

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

OFFICER PAMELA LEE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
-vs-)	
)	
MIKE PENCE, in his official capacity)	Cause No: 1:14-cv-406-RLY-TAB
as Governor of the State of Indiana, <i>et al.</i>)	
)	
Defendants.)	

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Officer Pamela Lee, Candace Batten-Lee, Officer Teresa Welborn, Elizabeth Piette, Battalion Chief Ruth Morrison, Martha Leverett, Sergeant Karen Vaughn-Kajmowicz, Tammy Vaughn-Kajmowicz, J.S.V., T.S.V. and T.R.V. by their Parents and Next Friends, Sergeant Karen Vaughn-Kajmowicz and Tammy Vaughn-Kajmowicz, by counsel, hereby allege as follows:

INTRODUCTION

Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to challenge the constitutionality under the United States Constitution of Indiana Code § 31-11-1-1 and its voiding of their marriages to persons of the same sex, despite plaintiffs' marriages having been lawfully entered

into under the laws of a state other than Indiana. Said challenge to Indiana Code § 31-11-1-1 is both facial and as applied to plaintiffs.

Indiana Code § 31-1 1-1-1 provides as follows:

- (a) Only a female may marry a male. Only a male may marry a female.
- (b) A marriage between persons of the same gender is void in Indiana even if the marriage is lawful in the place where it is solemnized.

2. Indiana law provides that "[t]he validity of the marriage, being governed by the law of the place of its celebration, must be recognized in Indiana as a matter of comity." *Gunter v. Dealer's Transport Company*, 120 Ind. App. 409; 91 N.E.2d 377, 379 (Ind. Ct. App. 1950).

3 But under comity principles, Indiana is not required to recognize a marriage solemnized in another state if the marriage violates Indiana's public policy. *Mason v. Mason*, 775 N.E.2d 706, 709 (Ind. Ct. App. 2002) (while marriage between first cousins under the age of 65 is void in Indiana, marriage will be recognized by Indiana if the first cousins marry in a state where such marriages are recognized, as there is no Indiana statute that articulates a public policy against the marriage of first cousins).

4. Under Indiana law, the only out-of-state marriages for which there is a public policy voiding the marriage upon returning to Indiana

are those marriages between persons of the same sex and marriages entered into out of state so as to evade the prohibition of marrying while mentally incompetent, drunk or on drugs. *See*, I.C. § 31-1 1-8-6.

5. Indiana's law restricting marriage to opposite-sex couples publicly stigmatizes persons in a same-sex marriage and sends a hideous message to their children by implying that persons entering into same-sex marriages are equivalent to marriages entered into by the mentally incompetent, the drunk or the drugged.

6. Indiana's refusal to recognize same-sex marriage solemnized in another state denies plaintiffs "a dignity and status of immense import." *United States v. Windsor*, 133 S.Ct. 2675, 2692 (2013). Moreover, they are stigmatized and relegated to a second-class status by having their respective marriages declared void by Indiana, which suggests that their relationships are "unworthy" of recognition. *Id.* at 2694.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 because this suit raises federal questions pursuant to 42 U.S.C. § 1983. Plaintiffs seek both injunctive relief and a declaratory judgment pursuant to 42 U.S.C. § 2201.

8. Venue is proper in the Indianapolis Division of the Southern District of Indiana under 28 U.S.C. § 139 1(b) because

defendants reside or have their principal offices in this district.

PARTIES

9. Defendant Mike Pence is the Governor of the State of Indiana. In his official capacity, he is the chief executive officer of Indiana and is, pursuant to Article V, Section 16 of the Indiana Constitution, responsible for the faithful execution of the laws of Indiana, including I. C. § 31-11-1-1, the law that excludes same-sex couples from having their out-of-state marriage recognized in Indiana. Governor Pence is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this complaint.

10. Defendants Brian Abbott, Chris Atkins, Ken Cochran, Steve Daniels, Jodi Golden, Michael Pinkham, Kyle Rosebrough and Bret Swanson are members of the Board of Trustees of the Indiana Public Retirement System (“INPRS”) who administer the 1977 Police Officers’ and Firefighters’ Pension and Disability Fund (“Pension Fund”) in which Officers Lee and Welborn, Sergeant Vaughn-Kajmowicz and Chief Morrison are participants. Defendant Steve Russo is the executive director of the INPRS. All of these defendants are persons within the meaning of 42 U.S.C. § 1983 and were acting under color of state law at all times relevant to this complaint.

