

Amendment of the United States Constitution, and Article I, Section 3 of the Pennsylvania Constitution. This litigation is brought pursuant to 42 U.S.C. § 1983. Plaintiffs seek declaratory and injunctive relief as well as compensatory damages and attorneys' fees as provided under 42 U.S.C. § 1988.

PARTIES

1. Plaintiff Mary Jo Knelly is a citizen of the United States and is a resident of the City of Pittsburgh in Allegheny County in the Commonwealth of Pennsylvania.

2. Plaintiff David Huggins-Daines is a citizen of the United States and is a resident of the City of Pittsburgh in Allegheny County in the Commonwealth of Pennsylvania.

3. Defendant Eileen Wagner is the Register of Wills of Allegheny County and in that position has responsibility for, among other things, the issuance of marriage licenses. Defendant Wagner maintains an office at City-County Building, Pittsburgh, Pennsylvania. Defendant Wagner is named herein in both her personal and official capacities.

4. Defendant Wagner is a "person" as that term is defined in 42 U.S.C. § 1983 and at all relevant times has been acting under color of state law.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) and (4). This Court has supplemental jurisdiction over the state constitutional and statutory claims pursuant to 28 U.S.C. § 1367. Declaratory relief is authorized by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57. Injunctive relief is authorized by Federal Rule of Civil Procedure 65.

6. This Court has personal jurisdiction over the defendant who is located in the Western District of Pennsylvania.

7. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) in that the defendant is subject to personal jurisdiction within the Western District of Pennsylvania and the events that give rise to this action occurred within the Western District of Pennsylvania.

ISSUANCE OF MARRIAGE LICENSES IN PENNSYLVANIA

8. In Pennsylvania, no person may marry without a license. 23 Pa. Cons. Stat. Ann. §§ 1103; 1301(a) (2007).

9. In Allegheny County, marriage licenses are issued by Defendant Wagner and by agents and employees operating under her authority and control.

10. Pennsylvania law sets forth the requirements for a properly completed application for a marriage license. 23 Pa. Cons. Stat. Ann. § 1302(b) provides in relevant part:

(b) Contents.--The application shall contain the following:

- (1) The full name of the applicants.
- (2) The occupation, birthplace, residence and age of the applicants. . .
- (3) Whether the marriage contemplated is the first, second or other marriage of an applicant.
- (4) A statement that neither of the applicants is afflicted with transmissible disease.
- (5) The full name, residence, occupation and birthplace of the parents of each applicant, including the maiden name of the mother of each applicant.

11. 23 Pa. Cons. Stat. Ann. § 1304 specifies certain restrictions on the issuance of a marriage license applicable to minors, incompetent persons, persons under the influence of drugs or alcohol, and persons who propose to marry a relative within certain degrees of consanguinity.

12. Pennsylvania law also requires persons wishing to obtain a marriage license to present themselves in person for an oral examination under oath with respect to four issues:

- (1) The legality of the contemplated marriage.

- (2) Any prior marriage or marriages and its or their dissolution.
- (3) The restrictions set forth in section 1304 (relating to restrictions on issuance of license).
- (4) All the information required to be furnished on the application for license as prepared and approved by the department.

23 Pa. Cons. Stat. Ann. § 1306.

13. Pennsylvania law further states that the person issuing the license “must be satisfied as to the identity of both of the applicants.” 23 Pa. Cons. Stat. Ann. § 1301(a).

14. Pennsylvania law commands, in relevant part, that “[t]he marriage license *shall* issue” if the application is properly completed and there is no legal objection to the marriage. 23 Pa. Cons. Stat. Ann. § 1307 (emphasis added).

15. Pennsylvania law does not condition issuance of a self-uniting marriage license upon proof of membership in a specific religious congregation, to wit Quaker or B’Hai.

