs of their guarantee of equality under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by denying Plaintiff couple and other lesbian and gay South Carolinians the right to marry the person of their choice based on their sexual orientation and sex. Through the marriage ban and through Defendants' enforcement of the ban, the State and Defendants send a purposeful message that they view lesbians, gay men, and their children as second-class citizens who are undeserving of the legal sanction, respect, protections, and support that different-sex couples and their children receive automatically through marriage.

29. In *Bostic*, the United State Court of Appeals for the Fourth Circuit ruled that the fundamental right to marriage includes the right of same-sex couples to marry, reasoning that “[i]f courts limited the right to marry to certain couplings, they would effectively create a list of legally preferred spouses, rendering the choice of whom to marry a hollow choice indeed.”

30. Defendants, and those subject to their supervision, direction, and control, intentionally performed, participated in, aided and/or abetted in some manner the acts alleged herein, proximately caused the harm alleged herein, and will continue to injure Plaintiffs irreparably if not enjoined.

31. South Carolina has enacted statutes that exclude same-sex couples from marriage. See S.C. Const. Art. XVII, § 15 and S.C. Code Ann. § 20-1-10 (as amended) and § 20-1-15. These laws cannot be explained by reference to any legitimate public policies that might justify the disadvantages the marriage bans impose on same-sex couples who wish to marry. Rather, the history of these enactments and their own text demonstrate that interference with the equal dignity of same-sex couples was more than a mere side effect of the various enactments – it was their essence.

32. Barring same-sex couples from marriage disqualifies them from critically important rights and responsibilities under state law that different-sex couples rely upon to secure their commitment to each other, and to safeguard their families. By way of example only, same-sex couples are affected in the spheres of legitimation, adoption, family/spousal health insurance, family leave, death benefits, tax benefits; caretaking decisions; inheritance; and an orderly dissolution of a relationship that allocates assets fairly and protects the children of the marriage.

33. In addition to causing the tangible harms listed above, Plaintiffs are denied the unique social recognition that marriage conveys and the stabilizing effects of marriage, which helps keep couples together during times of crisis or conflict. Without access to the familiar language and legal label of marriage, Plaintiff couple is unable instantly or adequately to communicate to others the depth and permanence of their commitment, or to obtain respect for that commitment as others do simply by invoking their married status.

34. The substantive and dignitary inequities imposed on committed same-sex couples, including Plaintiffs, include particular harms for same-sex couples' children, who are equally deserving of the stability, permanence, and legitimacy that children of different-sex spouses enjoy. The marriage ban denies children of same-sex couples the dignity, legitimacy, rights, benefits, support, security, and obligations conferred on children whose parents are married. Children of same-sex couples, including Condon's teenage son, must combat the common assumption, reinforced by South Carolina law, that as members of a family headed by an unmarried couple their bonds are impermanent, insubstantial, and unworthy of equal dignity and legitimacy because the couple has not made a marital commitment and taken on the obligations of marriage.

35. The State's marriage ban, and Defendants' enforcement of it, causes many private entities such as banks, insurers, and even health clubs, to likewise define "family" for purposes of an array of benefits and protections in ways that exclude same-sex couples and

their children from important safety nets such as private employer-provided health insurance for family members. The State, and Defendants' enforcement of the State's marriage ban, also encourages disrespect of committed same-sex couples and their children, including Plaintiffs, by others in workplaces, schools, businesses, and other major arenas of life, in ways that would be less likely to occur and more readily corrected if marriage were available to same-sex couples.

36. No legitimate, let alone important or compelling, interest exists to exclude same-sex couples from marriage. *Bostic* clearly recognized that marriage bans not only impose harm on same-sex couples and their children but also do nothing to protect or enhance the rights of different-sex couples. The *Bostic* court rejected every rationale proffered in support of Virginia's substantively identical laws: federalism; history and tradition; defending "the people's will"; protecting the institution of marriage; encouraging "responsible procreation"; an illogical "link between banning same-sex marriage and promoting optimal childrearing"; promoting the notion that marriage is "a framework for parenthood" and inveighing against the suggestion that marriage is "a vehicle for adults' emotional fulfillment" in order to express the view that marriages of same-sex couples are morally inferior to those of their different-sex counterparts; to reinforce gender-specific roles in parenting; to reduce the incentive for same-sex couples to have children and/or to incentivize different-sex couples to have more children.

FOR A FIRST CAUSE OF ACTION
Deprivation of Due Process
U.S. Const. Amend. XIV
(42 U.S.C. § 1983)

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

38. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

39. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

40. The right to marry the unique and irreplaceable person of one’s choice and to direct the course of one’s life in this intimate realm without undue government restriction is one of the fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment, and was specifically held by the Fourth Circuit in *Bostic* to be a liberty enjoyed by different-sex couples and same-sex couples alike.

41. South Carolina Constitutional Amendment Article XVII, § 15, S.C. Code Ann. § 20-1-10 (as amended), S.C. Code Ann. § 20-1-15, and all other sources of South Carolina law that preclude marriage for same-sex couples violate the due process guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs.

42. Thus, Defendants, acting under color of state law, are depriving Plaintiffs 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.

FOR A SECOND CAUSE OF ACTION
Deprivation of Equal Protection
U.S. Const. Amend. XIV
(42 U.S.C. § 1983)

43. Plaintiffs incorporate by reference and reallege all preceding paragraphs of this Complaint not inconsistent herewith as though fully set forth herein.

44. Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

45. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

46. South Carolina Constitutional Amendment Article XVII, § 15, S.C. Code Ann. § 20-1-10 (as amended), S.C. Code Ann. § 20-1-15, and all other sources of South Carolina law that preclude marriage for same-sex couples violate the equal protection guarantee of the Fourteenth Amendment both facially and as applied to Plaintiffs.

