IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Case No.: 1:15-cv-274

Kay Diane Ansley, Catherine "Cathy" McGaughey, Carol Ann Person, Thomas Roger Person, Kelley Penn, and Sonja Goodman,

Plaintiffs,

v.

State of North Carolina,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, pursuant to 28 U.S.C. § 2201, seeking a declaration that the state legislation known as "Senate Bill 2" violates the Establishment Clause of the First Amendment and the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution and asking this Court to enjoin the statute as unconstitutional, allege the following against Defendant:

PARTIES

1. Plaintiffs Kay Diane Ansley and Catherine "Cathy" McGaughey are citizens and residents of McDowell County, North Carolina and are North Carolina taxpayers. Diane and Cathy were married on October 15, 2014 after this Court struck down state laws forbidding their marriage in *General Synod of the United Church of Christ v. Reisinger*, No. 3:14-cv-213-MOC (W.D.N.C.). Diane earned a Bachelor of Science degree from the University of West Georgia in 1983 and a degree from the American Institute for Paralegal Studies in 1993. She previously worked in law enforcement for 22 years and now works for a local physician as a Patient Scheduler and Medical Records Custodian. In

1982, Cathy earned a Bachelor of Science degree from Georgia State University's College of Urban Life in 1982. She currently works for a local physician as a bookkeeper, and also does bookkeeping for two faith-based non-profit groups and a small retail business.

2. Plaintiffs Carol Ann Person and Thomas Roger Person are citizens and residents of Moore County, North Carolina and are North Carolina taxpayers. Both are legally blind and met at the Governor Morehead School for the Blind in the 1970s and both worked for many years at Industries for the Blind in Winston-Salem. Carol Ann is white and Thomas is African-American. In 1976, two magistrates in Forsyth County refused to marry Carol Ann and Thomas because of the magistrates' religious beliefs against interracial marriage. One of the magistrates read to them from the Old Testament to justify his refusal to marry the Persons, and the other recited the "Our Father" prayer to justify his refusal. Both magistrates declared that interracial marriage was against God's will and the Bible. In 1978, a federal district court found that the two magistrates had violated the Fourteenth Amendment rights of Carol Ann and Thomas, ordered that their marriage be performed and ordered the magistrates to pay the Persons' legal fees.

3. Plaintiffs Kelley Penn and Sonja Goodman are citizens and residents of Swain County, North Carolina and are North Carolina taxpayers. They live and work together and are engaged to be married.

4. Defendant State of North Carolina (hereinafter "Defendant" or "North Carolina") is the body politic of the geographically defined area known as North Carolina, and is a body corporate capable of bringing suit and being sued. It is also a member state of these United States, and thus is subject to the federal constitution as well as its own state constitution.

JURISDICTION AND VENUE

5. Plaintiffs bring this action pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983 seeking a declaration that the law known as Senate Bill 2, adopted and implemented by North Carolina, is action taken under color of state law that violates the federal constitution.

6. The District Court has federal question jurisdiction over the subject matter under 28 U.S.C. § 1331.

7. Plaintiffs have standing as state taxpayers under *Flast v. Cohen,* 392 U.S. 83 (1968), as they challenge a specific state law—known as Senate Bill 2—that authorizes public spending for an expressed and primary religious purpose in violation of the First Amendment.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because North Carolina is a body corporate capable of bringing suit and being sued in the Western District; the majority of Plaintiffs live within the Western District; and some of the challenged spending under the statute that violates the First Amendment has occurred in the Asheville Division of the Western District.

9. Moreover, Senate Bill 2 was enacted purposely as a collateral attack on the Order of this Court in a related case involving Plaintiffs Ansley and McGaughey: *General Synod of the United Church of Christ v. Reisinger*, No. 3:14-cv-213-MOC (W.D.N.C.).

FACTS

A. The Obligation of Each State's Judiciary to Support and Uphold the United States Constitution is at the Foundation of Our Constitutional Democracy.

10. On November 21, 1789, North Carolina became the twelfth state of the newly formed United States to ratify the federal constitution.

11. In ratifying the second clause of Article VI, North Carolina agreed that the federal constitution is the superseding law of the nation that all North Carolina judges must uphold. As stated under Article VI:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

12. In ratifying the third clause of Article VI, North Carolina further agreed that its public judicial officials "shall be bound by oath or affirmation, to support this Constitution."

13. On July 4, 1868, North Carolina ratified the Fourteenth Amendment of the federal constitution, which mandates that the State provide each of its citizens the right to equal protection and due process of law.

14. Thus, since July 4, 1868, all judicial officials in North Carolina have been "bound by oath or affirmation" to support the Fourteenth Amendment.

15. In 1970, North Carolina rewrote its state constitution. Under Article VI, § 7 of the 1970 North Carolina Constitution, all persons elected or appointed to public office must swear to or affirm the following oath (with emphasis added):

> "I, _____, do solemnly swear (or affirm) that **I will support and maintain the Constitution and laws of the United States**, and the Constitution and laws of North Carolina not inconsistent therewith and that I will faithfully discharge the duties of my office as _____, so help me God."

16. To further this state constitutional requirement, the North Carolina Legislature set out in N.C.G.S. § 11-7 a required oath for all elected and appointed public officials, including judicial officers. It reads (with emphasis added):

> "I, (name), do solemnly and sincerely swear **that I will support the Constitution of the United States**; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, **not inconsistent with the Constitution of the United States**, to the best of my knowledge and ability; so help me God."

17. N.C.G.S. § 11-11 then sets forth additional oaths for each public official, including an oath for judges to perform the duties of judicial office fairly and impartially.

B. North Carolina Magistrates are Judicial Officials.

18. Under subchapters IV and VI of Chapter 7A of North Carolina's General Statutes, magistrates are judicial officials who preside over certain matters in North Carolina's District Courts.

19. Under N.C.G.S. § 7A-170, magistrates are required to take the judicial oath of office, consisting of the oath of all public officials set out in N.C.G.S. § 11-7 and the specific oath for judges found in N.C.G.S. § 11-11.

20. Under N.C.G.S. § 7A-173, a magistrate may be removed from that judicial office for the same reasons that apply to all judges of the state's General Court of Justice.

21. In criminal cases, magistrates, *inter alia*, issue search and arrest warrants, set bail for arrestees, and may handle pleas and the payment of fines for certain traffic violations and specified misdemeanors. In some counties, magistrates conduct trials in specified criminal cases.

22. In civil cases, magistrates conduct trials in "small claims" court, hear eviction proceedings, and preside over a statutory list of other civil disputes.

23. Under N.C.G.S. § 7A-292(b)(9), North Carolina has assigned magistrates the power and judicial duty "to perform the marriage ceremony under N.C.G.S. § 51-1."

24. Chapter 51 of the General Statutes contains North Carolina's marriage laws. N.C.G.S. § 51-1 authorizes magistrates to solemnize marriages by ceremony, and N.C.G.S. § 51-7 authorizes magistrates to sign marriage licenses and submit them for registration.

25. Under N.C.G.S. § 14-230, any magistrate who violates the oath of office or willfully refuses to discharge a duty of office is subject to removal from office on a misdemeanor charge.

C. Amendment One and Corollary Marriage Laws Were Unconstitutional.

26. In September 2011, the North Carolina legislature voted to place on a statewide ballot an initiative, commonly called Amendment One, to amend the North Carolina Constitution to limit marriage to heterosexual couples and to prohibit the recognition of marriages between same sex couples.

