

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, et al,

Plaintiffs,

ED Mi No. 12-10285

-vs-

RICHARD SNYDER, et al,

Defendants.

EXPERT WITNESS REPORT OF JANE A. BASSETT, J.D.

I, JANE A. BASSETT, J.D., hereby declare and say as follows:

I. Expert Background and Qualifications

1. I am an attorney licensed in the State of Michigan since November 1994.

I have been retained by counsel for Plaintiffs in connection with the above referenced litigation ("*DeBoer*"). I have actual knowledge of the matters stated in this affidavit and could and would so testify if called as a witness.

2. My background, experience, and list of publications from the last ten years are summarized in this Affidavit.

DHS Lenawee County; and Episcopal Church of the Incarnation, Ann Arbor.

6. I am an adoptive parent of two special needs children who were former foster children with the State of Michigan.
7. I have been in private practice since becoming licensed, and have been a sole practitioner with occasional associates affiliated with the firm from time to time.
8. Over the years, my practice has focused consistently on LGBT-related legal matters, with the percentage of those matters ranging from approximately 30%-70% of the total practice at any given time.
9. I provide informational presentations several times a year to community and professional organizations on legal topics relevant to LGBT individuals including estate planning, adoption, marriage and divorce, Medicaid, and nursing home rights.
10. I regularly counsel individuals and couples who identify as lesbian, gay, bisexual, and transgender with regard to their legal and contractual rights. These legal and contractual rights include: the laws of the State of Michigan and the laws of the United States as they relate to these individuals, the rights, benefits and duties of marriage, tax regulations, Social Security laws, Medicaid benefits, probate law preferences for

fiduciary appointments and asset distribution, preferences with regard to wrongful death proceeds, health insurance and other employee benefits, options with regard to becoming parents or securing parentage rights for guardianship of minors, divorce and dissolution options for married same-sex couples who live in Michigan, custody, visitation and support agreements for the children of co-parenting couples, titling of real property, and rights with regard to disposition of the remains of a partner.

11. I have authored the following seminar materials: “Elderlaw and the Lesbian, Gay, Bisexual and Transgender Person” (for the 2012 National Academy of Elder Law Attorneys national law and aging conference), “Guardianship and Conservatorship of Incapacitated Adults (for the Spring 2011 conference of the Institute for Continuing Legal Education), and “Guardianship and Conservatorship of Incapacitated Adults” (for the Spring 2012 conference of the Institute for Continuing Legal Education).

12. In preparing this Affidavit, I reviewed the pleadings submitted to the court regarding this case. I may rely on those documents, in addition to the documents specifically cited as supportive examples in particular sections of this Affidavit, as support for my opinions. I have also relied on my years of experience in this field, as set out above, and on the materials referenced.

13. I am being compensated at my hourly rate of \$310.00 per hour for the time I expend participating in this matter. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

II. Summary of Fact and Opinion

14. The laws of the State of Michigan economically disadvantage the State of Michigan. I have counseled many talented and well-educated people who were employed in the State of Michigan and chose to leave the state because Michigan does not offer the same protections and rights to families headed by same-sex couples as it does to those families headed by couples of the opposite-sex.

15. The laws of the State of Michigan economically disadvantage the State of Michigan. I have counseled many talented and well-educated people who were considering employment offered in Michigan and ultimately refused the offer in favor of employment in another state where their marriage and parental relationships were recognized.

16. The laws of the State of Michigan economically disadvantage individuals and couples, who identify as lesbian, gay, bisexual or transgender, and by extension, the children of these individuals and couples. In some

instances, these laws cause such persons and their children to seek Medicaid and other needs-based benefits from the State and the Federal Government where similarly situated heterosexual persons would be able to seek private remedies through child support, alimony or employer benefits.

17. The laws of the State of Michigan cause some families to experience a bifurcation in the parent-child status among children in the same family who are being parented by the same two parents. For example, legal parentage for the second parent may be secured for one child as a result of the laws of the state of conception, the state of birth or the residence of the family at some point during the child(ren)'s lifetime, while another child may be conceived and born in Michigan, and has never lived in a state where the adoption by the second parent would be allowed. This results in similarly situated children having vastly different parental ties and rights as to inheritance, support, visitation and custody, and Social Security benefits.

