

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

RITA AND PAM JERNIGAN AND  
BECCA AND TARA AUSTIN

PLAINTIFFS

v.

CASE NO. 4:13-CV-00410

LARRY CRANE, In His Official Capacity  
As Circuit And County Clerk For Pulaski County  
And His Successors In Interest; RICHARD WEISS,  
In His Official Capacity As Director Of The Arkansas  
Department Of Finance And Administration, And His  
Successors In Interest; GEORGE HOPKINS, In His  
Official Capacity As Executive Director Of The  
Arkansas Teacher Retirement System And His  
Successors In Interest; DUSTIN McDANIEL, In His  
Official Capacity As Attorney General For The State  
Of Arkansas And His Successors In Interest

DEFENDANTS

**MOTION TO STRIKE PURSUANT TO FRCP 12**

Comes separate counsel for the Plaintiffs, Cheryl K. Maples, Attorney  
at Law, and for her Motion to Strike Pursuant to FRCP 12, states:

1. Cheryl K. Maples was retained as additional counsel by Plaintiffs in this action and continues to act in that capacity.
2. The "State" Defendants filed a Response to Motion for Attorneys' Fees in this action in response to two independent motions for attorney fees and costs filed by the two separate law firms that represent Plaintiffs.
3. That each of the law firms representing the Plaintiffs filed their individual replies to the State's Response in defense of their independent motion for fees and costs.
4. That one of the independent law firms representing the Plaintiffs, Wagner

Law Firm, P.A., states in their "Plaintiffs' Reply to Defendants' Response to Motion for Attorneys' Fees, filed on September 15, 2015, the following:

"Plaintiffs' attorneys have requested reasonable attorney fees based on a reasonable hourly rate. Defendants make several arguments in their attempt to deny Plaintiffs' attorneys their reasonable attorneys' fee. The Court should reject each of these arguments for the reasons set forth below."

(Doc.80, Page 1)(Emphasis added.)

5. The "reasons set forth below", as highlighted above, are then set forth under Roman Numerals I-VI.

6. Rule 12(f) of the Federal Rules of Civil Procedure states:

"MOTION TO STRIKE. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

7. "Immaterial" is defined as "Not material, essential, or necessary; not important or pertinent; not decisive." (Black's Law Dictionary.)

8. "Impertinent" is defined as "Irrelevancy; the fault of not properly pertaining to the issue or proceeding. The introduction of any matters into a bill, answer, or other pleading or proceeding in a suit, which are not properly before the court for decision, at any particular stage of the suit." (Black's Law Dictionary.)

9. Black's Law Dictionary refers the definition of "scandalous" to "scandal" and states:

"Defamatory reports or rumors ; aspersion or slanderous talk, uttered recklessly or maliciously. In pleading. "Scandal consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause; to which may be added that any unnecessary allegation, bearing cruelly upon the moral

character of an individual, is also scandalous." Daniell, Ch. Pr. 290. And see McNulty v. Wiesen (D. C.) 130 Fed. 1013; Kelley v. Boettcher, 85 Fed SCANDALOUS MATTER 1058"

10. Section VI of Jack Wagner's Reply and the referenced Affidavit are totally non-responsive, do not constitute any proper defense to the pleading that is being replied to, assert a request for relief against a non-party to this action, are immaterial, impertinent and scandalous. Any first year law student knows this is a violation of the Federal Rules of Civil Procedure. The "Plaintiffs' Reply to Defendants' Response to Motion for Attorneys' Fees" filed by Wagner Law Firm, P.A. should be struck pursuant to FRCP 12(f).

11. Wagner Law Firm's breaches of the Federal Rules of Civil Procedure are Particularly egregious in their presentation of impertinent and scandalous statements. Why would a competent, licensed attorney insert in a pleading intended to defend HIS request for attorney fees and costs non-responsive, defamatory statements about his former co-counsel, a non-party? The request for fees for time spent on this case by Wagner Law Firm is not in conflict with or in competition with the request for fees for the time spent on this case by Cheryl K. Maples.

12. The only plausible explanation is a bruised ego.

13. In June of 2014 Cheryl Maples requested that Jack Wagner withdraw from the same-sex marriage case that was pending in the Pulaski County Circuit Court due to difficulties they were having. Mr. Wagner refused and, rather than harm the case with a public airing of their difficulties, Maples agreed to his continuing as co-counsel on that case and he asked that Maples join the federal lawsuit as co-counsel. Maples never asked to join the case, but felt that she might have a positive impact on it, and so she

accepted.

14. An attorney would be derelict to not fully study the pleadings in a case that had been filed and check out any new or different cases cited in same. As her time sheet reflects, Cheryl Maples did so when she joined the case as co-counsel.

15. As the time sheets filed herein reflect, all the time spent on this case from July 15, 2014 to October 20, 2014 was solely on this matter. After this Court set the hearing date for November 20, 2014 and the Arkansas Supreme Court set their Oral Arguments for the same day, Cheryl Maples cleared her calendar and immersed herself in the two Arkansas cases and read the multitude of cases (pleadings, decisions, etc.) from around the United States that were recently decided or were pending. Plaintiff and Defendant issues, successes and failures were examined to prepare for the hearings. All of the time spent on this "research and review" was equally divided between the time sheets of the federal and state cases.

16. In his Affidavit attached to Document 80, Page 19 , Mr. Wagner states:

"Ms. Maples met with me the day before the November 20, 2014 hearing to prepare for both the hearing before this Court and the Arkansas Supreme Court hearing that was on the same date. After an hour, she said that she had other places she had to go and could stay no longer. At the hearing before this Court, I presented the argument and an accompanying Powerpoint presentation. Ms. Maples briefly addressed the Court afterwards and made points similar to what she had said to the Arkansas Supreme Court that morning. Based on the above, the only time that Ms. Maples devoted to this case was part of an hour the day before the November 20, 2014 hearing and the time she spent attending the hearing. That amounts to perhaps three to four hours."

17. Cheryl K. Maples was responsible for presenting the issues regarding the Arkansas Constitution in the Oral Arguments before the Arkansas Supreme Court. There were no state constitutional issues in the case at bar, so her preparation had to be greatly

expanded into the issues before this Court, primarily the impact the denial of the constitutional rights had on gay and lesbian couples. Mr. Wagner presented only federal constitutional issues at both hearings.

18. Due to the overwhelming importance of the two hearings scheduled for November 20, 2014, Cheryl K. Maples began her hearing preparation and review on November 7, 2014. Mr. Wagner was in New York from November 12-17, 2014 where he attended a performance by Phil Lesh, former member of the Grateful Dead. When he returned to his office on November 18<sup>th</sup>, he began his preparation and requested that Ms. Maples prepare a “bullet point outline” and that she meet with him the following day at his office to “practice” and to watch his “updated Powerpoint” presentation. (See Exhibit A attached hereto).

