NO. 14A65

In the
Supreme Court of the United States

Gary R. Herbert, in his official capacity as Governor of Utah, and
Sean D. Reyes, in his official capacity as Attorney General of Utah,

Applicants,

v.

JoNell Evans, Stacia Ireland, Marina Gomberg, Elenor Heyborne,
Matthew Barraza and Karl Fritz Shultz,

Respondents.

Reply Memorandum In Support Of
Emergency Application to Stay Preliminary Injunction Pending Appeal

DIRECTED TO THE HONORABLE SONIA SOTOMAYOR
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE TENTH CIRCUIT

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July 18, 2014

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INTRODUCTION

Plaintiff's opposition brief does not undermine the need for or the propriety of a stay of the district court's order directing Utah's public officials to violate Utah marriage laws that remain presumptively constitutional and in full force as a result of this Court's and the Tenth Circuit's stays in *Kitchen* v. *Herbert*, ___ F.3d ___, 2014 WL 2868044 (10th Cir. June 25, 2014). Indeed, the Plaintiffs' argument about the public interest in having immediate "certainty about the status of Plaintiffs' marriages" (Opp. at 27, quoting App. A at 28) doubles down on the district court's erroneous conclusion that people can obtain vested substantive rights as a result of a non-final appealable order. Such legal reasoning has no support in any court's precedents. And, as Judge Kelly observed, it makes a mockery of the appellate process by effectively "moot[ing] the novel issues" in this case and thus depriving Applicants and Utah's citizens of any opportunity for an effective appeal. *See* App. C, Kelly, J., dissenting at 4.

Plaintiff's Opposition also does not diminish the irreparable harm that this Court's denial of a stay would impose. For example, if the district court's decision goes into effect Monday morning, Utah will be forced to grant requests for adoption sought by same-sex couples—some of which also seek to change the names on their childrens' birth certificates. Utah will also be forced to grant requests for such things as same-sex spousal benefits for State employees.[1] As a practical matter, once taken, such actions will be virtually impossible to undo. *See id.*

Plaintiffs, moreover, have apparently now abandoned the key conclusion underlying the district court's (preliminary) merits decision—i.e., that the Utah marriage laws at issue here

[1] Other examples include: tuition reduction for spouses and children of eligible state employees, *see, e.g.*, http://dev.cfoc.utah.edu/ben/summ/standard/tuition.php; www.usu.edu/hr/htm/tuition-reduction; awards for loss of consortium and wrongful death of a spouse, *see* U.C.A. § 30-2-11, §§ 78B-3-105,106); and spousal worker compensation benefits, U.C.A. §§ 34A-2-414, 415. Once paid, such awards and benefits would be virtually impossible for the State to recoup.

suddenly became a legal "nullity" the moment the district court in *Kitchen* entered its unstayed, non-final order holding them unconstitutional. *See* App. A at 22. Plaintiffs do not dispute that this conclusion is indeed the key premise for the district court's holding that the Plaintiffs' interim marriages created "vested rights" and that the State cannot now "retroactively" impair those rights by refusing to "recognize" Plaintiffs' unions in new ways that are also forbidden by Utah law. Plaintiffs' failure to defend the district court's critical premise lays bare the reality that Plaintiffs have little chance of prevailing on the merits, either in the Tenth Circuit or in this Court.

I. If the Court of Appeals affirms, there is at least a reasonable probability that four Justices will vote to grant certiorari.

Plaintiffs' argument (at 12-13) that this case will not be worthy of review if the district court's decision is affirmed rests on a failure to acknowledge the fundamental issue presented. The overarching issue that this case presents is whether a federal district court can create legal rights that vest against a government simply by issuing a non-final order commanding government officials to perform a ministerial act (in this case, granting a marriage license) and then refusing to stay that order pending appeal. Plaintiffs do not dispute that this case squarely presents that issue or that, if the Tenth Circuit affirms, at least four Justices will likely vote to grant certiorari on that issue. Plaintiffs do not even dispute that the district court's rule conflicts with decisions of several other circuits and this Court. *See* Application ("Apl.") at 13–19.

