

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

DEFENDANTS' REPLY
BRIEF IN SUPPORT OF
MOTION TO HOLD CASE IN
ABEYANCE

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Dated: July 14, 2014

INTRODUCTION

Plaintiffs offered no persuasive opposition to Defendants' request that the Court hold this case in abeyance pending the Sixth Circuit's decision in *DeBoer, et al. v. Snyder, et. al.*, Case No. 14-1341.¹ Contrary to Plaintiffs' assertions, *DeBoer* raises substantially similar legal issues that are intertwined with those presented here; indeed, *DeBoer* will decide whether Plaintiffs' marriages may be recognized. Staying the case will thus promote judicial economy because there is no need for this Court to decide a question that will be decided by the Sixth Circuit, and will be a controlling, binding authority on the Court and parties. And the equities weigh in favor of abeyance, which will maintain the status quo of both parties consistent with the stay granted in *DeBoer*.

ARGUMENT

- I. **A stay in this case is warranted because a decision by the Sixth Circuit in *DeBoer* will have a dispositive effect on the legal questions presented in this case.**

One of the factors to be weighed in granting a stay is whether another case will potentially have a dispositive effect on the case to be stayed. *Monaghan v. Sebelius*, 2013 WL 3212597 *1 (E.D. Mich. 2013)

¹ Scheduled for oral argument in the Sixth Circuit on August 6, 2014.

(Doc #20-3, Page ID #290). Plaintiffs assert this factor is not met here because, under their interpretation of the case law, the legal issues in *DeBoer* are not substantially identical to those presented here and are not capable of invalidating Plaintiffs' claims. Plaintiffs are incorrect on both points.

The *DeBoer* plaintiffs argue that Michigan's Marriage Amendment violates equal protection principles by prohibiting same-sex couples from marrying. Those plaintiffs thus seek the right to marry. Plaintiffs argue here that denying them the opportunity to pursue benefits attendant to a legal marriage violates due process and equal protection principles. Plaintiffs thus seek the right to have their same-sex marriages recognized as valid marriages. These claims are not "profoundly different" from *DeBoer*. The Marriage Amendment provides the legal definition of marriage in Michigan, and the Sixth Circuit's stay reinstates that definition as controlling law. The Sixth Circuit in *DeBoer* will decide the future of the MMA; an affirmance will allow same-sex couples to marry and seek benefits, while a reversal will restore the Michigan Constitution. The legal issues presented in these cases are both substantially similar and intertwined.

Moreover, the Sixth Circuit's decision in *DeBoer* will be controlling authority in this Circuit and on this Court. And there is no reason to believe that the Sixth Circuit will take the unusual step of rendering application of the *DeBoer* decision prospective only. Thus, it will apply to pending cases. See, e.g. *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 97 (1993); *Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749 (1995). Contrary to Plaintiffs' assertions, they cannot avoid the consequences of a decision in *DeBoer*.

And a reversal means their marriages will not be entitled to recognition because the marriages will be void as having been entered into without legal authorization. On this point, Plaintiffs assert that Defendants lack supporting precedent. But Defendants, in turn, have carefully reviewed the 12 cases cited by Plaintiffs (see Plaintiffs' Brief, Doc #24, Page ID #481-483 nn. 4-9), and none involve facts such as those presented here. Most of those cases involved actual parties and relief that was court-ordered or mandated in some fashion, and often included the disposition of property or money that could not be recaptured.

Here, Plaintiffs married in reliance on a court decision that they were not a party to and that had already been appealed. Michigan law did not affirmatively authorize them to marry; rather, it was only a court decision setting aside Michigan law—subject to reversal on appeal—that created a window during which they were married. Under these circumstances, the validity of their marriage licenses is contingent on appeal and not a settled right. Indeed, a reversal in *DeBoer* would mean that the district court’s decision was incorrect in striking down Michigan’s Marriage Amendment, and a legal error cannot create a vested right. That is why it is a basic legal principle that “[a] prevailing party at trial acts at its peril if it proceeds before the appeal is concluded.” *N.L.R.B. v. Sav-On Drugs, Inc.*, 728 F.2d 1254, 1256 (9th Cir. (1984), citing *W.R. Grace and Co. v. Local Union 759*, 461 U.S. 757 (1983); *Federal Trade Commission v. Weyerhaeuser Co.*, 648 F.2d 739, 741 (D.C.Cir. 1981); *Young Women’s Christian Association v. Kugler*, 463 F.2d 203, 204 (3d Cir. 1972) (a party’s actions relying on a declaratory judgment while its appeal is pending are taken at that party’s peril if the judgment should be reversed); *Wolfe v. National Lead Co.*, 156 F. Supp. 883, 890 (N.D. Cal. 1957) (“The general rule is that a

lower court decree which is reversed does not protect parties acting thereunder prior to reversal.”).

