UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, individually and as parent and next friend of N.D.-R, R.D.-R., and J.D.-R, minors, and JAYNE ROWSE, individually and as parent and next friend of N.D.-R, R.D.-R., and J.D.-R, minors,

Plaintiffs,

v

RICHARD SNYDER, in his official capacity as Governor of the State of Michigan,

and

BILL SCHUETTE, in his official capacity as Michigan Attorney General,

Defendants.

No. 2:12-cv-10285-BAF-MJH

HON. BERNARD A. FRIEDMAN

MAG. MICHAEL J. HLUCHANIUK

**DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS**

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It is readily apparent this case is not about the adoption of the Plaintiff children. The children *have been adopted* by the Plaintiff parents. Also, this case is not about illegitimate children or about sexual orientation. Rather, this case is about the Plaintiff parents' attempt to control the manner in which they adopt children. This authority, however, rests with the Michigan Legislature, not Plaintiffs. Mich Const, art IV, § 1. Adoption is not a fundamental right; rather, it is created by statute. *In re Adams*, 189 Mich. App. 540, 542 (1991).

Nevertheless, Plaintiffs claim that they have standing to invoke this Court's jurisdiction because the Michigan Adoption Code's limitation on who may adopt allegedly injures both the Plaintiff children and the Plaintiff parents. Specifically, Plaintiffs claim that because two single people cannot jointly adopt children, the State has denied the Plaintiff children "legal benefits," that somehow rise to the level of recognized "legal rights". (Response, p 6). Plaintiffs are wrong. Such a claim has not been recognized in any decision from the U.S. Supreme Court, any Federal Circuit, or the State of Michigan.

It is well-established that family and probate law are areas of traditional state regulation. In Michigan, "[a] child has a right to proper and necessary support; education as required by law; medical, surgical, and other care necessary for his health, morals, or well-being; the right to proper custody by his parent; and the right to live in a suitable place free from neglect, cruelty, drunkeness, criminality, or depravity on the part of his parent." *Hunter v Hunter*, 484 Mich. 247; (2009), *In re Anjoski*, 283 Mich. App. 41 (2009). Here, the Defendants have *not*

interfered with *any* of the above rights. Quite the contrary, it was through the Adoption Code—once the adoptions were finalized—that Plaintiffs' children obtained the recognized rights of a parent-child relationship.

Similarly, the Plaintiff parents claim that they have standing because they cannot "file a joint . . . petition for adoption," "determine who may share custody of [their child/ren]," and "become a legal parent [to their partner's child/ren]" under the Adoption Code as a result of the enactment of the Michigan Marriage Amendment. (Response, p 7). Again, Plaintiffs cite no legal basis in support of the parental "rights" they claim. Moreover, the Michigan Supreme Court addressed the meaning of parental rights in *In re Beck*, 488 Mich. 6, 11 (2010):

> As a *constitutional* matter, parental rights encompass parents' fundamental liberty interest in "the care, custody, and control of their children." * * * As a *statutory* matter, the scope of parental rights can be found in 1968 PA 293, MCL 722.1 through 722.6. * * * MCL 722.2 defines the scope of parental rights as encompassing the "custody, control, services and earnings of the minor."

In this case, the Defendants have not interfered with Plaintiffs' care, custody, control, services and earnings of the children they adopted. Accordingly, Plaintiffs' claim that they have standing to invoke this Court's jurisdiction must fail.

Plaintiffs claim they are challenging Defendants' implementation, enforcement and defense of Michigan's so-called "second parent adoption" statute. (Response, p 1-2). But, there is no "second parent adoption" statute in Michigan. Therefore, Plaintiffs are, in fact, seeking to expand Michigan's adoption law to allow them to jointly adopt. To that end, Plaintiffs' request that this Court restructure a legitimate statute that promotes a valid state interest and, instead, focus solely on

their particular situation as a same-sex couple. Plaintiffs even suggest that the Court should wait for a different case to address the issue of joint adoptions for couples who can legally marry but chose not to. (Response, p 16, fn7). Any restructuring of Michigan's adoption system should be left to the State Legislature, rather than Federal Courts on a piecemeal basis. For the reasons more fully set out in Defendants' initial brief, this Court should abstain from addressing such questions of state law.

Plaintiffs also assert that intermediate scrutiny is applicable to this case because, they, as single persons who wish to jointly adopt, and the children of single parents who allegedly wish to be jointly adopted, belong to a suspect classification. In support of this argument, Plaintiffs rely on several cases where the United States Supreme Court struck down state statutes that disenfranchised certain groups of people. None of the cases is apposite to the situation here. In most of the cases cited by Plaintiffs, a classification of illegitimacy was at issue and the Court addressed the constitutionality of legislative enactments that discriminated against persons on the basis of having been born out of wedlock.[1] Here, Plaintiffs' children are not illegitimate; they have been adopted by the Plaintiff parents. Furthermore, the Adoption Code does not distinguish between unmarried same-sex couples or unmarried opposite-sex couples. Since Plaintiffs cannot reasonably contend that MCL § 710.24 burdens either a "suspect class" such as a racial or ethnic group or a

[1] *Levy v. Louisiana*, 391 U.S. 68 (1968), *Glona v. American Guar. & Liab. Ins. Co.*, 391 U.S. 73 (1968); *Gomez v Perez*, 409 U.S. 535 (1973), *Mathews v Lucas*, 427 U.S. 495 (1976), *Pickett v Brown*, 462 U.S. 1 (1983), and *Clark v Jeter*, 486 U.S. 456 (1988).

"fundamental interest" such as voting, the constitutional standard for assessing equal protection is concededly the rational basis test.

States have a legitimate interest in regulating adoption. Michigan has articulated what is certainly a legitimate state interest served by its adoption law: promoting the best interest of children, family stability, protecting the traditional family and avoiding untenable multiple party adoptions. The path chosen by the Legislature and its political wisdom is not for this Court to question. See *Minnesota v. Clover Leaf Creamery,* 449 U.S. 456 (1981). States are not required to convince the courts of the correctness of their legislative judgments. Rather, "those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Vance v. Bradley*, 440 U.S. 93, 111 (1979). This burden has clearly not been met.

In short, the classifications established under the Adoption Code are a rational means of protecting family stability and the traditional family unit. An examination of the relevant law and legislative history leads to one conclusion: that there is no equal protection violation with the statute in question. Plaintiffs and their children are not part of a suspect classification, no fundamental right is implicated, and Michigan's Legislature had a rational basis in enacting MCL § 710.24. *In re Adams*, 189 Mich. App. at 547.

With respect to Plaintiffs' remaining arguments, Defendants rely on Defendants' Motion to Dismiss and Brief in Support, and further request that Defendants' Motion to Dismiss be granted.

Respectfully submitted,

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Dated: April 2, 2012

**PROOF OF SERVICE**

I hereby certify that on April 2, 2012, I electronically filed the foregoing document(s) with the Clerk of the Court using the ECF System, which will provide electronic notice and copies of such filing of the following to the parties: Defendants' Reply Brief in Support of Motion to Dismiss.

A courtesy copy of the aforementioned document was placed in the mail directed to: Hon. Bernard A. Friedman

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