IN THE CIRCUIT COURT SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

AARON R. HUNTSMAN, et al.,
Plaintiffs,

CASE NO.: 2014-CA-305-K

vs.

AMY HEAVILIN, as Clerk of the Courts of Monroe County, Florida, in her official capacity,
Defendant,

and

STATE OF FLORIDA,
Intervenor-Defendant.
_____/

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The court having considered the Plaintiffs' verified complaint, the Plaintiff's motion for summary judgment and memorandum in support, the Declaration of Aaron R. Huntsman and William Lee Jones, the State of Florida's memorandum of law in opposition, the memorandum of law of Amici Curiae Florida Family Action, Inc. "FDL", and People United to Lead the Struggle for Equality Inc. "PULSE", in opposition to Plaintiffs' motion for summary judgment and the oral arguments held on July 7, 2014. The court makes the following findings:

Summary Judgment

Summary judgment shall only be granted when the moving party establishes conclusively the absence of any genuine issue of material fact. Moore v. Morris, 475 So.2d 666, (Fla. 1985). In the instant matter, the plaintiffs and the defendants have stipulated that there are no disputed facts that would prevent a ruling on plaintiffs' motion for summary judgment. However, Amici Curiae (FDL and PULSE) take the position that there are disputed facts that would prevent a granting of plaintiff's motion. Amici Curiae do not have standing to raise issues that have not been raised by the parties. Acton II v. Ft. Lauderdale Hospital, 418 So.2d 1099

(1st DCA 1982). Therefore, the court accepts the stipulation by the parties that there are no disputed facts that would prevent a ruling on plaintiff's motion for summary judgment.

Undisputed Facts

On April 1, 2014, the plaintiffs, a same-sex couple residing in Key West, Florida, applied and were denied a marriage license by the Clerk of the Court of Monroe County. The Clerk's denial was based on Florida law that required one of the applicants to be male and the other female; thereby, excluding same-sex couples from being married. The plaintiffs seek to publicly and officially have their eleven year relationship recognized and legitimized under Florida law. They seek to have their relationship accorded the dignity, respect and security as the relationships of other married couples in the State of Florida. In 2008, the voters of the State of Florida unequivocally voted in favor of an amendment to the Florida Constitution defining marriage, the Florida Marriage Protection Act (FMPA). The voter's intent is codified in Article I, Section 27 of the Florida Constitution.

Florida Laws at Issue

Florida Constitution Article I, Section 27 states: "Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized."

Florida Statute 741.04(1) forbids the issuance of a marriage license unless one party is male and the other female.

Florida Statute 741.212(1) states that same-sex marriages from other states will not be recognized by the State of Florida.

Issues

The plaintiffs hereby petition the court to find the above laws unconstitutional as violative of the Equal Protection and the Due Process Clause of the Fourteenth Amendment of the United States of America.

The State of Florida takes the position that Article I, Section 27 of the Florida Constitution as enacted by Florida voters does not implicate Due Process or the Equal Protection Clause of the Fourteenth Amendment, citing to Baker v. Nelson, 409 U.S. 810 (1972). The state argues that under Baker v. Nelson, Article I, Section 27 is exempt from any constitutional scrutiny by any court in the United States until the United States Supreme Court overturns its decision in Baker v. Nelson. Until that time, a state's definition of marriage is not subject to judicial review on constitutional grounds because the regulation of marriage is exclusively the province of the state. Sosna v. Iowa, 419 U.S. 393 (1975).

In the alternative, the State of Florida takes the position that if there is going to be constitutional scrutiny of Article I, Section 27, then the standard to be applied is the "Rational Basis Standard." Under this standard the law in question is accorded a strong presumption of validity and must be upheld if any reasonable conceivable state of facts could provide a rational basis for the classification. Romer v. Evans, 517 U.S. 620 (1996).

