

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

Case Number: 12-10285

RICHARD SNYDER, ET. AL.,

Defendants.

VOLUME 5 - AM SESSION

BENCH TRIAL  
BEFORE THE HONORABLE BERNARD A. FRIEDMAN  
UNITED STATES DISTRICT JUDGE  
100 U. S. Courthouse & Federal Building  
231 West Lafayette Boulevard West  
Detroit, Michigan 48226  
MONDAY, MARCH 3<sup>RD</sup> 2014

APPEARANCES:

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I N D E X

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1 Detroit, Michigan

2 Monday, March 3<sup>rd</sup>, 2014

3 (At or about 9:00 a.m.)

4 -- --- --

5 THE COURT: You may be seated.

6 Good morning.

7 MS. HEYSE: Good morning.

8 THE COURT: Are we waiting for some folks? Is  
9 everybody ready? Any preliminary matters?

10 MS. STANYAR: I think we can proceed.

11 MS. BRYA: Mr. Pitt is here.

12 THE COURT: Very well. As soon as he gets here.  
13 Anything preliminarily?

14 MS. STANYAR: I don't think so.

15 THE COURT: Mr. Pitt, are you ready?

16 My understanding is the first witness going to be  
17 called today is Oakland County Clerk, Lisa Brown, is that  
18 everybody's understanding?

19 Call your witness.

20 MR. PITT: Good morning, your Honor.

21 We call Lisa Brown, defendant.

22 MS. BRYA: Your Honor, if I may, for purposes of  
23 the record I just wanted to make it clear based on Ms.  
24 Brown's filing that although she's a defendant in this  
25 matter, she's an adverse witness to State defendants.

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1 THE COURT: I think that's correct. She may be  
2 treated as an adverse witness for the State.

3 At the time the State made a motion and the Court  
4 denied that motion. I think it's only fair that she be  
5 treated by the State as an adverse witness.

6 MS. BRYA: Thank you, your Honor.

7 Do you solemnly swear or affirm to tell the truth  
8 in the matter now pending before this Court?

9 THE WITNESS: Please have a seat.

10 Give us your full name and spell your last name.

11 THE WITNESS: Lisa Brown, B-r-o-w-n.

12 MR. PITT: Good morning, your Honor, everybody.

13 L I S A B R O W N ,

14 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. PITT:

17 Q Please state your name and position, please.

18 A Lisa Brown. I'm the Oakland County Clerk and Registrar  
19 of Deeds.

20 Q And when did you become the Oakland County Clerk and  
21 Registrar of Deeds?

22 A January 1<sup>st</sup>, 2013.

23 Q And that's an elected position?

24 A Yes.

25 Q Who did you succeed?

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1 A Bill Bullard, Jr.

2 Q And what is your educational background and what  
3 licenses do you hold?

4 A I received my bachelor's degree in psychology from  
5 Michigan State University, and my J.D. from the Detroit  
6 College of Law.

7 I am a member of the State Bar of Michigan.

8 Q What other public offices have you held?

9 A I was a state representative for the 39<sup>th</sup> District. I  
10 represented the communities of Commerce Township, West  
11 Bloomfield, and Wolverine Lake for four years.

12 Q And what are your overall duties as Oakland County  
13 Clerk and Registrar of Deeds?

14 A Well, there's a lot that goes into that job. I am the  
15 custodian of all vital records for Oakland County, all  
16 court records in the circuit court. All documents related  
17 to real estate. I'm in charge of keeping an index, a  
18 searchable index data base, for real estate documents. I'm  
19 in charge of the elections for Oakland County. I am the  
20 Clerk for the Board of Commissioners meetings, the Board of  
21 Canvassers, the Election Commission, the Jury Board. I'm  
22 also a member of the Election Commission for Oakland  
23 County.

24 Q And how many employees does your office oversee?

25 A Currently we have a 112.

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1 Q And do you also have marriage duties? Do you sometimes  
2 marry people?

3 A Oh, yes, that's I'll say a benefit of being a County  
4 Clerk is that you can officiate marriages which I've done  
5 between 15 and 20 since I've been in office.

6 Q Okay. So could you describe for Judge Friedman what  
7 your duties are as they relate to marriage applications and  
8 licenses?

9 A So either a couple or one of the individuals, both are  
10 not required to show up in person, but they fill out --  
11 they give us information and an affidavit is filled out and  
12 signed. Then they get the marriage license. There's  
13 normally a three-day waiting period to get the license.  
14 That can be waived for a fee. So they would get that from  
15 us and then once they've been married and it's filled out  
16 by the officiant, two of the copies -- we usually give  
17 three, two are returned to our office. One we keep and then  
18 one send onto the State, their Registrar.

