

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**NATIONAL ORGANIZATION FOR)
MARRIAGE AND AMERICAN)
PRINCIPLES IN ACTION,)**

PLAINTIFFS)

v.)

CIVIL No. 09-538-B-H

**WALTER F. McKEE, in his official)
capacity as member of the)
Commission on Government Ethics)
and Election Practices, ET AL.,)**

DEFENDANTS)

ORDER ON PLAINTIFFS' MOTION TO STAY

The plaintiffs have requested for the third time that I stay a discovery order pending its appeal of that order to the Court of Appeals for the First Circuit and its pending request for mandamus. I previously denied a request for stay when I overruled the plaintiffs' objection to the Magistrate Judge's discovery order and once again when I denied the request for a certificate of appealability.

I apply the factors described in Hilton v. Baunskill, 481 U.S. 770 (1987), as pertinent to the issuance of a stay in civil cases:

1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits;

2. Whether the applicant will be irreparably injured absent a stay;
3. Whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
4. Where the public interest lies.

Id. at 776 (citations omitted).

The plaintiffs do not have a likelihood of success on the merits, given the confidentiality order that applies to the material subject to the discovery order and the other factors (including late submission of evidentiary materials) that I referred to in my Order of February 17, 2010. See Order on Pls.' Mot. (Docket Item 50). Because of the confidentiality order, the plaintiffs will not be irreparably injured. Delay hampers the state defendants in enforcing the applicable state law. The public interest lies with enforcement of duly enacted laws, unless there is a constitutional violation, which I have concluded is unlikely.

Accordingly, the motion for stay is **DENIED**.

SO ORDERED.

DATED THIS 27TH DAY OF APRIL, 2010

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CIVIL DOCKET NO. 1:09cv538 (DBH)

National Organization for Marriage

and

American Principles in Action,

Plaintiffs

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v.

Walter F. McKee, Andre G. Duchette,
Michael P. Friedman,
Francis C. Marsano and Edward M.
Youngblood, *all in their official capacity*
as members of the Commission on
Government Ethics and Election Practices,

and

Matthew Dunlap, *in his official capacity*
as Secretary of State of the State of
Maine,

and

Mark Lawrence, Stephanie Anderson,
Norman Croteau, Evert Fowle, R.
Christopher Almy, Geoffrey Rushlau,
Michael E. Povich and Neal T. Adams,
all in their official capacity as District
Attorneys of the State of Maine,

and

Janet T. Mills, *in her official capacity as*
Attorney General of the State of Maine,

Defendants

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