

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 14-5297

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Apr 25, 2014
DEBORAH S. HUNT, Clerk

VALERIA TANCO, et al.,

Plaintiff-Appellees,

v.

WILLIAM HASLAM, et al.,

Defendants-Appellants.

ORDER

BEFORE: GUY and CLAY, Circuit Judges; BERTLESMAN, District Judge.*

PER CURIAM. This matter is before the Court on Defendants' motion to stay the district court's order preliminarily enjoining the enforcement of Tennessee Code Annotated § 36-3-113 and Article XI, § 18 of the Tennessee Constitution, which prohibit the recognition in Tennessee of marriages legally consummated by same-sex couples in other states, against the six named plaintiffs in this action. The district court denied Defendants' previous motion for a stay pending the outcome of their appeal, finding that "all four factors weigh against a stay and in favor of continuing enforcement of the Preliminary Injunction." *Jesty v. Haslam*, No. 3:13-CV-01159, 2014 WL 1117069, at *5 (M.D. Tenn. Mar. 20, 2014). For the reasons that follow, we find that a stay of the district court's order pending consideration of this matter by a merits panel of this Court is warranted, and that this case should be assigned to a merits panel without delay.

* The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

No. 14-5297

In deciding whether to issue a stay, the Court balances four factors: 1) whether the moving party “has a strong or substantial likelihood of success on the merits”; (2) whether the moving party “will suffer irreparable harm” if the order is not stayed; (3) whether issuing a stay “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). Because the law in this area is so unsettled, in our judgment the public interest and the interests of the parties would be best served by this Court imposing a stay on the district court’s order until this case is reviewed on appeal. As Judge Black observed in granting a stay of injunction pending appeal for *Henry v. Himes*, No. 1:14-CV-129, 2014 WL 1512541, at *1 (S.D. Ohio Apr. 16, 2014):

[R]ecognition of same-sex marriages is a hotly contested issue in the contemporary legal landscape, and, if [the state’s] appeal *is* ultimately successful, the absence of a stay as to [the district court’s] ruling of facial unconstitutionality is likely to lead to confusion, potential inequity, and high costs. These considerations lead the Court to conclude that the public interest would best be served by granting of a stay. Premature celebration and confusion do not serve anyone’s best interests. The federal appeals courts need to rule, as does the United States Supreme Court.

In the present case, as in *Henry*, we find that the public interest requires granting a stay and transferring this case to a merits panel for expedited consideration—so that the merits panel can assess whether a stay should remain in effect, and address the substantive issues in this case.

Defendants’ motion to stay the district court’s order is **GRANTED**, and this case shall be assigned to a merits panel without delay.

IT IS SO ORDERED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk