

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

**DEFENDANTS' REPLY TO  
PLAINTIFFS' RESPONSE  
TO MOTION TO  
CONSOLIDATE**

Jay D. Kaplan (P38197)  
Daniel S. Korobkin (P72842)  
Michael J. Steinberg (P43085)  
Brook A. Merriweather-Tucker  
Attorneys for Plaintiffs  
ACLU Fund of Michigan  
2966 Woodward Ave.  
Detroit, MI 48201  
(313) 578-6824

Andrew Nickelhoff (P37990)  
Attorney for Plaintiffs  
Sachs Waldman, P.C.  
2211 E. Jefferson Ave., Ste. 200  
Detroit, MI 48207  
(313) 496-9429

John A. Knight  
Attorney for Plaintiff  
ACLU Foundation  
180 N. Michigan Ave., Ste. 2300  
Chicago, IL 60601  
(312) 201-9740 x335

Michael F. Murphy(P29213)  
Joshua O. Booth (P53847)  
Christina M. Grossi (P67482)  
Attorneys for Defendants  
MI Dep't of Attorney General  
State Operations Division  
P.O. Box 30754  
Lansing, MI 48909  
(517) 373-1162

---

Bill Schuette  
Attorney General

Michael F. Murphy  
Assistant Attorney General  
Attorneys for Defendants  
State Operations Division  
P.O. Box 30754  
Lansing, MI 48909  
(517) 373-1162  
murphym2@michigan.gov  
(P29213)

Dated: July 25, 2014

## CONCISE STATEMENT OF ISSUES PRESENTED

1. The cases of *Caspar, et al. v. Snyder, et al.*, case no. 14-cv-11499, and *Blankenship v Snyder, et al.*, case no. 14-cv-12221, should be consolidated.

## CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority:

Fed. R. Civ. P. 42

*Cantrell v GAF Corp.*, 999 F.2d 1007, 1010-11 (6th Cir. 1993)

## INTRODUCTION

The conditions for consolidation under Federal Rules of Civil Procedure 42 are present in these cases. Plaintiffs go to great lengths to set out alleged prejudice affecting an adjudication of their rights as well as claiming, incorrectly, how far advanced their case is compared to *Blankenship v. Snyder et al.* But both cases share a key point of common ground: both rest on the Sixth Circuit's decision in *DeBoer v. Snyder*, case no. 14-1341, which has been placed on the Sixth Circuit's calendar for argument on August 6, 2014. Both *Caspar* and *Blankenship* are based on the effect of the district court's ruling in *DeBoer* and the Sixth Circuit's stay entered the next day.

The cases raise the constitutionality of the Michigan Marriage Amendment, Mich. Const. art. I, § 25, and the finding of unconstitutionality and injunction entered in *DeBoer*. The issues in *Caspar* (Michigan marriages on March 22, 2014, performed pre-stay) and *Blankenship* (instant marital recognition of out-of-state marriages) are, for purposes of complete adjudication, similar. Whether the affirmative act of marriage in *Caspar* under the facts presented is

viable, is not significantly different than the recognition theory set out in *Blankenship*.

The marriages' legality for purposes of obtaining benefits and rights is a primary issue in both cases. And neither case should be decided or addressed until a dispositive ruling is issued in *DeBoer*.<sup>1</sup> The merits of consolidating for purposes allowed under the federal rules are compelling.

## ARGUMENT

### **I. Consolidation will not prejudice any plaintiff in either case.**

Plaintiffs claim that they will be prejudiced by consolidation because this case has advanced further than *Blankenship*. (Doc #36, Page ID 650.) But the only matter set in this case is a status conference on July 24, 2014, the same day responsive pleadings and a motion to hold in abeyance will be filed in *Blankenship*, paralleling what has already been filed in this case. It is without question that both cases present the same claims, Equal Protection and Due Process; turn on the outcome and constitutionality of the marriage amendment, *DeBoer*; and

---

<sup>1</sup> A motion for stay has been filed with this Court, Doc #20. A motion to hold *Blankenship* in Abeyance will be filed July 24, 2014.

seek all the attendant benefits of marriage. In fact, some of the *Caspar* Plaintiffs seek the same adoption rights (see Motion for Preliminary Injunction, Doc #17) as are sought by the Blankenships. Since both cases turn on similar issues, depend on a single Sixth Circuit ruling, and seek the same or similar relief, consolidation is appropriate under the factors of *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1010-1011 (6th Cir. 1993).

