

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SECOND AMENDED COMPLAINT

Christopher Daniel McNosky
5108 Pleasant Run,
Colleyville, TX 76034

&

Sven Stricker
3047 Bent Tree Ct.
Bedford, TX 76021

Plaintiffs

CASE NUMBER: A-13-CV-0631

vs.

Texas Governor Rick Perry
Office of the Governor
State Insurance Building
1100 San Jacinto
Austin, TX 78701

&

Texas Attorney General Greg Abbott
Office of the Governor
State Insurance Building
1100 San Jacinto
Austin, Texas 78701

&

Tarrant County Clerk Mary Louise Garcia
Office of Public Records and Civil Courts
1895 Courthouse
100 W. Weatherford
Fort Worth, TX 76196

Defendants

II. PRELIMINARY STATEMENT

1. This civil rights case challenges as unconstitutional the Texas statute and state constitutional amendment that each prohibit the issuance of marriage licenses to same-sex couples in Texas. The issuance of marriage licenses exclusively to opposite-sex couples and blanket rejection of same-sex marriage license applicants, violates rights secured to the plaintiffs by the United States Constitution. Plaintiffs seek declaratory and injunctive relief for themselves and hope to set a precedent that will lead to relief for other same-sex couples.

II. JURISDICTION AND VENUE

2. Jurisdiction over the federal claims is conferred on this Court by 28 U.S.C. §1331 and §1343(3) and (4). Venue is proper under 28 U.S.C. §1391. United States judicial precedent, citing *Ex parte Young* – 209 U.S. 123 (1908), The Eleventh Amendment of The United States Constitution clearly indicates that when there is a question regarding whether or not a state's law is in violation of federal law, suits may be brought before United States District Courts to enjoin state officials from enforcing unconstitutional laws. The plaintiffs claim that the defendants' enforcement of *Article 1, Sec. 32 of the Texas Constitution*, and *Texas Family Code; Title 1; Subtitle A; Chapter 2; Subchapter A; Section 2.001 (b)*, is in violation of The Equal Protection Clause and Due Process Clause of The Fourteenth Amendment of The United States Constitution.

III. PARTIES

3. Plaintiff Christopher Daniel McNosky is a resident of Colleyville, Texas.
4. Plaintiff Sven Stricker is a resident of Bedford, Texas.
5. Defendant Rick Perry is the Governor of the State of Texas. In that capacity,

his duties include ensuring that the laws of the State are faithfully executed. *See Texas Const. Art. IV, § 10*. Defendant Perry is sued in his official capacity.

6. Defendant Greg Abbott is the Attorney General of the State of Texas. In that capacity, he is both chief legal officer and chief law enforcement official for the State of Texas. Among his duties is the requirement that he advise state and local officials on questions of Texas law. *See Texas Const. Art. IV, § 22*. Defendant Abbott is sued in his official capacity.

7. Defendant Mary Louise Garcia, Tarrant County Clerk, is responsible for issuing marriage licenses and ensuring the personal information on the marriage license is accurate. Defendant Garcia is sued in her official capacity.

IV. FACTS

8. On July 1, 2013, plaintiffs Christopher Daniel McNosky and Sven Stricker, jointly applied for a marriage license at the Vital Records Office of Tarrant County, located in Fort Worth, Texas. The plaintiffs' properly completed marriage license application was denied immediately upon submission, without further review. The plaintiffs were explicitly informed that their application could not be reviewed, nor approved because they were both of the same sex. An approval of their marriage license would have been a direct violation of state constitution and statute. Upon rejection at the Vital Records Office, plaintiffs were referred to the Tarrant County Public Records division of the Tarrant County Clerk's Office for further review of their completed marriage license application. The Public Records division then referred plaintiffs to the Civil Division of the Tarrant County Court at Law Clerks Office, where they were then referred to the Dell Dehay Law Library of Tarrant County for further assistance, which never materialized.

