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ANGELA MARIE COSTANZA and CHASITY SHANELLE BREWER for themselves and on behalf of their minor son, [redacted]

15TH JUDICIAL DISTRICT COURT

DOCKET NO.: 2013-0052 D2

VERSUS

PARISH OF LAFAYETTE

JAMES D. CALDWELL, in his official capacity as Louisiana Attorney General, ET AL

STATE OF LOUISIANA

****

CLERK OF COURT LAFAYETTE PARISH, LA 2014 SEP 22 AM 11:08

MINUTE ENTRY RULING

PETITIONERS ARE: Angela Marie Costanza and Chasity Shanelle Brewer for themselves and on behalf of their minor son, [redacted]

NAMED DEFENDANTS ARE: James D. Caldwell in his official capacity as Attorney General for the State of Louisiana, Piyush "Bobby" Jindal, in his official capacity as Governor of the State of Louisiana, Tim Barfield in his official capacity as Secretary of the State of Louisiana Department of Revenue, and, Devin George in his official capacity as Registrar of Vital Records for the State of Louisiana.

BACKGROUND

Chasity Brewer is the biological mother who on August 1, 2004 gave birth to [redacted] as a result of insemination by an anonymous sperm donor. According to the California Uniform Parentage Act the anonymous sperm donor bears no rights to and no responsibilities for children born through donor insemination using his semen. The biological father remains to be unknown.

On August 8, 2008 petitioners, Costanza and Brewer were married in the state of California, whose laws permit same-gender couples to marry. Both were at the time of their marriage, of the full age of majority. Both are now domiciled in the Parish of Lafayette, State of Louisiana.

On July 12, 2013, Petitioners filed a Petition for Intrafamily adoption pursuant to La.Ch.Code art. 1243, et seq. The Courts' Sealed Record shows that on October 17, 2013, the Legal Department for Attorney General was served with a certified copy of plaintiffs' Petition for Intrafamily Adoption, and their First Supplemental and Amended Petition. On October 21, 2013 the assistant Attorney General's office, Civil Division on behalf of James "Buddy" Caldwell, in his official capacity as Attorney General for Louisiana filed a request for written notice requesting notice "in advance of the date fixed for trial, hearing or other proceeding scheduled to come before this Honorable Court ....." On December 17, 2013

the clerk's office set the Adoption for Rule/Motion to be heard on January 27, 2014. The record shows that the notice for Adoption hearing was cc'd to: DCFS, Judge Rubin, Tameka Thomas [docket clerk], and Jessica Thornhill [assistant Attorney General]. On January 27, 2014 counsel for Petitioners, presented the court with the entire adoption file. Petitioners including the child, [redacted] were present. The Attorney General was not present. This court declined to address any of plaintiffs' constitution issues at that time, but carefully reviewed the adoption file which included, but was not limited to: an Authentic Act of Consent to Adoption from the biological mother, Chasity Brewer, criminal records check from the Sheriff of Lafayette Parish, the recommendations and records check for any validated complaints of child abuse or neglect from the Dept. of Child and Family Services (DCFS), and Child Welfare State Central Registry Check. Thus, relying on the contents of the adoption file, the court having found all reports and recommendation from Child Services in proper form, granted the intrafamily adoption on January 27, 2014. The final decree of adoption and Judgment was signed on February 5, 2014.

On March 6, 2014, Attorney General Caldwell, on behalf of the State of Louisiana, moved the court for a Suspensive Appeal from the final adoption decree signed on February 5, 2014. The Order for that Suspensive Appeal was signed March 10, 2014. Briefs were filed with the Court of Appeal of Louisiana, Third Circuit and oral arguments were heard. The Third Circuit rendered a Judgment on June 11, 2014. The findings of the Third Circuit are as follows:

"We find that the trial court erred by holding the hearing on this matter without notifying the Attorney General as required by La. Code of Civ.P. art. 1572. There is no question that the Attorney General made an appearance and requested notice pursuant to law. The record established that the Attorney General did not receive the notice to which it was entitled nor have an opportunity to be heard. The judgment of adoption is vacated and the case is remanded. On remand, the trial court is instructed to hear arguments on all issues raised by both the petitioners and the Attorney General."

The petitioners were permitted to file their Second, Third, and Fourth Supplemental and Amended Petitions.

The defendants, Attorney General and the Governor filed their peremptory Exception of No Cause of Action. Both sides filed Motions for Summary Judgment attaching their memoranda of law. These matters were set for hearing on Monday, September 15, 2014 at 10:00 a.m. The court heard oral argument on the exception of no cause of action and on the motions for summary judgment, and thereafter took the matter under advisement.

Petitioners ask that this court reaffirm its February 5, 2014 final decree of adoption. In their Prayer petitioners ask this court to issue an injunction, directing the Clerk of Court for this Parish to comply with the requirements of La.

Ch. C. Art. 1182(B) by forwarding a certificate of this final decree to the State Registrar of Vital Records, for entry of certificate of live birth of [redacted]. They assert their rights to Due Process and Equal Protection guaranteed by the 14th Amendment U.S. Constitution have been denied. Petitioners assert that Louisiana's refusal to recognize their California marriage violates Article IV, Section 1 of the United States Constitution, Full Faith and Credit Clause. They challenge the constitutionality of Article XII, Section 15 of the Louisiana Constitution known as the Defense of Marriage Act (DOMA); La. Civ. Code Art. 86, defining marriage; La. Civ. Code Art. 89, the Impediment of same-sex article; and, La. Civ. Code Art. 3520(B) denying recognition of same-sex marriages contracted in other states.

The defendants deny that Louisiana's constitutional and statutory provisions challenged by the petitioners violate equal protection and due process guaranteed by the Fourteenth Amendment. They likewise deny that the challenged laws violate the Full Faith and Credit Clause of Article IV, Section 1 of the U.S. Constitution.

THE PARTIES HAVE ASKED THE COURT TO ADDRESS THE FOLLOWING ISSUES:

Whether La. Const. Article XII, Section 15 (the Defense of Marriage Act DOMA), and La. Civil Code Articles 86, 89, and 3520(B) violate the Due Process and Equal Protection Clauses of the 14th Amendment to the U. S. Constitution.

Whether for purposes of the federal Due Process Clause, the right to marry someone of the same sex is a right deeply grounded in our Nation's history and tradition.

Whether the authority to recognize out-of-state marriages falls within the traditional authority of States over domestic relations law.

Whether La. Const. Art XII, Section 15, La. C.C. Art. 86, 89, and 3520(B) violate Article IV, Section 1 , the Full Faith and Credit Clause of the United States Constitution.

PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION

In the petitioners Third and Fourth Supplemental and Amended Petitions, paragraph 29, Governor Jindal, Attorney General Caldwell, Secretary of La. Department of Revenue, Tim Barfield, and the La. State Registrar, Devin George were made defendants and cited to appear and answer the same. The court notes that the two defendants who filed an Answer to plaintiffs' Original and Amended Petitions were Tim Barfield and Devin George. Jindal and Caldwell did not answer; rather they filed an exception of no cause of action.

Jindal in his official capacity as Governor, and Caldwell in his official capacity as Attorney General except to plaintiffs' petition on the grounds:

A) that although the plaintiffs' Second Supplemental and Amended Petition named the Governor and Attorney General as defendants, the plaintiffs make no allegations nor seek any relief as to Governor Jindal or the Attorney General; B) that the plaintiffs have failed to state a cause of action against Governor Jindal and Attorney General Caldwell; and C) neither the Governor nor the Attorney General is a proper party defendant under La.C.C.P. Art. 1880.

> **Art. 1880 deals with Parties to Declaratory Judgments & states in pertinent part: " When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of person not parties to the proceeding ..... If the statute, ... is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard."**

Defendants agree that under C.C.P. Art. 1880 "the attorney general must receive notice of any constitutional challenge to a state law." "But the purpose of Art. 1880 is only to allow the attorney general to defend the challenged law, not make him a party defendant." They also cite La. R.S. 49:257(C) which authorizes the Attorney General to "represent or supervise the representation of the interests of the state" where constitutionally of law is challenged. Defendants also rely on the Louisiana Supreme Court case of Vallo v. Gayle Oil Company, Inc., 94-1238 (La. 11/30/94), 646 So.2d 859 which explained that Art. 1880 "did not contemplate the Attorney General be required to be joined as an actual party..... Only that he be served and given an opportunity to be heard and participate in the case in a representative capacity."

Defendants further contend that plaintiffs mistakenly named the defendants Governor Jindal and Attorney General Caldwell. They argue that the plaintiffs make no allegations against, nor seek any relief from the governor or the attorney general. Further argue that neither the governor nor the attorney general has any direct role in administering or enforcing any of the laws to which plaintiffs object; and for those reasons plaintiffs have failed to state a cause of action against Jindal & Caldwell. Defendants cite the Louisiana Supreme court case, Everything on Wheels Subaru, Inc. v. Sabaru South, Inc., 616 So.2d 1234 (La. 1993) which reiterates the legal standard used by courts in determining whether or not to sustain an exception of no cause of action. "..... the court reviews the petition and accepts well pleaded allegations of fact as true, and the issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought." Defendants also cite La.C.C.P. article 931 which states "No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action." *Id.*

Defendants further allege that it is irrelevant that, under the La. Const. art. IV, section 5(A) the governor "shall faithfully support the constitution and laws of the state ..... and shall see that the laws are faithfully executed. Defendants'

assert "that duty does not mean the governor himself is a proper defendant anytime a lawsuit alleges a state law is unconstitutional." "Rather, the proper question is whether the plaintiffs' factual allegations establish that they have a legal remedy against the Governor." Hoag v. State, 2004-0857, p.9 (La. 12/1/04); 889 So.2d 1019, 1025.

With respect to the defendants, Secretary of Department of Revenue and the State Registrar of Vital Records, defendants concede that "it was the Secretary of Department of Revenue---not the Governor---who issued the bulletin declining to recognize same-sex marriages for tax purposes. Similarly, the State Registrar is vested with authority over Louisiana vital records, including amending.....birth certificates, not the Governor." Defendants concede that the State Secretary of Revenue and the State Registrar are the defendants from whom petitioners can obtain relief if they prevail on their claims regarding Louisiana's tax and vital records laws.

In petitioners' opposition they cite Louisiana Supreme court cases in which suits brought against the Governor and/or Attorney General were sustained in actions for declaratory judgment where state laws were challenged as unconstitutional. Plaintiffs cite: Bates v. Edwin Edwards, 294 So.2d 532 (La. 1974) which was an action to enjoin election on proposed new State Constitution and have declared null and void an Act providing for the meeting of constitutional convention to draft new State Constitution; Aguillard v. Treen, 440 So.2d 704 (LA. 1983)which dealt with constitutionality of La.R.S. Sections 17:286.7 through 17:286.8 and found that the statute did not violate Article 8 of the Louisiana Constitution; and Polk v. Edwin Edwards, 626 So.2d 1128 (1993) where action was brought challenging constitutionality of four statutes authorizing licensing of gaming operations.

Petitioners also assert that defendants' reliance on Vallo was misplaced since Vallo says nothing about naming the governor and/or the Attorney General as party defendants in litigation challenging the constitutionality of state law.

This court also heard oral argument regarding the exception of no cause of action. The State responded to the cases cited by petitioners and agreed that in Bates and in Aguillard the Governor had an enforcing role, whereas, in Polk the Governor's role was merely the appointment of members..... The State further maintains that Governor Jindal does not play any role in Louisiana's same-sex ban.

The petitioners responded in oral argument saying that, because this matter is an action for declaratory judgment, the Governor is a proper party defendant.

This court having considered the record, including memoranda, arguments, and applicable law, finds that with respect to petitioners' Original and Supplemental and Amending Petitions this court accepts the well pleaded allegations of fact as true, and on viewing the face of the petition(s), the petitioners are entitled to the relief sought. The court finds that all named defendants except Governor Jindal

are proper party plaintiffs. We find that the Attorney General in his official capacity has more than just an interest in this case; he has the authority to represent the State, and is the proper party defendant to represent the State involving laws of the State that are challenged as unconstitutional, and where plaintiffs are seeking injunctive relief as in the case at bar. Although Vallo explained that "Article 1880 did not contemplate the Attorney General b required to be joined as an actual party", we do not see how the Attorney General would not be the proper party to be sued and to defend the state of Louisiana with respect to the state laws challenged herein. This court similarly, finds that the Secretary of Revenue and the State Registrar are defendants who have direct roles in administering and enforcing the challenged laws in this case. . As such the court hereby sustains the State's exception of no cause of action as to the defendant, Governor Jindal only, dismissing plaintiffs' claims against the governor. The court hereby denies the exception of no cause of action as it relates to three defendants: Louisiana Attorney General Caldwell, Secretary of Louisiana Department of Revenue Tim Barfield, and Louisiana Vital Records Registrar Devin George.

SUMMARY JUDGMENT STANDARD

La. Code of Civil Procedure Article 966, the primary statute codifying Louisiana's procedural vehicle for summary judgment, states in part: "judgment shall be forthwith if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law."