The Amici Curiae, like the State of Florida, also argue that the court is precluded by the United States Supreme Court opinion in Baker v. Nelson from addressing any constitutional challenge to Article I, Section 27 of the Florida Constitution. In the alternative, the Amici Curiae argue that if Article I, Section 27 is subject to constitutional scrutiny it must be under the lower "Rational Basis Standard".

Analysis

A. Baker v. Nelson

The State of Florida and Amici Curiae contend that pursuant to the United States Supreme Court decision in Baker v. Nelson, the traditional definition of marriage does not implicate the Due Process or Equal Protection Clause of the Fourteenth Amendment, because it has been long held that the definition of marriage is the exclusive province of the states. Sosna v. Iowa, 419 U.S. 393 (1975)

In Baker v. Nelson, the Minnesota Supreme Court held that a Minnesota law that limited marriage to opposite sex couples did not violate the Equal Protection or Due Process Clause of the Fourteenth Amendment. On appeal in 1972, the United States Supreme Court summarily dismissed the case, "for want of a substantial Federal Question," by implication leaving the definition of marriage to be exclusively a state issue. Summary dismissals are binding precedents on lower courts. However, summary dispositions may lose their precedential value and are no longer binding, "When doctrinal developments indicate otherwise." Hicks v. Mirabda, 422 U.S. 332 (1975). Baker was decided over 40 years ago. Since then, there have been substantial changes in societal views as well as subsequent changes in Federal and state case law. See Romero v. Evans, 517 U.S. 620 (1996); Lawrence v. Texas, 539 U.S. 558 (2003); U.S. v. Windsor, 133 S. Ct. 2675 (2013). These changes compel this court to conclude that Baker v. Nelson is no longer binding and the issue of same-sex marriage has now become a Federal question. This court joins other state and federal courts that have held that Baker is no longer binding on lower courts. See Whitewood v. Wolf, 2014 WL 2058105 (M.D. Penn.2014); Geiger v. Kitzhaber, 2014 WL 2054264 (D. Oregon 2014); Kitchen v. Herbert, 2014 WL2868044 (10th Cir. 2014); Bishop v. U.S. ex.Rel.Holder, 962 F.Supp.2d. 1252 (N.D. Oklahoma 2014); DeBoer v.

Snyder, 973 F.2d. 757 (E.D. Michigan 2014); Bostic v.Rainey, 970 F.Supp.2d 456 (E.D. Virginia 2014).

B. Due Process Clause

The Fourteenth Amendment of the United States of America states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without Due Process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Within the body of the Fourteenth Amendment is the Due Process Clause, which guarantees all citizens have certain "fundamental rights" and that citizens have a right to "liberty" from governmental intrusion and this right is to be guaranteed and protected by the United States Constitution. The right to liberty has been described by the United States Supreme Court as, "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." See Planned Parenthood v. Casey, 505 U.S. 833 (1992). Encompassed within the right to liberty is the fundamental right to marry. Maynard v. Hill, 125 U.S. 190 (1888). In Maynard, the Supreme Court characterized marriage as "the most important relation in life" and "the foundation of the family and of society, without which there would be neither civilization nor progress." There is no dispute by the parties that the right to marry is a fundamental right protected by the Fourteenth Amendment. The parting-of- the-ways occurs on whether the right to marry belongs to the individual and that individual's choice of spouse or whether the state has the authority to dictate one's choice in spouse to the opposite sex.

The Supreme Court has cautioned that the Due Process Clause only "protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition..." Washington v. Glucksberg, 521 U.S. 702 (1997). These deeply rooted traditions have come into conflict with the principles of the Constitution, and when that has occurred the long standing tradition has been extinguished by the Constitution. An example of popular traditions

failing a constitutional challenge was Virginia's law against interracial marriage. Virginia's anti-miscegenation law was based on a long historical tradition held by many states that forbid interracial couples from marrying. The Supreme Court in Loving v. Virginia, 338 U.S. 1 (1967), held that Virginia's anti-miscegenation statute was unconstitutional as violative of both the Due Process and Equal Protection Clause of the Fourteenth Amendment. The Supreme Court held that the right to marry "resides with the individual and cannot be infringed by the State."

