

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SECOND DIVISION**

Sheila Cole, *et al.*,
Plaintiffs,

vs.

The State of Arkansas, *et al.*,
Defendants.

Case No. CV 2008-14284

**ANSWER FILED IN INTERVENTION BY
FAMILY COUNCIL ACTION
COMMITTEE AND JERRY COX**

FILED 01/16/2009 16:30:15
Pat O'Brien Pulaski Circuit Clerk
CR1 By _____

Intervenors answer the corresponding numbered paragraphs of the Plaintiffs' Complaint and deny each and every allegation, except for those matters expressly admitted or qualified. This Answer restates the headings as each appears in the Complaint.

INTRODUCTION

1. Admit only that the State of Arkansas has an obligation to act in the best interest of the children in its custody in need of adoption of foster care as determined by the laws of Arkansas. Deny all other allegations.
2. Admit.
3. Paragraph 3 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny to the extent it alleges facts.
4. Paragraph 4 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny to the extent it alleges facts.

5. Admit only that Act 1 is intended to prevent adoptive or foster care children from being placed in homes with individuals, homosexual or heterosexual, who have a live in boyfriend or girlfriend as stated in the Act 1 flyer attached to the Complaint. Deny all other allegations.

6. Paragraph 6 states conclusions of law to which no answer is required. Further admit only that Act 1 applies to all unmarried cohabiting couples. Deny all other allegations.

7. Deny.

8. Deny.

9. Deny.

10. Paragraph 10 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny to the extent it alleges facts.

11. Paragraph 11 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny to the extent it alleges facts.

JURISDICTION AND VENUE

12. Admit that Circuit Courts have original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Arkansas Constitution but deny that the Plaintiffs have pleaded justiciable causes of action.

13. Admit that venue is proper in Pulaski County.

PARTIES

Plaintiffs

**SHEILA COLE, ON HER OWN BEHALF, AND BY, FOR AND ON BEHALF OF
HER GRANDDAUGHTER, W.H.**

14. Deny this allegation due to lack of sufficient knowledge or information.

15. Deny this allegation due to lack of sufficient knowledge or information.

16. Deny this allegation due to lack of sufficient knowledge or information.

17. Deny this allegation due to lack of sufficient knowledge or information.

18. Paragraph 18 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

STEPHANIE HUFFMAN AND WENDY RICKMAN

19. Deny this allegation due to lack of sufficient knowledge or information.

20. Deny this allegation due to lack of sufficient knowledge or information.

21. Paragraph 21 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

FRANK PENNISI AND MATT HARRISON

22. Deny this allegation due to lack of sufficient knowledge or information.

23. Deny this allegation due to lack of sufficient knowledge or information.

24. Paragraph 24 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

**MEREDITH AND BENNY SCROGGIN, ON THEIR OWN BEHALVES, AND BY,
FOR AND ON BEHALF OF THEIR TWO CHILDREN, N.S. AND L.S.**

25. Deny this allegation due to lack of sufficient knowledge or information.

26. Paragraph 26 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent is alleges facts.

**CARY AND TRINA KELLY, ON THEIR OWN BEHALVES, AND BY, FOR AND ON
BEHALF OF THEIR TWO CHILDREN, V.K. AND T.K.**

27. Deny this allegation due to lack of sufficient knowledge or information.

28. Deny this allegation due to lack of sufficient knowledge or information.

29. Deny this allegation due to lack of sufficient knowledge or information.

30. Deny this allegation due to lack of sufficient knowledge or information.

31. Paragraph 31 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

SUSAN DUELL-MITCHELL AND CHRIS MITCHELL, ON THEIR OWN BEHALVES, AND BY, FOR AND ON BEHALF OF THEIR TWO CHILDREN, N.J.M. AND N.C.M.

32. Deny this allegation due to lack of sufficient knowledge or information.

33. Deny this allegation due to lack of sufficient knowledge or information.

34. Deny this allegation due to lack of sufficient knowledge or information.

35. Deny this allegation due to lack of sufficient knowledge or information.

36. Paragraph 36 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

TERESA MAY, ON HER OWN BEHALF, AND BY, FOR AND ON BEHALF OF HER TWO CHILDREN, C.A.A. AND C.L.A.

