

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 112,590

STATE OF KANSAS *ex rel.* DEREK SCHMIDT, ATTORNEY GENERAL,  
*Petitioner,*

v.

KEVIN P. MORIARTY, CHIEF JUDGE, TENTH JUDICIAL DISTRICT,  
AND SANDRA MCCURDY, CLERK OF THE DISTRICT COURT,  
TENTH JUDICIAL DISTRICT,  
*Respondents.*

**ORDER TO SHOW CAUSE**

On October 10, 2014, the State of Kansas on relation of Attorney General Derek Schmidt filed this original action in mandamus against Kevin P. Moriarty, Chief Judge of the Kansas Tenth Judicial District, and Sandra McCurdy, Clerk of the District Court for the Tenth Judicial District. Attorney General Schmidt alleged Chief Judge Moriarty exceeded his authority in issuing Amended Administrative Order 14-11 on October 8, which directs McCurdy to "issue marriage licenses to all individuals, including same-sex individuals, provided they are otherwise qualified to marry." Schmidt asked this court to strike down Moriarty's order and direct Moriarty and McCurdy not to issue marriage licenses to same-sex couples.

Later that day, this court ordered a temporary stay of Moriarty's order insofar as it authorized McCurdy to issue marriage licenses to same sex-couples. The stay was ordered to remain in force pending further order by this court. We also directed Moriarty and McCurdy to file a response to Schmidt's mandamus petition and set a deadline for any additional briefing the parties wished to submit. Oral argument on the petition was scheduled for Thursday, November 6 at 10:00 a.m.

Also on October 10, two same-sex couples who were denied marriage licenses by the Clerks of District Court in the Seventh and Eighteenth Judicial Districts filed suit in the United States District Court for the District of Kansas challenging Kansas' laws prohibiting same-sex marriage on grounds of equal protection and due process. *Marie v. Moser, et al.*, No. 14-cv-02518 (D. Kan. Oct. 10, 2014). Those plaintiffs also sought injunctive relief to temporarily block the enforcement of Kansas' constitutional and statutory ban on same-sex marriage. The federal district court held a hearing on this motion on Friday, October 31.

On Tuesday, November 4, the federal district court in *Marie* entered a preliminary injunction. It enjoined the defendants from "enforcing or applying Article 15, § 16 of the Kansas Constitution and K.S.A. § 23-2501, and any other Kansas statute, law, policy or practice that prohibits issuance of marriage licenses on the basis that applicants are members of the same sex." *Marie*, slip op. at 38. The federal court also granted the defendants' motion for temporary stay, which effectively prevents the preliminary injunction from taking effect until 5:00 p.m. (CST) on Tuesday, November 11, 2014. The temporary stay was granted to "permit adequate time for defendants to appeal from this Order and try to convince the Tenth Circuit that it should stay the Court's preliminary injunction for a longer period." *Marie*, slip op. at 38.

In the federal district court's rulings, it exercised jurisdiction over the constitutionality of Kansas' same-sex marriage ban. If Schmidt's mandamus action in our court were to proceed, we would also likely reach the same constitutional questions reviewed in *Marie*. And if we were to reach the opposite conclusion from the federal court—uphold the ban, not block it—the courts' conflicting judgments would inject additional uncertainty into the debate of the validity of Kansas's same-sex marriage ban. See *Schaefer v. Milner*, 156 Kan. 768, 775, 137 P.2d 156 (1943) (necessity of avoiding conflict in the execution of judgments by independent courts).

Accordingly, the parties are hereby ordered to show cause by 5:00 p.m. on November 14, 2014, why:

1. our October 10 order temporarily staying Moriarty's order insofar as it allows the issuance of marriage licenses to same-sex couples should, or should not, remain in full force and effect pending final resolution of the federal matter;
2. our consideration of this mandamus action otherwise should, or should not, be stayed pending final resolution of the federal matter. See *Henry, Administrator v. Stewart*, 203 Kan. 289, 292, 454 P.2d 7 (1969) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 [1936]) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

The parties' responses may include, but are not limited to, reference to the doctrine of judicial comity, "a principle by which the courts of one state or jurisdiction give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect." *In re Miller*, 228 Kan. 606, Syl. ¶ 3, 620 P.2d 800 (1980); see *Perrenoud v. Perrenoud*, 206 Kan. 559, 573, 480 P.2d 749 (1971) (comity can apply between federal courts and state courts). See also *Schaefer v. Milner*, 156 Kan. at 775 (principle enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and process). See, e.g., *State ex rel. Wilson v. Condon*, No. 2014-002121, 2014 WL 5038396 (S.C. Oct. 9, 2014).

Oral argument scheduled for 10:00 a.m. on Thursday, November 6, 2014, is hereby postponed pending further order by this court.

The stay issued in our order of October 10, 2014, shall remain in force pending further order by this court.

IT IS SO ORDERED THIS 5th day of November 2014.

A handwritten signature in black ink, appearing to read "L. R. Nuss", written over a horizontal line.

Lawton R. Nuss  
Chief Justice