IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 14-2386, 14-2387, 14-2388

MARILYN RAE BASKIN, *et al*.,

Plaintiffs/Appellees,

v.

PENNY BOGAN, in her official capacity as Boone County Clerk, *et al.*,

Defendants/Appellants.

On Appeal from the United States District Court for the
Southern District of Indiana, Nos. 1:14-cv-355-RLY-TAB, 1:14-cv-404-RLY-TAB,
1:14-cv-406-RLY-MJD
The Honorable Richard L. Young, Chief Judge

MOTION FOR STAY OF MANDATE PENDING FINAL DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

Penny Bogan, as Clerk of Boone County, Indiana; Gregory F. Zoeller, as Attorney General of Indiana; William C. VanNess II, M.D., as Commissioner of the Indiana State Department of Health; Mike Alley, as Commissioner of the Indiana Department of Revenue; Steve Russo, as Executive Director of the Indiana Public Retirement System; and Brian Abbott, Chris Atkins, Ken Cochran, Steve Daniels, Jodi Golden, Michael Pinkham, Kyle Rosebrough, and Bret Swanson, as Members of the Board of Trustees of the Indiana Public Retirement System, (hereafter, the "State") all respectfully move the Court, pursuant to Federal Rule of Appellate Procedure 41(d), for an immediate stay of the mandate pending the final disposition by the U.S. Supreme Court of their fully submitted petition for writ of certiorari.

INTRODUCTION

On June 25, 2014, the district court granted the *Baskin*, *Fujii*, and *Lee* Plaintiffs' motions for summary judgment in a consolidated opinion and entered a final judgment and permanent injunctions. That same day, along with its notice of appeal and docketing statement, the State filed in the district court an Emergency Motion for Stay Pending Appeal. On June 27, 2014, having received no response from the district court, the State filed in this Court a combined Emergency Motion for Stay Pending Appeal in all three cases. Doc. No. 11. The Court granted the motion that same day and also consolidated the three appeals. Doc. Nos. 10, 12.

On June 30, 2014, Plaintiffs Quasney and Sandler filed an Emergency Motion to Lift the Court's Stay in Part, requesting that the Court "lift the Court's June 27, 2014 stay as it applies to them and their family." Doc. No. 13 at 20. The Court granted Quasney and Sandler's motion to lift the stay "on an emergency basis pending further order of the court." Doc. No. 20. On July 1, 2014, the *Lee* Plaintiffs filed an Emergency Motion to Lift the Court's Stay in Part, requesting that "the stay should be lifted as regards all affected Indiana first responders or alternatively, only the Lee Plaintiffs." Doc. No. 19 at 14. The Court denied this motion on July 2, 2014. Doc. No. 21.

The Court entered judgment against the State in this matter on September 4, 2014. On September 9, 2014, the State filed a petition for writ of certiorari with the Supreme Court presenting the following questions: (1) Whether the Due Process and Equal Protection Clauses of the Fourteenth Amendment permit States to define marriage as a legal union between one man and one woman; and (2) Whether the Due Process and Equal Protection Clauses permit States to treat as void same-sex marriages from other jurisdictions. The Supreme Court immediately docketed that petition as No. 14-277. Docket, *Bogan v. Baskin*, No. 14-277 (U.S. docketed Sept.

9, 2014), http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/14-277.htm. The same day, Plaintiffs-Appellees filed their response *in support* of certiorari, and the State waived reply. The case is thus fully submitted to the Court on Petition for Writ of Certiorari, and Supreme Court personnel advise that the Petition will be before the Court at its first conference of the coming October term on September 29, 2014.

Meanwhile, the Supreme Court has unmistakably indicated that lower court orders invalidating States' traditional marriage laws should not disrupt the status quo until the Court resolves the issue, twice staying judgments and injunctions requiring licensing or recognition of same-sex marriages. *McQuigg v. Bostic*, 2014 WL 4096232 (U.S. Aug. 20, 2014); *Herbert v. Kitchen*, 134 S. Ct. 893 (2014). The Court even stayed an injunction that would have required Utah to recognize same-sex marriages solemnized within that State during the period the original injunction was in effect. *Herbert v. Evans*, 2014 WL 3557112 (U.S. July 18, 2014). The Supreme Court thus views the ultimate, orderly resolution of the same-sex marriage question and any resulting relief as its exclusive province. Staying the mandate in this matter pending resolution of the State's cert petition would appropriately preserve the status quo consistent with the Supreme Court's orders in *McQuigg* and the two *Herbert* cases.