Plaintiffs have offered no persuasive precedent demonstrating they should be entitled to have their marriages recognized despite a reversal. Indeed, had they been parties to *DeBoer*, such would not be the case. A reversal in *DeBoer* will be dispositive and invalidate Plaintiffs’ claims here. This is because a reversal will nullify Judge Friedman’s decision, which was the only source of authority for the county clerks to grant marriage licenses to Plaintiffs. At that point Plaintiffs’ marriages become void as having been unauthorized by law. See, e.g. *Li v. State*, 110 P.3d 91, 99-102 (Or. 2005) (declaring same-sex marriages conducted by Oregon county clerks without authority to do so void). If Plaintiffs’ marriages are invalid, they have no right to seek benefits.

II. A stay in this case is warranted because it will promote judicial economy and the public welfare.

Another of the factors to be weighed in granting a stay is whether the stay will promote judicial economy. *Monaghan, supra*. Plaintiffs argue that staying this case will not promote judicial economy because the legal issues in *DeBoer* are separate from those presented here, and

must be decided regardless. But, as explained above, the threshold question here is whether Plaintiffs' marriages are entitled to recognition for the purpose of applying for and receiving benefits. The answer to that question depends on the Sixth Circuit's decision in *DeBoer* because a reversal will render Plaintiffs' marriages void. Under these circumstances, a stay clearly promotes judicial economy.

III. A stay in this case is warranted because the prejudice to the State outweighs that to Plaintiffs if a stay is denied.

The final factor to be weighed in granting a stay is the balance of harms to the parties. *Monaghan, supra*. This is essentially a weighing of the equities. Plaintiffs primarily argue that the equities weigh in their favor because Defendants' failure to immediately recognize their marriages for purposes of seeking benefits has caused them worry and concern. (Plaintiffs' Brief, Doc #24, ID #488-489). But that results from the Sixth Circuit's decision to reinstate the fundamental law of Michigan—its Constitution—pending an appeal that may vindicate that law. The equities favor giving effect to this democratically enacted, still valid law; indeed, allowing it to be disregarded would be a substantial harm to the democratic process. See *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) (“[A]ny time a State is enjoined by a

court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.”).

The State has a duty to defend the constitution as approved by the voters. That duty is reflected by the appeal in *DeBoer*, and the decision to seek a stay of the ruling to maintain the status quo in Michigan until a final decision on the merits is rendered by the Sixth Circuit. The State’s position in this case is completely consistent with, and supported by, its position in *DeBoer*. The legal effect of appeals, stays, and subsequent reversals of lower court decisions are all a matter of law. See, e.g., *Lambert v. California*, 355 U.S. 225, 228 (1957) (citing *Shevlin–Carpenter Co. v. Minnesota*, 218 U.S. 57, 68 (1910)).

The equities here simply do not weigh in favor of Plaintiffs. Defendants understand their strong desire to pursue benefits, but no Plaintiff could reasonably have planned for or relied on receiving benefits before the issuance of Judge Friedman’s decision on March 21, 2014, which was quickly stayed and rendered ineffective the next day. Holding this case in abeyance maintains the status held by Plaintiffs and the Defendants before the *DeBoer* decision, which is consistent with the Sixth Circuit’s stay.

CONCLUSION AND RELIEF REQUESTED

Defendants request this case be stayed pending resolution of the appeal in *DeBoer, et al. v. Snyder, et. al.*, Case No. 14-1341.

Respectfully submitted,

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Dated: July 14, 2014

CERTIFICATE OF SERVICE

I hereby certify that on July 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:

Honorable Mark A. Goldsmith
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U.S. Courthouse
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