

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

KYLE LAWSON, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 14-0622-CV-W-ODS
)
ROBERT T. KELLY, in his official)
Capacity as Director of the Jackson)
County Department of Recorder of)
Deeds,)
)
Defendant.)
_____)
)
STATE OF MISSOURI,)
)
Intervenor.)

ORDER DENYING MOTION TO LIFT STAY

In the absence of an affirmative request from *all* participants in this litigation (Plaintiffs, Defendant, and Intervenor), the Motion to Lift Stay (Doc. # 57) is denied.

The Court stayed the judgment in this case pending its finality because there is at least a possibility that a higher court (the Court of Appeals or the Supreme Court) could hold the Court's judgment is wrong. Absent a stay, the Court's injunction would require Defendant to begin issuing marriage licenses that could later be determined to have been issued in error. Absent a stay the Court's declaration that Missouri's prohibitions on same-sex marriage are unconstitutional might be used to require other Recorders of Deeds who were not parties to this suit to issue marriage licenses that could later be determined to have been issued in error.

The Court does not agree that the Supreme Court's recent denials of stays indicate the stay should be lifted. Most of the cases Plaintiffs cite arose in circuits that had already struck down a statute and those decisions were final. Thereafter, a district court in a different state within the circuit applied that circuit's final ruling, and at the same time declined to issue a stay. The higher courts (the courts of appeal and the

Supreme Court) declined to issue a stay of the order applying that circuit's final and binding decision. That is not the procedural posture present here. This case involves the initial determination of a statute's validity. Without citing all the cases from a similar procedural posture, the Court notes that in most such previous situations the district courts entered a stay and, if they did not, a higher court did it for them, and the stays persisted until the cases were final.

The Court also rejects Plaintiffs' suggestion that the imposition of a stay undermines the interest in uniformity and consistency because a similar decision was issued by a state court and that decision was not stayed. The state court's decision not to issue a stay cannot dictate whether this Court should stay the case. Moreover, the Court believes that the imposition of a stay promotes certainty because it obviates the potential problems identified in the second paragraph of this Order.

Finally, Plaintiffs suggest there is no reason for a stay because marriage licenses will be issued as a result of the state court judgment. This argument also cuts against Plaintiffs: if marriage licenses are being issued, then the Court's stay in this case has no effect. If – as the Court suspects – there are some counties that are denying they are bound by the state court's judgment and Plaintiffs seek to use this Court's order to effectuate immediate change, then the Court's concerns come to the fore.¹

At this point there is little time before the stay expires. Defendant and Intervenor have until December 8, 2014 to file a Notice of Appeal. If neither appeals, the stay expires on December 9. If either appeals, Plaintiffs are free to ask the Court of Appeals to lift the stay.

¹The Court takes judicial notice of the fact that Defendant began complying with the Court's injunction, notwithstanding the stay, the same day the Judgment was issued. The Court does not know if Defendant continues this practice. If the practice continues, the fact that the stay is ignored by Defendant means the only possible value to Plaintiffs in lifting the stay is to use the Court's declaration to force or persuade other Recorders of Deeds to adhere to the Court's judgment. As stated, the Court does not want this done until the Court's judgment is final unless the Intervenor – as representative for the State as a whole – affirmatively accedes in this request.

The Court does not want to cast a cloud on the validity of marriages performed under its Judgment's auspices. For that reason, the Court deems it prudent to leave the stay in place until the Judgment is final.

IT IS SO ORDERED.

DATE: November 25, 2014

/s/ Ortrie D. Smith
ORTRIE D. SMITH, SENIOR JUDGE
UNITED STATES DISTRICT COUR