STANDARD FOR GRANTING A STAY OF MANDATE

A motion for stay of mandate "must show that the certiorari petition would present a substantial question and that there is good cause for a stay." Fed. R. App. P. 41(d)(2)(A). "[T]he party seeking the stay must demonstrate both a reasonable probability of succeeding on the merits and irreparable injury absent a stay." *Senne v. Vill. of Palatine*, 695 F.3d 617, 619 (7th Cir. 2012) (citation and internal quotation marks omitted). Regarding the former, "in order to demonstrate a reasonable probability of succeeding on the merits of the proposed certiorari

petition, a party must demonstrate a reasonable probability that four Justices will vote to grant certiorari and that five Justices will vote to reverse the judgment of this court." *Id.*

ISSUES RAISED IN THE PETITION FOR WRIT OF CERTIORARI

As noted above, the issues raised in the Petition for Writ of Certiorari are as follows:

1. Whether the Due Process and Equal Protection Clauses of the Fourteenth Amendment permit States to define marriage as a legal union between one man and one woman.

2. Whether the Due Process and Equal Protection Clauses permit States to treat as void same-sex marriages from other jurisdictions.

ARGUMENT

I. The Supreme Court Is Likely to Grant Certiorari and There Is a Reasonable Probability that the Court Will Reverse the Judgment of This Court

1. During the 2012 October Term, the Supreme Court granted certiorari in *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), which presented the issue whether States could define marriage as being between one man and one woman. It also took a case to address the validity of Section 3 of the Defense of Marriage Act, which similarly defined marriage for federal purposes. *United States v. Windsor*, 133 S. Ct. 2675 (2013). By taking these cases, the Court in effect acknowledged the national importance of the core same-sex marriage issues and announced its willingness to resolve them.

Unfortunately, the Court did not reach the merits of the issue in *Hollingsworth* because no actual defendants in that case appealed the district court's judgment. Holding that the sponsors of Proposition 8 did not have standing to appeal, the Court vacated the Ninth Circuit's decision invaliding California's traditional marriage definition but left intact the district court's judgment to the same effect. *Hollingsworth*, 133 S. Ct. at 2668. The same day, it issued its opinion in *Windsor* invalidating Section 3 of DOMA, not because the Constitution itself protects

same-sex marriage, but on the grounds that DOMA had "the purpose and effect to disparage and to injure those *whom the State, by its marriage laws, sought to protect* in personhood and dignity." *Windsor*, 133 S. Ct. at 2696 (emphasis added).

After the Court decided *Windsor*, a flurry of federal decisions have struck down States' traditional marriage laws under the Fourteenth Amendment, although the streak was recently broken in Louisiana, *Robicheaux v. Caldwell*, Nos. 13-5090, 14-97, 14-327, 2014 WL 4347099 (E.D. La. Sept. 3, 2014). What is more, a circuit conflict already exists on the core same-sex marriage issues. *Contrast Citizens for Equal Prot. v. Bruning*, 455 F.3d 859, 868 (8th Cir. 2006) (upholding against a Fourteenth Amendment challenge Nebraska's constitutional provision defining marriage as between a man and a woman), *with Baskin v. Bogan*, Nos. 14-2386, 14-2387, 14-2388, 14-2526, 2014 WL 4359059 (7th Cir. Sept. 4, 2014) (striking down the traditional marriage laws of Indiana and Wisconsin), *Bostic v. Schaefer*, Nos. 14-1167, 14-1169, 14-1173, 2014 WL 3702493 (4th Cir. July 28, 2014) (Virginia), *Bishop v. Smith*, Nos. 14-5003, 14-5006, 2014 WL 3537847 (10th Cir. July 18, 2014) (Oklahoma), *and Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014) (Utah). And other circuit courts, including the Fifth, Sixth, and Ninth Circuits (where cases challenging traditional marriage definitions are pending), may soon deepen the split. *See* Erik Eckholm, *One Court, Three Judges and Four States with Gay Marriage Cases*, N.Y. Times, Aug. 6, 2014, http://www.nytimes.com/2014/08/07/us/one-court-three-judges-and-four-states-with-gay-marriage-cases.html.