Section C (2) of article 966 states that "the burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact.

In the case at bar, the court is required to consider in its ruling, that petitioners and state defendants are both movants and adverse parties, since each side has filed a motion for summary judgment.

THE CHALLENGED LAWS

Section 1 of the XIV Amendment to the U.S. Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article IV, Section 1 of the United States Constitution:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.....

LSA-Const. Article 12, Section 15, the Defense of Marriage Act (DOMA):

Marriage in the state of Louisiana shall consist only of the union of one man and one woman. No official or court of the state of Louisiana shall construe this constitution or any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized. No official or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of one man and one woman. (Added by acts 2004, No. 926, sec 1, approved Sept. 18, 2004, eff. Oct. 19, 2004).

La. Civil Code Art. 3520(B):

A purported marriage between persons of the same sex violates a strong public policy of the state of Louisiana and such a marriage contracted in another state shall not be recognized in this state for any purpose, including the assertion of any right or claim as a result of the purported marriage. (eff. Jan. 1, 1992)

La. Civil Code Art. 86 (definition of marriage):

Marriage is a legal relationship between a man and a woman that is created by civil contract. The relationship and the contract are subject to special rules prescribed by law.

La. Civil Code Art. 89 (Impediment of same sex-marriage):

Persons of the same sex may not contract marriage with each other. A purported marriage between persons of the same sex contracted in another state shall be governed by the provisions of Title II of Book IV of the Civil Code.

La. Revenue Info. Bulletin No. 13-024 (Sept. 13, 2013) in part:

..... The Louisiana Department of Revenue shall not recognize same-sex marriages when determining filing status. If a taxpayer's federal filing status of married filing jointly, married filing separately.....is pursuant to IRS Revenue Ruling 2013-17 [ruling that same-sex couples legally married in states that recognize such marriages will be treated as married for federal tax purposes], the taxpayer must file a separate Louisiana return as single, head of household or qualifying widow, as applicable. The taxpayer (s) who filed a federal return pursuant to IRS Revenue Ruling 2013-17 may not file a Louisiana state income tax return as married filing jointly, married filing separately or qualifying widow. The taxpayer must provide the same federal income tax information on the Louisiana State Return that would have been provided prior to the issuance of Internal Revenue Service Ruling 2013-17.

EQUAL PROTECTION CLAUSE

(The court notes that both petitioners and defendants rely largely on their memoranda of law to support their equal protection arguments.)

The court considers petitioners' equal protection argument first.

Petitioners move this court to enter a summary judgment in their favor, alleging that there are no genuine disputes as to any material fact, and plaintiffs are entitled to judgment as a matter of law.

They assert that Louisiana's denial of intra-family adoption rights to petitioners is arbitrary and capricious in violation of equal protection of the laws.

Plaintiffs contend that there is absolutely no genuine issue of material fact in this matter. They maintain that the State doesn't deny that they are lawfully married under the laws of California. Nor is there any dispute that petitioners are of the same gender and ask that their marriage be recognized in this State. Additionally, the State does not deny that petitioners seek an intra-family adoption regarding their child, [redacted], whom they assert they have raised since his birth. There is no dispute that the current laws of our State deny all relief sought by petitioners in this matter.

Petitioners cite the case of Collins v. Brewer, 727 F. Supp. 2d 797 (D. Ariz. 2010) to support their argument that "because only same-sex couples are denied the ability to adopt, the State's discrimination on the basis of sexual orientation

violates the Equal Protection Clause." Plaintiffs assert that "categorically denying any mechanism for same-sex couples raising children to secure a legal parent relationship with both parents denies those families equal protection of laws." They submit that the Third Circuit Court of Appeal construed Louisiana's adoption laws as not permitting petitioners [who are a same-sex married couple] to adopt on the same terms as step-parents. They submit that "this discrimination..... violates the Equal Protection Clause.

Plaintiffs argue that "same-gender couples and opposite-gender couples are two classes that are similarly situated for purposes of marriage and Louisiana's ban on same-gender marriage unjustly treats these two classes differently." Plaintiffs assert that "the State must have a legitimate interest to satisfy an Equal Protection challenge. None is evident herein." Citing Huntsman v. Heavilin and State of Florida, No. 2014-CA-305-K, Sixteenth Judicial District Court, Monroe County, Florida (July 17, 14), Slip Opinion.

They also cite as authority U.S. Supreme court cases, Romer v. Evans , 517 U.S. 620 (1996), Lawrence v. Texas, 539 U.S. 558 558 (2003), and United States v. Windsor, 133 S. Ct. 2675 (2013) which according to plaintiffs held that there is absolutely no legitimate interest for the government to discriminate based on sexual orientation.

Petitioners argue that Windsor "indicates that same-sex marriage restrictions communicate to children the message that same-sex parents are less deserving of family recognition than other parents." Petitioners further argue that "under the latest expression of Louisiana's revenue laws (Revenue Information Bulletin, No. 13-024, 9/13/13) Costanza and Brewer are denied the "married filing jointly" status afforded to hundreds of other married couples in Louisiana." They also assert that "the United States has issued Revenue Ruling 2013-17 post-Windsor, allowing for same-sex married couples to use "married filing jointly status" on their federal tax returns, even in states that do not recognize same-sex marriage."

They maintain that Louisiana's Revenue Ruling is another factual basis of their claim that Louisiana law denies them equal protection of the laws.

The court now considers the defendants' equal protection arguments.

The state defendants maintain that "the Third Circuit has already held in this case that Plaintiffs' stepparent adoption of [redacted] is not permitted under Louisiana Law, a determination which is therefore law of the case. They cite Adoption of [redacted] 2014 WL 2853947. The court notes that this case's current citation is 140 So.3d 126, (La. App. 3 Cir. 6/11/14). Defendants contend that only the federal constitutional questions are before this court.

State defendants seek to have this court grant their motion for summary judgment on all of petitioners' claims and deny petitioners' motion for summary

judgment. Defendants assert that they agree with plaintiffs that there are no material fact disputes and that this court may decide all claims as a matter of law.

Defendants assert in their memorandum that "with respect to Plaintiffs' equal protection claims, Louisiana's decision to recognition only man-woman marriage triggers rational basis review." Citing Johnson v. Johnson, 385 F.3d 503 (5th Cir. 2004).

Defendants maintain that "Louisiana's definition [of marriage] "is not subject to courtroom factfinding, and so Louisiana need not "produce evidence" to justify it." Heller v. Doe, 509 U.S. 312 (1993). In addition they argue that Plaintiffs' equal protection "challenge must fail if there is any reasonable conceivable state of facts that could provide a rational basis for [Louisiana's definition]." Again, citing Heller.

