


New Jersey Judiciary
 Superior Court - Appellate Division
 NOTICE OF APPEAL

Type or clearly print all information. Attach additional sheets if necessary.		ATTORNEY / LAW FIRM / PRO SE LITIGANT				
TITLE IN FULL (AS CAPTIONED BELOW) FILED please see attached APPELLATE DIVISION SEP 30 2013  CLERK		NAME Jean Reilly, DAG				
		STREET ADDRESS Hughes Justice Complex, 25 Market St.				
		CITY Trenton	STATE NJ	ZIP 08625	PHONE NUMBER 609 633 1309	
		EMAIL ADDRESS jean.reilly@dol.lps.state.nj.us				

ON APPEAL FROM		
TRIAL COURT JUDGE Hon. Mary C. Jacobson, A.J.S.C.	TRIAL COURT OR STATE AGENCY Superior Court, Law Division, Mercer County	TRIAL COURT OR AGENCY NUMBER MER-L-1729-11

Notice is hereby given that Defendants appeals to the Appellate Division from a Judgment or Order entered on September 27, 2013 in the Civil Criminal or Family Part of the Superior Court or from a State Agency decision entered on _____

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.) Yes No

If not, has the order been properly certified as final pursuant to R. 4:42-2? Yes No

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a conviction post judgment motion post-conviction relief.
 If post-conviction relief, is it the 1st 2nd other _____
specify

Is defendant incarcerated? Yes No

Was bail granted or the sentence or disposition stayed? Yes No

If in custody, name the place of confinement:

Defendant was represented below by:
 Public Defender self private counsel _____
specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	Hon. Mary C. Jacobson, A.J.S.C.	09/30/2013
Trial Court Division Manager		
Tax Court Administrator		
State Agency		
Attorney General or Attorney for other Governmental body pursuant to <u>R. 2:5-1(a), (e) or (h)</u>		

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
Individual Plaintiffs (see attached caption sheet)	Lawrence Lustberg, Esq.; Gibbons P.C.; 1 Gateway Center, Newark, NJ, 07102 (973 596-4500)	09/30/2013
Garden State Equality	Hayley Gorenberg, Esq.; Lambda Legal; 120 Wall St., 19th Floor, NY, NY 10005 (212 809-8585) pro hac vice	09/30/2013

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office	Robert Mull	Aug. 15, 2013	\$0 (st. vchr)
Court Reporter (if applicable)	Catherine Hicks, Acting Supervisor Ct. Rptrs.	Aug. 15, 2013	\$0 (st. vchr)
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

Exempt from submitting the transcript request form due to the following:

- No verbatim record.
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).
List the date(s) of the trial or hearing:
August 15, 2013
- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

09/30/2013

DATE

Jean P. Reilly / *Jean P. Reilly*

SIGNATURE OF ATTORNEY OR PRO SE LITIGANT



New Jersey Judiciary
Superior Court - Appellate Division
CIVIL CASE INFORMATION STATEMENT

Please type or clearly print all information.

FILED
APPELLATE DIVISION

TITLE IN FULL

see attached

TRIAL COURT OR AGENCY DOCKET NUMBER

MER-L-1792-11

SEP 30 2013

[Signature]
CLERK

■ Attach additional sheets as necessary for any information below

APPELLANT'S ATTORNEY EMAIL ADDRESS: jean.reilly@dol.lps.state.nj.us

PLAINTIFF DEFENDANT OTHER (SPECIFY)

NAME

Jean Reilly, DAG

CLIENT

all Defendants

STREET ADDRESS

Hughes Justice Complex, 25 Market St.

CITY

Trenton

STATE

NJ

ZIP

08625

TELEPHONE NUMBER

609 633-1309

RESPONDENT'S ATTORNEY * EMAIL ADDRESS: llustberg@gibbonslaw.com hgorenberg@lambdalegal.org

NAME

Lawrence Lustberg, Esq.; Haley Gorenberg, Esq. (pro hac vice)

CLIENT

all Plaintiffs

STREET ADDRESS

Gibbons PC, 1 Gateway Center

CITY

Newark

STATE

NJ

ZIP

07102

TELEPHONE NUMBER

973 596-4500

* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

On September 27, 2013, the Hon. Mary C. Jacobson, A.J.S.C., granted Plaintiffs' motion for summary judgment and ordered the State to allow same-sex couples to marry.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? YES NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6) YES NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice? YES NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)) YES NO

