

IN THE ARKANSAS SUPREME COURT

M. KENDALL WRIGHT, et al

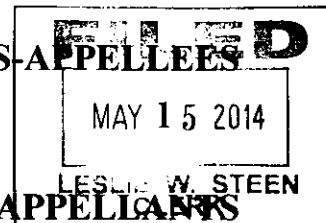
PLAINTIFFS-APPELLEES

VS.

NO. CV-14-414

CHERYL EVANS, et al

DEFENDANTS-APPELLANTS



SEPARATE WHITE, WASHINGTON, LONOKE, AND CONWAY
COUNTY APPELLANTS' EXPEDITED MOTION FOR STAY

Comes now the Separate White, Lonoke, Washington, & Conway County Clerk Appellants, White County Clerk Cheryl Evans, Lonoke County Clerk William "Larry" Clarke, Washington County Clerk Becky Lewallen, and Conway County Clerk Debbie Harman, in their official capacities (referred to collectively herein as the "Separate White, Lonoke, Washington & Conway County Clerk Appellants"), and for their Motion for a Stay, do state the following:

1. The Separate White, Lonoke, Washington, & Conway County Clerk Appellants hereby adopt and incorporate by reference, as if set forth herein word for word, the State Appellants' Motion for Stay.

2. Even if/when same-gender marriages are allowed, there are still rational and even compelling governmental reasons for statutory limitations on who can marry. It is necessary that the Order of the Circuit Court be stayed in order to have time for this County to consider the matter on appeal and for the Arkansas General Assembly to take the action necessary to adjust procedures for issuance of a marriage licenses.

3. The laws governing the process for issuance of a marriage license were written with that underlying assumption that all marriages would be different-gender.

With the judicial branch of government striking Ark. Code Ann. §9-11-109 & 107(b) and Ark. Code Ann. 9-11-208 [statutory prohibitions of same-gender marriage], there is now a need for the legislative branch of government to re-address the laws defining the procedure to be followed for the county clerk to be able to determine who is "capable in law of contracting marriage." Examples are set forth below.

4. Ark. Code Ann. 9-11-101 provides: "Marriage is ... a civil contract to which the consent of the parties capable in law of contracting is necessary." The Arkansas Code then proceeds to instruct as to who is and who is not "capable in law of contracting" to marry.

5. Ark. Code Ann. 9-11-102 provides the age requirements. Section (a) says: "Every male ... seventeen (17) .. And every female ... sixteen (16) ... shall be capable in law of contracting marriage. How is this to be applied to same-gender applicants? What is the legal age of marriage for same-gender applicants? Is it a different age for male same-gender applicants than for female same-gender applicants?

6. Ark. Code Ann. 9-11-103 deals with the issue of what to do "where one (1) or both parties are under the minimum age ... and the female is pregnant" While that Code provision assumes that the persons marrying procreated the expected child, that assumption would not apply in the case of same-gender applicants. Yet, if one of the same-gender female applicants for a same-gender marriage is pregnant and under the minimum age, what process is the county clerk to follow?

7. Ark. Code Ann. 9-11-106 deals with the issue of marriages between close relatives. Section 9-11-106 provides: "All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers

and sisters of the half as well as the whole blood, and between uncles and nieces, and between aunts and nephews, and between first cousins are declared to be incestuous and absolutely void." The law as currently written does not prohibit same-gender close relative marriages. Can all same-gender relatives now marry? Can an uncle marry a nephew? Can an aunt marry a niece? An underlying rational basis for disallowing marriage by close relatives is that procreation with a near relative has a statistically significant higher probability of producing a child with disabilities. The State has a legitimate governmental interest in the health and well-being of its citizens, and duties with regard to the care of treatment of persons unable to care for themselves. Since same-gender marriages do not have the biological capacity to produce children, do the same rules apply to same-gender marriages? Is an uncle still prohibited from marrying his niece and an aunt still prohibited from marrying her nephew? Are persons desiring to enter into different-gender marriages entitled to be treated in equal manner to those desiring to enter into same-gender marriages? How is a county clerk to proceed?

