IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SECOND DIVISION

M. KENDALL WRIGHT, ET AL.	:	
V.	:	**Case No: 60CV-13-2662**
STATE OF ARKANSAS, ET AL.	:	

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF THE PLAINTIFFS AND FINDING ACT 144 OF 1997 AND AMENDMENT 83 UNCONSTITUTIONAL

This case involves twelve same-sex couples who seek to marry in Arkansas and eight same-sex couples who have married in states that permit marriage between same-sex couples and seek to have their marriages recognized in Arkansas.

There are two state laws at issue in this matter which expressly prohibit such recognition—Act 144 of 1997 of the Arkansas General Assembly and Amendment 83 to the Arkansas Constitution. Act 144 states that "a marriage shall be only between a man and a woman. A marriage between persons of the same sex is void." Ark. ACT 144 of 1997, § 1 (codified at Ark. Code Ann. § 9-11-109). The Act further provides that a marriage which would be valid by the laws of the state or country entered into by a person of the same sex is void in Arkansas. *Id.* at § 2 (codified at Ark. Code Ann. § 9-11-107).

Amendment 83, which was approved by a majority of voters in a general election on November 2, 2004, states:

> §1. Marriage
>
> Marriage consists of only the union of one man and one woman

§2. Marital Status

Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common law marriage from another state between a man and a woman.

§3. Capacity, rights, obligations, privileges and immunities

The Legislature has the power to determine the capacity of persons to marry, subject to this amendment, and the legal rights, obligations, privileges, and immunities of marriage.

The plaintiffs contend that these prohibitions infringe upon their due process and equal protection rights under the Fourteenth Amendment of the United States Constitution and Article 2, § 3 of the Arkansas Constitution's Declaration of Rights. The State of Arkansas defends that it has the right to define marriage according to the judgment of its citizens through legislative and constitutional acts. Both parties have submitted motions for summary judgment.

The Equal Protection Clause forbids a state from denying "to any person within its jurisdiction the equal protection of the laws," U.S. Const. amend. XIV, § 1, and promotes the ideal that "all persons similarly situated should be treated alike." *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985). However, states are empowered to "perform many of the vital functions of modern government," *Nat'l Fed'n of Indep. Bus. v. Sebelius,* —— U.S. ——, 132 S.Ct. 2566, 2578 (2012), which necessarily involves adopting regulations which distinguish between certain groups within society. *See Romer v. Evans,* 517 U.S. 620, 631 (1996). Therefore, all courts must balance equal protection principles with the practical purposes of government when reviewing constitutional challenges to state laws.

The United States Supreme Court has outlined three categories for analyzing equal protection challenges. The most rigorous is referred to as "strict" scrutiny, which is reserved for laws that interfere with the exercise of a fundamental right or discriminate against "suspect classes." S*ee Plyler v. Doe,* 457 U.S. 202, 216-217 (1982). A more relaxed standard of review is "intermediate" or "heightened" scrutiny, which courts have applied to laws that discriminate against groups on the basis of gender, alienage or illegitimacy (also referred to as "quasi-suspect

classes"). *See Clark v. Jeter,* 486 U.S. 456, 461 (1988); *Miss. Univ. for Women v. Hogan,* 458 U.S. 718, 723–724 (1982). When the law does not interfere with a fundamental right or the rights of a suspect or quasi-suspect class, rational basis review applies. Here, the Arkansas marriage laws implicate both a fundamental right and the rights of a suspect or quasi-suspect class.

