

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

CARI. D. SEARCY and KIMBERLY)
MCKEEAND, individually and as parent and)
next friend of K.S., a minor,)
)
 Plaintiffs,)
)
 v.)
)
 LUTHER STRANGE, in his official capacity)
as Attorney General of the State of Alabama,)
)
 Defendant.)

Civil Action No.
1:14-cv-208-CG-N

MOTION FOR STAY

Alabama Attorney General Luther Strange, pursuant to Rule 62 of the Federal Rules of Civil Procedure and other applicable law, respectfully moves for a stay of this Court’s Memorandum Opinion and Order (doc. 53), enjoining him from enforcing Alabama’s marriage laws, on grounds that the issues in the case will be heard this term by the United States Supreme Court, resolving the issues on a nation-wide basis. *See James v. Hodges*, Supreme Court No. 14-556, Order dated January 16, 2015; *see also* cases 14-562, 14-571, and 14-574.

Moreover, and for reasons stated in Defendant’s Motion for Summary Judgment and related briefing, this issue is likely to be resolved in Defendant’s favor, and Defendant is likely to prevail on the merits of his appeal from the Court’s order. Even if this Court disagrees on that point, Defendant notes that when, as here, there is a “serious legal question” involved, *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A June 1981), and the balance of the equities identified in the other factors “weighs heavily in favor of granting the stay,” the stay may issue upon a “lesser showing of a substantial case on the merits.” *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986) (internal quotations, brackets, and citations omitted).

In addition, if the action is not stayed, Defendant and the State of Alabama will suffer irreparable harm if marriages are recognized on an interim basis that are ultimately determined to

be inconsistent with Alabama law, resulting in confusion in the law and in the legal status of marriages. Granting a stay will not harm the Plaintiffs, but would only maintain the status quo while these issues are considered by the appellate courts. Finally, a stay will serve the public interest by avoiding the confusion and inconsistency that will result from an on-again, off-again enforcement of marriage laws.

These factors have led other courts to issue stays in similar circumstances. The orders reviewed (and reversed) by the Sixth Circuit, for example, were stayed while they were on appeal. *See Tanco v. Haslam*, Case No. 14-5297 (mem. order) (6th Cir. Apr. 25, 2014) (granting stay pending appeal in Tennessee case after district court denied stay; finding that “public interest requires granting a stay” in light of “hotly contested issue in the contemporary legal landscape” and possible confusion, cost, and inequity if State ultimately successful) (following and quoting *Henry v. Himes*, No. 1:14-cv-129, 2014 WL 1512541, at *1 (S.D. Ohio Apr. 16, 2014)); *DeBoer v. Snyder*, No. 14-1341 (mem. order) (6th Cir. Mar. 25, 2014) (Michigan case); *Love v. Beshear*, 989 F. Supp. 2d 536, 550 (W.D. Ky. 2014); *Bourke v. Beshear*, 996 F. Supp. 2d 542, 558 (W.D. Ky. 2014) (“One judge may decide a case, but ultimately others have a final say It is best that these momentous changes occur upon full review, rather than risk premature implementation or confusing changes.”). The Fifth Circuit is considering the issue as well, see *supra*, and a stay remains in place there, too. *See DeLeon v. Perry*, 975 F. Supp. 2d 632, 666 (W.D. Tex. 2014). The public interest rationale that justified these stays applies with equal force here.

For these reasons, the Defendant asks that this Court enter an order staying its Memorandum and Judgment (doc. 53).

Respectfully submitted,

LUTHER STRANGE
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s/ James W. Davis

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CERTIFICATE OF SERVICE

I certify that on January 23, 2015, I electronically filed the foregoing document using the Court's CM/ECF system which will send notification of such filing to the following persons:

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