

STATE OF TENNESSEE DEPARTMENT OF HEALTH  
Dr. LISA PIERCEY, COMMISSIONER OF HEALTH

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PEE

IN THE MATTER OF:

George Grant, David Harrell, Dean Haun )  
Paul Becker, Jeff Oakes, Gary Starbuck, )  
Mike Norris, Freeman J. Weems, Rich Sevilla )  
Finley Cutshaw, Mitchell McClure, and )  
Tennessee Independent Baptists for Religious Liberty )  
Petitioners, )

Case No.

PETITION FOR DECLARATORY ORDER

Parties

1. Petitioner George Grant is a resident of Williamson County, Tennessee, and is over 18 years of age. Dr. Grant has earned academic degrees in Political Science at the University of Houston (B.A.), Philosophy at Whitefield Theological Seminary (M.A., D. Litt, PhD.), Humanities at Belhaven College (D. Hum.). Dr. Grant was first ordained as a pastor in the Southern Baptist Convention on July 11, 1976, but transferred into the Association for Reformation Churches on September 9, 1984 and to the Presbyterian Church in America on May 22, 1988. Dr. Grant transferred into the Nashville Presbytery of the Presbyterian Church in America on February 23, 2003. He is the currently the senior minister of a church within the Presbyterian Church of America that is located in Franklin, Tennessee.

2. Petitioner David Harrell is resident of Robertson County, Tennessee, is over 18 years of age, and earned Doctor of Philosophy degree in Integration of Religion and Society from Omega (formerly Oxford) Graduate School. Dr. Harrell was first ordained as a pastor by First Baptist Church of Joelton, Tennessee, a member of the Southern Baptist Convention, on August 15, 1993. Dr. Harrell is currently the senior pastor-teacher of Calvary Bible Church, Joelton, Tennessee, where he has served since 1994.

3. Petitioner Dean Haun is a resident of Hamblen County, Tennessee, and is over 18 years of age. Dr. Haun earned a Master of Divinity from Southwestern Baptist Theological Seminary

and a Doctor of Ministries at Trinity College of the Bible and Trinity Theological Seminary. Dr. Haun's first pastorate began at First Baptist Church in Rhome, Texas in 1979. Dr. Haun has held several pastorates since then, becoming the senior pastor of Morristown First Baptist Church, in Morristown, Tennessee, in December, 2007.

4. Petitioner Paul Becker is a resident of Sullivan County, Tennessee, and is over 18 years of age. Reverend Becker completed a Masters of Divinity at Concordia Seminary, St. Louis, Missouri in 1985 and there he also received a Master of Sacred Theology in 1988. He was ordained into the Holy Ministry on August 10, 1985 at Prince of Peace Lutheran Church, Douglassville, Georgia, where he served as pastor from 1986 to 1994. Reverend Becker has served as pastor of Concordia Lutheran in Kingsport, Tennessee, since October 1994.

5. Petitioner Jeff Oakes is a resident of Washington County, Tennessee, and is over 18 years of age. Reverend Oakes was ordained in 1993 by Covenant Life Church in Morristown, Tennessee by the elders of Covenant Life Church and became the church's youth director while simultaneously teaching science programs in the church's related day-school. In 1995, Petitioner Oakes became the interim senior pastor of Covenant Life Church, and, in November 1996, he led a team in planting Hosanna Fellowship in Johnson City, Tennessee where he continues to serve as senior pastor.

6. Petitioner Gary Starbuck is a resident of Shelby County, Tennessee, and is over 18 years of age. Reverend Starbuck received his Master of Theology from Dallas Theological Seminary on May 4, 1981. Reverend Starbuck was ordained to the Word of the Gospel Ministry by Open Door Bible Church, Memphis, Shelby County, Tennessee, on March 21, 1982, and was called by the church's congregation to serve as its associate pastor on June 17, 1981. Reverend Starbuck was named senior pastor of Open Door Bible Church on June 12, 1983, where he continues to serve as minister.

7. Petitioner Mike Norris is a resident of Rutherford County, Tennessee, and is over 18 years of age. Dr. Norris received doctoral degrees from Northeast Baptist School of Theology, Shawnee Baptist College, and Midwestern Baptist College. He has served as pastor of Franklin Road Baptist Church, Murfreesboro, Tennessee since 1999.

