

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

No: 14-3779

Kyle Lawson, et al.

Appellees

v.

Robert T. Kelly, in his official capacity as Director of the Jackson County Department of
Recorder of Deeds

State of Missouri

Appellant

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No: 14-3780

Kyle Lawson, et al.

Appellants

v.

Robert T. Kelly, in his official capacity as Director of the Jackson County Department of
Recorder of Deeds and State of Missouri

Appellees

Appeals from U.S. District Court for the Western District of Missouri - Kansas City
(4:14-cv-00622-ODS)

Third Motion to Vacate Stay of Judgment

Come now Appellees/Cross-Appellants, pursuant to Federal Rules of Appellate
Procedure 27, and move this Court for entry of an order vacating the district court's stay
of its November 7, 2014 judgment. In support, they state:

1. On November 7, 2014, the district court entered judgment declaring “that section 451.022 of the Revised Missouri Statutes and Article I, section 33 of the Missouri Constitution, and any other provision of state law that precludes people from marrying solely because they are of the same gender violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment[.]” *Lawson v. Kelly*, 58 F.Supp.3d 923, 936 (W.D. Mo. 2014) (footnote omitted).¹

2. The district court *sua sponte* ordered that “[t]he effects of the judgment will be stayed until the judgment is final.” *Id.*

3. On December 10, 2014, Appellees/Cross-Appellants filed their First Motion to Vacate Stay in this Court. No party opposed vacating the stay. On January 22, 2015, this Court denied the motion to vacate the district court’s stay, but expedited this appeal.

4. On February 9, 2015, Appellees/Cross-Appellants filed their Second Motion to Vacate Stay. No party opposed vacating the stay. On March 19, 2015, this Court entered an order stating: “Consistent with the status of the other cases set for argument on May 12, 2015, the second motion to vacate stay is denied.”

5. This case is fully briefed and was scheduled for argument on May 12, 2015.

¹ Only the refusal of marriage licenses to same-sex couples is at issue in this case. As a result of other litigation, Missouri last year began recognizing the marriages of same-sex couples entered into in jurisdictions that permit same-sex couples to marry. *See Barrier v. Vasterling*, No. 1416-CV03892, 2014 WL 5469888 (Mo. Cir. Ct. Oct. 27, 2014), *appeal dismissed* No. SC94667 (Mo. Dec. 16, 2014).

6. On April 29, 2015, this Court deferred oral arguments and any further consideration of this case pending the Supreme Court of the United States' decision in *Obergefell v. Hodges*, Nos. 14-556, 14-562, 14-571, and 14-574.

7. On June 26, 2015, the Supreme Court filed its decision in *Obergefell*.

The Stay of the District Court's Judgment Should be Vacated

8. A stay pending appeal is an intrusion into the ordinary process of judicial review, and “[t]he parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the prompt execution of orders.” *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal quotation marks and citations omitted). In the ordinary case “the judgment of a district court becomes effective and enforceable as soon as it is entered.” *In re Copper Antitrust Litig.*, 436 F.3d 782, 793 (7th Cir. 2006).

9. This Court requires that “[t]he party seeking a stay pending appeal must show (1) that it is likely to succeed on the merits; (2) that it will suffer irreparable injury unless the stay is granted; (3) that no substantial harm will come to other interested parties; and (4) that the stay will do no harm to the public interest.” *James River Flood Control Ass’n v. Watt*, 680 F.2d 543, 544 (8th Cir. 1982). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken*, 556 U.S. at 433-34.

10. Maintenance of the stay can no longer be justified.

a. In light of the decision in *Obergefell*, there is no doubt that the judgment of the district court will be affirmed.

b. Missouri will not suffer irreparable harm in the absence of a stay. It is the power and duty of the judiciary to declare state laws unconstitutional where application of the laws would conflict with the Constitution. *Younger v. Harris*, 401 U.S. 37, 52 (1971) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)). Now that the Supreme Court has reached the same conclusion as the district court in this case, there can be no harm in allowing the district court's judgment to be executed.

c. Continuing the stay would impose substantial hardship on Plaintiffs and other same-sex couples. The district court found that Plaintiffs "suffer irreparable harm from being deprived of the opportunity to marry." *Lawson*, 58 F.Supp.3d at 935.

d. Maintaining the stay is not in the public interest. Allowing the district court's judgment to be executed protects constitutional rights, and "it is always in the public interest to protect constitutional rights." *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) *overruled on other grounds by Phelps-Roper v. City of Manchester, Mo.*, 697 F.3d 678 (8th Cir. 2012).

WHEREFORE Appellees/Cross-Appellants respectfully request that this Court issue an order vacating the district court's stay of the November 7, 2014 judgment, and granting such other and further relief as is just and proper under the circumstances.

Respectfully submitted,

/s/ Anthony E. Rothert
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Certificate of Service

I certify that a copy of the forgoing was filed electronically with the Clerk and delivered by operation of the CM/ECF system to the counsel of record on June 26, 2015.

/s/ Anthony E. Rothert