

**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)

**REPLY IN SUPPORT OF MOTION TO HOLD APPEAL
IN ABEYANCE AND TO SUSPEND BRIEFING SCHEDULE**

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February 23, 2015

The State of Alaska¹ filed a motion to hold this appeal in abeyance and to suspend the briefing schedule pending the 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). The plaintiffs filed an opposition arguing that they want "final resolution, as soon as possible" and that in this Circuit "the law is settled."² Neither reason supports denial of this motion.

The State does not seek a lengthy delay of appellate proceedings but instead only to hold the appeal in abeyance until the Supreme Court issues its decision in *DeBoer v. Snyder*; a decision which is anticipated to be issued no later than June. And regarding the claim that "the law is settled" – the nation's highest court is about to address the direct issues raised in this appeal which are whether state laws such as Alaska's that do not provide for same-sex marriage or permit recognition of such marriages from other jurisdictions violate the Fourteenth Amendment. Although it is true that the Ninth Circuit's decision in *Latta v. Otter*³ reached the conclusion that such laws do violate the Fourteenth Amendment, the Supreme Court in *DeBoer v. Snyder* will soon issue the final controlling decision on this

¹ Plaintiffs' suit names four State officials in their official capacities.

² Pl. Opp. at 4-6; Dkt 18.

³ 771 F.3d 456 (9th Cir. 2014), petitions for certiorari filed (Dec. 30, 2014)(No. 14-765), (Jan 2, 2015)(No. 14-788).

issue. Accordingly, it cannot be reasonably said that the law is settled on the issues raised in this appeal.

Additionally, as set forth previously, the status quo in Alaska 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. Thus, the plaintiffs would not be prejudiced by a reasonably short delay in order for the parties and this Court to have the benefit of the Supreme Court's decision in *DeBoer*.

Finally, this Court has already issued an order staying an appeal filed by the State of Montana concerning the same-sex marriage issue until the Supreme Court issues its decision in *DeBoer. Rolando v. Fox*, Case No. 14-35987, Dkt. 8.

DATED February 23, 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 23, 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 23, 2015.

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