

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

VALERIA TANCO and SOPHY JESTY,)
IJPE DeKOE and THOMAS KOSTURA,)
KELLIE MILLER and VANESSA)
DEVILLEZ, and JOHNO ESPEJO and)
MATTHEW MANSELL,)
)
Plaintiffs,)
)
v.)
)
HASLAM, *et al.*,)
)
Defendants.)

Case No. 3:13-cv-01159

Judge Aleta A. Trauger

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65, Plaintiffs Valeria Tanco, Sophy Jesty, Ijpe DeKoe, Thomas Kostura, Kellie Miller-DeVillez, Vanessa Miller-DeVillez, Johno Espejo, and Matthew Mansell (“Plaintiffs”) move the Court for issuance of a preliminary injunction. In support of this motion, Plaintiffs state as follows:

1. Plaintiffs are four married, same-sex couples who, like thousands of other married couples in Tennessee, lived and married in other states before choosing to make Tennessee their home.
2. Tennessee, in reliance on Article 11, Section 18, of the Tennessee Constitution and Tennessee Code Annotated Section 36-3-113 (the “Anti-Recognition Laws”) refuses to recognize the marriages of Plaintiffs.
3. The Anti-Recognition Laws violate Plaintiffs’ rights to due process, interstate travel, and equal protection as guaranteed by the United States Constitution and as most recently

confirmed in the United States Supreme Court's opinion in *United States v. Windsor*, 113 S.Ct. 2675 (2013).

4. Tennessee cannot provide adequate justification for the Anti-Recognition Laws. The Anti-Recognition Laws have the purpose and effect of treating the lawful marriages of same-sex couples as unequal to other marriages, do not advance any legitimate policy objective, and cannot survive any level of constitutional scrutiny.
5. Plaintiffs are likely to succeed on the merits of their case and are suffering irreparable harm every day that the Anti-Recognition Laws remain in force.
6. The impairment of a constitutional right, even for a short period of time, constitutes irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001). The Anti-Recognition Laws cause Plaintiffs and their children to suffer serious and irreparable injuries, including but not limited to (a) the demeaning of their marital and family relationships, (b) denial of numerous state law protections intended to safeguard married couples and their children, and (c) insecurity regarding their legal relationships to each other and their children (including a soon-to-be born child).
7. Plaintiffs' likelihood of success on their constitutional claims weighs heavily in favor of issuance of a preliminary injunction. In addition, all other relevant factors weigh in favor of preliminary relief because: (a) a violation of constitutional rights necessarily constitutes irreparable harm, (b) there is no valid governmental interest in enforcing an unconstitutional law, and (c) the public has a strong interest in preventing enforcement of unconstitutional laws. *See Planned Parenthood Ass'n v. Cincinnati v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987).

In support of this motion, Plaintiffs are contemporaneously filing a memorandum of law and the Declarations of Valeria Tanco, Sophy Jesty, Ijpe DeKoe, Thomas Kostura, Kellie Miller-Devillez, Vanessa Miller-DeViliez, Johno Espejo and Matthew Mansell.

For the reasons set forth above and in the accompanying filings, Plaintiffs move the Court for issuance of a preliminary injunction barring Defendants and those under their supervision from enforcing the Anti-Recognition Laws against the four Plaintiff couples in this case while this action is pending.

Dated: November 19, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

Service of the foregoing was accomplished through the Court's Electronic Filing System this 19th day of November, 2013, upon the following:

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