IN THE AK-CHIN COMMUNITY COURT

IN AND FOR THE COUNTY OF PINAL, STATE OF ARIZONA

CLEO PABLO, a married woman,

Plaintiff,

vs.

AK-CHIN INDIAN COMMUNITY, a federally chartered tribe under the Indian Reorganization Act, et. al.,

Defendants.

Case No.: CV2015-00024

RULING ON MATTER UNDER ADVISEMENT

Assigned to Hon. Tresa S. Georgini, Pro Tem

This matter was filed before the Court on September 30, 2015. The Plaintiff seeks declaratory judgment against the Ak-Chin Community holding that the Ak-Chin law barring same-sex marriage violate the Due Process and Equal Protection clauses of the United States Constitution and the Constitution of the Ak-Chin Community.

Plaintiff is also seeking declaratory judgment against the Ak-Chin Community's Law and Order Code; Housing Policies and Benefits Plan declaring that those laws and policies also violate the Plaintiff's Due Process and Equal Protection under the United States Constitution.

Plaintiff is seeking a permanent injunction enjoining the enforcement of the law barring same sex marriage; a permanent injunction mandating the Benefits Plan be amended to include same sex spouse; an award of punitive damages; and an award of attorney's fees and costs.

On June 8, 2016, the parties executed a Memorandum of Understanding (hereinafter "MOU"). In the MOU, the parties agreed to dismiss all defendants but the AK-CHIN INDIAN COMMUNITY (hereinafter the "COMMUNITY"), named in the September 30, 2015,

complaint; the COMMUNITY waived its immunity and consented to the AK-Chin Community Court having jurisdiction over the issues of Declaratory Relief and Injunctive Relief; Plaintiff agreed to not seek or request monetary damages.

On August 29, 2016, the parties entered into a stipulation to Appoint Robert Clinton as special master to decide the issue of *"Is the right to marry a fundamental right of liberty of same-sex couples guaranteed under the laws of the Ak-Chin Indian Community?"* In the August 29, 2016, Joint Motion the parties also stipulated to waive their right to appeal the decision of the Special Master. The Court granted the parties request to appoint Mr. Clinton as the Special Master to address the above question.

On January 17, 2017, the Special Master issued his thirty-four (34) page report on the issue determining *"is the right to marry a fundamental right of liberty of same sex couples guaranteed under the laws of the Ak-Chin Community?"* (hereinafter the "Dispositive Question") The Special Master found that the dispositive questions must be answered in the affirmative.

Defendants filed their Motion to redact issues addressed in the Special Master's Report that the Defendants feel went beyond the scope of answering the Dispositive Question. Plaintiff objects to Defendant's request and wishes that the entire report be part of this Court's record.

The Court FINDS that the parties entered into a binding Stipulation agreeing to the appointment of Special Master Robert Clinton.

The Court FINDS that the parties voluntarily waived their right to appeal any decision made by the Special Master.

The Court FINDS that the individual right to marry constitutes a fundamental liberty of all adults protected by the Due Process clauses of both Article IX(h) of the Constitution of the Ak-Chin Indian Community and the Indian Civil Rights Act of 1968, 25 U.S.C. §1302(8).

The Court FINDS that the right to marry constitutes a fundamental right of liberty of same-sex couples guaranteed under the laws of and those applicable to the Ak-Chin Indian Community.

The Court further FINDS that the prohibition of same-sex marriage currently contained in Section 9.1.1(B) violates the Plaintiff's fundamental right to marry.

On the issue of whether or not the Special Master exceeded the scope of his appointment and addressed issues outside of the Dispositive Question, specifically the interpretation of the Ak-Chin Law and Order Code, the Court FINDS that the Special Master did exceed the scope of answering the Dispositive Question in his analysis of the AK-Chin Law and Order Code.

The Court notes that the issue relating to the Employee Benefit Trust Plan has been resolved and is therefore, moot.

IT IS ORDERED, adopting the Special Master's Report, filed on January 17, 2017 in part and redacting the report in part. IT IS ORDERED that Section A under Discussion beginning on page 4 and ending page 14 shall be redacted. The remaining report shall be adopted.

IT IS ORDERED, granting declaratory relief holding that Section 9.1.1(B) of the Ak-Chin Law and Order Code violates the Due Process and Equal Protection Clauses of the Constitution of the Ak-Chin Community and the Indian Civil Rights Act of 1968 and denies Plaintiff, her fundamental right to marry her same-sex partner.

IT IS ORDERED, granting declaratory relief that Ak-Chin's Housing Policies violate the Due Process and Equal Protection Clauses of the Constitution of the Ak-Chin Community.

IT IS ORDERED, granting injunctive relief enjoining the enforcement of Ak-Chin Law and Order Code that bars same-sex marriages.

IT IS ORDERED, based on the MOU filed on June 8, 2016, the Plaintiff is not awarded punitive monetary damages.

IT IS ORDERED setting this matter for hearing on Attorney's Fees and Court Costs on _____ day of _____, 2017.

DONE IN OPEN COURT this 24 day of July, 2017.

By _____
TRESA S. GEORGINI
Judge Pro Tem

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