9. Citing United States Supreme Court precedent set by *Craig v. Boren; Glenn v.*

Brumby; J.E.B. v. Alabama; and Mississippi University for Women v. Hogan, and United States v. Virginia, sex is considered to be a quasi-suspect classification, subject to intermediate judicial scrutiny under The Equal Protection Clause and The Due Process Clause of The Fourteenth Amendment of The United States Constitution.

10. According to the majority opinions of the preceding cases, federal, state, and local governments are barred from engaging in the discriminatory allocation and denial of liberty on the basis of sex, without valid governmental objective.

11. The defendants' continue to practice sex-based discrimination, related to their respective roles in the enforcement of *Article 1, Sec. 32 of the Texas Constitution*, which read:

“(a) Marriage in this state shall consist only of the union of one man and one woman. (b) This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage,”

and *Texas Family Code; Title 1; Subtitle A; Chapter 2; Subchapter A; Section 2.001 (b)*:

“A license may not be issued for the marriage of persons of the same sex.”

This different treatment of same-sex couples from opposite-sex couples is not supported by a legitimate state interest and imposes harm, by denying unencumbered exercise of a **fundamental right**, on same-sex couples including Plaintiffs Chris and Sven. *See: Maynard v. Hill*, 125 U.S. 190, 205, 211 (1888); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942); *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-40 (1974); *Carey v. Population Services International*, 431 U.S. 678, 684-85 (1977); *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978); *Turner v. Safley*, 482 U.S. 78, 95 (1987);

M.L.B. v. S.L.J., 519 U.S. 102, 116 (1996); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003).

12. The aforementioned laws restrict the otherwise legally eligible plaintiffs from participating in the state-regulated institution of marriage, solely based upon their respective sexes. These laws further suggest that the plaintiffs could be granted a marriage license simply if one of them was biologically female. Thus, this sex-based discrimination is a violation of The Equal Protection Clause and The Due Process Clause of The Fourteenth Amendment of The United States Constitution.

V. NEED FOR INJUNCTION

13. More than 1,000 federal benefits, privileges and responsibilities are impacted by marital status. Texas same-sex couples including Chris and Sven will be denied all of those federal benefits solely because of their respective genders. Many state and private employer benefits will also be denied to same-sex couples residing and/or working in Texas.

14. Defendant Garcia is responsible for issuing all marriage licenses in Tarrant County. She supplies forms and instructions for filling out forms. Texas law demands that she require that each marriage license application, when presented for approval, be completed in accordance with Texas law.

15. Because of Texas's *Const. Article 1, Sec. 32 of the Texas Constitution*, and *Texas Family Code; Title 1; Subtitle A; Chapter 2; Subchapter A; Section 2.001 (b)* prohibitions on same sex marriage, Defendant Garcia requires persons applying for a marriage license be of the opposite sex in order to be approved.

16. Upon information and belief Defendant Garcia will not allow plaintiffs' marriage license application to be approved.

17. The public interest is clearly served by this court acting to order non-discriminatory recognition of Texas same-sex marriage applicants in a manner which

Texas treats similarly situated opposite-sex couples. Only prompt action by this federal court ordering declaratory and injunctive relief will serve the public interest.

VI. CLAIM FOR RELIEF

First Claim – 42 U.S.C. §1983 - United States Constitution

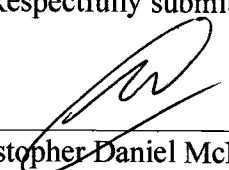
18. Defendants, acting under color of law, have violated rights secured to the plaintiffs by the First and Fourteenth Amendments to the United States Constitution including the right of association, the right to due process of law, and the right to equal protection under the law.

VII. PRAYER FOR RELIEF


WHEREFORE, Plaintiffs request that this Court:

- A. Issue a declaratory judgment that the statute and Texas Constitutional provision at issue in this case, as applied to the plaintiffs, violate the constitutional and statutory rights of plaintiffs;
- B. 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.

Respectfully submitted,



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