

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**CARL SCOTT ABRAMSON and KIMBERLY)
MARIE SARUBBI,)**

Plaintiffs,)

v.)

**JOHN J. DREYZEHNER, Commissioner)
Tennessee Department of Health; TERESA S.)
HENDRICKS, Director of the Tennessee Office)
Of Vital Records)**

Defendants.)

**No. 3:14-cv-1959
JUDGE HAYNES/BRYANT**

AMENDED COMPLAINT

Plaintiffs Carl Scott Abramson and Kimberly Marie Sarubbi file this complaint and show as follows:

1. This is an action pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief and nominal damages to redress the unconstitutional denial of plaintiffs' right to freedom of speech and expression guaranteed by the First Amendment to the Constitution of the United States and the denial of plaintiffs' substantive due process rights guaranteed by the Fourteenth Amendment of the Constitution.

PARTIES

2. Plaintiff Carl Scott Abramson is a resident of the state of Tennessee and lives at

_____.

3. Plaintiff Kimberly Marie Sarubbi is a resident of the state of Tennessee and lives at _____

4. Defendant John J. Dreyzehner is the Commissioner of the Tennessee Department of Health, which includes the Tennessee Office of Vital Records. Commissioner Dreyzenhner's official duties include administering the Tennessee Office of Vital Statistics. Commissioner Dreyzehner is sued in his official capacity.

5. Defendant Teresa S. Hendricks is the Director of Vital Records for Tennessee Department of Vital records, a department of the Tennessee Department of Health. The Tennessee Office of Vital Records reviews, registers, amends, issues and maintains the original certificates of births that occur in the state. Director Hendricks is sued in her official capacity.

6. Defendants, at all relevant times and as to all relevant actions described herein, was acting under color of state law.

JURISDICTION AND VENUE

7. This complaint is for injunctive and declaratory relief and nominal damages. The causes of action for injunctive relief and nominal damages are provided by 42 U.S.C. § 1983, which permits actions at law and suits in equity against any person who, under color of a state statute, caused injury to another in violation of the Constitution of the United States. The cause of action for declaratory relief arises under 28 U.S.C. § 2201, which permits a court to declare the rights of any interested party in a case of actual controversy.

8. This complaint presents questions that arise under the Constitution of the United States. Accordingly, jurisdiction is provided by 28 U.S.C. §§ 1331, 1343(a)(3), and 2201.

9. Venue is proper in this court under 28 U.S.C. § 1391 as Defendants may be found in this district.

FACTS

10. Plaintiffs married in 2001. At the time of their marriage, Plaintiffs discussed whether either or both of them would change their last names.

11. Plaintiffs each elected to keep their last names for personal and professional reasons.

12. In [REDACTED], Plaintiffs resided in [REDACTED]. During that time, Plaintiffs had their first child.

13. During the pregnancy, Plaintiffs again discussed the topics of last names. Both Plaintiffs again preferred to keep their last name for personal and professional reasons; however, neither wanted their children to share their last name with only one of the parents.

14. Plaintiffs discussed many solutions, including hyphenating their children's last name. Ultimately, Plaintiffs determined that a combination of the beginning letters of their last names would be the best name for their children.

15. Plaintiffs gave their first child the surname Sabr in [REDACTED]. The "Sar" from Plaintiff Sarubbi's name and the "abr" from Plaintiff Abramson's name.

16. Plaintiffs intended the blended surname to honor their respective families as well as reflect the new family created by their union.

17. The surname Sabr was accepted by the state of [REDACTED] and a Certificate of Live Birth reflecting this name was issued by the [REDACTED] Department of Human Resources, Division of Health, Section of Vital Statistics.

18. Between [REDACTED], Plaintiffs moved to [REDACTED] where they had their second child. Again Plaintiffs chose the surname Sabr for their child.

19. The surname Sabr was accepted by the state of [REDACTED] and a Certificate of Live Birth reflecting this name was issued by the County of [REDACTED] Department of Public Health.

20. Plaintiffs moved to Tennessee in [REDACTED]. At the time of the move, Plaintiff Sarubbi was pregnant with their third child.

21. On [REDACTED], Plaintiffs had their third child. Again they selected the surname Sabr.

22. Plaintiffs filled out a Tennessee Department of Health Mother's Worksheet for Child's Birth Certificate showing the choice of Sabr as the last name.

23. When a hospital employee noticed that the surname for the child was not the same as either Plaintiffs' surnames, Plaintiffs were asked to complete an affidavit stating that their desire was to give their child the surname Sabr.

24. An application was mailed to the Tennessee Department of Health, Office of Vital Records requesting the issuance of a Certificate of Live Birth.

25. The worksheet was returned to Plaintiffs with Sabr marked out and replaced with Abramson.

26. Also written on the worksheet was "Void per State [REDACTED]"

27. Consequently, a Certificate of Live Birth was issued for Plaintiffs' child bearing the last name Abramson and not Sabr.

28. After this refusal to allow Plaintiffs to name their child Sabr, State Representative Charles M. Sargent requested an opinion of the Tennessee Attorney General on the laws governing naming children.

