

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 2004-11325

DIVISION "C"

SECTION 6

FORUM FOR EQUALITY PAC, ET AL
VERSUS
CITY OF NEW ORLEANS, ET AL

NOTICE OF SIGNING OF JUDGMENT

Pursuant to La. C.C.P. Art. 1913, the parties are hereby notified that Judgment**
in the captioned matter was signed on August 20, 2004.

John D. Rawls
Attorney at Law
504-525-6023 fax

Roy A. Mongrue, Jr.
Angie R. LaPlace
Attorneys at Law
225-326-6096 fax

Randy Evans
Attorney at Law
504-523-8522 fax

J. Michael Johnson
Attorney at Law
318-222-0458 fax

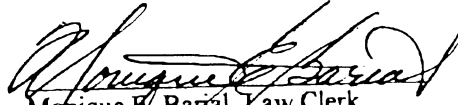
Regina O. Matthews
Attorney at Law
504-581-7635 fax

Deborah M. Henson
Attorney at Law
504-866-3898 fax

Merietta S. Norton
Attorney at Law
225-922-1180 fax

Thomas A. Robichaux
Attorney at Law
504-565-7691 fax

New Orleans, Louisiana, this 25th day of August, 2004.


Monique E. Barial, Law Clerk
Division "C"

** Note: The original Judgment signed on August 20, 2004 was inadvertently signed without the date of signature stamped on the Judgment. That original Judgment was subsequently stamped with the signature date of August 20, 2004 and is being re-sent to you.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2004-11325

SECTION 6

DIVISION "C"

FORUM FOR EQUALITY PAC a registered Louisiana Political Action Committee,
LAWRENCE E. BEST, JEANNE M. LeBLANC and WILLIAM SCHULTZ

VERSUS

CITY OF NEW ORLEANS, and THE HONORABLE W. FOX McKEITHEN,
in his official capacity as SECRETARY OF STATE of the STATE OF LOUISIANA only, and
not individually

FILED: _____
DEPUTY CLERK

JUDGMENT

This matter came before the court on August 20, 2004, on plaintiffs' Petition for Declaratory Relief and Permanent Injunction.

Present: John D. Rawls, attorney for Plaintiffs
K. Randall Evans, attorney for Plaintiffs
Regina O. Matthews, attorney for Plaintiffs
Meritta Spencer Norton, attorney for the Secretary of State
Angie R. LaPlace, attorney for the Attorney General
Roy A. Mongrue, attorney for the Attorney General
Thomas A. Robicheaux, attorney for the City of New Orleans
Deborah M. Henson, attorney for the City of New Orleans
J. Michael Johnson, attorney for Senators Hainkel and Fontenot,
Representatives Crowe and Scalise, Louisiana Family Forum Action and the
American Family Association of New Orleans

After considering the pleadings, the argument of counsel, and the law:

IT IS ORDERED, ADJUDGED, AND DECREED that the proposed amendment to the Louisiana Constitution, designated as Act No. 926, Acts of Louisiana (also designated as Article XII, §15 "Defense of Marriage") is itself unconstitutional, in that it does not confine itself to a single object as required by Article XIII, §1 of the Louisiana Constitution.

IT IS ORDERED, ADJUDGED, AND DECREED that the date set by the Legislature for the submission of the proposed amendment to the citizenry, that being September 18, 2004, is unconstitutional in that it is not a statewide election date, as required by Article XIII, §1, of the Louisiana Constitution, nor does the date represent a special election called for the specific purpose

of approval or disapproval of the proposed constitutional amendment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the defendant, The Honorable W. Fox McKeithen, in his official capacity as Secretary of State of Louisiana only, and not individually, is permanently enjoined from placing on the September 18, 2004, ballot, the proposed amendment designated as Act No. 926, Acts of Louisiana (also designated as Article XII, §15 "Defense of Marriage").

AUG 20 2004



CHRISTOPHER J. BRUNO
JUDGE PRO TEMPORE

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2004-11325

SECTION 6

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in his official capacity as SECRETARY OF STATE of the STATE OF LOUISIANA only, and
not individually

FILED: _____
DEPUTY CLERK

REASON FOR JUDGMENT

This matter came before the court on plaintiffs' Petition for Declaratory Relief and Permanent Injunction. Plaintiffs' seek to enjoin the placement of a proposed amendment to the Louisiana State Constitution banning same sex unions on the September 18, 2004, ballot.¹ This Court granted a preliminary injunction, in this matter, which is currently on appeal. Plaintiffs' argue that the proposed amendment violates Article XIII §1 (A) **Procedure** and (B) **Form of Proposal** of the Louisiana State Constitution. The Article XIII, § provides as follows:

Section 1. (A) **Procedure.** An amendment to this constitution may be proposed by joint resolution at any regular session of the legislature, but the resolution shall be prefiled, at least ten days before the beginning of the session, in accordance with the rules of the house in which introduced. An amendment to this constitution may be proposed at any extraordinary session of the legislature if it is within the objects of the call of the session and is introduced in the first five calendar days thereof. If two-thirds of the elected members of each house concur in the resolution, pursuant all to the procedures and formalities required for passage of a bill except submission to the governor, the secretary of state shall have the proposed amendment published once in the official journal of each parish within not less than thirty nor more than sixty days preceding the election at which the proposed amendment is to be submitted to the electors. Each joint resolution shall specify the statewide election at which the proposed amendment shall be submitted. Special elections for submitting proposed amendments may be authorized by law.

(B) **Form of Proposal.** A proposed amendment shall have a title containing a brief summary of the changes proposed; shall be confined to one object; and shall set forth the entire article, or the sections or other subdivisions thereof, as proposed to be revised or only the article, sections, or other subdivisions proposed to be added. However, the legislature may propose, as one amendment, a revision of an entire article of this constitution which may contain multiple objects or changes. A section or other subdivision may be repealed by reference. When more than one amendment is submitted at the same election, each shall be submitted so as to enable the electors to vote on them separately.

¹Civil Code Article 89 prohibits marriage between individuals of the same sex.

The procedures for the regulation to the amendment of the constitution are mandatory and are to be strictly construed. *Graham v. Jones*, 198 La. 507, 3 So 2d 761 (La. 1941). The first question directed to this Court is whether the amendment at issue is directed to a single object. The plaintiff introduced the testimony of Mr. Williams A Schultz. Mr. Schultz testified that the amendment presented him with a contradiction in his beliefs. On the one hand, he stated that he would vote for a ban on same sex marriages because of his strongly held religious beliefs. However, because of his equally strong support of civil unions, he would be forced not to vote for the amendment. Mr. Schultz further stated that in discussions that he has had with many voters only some favored gay marriages, while all of those with whom he spoke favored civil unions. Counsel for the Louisiana Family Forum Action pointed out to Mr. Schultz that the amendment does not use the term "civil union." However, the amendment is broader than "civil union" as it prohibits "the validation or recognition of the legal status of any union of unmarried individuals." Therefore, it includes a prohibition against civil unions. This Court finds that the amendment has dual objects. The *Graham*, supra court citing the requirement that every proposed amendment have a single object stated:

It requires no argument, nor citation of authorities to support the proposition that if the changes contained in the proposed amendment may logically viewed as parts of a single plan then their submission as one amendment meets the constitutional requirement. But does Act 384 of 1940 fall within this well recognized rule? That is the question presented for decision. 3 So 2d at 774.

In order to ascertain whether the provisions contained in the body of Act 384 of 1940 violate the constitutional prohibition against submitting more than one amendment in the same proposal, necessarily the entire text of the statute must be considered.