The Supreme Court in Turner v. Safley, 482 U.S. 78 (1987), once again reaffirmed that the right to marry resided with the individual when the court struck down a Missouri regulation that prohibited inmates from marrying without the prior approval of the prison superintendent. The Supreme Court held that even an inmate who clearly had a reduced expectation of liberty, retain his right to marry. The Supreme Court stated that "Inmate marriages like other marriages are expressions of emotional support and public commitment. These elements are a significant aspect of marital relationships...Taken together, we conclude that these elements are sufficient to form a constitutionally protected marital relationship in the prison contexts."

In Lawrence v. Texas, 539 U.S. 558 (2003), the Supreme Court stated,

> "Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they may have been more specific. They did not presume to have this insight. **They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress.** As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom." (Emphasis added)

This court concludes that a citizen's right to marry is a fundamental right that belongs to the individual. The right these plaintiffs seek is not a new right, but is a right that these individuals have always been guaranteed by the United States Constitution. Societal norms and traditions have kept same-sex couples from marrying, like it kept women from voting until 1920 and forbid interracial marriage until 1967.

The Supreme Court in Lawrence explained that every generation defines its own freedom and that our present laws may be judged by future generations as oppressive and obviously unconstitutional. The same way we now look at laws that forbade interracial marriages, or excluded homosexuals from entering the country, or kept women from voting, or kept black children from going to school with white children or that the U.S. imprisoned Japanese-Americans, on U.S. soil, in camps during WWII. When these laws were in effect, they were supported by society as being reflective of our traditions and morals at the time. Only when those not in power, challenged the constitutionality of those laws were they overturned by the courts regardless of the law's popularity and years of tradition. "One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other **fundamental rights may not be submitted to vote; they depend on the outcome of no elections**." W. Virginia State Bd. Of Educ. v. Barnette, 319 U.S. 624 (1943). (Emphasis Added).

This court holds that the fundamental right to marry belongs to the individual and is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and that right encompasses the right to marry a person of one's own sex. Thus Article I, Section 27 of the Florida Constitution and Florida Statute 741.04(1) are unconstitutional.

C. Equal Protection Clause

The Equal Protection Clause of the Fourteenth Amendment commands that no state shall deny to any person within its jurisdiction the equal protection of the law. The Constitution "neither knows nor tolerates classes among its citizens." Plessy v. Ferguson, 163 U.S.537 (1896). When faced with an Equal Protection claim, the court must first determine whether to apply strict scrutiny, intermediate scrutiny or the rational basis standard. U.S. v. Virginia, 518 U.S. 515 (1996). The rational basis standard is the least strict or easiest to over-come by the

government. Under the rational basis review, a classification will be upheld as long as there is a rational relationship between the disparity of treatment and some legitimate government purpose. Heller v. Doe, 509 U.S. 312 (1993). A law will not survive rational basis unless there is a legitimate government purpose for the law and the discrimination bears a rational relationship to achieve that purpose. City of Cleburne v. Cleburne Living Center, 105 S. Ct. 3249 (1985). The plaintiffs have the burden of proving either that there is no legitimate purpose for the law or that the means chosen to effectuate that legitimate purpose are not rationally related to that purpose. Rational basis while deferential to the state, if the law exhibits a desire to harm a politically unpopular group the Supreme Court has applied "a more searching form of rational basis to strike down such laws under the Equal Protection Clause." See Lawrence v. Texas, 539 U.S. 588 (2003). Where a court suspects animus towards a disadvantaged group a more meaningful level of review is warranted. Several federal courts have used this heightened rational basis test or rational basis test with "teeth." See City of Cleburne v. Cleburne Living center, 105 S. Ct. 3249 (1985); Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973); and most recently U.S. v. Windsor, 133 S. Ct. 2675 (2013).

