

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

DEREK KITCHEN, individually;  
MOUDI SBEITY, individually;  
KAREN ARCHER, individually;  
KATE CALL, individually;  
LAURIE WOOD, individually; and  
KODY PARTRIDGE, individually,

Plaintiffs - Appellees,

v.

GARY R. HERBERT, in his official  
capacity as Governor of Utah, and  
BRIAN L. TARBET, in his official  
capacity as Acting Attorney  
General of Utah,

Defendants – Appellants,

and

SHERRIE SWENSEN, in her  
official capacity as Clerk of Salt  
Lake County.

Defendant.

**No. 13-4178**

**DECLARATION OF STANFORD E. PURSER**

UNITED STATES :  
OF AMERICA :  
STATE OF UTAH : SS.  
COUNTY OF SALT LAKE :

STANFORD E. PURSER, upon oath, declares, deposes and states:

1. I am an adult citizen and resident of the State of Utah and the United States. I am one of the counsel of record in the aforementioned appeal for the State of Utah Defendants-Appellants. I was also one of the counsel of record in this matter at the district court level.

2. Unless otherwise noted, I make this declaration on personal knowledge. If called to testify, I would testify as set forth herein.

3. I was at home on the afternoon of Friday, December 20, 2013.

4. The district court issued the memorandum decision and order, which State Defendants have moved to stay, at approximately 1:33 p.m. on Friday, December 20, 2013.

5. I do not recall exactly when I first noticed the email notification of the district court's order but I had reviewed the decision by no later than 2:30 p.m., Friday afternoon. I realized that the order enjoined Utah from enforcing its laws defining marriage and that it appeared to be immediately effective.

6. Because I was at home, I was using my cell phone, an iphone,

to make and receive phone calls. My cell phone contains a log of incoming and outgoing calls, the time those calls occurred, and indicates the length of time those calls lasted. [True and correct copies of screen shots from my call log are attached to this Declaration as Exhibits A through D].

7. Based on the call log on my cell phone and my own memory of events, I did the following:

8. At 2:42 p.m., on December 20, 2013, I called the United States Court of Appeals for the Tenth Circuit to discuss the process for obtaining an emergency or expedited stay of the district court's order. [See Exhibit A, attached hereto]. The call lasted 9 minutes. I understood from my conversation about the appellate rules governing a stay pending appeal that I would most likely have to first seek a stay from the district court.

9. I decided to call the district court to determine the status of its order.

10. At 2:58 p.m., on December 20, 2013, my cell phone call log indicates I made an outgoing call to the phone number 801-524-6790. [See Exhibit B, attached hereto]. That number is identified as the

phone number for Judge Shelby's scheduling clerk on the website for the U.S. District Court for the District of Utah. No one answered my call. [A true and correct copy of the clerk's office directory from that website is attached hereto as Exhibit E].

11. At 2:59 p.m., on December 20, 2013, my cell phone call log indicates I made an outgoing call to the phone number 801-524-6100, [Exhibit C, attached hereto], which is identified as the phone number for the clerk of court on the website for the U.S. District Court of the District of Utah. [Exhibit E, attached hereto]. Based on my memory, I believe I actually called the number 801-524-6196, which is identified as the phone number for Judge Shelby's docketing clerk on the website for the U.S. District Court for the District of Utah. The call lasted 6 minutes. [Exhibit C].

12. During this call, I spoke with a female whose name I do not recall. I expressed my questions about the status of the court's order and whether it was intended to be immediately effective. She asked for my phone number and said I would get a call back. Again, because I was at home and only had my cell phone, I gave her my cell phone number.

13. My cell phone call log indicates that I received an incoming call from the phone number 801-524-6790 at 3:18 p.m., on December 20, 2013. [Exhibit D, attached hereto]. The call lasted 10 minutes. [*Id.*]. The person calling me (I believe the same female who I had spoken to during my 2:59 p.m. call to the court) said she was going to join counsel for the Plaintiffs to the call. After Plaintiffs' counsel was joined, Judge Shelby then joined the call and we proceeded to have a telephonic hearing. During the call, Judge Shelby refused to issue a *sua sponte* stay of his order and would not entertain an oral motion to stay his order. He said he would address only a written motion to stay pending appeal. To the best of my recollection, I told the Judge that the State would file a written motion to stay either in the district court or the 10th Circuit as early as that day (Friday, December 20, 2013) but no later than Monday. Judge Shelby agreed that he would address any such motion in an expedited manner.

Dated this 24<sup>th</sup> day of December, 2013.



STANFORD E. PURSER

Declarant

Assistant Utah Attorney General