Although marriage is not expressly identified as a fundamental right in the Constitution, the United States Supreme Court has repeatedly recognized it as such.[1] It has also consistently applied heightened scrutiny to laws that discriminate against groups considered to be a suspect or quasi-suspect classification. *Mass. Bd. of Ret. v. Murgia,* 427 U.S. 307, 313 (1976) (a group that has experienced a "history of purposeful unequal treatment or [has] been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities."). Courts consider whether the characteristics that distinguish the class indicate a typical class member's ability to contribute to society, *Cleburne,* 473 U.S. at 440–41; whether the distinguishing characteristic is "immutable" or beyond the group member's control, *Lyng v. Castillo,* 477 U.S. 635, 638 (1986); and whether the group is "a minority or politically powerless," *Bowen v. Gilliard,* 483

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[1] *See M.L.B. v. S.L.J.,* 519 U.S. 102, 116 (1996) (quoting *Boddie v. Connecticut,* 401 U.S. 371, 376 (1971)) (finding that choices about marriage "are among associational rights this Court has ranked as 'of basic importance in our society' "); *Planned Parenthood of Southern Pennsylvania v. Casey,* 505 U.S. 833, 848 (1992) (finding marriage "to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause"); *Turner v. Safley,* 482 U.S. 78, 97 (1987) (finding that a regulation that prohibited inmates from marrying without the permission of the warden impermissibly burdened their right to marry); *Zablocki v. Redhail,* 434 U.S. 374, 383–84 (1978) (defining marriage as a right of liberty); *Carey v. Population Servs. Int'l,* 431 U.S. 678, 684–85 (1977) (finding that the right to privacy includes personal decisions relating to marriage); *United States v. Kras,* 409 U.S. 434, 446 (1973) (concluding that the Court "has come to regard [marriage] as fundamental"); *Boddie,* 401 U.S. at 376 (defining marriage as a "basic importance in our society"); *Loving v. Virgina,* 388 U.S. 1, 12 ("Marriage is one of the 'basic civil rights of man,' fundamental to our existence and survival" (quoting *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535 541 (1942)); *Griswold v. Connecticut,* 381 U.S. 479, 486 (1965) (defining marriage as a right of privacy and a "coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred"); *Skinner v. Oklahoma ex rel. Williamson,* 316 U.S. 535, 541 (1942) (finding marriage to be a "basic civil right[ ] of man"); *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923) (the right to marry is a central part of Due Process liberty); *Andrews v. Andrews,* 188 U.S. 14, 30 (1903) (quoting *Maynard v. Hill,* 125 U.S. 190, 205 (1888)) (finding marriage to be "most important relation in life"), *abrogated on other grounds, Sherrer v. Sherrer,* 334 U.S. 343, 352 (1948); *Maynard,* 125 U.S. at 205 (marriage creates "the most important relation in life")(same).

U.S. 587, 602 (1987). On this issue, this Court finds the rationale of *De Leon v. Perry*, *Obergefell v. Wymyslo,* and the extensive authority cited in both cases to be highly persuasive, leading to the undeniable conclusion that same-sex couples fulfill all four factors to be considered a suspect or quasi-suspect classification. *See respectively*, SA-13-CA-00982-OLG, 2014 WL 715741, *12 (W.D. Tex. Feb. 26, 2014) and 962 F. Supp.2d 968, 987-88 (S.D. Ohio 2013) (internal citations omitted). Therefore, at a minimum, heightened scrutiny must be applied to this Court's review of the Arkansas marriage laws.

Regardless of the level of review required, Arkansas's marriage laws discriminate against same-sex couples in violation of the Equal Protection Clause because they do not advance any conceivable legitimate state interest necessary to support even a rational basis review. Under this standard, the laws must proscribe conduct in a manner that is rationally related to the achievement of a legitimate governmental purpose. *See Vance v. Bradley,* 440 U.S. 93, 97 (1979). "[S]ome objectives ... are not legitimate state interests" and, even when a law is justified by an ostensibly legitimate purpose, "[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *Cleburne,* 473 U.S. at 446–47.

At the most basic level, by requiring that classifications be justified by an independent and legitimate purpose, the Equal Protection Clause prohibits classifications from being drawn for "the purpose of disadvantaging the group burdened by the law." *Romer,* 517 U.S. at 633; *see also United States v. Windsor*, 570 U.S. ---, 133 S.Ct. 2675 (2013); *Cleburne,* 473 U.S. at 450; Rational basis review is a deferential standard, but it "is not a toothless one". *Mathews v. Lucas,* 427 U.S. 495, 510 (1976).

