

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
AT NEW ALBANY

LINDA G. SUMMERS,)	
Plaintiff)	
)	
v.)	CASE NO. 4:15-cv-93-RLY-DML
)	
SALLY WHITIS in her official capacity as)	
HARRISON COUNTY CLERK,)	
and)	
HARRISON COUNTY, a political)	
subdivision of the State of Indiana)	
Defendants)	

FIRST AMENDED COMPLAINT

Comes the Plaintiff, Linda G. Summers, by counsel, and for her first amended complaint states as follows:

I. INTRODUCTION

1. This is a proceeding for a declaratory judgment as to Plaintiff's rights and for a permanent injunction, restraining Defendant from maintaining a policy, practice, custom or usage of discriminating against Plaintiff because of her religious beliefs with respect to terms, conditions and privileges of employment and in ways that deprive Plaintiff of equal employment opportunities because of her religious beliefs, and otherwise adversely affect her status as an employee because of her religious beliefs. This Complaint also seeks money damages and restitution to Plaintiff of all rights, privileges, benefits, and income (both past and future) that would have been received by her, but for the Defendant's unlawful and discriminatory practices.

II. JURISDICTION

2. This is a suit in equity authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e – 2(a)(1), et seq. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1343(4). Declaratory relief is sought under 28 U.S.C. §§ 2201 and 2202. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by 42 U.S.C. §§ 2000e, et seq., providing for injunctive and other relief against racial, religious, national origin and sex discrimination in employment.

3. All conditions precedent to jurisdiction under 42 U.S.C. § 2000e-5(f) (3) have occurred or been complied with, to-wit: A charge of employment discrimination was filed with the Equal Employment Opportunity Commission within 180 days of the commission of the unfair employment practice; Notification of Right to Sue was received from the Equal Employment Opportunity Commission on or about May 7, 2015; this Complaint has been filed within 90 days of receipt of the Notification of Right to Sue.

III. PARTIES

4. Plaintiff, Linda G. Summers, is a citizen of the United States and the State of Indiana and whose address is 1765 Corydon – New Middletown Road, S.E., Corydon, Harrison County, Indiana 47112 and resides in the Southern District of Indiana.

5. Defendant, Sally Whitis ("Whitis"), is the Clerk of Harrison County in Corydon, Indiana, and is an elected official in the State of Indiana; Whitis is sued in her official capacity only.

6. Whitis has the responsibility for the employment of persons in the Harrison County Clerk's Office ("HCCO"), including the hire, promotion and termination

of employees in the HCCO.

7. Whitis is a person within the meaning of 42 U.S.C. § 2000e(a) and an employer or agent of an employer within the meaning of 42 U.S.C. § 2000e(b).

8. Defendant Harrison County is a political subdivision of the State of Indiana and is an employer within the meaning of 42 U.S.C. § 2000e(b).

9. The unlawful employment practices alleged herein were committed within the Southern District of Indiana.

IV. FACTUAL ALLEGATIONS

10. On or about June 30, 2008, Plaintiff, Linda Summers, was employed to work for the Defendant at the Harrison County Superior Court Clerk's Office in Corydon, Indiana.

11. The Plaintiff, Linda Summers, is a Christian believer and adherent of the Christian faith and is a worshiper and regular attender at First Capital Christian Church, Corydon, Indiana.

12. Plaintiff, Linda Summers has a sincerely held religious belief, based upon the tenants of her faith and biblical teaching, such as Leviticus 18:22; Romans 1:26-27, I Cor. 6:9-10; and I Tim 1:9-10, that it is a sin for persons of the same sex to engage in sexual relations and, based upon Genesis 2:18-25, and other biblical authority, that persons of the same sex cannot and should not be morally or legally recognized as husband and wife, and that God will judge individual Christians, as well as the society of which they are a part, who condone or institute same sex marriages.

