

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DEB WHITEWOOD, <i>et al.</i> ,	:	
	:	Civil Action
Plaintiffs,	:	
	:	No. 1:13-cv-1861
v.	:	
	:	Honorable John E. Jones, III
MICHAEL WOLF, in his official	:	
capacity as the Pennsylvania	:	
Secretary of Health, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT
OF UNCONTESTED FACTS**

AND NOW, come Defendants Secretary Wolf and Secretary Meuser, through their counsel, and respond to Plaintiff's Statement of Uncontested Facts. Defendants object to those paragraphs within Plaintiffs' Statement of Uncontested Facts that do not contain a citation to the record as required by Local Rule 56.1 and respond to the respective paragraphs as follows:

1. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1.
2. Admitted, upon information and belief.
3. Admitted, upon information and belief.
4. Admitted, upon information and belief.

5. Although the citation in this paragraph is inaccurate, admitted, upon information and belief.

6. Admitted, upon information and belief.

7. Admitted that Plaintiffs have brought a claim for the requested relief. Defendants deny that Plaintiffs' claim is valid and deny that summary judgment should be entered in their favor.

8. Defendants admit that Plaintiffs have made the argument set forth in this Paragraph. Defendants deny that strict scrutiny is the applicable standard and further deny that Pennsylvania's Marriage Law would not withstand a rational basis review.

9. Admitted.

10. Admitted that Plaintiffs have submitted and rely upon the documents set forth in this Paragraph. Defendants deny that such documents are sufficient to warrant summary judgment in favor of Plaintiffs.

11. Defendants admit that Plaintiffs rely upon the reports of the six expert witnesses set forth in this paragraph. The expert reports are comprised of the opinions of each proffered expert witness and are documents that speak for themselves. It is denied that the opinions and conclusions of the experts are sufficient to implicate strict scrutiny

12. Admitted.

13. Admitted that Maureen Hennessey's Declaration contains these statements.

14. Admitted that the declarations of Susan Whitewood, Deb Whitewood and A.W. contain these statements.

15. Admitted that Lynn Hurdle and Fredia Hurdle's declarations contain these statements.

16. Admitted that Fernando Chang-Muy and Len Rieser's declarations contain these statements. 17. Admitted that Julia Lobur and Marla Cattermole's declarations contain these statements.

18. Admitted that Dawn Plummer and Diana Polson's declarations contain these statements.

19. Admitted that Dara Raspberry and Helena Miller's declarations contain these statements.

20. Admitted that Gregory Wright and Ron Gebhardsbauer's declarations contain these statements.

21. Admitted that Christine Donato and Sandra Ferlanie's declarations contain these statements.

22. Admitted that Heather Poehler and Kath Poehler's declarations contain these statements.

23. Admitted that Angela Gillem and Gail Lloyd's declarations contain these statements.

24. Admitted that Edwin Hill and David Palmer's declarations contain these statements.

25. Admitted.

26. Admitted that Attorney General Kathleen Kane made these statements in the letter sent by Adrian King, Jr., First Deputy Attorney General, to James D. Schultz, General Counsel. Admitted that Attorney General Kathleen Kane has refused to defend the Commonwealth Defendants in this case. By way of further response, the Attorney General did not properly exercise her authority under the Pennsylvania Constitution when she refused to defend the Marriage Law. Defendants deny that the Attorney General had the authority to decline to defend the Marriage Law and deny that she had the authority to make the determination that the law at issue is unconstitutional. In making such an unauthorized determination, Attorney General Kane ignored the presumption that a duly enacted statute of the General Assembly is presumed to be constitutional and usurped the judicial function of this Court.

27. Admitted.

28. Admitted that the Stipulation executed by Plaintiffs and Defendant Petrilie contains this statement.

29. Admitted that the Stipulation executed by Plaintiffs and Defendant Petrilie contains this statement.

30. Admitted that the Stipulation executed by Plaintiffs and Defendant Petrilie contains this statement.

31. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1. In addition, the averment contained in this paragraph is a conclusion of law.

32. Admitted.

33. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1.

34. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1. Defendants also deny this statement on the grounds that it constitutes a legal conclusion.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1. Defendants also deny this statement on the grounds that it constitutes a legal conclusion.

