

No. 15-0139

In the Supreme Court of Texas

IN RE STATE OF TEXAS,
Relator

On Petition for Writ of Mandamus to
167th Judicial District Court, Travis County, Texas

PETITION FOR WRIT OF MANDAMUS

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STATEMENT OF THE CASE

Nature of the Case: This mandamus proceeding challenges an unappealable temporary restraining order holding Article I, section 32 of the Texas Constitution and Texas Family Code sections 2.001, 2.012 and 6.204 unconstitutional.

Respondent: Hon. David Wahlberg
Judge of 167th District Court, Travis County,
Texas

Course of Proceedings And Respondent's Challenged Action: This mandamus petition arises from a lawsuit seeking a TRO, preliminary injunction, and permanent injunction to declare unconstitutional Article I, section 32 of the Texas Constitution and Texas Family Code sections 2.001, 2.012, and 6.204 and allow Travis County Clerk Dana DeBeauvoir to issue a marriage license to Real Parties in Interest Sarah Goodfriend and Suzanne Bryant. Within minutes of the lawsuit being filed, the district court granted a TRO, ruling that Article I, section 32 of the Texas Constitution and Texas Family Code sections 2.001, 2.012, and 6.204 are unconstitutional, and commanding the county clerk to cease and desist from complying with Texas marriage law. The court also waived the statutory 72-hour waiting period for marriage licenses. Shortly thereafter, DeBeauvoir issued a marriage license. Later that day, this Court issued a temporary order staying the trial court's order.

STATEMENT OF JURISDICTION

The Court has original jurisdiction to issue the requested writ of mandamus because the State seeks to mandamus a district court judge. *See* TEX. GOV'T CODE § 22.002(a); TEX. R. APP. P. 52.1.

This petition was not first presented to the court of appeals due to the extremely time-sensitive nature of this matter and the serious harm that could arise absent prompt relief. The trial court ruled unconstitutional Article I, section 32 of the Texas Constitution and Texas Family Code sections 2.001, 2.012, and 6.204(b) and issued a temporary restraining order purporting to allow the Travis County Clerk to issue a marriage license to the plaintiffs. MR Tab C. This ruling may cause same-sex couples to seek marriage licenses across the State, and county clerks may mistakenly rely on that order to begin granting such licenses. If that occurred, the harm to the couples, state officials, and the general public would be difficult if not impossible to undo. Although this Court stayed the TRO, a clear statement is necessary so that all judges within Texas understand that this Court or the U.S. Supreme Court will decide the constitutionality of Texas law.

ISSUES PRESENTED

- (1) Trial courts are required to notify the Attorney General of a constitutional challenge to Texas law before holding the law unconstitutional. TEX. GOV'T CODE § 402.010.

Was it an abuse of discretion for the district court to hold Texas marriage law unconstitutional and enjoin its enforcement without first notifying the Attorney General of this constitutional challenge?

- (2) Article I, section 32 of the Texas Constitution defines marriage in Texas as only “the union of one man and one woman.” Texas Family Code section 2.001 prohibits issuance of a marriage license for “persons of the same sex”; section 2.012 declares that it is a misdemeanor for a county clerk to violate Texas marriage law; and section 6.204(b) declares any marriage between persons of the same sex void.

Was it an abuse of discretion for the trial court to hold these laws unconstitutional and command the county clerk to cease and desist applying them when the constitutional validity of these laws is under review in this Court?

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IN RE STATE OF TEXAS,
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On Petition for Writ of Mandamus to
167th Judicial District Court, Travis County, Texas

PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to Rule 52 of the Texas Rules of Appellate Procedure, the State of Texas seeks relief from the trial court’s order holding that Article I, section 32 of the Texas Constitution and Texas Family Code sections 2.001, 2.012, and 6.204 (collectively, Texas marriage law) violates “the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.” MR Tab C at 1. The trial court abused its discretion because (1) it held Texas law unconstitutional and enjoined enforcement of the law without first notifying the Texas Attorney General, as required by statute; and (2) it failed to wait for this Court’s resolution of the constitutionality of longstanding Texas marriage law, which is currently under review.

As a result of the trial court's ruling, at least one same-sex couple has been issued an invalid marriage license, but there may have been more. Moreover, the state of the law in Texas has been needlessly cast into doubt. Relief from this Court is necessary to avoid the legal chaos that would follow if the trial court's ruling is mistakenly interpreted as authorization for the creation or recognition of same-sex marriages in Travis County or throughout the State. The actions of the plaintiffs, as well as events in Utah, Michigan, and Alabama demonstrate the gravity, reach, and imminence of this harm absent mandamus relief.

