

---

---

UNITED STATES DISTRICT COURT  
for the

Eastern District of Louisiana

Jonathan P. Robicheaux  
*Plaintiff/Petitioner*

v.

Civil Action No. 13-CV-05090

James D. Caldwell in his official capacity as the Louisiana Attorney General  
*Defendant/Respondent*

---

COMPLAINT

---

NOW INTO COURT, through undersigned counsel, comes **JONATHAN P. ROBICHEAUX**, a person of full age and majority who is a resident of Orleans Parish and respectfully represents:

1.

Made defendant herein is James D. Caldwell in his official capacity as Attorney General for the State of Louisiana.

2.

Venue is proper in the United States District Court for the Eastern District of Louisiana because an Orleans Parish resident is seeking to have a provision of the Louisiana Constitution and an article of the Louisiana Civil Code declared unconstitutional as violating his rights as an American Citizen confirmed and preserved under the Constitution of the United States.

3.

This court has jurisdiction over the subject matter of this suit because it is a constitutional challenge invoking the Full Faith and Credit and Supremacy Clauses of the Constitution of the United States.

4.

Defendant, James D. Caldwell is the Attorney General for the State of Louisiana.

5.

Notice requirements under Federal Rule 5.1 have been met in this constitutionality challenge by serving the Louisiana Attorney General and making him the named defendant in his official capacity.

6.

On September 18, 2004 by popular vote, an amendment was made to the Louisiana Constitution that reads as follows:

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.

7.

Article 3520 of the Louisiana Civil Code reads as follows:

Art. 3520. Marriage

A. A marriage that is valid in the state where contracted, or in the state where the parties were first domiciled as husband and wife, shall be treated as a valid marriage unless to do so would violate a strong public policy of the state whose law is applicable to the particular issue under Article 3519.

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.

Acts 1991, No. 923, §1, eff. Jan. 1, 1992; Acts 1999, No. 890, §1.

8.

Article IV, Section 1 of the United States Constitution states:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

9.

28 USC § 1738 reads:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

10.

Your Petitioner, Jonathan P. Robicheaux, a man, legally married Derek D. Penton, a man, in Clayton County, Iowa on September 23, 2012. A copy of the marriage certificate is attached hereto as Exhibit A.

11.

The officials and courts of Louisiana are barred from recognizing Jon Robicheaux' marriage to Derek Penton by Section 15 of the Louisiana Constitution and Louisiana Civil Code article 3520.

12.

Jon Robicheaux cannot file a joint tax return with Derek Penton.

13.

If Derek Penton dies in Louisiana before Jon Robicheaux, Jon Robicheaux will not be entitled to receive the benefits or protections of receiving parts of Derek Penton's estate provided to surviving spouses who are the widow or widower of a two-sex marriage whether they are married in Louisiana or another state, territory, province or country.

14.

If there become any irreconcilable differences such that Jon Robicheaux desires to divorce Derek Penton, Jon Robicheaux is barred from filing a Petition for Divorce in Louisiana.

15.

Any couple that is made up of two United States Citizens who have properly observed a state's requirements to become married and have been issued a marriage certificate therefore have a right under the United States Constitution to have the marriage recognized by all states in which the couple decides to live.

16.

Louisiana's failure to recognize and give full faith and credit to Iowa's marriage certificate violates the Full Faith and Credit Clause of the United States Constitution.

17.

As stated by Chief Justice Marshall in *McCulloch v. Maryland*, 17 US 316:

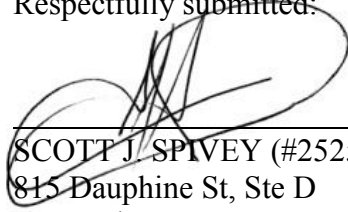
This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge; that principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise so long as our system shall exist. In discussing these questions, the conflicting powers of the General and State Governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

If any one proposition could command the universal assent of mankind, we might expect it would be this -- that the Government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, [p406] "this Constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land," and by requiring that the members of the State legislatures and the officers of the executive and judicial departments of the States shall take the oath of fidelity to it. The Government of the United States, then, though limited in its powers, is supreme, and its laws, when made in pursuance of the Constitution, form the supreme law of the land, "anything in the Constitution or laws of any State to the contrary notwithstanding."

WHEREFORE, petitioner prays that after all legal delays and due proceedings are had there be judgment, finding that Section 15 of the Louisiana Constitution and Louisiana Civil Code article 3520 unconstitutional, directing those provisions abrogated and ordering the courts and officials of the State of Louisiana to give full faith and credit to all marriage certificates

legally issued in any of the several states or countries with which the United States has a treaty requiring such full faith and credit.

Respectfully submitted:



---

SCOTT J. SPIVEY (#25257)  
815 Dauphine St, Ste D  
New Orleans, LA 70116  
(504) 684-4904 (office phone)  
(888) 502-3935 (office fax)  
Scott@SpiveyESQ.com  
*Attorney for Plaintiff, Jon Robicheaux*