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IN THE COURT OF APPEALS OF THE STATE OF OREGON

MARI LI and REBECCA KENNEDY;)
STEPHEN KNOX, M.D., and ERIC)
WARSHAW, M.D.; KELLY BURKE and)
DOLORES DOYLE; DONNA POTTER and)
PAMELA MOEN; DOMINICK VETRI and)
DOUGLAS DEWITT; SALLY SHEKLOW and)
ENID LEFTON; IRENE FARRERA and)
NINA KORICAN; WALTER FRANKEL and)
CURTIS KEIFER; JULIE WILLIAMS and)
COLEEN BELISLE; BASIC RIGHTS)
OREGON; and AMERICAN CIVIL)
LIBERTIES UNION OF OREGON,)

Plaintiffs-Respondents,)

and)

MULTNOMAH COUNTY,)

Intervenor-Respondent,)

and)

BENTON COUNTY,)

Intervenor below,)

v.)

STATE OF OREGON; THEODORE)
KULONGOSKI, in his official)
capacity as Governor of the State)
of Oregon; HARDY MYERS, in his)
official capacity as Attorney)
General of the State of Oregon;)
GARY WEEKS, in his official)
capacity as Director of the)
Department of Human Services of)
the State of Oregon; and JENNIFER)
WOODWARD, in her official capacity)
as State Registrar of the State)
of Oregon,)

Defendants-Appellants,)

and)

DEFENSE OF MARRIAGE COALITION,)
CECIL MICHAEL THOMAS, NANCY JO)
THOMAS, DAN MATES, and DICK)
JORDAN OSBORNE,)

Intervenors-Respondents.)

Multnomah County Circuit
Court No. 0403-03057

CA A124877

ORDER DENYING MOTIONS
FOR STAYS

Appellants State of Oregon, et al., (defendants below) have moved for a stay pending appeal of the provisions of the judgment that have the effect of requiring the State Registrar to file and register the county records of marriage of same-sex couples in Multnomah County.

Respondents Li, et al., (plaintiffs below) have moved for a stay pending appeal of the provision of the judgment enjoining Multnomah County from issuing marriage licenses to same sex couples, but only if the court grants appellants' motion for stay.

On de novo review of the trial court's denial of appellants' motion for stay, see ORS 19.360(1) and (2), the court has considered the factors specified in ORS 19.350(3), including the likelihood that appellants will prevail on appeal and the nature of the harm to appellants, to other parties, and to the public that likely will result from the grant or denial of a stay.

The court is not persuaded that the harm asserted by the state in connection with "unregistering" the records of marriage would be substantial. ORS 19.350(3) also allows the court to consider other factors that it considers important. In this case, the court considers it important that the trial court, with a full record before it, carefully crafted a judgment that balanced the competing interests of the parties, granting partial relief to both sides, and that the trial court later declined to grant a stay of this one part of that judgment. After considering those factors and all of the factors specified in ORS 19.350(3), the court denies appellants' motion for stay.

In light of the denial of appellants' motion for stay, respondents' motion for stay is denied as moot.

Appellants previously moved for, and were granted, a temporary stay of the provisions of the judgment that have the effect of requiring the State Registrar to file and register the county records of marriage of same-sex couples in Multnomah County. The court's order dated June 1, 2004, granting that temporary stay is vacated.

JUL - 8 2004

Date


Chief Judge

c: Michael C. Livingston
Lynn R. Nakamoto
Agnes Sowle
Kelly Clark
Multnomah County Circuit Court

Kelly E. Ford
Herbert G. Grey
Raymond M. Cihak

REPLIES SHOULD BE DIRECTED TO THE STATE COURT ADMINISTRATOR, RECORDS SECTION, SUPREME COURT BUILDING, 1163 STATE STREET, SALEM, OR 97301-2563