The Supreme Court invoked this principle most recently in *Windsor* when it held that the principal provision of the federal Defense of Marriage Act ("DOMA") violated equal protection guarantees because the "purpose and practical effect of the law ... [was] to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages." *Windsor,* 570 U.S. ---, 133 S.Ct. at 2693. The case at bar and many around the country have since challenged state laws that ban same-sex marriage as a result of that decision. *See e.g., De Leon,* 2014 WL 715741; *Lee v. Orr,* No. 13–cv–8719, 2014 WL 683680 (N.D. Ill. Feb. 21, 2014); *Bostic v. Rainey,* 970 F. Supp.2d 456 (E.D. Va. Feb. 13, 2014); *Bourke,* ——F.Supp.2d ——, 2014 WL 556729 (W.D. Ky. Mar. 19, 2013); *Bishop v. United States ex rel. Holder,* 962 F.Supp.2d 1252 (N.D. Okla. 2014); *Obergefell,* 962 F. Supp.2d 968; *Kitchen v. Herbert,* 961 F.Supp.2d 1181 (C.D. Utah 2013).

Edith Windsor and Thea Spyer were a same-sex couple that married in Canada and lived in New York, a state that recognizes same-sex marriages. When Spyer died, Windsor attempted to claim the estate tax exemption, but DOMA prevented her from doing so, and she filed suit to obtain a $363,053 tax refund from the federal government.

In the *Windsor* opinion, Justice Kennedy explained how the strict labels placed upon the definition of a marriage have begun to evolve:

> It seems fair to conclude that, until recent years, many citizens had not even considered the possibility that two persons of the same sex might aspire to occupy the same status and dignity as that of a man and woman in a lawful marriage. For marriage between a man and a woman no doubt had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization. That belief, for many who have long held it, became even more urgent, more cherished when challenged. For others, however, came the beginnings of a new perspective, a new insight.

Id. at 2689.

He further points out how this restriction on marriage impacts not only the individuals involved but also their families:

> This places same-sex couples in an unstable position of being in a second tier marriage. The differentiation demeans the couple, whose moral and sexual choices the Constitution protects and whose relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.

Id. at 2694 (citation omitted).

The Court concluded that this impact deprived a person of liberty protected by the Fifth Amendment and held that DOMA is unconstitutional.

> While the Fifth Amendment itself withdraws from Government the power to degrade or demean in the way

> this law does, the equal protection guarantee of the Fourteenth Amendment makes that Fifth Amendment right all the more specific and all the better understood and preserved.

Id. at 2695.

Since *Windsor*, a Virginia federal district court has considered the constitutionality of the Virginia law that banned same-sex marriages and found that the laws "fail to display a rational relationship to a legitimate purpose, and so must be viewed as constitutionally infirm under even the least onerous level of scrutiny." *Bostic*, 970 F. Supp. 2d at 482. The court explained, "Justice has often been forged from fires of indignities and prejudices suffered. Our triumphs that celebrate the freedom of choice are hallowed. We have arrived upon another moment in history when "We the People" becomes more inclusive, and our freedom more perfect." *Id.* at 483-484. The *Bostic* opinion includes a statement made by Mildred Loving on the fortieth anniversary of *Loving v. Virginia,* 388 U.S. 1 (1967). Her statement further demonstrates how definitions and concepts of marriage can change and evolve with time:

> We made a commitment to each other in our love and loves, and now had the legal commitment, called marriage, to match. Isn't that what marriage is? ... I have lived long enough now to see big changes. The older generations' fears and prejudices have given way, and today's young people realize that if someone loves someone they have a right to marry. Surrounded as I am now by wonderful children and grandchildren, not a day goes by that I don't think of Richard and our love, our right to marry, and how much it meant to me to have that freedom to marry the person precious to me, even if others thought he was the "wrong kind of person" for me to marry. I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry. Government has no business imposing some people's religious beliefs over others... I support the freedom to marry for all. That's what *Loving*, and loving, are all about.