In Windsor, the Supreme Court found animus when it held that the principle of the Federal Defense of Marriage Act (DOMA) violated the Equal Protection guarantee because the "purpose and practical effect of the law... [was] to impose a disadvantage, a separate status, and so a stigma upon all who enter into a same sex marriage." The Supreme Court struck down DOMA because it violated both the Due Process and Equal Protection Clause of the Fourteenth Amendment. Similarly, the purpose and practical effect of FMPA is that it creates a separate status for same-sex couples and imposes a disadvantage and stigma by not being recognized under Florida law. For example the right to make health care decisions for the other spouse, without a health care directive; federal tax implications; the right to support and equitable

distribution of property obtained during the marriage; upon the death of one spouse, the other spouse may receive an elective share of the estate; the obligation of spouses to support children of the marriage. Numerous benefits are available to married couples that form a safety net for the couples and their children that do not exist for same-sex couples at this time. See U.S. v. Windsor, 133 S. Ct. 2675 (2013).

The court finds that despite the Amici Curiae assertion that there is no evidence of animus towards homosexuals by the proponents of the Florida Marriage Protection Amendment (FMPA), there is ample evidence not only historically but within the very memorandum of law filed by the Amici Curiae. For example, the affidavits of Dr. Reisman, filed by the Amici Curiae, for the proposition that, "a law encouraging homosexual behaviors appears to increase HIV risk and negative health outcomes and thus creates a danger both to the individual engaging in these behaviors as well as society as a whole." The Amici Curiae also claims that homosexuality is not the result of biology, genetics or nature, but that in fact it is a choice that is naturally subject to change and within the control of the individual. (See page 20-21 of Amici Curiae memorandum.) The Amici Curiae's memorandum paints a picture of homosexuals as HIV infected, alcohol and drug abusers, who are promiscuous and psychologically damaged and incapable of long term relationships or of raising children. (Pages 29-39). They contend, "the personal, social and financial costs of these homosexual-specific health problems concern not just those who engage in homosexual activity, but also the larger community of citizens who help provide services and who must bear part of the burden imposed by the health challenges. It is eminently rational for the voters of Florida to seek to minimize the deleterious effect of these conditions on public health, safety and welfare by affirming that marriage in Florida remains the union of one man and one woman." (Page 39). The court finds that animus has been established by the plaintiffs and that the heightened rational basis test is appropriate.

Rational Basis

Only the Amici Curiae attempts to provide a rational basis for a law that treats one class of citizens different than another. The rational bases for excluding same-sex couples from the institution of marriage, according to Amici Curiae, are to encourage procreation, a better environment for children and to preserve the traditional definition of marriage. It is worth noting that neither of the defendants in this case have argued that the basis for the FMPA is to encourage procreation or to provide a better environment for children. Only the Amici Curiae has attempted to put forward a rational basis for the unequal treatment of a segment of our society. However, Amici do not have standing to raise issues that have not been raised by the parties. Acton II v. Ft. Lauderdale Hospital, 418 So.2d 1099 (1st DCA 1982). Because the Amici Curiae are not parties to the case they may not raise different issues than the defendants. Nevertheless, for purposes of completeness the court will discuss the rational basis arguments made by the Amici Curiae.

The first "rational basis" argued by the Amici Curiae is that, "FMPA" memorializes millennia of history and tradition. Justice Scalia in his dissent in Lawrence v. Texas stated, "Preserving the traditional institution of marriage...is just a kinder way of describing the State's moral disapproval of same-sex couples," which is obviously not a legitimate purpose for the unequal treatment. In Williams v. Illinois, 399 U.S.235 (1970), the Supreme Court stated, "Neither the antiquity of a practice nor the fact of steadfast legislative and judicial adherence to it through the centuries insulates it from constitutional attack." Tradition alone cannot justify the unequal treatment of same-sex couples any more than it could justify the ban of interracial marriages, law forbidding women from voting, segregation etc.

The second "rational basis" argued by the Amici Curiae is that FMPA encourages procreation. There is nothing in FMPA that encourages heterosexual couples to procreate.