19 Q Let's discuss what are the qualifications that a  
20 person has to demonstrate in order to apply for a marriage  
21 license and to get lawfully married in Michigan.

22 A Okay.

23 Q All right. Does one of the applicants have to be an  
24 Oakland County resident?

25 A Well, if they're residents of the State of Michigan

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1 one needs to live in Oakland County if they want to get  
2 their license from Oakland County. We can give a license to  
3 people from out of state if they're going to get married in  
4 Oakland County.

5 Q I think you said in your testimony -- I just want you  
6 to elaborate on that, one of the couple has to appear in  
7 person.

8 Q Yes. We ask for documentation. Every Clerk does it a  
9 little differently, but we ask for a driver's license for  
10 proof of residency because they have to live in Oakland  
11 County. And either a birth certificate or a passport. If  
12 only one person is there then they can bring copies of the  
13 other person's documentation.

14 They need to be 18 years of age. We check that.  
15 If they are under 18, if they're 16 or 17 they need to have  
16 parental consent. It needs to be written consent, and at  
17 least one parent. They need to be there in person as well.

18 Q So a qualification is you have to be 18 or older.

19 A Yes, unless you have parental consent if you're 16 or  
20 17.

21 Q All right. The minimum age for marriage in Michigan is  
22 16 with parental consent?

23 A Yes.

24 Q And the form of parental consent would be in what type  
25 of form do you need?



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1 A Written documentation, but they also would have to be  
2 in person at our counter.

3 Q Does the Oakland County Clerk do any verification of  
4 the information that the applicant submits on the  
5 affidavit?

6 A Well, we check, like I said, the driver's license. We  
7 get a lot of the information from the birth certificates  
8 because we need parents' names and parents' birth places.  
9 So we get a lot of that from that information.

10 Q On the reverse side of the application is there a  
11 printed copy of the Michigan laws that apply to marriage?

12 A On the back side of the affidavit there are the  
13 statutes listed -- spelled out and written that say the  
14 different qualifications, who you can and cannot marry. You  
15 know, what degree of relations, you know, familial  
16 relations and things like that.

17 Q And what is the law in Michigan in terms of who you  
18 can marry in terms of relationships?

19 A Well, you can't marry your first cousin. You can't  
20 marry your sibling, your parent, things like that.

21 Q Okay. Are blood tests required under Michigan law  
22 currently?

23 A They are no longer required. We give information on  
24 HIV and things like that. We're required to give  
25 educational materials, but they're not required to have

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1 blood tests.

2 Q And you mentioned a three-day waiting period that can  
3 be waived?

4 A Yes.

5 Q All right. And do the clerks at your counter have the  
6 authority to decide whether a waiver should be granted?

7 A Yes.

8 Q They don't need to check with the Clerk, they can make  
9 their own judgment?

10 A Correct.

11 Q In your office are waivers pretty freely granted?

12 A Yes. You know, I think so. I mean, in Oakland County  
13 we have -- you can fill out the application on line. So  
14 that gets the process started. So if somebody fills it in  
15 and -- you know, by the time they come into the office, you  
16 know, it's been three days but it's not conveniently  
17 located for everyone to come to the office so, you know,  
18 people come in on their lunch hour and things like that. I  
19 mean, they just -- there's not enumerated reasons in the  
20 statute as to, you know, what is a good reason. So it's up  
21 to the staff.

22 Q And once the application has been filled out properly  
23 and it's been approved then a marriage license will be  
24 issued?

25 A Yes.

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1 Q And what is the amount of time that the couple must  
2 actually get married after the issuance of a license?

3 A They have -- the marriage license itself is good for  
4 33 days. So they need to get married within that time  
5 period; otherwise, they would have to apply for another one  
6 and pay for another one.

7 Q After the couple is married, do they return the  
8 executed marriage license to your office?

9 A Usually it's the officiants who would send it in or  
10 bring it in.

11 Q Okay. And what happens when the executed marriage  
12 license is returned to your office?

13 A Well, it's sealed and we keep a copy as I said, and  
14 then one copy is sent to the State Registrar for their  
15 records.

16 Q Okay.

17 A And once it's filed with us then the couple can come  
18 and get a certified copy of their marriage license which is  
19 what you would need if you wanted to change your name or  
20 something like that. You have to have a certified copy to  
21 go to the Secretary of State's office or Social Security,  
22 those sorts of places to be able to make name changes and  
23 things like that.

24 Q When you were elected and installed as the Oakland  
25 County Clerk and Registrar Deeds did you have to provide an

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1 oath of office?

