IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

VALERIA TANCO and SOPHY JESTY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**Case No. 3:13-cv-01159**
	)	**Trauger/Griffin**
WILLIAM EDWARD "BILL" HASLAM,	)	
as Governor of the State of Tennessee,	)	
et al.,	)	
	)	
Defendants.	)	

Governor →

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR ENTRY OF ORDER AND PERMANENT INJUNCTION

Plaintiffs have moved for entry of a final order and permanent injunction, and they have submitted a proposed order. Defendants agree that the decision of the United States Supreme Court in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), warrants the entry of a final order and permanent injunction in this case. Plaintiffs filed this action arguing that the Fourteenth Amendment to the United States Constitution requires the State of Tennessee to recognize their out-of-state marriages, and they have won that argument, fair and square. The Supreme Court held in *Obergefell* that "there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character." 135 S.Ct. at 2608. But Defendants urge the Court to adopt Defendants' proposed order (attached) and not the one Plaintiffs have submitted. While the differences between the two orders are few, they are significant; Defendants' proposed order more faithfully reflects the scope of the relief Plaintiffs

sought in this case and the extent of the holding in *Obergefell*.[1]

Specifically, Plaintiffs sought declaratory relief only with respect to the Tennessee laws that "purport[] to *deny recognition*" to out-of-state same-sex marriages. (Doc. 1, Complaint at 36, ¶ No. 1 (emphasis added)) Plaintiffs did not seek a declaration that under the Fourteenth Amendment "a state may not exclude same-sex couples from civil marriage." (Doc. 86-1, Plaintiffs' Proposed Order at 2, ¶ No. 1) Nor did Plaintiffs seek the wholesale invalidation of Tenn. Const. art. XI, § 18, and Tenn. Code Ann. § 36-3-113. (Doc. 86-1, Plaintiffs' Proposed Order at 2, ¶ No. 2) Indeed, the Supreme Court itself invalidated the marriage laws challenged in *Obergefell* only "to the extent they exclude same-sex couples . . . on the same terms and conditions as opposite-sex couples." *See* 135 S.Ct. at 2607.

What else could these two sentences mean other than the court cannot enjoin enforcement of the constitutional provisions on marriage in their entirety?

While Defendants cannot dispute that Plaintiffs are prevailing parties for purposes of 42 U.S.C. § 1988(b) (Doc. 86-1, Plaintiffs' Proposed Order at 2 ¶ No. 4), it is simply incorrect for Plaintiffs to say that "[a]ll issues have been decided in Plaintiffs' favor." (Doc. 86, Motion at 2) Plaintiffs' complaint included seven separate counts, most of which have been pretermitted by the decision in *Obergefell*. Any prevailing-party finding must therefore preserve for Defendants at least the opportunity to raise objections to Plaintiffs' forthcoming application for attorneys' fees, costs, and expenses.

CONCLUSION

For the reasons stated, the Defendants request that the Court enter their proposed order (attached).

[1] Defendants agree that discussions between the parties failed to produce an agreement (Doc. 86, Motion at 2), but that is because Plaintiffs ultimately rejected Defendants' proposed order.

Respectfully submitted,

HERBERT H. SLATERY III
Attorney General and Reporter

s/Martha A. Campbell
MARTHA A. CAMPBELL #14022
Deputy Attorney General
General Civil Division
Cordell Hull Building, Second Floor
P. O. Box 20207
Nashville, TN 37214
(615) 741-6420
martha.campbell@ag.tn.gov

s/Kevin G. Steiling
KEVIN G. STEILING #10631
Deputy Attorney General
Civil Litigation and State Services Division
Cordell Hull Building, Second Floor
P. O. Box 20207
Nashville, TN 37214
(615) 741-2370
kevin.steiling@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Abby R. Rubenfeld # 6645
2409 Hillsboro Road, Suite 200
Nashville, Tennessee 37212
(615) 386-9077
arubenfeld@rubenfeldlaw.com

William L. Harbison # 7012
Phillip F. Cramer # 20697
J. Scott Hickman # 17407
John L. Farringer IV # 22783
SHERRARD & ROE, PLC
150 3rd Avenue South, Suite 1100
Nashville, Tennessee 37201
(615) 742-4200
bharbison@sherrardrod.com
pcramer@sherrardroe.com
shickman@sherrardroe.com
jfarringer@sherrardroe.com

Maureen T. Holland # 15202
HOLLAND AND ASSOCIATES, PLLC
1429 Madison Avenue
Memphis, Tennessee 38104-6314
(901) 278-8120
mtholland@aol.com

Regina M. Lambert # 21567
7010 Stone Mill Drive
Knoxville, Tennessee 37919
(865) 679-3483
lambertregina@yahoo.com

Shannon P. Minter
Christopher F. Stoll
Asaf Orr
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
(415) 392-6257

sminter@nclrights.org
cstoll@nclrights.org
aorr@nclrights.org

s/ Martha A. Campbell
MARTHA A. CAMPBELL
TBPR# 14022
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202
(615) 741-6420