Given the Supreme Court's demonstrated interest in the same-sex marriage issues in *Hollingsworth* and *Windsor*, the many cases pending around the country that present the core marriage issues, and the already-extant circuit conflict, conventional wisdom holds that the Supreme Court will decide the core same-sex marriage issues by the close of this coming

October Term. *See* Erik Eckholm, *Wave of Appeals Expected to Turn the Tide on Same-Sex Marriage Bans*, N.Y. Times, Mar. 22, 2014, http://www.nytimes.com/2014/03/23/us/appeals-expected-to-block-more-marriage-bans-on-fast-track-to-justices.html. The only question is which cases the Court will use as vehicles for doing so.

At its September 29, 2014, conference, the Court will consider cert petitions from not only this case, but also from Utah, *see* Petition for Writ of Certiorari, *Herbert v. Kitchen*, No. 14-124 (U.S. filed Aug. 5, 2014); Oklahoma, *see* Petition for Writ of Certiorari, *Smith v. Bishop*, No. 14-136 (U.S. filed Aug. 6, 2014); and Virginia, *see* Petitions for Writ of Certiorari in *McQuigg v. Bostic*, No. 14-251 (U.S. filed Aug. 29, 2014), *Schaefer v. Bostic*, No. 14-225 (U.S. filed Aug. 22, 2014), and *Rainey v. Bostic*, No. 14-153 (U.S. filed Aug. 8, 2014).

This case may present the cleanest vehicle yet for the Court to resolve core same-sex marriage issues. First, there are no potentially distracting (or even derailing) defendant standing issues, and full redress is possible because Petitioners include not only a county clerk who issues marriage licenses, but also state officials with actual authority to confer concrete benefits of recognition (rather than mere general supervisory authority) in the event Respondents prevail. Second, the Attorney General of Indiana provides a robust defense of the law. Third, both licensure of in-state marriages and recognition of out-of-state marriages have been thoroughly briefed and argued. Finally, Indiana does not offer same-sex couples a marriage substitute such as domestic partnerships or civil unions that could complicate evaluation of the core marriage issues.

Furthermore, if the Court determines that it would be best to address same-sex marriage through multiple cases, this case has an additional feature that recommends it for inclusion. Unlike the other circuits to invalidate traditional marriage under the Fourteenth Amendment, this

Court struck down Indiana's traditional marriage laws solely on equal protection grounds. *Baskin v. Bogan*, Nos. 14-2386, 14-2387, 14-2388, 14-2526, 2014 WL 4359059, at *4, *21 (7th Cir. Sept. 4, 2014). The case therefore provides an equal protection foil to the fundamental-rights methodology used to strike down States' laws in the other same-sex marriage cases pending before the Court, which may assist the Court in addressing all relevant issues.

Accordingly, it is very likely that at least four Justices will vote to grant certiorari in this case, or at the very least one of the same-sex marriage cases pending before it. And even if the Court does not set *this* case for plenary review, it is likely to hold the case while considering the same-sex marriage issues in another case. It would be proper, therefore, to preserve the status quo pending the Court's likely resolution of the same-sex marriage issues this Term.

2. On the merits, there is a reasonable probability that the Court will reject the argument that the Constitution requires all States to license and recognize same-sex marriages.

First, while this Court appears to have applied some form of heightened scrutiny, the Supreme Court is likely to conclude that rational basis review is appropriate. Indiana's traditional marriage definition on its face does not discriminate against homosexuals, as the prior Indiana marriages of Plaintiffs Everly, Judkins, and Carver confirm. *See Baskin* Doc. Nos. 36-3 at 2, 36-4 at 2, 36-6 at 2. And while the Indiana marriage law undoubtedly has a disparate impact on homosexuals, disparate impact alone is not a basis for inferring invidious discrimination. *Washington v. Davis*, 426 U.S. 229, 242 (1976). Furthermore, despite several opportunities to do so, the Court has never treated homosexuals as a specially protected class. *See, e.g.*, *United States v. Windsor*, 133 S. Ct. 2675, 2696 (2013); *Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003); *Romer v. Evans*, 517 U.S. 620, 632, 634-35 (1996).