Id. at 1 (quoting Mildred Loving, "Loving for All").

In *Kitchen v. Herbert*, a Utah federal district court also held that its state's constitutional ban of same-sex marriage violated plaintiffs' federal due process and equal protection rights. 961 F.Supp.2d at 1216. The Court explained:

> Rather than protecting or supporting the families of opposite-sex couples, Amendment 3 perpetuates inequality by holding that the families and relationships of same-sex couples are not now, nor ever will be, worthy of recognition. Amendment 3 does not thereby elevate the status of opposite-sex marriage; it merely demeans the dignity of same-sex couples. And while the State cites an interest in protecting traditional marriage, it protects that interest by denying one of the most traditional aspects of marriage to thousands of its citizens: the right to form a family that is strengthened by a partnership based on love, intimacy, and shared responsibilities. The Plaintiffs' desire to publicly declare their vows of commitment and support to each other is a testament to the strength of marriage in society, not a sign that, by opening its doors to all individuals, it is in danger of collapse.

Id. at 1215-1216.

The defendants offer several rationalizations for the disparate treatment of same-sex couples such as the basic premise of the referendum process, procreation, that denying marriage protections to same-sex couples and their families is justified in the name of protecting children, and continuity of the laws and tradition. None of these reasons provide a rational basis for adopting the amendment.

The state defendants contend that this court must follow the last pronouncement by Arkansas voters, as long as the ban does not violate a fundamental right of the United States Constitution. They argue that the Arkansas Constitution can be amended by the people, and three out of four voters in the 2004 general election said that same-sex couples cannot marry. This position is unsuccessful from both a federal and state constitution perspective.

Article 2, § 2 of the Arkansas Constitution guarantees Arkansans certain inherent and inalienable rights, including the enjoyment of life and liberty and the pursuit of happiness.

> All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing, and protecting property, and reputation; and of pursuing their own happiness, To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

ARK. CONST., art 2, § 2.

In this case, Article 2 § 2 was left intact by the voters, but in Amendment 83 they singled out same-sex couples for the purpose of disparate treatment. This is an unconstitutional attempt to narrow the definition of equality. The exclusion of a minority for no rational reason is a dangerous precedent.

Furthermore, the fact that Amendment 83 was popular with voters does not protect it from constitutional scrutiny as to federal rights. "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *W.Va. State Bd. of Educ. v. Barnette,* 319 U.S. 624, 638 (1943). The Constitution guarantees that all citizens have certain fundamental rights. These rights vest in every person over whom the Constitution has authority and, because they are so important, an individual's fundamental rights "may not be submitted to vote; they depend on the outcome of no elections." *Id. at 638.*

Defendants also cite *Donaldson v. State*, 367 Mont. 228 (2012), for the proposition that procreation can be a legitimate rational basis for the upholding of a ban on same-sex marriages.

> The replication, by children, of the procreative marital relationship as role-modeled by their married parents not only perpetuates the race-sustaining function by populating the race, but also builds extended families which share hereditary characteristics of a common gene pool.

Id at 237.

In a 1955 decision, the Supreme Court of Appeals of Virginia accepted the state's legitimate purposes "to preserve the racial integrity of its citizens," to prevent "the corruption of blood," "a mongrel breed of citizens" and "the

obliteration of racial pride." *Naim v. Naim*, 197 Va. 80, 90 (1955). In a comparison of *Donaldson* to *Naim*, the state's purposes sound eerily similar.

Procreation is not a prerequisite in Arkansas for a marriage license. Opposite-sex couples may choose not to have children or they may be infertile, and certainly we are beyond trying to protect the gene pool. A marriage license is a civil document and is not, nor can it be, based upon any particular faith. Same-sex couples are a morally disliked minority and the constitutional amendment to ban same-sex marriages is driven by animus rather than a rational basis. This violates the United States Constitution.