2 A I took an oath of office, yes.

3 Q And what is the oath of office?

4 A My oath of office is to uphold the Michigan and U.S.  
5 Constitutions.

6 Q All right. And how many county clerks are there in  
7 Michigan?

8 A Eighty-three.

9 Q And of the 83 Clerks, how many of them are attorneys,  
10 to your knowledge?

11 A I believe just two of us, myself and the Washtenaw  
12 County Clerk.

13 Q And what is his name?

14 A Larry Kestenbaum.

15 Q Is there a County Clerk Association?

16 A Yes, we have the Michigan Association of County  
17 Clerks.

18 Q And what is the function of the Michigan Association  
19 of County Clerks?

20 A Well, we have a variety of committees. You know, you  
21 can choose to be active or not, but I've been active in it  
22 since being a Clerk sitting on a couple committees.

23 We have quarterly conferences where we receive  
24 education and we share ideas with other Clerks. It's good  
25 networking and that sort of thing.

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1 Q Which committees do you sit on?

2 A I sit on the Legislative Committee which meets on a  
3 very regular basis, basically a monthly basis for the most  
4 part. And then I sit on a couple others that -- I just  
5 joined this past year because I didn't know to sign up for  
6 them my first year, the Vital Records Committee, the  
7 Standardization Committee. I think there's a couple others  
8 but we haven't met yet.

9 And then we're also divided into districts. The  
10 State is divided into five different districts. So we have  
11 district meetings. So it's not the entire association all  
12 meeting at once. Your sort of region meets.

13 In District Five, we've met a couple months ago  
14 and meeting again I think in two weeks.

15 Q Okay. Do you report to the Governor or the Attorney  
16 General for the State of Michigan or any other state  
17 official?

18 A No, I don't report to any state official.

19 Q And why is that?

20 A I'm an elected county person, and the people that I  
21 answer to would be the 1.2 million people of Oakland  
22 County.

23 Q Have you ever received any direction from the Governor  
24 of the Attorney General?

25 A In regards to this --

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1 Q Other than this marriage license issue that's part of  
2 this case has the Governor or the AG ever told you how to  
3 do your job?

4 A No.

5 Q Okay. If you have legal questions about the  
6 performance of your duties how do you get them answered?

7 A Well, I'll do research. One of my deputies is an  
8 attorney as well so we usually just, you know, we'll pull  
9 up a statute and read it. You know, do our own research for  
10 the most part.

11 Q You try to answer your own questions?

12 A Yes, I mean again we have -- you know, there's other  
13 county clerks that I can always reach out to if there's a  
14 question of procedure or, you know, how do you do this,  
15 that sort of a thing. That happens frequently where county  
16 clerks -- it's like on the list serve, you know, just kind  
17 of email everybody, how do you this, or how much do you  
18 charge for that.

19 Q So you can also inquire of your colleagues how they  
20 handle certain things?

21 A Yes.

22 Q Do you have any discretion in issuing marriage  
23 licenses?

24 A No, and we just have to follow the law.

25 Q Right. I'd like to pose some hypothetical situations

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1 for you to help illustrate this testimony about no  
2 discretion.

3 A Okay.

4 Q All right. I want you to assume a couple appears  
5 before you and it's clear to you that because of their age  
6 or because of obvious physical conditions they are unable  
7 to procreate children, is this a legal reason for you to  
8 deny them a marriage license? And if your answer is no  
9 explain your answer.

10 Q Well, my answer is no. That's not something that is  
11 required by the state or -- you know, they have to be old  
12 enough. There's not a maximum of what an age would be that  
13 you can't get married.

14 Q Is the ability to procreate children a legal  
15 requirement to get married in Michigan?

16 A No.

17 Q Can you deny a marriage license to a couple who say  
18 they do not intend to have children?

19 A No.

20 Q Is the willingness -- let me put this question this  
21 way: Assume you fear that one prospectus spouse may cause  
22 physical harm to the other prospectus spouse's children if  
23 they were to marry, is that a legal reason for you to deny  
24 a marriage license?

25 A I don't have the authority to deny them that license,

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1 no.

2 Q Is the ability or willingness to provide a safe and  
3 nurturing home environment for children a legal requirement  
4 in order to obtain a Michigan marriage license?

5 A No.

6 Q If the prospectus spouses tell you they have no  
7 intention of ever living together as husband and wife is  
8 that a legal reason for you to deny them a marriage  
9 license?

10 A No.

11 Q In evaluating your oath have you determined as Clerk  
12 that there is a conflict between the Michigan Constitution  
13 and the United States Constitution?

14 A Yes.

15 MS. BRYA: Your Honor, I'm going to object to that  
16 as --

17 THE COURT: Sustained.

18 BY MR. PITT:

19 Q You are aware of the ban on same-sex marriage in  
20 Michigan, Article I, Section 25?

21 A Yes.

22 Q And do you understand that the constitutional  
23 provision as it stands right now is the law in the State of  
24 Michigan?

25 A Yes.



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1 Q And you've been abiding by that in the performance of  
2 your duties?

3 A Yes.

4 Q If that ban did not exist what would your position be  
5 in term of issuance of marriage licenses to same-sex  
6 couples?

7 A If that ban did not exist I would be issuing marriage  
8 licenses to same-sex couples who meet all the other legal  
9 requirements.

10 Q And why is that?

11 A Well, looking at the Windsor decision, knowing that my  
12 oath is to uphold the constitution and looking at the  
13 Supreme Court's interpretation of equal protection of the  
14 law and then, you know, how -- I mean, we've had other  
15 courts now who have interpreted that case as well and  
16 supported that, but to uphold equal protection and the  
17 constitution I would feel that it's my duty to issue those  
18 licenses.

19 Q What is the role of the State Registrar in the  
20 marriage license process?

21 A The State Registrar approves the forms that we use so  
22 the affidavit and the marriage license itself and also as I  
23 said they receive a copy once it's been officiated, they  
24 receive a copy of the marriage license. So they keep a copy  
25 as well.

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1 Q Who is the current State Registrar?

2 A His name is Glen Copeland.

3 Q And this is a state official; correct?

4 A He's an appointed -- he's appointed to his position.

5 Q But in the State Government --

6 A In the State, in Lansing, yes.

7 Q Okay.

8 A Department of Community Health.

9 Q What steps have you, the State Registrar and other  
10 county clerks taken to get ready for the issuance of  
11 marriage licenses to same-sex couples if that should occur?

12 MS. BRYA: Your Honor, I'm going to object as to  
13 -- I believe it calls for speculation as to what the other  
14 clerks have done. If she wants to testify what she's done  
15 --

16 THE COURT: Or what she has been part of doing.

17 MR. PITT: I'll lay a foundation if the Court  
18 wishes.

19 THE COURT: As long as she testifies as to what  
20 she's done or what has been caused to be done by these  
21 other officials.

22 BY MR. PITT:

23 Q Go ahead.

24 A Well -- I'm trying to remember when, but months ago I  
25 called the State Registrar. I called Glen to see what he

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1 was doing to prepare if -- depending upon the outcome of  
2 this case, and he was unaware of this case at that time. So  
3 I brought him up-to-date on it. And said, you know, if the  
4 judge rules in favor of the plaintiffs we're going to need,  
5 you know, new forms. So we talked about it, and he said,  
6 you know, go ahead and draft something --

7 MS. BRYA: Your Honor, I'm going to object as to  
8 hearsay.

9 BY MR. PITT:

10 Q Did you draft some proposed new forms?

11 A I did, yes. I sent them and there were some revisions  
12 that were requested. Then -- as I said there's a committee  
13 of the Michigan Association of County Clerks, a Vital  
14 Records Committee, and their task is to suggest changes to  
15 any vital records that may happen whether from a change of  
16 law or something that the clerks, you know, want some  
17 language change for whatever reason.

18 So the clerks received my draft, that committee  
19 received my draft. I received after they had met a copy of  
20 their draft which was different than mine.

21 I had looked at what other states who had  
22 marriage equality, what their forms looked like, and  
23 basically used what we still have but just made some  
24 modifications that sort of mirrored what Maine, Vermont,  
25 states like that, what theirs looked like.

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1 Q I assume you're just making them gender neutrals as  
2 best as you can.

3 A Yes. That's what mine look like. They're gender  
4 neutral. Instead of having a male and female column, it's  
5 Applicant A, Applicant B, Spouse A, Spouse B. There's check  
6 boxes for bride, groom, spouse so if that somebody, you  
7 know, wants to identify themselves in that manner they may.

8 So -- the Vital Records Committee, their draft  
9 still has male and female on there. So that's how ours  
10 differ -- a big way that ours differ.

11 And so I've been in contact with Mr. Copeland  
12 throughout this process and when I asked if mine was okay  
13 he -- once he received it with the modifications that he  
14 had suggested he said it was under review. Then --

15 MS. BRYA: Your Honor, I'm going to object again  
16 as to what he said.

17 BY MR. PITT:

18 Q What is your understanding as to the current status of  
19 the revised forms?

20 A That they're waiting for approval from the Attorney  
21 General.

22 Q Okay. So that's where they stand right now.

23 A That is my understanding.

24 Q Okay. Good enough.

25 Now, the Amended Complaint that was filed and, of

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1 course, you're a defendant, asked the Court to enjoin Bill  
2 Schuette in his official capacity as Attorney General, and  
3 Richard Snyder in his official capacity as Governor of the  
4 State of Michigan, and Defendant Bill Bullard in his  
5 official capacity as Oakland County Clerk from attempting  
6 to block same-sex couples from securing a marriage license  
7 in any county of Michigan. That's what the prayer for  
8 relief is in the Complaint, asking for an injunction  
9 against you as the successor for Mr. Bullard.