8. Petitioner Freeman J. Weems is a resident of Tipton County, Tennessee, and is over 18 years of age. Dr. Weems earned Graduate of Theology Degree and a Bachelor of Divinity Degree from Tabernacle Baptist Bible College in Greenville, South Carolina, and earned a Master of Religious Education Degree and a Doctorate of Ministry Degree from Great Plains Baptist College in Sioux Falls, South Dakota. Dr. Weems also received an honorary Doctor of Divinity Degree from Tabernacle Baptist College in Greenville, South Carolina. Dr. Weems

was ordained in July 1981 at the Interstate Baptist Church in Memphis, Tennessee, and has been the pastor of First Baptist Church of Atoka a located in Atoka, Tennessee, since then.

9. Petitioner Rich Sevilla is a resident of Shelby County, Tennessee and is over 18 years of age. He earned a Master of Arts from Pensacola Christian College and a Master of Divinity from Bob Jones University. Reverend Sevilla was ordained to the Gospel ministry on March 24, 1991 and was called to be associate pastor at Marquette Manor Baptist Church, Downers Grove, IL in 1991. He was called by the congregation of Heritage Baptist Church, Cordova, Tennessee to be is senior pastor in 1998, where he continues to minister.

10. Petitioner Findley Cutshaw is a resident of Shelby County, Tennessee, and is over 18 years of age. Reverend Cutshaw received a Bachelor of Biblical Studies from Ambassador Baptist College, Shelby North Carolina in 1996, and was ordained to the ministry in August, 1996 at Bible Baptist Church at Charlotte, N.C. Reverend Cutshaw began pastoring in 1998 and in 2011, he became the Pastor of East Side Baptist, Memphis, Tennessee

11. Petitioner Mitchell McClure is a resident of Hamilton County, Tennessee, and is over 18 years of age. Reverend McClure earned a Bachelor of Science Degree from East Tennessee State University (Business Administration and Accounting) and earned a Masters of Arts from the Church of God Theological Seminary. Reverend McClure entered the pulpit ministry in 1977, and was ordained a Bishop in the Church of God in 1981. He has been pastor of Middle Valley Church of God in Hixson, Tennessee, since September 1997.

12. Petitioner Tennessee Independent Baptists for Religious Liberty (hereinafter sometimes also referred to singularly as “TIBRL”) is non-partisan, non-profit corporation organized on under the laws of the state of Tennessee by the filing of its charter with the Tennessee Secretary of State on July 12, 2018.

13. In accordance with its by-laws, TIBRL all officers and members of the board of direction must be pastors of Independent Baptist Churches, Petitioner Dr. Weems being chairman of the board. TIBRL exists for the purpose of “strengthening our position [as independent Baptists] on issues for the common good of all,” seeks “to inform Pastors concerning things of a critical nature that affect our local churches and their ministries,” and protect “religious liberty for all Tennesseans.”

14. According to its by-laws, TIBRL is committed to the understanding that “civil government is of divine appointment for the interest and good order of human society; that government officials are to be prayed for, conscientiously honored and obeyed, except in things opposed to the will of our Lord Jesus Christ who is the Lord of conscience. (Romans 13:1–7; 2 Samuel 23:3; Exodus 18:21–22; Acts 23:5; Matthew 22:21; Acts 4:19–20; Daniel 3:17–

18).”<sup>[SEP]</sup>Moreover, TIBRL’S by-laws “affirm the biblical teaching of marriage defined as the legal union between one man and one woman as husband and wife and a spouse as a husband and wife of the opposite gender (Genesis 1:27–28, 2:20–25; Matthew 19:3–6; 1 Corinthians 7:1–3; Ephesians 5:21–33).”

15. TIBRL counts among its constituency Independent Baptists Churches and individual Baptists over 250 of whom serve as ministers in Independent Baptist Churches.

16. Tennessee law authorizes “[a]ll regular ministers, preachers, pastors, priests, rabbis and other spiritual leaders of every religious belief, more than eighteen (18) years of age having the care of souls” to “solemnize the rite of matrimony.” TENN. CODE ANN. § 36-3-301(a)(1). Each of the individual Petitioners (identified herein in paragraphs 1 through 11) and each of the ministers who are members of TIBRL have the “care of souls” and are “ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization; and such customs ... provide for such ordination or designation by a considered, deliberate, and responsible act” as required by TENN. CODE ANN. § 36-3-301(a)(2).

17. Respondent Department of Health was created by virtue of Part 18, Chapter 3, Title 4 and Chapter 1 of Title 69 of the Tennessee Code Annotated.

18. Respondent Dr. Lisa Piercey is the Commissioner of Health for the State of Tennessee’s Department of Health (“Department”), having been appointed to that position by the Governor of Tennessee, William Byron Lee, pursuant to TENN. CODE ANN. §§ 4-3-111, 4-3-112, and 68-1-102.

