

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

<b>KYLE LAWSON, et al.,</b>	)	
	)	
<b>Appellees/Cross-Appellants,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 14-3779; 14-3780</b>
	)	
<b>State of Missouri,</b>	)	
	)	
<b>Appellant/Cross-Appellee.</b>	)	

**SUGGESTIONS IN OPPOSITION**

**Argument**

In support of their motion to vacate stay or, in the alternative, expedite appeal, Plaintiffs/Appellees argue that under Fed. R. App. P. 2, this Court should expedite the appeal with briefing ending in February 2015 and oral argument in February or March. Plaintiffs/Appellees also note instances in which expedited appeals have occurred. But they leave out any reference to, or potential consideration of, these issues by the United States Supreme Court – a point that has significance for purposes of this appeal, and making Plaintiffs/Appellees’ request premature.

In *DeBoer v. Snyder*, 772 F.3d 388 (6<sup>th</sup> Cir. 2014), the United States Court of Appeals for the Sixth Circuit held that the states’ decisions to limit marriage to one man and one woman, and to recognize only such

marriages, did not violate due process or equal protection rights, among other claims. This Sixth Circuit decision, though consistent with this Court's decision in *Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8<sup>th</sup> Cir. 2006), is in conflict with decisions in other circuits. Thus, the plaintiffs in the *DeBoer* case immediately filed for writs of certiorari in the United States Supreme Court. Briefing is complete on the petitions, and it is likely the United States Supreme Court will determine whether or not to grant certiorari in January 2015.<sup>1</sup>

The Federal Rules of Appellate Procedure provide that “On its own or a party’s motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except otherwise provided in Rule 26(b).” Fed. R. App. P. 2. Although Plaintiffs/Appellees seek to expedite

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<sup>1</sup> In *Robicheaux v. George*, 14-596, the appellants in the Fifth Circuit, challenging the district court’s decision upholding Louisiana’s marriage laws, are requesting that the United States Supreme Court grant certiorari before judgment—oral argument is scheduled in the Fifth Circuit for January 9, 2015.

this appeal, given the petitions likely to be considered shortly by the United States Supreme Court, such a request is premature.

If the United States Supreme Court grants certiorari in one, or all, of the cases seeking certiorari, and in which there is a conflict in the circuits, resolution of those cases will ultimately control the outcome of this case. Indeed, Plaintiffs/Appellees' proposed expedited briefing schedule would not allow this Court to reach a decision sooner than a likely certiorari decision by the United States Supreme Court (which is likely in January). As such, the Court and the parties' resources should be preserved. If, however, the United States Supreme Court denies certiorari—which seems unlikely given the split between the circuits—then Plaintiffs/Appellees can request expedited briefing at that time. But until then, Plaintiffs/Appellees' request for expedited appeal is premature given the circumstances surrounding the issues in this case.

### **Conclusion**

For the reasons stated above, the State of Missouri requests that the Court deny Plaintiffs/Appellees' Motion.

Respectfully submitted,

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**ATTORNEYS FOR THE STATE OF  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically via the Court's CM/ECF system, this 24<sup>th</sup> day of December, 2014, to:

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