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Kelli Olson, Jennifer Hoefle Olson, Kent Burbank,
 18 *Vicente Talanquer, C.J. Castro-Byrd, Jesús Castro-*
Byrd, Patrick Ralph, and Josefina Ahumada

19 UNITED STATES DISTRICT COURT
 20 DISTRICT OF ARIZONA

21 Nelda Majors; Karen Bailey; David
 22 Larance; Kevin Patterson; Michelle
 Teichner; Barbara Morrissey; Kathy
 23 Young; Jessica Young; Kelli Olson;
 Jennifer Hoefle Olson; Kent Burbank;
 24 Vicente Talanquer; C.J. Castro-Byrd; Jesús
 Castro-Byrd; Patrick Ralph; and Josefina
 25 Ahumada,

26 Plaintiffs,

27 v.

28 Tom Horne, in his official capacity as
 Attorney General of the State of Arizona;

No. 2:14-cv-00518-NVW

**MOTION TO CONSOLIDATE
 CASE WITH *CONNOLLY ET AL.*
 v. *ROCHE*, No. 2:14-CV-00024**

1 Will Humble, in his official capacity as
2 Director of the Department of Health
3 Services; and Michael K. Jeanes, in his
4 official capacity as Clerk of the Superior
5 Court of Maricopa County, Arizona,

6 Defendants.

7 **I. INTRODUCTION**

8 Plaintiffs Nelda Majors and Karen Bailey, David Larance and Kevin Patterson,
9 Michelle Teichner and Barbara Morrissey, Kathy Young and Jessica Young, Kelli Olson
10 and Jennifer Hoefle Olson, Kent Burbank and Vicente Talanquer, C.J. Castro-Byrd and
11 Jesús Castro-Byrd, Patrick Ralph, and Josefina Ahumada (collectively “Plaintiffs”) move
12 to consolidate this case with *Connolly v. Roche*, No. 2:14-CV-00024 (“*Connolly*”),
pursuant to Federal Rule of Civil Procedure 42(a).

13 **II. STATEMENT OF FACTS**

14 On March 12, 2014, Plaintiffs filed a complaint against Defendants Tom Horne,
15 Will Humble, and Michael K. Jeanes (collectively “Defendants”) pursuant to 42 U.S.C.
16 § 1983, seeking declaratory and preliminary and permanent injunctive relief for
17 Defendants’ violation of Plaintiffs’ rights under the Fourteenth Amendment to the U.S.
18 Constitution caused by the discriminatory exclusion of same-sex couples from the
19 freedom to marry and the discriminatory denial of recognition of marriages lawfully
20 entered by same-sex couples in other jurisdictions pursuant to the laws of the State of
21 Arizona (“State”). Subsequently, the Honorable Judge Neil Wake was assigned this case.

22 On January 6, 2014, two same-sex couples filed the *Connolly* action also seeking
23 declaratory and permanent injunctive relief pursuant to 42 U.S.C. §1983 from Defendant
24 Jeanes and others’ violations of the couples’ rights under the Fourteenth Amendment
25 caused by the discriminatory exclusion of same-sex couples from the freedom to marry
26 and the discriminatory denial of recognition of marriages lawfully entered into by same-
27 sex couples in other jurisdictions pursuant to the laws of the State. Subsequently, the
28 *Connolly* plaintiffs amended their complaint to add additional plaintiff couples and make

1 other changes. The State has filed an answer and an amended answer in *Connolly*. That
2 case is currently before Judge Sedwick.

3 **III. THE COURT SHOULD TRANSFER THIS CASE TO JUDGE SEDWICK.**

4 **A. This Case Should be Consolidated with *Connolly*.**

5 This case should be consolidated with *Connolly*. If, as here, “actions before the
6 court involve a common question of law or fact, the court may: (1) join for hearing or trial
7 any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other
8 orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a). In determining whether
9 “to order consolidation of actions presenting a common issue of law or fact under Rule
10 42(a),” a district court “weighs the saving of time and effort consolidation would produce
11 against any inconvenience, delay, or expense that it would cause.” *Huene v. United States*,
12 743 F.2d 703, 704 (9th Cir. 1984). In this case, the “saving of time and effort” that would
13 result from consolidation greatly outweighs “any inconvenience, delay, or expense” that
14 consolidation would cause. *Id.*

15 First, both *Connolly* and this case call for determinations of substantially the same
16 questions of law, involve a common defendant, and would entail substantial duplication of
17 labor if they are heard by different Judges. Plaintiffs in both cases brought complaints
18 pursuant to 42 U.S.C. § 1983 seeking injunctive relief on the grounds that Defendants’
19 enforcement of the State’s marriage ban excluding same-sex couples from marriage and
20 refusing to recognize their valid marriages from other jurisdictions violates the equal
21 protection and due process guarantees of the Fourteenth Amendment. Second, Plaintiffs
22 are unaware of any “inconvenience, delay, or expense” that would result from
23 consolidation. No substantive briefing has occurred in either case.¹

24 _____
25 ¹ We observe that similar considerations may also militate in favor of transfer
26 pursuant to Local Rule of Civil Procedure 42.1(a), according to which a case may be
transferred to a single Judge if two or more cases are pending before different Judges and
the cases:

- 27 (1) arise from substantially the same transaction or event; (2) involve substantially
28 the same parties or property; (3) involve the same patent, trademark, or copyright;
(4) call for determination of substantially the same questions of law; or (5) for any

1 **B. Local Rule of Civil Procedure 42.1(d) Suggests Factors to Be**
2 **Considered in Judicial Assignment.**

3 “If a motion to transfer or consolidate is granted,” Local Rule of Civil Procedure
4 42.1(d) provides the following factors that may be considered in determining to which
5 Judge the cases should be assigned: “(1) whether substantive matters have been
6 considered in a case; (2) which Judge has the most familiarity with the issues involved in
7 the cases; (3) whether a case is reasonably viewed as the lead or principal case; or (4) any
8 other factor serving the interest of judicial economy.” L. R. Civ. 42.1(d).

9 Plaintiffs do not have an assignment preference, but note the following
10 considerations relevant to the factors enumerated in Rule 42.1(d). First, the case before
11 Judge Sedwick was filed two months earlier, but, and again, there have been no
12 substantive matters heard by the *Connolly* court. Second, Judge Sedwick has familiarity
13 with the issues and underlying law presented in both this case and *Connolly* because he
14 has overseen *Diaz v. Brewer*, No. 2:09-cv-02402, a case challenging the State’s treatment
15 of same-sex couples under similar due process and equal protection claims. The *Diaz*
16 case was filed and assigned to Judge Sedwick in November 2009.²

17 **IV. CONCLUSION**

18 This matter should be consolidated with the *Connolly* case and decided by a single
19 judge.

24 other reason would entail substantial duplication of labor if heard by different
25 Judges.

26 L. R. Civ. 42.1(a). This Court may voluntarily transfer a case to another judge for,
27 among other things, “reasons of judicial economy and the availability of judicial
28 resources” or “any other reason which would entail substantial duplication of labor if
heard by the transferor Judge.” *Id.* at (e)(2)–(3).

² Plaintiffs’ counsel, Perkins Coie and Lambda Legal, are also counsel for the
plaintiffs in *Diaz*.

1 Dated: March 24, 2014

PERKINS COIE LLP

2 By: s/ Daniel C. Barr

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18 *Young, Jessica Young, Kelli Olson, Jennifer*
19 *Hoefle Olson, Kent Burbank, Vicente*
20 *Talanquer, C.J. Castro-Byrd, Jesús Castro-*
21 *Byrd, Patrick Ralph, and Josefina Ahumada*

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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2014, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing.

I hereby certify that on March 24, 2014, I caused the foregoing document to be delivered to a licensed process server to commence personal service upon defendants.

s/ S. Neilson

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Nelda Majors; Karen Bailey; David Larance; Kevin Patterson; Michelle Teichner; Barbara Morrissey; Kathy Young; Jessica Young; Kelli Olson; Jennifer Hoefle Olson; Kent Burbank; Vicente Talanquer; C.J. Castro-Byrd; Jesús Castro-Byrd; Patrick Ralph; and Josefina Ahumada,

Plaintiffs,

v.

Tom Horne, in his official capacity as Attorney General of the State of Arizona; Will Humble, in his official capacity as Director of the Department of Health Services; and Michael K. Jeanes, in his official capacity as Clerk of the Superior Court of Maricopa County, Arizona,

Defendants.

No. 2:14-cv-00518-NVW

**[PROPOSED] ORDER
GRANTING MOTION TO
CONSOLIDATE CASE WITH
CONNOLLY ET AL. v. ROCHE,
No. 2:14-CV-00024**

Having received and considered Plaintiffs' Motion to Consolidate Case with *Connelly et al. v. Roche*, No. 2:14-CV-0024, any response thereto and good cause appearing,

IT IS HEREBY ORDERED consolidating the above-entitled action with the *Connelly et al. v. Roche*, No. 2:14-CV-0024 case. All future pleadings will be filed using case number 2:14-CV-0024.