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Equalizer

**Attorney Jack Wagoner on the fight
for LGBT marriage equality, past battles
and why his political persuasion is 'The Little Guy'**

BY DAVID KOON

At the start of any attempt to correct the injustices of a society, the right side of history is the narrowest of ledges, hovering over a terrible drop. Though that ledge may eventually grow into something that encompasses the whole nation, in the beginning, it's a bare toehold, buffeted at all times by the howls of zealots. Ask the Little Rock Nine about the narrowness of that ledge. Ask the Stonewall Rioters or Abraham Lincoln, or Susan B. Anthony.

Still, thank God, there are folks willing to step out there. For the past year, one of those folks in Arkansas has been Little Rock lawyer Jack Wagoner III. Last June, soon after the U.S. Supreme Court handed down its landmark decision in *U.S. v. Windsor* — which struck down the Defense of Marriage Act's prohibition on same-sex marriage as unconstitutional — a spur-of-the-moment Facebook post entangled Wagoner in the fight for LGBT rights in Arkansas, territory he'd previously visited before. Since then, Wagoner, along with Searcy attorney Cheryl Maples and others, has provided both behind-the-scenes legal expertise and impassioned and sometimes emotional courtroom argument in support of the right of gays and lesbians to marry. Those efforts led to Pulaski Circuit Judge Chris Piazza's May 9 ruling that struck down the state's ban on gay marriage. With that ruling since stayed by the Arkansas Supreme Court, Wagoner is gearing up for the next court fight, one that he's confident he, Maples and the plaintiffs they represent will win.

It's a long way from where Wagoner started: a near-burn-out kid from Little Rock, bounced from school to school, who graduated with a GPA that wouldn't buy you a king-sized candy bar if it was dollars and cents. His outspoken zeal for the issue of gay marriage springs from a belief he's had since he was in college: The reason the Constitution exists is to protect the minority from the whims of the majority. Mixed in with that, however, is a heaping spoonful of something else that drives him: He just doesn't like the majority all that much, especially when they're waving around a Bible.

PHILOSOPHY, 5 CENTS

Wagoner was born in 1961, the son of a Little Rock doctor and a homemaker. Though his father,

Dr. Jack Wagoner Jr., was somewhat conservative in his thinking, he opened the first integrated medical practice in the state in 1969, partnering with a black physician. That decision-turned-statement on equality has stuck with his son.

"That was a bold move for a white doctor with four kids, coming out of medical school in 1969," Wagoner said. "He did the right thing, rather than think about how it was going to affect his livelihood, his practice, what people thought, or any of that. I've always been really proud of that."

As a kid, Wagoner acknowledged, he was a troublemaker, skipping so many classes that his parents eventually sent him to Pulaski Academy for two years, thinking that would help. By the end of the ninth grade, though,

he was on the verge of being kicked out. "If you got nine detentions, you were expelled," he said. "Three tardies was a detention hall. I got down to eight detention halls and two tardies in the ninth grade. My parents said, 'If you'll just shut your mouth and not get expelled, we'll let you go to Hall next year,' so I behaved completely for the next three months."

Wagoner didn't do much better in high school, graduating from Hall High in 1979 by the skin of his teeth with a 1.53 GPA. As a young man, he delivered flowers, and lived a wild life of partying with friends. "I didn't want any part of this normal adult world," he said. "I pictured myself working in a pizza place in Boulder, Colo., or California, drinking beer and hanging out, having a little apartment in the mountains."

A friend of his started classes at the University of Arkansas at Little Rock, and to Wagoner's amazement, the guy was soon pulling down straight As. Wagoner enrolled soon after, and found that the educational freedom afforded to college students worked for him. He eventually graduated with a 3.6 GPA, his course load heavy on religion and philosophy classes. After college, he was again conflicted about what to do with his life. "I thought about opening up a little Charlie Brown stand with a sign that said: 'Philosophy, 5 cents,'" he said with a laugh.

Returning home from a Grateful Dead show in Texas in 1983, Wagoner literally flipped a coin to decide whether to go law school or try for his Ph.D. in philosophy. He said that even if the coin toss hadn't been in favor of law school, he probably would have overruled it. "I never set out to be a lawyer," he said. "But I always knew that I hated people telling other people what to do. I have a strong distrust for authority — those in control and those in charge."

Taking courses at what would eventually become UALR's Bowen School of Law, Wagoner said the classes quickly divided between those who believed the law should be a check on authority and those who believed getting bad people off the streets trumped all else.

"There was a group of us who thought, 'If some guy gets



let go with a hundred pounds of cocaine in his truck because they pulled some monkey business to make up an excuse to search him, then it was better to let that guy go than to just start shirking the rules. The other side had a feeling like, 'The end justifies the means. If we cheat or cut corners, it doesn't matter about that as long as we got the bad guy.' That way of thinking leads to a breakdown of constitutional protections."