11. All defendants named herein are sued in their official capacities. Each of the defendants, and those subject to their

supervision, direction, and control, intentionally performed, participated in, aided and/or abetted in some manner the acts alleged herein, proximately caused the harm alleged herein, and will continue to injure plaintiffs irreparably if not enjoined from enforcing I. C. § 31-11-1-1.

12. On October 25, 2013, plaintiffs Pamela Lee and Candace Batten- Lee were lawfully married in California, a state that issues marriage licenses to same-sex couples. Officer Lee, a military veteran, has served as a police officer for 22 years, serving the last 19 years with the Indianapolis Metropolitan Police Department.

13. On or about January 27, 2014, Officer Lee made application for the designation of plaintiff Candace Batten-Lee as her spouse and primary beneficiary. The Pension Fund has declined to recognize Ms. Batten-Lee as the spouse of Officer Lee because it claims it is prohibited from doing so under I.C. § 31-11-1-1.

14. On December 13, 2013, plaintiffs Teresa Welborn and Elizabeth J. Piette were lawfully married in Hawaii, a state that issues marriage licenses to same-sex couples. For more than 25 years, Officer Welborn has served as an officer with the Indianapolis Metropolitan Police Department.

16. On or about February 20, 2014, Officer Welborn made application for the designation of plaintiff Elizabeth Piette as her spouse and primary beneficiary. The Pension Fund has declined to recognize

Ms. Piette as the spouse of Officer Welborn because it claims it was prohibited from doing so under I.C. § 31-11-1-1.

17. On September 11, 2013, Chief Morrison and Martha Leverett were married in Montgomery County, Maryland, a state that issues marriage licenses to same-sex couples. Chief Morrison served in the Indianapolis Fire Department for over 27 years before retiring as battalion chief on December 23, 2013.

18. On or about September 18, 2013, Chief Morrison submitted her application for retirement benefits and affirmed under oath that her marital status is that of “married” and that plaintiff Leverett is her lawful spouse. Chief Morrison was informed by the INPRS that Leverett would not be recognized as Chief Morrison’s spouse because of I. C. § 31-11-1-1.

19. On October 25, 2013, Plaintiffs Karen Vaughn-Kajmowicz and Tammy Vaughn-Kajmowicz were lawfully married in Iowa, a state that issues marriage licenses to same-sex couples. Sergeant Vaughn-Kajmowicz, has served as a police officer for 18 years with the Evansville Police Department, most recently working in the Narcotics Division. Plaintiffs Sergeant VaughnKajmowicz and Tammy Vaughn-Kajmowicz are the parents of J. S. V., T. S. V. and T. R. V., each of whom is under the age of seven years. In or around October 2013, Sergeant Vaughn-Kajmowicz made application for the designation of plaintiff Tammy

Vaughn-Kajmowicz as her spouse and primary beneficiary. The Pension Fund has declined to recognize Ms. Vaughn-Kajmowicz as the spouse of Sergeant Vaughn-Kajmowicz because it claims it is prohibited from doing so under I.C. § 31-11-1-1.

COUNT I
Indiana's Refusal to Recognize Plaintiffs' Marriages
Violates the Equal Protection Clause
of the Fourteenth Amendment to the United States Constitution

20. Plaintiffs incorporate by reference the allegations of paragraphs 1- 20.

21. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

22. By refusing to recognize plaintiffs' same-sex marriages that were lawful in the jurisdictions where those marriages were solemnized, defendants are depriving them of the numerous legal protections that are available to opposite sex couples under Indiana law by virtue of marriage.

23. Indiana's refusal to recognize same-sex marriages validly performed in other states infringes on protections offered by the Equal Protection Clause of the Fourteenth Amendment and treats plaintiffs differently because they married persons of the same sex instead of the opposite sex.

25. Officer Wellborn and Battalion Chief Morrison are vested

members and beneficiaries of the Pension Fund.

26. Sergeant Vaughn-Kajmowicz, Officer Welborn and Officer Lee are active duty police officers who would be covered by the provisions of the Pension Fund if they are killed in the line of duty.