### **Jurisdiction**

19. Both the Department and Office constitute an “agency . . . state government” within the meaning of TENN. CODE ANN. § 4-5-102, and the Department has jurisdiction over the subject matter of this Petition pursuant to TENN. CODE ANN. §§ 4-5-223 and -225.

20. The state’s judicial branch would have jurisdiction over the subject matter of this Petition pursuant to TENN CODE ANN. § 16-11-101 and § 16-11-102 and the Declaratory Judgment Act, TENN. CODE ANN. § 29-14-101, *et seq.*,

21. The state’s judicial branch would have jurisdiction over the subject matter of this Petition pursuant to the cause of action provided for in TENN. CODE ANN. § 1-3-121.

## Introduction

22. Petitioners are ministers of the Gospel of God referenced in first verse of the first Chapter of the Book of Romans, which is a part of the Cannon of Scripture contained in the sixty-six books of the Holy Bible as recognized by Protestants around the world.

23. The individual Petitioners and members of TIBRL are authorized by Tennessee's law (as referenced in paragraph 16) to "solemnize" the "rite of matrimony" subject to limitations imposed by Tennessee law (described hereinafter in paragraphs 24 through 27). Solemnization of marriage is a condition precedent to the creation of the legal status of marriage according to Tennessee law.

24. TENN. CODE ANN. § 36-3-103(a) provides that "[b]efore being joined in marriage, the parties shall present to the minister ... a license under the hand of a county clerk in this state, directed to such minister or officer, authorizing the solemnization of a marriage between the parties. Such license shall be valid for thirty (30) days from its issuance by the clerk." Marriages solemnized pursuant to the provisions of Chapter 3 of Title 36 of the Tennessee Code may hereinafter be referred to as "State Licensed Marriages."

25. According to TENN. CODE ANN. § 36-3-103(a) it is the "license under the hand of a county clerk in this state, directed to such minister or officer, [that] authorize[es] the solemnization of a marriage between the parties."

26. Pursuant to TENN. CODE ANN. § 36-3-303 those "who solemnize[] the rite of matrimony shall endorse on the license the fact and time of the marriage, and sign the license, and return it to the county clerk within three (3) days from the date of marriage. Every person who fails to make such return of the license commits a Class C misdemeanor."

27. TENN. CODE ANN. § 36-3-305 provides that "[a]ny such minister or officer who knowingly joins together in matrimony two (2) persons not capable thereof commits a Class C misdemeanor and shall also forfeit and pay the sum of five hundred dollars (\$500), to be recovered by action of debt, for the use of the person suing."

28. Marriage is a legal status of great significance in Tennessee law. Certain procedural defects affecting the potential validity of the status of marriage are exempted by Tennessee law from affecting the validity of marital status. Specifically, TENN. CODE ANN. § 36-3-306 provides that "[f]ailure to comply with the requirements of 36-3-104 -- 36-3-107, 36-3-109 -- 36-3-111 shall not affect the validity of any marriage consummated by ceremony." Other procedural defects are not exempted from affecting the validity of marital status. Specifically, TENN. CODE ANN. § 36-3-306 does not except TENN. CODE ANN. § 36-3-103. Thus, the

requirement to obtain a license “before” a minister is authorized to solemnize the “rite of matrimony” is a condition precedent to entering into marital status in Tennessee.

29. TENN. CODE ANN. § 36-3-103(a) requires that a valid license be issued “before” the Petitioners can solemnize a marital relation that will be given legal recognition by the state of Tennessee, hereinafter referred to as a “Licensed Marriage.”

30. Tennessee law empowers county clerks to issue State marriage licenses only under certain defined conditions. TENN. CODE ANN. § 36-3-104(a)(1) provides, among other things, that “[n]o county clerk or deputy clerk shall issue a marriage license until the applicants make an application in writing, stating the names, ages, addresses and social security numbers of both the proposed male and female contracting parties.”

31. In 2006, voters in the state of Tennessee adopted an amendment to the Tennessee Constitution by which they said, “The historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state.”

32. By the aforesaid amendment, voters in the State of Tennessee also said, “Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one man and one woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee.”

33. No judgment entered by a court of competent jurisdiction has adjudicated the constitutionality of TENN. CODE ANN. § 36-3-104(a) or the applicability of TENN. CODE ANN. § 36-3-113 relative thereto following the judgment entered by the United States Supreme Court on July 28, 2019 in the following cases, styled as follows: James Obergefell, et al. v. Richard Hodges, Director, Ohio Department of Health, et al., Valeria Tanco, et al. v. Bill Haslam, Governor of Tennessee, et al., April DeBoer, et al. v. Rick Snyder, Governor of Michigan, et al., and Gregory Bourke, et al. v. Steve Beshear, Governor of Kentucky. The opinion of the United States Supreme Court relative to the judgments entered in those cases is dated June 26, 2015 and is reported at 576 U.S. \_\_\_, 135 S. Ct. 2584.