19. In that the subject matter of Mr. Wagner’s and Ms. Maples’ responsibilities in the presentation of the cases was clearly delineated, Maples felt that the trip to Little Rock and the “practice” at Wagner’s office was a waste of valuable time on the day before the hearings, but she agreed to go. The trip and meeting at Mr. Wagner’s office did indeed turn out to be a waste of time. The meeting consisted of listening to Mr. Wagner over and over and watching his assistant time his delivery. Ms. Maples remained much longer than Mr. Wagner’s estimation, but she did, indeed, leave. She had her own presentations to prepare.

20. Mr. Jack Wagner filed an Affidavit in the state court case similar to the one filed with Document 80. Rather than restating everything in this Motion to Strike as to Mr. Wagner’s assertions and Ms. Maples method of the practice of law, a copy of the filed response to his Affidavit in that case is attached hereto as Exhibit B.

21. The inclusion of false, defamatory statements in in a pleading in which such statements, even if true, were unresponsive and were concerning a non-party to this case, is a textbook reason for the inclusion of Rule 12(f) in the Federal Rules of Civil Procedure.

22. This Court should strike Document 80 and its accompanying Affidavit and sanction Wagner Law Firm, P. A. and Jack Wagner. This Court should further Order Wagner Law Firm, P. A. and Jack Wagner to pay fees for having to respond to their baseless, improper and shocking pleading.

Respectfully submitted,

/s/ Cheryl K. Maples

Cheryl K. Maples ABA# 87109

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#### CERTIFICATE OF SERVICE

I, Cheryl K. Maples, do hereby certify that a true and correct copy of the foregoing document was served electronically by means of the Court's ECF/CM system on the following attorney of record:

David M. Fuqua

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Date: October 28, 2014 at 10:16:54 AM CDT

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Cc: "[ckmaples@aol.com](mailto:ckmaples@aol.com)" <[ckmaples@aol.com](mailto:ckmaples@aol.com)>, Angela Mann <[angela@wagonerlawfirm.com](mailto:angela@wagonerlawfirm.com)>

**Subject: Preparing for Ark. Supreme Court and Federal Court hearings November 20**

To all the good guys:

We have the two arguments set for November 20. One is in the morning and one is in the afternoon.

I will be out of town from November 12-17. So that leaves only the 18<sup>th</sup> and 19<sup>th</sup> to prepare once I get back. I would like to have the arguments nailed and rehearsed by the end of next week. Can we do a conference call with all concerned tomorrow afternoon or Thursday afternoon to discuss in detail?

Please chime in and let me know when you are available. I can do any time after 2:30 Central tomorrow and anytime Thursday after 2:30 Central. I will send a call-in number.

Thanks.



Jack Wagoner

Exhibit "A"

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
SECOND DIVISION

M. KENDALL WRIGHT, ET AL

PLAINTIFF

V.

CASE NO. 60CV-13-2662

STATE OF ARKANSAS, ET AL.

DEFENDANTS

**REPLY TO WAGONER LAW FIRM'S RESPONSE TO SEPARATE MOTION  
FOR ATTORNEYS' FEES FILED BY CHERYL MAPLES**

Comes the Plaintiffs, by and through their attorney, Cheryl K. Maples, and for their Reply to Wagoner Law Firm's Response to Separate Motion for Attorney Fees Filed by Cheryl Maples, states:

Wagoner Law Firm is not a party to this action. Jack Wagoner III is a licensed attorney who will be the first person to announce that he is, in fact, held in high esteem in the legal community, yet he filed this Response **without standing to do so and in clear violation of the Arkansas Rules of Civil Procedure and the Arkansas Rules of Professional Conduct.**

In his Response, Mr. Wagoner has, under oath, made untruthful statements, divulged confidential work product (in the few instances where there was any basis in fact to his statements) in violation of Rule 1.6 and 1.9, filed a pleading interposed for an improper purpose, and misled this Court. This list is not by any means exhaustive of all violations and omissions committed by the Wagner Law Firm in their filing of this Response and in Mr. Wagoner's Affidavit. The Response was filed combined in a

pleading titled "Reply in Support of Renewed Motion of Wagoner Law Firm for Attorneys' Fees and Costs and Response to Separate Motion for Attorneys' Fees Filed by Cheryl Maples. As the following is in Reply to his Response portion of the pleading, said pleading will be referred to as "Response".

Wagoner Law Firm services were terminated by the majority of the Plaintiffs in this cause of action earlier this year as reported on the front page of the Arkansas Democrat Gazette newspaper. It is unclear what motivated Mr. Wagoner to file such an extraordinary, baseless, libelous, untruthful and shocking pleading unless it was grounded in his anger toward and desire to deprive his former clients of their right to payment of their attorney fees and costs. If so, it violates Rule 1.9 and it can reasonably be inferred. This is backed up by Mr. Wagoner's statement on Page 4 of his Response wherein he states: "Thus, the undersigned counsel agrees that Plaintiffs are not entitled to recover attorney's fees incurred on appeal in this Court." Fired or not, he cannot act adverse to his former clients. Rules 1.6, 1.9 and 1.16. Mr. Wagoner also states that he "agrees that Ms. Maples's request for fees appears unreasonable and excessive" (Page 8 of Response) and that "Wagoner Law Firm agrees with the State Defendants that "there was no need to recruit forty adult plaintiffs (twenty couples) to collectively assert the same claims together in this case." (Page 8 of Response). Wagoner fails to notice, however, that little or no fees were claimed by Ms. Maples for the "recruitment" or interaction with the several clients. Thus, this statement/position seems petty and antagonistic towards his former clients in violation of Rules 1.6 and 1.9.

What is most shocking is how Mr. Wagoner could make the statements he did in

his Response and accompanying Affidavit knowing that the stated facts could be proven untrue and the assumptions totally baseless. The following examples are illustrative of the rest of Mr. Wagoner's negative assertions:

### I. THE ORIGINAL COMPLAINT

**PARAGRAPH 7, AFFIDAVIT OF JACK WAGONER III: "I was concerned about Ms. Maples filing her lawsuit so quickly after I had publicly announced that I would be filing a case the night that the *Windsor* opinion came out. I was most concerned that the original pleadings filed by Ms. Maples were deficient and might not withstand dismissal. I was very concerned that unfavorable rulings in Ms. Maples' case could create problems in the federal case. I was concerned about her ability to steer the case to a successful conclusion in the face of the aggressive defense that I expected the State of Arkansas to mount."**

Mr. Wagoner wishes this Court to believe that he is the only person that could possibly conceive of the idea of filing this lawsuit. Ms. Maples had no idea that Mr. Wagoner was on Facebook, recruiting people to bring a lawsuit. She was too busy editing the lawsuit, in light of the new *Windsor* decision, that she had spent the last few months researching and drafting, to spend any time on social media to see what he was doing.. The initial Plaintiffs were in place, a mass meeting had occurred, affidavits had been prepared - all long before Mr. Wagoner **read** the *Windsor* decision.