Wagoner worked for Bill Wilson, who would go on to the federal bench, during law school and served as a clerk for Pulaski Circuit Judge Ellen Brantley after he graduated in the top 5 percent of his law school class. That performance could have easily landed him a job with a corporation or a big firm, Wagoner said, but that just isn't his thing. "That's where most of the stuff that pisses me off occurs," he said. "I didn't want that."

It was from Wilson, Wagoner said, that he learned the passion of fighting for those without power. "He wanted to fight for the little guy against the insurance companies and the cops," Wagoner said. "I don't like calling it the Democratic side or the progressive side. I like to call it 'The Side of the Little Guy.' That's what I see in progressives and the liberals and the Democrats."

MORAL MAN OF THE YEAR

In a two-lawyer firm in a storefront in Riverdale, in a cluttered office with a portrait of The Grateful Dead's Jerry Garcia smiling beatifically down from the wall, at a desk adorned with a large coffee cup that says "Like I Give a Fuck," Jack Wagoner takes on the world. Most days, unless he's got to be in court, he dresses like he's on his way to a Jimmy Buffett concert: blousy shorts, sandals, loud shirts. His bicycle leans in the hallway, so he can hop on and head down to the river if he needs to clear his head. He'll commonly do 20 miles before work. He's his own boss, and can say whatever damn fool thing that pops into his head. That's the way he likes it.

He makes a good living with his family law practice but still finds time to tilt at the occasional windmill. He said he was the first lawyer in the state to bring a class-action lawsuit against nursing home owners. He's filed class

actions over fees levied on customers by banks. In the early 1990s, he sued the diocese of Little Rock for breach of fiduciary duty after a priest ran off with the wife of a Catholic client. Wagoner eventually took the case all the way to the state Supreme Court, losing



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7-0, with one judge recommending that sanctions be brought against him. Asked if he'd do that one again, knowing how it turned out, Wagoner flashed a big grin and said, "Yeah." Last October, he sent a \$158 check to Bryant Police Chief Mark Kizer — \$58 to pay for Kizer's unreimbursed dinner tab at an Orlando steakhouse Kizer visited while in town, and \$100 to offset the loss of income after being suspended for five days by Bryant Mayor Jill Dabbs over the question of whether the steakhouse was also a strip club. "It wasn't like 'support the cops!' or anything," Wagoner said. "It was just me telling the morality police to suck it. That's what stirs me."

His current crusade for gay marriage isn't his first foray into LGBT rights. Wagoner was one of the attorneys for John Moix, a divorced father who had been forbidden by the courts from cohabitating with his male partner of seven years on nights when Moix's 12-year-old son was visiting. In November 2013, the Arkansas Supreme Court reversed a lower court's ruling in the Moix case, striking down the blanket law that had forbidden unmarried people from

having romantic overnight guests when minor children are present.

Wagoner had been following the Windsor case, and when the decision was handed down June 26, Wagoner said the sweeping language — with Justice Kennedy's opinion clearly opening the door to gay marriage nationwide — gave him goose bumps. As he usually does at times he probably shouldn't, he soon turned to Facebook.

"I opened my mouth, like I always do. I often find myself standing behind my mouth, thinking: 'I wish it would SHUT UP!'" he said with a laugh. "But I posted on Facebook that if you go to the Pulaski County Clerk for a marriage license, and you're a same-sex couple, and they won't give you one, you've got a free lawyer." Later the same day, Wagoner made another Facebook post, referencing the Arkansas morality group that pushes a conservative agenda on issues ranging from abortion to marijuana legalization: "Suck it Family Council!"

"I missed the civil rights movement in the '60s," Wagoner said. "I think I would have been on the right side then.

But I thought, 'This is a once-in-a-lifetime opportunity to be part of something. This change is coming, and I can be a part of it.'"

Wagoner soon hooked up with Maples, who had also been moved to file a lawsuit in state court on July 2 after reading the Windsor decision, beating Wagoner to the punch by a few days. Since then, Wagoner and Maples have combined their efforts. He said that their cooperation on the case has been invaluable. "Cheryl is more involved in client contact and client management, and I was more involved in just the nuts and bolts of the legal arguments," he said. "But she contributed greatly to those as well."

Wagoner, who has been agnostic since college, said that a lot of his passion for the issue of same-sex marriage comes from a dislike of those who would seek to use the Bible as a tool to control others. It's annoying, he said, to have one side of any moral argument claim that the Bible is the be-all-end-all authority on the issue, especially given that carefully chosen passages from the Bible could be used to make the case for almost any prac-

tice or belief. On the issue of same-sex marriage, Wagoner said, the other side can't separate their religious convictions from civil law and can't seem to recognize that the same First Amendment that prevents the government from forcing churches to marry gay people also forbids the government from discriminating against same-sex couples who want to get married.