**PLAINTIFFS' INTENT TO MARRY
BY A SELF-UNITING CEREMONY**

16. Pennsylvania law provides for two types of marriage licenses. The first (pursuant to 23 Pa. Cons. Stat. Ann. §1501) requires officiating clergy or some other authorized third-party officiant.

The second license (23 Pa. Cons. Stat. Ann. §1502) provides for parties to solemnize their marriage by a “religious” ceremony without officiating clergy.

17. The Register of Wills has construed the second form of license to apply only to Quakers and B’Hai followers and refuses to apply it to any other persons including those who (like plaintiffs) seek to solemnize their marriage by vows before witnesses in accordance with their personal dictates and the beliefs of their own consciences.

18. Plaintiffs do not wish to follow the dictates of an organized religion but seek to follow their own bona fide personal beliefs and consciences.

19. Pursuant to their plans to marry in a self-uniting ceremony, scheduled for September 29, 2007, plaintiffs prepared and sent out invitations to approximately 100 family members and friends whom they

called upon to witness their vows and commitments and to attest to that ceremony.

20. Plaintiffs described their ceremony as one “similar to a Quaker wedding, although it will be Secular.” They stated that after the witnesses have gathered they will “exchange our vows & rings” and explained that the witnesses would be asked to sign their Marriage Certificate. (Copies of pages from a website created by plaintiffs to inform guests about their wedding are attached as Exhibits 1 and 2.)

21. Plaintiffs have been planning their self-uniting marriage ceremony for six months.

PLAINTIFFS’ ATTEMPTS TO OBTAIN A MARRIAGE LICENSE

22. On or about August 29, 2007, plaintiffs went to the office of Allegheny County Register of Wills Eileen Wagner to request a self-uniting marriage license.

23. Now and at all times relevant hereto, plaintiffs are eligible to marry under Pennsylvania law because:

- (a) Both plaintiffs are of full age;
- (b) Neither plaintiff is currently married;
- (c) Neither plaintiff has a transmissible disease;

- (d) Neither plaintiff has ever been adjudged incompetent;
- (e) Neither plaintiff was or is under the influence of alcohol or drugs;
- (f) Plaintiffs are wholly unrelated by blood;
- (g) Plaintiffs have sufficient documentation to establish their identities.

24. Plaintiffs and their witnesses were and are prepared to comply with the required declarations set forth in the Register of Wills form for self-uniting marriages:

To wit:

“We hereby certify that on (date), we united ourselves in marriage, at (city, borough or town), County of (name), Pennsylvania, having first obtained from the Court of Common Pleas of (name) a declaration numbered . . . that the court was satisfied that there was no existing legal impediment to our so doing.”

Signed
 Signed

“We, the undersigned, were present at the solemnization of the marriage of (name) and (name), as set forth in the foregoing certificate.”

Signed
 Signed

25. When plaintiffs explained that they intended to marry in a self-uniting ceremony, they were told that they could not get a self-uniting license. A Supervisor was called and told the plaintiffs that they could have a self-uniting license only if they supplied documentation that they were members of the Quaker or B'Hai faiths.

The Supervisor told plaintiffs that the Register had been directed to stop issuing self-uniting marriage licenses to anyone not a member of the specifically identified religious sects.

26. Plaintiffs subsequently received in the mail a license certificate (pursuant to 23 Pa. Cons. Stat. Ann. §1501), which requires a third-party officiant.

27. Plaintiff Knelly then called the Register of Wills and spoke with a man who identified himself as Marty Madigan. Mr. Madigan is the chief deputy for the Allegheny County Office of the Register of Wills. Plaintiff Knelly requested either a document stating why plaintiffs could not get a self-uniting license or a self-uniting license.

Mr. Madigan told her it was illegal for the Register to give plaintiffs a self-uniting license unless they had a letter from the Pittsburgh Quaker Friends Church stating that they were members. Mr. Madigan refused to

provide plaintiffs with a copy of the Register's policy concerning self-uniting marriages.

