



Plaintiffs the Campaign for Southern Equality and The Rev. Dr. Susan Hrostowski complain and allege:

**INTRODUCTION**

1. On July 4, 1776, the Second Continental Congress declared the United States of America to be an independent nation, proclaiming that “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness,” and that governments are instituted “[t]o secure these rights.”

2. Almost exactly 240 years later, on July 1, 2016, the State of Mississippi will begin to implement and enforce a state law that could hardly be more inconsistent with those words expressed by our founders and the core principles of liberty and equality that they recognized and acknowledged. That law, known as House Bill 1523 (“HB 1523”), rather than respect that all men (and women) are created equal, declares that certain people—only those who hold particular state-defined religious beliefs—should have special rights and privileges. Even worse, it allows them to exercise those special rights and privileges in derogation of the fundamental equality and dignity of a politically unpopular minority group.

3. Thus, while HB 1523 purports to protect “freedom of conscience,” the U.S. Constitution, the Mississippi Constitution, and Mississippi’s Religious Freedom Restoration Act already afford robust protections for all Mississippians to believe as they wish and practice their religions accordingly. HB 1523, unlike those provisions, singles out only a few specific, state-selected religious beliefs and grants their holders special

status, granting sweeping religious accommodations regardless of the burden they would impose on others.

4. Specifically, HB 1523 confers benefits exclusively upon those who adhere to at least one of three designated sectarian religious beliefs: (a) that “[m]arriage is or should be recognized as the union of one man and one woman,” (b) that “[s]exual relations are properly reserved to such a marriage,” and (c) that “[m]ale (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth” (collectively, the “Preferred Religious Beliefs”). §

2.

5. HB 1523 then goes on to promote and advance those Preferred Religious Beliefs in a wide variety of everyday contexts, including the following:

- (a) It authorizes state officials who issue marriage licenses to invoke the Preferred Religious Beliefs to deny service to gay and lesbian couples. § 3(8)(a).
- (b) It permits government employees to advocate a Preferred Religious Belief with impunity even while performing their official duties, as long as they can identify any other religious, political, or moral belief—regardless of the content of that other belief—that would have also been permitted. *Id.* at § 3(7).
- (c) It forbids the government and even private state-court plaintiffs from taking action against individuals or businesses that invoke the Preferred Religious Beliefs as justification for refusing to provide lesbian, gay, bisexual, and transgender (“LGBT”) people a litany

of goods and services, including counseling; fertility services; and commercial products, services, and accommodations “related to the solemnization, formation, celebration, or recognition of any marriage.” *See id.* at §§ 3, 4, 9(2), 9(3).

- (d) It also permits the imposition of restrictive gender-based policies on employees’ or students’ attire, grooming, and bathroom or locker room usage, as long as those policies are consistent with the Preferred Religious Beliefs. *Id.* at § 3(6).
- (e) Finally, HB 1523 forbids any government or state-court action against a “religious organization”—whether affiliated with a house of worship or not and whether acting as a government contractor or grant recipient or not—from using the Preferred Religious Beliefs as grounds for making discriminatory decisions about whom it employs, rents real estate to, or provides with adoption or foster care services. *See id.* at §§ 3(1)–3(2), 4(1)(c), 9(4).

6. HB 1523’s myriad applications all have three things in common: (1) they benefit only those who hold the Preferred Religious Beliefs, not those with any other inconsistent or contradictory religious or other beliefs; (2) they do not require holders of the Preferred Religious Beliefs to demonstrate that their freedom of religion would suffer any substantial or even nontrivial burden; and (3) they shift the entire burden of accommodating the Preferred Religious Beliefs from the believer to others (frequently LGBT people), without regard for the gravity of injury that the burden imposes.

7. But the First Amendment to the United States Constitution, adopted in 1791, provides that “Congress shall make no law respecting an establishment of religion. . . .”<sup>1</sup> The language of Article III, Section 18 of the Mississippi Constitution, enacted in 1890, is even stronger. It provides that “no preference shall be given by law to any religious sect or mode of worship.”

8. By identifying particular sectarian religious beliefs for special treatment and imposing a statutory scheme that systematically advances those beliefs at the expense of gay and lesbian Mississippians, HB 1523 makes unequal treatment the law of the land in Mississippi. It is hard to imagine a clearer violation of the Establishment Clause of the First Amendment.<sup>2</sup>

## PARTIES

### **B. Plaintiffs**

#### (i) The Campaign for Southern Equality

9. The Campaign for Southern Equality has been recognized as a proper institutional plaintiff with standing to sue on behalf of its members in two separate lawsuits challenging Mississippi’s laws banning marriage between gay couples and adoption by gay couples. *Campaign for S. Equal. v. Bryant*, 64 F. Supp. 3d 906, 917–18 (S.D. Miss. 2014) (“*CSE I*”), *aff’d*, No. 14-60837, 2015 WL 4032186 (5th Cir. July 1, 2015); *Campaign for S. Equal. v. Miss. Dep’t of Human Servs.*, \_\_\_ F. Supp. 3d \_\_\_, 2016 WL 1306202, at \*11 (S.D. Miss. Mar. 31, 2016) (“*CSE II*”). A court in this district described the Campaign for Southern Equality as “a non-profit advocacy group based in

---

<sup>1</sup> The Establishment Clause has been made applicable to the states by the Fourteenth Amendment. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 8 (1947).

<sup>2</sup> Plaintiffs anticipate that enforcement of HB 1523 will also present other legal and constitutional grounds for challenging the statute, and expressly reserve the right to file an amended complaint to address additional claims at a later date.

Asheville, North Carolina, that works across the South to promote ‘the full humanity and equality of lesbian, gay, bisexual, and transgender people in American life.’” *CSE I*, 64 F. Supp. 3d at 913.

10. The Campaign for Southern Equality was incorporated in 2011 in order to advocate for the full equality of LGBT people in American life and to increase public support for their rights. Based in Asheville, North Carolina, the Campaign for Southern Equality works throughout the South by providing free legal clinics and resources to help LGBT Southerners protect their rights; engaging in litigation to vindicate the rights guaranteed by the Constitution of the United States; and providing organizational support and training to local LGBT leaders. Since 2012, the Campaign for Southern Equality has worked actively with LGBT people across Mississippi. These efforts have included public advocacy promoting marriage equality, town hall events about LGBT equality, and free legal clinics.

11. The Campaign for Southern Equality’s membership includes LGBT people who live, work, and pay income taxes in the State of Mississippi. Members hold a variety of religious faiths and moral beliefs, but they share in common the belief that the identities, relationships, and marriages of LGBT people have as much dignity as anyone else’s.

12. The Campaign for Southern Equality has previously litigated cases to secure for LGBT Mississippians basic rights and equal dignity guaranteed by the Constitution. First, in *CSE I*, CSE won for gay and lesbian Mississippians the right to marry. 64 F. Supp. 3d at 913, *aff’d*, No. 14-60837, 2015 WL 4032186 (5th Cir. July 1, 2015). Most recently, in *CSE II*, the Court enjoined enforcement of Mississippi Code

section 93-17-3(5), which banned “couples of the same gender” from adopting. 2016 WL 1306202, at \*14.

(ii) The Rev. Dr. Susan Hrostowski

13. Plaintiff The Rev. Dr. Susan Hrostowski was ordained as an Episcopal priest in 1988 and is the vicar of St. Elizabeth’s Episcopal Church in Collins, Mississippi. St. Elizabeth’s is a small congregation, known in the community for its annual Mardi Gras Pancake suppers, its ministry to local foster children, and its beautiful outdoor chapel. As an Episcopal Priest, Susan helps her congregation and community celebrate life-cycle events from baptisms to funerals. She finds particular joy in joining couples—both gay and straight—in holy matrimony.

14. Susan grew up in Gulfport, Mississippi. She holds a Bachelor’s Degree in Psychology from the University of Southern Mississippi, a Master of Divinity from Virginia Theological Seminary, and a Master’s of Social Work Degree from USM and a Ph.D. in Social Work from Tulane University. In addition to being the vicar of St. Elizabeth’s Episcopal Church, Susan is also an Associate Professor in the School of Social Work at the University of Southern Mississippi. Before coming to St. Elizabeth’s, Susan served St. Paul’s Episcopal Church in Meridian, MS, a large downtown parish with about 500 members, and Holy Trinity in Fayetteville, NC, also a large congregation.

15. As a Christian who belongs to the Episcopal Church, Susan has many sincerely held religious beliefs, including the belief that the sacred institution of marriage is open to all loving couples. Susan’s religious beliefs, like all Episcopalians’, are based on the teachings of Jesus Christ. Chief among those teachings are to “seek and serve Christ in all persons, loving your neighbor as yourself” and “strive for justice and peace



among all people, and respect the dignity of every human being.” The Baptismal Covenant, Book of Common Prayer 305 (1979).

16. Indeed, in a letter dated June 3, 2016, the Rt. Rev. Brian R. Seage, Bishop of Mississippi, gave permission for congregations and clergy in the Diocese of Mississippi to use specific liturgies to perform marriage “for all couples legally entitled to marry.” *See* Ex. A at 1. While recognizing that there remain differing views among Episcopal clergy in the state, the Bishop explained that he arrived at his support for marriage equality “after a lot of prayer and discernment, as well as engagement with Holy Scripture, the traditions of the Church and human reason.” *Id.* at 2.

17. Susan has been together with her wife Kathryn (Kathy) Garner as a couple for 26 years. They had a religious ceremony 23 years ago, and were legally married on June 17, 2014 in an Episcopal wedding held at Washington National Cathedral in Washington, D.C. At their wedding, their now-16-year-old son, Hudson, served as their best man. Susan and Kathy are residents of Forrest County, Mississippi, where they live, work, and pay Mississippi state income tax.

18. Susan and Kathy were plaintiffs in *Campaign for Southern Equality v. Mississippi Department of Human Services*, No. 3:15cv578-DPJ-FKB, filed September 11, 2015. Together, they fought for Susan’s right to adopt their son, Hudson, and become his legal parent alongside Kathy.<sup>3</sup> On March 31, 2016, a court in this district issued a preliminary injunction against the enforcement of Mississippi’s ban on adoption by same-sex couples. *CSE II*, 2016 WL 1306202, at \*14. With this legal barrier to equality finally lifted, Susan adopted Hudson as her son on May 6, 2016.

---

<sup>3</sup> *See also* Hudson Garner, *My Day in Court*, Huffington Post (Dec. 22, 2015, 9:39 AM), [http://www.huffingtonpost.com/hudson-garner/my-day-in-court\\_b\\_8854120.html](http://www.huffingtonpost.com/hudson-garner/my-day-in-court_b_8854120.html).



**C. Defendants**

19. Defendant Phil Bryant is the Governor of the State of Mississippi and is being sued here in his official capacity. Governor Bryant is the chief executive of the State of Mississippi and is responsible for ensuring compliance with state law, including HB 1523, which he signed into law on April 5, 2016.

20. Governor Bryant also bears responsibility for the formulation and administration of the policies of the executive branch, including administrative agency policies. Governor Bryant was and is acting under color of state law at all times relevant to this complaint.

21. Defendant Jim Hood is the Attorney General of the State of Mississippi and is being sued here in his official capacity. Attorney General Hood is the chief law enforcement officer of the State of Mississippi and is responsible for enforcing and ensuring compliance with state law, including HB 1523. Attorney General Hood was and is acting under color of state law at all times relevant to this complaint.

22. Defendant John Davis is the Executive Director of the Mississippi Department of Human Services (“MDHS”), and is being sued here in his official capacity. Mr. Davis is the “chief administrative officer of the [MDHS],” and is charged by state law with the duty of “establish[ing] the organizational structure of the Mississippi Department of Human Services which shall include the creation of any units necessary to implement the duties assigned to the department and consistent with specific requirements of law, including . . . [the] Office of Family and Children’s Services,” Miss. Code Ann. §§ 43-1-2(2)–(5)(a), which is “responsible for the development, execution and provision of . . . foster care . . . [and] adoption services.” Miss. Code Ann. § 43-1-51. As a court in this district so clearly articulated, Mr. Davis is thus in charge of the agency

“statutorily empowered to set policies and participate directly in the adoption process.” *CSE II*, 2016 WL 1306202, at \*12. Defendant Davis was and is acting under color of state law at all times relevant to this complaint.

23. Defendant Judy Moulder is the Mississippi State Registrar of Vital Records and is being sued here in her official capacity. Under Mississippi law, Ms. Moulder is responsible for “carry[ing] into effect the provisions of law relating to registration of marriage.” Miss. Code Ann. § 41-57-43. HB 1523 § 3(8)(a) requires the State Registrar of Vital Records to accept notice and maintain records all state employees and agents who “seek recusal from authorizing or licensing lawful marriages based upon or in a manner consistent with” the Preferred Religious Beliefs. Defendant Moulder was and is acting under color of state law at all times relevant to this complaint.

24. HB 1523 requires every Defendant in this action to afford special privileges and exemptions to holders of the Preferred Religious Beliefs that are not extended to anyone else.

#### **JURISDICTION AND VENUE**

25. This action arises under the Constitution of the United States and the laws of the United States, including 42 U.S.C. § 1983. This Court therefore has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

26. Venue is proper under 28 U.S.C. § 1391 because Defendants Moulder and Davis reside in this district and Defendants Bryant and Hood reside in the State of Mississippi. Venue is also proper because a substantial part of the events giving rise to this action occurred in this district.

27. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

28. This Court has personal jurisdiction over Defendants because they are domiciled in Mississippi.

### **FACTS**

#### **A. The Constitution Prohibits the State of Mississippi from Discriminating Against LGBT Mississippians.**

29. There is, unfortunately, a long history of discrimination by Mississippi against its gay and lesbian citizens. “Seven centuries of strong objections to homosexual conduct have resulted in a constellation of State laws that treat gay and lesbian Mississippians as lesser, ‘other’ people.” *CSE I*, 64 F. Supp. 3d at 937. For example, Mississippi law made consensual intimacy between two people of the same sex a crime punishable by 10 years’ imprisonment (and indeed, this unconstitutional statute still has not been repealed). Miss. Code Ann., § 97-29-59. Same-sex couples could not marry or adopt children. Schools were required to teach that homosexuality is illegal and that the only appropriate setting for sexual intimacy is a heterosexual marriage. But, one by one, these discriminatory laws have fallen as federal courts from this District Court to the United States Supreme Court have recognized that gays and lesbians have the same right to love, marry, and raise children as any other American. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604–05 (2015); *CSE I*, 64 F. Supp. 3d at 913; *CSE II*, 2016 WL 1306202, at \*14.

30. This judicial recognition of the Constitutional imperative of equality began with *Romer v. Evans*, 517 U.S. 620 (1996), in which the Supreme Court

invalidated a Colorado constitutional amendment that barred the state and its municipalities from enacting anti-discrimination laws protecting gays and lesbians. 517 U.S. at 624. The Court held that the law was unconstitutional because it was enacted with the purpose of singling out gays and lesbians for mistreatment: “The amendment [withdrew] from homosexuals, but no others, specific legal protection from the injuries caused by discrimination, and it forbid[] reinstatement of these laws and policies.” *Id.* at 627. It thereby “deprive[d] gays and lesbians even of the protection of general laws and policies that prohibit arbitrary discrimination in governmental and private settings.” *Id.* at 630.