10 Does the Court have to enjoin you from issuing or  
11 blocking you from issuing same-sex marriage licenses if  
12 there's a final order that permits you to do that?

13 A No.

14 Q Okay. So you're going to be in complete compliance  
15 with whatever the final order is in this matter.

16 A Absolutely.

17 Q And you're not going to require a court to order you  
18 to do anything in those regards.

19 A No.

20 Q You're going to do it willingly and expeditiously.

21 A Yes.

22 Q If there is a final order that strikes down the ban on  
23 same-sex marriages in Michigan will the county clerks have  
24 any discretion in the issuance of marriage licenses to  
25 same-sex couples?

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1 A No.

2 Q What if a clerk, a county clerk, is religiously  
3 opposed to issuing a same-sex marriage license after the  
4 final order has been entered, what would you expect --

5 MS. BRYA: Your Honor, I'm going to object as to  
6 speculation.

7 THE COURT: She can't speak as to other clerks.

8 BY MR. PITT:

9 Q Fulfilling your duties as County Clerk would you let  
10 your personal opinions on any legal matter interfere with  
11 your official duties?

12 A No, it would be whatever the judge says.

13 Q Okay. If there ever was a situation where the law  
14 required you to violate some personal principle or  
15 religious doctrine of your own, what would you do?

16 A My oath is to uphold the Constitution of the State and  
17 the country. What my personal feelings are irrelevant.

18 Q You would put them aside.

19 A Yes. There's actually -- it's a crime for a county  
20 clerk to not give a marriage license to someone who is  
21 qualified. It's a misdemeanor.

22 Q There's a statute that makes it a misdemeanor?

23 A Yes.

24 Q Do you have any concerns as Oakland County Clerk that  
25 if there is a final order in this matter that strikes down

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1 the ban on same-sex marriages in Michigan that there is  
2 going to be a delay in implementation?

3 A In regards to -- from the clerks or --

4 Q From the clerks or from the State.

5 A I won't have a problem. I would like to have approval  
6 of the new licenses that I feel are being held up. But, you  
7 know, I would make do with what I have. It's not the  
8 perfect paper to use if marriage equality is decided in  
9 Michigan.

10 Q So if the new forms aren't available you're going to  
11 do what?

12 A I will use what -- I have to use the State approved  
13 forms so that what would be is what we currently use which  
14 has, you know, male and female, you know, one column for  
15 male, and one column -- and I would just alter them in a  
16 way to make them appropriate to the couple before me.

17 Q Okay. Do you have a well-founded belief that the  
18 Attorney General of the State of Michigan may attempt to  
19 prevent or delay implementation of --

20 MS. BRYA: Objection, your Honor. I don't think --

21 THE COURT: Sustained.

22 BY MR. PITT:

23 Q Has there been any communication from the Attorney  
24 General already regarding what he expects the county clerks  
25 to do under certain circumstances?

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1 A Yes.

2 MS. BRYA: I'm going to object, again, your Honor.

3 THE COURT: She can testify to that if there's  
4 such communication.

5 MR. PITT: It's happened. It's a fact.

6 A Yes. On October 16<sup>th</sup>, when we had the hearing on the  
7 motions for summary judgment, my office -- I'm looking at  
8 the email, every county clerk and -- the emails that I  
9 received from other county clerks, all received emails,  
10 faxes, and phone calls and then eventually also a snail  
11 mail letter, I don't even know what to call it any more, a  
12 letter through the post, from the Attorney General. The  
13 email was at 2:47 p.m. on October 16<sup>th</sup> and I know we were  
14 still in the courtroom. I don't even know if you had spoken  
15 at that point.

16 Can I read what it says? Is that okay?

17 MS. BRYA: I'm going to object, your Honor. It  
18 calls for hearsay.

19 THE COURT: Well, if it was done by a party to  
20 this action, but in order for her to read from it you have  
21 to move for its admission because she can't read from a  
22 document that is not in evidence.

23 THE WITNESS: I have a copy of it here if you want  
24 --

25 THE COURT: It's up to Mr. Pitt.



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1 BY MR. PITT:

2 Q If you would just summarize what were the  
3 instructions?

4 A Well, basically it said --

5 MS. BRYA: Your Honor, again, I'm going to object  
6 as to a characterization of what the letter says and  
7 relevance.