The initial lawsuit that was filed in this matter asserted that Act 146 of 1997 (Ark. Code Ann. §§ 9-11-208 and 9-11-107(b) and Arkansas Constitutional Amendment 83 violated the Arkansas and United States Constitutions and asserted, in a very abbreviated form, that:

- a. They deny due process of the fundamental right to marry under the Arkansas and United States Constitutions and for the court to declare at 146 of 1997, ask

for Amendment 83 to the Arkansas Constitution, Arkansas code 9–11–208 and 9–11–107 (b) to be determined to be unconstitutional and to enjoin preliminarily and permanently all enforcement of these and any other Arkansas statutes that exclude same-sex couples from civil marriages

- b. They violate the equal protection clause of the Arkansas Constitution and the 14<sup>th</sup> Amendment to the United States Constitution in restricting performance of civil marriages and the recognition of legal civil marriages to only same-sex couples and that this is a denial of a fundamental liberty.
- c. All other persons with the capacity to contract are allowed this privilege
- d. Gays and lesbians are distinct group singled out due to their sexual orientation
- e. Equal protection clauses of federal and state constitutions do not permit discrimination on the basis of sex and that these laws do so discriminate
- f. They violate full faith and credit clause of the United States Constitution
- g. The cause irreparable injury.
- h. The Complaint prayed for:

Finding of the amendment 83, act 146 and statutes to be unconstitutional under the Arkansas and U. S. Constitutions due to their violation of due process and equal protection; Finding that amendment 83 and act 146 and the statutes are unconstitutional as they conflict with the Bill of Rights of the Arkansas Constitution; For a preliminary and permanent injunction barring enforcement; For costs and attorney fees as set forth in 42 USC 1983 and otherwise.

Although this Complaint was amended three times, this Court ultimately granted all of the relief prayed for in the initial Complaint. The only true deficiency in this Complaint, that was later corrected, and the only thing this Court granted that was not included in the initial prayer was the failure to include Ark. Code Ann. § 9-11-109). It is interesting to note that Mr. Wagoner's federal complaint that was filed a few days after the original complaint in this case **included the same exact mistake**. The initial Complaint did ask for the Court to enjoin enforcement of any other statutes that impacted same-sex

marriage.

In Paragraph 3 of Mr. Wagoner's Affidavit he further states:

**"The Supreme Court issued the Windsor opinion on June 26, 2013. I immediately went to work on preparing to file the lawsuit. I contacted two organizations that have been involved in *Windsor* and other litigation before the Supreme Court, as well as same-sex marriage issues in cases throughout the nation. These organizations were the Williams Institute and the National Center for Lesbian Rights. These organizations agreed to provide background help with briefing, arguments, and other issues related to the case."**

While there is no doubt that Wagoner began work on his federal lawsuit right after *Windsor* decision, his initial contact with the Williams Institute and the National Center for Lesbian Rights on August 15, 2013 and was at the time he was preparing to enter his appearance in this case and Ms. Maples was fully involved. ( Exhibits "A" - "C"; note: all exhibits are incorporated herein.) Throughout Wagoner's Response and Affidavit , he leads the Court to believe that he worked exclusively with these organizations, to the exclusion of Ms. Maples, on this case. This assertion is totally untrue and will be addressed later.

Mr. Wagoner did indeed contact Ms. Maples right after she filed the lawsuit on August 2, 2013. Mr. Wagoner's only criticism of this suit was that it was filed in state court and that he disagreed with the Arkansas constitutional arguments. (Exhibit "D".) In light of this Court's later decision, Mr. Wagoner was wrong on the state constitutional argument.

Mr. Wagoner had informed Ms. Maples that he was being funded by a 501(c)(3) organization through Max Brantley and others. On July 15, 2013, Jack Wagoner informed Ms. Maples that the organization wanted him to file a separate lawsuit

in federal court and he would not be entering the state case. (Exhibit "E".) The following day, Wagoner indicated that he was still interested in being involved in a state case and had asked Max Brantley to reconsider. (Exhibit "F".)

As is stated in said Exhibit F, Wagoner was wanting to find plaintiffs to attempt to file Schedules of Non-Marital Personal Property in order to have them be denied and then Wagoner intended to file three other lawsuits in Pulaski County Circuit Court. As shown, Maples was not comfortable with being involved and wanted to proceed with her case.

The facts contained in the statements quoted above from Paragraphs 7 and 3 of Wagoner's Affidavit are completely false. The contacts he alleged to have made prior to joining this lawsuit, to demonstrate his fervor in filing a lawsuit, were apparently limited to his funding source. The only problems Wagoner voiced about the lawsuit that was filed in this case concerned the Arkansas constitutional issues and the judge to whom this case was originally assigned. The Complaint that was initially filed in this case would have succeeded without amendment, although the later versions were improvements.

## **II. THIRD AMENDED COMPLAINT**

**PARAGRAPH 9 AFFIDAVIT OF JACK WAGONER III: "I entered my appearance in the case on August 22, 2013... I promptly dove in and began working to correct the deficiencies in the Second Amended Complaint. I filed the Third Amended Complaint on September 30, 2013."**

**PAGE 3 OF WAGONER LAW FIRM'S RESPONSE: "Wagoner Law Firm, along with the lawyers at the National Center for Lesbian Rights, drafted and filed the Third Amended Complaint – the operative Complaint upon which Plaintiffs achieved all success – only one (1) month later, on September 30, 2014. Wagoner Law Firm added its own plaintiffs to the case at that time. Wagoner Law Firm also narrowed the approach taken in the Third Amended Complaint to include only those claims**

**which, based upon similar cases across the nation, Wagoner Law Firm considered most viable. The Court ultimately agreed that most of these claims were cognizable.”**

On August 22, 2013, after conference calls with Ms. Maples and Mr. Wagoner and reviewing the pleadings filed in this case, David Codell, Legal Director of the Williams Institute, and Shannon Minter, representing the National Center for Lesbian Rights, agreed to assist in this case. NCLR initially agreed to review and revise the Second Amended Complaint and the pending motion for temporary relief. Ms. Maples forwarded the pleadings to them in “Word format” on August 23<sup>rd</sup> in order that they could work from those documents. (Exhibit “C”.) On September 16, 2013, we were facing a deadline for the filing of the revised pleadings set for September 30 and we had not yet seen the proposed revisions. Jack Wagoner was going out of town to attend concerts in Colorado and would not be back in the office until September 24<sup>th</sup>. Cheryl Maples had prepared discovery motions to be served upon the Defendants that needed to be reviewed by NCLR. Mr. Wagoner emailed Mr. Codell and Mr. Minter requesting an update and asking that the revisions be available upon his return from his trip. (Exhibit “G”). When Mr. Wagoner returned from his trip, the pleadings were not yet received from NCLR. Wagoner sent an email requesting their status. (Exhibit “H”.) At this point, Jack Wagoner had not touched any pleading in this case except for his entry of appearance.

