

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAMES CATO and	§	
JODY STAPLETON,	§	
Plaintiffs,	§	CIVIL ACTION NO. _____
v.	§	
	§	
KATIE LANG, IN HER OFFICIAL	§	
CAPACITY AS HOOD COUNTY CLERK,	§	
Defendant.	§	

ORIGINAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, James (Jim) Cato and Jody (Joe) Stapleton, seek to enforce their right to be issued a marriage license. They have filed this Original Complaint for Declaratory and Injunctive Relief against Katie Lang, in her official capacity as Hood County Clerk, so that they can obtain their marriage license and get married.

I.
INTRODUCTION

1. Jim and Joe, a same-sex couple who live in Granbury, Hood County, Texas, have been waiting 27 years to get married. On Friday, June 25, 2015, in *Obergefell v. Hodges*, 576 U.S. ____, No. 14-556 (June 26, 2015), the majority opinion in which is attached hereto as **Exhibit A**, the United States Supreme Court held that same-sex couples may exercise the fundamental right to marry and that there is no lawful basis to deprive same-sex couples of this constitutionally-protected right. The Supreme Court found that the Equal Protection and Due Process clauses of the U.S. Constitution guarantee the right of same-sex couples to marry. This decision has the effect of invalidating both Texas laws that prohibit same-sex marriage, and Article I, Section 32 of the Texas Constitution, which defines marriage to exclude same-sex unions.

2. Starting on Monday, June 28, 2015, and continuing through July 2, 2015, Jim and Joe attempted to obtain a marriage license from the Hood County Clerk's office. The Clerk's office, in violation of their constitutional rights, refused to issue them a marriage license. Plaintiffs now seek such declaratory, injunctive, equitable, and legal relief as may be due to them under 42 U.S.C. §1983. In addition, Plaintiffs ask the Court to award them attorneys' fees incurred to enforce their rights, as provided in 42 U.S.C. §1988.

II.
JURISDICTION AND VENUE

3. This Court has jurisdiction over all claims in this matter pursuant to 28 U.S.C. § 1331 because Plaintiffs' claims arise under federal law.

4. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

5. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

6. All conditions precedent to filing this lawsuit, if any, have been met.

III.
PARTIES

7. Plaintiffs are individuals who are both native Texans, and who own a 30-acre working ranch and reside in Granbury, Hood County, Texas. They have been in a committed relationship for 27 years and want to marry in Texas.

8. Jim, who was born in Brenham, Texas, has a Doctorate in Education and recently served as the Chief Nurse Executive for a large health system in Texas. He also holds two Masters

degrees, one in Nursing from Old Dominion University, and another in Health Science from Texas Wesleyan University. He received his CRNA from Harris Hospital School of Nurse Anesthesia and has a Bachelors degree in Nursing from Southern Illinois University. Jim is a veteran who served in the United States Air Force during the Vietnam War. He currently teaches nursing at Weatherford College full-time and also teaches part-time at Texas A&M University, Corpus Christi.

9. Joe, who was born in Fort Worth, Texas, has a Master's degree in education from Texas Christian University, and a Bachelor's of Science from Texas Wesleyan University. He has worked for more than 20 years as an educator, teaching children and adults of all ages.

10. Defendant Katie Lang is the County Clerk of Hood County, Texas. She is required, under state law, to issue marriage licenses to qualified individuals. She is sued in her official capacity and may be served with process at 201 West Bridge Street, Granbury, Hood County, Texas, 76048.

IV. FACTUAL ALLEGATIONS

11. Jim and Joe live in Granbury, Hood County, Texas. They have waited 27 years to be married, so immediately after the U.S. Supreme Court's ruling in *Obergefell* they began to seek a marriage license.

12. Marriage licenses in Texas are issued by county clerks. Any Texas residents, regardless of where in Texas they reside, can request a marriage license from any county clerk's office. *See* TEX. FAM. CODE ANN. § 2.001(a).

13. On June 26, 2015, the U.S. Supreme Court issued the *Obergefell* opinion, which held that same-sex couples have a fundamental right to marry and that states have no lawful basis to deprive same-sex couples of this constitutionally-protected right.

14. Shortly thereafter, on June 26, 2015, the United States District Court for the Western District of Texas issued an order lifting the stay of the injunction that prohibited the State of Texas from enforcing Article I, Section 32 of the Texas Constitution and any related provisions of the Family Code. *See Exhibit B, DeLeon v. Perry*, No. SA-13-CA-00982-OLG, CM/ECF No. 96 (June 26, 2015). The result was that Texas laws that prohibited same-sex marriage were no longer enforceable, effective immediately.

15. Sometime after June 26, 2015, and before June 30, 2015, the Hood County Clerk's official website was updated to state that the Hood County Clerk's office would not issue marriage licenses to same-sex couples. It stated:

I would like to issue a statement that I will not be issuing same sex marriage license's [sic] due to my religious convictions.

In the Attorney General's opinion, Ken Paxton, issued in response to Lt. Governor Patrick's request for guidance, we find that although it fabricated a new constitutional right in 2015, the Supreme Court did not diminish, overrule, or call into question the First Amendment rights to free exercise of religion that formed the first freedom in the Bill of Rights in 1791. This newly invented federal constitutional right to same-sex marriage should peaceably coexist alongside longstanding constitutional and statutory rights, including the rights to free exercise of religion and speech. This opinion concludes that:

"County Clerks and their employees retain religious freedoms that may allow accommodation of their religious objections to issuing same-sex marriage licenses. The strength of any such claim depends on the particular facts of each case."

Exhibit C.

16. On information and belief, on Sunday, June 28, 2015, Hood County Clerk Katie Lang emailed her staff to say that although the U.S. Supreme Court ordered same-sex couples are entitled to marriage licenses, county clerks are to follow the law as stated in Texas. She further wrote about instilling her religious liberty, and quoted Attorney General Paxton. *See Exhibit D, <http://www.star-telegram.com/opinion/opn-columns-blogs/bud-kennedy/article25934896.html>.*

17. On Monday, June 29, 2015, Plaintiffs first contacted the Hood County Clerk's office to request an application for a marriage license. The person answering the phone, who they believe was Virginia, the assistant deputy clerk (who refused to give her last name), stated that the Hood County Clerk's office would not provide an application or issue a marriage license to same-sex couples.

18. On information and belief, on Monday, June 29, 2015, during an interview about her refusal to issue same-sex marriage licenses, Clerk Lang said that fines and lawsuits are a concern, but that she did not think anyone would sue her. *See Exhibit E*, http://www.star-telegram.com/news/politics-government/article26114680.html?mc_cid=421d5dfb94&mc_eid=58417b1204.

19. Also on Monday, June 29, on information and belief, Lang told another reporter that same-sex marriage is morally wrong, and that the Bible provides that marriage is between one man and one woman. She said that same-sex couples can go elsewhere to get a license. *See Exhibit F*, <http://www.wfaa.com/story/news/local/2015/06/29/same-sex-marriage-license/29487497/>.

20. On Tuesday, June 30, 2015, Jim and Joe again called the Hood County Clerk's office to request an application for a marriage license. Assistant Deputy Clerk Virginia again told Jim and Joe the office was not issuing marriage licenses to same-sex couples.

21. On Tuesday night, June 30, 2015, Clerk Lang appeared to recant and reverse her position. The official Hood County Clerk website was updated that night to state the following:

Statement of Katie Lang:

The religious doctrines to which I adhere compel me to personally refrain from issuing same-sex marriage licenses. Nonetheless, in addition to the county clerk offices in the several surrounding counties, as soon as the appropriate forms have been printed and supplied to my office, the County Clerk's Office of Hood County will have staff available and ready to issue same-sex marriage licenses.

Because some have misreported and misconstrued my prior statements, I want to make clear that the County Clerk's Office of Hood County will comply with the recent decision of the Supreme Court of the United States.

I am grateful that the First Amendment continues to protect the sincerely held religious beliefs of public servants like me. That has not changed since last Friday. As Justice Kennedy stated, "it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned."

See **Exhibit G**, <https://www.co.hood.tx.us/index.aspx?nid=211>.

22. On Wednesday, July 1, 2015, the United States Court of Appeals for the Fifth Circuit issued an Order affirming a preliminary injunction barring enforcement of Texas's laws prohibiting same-sex couples from marrying. See **Exhibit H**, Order in *DeLeon v. Abbott*, No. 14-50196, Doc No. 00513102239, (July 1, 2015). The Court stated: "***Obergefell*, in both its Fourteenth and First Amendment iterations, is the law of the land and, consequently, the law of this circuit and should not be taken lightly by actors within the jurisdiction of this court.**" (emphasis added)

23. Hopeful because of Clerk Lang's change in position, Jim and Joe again called the Hood County Clerk's office on July 1, 2015 to ask about obtaining a marriage license. This time, Assistant Deputy Clerk Virginia said the Clerk's office would not be issuing licenses to same-sex couples for three or more weeks because of a problem with forms. She would not provide a date certain on which the Clerk's office would issue a marriage license to Joe and Jim.

24. On Thursday, July 2, 2015, Jim and Joe traveled to the Hood County Clerk's office to request an application for a marriage license. When they arrived at approximately 11:40 a.m., there was a typed statement on the interior door to the Clerk's office that said,

Statement of Katie Lang:

The religious doctrines to which I adhere compel me to personally refrain from issuing same-sex marriage licenses. Nonetheless, in addition to the county clerk

offices in the several surrounding counties, as soon as the appropriate forms have been printed and supplied to my office, the County Clerk's Office of Hood County will have staff available and ready to issue same-sex marriage licenses.

See **Exhibit I**. They did not enter the office at that time.

25. Shortly thereafter, at approximately 12:30 p.m. on July 2, Jim and Joe, through their attorneys, sent the County Clerk and County Attorney a letter demanding that the Clerk's office issue them a marriage license before the end of the day. See **Exhibit J**.

26. At approximately 3:45 p.m. on Thursday, July 2, Jim and Joe returned to the Clerk's office to request their license. Several members of the media, who had been present for an earlier rally, followed Jim and Joe into the Clerk's office. They asked to apply for a marriage license. Assistant Deputy Clerk Virginia again told them that the office would not issue them a marriage license as it did not have the proper forms. Jim and Joe then produced a copy of the revised application for marriage license, promulgated by the state and available to county clerks, and asked if they could use it to apply. See **Exhibit K**, <http://www.dshs.state.tx.us/vs/field/Local-Registrar-and-County-Clerk-Forms/>, Form VS-180, rev. 06/2015. Virginia told them she could not accept that form. Then Clerk Lang asked everyone to leave the office, stating that no media was allowed. Jim replied that he and Joe are not media, but instead are taxpayers of Hood County, there to get their marriage license, but the Clerk said they needed to leave as well, humiliating them for seeking a marriage license. Clerk Lang also apparently called the Sheriff's Department, which sent over approximately half a dozen deputy sheriffs to stand guard outside and immediately inside the Clerk's office.

27. At approximately 4:15 p.m., Plaintiffs' attorneys Soifer and Kaplan arrived at the Hood County Clerk's office and hand-delivered a copy of the demand letter (Exhibit J) to Defendant. Defendant responded by handing Soifer her mobile phone and asking her to speak with

her lawyer. The person on the mobile phone identified herself as Chelsey Youman, a lawyer with the Liberty Institute, and indicated that the Liberty Institute is representing Clerk Lang in her individual capacity. Youman stated that the Clerk's office would not be issuing marriage licenses to same-sex couples for at least three weeks, as it did not have the correct forms. She explained that the problem was with the not with the application form, but instead was with the marriage license form, which she said was gender specific and therefore could not be used for same-sex couples. Upon request, Clerk Lang provided a form marriage license for Hood County, a photograph of which is attached as **Exhibit L**. This form is gender neutral; it does not include the words "male" and "female", "man" and "woman", "bride" and "groom", or "husband" and "wife." Instead, it has two blanks for the names of the applicants, the first of which is preceded by "Mr." and the second of which is preceded by the letter "M".

28. When asked why this marriage license form could not be used for same-sex couples, Clerk Lang said that putting two male names on the application form would require the Clerk's office to alter a public document, which would be a violation of law. In fact, putting an "r" next to the "M" for the second applicant would not "alter" the form – it would accurately complete the form. It is clear that the reason provided by Clerk Lang is simply a pretext for her to violate Jim and Joe's constitutional right to marriage and to delay issuing a license.

29. After additional discussion with Clerk Lang and Youman, Clerk Lang agreed that Jim and Joe could apply for a marriage license that day, and instructed them that Virginia would help them. Virginia asked for their driver's licenses, social security numbers, date of birth, and place of birth, and they provided them. She began typing on her computer, but she paused after a few minutes and asked, "which of you will be the husband?" When Jim replied that both of them would be husbands, she responded that they could not both be husbands. Upon being reminded

that the state had issued a new application form that replaced “husband” and “wife” with “applicant 1” and “applicant 2” and that the demand letter listed the URL for the new form, she asked Jim and Joe to fill out the form they had printed and brought with them, and they did.

30. However, Virginia refused to take Jim and Joe’s payment of the \$83 fee or issue them a marriage license. At that point, Clerk Lang reappeared and said that they would not accept the payment because Joe and Jim would need to return in a few weeks to get their license anyway.

31. After further discussion Clerk Lang admitted that she would allow an opposite sex couple to apply, pay their fee, and leave with a marriage license that day, but that she would not do the same for Jim and Joe because they are the same sex, and she reiterated that she had to wait for her vendor to supply revised marriage certificate forms that could be used for same-gender couples.

32. Clerk Lang’s refusal to issue a marriage license to Jim and Joe violates their constitutional rights in violation of the United States Supreme Court’s ruling in *Obergefell*. Her actions, as the County Clerk of Hood County, Texas, were taken under color of state law. Temporary, preliminary, and permanent injunctive relief is necessary to protect Joe and Jim’s rights and liberties, because, as provided by the Supreme Court in *Obergefell*, “The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty.” *Obergefell* at 22.

V.

CAUSE OF ACTION PURSUANT TO 42 U.S.C. § 1983

33. Plaintiffs incorporate by reference all of the allegations in each of the paragraphs above as if fully set forth herein.

34. Defendant, acting under color of state law, has violated rights secured to the Plaintiffs by the Fourteenth Amendment to the United States Constitution, including the right to due process of law and the right to equal protection under the law.

35. As a result of the foregoing acts committed against Plaintiffs by Defendant, Plaintiffs have been deprived of having and exercising the rights and privileges guaranteed to citizens of the United States and the State of Texas by the Fourteenth Amendment to the United States Constitution.

36. This action is brought to remedy these violations.

VI.

ATTORNEYS' FEES

37. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

38. Plaintiffs are entitled to recover attorneys' fees and costs for bringing this action, pursuant to 42 U.S.C. § 1988.

VII.

PRAYER

39. Plaintiffs respectfully pray that this Court:

- a.** Declare that Defendant's actions violated the constitutional and statutory rights of Plaintiffs;

- b. Grant Plaintiffs a temporary restraining order and a preliminary injunction requiring Defendant and the Hood County Clerk's office to issue a marriage license to Plaintiffs;
- c. Grant Plaintiffs a permanent injunction against the Defendant and her office, requiring her and the Hood County Clerk's office to issue marriage licenses to all otherwise qualified same-sex couples;
- d. Award Plaintiffs reasonable costs, expenses, and attorneys' fees for both this cause and for any and all appeals as may be necessary; and
- e. Award such other relief, legal or equitable, as may be warranted or to which Plaintiffs are entitled.

Respectfully submitted,

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