44. Admitted in part and denied in part. Admitted that Pennsylvania's marriage laws were amended in 1996. Denied that the marriage laws were amended expressly to prohibit marriage for same-sex couples and recognition of same-sex couples' marriages from other states. The marriage laws were amended to establish the definition of marriage in Pennsylvania as a union between one man and one woman.

45. Denied.

46.-50. Admitted that the Legislative Journals, which are attached in full as exhibits to Defendants' Motion for Summary Judgment contain the phrases Plaintiffs cite.

51. Admitted in part and denied in part. Admitted that certain legislators brought a declaratory judgment action in the Court of Common Pleas of Bucks County in 2004 and that the action was dismissed on standing grounds. Denied that the portions of the complaint cited by the Plaintiffs is a complete characterization of the action or claims asserted therein.

52. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1. Defendants also deny this statement on the grounds that it constitutes a legal conclusion.

53. It is admitted that this information is contained in the expert report of Dr. Badgett. It is denied that this opinion is sufficient to implicate strict scrutiny.

54. It is admitted that this information is contained in the expert report of Dr. Peplau and is the opinion of Dr. Peplau. It is denied that this opinion is sufficient to implicate strict scrutiny.

55. It is admitted that this information is contained in the expert report of Dr. Peplau. It is denied that this opinion is sufficient to implicate strict scrutiny.

56. It is admitted that this information is contained in the expert reports of Dr. Peplau and Dr. Badgett and is the opinion of Dr. Peplau and Dr. Badgett. It is denied that these opinions are sufficient to implicate strict scrutiny.

57. It is admitted that this information is contained in the expert report of Dr. Badgett and is the opinion of Dr. Badgett. It is denied that this opinion is sufficient to implicate strict scrutiny.

58. It is admitted that this information is contained in the expert report of Dr. Badgett and is the opinion of Dr. Badgett. It is denied that this opinion is sufficient to implicate strict scrutiny.

59. Admitted.

60. It is admitted that this information is contained in the expert report of Dr. Peplau and is the opinion of Dr. Peplau. It is denied that this opinion is sufficient to implicate strict scrutiny.

61. It is admitted that this information is contained in the expert reports of Dr. Peplau and Dr. Badgett and are the opinions of Dr. Peplau and Dr. Badgett. It is denied that these opinions are sufficient to implicate strict scrutiny.

62. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1. Defendants also deny this statement on the grounds that it constitutes a legal conclusion.

63. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1.

64. It is admitted that this information is contained in the expert report of Dr. Peplau and is the opinion of Dr. Peplau. It is denied that such opinion or conclusion is sufficient to implicate strict scrutiny.

65. The first paragraph of Paragraph 65 contains no citation to the record and Defendants, therefore, restate their objection above. It is denied that such opinion or conclusion is sufficient to implicate strict scrutiny. It is admitted that the statements attributed to Plaintiff Rieser are contained in his Declaration and describe Plaintiff Rieser's feelings. It is admitted that the statements attributed to

Plaintiff Lloyd are contained in her Declaration and describe Plaintiff Lloyd's feelings.

66. It is admitted that the information in this paragraph is contained in the expert reports of Dr. Peplau and Dr. Lamb and are the opinions of Dr. Peplau and Dr. Lamb. It is denied that such opinions or conclusions are sufficient to implicate strict scrutiny.

67. The first paragraph of Paragraph 67 contains no citation to the record and Defendants therefore restate their objection above. It is admitted that Plaintiffs' respective declarations contain these statements. Plaintiffs' statements regarding harm and any purported message Pennsylvania's Marriage Law may send are conclusions of law.

68. The first paragraph of Paragraph 68 contains no citation to the record and Defendants therefore restate their objection above. It is admitted that Plaintiff Hurdle's declaration contain the statements set forth.

69. It is admitted that this information is contained in the expert report of Dr. Peplau and is the opinion of Dr. Peplau. It is denied that this opinion is sufficient to implicate strict scrutiny.

70. The first paragraph of Paragraph 70 contains no citation to the record and Defendants therefore restate their objection above. It is admitted that

Plaintiffs' respective declarations contain the statements set forth and are the statements and opinions of those particular Plaintiffs.

71. Admitted that Maureen Hennessey's Declaration contains these statements. By way of further response, the statements in the referenced video are conclusions of law.