28. Plaintiffs' counsel sent a letter to Defendant Wagner on September 19, 2007, explaining that the Defendant Wagner's policy restricting the issuance of self-uniting marriage licenses to couples able to prove membership in the Quaker and B-Hai faiths was unconstitutional and asking Defendant Wagner to immediately issue a self-uniting marriage license to plaintiffs.

29. Timothy E. Finnerty, the solicitor for the Office of the Allegheny County Register of Wills responded by letter dated September 20, 2007. In that letter, Mr. Finnerty stated that it is the policy of the Allegheny County Register of Wills to limit the issuance of self-uniting marriage licenses to members of religions that do not have officiating clergy. (Mr. Finnerty's letter of September 20, 2007, to Sara J. Rose is attached as Exhibit 3.)

30. Plaintiffs will suffer irreparable harm by having their right to marry in accordance with their personal beliefs and consciences denied by the defendant's policy.

31. Injunctive relief is necessary to ensure that Ms. Knelly and Mr. Huggins-Daines are able to legally marry in a self-uniting ceremony on September 29, 2007.

**FIRST CAUSE OF ACTION
(FREE EXERCISE AND ESTABLISHMENT CLAUSES)**

32. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

33. The Policy adopted by the Defendant Wagner substantially and directly interferes with plaintiffs' rights under the First Amendment of the United States Constitution to freely exercise their own beliefs according to the dictates of their consciences. It affords certain faiths the right to self-unite in marriage but denies it to plaintiffs.

34. The Policy adopted by the Defendant Wagner violates the prohibitions of the First Amendment, which provide that the government may not establish any religion, in that it impermissibly limits the issuance of self-uniting marriage licenses to members of the Quaker and B'Hai religions.

35. The Policy adopted by the Defendant Wagner is not justified by any legitimate state governmental interest.

**SECOND CAUSE OF ACTION
(EQUAL PROTECTION CLAUSE)**

36. Plaintiffs incorporate by reference the allegations of the preceding paragraphs as though set forth at length herein.

37. The policy adopted, implemented, and enforced by Defendant Wagner to require persons applying for a self-uniting marriage license to prove they are members of the Quaker or B'Hai religions as a condition of obtaining such a license denies plaintiffs equal protection of the laws in that it deprives them of a legal right — the right to marry themselves without resort to a third-party officiant — that is provided to persons who are members of certain religious sects.

38. The policy adopted, implemented, and enforced by Defendant Wagner to require persons applying for a self-uniting marriage license to prove their membership in a particular religious sect as a condition of obtaining such a license serves no compelling state governmental interest.

39. The policy adopted by Defendant Wagner violates the plaintiffs' constitutional right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

**THIRD CAUSE OF ACTION
(ARTICLE I, § 3 OF THE PENNSYLVANIA CONSTITUTION)**

40. The policy adopted by Defendant Wagner violates plaintiffs' rights under Article I, Section 3 of the Pennsylvania Constitution.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request the following:

- (a) a temporary restraining order and/or a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting defendant Wagner from further implementing or enforcing the policy to require persons applying for a self-uniting marriage license to prove their membership in the Quaker or B'Hai religions as a condition of obtaining such a license or requiring her agents and employees from doing so;
- (b) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring the policy adopted and enforced by defendant Wagner to require proof of membership in the Quaker or B'Hai religions as a condition for the issuance of a self-uniting marriage license to be void because it violates the First Amendment Establishment and Free Exercise Clauses, the

Equal Protection Clause of the Fourteenth Amendment, and Article I, Section 3 of the Pennsylvania Constitution;

- (c) damages against Defendant Wagner for violating plaintiffs' rights under the United States Constitution, the Pennsylvania Constitution, and the law of Pennsylvania;
- (d) an order awarding the plaintiffs the costs incurred in this litigation including attorney's fees pursuant to 42 U.S.C. § 1988; and
- (e) such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Sara J. Rose

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