

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

CASIE JO MCGEE and SARAH ELIZABETH  
ADKINS; JUSTIN MURDOCK and WILLIAM  
GLAVARIS; and NANCY ELIZABETH MICHAEL  
and JANE LOUISE FENTON, individually and as next  
friends of A.S.M., a minor child;

*Plaintiffs,*

v.

KAREN S. COLE, in her official capacity as CABEL  
COUNTY CLERK; and VERA J. MCCORMICK, in  
her official capacity as KANAWHA COUNTY  
CLERK;

*Defendants,*

and

STATE of WEST VIRGINIA,

*Intervenor.*

No. 3:13-cv-24068

**STATEMENT OF UNDISPUTED FACTS (“SUF”)**

1. Casie Jo McGee and Sarah Elizabeth Adkins, both born and raised in West Virginia, have been in a loving, committed relationship for more than three years and wish to marry. Declaration of Casie Jo McGee (“McGee Dec.”) ¶¶ 2-4; Declaration of Sarah Elizabeth Adkins (“Adkins Dec.”) ¶ 2-4.

2. Casie’s state employer makes available affordable spousal health insurance for its employees, but Casie cannot add Sarah to her employer-provided health plan because she and Sarah are not married. Because the couple could not afford to buy separate health insurance for Sarah, Sarah went uninsured for a period of time. McGee Dec. ¶ 7.

3. For Casie and Sarah, the ability to make medical decisions for each other is not academic; Sarah has diabetes and has required emergency room treatment that the couple had to pay for out-of-pocket. McGee Dec. ¶¶ 8-10.

4. Once, Casie became seriously ill after a vacation, and Sarah stayed home to care for her. Adkins Dec. ¶ 6. Even though she arranged for someone to cover her shift at work, Sarah was reprimanded for inappropriately taking the day off, and her supervisor told her, “It’s not like Casie is your wife or something.” Adkins Dec. ¶ 6.

5. Casie and Sarah would like to start a family through assisted reproductive technology, but Casie’s inability to put Sarah on her health insurance plan made it impossible for Sarah to carry their child. McGee Dec. ¶¶ 13-14; Adkins Dec. ¶ 9.

6. Justin Murdock and William Glavaris, who both grew up in West Virginia, have been in a loving, committed relationship for almost three years and wish to marry. Declaration of Justin Murdock (“Murdock Dec.”) ¶ 2; Declaration of William Glavaris (“Glavaris Dec.”) ¶¶ 2, 4.

7. Justin has two children from a prior marriage, and he now shares custody of his children with his former spouse. Murdock Dec. ¶¶ 5,7.

8. Justin and Will wish to get married because it is the only way to indicate the seriousness and importance of their relationship with one another. Murdock Dec. ¶ 14; Glavaris Dec. ¶¶ 13-14.

9. Will is estranged from his only family members in West Virginia, and his closest remaining family member is located in South Carolina (a great aunt). Glavaris Dec. ¶ 11. Justin and Will both worry who would be permitted to make important medical decisions on Will’s behalf. Glavaris Dec. ¶ 11; Murdock Dec. ¶ 19.

10. On a daily basis, Justin and Will are reminded that their inability to marry renders them “strangers” to each other in the eyes of the law. Murdock Dec. ¶ 20.

11. Nancy Elizabeth Michael and Jane Louise Fenton have been in a loving, committed relationship for sixteen years and wish to marry. Declaration of Nancy Elizabeth Michael (“Michael Dec.”) ¶ 2; Declaration of Jane Louise Fenton (“Fenton Dec.”) ¶¶ 2-3.

12. Nancy and Jane have a six-year old son, A.S.M., who was conceived using assisted reproductive technology. Fenton Dec. ¶ 4; Michael Dec. ¶ 11. Only Nancy is listed on A.S.M.’s birth certificate, even though Jane has functioned as the boy’s parent since his birth. Fenton Dec. ¶ 5.

13. Nancy and Jane worry that in an emergency, Jane would not be authorized to make decisions for A.S.M. Fenton Dec. ¶ 6.

14. Because Nancy and Jane have been unable to get married, they have paid for alternate—but inferior—protections such as powers of attorney. Fenton Dec. ¶¶ 5-6. Jane must carry these important documents with her at all times. Fenton Dec. ¶ 5.

15. Nancy and Jane worry about the stigma and discrimination that A.S.M. may be subjected to because his parents are barred from marrying. Michael Dec. ¶¶ 15, 18-20. He has already recognized that the law brands Nancy and Jane as “just partners.” Michael Dec. ¶ 18.

16. The harm comes in smaller ways too. Because of the marriage ban, Jane must list on employment forms that she has no children, which causes her to feel as if she is denying her own child. Fenton Dec. ¶ 7.

17. Nancy and Jane also lack the financial safety net available to married couples and their children. Fenton Dec. ¶ 8. Nancy and A.S.M. are unable to receive Jane’s social security survivor or retirement benefits. Fenton Dec. ¶ 8.