37. Deny this allegation due to lack of sufficient knowledge or information.

38. Deny this allegation due to lack of sufficient knowledge or information.

39. Deny this allegation due to lack of sufficient knowledge or information.

40. Paragraph 36 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

CURTIS CHATHAM AND SHANE FRAZIER

41. Deny this allegation due to lack of sufficient knowledge or information.

42. Deny this allegation due to lack of sufficient knowledge or information.

43. Paragraph 43 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

**WENDY WILSON AND MATTHEW DYLAN FOSTER, ON THEIR BEHALVES,
AND BY, FOR AND ON BEHALF OF THEIR THREE CHILDREN E.M.F., A.P.F.,
AND O.M.F.**

44. Deny this allegation due to lack of sufficient knowledge or information.

45. Deny this allegation due to lack of sufficient knowledge or information.

46. Deny this allegation due to lack of sufficient knowledge or information.

47. Deny this allegation due to lack of sufficient knowledge or information.

48. Paragraph 48 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

KAYTEE WRIGHT

49. Deny this allegation due to lack of sufficient knowledge or information.

50. Deny this allegation due to lack of sufficient knowledge or information.

51. Deny this allegation due to lack of sufficient knowledge or information.

52. Deny this allegation due to lack of sufficient knowledge or information.

53. Deny this allegation due to lack of sufficient knowledge or information.

54. Deny this allegation due to lack of sufficient knowledge or information.

55. Paragraph 55 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny that Act 1 is invalid. Deny to the extent it alleges facts.

Defendants

56. Paragraph 56 states conclusions of law to which no answer is required. Deny as characterized to the extent it alleges facts.

57. Paragraph 57 states conclusions of law to which no answer is required. Deny as characterized to the extent it alleges facts.

58. Admit only that DHS is required to follow all rules and laws relating to foster care and adoption to protect the best interest of children under the care of DHS consistent with Arkansas statutes and Constitution. Admit only that DHS administers placements through the ICPC. Deny all remaining allegations.

59. Admit only that has promulgated regulations, contained in the Minimum Licensing Standards for Child Welfare Agencies. Deny all remaining allegations.

60. Admit that the Child Welfare Agency Review Board licenses private adoption agencies. Deny all remaining allegations.

61. Admit only that DHS and the Child Welfare Agency Review Board have responsibility for approving foster and adoptive parents and making foster and adoptive placements for dependants of the State of Arkansas who are in need of foster care or adoption. Deny the remaining allegations due to a lack of sufficient information or knowledge.

62. Admit only that the actions admitted to in paragraph 61 constitute actions under color of law.

STATEMENT OF FACTS

ACT 1

63. Admit.

64. Admit.

STATUTORY AND REGULATORY PROVISIONS RELATING TO THE SELECTION OF FOSTER AND ADOPTIVE PARENTS

65. Deny.

66. Admit.

67. Admit that the statutes are correctly quoted but that other statutes are also applicable. Deny all other allegations.

68. Admit only the standards as they are stated in MLS §§ 200.1, 300.1. Deny all other allegations.

69. Admit only that the statute is quoted correctly. Deny all other allegations.

70. Admit only that Act 1 is part of Arkansas's system of evaluating applicants for foster care and adoption. Deny all other allegations.

71. Deny as characterized.

72. Admit only that Act 1 does not bar a non-cohabiting single adult from consideration as an adoptive or foster parent.

73. Admit.

74. Admit only that Act 1 does not bar a non-cohabiting single adult from consideration as an adoptive or foster parent.

75. Deny this allegation due to lack of sufficient knowledge or information.

76. Deny as characterized.

77. Deny.

HOWARD AND THE ROOTS OF ACT I

78. Paragraph 78 states conclusions of law to which no answer is required. Deny to the extent it alleges facts.

79. Paragraph 79 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

80. Paragraph 80 states conclusions and stipulated facts from another case. Deny to the extent it alleges facts pertinent to this case.

81. Paragraph 81 states conclusions and stipulated facts from another case. Deny to the extent it alleges facts pertinent to this case.

82. Paragraph 82 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

83. Paragraph 83 characterizes Plaintiffs' claims and states conclusions of law to which no answer is required. Deny to the extent it alleges facts.