34. No court of competent jurisdiction has ever enjoined the enforcement of TENN. CODE ANN. § 36-3-113 or the first and second sentence of Article XI, Section 18 of the Tennessee Constitution relative to their bearing on Licensed Marriages under Chapter 3 of Title 36 of the Tennessee Code Annotated.

35. Petitioners allege that TENN. CODE ANN. § 68-3-401(a) requires Respondents to make “a record of each marriage performed in this state” and, pursuant to TENN. CODE ANN. § 68-3-401(b), to issue a form to Tennessee’s county clerks in furtherance of that duty, which Respondents call a Certificate of Marriage, and, pursuant to TENN. CODE ANN. § 68-3-

401(c), Petitioners are required to “certify” on that Certificate of Marriage the “fact of marriage.”

36. Petitioners allege that the Certificate of Marriage form issued on behalf of the state of Tennessee by Respondent Piercey’s predecessor, John J. Dreyzehner, prior to June 25, 2015 (hereinafter “Male-Female Marriage Certificate”) indicated that to qualify for a license State Licensed Marriage, the parties whose relationship was solemnized by Petitioners for state law purposes had to be a “Groom” and a “Bride” and could only be a “Groom” and “Bride,” that each party to the State Licensed Marriage they solemnized could only be designated as one or the other, and that such a limitation was required by TENN. CODE ANN. § 36-3-104(a)(1), TENN. CODE ANN. § 36-3-113, and the provisions of Article XI, Section 18 of the Tennessee Constitution.

37. Petitioners allege that the Certificate of Marriage form now being issued on behalf of the state of Tennessee by Respondent Piercey was approved by her predecessor, Commissioner John J. Dreyzehner, on or about June 26, 2015 in accordance with a “Forms Justification and Approval Request,” submitted to the Tennessee Department of General Services, Printing and Media Service Division, and the Certificate now indicates that the complementariness of the two biological sexes is no longer a necessary qualification for receiving a license under TENN. CODE ANN. § 36-3-104(a)(1) for the form of the relationship Petitioners are authorized to solemnize and that they “certify” by their signature as having solemnized.

38. Petitioners allege that in a box titled “Justification and Purpose of Form” on the aforesaid Forms Justification and Approval Request, the following words were entered by the Department of Health under the signature of Respondent Piercey’s predecessor, Commissioner John J. J. Dreyzehner, “Revised due to Supreme Court rules.”

39. Petitioners allege that the powers of the United States Supreme Court and the lower federal judiciary under Article III of the United States Constitution do not extend to amending, changing, or enacting state laws, announcing legislative rules, or to commandeering, ordering, or directing a state or local official who is not a party in case pending before a federal court to do any act that said official has not been authorized by state law to do.

40. Petitioners allege that Article VII, section 1 of the Tennessee Constitution provides that the duties of the several county clerks can only be “prescribed by the General Assembly” of the state of Tennessee. Federal judicial power does not extend to authorizing Tennessee county clerks to issue a marriage licenses. Federal courts may only adjudicate the rights and duties of county clerks who are parties before the court. There are no federal cases involving Tennessee county clerks ordering them to issue marriage licenses for marriage defined without regard to

whether the contracting parties are a male and female or one man and one woman as required by Tennessee law.

41. Petitioners allege that no court of competent jurisdiction has adjudicated and held unconstitutional the provisions of Article VII, Section 1 of the Tennessee Constitution nor examined the other statutory requirements defining the duties of county clerks regarding the issuance of State marriage licenses. Nor has any court of competent jurisdiction enjoined the enforcement of Tennessee law with respect to whether and to what extent county clerks have a duty to issue a license for a marriage defined without regard to whether the contracting parties are a male and female or one man and one woman.

42. Petitioners allege that the power to remedy violations of the provisions of the 14<sup>th</sup> Amendment to the United States Constitution was given to the United States Congress under section 5 thereof and that the 14<sup>th</sup> Amendment in no way altered, amended, or expanded the powers of the federal judiciary under Article III of the United States Constitution. The United States Congress has not, to date, enacted any remedial legislation regarding the legal status of marriage created by Tennessee law.

43. Petitioners allege that the General Assembly has not amended in any manner the requirement in TENN. CODE ANN. 36-3-104(a)(1) that the applicants for a marriage license be a “male and female.”