72. The first sentence of Paragraph 72 contains no citation to the record and Defendants therefore restate their objection above. Further, such statement is a conclusion of law. It is admitted that the information attributed to Dr. Peplau is contained in her expert report and is the opinion of Dr. Peplau. It is denied that this opinion is sufficient to implicate strict scrutiny. It is further denied that Dr. Peplau considered the Declarations of Plaintiffs in arriving at this opinion. It is admitted that the Stipulation contains the statement attributed to the Stipulation.

73. The first sentence of Paragraph 73 contains no citation to the record and Defendants therefore restate their objection above. It is admitted that the remaining statements attributed to Plaintiff Maureen Hennessey are contained in her Declaration.

74. The first paragraph of Paragraph 74 contains no citation to the record and Defendants therefore restate their objection above. It is admitted that Plaintiff Hill's Declaration contains the statement set forth. It is admitted that Plaintiff Whitewood's Declaration contains the statement set forth.

75. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1.

76. It is admitted that the information in this paragraph is contained in the expert reports of Dr. Badgett and Dr. Carpenter and are the opinions of Dr. Badgett and Dr. Carpenter.

77. It is admitted that the information in this paragraph is contained in the expert report of Dr. Badgett and is the opinion of Dr. Badgett. It is denied that these opinions and conclusions are sufficient to implicate strict scrutiny.

78. It is admitted that the information in this paragraph is contained in the expert report of Dr. Badgett and is the opinion of Dr. Badgett. It is denied that this opinion and conclusion are sufficient to implicate strict scrutiny.

79. It is admitted that Plaintiff Lobur's Declaration contains this statement.

80. It is admitted that Plaintiff Gillem's Declaration contains this statement.

81. It is admitted that Plaintiff Hennessey's Declaration contains these statements.

82. The first two sentences of Paragraph 82 contain no citation to the record and Defendants therefore restate their objection above. It is admitted that the remaining statements are contained in Plaintiff Whitewood's Declaration. The

facts in the declaration regarding the purchase of insurance and the purpose of its purchase are immaterial.

83. The averments contained in this paragraph are conclusions of law.

84. It is admitted that the statement set forth in this paragraph is contained in Plaintiff Deb Whitewood's Declaration.

85. It is admitted that Plaintiffs Lynn and Fredia Hurdles' respective Declarations contain these statements.

86. The first sentence of Paragraph 86 contains no citation to the record and Defendants therefore restate their objection above. It is admitted that the remaining statements are contained in Plaintiff Hennessey's Declaration.

87. It is admitted that same-sex couples are unable to file income tax returns jointly and that all of the married Plaintiff couples have expressed a desire to be able to file their Pennsylvania income tax returns jointly. The remaining factual averments contain no citation to the record and Defendants therefore restate their objection above.

88. It is admitted that the information in this paragraph is contained in the expert report of Dr. Badgett and is the opinion of Dr. Badgett. It is denied that these opinions and conclusions are sufficient to implicate strict scrutiny. It is admitted that the statement regarding Plaintiffs Deb and Susan Whitewood is

contained in Susan Whitewood's Declaration. Defendants have no facts to dispute this statement.

89. It is admitted that the information in this paragraph is contained in the expert report of Dr. Carpenter. These opinions constitute conclusions of law. It is denied that these opinions and conclusions are sufficient to implicate strict scrutiny.

90. It is admitted only that Plaintiffs Deb and Susan Whitewood, Dara Raspberry and Helena Miller, and Christine Donato and Sandy Ferlanie have undergone the second parent adoption process.

91. It is admitted that Plaintiff Dawn Plummer's Declaration contains these statements.

92. The first sentence of Paragraph 92 contains no citation to the record and Defendants, therefore, restate their objection above. It is admitted only that Plaintiff Donato's Declaration contains these statements. Plaintiff Donato's statement that they would not have had to undergo a second parent adoption if she and Plaintiff Ferlanie were allowed to marry is a conclusion of law.

93. The first sentence of Paragraph 93 contains no citation to the record and Defendants, therefore, restate their objection above. It is admitted that the statement attributable to Plaintiff Hurdle is contained in her Declaration. It is admitted that the statement attributable to Plaintiff Whitewood is contained in her

Declaration. It is admitted that the statement attributable to Plaintiff Plummer is contained in her Declaration. It is admitted that the information attributed to Dr. Badgett is contained in his expert report and is the opinion of Dr. Badgett. It is denied that these opinions and conclusions are sufficient to implicate strict scrutiny.

