

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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VIRGINIA WOLF and CAROL SCHUMACHER,  
KAMI YOUNG and KARINA WILLES,  
ROY BADGER and GARTH WANGEMANN,  
CHARVONNE KEMP and MARIE CARLSON,  
JUDITH TRAMPF and KATHARINA HEYNING,  
SALUD GARCIA and PAMELA KLEISS,  
WILLIAM HURTUBISE and LESLIE PALMER,  
JOHANNES WALLMANN and KEITH BORDEN,

Plaintiffs,

v.

SCOTT WALKER, in his official capacity as  
Governor of Wisconsin,  
J.B. VAN HOLLEN, in his official capacity as  
Attorney General of Wisconsin,  
OSKAR ANDERSON, in his official capacity as  
State Registrar of Wisconsin,  
JOSEPH CZARNEZKI, in his official capacity as  
Milwaukee County Clerk,  
WENDY CHRISTENSEN, in her official capacity as  
Racine County Clerk and  
SCOTT MCDONELL, in his official capacity as  
Dane County Clerk,

Defendants.

ORDER

14-cv-64-bbc

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Plaintiffs in this case are same-sex couples who challenged the constitutionality of Wisconsin laws that banned plaintiffs from marrying or receiving legal recognition for lawful marriages officiated in other states or countries. Judgment was entered in favor of plaintiffs

on June 19, 2014. Dkt. #136. The Court of Appeals for the Seventh Circuit affirmed the decision, Baskins v. Bogan, 766 F.3d 648 (7th Cir. 2014), and the Supreme Court denied defendants' petition for a writ of certiorari, Walker v. Wolf, 135 S. Ct. 316 (Oct. 6, 2014), rendering the judgment final.

On December 12, 2014, plaintiffs filed a motion for attorney fees under 42 U.S.C. § 1988, along with a bill of costs. Dkt. ##163 and 173. The court set January 5, 2015 as the deadline for responding and then moved the deadline to January 23, 2015 after defendants filed an unopposed motion for an extension of time. Dkt. #174.

On January 20, 2015, defendants filed what they called an "expedited motion to stay briefing and disposition of fees and costs issues." Dkt. #179. In their motion, defendants asked for a stay on those issues pending a decision by the Supreme Court in several cases regarding the validity of same-sex marriage bans in Michigan, Ohio, Kentucky and Tennessee. E.g., DeBoer v. Snyder, No. 14-571, 2015 WL 213650 (S. Ct. Jan. 16, 2015). In light of defendants' motion, Magistrate Judge Stephen Crocker stayed further briefing on plaintiffs' motion until the court resolved defendants' motion, dkt. #180, which is now ready for review.

Defendants' argument for the stay has two parts. First, they say that, if the Supreme Court rules in the states' favor, "this Court's judgment will no longer be valid and will be subject to a motion under Federal Rule of Civil Procedure 60(b) (or another pertinent rule) for the Court to vacate its judgment." Dfts.' Mot., dkt. #179, at 2. Second, if the judgment is vacated, "[p]laintiffs will no longer be prevailing parties under 42 U.S.C. § 1988 and will

not be entitled to recover their attorneys' fees, costs, and expenses." Id.

I am denying defendants' motion because they have not shown that they are entitled to a stay. Both of their arguments are speculative and are not supported by even a single case in their briefs. Of course, defendants are free to file a Rule 60 motion in the future if they believe it is appropriate, but I see no reason to further delay the resolution of the remaining issues in this case.

#### ORDER

IT IS ORDERED that defendants' motion for a stay, dkt. #179, is DENIED. Defendants may have until February 9, 2015, to file their opposition to plaintiffs' request for fees and costs; plaintiffs may have until February 19, 2015 to reply. Because defendants have already received one extension and filed their motion for a stay only three days before their response was due, I anticipate that defendants will not request additional extensions in the absence of extraordinary circumstances.

Entered this 2nd day of February, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge