

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

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

Plaintiffs

Case No. 1:14-cv-00632

v.

Hon.

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.

Stephanie D. Myott (P76697)
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. PARTIES

1. Plaintiffs Bruce T. Morgan (“Bruce”) and Brian P. Merucci (“Brian”), both adult males, are citizens and residents of Kent County, Michigan. They were married to each other on December 7, 2013 in the State of New York.

2. Defendant Rick Snyder is the Governor of the State of Michigan. He is being sued in his official capacity and was, is or will be acting under color of law at all times and for all relevant purposes of this Complaint.

3. Defendant Mary Hollinrake is the County Clerk and Register of Kent County, Michigan. She is being sued in her official capacity and was, is or will be acting under color of law at all times and for all relevant purposes of this Complaint.

II. JURISDICTION

4. Plaintiffs are bringing this action under 42 U.S.C. § 1983 to address the deprivation, under color of law, of rights secured by the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

5. Jurisdiction is proper under 28 U.S.C. § 1331 because this is a civil action arising under the Constitution and the laws of the United States.

6. Jurisdiction is proper under 28 U.S.C. § 1343 because this is a civil action to redress the deprivation, under color of state law, of equal rights of all persons within the jurisdiction of the United States secured by the United States Constitution and laws.

III. VENUE

7. Venue is proper under 28 U.S.C. § 1391(b)(1) because Defendant Mary Hollinrake resides in this district, and all Defendants are residents of the State of Michigan.

8. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this district.

IV. BACKGROUND

A. Full Faith and Credit Clause and Defense of Marriage Act

9. The Full Faith and Credit Clause, Article IV, Section 1 of the United States Constitution, provides:

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

10. Federal legislation enacted on September 21, 1996—the Defense of Marriage Act (“DOMA”)—defined the institution of marriage in such a way as to exclude same-sex couples. Section 2 of DOMA, 28 U.S.C. § 1738C, 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.

Section 3 of DOMA, 1 U.S.C. § 7, provided:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.

11. On June 26, 2013, the United States Supreme Court held that Section 3 of DOMA was unconstitutional in *U.S. v. Windsor*. The effect of the *U.S. v. Windsor* ruling is that federal rights and benefits associated with marriage are available to legally married same-sex couples.

12. Section 2 of DOMA purports to carve out an exception to the Full Faith and Credit Clause by allowing a state not to recognize a same-sex marriage performed in another state, the effect of which is that a legally married same-sex couple living in a state that does not recognize same-sex marriage enjoys federal rights and benefits associated with marriage, but not state rights and benefits associated with marriage.

B. Same-Sex Marriage in Michigan

13. Michigan limited marriage to a man-woman union by approving Proposal 04-2 in a voter referendum on November 2, 2004.

14. Proposal 04-2 amended the state constitution by adding Section 25 ("Marriage Amendment"), which took effect on December 18, 2004 and provides:

To 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.

15. The Michigan legislature has enacted statutory provisions limiting marriage to a man-woman union. Section 1 of the Revised Statutes of 1846, MCL 551.1, provides:

Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

Section 2 of the Revised Statutes of 1846, MCL 551.2, provides:

So far as its validity in law is concerned, marriage is a civil contract between a man and a woman, to which the consent of parties capable in law of contracting is essential. . . .

Section 3 of the Revised Statutes of 1846 states: "A man shall not marry . . . another man." MCL 551.3. Section 4 of the Revised Statutes of 1846 states: "A woman shall not marry . . . another woman." MCL 551.4 (collectively, "Marriage Statutes").

16. The Marriage Amendment and Statutes have prevented same-sex marriages from being performed in Michigan, and Section 2 of DOMA purportedly has enabled Michigan not to give full faith and credit to same-sex marriages performed in other states.

C. *DeBoer v. Snyder and Its Aftermath*

17. On September 7, 2012, plaintiffs April DeBoer and Jayne Rowse, an unmarried same-sex couple, filed their Amended Complaint against Governor Snyder, Michigan Attorney General Bill Schuette and Oakland County Clerk Bill Bullard, Jr. in the United States District Court for the Eastern District of Michigan, Southern Division, in *DeBoer v. Snyder*.

18. DeBoer and Rowse's Amended Complaint challenged the Marriage Amendment and its implementing statutes as unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

19. On March 21, 2014, Judge Bernard Friedman ruled in favor of DeBoer and Rowse, holding that the Marriage Amendment and its implementing statutes were

unconstitutional under the Equal Protection Clause and enjoining Michigan from enforcing the Marriage Amendment and its implementing statutes.

20. Judge Friedman did not grant the *DeBoer* defendants a stay of his order.

21. Upon information and belief, approximately 300 same-sex couples married in Michigan on March 22, 2014 in Ingham, Muskegon, Oakland and Washtenaw Counties.

22. Upon information and belief, thousands of same-sex couples legally married in states other than Michigan were living in Michigan when Judge Friedman issued his ruling.

23. On March 22, 2014, after same-sex marriages were performed in Michigan and same-sex couples legally married in other states had celebrated the recognition of their marriages by Michigan, the Sixth Circuit Court of Appeals granted the *DeBoer* defendants a temporary stay of Judge Friedman's decision. On March 25, 2014, the Sixth Circuit extended its stay pending final disposition of the *DeBoer* defendants' appeal to the Sixth Circuit.

24. Neither stay of the Sixth Circuit addressed the legality of the same-sex marriages performed in Michigan on March 22, 2014 or in other states by couples who were residing in Michigan when *DeBoer v. Snyder* was decided.

25. On March 26, 2014, Governor Snyder issued the following statement regarding *DeBoer v. Snyder* and the same-sex marriages performed in Michigan on March 22, 2014:

After comprehensive legal review of state law and all recent court rulings, we have concluded that same-sex couples were legally married at county clerk offices in the time period between U.S. District Judge Friedman's ruling and the 6th U.S. Circuit Court of Appeals temporary stay of that ruling.

In accordance with the law, the U.S. Circuit Court's stay has the effect of suspending the benefits of marriage until further court rulings are issued on this matter. The couples with certificates of marriage from Michigan courthouses last Saturday were legally married and the marriage was valid when entered into. Because the stay brings Michigan law on this issue back into effect, the rights tied to these marriages are suspended until the stay is lifted or Judge Friedman's decision is upheld on appeal.

26. Governor Snyder acknowledged that same-sex marriages performed in Michigan on March 22, 2014 before the stay was entered were legal. Thus, there was a window of time between *DeBoer v. Snyder* being decided on March 21, 2014 and the Sixth Circuit's stay on March 22, 2014 in which there was not a public policy against same-sex marriage in Michigan.

27. Governor Snyder only addressed the same-sex marriages performed in Michigan. He failed to address the same-sex couples married in other states who were residing in Michigan when *DeBoer v. Snyder* was decided and to declare Michigan's position with respect to the legality of those marriages following the Sixth Circuit's stay.

28. On March 28, 2014, United States Attorney General Eric Holder issued the following statement regarding federal recognition of the Michigan same-sex marriages:

I have determined that the same-sex marriages performed last Saturday in Michigan will be recognized by the federal government. These families will be eligible for all relevant federal benefits on the same terms as other same-sex marriages. The Governor of Michigan has made clear that the marriages that took place on Saturday were lawful and valid when entered into, although Michigan will not extend state rights and benefits tied to these marriages pending further legal proceedings. For purposes of federal law, . . . these Michigan couples will not be asked to wait for further resolution in the courts before they may seek federal benefits to which they are entitled.

Similar to Governor Snyder, Attorney General Holder acknowledged the validity of same-sex marriages performed in Michigan on March 22, 2014, and thus the existence of the window of time in which Michigan recognized same-sex marriage.

D. Bruce and Brian

29. Bruce and Brian have been in a loving, committed relationship for 7 years and have lived together since June 3, 2011.