47. Defendants' denying same-sex couples marriage licenses violates the right of Plaintiffs to equal protection by discriminating impermissibly on the basis of the Plaintiffs' sexual orientation and sex. Same-sex couples such as Plaintiffs are identical to different-sex couples in all of the characteristics relevant to marriage.

A. Discrimination Based on Sexual Orientation.

48. The marriage ban targets lesbian and gay South Carolinians as a class for exclusion from marriage and discriminates against each Plaintiff based on her sexual orientation, both facially and as applied.

49. Defendants' exclusion of Plaintiffs from marriage based on Plaintiffs' sexual orientation subjects Defendants' conduct to strict or at least heightened scrutiny, which Defendants' conduct cannot withstand because the exclusion does not even serve any legitimate governmental interests, let alone any important or compelling interests, nor does it serve any such interests in an adequately tailored manner.

50. Lesbians and gay men have suffered a long and painful history of discrimination in South Carolina and in the United States.

51. Sexual orientation bears no relation to an individual's ability to contribute to society.

52. Sexual orientation is a core, defining trait that is so fundamental to one's identity and conscience that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment.

53. Sexual orientation is generally fixed at an early age and is highly resistant to change through intervention. No credible evidence supports the notion that such interventions

are either effective or safe; indeed, they often are harmful and damaging. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and virtually all of them have adopted policy statements cautioning professionals and the public about these treatments.

54. Lesbians and gay men are a discrete and insular minority, and ongoing prejudice against them continues seriously to curtail the operation of those political processes that might ordinarily be relied upon to protect minorities. Lesbians and gay men lack express statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half the states, including South Carolina; are systematically underrepresented in federal, state, and local democratic bodies; and have seen 30 states attempt to strip them of the right to marry by passing state constitutional amendments barring them from marriage.

B. Discrimination Based on Sex.

55. South Carolina's marriage ban discriminates against Plaintiffs on the basis of their sex, both facially and as applied, barring Plaintiffs from marriage, solely because each Plaintiff wishes to marry a life partner of the same sex. The sex-based restriction is plain on the face of South Carolina's laws, which restrict marriage to "between one woman and one man," S.C. Const. Art. XVII, § 15 and prohibit recognition of marriages in other states between persons of the same sex. See also S.C. Code Ann. § 20-1-10, (as amended) and S.C. Code Ann. § 20-1-15 (as amended).

56. Because of these sex-based classifications, Plaintiff Condon, for example, is precluded from marrying Plaintiff Bleckley because Condon is a woman and not a man; were Condon a man, she could marry Bleckley.

57. South Carolina's marriage ban also impermissibly enforces conformity with sex stereotypes by excluding Plaintiffs from marrying the one person each Plaintiff loves, because

Plaintiffs have failed to conform to the sex-based stereotypes that women should marry men, and that men should marry women.

58. The exclusion of Plaintiffs from marriage based on their sex, and the marriage ban's requirement that Plaintiffs behave in conformity with sex-based stereotypes as a condition of being able to marry, cannot survive the heightened scrutiny required for sex-based classifications.

C. Discrimination With Respect to Fundamental Rights and Liberty Interests Secured by the Due Process Clause.

59. The marriage ban discriminates against Plaintiffs based on sexual orientation and sex with respect to access to the fundamental right to marry, and against Plaintiffs with respect to their liberty interests in dignity, autonomy, and family integrity and association. Differential treatment with respect to exercise of fundamental rights and liberty interests subjects Defendants' conduct to strict or at least heightened scrutiny, which Defendants' conduct cannot withstand.

FOR A THIRD CAUSE OF ACTION
Declaratory and Injunctive Relief
(U.S.C. §§ 2201 and 2202; Federal Rules of Civil Procedure, Rules 57 and 65)

60. Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this Complaint not inconsistent herewith as though fully set forth herein.

61. This case presents an actual controversy because Defendants' conduct, pursuant to directly applicable controlling authority, constitutes a present and ongoing denial of liberty and equal treatment to Plaintiffs, warranting the issuance of a declaratory judgment.

62. Plaintiffs seek permanent injunctive relief to protect their constitutional rights and avoid the injuries described above. A favorable decision enjoining Defendants would redress and prevent the irreparable injuries to Plaintiffs identified herein, for which Plaintiffs have no adequate remedy at law or in equity.

63. Defendants and the State will incur little to no burden in allowing same-sex couples to marry whereas the hardship for Plaintiffs of being denied liberty and equal protection is severe, subjecting them to an irreparable denial of their constitutional rights. The balance of hardships thus tips strongly in favor of Plaintiffs who, under controlling authority, will succeed on the merits of their case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that the provisions relating to same-sex couples in S.C. Const. Art. XVII, § 15, S.C. Code Ann. § 20-1-10, S.C. Code Ann. § 20-1-15, and any other sources of South Carolina law that exclude same-sex couples from marriage, as well as the enforcement by Defendants thereof, violate Plaintiffs' rights under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

B. Permanently enjoining enforcement by Defendants of the provisions relating to same-sex couples in S.C. Const. Art. XVII, § 15, S.C. Code Ann. § 20-1-10, S.C. Code Ann. § 20-1-15, and any other sources of South Carolina law that exclude same-sex couples from marriage;

C. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

D. Granting such other and further relief as the Court deems just and proper.

E. The declaratory and injunctive relief requested in this action is sought against each Defendant; each of Defendant's officers, employees, and agents; and against all persons acting in cooperation with any Defendant, or under a Defendant's supervision, direction, or control.

Respectfully submitted,

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