31. At bottom, the Colorado provision violated the Equal Protection Clause of the Fourteenth Amendment because it classified gays and lesbians “not to further a proper legislative end but to make them unequal to everyone else.” *Id.* at 635.

32. Applying *Romer*, the Supreme Court in 2003 held that state laws criminalizing intimacy between same-sex couples—such as Mississippi’s—violate the Constitution because such laws stigmatize gays and lesbians and “invi[t]e citizens to subject homosexual persons to discrimination both in the public and in the private spheres.” *Lawrence v. Texas*, 539 U.S. 558, 575 (2003). The Court acknowledged that condemnation of gay and lesbian couples’ physical intimacy had been “shaped by religious beliefs” that are for many people “profound and deep convictions,” but nonetheless concluded that the Constitution did not permit “us[ing] the power of the State to enforce these views on the whole society.” *Id.* at 571.

33. The next obstacle to full citizenship to fall was the Defense of Marriage Act (“DOMA”), which prohibited the federal government from recognizing the marriages

of lawfully married gay and lesbian couples. *United States v. Windsor*, 133 S. Ct. 2675 (2013). Like the sodomy laws invalidated in *Lawrence*, DOMA had been enacted to express “moral disapproval of homosexuality” and to promote “traditional (especially Judeo-Christian) morality.” *Id.* at 2693. Like the amendment found unconstitutional in *Romer*, the “avowed purposes and practical effect of [DOMA were] to impose a disadvantage, a separate status, and so a stigma upon” married same-sex couples. *Id.* DOMA demeaned the dignity of same-sex couples by “tell[ing] those couples, and all the world, that their otherwise valid marriages are unworthy of federal recognition” and rendering their unions “second-class marriages.” *Id.* at 2693–94.

34. In 2014, a court in this district affirmed the equal citizenship of gays and lesbians and struck down Mississippi’s ban on their ability to marry because it “deprive[d] same-sex couples and their children of equal dignity under the law,” relegated gay and lesbian Mississippians to “second-class citizenship,” and violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *CSE I*, 64 F. Supp. 3d at 913. The court acknowledged that supporters of Mississippi’s marriage ban “were simply trying to preserve their view of what a marriage *should* be, whether by religion or tradition,” *id.* at 913, but nonetheless recognized that gay and lesbian Mississippians “constitute a quasi-suspect class” and made clear that “the effect of the [Mississippi marriage ban] was (and is) to label same-sex couples as different and lesser, demeaning their sexuality and humiliating their children.” *Id.* at 940, 948. “That is something the voters cannot do.” *Id.* at 949.

35. While the State’s appeal of *CSE I* was pending before the United States Court of Appeals for the Fifth Circuit, on June 26, 2015, the United States Supreme Court

recognized that, like all Americans, gay and lesbian couples are endowed with “the fundamental right to marry” and may not be deprived of that right. *Obergefell*, 135 S. Ct. at 2604–05. The Constitution does not permit states to “exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.” *Id.* at 2605.

36. Following *Obergefell*, the Fifth Circuit affirmed *CSE I* and ordered that the court “act expeditiously” to enter a permanent injunction against Mississippi’s marriage ban. *Campaign for S. Equal. v. Bryant*, 791 F.3d 625, 627 (5th Cir. 2015). In so doing, the Court of Appeals took care to highlight *Obergefell*’s recognition that “[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach” the tenets of their faith and “advocate” their beliefs. *Id.* (quoting *Obergefell*, 135 S. Ct. at 2607).

37. The most recent barrier to the full citizenship of gay and lesbian Mississippians fell earlier this year when a court in this district held that Mississippi’s law prohibiting gay and lesbian couples from adopting children—the last of its kind in the United States—was unconstitutional. *CSE II*, 2016 WL 1306202. The court issued a preliminary injunction because Mississippi’s adoption ban “impose[d] an unconstitutional impediment that has caused [gay and lesbian couples] stigmatic and more practical injuries.” *Id.* at \*14.

**B. HB 1523 Responds to Advances in LGBT Equality by Expressing and Advancing the State of Mississippi’s Preferred Religious Beliefs.**

38. Mississippians who believe that marriage ought to be between a man and a woman, that physical intimacy should only take place in the context of straight couples’ marriages, or that sex is immutable and defined by a person’s anatomy at birth, have long had just as much a legal right to practice their religion as anyone else. The series of court

cases extending equal civil rights to gay and lesbian Americans has done nothing to change that; instead it has established only that such religious beliefs cannot be imposed on others through discriminatory government policies and actions.

39. Less than a year after marriage rights were extended to same-sex couples in Mississippi, and not even one week after the state's discriminatory adoption ban was invalidated, the State again afforded special legal status to particular religious beliefs about gay and lesbian people and their relationships. HB 1523 singles out three specific beliefs—(a) that “[m]arriage is or should be recognized as the union of one man and one woman,” (b) that “[s]exual relations are properly reserved to” a marriage between one man and one woman, and (c) that male and female “refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth,” § 2—and expresses the State’s endorsement of them by affording their adherents rights that extend beyond the protections federal and state laws provide for those who adhere to any other beliefs.

- (i) HB 1523 Is the Product of an Organized Effort to Advance a Religious Agenda at the Expense of LGBT Peoples’ Rights.

40. On information and belief, HB 1523 was drafted in large part by the sectarian Christian lobbying organization Alliance Defending Freedom (“ADF”), based in Arizona. See Adam Ganuchau, *Mississippi’s ‘Religious Freedom’ Law Drafted out of State*, Mississippi Today, May 17, 2016, <https://mississippitoday.org/2016/05/17/mississippis-religious-freedom-law-drafted-out-of-state/>. In advertising materials, ADF defines itself as a “Christ-Centered” “ministry” that fights to “keep[] the door open for the Gospel.”



41. ADF's sectarian mission includes opposing equal rights for gay and lesbian people. According to their website, a year after *Obergefell* was decided, "redefining marriage" remains one of the organization's key issues: "Alliance Defending Freedom remains committed to promoting the truth that marriage is the lifelong union of one man and one woman." Gregory S. Baylor, ADF Senior Counsel, has described gay and lesbian relationships as "both morally wrong and personally damaging."

42. On information and belief, one of the ways that ADF continues to advance its religious opposition to what it describes as the "redefinition of marriage" is by drafting legislation, such as HB 1523, that attempts to roll back Constitutional protections for gays and lesbians in the name of religious liberty. *See* Ganucheau, *supra* ¶ 40.

43. On information and belief, the American Family Association ("AFA"), a fundamentalist Christian organization that "believes that a culture based on biblical truth best serves the well-being of our nation and our families," also participated in the drafting of HB 1523. *See id.*

44. Like ADF, the AFA strongly opposes equal rights for gays and lesbians on religious grounds. The AFA teaches that "[h]omosexual behavior is sinful and unnatural," that "homosexual lust is highly addictive and difficult to stop," and that all gays and lesbians live in "rebellion against God and His created order."

45. The institutional authors of HB 1523 are committed to inscribing their conception of Christian values into law. Both ADF and the AFA believe that gays and lesbians are not deserving of full citizenship or equal dignity, but rather must be saved from their "sinful and unnatural lifestyles."