30. June 3, 2011 is significant to Bruce and Brian because it is the day when Bruce was diagnosed with inoperable brain cancer (glioblastoma) and given 6–15 months to live. The

alarming diagnosis reinforced Bruce and Brian's commitment to each other and made them realize how much they value and cherish each other and how precious their time together is.

31. Bruce and Brian responded to Bruce's diagnosis by setting up doctors' appointments, daily radiation and a chemotherapy program, and getting him admitted into a program at Duke University Medical Center, a leading institution for brain cancer treatment.

32. In July of 2013, Bruce sold his residence and used the proceeds to remodel the couple's shared residence in Kent County, Michigan.

33. On December 7, 2013, after obtaining a valid marriage license, Bruce and Brian publicly declared their love for each other in New York—a state that recognizes same-sex marriage—by exchanging wedding vows and rings. Bruce and Brian satisfied the requirements for marriage in New York and were legally married as evidenced by a Certificate of Marriage.

34. Bruce and Brian's marriage guaranteed to them the over 1,100 federal rights and benefits associated with marriage, including Social Security payments for a surviving spouse and portability of the federal estate tax exemption between spouses.

35. Although the federal government recognizes Bruce and Brian's marriage, when they returned home after getting married, they returned to a state that did not recognize their marriage or afford them any of the state rights and benefits associated with marriage, the effect of which is that, in Michigan, they are at the same time married and unmarried.

36. Bruce and Brian behave as any married couple: They live together, share ownership of their home, have joint finances and have provided for each other in estate plans.

37. Unlike an opposite-sex married couple living in Michigan, Bruce and Brian's marriage is not recognized by the state. They were thrilled, then, when Judge Friedman struck

down the Marriage Amendment and its implementing statutes because they believed that the ruling would cause Michigan to recognize their New York marriage.

38. Governor Snyder's statement suspending state rights and benefits associated with marriage for same-sex couples married in Michigan on March 22, 2014 confused Bruce and Brian, not only because it contradicts Governor Snyder's conclusion that those marriages were performed legally, but also because it does not mention the same-sex couples legally married in other states prior to Judge Friedman's decision on March 21, 2014 who were in Michigan in the window of time between *DeBoer v. Snyder* being decided and the Sixth Circuit's stay ("similarly situated couples"). Bruce and Brian contend that their marriage and those of similarly situated couples became valid in Michigan when Judge Friedman struck down the Marriage Amendment, but Governor Snyder's failure to acknowledge even the existence of those couples has made Bruce and Brian fear that pending the Sixth Circuit's decision, they must return to having a dual married/unmarried status in Michigan.

39. Bruce and Brian are anxious to have their marriage treated the same as that of any opposite-sex married couple living in Michigan and to enjoy state rights and benefits associated with marriage. Given Bruce's medical condition, he wants to know that if he is in the hospital, his spouse will be treated as just that: That Brian will have visitation and decision-making rights as any other spouse would, to be at Bruce's bedside and to make medical decisions for him in the event of an emergency. He wants to know that his and Brian's home will have the same tenancy by the entirety protections as real property owned by any opposite-sex married couple in Michigan. But most importantly, Bruce wants to know that in the most difficult time of his life, while he is battling cancer and fighting for his life, he will enjoy the most basic human decencies

of being able to be married to the person he loves and to have his home state treat his marriage no differently from any other marriage.

E. Register of Deeds

40. On April 29, 2014, Bruce and Brian submitted for recording with the Kent County Register of Deeds a quit claim deed signed by both of them conveying their residence from themselves as joint tenants to themselves as tenants by the entirety, along with a copy of their New York marriage certificate and a check in the amount of \$17.00 for the filing fee.

41. The Register of Deeds refused to record the deed and returned the deed and check on the grounds that “Michigan does not recognize same-sex marriages at this time.”

42. Attached as **Exhibit 1** is a true and accurate copy of the Register of Deeds’ denial.

V. **CAUSES OF ACTION**

43. Plaintiffs are bringing this action under 42 U.S.C. § 1983 to address the deprivation, under color of law, of rights secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

COUNT I. DUE PROCESS CLAUSE

44. The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law” and guarantees both procedural and substantive due process.