After analyzing the holdings in a number of earlier cases, Judge Lockwood, speaking for the Supreme Court of Arizona, in the case of *Kerby v Luhrs*, 44 Ariz. 208, 36 P. 2d 549, 554, 94 A.L.R. 1502, lays down the rule to be applied whether one or more than one constitutional amendment is covered by a proposition submitted as follows:

If the different changes contained in the proposed amendment all cover matters necessary to be dealt with in some manner, in order that the Constitution, as amended, shall constitute a consistent and workable whole on the general topic embraced in that part which is amended, and if, logically speaking, they should stand or fall as a whole, then there is but one amendment submitted. **But, if any one of the propositions, although not directly contradicting the others, does not refer to such matters, or if it is not such that the voter supporting it would reasonably be expected to support the principal of the others, then there are in reality two or more amendments to be submitted, and the proposed amendment falls within the constitutional prohibition.** (Emphasis added).

The *Graham, supra* court in discussing the single object rule, vis a vis, the voter's prerogative, citing the mandatory procedures for the amendment of a constitution quoted *McBee v. Brady*, 15 Idaho 761 as follows:

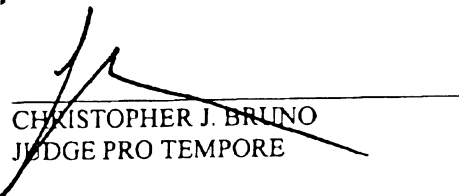
This provision of the Constitution is a wise one, and is intended to prevent several inconsistent and conflicting propositions from being submitted to the voters in the same amendment, and forcing the voter to approve or reject such amendment as a whole. In other words, it prevents burdening a meritorious proposition with a vicious one, and alike prevents a vicious proposition from having the support of a meritorious one, and **gives to the voter the right to have each separate proposition submitted to him in order that he may express his will for or against each separately without being compelled to accept a provision to which he is opposed in order to have adopted a provision which meets his favor.** (Emphasis added).

Mr. Schultz' testimony was compelling in that a vote on the proposed amendment would cause him to violate either his conviction against same sex marriages or his strong support of civil unions.

Considering the record as a whole, this Court finds that the proposed amendment to the Louisiana Constitution, designated as (designated as Article XII, §15 "Defense of Marriage") is itself unconstitutional, in that it does not confine itself to a single object as required by Article XIII, §1 of the Louisiana Constitution.

Further, for the reason orally assigned in the preliminary injunction trial and considering the record as a whole, the Court finds that the date set by the Legislature for the presentation of this proposed amendment to the citizenry, that being September 18, 2004, is not a statewide election date, as required by Article XIII, §1, of the Louisiana Constitution, nor does the date represent a special election called for the specific purpose of approval or disapproval of the proposed constitutional amendment. Accordingly, any inclusion of the proposed amendment on the September 18, 2004, ballot would be in violation of the Constitution's own procedural requirements respecting its amendments.

AUG 20 2004


CHRISTOPHER J. BRUNO
JUDGE PRO TEMPORE

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STATE OF LOUISIANA

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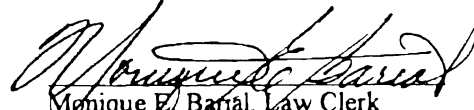
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New Orleans, Louisiana, this 20th day of August, 2004.


Monique E. Baral, Law Clerk
Division "C"

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in his official capacity as SECRETARY OF STATE of the STATE OF LOUISIANA only, and
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FILED: _____
DEPUTY CLERK

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American Family Association of New Orleans


After considering the pleadings, the argument of counsel, and the law:

IT IS ORDERED, ADJUDGED, AND DECREED that the proposed amendment to the Louisiana Constitution, designated as Act No. 926, Acts of Louisiana (also designated as Article XII, §15 "Defense of Marriage") is itself unconstitutional, in that it does not confine itself to a single object as required by Article XIII, §1 of the Louisiana Constitution.

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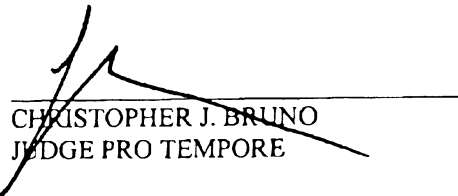
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