Citing as authority, Doe v. Jindal, 851 F. Supp.2d 995 (E.D. La. 2012) which quoted the U.S. Supreme court in Kimel v. Florida Bd. Of Regents, 528 U.S. 62 (2000), defendants state that "Plaintiffs must show Louisiana's decision is "so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that [Louisiana's] actions were irrational." Defendants suggest that "Plaintiffs cannot do so."

Defendants maintain that Louisiana's marriage and adoption laws pass rational basis review because the state has a legitimate interest in a) linking children to intact families formed by their biological parents, and b) ensuring that fundamental social change occurs through widespread social consensus. They cite La.C.C. article 86 to support their argument that "Marriage in Louisiana—anchored in the reality that opposite-sex couples naturally produce children—is ordered to promote the stability of that resulting family." Defendants add, "the marriage contract differs from other contracts in that it creates a social status that affects not only the contracting parties, but also their posterity and the good order of society." ..... "In every known human society the institution developed "to solidify, standardize, and legalize the relationship between a man, a woman, and their offspring, is civil marriage between one man and one woman. Citing Sevcik v. Sandoval, 911 F. Supp.2d 966 (D. Nev. 2012) which cites Maynard v. Hill, 125 U.S. 190 (1888).

Defendants cite Williams v. Williams, 87 So.2d 707 (La. 1956) which held that "it has always been the policy of the Louisiana law to protect innocent children, born during marriage, against scandalous attacks upon their paternity by the husband of the mother."

Defendants argue that Wilkinson v. Wilkinson, 323 So.2d 120 (La. 1975) stated that "the public policy of Louisiana that every effort must be made to uphold the validity of marriages ..... is closely intertwined with the presumption of legitimacy."

Defendants maintain that Louisiana voters acted to ensure that a change as profound as altering the basic definition of marriage would occur only through wide social consensus. They state that "Windsor confirmed that Louisiana acted not only rationally but wisely in elevating that momentous issue above the ordinary legislative process." Citing as authority, Frontiero v. Richardson, 411 U.S. 677,692 (1973) "A court would "act prematurely and unnecessarily.....[by] assum[ing] a decisional responsibility at the very time when state legislatures, functioning within the traditional democratic process, are debating" the shape of marriage."

DUE PROCESS CLAUSE

The court considers first, the defendants' due process arguments.

Defendants argue that Louisiana's recognition of only man-woman marriage does not violate the Due Process Clause. They state that "To establish a substantive due process violation, a plaintiff must first both carefully describe that right and establish it as 'deeply rooted in this Nation's history and tradition." Citing Malagon de Fuentes v. Gonzales, 462 F.3d 498 (5th Cir. 2006) which quoted Washington v. Glucksberg, 521 U.S. 702 (La. 1997). For this reason, they maintain that "Plaintiffs' due process claims fail because a right to marry someone of the same sex is not deeply rooted in our national history."

Defendants point out that Sevcik states that "Windsor recognizes the obvious: same-sex marriage is a "novel concept," provoking "intense democratic debate" across the nation." "As Windsor explained, "until recent years" the man-woman aspect of marriage "had been thought of by most people as essential to the very definition of that term and to its role and function throughout the history of civilization."

Defendants also maintain that Plaintiffs may not rely on right to privacy cases to establish a due process right to marry someone of the same sex. Citing Planned Parenthood of Pa. v. Casey, 505 U.S. 833 (1992); Griswold v. Connecticut, 381 U.S. 479 (1965); and Lawrence v. Texas, 539 U.S. 558 (2003).

Defendants argue that the recent Tenth and Fourth Circuit decisions mistakenly create a due process right to marry someone of the same sex. Citing Kitchen v. Hebert, 961 F.Supp.2d 1185 (D. Utah 2013) and Bostic v. Schaefer, ___F.3d ___, 2014 WL 3702493 (4th Cir. July 28, 2014). Defendants allege that Kitchen and Bostic are wrong because "they 1) misapply the Supreme Court's right-to-marry cases; and 2) misapply the Supreme Court's right-to-privacy cases."

In furtherance of their contention that Louisiana's laws do not violate the federal due process clause of the 14th Amendment, in their oral argument, defendants maintain that the right to marry someone of the same sex is not a right that is deeply rooted in our Nation's history and tradition.

The court now outlines the petitioners' due process agruments.

Petitioners contend that the material facts are not in dispute. In their memorandum they state they maintain that "the State doesn't deny that they are lawfully married under the laws of California." Nor is there any "dispute that petitioners are of the same gender and ask that their marriage be recognized in this State. Additionally, the State does not deny that petitioners see an intrafamily adoption regarding their child, [redacted], whom they assert they have raised since his birth. They further allege that there is no dispute that the current laws of our State deny all relief sought by petitioners in this matter.

They assert that Louisiana adoption law discriminates against Costanza and Brewer's lawful marriage in California. They submit that Costanza and Brewer have a 14th Amendment liberty interest in rearing and parenting of [redacted] as his lawfully married parents, and that Louisiana's non-recognition of petitioners' lawful California marriage denies the couple liberty without due process of law.

Plaintiffs argue that "The court has repeatedly referenced the raising of children—rather than just their creation as a key factor in inviolability of marital and family choices." They cite Kitchen v. Hebert, which cites the U.S. Supreme court in Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925). They assert that this case discussed "the liberty of parents and guardians to direct the upbringing and education of children under their control" and quote Kitchen as finding "Thus childrearing, a liberty closely related to the right to marry, is one exercised by same-sex and opposite – sex couples alike, as well as by single individuals."

Plaintiffs also argue that at a minimum, Chasity Brewer has a fundamental right to rear her biological child, [redacted] and that the State's refusal to sanction the Costanza/Brewer intra-family of [redacted] infringes upon petitioners' fundamental right to rear their child in violation of the Fourteenth Amendment. Citing Troxel v. Granville, 530 U.S. 57 (2000).

Plaintiffs argue that "the U.S. Constitution protects the Constanza/Brewer "family" unit---judicially determined by Your Honor to be in the best interest of [redacted] from Louisiana's attenuated severance claim, that only the State knows what is best for [redacted]" They cite as authority the U.S. Supreme court in Moore v. East Cleveland , 431 U.S. 494, 499 (1977) which held that "when the government intrudes on choices concerning family living arrangements, this Court must examine the important governmental interests advanced and the extent to which they are served by the challenged regulation."

Plaintiff argue that Brewers' affidavit states ".....refusal to recognize her marriage to Angela ....Constanza denies both Petitioners and their son [redacted]., the social recognition that comes with marriage." They further add that "The State has offered no contradictory affidavits.