45. The purpose of substantive due process guarantees is to prohibit a state from intruding into the fundamental rights and liberties of any person within its jurisdiction.

46. Government action that burdens the exercise of a fundamental right is subject to strict scrutiny, meaning that the government must prove that its action was necessary to achieve a compelling government purpose.

47. The United States Supreme Court has found that the Due Process Clause protects personal decisions relating to marriage, procreation, contraception, family relationships, child rearing and education. The Court held in *Loving v. Virginia* that “marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence.” 388 U.S. 1, 12 (1967).

48. The legal union of marriage provides over 1,100 federal benefits, rights and privileges based on marital status. In addition, married couples in Michigan enjoy numerous state benefits based on marital status including, but not limited to, filing joint income tax returns; inheriting a share of a deceased spouse’s estate under intestacy laws; receiving Social Security, Medicare and disability benefits for a spouse; making medical decisions for a spouse if s/he becomes incapacitated; visiting a spouse in a hospital; making burial and other arrangements after a spouse’s death; and owning real property as tenants by the entirety.

49. Tenancy by the entirety is a form of joint ownership of real property available to married couples only. Both spouses must consent to the sale of the property, and a creditor of one spouse cannot attach his or her interest in the property to satisfy a debt. Upon the death of one spouse, his or her interest in the property automatically passes to the surviving spouse.

50. When Judge Friedman held that the Marriage Amendment and its implementing statutes were unconstitutional, Section 2 of DOMA (though never lawful) no longer allowed Michigan not to give full faith and credit to Bruce and Brian’s marriage and to the marriages of all same-sex couples living in Michigan who were legally married in other states.

51. During the window of time between Judge Friedman deciding *DeBoer v. Snyder* and the Sixth Circuit issuing its stay, Michigan did not have a public policy against same-sex marriage. As such, Bruce and Brian’s marriage and those of all similarly situated couples sprang to life and became legally recognized by Michigan under the Full Faith and Credit Clause.

52. Governor Snyder's statement only addressed the legality of same-sex marriages performed in Michigan, making no mention of same-sex marriages performed in other states. By ignoring the marriages of Bruce and Brian and similarly situated couples, Governor Snyder violated their fundamental right to marry as protected by the Due Process Clause.

53. To the extent that Governor Snyder intended his statement to address the legality of same-sex marriages performed in other states, he violated the fundamental right to marry protected by the Due Process Clause of Bruce and Brian and of similarly situated couples by suspending state rights and benefits associated with marriage of married same-sex couples.

54. Until Governor Snyder recognizes the marriages of Bruce and Brian and similarly situated couples and affords them state rights and benefits associated with marriage, he will continue to violate their fundamental right to marry as protected by the Due Process Clause.

55. By refusing to record Bruce and Brian's quit claim deed conveying their home to themselves as tenants by the entirety on the grounds that "Michigan does not recognize same-sex marriages at this time", County Clerk and Register Hollinrake violated Bruce and Brian's fundamental right to marry and to enjoy rights and benefits associated with marriage, including ownership of real property as tenants by the entirety, as protected by the Due Process Clause.

56. Unlike the same-sex marriages performed in Michigan on March 22, 2014, the legality of Bruce and Brian's marriage is in no way dependent upon the decision in the Sixth Circuit appeal. Bruce and Brian's marriage was legal when performed in New York. When Judge Friedman found the Marriage Amendment and its implementing statutes unconstitutional, Section 2 of DOMA no longer allowed Michigan to deny Bruce and Brian their state marital rights and benefits, which were vested in them pursuant to the Full Faith and Credit Clause. Even

if the Sixth Circuit overturns Judge Friedman's decision, Bruce and Brian's state marital rights and benefits are vested in them and cannot be taken away.

57. Regardless of the outcome of *DeBoer v. Snyder*, Michigan, through such officials as Governor Snyder and Ms. Hollinrake, cannot deny Bruce and Brian their state marital rights and benefits by virtue of Section 2 of DOMA because Section 2 of DOMA is unconstitutional.

