

IN THE 19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CASE NO. _____

DIVISION “___”

ACLU FOUNDATION OF LOUISIANA, FORUM FOR EQUALITY FOUNDATION, CLYDE WATKINS,
REGINA O. MATTHEWS, WALLICK CONSTRUCTION AND RESTORATION, INC., MARILYN
MCCONNELL, LAURIE REED AND REVEREND WILLIAM BARNWELL

VERSUS

GOVERNOR PIYUSH “BOBBY” JINDAL, IN HIS OFFICIAL CAPACITY AS GOVERNOR, STATE OF
LOUISIANA

FILED: _____

DEPUTY CLERK

PETITION

This Petition of the ACLU Foundation of Louisiana, Forum for Equality Foundation, Clyde Watkins, Wallick Construction and Restoration, Inc., Marilyn McConnell, Laurie Reed and Reverend William Barnwell, who are each domiciled in the State of Louisiana, and through undersigned counsel represent as follows:

PRELIMINARY STATEMENT

1. The Plaintiffs file this petition to challenge Governor Piyush “Bobby” Jindal’s (“Governor Jindal”) Executive Order No. BJ 2015-8 “Marriage and Conscience Order” (“Marriage and Conscience Order”) as an unconstitutional *ultra vires* act that violates the separation of powers clause of the Constitution of the State of Louisiana of 1974. *See* Exhibit A, Executive Order No. BJ 2015-8 Marriage and Conscience Order.
2. The “Marriage and Conscience Order” is designed to block the government from revoking or denying licenses, tax benefits, and other government benefits from a person (including for-profit and non-profit corporations) because of the person’s religious view that marriage should be between one man and one woman.
3. The “Marriage and Conscience Order” creates a special class of persons who are protected due to their belief that same-sex couples should be denied marriage equality, while others who believe in equal rights for same-sex couples or other different beliefs are not afforded the same protection.
4. The apparent result is that this protected class will be permitted to discriminate against same-sex couples.

5. Indeed, on July 29, 2015, in response to the United State Supreme Court's ruling in *Obergefell v. Hodges*, No. 14-556 (2015) (holding that same-sex couples may exercise the fundamental right to marry in all States and that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character), Governor Jindal's office issued a Memo clarifying the implications of *Obergefell* on his Marriage and Conscience Order. See Exhibit B, Governor Jindal Executive Counsel Issues Memo on Religious Liberty Implications in Light of SCOTUS Ruling, June 29, 2015.
6. In this memo the Executive Counsel for Governor Jindal clarified that his Marriage and Conscience Order protects not only those defined as a "person" in the executive order but also "extend[s] to individuals employed in any branch of the government of the state" and that those individuals including, but not limited to, clerks, judges and justices of the peace, may not be forced to issue marriage licenses to same-sex couples or perform same-sex marriages if it is against their religious beliefs and there are other authorized individuals available who have no religious objection. See Exhibit B, p. 2.
7. Governor Jindal's "Marriage and Conscience Order," despite its statement to the contrary, sanctions discrimination against same-sex married couples, same-sex couples seeking to marry, and persons who believe in marriage equality for all couples. Examples of the type of actions protected by the "Marriage and Conscience Order" include businesses with state contracts that may discriminate against employees in same-sex marriages; licensed professionals who may refuse to provide services to same-sex couples; and businesses that may refuse to serve or accommodate same-sex couples.
8. The "Marriage and Conscience Order" sends the message that same-sex couples, their families and friends, and supportive employers should avoid living, working, or visiting Louisiana.
9. Additionally, it has not gone unnoticed that Governor Jindal not only issued his "Marriage and Conscience Order" just hours after the House Civil Law and Procedure Committee voted to not advance an identical bill, but also one day after announcing an exploratory committee to prepare for a presidential run.
10. Governor Jindal demonstrates a reckless disregard for the law and interests of the people and businesses of Louisiana by interfering with the legislature's powers and duties without authority and contrary to the Louisiana Constitution.

JURISDICTION AND VENUE

11. This Honorable Court has jurisdiction over this matter pursuant to LSA- Const. Art. 5, §16 (A)(1) and (2).
12. Venue is proper in this Parish because East Baton Rouge Parish in the State of Louisiana is where the wrongful conduct, acts, and omissions occurred and because upon information and belief Governor Jindal is domiciled in this Parish. La. C.C.P. Arts. 42 and 74. Venue is also proper in East Baton Rouge Parish because all suits filed against an officer or employee of the state for conduct arising within the course and scope of his employment shall be instituted before the district court of the judicial district in which the state capitol is located. La. R.S. § 13:5104.

PARTIES

13. Plaintiff, ACLU Foundation of Louisiana (“ACLU”) is a resident of, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana. The ACLU is a tax exempt 501(c)(3) organization pursuant to La. R.S. 47:287.501 and 26 U.S.C. §501(c)(4).
14. Plaintiff, Forum for Equality Foundation (“Forum for Equality”) is a resident of, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana. Forum for Equality is a tax exempt 501(c)(3) organization pursuant to La. R.S. 47:287.501 and 26 U.S.C. §501(c)(3).
15. Plaintiff, Clyde Watkins is a resident of, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana. Watkins is a donor to the ACLU and pays taxes to the State of Louisiana.
16. Plaintiff, Regina O. Matthews is a resident of, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana. Matthews is a donor to the ACLU and pays taxes to the State of Louisiana.
17. Plaintiff, Wallick Construction and Restoration, Inc. (“Wallick”), is a resident of, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana. Wallick holds both residential and commercial contractor’s licenses (nos. 82524 and 29912) issued by the State of Louisiana. Wallick pays taxes to the State of Louisiana.
18. Plaintiff, Marilyn McConnell is a resident of, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana. McConnell receives benefits under the state pension program and pays taxes to the State of Louisiana.

19. Plaintiff, Laurie Reed is a resident of, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana. Reed is an ordained minister of the Metropolitan Community Church of New Orleans and pays taxes to the State of Louisiana.
20. Plaintiff, Reverend William Barnwell, serving the local and national Episcopal Church, is a resident of, and domiciled in the City of New Orleans, Parish of Orleans, State of Louisiana. Rev. Barnwell is an ordained minister and pays taxes to the State of Louisiana.
21. Defendant Governor Piyush “Bobby” Jindal (“Governor Jindal”) is the elected governor of the State of Louisiana who performs his duties in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana. He is sued in his official capacity as the Governor of the State of Louisiana.

FACTS AND GENERAL ALLEGATIONS

22. The powers of the government of the state are divided into three separate branches: legislative, executive, and judicial. La. Const. Art. II, §1.
23. The power to make laws is vested in the legislature. La. Const. Art. III, §1.
24. Unless otherwise expressly provided by the Constitution of the State of Louisiana, no other branch of government or person holding office may usurp and exercise the legislative function of making laws. La. Const. Art. II, § 2.
25. The governor is authorized to see that the laws passed by the legislature are faithfully executed by issuing executive orders. La. R.S. §49:215.
26. The governor is not authorized to create substantive law or create substantive benefits by means of an executive order.
27. Governor Jindal issued Executive Order No. BJ 2015-8 titled “Marriage and Conscience Order” on May 19, 2015.
28. The “Marriage and Conscience Order” was modeled after The Marriage and Conscience Act, House Bill 707 (“HB 707”), sponsored by State Representative Mike Johnson and supported by Governor Jindal.
29. There was a vigorous debate during the House Civil Law and Procedure Committee hearing with numerous businesses and interests groups both supporting and opposing HB 707.
30. After a lengthy hearing on May 19, 2015, the House Civil Law and Procedure Committee, voted not to advance HB 707, by a 10-2 vote.

31. Within hours of HB 707's defeat, Governor Jindal issued his "Marriage and Conscience Order," which he stated was to carry out the intent of HB 707.

32. The "Marriage and Conscience Order" directs all government departments, commissions, boards, agencies, and political subdivisions of the state to recognize that the term "person" includes not only individuals but also for-profit and non-profit corporations, churches, association of churches, and other religious orders.

33. The "Marriage and Conscience Order" further directs the same government departments, commissions, boards, agencies and political subdivisions to not take the following actions against "persons" because they believe that marriage is or should be recognized as the union of one man and one woman:

- a. Deny or revoke corporate tax exemptions pursuant to La. R.S. 47:287.501;
- b. Disallow state tax deductions for charitable contributions made to or by such person;
- c. Deny or exclude such person from receiving any state grant, contract, cooperative agreement, loan, professional license, certification, accreditation, employment, or other similar position or status;
- d. Deny or withhold any benefit under a state benefit program; or
- e. Deny, revoke, or suspend the accreditation, licensing, or certification of any person that would be accredited, licensed, or certified for purposes of Louisiana law.

