

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRUCE T. MORGAN, an individual, and
BRIAN P. MERUCCI, an individual,

Plaintiffs,

No. 14-cv-00632

v

HON. GORDON J. QUIST

RICK SNYDER, in his official capacity as the
Governor of the State of Michigan, and
MARY HOLLINRAKE, in her official capacity
as the County Clerk and Register of Kent
County, Michigan,

Defendants.

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**DEFENDANT GOVERNOR RICK SNYDER'S RESPONSE TO PLAINTIFFS'
MOTION TO LIFT STAY**

ORAL ARGUMENT REQUESTED

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Should this Court lift the stay where the only change in circumstance cited by Plaintiffs that was not previously considered by this Court in entering the stay is the release of a non-precedential and factually distinguishable decision in *Caspar v. Snyder*, __ F. Supp. 3d __ (E.D. Mich. 2015); No. 14-cv-11499; 2015 WL 224741?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority:

Camreta v. Greene, 131 S. Ct. 2020 (2011)

Caspar v. Snyder, __ F. Supp. 3d __ (E.D. Mich. 2015); No. 14-cv-11499;

2015 WL 224741

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

Monaghan v. Sebelius, 2013 WL 3212597 (E.D. Mich. 2013) (unpublished)

STATEMENT OF FACTS

Plaintiffs are a same-sex couple married in the State of New York and residing in Kent County. (Complaint, Doc #1, Pg ID 1, ¶ 1). Plaintiffs allege that their out-of-state marriage, and all rights attendant thereto, became valid in Michigan as a result of the district court's decision in *DeBoer, et al. v. Snyder, et al.*, 973 F. Supp. 2d 757 (E.D. Mich. 2014), which declared Michigan's Marriage Amendment unconstitutional. (Complaint; Doc #1, Pg ID 8, ¶ 38).

The Sixth Circuit has now reversed the district court's decision in *DeBoer*. In addition, via the companion cases to *DeBoer*, the Sixth Circuit held that the Constitution does not prohibit a state from declining to recognize out-of-state same-sex marriages — a decision that resolves the question before the Court in this case. *DeBoer v. Snyder*, ___ F.3d ___, 2014 WL 5748990 (6th Cir. Nov. 6, 2014), slip op. at 38-39, 42.

In light of the preceding, this Court ordered the parties to show cause why this case should not be stayed pending a decision by the United States Supreme Court on the petitions for writ of certiorari that had been filed following the Sixth Circuit's decision in *DeBoer* and the companion cases. On December 23, 2014, after briefs on the show cause order were filed, the Court stayed this case, acknowledging that the issue presented by Plaintiffs was specifically addressed in one of the companion cases to *DeBoer*, but rather than dismiss Plaintiffs' complaint under that binding precedent, the case should be stayed (Order, Doc #31, Pg ID 297).¹

¹ The United States Supreme Court has since granted certiorari in *DeBoer* and the companion cases. Oral argument is scheduled for April 28, 2015.

Plaintiffs now move this Court to lift the stay, contending that the circumstances have changed, and for entry of judgment in their favor. (Plaintiffs' Brief, Doc #33, Pg ID 323, 334). Defendant Governor Snyder respectfully disagrees because the very legal issues on which Plaintiffs' claims are based are yet to be decided. Accordingly, he requests that this Court deny Plaintiffs' motion and leave the stay in effect pending the United States Supreme Court's resolution of *DeBoer* and the companion cases.²

ARGUMENT

The stay should remain in effect because the only change in circumstance cited by Plaintiffs that was not previously considered by this Court in entering the stay is the release of a non-precedential and factually distinguishable decision in *Caspar v. Snyder*.

In determining whether to grant a stay, the following factors are weighed: (1) the potential of another case having a dispositive effect on the case to be stayed; (2) the judicial economy to be saved by waiting on a dispositive decision; (3) the public welfare; and (4) the hardship or prejudice to the party opposing the stay (Order Granting Motion to Stay, Doc #25, Pg ID 271, citing *Monaghan v. Sebelius*, 2013 WL 3212597 *1 (E.D. Mich. 2013)). As Defendant Governor Snyder previously briefed, and this Court previously ruled, under the circumstances of this case, these factors weigh in favor of staying proceedings pending the resolution of *DeBoer* and

² In this same motion, Plaintiffs also move the Court to enter summary judgment in their favor under Federal Rule of Civil Procedure 56 (Plaintiffs' Brief, Doc #33, Pg ID 334). This response by Defendant Governor Snyder is to the non-dispositive aspect of Plaintiffs' motion. In the event the Court lifts the stay, Defendant Governor Snyder would like the full opportunity allowed by Local Rule 7.2(c) to file a response to the dispositive aspect of Plaintiffs' motion.

the companion cases by the Supreme Court. (Brief on Order to Show Cause, Doc #29, Pg ID 278; Order, Doc #31, Pg ID 297).

Plaintiffs now contend that there has been a change in circumstances that compels the Court to lift the stay and enter a judgment requiring the State to immediately recognize Plaintiffs' marriage. But the only change in circumstance cited by Plaintiffs is the district court's decision in *Caspar v. Snyder*, __ F. Supp. 3d __ (E.D. Mich. 2015); No. 14-cv-11499; 2015 WL 224741. And contrary to Plaintiffs' argument, *Caspar* does not compel this Court to take any action.

First, *Caspar* is a district court decision that has no precedential value outside of any future litigation involving the parties in *Caspar* (which Plaintiffs are not) and is not binding on this Court or any other. *Camreta v. Greene*, 131 S. Ct. 2020, 2033 n. 7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." Citing, 18 J. Moore et al., *Moore's Federal Practice* § 134.02[1] [d], p. 134–26 (3d ed. 2011)). Therefore, Plaintiffs' reliance on *Caspar* as establishing the law applicable to this case is misplaced. Instead, the applicable law was, and remains, the Sixth Circuit's decision in *DeBoer* and the companion cases, unless and until the Supreme Court rules otherwise.³

Also, *Caspar* is distinguishable from the case at bar in that it pertained to a limited number of couples married in Michigan in the few hours between the time of the district court's decision in *DeBoer* and the Sixth Circuit's stay of that decision.

³ And, as this Court has already recognized, that precedent would require dismissing Plaintiffs' complaint. Order, Doc #31, Pg ID 297.

Caspar, slip op. at 2-3; 2015 WL 224741, at 1. That the couples in *Caspar* were married in Michigan was a significant part of the court's rationale in finding a violation of due-process; in fact, the court identified the fundamental right at issue as, "the right to maintain the marital status *granted by the state seeking to defeat it*". *Caspar*, slip op. at 17; 2015 WL 224741, at 10 (emphasis added). Since Plaintiffs were married in New York, the rationale of *Caspar* is inapplicable.

The only circumstance cited by Plaintiffs not previously considered by this Court is the decision in *Caspar*. But *Caspar* is non-precedential and factually distinguishable. Consequently, the legal and factual landscapes relevant to staying this case remain the same as they did when this Court issued the stay, and Plaintiffs' motion should be denied.⁴

⁴ The reasons set forth for not lifting the stay (i.e., *Caspar* is without precedential value and is significantly distinguishable) also require denying summary judgment in favor of Plaintiffs under Rule 56. But as previously stated, in the event the Court lifts the stay, Defendant Governor Snyder requests an opportunity to fully and specifically respond to the dispositive aspect of Plaintiffs' motion.

CONCLUSION AND RELIEF REQUESTED

Defendant Governor Snyder respectfully requests that this Court deny Plaintiffs' motion and leave the stay in effect pending the United States Supreme Court's resolution of *DeBoer* and the companion cases.

Respectfully submitted,

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Dated: April 16, 2015

PROOF OF SERVICE (E-FILE)

I hereby certify that on April 16, 2015, I electronically filed the foregoing document(s) with the Clerk of the Court using the ECF System, which will provide electronic notice and copies of such filing to the parties.

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

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