

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JAMES DOMER BRENNER, et al.,

Plaintiffs,

Case No. 4:14-cv-107-RH-CAS

v.

RICK SCOTT, et al.,

Defendants.

SLOAN GRIMSLEY, et al.,

Plaintiffs,

Case No. 4:14-cv-138-RH-CAS

v.

RICK SCOTT, et al.,

Defendants.

GRIMSLEY PLAINTIFFS' MOTION TO LIFT STAY

The *Grimsley* Plaintiffs (“Plaintiffs”) move this Court to lift the stays outlined in its Order granting the preliminary injunctions sought in these consolidated cases. (*Grimsley* DE 23).¹ In that order, the Court stated the following:

The preliminary injunctions set out in paragraphs 4 and 6 are stayed and will not take effect until 91 days after stays have been denied or lifted in *Bostic v. Schaefer*, Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014). The stay may be lifted or extended by further order.

Id. at 32-33.

Yesterday, the Supreme Court denied review in each of these cases and in all other appeals concerning marriage for same-sex couples that were pending before it. See 10/06/14 Order List, available at <http://www.supremecourt.gov/orders/courtorders/100614zor.pdf> (denying review in *Bostic*, *Bishop*, and *Kitchen*, as well as appeals from the Seventh Circuit). Because of the Supreme Court’s action, the stays in the cases from the Fourth, Seventh, and Tenth Circuits have terminated automatically, and marriages in Virginia, Wisconsin, Indiana, Oklahoma, and Utah are already underway.² Although this Court previously granted Defendants

¹ Pursuant to Local Rule 7.1(B), Plaintiffs’ counsel has conferred with Defendants’ counsel. Defendants do not consent to the resolution sought in this motion.

² See 01/06/14 Order List, available at http://www.supremecourt.gov/orders/courtorders/010614zr_2co3.pdf (with respect to *Herbert v. Kitchen*, Case No. 13A687, stating that “[t]he permanent injunction issued by the United States District Court for the District of Utah, case No. 2:13-cv-217, on December 20, 2013, is stayed pending final disposition of the appeal by the United States Court of Appeals for the Tenth Circuit”); *Bishop v. U.S. ex rel. Holder*, 962 F. Supp. 2d 1252, 1296 (N.D. Okla. 2014) (“In accordance with the U.S. Supreme Court’s issuance of a stay in a nearly identical case on appeal from the District Court of Utah to the Tenth Circuit Court of Appeals, see *Herbert v. Kitchen*, U.S. Supreme Court Order in Pending Case 13A687 (Jan. 6, 2014), the Court stays execution of this injunction pending the final disposition of any appeal to the Tenth Circuit Court of Appeals.”), *aff’d sub nom. Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014); *Bostic v. Rainey*, 970 F. Supp. 2d 456, 484 (E.D. Va. 2014) (“In accordance with the Supreme Court’s issuance of

90 days from the lifting of the stays in *Bostic*, *Bishop*, and *Kitchen* to seek a further stay from this Court, the Eleventh Circuit, or the U.S. Supreme Court, this Court also noted that the stay may be lifted “by further order.” (*Grimsley* DE 23 at 33). In light of yesterday’s pathbreaking development, Plaintiffs respectfully submit that the Court should lift the stay immediately.

First, the Supreme Court’s denial of review in the marriage cases pending before it is highly significant. As this Court noted in its decision granting a stay, “it is a rare case in which a preliminary injunction is properly stayed pending appeal.” (*Grimsley* DE 23 at 28). This Court concluded that a stay was nevertheless appropriate because there is “a substantial public interest in implementing this decision just once—in not having, as some states have had, a decision that is on-again, off-again.” (*Id.* at 28-29). The Supreme Court’s action yesterday shows that the Supreme Court has decided to let stand decisions—like this Court’s—enjoining as unconstitutional state laws that refuse to recognize the marriages of same-sex couples. Although some courts in the past have issued stays in marriage cases based on the Supreme Court’s past issuance of similar stays, the Supreme Court’s action yesterday shows that it has reversed course. If the Supreme Court merely wanted to delay review until a circuit split arose, it could have simply “held” the petitions and not taken any action on them until it was prepared to grant certiorari in a case raising this issue. Instead, the Supreme Court denied review outright in all of the cases before it, sending a strong signal that any remaining doubt about the Supreme Court’s

a stay in *Kitchen v. Herbert*, and consistent with the reasoning provided in *Bishop*, this Court stays execution of this injunction pending the final disposition of any appeal to the Fourth Circuit Court of Appeals.”), *aff’d sub nom. Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014)); *see also* Bonnie Miller Rubin & Lisa Black, *Indiana, Wisconsin proceed with same-sex marriages*, CHICAGO TRIBUNE, Oct. 6, 2014, available at <http://www.chicagotribune.com/news/local/breaking/ct-wisconsin-same-sex-marriage-met-20141007-story.html>. The mandates in the Fourth, Seventh, and Tenth Circuit cases have already issued and are attached.

ultimate resolution of the legal issue does not justify continuing to deny recognition of same-sex couples' valid out-of-state marriages.

Second, the ongoing harms to many of Florida's married same-sex couples are acute and in need of immediate resolution. For example, as noted in Plaintiffs' motion for preliminary injunction (*Brenner* DE 42 at 37-38), Plaintiff Arlene Goldberg has been left financially vulnerable without access to her late wife's Social Security benefits. Further, Plaintiffs Sarah Humlie and Lindsay Myers must pay hundreds of dollars per month to purchase insurance for Sarah because Lindsay's public employer does not recognize their marriage. If Defendants are permitted to wait an additional 90 days to make arguments it is very well equipped to make in short order, the harms to these and other Floridians—harms that the Court has already deemed to be irreparable—will only grow. The burden on Defendants to brief the issue of the stay is minimal compared to the harms that continue to adhere to plaintiffs in these consolidated cases.³

Finally, if this Court lifts its stay, Defendants can always request a stay from the Eleventh Circuit or the Supreme Court. Plaintiffs do not object to a limited stay of 7 days to provide Defendants the orderly opportunity to make such a request.

For these reasons and in light of the newly changed circumstances, Plaintiffs respectfully request that the Court lift the stay entered in this case and order the State to recognize in all respects the marriages of Plaintiffs and all of Florida's other married same-sex couples.

Date: October 7, 2014

Certificate of Service: Today, I electronically filed this document with the Clerk of Court using CM/ECF, which automatically serves all counsel of record via electronic transmission of Notices of Electronic Filing generated by CM/ECF

³ The stay in this case—issued August 21, 2014 (*Grimsley* DE 23 at 32-33)—has been in effect for more than six weeks.

Respectfully submitted,

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