There is also no adequate remedy by appeal, given the inability of the State to file an interlocutory appeal. The Court should grant the petition for writ of mandamus and (1) order the trial court to vacate its ruling that Texas marriage law is unconstitutional (or at the very least stay the ruling pending this Court's resolution of the constitutional issues); (2) confirm that any marriage license issued pursuant to the trial court's improper order was void ab initio; and (3) clarify that it is an abuse of discretion for any state court to hold Texas marriage law unconstitutional or enjoin enforcement of that law while those issues are under review in this Court and the U.S. Supreme Court.

STATEMENT OF FACTS

Yesterday, Sarah Goodfriend and Suzanne Bryant (the plaintiffs), filed a lawsuit in Travis County District Court challenging the constitutionality of Article I, section 32 of the Texas Constitution and Texas Family Code sections 2.001, 2.012, and 6.204. MR Tab A. The plaintiffs requested a temporary restraining order, a preliminary injunction, and a permanent injunction against the enforcement of Texas marriage law so that Travis County Clerk DeBeauvoir could issue them a marriage license. MR Tab A. Minutes after the lawsuit was filed, the trial court granted the TRO. MR Tab C. In its order, the court held that the “unconstitutional statutory and state constitutional prohibitions in Texas against same-sex marriage, including as set out in and applied through Texas Family Code §§ 2.001, 2.012, and 6.204, and in Article I, § 32 of the Texas Constitution” caused an “ongoing violation of [the plaintiffs’] rights under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, through the denial of their vital, personal right to marry.” MR Tab C at 1. The court also waived the statutory 72-hour waiting period for a marriage license. MR Tab D. Later that morning, the county clerk issued

a marriage license. See Chuck Lindell, *Travis County Clerk Issues First Legal Gay Marriage License in Texas*, AUSTIN AMERICAN-STATESMAN (Feb. 19, 2015), available at <http://atxne.ws/17vl7lo>.

The Attorney General was not notified of the constitutional challenge or the order by the parties or the court. In fact, the State learned of the order only because the county clerk notified a federal district court of the order in an unrelated same-sex marriage case. MR Tab E. Upon learning of the order, the State immediately intervened in the case and sought emergency relief from this Court. This Court stayed the trial court's ruling soon after. MR Tab F.

ARGUMENT

Mandamus relief is available where (1) a court abuses its discretion and (2) there is no "adequate remedy by appeal." *In re Prudential Ins. Co. v. Am.*, 148 S.W.3d 124, 135-36 & n.47 (Tex. 2004) (citing *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)). A trial court "has no discretion in determining what the law is or in applying the law to the facts, even if the law is somewhat unsettled." *In re Jordan*, 249 S.W.3d 416, 424 (Tex. 2008, orig. proceeding) (footnote omitted). Accordingly, an error of law

constitutes a clear abuse of discretion. *Id.*; *Prudential*, 148 S.W.3d at 135.

I. THE TRIAL COURT ABUSED ITS DISCRETION IN MULTIPLE WAYS.

A. It Was an Abuse of Discretion for the Trial Court to Hold Texas Marriage Law Unconstitutional and Immediately Enjoin Its Enforcement Without First Notifying the Attorney General, as Texas Law Commands.

The trial court’s ruling should be vacated for not following statutory procedural requirements. Texas law requires that a party challenging the constitutionality of Texas law must file a form with the trial court advising it of the constitutional challenge, and the trial court must notify the Attorney General of the constitutional challenge. TEX. GOV’T CODE § 402.010(a). “The purpose of this statute is to provide the attorney general with the opportunity to be heard on issues important to the laws of the state—the laws the attorney general’s office is charged with defending and enforcing.” *In re State*, No. 04-14-00282-CV, 2014 WL 2443910, at *2 (Tex. App. —San Antonio, May 28, 2014, orig. proceeding).

Neither the parties nor the trial court provided notice to the Attorney General of the constitutional challenge, the TRO, or the constitutional ruling against Texas law. Rather, the Attorney General

learned of the ruling from a notice filed in an unrelated federal same-sex marriage lawsuit. *See* Advisory Letter to the Court, *Zahrn v. Abbott*, Case No. 1:13-CV-00955-SS, Doc. 28 (February 19, 2015), MR Tab E. The trial court’s failure to notify the Attorney General of the constitutional challenge violated section 402.010 and was therefore a clear abuse of discretion. *In re Jordan*, 249 S.W.3d at 424; *Prudential*, 148 S.W.3d at 135.

