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Order 58, rule 15

No. 1

### SUPREME COURT

### Application for Leave and Notice of Appeal

#### For Office use

Supreme Court record number of this appeal	
Subject matter for indexing	Leave to petition against the 22 <sup>nd</sup> of May 2015 marriage referendum

Leave is sought to appeal from	<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court
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[Title and record number as per the High Court proceedings]

<b>Gerry Walshe</b>		V	<b>Ireland and the Attorney General Referendum Returning Officer Referendum Commissioner</b>	
High Court Record Nr	High Court Record No: 2015-295-JR	Court of Appeal Record Nr	Court of Appeal Record No. 2015-298	
Date of filing	August 2015			
Name(s) of Applicant(s)/Appellant(s)	<b>Gerry Walshe</b>			
Solicitors for Applicant(s)/Appellant(s)	N/A			
Name of Respondent(s)	<b>Ireland and the Attorney General Referendum Returning Officer Referendum Commissioner</b>			
Respondent's solicitors	Mr Mark Tierney			
C/o Chief State Solicitors Office, Osmond Hose, Ship Street Little, Dublin 8				
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?				
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No - X			
If yes, give [Supreme Court] record number(s)				

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If Yes, please explain why		

#### 1. Decision that it is sought to appeal

Name(s) of Judge(s)	Justice Sean Ryan, Justice Mary Finlay Geoghegan, Justice Michael Peart
Date of order/ Judgment	30 <sup>th</sup> of July 2015

## 2. Applicant/Appellant Details

Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

Appellant's full name	Gerry Walshe
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Original status

<input type="checkbox"/>	Plaintiff
<input checked="" type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party

<b>Solicitor - N/A</b>			
Name of firm			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

<b>Counsel</b>			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

<b>Counsel</b>			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Applicant / Appellant is not legally represented please complete the following

Current postal address	Kilkee Road, Lisdeen, Co. Clare.
e-mail address	<a href="mailto:gerry-walshe@gmx.com">gerry-walshe@gmx.com</a>
Telephone no.	085-8139889

How would you prefer us to communicate with you?			
<input checked="" type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

### 3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondent's full name	<b>Ireland and the Attorney General</b> <b>Referendum Returning Officer</b> <b>Referendum Commissioner</b>
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Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input checked="" type="checkbox"/>	Respondents
<input type="checkbox"/>	Notice Party
<input type="checkbox"/>	

Solicitor - Mr Mark Tierney			
Name of firm	C/o Chief State Solicitors Office, Osmond Hose, Ship Street Little, Dublin 8		
Email	mark_tierney@csso.gov.ie		
Address	Chief State Solicitors Office, Osmond Hose, Ship Street Little, Dublin 8	Telephone no.	01-4176207
		Document Exchange no.	
		Ref.	
Postcode			

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Michael McDowell		
Email			
Address	The Four Courts, Dublin 7	Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address	Telephone no.		
	Document Exchange no.		
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

#### 4. Information about the decision that it is sought to appeal

<p>Please set out below:</p> <p>Whether it is sought to appeal from (a) the entire decision or (b) a part or parts of the decision and if (b) the specific part or parts of the decision concerned</p> <p>(a) A concise statement of the facts found by the trial court (in chronological sequence) relevant to the issue(s) identified in Section 5 below and on which you rely (include where relevant if certain facts are contested)</p> <p style="padding-left: 40px;">(b) In the case where it is sought to appeal in criminal proceedings please provide a concise statement of the facts that are not in dispute</p> <p>The relevant orders and findings made in the High Court and/or in the Court of Appeal</p> <p><b>(a) the entire decision</b></p> <p>(b) That the trial court disregarded the significance of facts presented by the applicant, regarding the misuse of state organs and resources to promote a yes campaign in the 22<sup>nd</sup> of May 2015 marriage referendum and failed to consider the material information and related obstructions and hindrance caused to the said referendum process.</p>
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## 5. Reasons why the Supreme Court should grant leave to appeal

*In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)—*

Please list (as 1, 2, 3, etc) concisely the reasons in law why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

*In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)—*

Please list (as 1, 2, 3, etc) concisely the reasons in law:

- i. why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court and
  - ii. why there are exceptional circumstances warranting a direct appeal to the Supreme Court
1. That the applicant's case is of national public importance, as it relates to a challenge on the validity of the 22<sup>nd</sup> of May 2015 marriage referendum and the constitutionality of the referendum process, which may be lawfully challenged under the Referendum Act 1994, 43, as highlighted inter alia, by an obstruction or interference with the referendum process.
  2. That the respondents use of state organs and recourses to promote a particular outcome in relation to the 22<sup>nd</sup> of May 2015 marriage referendum was unconstitutional, as endorsed in *McCrystal and McKenna -V- An Taoiseach*, wherein it states "*The people by virtue of the democratic nature of the state enshrined in the constitution, are entitled to be permitted to reach their decision free from unauthorised interference by any of the organs of the state, that the people, have created by the enactment of the constitution*"
  3. That the trial judges erred by restricting the applicant's submissions to one hour and denied the applicant due process and a fair and proper hearing, which in turn contributed to the misinterpretation of vital information relating to the applicant's submissions.
  4. That the president erred in law by disregarding the significance of the misuse of state organs and resources, such as the GRA's call for a yes vote in promoting the said marriage referendum, representing a primary non political organ of the state.
  5. That the president erred in law by disregarding the significance of the acknowledgment by council for the respondents, in relation to the logo for the charity "Marriage Equality Ltd." printed on An Post's stamp and having been a misuse of state organs and resources, endorses the need for a full disclosure of all state resources.
  6. That the president erred in law by not allowing the applicant discovery and disregarding the significance of the acknowledgment by council for the respondents as referred to in transcript page 147 that the respondents may have (unconstitutionally) used state funds, in particular state funds in relation to posters etc., in an effort to sway public opinion in the promotion of a yes campaign.