Plaintiffs' insistence that there is no issue presented of "national importance" (Opp. at 13) is belied by two facts. First, as the Plaintiffs acknowledge (at 13), the circumstances here were replicated in Michigan, Wisconsin and Indiana, and are likely to occur again until this Court resolves the underlying constitutionality of state laws retaining the definition of marriage as between one man and one woman. Second, if the Tenth Circuit affirms, it will have created in

the district courts throughout that circuit—and in any other circuit that adopts its reasoning—an enormous new and troublesome judicial power vis-à-vis government officials of all kinds, a power that could be deployed in a wide array of circumstances beyond same-sex marriage.

Finally, Plaintiffs are wrong in suggesting (at 14) that Applicants really just "disagree with the district court's prediction regarding how Utah state courts would apply the state's strong presumption against retroactivity when the law changes as a result of a federal injunction." As explained in the Application (at 14–15), the district court's "retroactivity" analysis was premised on its conclusion that, as a matter of federal law, a state law becomes a "nullity" the moment it is held unconstitutional in a non-final district court order—so that its reinstatement as a result of a stay is the legal equivalent of enacting a new law. App. A at 22. Although Plaintiffs no longer defend the district court's "nullity" conclusion expressly, they do not dispute that the district court's retroactivity analysis is premised on that conclusion of federal law—a conclusion that also lies at the heart of the *federal* question that, in the event of an affirmance, Applicants intend to present in this Court.

In short, if the Tenth Circuit affirms, there is at least a reasonable probability that four Justices will vote to grant certiorari on the federal question described above.

II. If the Court of Appeals affirms, there is at least a fair prospect that five Justices will vote to reverse.

There is also at least a fair prospect that, if the Tenth Circuit affirms, at least five Justices will conclude that a federal district court does *not* have the authority to create vested substantive legal rights merely by issuing an unstayed, non-final order—and will reverse the district court on that basis. Plaintiffs' contrary arguments misapprehend Utah's position and ignore the key role that the district court's "nullity" conclusion played in its analysis of the merits.

1. Plaintiffs' suggestions that the State is attempting to void the Plaintiffs' marriage licenses, "nullify" their marriages (Opp. at 17), or force them to "divorce" (Opp. at 2) are not true. The issue here is *not* whether Plaintiffs' marriage licenses—issued in violation of State law but pursuant to a federal injunction—should be revoked. Utah is not trying to do that.

Utah's constitution and statutes prohibit not only the issuance of marriage licenses to same-sex couples, but also any "recognition" of such unions as marriages. Utah Const. art. I. §29 ("Marriage consists only of the legal union between a man and a woman" and "[n]o other domestic union, however denominated, may be *recognized* as a marriage ….") (emphasis added); Utah Code § 30-1-4.1(1)(a) ("It is the policy of this state to *recognize* as marriage only the legal union of a man and a woman ….") (emphasis added). Accordingly, the issue here is whether, once this Court issued its stay in *Kitchen,* Utah was and is obligated to commit *additional* violations of Utah law by "recognizing" Plaintiffs' unions as marriages for other purposes, including such things as adoption, changes to birth certificates, and spousal benefits. As Judge Kelly pointed out, the idea that a non-final district court order can "change the law" in that manner is implausible. App. C, Kelly, J., dissenting, at 3. And it is an affront to the sovereignty of a State and to the dignity of its democratic processes to conclude that, because the State has involuntarily suffered one monumental federal intrusion into its sovereign prerogatives, it must accept additional intrusions into those same prerogatives.

2. As Plaintiffs point out, the district court offered two bases for concluding that the State, having been forced to issue those licenses by an unstayed district court order, must now "recognize" Plaintiffs' relationships as "marriages" for all purposes. Both of those arguments—one based directly on the Fourteenth Amendment and the other based on alleged "retroactive"

deprivation of a state-created liberty interest—are purportedly grounded in federal due-process principles. *See* App. A at 12.

As explained in the Application, moreover, both arguments are premised on the district court's erroneous conclusion that the mere issuance of an unstayed, non-final district court order finding a statute unconstitutional renders that statute a "nullity" at that very moment. App. A at 22. As previously explained, for example, that is the necessary federal-law premise of the district court's conclusion that the State's refusal to grant additional recognition to Plaintiffs' interim marriages violates state-law prohibitions on the retroactive application of new laws.

Plaintiffs do not dispute that the district court's entire merits analysis was based on its "nullity" conclusion. Yet Plaintiffs do not attempt to defend that conclusion, either. Indeed, they do not even acknowledge it—perhaps because, as the Application explained (at 13–19), it is so thoroughly contrary to several lines of decisions from this Court.

Instead, Plaintiffs invoke cases holding that an unstayed federal injunction must be obeyed even if it issued erroneously, and even if the refusal to stay it was erroneous. *See* Opp. at 14. But a State's being required to comply with a non-final federal injunction invalidating a democratically enacted State law (as Utah did) is a far cry from having that law treated as a legal "nullity," such that the full reinstatement of that law as a result of a stay must be treated as the equivalent of *reenacting* that law. And it is a far cry from being forced, after the injunction is stayed, to commit *additional* violations of that law.

3. Even though Plaintiffs no longer defend the district court's "nullity" conclusion, their articulation of their own arguments makes clear that they rest on that same premise. For example, in their argument regarding "rights springing directly from the Fourteenth Amendment" (Opp. at 18), Plaintiffs argue that they "solemnized legally valid marriages under

Utah law as it existed at the time of such solemnization." *Id.* (quoting App. A at 13); *see also id.* at 19 (Plaintiffs were "legally married ***under that state's law*** at the time the marriages were solemnized") (emphasis added). But given that *Utah* law has always defined marriage as the union of a man and a woman, and given that Amendment 3 specifically forbids any "recognition" of any other union, the only way Plaintiffs (and the district court) can make such an assertion is on the assumption that the district court's non-final *Kitchen* order rendered those provisions of Utah law a legal "nullity." In fact, Plaintiffs were married, not "under Utah law," but in *defiance* of Utah law, which had been temporarily suspended (not "nullified") by the district court's non-final order.

For similar reasons, Plaintiffs' repeated refrain that they were "*fully* recognized *by Utah* as married couples in the eyes of the law" (Opp. at 2) and were "*fully* recognized *by Utah* as married" (Opp. at 3) is simply incorrect: Utah has never "fully recognized" Plaintiffs' interim marriages as legal marriages.[2]

Because the district court's "nullity" conclusion is the keystone of its holding that an unstayed, non-final order can create vested rights, it is highly likely that, if the Tenth Circuit affirms and this Court grants certiorari, at least five Justices will vote to reverse. Especially in light of the Plaintiffs' failure to defend the district court's reasoning, such a reversal could well be accomplished summarily.

[2] Nothing in the cited memoranda by the Governor or the Attorney General (Opp. at 4–5) suggests that the State "fully recognized" Plaintiffs' unions as legal marriages. *See* Reply Appendix. Indeed, none of those memoranda suggested that those unions would be recognized for purposes of other State-conferred benefits, such as the adoption rights, spousal benefits, etc., at issue in this case. All those memoranda did was to recognize the practical and legal reality that marriage licenses had been or would need to be issued as a result of the district court's *Kitchen* order—which this Court subsequently concluded should have been stayed pending appeal.

III. Absent a stay, there is a certainty of irreparable harm to Utah.

As to irreparable injury, Plaintiffs do not deny that if left unstayed, the district court's decision will likely interfere with parallel adoption and similar proceedings in the Utah Supreme Court—by mooting them.[3] Nor do Plaintiffs dispute the general principle that "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd.* v. *Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers); *Maryland* v. *King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) (granting a stay); *Planned Parenthood of Greater Texas Surgical Health Servs.* v. *Abbott*, 134 S. Ct. 506, 506 (2013) (Scalia, J., concurring in denial of application to vacate stay). Instead, Plaintiffs claim that Applicants—the public officials charged with enforcing State law—are simply misinterpreting Utah's marriage laws—which, they say, do not really prohibit Utah from "recognizing" Plaintiffs' interim marriages for *additional* purposes such as adoption, birth certificates and spousal benefits. Opp. at 23-24.

But Plaintiffs' assertion that the Utah courts have uniformly rejected this reading of Utah law is false. In fact, Judge Faust agreed with Defendants' position. *See Doe* v. *State*, Case No. 140900542, Tr. of Hr'g, at 42–43 ("By issuing a temporary restraining order [requiring the state to recognize petitioner's same-sex marriage] the Court would be, by implication, making a

[3] Plaintiffs' argument that any such interference is the result, not of the district court's decision, but Utah's litigation strategy, is wrong. Although it is true that Utah removed this action to federal court—because (as Plaintiffs now concede) it involves primarily federal rather than state-law issues—the only reason the district court's decision interferes with the ongoing Utah Supreme Court proceedings described in the Application is that the district court wrongly refused to stay its injunction.

determination in part on those matters and issues being determined at the federal level.") And the Utah Supreme Court has now stayed the contrary lower-court decisions. *See* Apl. at 6. [4]

Moreover, the laws' texts—which Plaintiffs do not quote or analyze—could not be more clear. Amendment 3, the constitutional amendment adopted by an overwhelming majority of Utah's voters, states in no uncertain terms that in Utah, "[m]arriage consists only of the legal union between a man and a woman," and that "[n]o other domestic union, however denominated, may be *recognized* as a marriage …." Utah Const. art. I. §29 (emphasis added); *accord*, Utah Code § 30-1-4.1(1)(a) ("It is the policy of this state to *recognize* as marriage only the legal union of a man and a woman ….") (emphasis added). By its terms, a new violation of this provision—and a new injury to the State's authority over marriage and the peoples' right to make choices through democratic means—would occur each time Utah "recognized" Plaintiffs' unions as marriages for purposes of any State-conferred benefit, such as adoption or spousal benefits. *See Windsor*, 133 S. Ct. at 2691 ("'Each state as a sovereign has a rightful and legitimate concern in the marital status of persons domiciled within its borders.'" (quoting *Williams*, 317 U.S. at 298)).

Plaintiffs do not dispute this textual reality. Instead, like the district court, they argue that the Utah courts would apply a kind of "constitutional doubts" doctrine to conclude that these laws do not really mean what they so clearly say—i.e., that *any* State "recognition" of a same-sex union as a marriage is prohibited. *See* Opp. at 23. But here again, like the district court, Plaintiffs rely for this proposition on Utah's "presumption against retroactivity and protection of

[4] Plaintiffs also ignore Judge Kelly's practical point that, "It is disingenuous to contend that the State will suffer no harm if the matter is not stayed" because "undoing what is about to be done will be labyrinthine and has the very real possibility to moot important issues that deserve serious consideration." App. C, Kelly, J., dissenting at 3. In fact, some of the actions that the Plaintiffs demand that the State take in "recognition" of their unions—such as changing names on childrens' birth certificates and granting adoptions—as a practical matter simply could not be "undone" if the district court's order is not stayed. That too represents severe irreparable injury.

vested rights." *Id.* As explained above and in the Application (at 13–19), the only way Utah can possibly be engaged in a "retroactive" intrusion into "vested rights" is if the district court was correct in concluding that these laws became a "nullity" the moment the unstayed, non-final *Kitchen* injunction was issued. And the district court was wrong.

Plaintiffs' refusal to defend that proposition critically undermines their attempt to negate the State's irreparable injury in being "enjoined from effectuating statutes enacted by representatives of its people," *New Motor Vehicle Board, supra,* at 1351, and by extension, a constitutional provision enacted by the voters themselves.

IV. The balance of equities favors a stay.

Although the Applicants recognize and appreciate Plaintiffs' desires to have their marriages recognized in every possible way, their arguments on the balance of equities are similarly misguided. *First,* against the clear and irreparable injury to Utah and its people, Plaintiffs identify no *concrete* harm that they will likely suffer during the pendency of the appeal. Instead, they acknowledge (at 25) that "no one knows what the next twelve months (or more) may bring" their way. But they nevertheless claim to "have an urgent need for those marriages to be recognized now as they face the same life events and financial decisions in 2014 and 2015 that other families will encounter over the course of the next couple of years," *id* –but without identifying any particular "life events" or "financial decisions" that will be impaired by leaving Utah's laws in force. *See, e.g., CBS, Inc.* v. *Davis*, 510 U.S. 1315, 1318 (1994) (Blackmun, J. in chambers) (granting petitioner's request to stay preliminary injunction based, in part, on the respondent's mere "speculative predictions" of harm, i.e., that allowing enjoined broadcast to go forward "could" harm respondent's business).

Second, the alleged harms assume Utah is somehow trying to deprive Plaintiffs of their marriage licenses and thus prevent *private* actors from recognizing their marriages. *See, e.g.*, Opp. at 6 (discussing hospital visitation rights). As previously explained, that is not what this case is about. This case is about whether Plaintiffs can force the *State* to "recognize" their unions as marriages in *additional* ways that go well beyond the initial grant of a marriage license.

