

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

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Dana M. Nessel (P51346)  
Attorney for Plaintiffs  
645 Griswold Street, Suite 3060  
Detroit, MI 48226  
(313) 556-2300  
[dananessel@hotmail.com](mailto:dananessel@hotmail.com)

Carole M. Stanyar (P34830)  
Attorney for Plaintiffs  
682 Deer Street  
Plymouth, MI 48170  
(313) 963-7222  
[cstanyar@wowway.com](mailto:cstanyar@wowway.com)

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Joseph E. Potchen (P49501)  
Attorney for Defendants  
Michigan Department of Attorney General  
Health, Education & Family Services Division  
P.O. Box 30758  
Lansing, MI 48909  
(517) 373-7700  
[PotchenJ@michigan.gov](mailto:PotchenJ@michigan.gov)

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**DEFENDANTS' RESPONSE TO PLAINTIFFS'  
NOTICE OF IDENTIFICATION OF CASE  
AS COMPANION CASE**

Defendants, Richard Snyder, in his official capacity as Governor of the State of Michigan, and Bill Schuette, in his official capacity as Michigan Attorney General, by their attorney, Assistant Attorney General Joseph E. Potchen, respond to Plaintiffs' Notice of Identification of Case as a Companion Case as follows:

1. The case that Plaintiffs claim to be a companion case, *Basset, et al v Snyder* case, No. 12-cv-10038, does not meet the requirements of Local Rule 83.11(b)(7). Plaintiffs have not shown (1) that substantially similar evidence will be offered at trial, (2) that the same or related parties are present or (3) that the cases arise out of the same transaction or occurrence.

2. In this case, Plaintiffs April DeBoer and Jayne Rowse individually and as next friend of three minor children filed this lawsuit against Governor Snyder and Attorney General Schuette in their official capacities. The single-count complaint alleges that Ms. DeBoer and Ms. Rowse have been in a long-term committed relationship and have been raising three children since birth. They allege that since they cannot adopt as an unmarried couple, Ms. DeBoer adopted two of the children as a single person and Ms. Rowse adopted one of the children as a single person. They further allege that prohibition of adoption by unmarried couples in Michigan's adoption law, MCL 710.24, lacks a rational basis and violates the U.S. Constitution's Equal Protection Clause because it results in the disparate treatment of children of unmarried parents and of unmarried parents seeking second-parent adoption.

3. Ms. DeBoer and Ms. Rowse seek to have the provisions of MCL 710.24 that prohibit second-parent adoptions by unmarried persons declared unconstitutional under the U.S. Constitution's Equal Protection Clause and request an order (1) enjoining Attorney General Schuette and Governor Snyder from attempting to bar second-parent adoptions, (2) enjoining all state judges and other officials presented with plaintiffs' request for second-parent adoption from refusing to process the adoptions, (3) requiring Attorney General Schuette to inform all judges that they are required to process plaintiffs' request for adoption, and (4) attorneys' fees and costs.

4. In the *Basset, et al v Snyder* case, eight adult Plaintiffs filed a two-count complaint against Governor Snyder in his official capacity. (Complaint, *Basset, et al v Snyder*, No. 12-cv-10038, copy attached as Exhibit 1). Attorney General Schuette is not named in that lawsuit nor is there any apparent relationship between the Plaintiffs in that lawsuit and Ms. DeBoer or Ms. Rowse.

5. The *Bassett* Plaintiffs allege that the recently enacted Public Employee Domestic Partner Benefit Restriction Act, (Public Act 297 of 2011) violates the Fourteenth Amendment of the U.S. Constitution by stripping family health benefits from the committed same-sex domestic partners of certain gay and lesbian public employees within the State of Michigan while allowing public employees' other family members access to such benefits, and by preventing public employers from offering such benefits to employees' same-sex domestic partners in the future.

6. The *Bassett* Plaintiffs allege that Michigan's Public Employee Domestic Partner Benefit Restriction Act violates the Equal Protection Clause of the U.S. Constitution on the basis of sexual orientation and sex because it categorically bars the granting of family health insurance to a class of lesbian and gay public employees.

7. In this case, Ms. DeBoer and Ms. Rowse's equal protection argument regarding Michigan's adoption law is premised upon their unmarried status, not sexual orientation or sex.

8. The *Bassett* Plaintiffs also allege that Michigan Public Employee Domestic Partner Benefit Restriction Act violates the Due Process Clause of the U.S. Constitution.

9. Ms. DeBoer and Ms. Rowes do not assert any Due Process claim in this lawsuit.

10. Notably, the statutes being challenged in each of these separate cases are unique and arise from different circumstances. Michigan's adoption law has been in place for years while the Michigan Public Employee Domestic Partner Benefit Restriction Act was just recently enacted. There may be entirely different reasons for the underlying language in two entirely separate statutes. For example, in this case, it will be pointed out that Michigan has a legitimate interest in encouraging a stable and nurturing environment of its adopted children. If this Court reaches the merits of Plaintiffs' equal protection claim, it may be asked to determine whether Michigan has a rational basis for its long-standing adoption

regime. The *Bassett* case, however, focuses solely on the limitations of health care benefits for same-sex partners under an entirely new law. Nothing in the *Bassett* case implicates the State's compelling interest in the welfare of its children.

WHEREFORE, Defendants, Richard Snyder and Bill Schuette, respectfully ask this Court to deny Plaintiffs' request to have this case reassigned to the Honorable David M. Lawson because this case is not a companion case to *Bassett, et al v Snyder* case, No. 12-cv-10038 and does not meet the requirements of Local Rule 83.11(b)(7). Plaintiffs fail to show that (1) that substantially similar evidence will be offered at trial, (2) that the same or related parties are present or (3) that the cases arise out of the same transaction or occurrence.

Respectfully submitted,

Bill Schuette  
Attorney General

/s/ Joseph E. Potchen  
Joseph E. Potchen  
Assistant Attorney General  
Attorneys for Defendants  
Health, Education & Family Services  
Division  
P.O. Box 30758  
Lansing, MI 48909  
(517) 373-7700  
[PotchenJ@michigan.gov](mailto:PotchenJ@michigan.gov)  
P49501

Dated: February 3, 2012

**PROOF OF SERVICE**

I hereby certify that on February 3, 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' Response to Plaintiffs' Notice of Identification of Case as Companion Case.

/s/ Joseph E. Potchen  
Assistant Attorney General  
Attorneys for Defendants  
Health, Education & Family Services  
Division  
P.O. Box 30758  
Lansing, MI 48909  
(517) 373-7700  
[PotchenJ@michigan.gov](mailto:PotchenJ@michigan.gov)  
P49501