7. That the use of Irish charities and outside influences such as funding by Chuck Feeney, to promote a yes campaign has compromised the impartiality and democratic process of the 22<sup>nd</sup> of May 2015 marriage referendum and as such, said actions are unconstitutional.
8. That due to a lack of an impact study in relation to the 22<sup>nd</sup> of May 2015 marriage referendum, vital information was withheld from the general public and as such, the said electorate were not properly informed regarding the said referendum and as such were not in a position to make an informed decision.
9. That the wording of the 22<sup>nd</sup> of May 2015 marriage referendum was misleading and confusing as it suggested inequality in marriage prior to the 22<sup>nd</sup> of May marriage referendum between a man and a woman and as such the electorate were asked to vote, Yes for equality or No for inequality.
10. That the repeal of the Electorate 2013 Act, requiring the respondents to provide the voting public with a copy of the proposed amendment bill, prior to voting is unconstitutional, as it discriminates against that of the elderly non familiar with the use of modern technology and I say the electorate have a constitutional right to view and inspect any proposed amendment bill, prior to voting in a referendum.
11. That due to the apparent bias and/or conflict of interest regarding the applicant's case regarding a member of the trial judge's involvement in the Constitutional Review Group and/or the fact that all three trial judges were nominated by council for the respondents, while formerly the Minister for Justice and Equality, the applicant was denied a fair and proper hearing.
12. That due to the serious risk of retaliation and/or intimidation in relation to the 22<sup>nd</sup> of May 2015 marriage referendum, identification markings on ballot papers and combined use of modern technology, has compromised the secrecy of the ballot papers and has caused uncertainty among voters, which has materially affected the referendum process.
13. That the judge erred in law by awarding costs against the applicant, regarding a matter of national public interest, wherein should the applicant be successful in his case, no such costs would be awarded.

## 6. Ground(s) of appeal which will be relied on if leave to appeal is granted

Please list (as 1, 2, 3, etc) concisely:

1. the specific ground(s) of appeal and the error(s) of law related to each numbered ground
2. the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom
3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely
4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

1. That the unconstitutional actions by the respondents in relation to the 22<sup>nd</sup> of May 2015 marriage referendum process have affected the result as a whole.
2. That the misappropriation of state organs and resources by the respondents such as An Garda Síochána/the GRA's calling on voters to vote yes and An Post's, abuse of state funds in the promotion of the An Post Love Equality stamp using the Marriage Equality Ltd. logo and/or bias promotions by the respondents with the use of media, radio and TV and/or funding relating to political posters and banners, yet to be disclosed, have materially affected the referendum process as a whole.
3. That the failure to conduct an impact study in relation to the 22<sup>nd</sup> of May 2015 marriage referendum and failure to inform the electorate of the related impact on social and religious traditions, relating to compulsory gay sex education in schools and the implications regarding surrogate mothers and other forms of reproductive treatments and risks of disease associated with homosexuality activity, has restricted vital information and unduly influenced the electorate and as such the electorate were not in a position to make an informed decision.
4. That the failure to provide a copy of the bill to the electorate at post offices and libraries etc is unconstitutional, as it discriminates against those not familiar with the use of modern technology, such as iphones, computers etc.
5. That the unconstitutional actions by the respondents in relation to the misrepresentation in the wording of the Marriage Equality bill 2015 regarding Yes for equality or No for inequality, has affected the integrity of the referendum and has caused uncertainty and unduly influenced the electorate.
6. That due to the serious risk of retaliation and/or intimidation in relation to the 22<sup>nd</sup> of May 2015 marriage referendum, identification markings on ballot papers and combined use of modern technology, has compromised the secrecy of the ballot papers and has caused uncertainty among voters, which has materially affected the referendum process.

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:

**7. Other relevant information**

Neutral citation of the judgment appealed against e.g. Court of Appeal [2015] IECA 1 or High Court [2009] IEHC 608

[Empty box for neutral citation]

References to Law Report in which any relevant judgment is reported

[Empty box for law report references]

**8. Order(s) sought**

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

An order clarifying the constitutionality regarding the law on awarding costs against the applicant should his application fail, in a case taken on behalf of the people and the inequality in law wherein the applicant shall not be awarded equivalent costs, should the applicant's application be successful as a lay litigant.  
An order granting a stay on the signing of the certificate verifying the 22<sup>nd</sup> of May 2015 Marriage Referendum, pending the completion of the applicants appeal process.  
An order granting the applicant leave to petition against the 22<sup>nd</sup> of May 2015 Marriage Referendum.

What order are you seeking if successful?

Order being appealed: set aside  vary/substitute

Original order: set aside  restore  vary/substitute

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution

The Electoral Act 2013, repealing the need to provide the public with a copy of the proposed Amendment referendum bill.

The lawfulness of outside funding in relation to the amendment of the constitution

Government transparency in relation to expenditures in referendums

The inequality in awarding/regarding lay litigant costs

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

[Empty box for European Convention on Human Rights incompatibility]



**Are you asking the Supreme Court to:**

depart from (or distinguish) one of its own decisions?

Yes

No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?

Yes

No

If Yes, please give details below:

Depends on the outcome of this application.

Will you request a priority hearing?

Yes

No

If Yes, please give reasons below:

Signed:



(Solicitor for) the applicant/appellant

**Please submit your completed form to:**

The Office of the Registrar of the Supreme Court  
The Four Courts  
Inns Quay  
Dublin

**together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.**

**This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.**