46. HB 1523's authorship makes evident that the bill was drafted with the primary purpose of expressing and advancing religious disapproval of LGBT citizens.

(ii) HB 1523 Extends Special Benefits Only to People who Hold Preferred Religious Beliefs.

47. Prior to the enactment of HB 1523, federal and state law equally protected the religious freedom of all Mississippians, including those who oppose gay and lesbian couples' relationships and marriages. The First Amendment to the United States Constitution guarantees that every American can freely exercise religion, no matter what faith tradition or tenets he or she holds sacred. The Mississippi Constitution likewise protects the "free enjoyment of all religious sentiments," again without affording some beliefs greater protection than others. Miss. Const. art. III, § 18. Indeed, the Mississippi Constitution mandates that "no preference shall be given by law to any religious sect or mode of worship." *Id.*

48. The Mississippi Religious Freedom Restoration Act ("RFRA"), Miss. Code Ann. § 11-61-1, further protects the free exercise rights of all Mississippians against government intrusion. Any individual who believes that the government has substantially burdened his or her exercise of religion can sue under RFRA in order to seek an exemption from the allegedly burdensome law or regulation. Miss. Code Ann. § 11-61-1(6). Mississippians can also invoke RFRA as a defense to a government enforcement action. *Id.*

49. In order to prevail under RFRA, a person must demonstrate that the challenged government action imposes a "substantial burden" on his or her free exercise of religion. The individual will be exempted from the governmental requirement unless the state demonstrates that "the application of the burden to the person (i) Is in

furtherance of a compelling governmental interest; and (ii) Is the least restrictive means of furthering that compelling governmental interest.” Miss. Code Ann. § 11-61-1(6).

50. Critically, the Mississippi RFRA does *not* single out any particular religious belief or creed and privilege it above all others. That, again, would clearly be inconsistent with Article III of the Mississippi Constitution as well as the First Amendment.

51. Thus, prior to the passage of HB 1523, RFRA—like the federal Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb–2000bb-4, and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc–2000cc-5—applied equally to all Mississippians of every faith and creed.

52. HB 1523, however, starkly departs from this tradition and practice by providing additional rights and benefits and by extending well beyond those available under RFRA, but only to individuals or entities that espouse one of three specific beliefs: (a) that “[m]arriage is or should be recognized as the union of one man and one woman,” (b) that “[s]exual relations are properly reserved to” a marriage between one man and one woman, or (c) male and female “refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth.” § 2.

53. The Preferred Religious Beliefs are not espoused by all religions or even by all Christian denominations. Some religious organizations, such as the Southern Baptist Convention and the Catholic Church, teach that marriage is limited to opposite-sex couples. Other religious organizations, however, including among others the United Church of Christ, the Presbyterian Church USA, the Episcopal Church of the United States, and the Union for Reform Judaism and the United Synagogue of Conservative

Judaism, solemnize gay and lesbian couples' marriages and regard such marriages as equal to straight couples'. Nonetheless, *all* of these organizations and their members, whatever they believe about marriage, are protected by the First Amendment.

54. HB 1523 identifies and singles out three Preferred Religious Beliefs as more important and more deserving of protection than all other beliefs.

55. Under HB 1523, people who hold the Preferred Religious Beliefs do not need to follow the procedures established by RFRA in order to receive a religious accommodation exempting them from a burdensome governmental action. Instead, the State has chosen to make it *easier* for people who hold the Preferred Religious Beliefs to receive an accommodation than for people who hold any other sincerely held religious belief:

(a) Unlike RFRA, which provides relief from a "substantial burden" on religious exercise, HB 1523 prohibits the government, including all Defendants, from imposing even the smallest and most insubstantial burden on people who hold one of the Preferred Religious Beliefs. § 4(1).

(b) Unlike RFRA, which does not provide an exemption from a law or regulation that is narrowly tailored to a compelling government interest, HB 1523 purports to provide an absolute exemption from even the most narrowly tailored law, even when that law is essential to the most compelling government interest. § 3.

56. Thus, HB 1523 affords *far* greater benefits and protections to people who hold the Preferred Religious Beliefs than are available to all other Mississippians.

57. Plaintiff The Rev. Dr. Susan Hrostowski does not hold any of the Preferred Religious Beliefs. As a devout Episcopalian and an ordained Episcopal priest, she has other sincerely held religious beliefs, including the belief that the sacred institution of marriage must be open to all loving couples, the belief in the sacred teaching, “love your neighbor as yourself,” and the belief in the vital importance of joining together in Christian prayer. If the State substantially burdens her exercise of any of these sincerely held religious beliefs, Susan could bring a lawsuit under RFRA to vindicate her rights, but that vindication will be much more burdensome than it would be for someone who holds one of the Preferred Religious Beliefs and can take advantage of HB 1523.

58. HB 1523 sends a clear message to Susan and the other Plaintiffs that their religious or secular beliefs are less important and less worthy of protection than the Preferred Religious Beliefs.

59. This singling out of three particular religious beliefs for special treatment obviously cannot be explained by any secular purpose. To the contrary, it expresses government support for religion over non-religion and for the beliefs of some sects over others. *See Wallace v. Jaffree*, 472 U.S. 38, 59–61 (1985). Such “legislative favoritism” violates the “clearest command of the Establishment Clause”: “that one religious denomination cannot be officially preferred over another.” *Croft v. Perry*, 624 F.3d 157, 165–66 (5th Cir. 2010) (quoting *Larson v. Valente*, 456 U.S. 228, 244 (1982)).

(iii) HB 1523 Was Enacted for the Purpose of Advancing Preferred Religious Beliefs.

60. HB 1523's sponsors and supporters have made clear that the bill's purpose is to extend benefits to only those who hold particular religious beliefs to promote and advance those beliefs and the sects that adhere to them, but no others.

61. State Representative Dan Eubanks, a co-sponsor of HB 1523, stated during floor debate that the bill was intended to protect "Christians" like him. Referring to same-sex relationships, Representative Eubanks said: "It's very clear what God says. Go back and look at your Bible. He calls sin, 'sin.'" Referring to his fellow Christians, Representative Eubanks said: "This [bill] is about aligning our right to worship, to speak, to do with our faith. And our faith is pretty clear." Representative Eubanks closed by saying that HB 1523 "protects what I am willing to die for—and what I hope you who claim to be Christians are willing to die for—which is your beliefs." Statement of Rep. Dan Eubanks, February 19, 2016.<sup>4</sup>

62. State Senator Jenifer Branning stated during floor debate that, under HB 1523, it would not be discrimination for Mississippi College as a "Baptist college" to deny employment to all LGBT people. Senator Branning also acknowledged that although there are Mississippians with deeply held religious beliefs regarding gambling, the death penalty, and alcohol, HB 1523 does nothing to protect people who hold those religious beliefs because it is "very specific to same-sex marriage." Statement of Sen. Jenifer Branning, March 30, 2016.

---

<sup>4</sup> A video transcript of the legislative debate regarding HB 1523 is available at [http://law.mc.edu/legislature/bill\\_details.php?id=4621&session=2016](http://law.mc.edu/legislature/bill_details.php?id=4621&session=2016). All of the statements in the following paragraphs have been transcribed from these videos.

63. State Senator Angela Burks Hill stated during floor debate that HB 1523 “is about protecting against discrimination from somebody who has personally held religious beliefs that want to exercise that religion not just in their church on Sunday but throughout their daily life.” Statement of Sen. Angela Burks Hill, March 30, 2016. Adherents of non-Christian faiths generally do not attend churches and often worship on days other than Sunday.

64. State Senator Chris McDaniel stated during floor debate that under HB 1523, “now the state can’t force a Christian, or whomever, to violate” their religious beliefs. Statement of Sen. Chris McDaniel, March 30, 2016.

