

**VIRGINIA:**

**IN THE CIRCUIT COURT OF RICHMOND CITY**

JANE WOODRUFF and SCOTT WOODRUFF,	)	
	)	
<i>Plaintiffs,</i>	)	<b>VERIFIED COMPLAINT FOR</b>
v.	)	<b>DECLARATORY AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
	)	
MARK R. HERRING, Attorney General,	)	
In his official capacity,	)	<b>CASE NO. _____</b>
	)	
<i>Defendant.</i>	)	
	)	

**COMPLAINT FOR DECLARATORY JUDGMENT AND**  
**INJUNCTIVE RELIEF**

1. Plaintiffs JANE WOODRUFF and SCOTT WOODRUFF bring this Verified Complaint pursuant to the Virginia Religious Freedom Restoration Act, VA. CODE § 57-2.02. Jane and Scott are the parents of M.W., a minor child with severe physical and developmental needs. For years, Jane has employed a regular babysitter to care for M.W.’s needs. Because of their religious beliefs, the Woodruffs believe that the person who cares for their daughter should be a like-minded Christian who will support their desire to raise M.W. in the nurture and admonition of the Lord. Consistent with these beliefs, the Woodruffs have expressed this preference in their advertisements for the position and their interviews with applicants.

2. In July 2021, the Virginia Human Rights Act (VA. CODE § 2.2-3095) was amended to make it an unlawful business practice for anyone who employs one or more domestic workers—including a babysitter—to refuse to hire any individual because of their religion, to use religion as a motivating factor for any employment practice (even though other factors also motivate the practice), or to publish any advertisement related to employment that indicates any preference based on religion unless religion is a “bona fide occupational

qualification.” Violations of the Act can be reported to and are enforced by the Office of Civil Rights, a division of the Office of the Attorney General. Violations of the Act can be punished by civil penalties leveled by the Office of Civil Rights, in an amount of up to \$50,000 for the first offense (and \$100,000 for each subsequent offense). Additionally, if the Office of Civil Rights determines that an employer has engaged in a discriminatory business practice, the employer may also be subjected to civil suits for both compensatory and punitive damages.

3. The Virginia Human Rights Act substantially burdens the Woodruffs’ religious practice of advertising for and hiring a babysitter who is a like-minded Christian. As such, they seek a declaratory judgment and injunctive relief under the Virginia Religious Freedom Restoration Act, VA. CODE § 57-2.02(D), against defendant MARK R. HERRING in his official capacity as the Attorney General of the Commonwealth of Virginia.

#### **JURISDICTION AND VENUE**

4. Petition to this Court is proper under VA. CODE §§ 57-2.02 and 8.01-620.

5. Venue is proper under VA. CODE §§ 8.01-185, 8.01-257, 8.01-261(2), and 8.01-261(15)(c), in that Attorney General Herring is an officer of the Commonwealth sued in his official capacity, Attorney General Herring’s official office is in Richmond City, and the Woodruffs seek injunctive relief against Attorney General Herring.

#### **THE PARTIES**

6. Plaintiff Jane Woodruff is a citizen of the Commonwealth of Virginia, a resident of Loudoun County, Virginia, the wife of Scott Woodruff, and the mother of M.W., a minor child. Jane regularly hires a babysitter to care for M.W., and serves as the employer of record. In that capacity, Jane places advertisements for a babysitter, interviews applicants, signs the contract as the employer of record, and oversees the babysitter’s schedule and duties.

7. Plaintiff Scott Woodruff is a citizen of the Commonwealth of Virginia, a resident of Loudoun County, Virginia, the husband of Jane Woodruff, and the father of M.W., a minor child. While Jane is the employer of record, Scott assists Jane in reviewing and posting advertisements for a babysitter, interviewing applicants, and making the final hiring decision.

8. Defendant Mark R. Herring is the Attorney General for the Commonwealth of Virginia. Attorney General Herring oversees the Office of Civil Rights, which is charged with investigating employers for suspected violations under the Virginia Human Rights Act, and may assess civil penalties against employers under the Act. Attorney General Herring's official office is in Richmond, Virginia. Attorney General Herring is sued in his official capacity only.

### **THE VIRGINIA HUMAN RIGHTS ACT**

9. The Virginia Human Rights Act ("the Human Rights Act"), codified in VA. CODE § 2.2-3095, states in pertinent part that it is an unlawful employment practice for an employer to "fail or refuse to hire . . . any individual . . . because of such individual's . . . religion. . . ." VA. CODE § 2.2-3095(B)(1)(a).