In a similar case, the San Antonio Court of Appeals granted mandamus relief when a trial court in a same-sex divorce case declared Texas marriage law unconstitutional without first notifying the Attorney General and providing an opportunity for the State to defend the law. *In re State*, 2014 WL 2443910, at *4 (holding that “the trial court abused its discretion in failing to provide notice to the attorney general of a constitutional challenge to Texas state laws” and ordering the trial court to vacate its order declaring Texas marriage law unconstitutional). The same reasoning applies here, and the trial court’s ruling should be vacated. Because the trial court’s order was improperly issued, any marriage licenses issued in purported reliance on that order were improperly issued and are void ab initio.

Given the serious danger that the trial court's order may embolden other courts to hold Texas marriage law unconstitutional and suspend enforcement of the law without notice to the Attorney General, the Court should clarify that it is an abuse of discretion for any Texas court to rule on the constitutionality of Texas law without first notifying the Attorney General and providing an opportunity for the State to defend the law, as required by Texas Government Code section 402.010(a).

B. The Trial Court Abused Its Discretion by Holding Texas Marriage Law Unconstitutional and Enjoining Its Enforcement While Those Laws Are Under Review in This Court.

The trial court also abused its discretion because it held Texas marriage law unconstitutional and commanded the county clerk to cease enforcing the law while the constitutional validity of these laws is currently being considered by this Court. A court's failure to stay a constitutional ruling while that issue is pending in this Court is an abuse of discretion.

The constitutional issues addressed in the trial court's order are the same issues under review by this Court in *In re Marriage of J.B and H.B*, No. 11-0024, *Naylor v. Daly*, No. 11-0114, and *In re State of Texas*, No. 11-0222, all of which are fully briefed and were argued on November 5,

2013. Specifically, these cases address whether Article I, section 32 of the Texas Constitution and Texas Family Code section 6.204 violate the federal constitution. The trial court’s refusal to stay its hand and defer to this Court on these serious constitutional questions was a clear abuse of discretion.

This is not the first time a trial court improperly failed to wait for this Court’s ruling on these issues. After the San Antonio Court of Appeals granted mandamus relief when the trial court declared Texas marriage law unconstitutional without first notifying the Attorney General, *In re State*, 2014 WL 2443910, the trial court again held Texas marriage law unconstitutional. The court of appeals then stayed all trial court proceedings because the issues were “similar to issues in two cases pending before the Texas Supreme Court—*In the Matter of the Marriage of J.B. & H.B.*, 326 S.W.3d 654 (Tex. App.—Dallas 2010, pet. granted), and *State v. Naylor*, 330 S.W.3d 434 (Tex. App.—Austin 2011, pet. granted)” —namely “the constitutionality of Texas marriage law under article I, section 32 of the Texas Constitution and section 6.204 of the

Texas Family Code.” Order, *In re Marriage of A.L.F.L. and K.L.L.*, No. 04-14-00364-CV (Tex. App.—San Antonio, August 13, 2014).

The trial court’s order is an abuse of discretion because it frustrates this Court’s resolution of these issues on a statewide basis. For this reason too, this Court should, by mandamus, direct the trial court to vacate its order and to declare void any invalid marriage licenses issued in reliance on the trial court’s improper order. Again, the Court should make clear that it is an abuse of discretion for any court to strike down as unconstitutional Texas marriage law without staying that ruling pending the U.S. Supreme Court’s and this Court’s resolution of those issues.

II. ABSENT MANDAMUS RELIEF, THE TRIAL COURT’S ORDER THREATENS CONTINUED SERIOUS, IMMINENT HARM.

The trial court’s order has already resulted in the issuance of an invalid marriage license to a same-sex couple, in violation of Texas law. That license is invalid because the county clerk relied on a trial-court order lacking legal authorization. Furthermore, Texas Family Code section 6.204(b) provides that “[a] marriage between persons of the same sex . . . is contrary to the public policy of this state and is void in this state.” By staying the district court’s order, this Court confirmed that

this provision remains in effect, and that provision renders void any same-sex marriage in Texas, no matter when or where it was entered into.

Moreover, the district court did not purport to strike down the common law of marriage in Texas, which has always limited marriage to one man and one woman. *See, e.g., Grigsby v. Reib*, 153 S.W. 1124, 1130 (Tex. 1913) (“Marriage is not a contract, but a status created by mutual consent of one man and one woman.”). The Legislature began to codify the common law in 1997, but in doing so, it did not abrogate the background common law principle that marriage is limited to opposite-sex couples. *See Cash Am. Int’l Inc. v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000) (explaining that a statute abrogates the common law only when its express terms or necessary implications clearly indicate that intent).

