

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER INNISS and SHELTON STROMAN; RAYSHAWN CHANDLER and AVERY CHANDLER; MICHAEL BISHOP and JOHNNY SHANE THOMAS; and JENNIFER SISSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

DEBORAH ADERHOLD, in her official capacity as State Registrar and Director of Vital Records; BROOK DAVIDSON, in her official capacity as Clerk of Gwinnett County Probate Court; and the Honorable Judge PINKIE TOOMER, in her official capacity as Judge of Fulton County Probate Court,

Defendants.

Civil Action Number
1:14-cv-01180-WSD

**PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO AMEND THE
COMPLAINT TO ADD PLAINTIFFS AND A DEFENDANT**

Pursuant to Federal Rules of Civil Procedure 15 and 21, Plaintiffs respectfully move the Court to permit Plaintiffs to amend their complaint to add two plaintiffs and a defendant. Plaintiffs do not anticipate that this amendment will affect the current schedule in the case. Plaintiffs' proposed First Amended Complaint is attached hereto as Exhibit A.

MEMORANDUM IN SUPPORT OF MOTION

On April 22, 2014 Plaintiffs filed a complaint against certain public officials to challenge the State of Georgia's exclusion of same-sex couples from marriage and refusal to recognize the lawful marriages some of them have entered in other jurisdictions. ECF No. 1. Plaintiffs seeking recognition of their lawful marriage include Jennifer Sisson, a widow whose spouse recently passed away from cancer after the couple was lawfully married in New York; Ms. Sisson seeks to correct the death certificate that lists her late spouse as "never married." ECF No. 1 ¶ 34-41. Plaintiffs also include RayShawn and Avery Chandler, a couple seeking recognition of their marriage from Connecticut, including for purposes of being able to obtain accurate birth certificates for the children they are planning to have. ECF No. 1 ¶ 26-30.

After the complaint was filed, other couples identified themselves to Plaintiffs' counsel as suffering additional forms of harm from Georgia's refusal to

recognize their lawful marriages. These couples include Elizabeth Wurz and Krista Wurz, who are denied recognition of the marriage they entered in New Hampshire; their harms include a denial of spousal health coverage for Krista through Elizabeth's employee health plan with the College of Coastal Georgia, and other harms related to protecting their children. Ex. A ¶¶ 34-41. Because these harms are not represented in the suit, Plaintiffs respectfully seek leave to amend the complaint to include Elizabeth and Krista Wurz. Plaintiffs also request permission to add Monica P. Fenton as the defendant responsible for the harms alleged by Elizabeth and Krista Wurz. Plaintiffs intend to name Ms. Fenton in her official capacity as "Director of System Benefits – Healthcare and Pharmacy Plans" for the Board of Regents of the University System of Georgia. Ex. A ¶ 51.

Federal Rule of Civil Procedure 21 provides that either on a motion or of its own accord, the Court may "on just terms . . . add or drop a party." The courts are to "freely give leave when justice so requires." Fed. R. Civ. P. Rule 15(a)(2). "In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought

should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

None of those concerns are present here. Plaintiffs have not unduly delayed this request, and instead raise it at a preliminary stage of the case, shortly after Defendants have responded to the complaint and before the parties have commenced discovery. Nor do Plaintiffs anticipate that the amendment will cause any delay. To maximize judicial and party economy, Plaintiffs are amenable to treating Ms. Aderhold’s motion to dismiss as responsive to the amended complaint, so that briefing can continue on the current schedule. Plaintiffs also are willing to waive the need for an answer to the amended complaint by Defendants Brook Davidson and the Honorable Judge Pinkie Toomer.

Because of the early stage of the case, no Defendant will be prejudiced by the proposed amendment. The Defendants do not oppose the relief sought in this motion. In the interest of efficiency, Plaintiffs request that those Defendants who have already answered the complaint not be required to answer the amended complaint.

Nor is the proposed amendment futile. Similar claims seeking recognition of same-sex couples’ marriages from other jurisdictions recently have succeeded

both with respect to spousal health benefits specifically,¹ and recognition in other contexts more broadly.²

¹ See, e.g., *Bourke v. Beshear*, No. 3:13-CV-750, 2014 U.S. Dist. LEXIS 17457, at *11 (W.D. Ky. Feb. 12, 2014) (ruling that Kentucky must recognize same-sex couples' marriages in a case including a married same-sex couple denied equal access to spousal health coverage); *Tanco v. Haslam*, No. 3:13-cv-01159, 2014 U.S. Dist. LEXIS 33463, at *9 (M.D. Tenn. Mar. 14, 2014) (holding that Tennessee must recognize same-sex couples' marriages for purposes of, *inter alia*, spousal health coverage).