On the afternoon of September 24, 2013 we received the draft of the Third Amended Complaint. (Exhibit “I”.) Cheryl Maples reviewed and edited the draft and forwarded the draft with her revisions to Mr. Wagoner on September 27, 2013. (Exhibit “J”.) This was Mr. Wagoner’s first attempt and opportunity, as he calls it, to “promptly d(i)ve in and beg(i)n working to correct the deficiencies in the Second Amended Complaint.”

Two days later Mr. Wagoner submitted the draft with his and Ms. Maples revisions to Angela Mann with instructions to get the edits accepted and get it in final form to file. (Exhibit “K”.) On that day we received the draft of the Motion for

Preliminary Injunction, also due on the following day. At this point, both Mr. Wagoner and Ms. Maples began their review and editing of that document. The final form of the Third Amended Complaint was based upon the existing complaint filed by Cheryl Maples with stylistic changes, the removal of the issue of "Full Faith and Credit", the addition of three more plaintiffs provided by Mr. Wagner one of which added the issue of divorce to the case, and the addition of "the right to travel." Notwithstanding the quality of the final complaint, nothing was added that was critical to the ultimate success of the case that was not already pled by Ms. Maples prior to Mr. Wagoner's appearance. In complete contradiction of Mr. Wagoner's assertions quoted at the beginning of this section, he did no more work on the Third Amended Complaint than Cheryl Maples. As evidenced from the referenced email exhibits above, Mr. Wagoner's statement that: "Wagoner Law Firm also narrowed the approach taken in the Third Amended Complaint to include only those claims which, based upon similar cases across the nation, Wagoner Law Firm considered most viable" is patently untrue. In the two quotations heading this section, there are three correct statements: Jack Wagoner entered his appearance on August 22, 2013, NCLR attorneys were very involved in the revision and Wagoner Law Firm did file the Third Amended Complaint on September 30, 2013.

### **III. THE PLAINTIFFS AND PAYMENT OF FEES**

**PARAGRAPH 10 AFFIDAVIT OF JACK WAGONER III:** "In preparing the Third Amended Complaint, I felt that it was entirely unnecessary and complicating to have the approximately forty (40) plaintiffs that Ms. Maples had named in the original filing. If a trial were necessary, it would have made the litigation unmanageable. I wanted to pair the number of plaintiffs down to two or three couples. Ms. Maples told me at that time that she could not "afford to do this for free like you," and that she needed all the plaintiffs in the case so that they could share the expense of paying her for her work."

**PARAGRAPH 18 AFFIDAVIT OF JACK WAGONER III:** "At some point during the case, Ms. Maples told me that we could ask for attorneys' fees in the case. I had not thought about the possibility of recovering attorneys' fees – at least not at that point."

The second quotation above can be disproven easily. In Mr. Wagoner's prayer for relief in the federal lawsuit, *Jernigan v. Crane*, Case No. 4:13-CV-410 JLH (E.D. Ark), Page 17, filed on July 15, 2013, he prays for the Court to "Award costs of this suit, including reasonable attorneys' fees under 42 U.S.C. § 1988". Mr. Wagoner's correct citation of the statute providing for the payment of fees and costs in cases where federal civil/constitutional rights have been denied in either federal or state courts absolutely demonstrates the untruthfulness of this assertion.

The only time Jack Wagoner, a person who solicited clients on Facebook, ever suggested that the number of Plaintiffs was burdensome was in regard to the Motion for Preliminary Injunction. This motion did not address any issues relating to unmarried couples seeking to get married. On the day that the Motion for Preliminary Injunction was filed, the Third Amended Complaint was also filed, properly adding a Plaintiff that sought the right to get divorced and unnecessarily adding a married couple whose inclusion, at Mr. Wagoner's insistence, contributed no new issues to the case. Ms. Maples is proud for that couple, because she is aware of how much it means to each Plaintiff to have been a part of this case. Ms. Maples is totally bewildered by Jack Wagoner's criticism of the number of Plaintiffs since he never even met the majority of them and very little time was claimed by Ms. Maples for her interaction with them.

Each and every plaintiff in this case will testify truthfully that Cheryl Maples never asked for or suggested that they pay her one red cent of attorney fees. The need for each and every Plaintiff in this case was the representation of several different issues, several different counties and the satisfaction of their deeply felt desire to be included in this historic case. They represent a wide range of educational and socioeconomic backgrounds and each brought a vast amount of insight and experience into this case. Mr. Wagoner's apparent distaste for them was never vocalized to Ms. Maples and was not apparent until his filing of this Response.

#### **IV. WORK PERFORMED**

**PAGE 8 OF WAGNER LAW FIRM'S RESPONSE: "Ms. Maples had little involvement in tasks related to research, writing, editing, or presentation of argument after Wagoner Law Firm entered the case. After Wagoner Law Firm entered the case, the undersigned conservatively estimates that 95% of all tasks related to the litigation were performed by Wagoner Law Firm and the lawyers associated with the National Center for Lesbian Rights."**

**FOOTNOTE ON PAGE 4 OF WAGNER LAW FIRM'S RESPONSE: "Ms. Maples had very little participation in any of the research, briefing, or editing of the arguments made in the appeal of this case. She came to Wagoner Law Firm to prepare for arguments before the Arkansas Supreme Court and the Federal Court for the Eastern District of Arkansas the day before the arguments. She remained for approximately one hour and could not stay for further preparation."**

As demonstrated, Mr. Wagoner's "perception" as to the extent of Ms. Maples' involvement is totally in error. This case was developed by Ms. Maples and she became totally involved in it to the exclusion of the majority of the rest of her law practice from early in 2013 until its completion in June 2015. Ms. Maples appreciated the assistance of Wagoner Law Firm and NCLR, but their involvement did not stop her development of ideas, further research, monitoring of the developments in this area across the country, and being involved in each and every issue and filing that the case presented.

Mr. Wagoner has never stepped foot in Ms. Maples office, has never Observed her working at all hours of the day and night on this case. Ms. Maples lives and works approximately 75 miles north of Mr. Wagoner's office. Cheryl Maples is a sole practitioner and has her own way of working on and preparing a case. A few days before the hearing on the Plaintiff's Motion for Preliminary Injunction and the Defendants' Motions to Dismiss, Cheryl Maples suffered a compound fracture of her right leg and was wheelchair bound. It is fortunate that Mr. Wagoner had joined the case and the matter did not have to be continued. Although Mr. Wagoner readily agreed to present the case, this did not eliminate the need for Ms. Maples to be fully prepared and present. That hearing was the only time Maples happily agreed to the

division and manner of the presentation in Court.

Cheryl Maples does not use and does not like "Powerpoint Presentations." In her opinion, such a delivery of her clients' position is boring and puts the listener to sleep. Mr. Wagoner bragged that he didn't have to prepare for a hearing beyond the preparation of the Powerpoint slides because he could just read the presentation as the slides were presented. Mr. Wagoner insisted upon presenting the Motions for Summary Judgment issues in this manner. Ms. Maples gave in with the agreement that she could make her presentation to the Court to conclude our arguments. Unfortunately, Mr. Wagoner's arguments were rather lengthy and by the time it was Ms. Maples' opportunity to argue the issues, the Court indicated a need to conclude the case. Cheryl Maples did make a presentation, but not the one she had spent hours preparing and same was totally ad lib.