Third, Plaintiffs' argument (at 2) that the mere deprivation of constitutional rights is *ipso facto* irreparable injury, and the mirror-image argument (at 25) that the State suffers "no cognizable harm … when it is prevented from acting unconstitutionally," ignore the fact that no deprivation of constitutional rights has yet been finally determined. (Indeed, as explained above, it is difficult to see how the district court's conclusion on this point can possibly be affirmed.) In that respect this case is similar to *Rostker* v. *Goldberg*, 448 U.S. 1306 (1980) (Brennan, J., in chambers), cited at page 10 of the Application. That decision held that the government was entitled to a stay while the constitutional rights of the plaintiffs there were determined on appeal. *See id.* at 1310 (compelling objectors to register for the draft pending appeal does not "outweigh[ ] the gravity of the harm" to the government "should the stay requested be refused"). The same is true here.

V. The public interest favors a stay.

The above discussion also rebuts most of Plaintiffs' public-interest argument—including the alleged public interest in vindicating "constitutional rights" that are still very much in dispute and, in this case, based on an indefensible premise. This case, moreover, arises in the context of a preliminary injunction and, as a result, although the Plaintiffs have now received all the relief they sought, the State has not even had a full hearing on the merits of Plaintiffs' claims, and if

affirmed Utah will have no meaningful appellate review.

Indeed, Plaintiffs' argument (echoing the district court) that "the public is well served by having certainty about the status of Plaintiffs' marriages" (Opp. 27, quoting App. A at 28) simply proves Judge Kelly's point that what is really going on in this case is an attempt to deprive the State of its right to appeal—here and in *Kitchen.* A non-final district court order, especially a preliminary injunction, is necessarily subject to further review, and is therefore intrinsically incapable of creating the immediate "certainty" that Plaintiffs seek—unless of course a stay is denied and the "facts on the ground" are allowed to develop in ways that cannot be undone if the decision is ultimately reversed. That, unfortunately, is what the Plaintiffs appear to be seeking, and what the district court and two judges of the Tenth Circuit have now endorsed.

Especially where the people's democratic rights are at stake, that approach to litigation contravenes the public interest. This Court has previously recognized the "public interest in the Government's right to appeal from an erroneous conclusion of law." *U.S.* v. *Scott*, 437 U.S. 82, 101 n.13 (1978) (in context of criminal case discussing the Double Jeopardy Clause). As the Court put it in *U.S. Bancorp Mortg. Co.* v. *Bonner Mall P'ship*, 513 U.S. 18 (1994), the "public interest requires" that the "orderly procedure" of the judicial system be "honored." *Id.* at 27 (internal quotation marks omitted). And nothing is more central to that system's "orderly procedure" than the right to an effective appeal—especially of an order granting a preliminary injunction enjoining the enforcement of democratically adopted state laws.

CONCLUSION

For the foregoing reasons, and those stated in the Application, Applicants respectfully request that the Circuit Justice issue the requested stay of the district court's order and preliminary injunction pending appeal. If the Circuit Justice is either disinclined to grant the requested relief or simply wishes to have the input of the full Court on this application, Applicants respectfully request that it be referred to the full Court, and that a temporary stay be instituted if the Court should require additional time for deliberation.

Respectfully submitted,

/s/ Gene Schaerr

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July 18, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the 18th of July, 2014, a true, correct and complete copy of the foregoing Reply Memorandum In Support Of Emergency Application to Stay Preliminary Injunction Pending Appeal was filed with the United States Supreme Court and served on the following via electronic mail and United States Mail:

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APPENDIX

App. E GOVERNOR'S MEMORANDUM TO CABINET DECEMBER 24, 2013

App. F GOVERNOR'S MEMORANDUM TO CABINET JANUARY 8, 2014

App. G ATTORNEY GENERAL REYES' LETTER

APPENDIX E-

GOVERNOR'S MEMORANDUM TO CABINET
DECEMBER 24, 2013

Governor's Office gives direction to state agencies on same sex marriage issues

Dec 24 2013

SALT LAKE CITY - (Dec. 24, 2013) The Governor's Office sent the following email to Cabinet Members today in regards to issues stemming from the recent federal court rulings on Amendment 3 to the Utah State Constitution:

> *Dear Cabinet,*
> *Thanks to each of you for providing an analysis of the impacts to the operations in your respective agencies based on the recent federal district court ruling on same sex marriage. As indicated in your responses, many agencies will experience minimal or no impact.*
>
> *For those agencies that now face conflicting laws either in statute or administrative rule, you should consult with the Assistant Attorney Generals assigned to your agency on the best course to resolve those conflicts. You should also advise your analyst in GOMB of the plans for addressing the conflicting laws.*
>
> *Where no conflicting laws exist you should conduct business in compliance with the federal judge's ruling until such time that the current district court decision is addressed by the 10th Circuit Court.*

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Thank you for your attention to this matter.

