IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER INNISS, et al.,
Plaintiffs,
v.
DEBORAH ADERHOLD, et al.,
Defendants.

1:14-cv-01180-WSD

ORDER

This matter is before the Court on Defendants Deborah Aderhold's ("Aderhold") and Monica P. Fenton's ("Fenton") Unopposed Motion to Stay Proceedings Pending a Ruling by the United States Supreme Court ("Motion to Stay") [53].

Defendants Aderhold, Fenton and Davidson ("Defendants")[1] seek a stay of this action in light of the United States Supreme Court's grant of certiorari in four cases ("the Sixth Circuit Cases")[2] that were the subject of a November 6, 2014,

[1] Defendant Toomer has not responded to the Court's January 23, 2015, request to state her position on the Motion to Stay.

[2] See Obergefell v. Hodges, No. 14-556, 2015 WL 213646 (Jan. 16, 2015); Tanco v. Haslam, No. 14-562, 2015 WL 213648 (Jan. 16, 2015); DeBoer v. Snyder, No. 14-571, 2015 WL 213650 (Jan. 16, 2015); Bourke v. Beshear, No. 14-574, 2015 WL 213651 (Jan. 16, 2015).

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opinion issued by the United States Court of Appeals for the Sixth Circuit. In that opinion, the Sixth Circuit held that a State's prohibition on same-sex marriage, and a State's refusal to recognize lawful same-sex marriages performed in other States, does not violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment. See DeBoer v. Snyder, 772 F.3d 388, 403-20 (6th Cir. 2014).

In granting certiorari, the Supreme Court appears to have recognized a split among the Sixth Circuit and other United States Courts of Appeals on whether same-sex marriage bans are constitutional. In the Sixth Circuit Cases, the Supreme Court granted certiorari on the following questions:

> 1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?
> 2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

DeBoer, 2015 WL 213650, at *1.

The constitutionality of same-sex marriage bans, and the standard of review that a court applies to evaluate them, have been considered by approximately forty eight (48) United States District Courts and Courts of Appeals. The holdings in these cases and the reasoning behind them are varied. In addition to the split among the Circuits, there is a split of opinion on these issues among the District Courts in the Eleventh Circuit. In Brenner v. Scott, 999 F. Supp. 2d 1278 (N.D.

Fla. 2014), the district court applied strict scrutiny to invalidate Florida's same-sex marriage ban because the district court concluded that the ban infringed on the plaintiffs' fundamental right to marry. The decision in Brenner is on appeal to the Eleventh Circuit. The appeal has not been stayed.[3]

The Court's January 8, 2015, Opinion and Order (the "January 8th Order") [49] reaches a different conclusion than was reached in Brenner. In its January 8th Order, the Court considered Georgia's marriage laws, as enacted by O.C.G.A. § 19-3-3.1 and Art. I, § IV, Para. I of the Georgia State Constitution, prohibiting same-sex marriages in Georgia and preventing recognition of same-sex marriages performed in other States. The Court found that Plaintiffs do not have a fundamental right to same-sex marriage. The Court also determined that the rational basis test applies to Plaintiffs' claims based on the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The district court's decision in Brenner differs materially on these issues.

The parties acknowledge that the Court has discretion, under Rule 26(d)(2) of the Federal Rules of Civil Procedure, to grant a stay and alter the sequence of discovery "for the parties' and witnesses' convenience and in the interests of

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[3] In Searcy v. Strange, No. 1:14-cv-00208, 2015 WL 328728 (S.D. Ala. Jan. 23, 2015), the district court held that Alabama's same-sex marriage ban violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. On January 26, 2015, the defendants filed a notice of appeal to the Eleventh Circuit.

justice." See Fed. R. Civ. P. 26(d)(2). In support of staying this action, the parties assert that the Supreme Court's determination of the issues on which it granted certiorari in the Sixth Circuit Cases "will most certainly guide the future path of the case at bar," Mot. to Stay [53] at 3; "will likely guide the future path of the present action," Def. Davidson's Resp. [57] at 3; and "will likely significantly reshape the issues for discovery, and may decide this case, and given the discovery that Defendants believe is necessary, Plaintiffs believe that proceeding with the case before [the Sixth Circuit Cases] [are] decided would not serve the interests of efficiency or judicial economy," Pls' Am. Resp. [59] at 2. Plaintiffs also recognize that Brenner v. Armstrong, No. 14-14061 (11th Cir.), is on appeal to the Eleventh Circuit, and that the Circuit opinion in that case "could also reshape discovery or decide the issues in this case." Id.[4]

The Court has considered the parties' input and evaluated a proper balance between Plaintiffs' practical concern that a stay withholds from them the recognition to which they claim they are constitutionally entitled, and Georgia and its citizens' interest in having full review of the Georgia statute and constitutional provision at issue. This balance is best accomplished by presenting to the Eleventh

[4] This observation implicitly acknowledges that the Eleventh Circuit could consider the important issues in Brenner, also raised in this case, without the benefit of input from the parties in this action.

Circuit the full range of judicial interpretations of the constitutional issues presented in Brenner and in this case—issues, the resolution of which, will have a fundamental and transformative impact on legal, cultural and individual interests in our State and our Nation.

The Court concludes, therefore, that the interests in this case are best served by: (i) staying discovery; (ii) not staying Defendants Aderhold's and Fenton's obligation to answer Plaintiffs' Amended Complaint, so this case is reasonably processed further; and (iii) allowing the parties to seek an interlocutory appeal of the Court's January 8th Order.

Allowing an interlocutory appeal of the Court's January 8th Order permits the parties to support or challenge the Court's reasoning or conclusions in the January 8th Order, including whether the Court has subject-matter jurisdiction over this action and whether Plaintiffs have a fundamental right to same-sex marriage under the United States Constitution. By allowing an appeal in this case, the Eleventh Circuit can elect to have before it two differing views and constitutional analyses of these issues. Accordingly, and to allow an interlocutory appeal, the Court, pursuant to 28 U.S.C. § 1292(b), certifies that the January 8th Order, "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the [O]rder may

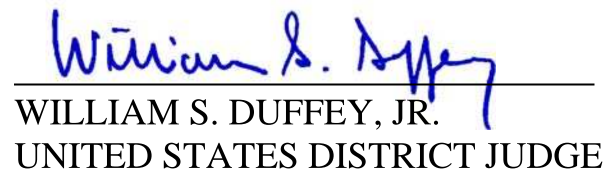
materially advance the ultimate termination of the litigation." See 28 U.S.C. § 1292(b); see also Fed. R. App. P. 5(a)(3) (district court may *sua sponte* amend its order to include required permission or statement allowing party to petition for appeal; new period for filing petition runs from entry of amended order).

For the reasons stated above,

IT IS HEREBY ORDERED that Defendants Aderhold's and Fenton's Unopposed Motion to Stay Proceedings Pending a Ruling by the United States Supreme Court [53] is **GRANTED IN PART** and **DENIED IN PART.** It is **GRANTED** with respect to discovery in this action, but **DENIED** with respect to non-discovery pleadings, including the Answer required to be filed by Defendants Aderhold and Fenton. Defendants Aderhold's and Fenton's Answer is required to be filed on or before February 17, 2015.

IT IS FURTHER ORDERED that the Court's January 8, 2015, Opinion and Order [49] is **CERTIFIED** under 28 U.S.C. § 1292(b). The Court determines that its January 8th Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the January 8th Order may materially advance the ultimate termination of this litigation. The ten-day period within which to appeal the Court's January 8th Order will run from the date of this Order.

SO ORDERED this 29th day of January, 2015.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE