

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

MARSHA CASPAR, GLENNA
DEJONG, CLINT MCCORMACK,
BRYAN REAMER, FRANK
COLASONTI, JR., JAMES
BARCLAY RYDER, SAMANTHA
WOLF, MARTHA RUTLEDGE,
JAMES ANTEAU, JARED
HADDOCK, KELLY CALLISON,
ANNE CALLISON, BIANCA
RACINE, CARRIE MILLER,
MARTIN CONTRERAS, and KEITH
ORR,

Plaintiffs,

v

RICK SNYDER, in his official
capacity as Governor of the State of
Michigan; MAURA CORRIGAN, in
her official capacity as Director of
the Michigan Department of Human
Services; PHIL STODDARD, in his
official capacity as Director of the
Michigan Office of Retirement
Services; and JAMES HAVEMAN,
in official capacity as Director of the
Michigan Department of Community
Health;

Defendants.

No. 14-cv-11499

HON. Mark A. Goldsmith

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SUPPLEMENTAL BRIEF

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Dated: November 14, 2014

CONCISE STATEMENT OF ISSUES PRESENTED

1. Are Plaintiffs' marriages void in light of the Sixth Circuit's decision in *DeBoer v Snyder*, __ F.3d __, 2014 WL 5748990 (6th Cir. 2014)?
2. Even if Plaintiffs' marriages are not void, can the marriages be recognized for any purpose?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority:

DeBoer v Snyder, __ F.3d __, 2014 WL 5748990 (6th Cir. 2014)

Mich. Const., art. I, § 25

INTRODUCTION

In *DeBoer v Snyder*, __ F.3d __, 2014 WL 5748990 (6th Cir. 2014), the Sixth Circuit upheld the constitutionality of Michigan's Marriage Amendment and the rights of 2.7 million voters who elected to define marriage in Michigan for all purposes as between one man and one woman. Mich. Const., art. I, § 25. This Court has now ordered the parties to submit supplemental briefing addressing the impact the *DeBoer* decision has on the pending motions in this case.

Consistent with Defendants' position in their pending motion to hold the case in abeyance (Dkt # 20 at 7), Defendants continue to believe that this Court should hold this case in abeyance pending a final decision in *DeBoer*, including a decision by the United States Supreme Court, if applicable. But if the Court declines to hold the case in abeyance, then for the reasons to be discussed, in light of *DeBoer*, Defendants' motion to dismiss (Doc #21) must be granted and Plaintiffs' motion for a preliminary injunction (Doc #17) must be denied.

The *DeBoer* decision answered two questions: (1) does either the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment require states to expand the definition of marriage to

include same-sex couples; and (2) does the Constitution prohibit a State from denying recognition to same-sex marriages conducted in other States? (*DeBoer*, slip op. at 13, 38). The Sixth Circuit answered both questions in the negative, and both of those answers impact pending motions in this case.

ARGUMENT

I. The Sixth Circuit's decision in *DeBoer* has rendered Plaintiffs' marriage void.

The Sixth Circuit's decision in *DeBoer* affirmed the validity of Michigan's Marriage Amendment, which states, “[t]o secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.” Mich. Const., art. I, § 25. Under the plain language of this definition, a same-sex marriage cannot be created or recognized.

It has been Defendants' position from the outset of this litigation that Plaintiffs' marriages were conditionally valid; the condition being the affirmance of the district court's decision in *DeBoer*, which

established the sole premise for the legality of Plaintiffs' marriages. Now that the Sixth Circuit has reversed the district court's decision in *DeBoer*, that condition cannot be met, and Plaintiffs' marriages are therefore void.

This result is necessitated by the legal principle that, as previously argued by Defendants, "[t]he effect of a general and unqualified reversal of a judgment, order, or decree by the court of appeals is to nullify it completely and to leave the cause standing as if it had never been rendered[.]" 36 C.J.S. Federal Courts § 739. See also 5 Am. Jur. 2d Appellate Review § 803. Here, the unqualified reversal by the Sixth Circuit in *DeBoer* nullifies the district court's decision completely, and it is as if the legal premise upon which Plaintiffs' marriages are based never existed. Consequently, from a legal standpoint, because the marriages rested solely on the district court's erroneous decision, which has now been reversed, it is as if the marriages never existed, and Plaintiffs' requests for benefits attendant to a legal marriage must be denied. Accordingly, Defendants' motion to dismiss must be granted and Plaintiffs' motion for preliminary injunction must be denied.

II. Even if the Court were to find that Plaintiffs' marriages have not been rendered void, Plaintiffs' marriages cannot be recognized by the State of Michigan.

As just discussed, it is, and has been, Defendants' position that a reversal of *DeBoer* by the Sixth Circuit renders Plaintiffs' marriages void. But assuming the Court disagrees and thinks the marriages are valid (like a marriage conducted in a State that allows same-sex marriage), the relief requested by Plaintiffs (i.e., various State benefits) is still unavailable.

DeBoer, via companion cases from Ohio, Kentucky, and Tennessee, also decided that the Constitution does not prohibit a State from withholding recognition to same-sex marriages (*DeBoer*, slip op. at 38). While those companion cases specifically dealt with out-of-state same-sex marriages being denied recognition, and the instant case deals with Plaintiffs married in Michigan seeking recognition in Michigan, that distinction is of no legal significance.

In particular, the Sixth Circuit in *DeBoer* protected a State's "sovereign interest in deciding for itself how to define the marital relationship," and concluded that a "State does not behave irrationally by insisting upon its own definition of marriage rather than deferring to

the definition adopted by another State” (*DeBoer*, slip op. at 39). Here, Plaintiffs were married not because the voters of Michigan decided to define the marital relationship as including same-sex marriage, but because a court erroneously concluded that Michigan’s definition was unconstitutional. In fact, Plaintiffs’ argument for recognition of their marriages is more tenuous than the arguments set forth in the companion cases to *DeBoer* because Plaintiffs’ marriages were never sanctioned by the public policy of any State. Instead, the marriages occurred when the district court incorrectly invalidated Michigan’s public policy. Despite the district court’s decision, Michigan’s public policy has at all times insisted upon a definition of marriage as between one man and one woman. In order to protect Michigan’s sovereign interest in that definition, Plaintiffs’ marriages cannot be recognized for any purposes, and the benefits the Plaintiffs seek cannot be provided. Consequently, Defendants’ motion to dismiss must be granted and Plaintiffs’ motion for preliminary injunction must be denied.

CONCLUSION AND RELIEF REQUESTED

Defendants continue to believe that this Court should hold this case in abeyance pending a final decision in *DeBoer*, including a

decision by the United States Supreme Court, if applicable. But if the Court declines to hold the case in abeyance, then Defendants' motion to dismiss must be granted and Plaintiffs' motion for a preliminary injunction must be denied because, under the Sixth Circuit's decision in *DeBoer*, Plaintiffs' marriages are void and cannot be recognized for any purposes.

Respectfully submitted,

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Dated: November 14, 2014

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on November 14, 2014, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

A courtesy copy of the aforementioned document was placed in the mail directed to:

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