27. Chapter 51 of the General Statutes already contained similar limiting provisions.

28. Many public officials voiced strident support for Amendment One based on a religious belief that the Bible limited marriage to heterosexual couples and that homosexuality was sinful. For example, State Senator James Forrester stated: "The Lord intended for a family to have one man and one woman."[1] State Senator Wesley Meredith stated: "We need to regulate marriage because I believe that marriage is between a man and woman," and expressed the view that the Bible provides the basis that marriage should be limited to a relationship between a man and a woman.[2]

29. The Amendment One referendum passed on May 10, 2012, amending the state constitution.

30. On Friday, October 10, 2014, this Court declared Amendment One, and its corollary provisions in Chapter 51 of the General Statutes, unconstitutional. This Court found that the ban on marriage between same sex couples violated the Fourteenth Amendment under the Fourth Circuit's decision in *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014). *See General Synod of the United Church of Christ v. Reisinger*, No. 3:14-cv-213-MOC, Doc. 121 (W.D.N.C. Oct. 10, 2014).

31. This Court entered its order shortly after the Supreme Court denied *certiorari* in *Bostic*.

---

[1] State Senator James Forrester, Sponsor of Amendment One, *Wedding Bills*, The News & Observer (Mar. 2, 2011), http://www.newsobserver.com/2011/03/02/1022741/wedding-bills.html.

[2] Paul Woolverton, *N.C. Senate Approves Amendment to Block Gay Marriage*, Fayetteville Observer (Sept. 14, 2011), http://www.fayobserver.com/news/state/article_df7d48cf-1770-5f59-9975-11bc83b05347.html.

32. The President Pro Tempore of the North Carolina Senate and Speaker of the North Carolina House of Representatives sought to intervene in *General Synod of the United Church of Christ v. Reisinger*, No. 3:14-cv-213-MOC, after the Supreme Court denied *certiorari* in *Bostic* and North Carolina's Attorney General stated publicly that he saw no legal basis to defend Amendment One or to appeal this Court's order in light of *Bostic*.

33. This Court denied that motion to intervene. *See General Synod of the United Church of Christ v. Reisinger*, No. 3:14-cv-213-MOC, Doc. 120 (W.D.N.C. Oct. 10, 2014).

34. This Court's ruling in *General Synod* led immediately to the issuance of marriage licenses to same sex couples in North Carolina, as well as the marriage of same sex couples by magistrates. Thousands of marriage licenses were issued to same sex couples in North Carolina, and those couples were married, in the ensuing days, weeks, and months.

35. On Monday, October 13, 2014, the head of the Administrative Office of the Courts issued a directive that "[m]agistrates should begin immediately conducting marriages of all couples presenting a marriage license issued by the Register of Deeds."

36. On Tuesday, October 14, 2014, General Counsel for the Administrative Office of the Courts issued a legal memorandum explaining that magistrates would violate their oath required by Article IV, Sec. 7 of the North Carolina Constitution to uphold the United States Constitution if they refused to marry same sex couples.

37. On October 14, 2014, the District Court for the Middle District of North Carolina issued an Order and Judgment also striking down Amendment One and corollary marriage laws prohibiting marriage equality. *See Fisher-Borne v. Smith*, No. 1:12-cv-589-WO (M.D.N.C. Oct. 14, 2014); *Gerber v. Cooper*, No. 1:14-cv-299-WO (M.D.N.C. Oct. 14, 2014).[3]

[3] An amended Order and Judgment striking down Amendment One and related marriage laws were entered the following day in the Middle District cases.

38. The President Pro Tempore of the North Carolina Senate and Speaker of the North Carolina House of Representatives were allowed to intervene in the *Fisher-Borne* and *Gerber* cases, but did so unsuccessfully.

39. Also on October 14, 2014, Michael Crowell, Professor of Public Law and Government, School of Government, University of North Carolina—Chapel Hill, sent an email to Judicial Chief District Court Judges, who supervise the magistrates in their judicial districts, with the subject title: "Magistrates and same-sex marriage."

40. Professor Crowell wrote, in part, that he was responding to inquiries concerning how to address the issue of "magistrates [who] would prefer not to perform ceremonies for same-sex couples."

41. After acknowledging the binding effect of this Court's ruling statewide, Professor Crowell wrote, in part, "A magistrate has taken an oath of office to perform the duties of the office and, just like you [District Court Judges], does not get to choose which laws to follow and which not. Everyone would agree that it would not be proper for a magistrate to refuse to marry an interracial couple because the magistrate does not approve of such marriages. The same principle would apply to same-sex couples now. No doubt you can think of lots of other examples of laws which a judge might not approve personally but is obligated to uphold."

42. Professor Crowell continued: "This is an issue about which people have strong opinions, and magistrates no doubt are divided just as other citizens are. The difference is that magistrates have taken an oath of office and are public officers. They, like you, are required to put their personal feelings aside when necessary. The judicial system could not work if individual officers acted otherwise."

43. Professor Crowell concluded by stating: "I hope this does not sound preachy or heavy handed, but I do think it is important to remind magistrates of the majesty of their position. They, like

you, are judicial officials. They should be proud of the public trust that has been placed in them, in the importance of their office, and the need to sustain the rule of law regardless of the discomfort it causes. In the end the one thing that should make them proudest is being judicial."

44. The North Carolina Court System posted Professor Crowell's e-mail to the Chief District Court Judges on its website, where it remains as of this filing.[4]

45. On information and belief, some magistrates, including magistrates from counties within the Western District, resigned in the face of this Court's Order and the directives from the Administrative Office of the Courts rather than be required to perform marriages for same sex couples.

D. North Carolina Adopted Senate Bill 2 in Defiance of These Court Rulings.

46. On January 28, 2015, the President Pro Tempore of the Senate filed the second bill of the new legislative session: a proposed law to allow magistrates to opt out of performing marriages on religious grounds (and also to allow assistant and deputy registers of deeds to opt out of issuing marriage licenses).

47. The long name of the bill read (with emphasis added):

> A BILLTO BE ENTITLED AN ACT TO ALLOW MAGISTRATES AND REGISTERS OF DEEDS TO RECUSE THEMSELVES FROM PERFORMING DUTIES RELATED TO MARRIAGE CEREMONIES **DUE TO SINCERELY HELD RELIGIOUS OBJECTION**.

48. The official "short title" of the bill was "Magistrates Recusal of Civil Ceremonies."

49. The bill became known simply as "Senate Bill 2," a moniker based on the filing number.

50. Section 1 of the proposed bill created a new statute, N.C.G.S. § 51-5.5, that would grant magistrates the right to recuse themselves from conducting any marriages, and separately would grant

[4] Email from Michael Crowell, Professor of Public Law and Government, School of Government, UNC-CH (October 14, 2014), http://www.nccourts.org/News/Documents/Marriage/crowell_email_magistrates_and_same_sex_marriages.pdf.

assistant and deputy registers of deeds the right to recuse themselves from issuing marriage licenses, for six-month intervals, based upon "any sincerely held religious belief."

51. N.C.G.S. § 51-5.5 permits recusal based on "any" religious belief regarding marriage, which could include religious opposition to marriage between two men, two women, two people of different faiths, or, like Plaintiffs Carol Ann and Thomas Person, two people of different races.

52. The statute's obvious purpose and timing, however, were in response to this Court's ruling, and an effort to give magistrates who oppose constitutionally-protected, equal marriage rights for gays and lesbians an exemption from their mandatory judicial oath to support and uphold the federal constitution.

53. The statute allowed magistrates to refuse to support the Fourteenth Amendment but still remain judicial officials, notwithstanding the requirements imposed of Article VI of the United States Constitution and Article VI, § 7 of the North Carolina Constitution that all judges be "bound" to uphold the federal constitution.