8 MR. PITT: You're free to look at it if you wish.

9 THE COURT: You can just admit it and then she can  
10 read from it. Then there's no speculation.

11 MR. PITT: It's only one sentence long.

12 THE COURT: Any objection to it being admitted?

13 MR. PITT: No, none.

14 MS. BRYA: Your Honor, we have an objection to it  
15 being admitted. We were never advised that this particular  
16 letter was going to be used --

17 THE COURT: I agree in terms of that, but as I say  
18 because of the fact that it comes from a party to this  
19 action in the normal course of business it would be  
20 admissible for lots of reasons. Rather than getting into --  
21 and spending a lot of time worrying about it we'll just  
22 admit as an Exhibit and Clerk Brown can read from it.

23 MS. BRYA: Can we please have a look at it?

24 THE COURT: Yes, and we'll make copies for  
25 everybody since it wasn't anticipated. Show it to all the

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1 parties. At a break, we'll make sure everybody gets a copy

2 Just take a second, take a look at it.

3 (Short Pause.)

4 Have you had an opportunity to go through it,  
5 counsel?

6 MS. BRYA: Yes, I did.

7 Thank you.

8 THE COURT: You don't object to it as to  
9 authenticity or anything of those kinds, just relevancy and  
10 -- relevancy really; is that correct?

11 MS. BRYA: That's correct, your Honor. We weren't  
12 provided a copy of it with prior either.

13 THE COURT: Because of the fact that it's limited  
14 and probably didn't realize had to give a copy of it to  
15 everybody, just read it. I will admit it as Clerk Court  
16 Lisa Brown's Exhibit A.

17 Mr. Pitt, at a break if you could give it to Dan  
18 he'll make copies for everybody and we'll go from there.

19 (Defendant Lisa Brown's Exhibit A received into  
20 evidence.)

21 BY MR. PITT:

22 Q So the email is dated October 16tyh, 2013, at 2:47  
23 p.m.; correct?

24 A Yes.

25 Q And the email is directed to whom?

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1 A Well, it looks like to all of the county clerks in  
2 Michigan.

3 Q So there's quite a list like 83 email addresses on  
4 here.

5 A Yes.

6 Q What does the body of the email say?

7 A "Status of Michigan law defining marriage."

8 Sorry, that was the subject.

9 So the email reads,

10 "To All County Clerks,

11 "Even if the U. S. District Court were to decide  
12 that Michigan's Marriage Amendment is unconstitutional in  
13 Deboer v Snyder same-sex marriage licenses should not be  
14 issued. Please see the attached guidance from Attorney  
15 General Bill Schuette's Office."

16 Q Okay. And the attachment was a letter dated what?

17 A October 16<sup>th</sup>, 2013.

18 Q Okay. And that's a two-page letter?

19 A Yes.

20 Q And tell me if I summarize it correctly that you're  
21 saying that if the Court strikes down the ban there's going  
22 to be a request for a stay?

23 A Yeah, that's eventually in there, the "stay" part. I  
24 mean the parts that are in bold and underlined. Like on the  
25 first page it's underlined and in bold, "You are forbidden

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1 by Michigan law from issuing a marriage license to same-sex  
2 couples during the pendency of the appeal."

3 The word "stay" isn't in that sentence.

4 The second page another phrase that is underlined  
5 and in bold print says, "Since adverse decision is not  
6 subject to enforcement while the decision is stayed and  
7 subject to appeal."

8 So on the second page you get "stay" in there,  
9 but on the first page in the bold part -- you know, if  
10 you're just glancing at it, I mean, it's a two-page letter.  
11 I don't know how many people stop and read the whole thing  
12 in this day and age. But I think especially if you don't  
13 look at the attachment and you just read just the body of  
14 the email, you know, you open your email and that's the  
15 part that comes up that says that same-sex marriage  
16 licenses should not be issued basically -- regardless of,  
17 you know, what the judge says.

18 Q All right. If a final order in this matter is issued  
19 striking down the Michigan Constitutional Ban as  
20 unconstitutional and you get conflicting instructions from  
21 AG Schuette and those instructions conflict with what the  
22 order of the Court is, which are you going to follow?

23 A Well, my job is it follow what the judge says, not  
24 what the AG says.

25 Q So if the AG gives you instructions that you feel are

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1 in conflict with what the Court has ordered, you're going  
2 to follow the Court; is that correct?

3 A Yes.

4 Q And you do not report to AG Schuette.

5 A I do not.

6 Q And you in your official capacity as Clerk you have to  
7 decide whether or not his instructions are consistent with  
8 your sense of duty and your oath?