29. T.C.A. § 68-3-305(a)(1) governs the surname of children born in the state of Tennessee and provides:

(a)(1) If the mother was married at the time of either conception or birth, or anytime between conception and birth, to the natural father of the child, the name of the natural father shall be entered on the certificate and the surname of the child shall be entered on the certificate as one of the following:

(A) The surname of the natural father; or

(B) The surname of the natural father in combination with either the mother's surname or the mother's maiden surname.

30. The Attorney General concluded that Tennessee law “does not permit the surname of a child to be listed on a birth certificate using only a portion of the father’s surname and a portion of the mother’s surname.” Tenn. Ag. Op. No. 14-75.

COUNT I
Violation of First Amendment Right to Freedom of Speech
28 U.S.C. § 1983

31. Based on the allegations contained in previous paragraphs, which are re-alleged here by reference, Plaintiffs claim that Defendants violated Plaintiffs’ First Amendment right to Freedom of Speech.

32. Plaintiffs’ naming of their children with the surname Sabr is an expressive activity and, therefore, entitled to the highest degree of protection under the First Amendment.

33. The name Sabr held personal and emotional meaning to Plaintiffs and expressed their respect for their individual families as well as the union of those families through Plaintiffs’ marriage and children.

34. The First Amendment to the United States Constitution protects a person’s right to freedom of speech.

35. T.C.A. § 68-3-305 prohibits Plaintiffs from choosing the surname Sabr, or any other surname that is not delineated in the statute.

36. T.C.A. § 68-3-305 is a content based restriction because it limits surnames only to those that are already held by a parent, a maiden name, or a hyphenated combination of both parents' surnames.

37. T.C.A. § 68-3-305 constitutes an impermissible content based regulation of Plaintiffs' Freedom of Speech.

38. Defendants and their employees acted under color of state law by enforcing T.C.A. § 68-3-305 and refusing to issue a Certificate of Live Birth bearing the chosen name Sabr.

39. As a result of Defendants' enforcement of the unconstitutional state law, Plaintiffs have been limited in their ability to exercise First Amendment rights.

COUNT II
Violation of Fourteenth Amendment Right to Substantive Due Process
28 U.S.C. § 1983

40. Based on the allegations contained in previous paragraphs, which are re-alleged here by reference, Plaintiffs claim that Defendants violated Plaintiffs' Fourteenth Amendment substantive due process right to choose the name of their child.

41. The naming of a child is an exercise of a parent's fundamental right to make decisions concerning the care, custody, and control of their children.

42. Plaintiffs' other two children bore the surname Sabr, therefore, Plaintiffs believe that it is in their third child's best interest to share that surname.

43. The Fourteenth Amendment to the United States Constitution protects a parent's right to make decisions for their children such as the child's surname.

44. T.C.A. § 68-3-305 prohibits Plaintiffs from choosing the surname Sabr, or any other surname that is not delineated in the statute.

45. T.C.A. § 68-3-305 limits the choice of surnames only to those that are already held by a parent, a maiden name, or a hyphenated combination of both parents' surnames.

46. T.C.A. § 68-3-305 constitutes an impermissible regulation of Plaintiffs' parental rights guaranteed by the Fourteenth Amendment.

47. Defendants and their employees acted under color of state law by enforcing T.C.A. § 68-3-305 and refusing to issue a Certificate of Live Birth bearing the chosen name Sabr.

48. As a result of Defendants' enforcement of the unconstitutional state law violated Plaintiffs' substantive due process rights.

COUNT III
Permanent Injunctive Relief
42 U.S.C. § 1983

49. Based on the allegations contained in previous paragraphs, which are re-alleged here by reference, Plaintiffs claim that they are entitled to a permanent injunction.

50. Plaintiffs' First and Fourteenth Amendment rights have been violated under color of state law.

51. To make Plaintiffs whole and restore their rights, the state of Tennessee must issue an original Certificate of Live Birth bearing the proper surname for Plaintiffs' child.

52. Accordingly, Plaintiffs have no adequate remedy at law and only injunctive relief can restore Plaintiffs' constitutionally protected rights.

53. Furthermore, the continued deprivation of Plaintiffs' rights during the pendency of this case causes Plaintiffs irreparable harm.

54. Plaintiffs are, therefore, entitled to a permanent injunction.

WHEREFORE: Plaintiffs request the following relief be granted:

(1) Declaratory relief, including a declaration that T.C.A. § 68-3-305 is invalid and unenforceable as applied to Plaintiffs;

(2) A permanent injunction ordering the Defendants to issue a Certificate of Live Birth conforming to the chosen name of Plaintiffs;

(3) Attorneys' fees and costs associated with this action, pursuant to 28 U.S.C. § 1988, *et seq.* or under any other relevant authority;

(4) Nominal damages in an amount to be determined by the Court; and

(5) Such other and further relief that the court deems just and proper.

Respectfully submitted,

/s/ Amy R. Mohan

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been served upon the following via the Court's electronic filing system on this the 16th day of December, 2014:

Sara E. Sedgwick, #04336
Shayna R. Abrams, #16702
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/s/ Amy R. Mohan

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