34. As Governor Jindal acknowledged in his Executive Order, Louisiana's Preservation of Religious Freedom Act of 2010 (LSA R.S. 13:5231, *et seq.*) already prohibits government intrusion into a person's exercise of religion, in addition to other federal and state protections that exist.

35. The "Marriage and Conscience Order" is an unconstitutional and unnecessary preemptive executive order because (a) it usurps the power granted to the legislature by La. Const. Art. III, §1; (b) it violates the separation of powers clause of La. Const. Art. II, §§ 1 and 2; (c) it attempts to ensure that a non-existing law, one rejected by the house of representatives, is faithfully executed; and (d) there is no law that penalizes or attempts to take away state benefits of persons who only believe in unions between one man and one woman.

CAUSE OF ACTION AGAINST DEFENDANT GOVERNOR JINDAL

Governor Jindal's "Marriage and Conscience Order" is An Unauthorized Usurpation of the Powers Vested in the Legislature and As Such is an Ultra Vires Act in Violation of The Separation of Powers Doctrine. La. Const. Art. II, §§ 1-2.

36. Plaintiffs repeat and reallege, as though fully set forth herein, each and every allegation contained above.
37. An executive order that implements legislation refused by the legislature is an ultra vires act by the governor.
38. Governor Jindal's unauthorized taking of the legislature's power to make new laws or change existing laws violates the Louisiana Constitution. La. Const. Art. II, §§ 1-2 and Art. III, §1.
39. Governor Jindal exceeded the scope of the powers granted to him by the Louisiana Constitution, "to faithfully support the constitution and laws of the state . . . and see that the laws are faithfully executed." La. Const. Art. IV, § 5.
40. Governor Jindal's "Marriage and Conscience Order" also exceeds the authority granted to him for issuing executive orders.
41. The governor is given the authority to issue executive orders to see that the laws are faithfully executed. La. R.S. §49:215. This statute does not give the governor the authority to create new law or overrule the legislature's decision to not pass a law.
42. Governor Jindal's unlawful and arbitrary attempt to usurp the authority of the legislature has caused Plaintiffs to suffer irreparable harm.
43. Plaintiffs, because of their beliefs in marriage equality, are not given the same protections and benefits as persons who believe in unions between only one man and one woman.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief in the form of a judgment against Defendant Governor Jindal:

- (1) An order permanently enjoining Defendant Governor Jindal and all departments, commissions, boards, agencies, and political subdivisions of the state from enforcing, applying, and/or implementing, in whole or part, the "Marriage and Conscience Order;"
- (2) An order declaring that the "Marriage and Conscience Order" is an ultra vires act in violation of the Louisiana Constitution Article II, § 1 and 2;
- (3) Entry of a judgement for Plaintiffs against Defendant Governor Jindal for nominal damages;

- (4) An order permitting this Court to retain jurisdiction over this matter to enforce the terms of the Court's orders; and
- (5) Any other equitable and general relief the nature of this case will allow.

Respectfully submitted,



MAURY A. HERMAN, La Bar No. 6815
STEVEN J. LANE, La Bar No. 7554
STEPHEN J. HERMAN, La Bar No. 23129
HERMAN, HERMAN & KATZ, LLC
820 O'Keefe Avenue
New Orleans, Louisiana 70113
Phone: (504) 581-4892
Fax: (504) 561-6024



Candice C. Sirmon, T.A., La No. 30728
ACLU Foundation of Louisiana
P.O. Box 56157
New Orleans, La 70156
(504) 522-0628
Facsimile: (504) 613-6511
Email: csirmon@laaclu.org

Attorneys for Plaintiffs

PLEASE SERVE

Governor Piyush "Bobby" Jindal
Office of the Governor
900 N. Third Street, 4th Floor
Baton Rouge, LA 70802

James D. "Buddy" Caldwell
Attorney General, State of Louisiana
1885 N. Third Street
Baton Rouge, LA 70802

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GOVERNOR PIYUSH "BOBBY" JINDAL, IN HIS OFFICIAL CAPACITY AS GOVERNOR, STATE OF
LOUISIANA

Petitioners' Exhibit A

Executive Order No. BJ 2015-8 Marriage and Conscience Order

State of Louisiana

EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. BJ 2015 – 8

MARRIAGE AND CONSCIENCE ORDER

WHEREAS, Article I, Section 1 of the Louisiana Constitution is titled “Origin and Purpose of Government”, and provides:

All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

WHEREAS, in 1974, the people of the State of Louisiana chose to adopt the exact language found in the First Amendment of the Constitution of the United States of America regarding religious free exercise as Article 1, Section 8 of the Constitution of Louisiana:

No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.

WHEREAS, in 2010, the Governor made part of his legislative package and signed into law the Preservation of Religious Freedom Act to further protect the free exercise of religion by making clear:

Government shall not substantially burden a person's exercise of religion, even if the burden results from a facially neutral rule or a rule of general applicability, unless it demonstrates that application of the burden to the person is both:

- (1) In furtherance of a compelling governmental interest.*
- (2) The least restrictive means of furthering that compelling governmental interest.*

WHEREAS, the federal Religious Freedom Restoration Act contains virtually identical language to prohibit the federal government from imposing a substantial burden upon a person's exercise of religion absent a compelling governmental interest and a showing that the action taken is the least restrictive means of furthering that compelling governmental interest;

WHEREAS, in June, 2014, the United States Supreme Court, in Burwell v. Hobby Lobby Stores, Inc., 134 S.Ct. 2751 (2014), expressly held that the federal Religious Freedom Restoration Act of 1993 prohibits the federal government from requiring a “person” to act in contravention of a sincerely held religious belief, and that the definition of “person” includes individuals, non-profit, or for-profit corporations;

WHEREAS, federal and state law each contain nearly identical, expansive definitions of “person”, while the Preservation of Religious Freedom Act's definition includes certain terms, but does not exclude the more expansive state law definition:

“Person” is defined by La. R.S. 1:10: “*Unless it is otherwise clearly indicated, the word ‘person’ includes a body of persons, whether incorporated or not.*”

“Person” is defined in 1 USC 1: “*In determining the meaning of any Act of Congress, unless the context indicates otherwise—...the words ‘person’ and ‘whoever’ include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;...*”

“A person” is defined in La. R.S. 13:5234: “‘A person’ *includes* an individual and also includes a church, association of churches or other religious order, body or institution which qualifies for exemption from taxation under Section 501(c)(3) or (d) of the Internal Revenue Code of 1986 (Public law 99-514, 26 U.S.C. Section 501).” (Emphasis added.)

WHEREAS, it is of preeminent importance that government take no adverse action against a person, wholly or partially, on the basis that such person acts in accordance with his religious belief that marriage is or should be recognized as the union of one man and one woman, but that this principle not be construed to authorize any act of discrimination.

WHEREAS, specifically, government should take no adverse action to:

1. Deny or revoke an exemption from taxation pursuant to La. R.S. 47:287.501 of the person who is acting in accordance with his religious belief;
2. Disallow a deduction for state tax purposes of any charitable contribution made to or by such person;
3. Deny or exclude such person from receiving any state grant, contract, cooperative agreement, loan, professional license, certification, accreditation, employment, or other similar position or status; or
4. Deny or withhold from such person any benefit under a state benefit program;

WHEREAS, the state should consider any person who would be accredited, licensed, or certified but-for a determination against such person on the basis that the person acts in accordance with his own religious belief about the institution of marriage, to be accredited, licensed, or certified for purposes of Louisiana law.

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: All departments, commissions, boards, agencies, and political subdivisions of the state are authorized and directed to take cognizance of the definition of “person” contained in La. R.S. 1:10 when complying with the Preservation of Religious Freedom Act (La. R.S. 13:5230-5242), the interpretation of the virtually identical federal law definition contained in 1 USC 1 by the United States Supreme Court in Burwell v. Hobby Lobby in its holding that the federal government is prohibited from requiring a “person” to act in contravention of a sincerely held religious belief, and that the definition of “person” includes individuals, non-profit, or for-profit corporations.

SECTION 2: All departments, commissions, boards, agencies, and political subdivisions of the state are authorized and directed to comply with the restrictions placed upon government action in the Preservation of Religious Freedom Act and, including more specifically, on the basis that such person acts in accordance with his religious belief that marriage is or should be recognized as the union of one man and one woman, shall take no adverse action to:

- A. Deny or revoke an exemption from taxation pursuant to La. R.S. 47:287.501 of the person who is acting in accordance with his religious belief.
- B. Disallow a deduction for state tax purposes of any charitable contribution made to or by such person.
- C. Deny or exclude such person from receiving any state grant, contract, cooperative agreement, loan, professional license, certification, accreditation, employment, or other similar position or status.
- D. Deny or withhold from such person any benefit under a state benefit program.
- E. Deny, revoke, or suspend the accreditation, licensing, or certification of any person that would be accredited, licensed, or certified for purposes of Louisiana law but-for a determination against such person on the basis that the person acts in accordance with his own religious belief.