44. *Tanco v. Haslam*, Case No. 3:13-cv-01159, United States District Court for the Middle District of Tennessee, Nashville Division, is the only case or controversy brought by any same-sex couple(s) involving or putting at issue or into controversy any of Tennessee’s marriage-related laws and to which the power of the federal judiciary under Clause 1, Article III of the United States Constitution could extend relative to the state of Tennessee and its constitutional officers.

45. The *Tanco* “plaintiffs challenged Article XI, § 18 of the Tennessee Constitution and Tennessee Code Annotated § 36-3-113 only to the extent that they denied recognition to out-of-state same-sex marriages lawfully performed, a point that the [federal] court emphasized in its opinions in this case.”

46. The Final Judgment and Permanent Injunction entered in *Tanco* on August 24, 2015 held, in pertinent part:

Under the Fourteenth Amendment to the United States Constitution, the right to marry is fundamental, and a state may therefore not refuse to recognize a marriage



between two people of the same sex on the same terms and condition as opposite-sex couples, when such a marriage was lawfully entered in another state.

Article XI, section 18, of the Tennessee Constitution and Tennessee Code Annotated § 36-3-113 are invalid under the Fourteenth Amendment to the United States Constitution to the extent that they exclude same-sex couples from the recognition of their civil marriage on the same terms and conditions as opposite-sex couples, when their marriage was lawfully entered into out of state.

47. As a consequence of these limited holdings, the *Tanco* Judgment itself held that the *Tanco* Defendants were only “enjoined from enforcing” those provisions “against plaintiffs” because all the plaintiffs had “lawfully and validly married in other jurisdictions” and, according to the *Tanco* Court’s Memorandum in support of the judgment, to extend the judgment to the laws put at issue by the present Petition would have required the federal court to “rewrite the scope of the lawsuit.”

48. The first sentence of Marriage Amendment states the overriding general principle regarding relationships that can be licensed as a marriage in Tennessee or recognized by the Tennessee when licensed or otherwise approved under the laws of another state:

The historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state.

49. The second sentence of the Marriage Amendment states:

Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one man and one woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee.

50. As a matter of law, the *Tanco* Judgment did not enjoin enforcement of the first two sentences of Article XI, Section 18 of the Tennessee Constitution with respect to their application to Tenn. Code Ann. §§ 36-3-103, -104 and Tenn. Code Ann. §§36-3-301, -303, and -305, and Tenn. Code Ann. § 36-3-113 (“Defense of Marriage” or “DOMA” law or statute) relative to the licensing of civil marriages created and defined by positively enacted law.

51. As a matter of law, the *Tanco* Judgment did not enjoin enforcement of those provisions of the DOMA statute with respect to their application to Tenn. Code Ann. §§ 36-3-103, -104 and Tenn. Code Ann. §§36-3-301, -303, and -305, and Tenn. Code Ann. § 36-3-113 (“Defense

of Marriage” or “DOMA” law or statute) relative to the licensing of civil marriages created and defined by positively enacted law.

52. The DOMA statute (Tenn. Code Ann. § 36-3-113) provides, in full:

(a) Tennessee's marriage licensing laws reinforce, carry forward, and make explicit the long-standing public policy of this state to recognize the family as essential to social and economic order and the common good and as the fundamental building block of our society. To that end, it is further the public policy of this state that the historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman shall be the only legally recognized marital contract in this state in order to provide the unique and exclusive rights and privileges to marriage.

(b) The legal union in matrimony of only one (1) man and one (1) woman shall be the only recognized marriage in this state.

(c) Any policy, law or judicial interpretation that purports to define marriage as anything other than the historical institution and legal contract between one (1) man and one (1) woman is contrary to the public policy of Tennessee.

(d) If another state or foreign jurisdiction issues a license for persons to marry, which marriages are prohibited in this state, any such marriage shall be void and unenforceable in this state.

53. As a matter of law, the *Tanco* Judgment did not enjoin enforcement of sections (a), (b), or (c) of the DOMA statute with respect to Tenn. Code Ann. §§ 36-3-104(a).

**Allegations Concerning Petitioners' Religious Beliefs**  
**Regarding Relations Denominated a Marriage by Statute**

54. William Blackstone, author of the *Commentaries on the Laws of England*, rightly defined law as “a rule of action prescribed by a superior and which the inferior is bound to obey.”

55. The promulgation of legislation is an exercise of sovereignty.

56. Petitioners believe that the Holy Bible declares that all sovereignty originates in the Creator God who is distinct from and sovereign over all that which was created.