9 A Yes.

10 MR. PITT: That's all I have.

11 Thank you.

12 THE COURT: It's an unusual situation.

13 Do you have some questions?

14 MS. NESSEL: I do, your Honor.

15 THE COURT: Okay. I'll allow you to go first then  
16 because the State will have the last word.

17 MS. BRYA: Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY MS. NESSEL:

20 Q Good morning, Ms. Brown.

21 A Good morning.

22 Q Ms. Brown, as you've explained during your testimony  
23 one of the many requirements of your job as Oakland County  
24 Clerk is to grant or deny marriage licenses to the many  
25 couples who come to your office to apply for one; correct?

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1 A Yes.

2 Q And you realize, of course, that when a couple applies  
3 for a marriage license and when you choose to deny that  
4 couple a marriage license that, in effect, you are denying  
5 them dozens, and dozens of state and federal rights; you  
6 understand that.

7 MS. BRYA: Objection, your Honor. Leading.

8 THE COURT: Sustained.

9 BY MS. NESSEL:

10 Q Now, is it your understanding that our clients in this  
11 case, April Deboer and Jayne Rowse, have indicated they  
12 wish to obtain a marriage license sanctioned by the State  
13 of Michigan from you in Oakland County?

14 A Yes.

15 Q Okay. And do you know where Ms. Deboer and Ms. Rowse  
16 reside with their three children?

17 A According to the news and the Court pleadings Hazel  
18 Park.

19 Q Okay. And where is Hazel Park located?

20 A The southeast part of Oakland County.

21 Q So inside your jurisdiction, inside Oakland County;  
22 correct?

23 A Yes.

24 Q And so if I understand your testimony correctly when a  
25 couple resides in the State of Michigan they have to go to

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1 the Clerk in the county in which they reside to obtain a  
2 marriage license; correct?

3 A Yes, if they -- if the couple -- you know, if one  
4 lives in -- if they live in separate counties they can  
5 choose which clerk they go to.

6 Q Okay. But in this instance because these individuals  
7 live together in the same location they could really only  
8 go to you in order to obtain a marriage license.

9 A Yes.

10 MS. BRYA: Objection, your Honor. Counsel is  
11 leading the witness.

12 THE COURT: I know it's a very unusual situation  
13 here. I'll give you some leeway, but try not to lead the  
14 witness. You have a witness that really probably --

15 MS. NESSEL: I understand, your Honor.

16 BY MS. NESSEL:

17 Q All right. So now in -- going over the contents of  
18 what you indicated was required for an application for a  
19 marriage license, you indicated that you can actually apply  
20 on line; is that correct?

21 A You can give the information on line. You still need  
22 to come into the office.

23 Q Okay. And what you're seeing on the screen is that  
24 actually from a website that involves your county, Oakland  
25 County?

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1 A Yes.

2 Q Is that the application that you spoke of earlier that  
3 you fill out on line?

4 A Yeah, that would be the page you go to. We need to  
5 tweak it a little but -- just because some of the fields  
6 aren't marked as required, but they are required once you  
7 get here so we're trying to work that part out.

8 You see like father's place of birth, and there's  
9 not an asterisk there, but if you know it you're suppose to  
10 provide that information. So we're working on tweaking that  
11 on our website.

12 Q Okay. But irrespective of that still as you indicated  
13 the applicants are required to be over the age of 18;  
14 correct?

15 A Yes, unless they have parental consent if they're 16  
16 or 17.

17 Q All right. The other requirements in terms of names,  
18 address, city, place of birth, date of birth, all of those  
19 requirements are reflected accurately on that?

20 A Yes.

21 Q Okay. Now, what you have listed in terms of the  
22 applicants, in terms of their identification you have male  
23 and female listed; correct?

24 A Yes.

25 Q So as you stated then there is a requirement that



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1 these individuals who apply that the two applicants be of  
2 opposite gender; correct?

3 A Yes.

4 Q Now, where on that form, if anywhere, is there a  
5 requirement for a criminal history check?

6 A There isn't one.

7 Q Where on that form, if anywhere, is there a  
8 requirement for a submission of medical records for the  
9 applicants?

10 A That's nothing that's required. So there isn't that.

11 Q So there's no requirement of any kind then that a male  
12 submit say proof of his sperm count to indicate that he's  
13 actually able --

14 MS. BRYA: Objection, your Honor. I think this is  
15 irrelevant to the issues before the Court.

16 THE COURT: Sustained. Plus, it's already been  
17 covered.

18 MS. NESSEL: All right, all right.

19 BY MS. NESSEL:

20 Q So as you indicated then no requirement that these  
21 individuals have the ability to procreate.

22 A Correct, that's not the requirement.

23 Q Okay. And no requirement then that the applicants even  
24 intend to have children either biologically, or adoptive,  
25 by some other measure.

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1 A Correct.

2 Q Okay. And do you make any inquires of -- any kind at  
3 all about the couple's parenting ability in making a  
4 determination as to whether or not to grant a marriage  
5 license?