54. To achieve that end, Senate Bill 2 also amended N.C.G.S. § 14-230 to add subsection (b) to expressly exclude a magistrate's refusal to perform marriage ceremonies as an act that "violated his oath of office" or that constituted a form of "misbehavior in office" or otherwise provided cause for removal from office on a Class 1 misdemeanor.

55. Senate Bill 2 also amended N.C.G.S. § 161-27 to add a subsection (b) that expressly protects assistant and deputy registers of deeds from being charged with a Class 1 misdemeanor for "recusal to issue marriage licenses in accordance with Chapter 51 of the General Statutes."

E. Senate Bill 2 Directed that Public Funds Be Used to Accomplish its Religious Goal.

56. Senate Bill 2 also authorized the expenditure of public funds to accomplish the goal of exempting magistrates from their oath of office on religious grounds. The law does so in at least two ways.

57. First, language in N.C.G.S. § 51-5.5 provides that if all of the magistrates in a given county recuse themselves due to a "sincerely held religious objection" from performing marriages, the Administrative Office of the Courts shall arrange to bring a willing magistrate from another county to perform marriages in the county—an act that requires the expenditure of state funds. A district court judge would perform marriages until such an arrangement could be made.

58. Second, under Section 5 of Senate Bill 2, any magistrate who had resigned his or her position after this Court's order in *General Synod* and then applied and was reappointed within 90 days of the effective date of Senate Bill 2, would receive full service credit towards retirement for that gap in service from the magistrate's resignation to his or her reinstatement.

59. To accomplish that end, Section 5 of Senate Bill 2 requires the "Judicial Department" to pay into the state retirement system on behalf of each reappointed magistrate both the employee's and employer's share of retirement contributions to cover that gap in service.

F. Senate Bill 2 Became Law over the Governor's Veto.

60. Senate Bill 2 was approved by the full Senate on February 25, 2015.

61. The House then approved the legislation on May 28, 2015.

62. The Governor vetoed Senate Bill 2 that same day, issuing a formal statement explaining the reason for his veto:

> I recognize that for many North Carolinians, including myself, opinions on same-sex marriage come from sincerely held religious beliefs that marriage is between a man and a woman. However, we are a nation and a state of laws. Whether it is the president, governor, mayor, a law

> enforcement officer, or magistrate, no public official who voluntarily swears to support and defend the Constitution and to discharge all duties of their office should be exempt from upholding that oath; therefore, I veto Senate Bill 2.

63. Despite the Governor's warning that Senate Bill 2 created a constitutional problem in allowing public officials to claim a religious exemption from their oath of office, the legislature overrode the Governor's veto on June 11, 2015.

64. On June 26, 2015, the U.S. Supreme Court ruled in *Obergefell v. Hodges,* 576 U.S. ___, 135 S. Ct. 2584 (2015), that state bans on marriage between same sex couples violated both the Equal Protection and Due Process clauses of the Fourteenth Amendment.

65. North Carolina did not seek to modify or change Senate Bill 2 in the wake of the Supreme Court's decision in *Obergefell*.

G. North Carolina Has Expended Public Funds to Accomplish the Goals of Senate Bill 2.

66. Since Senate Bill 2 became law, on information and belief, at least 32 magistrates across North Carolina have invoked religious belief to recuse themselves from performing marriages because of their opposition to marriage equality for same sex couples.

67. On information and belief, these magistrates had previously performed marriages for opposite sex couples freely and without compunction, but chose to opt out of performing marriages because of their opposition to performing marriages for same sex couples.

68. On information and belief, all of the magistrates in McDowell County recused themselves from performing marriages under Senate Bill 2 because of their opposition to marriage equality for same sex couples.

69. On information and belief, these McDowell County magistrates had previously performed marriages for opposite sex couples freely and without compunction, but chose to opt out of performing marriages because of their opposition to performing marriages for same sex couples.