57. Petitioners believe that the Creator God, revealed in the Holy Bible, is one in essence and three in persons, Father, Son, and Holy Spirit, and is the maker and sustainer of heaven and earth. Petitioners further believe that God, as the maker of heaven and earth, has established

both creational and ethical laws by which all things, in the words of the Apostle Paul recorded in Acts 17:28, “live, move, and have their being.” In accordance with these beliefs, Petitioners also believe that no legislation, rule, statute, nor regulation promulgated by civil government may affirmatively contradict Creator God’s creational and ethical laws.

58. Petitioners believe that God created differences between male and female human beings and that those differences are divinely ordained in order that image of God in which human beings were made would reflect the unity and diversity in God’s nature. Petitioners believe the complementariness of male and female reflects God’s unity and that these biological differences are meant for and tend toward human good and human flourishing. Petitioners believe the union of male and female in a marital relation is ordained by God and is intended to further reflect the unity and diversity in God’s nature.

59. Petitioners believe that the nothing in the divinely ordained differences between male and female render either male or female unequal in dignity or worth as between the two of them, as members in society, or before God, and, in fact, Petitioners believe the complementarity of the two biological sexes actually evidences and strengthens their equality in dignity and worth.

60. Petitioners believe the differences between male and female are integral to a true conception of one’s self as male or female.

61. Petitioners believe that one’s conception as male or female should be defined by God’s holy purposes in creation and redemption as revealed in the Holy Bible

62. Petitioners believe that God ordained and by his ordination defined the marital relation as one that can truly exist only between a biological male and female because, in the joining together of these two distinct bearers of the divine image, they become united in a way that gives expression to and provides an image of the unity and diversity within the Godhead.

63. Petitioners’ believe that marriage was also intended by God to reflect the relationship or union between the Lord Jesus Christ and His church.

64. Petitioners believe that marriage was intended by God to be a means by which His purpose in creation and the continued development of his creation by humankind’s cultural progress would reveal the glory of God and bring blessing to His creation and, in particular, to men and women as His image bearers and vicegerents over creation.

65. Petitioners believe that conducting a marriage ceremony and the rite of marriage is a part of their ministry and, specifically, their ministry to the man and woman to be married. Marriage “rites” have been defined by churches, not states, from time immemorial.

66. Petitioners believe that a God-ordained function of civil government, represented by its various magistrates and officers, is to secure performance of the rights that naturally arise out of the duties assumed by entering into a marital relation or contract by providing a remedy to the party in a marital relation whose rights are breached by the other party.

67. Tenn. Op. Atty. Gen. No. 90-49, 1990 WL 513037 (hereafter AG Opinion 90-49), states, “A valid marriage will not result from a ceremony performed in Tennessee without a marriage license. Thus, a minister or officer performing a marriage ceremony should not proceed until and unless the parties produce a marriage license for his or her signature.”

68. Without the execution of the marriage license by one authorized by law to solemnize the license issued by a county clerk, there is no valid marriage.

69. AG Opinion 90-49 states, “[B]ecause of the important impact of marriage upon legal rights, such as property rights (T.C.A. § 36-3-505 tenancy by the entirety), inheritance (T.C.A. §§ 31-2-104, 105 interstate succession), and the status of children (T.C.A. §§ 36-2-101(1), 36-2-202 paternity and legitimation), it would appear that one who solemnizes a marriage by ceremony without requiring the parties first to obtain a marriage license from the county clerk could be liable to those parties at common law upon a theory of negligence.”

70. AG Opinion 90-49 states that “T.C.A. §§ 36-3-103(a) and 36-3-303(3) should be read in pari materia,” and that while “[i]t does not appear that a person authorized to perform a marriage ceremony would be subjected to criminal liability for the failure to return a license which he or she was never provided by the parties . . . , the safest course is clearly not to perform a marriage ceremony until the parties have provided a marriage license issued by the county clerk.”

71. Petitioners allege that Tennessee law as interpreted by Tennessee courts requires that a marriage license issued by a county clerk be obtained prior to entering into the marital relationship. Tennessee law precludes creation of marriage by any other means such as intending to marry and holding out a relationship to the public as marital.

### **Count One**

#### **Cause of Action Pursuant to Tenn. Code. Ann. § 1-31-121**

72. Petitioners hereby incorporate by reference as if fully stated herein the allegations in Paragraphs 1 through 71.

73. On December 6, 2019, Petitioner Grant, by and through his counsel of record, sent to Lisa M. Carson, legal counsel for Elaine Anderson, County Clerk for Williamson County,

Tennessee, a letter asking if the county clerk would accept for recordation a marriage license issued by her office and Respondent's Certificate of Marriage issued through her office if both bore the following notation: "Signed in reliance on Article XI, section 18 of the Tennessee Constitution and by solemnizing the marriage I in no way endorse any understanding of marriage other than that stated in Article XI section 18."

