

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MATTHEW HAMBY and
CHRISTOPHER SHELDEN,
a married couple, CHRISTINA
LABORDE and SUSAN TOW,
a married couple, SEAN EGAN and
DAVID ROBINSON, a married couple,
TRACEY WIESE and KATRINA
CORTEZ, a married couple, and
COURTNEY LAMB and STEPHANIE
PEARSON, unmarried persons,

Plaintiffs – Appellees,

v.

BILL WALKER, in his official capacity
as Governor of Alaska, CRAIG
RICHARDS, in his official capacity
as Attorney General of the State of
Alaska, VALERIE DAVIDSON, in her
official capacity as Commissioner of the
State of Alaska, Department of Health
and Social Services, and PHILLIP
MITCHELL, in his official capacity as
State Registrar and Licensing Officer,
Alaska Bureau of Vital Statistics,

Defendants – Appellants.

No. 14-35856

D.C. No. 3:14-cv-00089-TMB
U.S. District Court for Alaska,
Anchorage

Appeal from the United State District Court for the District of Alaska
(Timothy M. Burgess Presiding)

**MOTION TO HOLD APPEAL IN ABEYANCE
AND TO SUSPEND BRIEFING SCHEDULE**

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February 9, 2015

The State of Alaska¹ hereby moves for an order to hold this appeal in abeyance and to suspend the briefing schedule pending the United States Supreme Court's issuance of a decision in *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014), *cert. granted*, – S. Ct. –, Nos. 14-556, 14-562, 14-571, 14-574, 2015 WL 213650 (Jan 16, 2015).

This appeal concerns whether Alaska's marriage laws violate the Fourteenth Amendment because they do not provide for same-sex marriage or permit recognition of such marriages from other jurisdictions. The Supreme Court will soon address these issues as it has granted review of the Sixth Circuit's decision in *DeBoer v. Snyder* which affirmed the constitutionality of four states' laws which do not provide for same-sex marriage.² Specifically, the Supreme Court's order granting certification states that the Court will address the following questions:

- 1) Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?

¹ Plaintiffs' suit names four State officials in their official capacities. Pursuant to Appellate Rule 43(c), the names of three original Defendants-Appellants have been changed to reflect the current office holders. Specifically, William Walker is now Governor of Alaska; Craig Richards is now Attorney General of Alaska; and Valerie Davidson is now Commissioner of the Department of Health and Social Services. Phillip Mitchell continues to be the State Registrar and Licensing Officer.

² 772 F.3d 388 (6th Cir. 2014).

- 2) Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?³

Here, the district court found that Alaska's law violated the Fourteenth Amendment and issued an order enjoining the State from enforcing its marriage laws to the extent they do not provide for same-sex marriage or do not recognize same-sex marriages entered into in another jurisdiction. *Hamby v. Parnell* — F. Supp.2d —, 2014 WL 5089399 (D. Alaska 2014).⁴

Because the legal issues raised in this appeal will soon be addressed by the Supreme Court, it is appropriate to hold this appeal in abeyance pending the Supreme Court's decision in the *DeBoer* case. This court has previously stated that a "court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (*Leyva v. Certified Grocers of California, Ltd.* 593 F.2nd 857, 863-4 (9th Cir. 1979)). Factors a court may

³ *DeBoer v. Snyder*, — S. Ct. —, 2015 WL 213650 (Jan 16, 2015).

⁴ The district court issued its order and opinion on October 12, 2014 and its final judgment on October 14, 2014. The State filed a notice of appeal of the district court's order on October 13, 2014. It is noted that the Ninth Circuit's decision in *Latta v. Otter*, which the district court found to be controlling, has also been appealed to the Supreme Court as two petitions for certiorari have been filed by the Idaho defendants in that case. 771 F.3d 456 (9th Cir. 2014), petitions for certiorari filed (Dec. 30, 2014)(No. 14-765), (Jan 2, 2015)(No. 14-788).

consider when deciding whether to issue a stay of proceeding include the interests of the parties, the efficient use of judicial resources, and the interests of the public and persons not parties to the litigation.⁵ These factors weigh in favor of placing this appeal on hold pending the Supreme Court's decision. Holding this appeal in abeyance will avoid unnecessary expense of judicial resources and the resources of the parties. Moreover, there is no harm to the plaintiffs as the status quo is that the district court's injunction prohibiting the State from applying its marriage laws to the extent they do not provide for same-sex marriage continues in effect. Finally, it is noted that only a few days ago the Eleventh Circuit Court of Appeals issued orders holding appeals from the states of Florida and Alabama regarding the constitutionality of those states' marriage laws in abeyance pending the Supreme Court's decision in *DeBoer v. Snyder*.⁶

For the foregoing reasons, the State of Alaska respectfully requests that this appeal be held in abeyance, and the briefing schedule be suspended, pending the Supreme Court's issuance of its decision in *DeBoer v. Snyder*. It further requests that the Court direct the parties to notify the Court within 30 days of the Supreme

⁵ See e.g. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324-5 (9th Cir. 1995).

⁶ *Searcy v. Attorney General, State of Alabama*, Case No. 15-10295 (11th Cir. Feb. 4, 2015); *Bremer v. Armstrong*, Case No. 14-14061 (11th Cir. Feb. 4, 2015).

Court's decision in *DeBoer v. Snyder* whether any issues remain pending in this appeal.

DATED February 9, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 9, 2015.

I certify that not all participants in the case are registered CM/ECF users, therefore I served via electronic mail and that service will be accomplished by the appellate CM/ECF system.

DATED February 9, 2015.

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