94. The statements contained in this paragraph are conclusions of law.

95. The first two sentences of Paragraph 95 contain no citation to the record and Defendants, therefore, restate their objection above. It is admitted that Plaintiffs Susan Whitewood and Lynne Hurdle legally changed their names. It is admitted that the Plaintiff couples have obtained legal documents. It is admitted that the statements attributable to Susan Whitewood are contained in her Declaration.

96. It is admitted that the information in the first sentence of this paragraph is contained in the expert reports of Dr. Badgett and Dr. Carpenter and are the opinions of Dr. Badgett and Dr. Carpenter. It is denied that these opinions and conclusions are sufficient to implicate strict scrutiny. It is admitted that Dawn Plummer's and Diana Polson's Declarations contain information that that they are saving for a second-parent adoption.

97. It is admitted that the information in the first paragraph of Paragraph 97 is contained in the expert reports of Dr. Carpenter (although the citation to Dr.

Carpenter's report is inaccurate) and Dr. Badgett and are the opinions of Dr. Carpenter and Dr. Badgett. These opinions constitute conclusions of law. It is denied that these opinions and conclusions are sufficient to implicate strict scrutiny. It is admitted that the statements attributed to Plaintiff Chang-Muy are contained in his Declaration.

98. It is admitted that the information in this paragraph is contained in the expert report of Dr. Badgett and is the opinion of Dr. Badgett. It is denied that these opinions and conclusions are sufficient to implicate strict scrutiny.

99. Admitted that these statements are contained in Plaintiff Gebhardtsbauer's Declaration. By way of further answer, it is denied that these conclusions have any basis in fact.

100. The first sentence of Paragraph 100 contains no citation to the record and Defendants, therefore, restate their objection above. Such statement also is a conclusion of law. It is admitted that the statements attributed to Plaintiff Gillem are contained in her Declaration. It is admitted that the statements attributed to Plaintiff Hennessey are contained in her Declaration.

101-112. It is admitted the information and statements in these paragraphs are contained in Dr. Cott's expert report and are the opinion of Dr. Cott. It is denied that these opinions and conclusions implicate strict scrutiny.

113.-117. It is admitted the information and statements in these paragraphs are contained in Dr. Chauncey's expert report and are the opinions of Dr. Chauncey. It is denied that these opinions and conclusions are sufficient to implicate strict scrutiny.

118. It is admitted the first sentence in this paragraph is information contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny. It is admitted that the remaining statements are contained within 1990 Pa.Legis. J. (House). It is denied that these statements are material facts.

119. It is admitted the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny.

120. It is admitted the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny.

121. It is admitted the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is admitted that the citation to the case in the Court of Common Pleas of Berks County is accurate. It is denied that these statements are material facts and it is denied these statements are sufficient to implicate strict scrutiny.

122. It is denied that the information in this paragraph is contained in Dr. Chauncey's expert report. It is denied that this opinion is sufficient to implicate strict scrutiny. It is further denied that these statements are material facts.

123. It is admitted the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny. It is further denied that these statements are material facts.

124. It is admitted the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny. It is further denied that these statements are material facts.

125. It is admitted the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny. It is further denied that these statements are material facts.

126. It is admitted the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny. It is further denied that these statements are material facts.

127. [Plaintiffs omitted Paragraph 127]

128.-131. It is admitted that the information in these paragraphs is contained in Dr. Peplau's expert report and is the opinion of Dr. Peplau. It is denied that this opinion is sufficient to implicate strict scrutiny.

132. It is admitted that the information in this paragraph is contained in Dr. Peplau's expert report and Dr. Chauncey's expert report and are the opinions of Dr. Peplau and Dr. Chauncey. It is denied that these opinions are sufficient to implicate strict scrutiny

133. It is admitted that the information in this paragraph is contained in Dr. Peplau's expert report and is the opinion of Dr. Peplau. It is denied that this opinion is sufficient to implicate strict scrutiny.

134. It is admitted that the information in this paragraph is contained in Dr. Dr. Badgett's expert report and is the opinion of Dr. Badgett. It is denied that this opinion is sufficient to implicate strict scrutiny.

135. It is admitted that this information is contained in the expert reports of Dr. Peplau (although the citation to Dr. Peplau's report is inaccurate) and Dr. Chauncey and are the opinions of Dr. Peplau and Dr. Chauncey. These opinions constitute conclusions of law. It is denied that these opinions are sufficient to implicate strict scrutiny.

