

CV-14-414

IN THE ARKANSAS SUPREME COURT

M. KENDALL WRIGHT, et al

PLAINTIFFS-APPELLEES

VS.

Case No. CV-14-414

NATHANIEL SMITH, MD, MPH, et al

DEFENDANTS-APPELLANTS

STATE DEFENDANTS-APPELLEES'
RESPONSE TO PLAINTIFF-APPELLEES'
MOTION TO DISMISS APPEAL

The Director of the Arkansas Department of Health and the Director of the Arkansas Department of Finance and Administration, in their official capacities, and their successors in office (the "State"), state as follows for their Response to the Plaintiffs-Appellees' Motion to Dismiss Appeal filed May 13, 2014:

1. The State filed a notice of appeal of the Circuit Court's May 9, 2014 order on May 10, 2014, and lodged a partial record in order to request a stay from this Court on the morning of the next business day, May 12. The need for a stay is extraordinary because although the Circuit Court's order does not grant injunctive relief (as apparently now conceded by Plaintiffs-Appellees), several circuit clerks are actively issuing marriage licenses to same-sex couples. Other clerks have

concluded that Amendment 83 continues to prohibit the issuance of same-sex marriage licenses. Confusion is pervasive, and this Court should exercise its superintending authority over circuit courts to issue a stay. A stay remains necessary and appropriate, for the reasons described in the State's petition, regardless of the technical final or appealable nature of the Circuit Court's May 9, 2014 order. This Court has superintending authority regardless. Because the Circuit Court has declined to issue a stay, this Court should exercise its superintending authority to issue a stay.

2. The State agrees that the Circuit Court's May 9, 2014 order provides declaratory relief, but fails to address the Plaintiffs' claims for injunctive relief. The State agrees that the Circuit Court's May 9, 2014 order does not address the constitutionality of Ark. Code Ann. § 9-11-208(b), which prohibits circuit clerks from issuing marriage licenses to persons of the same sex. The State agrees that there are a bevy of unanswered questions that have arisen from the Circuit Court's order. This confusion and uncertainty supports a stay by this Court.

3. The Court should grant the State's Petition for Emergency Stay. If a stay is issued, and this Court determines that there is no final and appealable order, and therefore the State's ability to appeal will arise after the entry of a subsequent final order by the Circuit Court, then the State does not object to an order dismissing this appeal and allowing the State to pursue its appeal in the ordinary

course. The State did not intend to expedite the ordinary appeal of the Circuit Court's substantive order, by lodging the partial record in order to request an emergency stay.

WHEREFORE, the State prays that this Court immediately issue a stay of the Circuit Court's May 9, 2014 "Order Granting Summary Judgment in Favor of the Plaintiffs and Finding Act 144 of 1997 and Amendment 83 Unconstitutional," and if a stay is issued, and this Court determines that there is no final and appealable order, and therefore the State's ability to appeal will arise after the entry of a subsequent final order by the Circuit Court, then the State does not object to an order dismissing this appeal and allowing the State to pursue its appeal in the ordinary course.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Colin R. Jorgensen, Assistant Attorney General, certify that on this 14th day of May, 2014, I have served the foregoing upon the following via electronic mail attachment:

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/s/ Colin R. Jorgensen

CERTIFICATE OF COMPLIANCE

I, Colin R. Jorgensen, do hereby certify that I have submitted and served on opposing counsel an unredacted PDF document that complies with the Rules of the Supreme Court and the Court of Appeals of Arkansas. The PDF document is identical to the corresponding parts of the paper document from which it was created as filed with the Court. To the best of my knowledge, information, and belief formed after scanning the PDF document for viruses with an antivirus program, the PDF document is free from computer viruses. A copy of this certificate has been submitted with the paper copies filed with the Court and has been served on all parties.

/s/ Colin R. Jorgensen