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APPENDIX F-

GOVERNOR'S MEMORANDUM TO CABINET
JANUARY 8, 2014

Governor's Office gives direction to state agencies on same-sex marriages

Jan 08 2014

SALT LAKE CITY (Jan. 8, 2014) – The Governor's Chief of Staff Derek Miller sent the following email to Cabinet Members last night providing direction on the status of same-sex marriages in Utah:

Dear Cabinet,

I'm sure you are all aware of the issuance of the stay regarding same-sex marriage in Utah from the United States Supreme Court yesterday. This stay effectively puts a hold on the decision of the district court, which found state laws prohibiting same-sex marriage in Utah to be unconstitutional.

After the district court decision was issued on Friday, December 20th, some same-sex couples availed themselves of the opportunity to marry and to the status granted by the state to married persons. This office sent an email to each of you soon after the district court decision, directing compliance.

With the district court injunction now stayed, the original laws governing marriage in Utah return to effect pending final resolution by the courts. It is important to understand that those laws include not only a prohibition of performing same-sex marriages but also recognizing same-sex marriages.

Based on counsel from the Attorney General's Office regarding the Supreme Court decision, state recognition of same-sex marital status is ON HOLD until further notice. Please understand this position is not intended to comment on the legal status of those same-sex marriages – that is for the courts to decide. The intent of this communication is to direct state agency compliance with current laws that prohibit the state from

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recognizing same-sex marriages.

Wherever individuals are in the process of availing themselves of state services related to same-sex marital status, that process is on hold and will stay exactly in that position until a final court decision is issued. For example, if a same-sex married couple previously changed their names on new drivers licenses, those licenses should not be revoked. If a same-sex couple seeks to change their names on drivers licenses now, the law does not allow the state agency to recognize the marriage therefore the new drivers licenses cannot be issued.

We appreciate your patience and diligence in this matter. We recognize that different state agencies have specific questions and circumstances that will need to be worked through. Please do so with the Assistant Attorney General assigned to your respective agency in coordination with the Governor's General Counsel. We also recognize that these changes affect real people's lives. Let us carefully and considerately ensure that we, and our employees throughout the state, continue to treat all people with respect and understanding as we assist them.

Regards,

Derek B. Miller
Chief of Staff
Governor's Office
State of Utah

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Governor's Office gives direction to state agencies on same sex marriage issues

Flag Notification for Senator Edward M. Kennedy

Flags lowered for National Fallen Firefighters Memorial Service

Flags lowered in honor of victims of the tragedy at Fort Hood, TX

Half-Staff Flag Notification, September 11, 2010

APPENDIX G-

ATTORNEY GENERAL REYES' LETTER

STATE OF UTAH

Office of the Attorney General

To all County Attorneys and County Clerks in the State of Utah:

The Utah Office of the Attorney General has been asked by certain counties for legal clarification about whether or not to mail or otherwise provide marriage certificates to persons of the same sex whose marriage ceremonies took place between December 20, 2013 and January 6, 2014, prior to the issuance of the stay by the U.S. Supreme Court. We offer the following guidance:

Although the State of Utah cannot currently legally recognize marriages other than those between a man and a woman, marriages between persons of the same sex were recognized in the state of Utah between the dates of December 20, 2013 until the stay on January 6, 2014. Based on our analysis of Utah law, the marriages were recognized at the time the ceremony was completed.

While the validity of the marriages in question must ultimately be decided by the legal appeals process presently working its way through the courts, the act of completing and providing a marriage certificate for all couples whose marriage was performed prior to the morning of January 6, 2014, is administrative and consistent with Utah law. Therefore, it is recommended that county clerks provide marriage certificates to all persons whose marriages were solemnized during this period as an administrative function and not a legal function. This would allow, for instance, same-sex couples who solemnized their marriage prior to the stay to have proper documentation in states that recognize same-sex marriage.

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