

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.	§	

**PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION**

This Brief is filed in support of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction, which Motion is necessitated by Defendant's failure and refusal to issue a marriage license to Plaintiffs following the issuance of the Supreme Court's decision in *Obergefell v. Hodges*, 576 U.S. ___, No. 14-556 (June 26, 2015).

I. INTRODUCTION

1. Plaintiffs James (Jim) Cato and Jody (Joe) Stapleton have waited 27 years to get married. Defendant has failed and refused to grant them a marriage license despite the Supreme Court's decision in *Obergefell*. Plaintiffs now seek an order from this Court immediately restraining, temporarily and preliminarily, Defendant Katie Lang, in her Official Capacity as Hood County Clerk, and her employees in the Hood County Clerk's Office, from violating the Fourteenth Amendment to the United States Constitution, and ordering Defendant (1) to accept the payment of the \$83 fee that Plaintiffs offered when they tendered their completed marriage license application to Defendant's office on July 2, 2015, but which Defendant refused; and (2) issue Plaintiffs a Marriage License.

2. Defendant's refusal to issue a marriage license to Plaintiffs violates their constitutional rights, and Defendant has no valid justification for her continuing failure to issue the marriage license Plaintiffs seek. Plaintiffs' requests for immediate temporary relief should be granted, based upon the pleadings, the evidence submitted in support of the Motion, and the authorities and arguments presented herein.

II. FACTS

A. The Parties

3. 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. **App. at 3.**

4. 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. **App. at 3.**

5. Defendant Katie Lang is the County Clerk of Hood County, Texas. She is required, under state law, to issue marriage licenses to qualified individuals.

B. Factual Support

6. 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. **App. at 3.**

7. On Monday, June 29, 2015, Jim first contacted the Hood County Clerk's office to request an application for a marriage license. The person answering the phone, who Jim believes was Virginia, the assistant deputy clerk (who refused to give her last name), and the same person he spoke with each time he called that office, stated that the Hood County Clerk's office would not provide an application or issue a marriage license to same-sex couples. **App. at 3.**

8. Sometime after June 26, 2015, and before June 30, 2015, Jim reviewed the Hood County Clerk's official website, and it stated that the Hood County Clerk's office would not issue marriage licenses to same-sex couples. **App. at 4.**

9. On Tuesday, June 30, 2015, Jim again called the Hood County Clerk's office to request an application for a marriage license. Assistant Deputy Clerk Virginia again told him that the office was not issuing marriage licenses to same-sex couples. **App. at 4, 5.**

10. On June 30, 2015, the Hood County Clerk website was updated to say: "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." **App. at 5.**

11. So the next day, on July 1, 2015, Jim called the Hood County Clerk's office 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 tell Jim exactly when the Clerk's office would issue a

marriage license to Joe and Jim, and Jim was concerned that in three weeks or four weeks he would get another run-around, but would not get a marriage license. **App. at 5.**

12. On Thursday, July 2, 2015, Joe and Jim went in person 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 "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." **App. at 5, 6.**

13. After seeing the notice on the door, Jim and Joe authorized their attorneys to send a demand letter requesting immediate issuance of their marriage license. **App. at 6.**

14. Joe and Jim tried one more time to get a license. At approximately 3:45 p.m. on Thursday, July 2, Joe and Jim returned to the Clerk's office to request their license. Several members of the media, who had been present for an earlier rally, followed them into the Clerk's office. Joe and Jim asked to apply for a marriage license. Assistant Deputy Clerk Virginia, whose voice Jim recognized from their phone calls, again told them that the office would not issue them a marriage license, this time explaining it was because their office did not have the proper forms. Joe and Jim 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. 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 Joe and Jim were not media, but instead taxpayers of Hood County, there to get a marriage license, but the Clerk said they needed to leave as well, which was humiliating. Clerk Lang also apparently called the Sheriff's Department, because by

the time Joe and Jim left her office, approximately half a dozen deputy sheriffs had arrived to stand guard outside and immediately inside the Clerk's office. **App. at 6.**

15. At approximately 4:15 p.m. on Thursday, July 2, attorneys Jan Soifer and Austin Kaplan arrived at the Hood County Clerk's office to hand-deliver a copy of the demand letter to Defendant. After some discussion, Joe and Jim went back into the Clerk's office, where Virginia asked them for their drivers' licenses and asked them to write down their social security numbers, dates of birth, and places of birth, which they did. Virginia 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 will be husbands, Virginia responded with an insulting comment that they could not both be husbands. **App. at 6.**