If the trial court’s invalid order were allowed to stand, it could produce a host of additional legal and practical problems that undermine the public interest in predictable and clear legal rules. The court’s order may lead other parties, courts, and county clerks to mistakenly believe that Texas’s marriage laws have been invalidated, clearing the way for

the erroneous creation and recognition of other same-sex marriages in Travis County or throughout the State.

And many practical problems will surely arise. If the same-sex couple here takes other actions in reliance on the invalid marriage license, those actions could be difficult and costly for officials and affected third-party actors to detect and correct. That is why federal courts in numerous cases have stayed injunctions against state marriage laws. *See, e.g., Campaign for S. Equal. v. Bryant*, 773 F.3d 55, 58 (5th Cir. 2014) (staying injunction against Mississippi marriage law due to “[t]he inevitable disruption that would arise from a lack of continuity and stability in this important area of law”); Order Denying Plaintiffs’ Motion to Lift the Stay of Injunction 5, *De Leon v. Perry*, 5:13-cv-00982-OLG (W.D. Tex. Dec. 12, 2014), ECF No. 91 (refusing to lift a stay, entered by the district court, of a federal-court injunction against Texas marriage law due to the same concerns).

These problems are real, not theoretical. As this case proves, a single court’s erroneous ruling on Texas marriage law may be relied upon by other courts, counsel, and litigants seeking invalid marriage licenses. One example comes from the actions of the plaintiffs’ own counsel, Brian

Thompson. Representing another party before this Court in emergency proceedings yesterday from a probate-court ruling, Mr. Thompson claimed that these reliance concerns are “wholly speculative.” Response to Emergency Motion for Temporary Relief at 2, *In re Texas*, No. 15-0135 (Tex., filed Feb. 19, 2015). Yet that same day, he relied on that probate court’s ruling—that Texas marriage law is unconstitutional—for his other client to convince a court to issue the TRO to the plaintiffs here. MR Tab A. Mr. Thompson’s own actions demonstrate that the State’s concerns are not “wholly speculative.” Response to Emergency Motion for Temporary Relief at 2, *In re Texas*, No. 15-0135.

The experience of other states confirms the dangers of allowing the trial court’s order to stand. In Utah, for example, same-sex couples married within hours of a district court’s decision to enjoin application of Utah’s same-sex marriage ban. *Kitchen v. Herbert*, No. 2:13-CV-217, 2013 WL 6834634, at *1 (D. Utah Dec. 23, 2013). The district court and the Tenth Circuit denied Utah’s stay motions, but the Supreme Court granted a stay, restoring the enforceability of Utah’s marriage law during the appeal. But even after that decision was stayed by the Supreme Court, the federal government stated that it would recognize the same-

sex marriages entered into while the order was in place, creating legal uncertainty and practical confusion about the status of those marriage licenses. Charlie Savage & Jack Healy, *U.S. to Recognize 1,300 Marriages Disputed by Utah*, N.Y. TIMES (Jan. 10, 2014), available at <http://nyti.ms/1E490so>.

Similar developments occurred in Michigan when a federal court struck down Michigan's marriage law, but refused to stay the effect of its judgment. See *DeBoer v. Snyder*, No. 2:12-cv-10285, 2014 WL 1100794 (E.D. Mich. Mar. 21, 2014). The Sixth Circuit granted a stay less than one day later, restoring the validity of state marriage law, but in the interim 321 same-sex couples obtained marriage licenses and at least 299 couples were married. Kathleen Gray & Gina Damron, *Federal Appeals Court Extends Freeze on Michigan Gay Marriages*, DETROIT FREE PRESS (March 25, 2014), available at <http://on.freep.com/17PJonj>.

Alabama, too, is experiencing similar confusion. See Richard Fausset, *Fresh Challenge to Gay Marriage Increases Confusion in Alabama*, N.Y. TIMES, Feb. 18, 2015, at A12, available at <http://nyti.ms/1CO7c2q>.