27. Sergeant Vaughn-Kajmowicz, Officer Welborn and Officer Lee are active duty police officers who would be covered by the provisions of the Pension Fund if they were to die while on active duty.

28. Under the Pension Fund, if a police officer dies in the line of duty, then the "surviving spouse is entitled to a monthly benefit during the spouse's lifetime." I.C. § 36-8-8-14.1. It is not necessary that the police officer be vested in the Pension Fund to be covered by this provision.

29. Defendants recognize the spouses of police officers married to persons of the opposite sex and enter those spouses as spouses in the officers' records maintained by the Pension Fund. If such officers die in the line of duty, their opposite-sex spouse is entitled to be paid a monthly benefit during the spouse's lifetime.

30. Because of I. C. § 31-11-1-1, defendants have refused to enter the same-sex spouses of Sergeant Vaughn-Kajmowicz, Officer Welborn and Officer Lee as designated surviving spouse beneficiaries in the officers' records, making their spouses ineligible to claim this benefit if Sergeant Vaughn-Kajmowicz, Officer Lee or Officer Welborn should die in

the line of duty.

31. Under the Pension Fund, if a police officer is married to a person of the opposite sex and dies in the line of duty, the Pension Fund will pay that officer's spouse a lump sum, tax free, of \$150,000.00. See I.C. § 36-8-8-20(c).

32. Because of I. C. § 31-11-1-1, defendants have refused to designate the spouses of Sergeant Vaughn-Kajmowicz, Officer Lee and Officer Welborn as designated spouse beneficiaries in the officers' records as maintained by the Pension Fund, making their spouses ineligible to claim the lump sum payment should Sergeant Vaughn-Kajmowicz, Officer Lee or Officer Welborn die in the line of duty.

33. Under the Pension Fund, if a police officer is married to a person of the opposite sex and dies while on active duty, the Pension fund will pay that officer's surviving spouse a monthly benefit. See I.C. § 36-8-8-13.8(c).

34. Because of I. C. § 31-11-1-1, defendants have refused to designate the spouses of Sergeant Vaughn-Kajmowicz, Officer Lee and Officer Welborn as designated spouse beneficiaries, making them ineligible to claim the monthly benefit should Sergeant Vaughn-Kajmowicz, Officer Lee or Officer Welborn die while on active duty.

35. Should Sergeant Vaughn-Kajmowicz die while on active duty, her dependent children will receive the monthly benefit but as the

surviving mother of the children will not receive a benefit, the total of the family's monthly benefit will be significantly less than a similarly situated family where the officer's spouse was of the opposite sex.

36. Under the Pension Fund, if a retired firefighter dies while receiving retirement, the "surviving spouse is entitled to a monthly benefit." I.C. § 36-8- 8-13.8. If a retired firefighter is married to a person of the opposite sex, the Pension Fund will pay the spouse of that retired firefighter a monthly benefit.

37[a]. Because of I. C. § 31-11-1-1, defendants have refused to designate the spouse of retired Chief Morrison as a spouse beneficiary thereby making her ineligible to claim the monthly benefit should she be predeceased by Chief Morrison.

37[b]. Without certain knowledge of what benefits will be made available to their surviving spouse, plaintiffs cannot do necessary financial and estate planning. If plaintiffs wish to provide for the same level of benefits provided by the pension fund to surviving spouses who are the opposite sex of the deceased officer or firefighter, they must pay an additional amount to private investment plans, a financial burden not imposed upon same opposite-sex couples.

38[a]. In the case of the children, J. S. V., T. S. V. and T. R. V., while the children will qualify for a monthly benefit, their stay-at-home mother, Tammy Vaughn-Kajmowicz, will not receive a benefit. Thus, her burden to

care for her children as the surviving spouse of Sergeant Vaughn-Kajmowicz will be more costly and difficult than the financial burden of an opposite-sex spouse of a deceased police officer with children.