Plaintiffs direct this court's attention to their Request for Admission No. 15 and defendants' response. "Admit or deny that Plaintiffs ..... have a fundamental right to rear their child, [redacted] (in the context of a Liberty interest in same as expanded by our U. S. Supreme Court in its jurisprudential interpretation of the Due Process Clause of the 14th Amendment to the U.S. Constitution."

The record indicates that the State's response was: "Denied as written. The fundamental right to raise children does not encompass Plaintiffs' right to raise a child together in the context of a same-sex marriage."

Petitioners argue that "Denying Angela Costanza eligibility to Petition for adoption of the child she is raising with her partner Chasity Brewer violates the Constitution and does not turn on whether same-sex couples are allowed to marry.

"Petitioners' claim that Louisiana's refusal to grant them the same family protections afforded couples headed by different-sex parents denies them liberty and equality in violation of the 14th Amendment.....The State argues that Louisiana adoption law only allows single individuals or married opposite-sex couples, or the lawfully married spouse of a legal parent to adopt."

Plaintiffs argue that they have a fundamental right to marry. They cite as authority the Supreme court cases of Meyer v. Nebraska, 262 U.S. 390 (1923) and Loving v. Virginia, 388 U.S. 1 (1967) "..... Choices about marriage, such as choices about other aspects of family life, are a central part of the liberty protected by the Due Process Clause." Meyer, and "liberty protected by the Due Process Clause includes the "right to marry, establish a home, and bring up children. Loving. The Slip Opinion in Kitchen states that Loving did not provide a fundamental right to marry based purely on race, one's gender, or even one's sexual orientation. Defendants argue that "Loving guarantees to all people that fall under the realm of our federal Constitutional, the fundamental right to marry whomever they choose." They further argue that " the focus of Loving is choice, not humanistic attributes over which an individual has no control such as race or sexual orientation. Citing Huntsman v. Heavilin, July 17, 2014 Slip Opinion.

Plaintiffs argue that they have a fundamental right to rear a child. "The State's refusal to sanction their intra-family adoption of [redacted] infringes upon petitioners' fundamental right to rear their child in violation of the Fourteenth Amendment."

Plaintiffs cite Kitchen, which cites the Slip Opinion in Pierce v. Soc'y of Sisters which addresses the liberty of parents and guardians to direct the upbringing and education of children under their control. Kitchen went further to say that "....childrearing, a liberty closely related to the right to marry, is one exercised by same-sex and opposite-sex couples alike, as well as by single individuals."

FULL FAITH AND CREDIT CLAUSE

The court first considers the petitioners' full faith and credit arguments.

In their memorandum of law the petitioners contend that "Marriage is a public act and record. Louisiana prohibition of the courts and officials of the State of Louisiana from recognizing valid marriages between two persons of the same gender contracted in another state violates the Full Faith and Credit Clause of the U.S. Constitution, Article IV, Section 1." They further state that "said denial of full faith and credit is unmerited and does not fall within the discretion of a State within our Republic." (no authority is cited). Petitioners also assert in their memorandum that "no compelling, overriding "public policy" has been presented by the State." Petitioners point out that defendants argue that Texas' 'public policy' allows the state to deny recognition to valid out-of-state marriages." Citing Deleon v. Perry, 2014 WL 715741 (W.D. Tex., Feb. 26, 2014), Slip Opinion. Petitioners add "but [Texas] fail[s] to articulate what that 'public policy is."

During oral argument, the court asked the question, "why not full faith and credit?" Petitioners responded by saying they "believe the U.S Supreme court got it right in Loving." They also opined that public policy [against same-sex marriage] is not as strong as the State argues. They further argued that the State can't hide behind its sovereignty.

Petitioners also argued that with respect to full faith and credit clause, it is unfair, and very capricious for Louisiana not to recognize the petitioners' marriage.

Petitioners conclude their oral argument by asking the court to reconsider the exhibits attached to the adoption file as well as the affidavits of petitioners. They suggested to the court that a particular teacher gave excellent remarks concerning [redacted] parentage and his very fine and compassionate character, and thus begged the court to 'renew' its previous Adoption Order.

The court now considers the defendants' full faith and credit arguments.

Defendants contend that the Full Faith and Credit Clause (FFC) does not require Louisiana to recognize the Petitioners' out-of-state same-sex marriage.

Defendants maintain that FFC also confirms that the States have authority to decide whether to adopt same-sex marriage. They further maintain that a State need not recognize marriages that violate public policy.

Defendants cite as authority the case of Baker v. General Motors Corp., 522 U.S. 222 (1998) which quoted the Supreme Court in Pac. Employers Ins. Co. v. Indus. Accident Comm'n., 306 U.S. 493 (1939). Those cases held that "While FFC demands "exacting" credit to another state's judgment, it "does not compel a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate."

Defendants cite Restatement (2d) Conflicts of Laws Section 92 which states that "One State's marriage is not a "judgment" that merits full faith and credit in

another State. A marriage has none of a judgment's earmarks—i.e., adversarial court proceeding, notice and opportunity-to-be-heard by affected parties, and a final decision."

Franchise Tax Bd. Of Cal. v. Hyatt, 538 U.S. 488 (2003) held "That one State recognizes same-sex marriage thus triggers a far lighter standard for those that do not: a State may apply its own marriage laws, provided it has "a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." Defendants add "That lenient standard does not oblige Louisiana to recognize Plaintiffs' same-sex marriages."

Williams v. North Carolina, stated that "Each state as a sovereign has a rightful and legitimate concern in the marital status of persons domiciled within its borders. It is also argued in their memorandum, that "Congress has confirmed that FFC does not require interstate recognition of same-sex marriages. Citing U.S. Const. art. IV, section 1. Defendants state that in 1996 Congress provided that " No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, ... respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State..... or a right or claim arising from such relationship." 28 U.S.C. A. section 1738C.

Defendants further assert that Sevcik (quoting Nevada v. Hall, 440 U.S. 410 (1979) rejected recognition claims asserted under equal protection because [FFC] didn't enable states to legislate for others or "project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it."

Defendants asserted in their oral argument that the "full faith and credit clause draws sharp distinction between a public act and a judgment and that no federal case has ever held that a marriage is a judgment for purposes of full faith and credit." The state defendants further argued that some judgments, e.g. adoption decrees and divorce decrees, are given full faith and credit among states, but not marriage, which is enacted by statutes.

Defendants agrees that "if the minor, [redacted] had been adopted in California, then Louisiana would be required to recognize that adoption."

Defendants maintain that "courts don't have the powers to overturn laws, even bad laws."

Defendants argued that Windsor said "marriage laws can vary in some respects from state to state, such as in minimum age requirement and the permissible degree of consanguinity."

With respect to Loving, defendants maintain that Loving was about laws that were so bad that the Court applied strict scrutiny analysis to strike down the law.

In their memorandum defendants contend that because Loving involved White Supremacy laws that violated the "clear and central purpose of the 14th Amendment" and triggered strict scrutiny, it is not applicable to this case. This court believes that Loving cannot be so easily dismissed. From a historical standpoint, we have not been able to find any analogy to this same-sex marriage ban since the miscegenation laws. Peggy Pascoe is an Associate Professor .....Not since Loving has this country had such a controversy over a set of laws directed restricting a certain class of people to marry whom they chose. Anti-miscegenation laws dealt with what people considered at that time, non-traditional marriages. The

Defendants contend that the Supreme court in Windsor struck down New York's Defense of Marriage Act (DOMA), "not.....as [the recent Tenth and Fourth Circuit] courts thought, because it classified by sexual orientation or burdened a fundamental right to marry someone of the same sex—but rather because DOMA's purpose [was] to influence or interfere with state sovereign choices about who may be married."

THE COURTS' ANALYSIS AND FINDINGS

Since taking this matter under advisement this court has had much to consider in addressing issues of a most serious nature.

This court adopts the reasoning of Windsor as discussed below. It is true that in 2013 the U.S. Supreme court in Windsor struck down New York's Defense of Marriage Act (DOMA) because it found that the purpose of that Act [was] to influence or interfere with the state's sovereign choices about who may be married; but Windsor also addressed the definition of marriage and spouse contained within DOMA. Section 3 of DOMA defined marriage as the "legal union between one man and one woman as husband and wife" for purposes of federal law 1 S.S.C. Section 7 (2012). Windsor like the case at hand involved a same sex marriage. The marriage in Windsor that took place in Ontario, Canada was recognized by the State of New York, but DOMA's definition of marriage had the effect of depriving the petitioners there of their liberty protected by the Fifth Amendment. The court stated that "DOMA seeks to injure the very same class New York seeks to protect. By doing so, it violates basic due process and equal protection principles applicable to the Federal Government." See U.S. Const. Amdt. 5. Winsor stated that "The State's decision to give this class of persons a right to marry conferred upon them a dignity and status of immense import. But the Federal Government uses the state-defined class for the opposite purpose, to impose restrictions and disabilities." Windsor stated: "DOMA's principal effect is to identify and make unequal a subset of state-santioned marriages. It contrives to deprive some couples married under the laws of their state, but not others, of both rights and responsibilities, creating two contradictiory marriage regimes

within the same State. It also forces same-sex couples to live as married for the purpose of the state law, but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect."

Windsor went further to explain that "Marriage laws vary in some respects form state to state. For example, the required minimum age is 16 in Vermont, but only 13 in New Hampshire.....Likewise the permissible degree of consanguinity can vary (most states permit first cousins to marry, but a handful .....prohibit the practice. But, these rules are in every event consistent within each state." Windsor cites the 2003 U.S. Supreme Court case of Lawrence v. Texas which held that " Private, consensual sexual intimacy between two adult persons of the same sex may not be punished by the State, and it can form " but one element in a personal bond that is more enduring." Windsor reasoned that marriage is more than a routine classification for purposes of certain statutory benefits. Windsor also cited 1973 U.S. Supreme Court case of Dept. of Agriculture v. Moreno which stated that "The Constitution's guarantee of equality "must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot" justify disparate treatment of that group. Windsor reasoned that "the..... practical effect of the law [DOMA] ..... Impose a disadvantage, separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States." Windsor concludes by saying "....though Congress has great authority to design laws to fit its own conception of sound national policy, it cannot deny the liberty protected by the Due Process Clause of the Fifth Amendment. .....the principal purpose and the necessary effect of [DOMA] are to demean those persons who are in a lawful same-sex marriage. This requires the Court to hold, that DOMA is unconstitutional as a deprivation of the liberty of the person protected by the 5th Amendment of the Constitution.

This court notes that the opinions and holding of Windsor addressed only persons of the same-sex that were in lawful marriages. All parties in this matter concede that the petitioners in this case were lawfully married in California.

While petitioners cite as authority the 2013 U. S. District Court for the Central Division of Utah in Kitchen v. Herbert, 961 F.Supp.2d 1185 (D. Utah 2013), we recognize that since that although the background and facts are similar, that case went to the U.S. Court of Appeals, Tenth Circuit. Hence we look to holdings of the Tenth Circuit. Kitchen v. Herbert, 755 F.3d 1193 (10th Cir. 6/25/14). Utah dealt with the gay/lesbian couples who wished to have their marriage recognized in Utah. The petitioners Kitchen, just the petitioners in this case challenge their state's Constitution, and two statutes that prohibit same-sex marriage as violative of plaintiffs' due process and equal protection rights under the 14th Amendment of U.S. Constitution. The Tenth Circuit in Kitchen affirmed the lower court and held that that Utah's laws were unconstitutional. The Tenth Circuit in Kitchen held: "The Fourteenth Amendment protects the fundamental right to marry,

establish a family, raise children, and enjoy the full protection of a state's marital laws. A state may not deny the issuance of a marriage license to two persons, or refuse to recognize their marriage, based solely upon the sex of the persons in the marriage union." We also adopt the ruling in Meyer v. Nebraska, 262 U.S. 390 (1923) which recognized that the right to marry and raise children in the home was "a central part of the liberty protected by the Due Process Clause."

We find that petitioners are in a better position than the state to make decisions regarding the custody and care of the child, [redacted]. To hold otherwise would be a denial of petitioner's personal liberty interest guaranteed under the Due Process Clause of the 14th Amendment.

Defendants, argue that Louisiana's marriage and adoption laws are rationally related to furthering its legitimate interests in a) linking children to intact families formed by their biological parents, and b) ensuring that fundamental social change occurs through widespread social consensus.

Defendants cite the U.S. Supreme court case of Baker v. Nelson, 409 U.S. 810 (1972) as authority to support their position that the Constitution does not require Louisiana to recognize same-sex marriage. But in Baker, the Supreme Court summarily dismissed the claim that the Constittution requires a state to recognize same-sex marriage, for want of a substantial federal question. The lower district court and the Tenth Circuit in Kitchen points out that "Baker is no longer controlling precedent. Both courts concluded "that doctrinal developments" had superseded Baker. The Tenth Circuit in Kitchen found that "Baker was decided before the Supreme Court held that "intimate conduct with another person ..... can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice." Citing Lawrence v. Texas. Hence, this court likewise recognizes that Baker is no longer binding precedent.