III. THERE IS NO ADEQUATE REMEDY BY APPEAL BECAUSE THE HARM IS IMMINENT AND NO INTERLOCUTORY APPEAL IS AVAILABLE.

There is no adequate remedy by appeal from the trial court's order because further harm from the order could occur at any time and no interlocutory appeal is available. The trial court's order is interlocutory and is not immediately appealable by the parties. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a); *In re Tex. Natural Res. Conservation Comm'n*, 85 S.W.3d 201, 205 (Tex. 2002); *see also Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 355 (Tex. 2001) (explaining that section 51.014 should be “strictly construed as a narrow exception to the general rule that only final judgments and orders are appealable” (quotation marks omitted)). Therefore, the defendant (Travis County Clerk DeBeauvoir) could not seek immediate appellate relief, even if she wanted to (which is unclear). Any motion for reconsideration of the court's order would take time, all the while leaving the trial court's ruling—and the uncertainty it creates—in place. And because the harm is imminent, any later interlocutory appellate remedy would be inadequate.

IV. THE STATE HAS A JUSTICIABLE INTEREST IN THE OUTCOME OF THE UNDERLYING PROCEEDINGS.

The State has a justiciable interest in the underlying case because Texas law has been challenged and the State has a strong and well-recognized interest in defending the validity of Texas law. *See, e.g., Terrazas v. Ramirez*, 829 S.W.2d 712, 721-22 (Tex. 1991) (recognizing the Attorney General’s legitimate role in representing the State in a lawsuit challenging the constitutionality of a Texas statute); *In re Marriage of J.B. & H.B.*, 326 S.W.3d 654, 661 (Tex. App.—Dallas 2010, pet. filed) (noting “the State’s important right to be heard on the constitutionality of its statutes”); TEX. GOV’T CODE §§ 402.010, 402.021. As the chief legal officer of the State, the Attorney General represents the State in civil litigation, and “has broad discretionary power in carrying out his responsibility to represent the State.” *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001) (citing TEX. CONST. art. IV, sections 1, 22; TEX. GOV’T CODE § 402.021).

PRAYER

The Court should grant the petition for writ of mandamus.

Respectfully submitted.

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MANDAMUS CERTIFICATION

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this petition and that every factual statement in the petition is supported by competent evidence included in the appendix or record. Pursuant to Rule 52.3(k)(1)(A), I certify that every document contained in the appendix is a true and correct copy

/s/ Michael P. Murphy
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CERTIFICATE OF SERVICE

I certify that on February 20, 2015, the foregoing document was served via File & ServeXpress or electronic mail upon counsel for real parties in interest. A courtesy copy was also sent to counsel for real parties in interest by electronic mail.

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CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2), this brief contains 2907 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Michael P. Murphy
Michael P. Murphy
Counsel for Relator

APPENDIX AND RECORD

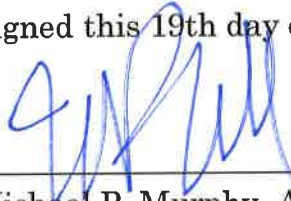
VERIFICATION

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Michael P. Murphy, a person whose identity is known to me. After I administered an oath to him, upon his oath he said the following:

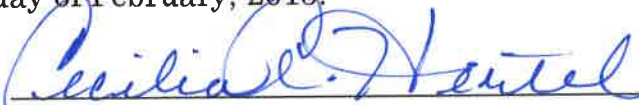
“My name is Michael P. Murphy. I am over twenty-one (21) years of age, of sound mind, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I am an attorney with the Office of the Solicitor General, Office of the Texas Attorney General, representing Relator The State of Texas. I am licensed to practice in the State of Texas, and prepared, with co-counsel, the Petition for Writ of Mandamus and mandamus record and appendix, attached to the Petition as the Appendix and Record. All of the documents in the attached Appendix are true and correct copies of the documents identified or true and correct copies of the documents filed in this action, as those documents exist in our files or were transferred to me by co-counsel.”

Signed this 19th day of February, 2015.



Michael P. Murphy, Affiant

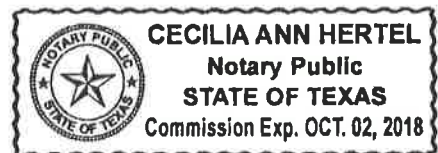
SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 19th day of February, 2015.



Notary Public in and for the State of Texas

My commission expires:

10/02/2018



Notary without Bond

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2-19-15
e \$52
ADW

NO. _____

SARAH GOODFRIEND AND
SUZANNE BRYANT

PLAINTIFFS

VS.

DANA DEBEAUVOIR, TRAVIS
COUNTY CLERK

DEFENDANT

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION
AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Sarah Goodfriend and Suzanne Bryant file this Original Petition and Application for Injunctive Relief against Defendant Dana DeBeauvoir.

I.