Accordingly, the Supreme Court is likely to apply only rational basis review. In so doing, it is reasonably likely to conclude that the State's interest in encouraging biological parents to remain together for the sake of their children is sufficient to uphold its traditional marriage laws. Because that rationale for marriage does not extend to same-sex couples, the State is not required to treat them the same as opposite-sex couples. *See Johnson v. Robison*, 415 U.S. 361, 383 (1974) ("When, as in this case, the inclusion of one group promotes a legitimate governmental purpose, and the addition of other groups would not, we cannot say that the statute's classification of beneficiaries and nonbeneficiaries is invidiously discriminatory.").

The proper constitutional question, that is, has nothing to do with justifications for "excluding" access to marriage and its benefits—an inquiry that inherently presupposes the existence of a right to such "access" and thereby amounts to a *rejection* of rational-basis review. Rather, "the relevant question is whether an opposite-sex definition of marriage furthers legitimate interests that would not be furthered, or furthered to the same degree, by allowing same-sex couples to marry." *Jackson v. Abercrombie*, 884 F. Supp. 2d 1065, 1107 (D. Haw. 2012). Otherwise, there would be no basis for "excluding" any other grouping of individuals from making equal claims for marriage.

While this Court dismissed the responsible procreation argument, *Baskin*, 2014 WL 4359059 at *19, many courts have found it convincing, including most recently in *Robicheaux v. Caldwell*, Nos. 13-5090, 14-97, 14-327, 2014 WL 4347099, at *6 (E.D. La. Sept. 3, 2014). *See also Citizens for Equal Prot. v. Bruning*, 455 F.3d 859, 867-68 (8th Cir. 2006); *Lofton v. Sec'y of Dep't of Children & Family Servs.*, 358 F.3d 804, 818-19 (11th Cir. 2004); *Sevcik v. Sandoval*, 911 F. Supp. 2d 996, 1015-16 (D. Nev. 2012); *Jackson v. Abercrombie*, 884 F. Supp. 2d 1065, 1112-13 (D. Haw. 2012); *Smelt v. County of Orange*, 374 F. Supp. 2d 861, 880 (C.D. Cal. 2005),

aff'd in part, vacated in part, 477 F.3d 673 (9th Cir. 2006); *Wilson v. Ake*, 354 F. Supp. 2d 1298, 1309 (M.D. Fla. 2005); *In re Kandu*, 315 B.R. 123, 147-48 (Bankr. W.D. Wash. 2004); *Adams v. Howerton*, 486 F. Supp. 1119, 1124 (C.D. Cal. 1980), *aff'd*, 673 F.2d 1036 (9th Cir. 1982); *In re Marriage of J.B. & H.B.*, 326 S.W.3d 654, 677-78 (Tex. App. 2010); *Conaway v. Deane*, 932 A.2d 571, 619-21, 630-31 (Md. 2007); *Hernandez v. Robles*, 855 N.E.2d 1, 7 (N.Y. 2006); *Andersen v. King County*, 138 P.3d 963, 982-83 (Wash. 2006) (en banc); *Standhardt v. Superior Court ex rel. County of Maricopa*, 77 P.3d 451, 463- 65 (Ariz. Ct. App. 2003); *Dean v. District of Columbia*, 653 A.2d 307, 337 (D.C. 1995) (opinion of Ferren, J.); *Singer v. Hara*, 522 P.2d 1187, 1195 (Wash. Ct. App. 1974); *Baker v. Nelson*, 191 N.W.2d 185, 186 (Minn. 1971).

United States v. Windsor, 133 S. Ct. 2675 (2013), does nothing to undermine the responsible procreation argument. There, the Court did not address state rationales for marriage but instead struck down Section 3 of DOMA, which had "the purpose and effect to disparage and to injure those whom *the State*, by its marriage laws, sought to protect in personhood and dignity." *Id.* at 2696 (emphasis added). This was a violation of the Fifth Amendment principally because it was an "*unusual* deviation from the tradition of recognizing and accepting *state definitions* of marriage . . . ." *Id.* at 2693 (emphasis added). It was critical to the Court's analysis that New York had *previously granted* marital interests that federal DOMA then threatened. *Id.* at 2689. The Court stressed States' regulatory primacy over marriage as a matter of core sovereign interests, *id.* at 2689-92, and closed its opinion by stating, in no uncertain terms, that "[t]his opinion and its holding are confined to [New York's] lawful marriages," *id.* at 2696. It is therefore improper to extrapolate from *Windsor* any rule that affects any State's own definition of marriage, much less a repudiation of the long-recognized rationale for maintaining traditional marriage definitions.