58. The United States Supreme Court has held that the Full Faith and Credit Clause does not require one state to apply another state's law in violation of "its own *legitimate* public policy." *Nevada v. Hall*, 440 U.S. 410, 422 (1979). However, the line of case law classifying the right to marry as fundamental and decisions in *DeBoer v. Snyder*, *U.S. v. Windsor* and other recent cases that have overturned bans on same-sex marriage show that a ban on same-sex marriage is not a legitimate public policy. The Supreme Court has also held that "neither Congress nor a State can validate a law that denies the rights guaranteed by the Fourteenth Amendment." *Saenz v. Roe*, 526 U.S. 489, 508 (1999). It is well established that the right to marry is a fundamental right protected by the Fourteenth Amendment. Thus, Section 2 of DOMA is unconstitutional because it denies the fundamental right to marry and to enjoy state marital rights and benefits of such couples as Bruce and Brian.

59. The actions of Governor Snyder and Ms. Hollinrake were not necessary to achieve any compelling government purpose and were and are unlawful.

COUNT II. EQUAL PROTECTION CLAUSE

60. Paragraphs 44–59 are incorporated by reference herein.

61. The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

62. The purpose of the Equal Protection Clause is to prohibit a state from denying to any person within its jurisdiction the equal protection of the laws, meaning that a state must treat similarly situated persons similarly.

63. In general, if government action benefits or burdens one class of persons but not another, it is subject to the deferential rational basis standard of review, meaning that it must be rationally related to a legitimate state purpose. If a classification burdens a class's exercise of its fundamental rights, it must be necessary to achieve a compelling government purpose. Further, if government action involves suspect classification, heightened scrutiny applies.

64. The United States Supreme Court has held that classification born of animus toward or a desire to harm a class of persons lacks a rational relationship to a legitimate government purpose. *Romer v. Evans*, 517 U.S. 620, 632 (1996).

65. By denying same-sex couples as a class the fundamental right to marry, Governor Snyder violated their right to equal protection under the law.

66. By refusing to afford state rights and benefits associated with marriage to Bruce and Brian and to similarly situated couples, but granting them to opposite-sex married couples, Governor Snyder violated their right to equal protection under the law.

67. By refusing to record Bruce and Brian's deed conveying their home to themselves as tenants by the entirety based on their classification as a same-sex couple, Ms. Hollinrake violated their right to equal protection under the law.

68. Treating same-sex couples differently from opposite-sex couples and same-sex married couples differently from opposite-sex married couples with respect to the fundamental right to marry and to enjoy all benefits associated with marriage serves no legitimate government purpose; the actions of Governor Snyder and Ms. Hollinrake fail under all standards of review.

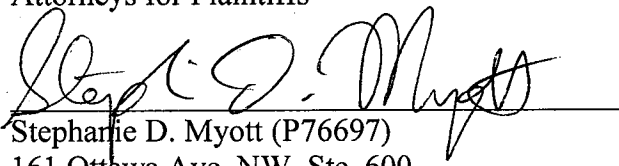
RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an Order:

- A. Declaring that the Marriage Amendment and Statutes do not apply to the marriages of Bruce and Brian and similarly situated couples.
- B. Declaring that the actions of Governor Snyder and Ms. Hollinrake denying to Bruce and Brian and similarly situated couples recognition of their marital status and the attendant state marital rights and benefits violated their due process and equal protection guarantees as protected by the Fourteenth Amendment of the United States Constitution.
- C. Enjoining Defendants and all other state officials from enforcing the Marriage Amendment and Statutes against Bruce and Brian and similarly situated couples.
- D. Enjoining Defendants and all other state officials from refusing to recognize the marriages of Bruce and Brian and similarly situated couples and to afford such couples the state rights and benefits associated with marriage.
- E. Awarding Plaintiffs reasonable attorney's fees in bringing this action under 42 U.S.C. § 1983 as allowed by 42 U.S.C. § 1988(b).
- F. Providing any and all other equitable relief as this Court deems just and proper.

Respectfully submitted,

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