Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 976   (Senator Green, *et al.*)

Judicial Proceedings

Stay of Enforcement of Final Appellate Decisions - Maryland Constitution and Declaration of Rights - State Statutes

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This emergency bill authorizes the Court of Appeals or the Court of Special Appeals, on its own motion or motion of a party, to stay enforcement of any of its final appellate decisions that hold a State statute violates the Maryland Constitution or Declaration of Rights, if the stay would enable the General Assembly to enact implementing or remedial legislation or propose a constitutional amendment for consideration by the voters. The stay may extend for a period of time that would allow for enactment of legislation or proposal of a constitutional amendment. The bill does not limit the inherent authority of any court to issue a stay.

Fiscal Summary

State Effect: None. The change would not directly affect State finances.

Local Effect: None. The change would not directly affect local finances.

Small Business Effect: None.

Analysis

Current Law: In general, under Rules 2-632 and Rules 8-422 through 8-424, courts may stay enforcement of a judgment pending an appeal, the disposition of a motion for a new trial, a motion to alter or amend a judgment, a motion to revise a judgment, or a motion for judgment notwithstanding the verdict. All of these motions are filed by a party to the case.

If one of these motions is not practical or such a motion was denied by the circuit court or not ruled upon within a reasonable time, the party may file a motion in the Court of Special Appeals or in the Court of Appeals when it has assumed jurisdiction. The motion shall include the reason why it is impractical to seek the relief in the circuit court or, if a motion seeking the relief was considered by the circuit court, any reason given by that court for denying or not affording the relief.

Background: This bill stems from the verdict in *Deane v. Conway (case # 24-C-04-005390)* in the Circuit Court for Baltimore City.

In July 2004, nine same-sex couples sued Maryland in the Baltimore City circuit court claiming that its law prohibiting marriage between individuals of the same-sex violated the Maryland Declaration of Rights, as well as due process and equal protection rights. The plaintiffs asked the court for a ruling (1) declaring that the failure of the Maryland statutory code to permit same-sex couples to marry constitutes unjustified discrimination based on sexual orientation and an unjustified deprivation of fundamental rights, including the fundamental right to marry, and therefore is a violation of Article 24 of the Maryland Declaration of Rights; and (2) enjoining the clerks of the courts from refusing to issue marriage licenses to plaintiff couples or other same-sex couples because they are same-sex couples. A hearing was held on the lawsuit in August 2005.

In January 2006, the circuit court in *Deane v. Conway* granted the plaintiffs' motion for summary judgment and held that the Maryland statute defining marriage is unconstitutional and violates Article 46 of the Maryland Declaration of Rights because it discriminates based on gender against a suspect class and is not narrowly tailored to serve any compelling governmental interests. Article 46 of Maryland's Declaration of Rights is commonly referred to as "Maryland's Equal Rights Amendment" and prohibits abridgment of equal rights under State law because of sex. The ruling was stayed pending an appeal. The Office of Attorney General immediately filed an appeal of the ruling.

Additional Information

Prior Introductions: None.

Cross File: HB 967 (Delegate Simmons, *et al*.) – Judiciary.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2006
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