16. At that point, Attorney Jan Soifer reminded Virginia 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, and so Virginia asked Joe and Jim to fill out the form they had printed and brought with them, and which she had previously refused to accept. They filled out that form, but then Virginia refused to take their 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. **App. at 6.**

17. 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 Joe and Jim because they are a same-sex couple, and she said that she had to wait for her vendor to supply revised marriage certificate forms that could be used for same-gender couples. **App. at 7.**

18. Joe and Jim found the entire process to be humiliating and degrading, and have no reason to believe that they would receive a marriage license without having to file a lawsuit to get it. **App. at 7.**

III. LEGAL ARGUMENT

19. Under Fed. R. Civ. P. 65, to obtain a temporary restraining order, Plaintiffs must demonstrate: (1) a substantial likelihood of success on the merits, (2) a substantial threat they will suffer irreparable injury if an injunction is denied, (3) that the threatened injury outweighs any damage that an injunction might cause defendants, and (4) that an injunction will not disserve the public interest. *Planned Parenthood of Houston & Southeast Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005).

A. Plaintiffs Are Likely to Prevail on the Merits of Their Claim

Plaintiffs are likely to prevail on the merits of their Claim because the *Obergefell* decision mandates it: “The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States.” *Obergefell* at 28.

B. Plaintiffs Will Suffer Irreparable Harm if the Court Declines to Issue a Temporary Restraining Order

Federal courts at all levels have recognized that violation of constitutional rights constitutes irreparable harm as a matter of law. *See, e.g., Cohen v. Coahoma County, Miss.*, 805 F. Supp. 398, 406 (N.D. Miss. 1992). An injury is irreparable if money damages cannot compensate for the harm. *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 332 (5th Cir. 1981). The Supreme Court has stated: “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976); *see also* Charles Alan Wright, Arthur R. Miller & Mary Kay Kane,

FEDERAL PRACTICE AND PROCEDURE § 2948.1 (2d. ed. 1995) (“When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”)

C. The Irreparable Harm Suffered by Plaintiffs Strongly Outweighs Defendant’s Interest in Delaying Issuing a License

Defendant has no legitimate interest in delaying the issuance of a marriage license to Plaintiffs, who have been waiting 27 years to get married. Contrary to Defendant’s contention, the form currently used by Hood County for Marriage Licenses is not gender-specific and is perfectly acceptable for use with Plaintiffs. **App. at 41.** There is no need to wait three weeks for Defendant’s vendor to produce and deliver new forms. Consequently, the harm to Plaintiffs of delay strongly outweighs Defendant’s interest in delaying the issuance of the license.

D. Granting this Temporary Restraining Order and Temporary Injunction Will Serve the Public Interest.

Nothing can serve the public interest more than for this Court to issue an order admonishing the Defendant that public officials who have a duty to uphold the Constitution, and in fact have sworn to do so, cannot frivolously choose to ignore the Supreme Court of the United States and create their own “Rule of Law.”

IV. CONCLUSION

Plaintiffs respectfully request that this Court issue a Temporary Restraining Order and Preliminary Injunction, and grant such other relief to which they may be entitled.

Respectfully submitted,

/s/ Jan Soifer
Jan Soifer
State Bar No. 18824530
Patrick J. O’Connell
State Bar No. 15179900
O’CONNELL & SOIFER LLP
98 San Jacinto Blvd., Suite 540
Austin, Texas 78701
Telephone: (512) 222-0444

Fax: (512) 222-0422
jsoifer@oconnellsoifer.com
poconnell@oconnellsoifer.com

/s/ Austin Kaplan

Austin Kaplan
State Bar No. 24072176
KAPLAN LAW FIRM, PLLC
98 San Jacinto Blvd., Suite 540
Austin, Texas 78701
Telephone: (512) 553-9390
Fax: (512) 692-2788
akaplan@kaplanlawatx.com

ATTORNEYS FOR PLAINTIFFS

Certificate of Service

This is to certify that I have served this Brief on Defendant by forwarding a copy to Hood County Attorney Lori Kaspar, by email to lkaspar@co.hood.tx.us and to Liberty Institute counsel Chelsey Youman, by email to cyouman@libertyinstitute.org.

/s/ Jan Soifer

Jan Soifer