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Attorneys for Defendants Gary R. Herbert and John Swallow

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DEREK KITCHEN, individually; MOUDI
SBEITY, individually; KAREN ARCHER,
individually; KATE CALL, individually;
LAURIE WOOD, individually; and
KODY PARTRIDGE, individually,

Plaintiffs,

vs.

GARY R. HERBERT, in his official capacity
as Governor of Utah; JOHN SWALLOW, in
his official capacity as Attorney General of
Utah; and SHERRIE SWENSEN, in her
official capacity as Clerk of Salt Lake
County,

Defendants.

**JOINT MOTION AND STIPULATION
TO STAY ACTION**

Civil Case No. 2:13-cv-00217-RJS

Judge Robert J. Shelby

Plaintiffs and Defendants, by and through their counsel of record, hereby stipulate and jointly move the Court to order that this action be stayed, including the deadline for Defendants'

responses to the Complaint, pending the decisions by the United States Supreme Court in *Hollingsworth v. Perry*, No. 12-144, and *United States v. Windsor*, No. 12-307.

Grounds for Stipulation and Joint Motion

1. Plaintiffs filed a Complaint [Doc. No. 4] on March 25, 2013 and it was served on the Defendants within a few days.

2. The Complaint seeks a declaratory judgment that Utah Const. Art. 1 § 29 and Utah Code Ann. §§ 30-2-2(5) and 30-1-4.1, which generally define and recognize marriage in Utah as only between a man and a woman, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. [Doc. No. 4 ¶¶ 5-6]. The Complaint also requests a permanent injunction enjoining the enforcement of these provisions and/or statutes. [*Id.*].

3. The United States Supreme Court is currently reviewing two cases, *Hollingsworth v. Perry*, No. 12-144, and *United States v. Windsor*, No. 12-307, that raise some of the same or related issues that the parties and the Court will need to address in the instant case. In general, the *Hollingsworth* case involves a constitutional challenge to Proposition 8, which amended the California constitution to define marriage as between a man and a woman, and the *Windsor* case challenges the constitutionality of portions of the federal Defense of Marriage Act, which also defines marriage as only between a man and a woman.

4. The *Hollingsworth* and *Windsor* cases are fully briefed and have been argued. The Supreme Court's decisions are widely expected by the end of June 2013, one month away.

5. Because the opinions of the Supreme Court in these cases may affect the

Plaintiffs' claims and/or the Defendants' responses/defenses, the parties have stipulated to stay this action, including the deadline for Defendants' responses to the Complaint, pending the Supreme Court's decisions.

6. Within forty-five (45) days after the Supreme Court issues its decisions in the *Hollingsworth* and *Windsor* cases, the Defendants shall file and serve their response to the Complaint. Within twenty (20) days after the response is filed, the parties will either agree to a Scheduling Order or, if they are unable to agree upon a Scheduling Order, the parties will either jointly or separately contact this Court to schedule a Rule 16 Case Management Conference.

WHEREFORE, the parties respectfully request the Court to stay this action, including the deadline for Defendants' initial responses to Plaintiffs' Complaint pursuant to the terms of this Joint Motion and Stipulation, pending decisions by the United States Supreme Court in *Hollingsworth v. Perry*, No. 12-144, and *United States v. Windsor*, No. 12-307.

Dated this 29th day of May, 2013.

MAGLEBY & GREENWOOD, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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