18. The laws of Michigan negatively impact children of same-sex parents as the laws do not afford them the protections of similarly situated children of opposite-sex married couples because they are deprived of the application of custody and support laws designed to ensure their financial

welfare and continued contact with those whom they have formed an emotional bond and view as a parent.

19. The laws of the State of Michigan disadvantage children in the foster care system who are waiting to be adopted. Same-sex couples are not able to jointly adopt children, and are not able to accomplish the adoption by the second parent even after one adult completes the initial adoption. In my experience, many couples are significantly deterred by the fact that the person adopting the child is making a legal commitment to support and raise the child while the other person has no legal commitment. Non-legal parents are deterred from forming the same emotional attachment and fully participating in the rearing of children to the same extent as the legal parents because they know that the children can be removed from them at any time with no legal recourse available.

20. The laws of the State of Michigan disadvantage children in the foster care system who are waiting to be adopted. Same-sex couples are opting to adopt children from other states rather from the State of Michigan in order to gain the protections of joint adoption offered by other states.

21. The laws of the State of Michigan economically disadvantage same-sex couples who must look to other states to jointly adopt children. The cost of travel, the expense of being absent from their employment to tend to

the details of the adoption, the legal and agency costs incurred in another state, and the time and expense of working through the Interstate Compact on the Placement of Children (ICPC) offices in both states is financially and emotionally taxing. Further, the adoption credit can no longer be claimed through federal income tax returns if the couple wed in a state where the marriage was legal.

22. The laws of the State of Michigan economically disadvantage the State of Michigan. The State continues to support the children who are in foster care, incurring not only direct care costs, but the cost of case workers and supervisors, expenses related to developing and monitoring licensed foster homes, and the ongoing associated costs as the children move into adulthood. These children oftentimes lack the foundation that a stable home life offers resulting in increased rates of addiction, incarceration, and continuation of the cycle of abuse and neglect with their own partners and children.

23. The laws of the State of Michigan economically disadvantage same-sex couples who must pay to have their estate planning documents drafted and periodically updated to reflect their wishes. Failing to do so places them at risk of having their partners and/or non-legal children be treated as legal strangers. Other similarly situated opposite-sex couples can rely

on the laws of the State of Michigan that codify priority of appointment for legal spouses to be the guardian, conservator, and personal representative of the decedents' estates. Such laws codify priority of distribution for decedent's estates, including support allowances that are paid prior to any creditor's claims.

24. The laws of the State of Michigan economically disadvantage the families headed by same-sex couples when a legal parent dies and the second parent must petition the court to become guardian over minor children to whom the petitioner is already serving as a parent. This process can cause distress and unrest for a child who has already lost one parent, since his or her other parent has to ask the court for continued authority to raise the child- sometimes in the face of objections from other family members.

25. The laws of the State of Michigan economically disadvantage the State of Michigan by having to provide judicial and administrative resources to hear and resolve petitions that would be unnecessary, but for the fact that the couple was not able to enter into a legally recognized marriage and adoption.

26. The laws of the State of Michigan do not allow a same-sex partner to determine the disposition of the remains of a deceased partner. This

results in bodies being unclaimed, court actions requesting the authority to claim a body which may or may not be disputed by blood relatives, and requests for public administrative services and State funding for burial. Again, this results in judicial and other public resources that otherwise would not have been necessary if the deceased was in a recognized marriage.

27. The laws of the State of Michigan do not allow for a marriage of a same-sex couple to be recognized. These laws do not allow for dissolution of a marriage entered in another state or country through a Michigan court. This results in the continuation of a marriage, even when the parties no longer wish to be married and would divorce if legally permitted to do so. In the event they wish to marry another person, they risk entering into a bigamous relationship because there is no legal alternative.

28. The laws of the State of Michigan are such that individuals in same-sex marriages living in a jurisdiction that recognizes their marriage may decide to come to Michigan for the purpose of escaping community property laws, or child support and/or alimony, in an attempt to use the hostile laws of Michigan and the Michigan courts to their advantage.

