

IN THE ARKANSAS SUPREME COURT

M. KENDALL WRIGHT, et al

PLAINTIFFS-APPELLEES

VS.

Case No. _____

NATHANIEL SMITH, MD, MPH, et al

DEFENDANTS-APPELLANTS

STATE DEFENDANTS-APPELLANTS'
PETITION FOR EMERGENCY STAY

The Director of the Arkansas Department of Health and the Director of the Arkansas Department of Finance and Administration, in their official capacities, and their successors in office (the "State"), state as follows for their petition for an emergency stay of the Circuit Court's Order entered on Friday, May 9, 2014:

1. The State requests an immediate stay of the Circuit Court's May 9, 2014 "Order Granting Summary Judgment in Favor of the Plaintiffs and Finding Act 144 of 1997 and Amendment 83 Unconstitutional." A stay is warranted under the circumstances of this case. Minutes after the Circuit Court's ruling at 4:51 p.m. on Friday, May 9, the State filed a motion requesting a stay from the Circuit Court, but the Circuit Court has not ruled on the State's request for a stay. The State has filed a Notice of Appeal of the Circuit Court's order.

2. This year, the United States Supreme Court has granted a stay in a case where the trial court declared a state's marriage law unconstitutional. See

Herbert v. Kitchen, No. 13A687, 134 S. Ct. 893 (Jan. 6, 2014). The Supreme Court grants a stay if there is “a fair prospect that a majority of the Court will vote to reverse the judgment below.” *Hollingsworth v. Perry*, 558 U.S. 183, 189-90 (2010) (per curiam). Thus, as a matter of law, the Supreme Court has already indicated the likelihood that the Supreme Court will ultimately affirm state marriage laws such as Amendment 83 and Arkansas Act 144 of 1997. More importantly, the Supreme Court has indicated that a stay is appropriate under the circumstances of this case, regardless of how the appellate court may rule.

3. Several district courts that have struck down laws similar to Amendment 83 have also granted requests for stays made by the States. See *Bishop v. United States ex rel. Holder*, 962 F. Supp. 2d 1252 (N.D. Okla. 2014); *Bostic v. Rainey*, No. 2:13cv395, 2014 WL 561978 (E.D. Va. Feb. 13, 2014); *De Leon v. Perry*, No. SA-13-CA-00982-OLG, 2014 WL 715741 (W.D. Tex. Feb. 26, 2014); *Love v. Beshear*, No. 3:13-CV-750-H (W.D. Ky. Mar. 19, 2014) (order granting stay). Most recently, a Michigan district court enjoined the State of Michigan from enforcing its constitutional marriage amendment but declined to issue a stay of its ruling. *DeBoer v. Snyder*, No. 2:12-cv-10285, 2014 WL 1100794 (E.D. Mich. Mar. 21, 2014). On March 25, 2014, the Sixth Circuit Court of Appeals granted a stay of the district court’s order pending final disposition of Michigan’s appeal by the Sixth Circuit. *DeBoer v. Snyder*, No. 14-1341 (6th Cir.

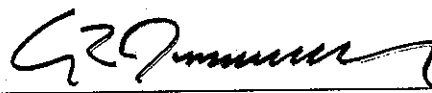
Mar. 25, 2014). The Sixth Circuit held that “[i]n light of the Supreme Court’s issuance of a stay in a similar case, *Herbert v. Kitchen*, 134 S. Ct. 893 (2014), a stay of the district court’s order is warranted.” *Id.* at * 1. To date, all of the marriage decisions by trial courts over the last year have been placed under stay, and remain stayed at this time.

4. The Circuit Court’s order should be stayed while this Court considers the State’s appeal, in order to avoid confusion and uncertainty about the effect of the Circuit Court’s order on Arkansas marriage law. The Circuit Court’s order broadly declares Arkansas Act 144 of 1997 and Amendment 83 to the Arkansas Constitution unconstitutional. Circuit clerks across Arkansas are uncertain about whether they are required to immediately issue marriage licenses to same-sex couples, pursuant to the Circuit Court’s order, or required to refrain from doing so, pursuant to Amendment 83. The Carroll County Circuit Clerk began providing marriage licenses to same-sex couples on Saturday, May 10, 2014, and the Pulaski County Circuit Clerk has indicated that he will provide marriage licenses to same-sex couples. Other clerks have concluded that they are not authorized to grant marriage licenses to same-sex couples at this time. This Court should grant a stay immediately, to resolve the confusion and uncertainty that have arisen out of the Circuit Court’s order.

WHEREFORE, the State prays that this Court immediately issue a stay of the Circuit Court's May 9, 2014 "Order Granting Summary Judgment in Favor of the Plaintiffs and Finding Act 144 of 1997 and Amendment 83 Unconstitutional," and prays for all other just and appropriate relief.

Respectfully Submitted,

By:



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CERTIFICATE OF SERVICE

I, Colin R. Jorgensen, Assistant Attorney General, certify that on this 12th day of May, 2014, I have served the foregoing upon the following via electronic mail attachment:

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