Procreation has never been a qualification for marriage. A married couple who by choice or by circumstance do not have children is no less married than a couple that chooses to have children. Therefore, if the purpose of FMPA is to exclude same-sex couples from marriage, in order to encourage procreation by heterosexual couples; it fails, as "permitting same-sex couples to marry will not affect the number of opposite-sex couples who marry, divorce, cohabit, have children outside of marriage or otherwise affect the stability of opposite-sex marriages." Perry v. Schwarzenegger, 704 F. Supp.2d. 921 (N.D. Calif. 2010).

The third "rational basis" argued by the Amici Curiae is that FMPA encourages a better environment for the rearing of children. It is undisputed that the State of Florida has a legitimate interest in insuring the welfare of children. However, FMPA by limiting marriages to heterosexual couples not only fails to further the State's interest, but it in fact has the opposite effect. "(T)he only effect the marriage recognition bans have on children's well-being is harming the children of same-sex couples who are denied the protection and stability of having parents who are legally married." Obergefell v.Wymslo, 962 F.Supp.2d. 968 (S.D. Ohio 2013). The denial of marriage to same-sex couples, "(L)eads to a significant unintended and untoward consequence by limiting the resources, protections and benefits to children of same-sex parents." Pedersen v. Office of Personnel Management, 881 F.Supp.2d 294 (D. Conn. 2012). The court holds that the plaintiffs have established animus by the proponents of FMPA and that the plaintiffs have also established that there is no rational basis for the unequal treatment of homosexuals by FMPA and Florida Statute 741.04(1). The court finds Article 1, Section 27 of The Florida Constitution and Florida Statute 741.04(1) as unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

Plaintiffs Lack of Standing

The plaintiffs further move this court to declare Florida Statute 741.212(1) as unconstitutional. Florida Statute 741.212, declares that any same-sex marriage from another jurisdiction shall not be recognized by the State of Florida. The record is void of any facts establishing that the plaintiffs were married in another jurisdiction and that they have been "harmed" by Florida's failure to recognize their legal union. The motion for summary judgment holding Florida Statute 741.212 unconstitutional is denied.

Conclusion

This court is aware that the majority of voters oppose same-sex marriage, but it is our country's proud history to protect the rights of the individual, the rights of the unpopular and the rights of the powerless, even at the cost of offending the majority. Whether it's the NRA protecting our right to bear arms when the City of Chicago attempted to ban handguns within its city limits; or when Nazi supremacists won the right to march in Skokie, Illinois a predominantly Jewish neighborhood; or when a black woman wanted to marry a white man in Virginia; or when black children wanted to go an all-white school, the Constitution guarantees and protects ALL of its citizens from government interference with those rights. All laws passed whether by the legislature or by popular support must pass the scrutiny of the United States Constitution, to do otherwise diminishes the Constitution to just a historical piece of paper.

It is therefore,

ORDERED AND ADJUDGED as follows:

1) Plaintiffs' Motion for Summary Judgment is **GRANTED**.

2) The Defendant, Amy Heavilin, in her official capacity as Clerk of Monroe County, Florida, is hereby enjoined from enforcing Article I, Section 27 of the Florida Constitution and Florida Statute 741.04(1) only to the extent that it prohibits same-sex marriage.

3) Defendant, Amy Heavilin, in her official capacity as Clerk of Monroe County, Florida, shall issue a marriage license to the plaintiffs and similarly situated same-sex couples, subject to the same restrictions and limitations applicable to opposite sex-couples under Florida law.

4) In consideration of the Clerk of Courts anticipated rise in activity, and preparation thereof, issuance of said license(s) shall commence no sooner than Tuesday, July 22, 2014.

DONE AND ORDERED in Tavernier, Monroe County Florida this the 17th day of July, 2014.

LUIS M. GARCIA
Circuit Judge

I HEREBY CERTIFY that a true and correct copy of the above and foregoing order was emailed on the 17th day of July, 2014 to:

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