136. It is admitted that the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. This opinion

constitutes a conclusion of law. It is denied that this opinion is sufficient to implicate strict scrutiny.

137. It is admitted that the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. This opinion constitutes a conclusion of law. It is denied that this opinion is sufficient to implicate strict scrutiny.

138. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1.

139. It is admitted that the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. This opinion constitutes a conclusion of law. It is denied that this opinion is sufficient to implicate strict scrutiny.

140. It is admitted that the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny.

141. It is admitted that the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny.

142. It is admitted that the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny.

143. It is admitted that the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny.

144. It is admitted that the information in this paragraph is contained in Dr. Chauncey's expert report and is the opinion of Dr. Chauncey. It is denied that this opinion is sufficient to implicate strict scrutiny.

144. [Plaintiffs have included two paragraphs numbered 144]. Admitted.

145. Admitted.

146. Defendants admit they produced the legislative history as evidentiary support. Defendants deny Plaintiffs' characterization of Defendants' production.

147. No response required.

148. Admitted.

149. Admitted.

150. Admitted.

151-155. It is admitted that the statements and information in these paragraphs are contained in the expert report of Dr. Lamb and is the opinion of Dr. Lamb. It is denied that this opinion is sufficient to implicate strict scrutiny.

156. It is admitted that this information is contained in the expert report of Dr. Lamb and is the opinion of Dr. Lamb. It is denied that this opinion is sufficient to implicate strict scrutiny. It is denied that these statements are material facts. Defendants have not proffered Dr. Regnerus as an expert and in no way rely upon any studies or testimony of Dr. Regnerus.

157.-160. It is admitted that the statements and information in these paragraphs are contained in the expert report of Dr. Lamb and is the opinion of Dr. Lamb. It is denied that this opinion is sufficient to implicate strict scrutiny..

161. Defendants object to this paragraph as it contains no citation to the record as required by Local Rule 56.1. By way of further response, Defendants deny Plaintiffs' characterization of their discovery responses.

162. It is admitted that the statements in this paragraph are contained in Dr. Cott's expert report and is the opinion of Dr. Cott. It is denied that this opinion is sufficient to implicate strict scrutiny.

163.-164. It is admitted that the information in these paragraphs is contained in Dr. Peplau's expert report and are the opinions of Dr. Peplau. It is denied that these opinions are sufficient to implicate strict scrutiny. It is further denied that these are material facts.

165. It is admitted that the information in this paragraph is contained in Dr. Badgett's expert report and is the opinion of Dr. Badgett. It is denied that this opinion is sufficient to implicate strict scrutiny.

166. It is admitted that Representative Egolf made the statements set forth in this paragraph.

167. It is admitted that Senator Afflerbach made the statements set forth in this paragraph.

168. Defendants deny the characterization of Senator Afflerbach's statement. It is admitted that the statement attributed to Dr. Badgett is contained in the expert report and is the opinion of Dr. Badgett. It is denied that this opinion is sufficient to implicate strict scrutiny.

169. Admitted.

170.-175. It is admitted that the statements and information in these paragraphs are contained in Dr. Badgett's report and are the opinions of Dr. Badgett. It is denied that these opinions are sufficient to implicate strict scrutiny. By way of further response, Dr. Badgett's opinions are not specific to Pennsylvania.

176. Admitted.

177. Admitted.

178. Admitted.

179-180. It is admitted that the statements and information in these paragraphs are contained in the expert report of Dr. Badgett and are the opinions of Dr. Badgett. It is denied that these opinions are sufficient to implicate strict scrutiny.

Respectfully submitted,

LAMB McERLANE PC

Date: May 5, 2014

By: /s/William H. Lamb

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DEB WHITEWOOD, <i>et al.</i> ,	:	
	:	Civil Action
Plaintiffs,	:	
	:	1:13-cv-1861
v.	:	
	:	Honorable John E. Jones, III
MICHAEL WOLF, in his official	:	
capacity as the Pennsylvania	:	
Secretary of Health, <i>et al.</i> ,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Response of Defendants Michael Wolf and Dan Meuser to Plaintiffs' Statement of Uncontested Facts in the above captioned matter was served on the 5th day of May, 2014, to the attorneys/parties of record as follows:

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