29. The laws of the State of Michigan economically disadvantage same-sex couples in that any wrongful death proceeds may not flow to a same-sex partner or the children of the couple unless there is a legal nexus between the deceased and the children, whether or not the couple is legally married in another jurisdiction.

30. Michigan allows a parent to delegate his or her authority to another adult while the parent is alive and has capacity. However, such delegation shall only last six months per Michigan statute and can be revoked at any time by the signor. Hence, a delegation of authority to the non-legal parent is always temporary and always revocable.

31. Michigan allows a parent to nominate a guardian for minor children either through a testamentary document or another writing for use at a time when the parent becomes incapacitated or is deceased. However, the guardianship nomination may be revoked during the parent's lifetime, may be challenged by a blood relative, or disregarded by the Court altogether.

32. Michigan's laws create confusion and misunderstanding, often leading to erroneous actions that have to be later corrected, as a result of a misinterpretation or misapplication of the couple's marital status. Property-related transactions require an analysis of the purchasers' and

buyers' marital status. This may include where the couple was married, where they are domiciled, where they are located at the time when the transaction is conducted, who the entity is with whom they are transacting, the location where the transaction is taking place, the location where the entity with whom they are transacting is incorporated or physically located, and any policies or contracts that entity may have adopted that affects the rights of the couple in that transaction.

33. Michigan's laws disadvantage same-sex couples in tax reporting and the cost of tax preparation. A married same-sex couple can file jointly for federal income tax and must use the adjusted gross income from that return as a starting point for the Michigan income tax return, but may not file jointly in Michigan, causing the couple to bear the cost of preparing two sets of returns, one to be used for federal taxes and one to be used for the State of Michigan.

34. Michigan's laws with regard to estate taxes are generally tied to the federal estate tax calculation. However, under an application of federal estate tax law, a same-sex marriage will be recognized which in many cases eliminates the tax liability. Since Michigan does not recognize the marriage, there may be a resulting tax liability, additional reporting

requirements, and the expense of having to prepare two different tax reports using entirely different approaches.

35. Michigan's public school employee retirement benefits, including the tax deferred retirement fund accumulated by the employee, may not be directed by beneficiary designation to a same-sex partner or the non-legal children of a same-sex partner. This economically damages the couple, their children, and the Michigan public school system. The State's laws create a disincentive for qualified teachers who do not wish to be employed under these terms.

36. Under Michigan's legal structure, parents of the same sex who are legally the parents of a child in another state by virtue of their marital status, may lose their legal rights to the child upon moving to Michigan. This raises questions not only about the parent-child status, but income tax deductions, financial aid for college, and inheritance rights. It could result in college-aged young adults choosing other states for their education, thereby impacting Michigan's economy.

37. Michigan's laws cause a disruption to the economic mobility of gay and lesbian families. These laws limit the career opportunities of such families because they cannot pursue employment in states like Michigan without potentially suffering devastating effects to their family. As a

result, Michigan's talent bank and personnel resources are diminished.

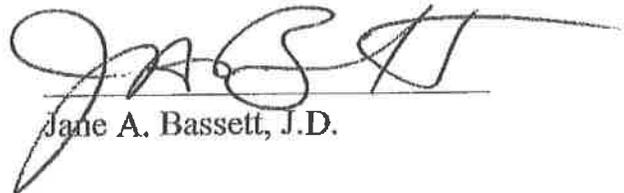
Attracting job-creating businesses becomes more difficult as well.

38. Michigan's laws cause interpretation of employee benefits to become difficult when a person works for a company that is headquartered in a marriage equality state, but operates local branch(s) in Michigan. These laws make it unclear whether the marriage must be recognized by the employer, and if the same-sex couple is afforded benefits as outlined for spouses or partners, or is simply omitted. This can result in costly legal intervention to resolve the matter.

39. Michigan's failure to recognize marriages between same-sex couples causes confusion with regard to real estate titles. The marital status of a grantor or grantee of an interest in land must be identified, and while the marriage is not recognized currently, the deed may still be in force in years to come at such time when the marriage is later recognized.

I declare under the laws of the United States that the foregoing is true and correct.

Executed this 20th day of December, 2013, in Ann Arbor, Michigan.


Jane A. Bassett, J.D.