38[b]. Additionally, by refusing to recognize the plaintiffs' lawful marriages from other states, Indiana law as administered and enforced by defendants deprives same-sex married couples of numerous legal protections that are available to opposite-sex married couples by virtue of marriage. By way of example:

- a. A widow or widower of an opposite-sex spouse is entitled to 50% to 100% of his or her deceased spouse's estate if the spouse died intestate. I. C. § 29-1-2-1(b). Because of I. C. § 31-11-1-1, same-sex surviving spouses in this situation receive nothing.
- b. If an opposite-sex spouse becomes incapacitated, her spouse may be ordered by a court to support that spouse during the period of incapacity. I. C. § 31-15-7-2. Because of I. C. § 31-11-1-1, plaintiffs are not afforded this protection by Indiana law.
- c. Because of I. C. § 31-11-1-1, Indiana's divorce laws do not apply to same-sex spouses.
- d. Because of I. C. § 31-11-1-1, Indiana requires same-sex couples who file federal returns with a married filing status

to file their Indiana income tax returns with a filing status of single, thus requiring plaintiffs to complete a "sample" federal return entering information as if they are each single, as a basis for their Indiana return, at additional cost and inconvenience.

39. Same-sex married couples are excluded from these and many other legal protections and obligations provided for opposite-sex married couples under Indiana law. For example, the publication "More than Just a Couple - A Compendium of the Rights and Responsibilities of Civil Marriage in the Indiana Code" was compiled by the LGBT project at the Indiana University Maurer School of Law and identifies 614 different provisions in the Indiana Code that "are legally and linguistically tied to civil marriage, family and spousal relationships." <http://www.indianaequalityaction.org/wordpress/wp/content/uploads/2012/11/More-Than-Just-a-Couple.pdf> (Last viewed on Mar. 4, 2014). Because plaintiffs are married to persons of the same sex, they cannot avail themselves of any of the protections, rights or responsibilities that Indiana imposes upon persons who are married to someone of the opposite sex.

40. By refusing to recognize the plaintiffs' lawful, out-of-state marriages, Indiana, acting through the defendants and pursuant to I. C. § 31-11-1-1, disadvantages, harms and stigmatizes plaintiffs solely

because their spouses are of the same sex instead of the opposite sex.

41. Because defendants refuse to recognize the plaintiffs' lawful out-of-state marriages by virtue of I. C. § 31-11-1-1, their children are harmed and stigmatized by the treatment of their family because it is headed by two persons of the same sex versus a family headed by a man and a woman.

42. I. C. § 31-11-1-1 tells the plaintiffs and their children that their marriages -- and their families -- are not valued in the same manner as opposite-sex marriages or single-parent families.

43. By refusing to recognize the plaintiffs' lawful out-of-state marriages, defendants, acting pursuant to I. C. § 31-11-1-1, deny plaintiffs significant legal protections, benefits and a "dignity and status of enormous import." *Windsor*, 133 S. Ct. at 2692.

44. By refusing to recognize plaintiffs' marriages validly entered into elsewhere, defendants, acting under color of I. C. § 31-11-1-1, deprive plaintiffs of the rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

COUNT II
Indiana's Refusal to Recognize Plaintiffs' Marriages
Violates the Due Process Clause of the Fourteenth Amendment
to the United States Constitution

45. Plaintiffs incorporate by reference the allegations of paragraphs 1- 44.

46. The Fourteenth Amendment to the United States Constitution

guarantees to all citizens due process of law.

47. Marriage is a fundamental right. Choices regarding marriage, like choices about other aspects of family life, are a central part of the liberty protected by the Due Process Clause.

48. Plaintiffs, once they have been validly married in a state which authorizes same-sex marriage, have a fundamental right to remain married and a fundamental right to have their marriage recognized.

49. Plaintiffs, as persons in valid, lawful marriages have a liberty interest in their marital status that is protected by the Due Process Clause of the Fourteenth Amendment, regardless of where they choose to live in the United States as a married couple.

50. Plaintiffs, as persons in valid, lawful marriages have a protected property interest in maintaining their lawful marital status and the comprehensive protections and mutual obligations that marriage provides.

51. Plaintiffs also have a fundamental right to preserve their lawful marital status as they choose to travel in and out of Indiana.

52. Ind. Code § 31-1 1-1-1 denies the plaintiffs their fundamental right to have their lawful marriages recognized and their fundamental right to remain married by voiding, without any semblance of due process, the marriages they validly entered into in jurisdictions other than Indiana and thus denies them the myriad

benefits, privileges and rights of marriage available under Indiana law.

