

NO. 14-2241

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ANNE NICHOLS BLECKLEY; COLLEEN THERESE CONDON

Plaintiffs – Appellees,

v.

ALAN WILSON, in his official Capacity as Attorney General,

Defendant – Appellant,

and IRVIN G. CONDON in his official capacity as Probate Judge of Charleston
County,

Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AT CHARLESTON

MOTION FOR STAY OR CONTINUANCE OF APPEAL

Appellant Attorney General Alan Wilson hereby moves for a stay or continuance of this appeal pending a final decision by the United States Supreme Court regarding the petitions for writ of certiorari filed in *DeBoer v. Snyder*, No. 14-1341, 2014 WL 5748990 (6th Cir. Nov. 6, 2014) and any petition for writ of certiorari filed in the instant case. *See, Obergefell v. Hodges*, No. 14-556,

November 14, 2014; *DeBoer v. Snyder*, No. 14-571, November 18, 2014; *Bourke v. Beshear*, No. 14-574, November 18, 2014. Those petitions seek review of the *DeBoer* opinion upholding bars on same-sex marriage in four states in the Sixth Circuit. The Attorney General also anticipates filing a petition for writ of certiorari as to the Order of the United States District Court of the District of South Carolina under appeal in the instant case while this appeal is pending. *See*, 28 U.S.C. §§1254 and 2101(e). *Condon v. Haley*, No. CIV.A. 2:14-4010-RMG, 2014 WL 5897175 (D.S.C. Nov. 12, 2014). That District Court Order found South Carolina laws barring same-sex marriage to be unconstitutional.

Staying or continuing this appeal including briefing deadlines would serve purposes of judicial economy. Although if not stayed, Appellant Attorney General would anticipate moving for the appeal to be heard en banc and seeking to argue against the precedent of *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014)¹, a decision of the Supreme Court to grant certiorari in *DeBoer* or the instant case could be dispositive of this appeal or expedite any consideration of South Carolina law by the Court of Appeals. If the Supreme Court grants the *DeBoer* petitions, that Court may reach a decision applicable nationally regarding the constitutionality of same-sex marriage bans. Therefore, until the Supreme Court

¹ cert. denied sub nom. *Rainey v. Bostic*, No. 14-153, 2014 WL 3924685 (U.S. Oct. 6, 2014) and cert. denied, No. 14-225, 2014 WL 4230092 (U.S. Oct. 6, 2014) and cert. denied sub nom. *McQuigg v. Bostic*, No. 14-251, 2014 WL 4354536 (U.S. Oct. 6, 2014)

makes a final decision regarding the *DeBoer* petitions and any in the instant case, staying or continuing this appeal while awaiting guidance from the Supreme Court will avoid the writing and filing of briefs that may need to be rewritten or supplemented following action by that Court. If this appeal is stayed, the Attorney General reserves all rights to proceed with this appeal following decisions of the Supreme Court regarding the referenced petitions for writs of certiorari.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully requests that this Court stay or continue the appeal in this case, including briefing, until such time as the Supreme Court makes a final decision regarding the *DeBoer* petitions and any petition in the instant case.

Respectfully submitted,

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December 1, 2014

Counsel for Defendant-Appellant
Attorney General

Pursuant to Fourth Circuit Rule 27(a), Counsel for has emailed other counsel in this case about the intent to file this Motion. Counsel for Plaintiffs-Appellees and, to the extent necessary, counsel for Judge Condon do not object to a stay of this appeal. The Governor has been dismissed as a party to this case.

December 1, 2014

/s/ J. Emory Smith, Jr.
J. EMORY SMITH, JR.
Deputy Solicitor General