Even if it were rational for the state to speculate that children raised by opposite-sex couples are better off than children raised by same-sex couples, there is no rational relationship between the Arkansas same-sex marriage bans and the this goal because Arkansas's marriage laws do not prevent same-sex couples from having children. The only effect the bans have on children is harming those children of same-sex couples who are denied the protection and stability of parents who are legally married.

The defendants also argue that *Windsor* is a federalism issue and claim the states have the authority to regulate marriage as a matter of history and tradition, and that DOMA interfered with New York's law allowing same-sex marriage. The state defendant points to *Baker v. Nelson*, as precedent for upholding the application of Amendment 83 to the Arkansas Constitution. 191 N.W.2d 185 (1971). In that case, the United States Supreme Court dismissed an appeal from the Minnesota Supreme Court for lack of a substantial federal question. 409 U.S. 810 (1972). While a summary disposition is considered precedential, the courts that have considered this issue since *Windsor*, *supra.*, have found that doctrinal developments render the decision in *Baker* no longer binding. *Bostic*, 970 F. Supp. 2d at 469.

Tradition alone cannot form a rational basis for a law. *Heller v. Doe,* 509 U.S. 312, 326 (1993) (stating that the "[a]ncient lineage of a legal concept does not give it immunity from attack for lacking a rational basis."). The fact that a particular discrimination has been "traditional" is even more of a reason to be skeptical of its rationality. "The Court must be especially vigilant in evaluating the rationality of any classification involving a group that has been subjected to a tradition of disfavor for a traditional classification is more likely to be used without pausing to consider its justification than is a newly created classification." *Cleburne,* 473 U.S. at 454 n. 6 (Stevens, J., concurring). Just as the tradition of banning interracial marriage represented the embodiment of deeply-held prejudice and long-term racial discrimination in *Loving,* 388 U.S. at 1, the same is true here

with regard to Arkansas's same-sex marriage bans and discrimination based on sexual orientation.

The traditional view of marriage has in the past included certain views about race and gender roles that were insufficient to uphold laws based on these views. *See Lawrence v. Texas,* 539 U.S. 558, 577–78 (2003) ("[N]either history nor tradition could save a law prohibiting miscegenation from constitutional attack") (citation omitted). And, as Justice Scalia has noted in dissent, " 'preserving the traditional institution of marriage' is just a kinder way of describing the State's *moral disapproval* of same-sex couples." *Lawrence,* 539 U.S. at 601 (Scalia, J., dissenting).

Defendants contend that the Eighth Circuit decision in *Citizens for Equal Protection v. Bruning*, 455 F. 3rd 859 (2006) is dispositive of this issue because it upheld a Nebraska constitutional ban on same-sex marriage. However, both the *Donaldson* and *Bruning* decisions predate *Windsor* where the United States Supreme Court held:

> DOMA instructs all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others. The federal statute is invalid, **for no legitimate purpose overcomes the purpose and effect to disparage and to injure** these whom the State, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment. This opinion and its holding are confined to those lawful marriages.

Windsor at 2696 (emphasis added).

The state defendant attempts to distinguish *Windsor* by claiming that DOMA is related only to states that have allowed same-sex marriages. However:

> The Constitution's guarantee of equality "must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot" justify disparate treatment of that group.

Dep't of Agriculture v. Moreno, 413 U.S. 528, 534-535 (1973).

The issues presented in the case at bar are of epic constitutional dimensions—the charge is to reconcile the ancient view of marriage as between

one man and one woman, held by most citizens of this and many other states, against a small, politically unpopular group of same-sex couples who seek to be afforded that same right to marry.

Attempting to find a legal label for what transpired in *Windsor* is difficult but as United States District Judge Terence C. Kern wrote in *Bishop v. United States*, "this court knows a rhetorical shift when it sees one." Judge Kern applied deferential rational review and found no "rational link between exclusion of this class from civil marriage and promotion of a legitimate governmental objective." 962 F. Supp. 2d 1252, 1296 (2014).

