

DISTRICT COURT, ADAMS COUNTY STATE OF COLORADO

Adams County Justice Center, 1100 Justice Center Drive, Brighton, Colorado 80601

Plaintiffs: Rebecca Brinkman and Margaret Burd

v.

Defendants: Karen Long and The State of Colorado

And

Plaintiffs: G. Kristian McDaneil-Miccio, et al.

v.

Defendants: State of Colorado et al.

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Case No.:

2013CV032572

Division C

And

Denver District Court No.
14CV30731

MDL Case No. 14MD4

ADAMS COUNTY PLAINTIFFS' RULE 59 MOTION TO AMEND THE JUDGMENT

Pursuant to C.R.C.P. 59(a)(4), the Adams County plaintiffs move to amend the Court's judgment by adding an injunction against enforcement of the marriage bans. The addition of an injunction against enforcement is necessary to effectuate the Court's declaration that the marriage bans are unconstitutional and to prevent the defendants from enforcing the bans at such time as the stay may be dissolved.¹ The addition of an injunction to the Court's order does not in any way effect the stay of the Court's judgment, and the injunction, like other provisions of the judgment, would be stayed until and unless the stay is lifted or dissolved by operation of law.

Permanent injunctive relief against enforcement of the marriage bans was requested by both sets of plaintiffs in their Complaints. (Brinkman Complaint, pages 7 and 12, "Wherefore" paragraphs; Denver Complaint, page 18, paragraph 105; page 22, paragraph 140; Prayer for Relief, page 23, paragraph 3).

Plaintiffs suggest that the Court add the following language to its July 9th judgment, with the new language indicated by bold faced type:

The Court holds that the Marriage Bans violate plaintiffs' due process and equal protection guarantees under the Fourteenth Amendment to the U.S. Constitution. The existence of civil unions is further evidence of discrimination against same-sex couples and does not ameliorate the discriminatory effect of the

¹ The injunctive relief which plaintiffs seek is against enforcement of the marriage bans, whereas the injunctive relief just requested by the State against the Denver County Clerk and Recorder appears to be related to Clerk's issuances of marriage licenses, an entirely different issue.

Marriage bans. **The defendants are enjoined from enforcing or seeking to enforce the prohibitions against same gender marriage contained in article II, section 31 of the Colorado Constitution and in C.R.S. sections 14-2-104(1)(b) and 14-2-104(2). Defendants are ordered to issue or allow the issuance of marriage licenses to same gender couples and the State is ordered to allow the Registrar of Vital Statistics to record same gender marriages without identifying them as such.** Denver Plaintiffs' claims against Governor Hickenlooper are dismissed without prejudice. The Court's Judgment is stayed pending a resolution of the issue on appeal.

Injunctions have been issued against enforcement of the marriage bans by virtually every court to strike the bans, even though the injunctions have been stayed pending further appeals. *See, e.g., Kitchen v. Herbert*, 961 F.Supp.2d 1181, 1216 (D. Utah 2013) (“[T]he Court hereby enjoins the State from enforcing” Utah’s laws “to the extent these laws prohibit a person from marrying another person of the same sex.”) *Baskin v. Bogan*, 983 F.Supp.2d 1021, 1025 (S.D. Ind. 2014) (“the Court does not interpret the fact that other federal courts are staying injunctions to mean that preliminary injunctive relief is inappropriate in this case.”); *Baskin v. Bogan*, ___ F.Supp.2d ___, 2014 WL 2884868 at *15 (S.D. Ind. June 25, 2014) (final judgment) (permanent injunctions issued to prevent officials from denying marriage licenses to same gender couples and permanently enjoining a variety of acts that would interfere with the right of same gender couples to marry); *DeLeon v. Perry*, 975 F.Supp.2d 632, 666 (W.D. Texas 2014) (“...the

Court grants GRANTS Plaintiffs’ Motion for Preliminary InjunctionThe Court enjoins Defendants from enforcing” the marriage bans); *Bishop v. United States ex rel. Holder*, 962 F.Supp.2d 1252, 1296 (N.D. Okla. 2014) (“[T]he Court permanently enjoins enforcement of” Oklahoma’s marriage bans); *Henry v. Himes*, No. 1:14-cv-129, 2014 WL 1418395 (S.D. Ohio April 14, 2014) ((permanently enjoining the enforcement of Ohio’s marriage recognition ban); *Latta v. Otter*, ___F.Supp.2d ___, 2014 WL 1909999, at **29 (D. Idaho May 13, 2014) (“The Court PERMANENTLY ENJOINS the State of Idaho. . . .” from enforcing its bans on same gender marriages.); *Bostic v. Rainey*, 970 F.Supp.2d 456, 484 (E.D. Va. 2014) (preliminarily enjoining enforcement of the marriage bans); *Tanco v. Haslam*, 2014 WL. 997525 at *9 (M.D. Tenn. March 14, 2014) (enjoining enforcement of Tennessee’s anti-recognition laws); *DeBoer v. Snyder*, 973 F.Supp.2d 757, 775 (E.D. Mich. 2014) (“. . . .the State of Michigan is enjoined from enforcing. . .” its marriage bans); *Obergefell v. Wymyslo*, 962 F.Supp.2d 968, 997-998 (S.D. Ohio 2013) (“Defendants and their officers are permanently enforcing Ohio’s marriage recognition bans on Plaintiffs.”).

Counsel have written to all other counsel about their position on this motion. The Denver plaintiffs do not oppose it, the Governor takes no position because he

has been dismissed, the State of Colorado has stated that, “Your proposed amendment of the order does not appear unreasonable” but feels that the motion should wait until after the resolution of the State’s emergency motion for a preliminary injunction. (e-mail from Mr. Francisco to counsel dated July 10, 2014); and counsel have not received a response from either Clerk and Recorder, although counsel believes that the Denver County Clerk and Recorder would consent.

A proposed order is attached.

Respectfully submitted,

WILCOX & OGDEN, P.C.

/s/ Ralph Ogden, # 13623

*Duly signed original on file at the offices of
WILCOX & OGDEN, P.C.*

Certificate of Service

I certify that a copy of this motion was electronically served upon all counsel of record this 11th day of July, 2014, by ICCES.

/S/ Ralph Ogden, # 13623