Plaintiffs Goodfriend and Bryant are a same-sex couple who desire to get married. United States District Judge Orlando Garcia has ruled that the Texas ban on same-sex marriages is unconstitutional, illegal, and unenforceable. On February 17, 2015, the Honorable Guy Herman, Probate Judge, Travis County, Texas, issued an Order expressly finding that Texas Family Code §§ 2.401, and 6.204(b), and Article I, § 32 of the Texas Constitution “are unconstitutional insofar as they restrict marriage in the State of Texas to the union of a man and woman and prohibit the creation or recognition of marriage to same-sex couples, because such restrictions and prohibitions violate the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.” Plaintiffs have therefore asked Defendant DeBeauvoir to issue a marriage license to allow Plaintiffs to marry. Based upon her concerns

about the Texas statutory and constitutional prohibitions against same-sex marriage—including Texas Family Code §§ 2.001, 2.012, and 6.204, and in Article I, § 32 of the Texas Constitution—Defendant DeBeauvoir has told Plaintiffs that she cannot issue them a marriage license, unless and until a Court orders her to do so. The denial of a marriage license, based on those statutory and constitutional prohibitions against same-sex marriage, violates Plaintiffs’ constitutional rights under the Due Process and Equal Protection clauses of the United States Constitution. Accordingly, Plaintiffs request that this Court issue an immediate Temporary Restraining Order granting the relief necessary to allow Defendant DeBeauvoir to issue a marriage license.

II.

As the United States Supreme Court has held, the “freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.” *Loving v. Virginia*, 388 U.S. 1 (1967). The Texas statutory and constitutional prohibitions against same-sex marriage deny Plaintiffs the opportunity to exercise that fundamental personal freedom. Current Texas law promotes the view that same-sex relationships and families are inferior; discriminates against homosexuals; “demean[s]” Plaintiffs and other same-sex couples; and treats Plaintiffs and other same-sex couples as second-class citizens by “tell[ing] those couples, and all the world, that their . . . [prospective] marriages are unworthy of recognition.” *See United States v. Windsor*, 133 S. Ct. 2675, 2693-96 (2013).

III.

Plaintiffs’ inability to obtain issuance of a marriage license is also causing Plaintiffs ongoing, irreparable loss of actual and potential benefits otherwise available under the law, including financial losses that are not capable of being calculated with reasonable certainty, and

including but not limited to depriving Plaintiffs of intestacy rights;¹ homestead rights;² the potential rights of spousal maintenance and community-property presumption;³ right of a surviving spouse to pursue remedies for possible wrongful death; and spousal evidentiary privileges. Additionally, Plaintiff Goodfriend has been diagnosed with and received extensive treatment for ovarian cancer, a life-threatening illness, with all of the inevitable, attendant stress and disruption of life and family; thus, her future remains very uncertain.

IV.

Plaintiffs have no adequate remedy at law to obtain a marriage license and to remedy that ongoing violation of the United States Constitution. Unless this Court grants an immediate TRO, the violations of Plaintiffs' fundamental constitutional rights will continue on a daily basis, and will cause ongoing, imminent, and irreparable damage to Plaintiffs.

V.

Therefore, Plaintiffs request that this Court immediately (i) issue a Temporary Restraining Order to prevent the unconstitutional violation of Plaintiffs' right to obtain a marriage license; (ii) set a bond in accordance with Tex. R. Civ. P. 684; (iii) set this matter for Temporary Injunction hearing, and then for trial on Permanent Injunction hearing; and (iv) at the conclusion of such hearings, grant temporary and permanent injunctive relief, and grant all additional relief to which Plaintiffs are entitled.

Respectfully submitted,

HERRING & IRWIN, L.L.P.
1411 West Avenue, Suite 100
Austin, Texas 78701
(512) 320-0665

¹ Tex. Probate Code §§ 38, 45.

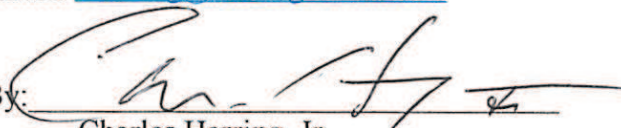
² Tex. Const., art. 16, § 52.

³ Tex. Family Code §§ 3.003, 7.001, 7.003, 8.051.

(512) 519-7580 – FAX

Email: cherring@herring-irwin.com

By:



Charles Herring, Jr.

