

Case Nos. 14-35420 & 14-35421

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

SUSAN LATTA, et al.,
Plaintiffs-Appellees,

vs.

C.L. "BUTCH" OTTER, et al.,
Defendants-Appellants,

and

STATE OF IDAHO,
Defendant-Intervenor-Appellant.

On Appeal from the United States District Court
for the District of Idaho
D.C. No. 1:13-cv-00482-CWD
(Dale, M.J., Presiding)

**APPELLANTS RICH AND IDAHO'S RESPONSE TO MOTION TO
DISSOLVE THE STAY OF THE DISTRICT COURT'S JUDGMENT AND
INJUNCTION**

LAWRENCE G. WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN
Chief of Civil Litigation Division
W. SCOTT ZANZIG, ISB No. 9361
CLAY R. SMITH, ISB No. 6385
Deputy Attorneys General
Statehouse, Room 210, Boise, ID 83720
Telephone: (208) 334-2400
Fax: (208) 854-8073
Counsel for Appellants Christopher Rich and State of Idaho

Appellees request dissolution of the stay entered by this Court on May 20, 2014. Dkt. 191. In relevant part, they rely on the Court's opinion issued on October 7, 2014 (Dkt. 180-1), the denial of certiorari by the United States Supreme Court in seven cases from the Fourth, Seventh and Tenth Circuits on the previous day,^{*} and the denial of a stay application by the Supreme Court with respect to this Court's October 7 opinion on October 10, 2014 (*Otter v. Latta*, 14A374 (Dkt. 190)). Appellants Christopher Rich and State of Idaho do not oppose Appellees' motion.

The October 7 decision affirmed the district court's judgment invalidating Article III, Section 28 of the Idaho Constitution and Idaho Code §§ 32-201 and -209 to the extent that they preclude same-sex marriages in Idaho or recognition of such marriages lawfully entered into under the laws of another State. The petitions for writ of certiorari denied on October 6 were directed to the invalidation of similar restrictions in Indiana, Oklahoma, Utah, Virginia and

* *Bostic v. Schaeffer*, 760 F.3d 352 (4th Cir. 2014)), *cert. denied*, No. 14-153, 2014 WL 3924685 (U.S. Oct. 6, 2014), No. 14-225, 2014 WL 4230092 (U.S. Oct. 6, 2014), & No. 14-251, 2014 WL 4354536 (U.S. Oct. 6, 2014); *Baskin v. Bogan*, Nos. 14-2386 *et al.*, 2014 WL 4359059 (7th Cir. Sept. 4, 2014), *cert. denied*, No. 14-277, 2014 WL 4425162 (U.S. Oct. 6, 2014), & No. 14-278, 2014 WL 4425163 (U.S. Oct. 6, 2014); *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014), *cert. denied*, No. 14-136, 2014 WL 3854318 (U.S. Oct. 6, 2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014), *cert. denied*, No. 14-124, 2014 WL 3841263 (U.S. Oct. 6, 2014).

Wisconsin. Following denial of these petitions, existing stays were vacated upon issuance of mandates from the affected Courts of Appeals.

Appellants Rich and Idaho have concluded, given the actions taken by the Supreme Court with respect to the certiorari petitions and in No. 14A374, that they cannot satisfy the stringent standards governing issuance of stays. *E.g.*, *Hollingsworth v. Perry*, 558 U.S. 183, 189 (2010) (per curiam); *cf. Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (citing *Nken v. Holder*, 556 U.S. 418 (2009)). Their non-opposition to Appellees' motion should not be interpreted as a concession to the correctness of this Court's October 7 decision or the opinions of the Fourth, Seventh and Tenth Circuits as to which certiorari was denied. Appellants believe that Article III, Section 28 and §§ 32-201 and -209 are consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Other States currently in litigation before other Courts of Appeals over the validity of their marriage statutes have taken comparable positions and may prevail. Appellants' non-opposition therefore does not reflect reconsideration of their position concerning the validity of Idaho's marriage laws or the strength of their legal position. Nor does it reflect a determination not to pursue further review of the October 7 opinion.

//

//

DATED this 13th day of October 2014.

Respectfully submitted,

HON. LAWRENCE G. WASDEN
Attorney General

Steven L. Olsen
Chief of Civil Litigation

/s/ Clay R. Smith

Clay R. Smith, ISB #6385

W. Scott Zanzig, #9361

Deputy Attorneys General

Statehouse, Room 210

Boise, ID 83720

Attorneys for Appellants Rich and Idaho

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 13, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Clay R. Smith

Clay R. Smith