When the oral arguments were to be held before the Arkansas Supreme Court, it was Cheryl Maples desire to make the entire argument. After discussion, she finally agreed to a division of delivery whereby Mr. Wagoner would argue federal issues and Ms. Maples would argue state issues. Then the disagreement became how many minutes each attorney would get of the 20 minutes allotted. This was not resolved until the very last moment that the Supreme Court had to be notified of same. As it turned out, Jack Wagoner was to get, again, the majority of argument time. This actually increased the work necessary for Ms. Maples to prepare for the arguments, because a great many important issues had to be compressed into an extremely small amount of time.

Ms. Maples spent a great deal of time on her preparation of her arguments and preparedness for possible questioning in the weeks leading up to the oral arguments. Mr. Wagoner was on a trip to Miami, Florida during part of this time and the final decision as to the division of time had to wait until his return. Upon his return and the division made, Ms. Maples had to reorganize her arguments. At this point, Mr. Wagoner insisted that Ms. Maples come to his offices in Little Rock for preparation. It ended up

being, basically, listening to and critiquing his proposed presentation. With the oral arguments scheduled for the following day, the travel time involved and critiquing Mr. Wagoner's performance was a loss of valuable time needed for Ms. Maples' preparation. In the second quote above, Mr. Wagoner suggests that since "(s)he remained for approximately one hour and could not say for further preparation", Maples did not prepare adequately. Ms. Maples is not one of Jack Wagoner's employees and is used to working independently. The attorneys that work for Wagoner have to do things his way, Cheryl Maples does not. Moreover, Wagoner should be aware that most of a lawyer's work is solitary and cerebral.

#### V. FEE PETITION

**PARAGRAPH 19 AFFIDAVIT OF JACK WAGONER III: "I kept pressing Ms. Maples to get me her time estimate and she kept delaying – saying that she was still working on her billing. I became pretty anxious as she still did not have me her billing estimate when the fourteenth day after the Court's May 9, 2014 ruling arrived. The Motion was filed on May 29, 2014, which was fifteen (15) business days after the Court's May 9 initial order. The Motion was filed then because I did not get Ms. Maples' estimates billing until that time."**

The Final Order and Rule 54(b) Certification was entered in this case on May 15, 2014. The Fee Petition was due on **May 30, 2014**. Cheryl Maples researched and drafted a proposed Fee Petition and sent it to the Wagoner Law Firm on May 27, 2014 at 3:35 p.m. for their approval. On May 28, 2014, Mr. Wagoner forwarded a finalized Fee Petition to Cheryl Maples. This was the first and only time Mr. Wagoner requested Ms. Maples estimated fee requests. Mr. Wagoner did not have his time calculations completed at this time. (Exhibit "L".) Mr. Wagoner had revised the proposed fee petition to include, among other changes, the "time-intensive tasks" that each attorney accomplished. In that it was obvious that Cheryl K. Maples had been heavily involved in each and every step of the litigation, that Cheryl Maples had been dealing with recent problems in coping with Mr. Wagoner's ego, that there was an upcoming deadline for filing and in that she was preparing for an important trial that was to take place in

Woodruff County Circuit Court on May 30, 2014, it did not seem necessary to quibble about the wording. Cheryl Maples time and cost calculations were submitted to Wagoner Law Firm and the Fee Petition was filed the following morning at 8:35 a.m.

To be fair to Mr. Wagoner, his perception that he had to “wait” on Ms. Maples’ fee and cost calculations may be due to his being rather “high-strung.” This does not excuse, however, his baseless conclusions and their shameless public airing. Meticulous records and contemporaneous time records were kept, and they are voluminous.

### CONCLUSION

The Plaintiffs have no doubt that the time claimed by the attorneys in Wagoner Law Firm are likely accurate. Like Mr. Wagoner, Cheryl Maples has no way of knowing what time was spent and by whom. She is aware that the case was very time consuming. There were new developments occurring almost on a daily basis throughout the country and several novel issues presented themselves in this case.

As can be seen from the time records submitted by Cheryl Maples, upon the entry of Wagoner Law Firm and the assistance of the National Center for Lesbian Rights, the amount of time spent by Ms. Maples drastically dropped. These time records do not reflect the constant thinking about the case, the majority of time spent with the clients, community outreach to educate others on these issues to create an atmosphere where acceptance of the constitutional rights of these individuals could better be fostered and countless other hours of work that were not documented and, therefore, not estimated.

Although the position of the Defendants is understandable in trying to limit Plaintiffs attorney fees and costs, Wagoner Law Firm’s position is not. Jack Wagoner’s false and misleading statements are shocking. He filed a separate renewed motion for attorney fees and costs because he no longer represented the majority of the Plaintiffs and after they had instructed him to file no further pleadings on their behalf. This Court

should carefully consider the standing of Wagoner Law Firm and the violations of ethical conduct committed in the Response and Affidavit. They are egregious.

Respectfully submitted,

/s/ Cheryl K. Maples  
Cheryl K. Maples ABA# 87109  
P. O. Box 1504  
Searcy, AR 72145  
(501)912-3890  
Fax (501)362-2128  
Email: [ckmaples@aol.com](mailto:ckmaples@aol.com)

**Certificate of Service**

I, the undersigned attorney do hereby state that on this 6th day of August, 2015 a true and correct copy of the foregoing document was served by the AOC e-filing system only upon:

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*Attorney for Separate Defendants, Doug Curtis, in his official capacity as Saline County Clerk and Larry Crane, in his official capacity as Pulaski County/Circuit Clerk*

Michael R. Rainwater, #79234  
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P. O. Box 17250  
6315 Ranch Dr.  
Little Rock, AR 72222-7250  
Phone: (501)868-2500  
Fax: (501)868-2505  
Email: [owens@rainfirm.com](mailto:owens@rainfirm.com)

*Attorneys for Separate Defendants Cheryl Evans, in her official capacity as White County Clerk, William "Larry" Clarke, in his official capacity as Lonoke County Clerk, Debbie Hartman, in her official capacity as Conway County Clerk, and Becky Lewallen, in her official capacity as Washington County Clerk.*

Jack Wagoner  
Angela Mann  
Wagner Law Firm, P.A.  
1320 Brookwood, Suites D&E  
Little Rock, AR 72202  
Email: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)

*Co-counsel*

/s/ Cheryl K. Maples

Subj: **Need help with expert witness location for Arkansas lawsuit**  
Date: 8/15/2013 7:53:27 P.M. Central Daylight Time  
From: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
To: [williamsinstitute@law.ucla.edu](mailto:williamsinstitute@law.ucla.edu)

Hello,

My name is Jack Wagoner. I am working with another lawyer in Arkansas and we have both a state and federal case pending related to same-sex marriage in Arkansas.

