UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, *et al,*

Plaintiffs,

v

RICHARD SNYDER, *et al*

Defendants.

Civil Action No. 12-cv-10285

HON. BERNARD A. FRIEDMAN

MAG. MICHAEL J. HLUCHANIUK

STATE DEFENDANTS' PROPOSED CONCLUSIONS OF LAW

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PROPOSED CONCLUSIONS OF LAW

I. The People of Michigan Have a Right to Determine Marriage Policy.

1. Each state as a sovereign has a rightful and legitimate interest in the marital status of persons living within its borders. The recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens. *See Williams v. North Carolina*, 317 U. S. 287, 298 (1942). The definition of marriage is the foundation of the state's broader authority to regulate the subject of domestic relations with respect to the "[p]rotection of offspring, property interests, and the enforcement of marital responsibilities." *Id.*

2. "[T]he states, at the time of the adoption of the Constitution, possessed full power over the subject of marriage and divorce . . . [and] the Constitution delegated no authority to the Government of the United States on the subject of marriage and divorce." *Haddock v. Haddock*, 201 U. S. 562, 575 (1906); *see* also *In re Burrus*, 136 U. S. 586, 593–594 (1890) ("The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States"). "Consistent with this allocation of authority, the Federal Government, through our history, has deferred to state law policy decisions with respect to domestic relations. . . . In order to respect this principle, the federal courts, as a general rule, *do not* adjudicate issues of marital status even when there might otherwise be a basis for federal jurisdiction. *See Ankenbrandt v. Richards*, 504 U. S. 689, 703 (1992)." *U.S. v. Windsor*, 113 S. Ct. 2675 (2013) (emphasis added).

3. In passing Michigan's marriage amendment, lawmakers and voters exercised the unique authority that the federal government has preserved for the states. The Supreme Court in *Windsor* stressed that domestic relations has long been the almost exclusive responsibility of the states and "recognition of civil

marriages is central to state domestic relations law." *Windsor*, 133 S. Ct. at 2691.

II. The issue of same-sex marriage does not raise a substantial federal question.

4. The issue of same-sex marriage does not raise a substantial federal question under constitutional analysis. *Baker v. Nelson*, 409 U.S. 810 (1972).

5. The *Baker* decision is binding on this Court because a dismissal for lack of a substantial federal question constitutes an adjudication on the merits that is binding on lower federal courts. *Wilson v. Ake*, 354 F. Supp. 2d 1298, 1303 (M.D. Fla. 2005); *see also Ohio ex rel. Eaton v. Price*, 360 U.S. 246, 247 (1959) ("Votes to affirm summarily, and to dismiss for want of a substantial federal question, it hardly needs comment, are votes on the merits of a case . . . .").

6. The precedential value of a dismissal for want of a substantial federal question extends beyond the facts of the particular case *to all similar cases*. *Jackson v. Abercrombie*, 884 F. Supp. 2d 1065, 1087 (D. Haw. 2012) (emphasis in original).

7. *Baker* is binding precedent unless the Supreme Court overturns it. *Massachusetts v. United States Dep't of Health & Human Servs.*, 682 F.3d 1, 8 (5th Cir. 2012).

8. The Supreme Court's decision in *Windsor* does not undermine the precedential effect of *Baker*. To the contrary, *Windsor* only reaffirms that the task of defining marriage falls squarely within the province of the states. *Windsor*, 133 S. Ct. at 2691.

III. The U.S. Congress has expressly recognized the states' authority to define marriage, including the right to refuse to recognize out-of-state marriages.

9. Section 2 of the federal DOMA provides:

> *No State*, territory, or possession of the United States, or Indian tribe, *shall be required to give effect to any public act*, record, or judicial proceeding *of any other State*, territory, possession, or tribe *respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State*, territory, possession, or tribe, or a right or claim arising from such relationship. 28 U.S.C. § 1738C (emphasis added).

10. *Windsor* left this provision of DOMA untouched. *See Windsor*, 133 S. Ct. at 2682-83.

11. The states' role to define their different policies with respect to same-sex marriage includes the authority to determine whether or not to recognize same-sex marriages that take place in other states.

12. Implicit in this recognition is that each state has, and has always had, the right to define marriage within its borders.

IV. There is no fundamental right to same-sex marriage.

13. The Equal Protection Clause prohibits discrimination by government which burdens a fundamental right, targets a suspect class, or intentionally treats one differently than others similarly situated without any rational basis for the difference. *Bench Billboard Co v. City of Cincinnati,* 675 F.3d 974, 986 (6th Cir. 2012).