This court agrees with defendants' argument that marriage laws can vary in some respects from state to state, but Louisiana cannot define and regulate marriage to the extent that it infringes upon the constitutional rights of the petitioners. This court finds that there is no rational connection between Louisiana's laws prohibiting same sex marriage and its goals of linking children to intact families formed by their biological parents, or ensuring that fundamental social change occurs through widespread social consensus. What is meant by 'intact' is not clear. This court is not convinced that only linking children to intact families formed by a child's biological parent serves a legitimate state interest. Louisiana already allows for foster parent adoptions where there is no linkage to a child's biological parent or family. Such placements have been found to be in the best interest of the child. It would be illogical to say that intact families are only those that are formed by a child's biological parents. There can be no distinction between linking children to 'intact families' formed by biological parents and linking children who are already in intact families involving same-sex marriages

such as the Costanza/Brewer family. We firmly agree with Smith v. Org. of Foster Families for Equal. & Reform, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977) which stated "Children of same-sex couples may lack a biological connection to at least one parent, but "biological relationships are not [the] exclusive determina[nt] of the existence of a family."

As to the state's argument that laws prohibiting same-sex marriage ensure fundamental social change occurs through widespread social consensus, the State has given no legitimate state interest in waiting to ensure that fundamental social change occurs through widespread social consensus. It hasn't been shown what that widespread consensus might look like. This court notes that widespread social consensus can vary among our citizens, and not always for reasons that are fair and just, or comport with rights guaranteed by the U.S. Constitution. This court ask the question, how is there a strong public policy against same-sex marriage in this day and age? It is the opinion of this court that widespread social consensus leading to acceptance of same-sex marriage is already in progress. The moral disapproval of same-sex marriages is not the same as it was when Louisiana first defined marriage as a union between a man and a woman. Thus, for the reasons outlined above, the court holds that Louisiana's interests in linking children to intact families formed by their biological parents, or ensuring that fundamental social change occurs through widespread social consensus, simply do not justify banning same-sex marriage.

The court adopts the opinion in Carey v. Population Servs. Int'l , 431 U.S. 678 (1977) which stated that "It is clear that among the decisions that an individual may make without unjustified governmental interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education." This court agrees with petitioners' contention that "at a minimum, Chasity Brewer has a fundamental right to rear her biological child, [redacted] and that the State's refusal to sanction this court's prior Adoption decree infringes upon petitioners' fundamental right to rear [redacted]. This is a violation of the 14th Amendment. This court opines that if petitioners in this case had been a married opposite-sex couple, Louisiana would no doubt have given recognition to their marriage, the adoption of [redacted], and their personal liberty rights contained within the due process clause of the 14th Amendment.

There are those who might argue that gays and lesbians can be treated differently, and yet be considered to be equal to the rest of Americans. More than a century ago, there was a "case that turned upon the constitutionality of an act of the general assembly of the state of Louisiana, providing for separate railway carriages for the white and colored races." Plessy v. Ferguson, 163 U.S. 537 (1896). Plessy stood for the proposition that there could be separate but equal treatment of the two races. Fortunately for this country, the U.S. Supreme court was presented with the case of Brown v. Board of Education of Topeka, Shawnee County, Kan., et al, 347 U.S. 483 (1954), which overruled any doctrine

that held 'separate but equal'. That court held that "plaintiffs and others similarly situated ..... are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

This court accepts the petitioners' argument that Loving is relevant to their case. In the defendant's memorandum and oral argument, the State cited the case of Hernandez v. Robles, 855 N.E.2d 1, 8 (N.Y. 2006). The New York Court of Appeals upheld that state's man-woman marriage laws and explained that "to equate the same-sex marriage debate with the racist laws struck down in Loving is to suffer from historical myopia. Hernandez further articulated that "[T]he historical background of Loving is different from the history underlying this case. Racism has been recognized for centuries—at first by a few people, and later by many more—as a revolting moral evil. This country ..... has passed three constitutional amendments to eliminate that curse and its vestiges. Loving was part of the civil rights revolution of the 1950's and 1960's, the triumph of a cause for which many heroes and many ordinary people had struggled since our nation began."

Lest we forget, there was a time in America's history when gays and lesbians were not permitted to even associate in public. Many in this country held a deep seated hatred for the lifestyle of gays, lesbians, bisexuals etc., and with that hatred carried numerous arrests and imprisonment for those who chose a different lifestyle than what was "traditionally" recognized. We are past that now, but when it comes to marriage between persons of the same sex, this nation is moving towards acceptance that years ago would have never been contemplated. Kitchen stated "Thus the question as stated in Loving, and characterized in subsequent opinions, was not whether there is a deeply rooted tradition of interracial marriage, or whether interracial marriage is implicit in the concept of ordered liberty; the right at issue was "the freedom of choice to marry." There was a time when racially mixed marriages were non-traditional, as were marriages between certain degrees of cousins and common law marriages. The Third Circuit Court of Appeal of Louisiana, in 2005 gave full-faith and credit to a valid common-law marriage contracted in the state of Texas. Fritsche v. Vermilion Parish Hospital Service District # 2 et al., 893 So.2d 935 (La. App. 3 Cir. 2/2/05). Just a few decades ago in these United States, miscegenation was illegal. It is now something that most Americans in today's society hardly even debate. From a historical standpoint we've not been able to find any case law analogous to petitioner's non-traditional marriage based on their sexual orientation, other than America's miscegenation laws. Those laws were eventually resolved in the Supreme court decision in Loving v. Virginia.

This court does not believe that the historical background of Loving is so different from the historical background underlying state's bans on same-sex marriage. One cannot look at Loving without recognizing that it was about racism **as well as** a couples' decision to assert their right to choose whom to marry.

In Loving, the Supreme Court struck down Virginia's law anti-miscegenation statute as being in violation of both Equal Protection Clause and the Due Process Clause of the 14 Amendment. Loving was correctly decided, even though mixed-race marriages had been illegal in many states and for many years. Peggy Pascoe an Associate Professor and Beekman Chair of Northwest and Pacific History at the University of Oregon, wrote an article entitled, Why the Ugly Rhetoric Against Gay Marriage Is Familiar to this Historian of Miscegenation. (George Mason University's History News Network. Retrieved 14 July 2008). In her article she stated the following: "We are in the midst of an attempt to ground a category of discrimination in the fundamental social bedrock of marriage law. I would argue that it is virtually impossible to understand the current debate over same-sex marriage without first understanding the history of American miscegenation laws and the long legal fight against them, if only because both supporters and opponents of same-sex marriage come to this debate, knowing or unknowingly, wielding rhetorical tools forged during the history of miscegenation law."

Ms. Pascoe further wrote that "It is important to remember that there are real differences in the case of gay marriage and so- called mixed marriages. The situation of a lesbian or gay couple in 2004 is not the same as that of an interracial couple in the 1930s, when miscegenation laws carried criminal penalties, ... The federal government is a much bigger player in the fight over same-sex marriage than it ever was in the case of miscegenation law; in the case of interracial marriage, there was no federal equivalent to the Defense of Marriage Act."

This court has been asked to determine whether for purposes of the due process clause, the right to marry someone of the same sex is a 'right' deeply grounded in our Nation's history and tradition. In line with what the Tenth Circuit said in Kitchen in regards to Loving; we respond by saying, the question for this court is not whether the right to marry someone of the same sex is deeply rooted in our Nation's history and tradition; but the 'right' at issue is the freedom of choice to marry. Loving, 388 U.S. at 12, 87 S.Ct. 1817.

In Perry v. Schwarzenegger, 704 F. Supp.2d 921 (N.D. Cal. 2010) the court recognized that 'race restrictions, despite their historical prevalence, stood in stark contrast to the concepts of liberty and choice inherent in the right to marry." Meyer v. Nebraska recognized that the right to marry and raise children in the home was "a central part of the liberty protected by the Due Process Clause."

As to Louisiana Revenue Bulletin No. 13-024, if this court were to allow that Revenue policy to stand, it would have the effect of treating married same-sex couples, differently than married opposite-sex couples. The court cannot find that the State would have any rational reason for doing so. On the contrary, Rev. Bulletin No. 13-024 imposes a disadvantage and separate status on the Brewer/Costanza household, a politically unpopular group of individuals. Our

Constitution's guarantee of equality simply cannot permit disparate treatment of this group of individuals.

The court notes that neither petitioner nor the State interjected any argument using religion as ground for, or against same-sex marriage.

This court acknowledges that in deciding an equal protection claim, the Supreme court recognizes that the 14th Amendment does not deny states the power to treat different classes of people in different ways. However, the statute which creates different classes and by treating some people different must be related to the objective of that statute. We find in this case that Louisiana's laws banning same-sex marriage is entirely unrelated to the objective of those statutes. Therefore the court finds that the state's laws prohibiting the petitioners' same-sex marriage and the adoption of [redacted] are due to the sole reason that this couple is of the same gender, and thus those laws are arbitrary, capricious, discriminatory, and unrelated to any legitimate state interest. As such, La. Const. Article XII, Section 15 (the Defense of Marriage Act), and La. Civil Code Articles 86, 89, and 3520(B) are unconstitutional.

Defendant contend that our Third Circuit Court of Appeal held in this case that petitioners' stepparent adoption of [redacted] is not permitted under Louisiana law, and that determination is therefore law of the case. This statement is only partly correct. When this case went up to the Third Circuit Court of Appeal that court found that this trial court erred in holding the [Adoption] hearing without notifying the Attorney General. The Third Circuit noting that the Attorney General had not had an opportunity to be heard vacated the adoption and remanded the case with instructions to the trial court to [**hear arguments on all issues raised by both**] petitioners and the Attorney General. **Emphasis added.** For that reason both parties have submitted their arguments and ask this court to rule on the constitutionality of Louisiana's marriage and petitioner's adoption and whether Louisiana's laws against same-sex marriage violate the due process, and equal protection clauses of the 14th Amendment to the U.S. Constitution, and Article IV, Section 1 Full Faith and Credit Clause of the U.S. Constitution.

This court has search and found that nearly eight decades ago, our U.S. Supreme court spoke to the importance of this nation's full faith and credit clause. In Milwaukee County v. M.E. White Co., 269 U.S. 268 (1935) the court held that "the public policy of the forum state must give way, because the "very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation....."

Our Supreme court in Sherrer v. Sherrer, 334 U.S. 343 (1948) ordered the state of Massachusetts to give full faith and credit to a Florida divorce decree. Sherrer

stated " ..... If in its application local policy must at times be required to give way, such is part of the price of our federal system."

This court finds that Milwaukee County and Sherrer are controlling and hence the positions of those courts as stated above are embraced by this court.

ORDER

The court grants the Petitioners' Motion for Summary Judgment and denies the Defendants' Motion for Summary Judgment. It hereby declares that La. Const. Article XII, Section 15 (the Defense of Marriage Act/DOMA), and La. Civil Code Articles 86, 89, and 3520(B) are unconstitutional because they violate the Due Process and Equal Protection Clauses of the 14th Amendment to the U. S. Constitution and Article IV, Section 1, the Full Faith and Credit Clause, of the United States Constitution. Louisiana's Revenue Bulletin No. 13-024 (9/13/13) is likewise declared unconstitutional as it violates the petitioners' rights guaranteed by the Due Process and Equal Protection Clauses of the 14th Amendment of the U.S. Constitution. Hence, Tim Barfield in his official capacity as the Secretary of the State of Louisiana Department of Revenue, is hereby ordered to act in accordance with this courts' ruling and allow the petitioners to file their state tax returns as a couple whose marriage is valid and recognized in Louisiana. The court hereby enjoins the State from enforcing the above referenced laws to the extent that these laws prohibit a person from marrying another person of the same sex. Additionally, having ruled that the petitioners' marriage shall be recognized by the state of Louisiana, it follows that Angela Marie Costanza has satisfied the requirement of stepparent under the provisions of La. Ch.C. article 1243, which allows for Intrafamily adoption. The court reaffirms its previous decision in Adoption of [redacted] which declared Angela Costanza's adoption of [redacted] to be in the child's best interest. The minor child, [redacted] is declared, for all purposes, to be the child of petitioner, Angela Marie Costanza to the same extent as if [redacted] had been born to Angela Costanza in marriage. As such, the court further orders Devin George in his official capacity as the State's Registrar of Vital Records, to issue a new birth certificate naming Angela Costanza as [redacted] mother.

The State of Louisiana is hereby ordered to recognize the Petitioners' marriage validly contracted in California as lawful in this state, pursuant to the Full Faith and Credit guaranteed by Article IV, Section 1 of the United Stated Constitution.

THUS DONE AND SIGNED in chambers this 22nd day of September, 2014 in Lafayette, Louisiana.

EDWARD D. RUBIN, JUDGE, 15TH JDC

ATTN CLERK: Please forward a copy of this Minute Entry Ruling to the parties of record.

FILED THIS 22nd DAY OF Sept 2014

Deputy Clerk of Court