

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 22, 2013

Elisabeth A. Shumaker
Clerk of Court

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

Plaintiffs-Appellees,

v.

GARY R. HERBERT, in his official
capacity as Governor of Utah; JOHN
SWALLOW, in his official capacity as
Attorney General of Utah,

Defendants-Appellants,

and

SHERRIE SWENSEN, in her official
capacity as Clerk of Salt Lake County,

Defendant.

No. 13-4178
(D.C. No. 2:13-CV-00217-RJS)
(D. Utah)

ORDER

Before **HOLMES** and **BACHARACH**, Circuit Judges.

This matter comes before the court on an “Emergency Motion for Temporary Stay.” The district court entered an order on December 20, 2013, in which it found Utah’s constitutional and statutory definition of marriage unconstitutional and

enjoined the state from enforcing Article 1, § 29 of the Utah Constitution and Utah Code §§ 30-1-2 and 30-1-4.1. The Defendants-Appellants ask this court to stay the district court's order pending the district court's ruling on a motion for stay pending appeal that is currently pending in that court.

The Federal Rules of Appellate Procedure and the local rules of this court provide and set out the requirements for a stay pending appeal. Fed. R. App. P. 8; 10th Cir. R. 8.1. Defendants-Appellants acknowledge that they have not addressed, let alone satisfied, the factors that must be established to be entitled to a stay pending appeal. They state that they do not address the 10th Cir. R. 8.1 criteria because they do not seek a stay pending appeal, but rather a stay pending the district court's decision on their stay motion. But the appellate and local rules contemplate only a motion for stay pending appeal, and the requirements are clear. Because the motion before us does not meet the requirements of the Federal or local appellate rules governing a request for a stay, we deny the motion. This denial is without prejudice should Defendants-Appellants file a motion for stay pending appeal that complies with Fed. R. App. P. 8 and 10th Cir. R. 8.1.

Entered for the Court



ELISABETH A. SHUMAKER
Clerk of Court