13. On or about October 22, 2014, Defendant Whitis circulated an email

communication to all employees concerning a published decision of the Indiana Supreme Court to recognize marriages between same sex couples and that, "Therefore it is our duty in the Clerk's Office to process those applications." Defendant further stated that, "Even though it may be against your personal beliefs, we are required by state law to process their applications. We are only doing the paperwork and not performing their ceremony." A true copy of said email communication is attached hereto and incorporated by this reference herein as Exhibit A.

14. On December 8, 2014, a same sex couple came to the Harrison County Clerk's Office to apply for a marriage license which Plaintiff Linda Summers was called upon to process. She informed Defendant Whitis that she felt that she could not prepare the appropriate paperwork for a marriage license for the same sex couple because of her religious beliefs against same sex marriages.

15. Later that day, Plaintiff wrote and hand-delivered the following morning a letter to Defendant Whitis styled "Religious Accommodation Request," in which she informed Whitis that she has "a sincerely held religious belief against same sex marriages" and that she felt that being required to process marriage licenses for such couples violated her religious beliefs based upon Biblical teaching. She further requested that Whitis accommodate her sincerely-held religious belief by not requiring her to process such applications for marriage licenses and that there were two other employees of the Harrison County Clerk's Office who had offered to do so when such applications were received. A true copy of said letter dated December 9, 2014 is attached hereto and incorporated by this reference herein as Exhibit B.

16. On December 9, 2014, immediately after the receipt of Summers' "Religious Accommodation Request," Defendant Whitis terminated Plaintiff's employment with the HCCO because of her refusal to process application(s) for marriage licenses by same sex couples, which Defendant described, in a Memorandum hand-delivered to Summers, as insubordination, purportedly in accordance with Harrison County personnel policy, which provides that "refusing to perform assigned work or to comply with written or verbal instructions of supervisors," will subject "the individual involved to disciplinary action, up to and including termination." A true copy of said Memorandum from Defendant Whitis to Plaintiff Summers dated December 9, 2014, is attached hereto and incorporated by this reference herein as Exhibit C.

17. The foregoing discharge occurred without any attempt by the Defendant to accommodate Plaintiff and her religious beliefs, despite the fact that Plaintiff made her sincerely-held beliefs known to Defendant Whitis; requested a reasonable accommodation; and that Section 1.4 of the Harrison County Personnel Policies Handbook provides, in relevant part that, "It is the policy of the County of Harrison to provide equal employment opportunity in employment to all employees . . . and **to prohibit discrimination in employment because of race, religion, color, sex, age, national origin, disability, military status, or any other classification under applicable law.**" (emphasis supplied). A true copy of the referenced section of the Harrison County Personnel Policies Handbook is attached hereto and incorporated herein by this reference as Exhibit D.

18. Plaintiff at all times relevant herein was an "employee" of the Defendant

as that term is defined in (12 U.S.C. § 2000e(f).]

19. Defendants at all times relevant herein were the "employer," or agent of the "employer," which employed the Plaintiff as that term is defined in 42 U.S.C. § 2000e(b).

V. CAUSES OF ACTION

COUNT I

20. Plaintiff incorporates herein by reference each and every allegation of ¶ 1 through ¶ 19 of this Complaint.

21. Defendant Whitis committed an unlawful employment practice to the detriment of Plaintiff when she discharged the Plaintiff, or otherwise discriminated against her with respect to her compensation, terms, conditions, or privileges of employment because of her religion, in violation of 42 U.S.C. § 2000e-2(a)(1).

COUNT II

22. Plaintiff incorporates herein by reference each and every allegation of ¶ 1 through ¶ 21 of this Complaint.

23. The Defendants committed an unlawful employment practice by limiting, segregating, or classifying the employees of the HCCO, including the Plaintiff, in a way which deprived or tended to deprive the Plaintiff of employment opportunities or otherwise adversely affected her status as an employee because of her religion, in violation of 42 U.S.C. § 2000e-2(a)(2).

COUNT III

24. Plaintiff incorporates herein by reference each and every allegation of ¶ 1 through ¶ 23 of this Complaint.

25. The acts, policies, practices, customs, and usages of the Defendants described and complained of hereinabove are unlawful employment practices in that they have the effect of denying employment to, discriminating against, depriving and tending to deprive equal employment opportunities to Plaintiff, and otherwise adversely affecting Plaintiff, because of her religion in violation of Title 7 of the Civil Rights Act of 1964, 42 U.S.C. § 2000c et seq.

COUNT IV

26. Plaintiff incorporates herein by reference each and every allegation of ¶ 1 through ¶ 25 of this Complaint.

27. Plaintiff has no plain, adequate, or complete remedy at law to redress the wrong alleged, and this suit for injunctive relief and for restitution and damages is her only means of securing adequate relief. Plaintiff is now suffering and will continue to suffer irreparable injury from Defendants' policy, practice, custom and usage as set forth herein until and unless empowered by the Court. Plaintiff is therefore entitled to injunctive relief.

WHEREFORE, Plaintiff, Linda G. Summers, respectfully prays that the Court:

1. Advance this case on the docket, order a speedy hearing at the earliest practicable date and cause this case to be in every way expedited;
2. Grant Plaintiff trial by jury on all claims properly so triable.
3. Permanently enjoin Defendants and all agents, successors, officers, employees, attorneys, and those acting in concert with Defendants from engaging in each of the unlawful practices, policies, customs, and usages sets forth herein, and from

continuing any and all other practices shown to be in violation of applicable law;

4. Order examination or modification of practices, policies, customs, and usages set forth herein and all other such practices shown to be in violation of applicable law so that they do not discriminate on the basis of religion;

5. Compensate and make whole the Plaintiff for all earnings, wages, bonuses and other benefits (both past and future) she would have received but for the discriminatory practices of Defendants, and award Plaintiff a Judgment against Defendants in said amount;

6. Award Plaintiff punitive damages pursuant to 42 U.S.C. § 1981a(a)(1) due to Defendants' knowing and willful violation of Defendants' stated policy of prohibiting discrimination in employment against all employees, including Plaintiff, because of their sincerely held religious beliefs;

7. Award Plaintiff the costs and expenses of this action, including reasonable attorney's fees; and

8. Grant such other relief as may be just and proper.

Respectfully submitted,

MASTERS, MULLINS & ARRINGTON

s/ Richard L. Masters

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Counsel for Plaintiff

Yvonne Beanblossom

From: Sally Whitis
Sent: Wednesday, October 22, 2014 9:40 AM
To: Sherry Brown; Rilla Gerdon; Linda Elsler; Yvonne Beanblossom; Tammy Bickel; Joy Bline; Wanda Kirkham; Linda Summers
Subject: Gay Marriage License

While I was on vacation, the Supreme Court has ordered Indiana to proceed with gay marriages.

Therefore, it is our duty in the Clerk's Office to process those applications. The process in Incite has been modified to accommodate these filings.

Even though it may be against your personal beliefs, we are required by state law to process their applications. We are only doing the paperwork and not performing their ceremony.

I expect everyone to please comply. Thanks.

Sally A. Whitis, Clerk
Harrison Circuit Court
300 N. Capitol Ave.
Corydon, IN 47112
Tel: (812) 738-4289 (Circuit)
Tel: (812) 738-8149 (Superior)

RELIGIOUS ACCOMMODATION REQUEST

December 9, 2014

Sally Whitis
Clerk of Harrison Superior/Circuit Courts
Suite 3126
1445 Gardner Lane NW
Corydon, In 47112

RE: Same Sex Marriage License

Dear Sally,

I have a sincerely held religious belief against providing marriage license for same sex couples. I wish to claim the right to refrain from the work task of providing same sex couples a marriage license because it violates my religious beliefs. I believe the Bible to be the Word of God and I base my beliefs on biblical scripture.

It is not my intent to create any undue hardship, and I am certain that this accommodation request does not cause an undue hardship in the normal conduct of business, since there are two employees who have offered and have no problem with processing same sex marriage licenses.

Therefore, I am respectfully requesting that you, my employer, accommodate my sincerely held religious belief by not requiring me to perform the task of processing marriage license for same sex couples.

Sincerely & Respectfully,



Linda Summers
Second Deputy Clerk
Harrison Superior Court

Memorandum

To: LINDA SUMMERS
Date: December 9, 2014
From: SALLY WHITIS, CLERK
Re: EMPLOYMENT STATUS

Please be informed that effective immediately your employment with the Clerk's Office is terminated due to insubordination, as is defined in the Handbook on page 64.

Please provide me with your keys and an updated time sheet, and make arrangements with the Auditor's Office to complete an exit interview.

- 1.4.1 Reviewing employee complaints in connection with the problem resolution procedure in the Harrison County Personnel Policies Handbook and providing advisory recommendations as warranted;
- 1.4.2 Monitoring personnel policies and procedures and making recommendations for revisions, modifications, additions, and deletions as deemed necessary; and
- 1.4.3 Reviewing all standard operating procedures adopted by any department. The Harrison County Personnel Administration Committee shall serve yearly and be comprised of four (4) members. The members of the Personnel Administration Committee shall be one (1) County Commissioner (appointed by the County Commissioners), one (1) County Council member (appointed by the County Council), the County Attorney (by virtue of the office), and the County Auditor (by virtue of the office).

1.4 EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the County of Harrison to provide equal opportunity in employment to all employees and applicants for employment and to prohibit discrimination in employment because of race, religion, color, sex, age, national origin, disability, military status, or any other classification protected under applicable law.

This policy applies to all terms, conditions, and privileges of employment, including, but not limited to, hiring, probation, training, promotion, transfer, compensation, benefits, layoff, recall, employee facilities, discharge, and retirement.

1.5 MANAGEMENT RIGHTS

Harrison County retains the responsibility and authority to manage and direct on behalf of the public the operations and activities of the County to the full extent authorized by law. Such responsibility and authority shall include but not be limited to:

- 1.5.1 The right to direct the work of its employees;
- 1.5.2 The right to establish policy;
- 1.5.3 The right to maintain the efficiency of public operations;
- 1.5.4 The right to design and implement safety programs for employees;
- 1.5.5 The right to design and implement job training for employees;
- 1.5.6 The right to determine what services shall be rendered to the public;
- 1.5.7 The right to determine job content and job descriptions;
- 1.5.8 The right to determine and implement objectives and goals of the County;
- 1.5.9 The right to establish, allocate, schedule, assign, modify, change, and discontinue County operations, work shifts, and working hours;
- 1.5.10 The right to establish, change, and discontinue work standards;
- 1.5.11 The right to hire, examine, classify, train, transfer, assign, and retain employees; suspend, discharge, or take other disciplinary action against employees in accordance with applicable law and to relieve employees from duties due to disciplinary reasons or other legitimate reasons; and make promotions and demotions;
- 1.5.12 The right to change, modify, and alter the composition of the work force;
- 1.5.13 The right to determine, establish, and implement policies for the selection, training, and promotion of employees in accordance with applicable law;
- 1.5.14 The right to establish, implement, modify, and change procedures and policies for the safety, health, and protection of County property and personnel;
- 1.5.15 The right to adopt, modify, change, enforce, or discontinue any existing rules, regulations, procedures, and policies;
- 1.5.16 The right to establish, select, modify, change, or discontinue equipment, materials, and the layout and arrangement of equipment;
- 1.5.17 The right to determine the size and character of inventories and their disposal;
- 1.5.18 The right to control the use of property, machinery, inventories, and equipment owned, leased, or borrowed by the County;