² See, e.g., *Bostic v. Schaefer*, No. 14-1167, 2014 U.S. App. LEXIS 14298, at *66-67 (4th Cir. July 28, 2014) (holding that Virginia must recognize same-sex couples' marriages from other jurisdictions); *Kitchen v. Herbert*, No. 13-4178, 2014 U.S. App. LEXIS 11935, at *4 (10th Cir. June 25, 2014) (affirming district court ruling that Utah must recognize same-sex couples' lawful marriages from other jurisdictions); *Wolf v. Walker*, No. 14-cv-64-bbc, 2014 U.S. Dist. LEXIS 77125, at *61 (W.D. Wis. June 6, 2014) (holding that Wisconsin's refusal to recognize same-sex couples' marriages violates the fundamental right to marry); *Whitewood v. Wolf*, No. 1:13-cv-1861, 2014 U.S. Dist. LEXIS 68771, at *27 (M.D. Penn. May 20, 2014) (holding that Pennsylvania's refusal to recognize same-sex couples' marriages violates the Fourteenth Amendment); *Geiger v. Kitzhaber*, No. 6:13-cv-01834-MC, 2014 U.S. Dist. LEXIS 68171, at *49-50 (D. Or. May 19, 2014) (striking down Oregon's refusal to allow or recognize marriages for same-sex couples); *Latta v. Otter*, No. 1:13-cv-00482-CWD, 2014 U.S. Dist. LEXIS 66417, at *81 (D. Idaho May 13, 2014) (finding Idaho's laws refusing to recognize marriage for same-sex couples unconstitutional); *Wright v. Arkansas*, No. 60CV-13-2662 (Ark. Cir. Ct. May 9, 2014) (ruling for plaintiffs, including eight same-sex couples seeking recognition of their marriages, by striking down Arkansas's marriage ban); *Baskin v. Bogan*, Nos. 1:14-cv-00355-RLY-TAB (L), 1:14-cv-00404-RLY-TAB, 1:14-cv-00406-RLY-MJD, 2014 U.S. Dist. LEXIS 86114, at *42 (S.D. Ind. June 25, 2014) (holding that Indiana "cannot refuse to recognize out-of-state, same-sex marriages"); *Henry v. Himes*, No. 1:14-cv-129, 2014 U.S. Dist. LEXIS 51211, at *3 (S.D. Ohio Apr. 14, 2014) (finding facially invalid Ohio's refusal to recognize same-sex couples' marriages); *De Leon v. Perry*, 975 F. Supp. 2d 632, 662-63 (W.D. Tex. 2014) (preliminarily enjoining Texas from refusing to recognize same-sex couples' marriages).

CONCLUSION

For all the reasons above, Plaintiffs respectfully request an order permitting them to file the proposed First Amended Class Action Complaint for Injunctive and Declaratory Relief attached hereto as Exhibit A.

Respectfully submitted this 31st day of July, 2014.

BRYAN CAVE LLP

/s/ William V. Custer

William V. Custer (Bar No. 202910)

Jennifer D. Odom (Bar No. 549717)

Jennifer B. Dempsey (Bar No. 217536)

Luke A. Lantta (Bar No. 141407)

1201 W. Peachtree Street, N.W.

Fourteenth Floor

Atlanta, GA 30309

Phone: (404) 572-6600

Fax: (404) 572-6999

Bill.Custer@bryancave.com

Jennifer.Odom@bryancave.com

Jennifer.Dempsey@bryancave.com

Luke.Lantta@bryancave.com

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

Tara L. Borelli (Bar No. 265084)

Gregory R. Nevins (Bar No. 539529)

Elizabeth L. Littrell (Bar No. 454949)

730 Peachtree Street, NE, Suite 1070

Atlanta, Georgia 30308

Phone: (404) 897-1880

Fax: (404) 897-1884

tborelli@lambdalegal.org

gnevins@lambdalegal.org

blittrell@lambdalegal.org

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

Susan L. Sommer (*Pro Hac Vice*)

120 Wall Street, 19th Floor

New York, NY 10005

Phone: (212) 809-8585

Fax: (212) 809-0055

ssommer@lambdalegal.org

BRYAN CAVE LLP
Douglas E. Winter (*Pro Hac Vice*)
1155 F. Street, NW, Suite 700
Washington, DC 20004
Phone: (202) 508-6000
Fax: (202) 220-7372
dewinter@bryancave.com

WHITE & CASE LLP
David P. Draigh (*Pro Hac Vice*)
Southeast Financial Center
200 South Biscayne Boulevard
Suite 4900
Miami, Florida 33131-2352
Phone: (305) 995-5293
Fax: (305) 358-5744
ddraigh@whitecase.com

Counsel for Plaintiffs

LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE

I certify that this pleading has been prepared with Times New Roman font,
14 point, as approved by the Court in L.R. 5.1(C), N.D. Ga.

Respectfully submitted, this 31st day of July, 2014.

/s/ William V. Custer
William V. Custer (Bar No. 202910)
Bill.Custer@bryancave.com

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2014, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification to the following attorneys of record:

Tara L. Borelli
Susan L. Sommer (*Pro Hac Vice*)
Gregory R. Nevins
Elizabeth L. Littrell
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
Attorneys for Plaintiffs

Nels Peterson
Devon Orland
OFFICE OF STATE ATTORNEY GENERAL
*Attorneys for Defendant Deborah
Aderhold*

Diana L. Freeman
Kaye W. Burwell
R. David Ware
FULTON COUNTY ATTORNEY'S OFFICE
*Attorneys for Defendant Hon. Judge
Pinkie Toomer*

William V. Custer
Douglas E. Winter (*Pro Hac Vice*)
Jennifer D. Odom
Jennifer B. Dempsey
Luke A. Lantta
BRYAN CAVE LLP
Attorneys for Plaintiffs

David P. Draigh (*Pro Hac Vice*)
WHITE & CASE LLP
Attorneys for Plaintiffs

Frank E. Jenkins, III
Michael Van Stephens, II
Robert L. Walker
JENKINS & BOWEN, P.C.
*Attorneys for Defendant Brook
Davidson*

I further certify that all attorneys of record are CM/ECF participants.

/s/ William V. Custer
William V. Custer (Bar No. 202910)
BRYAN CAVE LLP
1201 W. Peachtree Street, N.W.
Fourteenth Floor
Atlanta, GA 30309

Phone: (404) 572-6600

Fax: (404) 572-6999

Counsel for Plaintiffs