84. Paragraph 84 states conclusions of law to which no answer is required. Deny to the extent it alleges facts.

85. Paragraph 85 states conclusions of law to which no answer is required. Deny to the extent it alleges facts.

86. Admit.

87. Deny.

88. Deny.

DHS REJECTS THE EXCLUSION OF COHABITATING ADULTS AS FOSTER PARENTS

89. Deny.

90. Deny this allegation due to lack of sufficient knowledge or information.

91. Deny.

92. Paragraph 92 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

ACT 1 WILL HARM CHILDREN BY UNNECESSARILY RESTRICTING THE POOL OF QUALIFIED FOSTER AND ADOPTIVE FAMILIES

93. Deny this allegation due to lack of sufficient knowledge or information.

94. Deny this allegation due to lack of sufficient knowledge or information.

95. Deny this allegation due to lack of sufficient knowledge or information.

96. Deny this allegation due to lack of sufficient knowledge or information.

97. Deny this allegation due to lack of sufficient knowledge or information.

98. Deny this allegation due to lack of sufficient knowledge or information.
99. Deny this allegation due to lack of sufficient knowledge or information.
100. Deny this allegation due to lack of sufficient knowledge or information.
101. Deny this allegation due to lack of sufficient knowledge or information.
102. Deny this allegation due to lack of sufficient knowledge or information regarding

all Defendants.

103. Deny.
104. Deny.
105. Deny.
106. Deny.
107. Deny this allegation due to lack of sufficient knowledge or information.
108. Deny this allegation due to lack of sufficient knowledge or information.

FIRST CLAIM FOR RELIEF BY W.H. AND TAXPAYER PLAINTIFFS
(Children's Rights Under the Due Process Clause of the United States Constitution, 42 U.S.C. § 1983)

109. Intervener realleges and incorporates all previous paragraphs of this answer.
110. Deny.
111. Admit.
112. Deny.
113. Deny.
114. Deny.

115. Paragraph 115 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

116. Paragraph 116 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

117. Paragraph 117 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

118. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

SECOND CLAIM FOR RELIEF BY W.H. AND TAXPAYER PLAINTIFFS
(Children's Rights Under the Due Process Clause of the Arkansas Constitution, Ark. Code Ann. § 16-123-101, et. seq.)

119. Intervener realleges and incorporates all previous paragraphs of this answer.

120. Deny.

121. Deny.

122. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

THIRD CLAIM FOR RELIEF BY SHEILA COLE AND W.H
(Children's Rights Under the Due Process Clause of the United States Constitution, 42 U.S.C. § 1983)
(Burden on Family Integrity)

123. Intervener realleges and incorporates all previous paragraphs of this answer.

124. Admit upon information and belief.

125. Deny this allegation due to lack of sufficient knowledge or information.

126. Deny this allegation due to lack of sufficient knowledge or information.

127. Deny this allegation due to lack of sufficient knowledge or information.

128. Deny this allegation due to lack of sufficient knowledge or information.

129. Paragraph 129 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

130. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

FOURTH CLAIM FOR RELIEF BY SHIELA COLE AND W.H.
(Due Process Clause of the Arkansas Constitution, Ark. Code Ann. § 16-123-101, et. seq.)
(Burden on Family Integrity)

131. Intervener realleges and incorporates all previous paragraphs of this answer.

132. Deny.

133. Deny that the application of Act 1 will cause irreparable harm. Deny all remaining allegations.

FIFTH CLAIM FOR RELIEF BY PLAINTIFFS MEREDITH AND BENNY SCROGGIN, CARY AND TRINA KELLEY, SUSAN DUELL-MITCHELL AND CHRIS MITCHELL, TERESA MAY, AND WEDNY WILSON AND DYLAN FOSTER
(Right to Parental Autonomy Under the Due Process Clause of the United States Constitution, 42 U.S.C. § 1983)

134. Intervener realleges and incorporates all previous paragraphs of this answer.

135. Deny.

136. Paragraph 136 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

137. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

SIXTH CLAIM FOR RELIEF BY PLAINTIFFS MEREDITH AND BENNY SCROGGIN, CARY AND TRINA KELLEY, SUSAN DUELL-MITCHELL AND CHRIS MITCHELL, TERESA MAY, AND WEDNY WILSON AND DYLAN FOSTER
(Right to Parental Autonomy Under the Due Process Clause of the Ark. Code Ann. § 16-123-101, et. seq.)

138. Intervener realleges and incorporates all previous paragraphs of this answer.

139. Deny.

140. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

SEVENTH CLAIM FOR RELIEF BY PLAINTIFFS V.K., T.K., N.S., L.S., N.J.M., N.C.M., C.A.A., C.L.A., E.M.F., A.P.F., AND O.M.F.
(Equal Protection Clause of the United States Constitution, 42 U.S.C. § 1983)

141. Intervener realleges and incorporates all previous paragraphs of this answer.

142. Deny.

143. Paragraph 143 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

144. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

EIGHTH CLAIM FOR RELIEF BY PLAINTIFFS V.K., T.K., N.S., L.S., N.J.M., N.C.M., C.A.A., C.L.A., E.M.F., A.P.F., AND O.M.F.
(Equal Protection Clause of the Arkansas Constitution, Ark. Code Ann. § 16-123-101, et seq.)