It is also doubtful that the Supreme Court will separately find a fundamental right to same-sex marriage. While it has said that "[m]arriage is one of the basic civil rights of man, fundamental to our very existence and survival," *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (internal quotation marks omitted), neither it (nor this Court) has held that the constitutional right to marry encompasses same-sex marriages. "Marriage" is a foundational and ancient social institution whose meaning, until recently, was universally understood as limited to the union of a man and a woman. *Windsor*, 133 S. Ct. at 2689. No separate fundamental right to "same-sex marriage" is "deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (quotation marks omitted).

Accordingly, there is a reasonable probability that the Supreme Court will reverse the judgment of this Court.

II. The State and Indiana Citizens Will Suffer Irreparable Harm if a Stay Is Not Granted

1. The State seeks to preserve the status quo that was set in place by this Court on June 27 and July 1, 2014. Even if they ultimately prevail, Plaintiffs will not be irreparably harmed by a slightly longer delay until a final resolution. For example, even if Plaintiffs are unable to file joint Indiana tax returns by April 2015, a decision in their favor from the Supreme Court in the near future would enable them to amend their returns for the 2014 tax year. *See* Ind. Dep't of Revenue, FAQs: When Do I File an Amended (Corrected) Return? http://www.in.gov/dor/4710.htm (last visited Sept. 10, 2014) (directing Hoosier taxpayers to submit an IT-40X to amend previously-filed tax returns).

Next, this Court has already implicitly determined that claims for spousal and family benefits are insufficiently weighty to justify immediate relief pending final resolution. *See* Doc.

No. 12 (staying relief that would otherwise have allowed same-sex spouses to access their spouses' public and private employer-provided insurance); Doc. No. 21 (refusing to lift stay as applied to the *Lee* plaintiffs, who sought access to Indiana Public Retirement System benefits, including future police and fire department death benefits). What is more, if the State were to pay such benefits now, only to prevail later, it would be unclear whether it would be entitled to recover the erroneously paid sums from Plaintiffs. There is nothing emergent about a claim for benefits that can justify the confusion and potential exposure immediate enforcement would prompt.

Finally, Plaintiffs' remaining forms of relief are too speculative or dependent on the actions of a private entity to ward off a stay. For example, for Plaintiffs other than Quasney and Sandler, issues relating to evidentiary privileges, inheritance laws, hospital visitation, and wrongful death claims depend on factual predicates that do not exist in the record.

2. In contrast, the State's concerns that the lack of a stay will result in widespread chaos and confusion have already been born out. In the wake of the district court's grant of final judgment and permanent injunctions against defendant state officials and county clerks on June 25, 2014, same-sex couples rushed to Indiana courthouses to obtain marriage licenses, and some county clerks, even those not directly subject to the district court's permanent injunctions, began issuing them. *See, e.g.*, *Same-Sex Marriage in Indiana: Is Your County Allowing It?*, TheIndyChannel, June 27, 2014, http://www.theindychannel.com/news/local-news/how-are-indiana-clerks-handling-same-sex-marriage; Tim Evans, *ACLU Opposes State's Request for Stay that Would Halt Same-Sex Marriages*, IndyStar, June 27, 2014, http://www.indystar.com/story/news/2014/06/27/acluopposed-states-request-stay-halt-sex-

marriages/11461775/ (noting that the Marion County Clerk's Office had announced it would hold special hours from 10:00 A.M. to 2:00 P.M. on Saturday, June 28, 2014).

Yet other clerks decided not to issue licenses. *See Same-Sex Marriage*, *supra* (Adams, Clay, Daviess, Grant, and Warren Counties not issuing licenses); *see also* Dave Stafford, *Some Indiana Clerks Refuse to Issue Same-Sex Marriage Licenses*, The Indiana Lawyer, June 26, 2014, http://www.theindianalawyer.com/some-indiana-clerks-refuse-to-issue-same-sex-marriagelicenses/PARAMS/article/34473 (reporting that at least one clerk had reservations about issuing licenses until conclusive guidance was given). These refusals led to suggestions by counsel for plaintiffs that non-defendant county clerks might be at risk of litigation. *See Two Counties Refuse to Issue Marriage Licenses to Same Sex Couples*, WBIW, June 27, 2014, http://www.wbiw.com/state/archive/2014/06/two-counties-refuse-to-issue-marriage-licenses-to-same-sex-couples.php (Counsel stated, "Theoretically, we could bring new litigation.").

By the time that this Court stayed the district court's decision, Order, *Baskin v. Bogan*, Nos. 14-2386, 14-2387, 14-2388, Doc. No. 12 (7th Cir. June 27, 2014), hundreds of same-sex marriages had taken place. In Marion County alone, more than 500 licenses were issued to same-sex couples. *See* Tim Evans, *Federal Appeals Panel Stops Same-Sex Marriages*, IndyStar, June 28, 2014, http://www.indystar.com/story/news/2014/06/27/state-turns-appeals-court-stay-halt-sex-marriages-indiana/11555205/. Some plaintiffs chose to marry during the window. *See, e.g.*, Sam Klemet, *Hoosier Same-Sex Couples Prepare for Chicago*, WYFI Indianapolis, Aug. 25, 2014, http://www.wfyi.org/news/articles/hoosier-same-sex-couples-prepare-for-chicago (Gregory Hasty and Christopher Vallero); LaMar Holliday, *Federal Appeals Court Set to Hear Gay Marriage Arguments*, WANE, Aug. 25, 2014, http://wane.com/2014/08/25/federal-appeals-court-set-to-hear-gay-marriage-arguments/ (Monica Wehrle and Harriet Miller). But others did

not, "preferring to wait until they know it won't be appealed and they can celebrate their marriage with family and friends." Karen Caffarini, *Both Sides in Same-Sex Marriage Ready for Next Round*, Post-Tribune, Aug. 24, 2014, http://posttrib.suntimes.com/29402522-537/both-sides-in-same-sex-marriage-ready-for-next-round.html#.U_yLg5NMu-o (Dawn Carver, Pamela Eanes, Bonnie Everly, and Linda Judkins).

The couples who married are now in legal limbo, lacking surety as to their status and any related benefits and responsibilities. *See, e.g.*, Tim Evans & Tony Cook, *What Now for Those in Same-Sex Marriage Limbo?*, IndyStar, July 1, 2014, http://www.indystar.com/story/news/politics/2014/07/01/now-sex-marriage-limbo/11906429/; Jacob Rund, *Married Couples Live in Uncertainty*, The Republic, July 20, 2014, http://www.therepublic.com/view/local_story/Married-couples-live-in-uncert_1405899168. Indiana does not recognize those marriages. Barb Berggoetz, *Indiana Won't Recognize Same-Sex Marriages Performed Last Month*, IndyStar, July 9, 2014, http://www.indystar.com/story/news/politics/2014/07/09/state-recognize-june-marriages-sex-couples/12410207/. But that position has already led to at least one follow-on lawsuit seeking legal recognition of marriages that occurred after the district court's June 25 ruling but before this Court's June 27 stay. *See Hoenigman v. Pence*, No. 1:14-cv-01426-SEB-TAB (S.D. Ind. filed Aug. 29, 2014).

The lack of certainty has also created significant confusion for the public, including Indiana employers who are unsure whether they must modify their employment policies to include same-sex couples. J.K. Wall, *Employers Scramble to Deal with Same-Sex Marriage*, Indianapolis Business Journal, June 26, 2014, http://www.ibj.com/employers-scramble-to-deal-with-same-sex-marriage/PARAMS/article/48332; *see also* Tony Cook & Tim Evans, *Stay on*

Same-Sex Marriages Clouds Issue, IndyStar, June 29, 2014, http://www.indystar.com/story/news/2014/06/28/stay-sex-marriages-clouds-issue/11681857/.