We expect to move forward in state court with a petition for a temporary restraining order/preliminary injunction in short order. The request will be for the Court to act NOW to enjoin enforcement of Arkansas's constitutional and statutory DOMA provisions pending a final hearing in the litigation. We will have a hearing set in a fairly short time frame. We will need to be prepared to rebut the typical reasons that states use to attempt to justify classifying same-sex couples differently from opposite couples when it comes to marriage. We have a pretty good idea of what the defendants in our cases will seek to use to justify the laws, but would like to cover all the basis.

I have some help from backing that should allow us to hire appropriate experts here provided the expense does not turn out to be completely outrageous. I've used a lot of experts in a lot of cases and expect that we'll be ok on this end. But I would like to visit with someone with your organization to discuss this as soon as possible if you are willing to help. I would be grateful if you would reply and let me know when I might be able to communicate with someone from the Williams Institute about this matter.

I very much look forward to hearing from you.

Thank you.



**Jack Wagoner**



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Exhibit "A" Page 1 of 1

Subj: **Re: same-sex marriage**  
Date: 8/19/2013 9:15:22 A.M. Central Daylight Time  
From: [ckmaples@aol.com](mailto:ckmaples@aol.com)  
To: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)

Then I think I will add a Pulaski county couple and proceed. Maybe drop attorney general, the governor and the state but leave health dept for now

Cheryl K. Maples

On Aug 19, 2013, at 9:09 AM, Jack Wagoner <[jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)> wrote:

> Yes.

>

> Sent from my iPhone

>

> On Aug 19, 2013, at 9:08 AM, "Cheryl" <[ckmaples@aol.com](mailto:ckmaples@aol.com)> wrote:

>

>> Isn't it what the Supreme Court ultimately says, not Moody, that is important?

>>

>> Cheryl K. Maples

>>

>> On Aug 19, 2013, at 8:45 AM, Jack Wagoner <[jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)> wrote:

>>

>>> Cheryl,

>>>

>>> I'm not ignoring you. And I'm not going anything without your knowledge. Just have a trial Wednesday that's going to mess with me mostly until then.

>>>

>>> Too many people say that Moody would completely sabotage his federal judge nomination by issuing a ruling in our favor. I am very worried about this. So I think I want to get a couple of couples to file for TRO/Injunctive relief in separate suits in Pulaski County and I will move forward on the one that is in Fox's court. I will have to file because if you do it it will look like you are judge shopping. As soon as we have a case in Fox's court, you can enter an appearance and be officially on the case. I have several couples that are in Pulaski County and are married, so it should not be a problem to get like three separate lawsuits ready to file. I think we should do this first and then go forward with other cases before other judges, including the one you have in Moody's court.

>>>

>>> I am most interested in doing this with the state court cases. I'm going to go ahead and get it set up to have the talk with you and I and the Williams Institute and the National Center for Lesbian Rights tomorrow afternoon. I'll send you the confirmation when I get it.

>>>

>>> Talk to you soon.

>>>

>>> Jack

>>> --

>>>

Exhibit "B" Page 1 of 1

Subj: **Re: Arkansas same-sex marriage case**  
Date: 8/23/2013 2:42:42 A.M. Central Daylight Time  
From: [Ckmaples@aol.com](mailto:Ckmaples@aol.com)  
To: [david@codell.com](mailto:david@codell.com), [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
CC: [SMinter@nclrights.org](mailto:SMinter@nclrights.org)

Attached are the complaint and motion in word format.

Cheryl Maples

In a message dated 8/22/2013 11:54:12 A.M. Central Daylight Time,  
[david@codell.com](mailto:david@codell.com) writes:

That will work for me. Let's plan on 4 pm Central/2 pm Pacific. Not sure whether Shannon will be able to join at that hour, but I'll be able to follow up with him either way.

 LAW OFFICE OF  
**DAVID C. CODELL**

Law Office of David C. Codell  
9200 Sunset Boulevard, Penthouse Two  
Los Angeles, California 90069  
Telephone: 310.273.0306  
Facsimile: 310.273.0307  
Website: [www.codell.com](http://www.codell.com)  
Email: [david@codell.com](mailto:david@codell.com)

---

**From:** Jack Wagoner [mailto:[jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)]  
**Sent:** Thursday, August 22, 2013 8:43 AM  
**To:** David Codell  
**Cc:** [Ckmaples@aol.com](mailto:Ckmaples@aol.com); [SMinter@nclrights.org](mailto:SMinter@nclrights.org)  
**Subject:** Re: Arkansas same-sex marriage case

I will have to do it later today. Like 2 your time or something.

Sent from my iPhone

On Aug 22, 2013, at 10:41 AM, "David Codell" <[david@codell.com](mailto:david@codell.com)> wrote:

Jack and Cheryl,

Thank you very much for this information and your invitation. We are grateful and are giving it prompt consideration. Shannon is in meetings this morning, but I will give you a call in 45 minutes or an hour. I look forward to speaking with you.

David

Sent from my iPhone

On Aug 22, 2013, at 8:15 AM, Jack Wagoner <[jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)> wrote:

David and Shannon,

Cheryl Maples and I are meeting. I am joining in her lawsuit. We have some good developments to share and a plan worked out.

Exhibit "C" Page 1 of 2

I want to tell you about this and see if you all would like to be involved. What we would love would be for you all to join in and take the lead role in connection with the briefing that will be incorporated in our amended motion for temporary injunctive relief. We would also like to be prepared with an expert for the injunctive relief hearing.

Please call as soon as you can. Thanks!

<image002.jpg><image003.jpg>

---

**From:** David Codell [<mailto:david@codell.com>]  
**Sent:** Tuesday, August 20, 2013 3:28 PM  
**To:** [Ckmaples@aol.com](mailto:Ckmaples@aol.com)  
**Cc:** [SMinter@ndrights.org](mailto:SMinter@ndrights.org); Jack Wagoner  
**Subject:** RE: Scheduling a follow-up call re Arkansas marriage case

Thank you, Cheryl!

<image004.gif>

Law Office of David C. Codell  
9200 Sunset Boulevard, Penthouse Two  
Los Angeles, California 90069  
Telephone: 310.273.0306  
Facsimile: 310.273.0307  
Website: [www.codell.com](http://www.codell.com)  
Email: [david@codell.com](mailto:david@codell.com)

---

**From:** [Ckmaples@aol.com](mailto:Ckmaples@aol.com) [<mailto:Ckmaples@aol.com>]  
**Sent:** Tuesday, August 20, 2013 1:12 PM  
**To:** [ckmaples@aol.com](mailto:ckmaples@aol.com)  
**Cc:** [david@codell.com](mailto:david@codell.com); [SMinter@ndrights.org](mailto:SMinter@ndrights.org); [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
**Subject:** Re: Scheduling a follow-up call re Arkansas marriage case

Attached please find the state court pleadings thus far...