70. By opting out of performing marriages, these magistrates in McDowell County and across North Carolina renounced the oath to uphold the United States Constitution, as they rejected and refused to defend, support, uphold and be bound by the Fourteenth Amendment rights of same sex couples to marry.

71. By published news accounts, North Carolina's Administrative Office of the Courts has confirmed that it has expended public funds monthly under N.C.G.S. § 51-5.5(c) to further this religious exemption from the oath of office for all of McDowell County's magistrates, and to support and facilitate their renunciation of their judicial oath to be bound by the federal constitution.

72. As required by Senate Bill 2, North Carolina has paid and is paying from public funds the costs necessary to transport an oath-abiding magistrate from Rutherford County to perform marriages in McDowell County, and to transport one or more of the oath-renouncing magistrates to Rutherford County to perform other judicial duties there while that oath-abiding magistrate performs constitutionally required marriages in McDowell County.

73. The gay and lesbian citizens of McDowell County who may need to appear before these oath-renouncing magistrates in other civil or criminal matters do so knowing that every magistrate in McDowell County believes that gays and lesbians are second-class citizens not entitled to Equal Protection and Due Process of law under the Fourteenth Amendment.

74. The gay and lesbian citizens of McDowell County also know that North Carolina is using their tax money specifically to support these magistrates' religious renunciation of the citizens' Fourteenth Amendment rights.

75. On information and belief, after Senate Bill 2 became law, several former magistrates in the Western District who had resigned rather than be bound by this Court's October 10, 2014 ruling

were reappointed as magistrates; other magistrates in other parts of the states who had resigned rather than perform same-sex marriages were similarly reappointed.

76. For each of these reappointed magistrates, North Carolina's Judicial Department has paid tax funds into the state employees' retirement system, both the employee and employer contributions, to purchase service credit for the gap in service from the time of each magistrate's resignation in the face of this Court's ruling and the orders of the AOC to perform same sex marriages, until the time of his or her reappointment under the provisions of Senate Bill 2.

77. Because Senate Bill 2 permits magistrates in North Carolina to renounce their oaths in this manner, Senate Bill 2 sends a deliberate, purposeful and malicious message to gays and lesbians that they are not full citizens, and denounces the federal courts for finding a fundamental right to marry under the Equal Protection and Due Process Clauses of the U.S. Constitution.

CLAIM I
First Amendment – Establishment Clause Violation
(Applicable to North Carolina Pursuant to the Fourteenth Amendment)
(All Plaintiffs)

78. All prior paragraphs are incorporated by reference.

79. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983 to challenge North Carolina's actions, taken under color of state law, that violate the First Amendment to the U.S. Constitution, which applies to the State of North Carolina under the Fourteenth Amendment.

80. The actions of North Carolina in passing Senate Bill 2 into law, then overriding the constitutional concerns expressed in the Governor's veto, and expending public funds to further this new statutory right of magistrates to assert "any" "sincere" religious justification for not performing marriages, and thereby renounce their constitutionally required oath of office on religious grounds, violate the Establishment Clause of the First Amendment.

81. Senate Bill 2 establishes a religious exemption from the judicial obligation to uphold the federal constitution. This religious exemption permits judicial officials to substitute their own religious beliefs as supreme to their oath to uphold the federal constitution, and thus violates the Establishment Clause of the First Amendment.

82. Senate Bill 2's primary purpose is to endorse and establish the primacy of a specific religious belief about same sex marriage above the constitutional obligations of magistrates, by exempting any magistrate who opposes such marriages on religious grounds from that judicial obligation. Moreover, the law orders the expenditure of taxpayer funds to accomplish that religious purpose in violation of the Establishment Clause.

83. North Carolina endorsed and established into law this religious view of same sex marriage in defiance of this Court's ruling that same sex couples have a constitutional right to marry, and it adopted this legislation without undertaking any balancing of the individual and state interests, as required in adopting any legislation with a religious impact.