10. The Human Rights Act further states that it is an unlawful employment practice for "an employer to use . . . religion . . . as a motivating factor for any employment practice, even though other factors also motivate the practice." VA. CODE § 2.2-3095(B)(6).

11. The Human Rights Act further states that it is an unlawful employment practice for an employer "to print or publish, or cause to be printed or published, any notice or advertisement relating to . . . employment by such an employer . . . that indicates any preference, limitation, specification, or discrimination based on . . . religion" unless religion "is a bona fide occupational qualification for employment." VA. CODE § 2.2-3095(B)(8).

12. The Human Rights Act permits any person aggrieved by an unlawful discriminatory practice to file a complaint in writing under oath and affirmation with the Virginia Attorney General’s Office of Civil Rights. VA. CODE § 2.2-3097(A). The Office itself, or the Attorney General, may in a like manner file a complaint alleging an unlawful discriminatory practice. VA. CODE § 2.2-3097(A).

13. Upon perfection of such a complaint, the Human Rights Act requires the Office to timely serve a charge on the employer, and provide all parties with a notice that includes the complainant’s rights—including the right to commence a civil action against the employer—and a notice that the charge of unlawful discrimination will be dismissed with prejudice if a written complaint is not timely filed with the appropriate general district or circuit court. VA. CODE § 2.2-3097(B).

14. Once a charge has been issued, the Office is required to conduct an investigation sufficient to determine whether there is reasonable cause to believe the alleged discrimination occurred. VA. CODE § 2.2-3097(D).

15. If the Office determines that there is reasonable cause to believe the alleged unlawful discrimination has been committed, the complainant and employer must be notified, and “the Office shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods such as a conference, conciliation, and persuasion.” VA. CODE § 2.2-3097(F).

16. If the Office determines that further endeavors to settle a complaint by conference, conciliation, and persuasion is unworkable, “the Office shall issue a notice that the case has been closed and the complainant shall be given notice of his right to commence a civil action.” VA. CODE § 2.2-3097(F).

17. An aggrieved person who has provided notice of his right to file a civil action may commence a civil action in the appropriate general district or circuit court. VA. CODE § 2.2-3097(A). Upon timely application, the Attorney General may intervene in such civil action if the Attorney General certifies that the case is of general public importance. VA. CODE § 2.2-3097(A).

18. If the court or jury finds that unlawful discrimination has occurred, it may award to the plaintiff as the prevailing party compensatory and punitive damages, reasonable attorney fees, and costs. VA. CODE § 2.2-3097(A).

19. The court or jury may also grant as relief any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the employer from engaging in such practice or ordering such affirmative action as may be appropriate. VA. CODE § 2.2-3098(B).

20. Additionally, at any time after the notice of charge is issued, the Office or the complainant may petition an appropriate court for temporary relief. VA. CODE § 2.2-3097(G).

21. Additionally, the Attorney General may commence a civil action whenever he or she has reasonable cause to believe that any person has been denied any of the rights granted by the Act, or is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by the Act, and the case raises an issue of general public importance. VA. CODE § 2.2-3096(A).

22. Should the Attorney General prevail in this civil action, the court may award preventative relief (including a permanent or temporary injunction, restraining order, or other order), assess a civil penalty of up to \$50,000 for a first violation (and up to \$100,000 for any subsequent violation), and award the prevailing plaintiff reasonable attorney fees and costs.

## **THE GENERAL ASSEMBLY AMENDS THE VIRGINIA HUMAN RIGHTS ACT**

23. Prior to March 2021, the term “employer” in the Human Rights Act was defined as “a person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.” For the purposes of unlawful discharge on the basis of religion, the Act defined “employer” as “any employer employing more than five persons.” VA. CODE § 2.2-3095(A) (2020).

24. In January 2021, Delegate Marcia S. Price introduced House Bill 1864 in the Virginia House of Delegates.

25. HB 1864 sought to amend the Human Rights Act by expanding the definition of “employer” to include any person who employs “one or more domestic workers.”

26. HB 1864 also amended the Human Rights Act by adding a definition of the term “domestic worker.” HB 1864 defined “domestic worker” as “an individual who is compensated directly or indirectly for the performance of services of a household nature performed in or about a private home, including services performed by individuals such as companions, babysitters, cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, home health aides, personal care aides, and chauffeurs of automobiles for family use.”

27. The definition of “domestic worker” in HB 1864 did not include “a family member, friend, or neighbor of a child, or the parent of a child, who provides child care in the child’s home.” The definition also excluded child day programs and their employees, and “any employee employed on a casual basis in domestic service employment to provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves.”