"They want to bring out the Biblical basis for it," he said. "They want to point to Leviticus, 'A man shall not lie with a man, and he ought to be killed if he does.' They say they're Christians, but they're skipping the New Testament, man! The message of Jesus was unconditional love. It was, 'Don't judge people, and don't condemn people.' These that are labeling themselves as Christians are persecuting the very people Jesus would be putting his arm around and saying, 'Sweet child, I love you. You're loved.' It's backwards. It's crazy."

Though the other side often frames the argument in terms of a slippery slope, saying that if gay marriage is allowed, people will soon be filing suit for the right to marry their dog, computer or more than one spouse, Wagoner said it boils down to a matter of choice: Gay people are born gay, with no choice in the matter. Nobody, on the other hand, is born a polygamist, or wanting to marry their dog or computer. Discriminating against people for things they have no control over, Wagoner said, is no better than bullying.

"You want to bully people who commit murder, or people who are engaged in child pornography," he said. "Those are moral actions that people have a choice about. By all means, hold them accountable."

Another thing those on the other side of the gay marriage argument do, Wagoner said, is to frame sexuality as a moral choice. "One, why would somebody make that choice [to be homosexual] given everything you'd have to deal with?" he said. "And, two, I'm not sitting here heterosexual because I'm up for the Moral Man of the Year Award. I'm not restraining myself from running out and engaging in homosexual sex. ... [Heterosexuality] is a part of my basic identity. You've got to wonder how intelligent somebody would have to be to

believe it's some kind of moral choice."

Asked about his thoughts on state Sen. Jason Rapert, Republican of Bigelow — who has repeatedly questioned Pulaski Circuit Judge Chris Piazza's authority to strike down state law, and who authored and pushed through a resolution June 20 that affirmed the Arkansas Legislative Council's support for Arkansas Amendment 83, which outlawed gay marriage — Wagoner said he considers him an embarrassment who uses select passages from the Bible to justify discrimination while depicting himself as being "in some higher, better, more moral category."

"That way of thinking is an embarrassment to the state, and to the opportunity to have us



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viewed as decent, caring, progressive people," Wagoner said. "His stance is on all fours with Orval Faubus standing in the doors of Central High to keep black students from entering."

DOMINOES

Heading into oral arguments before the state Supreme Court, Wagoner said he expected the court would reach a decision this year. He'll not guarantee it, he said, but that's his feeling. When the case was first filed in state court soon after the Windsor decision, Wagoner said, the arguments were kind of out on a limb, with no legal precedent to build on other than the broad, sweeping language in the Windsor opinion. As more and more states have scuttled their bans on same-sex marriage, however, Wagoner's confidence has grown.

"The more dominoes that fall, the harder it

is to see [the state Supreme Court] as the only court that doesn't follow suit," he said. "Right now, in the federal arena, we're going to start seeing the first federal appeals court decisions — the courts right below the Supreme Court. The Sixth Circuit Court of Appeals already has two cases they've heard oral arguments on, and the Second Circuit Court of Appeals has one that's pretty far along. We're going to start getting decisions out of those courts pretty quick."

With all the celebrations surrounding Piazza's decision and all the work that's been put in, Wagoner said that in a few years, the last word on same-sex marriage will be the U.S. Supreme Court's. He's heartened by the language in Windsor, though, and the speed at which courts across the country have tolled the bell for marriage equality. He's got a gut feeling about the case, he said, buttressed by his belief that it'll be hard for opponents of same-sex marriage to find legal backing for their arguments.

"I've had cases where I felt certain in my gut that my assessment of the facts and the law was correct and that we should win, but somebody's been on the other side who's giving me a version of things that doesn't square with my gut and what my eyes are seeing. I sometimes think, 'What am I missing here?' But I have never, ever lost when I had that feeling. I kind of have that feeling about this. It's so hard to envision it. Even if there was a motivation and somebody told me, 'Write

an opinion overruling Judge Piazza based on existing law,' that would be a hard row to hoe."

In the end, it all goes back to fighting for the underdog. He said that the most patriotic movie he ever saw wasn't "Mr. Smith Goes to Washington" or "Saving Private Ryan," or "Top Gun." It's "The People vs. Larry Flynt," a large part of which is about an idealistic lawyer who steps up to defend the much-reviled publisher of "Hustler" magazine after he was charged with indecency. Seeing someone defend the rights of those who the majority seeks to crush is what makes him feel patriotic, Wagoner said.

"This is the United States," he said. "We're supposed to be tolerant. We don't have to like what other people want to do, and they don't have to like what we do. But if there's not some demonstrable harm to somebody that's coming of it, people ought to be left alone." ■