

NOS. 14-556, 14-562, 14-571, 14-574 (CONSOLIDATED)
IN THE SUPREME COURT OF THE UNITED STATES

JAMES OBERGEFELL, *ET AL.*,

Petitioners,

v.

RICHARD HODGES, DIRECTOR, OHIO DEP'T OF HEALTH, *ET AL.*,

Respondents.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT**

**MOTION OF STEVEN F. HOTZE, M.D. FOR RECUSAL OF JUSTICES RUTH BADER
GINSBURG AND ELENA KAGAN**

Pro Se

Comes now Steven F. Hotze, M.D. (“Hotze”), a citizen of the United States and resident of Texas who is acting *pro se* on this motion, and respectfully moves, pursuant to 28 U.S.C. § 455, for the recusal of Justices Ruth Bader Ginsburg and Elena Kagan in these consolidated cases, and states the following grounds:

1. These cases potentially impact the authority of the People of Texas to retain the historic definition of marriage and whether Texas must recognize homosexual marriages performed in other states. As a lifelong resident of Texas, Movant Hotze has an interest in an impartial adjudication of these cases.

2. The day before oral arguments in these cases, the Senior National Affairs Reporter (Liz Goodwin) for a national news service announced and publicized a predisposition of these cases in a headline entitled:

“As arguments near, Justice Ginsburg has already made up her mind on gay marriage,”

<https://www.yahoo.com/politics/as-arguments-near-justice-ginsburg-has-already-117280631046.html> (viewed April 28, 2015). The article then detailed its substantial grounds for the headline. At a minimum, this publicity confirmed an appearance of partiality prior to oral argument in these cases.

3. In addition, Justices Ginsburg and Kagan have officiated at highly publicized homosexual marriages that would potentially be affected by the ruling in these cases. That supports a predisposition to vote in these cases to validate the marriages they have performed.

4. Moreover, four weeks after this Court granted *certiorari* in these cases, Justice Ginsburg was asked whether parts of the country might not accept homosexual marriage being constitutionalized. She answered: “I think it’s doubtful that it wouldn’t be accepted. The change in people’s attitudes on that issue has been enormous. ... It would not take a large adjustment” Bloomberg News interview, Feb. 12, 2015. These extrajudicial comments about a matter pending before the Court violate Canon 3A (6) of the Code of Conduct for United States Judges: “A judge should not make public comment on the merits of a matter pending or impending in any court”

5. Additionally, by performing homosexual weddings, Justices Ginsburg and Kagan have improperly lent the prestige of their judicial office to a cause that is now before them for decision. See Canon 2B, Code of Conduct for United States Judges.

6. Furthermore, 28 U.S.C. § 455(a) mandates that any justice of the United States “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” See *Pilla v American Bar Ass’n*, 542 F.2d 56, 58 (8th Cir. 1976) (explaining that 28 U.S.C. § 455(a) applies to members of the U.S. Supreme Court).

7. Section 455(b) (4) requires recusal when a Supreme Court Justice has “any other interest that could be substantially affected by the outcome of the proceeding.”

8. A reasonable observer would doubt that any judge can objectively sit in judgment of her very own acts, actions, or directives. Thus, Movant Hotze has fully satisfied the burden required under 28 U.S.C. § 455.

9. “The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact.” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 869-70 (1988) (quoting *Public Utilities Comm’n of D. C. v. Pollak*, 343 U.S. 451, 466-67 (1952) (Frankfurter, J., in chambers)).
10. Due process requires a neutral and detached judge. A hearing before a biased judge is structural error that is not subject to harmless error analysis. *See Tumey v. Ohio*, 273 U.S. 510, 535 (1927) (noting that every litigant has “the right to have an impartial judge”). Justices Ginsburg and Kagan have personally and publicly engaged in extrajudicial conduct that dramatically endorses the legal recognition that petitioners seek to have nationalized in these cases. Their favorable disposition towards the petitioners “is so extreme as to display clear inability to render fair judgment.” *Liteky v. United States*, 510 U.S. 540, 551 (1994).
11. Because the resolution of these marriage cases could have an enormous impact on the moral and cultural fabric of our nation and our federalism, the strong ethical proscription against allowing a case to be decided under the cloud of an appearance of impropriety should apply with particular force.
12. No motion is required to precipitate a Judge’s recusal under 28 U.S.C. § 455. *See Davis v. Board of Sch. Comm’rs of Mobile County*, 517 F.2d 1044, 1051 (5th Cir. 1975), *cert. denied*, 425 U.S. 944(1976); 13 A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3550 (1984). Accordingly, no showing of standing is required to seek recusal by motion. *See Klenske v. Goo*, 781 F.2d 1370, 1373 (9th Cir. 1986) (“Though section 455 is stated in terms of a self-enforcing obligation upon the Judge, it may be invoked by a party.”). By analogy, a suggestion of recusal under Section 455 may also be invoked by a citizen in a matter of such national importance as these cases at bar.
13. The longstanding policy of this Court has favored recusal. For example, Justice Stephen Breyer consistently recuses himself from cases in which his brother participated as a lower court judge, and Justices have always recused themselves from cases in which they had personally participated. Justice Thurgood Marshall recused himself from many dozens of cases on the Supreme Court, in order to protect its integrity. Justice Antonin Scalia recused himself from a high-profile case concerning the constitutionality of the Pledge of Allegiance, based on comments he had previously made. Justice Clarence Thomas recused himself from the highly publicized case concerning the admission of women at the Virginia Military Institute, because his son was enrolled at the college. *See United States v. Virginia*, 518 U.S. 515 (1996).
14. Public comments by Justice Ginsburg in support of homosexual marriage, including her published statement that our nation is supposedly ready to accept homosexual marriage, reflect a strong opinion about the underlying issue before oral argument was even heard. Given the precedent of recusal established by Justices Breyer, Thurgood Marshall, Scalia, Thomas, and many others, Hotze respectfully requests recusal by Justices Ginsburg and Kagan in order to protect the integrity of this important adjudication.
15. Should Justices Ginsburg and Kagan decline to recuse themselves, Movant Hotze respectfully requests that the remaining justices review that decision.
16. Specifically, in the event this motion for recusal is denied by an individual Justice, then Hotze moves the entire Court to review the underlying facts and grant the requested disqualification. Justices Ginsburg and Kagan have an interest – their official acts in performing homosexual marriages as

Supreme Court Justices – that would be substantially affected by a decision in these cases, or would at least cause their impartiality to “reasonably be questioned.” 28 U.S.C. § 455(a).

17. No harm would result from these recusals as the seven remaining Justices constitute a quorum without the likelihood of a tie vote.

CONCLUSION

Movant Hotze respectfully requests that Justices Ginsburg and Kagan recuse themselves from these cases, or that they be disqualified upon review by the remainder of the Justices.

Respectfully submitted this 28th day of April, 2015



Steven F. Hotze, M.D.
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