84. In the drafting of Senate Bill 2 and passing it into law, North Carolina failed to balance the public's societal interest in having all judges bound by their judicial oath to support and evenly apply the United States Constitution to all citizens, against the magistrates' interests in asserting their personal religious beliefs about same sex marriage in the face of that judicial oath.

85. From the face of the legislation, North Carolina failed to undertake this required balancing of interests, rendering Senate Bill 2 constitutionally infirm.

86. Further, this legislation does not have a legitimate secular purpose.

87. The legislation's sole purpose is to advance a specific religious belief about same sex marriage.

88. Moreover, Senate Bill 2 entangles the state in religious affairs, because it establishes a sincerity test for a magistrate's religious-based recusal from the duty to perform marriages.

89. Finally, Senate Bill 2 harms third parties because it compromises, impairs, and violates the constitutional integrity of the judicial system to the detriment of the citizens of North Carolina by protecting the employment of magistrates unwilling to recognize and protect the constitutional rights of a segment of the public: gay and lesbian citizens of McDowell County and every other county in the state.

90. Under Senate Bill 2, the actions of the two magistrates who refused to conduct an interracial marriage for Carol Ann and Thomas Person on religious grounds, later found by a federal court to violate the Fourteenth Amendment, is sanctioned and protected conduct.

91. Plaintiffs seek and are entitled to a declaration that Senate Bill 2 violates the First Amendment and to an Order enjoining the laws contained in the legislation.

92. Plaintiffs also seek and are entitled to costs and attorneys' fees under 42 U.S.C. § 1988 and *Hutto v. Finney,* 437 U.S. 678 (1978).

CLAIM II
Fourteenth Amendment – Equal Protection Violation
(Plaintiffs Ansley, McGaughey, Penn, and Goodman)

93. All prior paragraphs are incorporated by reference.

94. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983 to challenge North Carolina's actions, taken under color of state law, that violate the Fourteenth Amendment to the U.S. Constitution, which applies to the State of North Carolina.

95. Senate Bill 2 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, both on its face and as applied to Plaintiffs Ansley, McGaughey, Penn, Goodman, and all other gay and lesbian citizens of North Carolina.

96. Gay or lesbian citizens like Plaintiffs Ansley, McGaughey, Penn, and Goodman may have to appear in other civil or criminal proceedings before these same magistrates who believe as a matter of publicly sanctioned and financed religious creed that gays and lesbians are not entitled to the full rights of other citizens. Therefore, Senate Bill 2, deliberately and maliciously, compromises, impairs, and violates the constitutional integrity of the judicial system that must provide equal protection of the law to gay and lesbian citizens in McDowell County and throughout North Carolina.

97. Gay and lesbian citizens in any other county where a magistrate has been recused from performing marriages under Senate Bill 2 must endure this same risk of appearing before a magistrate judge who believes they are not full citizens as a matter of state sanctioned religious belief.

98. At its bottom, Senate Bill 2 singles out gay and lesbian couples, and rejects with malice and animus the fundamental right and equal dignity of marriage for gays and lesbians protected under the Fourteenth Amendment by the U.S. Supreme Court, as held in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015), and protects and supports magistrates who deny gay and lesbian citizens equal treatment under the law, including Plaintiffs Ansley, McGaughey, Penn, and Goodman.

99. Plaintiffs seek and are entitled to a declaration that Senate Bill 2 and the stated-sanctioned recusal of magistrates from performing marriages of gay and lesbian citizens violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and to an Order enjoining the laws passed in this legislation.

100. Plaintiffs seek and are entitled to costs and attorneys' fees on Claim II under 42 U.S.C. § 1988 under *Hutto v. Finney,* 437 U.S. 678 (1978).

CLAIM III
Fourteenth Amendment – Due Process Violation
(Plaintiffs Ansley, McGaughey, Penn, and Goodman)

101. All prior paragraphs are incorporated by reference.

102. Plaintiffs bring this claim pursuant to 42 U.S.C. § 1983 to challenge North Carolina's actions, taken under color of state law, that violate the Fourteenth Amendment to the U.S. Constitution, which applies to the State of North Carolina.

103. Senate Bill 2 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, both on its face and as applied to Plaintiffs Ansley, McGaughey, Penn, and Goodman and all other gay and lesbian citizens of North Carolina.

104. Senate Bill 2 compromises, impairs, and violates the constitutional integrity of the judicial system. Gay or lesbian citizens, like Plaintiffs Ansley, McGaughey, Penn, and Goodman, may have to appear in other civil or criminal proceedings before magistrates who believe as a matter of publicly sanctioned religious creed that gays and lesbians are not entitled to the full rights of other citizens.

105. Gay and lesbian citizens in other counties where magistrates have recused themselves under Senate Bill 2 also must endure this same situation in derogation of their rights.

106. Because of Senate Bill 2, gay and lesbian citizens across the State of North Carolina must appear before judicial officials who are empowered to adjudicate matters of significant importance yet who deny the full constitutional rights of gay and lesbian citizens.

107. Therefore, Senate Bill 2, deliberately and maliciously, compromises, impairs, and violates the constitutional integrity of the judicial system that must guarantee Due Process of the law to gay and lesbian citizens in McDowell County.

108. Accordingly, Senate Bill 2 denies gay and lesbian citizens their fundamental right to government services.

109. At its bottom, Senate Bill 2 singles out gay and lesbian couples, and rejects with malice and animus the substantive due process rights of gays and lesbians to the dignity of marriage as

protected under the Fourteenth Amendment by the U.S. Supreme Court in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015), and protects and supports magistrates who deny gay and lesbian citizens equal treatment under the law.

110. Plaintiffs seek and are entitled to costs and attorneys' fees on Claim III under 42 U.S.C. § 1988 under *Hutto v. Finney,* 437 U.S. 678 (1978).

PRAYER FOR RELIEF

WHEREFORE, upon consideration of this matter, Plaintiffs pray for the following relief from the Court:

1. A Declaration that Senate Bill 2 violates Article VI of the U.S. Constitution and the First Amendment, as applied to North Carolina under the Fourteenth Amendment;

2. A Declaration that magistrates cannot disavow their required Article VI judicial oath and duties on religious grounds;

3. A Declaration that the use of public funds to advance a specific religious view of same sex marriage is unconstitutional;

4. A Declaration that Senate Bill 2 violates the Due Process and Equal Protection Clauses under the Fourteenth Amendment;

5. An Order enjoining North Carolina from further implementation of Senate Bill 2, including the expenditure of public funds to further the legislation;

6. The costs and expenses in this action, including reasonable attorneys' fees under 42 U.S.C. § 1988; and,

7. Such other and further relief as the Court deems just and necessary.

Date: December 9, 2015

Respectfully submitted,

/s/ S. Luke Largess
N.C. Bar 17486
llargess@tinfulton.com

/s/ Jacob H. Sussman
N.C. Bar No. 31821
jsussman@tinfulton.com

/s/ John W. Gresham
N.C. Bar No. 6647
jgresham@tinfulton.com

TIN FULTON WALKER & OWEN, PLLC
301 East Park Avenue
Charlotte, NC 28203
Tel: 704-338-1220
Fax: 704-338-1312

/s/ Katherine Lewis Parker
N.C. Bar No. 36263
kparker@tinfulton.com

TIN FULTON WALKER & OWEN, PLLC
1213 Culbreth Drive
Wilmington, NC 28405
Tel: 910-228-5200
Fax: 910-401-1155

/s/ Meghann Burke
N.C. Bar No. 42209
meghann@brazilburkelaw.com

BRAZIL & BURKE, P.A.
77 Central Avenue, Suite E
Asheville, NC 28801
Tel: 828-350-3812
Fax: 828-258-8972