SECTION 3: All departments, commissions, boards, agencies, and political subdivisions of the state are authorized and directed to cooperate with the implementations of the provisions of this Order.

SECTION 4:

This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded.



IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 19th day of May, 2015.

/s/ Bobby Jindal
GOVERNOR OF LOUISIANA

**ATTEST BY
THE GOVERNOR**

/s/ Tom Schedler
SECRETARY OF STATE

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VERSUS

GOVERNOR PIYUSH "BOBBY" JINDAL, IN HIS OFFICIAL CAPACITY AS GOVERNOR, STATE OF
LOUISIANA

Petitioners' Exhibit B

**Governor Jindal Executive Counsel Issues Memo on
Religious Liberty Implications in Light of SCOTUS Ruling, June 29, 2015**



State of Louisiana
Office of the Governor
GOVERNOR BOBBY JINDAL

FOR IMMEDIATE RELEASE
June 29, 2015
Press Office: Mike Reed
Contact: 225-342-8006, (c) 225-247-5028

Governor Jindal Executive Counsel Issues Memo On Religious Liberty Implications In Light Of SCOTUS Ruling

BATON ROUGE--The following is a legal memorandum, from Thomas Enright, Executive Counsel to Governor Jindal:

TO: Interested Parties
FROM: Thomas Enright, Executive Counsel, Office of Governor Bobby Jindal
DATE: June 29, 2015

RE: Religious liberty implications in light of same sex marriage ruling

On June 26, the U.S. Supreme Court held 5-4 in *Obergefell v. Hodges* that there is now a constitutional right to same sex marriage. No. 14-566 (2015).

While *Obergefell* will significantly impact Louisiana's same-sex marriage cases, currently consolidated at the U.S. Court of Appeals for the Fifth Circuit as *Robicheaux v. Caldwell*, No. 14-31037, the Fifth Circuit has not yet rendered a full and appropriate decision in these matters. Today, the Fifth Circuit ordered the two sides to file on or before July 1, 2015, a letter advisory on the current posture of the litigation.

When the Fifth Circuit issues their judgment, it is important to note it will in no way diminish or overrule the fundamental rights to the free exercise of religion and freedom of speech guaranteed by both the First Amendment to the United States Constitution and Article 1, Section 8 of the Louisiana Constitution. In its ruling, the Supreme Court majority affirmed "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered."

In Louisiana, we celebrate diversity of belief and the religious liberties that are fundamental to our society. We do not support discrimination and believe that these two foundational values can simultaneously co-exist. The ruling in *Obergefell* does not permit states to bar same-sex couples

from marriage, but the ruling in no way forces specific individuals to violate their sincerely held religious beliefs, or to perform or facilitate same sex marriages.

This religious liberty protection is reiterated in our statutes by the "Preservation of Religious Freedom Act" (La. R.S. 13:5231, et seq.), which clarifies that:

Government shall not substantially burden a person's exercise of religion; even if the burden results from a facially neutral rule or a rule of general applicability, unless it demonstrates that application of the burden to the person is both:

(1) In furtherance of a compelling governmental interest.

(2) The least restrictive means of furthering that compelling governmental interest.

In addition, on May 19, 2015, Governor Jindal issued Executive Order No. BJ 2015-8, which notes, in relevant part, "it is of preeminent importance that government take no adverse action against a person, wholly or partially, on the basis that such person acts in accordance with his religious belief that marriage is or should be recognized as the union of one man and one woman."

The protections referenced above extend to individuals employed in any branch of the government of the state. Accordingly, we urge all branches of government in Louisiana to protect and respect individuals' fundamental religious liberties regarding sincerely held religious convictions about the institution of marriage. By way of example, appropriate accommodations may be made for state employees who express a religious objection to involvement in issuance of same-sex marriage licenses, and judges and justices of the peace may not be forced to officiate a same-sex wedding ceremony when other authorized individuals who have no religious objection are available. The facts of any such case may affect the strength of the individual's accommodation claims.

If any such state employee or official who asserts a religious objection is faced with a legal challenge for doing so, numerous attorneys have committed to defend their rights free of charge, subject to the facts of each case.

As the full implications of Friday's Supreme Court decision are determined over the coming months and years, Louisiana is resolved to protect the inalienable rights of all its citizens.

Thomas Enright, Jr.,
Executive Counsel
Office of Governor Bobby Jindal