

NATIONAL FAMILY CIVIL RIGHTS CENTER

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March 25, 2014

BY COURIER DELIVERY

Attorney General Bill Schuette
G. Mennen Williams Building, 7th Floor
525 W. Ottawa Street
Lansing, MI 48909

Governor Rick Snyder
444 N. Capitol Street, NW
Hall of the States, Suite 411
Washington, D.C. 20001

RE: *DeBoer v Snyder*, Stay Application in the Sixth Circuit

Dear Attorney General Schuette and Governor Snyder:

After a full trial, U.S. District Judge Bernard Friedman struck down Michigan's same-sex marriage ban, in the latest of an unbroken string of decisions all invalidating state bans since the U.S. Supreme Court struck down the federal same-sex marriage ban in *US v. Windsor* last year.

Today, you opened your *Detroit Free Press* editorial explaining your appeal of Judge Friedman's decision by quoting from the oath of office you took:

"I do solemnly swear that I will support the Constitution of the United States and the Constitution of this state..."

As your editorial dwells only on defending Michigan's constitutional amendment without respect to whether this conflicts with the U.S. Constitution you swore to support first – because you cannot "ignore the [state] constitution and negate the will of the people" – we have no doubt that you have constituents who fervently support your actions.

However, we write on behalf of our Michigan families on two important points and ask that you consider the immediate impacts of your actions today and within the context of history. Indeed, your counterpart Attorney Generals in Kentucky, Oregon, Nevada, Virginia, Pennsylvania, California, and Illinois have refused to defend their state same-sex marriage bans, as should you.

First, we note that Governor George Wallace had substantial support in Alabama from the "will of the people" and state laws when he declared "*I say segregation now, segregation tomorrow, segregation forever*" taking his oath of office on January 14, 1963 and later stood on the steps of the University of Alabama to prevent Vivian Malone and James Hood from an education only because of their skin color. With time, history does not look favorably on those who stood and opposed the inevitable march of justice and equality, as Governor Wallace did in 1963.



Indeed, young people today stand in disbelief that just two generations ago, the Virginia Supreme Court upheld Virginia's ban on interracial marriage and the trial court's holding that "*Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.*" See e.g. *Loving v Commonwealth of Virginia*, 206 Va. 924 (1966).

With the passage of time, today, we see these actions as nothing more than bigotry, intolerance, and hatred shrouded in the empty rhetorical arguments of that day. We respectfully highlight that future generations of Michigan families and the State's jurisprudence will judge your actions in the coming days and weeks, and for this reason alone, we urge you to reconsider your appeal of Judge Feinstein decision which "*affirms the enduring principle that regardless of whoever finds favor in the eyes of the most recent majority, the guarantee of equal protection must prevail.*"

However, if the judgment of history is not persuasive enough, we draw your attention to Dr. Martin Luther King, Jr.'s "Letter from Birmingham Jail" where he aptly argued that "*justice too long delayed is justice denied.*" Although we have every confidence that the inevitable march of justice will invalidate Michigan's same-sex ban; we ask you to consider how justice delayed – from your appeal – is affecting just one Michigan family like many others.

For over two years, Michigan's same-sex marriage ban has been used to deny a young Michigan boy any contact with his mother who raised him from birth through the formative years of his childhood, about which Dickenson County Circuit Judge Richard Cellelo eloquently stated:

"If I could make law in this case, I would[.]. In 1967, the United States Supreme Court in *Loving versus Virginia*, for the first time recognized that no state could prohibit, under equal protection, the marriage of an interracial marriage. Until that time, I believe, thirty-nine states had something on the books prohibiting it. At that time, 70 percent of the people in this country favored those laws. And the Supreme Court said no, that's not—that's not who we are.[.] I'm not very proud to be a citizen of the state of Michigan right now on this issue. Michigan passed a constitutional amendment recognizing that a marriage is between a man and a woman, and there's legislation to that effect. I think it violates the rights of citizens who want to enter into a loving relationship, who happen to be of the same sex, but I have to apply the law that exists. I want to make some findings in this case. I believe that the best interests of [G.M.] would be served by him having a relationship with [his mother]. It's clear that they had bonded, and that to sever that relationship, I don't believe is in the best interests of G.M. [.] but, again, the Michigan constitution and the Michigan statutory scheme prevents me from granting [the mother] the relief she is requesting. If I had the power to do so I would." *May 18, 2012 Transcript, at page 24, line 16.*



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At present, and on behalf of this child, G.M., we have had an appeal pending in the Michigan Supreme Court asking to invalidate Michigan's same-sex marriage ban.¹

We respectfully inform you that Michigan is on the wrong side of history on this issue and that Michigan's appeal now distinguishes Michigan from its sister states who have decided that equal rights outweigh the intolerance of past majorities. In Virginia in 1976, a majority of Virginians and citizens across this county then favored state bans on interracial marriage when the U.S. Supreme court decided that these bans violated the U.S. Constitution. As a consequence, today, we look back with shame on this period of our history that unfairly targeted and diminished the love and bonds in families only because of their racial makeup.

While future generations will judge you personally and the State of Michigan as this inevitable march of justice moves towards equality, of great consequence today, how will you look at young G.M. and justify one more day where he is deprived of love and bonds with his mother only because of the constitutionally-protected sexual orientation of his mother.

Finally, we recognize that while public opinion is changing with "stunning speed", same-sex marriage has been a deeply-polarizing political issue, including in Michigan. Like the civil rights struggles of earlier eras, opponents of same-sex marriage have been quick to claim that judicial decisions are a function of minority politics in the judiciary. However, in Michigan you have a decision handed down by a highly esteemed Senior District Judge appointed by President Ronald Reagan, who based his decision after a full trial by looking to the *Windsor* decision handed down by a US Supreme Court with a conservative-appointed majority. Consequently, it is now time to set aside polarizing politics and respect the equality of all Michiganders.

For the foregoing reasons and on behalf of Michigan families, we implore you to reconsider Michigan's defense of its ban and withdraw your application for a stay from the Sixth Circuit.

Very truly yours,



Benjamin J. Ashmore, Sr.
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¹ See e.g. Ashmore, Benjamin. "*Another Gay Marriage Case Shows Real Harm Michigan's Ban Brings to Children*" March 21, 2014. Available online at < http://www.mlive.com/opinion/index.ssf/2014/03/guest_column_another_gay_marri.html >