This case is not so far along so as to prejudice Plaintiffs. Neither this case nor *Blankenship* involve questions that a district court can quickly resolve. Both depend entirely upon the validity or recognition of marriages relying on the district court's decision in *DeBoer* and its stay of judgment entered by the Sixth Circuit—in other words, on issues that depend on the Sixth Circuit's resolution of *DeBoer*. Pre-trial motions have been filed in this case, and none have been set for argument. Pre-trial motions are to be filed in *Blankenship* on July 24, 2014.

*Blankenship* is not far behind *Caspar* procedurally in any significant sense, and if there is any delay in *Caspar*, it will be slight and not lead to prejudice. The motion to consolidate should be granted.

**A. Federal Rule of Civil Procedure 42 governs consolidation, and its criteria are met in this case.**

Federal Rules of Civil Procedure 42 provides in part:

(a) CONSOLIDATION. If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions;

Consolidation is a matter of convenience and also to avoid the possibility of inconsistent rulings. As set forth in Rule 42, “any or all” matters involving common questions may be consolidated. The Court in its discretion may consolidate just the pre-trial components of the case as a matter of convenience and economy in administration but does not have to put cases together and make it a single case or change the rights of parties to separate actions. *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933).

Both of these cases are vulnerable to potential inconsistent decisions. Presently, there is one case arising out of marriages performed in Michigan on March 22, 2014, and two cases seeking recognition of marriages, all of which are based on the same district-court decision in *DeBoer*. The two cases included in this motion are in the Eastern District of Michigan with two judges, and another case is in

the Western District seeking marriage recognition, all turning on the same issues and a common factual basis. All three of the pending cases seek similar relief based on the Equal Protection and Due Process Clauses, and the rights and benefits attendant to a valid marriage. All three cases turn on the validity and constitutionality of the Michigan Marriage Amendment. In reality, there is more than enough similarity and congruity between *Caspar* and *Blankenship* to support the Court's exercise of discretion to consolidate the cases.

Plaintiffs' case concerns the solemnization of marriages performed in Michigan on March 22, 2014, prior to the Sixth Circuit's stay and the *Blankenship* case, which concerns immediate recognition of an out-of-state same-sex marriage. But both cases will turn on the Sixth Circuit's decision in *DeBoer*; both cases claim violations of the Fourteenth Amendment's guarantees of due process and equal protection of the law; and both seek essentially the same relief—marital benefits. The differences between the two are minimal.<sup>2</sup>

---

<sup>2</sup> It's interesting to note that the Sixth Circuit has found sufficient similarity between the constitutionality of Michigan's Marriage Amendment and recognition cases involving out-of-state marriages that it has consolidated oral arguments in the *DeBoer* appeal with arguments in marriage recognition cases from Ohio, Tennessee, and



These cases are so closely interrelated and turn on the same legal principles that the factors of *Cantrell, supra*, and those underlying Federal Rule of Civil Procedure 42 have been met. It is in the interest of the Court and ultimately *all* the parties that these cases be heard together. The dissimilarities emphasized in Plaintiffs' response are outweighed by the need for consistent legal rulings and ultimately for resolution by the Sixth Circuit in a matter already before them that clearly controls both of these cases.

### **CONCLUSION AND RELIEF REQUESTED**

The efficient administration of these cases and the need to avoid inconsistent decisions call for the cases' consolidation in some fashion as envisioned by Federal Rule of Civil Procedure 42.

The criteria have been met, and neither case is in a procedural posture that prevents consolidation. It is requested that the motion to consolidate be granted.

---

Kentucky. See: *DeBoer v. Snyder*, Sixth Circuit Case No. 14-1341. *Obergefell, et al. v. Wymyslo, et al.*, (S.D. Ohio, Case No. 14-3464; *Bourke, et al. v. Beshear, et al.* (W.D. Ky. Case No. 14-5291; *Tanco, et al v. Haslam, et al.* (M.D. Tenn. Case No. 14-5297).

Respectfully submitted,

Bill Schuette  
Attorney General

/s/ Michael F. Murphy  
Assistant Attorney General  
Attorneys for Defendants  
State Operations Division  
P.O. Box 30754  
Lansing, MI 48909  
(517) 373-1162  
murphym2@michigan.gov  
(P29213)

Dated: July 25, 2014

**CERTIFICATE OF SERVICE (E-FILE)**

I hereby certify that on July 25, 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:

Hon. Mark A. Goldsmith  
U.S. District Court, Eastern Mich.  
600 Church St., Rm. 132  
Flint, MI 48502

/s/ Michael F. Murphy  
Assistant Attorney General  
Attorney for Defendants  
State Operations Division  
P.O. Box 30754  
Lansing, MI 48909  
(517) 373-1162  
(P29213)

2014-0074408-A