14. To be deemed a fundamental right, the right must be deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice

would exist if they were sacrificed. *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

15. Until recently, it was an accepted truth for almost everyone who ever lived, in any society in which marriage existed, that there could be marriages only between participants of different sex. *Hernandez v. Robles*, 855 N.E.2d 1, 8 (N.Y. 2006).

16. In recognizing a fundamental right to marry, the Supreme Court has only contemplated marriages between persons of opposite sexes—persons who had the possibility of having children with each other. *Dean v. Dist. of Columbia*, 653 A.2d 307, 333 (D.C. 1995).

17. Marriage between a man and a woman is essential to the very definition of that term and to its role and function throughout the history of civilization. *Windsor*, 133 S. Ct. at 2689.

18. Until recent years, many citizens had not even considered the possibility that two persons of the same sex might aspire to marry. *Windsor*, 133 S. Ct. at 2689.

19. The right of same-sex couples to marry is not a fundamental right. *Jackson v. Abercrombie, 884 F. Supp. 2d at 1097* ; *Smelt v. County of Orange*, 374 F. Supp. 2d 861, 879 (C.D. Cal. 2005); *Wilson v. Ake*, 354 F. Supp. 2d 1298 at 1307 (M.D. Fla. 2005); *Andersen v. King Cnty.*, 158 Wn.2d 1 (Wash. 2006); *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d at 987 (Cordy, J., dissenting).

V. Michigan's Marriage Amendment does not target a suspect class.

20. Men and women enjoy equal rights to marry a person of the opposite sex; neither sex is advantaged or disadvantaged in this consideration.

21. Each sex is equally prohibited from precisely the same conduct, *i.e.,* marriage to a person of the same sex.

22. The Supreme Court has never strayed from the baseline rule that to constitute sex-based discrimination, a law must subject men and women to disparate treatment. *See Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 718-19 (1982).

23. Classifications based on sexual orientation do not constitute a suspect class. *Davis v. Prison Health Services*, 679 F.3d 433, 438 (6th Cir. 2012); see also *Scarbrough v. Morgan County Bd. of Educ.,* 470 F.3d 250, 261 (6th Cir. 2006).

24. Because Michigan's Marriage Amendment does not discriminate between men and women, it does not target any recognized suspect class.

VI. Plaintiffs' claims fail under rational-basis review

25. Under rational-basis review, legislation is presumed valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate State interest. *Romer v. Evans*, 517 U.S. 620 (1996).

26. Under rational-basis review, whether the Legislature was unwise in not choosing a means more precisely related to its primary purposes is irrelevant. *Breck v. Michigan,* 203 F.3d 392, 396 (6th Cir. 2000).

27. A legislative classification is accorded a strong presumption of validity and must be upheld against equal protection challenge if there is any reasonably conceivable set of facts that could provide a rational basis for the classification. *Heller v. Doe,* 509 U.S. 312, 320 (1993).

28. A State has no obligation to produce evidence to sustain the rationality of a statutory classification. A legislative choice is not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data. *Heller*, 509 U.S. at 320.

29. The presumption of validity is true even if the law works to the disadvantage of a particular group, or if the rationale for it seems tenuous. *Romer,* 517 U.S. at 632; *see also F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313-14 (1993).

30. When the inclusion of one group promotes a legitimate governmental purpose, and the addition of other groups would not, a court cannot say that the law's classification of beneficiaries and non-beneficiaries is invidiously discriminatory. *Johnson v. Robison*, 415 U.S. 361, 383 (1974).

31. Plaintiffs did not show that the passage of the Marriage Amendment reflects any animus against same-sex couples.

32. Plaintiffs failed to establish that the Michigan Marriage Amendment's recognition of opposite-sex marriage is not rationally related to any conceivable State interest.

33. Plaintiffs failed to prove that there is no rational basis for (1) providing children with "biologically connected" role models of both genders that are necessary to foster healthy psychological development; (2) forestalling the unintended consequences that would result from the redefinition of marriage; (3) tradition and morality of retaining the definition of marriage and (4) promoting the transition of "naturally procreative relationships into stable unions."

34. Michigan's limitation of marriage to opposite-sex couples is rationally related to legitimate State interests.

35. Opposite-sex marriages have been recognized as promoting long-standing societal benefits because they are the only sexual relationship capable of producing children. *See Standhardt v. Super. Ct.*, 77 P.3d 451 (Ariz. Ct. App. 2003); *Morrison v. Sadler*, 821 N.E.2d 15 (Ind. App. 2005)*; Jackson v. Abercrombie*, 884 F. Supp. 2d 1065, 1087 (D. Haw. 2012).