65. In a blog post on his campaign website, State Representative Dana Criswell stated that HB 1523 is opposed by “those who oppose basic [C]hristian values.” Dana Criswell, *Rep. Dana Criswell – At Your Capitol, Week of March 28*, Dana Criswell for Mississippi (Apr. 2, 2016), [http://www.danacriswellformississippi.com/rep\\_dana\\_criswell\\_at\\_your\\_capitol\\_week\\_of\\_march\\_28](http://www.danacriswellformississippi.com/rep_dana_criswell_at_your_capitol_week_of_march_28). In other words, HB 1523 was intended to inscribe certain Christian values into law.

66. State Representative Andy Gipson, a co-sponsor of HB 1523, stated in a Facebook post that HB 1523 was supported by “[m]ore than 270 pastors,” religious leaders including the Rev. Franklin Graham, and churches and church organizations including the Southern Baptist Convention, Bethany Christian Services, the Catholic Dioceses of Mississippi, the National Hispanic Christian Leadership Conference, the United Pentecostal Church, and the American Association of Christian Schools. All of the religious organizations cited by Rep. Gipson in support of HB 1523 are Christian organizations.



67. The Family Research Council, a conservative Christian ministry whose self-proclaimed “mission is to advance faith, family and freedom in public policy and the culture from a Christian worldview,” recently presented Governor Phil Bryant with an award for having signed HB 1523 into law. Governor Bryant accepted the award at a convention on May 26, 2016, where Family Research Council president Tony Perkins introduced him to the audience of conservative Christian ministers by remarking, “You are not the only ministers that God has called . . . God has also called ministers to government.” Leah Jessen, *‘We Will Never Be Silent’: Mississippi Governor Receives Religious Freedom Award*, The Daily Signal (May 27, 2016), <http://dailysignal.com/2016/05/27/we-will-never-be-silent-mississippi-governor-receives-religious-freedom-award/>. Governor Bryant explained to the audience that “the secular, progressive world” was angry with him for signing HB 1523. “They don’t know that Christians have been persecuted throughout the ages,” Bryant said. “They don’t know that if it takes crucifixion, we will stand in line before abandoning our faith and our belief in our Lord and savior, Jesus Christ.” Emily Wagster Pettus, *Mississippi Governor: ‘Secular’ World Angry at LGBT Law*, The Clarion-Ledger (June 1, 2016, 9:48 AM), <http://www.clarionledger.com/story/news/politics/2016/05/31/mississippi-governor-secular-world-angry-over-lgbt-law/85208312/>.

68. Lieutenant Governor Tate Reeves, who supported the passage of HB 1523, stated on an earlier occasion that Mississippi needed to enact laws protecting religious freedom because the “United States is a Christian nation, and nowhere is that reflected more than in Mississippi.” Travis Gettys, *Mississippi Tackles Perceived Christian Oppression With ‘Religious Freedom’ Bill*, Raw Story (Feb. 3, 2014, 12:10 PM),

<http://www.rawstory.com/2014/02/mississippi-tackles-perceived-christian-oppression-with-religious-freedom-bill/>.

69. And if it were not plain enough from the language of HB 1523, which ADF helped draft, the President and CEO of ADF, Alan Sears, made ADF's mission of advancing its particular conservative brand of Christianity crystal clear when he acknowledged and condemned Christian denominations that disagree with the Preferred Religious Beliefs: "Unfortunately, just as some in the church have shown a total lack of grace, the theologically liberal church has gone the other direction and totally capitulated on the issue without ever dealing with the sin and sorrow. Rather than helping those engaging in forbidden behaviors to turn from their sin by pointing to Christ, the theologically liberal church is providing 'spiritual' cover that enables their actions and the terribly destructive results." Alan Sears and Craig Osten, *The Homosexual Agenda* 130 (2013)

70. It is clear from the text and effect of the bill as well as the above-cited statements of its sponsors and supporters that the actual purpose of HB 1523 is the endorsement of religion and, specifically, of those Christian denominations that oppose marriage by gay and lesbian couples. HB 1523 was enacted "for the sole purpose of expressing the State's endorsement of" the Preferred Religious Beliefs. *Wallace*, 742 U.S. at 60. By endorsing the Preferred Religious Beliefs, HB 1523 flagrantly ignores the "mandate [of] governmental neutrality between religion and religion, and between religion and nonreligion." *M.B. ex rel. Bedi v. Rankin Cnty. Sch. Dist.*, No. 3:13cv241-CWR-FKB, 2015 WL 5023115, at \*12 (S.D. Miss. July 10, 2015) (quoting *McCreary Cnty. v. Am. Civil Liberties Union*, 545 U.S. 844 (2005)).

(iv) HB 1523 Ensures Ongoing State Endorsement and Advancement of the Preferred Religious Beliefs.

71. HB 1523's enactment itself injures Plaintiffs by conveying that their beliefs are inferior to those the State has hand-selected for special treatment under the law. But the State's endorsement of the Preferred Religious Beliefs is not limited to the bill's enactment. To the contrary, HB 1523 establishes a statutory scheme that ensures government-sponsored actors will continue to advance and promote the Preferred Religious Beliefs for as long as the statute is in effect.

72. HB 1523 prohibits state and local governments from taking any action against a government employee for "speak[ing] or engag[ing] in expressive conduct based upon or in a manner consistent with" any of the Preferred Religious Beliefs. HB 1523 § 3(7). Government employees are authorized to express the Preferred Religious Beliefs even "in the workplace," so long as the "speech or expressive conduct is consistent with the time, place manner and frequency of any other expression of a religious, political, or moral belief or conviction allowed." *Id.*

73. In effect, HB 1523 arguably grants all state and local government employees the right to advocate the controversial and sectarian Preferred Religious Beliefs in *every* workplace situation where they would be permitted to express *any* moral belief at all. If a public school teacher or counselor, a government office manager, a doctor in a public hospital, or a garbage collector would be permitted to tell students, patients, employees, or customers that it is wrong to steal or is appropriate to treat others with kindness, HB 1523 may ensure that they can also, *while on the job as government agents*, proclaim that marriage or physical intimacy by gay or lesbian people will result in eternal damnation.

74. This sweeping right to advocate religious viewpoints, with impunity while on the clock as a government employee is extended only with regard to expressions that are “consistent with” the Preferred Religious Beliefs, and not to any other beliefs. And HB 1523 appears to protect the ability to promote the Preferred Religious Beliefs regardless of the impact that promotion may have on members of the public, who are likely to rightly perceive such messages as being endorsed by the government on whose behalf an employee is working.

75. These scenarios are hardly far-fetched or unlikely hypotheticals. Indeed, HB 1523 is already having its intended effect. Just weeks after the law was enacted, a Mississippi public school teacher accepted her government’s invitation to promote a Preferred Religious Belief at the expense of LGBT Mississippians and their family members by verbally assaulting her six-year old student for being the daughter of lesbian parents. According to the girl’s mothers, the teacher told their daughter that “her parents weren’t really married because a marriage can only be between a man and a woman.” The teacher then proceeded to humiliate the little girl by polling the other children in the class to show that they all had both a mother and a father and demonstrate that her parents were different. Such humiliation was precisely the “demean[ing]” conduct that the Supreme Court cited as an impetus for striking down the so-called Defense of Marriage Act. *See Windsor*, 133 S. Ct. at 2695. Yet HB 1523 purports to grants state actors the right to engage in it, so long as doing so is consistent with the Preferred Religious Beliefs.

