

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO</p> <p>1777 Sixth Street Boulder, Colorado 80302</p> <hr/> <p>PEOPLE OF THE STATE OF COLORADO ex rel. JOHN W. SUTHERS, in his official capacity as Colorado Attorney General, and</p> <p>THE STATE OF COLORADO,</p> <p>Plaintiffs,</p> <p>v.</p> <p>HILLARY HALL, in her official capacity as Boulder County Clerk and Recorder,</p> <p>Defendant.</p>	<p>DATE FILED: July 21, 2014 3:45 PM FILING ID: 4F87E01A12F9B CASE NUMBER: 2014CV30833</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p><b>FORTHWITH MOTION FOR STAY PENDING APPEAL</b></p>	

This past Friday afternoon, July 18, the Colorado Supreme Court ordered the Denver Clerk & Recorder to stop issuing same-sex marriage licenses until the merits case is resolved on appeal IN Case No. 14SA212, *State of Colorado v. Brinkman*. Attached as **Exhibit A**. Following this development, this Court should forthwith issue a like order to preserve the status quo pending the outcome of the appeal and order the Boulder Clerk to act precisely as the Colorado Supreme Court, unanimously, ordered the Denver Clerk to act.

## Reasons to Grant the Stay Pending Appeal

The multiplicity of lawsuits relating to Colorado's marriage laws and how those cases relate should not distract from the simple legal issue before this Court: Should the Boulder Clerk be ordered to stop issuing same sex marriage licenses, temporarily, while the merits of same-sex marriage is appealed? Yes. The Supreme Court's unanimous order directing the Denver Clerk to stop issuing same-sex marriage licenses powerfully answers this question.

That the Boulder Clerk desires to continue issuing same-sex marriage licenses cannot be doubted. It must be noted that the Denver Clerk pointed to this Court's order denying the State's request for a preliminary injunction (effectively allowing the Boulder Clerk to continue issuing same-sex marriage licenses) as justification for the Denver Clerk's decision to started issuing same-sex marriage licenses. Counsel for the State reached out to counsel for the Boulder Clerk last Friday regarding the Clerk's continued issuance of same-sex marriage licenses, and they responded at 11:50 a.m. by letter. Counsel was not aware of the response at the time this motion was filed. The Boulder Clerk has since been consulted and opposes the motion.

Following a flurry of litigation, the Colorado Supreme Court rejected all the arguments made to defend issuing same-sex marriage licenses while appeals are pending. Indeed, this Court's order was presented to the Colorado Supreme Court and the conclusions and findings therein were leveraged by the Denver Clerk as reasons to *not* issue an order directing her to stop. *See* Emergency Mot. for Injunction Pending Appeal, **Exhibit B**; Denver Clerk's Objection, **Exhibit C**, and State's Reply, **Exhibit D**. Those arguments failed to carry the day.

This Court has the authority and jurisdiction to consider this definitive legal development and now issue an order directing the Boulder Clerk to abide by the same conditions as the Denver Clerk when it comes to issuing same-sex marriage licenses while the constitutional issues are resolved on appeal. C.R.C.P. 62(d) (Stay upon appeal). While the trial court normally loses jurisdiction once a Notice of Appeal is filed, the rules expressly allow for the trial court to rule on motion for a stay or injunction pending appeal, after a Notice of Appeal is filed. *See* C.A.R. 8(a) ("Application for a stay ... [or injunction] during the pendency of an appeal, ... must ordinarily be made in the trial court."); C.R.C.P. 62(c) and (d) ("When an appeal is taken ..."); *see, e.g., Sansom Committee v. Lynn*, 735 F.2d 1552, 1554 (3d Cir. Pa. 1984) ("it is well recognized that a district court possesses residual jurisdiction to enter orders to assist in maintaining the true status quo pending disposition of an appeal."); and 11 WRIGHT, MILLER, & KANE, FEDERAL PRACTICE AND PROCEDURE § 2904 (1995) (noting that Rule 62(c) "authorizes the trial court to suspend, modify, restore, or grant an injunction [14] during the pendency of an

appeal in injunction cases." ). The Supreme Court has set the precedent that an order to preserve the status quo in this circumstance can be for a Clerk to be "stayed ... from issuing marriage licenses to same-sex couples pending resolution of this appeal." Ex. A.

The Supreme Court's order is definitive. While only the Denver Clerk, not the Boulder Clerk was a party to the case appealed to the Supreme Court, the inescapable conclusion is that the Colorado Supreme Court has determined the status quo of same-sex marriage licenses not being issued must be preserved while the merits appeal is deliberated. The Attorney General expressed the view that "even an order only directed at the clerks in this case [Denver and Adams Counties], but mandating that they comply with state law until the Court has ruled on the merits, would be adequate guidance to other clerks around the state." Ex. D at 11-12.<sup>1</sup> Because the Boulder Clerk refuses to head the Supreme Court's order, the State has no choice but to now seek a court order directly naming the Boulder Clerk and providing for the same order that has been applied to the Denver Clerk.

There are no sound legal reasons for the Boulder Clerk to be permitted to issue same-sex marriage licenses in this temporary period, when Denver vigorously fought for that same right, but the Supreme Court instead acted to preserve the status quo pending final resolution of the merits by stopping the issuance of same-sex marriage licenses. That Denver was party to that case and Clerk Hall party to this case makes no difference to the substance of the legal issue addressed by this motion.

Time is of the essence. There is no need for additional briefing (let alone a hearing) on this issue. Every substantive argument that could be presented by the Boulder Clerk was made in the Colorado Supreme Court on behalf of the Denver Clerk. *See* Ex. C. Those arguments no longer stand. The uniform application of Colorado's marriage laws counsel in favor of a stay order pending appeal in this case that would order the Boulder Clerk to stop issuing same-sex marriage licenses (consistent with the Denver Clerk being ordered to stop).

The State hereby requests relief to effectuate the stay preserving the status quo as the Colorado Supreme Court considers the merits of constitutional claims for same-sex marriage in Colorado. The merits are now pending before the Colorado Supreme Court with Judge Crabtree's Summary Judgment Order having been appealed directly to the Supreme Court. Without a ruling forthwith, the State may be forced to pursue additional avenues of relief. *See* C.A.R. 8(a). A proposed order is attached.

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<sup>1</sup> Aware that such expectation may prove unfounded, the State "would presumably have to bring new suits or appeals and ask the lower courts to apply this Court's reasoning to any recalcitrant clerks. Again, one would hope that no clerks would wish to add to the already heavy sum of wasteful litigation in this matter." Ex. D. at n.3, p.12.

DATED this 21<sup>st</sup> Day of July, 2014

*/s/ Michael Francisco*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 21st, 2014, I electronically filed the foregoing with the Integrated Colorado Courts E-Filing System (ICCES), which will send notification of such filing to counsel of record.

*/s/ Michael Francisco*