

ANGELA MARIE COSTANZA, et al.,

Plaintiffs,

v.

JAMES D. CALDWELL, et al.,

Defendants

15TH JUDICIAL DISTRICT COURT

A-20130052 D2
JUDGE EDWARD D. RUBIN

STATE OF LOUISIANA

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DEFENDANTS' MOTION FOR SUSPENSIVE APPEAL

Pursuant to Code of Civil Procedure articles 2121 and 2123, and Children's Code articles 330-333, Defendants James Caldwell, Louisiana Attorney General, Tim Barfield, Secretary of the Department of Revenue, and Devin George, State Registrar,¹ move for a suspensive appeal of (1) the Court's Judgment entered September 25, 2014; (2) its sealed Judgment on Intrafamily Adoption entered September 25, 2014; and (3) its Minute Entry Ruling and Order entered September 22, 2014. The two Judgments confirm the Court's September 22 Order, which declared unconstitutional Louisiana Constitution article XII, §15, Civil Code articles 86, 89, and 3520(B), and Revenue Bulletin 13-024; enjoined Defendants from enforcing those provisions; and granted a stepparent adoption to petitioner Angela Costanza under Children's Code article 1243.

Defendants' appeal extends to all aspects of those judgments and order, including (1) denying the Attorney General's peremptory exception of no cause of action; (2) granting petitioner Angela Costanza a stepparent adoption; (3) ordering Defendant Barfield to allow petitioners to file a Louisiana tax return as a married couple; (4) ordering Defendant George to issue a revised birth certificate naming Angela Costanza as the adopted child's mother; and (5) enjoining the State from enforcing the challenged laws

¹ The Court granted a peremptory exception of no cause of action dismissing Governor Jindal. As Governor Jindal is no longer a party, he does not join in this motion.

“to the extent that these laws prohibit a person from marrying another person of the same sex.” Sept. 22, 2014 Order, at 24.

Defendants will appeal directly to the Louisiana Supreme Court under Louisiana Constitution article V, §5(D). A trial court’s declaration that a state law is unconstitutional “must be directly appealed to the [Louisiana] supreme court” because the supreme court “has exclusive appellate jurisdiction to review the declaration of unconstitutionality.” *Forum for Equality PAC v. McKeithen*, 2004-2182, at *6-7 (La. App. 1 Cir. 10/13/04); 886 So.2d 1172, 1175.

Therefore, Defendants ask the Court to grant a suspensive appeal from its September 25 Judgments and September 22 Order, in accordance with the attached Order. Pursuant to Children’s Code article 334(A), Defendants ask the Court set a return date of no more than thirty days for lodging the record in the Louisiana Supreme Court. Finally, pursuant to Louisiana Supreme Court Rule X, §5(b), Defendants ask the Court to fix a time period of no more than thirty days within which Defendants’ appeal shall be filed in the Louisiana Supreme Court.

Respectfully submitted,

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15th JUDICIAL DISTRICT COURT
FOR THE PARISH OF LAFAYETTE
STATE OF LOUISIANA

NO: A-20130052 D2

DIVISION: D

Costanza et al. v. Caldwell et al.

FILED: _____

DEPUTY CLERK

ORDER

Considering the foregoing Motion for Suspensive Appeal filed by Defendants James D. Caldwell, Attorney General of Louisiana, Tim Barfield, Secretary of the Louisiana Department of Revenue, and Devin George, Louisiana State Registrar;

IT IS ORDERED that the Motion for Suspensive Appeal is hereby **GRANTED**.

IT IS FURTHER ORDERED that November 24, 2014 be designated as the return date for the record.

IT IS FURTHER ORDERED that October 25, 2014 be designated as the date by which Defendants' appeal shall be filed in the Louisiana Supreme Court.

IT IS FURTHER ORDERED that, pursuant to La. R.S. 13:4581, movants are not required to post security or bond.

Done this 25th day of September, 2014, in Lafayette, Louisiana.



Honorable Edward D. Rubin
District Judge
15th Judicial District Court



CERTIFICATE OF SERVICE

I certify that on the 25th day of September, 2014, I sent a copy of the foregoing by Federal Express, as well as an electronic copy by email, to the following counsel of record:

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