

No. _____

In the Supreme Court of Texas

IN RE STATE OF TEXAS,
Relator

Original Proceeding from
167th Judicial District
Travis County, Texas

EMERGENCY MOTION FOR TEMPORARY RELIEF

TO THE HONORABLE SUPREME COURT OF TEXAS:

Pursuant to Rule of Appellate Procedure 52.10, Relator State of Texas seeks emergency temporary relief pending resolution of the soon-to-be-filed Petition for Writ of Mandamus. Relator asks the Court to stay the district court's Temporary Restraining Order ruling that Texas Constitution art. I, §32, and Texas Family Code sections 2.001, 2.012, and 6.204 are unconstitutional and to stay all further state trial court proceedings that seek to resolve the issue currently pending before this Court in *In re J.B. and H.B.* (No. 11-0024) and two other cases. *See* Appendix. **Relator respectfully requests that the Court act on this emergency motion within the hour.**

STATEMENT OF FACTS

Today, Plaintiffs Sarah Goodfriend and Suzanne Bryant filed an original petition and application of Temporary Restraining Order in Travis County seeking a declaration that Texas Constitution, art. I, § 32, and Texas Family Code sections 2.001, 2.012, and 6.204 are unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. *See* Appendix. At 8:52 a.m., Judge Wahlberg granted their motion, declared Texas's marriage laws unconstitutional, and signed a 72-hour waiver form, permitting the same-sex marriage to take place without having to wait the typical 72 hours. The State of Texas has intervened in the suit below.

ARGUMENT

The Court has the power to stay orders that are challenged by an original proceeding under Rule 52.10. *See* TEX. R. APP. P. 52.10(a) (“The relator may file a motion to stay any underlying proceedings or for any other temporary relief pending the court’s action on the petition.”). The Court should exercise that power here. The district court declared Article I, Section 32, of the Texas Constitution and Texas Family Code sections

2.001, 2.012, and 6.204(b) unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. A stay is necessary to make clear to all county clerks that Texas marriage law remains enforceable until there has been final appellate resolution.

Federal precedent on this point is instructive. A district judge for the Western District of Texas also held that Article I, Section 32, of the Texas Constitution and related Texas Family Code provisions were unconstitutional, but agreed to stay his ruling pending appeal. *De Leon v. Perry*, 975 F. Supp. 2d 632, 666 (W.D. Tex. 2014). Nine months later, the plaintiffs asked him to lift the stay and he refused, noting the legal and practical concerns that would be caused by temporarily suspending Texas's marriage laws should those laws ultimately be found constitutional. *See* Order Denying Plaintiffs' Motion to Lift the Stay of Injunction at 4-6, Doc. 91, *De Leon v. Perry*, No. 5:13-CV-00982-OLG (W.D. Tex. Dec. 12, 2014) (noting that relief would "only be temporary, with confusion and doubt to follow").

During this time, the Fifth Circuit also addressed a request to stay an injunction declaring Mississippi's marriage laws unconstitutional. *Campaign for S. Equality v. Bryant*, 773 F.3d 55 (5th Cir. 2014). The Court granted the stay. *Id.* at 58. In doing so, the Court recognized that a race to the courthouse – plaintiffs to the clerk's office and the State to the appellate court – served no one's interest. *Id.* Instead, the "inevitable disruption that would arise from a lack of continuity and stability in this important area of law presents a potential harm not just to [the State] but to the Plaintiffs themselves and to the public interest at large." *Id.*

To date, the challenges to Texas's marriage laws have proceeded in an orderly fashion. This Court is poised to decide the issue in *In re J.B. and H.B.* (No. 11-0024) and two other cases, the Fifth Circuit has heard arguments on Texas's marriage laws, and the Supreme Court has granted certiorari to decide whether prohibitions on same-sex marriage are constitutional. There is no need to disrupt that process now, with a Temporary Restraining Order issued with no notice to the State and no opportunity for the State to defend its laws. The Court should stay the temporary restraining order holding that Texas marriage law is

unconstitutional, and to stay all further state trial court proceedings that seek to resolve the issue currently pending before this Court in *In re J.B. and H.B.* (No. 11-0024) and two other cases, until it can decide the mandamus petition filed in this case.

CONCLUSION AND PRAYER

The State of Texas asks the Court to stay the district court's temporary restraining order and constitutional ruling, and to stay all further state trial court proceedings that seek to resolve the issues currently pending before this Court in *In re J.B. and H.B.* (No. 11-0024) and two other cases, pending resolution of the Relator's forthcoming petition for writ of mandamus.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

SCOTT A. KELLER
Solicitor General

/s/ Michael P. Murphy
MICHAEL P. MURPHY
Assistant Solicitor General
State Bar No. 24051097

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COUNSEL FOR RELATOR

CERTIFICATE OF CONFERENCE

Pursuant to Texas Rule of Appellate Procedure 52.10(a), I certify that on February 19, 2015, counsel for Relator notified counsel for the parties by e-mail of this motion.

Brian T. Thompson
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/s/ Michael P. Murphy
Michael P. Murphy
Counsel for Relator

CERTIFICATE OF COMPLIANCE

This motion contains 784 words, counted consistent with Rule of Appellate Procedure 9.4(i)(3).

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

CERTIFICATE OF SERVICE

I certify that on February 19, 2015, the foregoing document was served via U.S. Mail and/or electronic mail upon counsel for real parties in interest.

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The Respondent was served a copy by email and by U.S. Mail, sent February 19, 2015.

Hon. David Wahlberg
Judge of 167th District Court, Travis County, Texas
509 West 11th, 8th floor
Austin, TX 78701
Phone: (512) 854-9310
Fax: (512) 854-6425

RESPONDENT

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

Appendix

2-19-15
0552
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.
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(512) 320-0665

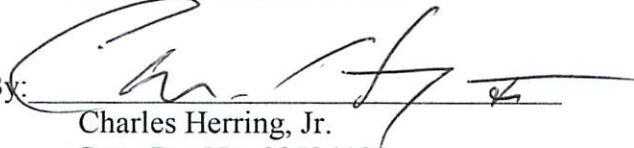
¹ Tex. Probate Code §§ 38, 45.

² Tex. Const., art. 16, § 52.

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

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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

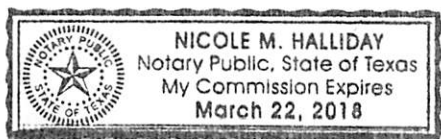
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BEFORE ME, the undersigned Notary Public, on this day personally Sarah Goodfriend, who being by me duly sworn on her oath, deposed and said that she has read Plaintiffs' Original Petition and Application for Temporary Restraining Order, and that the 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

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

2:19 P
@ 8:55 AM



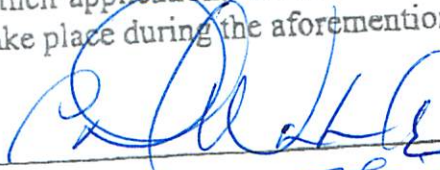
DANA DeBEAUVOIR
Travis County Clerk
(512) 854-9188
P. O. Box 149325, Austin, Texas 78714-9325
5501 Airport Blvd, Austin, Texas 78751
www.co.travis.tx.us

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

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