State Bar No. 09534100

Jess M. Irwin III

State Bar No. 104257

CATHERINE A. MAUZY

State Bar No. 13239400

Mauzy & Tucker PLLC

1717 West 6th Street, Suite 315

Austin, Texas 78703

(512) 474-1493

(512) 479-7910

Brian Thompson

State Bar No. 24051425

HOPPER MIKESKA, PLLC

400 West 15th Street, Suite 408

Austin, Texas 78701

(512) 615-6195

(512) 610-1306 – FAX

Email: bthompson@hoppermikeska.com

ATTORNEYS FOR PLAINTIFFS

VERIFICATION

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

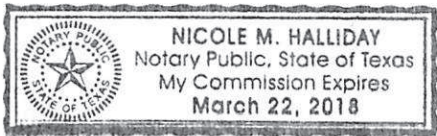
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BEFORE ME, the undersigned Notary Public, on this day personally Sarah Goodfriend, who being by me duly sworn on her oath, deposed and said that she has read Plaintiffs' Original Petition and Application for Temporary Restraining Order, and that the facts stated therein are within her personal knowledge and are true and correct.

Sarah Goodfriend
Sarah Goodfriend

SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of February, 2015, to certify which witness my hand and official seal.



Nicole M. Halliday
NOTARY PUBLIC - STATE OF TEXAS

My Commission Expires:
3-22-18

B

2-19-15
@ 8:51 AM

NO. _____

SARAH GOODFRIEND AND
SUZANNE BRYANT

PLAINTIFFS

VS.

DANA DEBEAUVOIR, TRAVIS
COUNTY CLERK

DEFENDANT.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORDER

Plaintiffs Goodfriend and Bryant in the above-styled and numbered action are seeking an immediate Temporary Restraining Order to prohibit the defendant from continuing to enforce prohibitions against issuance of marriage licenses to same-sex persons. Given the time urgency, and the other circumstances in this case, and the ongoing violations of Plaintiffs' constitutional rights, the Court has concluded that good cause exists to allow filing of the pleadings in this matter in paper form, rather than by e-filing, and to permit filing directly with the Court in accordance with Tex. R. Civ. P. 21(f)(4)C) and 74.

It is so Ordered.

SIGNED this the 19 day of February, 2014.

Judge Presiding

C

2.19.15
@ 8:52 AM

NO. _____

SARAH GOODFRIEND AND
SUZANNE BRYANT

PLAINTIFFS

VS.

DANA DEBEAUVOIR, TRAVIS
COUNTY CLERK

DEFENDANT.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORDER

Plaintiffs Sarah Goodfriend and Suzanne Bryant have filed Plaintiffs' Original Petition and Application for Temporary Restraining Order, supported by affidavit, against Defendant Dana DeBeauvoir, the County Clerk of Travis County.

It clearly appears from the facts set forth in the Application that because of the current, unconstitutional statutory and state constitutional prohibitions in Texas against same-sex marriage, including as set out in and applied through Texas Family Code §§ 2.001, 2.012, and 6.204, and in Article I, § 32 of the Texas Constitution, Plaintiffs are unable to obtain issuance of a marriage license by Defendant DeBeauvoir.

The Court finds that unless the Court immediately issues a Temporary Restraining Order, the unconstitutional denial of a marriage license to Plaintiffs will cause immediate and irreparable damage to Plaintiffs, based solely on their status as a same-sex couple. That irreparable injury includes the ongoing violation of their rights under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, through the denial of their vital, personal right to marry. Based on the Plaintiff's sworn pleading regarding the severity and uncertainty of Plaintiff Goodfriend's health condition, the Court finds

that Plaintiff Goodfriend's health condition strongly militates in favor of issuing immediate relief, before a hearing can be held on Plaintiffs' request for temporary injunction and before a final trial on the merits of permanent injunctive relief. Plaintiffs have no adequate remedy at law for the damage and the continuing harm that this course of action is causing them and will continue to cause them, and thus the only remedy available to Plaintiffs is the issuance of a temporary restraining order to prevent that ongoing unconstitutional denial of Plaintiffs' constitutional rights.

IT IS THEREFORE ORDERED that Defendant Dana DeBeauvoir, County Clerk of Travis County, is hereby commanded forthwith to cease and desist relying on the unconstitutional Texas prohibitions against same-sex marriage as a basis for not issuing a marriage license to Plaintiffs Sarah Goodfriend and Suzanne Bryant.

The clerk of this Court shall on the filing of the bond, as specified below, issue a temporary restraining order in conformity with the law and the terms of this Order.

This Order shall remain in place and effective for 14 calendar days after the date this Order is signed.

The Plaintiffs' request for temporary injunction shall be set for hearing on 3-5, 2015, at 9:00 AM

This Order shall not be effective unless and until Plaintiffs execute and file with the clerk a cash bond, in conformity with the law, in the amount of \$ 100.