> The strength of our nation is in our freedom which includes, among others, freedom of expression, freedom of religion, the right to marry, the right to bear arms, the right to be free of unreasonable searches and seizures, the right of privacy, the right of due process and equal protection, and the right to vote regardless of race or sex.
>
> The court is not unmindful of the criticism that judges should not be super legislators. However, the issue at hand is the fundamental right to marry being denied to an unpopular minority. Our judiciary has failed such groups in the past.

In *Dred Scott v. John Sandford*, Chief Justice Taney narrowed this issue by contemplating when and if a person can attain certain fundamental rights and freedoms that were not originally granted to that individual or group of individuals. 60 U.S. 393 (1856). Scott, a slave whose ancestors were brought to America on a slave ship, attempted to file a case in federal court to protect his wife and children. In the majority opinion, Chief Justice Taney pondered:

> > The question is simply this: Can a negro, whose ancestors were imported in to this country, and sold as slaves, become a member of the political community formed and brought into existence by the constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.
>
> *Id.* at 403.

The Court majority in 1856 relied on a strict interpretation of the intent of the drafters to come to their decision.

> We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, there were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

Id. at 404-405.

One hundred years later, in *Loving*, the Supreme Court was still struggling with race in a miscegenation statute from the state of Virginia where interracial marriages were considered a criminal violation. The Lovings were convicted and sentenced to one year in jail suspended for twenty-five years on the condition that they leave the state for twenty-five years. 388 U.S. at 1. The trial judge stated in his opinion that:

> Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages, The fact that he separated the races shows that he did not intend for the races to mix.

Id. at 2 (citation omitted).

The U.S. Supreme Court disagreed with the trial court and in their opinion, Chief Justice Warren stated that "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." *Id.* at 12.

Our freedoms are often acquired slowly, but our country has evolved as a beacon of liberty in what is sometimes a dark world. These freedoms include a right to privacy.

The United States Supreme Court observed:

> We deal with a right of privacy older than the BILL OF RIGHTS—older than our political parties, older than our school system. Marriage is a coming together for the

> better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

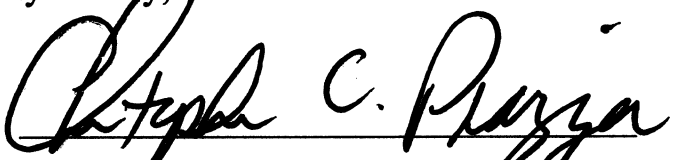
Griswold v. Connecticut, 381 U.S. 479, 486 (1965).

The Arkansas Supreme Court has previously addressed the right to privacy as it involves same-sex couples. In *Jegley v. Picado*, the Arkansas Supreme Court struck down the sodomy statute as unconstitutional in violating Article 2, § 2 and the right to privacy. 349 Ark. 600, 638 (2002). Justice Brown, in *Arkansas Dep't of Human Services v. Cole*, noted "that Arkansas has a rich and compelling tradition of protecting individual privacy and that a fundamental right to privacy is implicit in the Arkansas Constitution." 2011 Ark. 145, 380 S.W. 3d. 429, 435 (2011) (citing *Jegley*, *id.* at 632). The Arkansas Supreme Court applied a heightened scrutiny and struck down as unconstitutional an initiated act that prohibited unmarried opposite-sex and same-sex couples from adopting children. *Id* at 442. The exclusion of same-sex couples from marriage for no rational basis violates the fundamental right to privacy and equal protection as described in *Jegley* and *Cole*, *supra*. The difference between opposite-sex and same-sex families is within the privacy of their homes.

THEREFORE, THIS COURT HEREBY FINDS the Arkansas constitutional and legislative ban on same-sex marriage through Act 144 of 1997 and Amendment 83 is unconstitutional.

It has been over forty years since Mildred Loving was given the right to marry the person of her choice. The hatred and fears have long since vanished and she and her husband lived full lives together; so it will be for the same-sex couples. It is time to let that beacon of freedom shine brighter on all our brothers and sisters. We will be stronger for it.

IT IS SO ORDERED this 9th day of May, 2014



CHRISTOPHER CHARLES PIAZZA

CIRCUIT COURT JUDGE