28. In January 2021, Senator Jennifer L. McClellan introduced a companion bill (Senate Bill 1310) to HB 1864 in the Virginia Senate.

29. Like HB 1864, SB 1310 also expanded the definition of “employer” to anyone who employs one or more domestic workers, and added a definition of “domestic worker” that includes companions, babysitters, nannies, caretakers, home health aides, and personal care aides.

30. On January 29, 2021, the House approved HB 1864 by a vote of 55- 44.

31. On February 5, 2021, the Senate approved SB 1310 by a vote of 21-18.

32. In February 2021, both the House of Delegates and the Senate agreed to a reconciled version of HB 1864 and SB 1310. The final enrolled bill was communicated to the Governor on February 26, 2021.

33. On March 31, 2021, the amendments to the Human Rights Act were approved by the Governor, effective July 1, 2021.

#### **PLAINTIFFS JANE AND SCOTT WOODRUFF**

34. Jane Woodruff lives in Loudoun County, Virginia, with her husband Scott and their adopted daughter M.W.

35. M.W. was born in 2012 with severe medical conditions.

36. The Woodruffs were appointed M.W.’s foster parents in 2012, when she was 7 days old.

37. Because of M.W.’s medical needs, Jane has had to employ one or more domestic workers—including personal care nurses, attendants, and babysitters—from the moment the Woodruffs welcomed M.W. into their home.

38. Jane and Scott adopted M.W. in 2015.

39. Although M.W. is now 9 years old, her ongoing medical conditions still require regular, specialized care.

40. Since 2014, Jane has regularly employed a babysitter to care for M.W. In addition to supervising M.W. and taking care of her medical needs, the babysitter also assists with light housekeeping, transporting M.W. to and from school, supervising M.W. after school, and doing limited meal preparation in the home.

41. Jane employs a babysitter to regularly care for M.W. on average for fifteen hours per week, for five days each week.

42. Because of M.W.'s physical needs, she qualifies for financial assistance through the Commonwealth Coordinated Care Plus program ("VA CCC Plus"), a long-term services and supports program managed through Virginia Medicaid.

43. While the Woodruffs receive financial assistance from VA CCC Plus for M.W.'s care, Jane is the employer of record for the babysitters hired to care for M.W.

44. As the employer of record, Jane reviews and enters into employment contracts ("Attendant Employment Agreements") with the babysitter; establishes schedules and tasks for the babysitter; monitors the babysitter's work; approves and submits service shifts to VA CCC Plus; keeps track of service authorizations and use; and is responsible for hiring, supervising, and discontinuing the employment of the babysitter.

45. Jane and Scott are devoted Christians. Because following Jesus' life and teachings is central to their lives, the Woodruffs strongly believe that the person who cares for M.W. must be someone who will be a like-minded Christian and embrace how they incorporate their faith into their daughter's upbringing.



46. Because of M.W.'s young age and medical needs, the Woodruffs know that the person who cares for M.W. will spend a significant amount of time with M.W. and will make an important investment in her life. It is very important to the Woodruffs that this person be a like-minded Christian and support their decision to raise M.W. in the nurture and admonition of the Lord (rather than undermining it).

47. Consistent with their religious beliefs, Jane and Scott have regularly asked babysitter applicants about their faith.

48. Consistent with their religious faith, Jane and Scott have regularly made hiring decisions where the applicant's faith was a critical factor.

49. The Human Rights Act, as amended in March 2021, prohibits employers like Jane from refusing to hire a domestic worker—which includes a companion, babysitter, nanny, caretaker, home health aide, or personal care aide—based on that individual's religion.

50. The Act as amended also prohibits employers from using religion as a motivating factor for any employment practice, even if other factors also motivate the practice.

51. Jane fears that she cannot continue to ask prospective applicants about their faith or hire like-minded Christian babysitters without exposing herself to civil actions, penalties, and punitive damages under the Human Rights Act.

52. Since 2019, the Woodruffs have posted advertisements for their babysitter position on websites such as Care.com, which offers an array of services that enable families to find, manage and pay for care and provide employment opportunities for caregivers.

53. Prior to July 1, 2021, the Woodruffs disclosed in their advertisements that "We are Christians and are looking for a like-minded caregiver." **See Appendix A.**

54. This practice stemmed from the Woodruffs' sincere religious belief that they needed to find a like-minded babysitter who accepts their Christian faith, and their desire not to blindsight prospective applicants when asking questions about the applicant's faith during interviews.

55. The Virginia Human Rights Act, as amended in March 2021, prohibits employers like Jane from printing or publishing any notice or advertisement related to employment that indicates a preference, limitation, specification, or discrimination based on religion unless it is a "bona fide occupational qualification for employment."

56. While Jane sincerely believes that she must find a person to care for M.W. who shares their faith, she fears that faith is not a "bona fide occupational qualification for employment" as a babysitter in the Commonwealth of Virginia, for purposes of the Human Rights Act.

57. On July 27, 2021, after the amendments to the Human Rights Act went into effect, Jane posted a new advertisement on Care.com which again stated that "We are Christians and are looking for a like-minded caregiver." **See Appendix B.**

58. Jane posted this advertisement because she sincerely believes that M.W.'s babysitter should accept the Woodruffs' Christian faith and support their decision to raise M.W. in the nurture and admonition of the Lord.

59. Consistent with her sincere religious beliefs, Jane intends to post similar advertisements in the future when looking to hire a babysitter for M.W.

60. Nevertheless, Jane fears that such an advertisement expresses a prohibited religious preference under the Human Rights Act, which could expose her to civil actions, penalties, and punitive damages.

## **THE VIRGINIA RELIGIOUS FREEDOM RESTORATION ACT**

61. The Virginia Religious Freedom Restoration Act (“VRFRA”) states that “No government entity shall substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.” VA. CODE § 57-2.02(B) (2021).

62. VRFRA defines “substantially burden” as “to inhibit or curtail religiously motivated practice.” VA. CODE § 57-2.02(A).

63. VRFRA defines “exercise of religion” as “the exercise of religion under Article I, Section 16 of the Constitution of Virginia, the Virginia Act for Religious Freedom, and the First Amendment to the United States Constitution.” VA. CODE § 57-2.02(A).

64. The Virginia Act for Religious Freedom, incorporated by reference into VRFRA, reflects the Commonwealth’s longstanding public policy that neither the civil nor ecclesiastical rulers of men may assume dominion over the faith of others, nor enforce, restrain, molest, or burden any man’s body or goods on account of his religious beliefs. VA. CODE § 57-2.01.

65. Consistent with the right to freely exercise one’s religion, it is also the public policy of the Commonwealth that parents have a fundamental right to make decisions concerning the upbringing, education, and care of their children. VA. CODE § 1-240.1.

66. VRFRA states that any person whose religious exercise has been burdened by government may assert that violation as a claim or defense in any judicial or administrative proceeding, may obtain declaratory and injunctive relief from a circuit court, and may recover reasonable costs and attorney fees if he or she a prevailing party. VA. CODE § 57-2.02(D).

## COUNT ONE

### Declaratory Relief – VA. CODE § 57-2.02

#### **The Virginia Human Rights Act, as applied to Jane and Scott Woodruff, substantially burdens their right to freely exercise their religion**

67. Paragraphs 1 through 66 are incorporated by reference.

68. Because of their Christian faith, the Woodruffs believe that the babysitter they hire to care for M.W. must be someone who can accept the Woodruffs' Christian faith and support their decision to raise M.W. in the nurture and admonition of the Lord.

69. Consistent with these sincere beliefs, both Jane and Scott have established a practice of seeking a like-minded Christian babysitter for M.W., and a practice of including both their Christian faith and their desire for a like-minded babysitter in their employment advertisements.

70. Since July 1, 2021, the Human Rights Act has made it an unlawful employment practice for Jane to make any employment decision regarding a babysitter based on the applicant's religion.

71. In so doing, the Human Rights Act has curtailed Jane's religiously motivated practice of inquiring as to the religious beliefs of applicants and hiring a like-minded Christian babysitter for M.W.

72. Since July 1, 2021, the Human Rights Act has also made it an unlawful employment practice for Jane to profess any preference in their advertisements for a babysitter who shares their religious faith, as she has regularly done and wishes to do in the future.

73. Jane cannot continue to engage in these religiously motivated practices without exposing herself to punishment under the Human Rights Act, including civil penalties of as much as \$100,000 and civil actions for compensatory and punitive damages.

74. This risk of future civil actions, compensatory and punitive damages, and civil penalties has chilled Jane from expressing her preference for like-minded Christian applicants in her advertisements for this position and in her interviews with applicants.

75. The Commonwealth does not have any compelling interest in preventing religious parents like Jane and Scott from seeking to employ a like-minded Christian babysitter for their own young child. Nor does the Commonwealth have a compelling interest sufficient to threaten Jane with civil suits and penalties because her advertisements express a preference for a babysitter who shares her faith.

