

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

VALERIA TANCO and SOPHY JESTY,)
 IJPE DeKOE and THOMAS KOSTURA,)
 and JOHNO ESPEJO and MATTHEW)
 MANSELL,)
)
 Plaintiffs,)
)
 v.)
)
 WILLIAM E. "BILL" HASLAM, *et al.*,)
)
 Defendants.)

Case No. 3:13-cv-01159
 Judge Aleta A. Trauger

FINAL ORDER AND PERMANENT INJUNCTION

This matter is pending before the court upon Plaintiffs' Complaint for Declaratory and Injunctive Relief filed on October 21, 2013. Plaintiffs are same-sex couples who have lawfully and validly married in other jurisdictions. In their complaint, Plaintiffs claim that the enforcement of Article XI, section 18, of the Tennessee Constitution and Tennessee Code Ann. § 36-3-113, which limit marriage to unions between one man and one woman, violate their rights under the Fourteenth Amendment to the United States Constitution.

On March 14, 2014, this court entered a preliminary injunction barring Defendants and those under their supervision from enforcing these marriage laws against the six named plaintiffs. (Dkt. Nos. 68, 69). Defendants appealed the injunction to the United States Court of Appeals for the Sixth Circuit, which consolidated argument for this case with cases from Kentucky, Ohio, and Michigan, and subsequently reversed the grant of the preliminary injunction. *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014). Plaintiffs here and in the three other states filed petitions for writs of certiorari in the Supreme Court of the United States, which were granted. *Obergefell v. Hodges*, 135 S.Ct. 1039 (2015).

The Supreme Court ultimately reversed, holding that, under the Fourteenth Amendment, “same-sex couples may exercise the fundamental right to marry in all States.” *Obergefell v. Hodges*, 135 S.Ct. 2584, 2607 (2015). On that basis, the Court held 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.” *Id.* at 2608. In accordance with the decision in *Obergefell*, this court now holds:

1. 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 conditions as opposite-sex couples, when such a marriage was lawfully entered in another State.

2. 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 recognition of their civil marriage on the same terms and conditions as opposite-sex couples, when their marriage was lawfully entered into outside of Tennessee.

Note: TN Marriage Amendment only invalid “to extent” it applies to out-of state couples. Court did NOT decide the effect of Obergefell on state constitution’s applicability to the licensing statutes. Acts of Clerk to issue licenses to same-sex couples are “void and unenforceable.”

3. Defendants in their official capacities; their officers, employees, and agents; and all individuals under any Defendant’s supervision, direction, or control are permanently enjoined from enforcing Article XI, section 18, of the Tennessee Constitution and Tennessee Code Annotated § 36-3-113 against Plaintiffs. **Note: Plaintiffs were ONLY couples who married in another state and moved to TN. The state license law was NOT at issue!**


4. Costs are taxed to Defendants. Plaintiffs are prevailing parties for purposes of 42 U.S.C. § 1988(b), but Defendants are not precluded from raising objections to any motion or application for attorney’s fees, costs, and related expenses. Plaintiffs’ counsel may file an

application for attorney's fees and costs pursuant to Local Rule 54.01 within 45 days from the entry of this order, to which the defendant may file objections within 30 days thereafter.

It is so **ORDERED** this 24th day of August, 2015.

**Note: Post-Obergefell decision
that was June 26, 2015**





ALETA A. TRAUGER
United States District Judge