8. Ark. Code Ann. 9-11-203(a) says: "The clerks of the county courts of the several counties in this state are required to furnish the license upon: (1) Application's [sic] being made; (2) Being fully assured that applicants are lawfully entitled to the license" Given the lack of processes that delineate between the processes for same-gender and different-gender marriages, it is not clear how a County Clerk can be "fully assured" in all situations, as pointed out (for illustration) in the preceding paragraphs. How is a county clerk to proceed?

9. The duty of a county clerk is to apply the law as written. They are neither charged with the duty nor given the discretion to do other than administer the

law, as written. As written, the law is now confusing. The judicial branch has spoken, but only at the Circuit Court level. There is need for the time for the Supreme Court to conduct its review and for the legislative branch to adopt the procedural rules needed to implement the final decision of the judicial branch.

10. Covenant marriage is a separate category of marriage created by the Arkansas General Assembly. Ark. Code Ann. 9-11-803 provides: "(a)(1) A covenant marriage is a marriage entered into by one (1) male and one (1) female who understand and agree that the marriage between them is a lifelong relationship." Ark. Code Ann. 9-11-205(h) requires the county clerk to determine whether the "notice of intention to wed shall contain the declaration of intent for a covenant marriage as provided in the Covenant Marriage Act of 2001, § 9-11-801 et seq." How is the county clerk to proceed when two persons of the same gender want to enter into this separate category of marriage recognized in Arkansas as a "covenant marriage?"

11. If the Judge's Order is upheld on appeal, the procedures to be adopted will have to carefully consider both the "substantive due process" requirement of the Fourteenth Amendment and the "equal protection" requirements of the Fourteenth Amendment. This is not the role of the county clerks, as they are in the executive branch of the government. A county clerk does not have the legal authority to determine, for example, if there is a rational basis or a compelling necessity applying to same-gender marriages for the laws prohibiting close-relative marriage. Contrariwise, a county clerk does not have the legal authority to determine if the prohibitions on close-relative marriages still apply to same-gender marriage license applicants. How is a county clerk to proceed?

12. Guidance is needed so that the County Clerks will know how to proceed

in the face of requests for marriage. Time is needed to provide the needed guidance.
A stay is in order.

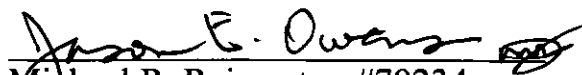
Wherefore, for the reasons set forth herein, the Separate White, Lonoke, Washington, and Conway County Appellants respectfully request an immediate stay of the Circuit Court's Order in this case, pending finalization of the appeal.

Respectfully submitted,

White County Clerk Cheryl Evans, Lonoke
County Clerk William "Larry" Clarke,
Conway County Clerk Debbie Hartman,
Faulkner County Clerk Melinda Reynolds,
and Washington County Clerk Becky
Lewallen, and their successors in interest, in
their official capacities,
*Separate White, Lonoke, Washington, &
Conway County Clerk Appellants*

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By:


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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of May, 2014, I have served the foregoing upon the following via electronic mail attachment:

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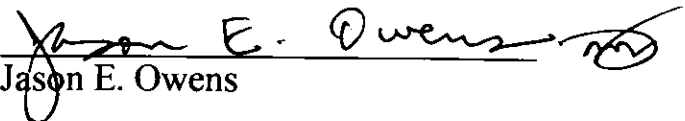
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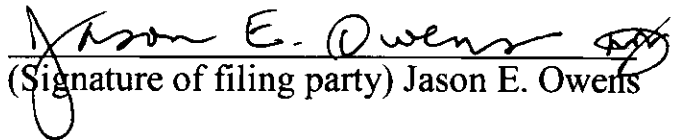
CERTIFICATE OF COMPLIANCE

Certification: I hereby certify that:

I have submitted and served on opposing counsel an unredacted and, if required, a redacted PDF document that complies with the Rules of the Supreme Court and Court of Appeals. The PDF document is identical to the corresponding parts of the paper document from which it was created as filed with the Court. To the best of my knowledge, information and belief formed after scanning the PDF document for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this Certificate has been submitted with the paper copies filed with the Court and has been served on all opposing parties.

Identification of paper documents not in PDF format:

The following original paper documents are not in PDF format and are not included in the PDF document: N/A.


(Signature of filing party) Jason E. Owens