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

In Lewis v. Harris, the Supreme Court afforded the Legislature two equally constitutional options: amend the marriage statutes to include same-sex couples or, preserving the traditional definition of marriage, create a parallel statutory structure that provides same-sex couples all of the same rights and benefits that married couples enjoy under the State's laws. In response to Lewis, the Legislature adopted the Civil Union Act, N.J.S.A. 37:1-28 to -36, which provides that "[c]ivil union couples shall have all of the same benefits, protections and responsibilities under law . . . as are granted to spouses in a marriage." N.J.S.A. 37:1-31. Subsequently, the United States Supreme Court struck down the federal Defense of Marriage Act, holding that the federal government cannot treat unequally those whom the states treat equal. Windsor, 570 U.S. ___ (2013). Plaintiffs then filed a summary judgment motion claiming, on equal protection grounds, that same-sex couples have a right to marry. The trial court granted the motion.

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):

see attached

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ YES NO
2. Did the trial judge issue written findings or an opinion? If so, on what date? Sept. 27, 2013 YES NO
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? YES NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: _____

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as this appeal? YES NO
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? YES NO

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? YES NO

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:

Appellate Division Docket Number:

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. YES NO

Explain your answer:

The State defends the validity of the statute. The definition of marriage has profound social implications.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Dow et al.
Name of Appellant or Respondent

Jean Reilly, DAG
Name of Counsel of Record
(or your name if not represented by counsel)

Sept. 30, 2013
Date

Jean P. Reilly, DAG
Signature of Counsel of Record
(or your signature if not represented by counsel)

GARDEN STATE EQUALITY; DANIEL WEISS and JOHN GRANT; MARSHA SHAPIRO and LOUISE WALPIN; MAUREEN KILIAN and CINDY MENECHIN; SARAH KILIAN-MENECHIN, a minor, by and through her guardians; ERICA and TEVONDA BRADSHAW; TEVERICO BARACK HAYES BRADSHAW, a minor, by and through his guardians; MARCYE and KAREN NICHOLSON-MCFADDEN; KASEY NICHOLSON-MCFADDEN, a minor, by and through his guardians; MAYA NICHOLSON-MCFADDEN, a minor, by and through her guardians; THOMAS DAVIDSON and KEITH HEIMANN; MARIE HEIMANN DAVIDSON, a minor, by and through her guardians; GRACE HEIMANN DAVIDSON, a minor, by and through her guardians,

Plaintiffs,

v.

PAULA DOW, in her official capacity as Attorney General of New Jersey; JENNIFER VELEZ, in her official capacity as Commissioner of the New Jersey Department of Human Services, and MARY E. O'DOWD, in her official capacity as Commissioner of the New Jersey Department of Health and Senior Services,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
DOCKET NO.: MER-L-1729-11

Civil Action

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5).

RESPONDENTS HAVE THE BURDEN OF ESTABLISHING BEYOND A REASONABLE DOUBT THAT THE CIVIL UNION ACT RUNS AFOUL OF THE CONSTITUTION

SUPREME COURT PRECEDENT MANDATES THAT A COURT EXERCISE MAXIMUM CAUTION WHEN REVIEWING A GRANT OF SUMMARY JUDGMENT IN A CASE THAT HAS FAR-REACHING CONSEQUENCES AND INVOLVES SIGNIFICANT POLICY CONSIDERATIONS

UNDER WINDSOR, CIVIL UNION SPOUSES ARE ENTITLED TO FEDERAL MARRIAGE BENEFITS

THE MOTION IS NOT RIPE

RESPONDENTS' EQUAL PROTECTION CLAIMS FAIL BECAUSE THE STATE'S ACTION IS NOT LEGALLY COGNIZABLE AND, EVEN IF IT WERE, IT HAS A RATIONAL BASIS

Respondents' Federal Equal Protection Claim Fails Because of a Lack of Legally Cognizable State Action

Respondents' State Equal Protection Claim Fails Because the Protection that the State Constitution Controls Only the Actions of Agents of the State

The State's Action is Rationally Based and in Accord with the Lewis Decision