SIGNED on 2-19, 2015.


PRESIDING JUDGE

D

2:19 PM
02/19/15



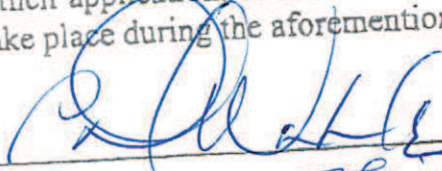
DANA DeBEAUVOIR
Travis County Clerk
(512) 854-9188
P. O. Box 149325, Austin, Texas 78714-9325
5501 Airport Blvd, Austin, Texas 78751
www.co.travis.tx.us

72 HOUR WAIVER FORM

On this the 19 day of FEB 2015 came to be

Heard the request of Sarah Goodfriend and

Suzanne Bryant applicants, for an order permitting their marriage ceremony to take place during the 72-hour period immediately following the issuance of their marriage license. The Court having heard their application, does find that there is good cause for the marriage to take place during the aforementioned 72-hour period. And so does order.


Judge and Court # 107th District

NOTE: This waiver form can be completed by any District Judge or County Family Court Judge in Travis County. In Travis County, there is a District Judge available to sign this form Monday - Friday between 8:30 to 9:20 am and 1:30 to 2:20 pm.

KEEP THIS WITH YOUR MARRIAGE LICENSE!!!!

Applicant's Address: _____

Marriage License Document # _____

After the ceremony has been performed, return this order with the Marriage license to:

Travis County Clerk
P.O. Box 149325
Austin, Texas 78714-9325

Recording, Elections, Accounting,
and Administration Divisions
5501 Airport Blvd
Austin, Texas 78751

Misdemeanor Records, Civil/Probate,
and Records Management Divisions
Travis County Courthouse
1000 Guadalupe
Austin, Texas 78701

E

DAVID A. ESCAMILLA
COUNTY ATTORNEY

STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH STREET
GRANGER BLDG., SUITE 600
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



LITIGATION DIVISION

SHERINE E. THOMAS†
DIRECTOR

ANTHONY J. NELSON

LESLIE W. DIPPEL

LAURIE R. EISERLOH*

ANDREW M. WILLIAMS

PATRICK M. KELLY

AMY S. YBARRA

†MEMBER OF THE COLLEGE
OF THE STATE BAR
*BOARD CERTIFIED-LABOR & EMPLOYMENT
LAW AND PERSONAL INJURY TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

February 19, 2015

VIA E-FILING

The Honorable Sam Sparks, US District Judge
501 West Fifth Street, Suite 4120
Austin, Texas 78701

Re: *Zahrn, et al, v. Abbott, et al.*; Civil Action No. 1:13-CV-00955-SS; In the United States District Court for the Western District of Texas, Austin Division

Dear Judge Sparks:

This letter is to advise you that this morning, the Travis County Clerk Dana Debeauvoir, was served with a State Court order from the 167th Judicial District Court, Travis County, Texas, signed by the Honorable Judge David Wahlberg.

The TRO commands Ms. Debeauvoir to immediately “cease and desist relying on the unconstitutional Texas prohibitions against same-sex marriage as a basis for not issuing a marriage license specifically to Plaintiffs Sarah Goodfriend and Suzanne Bryant,” a same sex couple residing in Austin, Texas.

The 167th District Court issued this order in response to an application for an *ex parte* temporary restraining order by Plaintiffs Goodfriend and Bryant. Please see the attached petition and order. If you have any questions, please feel free to contact me at (512) 854-9513. I certify that this letter has been served on all counsel of record in the above-styled and numbered cause.

Sincerely,


Sherine E. Thomas
Assistant County Attorney

cc: All counsel of record

SET/gh

F

IN THE SUPREME COURT OF TEXAS

No. 15-0139

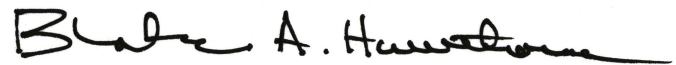
IN RE STATE OF TEXAS, RELATOR

ON MOTION FOR TEMPORARY RELIEF

ORDERED:

1. Relator's emergency motion for temporary relief, filed February 19, 2015, is granted in part. The trial court order dated February 19, 2015, styled *Sarah Goodfriend and Suzanne Bryant v. Dana DeBeauvoir, Travis County Clerk*, in the 167th District Court of Travis County, Texas, is stayed pending further order of this Court.

Done at the City of Austin, this February 19, 2015.



BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK