

No. 2014-2184

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

ADA MERCEDES CONDE-VIDAL; MARITZA LOPEZ-AVILES; IRIS DELIA RIVERA-RIVERA; JOSE A. TORRUELLAS-IGLESIAS; THOMAS J. ROBINSON; ZULMA OLIVERAS-VEGA; YOLANDA ARROYO-PIZARRO; JOHANNE VELEZ-GARCIA; FAVIOLA MELENDEZ-RODRIGUEZ; PUERTO RICO PARA TOD@S; IVONNE ALVAREZ-VELEZ,

Plaintiffs-Appellants,

v.

DR. ANA RIUS-ARMENDARIZ, in her official capacity as Secretary of the Health Department of the Commonwealth of Puerto Rico; WANDA LLOVET DIAZ, in her official capacity as the Director of the Commonwealth of Puerto Rico Registrar of Vital Records; ALEJANDRO J. GARCIA-PADILLA, in his official capacity as Governor of the Commonwealth of Puerto Rico; JUAN C. ZARAGOSA-GOMEZ, in his official capacity as Director of the Treasury in Puerto Rico,

Defendants-Appellees.

On Appeal from the United States District Court for the District of Puerto Rico in
Case No. 3:14-cv-01253, Judge Juan M. Pérez-Giménez

REQUEST FOR ASSIGNMENT

April 6, 2015

Pursuant to Rule 34.1(b)(2) of the Local Rules of the United States Court of Appeals for the First Circuit, Plaintiffs-Appellants hereby request that oral argument in this case be scheduled for a date as soon as possible and, in any event, no later than this Court's July/August 2015 sitting. As reasons therefor, Plaintiffs-Appellants state as follows:

This appeal raises a number of constitutional challenges against Puerto Rico's laws prohibiting same-sex couples from marrying and denying recognition to same-sex couples' valid out-of-state marriages. All parties before this Court agree not only that the District Court erred in dismissing Plaintiffs-Appellants' claims by relying on *Baker v. Nelson*, 409 U.S. 810 (1972), *see* Appellants' Br. 15-27; Appellees' Br. 15-22, but also that this Court may properly consider—and should reverse—the District Court's holding that the Marriage Ban passes constitutional muster. *See* Appellants' Br. 11-12; Appellees' Br. 10-11.

Nonetheless, despite its agreement that Puerto Rico's Marriage Ban infringes Plaintiffs-Appellants' constitutional rights, the Commonwealth will continue to enforce its Marriage Ban absent a decision by this Court finding the Ban unconstitutional. As a result, Plaintiffs-Appellants' ongoing harms will continue unabated, and thousands of same-sex couples and their children will be deprived of their constitutional rights each and every day that goes by. Aside from the concrete and particularized harms each Plaintiff-Appellant suffers, the

infringement of Plaintiffs-Appellants' fundamental right to marry, liberty interests, and right to equal protection constitutes ongoing irreparable harm that warrants this Court's prompt attention and resolution. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (the loss of constitutional "freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

Plaintiffs-Appellants recognize that the Supreme Court is currently considering the constitutionality of marriage bans from Ohio, Kentucky, Michigan, and Tennessee in six consolidated cases. *See, e.g., Obergefell v. Hodges*, 135 S. Ct. 1039 (2015) (granting certiorari). Those cases will be argued April 28, 2015. *See Order, Obergefell*, No. 14-556 (U.S. Mar. 6, 2015) (scheduling oral argument). The Commonwealth has requested that this Court not hold oral argument in this appeal until a decision is reached in *Obergefell*, because the issues in both cases overlap substantially. *See Appellees' Br. 4*. Plaintiffs-Appellants recognize the potential implications of a ruling in *Obergefell*. However, in light of the ongoing constitutional violations they continue to experience, Plaintiffs-Appellants respectfully request that this Court schedule oral argument in this case for a date as soon as is feasible or, in the alternative, establish an expedited post-*Obergefell* schedule—including any additional briefing the Court may require—to allow this case to be heard this summer.

This request is not unusual. The Fourth, Fifth, Seventh, Eighth, and Tenth Circuits have all granted expedited treatment of cases involving the constitutionality of state marriage bans. *See, e.g.,* Order, *Bostic v. Schaefer*, No. 14-1167 (4th Cir. Mar. 10, 2014); Order, *Robicheaux v. Caldwell*, No. 14-31037 (5th Cir. Sept. 25, 2014); Order, *Baskin v. Bogan*, No. 14-2386 (7th Cir. June 30, 2014); Order, *Lawson v. Kelly*, No. 14-3779 (8th Cir. Jan. 22, 2015); Order, *Rosenbrahn v. Daugaard*, No. 15-1186 (8th Cir. Feb. 3, 2015); Order, *Waters v. Ricketts*, No. 15-1452 (8th Cir. Mar. 5, 2015); Order, *Kitchen v. Herbert*, No. 13-4178 (10th Cir. Dec. 30, 2013). Indeed, the Eighth Circuit is holding oral arguments in cases arising out of Arkansas, Missouri, Nebraska, and South Dakota on May 12, 2015. *See* Order, *Rosenbrahn*, No. 15-1186 (Feb. 3, 2015) (setting oral argument for marriage cases from Missouri, Nebraska, and South Dakota for week of May 11-15, 2015); Order, *Waters*, No. 15-1452 (Mar. 5, 2015) (setting oral argument for marriage case from Arkansas for May 12, 2015).

For these reasons, Plaintiffs-Appellants respectfully request that oral argument be held as soon as possible and, in any event, no later than this Court's July/August sitting. If the Court deems additional briefing to be necessary, Plaintiffs-Appellants also respectfully request that the Court issue a briefing schedule to allow such an expedited argument to occur.

April 6, 2015

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Request for Assignment with the Clerk of the United States Court of Appeals for the First Circuit via the CM/ECF system this 6th day of April, 2015 to be served on the following counsel of record via ECF:

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