

No. 14-1341

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 25, 2014
DEBORAH S. HUNT, Clerk

APRIL DEBOER; JANE ROWSE, individually)
and as parents and next friend of N.D.-R, R.D.-R)
and J.D.-R, minors,)

Plaintiffs-Appellees,)

v.)

RICHARD SNYDER, in his official capacity as)
Governor of the State of Michigan; BILL)
SCHUETTE, in his official capacity as Michigan)
Attorney General,)

Defendants-Appellants.)

ORDER

Before: ROGERS and WHITE, Circuit Judges; CALDWELL, District Judge*

The district court in this case enjoined the enforcement of Article I, § 25 of the Michigan Constitution, which provides that marriage is “the union of one man and one woman.” In 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.

On March 21, 2014, the district enjoined the State of Michigan from enforcing the constitutional provision and its implementing statutes because the court concluded that those laws violate the Equal Protection Clause of the Fourteenth Amendment. *DeBoer v. Snyder*, No. 2:12-cv-10285, 2014 WL 1100794, at *17 (E.D. Mich. Mar. 21, 2014). Michigan filed a notice

* The Honorable Karen K. Caldwell, Chief United States District Judge for the Eastern District of Kentucky, sitting by designation.

of appeal and made an emergency motion to stay the district court's order in this court the same day. This court temporarily stayed the district court's order so that it could more carefully consider Michigan's request and a response from the plaintiffs. The plaintiffs filed a response, and defendant Lisa Brown in her capacity as Clerk of Oakland County moved for leave to file a response to Michigan's motion.

Counsel for Michigan assert that during closing argument in the district court, counsel asked the district court to stay its order should the court rule in favor of the plaintiffs. The district court did not grant a stay. Federal Rule of Appellate Procedure 8(a) requires that a stay pending appeal be brought first in the district court. However, a court of appeals may grant a stay pending appeal if "the district court denied the motion or failed to afford the relief requested." Fed. R. App. P. 8(a)(2)(A)(ii). In the context of this case, the requirements of Rule 8 have been substantially met.

In deciding whether to grant a stay of a district court's grant of injunctive relief, "we consider (1) whether the defendant has a strong or substantial likelihood of success on the merits; (2) whether the defendant will suffer irreparable harm if the district court proceedings are not stayed; (3) whether staying the district court proceedings will substantially injure other interested parties; and (4) where the public interest lies." *Baker v. Adams Cnty./Ohio Valley School Bd.*, 310 F.3d 927, 928 (6th Cir. 2002). In this case, these factors balance no differently than they did in *Kitchen v. Herbert*. *Kitchen* involved a challenge to "provisions in the Utah Code and Utah Constitution that prohibited same-sex marriage." No. 2:13-cv-217, 2013 WL 6834634, at *1 (D. Utah Dec. 23, 2013). Like the decision below, the *Kitchen* court's order enjoined Utah from enforcing laws that prohibit same-sex marriage. 961 F. Supp. 2d 1181, 1216 (D. Utah 2013). And like the stay requested by Michigan before this court, the Supreme Court's order delayed the

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applicability of the *Kitchen* court's order pending resolution by the Tenth Circuit. 134 S. Ct. 893 (2014). There is no apparent basis to distinguish this case or to balance the equities any differently than the Supreme Court did in *Kitchen*. Furthermore, several district courts that have struck down laws prohibiting same-sex marriage similar to the Michigan amendment at issue here have also granted requests for stays made by state defendants. 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).

We GRANT Lisa Brown's motion to respond to Michigan's stay motion. We GRANT Michigan's motion to stay the district court's order pending final disposition of Michigan's appeal by this court.

WHITE, J., dissenting.

I agree that this court balances the traditional factors governing injunctive relief in ruling on a motion to stay a district court's decision pending appeal: (1) whether the defendant has a strong or substantial likelihood of success on the merits; (2) whether the defendant will suffer irreparable harm if the district court proceedings are not stayed; (3) whether staying the district court proceedings will substantially injure other interested parties; and (4) where the public interest lies. "In order to justify a stay of the district court's ruling, the defendant must demonstrate at least serious questions going to the merits and irreparable harm that decidedly outweighs the harm that will be inflicted on others if a stay is granted." *Baker v Adams County/Ohio Valley School Bd*, 310 F3d. 927, 928 (6th Cir. 2012). Michigan has not made the requisite showing. Although the Supreme Court stayed the permanent injunction issued by the

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Utah District Court in *Kitchen v. Herbert* pending final disposition by the Tenth Circuit, 134 S.Ct. 893 (2014), it did so without a statement of reasons, and therefore the order provides little guidance. I would therefore apply the traditional four-factor test, which leads me to conclude that a stay is not warranted.

ENTERED BY ORDER OF THE COURT



Clerk