74. On December 9, 2015, Ms. Carson sent letter by email to Grant's counsel of record saying, in full: "Mrs. Anderson has a ministerial duty to record marriage licenses that are signed and returned to her office. She will fulfill that statutory duty if Mr. Grant includes the notation that you have proposed on otherwise properly completed documentation. The notation you proposed is, of course, not binding on the Williamson County Clerk's Office and only reflects the view of Mr. Grant. **Mrs. Anderson makes no representation about whether the notation that Mr. Grant plans to include would affect the validity of the marriage in any way. Such a determination would be beyond the scope of her statutory authority.** Feel free to contact me if you have additional questions."

75. Petitioner Grant is, therefore, uncertain as to the legal effect that will be given to his execution of the license containing this notation and whether the execution of the license will, in fact, create or bring into existence a valid, legal marriage in Tennessee.

76. Petitioner Grant is willing to solemnize marriages subject to the requirements of Tennessee law, but only so long as state law does not impose upon him any requirement in violation of the free exercise of his religious beliefs concerning the institution of marriage or of marital rites as defined by his church and his religious beliefs regarding civil government and its duty to enforce those natural rights that arise out of the obligations undertaken by a couple in forming a marital contract.

77. The failure of Petitioner Grant to return a license issued by the Williamson County Clerk within three days of the ceremony will subject him to criminal sanctions under TENN. CODE ANN. § 36-3-303, and to damages in cases arising from the invalidity of the marriage if the license containing the afore-described notation affects the validity of the marriage inasmuch as Tennessee's statutes do not recognize two different kinds of marriages, those defined in terms expressly and exclusively in terms of the two biological sexes and those defined without regard to the two biological sexes.

78. Petitioner Grant alleges that acceptance of Respondents' Certificate by the Williamson County Clerk leaves legal uncertainty as to Petitioner Grant's legal status and legal relations if Respondents accept the Certificate when presented by the Williamson County Clerk unless the state clarifies, by and through Respondents, that its acceptance of the Certificate is proof of a valid licensed marriage even though solemnized by Petition Grant on the understanding that the

relationship solemnized is defined strictly and exclusively in terms of the parties being of the opposite biological sex.

79. Individual Petitioner Becker is scheduled to officiate or solemnize a marriage on March 21, 2020.

80. Individual Petitioner Harrell is scheduled to officiate or solemnize a marriage in March, 2020.

81. Individual Petitioner Weems is scheduled to officiate or solemnize a marriage in February, 2020.

82. Each of the individual Petitioners allege that they have each conducted marriage ceremonies prior to June 25, 2006 and have done so consistent with their beliefs in regard to the nature and meaning of marriage and its purposes and their beliefs regarding the functions of human government regarding the securing of rights and the provision of remedies for violations of those rights.

83. Each of the individual Petitioners allege that they fully expect to officiate or solemnize a marriage in the future as such has been a regular part of their ministry over the years.

84. Petitioner TIBRL alleges that ministers among its constituency have conducted marriage ceremonies prior to June 25, 2006 and have done so consistent with their beliefs in regard to the nature and meaning of marriage and its purposes and their beliefs regarding the functions of human government regarding the securing of rights and the provision of remedies for violations of those rights.

85. Petitioner TIBRL alleges that ministers among its constituency fully expect to officiate or solemnize a marriage in the future as such has been a regular part of their ministry over the years.

86. Petitioners allege that because the statutory laws of the state of Tennessee and the provisions of Article XI, section 18 of the Tennessee Constitution define marriage as the relationship between one man and one woman or as a relationship between a male and female, they each have exercised the authority provided under Tenn. Code Ann. § 36-3-301 to administer on behalf of the state of Tennessee the provisions of Chapter 3 of Title 36 of the Tennessee Code Annotated and have signed the Certificate of Marriage issued by Respondents, making the certification thereon required.

87. Petitioner TIBRL alleges that because the statutory laws of the state of Tennessee and the provisions of Article XI, section 18 of the Tennessee Constitution define marriage as the relationship between one man and one woman or as a relationship between a male and female,

some of the ministers among its constituency have exercised the authority provided under Tenn. Code Ann. § 36-3-301 to administer on behalf of the state of Tennessee the provisions of Chapter 3 of Title 36 of the Tennessee Code Annotated and have signed the Certificate of Marriage issued by Respondents, making the certification thereon required.