18. A.S.M., who sues through his parents and next friends Nancy and Jane, does not have the rights or benefits that accrue to children of married parents. Fenton Dec. ¶ 8.

19. A.S.M.'s financial security is threatened because Nancy and Jane have had to divert money to pursue alternatives to the protections of marriage, such as guardianship documents. Fenton Dec. ¶ 5.

20. A.S.M. receives lower-quality health insurance because Nancy and Jane are unable to qualify for a family plan marriage because they are not married. Fenton Dec. ¶ 8.

21. A.S.M. already recognizes that the State brands his family's relationship as less consequential, enduring, and meaningful than those of different-sex parents and their children. Michael Dec. ¶¶ 18-19.

22. All Adult Plaintiffs and other same-sex couples face numerous harms at the state level based on their exclusion from the right to marry. There are almost 700 references to marriage in West Virginia law.<sup>1</sup> Adult Plaintiffs and other same-sex couples cannot solemnize their relationships through state-sanctioned ceremonies, W. Va. Code § 48-2-401; they cannot have their relationships recorded and recognized as marriages even if they solemnize them in other jurisdictions, W. Va. Code § 48-2-603; and they lack the ability to safeguard family resources under an array of laws that protect spousal finances. West Virginia same-sex couples are denied spousal coverage on health insurance, *id.* § 5-16-8; benefits for surviving spouses of public employees, sheriffs, police officers, and firefighters, *id.* §§ 5-10-24, 7-14D-18, 8-22A-20; a \$2000 tax credit for a surviving spouse, *id.* § 11-21-16(c); the ability to maintain auto insurance under the same terms as a divorced or deceased spouse, *id.* § 33-6-36(a); tax exemptions for

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<sup>1</sup> See Westlaw search of unannotated West Virginia statutes and the West Virginia Constitution for terms "wife," "husband," "spouse," "married," "marriage," "marital," "matrimony," "widow," or "widower." (Dec. 28, 2013) (returning 696 hits).

transferring a motor vehicle between spouses, *id.* § 17A-3-4(b)(2); free college education for the spouse of a military member killed in action, *id.* § 18-19-3; the automatic ability and priority to make caretaking decisions in times of medical emergency, *id.* § 16-30-8; the right for school teachers to receive full pay while out of work due to a spouse's death or serious injury, *id.* § 18A-4-10(a)(2); the presumption of gift for real property transfers between spouses, *id.* § 48-29-202; the right to receive an elective share of a deceased spouse's estate, *id.* § 42-3-1; access to an equitable division of finances in the event a couple separate, *id.* § 48-7-103; and the ability to hold a partner accountable for spousal and child support, *id.* §§ 48-8-101, 48-11-101.

23. West Virginia's marriage laws afford numerous protections to children of married parents, including the ability to secure legal recognition of parent-child bonds: an efficient procedure to adopt a spouse's child, W. Va. Code §§ 48-22-116, 48-22-301(b)(3); legitimization of children through marriage, *id.* § 42-1-6; and the presumption of parentage for children born into a marriage, *id.* §§ 16-5-10(f), 48-22-110. West Virginia also makes spouses and parents accountable for economic support through, for example, obligations of spousal and child support. *Id.* §§ 48-8-101, 48-11-101. These rules ensure that children can maintain a relationship with both spouses, that the best interests of children remain uppermost if parents separate, and that children receive financial support from their parents, rather than by the State.

24. West Virginia's marriage ban also renders Adult Plaintiffs and other same-sex couples unable to benefit from a host of federal rights that turn on marital status. The federal General Accounting Office reported in 1997 that there are more than 1,000 references in federal law to marriage, *see United States v. Windsor*, 133 S. Ct. 2675, 2683 (2013), including laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans' benefits.

25. In addition to these tangible harms, Plaintiffs suffer from the harm of being excluded from the unique social recognition that marriage conveys. The marriage ban makes it more difficult for A.S.M. and other children of same-sex couples to understand the integrity and closeness of their own families. Without access to the familiar language and legal label of marriage, Adult Plaintiffs are unable instantly or adequately to communicate to others the depth of their commitment, or obtain respect for that commitment, as other do by simply invoking their married status. Adult Plaintiffs wish to express the nature, depth, and quality of their lifelong commitment to each other in the way that they, their family, their friends, and society best understand. *See, e.g.*, McGee Dec. ¶¶ 12-13, 15; Adkins Dec. ¶¶ 7-9; Glavaris Dec. ¶¶ 13, 15; Murdock Dec. ¶¶ 10, 14; Fenton Dec. ¶ 9; Michael Dec. ¶ 21.

Dated: December 30, 2013

Respectfully submitted,

CASIE JO MCGEE and SARAH  
ELIZABETH ADKINS, et al.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 30th day of December 2013, I effected service upon counsel for Defendants by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system.

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