

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MARCIE FISHER-BORNE, for )  
herself and as guardian ad )  
litem for M.F.-B., a minor, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. ) 1:12CV589  
 )  
JOHN W. SMITH, in his official )  
capacity as the Director of the )  
North Carolina Administrative )  
Office of the Courts, et al., )  
 )  
Defendants. )

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ELLEN W. GERBER, et al., )  
 )  
Plaintiffs, )  
 )  
v. ) 1:14CV299  
 )  
ROY COOPER, et al., )  
 )  
Defendants. )

**ORDER**

This court previously entered an order staying further proceedings in these cases pending termination of the stay granted in McQuigg v. Bostic, No. 14A196 (Fourth Circuit Case No. 14-1167). This court directed the parties to "notify the court within twenty (20) days of the denial of the petition for a writ of certiorari or the sending down of the judgment of the

Supreme Court.” (1:12CV589 (Doc. 108 at 3); 1:14CV299 (Doc. 63 at 3).) This court is aware that the Supreme Court has issued an order denying the petition for a writ of certiorari in McQuigg v. Bostic, No. 14-251, \_\_\_\_ S. Ct. \_\_\_\_, 2014 WL 4354536 (Mem) (Oct. 6, 2014) (Fourth Circuit Case No. 14-1167). As a result, notification from the parties is not necessary, and the parties are relieved of that obligation.

The parties have previously filed briefs in response to this court’s July 30, 2014 order requesting briefing as to the effect of the Fourth Circuit’s opinion in Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014) and appear to agree the opinion in Bostic will constitute binding precedent in this court. (See, e.g., 1:12CV589 (Doc. 104 at 5); 1:14CV299 (Doc. 57 at 5) (“Given the similarity between these challenged laws, the State Defendants herein have consistently represented to this Court that the Fourth Circuit’s holding in Bostic would likely control the analysis of North Carolina’s marriage laws.”) and 1:12CV589 (Doc. 105 at 1); 1:14CV299 (Doc. 58 at 1) (“[T]he Fourth Circuit’s decision in Bostic v. Schaefer . . . controls the result here. The Virginia marriage ban declared unconstitutional in Bostic is indistinguishable from the North Carolina prohibitions challenged in this matter . . .”).)

The Fourth Circuit in Bostic affirmed a Virginia district court order finding that "Va. Const. Art. I, § 15-A, Va. Code §§ 20-45.2, 20-45.3, and any other Virginia law that bars same-sex marriage or prohibits Virginia's recognition of lawful same-sex marriages from other jurisdictions unconstitutional." Bostic v. Rainey, 970 F. Supp. 2d 456, 484 (E.D. Va. 2014), aff'd sub nom. Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014). The district court then granted Plaintiff's motion for summary judgment and preliminary injunction, and enjoined enforcement of the designated provisions of Virginia law. Id.

In light of the parties' prior briefings, it would appear Plaintiffs are entitled to an order granting the pending motions for preliminary injunction (1:12CV589 (Doc. 75); 1:14CV299 (Doc. 3)) as to this issue now that the Fourth Circuit has issued its mandate. However, there are at least two issues that remain for resolution by this court; first, what further action by this court is necessary with respect to those issues arguably resolved by Bostic and second, how this court should proceed with respect to a resolution of the adoption laws at issue in this case.

In light of the foregoing, this court orders that the parties file a status report, without argument, detailing the following matters: (1) whether the parties agree with this

court's suggestion as to the effect of Bostic on this case as set out herein; (2) whether any discovery is required as to either of these cases prior to proceeding to summary judgment; (3) what issues remain for resolution by this court in each of these cases with respect to the challenged adoption laws; and (4) what the parties suggest in terms of additional briefing on any remaining issues.

These status reports shall be filed within ten (10) days of the entry of this order. No additional briefing shall be permitted prior to the filing of the status reports unless ordered by this court, and the stay shall remain in place as to all other matters at this time.

**IT IS SO ORDERED.**

This the 6th day of October, 2014.

  
United States District Judge