**Cheryl Maples**

In a message dated 8/20/2013 11:08:51 A.M. Central Daylight Time, [ckmaples@aol.com](mailto:ckmaples@aol.com) writes:

I will do it!!

Cheryl K. Maples

On Aug 20, 2013, at 10:26 AM, Jack Wagoner <[jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)> wrote:

Ok. 2 o'clock central time. Here is the call in number and participant code you'll need to key in when they ask for it:

Conference Dial-in Number: (712) 432-1500

Exhibit "C" Page 2 of 2

Subj: **Gay rights**  
Date: 7/2/2013 6:58:06 P.M. Central Daylight Time  
From: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
To: [ckmaples@aol.com](mailto:ckmaples@aol.com)

Cheryl,

Sorry we got cut off. I got the part about your daughter and understand your zeal on this issue.

I have a case before the Arkansas Supreme Court now where my gay father was denied overnight visitation by the Court when his long time partner was in the home they share. The judge said that both my client and his partner were exemplary individuals and that it had nothing to do with them individually, but that he had to follow the "public policy" of the State of Arkansas. I told the client I would do his appeal for free. I got the national ACLU to join on that one.

The ACLU has been hostile to me as far as challenging Amendment 83 now. I heard they may have taken the same path with you. But I have other people and organizations that will help us to put on a case better than OJ Simpson's lawyers put on when he got off the murder rap. I hope we can team up. Your lawsuit is actually good because it acts as a "placeholder" in connection with other cases that may be filed.

I studied on bringing the case in State court. But I think it ends up in federal court. I guess the State could decide not to remove it, but I think they will remove it. I mean, you can challenge the two statutes on the basis that they conflict with the Arkansas Constitution, but you're still left with Amendment 83 which says the same thing. You can't knock out Amendment 83 by arguing conflict with other provisions of the Arkansas Constitution because to the extent there is a conflict, the later Amendment will prevail and be deemed to modify any prior provisions of the Arkansas Constitution. So it really leaves you with the real meat of the case being a challenge to Amendment 83 based on the U.S. Constitution. But I'm not so sure that the 8th Circuit is such a scary idea. They already declined to overrule Nebraska's DOMA law in 2006. But it's really hard to reconcile a lot of things said in that case with the things said in Windsor and other cases in the seven years since that decision.

So much to talk about. There is a reporter from NPR coming to talk with me at 9:30 in the morning in my office. I welcome you to come over too and hope you will. I very much hope that we can pool our efforts on this. I seek no pay for it (although the 501(c)3 organization I mentioned may pay us a little something as well as paying expenses).



**Jack Wagoner**



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Exhibit "D" Page 1 of 1

Subj: **same-sex marriage**  
Date: 7/15/2013 8:42:49 A.M. Central Daylight Time  
From: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
To: [ckmaples@aol.com](mailto:ckmaples@aol.com)

Cheryl,

The people working on my team want me to file direct in federal court. I think this is a good plan. I will still be happy to help you every way I can with your case in state court. I have concerns about the Arkansas Supreme Court right now though. I just don't see how the new elected judges—Baker and Hart primarily—can vote to throw out Amendment 83 and then go back to their constituents and ask for re-election. The people in the Batesville area and NW Arkansas just won't go for it. [REDACTED], but I just can't see it.

I think that it is best to have two cases out there right now. If yours gets removed to federal court, maybe we can see who has the best judge and if one of us has a really bad judge for this we can drop our case. If it doesn't get removed I'll help you on your case as much as possible if you want. I hope we'll still work together towards the common goal no matter what.



**Jack Wagoner**



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Exhibit "E" Page 1 of 1

Subj: **same-sex marriage -- state's arguments**  
Date: 8/16/2013 6:20:26 A.M. Central Daylight Time  
From: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
To: [ckmaples@aol.com](mailto:ckmaples@aol.com)  
CC: [angela@wagonerlawfirm.com](mailto:angela@wagonerlawfirm.com)

I think the State is off base if they think that all they have to do is advance a rational basis for the discrimination and that they can do this by saying that the state has a legitimate interest in making distinctions between couples that can procreate and those that cannot. You immediately threw out a couple of responses:

1. Gay and lesbian couples can have children through adoption or surrogacy and our state laws already guarantee this as a right.

So, this classification with this justification actually acts to discriminate by giving biological children a superior status in relation to their parents than adopted or surrogate children. But this cannot be as the law recognizes that such children are in the eyes of the law not different from biological children. Their argument really attempts to pervert the definition of "procreation." Gay and lesbian couples "procreate" just as same-sex couples do as adoption and surrogacy are just as much "procreation" as having biological children.

I would also throw out other counters to the notion that the statute is a reasonable means of advancing a state interest in favor of procreation:

1. Women past menopause are allowed to marry;
  2. We allow infertile couples to marry;
  3. Nothing about the civil contract of marriage relates to children in any way. \
- A. People are not required to have children to marry;  
B. people are not required to be married to have children.

(I have a law review article that references this fact to show that it is a non-sequiter to say that the issue of marriage has to do with the issue of children. NOTHING in Arkansas's statutes (the 9-11-101 and following statutes) says ANYTHING about children in setting forth the requirements and procedures for people that want to marry. So it is disingenuous to argue that prohibiting classes of people from marrying is rationally related to issues pertaining to people having children.

We are smarter than the defendants and will have thought about it all more. I want to get "loaded for bear" and give them a ride they'd never expect in a TRO/preliminary injunction hearing. I sent an email to Max tonight telling them that I thought that they should continue to fund my efforts in this regard and they should support me in joining with you and paying for the experts, etc. I think they'll do it, although I may have to go over and meet with the board of the charitable organizations involved and sell to them. May have to take you with me.

Oh - I meant to mention that the defendants will argue that a lot of your people don't have standing because they didn't go try to get married and get rejected like I had a couple of my clients do. I'm not sure they're right on this, but maybe. We can give all the couples married in other states standing to sue Larry Crane by seeking to file the schedule of non marital personal property that a married person may file with the clerk - and making sure in advance that Larry Crane will have told his people not to allow them to file it.

:) Jack

-

Exhibit "F" Page 1 of 1

Subj: **Arkansas same-sex marriage case**  
Date: 9/16/2013 11:34:06 A.M. Central Daylight Time  
From: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
To: [SMinter@ncirights.org](mailto:SMinter@ncirights.org), [david@codell.com](mailto:david@codell.com)  
CC: [ckmaples@aol.com](mailto:ckmaples@aol.com)

Shannon and David,

Our Amended Pleadings are due September 30. We discussed you all sending an outline last week I believe, but I have not heard back from you.

Can we get a phone call to discuss this sometime between today and Wednesday?

We also have some discovery we are wanting to get out and would like to have you review.

