

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
2015 JAN 29 PM 12 44
STEPHAN HARRIS, CLERK
CASPER

ANNE MARIE GUZZO and BONNIE ROBINSON;
IVAN WILLIAMS and CHARLES KILLION;
BRIE BARTH and SHELLY MONTGOMERY;
CARL OLESON and ROB JOHNSTON; and
WYOMING EQUALITY;

Plaintiffs,

vs.

MATTHEW H. MEAD, in his official capacity as the
Governor of Wyoming; DEAN FAUSSET, in his official
capacity as Director of the Wyoming Department of
Administration and Information; DAVE URQUIDEZ, in his
official capacity as Administrator of the State of Wyoming
Human Resources Division; and DEBRA K. LATHROP, in
her official capacity as Laramie County Clerk;

Defendants.

Case No. 14-CV-200-SWS

**ORDER GRANTING JUDGMENT ON THE PLEADINGS
and
PERMANENT INJUNCTION**

This matter comes before the Court upon the State Defendants' Motion for and Brief in Support of Judgment on the Pleadings, filed on November 10, 2014. (Doc. 54.) Plaintiffs filed a response thereto on November 17, 2014. (Doc. 55.) Plaintiffs also filed their own Motion for Judgment on the Pleadings on November 2014, to which Defendant Debra Lathrop agreed. (Doc. 54.) State Defendants filed a response to the Plaintiffs' motion on December 8, 2014 (Doc. 60), and Plaintiffs filed a reply on December 12, 2014 (Doc. 61).

The Court granted a preliminary injunction in Plaintiffs' favor in this matter on October 17, 2014 (Doc. 44), which has been in continuous effect since. State Defendants opposed entry of the preliminary injunction (Doc. 26), but did not appeal the preliminary injunction to the Tenth Circuit Court of Appeals (Doc. 46).

Now, all parties agree judgment on the pleadings in Plaintiffs' favor is appropriate and a permanent injunction should be entered. However, Plaintiffs and State Defendants disagree on the form of that permanent injunction. Specifically, Plaintiffs contend State Defendants' proposed permanent injunction fails to provide complete relief to Plaintiffs. (Doc. 55 at p. 3.) In contrast, State Defendants contend Plaintiffs' proposed permanent injunction requires State Defendants to assume responsibilities beyond their statutory mandate. (Doc. 60 at p. 4.) Having reviewed the parties' motions and responses thereto, the record herein, and considering the parties' concerns, the Court finds, concludes, and orders as follows:

1. Judgment on the pleadings is hereby entered in favor of Plaintiffs and against Defendants. The Tenth Circuit Court of Appeals determined in *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014), and *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014), that those who wish to marry a person of the same sex have a fundamental right to do so, and that fundamental right is protected by the Due Process and Equal Protection Clauses of the United States Constitution. Defendants must comply with these rulings in administering the duties of their offices.

2. Laws prohibiting same-sex marriages or limiting marriage to opposite-sex couples, including Wyoming Statute § 20-1-101, and laws failing to recognize the validity of same-sex marriages are unconstitutional. The provisions and enforcement of Wyoming's laws that exclude same-sex couples from marriage, including Wyoming Statute § 20-1-101, and any other sources of state law or practice that exclude same-sex couples from marrying, violate the

Unmarried Plaintiffs' rights under the Due Process and Equal Protection Clauses of the United States Constitution and 42 U.S.C. § 1983.

3. Defendants are permanently enjoined from enforcing Wyoming Statute § 20-1-101 and any other sources of state law, policy, or practice that exclude same-sex couples from marriage or that refuse to recognize the marriages of legally married same-sex couples.

4. The Married Plaintiffs' marriages are valid in the State of Wyoming, in accordance with Wyoming Statute § 20-1-111.

4. State Defendants, along with the state employees whose work they control or direct, are permanently enjoined from enforcing or applying Wyoming Statute § 20-1-101 and any other state law, policy, or practice as a basis to exclude same-sex couples from marriage or to refuse to recognize valid marriages of same-sex couples entered into in Wyoming or elsewhere.¹

Dated this 29th day of January, 2015.



Scott W. Skavdahl
United States District Judge

¹ Plaintiffs seek to “require[] the State Defendants to ensure that county clerks and other officials within their control fulfill their obligations under the law.” (Doc. 61 at p. 3.) The Court is not convinced State Defendants have the authority to control county clerks because county clerks are separately elected officials. Wyo. Stat. Ann. § 18-3-401 (LexisNexis 2013). The Court finds Plaintiffs' request in this regard is inappropriate and cannot be granted.

That said, the Court notes that any government official who unlawfully refuses to issue a marriage license to a same-sex couple or to otherwise perform any of their official duties exposes themselves to appropriate legal action, including a lawsuit under 42 U.S.C. § 1983. Further, such an action would expose the government official to personal liability for money damages in an individual capacity, *Brown v. Montoya*, 662 F.3d 1152, 1163 (10th Cir. 2011), and the defense of qualified immunity likely would be unavailable to shield that official from suit, *see Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (qualified immunity is unavailable where the official's conduct violates a clearly established constitutional right).