36. The limitation of marriage to one man and one woman preserves both its structure and its historic purposes. *Goodridge,* 798 N.E.2d 941, 992 n.13.

37. The preservation of the historic institution of marriage as a union of one man and one woman uniquely fosters responsible natural procreation and promotes raising children in a home environment with both a mother and a father. *See Jackson*, 884 F. Supp.2d at 1113; *Sevcik v. Sandoval*, 911 F. Supp. 2d 996, 1015-1016 (D. Nev. 2012); *Citizens for Equal Prot. v. Bruning*, 455 F.3d 859, 867, 868 (8th Cir. 2006); *Smelt v. County of Orange*, 374 F. Supp.2d 861, 880 (C.D. Cal. 2005); *Wilson v. Ake*, 354 F. Supp. 2d 1298, 1308 (M.D. Fla. 2005); *In re Kandu*, 315 B.R. 123, 145 (Bankr. W.D. Wash. 2004); *Standhardt v. Super. Court*, 77 P.3d 451, 461-62 (Ariz. Ct. App. 2003); *Baehr v. Lewin*, 852 P.2d 44, 55-56 (Haw. 1993); *Morrison v. Sadler*, 821 N.E.2d 15, 24-25 (Ind. App. 2005); *Adams v. Howerton*, 486 F. Supp. 1119, 1124-25 (C.D. Cal. 1980); *Conaway v. Deane*, 401 Md. 219, 300-01 (Md. 2007); *Baker v. Nelson*, 191 N.W.2d 185, 312-13 (Minn. 1971); *Hernandez v. Robles*, 855 N.E.2d 1, 21 (N.Y. 2006); *Matter of Cooper*, 187 A.D.2d 128, 133 (N.Y. App. Div. 1993); *In re Marriage of J.B. and H.B.*, 326 S.W.3d 654, 674-75 (Tx. Ct. App. 2010); *Anderson v. King County*, 138 P.3d 963, 985, 990 (Wash. 2006); *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942); *Lofton v. Sec'y of Dept' of Children & Family Serv.*, 358 F.3d 804 (11th Cir. 2004).

38. It is rational for the people of the State of Michigan to encourage and promote the raising of children by their biological mother and father which has been shown to be the optimal environment for children. *See Jackson*, 884 F. Supp. 2d at 1113; *Sevcik*, 911 F. Supp. 2d at 1015-1016 (D. Nev. 2012); *Citizens,* 455 F.3d at 867, 868 (8th Cir. 2006); *Smelt*, 374 F. Supp.2d at 880 (C.D. Cal. 2005); *Wilson,* 354 F. Supp. 2d at 1308 (M.D. Fla. 2005); *Kandu*, 315 B.R. at 145 (Bankr. W.D. Wash. 2004); *Standhardt*, 77 P.3d at 461-62 (Ariz. Ct. App. 2003); *Baehr*, 852 P.2d at 55-56 (Haw. 1993); *Morrison*, 821 N.E.2d at 24-25 (Ind. App. 2005); *Adams*, 486 F. Supp. at 1124-25 (C.D. Cal. 1980); *Conaway*, 401 Md. at 300-01 (Md. 2007); *Baker*, 191 N.W.2d at 312-13 (Minn.

1971); *Hernandez*, 855 N.E.2d at 21 (N.Y. 2006); *Cooper*, 187 A.D.2d at 133 (N.Y. App. Div. 1993); *In re Marriage*, 326 S.W.3d at 674-75 (Tx. Ct. App. 2010); *Anderson*, 138 P.3d at 985, 990 (Wash. 2006); *Skinner*, 316 U. S. 535 (1942); *Lofton,* 358 F.3d 804 (11th Cir. 2004).

39. The Michigan Marriage Amendment encourages and promotes the raising of children by their biological parents since laws shape beliefs and beliefs shape human behavior. See, S. Girgis, R. Anderson, & R. George, "What is Marriage? Man and Woman: A Defense" (2012).

40. Michigan's current marriage framework creates stability in the law and legal predictability which are all in the best interest of the child.

41. The social science is unsettled as to the affect that any redefinition of marriage to include same-sex couples will have on outcomes for children and the institution of marriage itself.

42. It is rational for the people of the State of Michigan to encourage and promote a cautious approach before redefining marriage to include same-sex couples. *Marshall v. United States*, 414 U.S. 417, 427 (1974).

43. The Michigan Marriage Amendment encourages and promotes this cautious approach because it enshrines the definition of marriage in the state constitution.

