

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

CASIE JO MCGEE and SARAH ELIZABETH
ADKINS; JUSTIN MURDOCK and WILLIAM
GLAVARIS; and NANCY ELIZABETH
MICHAEL and JANE LOUISE FENTON,
individually and as next friends of A.S.M., a minor
child;

Plaintiffs,

v.

KAREN S. COLE, in her official capacity as
CABEL COUNTY CLERK; and VERA J.
MCCORMICK, in her official capacity as
KANAWHA COUNTY CLERK;

Defendants,

and

STATE of WEST VIRGINIA, *ex rel.*
PATRICK MORRISSEY, ATTORNEY
GENERAL,

Intervenor.

No. 3:13-cv-24068

DECLARATION OF JANE LOUISE FENTON

I, Jane Louise Fenton, hereby declare as follows:

1. The testimony set forth in this Declaration is based on first-hand knowledge, about which I could and would testify competently in open Court if called upon to do so.
2. I live in Saint Albans, West Virginia, with Nancy Elizabeth Michael (“Nancy”), with whom I have been in a loving and committed relationship for more than 16 years. Nancy and I have a son, A.S.M., who is 6 years old.

3. Nancy and I wish to marry each other. We love each other and want our relationship to be fully recognized and protected.

4. We also wish to marry because of what it would mean for our son, A.S.M. Nancy and I decided together to bring A.S.M. into our family. We planned together for the pregnancy, using assisted reproductive technology and an anonymous donor, and Nancy and I have co-parented him since his birth. When A.S.M. was born, Nancy and I gave him a middle name that is very special to my family. It ties him to the five generations of Fenton men before him who have had that same middle name. It's a tradition that I was really happy and proud to have been able to continue.

5. Even though I have been A.S.M.'s parent in every way, I am not legally recognized as his parent, nor he as my child. Only Nancy is listed on A.S.M.'s birth certificate. Because Nancy and I are not permitted to marry, we were told that West Virginia law does not permit me to adopt A.S.M. In an attempt to safeguard my relationship to our son, we have paid for expensive, yet inadequate protections such as powers of attorney for healthcare and paperwork to make me a legal guardian to A.S.M. While these steps have helped to clarify that I am authorized to make certain decisions for my son, we must remember to carry important legal documents wherever we go and we remain vulnerable to misunderstandings, blatant refusal to recognize us, or disrespect of our parent-child relationship. Additionally, these legal papers were costly, and we would have preferred to put the money toward other child-centered expenses.

6. Marriage would provide our family a much needed sense of security. We often fear that our family structure will not be understood or respected in various situations when recognition of our familial relationships is vital. Being a two-mom family without the benefit of marriage, we are required to take a lot of steps to ensure that our family will be respected. For

example, when planning for the birth of A.S.M., we clarified with the hospital beforehand that we were a lesbian couple, that we were the two parents of the child we were expecting and that they needed to understand that. We made sure they had copies of our medical powers of attorney, and emphasized over and over that I was to be recognized as Nancy's partner and that I was to be recognized as our child's other parent. As much as we tried to prepare and clarify that we were equal co-parents to the child Nancy was carrying before his birth, there was a risk and a fear that the medical personnel would ignore our paperwork and deny me the ability to be treated as family during the birth of our son and afterward. We felt very vulnerable. We always worry that in an emergency, I will not be recognized as A.S.M.'s parent or even family member, or otherwise as a person authorized to make medical decisions for him.

7. I recently started a new job and was filling out tax forms. When asked how many children I had, I had to select "0" because I knew that my relationship to A.S.M. wasn't recognized. Being forced to deny my child felt indescribably horrible, like someone had stabbed me.

8. Because West Virginia law bars Nancy and me from marrying, we and our son lack the financial safety net available to married couples and their children. For example, we were not able to afford to purchase a separate insurance plan for Nancy for some time, and the plan that we could afford to buy for A.S.M. is not very good. Were we married, our family would have superior access to health care through health insurance coverage. As well, we live with the anxiety of knowing that Nancy and A.S.M. do not have access to survivor benefits if something were to happen to me. As a former employee of Oklahoma State University I have retirement benefits that I could pass on to a spouse or children. I would also like for Nancy and

A.S.M. to receive Social Security survivor benefits my spouse and child would receive. We wish to marry in part so that Nancy and A.S.M. have greater financial security.

9. Aside from all of the very real and tangible benefits marriage would bring to our family, it is also really important for the simple reason that Nancy is the love of my life. She has helped me to be the person that I am today. She is my family. My best days are when we have to share a car so we can be together the whole time. I would love to be able to marry her, surrounded by our friends and family, most importantly A.S.M., and in the place that we consider home.

10. On or about September 19, 2013, Nancy and I appeared in person at the office of Defendant McCormick in Charleston, Kanawha County, West Virginia, to seek a marriage license because we wish to marry each other. We both presented valid forms of identification, provided the required personal information, and were prepared to pay the required fee and complete a marriage application. When we requested a marriage license, an employee of Defendant McCormick asked, "Where is your groom?" We explained that we wanted to marry each other, to which she responded, "That's not recognized in the State of West Virginia. There's nothing we can do here."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and ability.