76. The Act is not narrowly tailored to accomplish a compelling interest. On the contrary, the Act applies to Jane, Scott, and every parent in the Commonwealth who decides to regularly hire at least one babysitter who is not a family member or friend.

77. Accordingly, the Woodruffs seek a declaratory judgment from this Court that the Virginia Human Rights Act, as applied to their decision to hire a babysitter for their young special needs daughter, violates their right to freely exercise their religion under VRFRA.

## **COUNT TWO**

### **Injunctive Relief – VA. CODE § 57-2.02**

#### **The Virginia Human Rights Act, as applied to Jane and Scott Woodruff, substantially burdens their right to freely exercise their religion**

78. Paragraphs 1 through 76 are incorporated by reference.

79. The Virginia Religious Freedom Restoration Act explicitly permits the Woodruffs to assert these violations as a claim in any judicial proceeding, and to obtain injunctive relief from this court. VA. CODE § 57-2.02(D).

80. Because VRFRA empowers this court to issue injunctive relief, the Woodruffs are not required to establish the traditional prerequisites for obtaining an injunction; they need only

prove that VRFRA has been violated. *Virginia Beach S.P.C.A., Inc. v. South Hampton Rds. Veterinary Ass'n*, 229 Va. 349 (1985); *Carbaugh v. Solem*, 225 Va. 310 (1983).

81. The Virginia Human Rights Act, as applied to the Woodruffs, substantially burdens without justification their right to freely exercise their religion, in that it curtails their religiously motivated practice of hiring like-minded Christian babysitters for M.W. and curtails their religiously motivated practice of advertising for a like-minded Christian babysitter. Either amounts to a violation of VRFRA.

82. Accordingly, Jane and Scott seek a permanent injunction from this Court barring the defendants from enforcing the Virginia Human Rights Act against them based on their decision to hire a like-minded Christian babysitter for M.W, or their decision to express their preference for a like-minded Christian babysitter in their employment advertisements.

#### **PRAYER FOR RELIEF**

For the foregoing reasons, Jane and Scott request that this Court grant the following relief:

A. A declaration that the Virginia Human Rights Act, VA. CODE § 2.2-3095, substantially burdens their religious practice in violation of the Virginia Religious Freedom Restoration Act, VA. CODE § 57-2.02;

B. A preliminary injunction enjoining the Attorney General and his agents and employees (including the Office of Civil Rights) from enforcing § 2.2-3095 against the Woodruffs;

C. A permanent injunction enjoining the Attorney General and his agents and employees (including the Office of Civil Rights) from enforcing § 2.2-3095 against the Woodruffs;

D. A judgment, decree, and declaration of rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of a final judgment;

E. Retention of jurisdiction over this matter for the purpose of enforcing this Court's orders;

F. Reasonable costs and attorneys fees, or any part thereof that the court may deem proper and just in view of the particular stances of this case, pursuant to VA. CODE § 57-2.02(D); and

G. Such other relief as the Court deems just and proper.

DATED: October 28, 2021

/s Peter K. Kamakawiwoole, Jr.  
Peter K. Kamakawiwoole, Jr., #83223  
PARENTAL RIGHTS FOUNDATION  
One Patrick Henry Circle  
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*Counsel for Plaintiffs*

**VERIFICATION OF JANE WOODRUFF**

Pursuant to VA. CODE § 8.01-4.3, I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: October 28, 2021

/s Jane Woodruff  
Jane Woodruff\*

\* In accordance with Rule 3.3(b)(2) of the Virginia Rules of Civil Procedure, the original signed document is in the possession of the attorney and is available for review upon request by a party or by the Court.



**VERIFICATION OF SCOTT WOODRUFF**

Pursuant to VA. CODE § 8.01-4.3, I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: October 28, 2021

/s Scott Woodruff  
Scott Woodruff\*

\* In accordance with Rule 3.3(b)(2) of the Virginia Rules of Civil Procedure, the original signed document is in the possession of the attorney and is available for review upon request by a party or by the Court.

**CERTIFICATE OF SERVICE**

I certify that on October 28, 2021, the foregoing Complaint was filed with the Circuit Court of Richmond, and that arrangements were made with the Court to have said Verified Complaint served by a Virginia Sheriff or High Constable upon:

Attorney General Mark R. Herring  
Office of the Attorney General  
202 North Ninth Street  
Richmond, Virginia 23219

DATED: October 28, 2021

/s Peter K. Kamakawiwoole, Jr  
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