44. The Michigan Marriage Amendment does not violate either the Due Process or Equal Protection clauses of the U.S. Constitution. Plaintiffs and their children are not part of suspect classification, no fundamental right is implicated, and Michigan's legislature had a rational basis for enacting the Marriage Amendment. The path chosen by the Legislature and its political wisdom is not for this Court to question. *See Minnesota v. Clover Leaf Creamery*, 449 U.S. 456 (1981).

VII. Plaintiffs fail to establish that the Michigan adoption code violates their equal-protection rights.

45. In Michigan, adoption is not a right; it is a statutory privilege. *In re Adams*, 189 Mich. App. 540, 542; 473 N.W.2d 712 (1991).

46. Unlike biological parentage, which precedes and transcends formal recognition by the state, adoption is wholly a creature of the state. *Lindley v. Sullivan,* 889 F.2d 124, 130 (7th Cir. 1989) ("Because of its statutory basis, adoption differs from natural procreation in a most important and striking way.").

47. Because it is the welfare of the adoptee child that is the overriding interest of the state, and the state acts in a protective and provisional role of *in loco parentis* for adoptees, the state can—and routinely does— make classifications for adoption that would be otherwise constitutionally suspect. *Lofton v. Sec'y of the Dep't of Children & Family Serv.*, 358 F.3d 804, 818 (11th Cir. 2004).

48. Michigan's Adoption Code is rationally related to the State's interest in promoting the traditional family.

49. Michigan adoption law, Mich. Comp. Laws § 710.24, defines three classifications of persons who are eligible to adopt. They are: single persons, who retain the ability to marry and provide the adopted child with an opposite-sex parent, married couples, or a married individual without his or her spouse in limited circumstances. In all three classifications there remains the possibility that the natural family-like model will be completed and the adoptee will be reared in what this state recognizes as an ideal home environment—one with both a mother and a father. *See Vance v. Bradley*, 440 U.S. 93, 111, 99 S. Ct. 939, 949, 59 L. Ed. 2d 171 (1979) ("In an equal protection . . ., those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based

could not reasonably be conceived to be true by the governmental decisionmaker.").

50. "It is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Beach Communications*, 508 U.S. at 315, 113 S. Ct. at 2102. Instead, the question is whether the Michigan legislature could have reasonably believed that prohibiting joint adoption by two single individuals would further its interest in placing adoptive children in homes that will provide them with optimal developmental conditions.

51. The Michigan legislature could rationally conclude that two singles—be they heterosexual or homosexual— are not "similarly situated in relevant respects" to a married couple, married individual, or a lone single individual. It is not irrational to think that a married couple, married individual, or even a single person who has a markedly greater probability of eventually establishing a married household, will provide their adopted children with a stable, dual-gender parenting environment. *Lofton,* 358 F.3d at 818.

52. Joint adoptions by unmarried couples in Michigan would run contrary to the historical purpose of adoption, *i.e.*, to imitate the natural family, and "it [is] inconsistent with the general scope and purpose of adoption statutes to allow two unmarried persons to make a joint adoption." *In re Adams*, 189 Mich. App. at 544.

53. Michigan's interest in not recognizing adoptions of its children by unmarried couples is part of the state's recognition of the importance of the traditional family. *Michael H. v. Gerald D.,* 491 U.S. 110, 122 (1989).

54. Michigan's Adoption Code steadfastly maintains its focus on the best interests of children. It has done so based on the premise that—all things being equal—the traditional family structure is superior to other household compositions. *Cf. Hernandez*, 855 N.E.2d 1, at 7 (N.Y. 2006) (plurality opinion) ("[t]he Legislature

could rationally believe that it is better, other things being equal, for children to grow up with both a mother and a father.").

55. Michigan's Adoption Code does not violate the Equal Protection clause of the U.S. Constitution. Plaintiffs and their children are not part of suspect classification, no fundamental right is implicated, and Michigan's legislature had a rational basis for enacting Mich. Comp. Laws. § 710.24. *In re Adams*, 189 Mich. App. at 547. The path chosen by the Legislature and its political wisdom is not for this Court to question. *See Minnesota v. Clover Leaf Creamery*, 449 U.S. 456 (1981).

CONCLUSION AND RELIEF REQUESTED

State Defendants respectfully request this Court to grant Judgment in its favor, Dismiss Plaintiffs' Amended Complaint, with prejudice, award State Defendants their attorneys' fees and costs, and grant such further relief this Court deems just and equitable.

Respectfully submitted,

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Dated: March 10, 2014

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on March 10, 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.

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