76. Were it not for the State’s clear statement through the enactment of HB 1523 that Mississippians can and should advocate the Preferred Religious Beliefs at the

expense of their gay and lesbian neighbors, this teacher likely would not have felt comfortable asserting her sectarian religious belief to humiliate a child that the State placed in her care. Once HB 1523 goes into effect, it is likely that neither the parents nor the school district will have *any* recourse against the teacher. Students and their parents will reasonably—and correctly—conclude that the State of Mississippi endorses the teacher’s exclusionary and humiliating sectarian message.

77. HB 1523 also permits government officials who authorize marriage licenses to refuse service to a gay or lesbian couple based on any of the Preferred Religious Beliefs, and requires the State Registrar of Vital Records to maintain records of all such “recusals.” § 3(8)(a). This scheme uses state resources and offices to convey to gay and lesbian Mississippians that the State holds adherence to the Preferred Religious Beliefs in higher regard than adherence to any other views, and indeed, than their own fundamental right to marry.

78. HB 1523 arguably further extends its “protection” of certain discriminatory actions by adherents of the Preferred Religious Beliefs to government contractors and grant recipients, *see* § 4(1)(c), and to a wide array of private entities, including individuals, closely held companies, and “religious” entities—“regardless of whether [they are] affiliated with a church or other house of worship,” §§ 9(3), 9(4). This broad scope, combined with the array of situations in which HB 1523’s religious accommodation can be invoked ensures that Plaintiffs will be subject to near-constant risk of unwelcome and injurious contact with state-endorsed religious expression in their day-to-day lives as Mississippi residents.

**C. HB 1523 Accommodates Preferred Religious Beliefs by Burdening LGBT Mississippians and Undermining Their Constitutional Rights.**

79. Across a wide variety of contexts, HB 1523 purports to grant certain individuals who hold one of the Preferred Religious Beliefs an absolute and unqualified exemption from consequences that they might otherwise face for discriminatory actions against gay and lesbian Mississippians. There is no balancing test to determine the extent to which a religious accommodation is necessary or how much harm it might impose on others. Instead, the statute invariably grants the accommodation and shifts the burden of that accommodation from the person who holds a Preferred Religious Belief to others around him.

80. The burdens resulting from HB 1523's religious accommodation are significant, and the statute systematically places them on the shoulders of LGBT people, even in situations where they are vulnerable and in need of legal protection. This accommodation scheme violates the First Amendment, which "gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities." *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985) (quoting *Otten v. Baltimore & Ohio R. Co.*, 205 F.2d 58, 61 (2d Cir. 1953)). HB 1523's "unyielding weighting" in favor of people who hold the Preferred Religious Beliefs has the primary and impermissible effect of advancing religion. *Id.*

(i) **HB 1523 Targets Gays and Lesbians to Bear the Burden of Religious Accommodations.**

81. That HB 1523 systematically places the burden of its religious accommodation squarely on the shoulders of gays and lesbians is no accident. To the contrary, HB 1523—which was enacted less than a year after the Supreme Court invalidated Mississippi's ban on gay and lesbian couples' ability to marry and less than

one week after a court in this district enjoined Mississippi's ban on their ability to adopt children—intentionally promotes the Preferred Religious Beliefs at the expense of gays and lesbians. State Senator Jennifer Branning, a proponent of HB 1523 who met with the bill's drafters, describes HB 1523 as “balancing legislation” to the Supreme Court's *Obergefell* decision. Statement of Sen. Jenifer Branning, March 30, 2016.

82. Senator Branning's floor statements confirm that the primary purpose of HB 1523 is to encourage and enable anti-gay discrimination in furtherance of the Preferred Religious Beliefs. Senator Branning stated that the bill would permit Mississippi College to not “employ homosexual people on their staff.” When asked by Senator Willie Simmons whether refusing to employ gays and lesbians was a form of discrimination, Senator Branning replied, “If this bill is passed, it would not be.” Statement of Sen. Jenifer Branning, March 30, 2016.

83. This astonishing statement—that discrimination against gay and lesbian Mississippians can be transformed into non-discrimination by legislative fiat—demeans the very personhood of gay people and clearly demonstrates the legislature's intent to create a religious accommodation that returns gay and lesbian Mississippians to second-class citizenship. Ironically, Mississippi achieved this demeaning and discriminatory objective by enacting a bill the very title of which purports to protect *against* discrimination. See HB 1523 § 1 (“This act shall be known and may be cited as the ‘Protecting Freedom of Conscience from Government Discrimination Act.’”). But just as the so-called “Defense of Marriage Act” was actually “contrive[d] to deprive some couples married under the laws of their State, but not other couples, of both rights and



responsibilities,” so too is the “principal purpose [of HB 1523] to impose inequality.” *Windsor*, 133 S. Ct. at 2694.

84. Like the legislature that passed HB 1523, Governor Bryant and Mississippi’s senior United States Senator Thad Cochran also reacted negatively to *Obergefell*. On the day that the Supreme Court decided *Obergefell*, Governor Bryant responded that “a federal court has usurped that right to self-governance and has mandated that states must comply with federal marriage standards—standards that are out of step with the wishes of many in the United States and that are certainly out of step with the majority of Mississippians.” *See Governor Bryant Issues Statement on Supreme Court Obergefell Decision*, Governor Phil Bryant (June 26, 2015), <http://www.governorbryant.com/governor-bryant-issues-statement-on-supreme-court-obergefell-decision/>.

85. Senator Cochran, suggesting that legislation would be needed in response to *Obergefell*, declared, “The Supreme Court decision does not and cannot change the firmly held faith of most Mississippians. I believe marriage is defined as the union of one man and one woman. The court’s decision raises questions about the protection of religious liberties and First Amendment rights, which the Congress may have to address. It is important that this ruling does not result in individuals, businesses, and religious-oriented schools and organizations being penalized by the government for their belief in the traditional definition of marriage.” *See Cochran Statement on Supreme Court Ruling on Same-Sex Marriage*, Thad Cochran: United States Senator for Mississippi (June 26, 2015), <http://www.cochran.senate.gov/public/index.cfm/2015/6/cochran-statement-on-supreme-court-ruling-on-same-sex-marriage>.

(ii) HB 1523's Religious Accommodation Erodes the Protections of Federal, State, and Local Anti-Discrimination Laws.

86. LGBT Mississippians are protected from discrimination by federal laws including Title VII, Title IX, and § 1983. 42 U.S.C. § 2000e, *et seq.* (“Title VII”); 20 U.S.C. § 1681, *et seq.* (“Title IX”); 42 U.S.C. § 1983 (“§ 1983”).

87. LGBT Mississippians are also protected from discrimination and harassment by state and local laws and public university equal opportunity policies.

88. The University of Southern Mississippi's employee handbook states that equal employment opportunities will be provided “without regard to . . . sex, sexual orientation . . . gender identity, genetic information,” and permits any “University of Southern Mississippi employee, student, applicant for admission or employment, or other participant in the University's programs or activities” to file a complaint with the University's Office of Affirmative Action/Equal Employment Opportunity if they believe they have been unlawfully discriminated against, including on the basis of sex, sexual orientation, gender identity, and genetic information. *Univ. of S. Miss. Employee Handbook* 22, 117 (June 2014), available at [https://www.usm.edu/sites/default/files/groups/employment-hr/pdf/employee\\_handbook\\_june\\_2014.pdf](https://www.usm.edu/sites/default/files/groups/employment-hr/pdf/employee_handbook_june_2014.pdf).

