

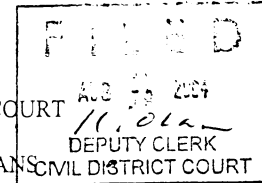
FORUM FOR EQUALITY PAC,  
a registered Louisiana Political Action Committee,  
LAURENCE E. BEST, JEANNE M. LeBLANC  
and WILLIAM SCHULTZ

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: \_\_\_\_\_

CIVIL DISTRICT COURT  
PARISH OF ORLEANS



STATE OF LOUISIANA

NO. 2004-11325

DIV. "C", SECTION 6

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DEPUTY CLERK

**INTERVENORS' MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS' PETITION FOR PERMANENT INJUNCTION  
AND DECLARATORY JUDGMENT**

MAY IT PLEASE THE COURT:

Intervenors, Hon. Heulette "Clo" Fontenot and Hon. John J. Hainkel, Jr., members of the Louisiana State Senate, Hon. A.G. Crowe and Hon. Steve J. Scalise, members of the Louisiana House of Representatives, the Louisiana Family Forum, Louisiana Family Forum Action, and the American Family Association of New Orleans, not-for-profit organizations, respectfully submit this memorandum in support of the defendant, Hon. W. Fox McKeithen, Secretary of State of the State of Louisiana, and in opposition to plaintiffs' Petition for Permanent Injunction and Declaratory Judgment. Intervenors incorporate by reference herein their previous memorandum, entitled, "Brief of *Amici Curiae*, [ ], in Support of Defendants' Exceptions and in Opposition to the Plaintiffs' Claim for Preliminary Injunction," and filed August 13, 2004.

The issuance of a permanent injunction takes place only after a trial on the merits, in which the burden of proof must be founded on a preponderance of the evidence, rather than a prima facie showing. *Bollinger Machine Shop and Shipyard, Inc. v. U.S. Marine, Inc.*, 595 So.2d 756, 758 (La.App. 4th Cir.); *writ denied*, 600 So.2d 643 (La.1992). The requirements for the permanent injunction sought herein cannot be met by the plaintiffs, because they cannot show by a preponderance of the evidence that the Legislature failed to follow LA. CONST. ART. XIII, § 1(A) when it provided the election date for the proposed constitutional amendment. Moreover, the plaintiffs cannot prevail on any of the other claims they have made in these proceedings.

## ARGUMENT

### I. THE SELECTED REFERENDUM DATE OF SEPTEMBER 18, 2004, MEETS ALL THE EXISTING CRITERIA FOR A STATEWIDE ELECTION.

In its Reasons for Judgment issued August 13, 2004, this Honorable Court explained that its grant of the plaintiffs' Motion for Preliminary Injunction was based upon the finding that "[t]he election of September 18[, 2004,] is not a statewide election as that term is used in Article [XIII], Section 1(A) [of the state constitution]." *Reasons for Judgment*, p.3, ¶2. That "failure of the Legislature . . . placing this proposed amendment to the Constitution at an election other than a statewide election is a prohibitory act and will thus be enjoined." *Id.*, p.4, ¶2. Interveners respectfully submit that—for the reasons set forth herein and in the defendants' briefs, and upon the evidence that will be presented at trial—this Court must reconsider its earlier findings, dissolve the preliminary injunction, and deny the permanent injunction requested by the plaintiffs.

At issue before the Court are the last two sentences of LA. CONST. ART. XIII, § 1(A).

Those sentences read in their entirety:

*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.*

The Legislature followed these rules precisely when it passed the current proposed amendment by resolution (Act 926 of the 2004 Regular Session), and specified the third Saturday in September for the election.

#### A. Consideration of Timing.

*The date of September 18, 2004, is clearly a valid and lawful option for a statewide election.* Plaintiffs herein cannot show otherwise. To determine the validity of this date, the trier of fact must review the relevant provisions of the Louisiana Election Code. Adopted by the Legislature pursuant to the single-sentence mandate of LA. CONST. ART. XI, § 1, the Election Code (Title 18 of the La. Revised Statutes) sets forth the rules "for the conduct of all elections." These provisions have been affirmed many times in our jurisprudence.

The constitutional grant of this power in a single sentence indicates the constitutional intent that the Legislature have broad powers to legislate the conduct, *when and how*, of the election process. Our Louisiana Constitution is unlike the Federal Constitution. Legislation not constitutionally prohibited is allowed the Legislature.

*Hurd v. McKeithen*, 28,371 (La.App. 2 Cir. 10/31/95), 663 So.2d, 537, 541, writ denied, 95-2650 (La. 11/2/95), 664 So.2d 404, Citing *Aguillard v. Treen*, 440 So.2d 704 (La. 1983); *Swift v. State*,

342 So.2d 191 (La. 1977) (emphasis added).

The “*when*” of the election process in Louisiana is governed by La. R.S. 18:402. According to one of its provisions, § 402(B)(1), “Congressional primary elections shall be held on the first Saturday in October of an election year.” This practice was followed until it was successfully challenged in federal court in 1995 by voters who alleged that § 402(B)(1) is a violation of federal statutes which require a uniform, nationwide election day for members of Congress. *See Foster v. Love*, 522 U.S. 67, 118 S.Ct. 464 (1997). On remand, the Fifth Circuit confirmed that § 402(B)(1) is indeed unconstitutional as applied—but it is *severable* in that manner of application from the remainder of the Election Code. *See Love v. Foster*, 147 F.3d 383, 385 (5<sup>th</sup> Cir. 1998). Thus, the court held:

The question which remains is whether the Louisiana election schema, without the October first primary, may stand on its own. We harbor no doubt that this question may be answered in the affirmative. *The Louisiana election code systemically is complete*. It provides for an open primary for election of state and federal office holders. It establishes detailed procedures for implementing elections and regulating the voting process. *It provides an encompassing body of law governing the conduct of local, state, and federal elections*.

*Id.*, at 386 (emphasis added).

In other words, while the *Love* cases have ensured that *federal* elections in Louisiana may not be held prior to Federal Election Day (“the first Tuesday following the first Monday in November”), *there is no existing prohibition against a purely statewide matter—such as a proposed constitutional amendment—being brought before the voters at any time provided by the Election Code.*<sup>1</sup>

What time, then, would be appropriate? To answer that question, the Legislature looked to the still existing provision of LA. R.S. 18:402(B)(1). As explained more fully below in Section I(B) of this brief, because the Election Code still includes § 402(B)(1), regardless of its inapplicability to an actual Congressional election after *Love v. Foster*, the dates called for by that statute—in this instance, September 18, 2004—are still rightfully considered “congressional elections” where no congressional candidate appears on the ballot. But, why September 18<sup>th</sup>, and not “the first Saturday in October of an election year,” as provided by the statute?

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<sup>1</sup> “The trial court ordered that the upcoming congressional election and, absent intervening action by the Legislature, future elections for members of Congress shall be held on federal election day, the first Tuesday following the first Monday in November. . . . In the event no candidate receives a majority of the votes cast, the court ordered a runoff election on the next available election date contained in Louisiana law, R.S. 18:512(C), the third Saturday after federal election day. . . . *Otherwise, the elections are to be conducted in full accordance with the Louisiana election code as currently written.*” *Love*, 147 F.3d at 384-85.

Although Saturday, October 2<sup>nd</sup>, would have seemingly been the appropriate date for the proposed constitutional amendment at issue,<sup>2</sup> there is yet another provision that the Legislature had to consider in this case. Section 402(G) states as follows:

**Prohibited days.** No election of any kind shall be held in this state on any of the days of Rosh Hashanah, Yom Kippur, Sukkoth, Shimini Atzereth, Simchas Torah, the first two days and the last two days of Passover, Shavuoth, Fast of AV, or the three days preceding Easter. If the date of any election falls on any of the above named days, the election shall be held on the same weekday of the preceding week.

Pursuant to the limitation imposed by § 402(G), the Legislature *was required* to place the proposed amendment on the statewide ballot for September 18<sup>th</sup>. A review of the calendar explains why: In 2004, the “first Saturday in October” (October 2<sup>nd</sup>) falls in the middle of the Jewish holiday, Sukkoth.<sup>3</sup> Defaulting then to “the same weekday of the preceding week” (or, September 25<sup>th</sup>), created a conflict with Yom Kippur.<sup>4</sup> An additional, required default to “the same weekday of the preceding week” then yielded the selected date, Saturday, September 18<sup>th</sup>.

Reviewing the applicable provisions of state law, it is clear that the Legislature acted lawfully and appropriately when it provided for the timing of the referendum vote on the proposed constitutional amendment. *Via* the power granted by LA. CONST. ART. XI, § 1, the Election Code sets forth the rules “for the conduct of all elections.” As the courts have affirmed, “The Louisiana election code systemically is complete.” *Love*, 147 F.3d 386. Its statutes, then, including La. R.S. 18:402, must be strictly followed by lawmakers. That is what lawmakers did on this occasion, and that is why the plaintiffs cannot prevail in their claims.

#### **B. Characterization of the Referendum.**

In the Reasons for Judgment granting plaintiffs’ Motion for Preliminary Injunction, this Honorable Court seemed to express some doubt concerning the characterization of the scheduled vote on the proposed amendment, when it stated: “The election of September 18 is not a statewide election as that term is used in Article [XIII], Section 1(A).” *Reasons for Judgment*,

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<sup>2</sup> Interestingly, the Legislature could also have referred to a following provision of R.S. 18:402, namely subsection (F). It specifies: “Every ... other election at which a proposition or question is to be submitted to the voters shall be held only on one of the following dates.” Among the options is “The first Saturday in October ... of even numbered years.” §402(F)(2).

<sup>3</sup> Sukkoth is the Jewish festival celebrating the harvest and commemorating the period after the exodus from Egypt during which the Jews wandered in the wilderness. It is celebrated for nine days by Orthodox and Conservative Jews outside of Israel, and for eight days by Reform Jews and by Jews in Israel. It is celebrated in 2004, between September 30<sup>th</sup> and October 5<sup>th</sup>. *See, e.g.*, <http://www.torah.org/learning/yomtov/calendar/5765.html>; “Judaism 101” <http://www.jewfaq.org/holiday5.htm>.

<sup>4</sup> Yom Kippur, also known as the Day of Atonement or Fast of Expiation, is the most sacred Jewish festival, and is the only fast day prescribed by the Torah. It must not fall on a Friday or Sunday. It is celebrated in 2004, on September 25<sup>th</sup>. *See, id.*

p.3, ¶2. To the contrary, intervenors submit that the scheduled vote is indeed correctly considered a “statewide election.” Plaintiffs can support no other logical conclusion.

When exactly *does* an election qualify as one held “statewide?” According to WEBSTER’S NEW COLLEGIATE DICTIONARY 1152 (9<sup>th</sup> ed. 1987), the term “statewide” is defined as follows: “<sup>1</sup> affecting or extending throughout all parts of a state; <sup>2</sup> throughout the state.” Intervenors suggest that the doubt of the Court can be settled just that easily.

In his affidavit filed herein by the defendants, Louisiana Commissioner of Elections Wade O. Martin, III, will testify that the September 18, 2004, election on the proposed constitutional amendment will involve all 4,124 precincts throughout the state, and 7,400 voting machines. *Affidavit of Wade O. Martin, III*, ¶5.<sup>5</sup> He will add further, “The statewide ballots include not only the proposed constitutional amendment, but also any candidate races and/or proposition questions for each applicable precinct.” *Id.* It is irrelevant whether some of the individual precincts may not include candidate races or other questions on the ballot for September 18<sup>th</sup>. *What matters is that this one issue of statewide concern, the proposed amendment, is being presented everywhere in the state.*

Commissioner Martin will also testify that “[t]he gubernatorial and congressional elections *set forth in the Louisiana Election Code* are budgeted by the Department of State as statewide elections, including the September 18, 2004 election.” *Affidavit of Wade O. Martin, III*, ¶ 11 (emphasis added). The State of Louisiana pays “all of the costs of election expenses for gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot.”<sup>6</sup> *Id.*, at ¶ 12. Because the Election Code still includes La. R.S. 18:402(B)(1), regardless of its inapplicability to an actual Congressional election after *Love v. Foster*, the dates called for by that statute—in this instance, September 18, 2004—are still considered “congressional elections” where no congressional candidate appears on the ballot. *Id.* It is important to note that the *Love* cases did not require the Legislature to remove La. R.S.

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<sup>5</sup> If the said affidavit, to be submitted by defendants, is opposed by the plaintiffs, defendants will introduce evidence in the form of witness testimony at the hearing which establishes all of the facts attributed herein to the *Affidavit of Wade O. Martin, III*. If Mr. Martin himself is unavailable for trial, another qualified official from the Office of the Commissioner of Elections for the Department of State will appear to present this same evidence.

<sup>6</sup> The exception to this is when a local or municipal candidate or issue appears on the ballot. In that scenario, the local entities will cover one half the costs of the election expenses. *Affidavit of Wade O. Martin, III*, ¶12.

18:402(B)(1) from our statute books.<sup>7</sup> It thus remains applicable for use as an available date for other, *non-federal*, statewide elections, and the Secretary of State and the Legislature have been applying it that way for years.

Commissioner Martin will explain that La. R.S. 18:1400.1 through 1400.4 place these requirements to cover the election expenses upon the state. *Id.* Also, costs incurred for the holding and conducting of any “special election” when a proposed constitutional amendment appears on the ballot are paid by the state from funds appropriated for those purposes. *See* La. R.S. 18:1400.1(B), 1400.2(B), 1400.3(B), 1400.4(B). Intervenors submit that the date of September 18, 2004, could also be construed by the Court as an appropriately called “special” statewide election pursuant to the language of Act No. 926, and the authority granted by law under La. R.S. 18:402(F)(2).

Another characteristic of the September 18<sup>th</sup> referendum that shows it is a “statewide” election is the fact that it is being conducted, overseen, and tabulated by and through the Office of the Secretary of State. *Affidavit of Wade O. Martin, III*, ¶¶ 1-4.

[O]ur statutes and jurisprudence clearly reflect that there be a distinction between statewide or multiparish or district races and those which are purely local in nature. In the former situations it is the Secretary of State who tabulates the results. In the latter case the local committee compiles and tabulates the result.

*LeCompte v. Bd. of Election Comm'n of Terrebonne*, 331 So.2d 173, 176 (La. App. 1<sup>st</sup> Cir. 1976).

The Reasons for Judgment issued August 13, 2004, seem to imply that only the Federal Election Day can serve as a statewide election date. It reads, in relevant part: “The statewide election that’s going to take place in this state this year, *the only one there is* is the presidential election, which is scheduled for November 2, 2004.” *Reasons for Judgment*, p.3, ¶2 (emphasis added). The Court must acknowledge that there can be more than one “statewide election” in any given year. In fact, a distinction can be, and *is*, made in Louisiana law between such a non-Federal Election Day “statewide election” and the prescribed Congressional elections to be held on Federal Election Day. For one example, consider the relevant language of La. R.S. 17:23(B), which concerns how the office of the state superintendent of education is to be filled in the event of a vacancy (emphasis added):

A vacancy in the office of superintendent shall be filled by the first assistant.

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<sup>7</sup> “Absent action by Congress, any further changes that might be made therein [to the Louisiana Election Code] are the exclusive province of the Louisiana Legislature and Governor, as are any refinements or valid significant changes they may wish to make as a consequence of today’s resolution.” *Love*, 147 F.3d at 387.

However, if the unexpired term exceeds one year, the office shall be filled by election at the next **regularly scheduled congressional *or* statewide election**, and the first assistant shall serve only until the person then elected takes office.

On review of the facts herein, it is clear that the date selected for the vote on the proposed constitutional amendment is appropriate. Moreover, there is no question that September 18, 2004, will and should be characterized as a legitimate "statewide election," as that term is anticipated by LA. CONST. ART. XIII, § 1, and common sense. For all of these reasons, there is no way that the plaintiffs herein can meet their burden necessary for issuance of a permanent injunction. It must be denied.

**II. THE PROPOSED CONSTITUTIONAL AMENDMENT CONSISTS OF A SINGLE, PERMISSIBLE OBJECT.**

The other claims of the plaintiffs are similarly without merit. The language of the proposed constitutional amendment is important to review. In its final form, the suggested new Article XII, § 15 reads:

§ 15. Defense of Marriage

Section 15. 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.

A plain reading of this language makes clear that the single object of the proposed amendment is to "protect marriage" in Louisiana from all perceived threats: redefinition (addressed by sentence 1); lawless acts by public officials and decisions by courts interpreting our own constitution (sentence 2); other alternative, legally recognized arrangements that would rival marriage (sentence three); and lastly, recognition of unions in violation of the above from other states (sentence 4). The sole and only object of the legislation is to protect traditional marriage. This objective could not be adequately accomplished without the inclusion of all four sentences above.

**A. The Four Parts of the Amendment Are All Germane to One Another.**

Few constitutional amendments consist of just one sentence. If that were a limitation, the constitution would require thousands of individual amendments. For this logical reason, there is no limitation upon how many sentences, or how many separate parts, that a proposed amendment may have. The only requirement is that the component parts all be germane to one another.

The jurisprudence makes this requirement clear. In *Miller v. Greater Baton Rouge Port Comm'n.*, 225 La. 1095, 74 So.2d 387 (La. 1954), taxpayers brought suit to permanently enjoin the Port Commission from issuing any new bonds under the constitutional amendment that established the Commission. The Louisiana Supreme Court upheld the amendment, in spite of its complexity, and explained:

The establishment of the Port and its administration is a single plan and only one object has been dealt with. As pointed out in *Graham v. Jones*, 198 La. 507, 3 So.2d 761, **where an amendment may be logically viewed as parts of a single plan, it may be submitted as one amendment.** Where an act of the Legislature or an amendment to the Constitution embodies a single plan and every provision therein is **germane** to that plan, it is not violative of the Constitution. Similar amendments have been approved in the cases of *Hotard v. New Orleans*, 213 La. 843, 35 So.2d 752 (La. 1948); and *Orleans Parish School Board v. New Orleans*, La.App., 56 So.2d 280.

*Miller*, 225 La. At 1105, 74 So.2d at 390 (emphasis added).

In *Hotard*, the constitutional amendment in question was one very long set of provisions, authorizing the city of New Orleans to establish and maintain railroad passenger stations, and, as an incident thereto, to eliminate certain grade crossings of tracks entering the station or stations.

Again, the Louisiana Supreme Court was not bothered by the breadth of the provision:

The [amendment] covers nearly five pages of the Constitution; but all of its provisions relate to the one purpose of authorizing the city, acting through the Public Belt Railroad Commission, to construct, maintain and operate one or more passenger stations, and, as an incident thereto, to eliminate grade crossings.

*Hotard*, 213 La. at 852-53. In fact, the Court found that it would have been unworkable to present the amendment otherwise:

*The provisions of the amendment are so interrelated that it would not have been feasible to submit each one of them to the voters as a separate and independent amendment of the Constitution.* If they had been so submitted, and if the voters had voted for some of the propositions and against others, the purpose of the amendment might have been defeated. In fact, a careful reading of the amendment reveals that it would have been practically if not actually impossible for the voters to vote upon the adoption or rejection of each provision separately.

*Id.*, at 853 (emphasis added).

The proposed constitutional amendment—which is comprised of only four simple sentences—is far less complex and voluminous than those amendments that were upheld in *Miller* and *Hotard*. As in *Hotard*, however, the provisions are so interrelated that it would not have been feasible, and practically impossible, to present them separately. Such would have defeated the clear and stated purpose of the amendment—to protect traditional marriage from all perceived threats. There is no question that all four sentences of the proposed Article XII, § 15 are germane to one another. For this reason, the plaintiffs' challenge must fail.

B. The Plaintiffs' Suggested "Dilemma" Does Not Exist.

Much has been made at the hearing and in the briefs of this case, of the supposed "dilemma" of the plaintiff, William Schultz. Yet, *this "dilemma" is based purely on speculation and imagination, and not on the actual language of the proposed amendment.* For example, plaintiffs argue that Mr. Schultz is stuck in an inescapable quandary regarding the impending vote because he opposes same sex marriage, but supports civil unions, and has an "earnest desire" to see both realities become law. To that, we would say, "What's new?"

Virtually every law produced by the "sausage factory" of a legislature is bound to make *some* people unhappy or unsatisfied. Virtually every proposed constitutional amendment puts *some* individuals and classes of persons in an "earnest desire" quandary. Intervenors suggest that they could produce hundreds of persons still disgruntled over their choices provided by the recent vote on "The Stelly Plan" [Act 88 of the 2002 Regular Session, amending Article VII, § 4(A) and adding § 2.2]. Thousands of Louisianians had an "earnest desire" on that election day in 2002 to vote *for* the permanent exemption of food for home use, residential utilities, and prescription drugs from the state sales tax—but an equally "earnest desire" to vote *against* changing the income tax brackets to raise the tax on higher income earners. They could not do both, but the proposed amendment was not subject to legal challenge on that basis. Because we may like some parts of a law, and abhor other parts of it, does not make the law unconstitutional.

Importantly, every item in the parade of horrors suggested by the plaintiffs herein is based on pure speculation. Plaintiffs have argued that sentence three of the proposed amendment will wreak havoc in the lives of homosexuals throughout the state by automatically invalidating and somehow magically dissolving their private contracts, their wills, and business arrangements. These dramatic claims are wholly without merit. Sentence three merely states: "A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized." There is no mention in this language of the term "civil unions," just as there is no indication here that a homosexual's Last Will and Testament or Power of Attorney document will automatically be invalidated upon passage of the amendment.

Any and all of such determinations would be left for courts *at other points in the future* to sift through and decide how the terms "identical" and "substantially similar" should be interpreted and applied, *if the amendment were to pass, and if any legal cases were ever brought*

*under the plaintiffs' theories.* The present case is simply not ripe for a determination of proposed amendment's substantive constitutionality or eventual effects. To do so, would be to put the cart WAY before the horse. The people deserve a vote, as their constitution allows them.

The sky simply isn't falling—as the plaintiffs' courtroom antics have been orchestrated to portray—and the dilemma they have imagined simply *does not exist* on the face of the proposed amendment. Their hypotheses certainly offer no legal ground for a court to strike the amendment now.

C. **The Legislature is Seeking a Legitimate End Through Permissible Means.**

The primary and underlying proposition of the plaintiffs in this case is their extraordinary and legally unsupported suggestion that the Legislature may not seek at all to offer an amendment to the constitution with regard to the state's definition of marriage. To the contrary, *of course it can.* As the plaintiffs themselves acknowledge, the Louisiana Supreme Court has long held that “it is an elementary proposition of constitutional law, that the Constitution may be amended by the people in whole or in part.” *Police Jury of Parish of Washinton v. All Taxpayers, Property Owners and Citizens of Industrial District No.1 of Parish of Washington*, 278 So.2d 474, 478 (La. 1973). Citing cases going back nearly one hundred years, the Court affirmed: “There is, in fact, no limitation upon the power of the people of Louisiana to amend their Constitution in any respect, **providing that the amendment does not conflict with the Constitution of the United States.**” *Id.* (emphasis added). Because the proposed amendment at issue does not conflict with the United States Constitution, the plaintiffs cannot support their unfounded claims.

Intervenors refer to, and include by reference herein, their previous memorandum, entitled, “Brief of *Amici Curiae*, [ ], in Support of Defendants' Exceptions and in Opposition to the Plaintiffs' Claim for Preliminary Injunction,” and filed August 13, 2004. That brief explains in detail why there is no federal constitutional right to same-sex “marriage,” and why the proposed amendment does not violate the Louisiana Constitution's Declaration of Rights, LA. CONST. ART. I, but rather, supports it. Moreover, the brief provides explanation why Louisiana's equal protection clause does not create a right to same-sex marriage, and why the State has a strong and prevailing interest in protecting the traditional definition and paradigm for marriage. Homosexuality is not a protected classification in LA. CONST. ART. I, § 3. In fact, homosexuals were *specifically and intentionally excluded* as a protected class. See Brief of *Amici Curiae*, p.6.

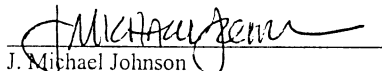
CONCLUSION

All of the above being true, it is clear that the proposed amendment is lawful as drafted and as appropriately scheduled for the statewide election on September 18, 2004. The plaintiffs thus have no merit to their case. Their creative interpretations of Louisiana law, and their unfounded theories for what effect the amendment would have if passed, must be rejected by this Honorable Court. Intervenors thus respectfully request that the Court dissolve the preliminary injunction and deny the permanent injunction requested by the plaintiffs.

Dated: August 19, 2004.

Respectfully submitted,

ALLIANCE DEFENSE FUND  
Southeast Regional Service Center

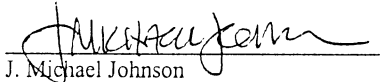


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**CERTIFICATE OF SERVICE**

I, the undersigned counsel, do hereby certify that a copy of the foregoing pleading has been served upon all counsel of record, via facsimile, and by depositing the same in the U.S. Mail, postage prepaid and properly addressed, on this 19<sup>th</sup> day of August, 2004.



J. Michael Johnson