Cheryl is getting worried with the September 30 date coming up. I'm not worried yet, but will be out of town from Thursday until Tuesday. That puts me back in on the 24<sup>th</sup>. I can do a lot in a short period of time, so we'll be ok. But we've got to know what you all will be contributing, etc. Ideally you all would do drafts of the Amended Complaint and TRO motion so we have it by Tuesday and we can all work on it from there. That's a little over a week from now.

Thanks! I look forward to talking with you all.



**Jack Wagoner**



**Wagoner law firm, p.a.**

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501-663-JACK (5225) • 501-660-4030 (fax)

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Web: [wagonerlawfirm.com](http://wagonerlawfirm.com)

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Exhibit "G" Page 1 of 1

Subj: **Re: Arkansas same-sex marriage case**  
Date: 9/24/2013 10:42:29 A.M. Central Daylight Time  
From: [SMinter@nclrights.org](mailto:SMinter@nclrights.org)  
To: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
CC: [AWhelan@nclrights.org](mailto:AWhelan@nclrights.org), [david@codell.com](mailto:david@codell.com), [ckmaples@aol.com](mailto:ckmaples@aol.com)

Hi Jack,

We are on track with both complaint and motion. The complaint is in really good shape--Amy has done a fantastic job on that, I think you and Cheryl will be pleased. David is reviewing a couple of last important things and if okay with you, we would rather give him a chance to do that before sending to you? Is it okay if we get it to you by noon California time?

Shannon

Sent from my iPhone

On Sep 24, 2013, at 10:06 AM, "Jack Wagoner" <[jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)> wrote:

Amy and Shannon,

Last week before I went out of town we had a phone call in view of our amended pleadings that we are required to file by the end of the day Monday. We discussed you all having the suggested Amended Complaint to us by today. Where does it stand? We also discussed having the suggested amended TRO/Preliminary Injunction Motion Thursday sometime. Are we on track for that?

Just got back in town today and am ready to roll with this. I have my lady that was married in New York and relocated here due to military orders coming in tomorrow and will sign her up for this so we have a good plaintiff on the right to travel issues.

Thanks.

<image001.jpg>

**Jack Wagoner**

<image002.jpg>

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1320 Brookwood, Suites D & E • Little Rock, AR 72202

501-663-JACK (5225) • 501-660-4030 (fax)

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Exhibit "H" Page 1 of 1

**From:** Amy Whelan [<mailto:AWhelan@nclrights.org>]  
**Sent:** Tuesday, September 24, 2013 2:34 PM  
**To:** Jack Wagoner; [ckmaples@aol.com](mailto:ckmaples@aol.com)  
**Cc:** Shannon Minter; Chris Stoll; David  
**Subject:** Draft Complaint

Jack and Cheryl—here is the draft complaint. We tried to keep as much from both of your original complaints as possible, and then combined everything that seemed to make sense. Note that you will need to update the Plaintiffs with any new people, including the couple Jack met with today. You should also make sure we have all of the correct defendants. We dropped out the state itself, but that's it. Please let us know if you need anything else on this—you will see that we added a state law claim regarding Section 29 of the Bill of Rights, per Cheryl's memo on this—the rest are federal constitutional claims, including the new right to travel claim.

Amy Whelan | Senior Staff Attorney

National Center for Lesbian Rights | [www.nclrights.org](http://www.nclrights.org)

870 Market Street, Suite 370, San Francisco, CA 94102

415.365.1338 t / 415.392.8442 f

[awhelan@nclrights.org](mailto:awhelan@nclrights.org)

<image005.png>\_\_<image006.png>\_

*The audacity to fight for justice. The perseverance to win.*

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Exhibit "I" Page 1 of 1

Subj: **Re: COMPLAINT**  
Date: 9/27/2013 2:28:54 P.M. Central Daylight Time  
From: [jack@wagoneerlawfirm.com](mailto:jack@wagoneerlawfirm.com)  
To: [Ckmaples@aol.com](mailto:Ckmaples@aol.com)

K. I'll do my part ASAP here. Got my divorce chick giving me the go ahead. Just been playing phone tag. Will get info I need on her this weekend.

Sent from my iPhone

On Sep 27, 2013, at 2:22 PM, "[Ckmaples@aol.com](mailto:Ckmaples@aol.com)" <[Ckmaples@aol.com](mailto:Ckmaples@aol.com)> wrote:

Here is the Complaint with the changes I made in highlighted in red....

**Cheryl Maples**

<DRAFTWrightThirdAmendComplaint,9-24-13.docx>

Exhibit "J" Page 1 of 1

Subj: **Same-Sex marriage amended complaint with JW edits and editions**  
Date: 9/29/2013 12:44:09 P.M. Central Daylight Time  
From: [jack@wagnerlawfirm.com](mailto:jack@wagnerlawfirm.com)  
To: [ckmaples@aol.com](mailto:ckmaples@aol.com), [angela@wagnerlawfirm.com](mailto:angela@wagnerlawfirm.com)  
CC: [david@codell.com](mailto:david@codell.com), [SMinter@nclrights.org](mailto:SMinter@nclrights.org), [awhelan@nclrights.org](mailto:awhelan@nclrights.org)

Ok, I've done my deal on this now. Angela, do you have time before the morning to accept the changes and read through this one time to catch any typos or glaring problems? We have to file it tomorrow and we also have to file our preliminary injunction motion that is going to require Cheryl and I, along with the expert lawyers helping us, to focus on until we have it ready tomorrow.

Everyone else can read through and see what Cheryl changed, what I changed, etc. Unless anyone has any major comments, I'm just going to have Angela get the edits accepted into the document so we have a clean final copy to forward out to everyone and to file.

Now, on to the PI motion....

Exhibit "K" Page 1 of 1

Subj: **Same Sex marriage -- URGENT**  
Date: 5/28/2014 10:46:43 A.M. Central Daylight Time  
From: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)  
To: [harrison@wagonerlawfirm.com](mailto:harrison@wagonerlawfirm.com), [ckmaples@aol.com](mailto:ckmaples@aol.com)

Harrison and Cheryl,

Attached is a draft fee/costs motion for us to file in the case. IT HAS TO BE FILED BY THE END OF THE DAY TOMORROW AND I DO NOT LIKE THE IDEA OF NOT FILING IT TODAY AT ALL ACTUALLY.

Harrison, I am putting my estimated hours and costs together and will have them done by early afternoon. We are waiting on Cheryl's. If Cheryl doesn't have hers by the morning, please revise this to just be a fee petition for our firm and state in it that Cheryl also requests fees and costs and will be filing her own petition. I want to make sure this gets filed by early afternoon tomorrow.

Thanks.



**Jack Wagoner**



**Wagoner law firm, p.a.**

1320 Brookwood, Suites D & E • Little Rock, AR 72202

501-663-JACK (5225) • 501-660-4030 (fax)

Email: [jack@wagonerlawfirm.com](mailto:jack@wagonerlawfirm.com)

Web: [wagonerlawfirm.com](http://wagonerlawfirm.com)

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Exhibit "L" Page 1 of 1