89. People who live in or travel to Jackson, Mississippi are protected by a local ordinance that forbids drivers of vehicles for hire, such as taxis and limousines, from refusing “to accept a passenger” solely on the basis of the passenger's “sexual orientation.” Jackson, Mississippi Code of Ordinance § 126-161.

90. All LGBT Mississippians are protected by the professional ethics rules governing the conduct of physicians, physician assistants, counselors, psychotherapists, family therapists, and social workers. State boards of licensure have the regulatory

and/or statutory authority to discipline medical and mental health providers who violate professional codes of ethics by, for example, “discriminat[ing] against prospective or current clients . . . based on . . . gender identity [or] sexual orientation[.]” 2014 ACA Code of Ethics, Rule C.5, *available at* <https://www.counseling.org/resources/aca-code-of-ethics.pdf>.

91. HB 1523 purports to accommodate the Preferred Religious Beliefs at the expense of limiting these and other pre-existing protections in three ways.

92. *First*, by its own terms HB 1523’s religious accommodation is intended to supersede any state or local law or government regulation that “impinges upon the free exercise of” the three Preferred Religious Beliefs. § 8(3). And while HB 1523 does allow for the possibility of a future state statute being “expressly made exempt” from its application, it does not contain any such provision with regard to any other exercise of the state government’s authority. *Id.* The statute thus effectively purports to supersede not only every current conflicting state or local law, but also every *future* “ordinance, rule, regulation, order, opinion, decision, practice or other exercise” of authority by the state or any of its political subdivisions.

93. *Second*, HB 1523’s broad prohibition on the “state government” taking “discriminatory action” against individuals and businesses who avail themselves of the accommodation by denying services on the basis of any of the three Preferred Religious Beliefs hinders state and local governments’ enforcement of existing anti-discrimination protections.

94. For example, HB 1523 bans government officials from taking nearly any action—including withholding, denying or changing the conditions of a license or

certification, *see* § 3(4)(1)(f)—against someone who “declines to participate in the provision of treatments, counseling, or surgeries related to sex reassignment or gender identity transitioning or declines to participate in the provision of psychological, counseling, or fertility services based upon” any of the three Preferred Religious Beliefs. § 3(4). This could prevent state boards of licensure from disciplining a health care professional who violated professional ethics by refusing to provide care to a gay or lesbian person.

95. Section 3(5) of HB 1523 similarly prohibits the “state government” from taking “discriminatory action” against someone who has “declined to provide” any of a wide assortment of “services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, celebration, or recognition of any marriage,” if the refusal is based upon or done “in a manner consistent with” one of the three Preferred Religious Beliefs. § 3(5).

96. Section 3(5) can be interpreted to bar municipalities like Jackson, Mississippi from enforcing laws aimed at prohibiting discrimination against gay and lesbian couples by allowing and encouraging providers of various accommodations, goods, and services to discriminate against gay and lesbian Mississippians. For example, a local Jackson ordinance prohibits a limousine driver from discriminating against a gay or lesbian couple traveling to or from their wedding. Now, HB 1523 purports to prohibit the state or any of its political subdivisions from taking action against that limousine driver should he refuse to provide the “marriage-related services” of driving a couple to and from their wedding, or for that matter any other event “related to the solemnization,

formation, celebration, or recognition” of their marriage or any other gay or lesbian couple’s marriage.

97. Because HB 1523 permits someone who discriminates against LGBT people based on the Preferred Religious Beliefs to seek injunctive relief that prevents or “remedies” any resulting adverse governmental action, the bill effectively ties the hands of government agencies or officials who would otherwise enforce anti-discrimination protections. § 6.

98. *Third*, HB 1523 imposes a meaningful burden on LGBT Mississippians who attempt to vindicate their civil rights by defining “state government” to include not only government agencies and employees, but also any “private party or third party suing under or enforcing a law, ordinance, rule or regulation of the state or political subdivision of the state.” § 9(2). Individuals or entities who discriminate in the name of any of the Preferred Religious Beliefs can obtain an injunction against any private party’s effort to obtain relief under an anti-discrimination law, and may even be able to seek “compensatory damages” and attorneys’ fees and costs from a private plaintiff who continues to pursue relief despite entry of an injunction under HB 1523. § 6.

Accordingly, private *victims* of discrimination could be held liable for the “harm” their complaint causes the person who claims that HB 1523’s religious accommodation entitled him to discriminate against them.

99. Moreover, HB 1523 bars state judges and courts from imposing a “fine, fee, penalty, or injunction” against individuals claiming HB 1523’s religious exemption—a provision that presumably purports to prohibit them from deciding even

federal law claims against individuals who claim their actions were consistent with adherence to the Preferred Religious Beliefs. § 4(1)(e).

(iii) HB 1523's Religious Accommodation Systematically Imposes Substantial Burdens and Injuries on Gay and Lesbian Mississippians.

100. HB 1523 creates an arguably unqualified religious accommodation and impermissibly and systematically imposes the resulting burden on gay and lesbian Mississippians, even when doing so impinges on their most fundamental rights. Even the “list of governmental rights, benefits, and responsibilities” that the Supreme Court recognized in *Obergefell* as part and parcel of the fundamental right to marry are not shielded from the reach of an accommodation for the Preferred Religious Beliefs. HB 1523's religious accommodation seriously impedes the ability of gay and lesbian couples and individuals to fully participate in the legal and social order.

101. *First*, HB 1523's religious accommodation unduly burdens the issuance of marriage licenses to gay and lesbian couples. Section 3(8) permits anyone “employed or acting on behalf of the state government who has authority to authorize or license marriages” to “seek recusal from authorizing or licensing lawful marriages” based upon any of the three Preferred Religious Beliefs.

102. As Plaintiff Campaign for Southern Equality has argued in a pending motion for injunctive relief in a related case, the law provides no enforcement mechanism for ensuring that the fundamental right to marry is not unduly impeded, delayed, or otherwise burdened. Mot. to Reopen J., File Suppl. Pleading, and Modify the Permanent Inj., *Campaign for S. Equal. v. Bryant*, No. 3:14-cv-818 (S.D. Miss. May 10, 2016), ECF No. 39. Under HB 1523, every clerk and deputy clerk in a county could recuse himself or herself such that no state employees will be available to issue marriage licenses to

same-sex couples. And by its terms, the law does not permit a court or any other state agency to remedy the situation by altering the terms or conditions of employment for any state employee. Moreover, HB 1523 does not even acknowledge, much less attempt to address, the humiliation and stigmatic harm that gay and lesbian Mississippians endure when they are informed that an agent of the State refuse to provide them service because of their sexual orientation.

103. *Second*, HB 1523’s religious accommodation makes it harder for gay and lesbian couples to celebrate marriage—before, during, and after their weddings. Section 3(5) permits a person or business claiming the Preferred Religious Beliefs who provides “services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, celebration, or recognition of any marriage” to deny services to LGBT Mississippians with impunity. These goods and services include, but are not limited to, “photography,” “videography,” “printing,” “publishing,” “floral arrangements,” “dress making,” baking, “assembly-hall” rentals, “car-service rentals,” and “jewelry sales and services.” *Id.*

104. The statute is worded so expansively that it could apply to not just wedding-related businesses but also almost any business that serves gay or lesbian married couples. For example, a restaurant could refuse to seat a married lesbian couple like Susan and Kathy at a table for two if it viewed the couple’s dinner date as a “celebration” of their marriage. A hotel could refuse to let them stay in a room together. Even a furniture store could turn Susan and Kathy away with impunity if it fears that supplying home furnishings relates to the “formation” or “recognition” of their marriage. Every time this religious accommodation is invoked, Susan will suffer the tangible and



dignitary harm that arises from being turned away because of someone else's religious views about her sexual orientation.