53. The voiding by defendants acting pursuant to I. C. § 31-1 1-1-1 of plaintiffs' marriages lawfully entered into in jurisdictions other than Indiana denies the plaintiffs substantive due process by infringing upon their fundamental rights to have their lawful marriages recognized and to remain married and thus denies them the myriad benefits, privileges and rights of marriage available under Indiana law.

54. Defendants' refusal to recognize plaintiffs' respective marriages entered into in other jurisdictions where those marriages are valid and lawful, and its voiding of those marriages by operation of law, violates the Due Process Clause.

DECLARATORY AND INJUNCTIVE RELIEF
28 U.S.C. §§ 2201 and 2202;
Federal Rules of Civil Procedure, Rules 57 and 65

55. Plaintiffs incorporate by reference the allegations of paragraphs 1- 54.

56. This case presents an actual controversy because defendants' present and ongoing denial of equal treatment to plaintiffs; the infringement of plaintiffs' fundamental rights; and the denial of due process to plaintiffs; and, an infringement of plaintiffs' rights promised by the Full Faith and Credit Clause, subjects them to serious and immediate harms, including ongoing emotional distress and stigma, warranting the issuance of a judgment declaring that I. C. § 33-11-1-1

violates the Due Process Clause and/or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

57. A favorable decision enjoining defendants from further constitutional violations, and mandating them to recognize plaintiffs' marriages, would redress and prevent the irreparable injuries to plaintiffs which they have identified, and for which they have no adequate remedy at law or in equity.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

- a. Enter a declaratory judgment that Ind. Code § 31-1 1-1-1 on its face and as applied to plaintiffs violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- b. Enter a declaratory judgment that Ind. Code § 31-1 1-1-1 on its face and as applied to plaintiffs violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
- c. Enter a declaratory judgment that Ind. Code § 31-1 1-1-1 on its face and as applied to plaintiffs violates the Full Faith and Credit Clause of the United States Constitution;
- d. Enter a permanent injunction directing defendants to recognize plaintiffs' marriages as valid and lawful within the State of Indiana and to administer the Pension Fund so as to provide the same benefits for all married couples, regardless of whether the couples are of

the opposite sex or the same sex;

e. Award plaintiffs the costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and

f. Enter all further relief to which plaintiffs may be justly entitled.

Respectfully submitted,

/s/ Karen Celestino-Horseman
Karen Celestino-Horseman
Of Counsel, Austin & Jones, P.C.
One N. Pennsylvania St., Ste. 220
Indianapolis, IN 46204
Tel: (317) 632-5633
Fax: (317) 630-1040
[E-mail: Karen@kchorseman.com](mailto:Karen@kchorseman.com)

/s/ William R. Groth
William R. Groth
Fillenwarth Dennerline Groth
& Towe, LLP
429 E. Vermont St., Ste. 200
Indianapolis, IN 46202
Tel: (317) 353-9363
Fax: (317) 351-7232
[E-mail: wgroth@fdgtlaborlaw.com](mailto:wgroth@fdgtlaborlaw.com)

/s/ Mark W. Sniderman
Mark W. Sniderman
Sniderman Nguyen, LLP
47 S. Meridian St., Ste. 400
Indianapolis, IN 46204
Tel: (317) 361-4700
Fax: (317) 464-5111
[E-mail: mark@snlawyers.com](mailto:mark@snlawyers.com)

/s/ Kathleen M. Sweeney
Kathleen M. Sweeney
Sweeney Law Group, LLC
141 E. Washington St., Ste. 225
Indianapolis, IN 46204
Tel: (317) 491-1050
Fax: (317) 491-1043
[E-mail: ksween@gmail.com](mailto:ksween@gmail.com)

/s/ Robert A. Katz*
Robert A. Katz
Indiana University
McKinney School of Law
530 W. New York St., Room 349
Indianapolis, IN 46202
[E-mail: robkatz87@gmail.com](mailto:robkatz87@gmail.com)
*Pro Hac Vice Admission Requested

/s/ Kelly R. Eskew
Kelly R. Eskew
6459 Central Avenue
Indianapolis, IN 46220
[Email: kellyreskew@gmail.com](mailto:kellyreskew@gmail.com)