Without a stay, in the absence of a final resolution, any recognition of same-sex marriages would come under a cloud of doubt. Plaintiffs have discussed at length their desire for societal acceptance. Yet, as even this Court's opinion acknowledges, judgment and injunctions in their favor cannot ensure those aims. *See Baskin*, 2014 WL 4359059 at *5. And allowing the district court's injunctions to become effective now would leave a bitter taste if they are ultimately reversed. Particularly given the likely prospect of Supreme Court resolution on the near horizon, the best course would be to allow that full and final resolution to occur before building up the expectations and reliance of same-sex couples and the citizenry more generally.

CONCLUSION

For the foregoing reasons, the State respectfully moves this Court to stay the issuance of its mandate pending the final disposition of its fully submitted petition for a writ of certiorari.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana

s/ Robert V. Clutter (with permission)
Robert V. Clutter
Kirtley, Taylor, Sims, Chadd & Minnette, P.C.
117 W. Main Street
Lebanon, IN 46052
(765) 483-8549
bclutter@kirtleytaylorlaw.com

Counsel for the Boone County Clerk

s/ Thomas M. Fisher
Thomas M. Fisher
Solicitor General
Office of the Attorney General
IGC South, Fifth Floor
302 W. Washington Street
Indianapolis, IN 46204
Tel: (317) 232-6255
Fax: (317) 232-7979
Tom.Fisher@atg.in.gov

Counsel for State Defendants

FEDERAL RULE OF APPELLATE PROCEDURE 41(d)(2)(A)
CERTIFICATION

The undersigned hereby certifies that a petition for writ of certiorari to the Supreme Court has been filed in this matter on September 9, 2014. This Motion for Stay of Mandate Pending Petition for Writ of Certiorari is not being filed merely for delay.

The Motion includes a statement of the specific issues raised in the petition for certiorari and shows that the petition for certiorari raises important questions meriting review by the Supreme Court.

By: *s/ Thomas M. Fisher*
Thomas M. Fisher
Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

No. 14-2386

Paul D. Castillo
Camilla B. Taylor
Lambda Legal Defense & Education Fund, Inc.
pcastillo@lambdalegal.org
ctaylor@lambdalegal.org

Brent Phillip Ray
Jordan Heinz
Melanie MacKay
Scott Lerner
Dmitriy Tishyevich
Kirkland & Ellis LLP
brent.ray@kirkland.com
jordan.heinz@kirkland.com
melanie.mackay@kirkland.com
scott.lerner@kirkland.com
dmitriy.tishyevich@kirkland.com

Barbara J. Baird
Law Office of Barbara J. Baird
bjbaird@bjbairdlaw.com

No. 14-2387

Kenneth J. Falk
Gavin M. Rose
ACLU Of Indiana
kfalk@aclu-in.org
grose@aclu-in.org

Sean C. Lemieux
Lemieux Law
sean@lemieuxlawoffices.com

James Esseks
Chase Strangio
American Civil Liberties Union Foundation
jesseks@aclu.org
cstrangio@aclu.org

Thomas Alan Hardin
Shine & Hardin LLP
thardin@shineandhardin.com

No. 14-2388

Karen Celestino-Horseman
Austin & Jones, PC
karen@kchorseman.com

William R. Groth
Fillenwarth Dennerline Groth & Towe LLP
wgroth@fdgtlaborlaw.com

Mark W. Sniderman
Sniderman Nguyen, LLP
mark@snlawyers.com

Kathleen M. Sweeney
Sweeney Hayes LLC
ksween@gmail.com

Kelly R. Eskew
kellyreskew@gmail.com

I further certify that on September 10, 2014, I e-mailed courtesy copies of this filing to the following counsel of record in the District Court:

No. 14-2386

Darren J. Murphy
Assistant Hamilton County Attorney
dmurphy@ori.net

Nancy Moore Tiller
Nancy Moore Tiller & Associates
nmt@tillerlegal.com

John S. Dull
Law Office of John S. Dull, PC
jsdull@yahoo.com

Elizabeth A. Knight
Porter County Administrative Center
eknight@porterco.org

No. 14-2388

Robert A. Katz
Indiana University McKinney School of Law
robkatz87@gmail.com

s/ Thomas M. Fisher
Thomas M. Fisher
Solicitor General

Office of the Attorney General
Indiana Government Center South 5th Floor
302 W. Washington St.
Indianapolis, IN 46204-2770
Phone: (317) 232-6255
Fax: (317) 232-7979
Email: Tom.Fisher@atg.in.gov