88. Petitioners believe the solemnization of any relationship denominated either for legal or ecclesiastical purposes as a marriage or marital contract whose meaning and teleological purpose exists apart from and without regard to the complementariness of the two biological sexes is contrary to the Word of God set forth in the Holy Bible, denies and distorts the image of God to which marriage was intended by God to bear witness and the relationship pictured in marriage between Christ and His church.

89. Petitioners allege that they cannot ascribe to, affirm, or bring into legal existence a form of marriage that is contrary to their aforesaid beliefs, which would be a form of marriage defined without regard to the presence of both biological sexes.

90. Petitioners allege that the changes made to the Certificate of Marriage by the Department on or after June 26, 2015, have now created uncertainty and doubt among Plaintiffs as to whether the positive statutory laws of Tennessee still define marriage in terms of a “male and female contracting parties” or define it without regard to the biological sex of the contracting parties.

91. Petitioners allege that acceptance by a county clerk of a Certificate of Marriage containing a notation that the marriage solemnized by statute is one expressly and exclusively defined as between a “male and female” creates uncertainty and doubt among Plaintiffs in regard to their legal status and legal relations both to the state and the couples whose marriages they solemnize as to whether the state, by and through Respondent, will recognize the marriages they solemnize as valid or will reject it on the ground that the statutes now define a licensed marriage as one in which the two biological sexes is irrelevant to the existence of a statutorily authorized form of marital relation.

92. Petitioners allege that if any notation on a license and Respondent’s Certificate to the effect that the marriage solemnized is expressly and exclusively defined in term of the presence of the two biological sexes is disregarded by Respondent and treated as a marriage that the statutory law defines without regard to the biological sex simply because the marriage does, in fact, involve two people, the Petitioners will be deemed to have ascribed to a statutory understanding of marriage to which they would not have otherwise ascribed as a matter of conscience.

93. Because no court of competent jurisdiction has enjoined enforcement of the provision in Article XI, section 18 of the Tennessee Constitution making “void and unenforceable” “any

policy” even “purporting” to define marriage as “anything other than the historical institution and legal contract between one man and one woman,” uncertainty has arisen among Plaintiffs as to whether they are relieved of the statutory obligation to sign the Certificate of Marriage promulgated by Respondents, because it is “void and unenforceable.”

94. The individual Petitioners and TIBRL are each “affected persons” seeking declaratory relief concerning the constitutionality or legality of the governmental actions of the Respondents.

### **Count Two**

#### **Cause of Action Pursuant to Tenn. Code. Ann. § 29-14-101, *et seq.***

95. Petitioners hereby incorporate by reference as if fully stated herein the allegations in Paragraphs 1 through 94.

96. The individual Petitioners and TIBRL, by virtue of its constituent ministers, are each persons whose rights, status, and legal relations are affected by the marriage licensing statutes of Tennessee by and through criminal sanctions and damages pertaining to the solemnization of a marriage license, by the validity of that license and Respondents’ Certificate of Marriage, and by the validity or invalidity of a marriage they solemnize if, the exercise of their civil and constitutional rights the individual Petitioners and the ministers among Petitioner TIBRL’s constituency note on Respondents’ Certificate of Marriage and on a marriage license that the marital relation or contract is being solemnized on the condition that the marriage solemnized is defined strictly and exclusively in terms of the contracting parties being a male and female in accordance with Article XI, Section 18 of the Tennessee Constitution.

#### **Prayer for Relief**

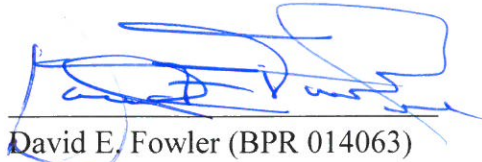
WHEREFORE, Petitioners respectfully request an Order:

- A. Declaring the Certificate of Marriage approved on June 26, 2015 to be *ultra vires* and in violation of the authority given the Department by the General Assembly and allowed to it by the provisions of Article XI, section 18 of the Constitution of the State of Tennessee,
- B. Declaring that said Certificate approved on June 26, 2015 is “void and unenforceable” in accordance with the provisions provision of Article XI, section 18 of the Constitution of the State of Tennessee,
- C. Declaring that Respondent has no statutory authority to authorize or issue any form of Certificate of Marriage, because Tenn. Code Ann. 36-3-104(a)(1) is unenforceable as a violation of the “right to marry” under the 14<sup>th</sup> Amendment to the United States Constitution and has not been replaced by the General Assembly, or



D. Reinstating the Certificate of Marriage form as such existed prior to June 26, 2015, because the statutory scheme for the licensure of marriages is declarative of the common law form of marital contract providing for a registration of marriages and proof of the marriage rather than the creation of a civil law marriage.

Respectfully submitted,



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