105. **Third**, HB 1523's religious accommodation creates barriers to raising children. Despite the district court's recent holding in *CSE II* that there is *no* constitutionally permissible basis for preventing same-sex couples from adopting and raising children, *CSE II*, 2016 WL 1306202, at \*13–14, § 3(2) permits adoption and foster care agencies who invoke any of the Preferred Religious Beliefs to refuse to place children with same-sex parents. Accordingly, the burden of a decision by a Christian adoption service—arguably even one receiving state funding—to turn away gays and lesbians would fall on would-be parents and on the children who are denied loving homes. HB 1523 also creates a similarly unrestricted ability for holders of the Preferred Religious Beliefs to deny fertility-related services to a gay or lesbian couple.

106. The Supreme Court explained in *Obergefell* that “[t]here is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices.” 135 S. Ct. at 2599. And yet the decision to raise a child—one of the most “profound choices” a couple can make—is entirely disregarded when HB 1523's religious exemption is invoked, regardless of the extent to which facilitating an adoption would actually burden anyone's exercise of religion.

107. **Fourth**, HB 1523's religious accommodation burdens gay and lesbian couples' ability to keep their relationships and families strong by erecting obstacles to accessing essential health services. Section 3(4) permits healthcare professionals and staff who subscribe to any of the Preferred Religious Beliefs to use those beliefs as

justification to refuse marriage counseling or other psychological or counseling services to a gay or lesbian patient, or to the child of a gay or lesbian couple.

108. *Finally*, HB 1523 accommodates an individual's adherence to the Preferred Religious Beliefs even where doing so requires the believers' employees, students, or customers to comply with his or her religious views on appropriate attire, grooming, or facilities for individuals of each sex. § 3(6). A manager with the sincerely held religious belief that women should not wear pants or should not have their knees, elbows, or hair uncovered could force all female employees to conform to a restrictive religious dress code, as long as the policy is "based upon" or "consistent with" any of the Preferred Religious Beliefs. No matter how slightly an individual's religious exercise might be burdened and how severely others may be harmed, HB 1523 impermissibly directs the resulting burden away from those who ascribe to any Preferred Religious Belief and onto others around him.

### **FIRST CAUSE OF ACTION**

#### **First and Fourteenth Amendments to the United States Constitution**

109. Plaintiffs incorporate by reference paragraphs 1 through 108, *supra*, as if set forth fully herein.

110. Plaintiffs set forth this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

111. The First Amendment to the United States Constitution, as incorporated against the States through the Fourteenth Amendment to the United States Constitution, prohibits the State of Mississippi from enacting or enforcing any "law respecting an establishment of religion." U.S. Const. amend. I.

112. Plaintiffs live in and pay taxes in Mississippi. HB 1523 provides for the direct expenditure of Plaintiffs' tax dollars in multiple ways, including in the form of "[c]ompensatory damages" and "attorneys' fees and costs" to certain holders of Preferred Religious Beliefs who bring a successful action under the statute against the state or any of its political subdivisions, agencies, or institutions. § 6. It also provides for the direct expenditure of tax dollars to fund advocacy of the Preferred Religious Beliefs by prohibiting the government from withholding, reducing, or materially altering the terms or conditions of "any state grant, contract, subcontract, cooperative agreement, guarantee, loan scholarship, or other similar benefit" or the employment of any individual on the basis of advocacy of the Preferred Religious views, even when this advocacy is funded by taxpayer dollars. In addition, HB 1523 requires the direct expenditure of taxpayer funds to maintain a system that requires the State Registrar of Vital Records to keep records of officials who refuse to serve gay and lesbian people due to adherence to Preferred Religious Beliefs and requires State officials "to take all necessary steps"—regardless of cost to the State—to facilitate this selective religious accommodation without delaying or impeding the issuance of any legally valid license. These expenditures of taxpayer revenues are integral to HB 1523's overall statutory scheme.

113. Plaintiffs have been injured by the unjust and unequal treatment prescribed by HB 1523. Plaintiffs The Rev. Dr. Susan Hrostowski and some of Campaign for Southern Equality's members have been injured by the exclusion of their deeply held religious beliefs from the Preferred Religious Beliefs. All Plaintiffs, whether religious or not, have been injured by the statute's deliberate extension of benefits only to a subset of favored Christian sects and denominations. This injury is traceable to the enactment and

enforcement of HB 1523 and can be remedied by the injunction of the law's unjust and unequal benefits. See *Peyote Way Church of God, Inc. v. Thornburgh*, 922 F.2d 1210, 1214 n.2 (5th Cir. 1991).

114. HB 1523 violates the Establishment Clause in at least three ways. By singling out specific religious beliefs for approbation, HB 1523 makes clear that its *purpose* is the endorsement and advancement of religion. And by requiring that religious accommodations be granted even when such accommodations would impermissibly burden innocent third parties, HB 1523 has the *effect* of impermissibly advancing religion. Finally, by conferring benefits only upon holders of the Preferred Religious Beliefs, HB 1523 impermissibly discriminates between religious sects on the basis of religious doctrine.

#### **DECLARATORY AND INJUNCTIVE RELIEF**

##### **28 U.S.C. §§ 2201 and 2202; Federal Rules of Civil Procedure 57 and 65**

115. Plaintiffs incorporate by reference paragraphs 1 through 114, *supra*, as if set forth fully herein.

116. This case presents an actual controversy because Defendants' present and ongoing denial of Plaintiffs' constitutional rights subjects them to serious and immediate harms, warranting the issuance of a declaratory judgment.

117. Plaintiffs seek an injunction to protect their constitutional rights and avoid the injuries described in this complaint. A favorable decision enjoining Defendants would redress and prevent irreparable injuries to Plaintiffs identified herein, for which Plaintiffs have no adequate remedy at law.

118. The State of Mississippi will incur no or little burden in halting the implementation of HB 1523's convoluted discriminatory regime, whereas the hardship for Plaintiffs of being denied equal treatment is severe. The balance of hardships weighs strongly in favor of Plaintiffs.

**PRAYERS FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court enter an order:

119. Declaring that House Bill 1523 violates the Establishment Clause of the First Amendment to the United States Constitution, as incorporated against the States through the Fourteenth Amendment to the United States Constitution;

120. Preliminarily and permanently enjoining the enforcement and application of House Bill 1523;

121. Awarding Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to 42 U.S.C. § 1988; and

122. Granting such other relief as the Court may deem just, equitable, and proper.

**PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP**

Roberta A. Kaplan\*

*Lead Counsel*

Andrew J. Ehrlich\*

William B. Michael\*

Joshua D. Kaye\*

Jacob H. Hupart\*

Alexia D. Korberg\*

1285 Avenue of the Americas

New York, NY 10019-6064

Tel:(212) 373-3000

Fax:(212) 757-3990

rkaplan@paulweiss.com

aehrlich@paulweiss.com

wmichael@paulweiss.com

jkaye@paulweiss.com

jhupart@paulweiss.com

akorberg@paulweiss.com

Zachary A. Dietert\*

2001 K Street NW

Washington, DC 20009

Tel: (202) 223-7300

Fax: (202) 223-7420

zdietert@paulweiss.com

*Attorneys for Plaintiffs Campaign for Southern Equality and Susan Hrostowski*

*\* Pro hac vice application forthcoming*

**FISHMAN HAYGOOD, LLP**



Alysson Mills

Bar No. 102861


201 St. Charles Avenue, Suite 4600

New Orleans, Louisiana 70170

Tel: (504) 586-5253

Fax: (504) 586-5250

amills@fishmanhaygood.com

  
504-586-5253