145. Intervener realleges and incorporates all previous paragraphs of this answer.

146. Deny.

147. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

NINTH CLAIM FOR RELIEF BY PLAINTIFFS SHEILA COLE, STEPHANIE HUFFMAN AND WENDY RICKMAN, FRANK PENNISI AND MATT HARRISON, CURTIS CHATHAM AND SHANE FRAZIER, AND KAYTEE WRIGHT
(Equal Protection and Due Process Clauses of the United States Constitution, 42 U.S.C. § 1983)

148. Intervener realleges and incorporates all previous paragraphs of this answer.

149. Admit only that under Arkansas law, Arkansas will not place children under its care for adoption or fostering with an individual who cohabits with a person to whom they are not married. Deny all remaining allegations.

150. Paragraph 150 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

151. Paragraph 151 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

152. Paragraph 152 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

153. Paragraph 153 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

154. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

TENTH CLAIM FOR RELIEF BY PLAINTIFFS SHEILA COLE, STEPHANIE HUFFMAN AND WENDY RICKMAN, FRANK PENNISI AND MATT HARRISON, CURTIS CHATHAM AND SHANE FRAZIER, AND KAYTEE WRIGHT
(Right to Equal Protection, Due Process, and Privacy under the Arkansas Constitution and Ark. Code. Ann. § 16-123-101, *et. seq.*)

155. Intervener realleges and incorporates all previous paragraphs of this answer.

156. Paragraph 156 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

157. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

ELEVENTH CLAIM FOR RELIEF BY ALL PLAINTIFFS
(Amendment 7 of the Arkansas Constitution)
(Materially Misleading)

158. Intervener realleges and incorporates all previous paragraphs of this answer.

159. Paragraph 159 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

160. Admit.

161. Admit only that the ballot title of Act 1 does not reference Section 903. Deny all remaining allegations.

162. Paragraph 162 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

163. Paragraph 163 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

164. Paragraph 164 characterizes Plaintiffs' claims and states conclusion of law to which no answer is required. Deny to the extent it alleges facts.

165. Deny that Plaintiffs are entitled to any remedy and that the application of Act 1 will cause irreparable harm.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Plaintiffs lack standing to bring this action, are not asserting a justiciable claim, and the Court lacks jurisdiction over this matter.

THIRD DEFENSE

Act 1 is rationally related to a legitimate governmental interest.

FOURTH DEFENSE

Act 1 is substantially related to an important governmental interest.

FIFTH DEFENSE

Act 1 does not discriminate on the basis of marital status.

SIXTH DEFENSE

Act 1 does not discriminate on the basis of sexual orientation.

SEVENTH DEFENSE

Act 1's ballot title is not materially misleading under Amendment 7 of the Arkansas Constitution.

EIGHTH DEFENSE

The challenge to Act 1 ballot title is untimely.

NINTH DEFENSE

Act 1 does not discriminate against a suspect class.

TENTH DEFENSE

Act 1 does not infringe a fundamental right.

ELEVENTH DEFENSE

Act 1 does not infringe a statutory right.

TWELVTH DEFENSE

Act 1 serves a compelling government interest and is narrowly tailored to that end.

THIRTEENTH DEFENSE

The Plaintiffs claims for relief if granted will infringe the fundamental right of the intervenors and voters of the State of Arkansas to determine social policy by initiative.

WHEREFORE, Intervener's request that Plaintiffs take nothing by way of their Complaint, that it be dismissed with prejudice, that the Plaintiffs be responsible for fees and

costs of this action, and that such other and further relief be awarded as the Court deems just and proper.

Respectfully submitted this the 16th day of January, 2009.

By: Martha M. Adcock
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Attorneys for Intervenors
Family Council Action Committee and Jerry Cox
**Pro hac vice pending*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by U.S. Mail, First Class, postage prepaid on the following:

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on this the 16th day of January, 2009.



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**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
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**[PROPOSED] ORDER GRANTING
PROPOSED INTERVENORS FCAC AND
JERRY COX'S MOTION TO
INTERVENE**

Upon good cause shown, it is ORDERED, ADJUDGED and DECREED that the proposed intervenors, Family Council Action Committee (FCAC) and Jerry Cox, are made an intervening party in this action of right, and that FCAC and Jerry Cox shall hereafter be entitled to notice through counsel of record regarding all further proceedings which may take place.

ENTERED: _____, 2009.

The Honorable Chris Piazza, Circuit Judge