6 A No.

7 Q What if one or both of the applicants has a conviction  
8 for child abuse, do you take that into account?

9 A We wouldn't know that and if we did, no, we wouldn't  
10 be able to do anything. As long at they're, you know, not  
11 related, if they're not siblings, etc. and over 18, and  
12 they live in Oakland County, etc.

13 Q What if you have -- what if there's absolute proof  
14 that one or both of the applicants has actually sexually  
15 assaulted a child, they're a convicted pedophile would that  
16 play a factor in your determination as to whether or not  
17 they can marry?

18 A No.

19 Q Okay. What if one or both of the applicants of the  
20 couple prior to marrying already has children and those  
21 children have flunked out of school altogether, can you  
22 deny them a marriage license based on that?

23 A No.

24 Q All right. What if the children of that couple who's  
25 applying, what if they went on to become substance abusers

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1 or convicted felons would that play a role in your decision  
2 as to whether or not you should grant them a marriage  
3 license?

4 A No.

5 Q Okay. So then if I understand this correctly even if  
6 this couple has actually raised children who have had  
7 terrible outcomes and yet these people are still capable of  
8 biologically procreating yet again do you still grant the  
9 marriage license?

10 A Yes.

11 Q Okay. What if one or both of the applicants has  
12 outstanding felony warrants for non-support violations  
13 because they have tens of thousands of dollars in  
14 arrearages for failure to pay child support --

15 MS. BRYA: I'm going to object, your Honor. This  
16 is cumulative. I think we've gone over.

17 THE COURT: Sustained.

18 MS. BRYA: Thank you.

19 BY MS. NESSEL:

20 Q Let me ask separately, do you make any inquiry at all  
21 about the stability of the couple?

22 A No.

23 Q All right. Now, is there a place where you ask if the  
24 applicant has been married before?

25 A Yes. I don't know if it's -- yes, it says times

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1 married under -- I can't see it. Place of birth, I think.

2 So, yes.

3 Q What's the reason for that?

4 A Well, if they've been married before then we want to  
5 make sure that that marriage has been dissolved before they  
6 enter into marriage.

7 Q So they're not committing bigamy.

8 A Yes.

9 Q Which is a crime in the State of Michigan?

10 A Yes.

11 Q Okay. Do you make any inquiries though to find out if  
12 the relationship between the applicant is monogamous?

13 A No.

14 Q Okay. Any other inquiries at all into any factors  
15 relevant to or predictive of the couples' stability who  
16 would like to get married?

17 A No.

18 Q Okay. All right. And -- forgive me, I don't remember  
19 if you testified to this, do you make any inquiries as to  
20 whether or not the couple intend to engage in the act of  
21 sexual intercourse, is that something that you inquire  
22 about?

23 MS. BRYA: Objection, your Honor.

24 THE COURT: Sustained.

25 BY MS. NESSEL:

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1 Q All right. So fair to say then you don't know what, if  
2 anything, the couple is going to do in terms of living  
3 together; correct?

4 A Correct.

5 Q In terms of their sexual relationship with one  
6 another.

7 MS. BRYA: Objection, your Honor.

8 THE COURT: Sustained.

9 BY MS. NESSEL:

10 Q Now, supposing our clients, April and Jayne, were to  
11 come to your office, carrying valid Michigan drivers'  
12 licenses indicating that they live in Hazel Park, and a 20-  
13 dollar bill, 20 dollars is your fee for a marriage license;  
14 correct?

15 A Of instate residents, yes.

16 Q Okay. Would they be eligible for a marriage license?

17 A Right now, no.

18 Q Okay. Well, Ms. Brown, are you aware that the State  
19 defendants have already entered into a stipulation  
20 regarding our clients' parenting ability?

21 A I have not seen that, no.

22 MS. NESSEL: Your Honor, may I approach?

23 THE COURT: You can, but I'm not sure -- I think  
24 we're going to get an objection in a second.

25 MS. BRYA: Yes, your Honor.

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1 THE COURT: She's getting ready to get up.

2 BY MS. NESSEL:

3 Q I show you what's admitted as Plaintiffs' Exhibit  
4 Number 53. I direct you to paragraph 9. Will you tell me  
5 what that states, please?

6 A "Deboer and Rowse are responsible and caring parents  
7 who are providing a stable and loving home for their  
8 children."

9 Q Okay. So if -- in going to your office to apply for a  
10 marriage license if Ms. Deboer and Ms. Rowse were to bring  
11 that into you a stipulation entered into in federal court  
12 wherein the Governor and the Attorney General have  
13 stipulated that they are, in fact, good parents would that  
14 affect your decision as to whether or not you could then  
15 decide to grant them a marriage license?

16 A No, it's irrelevant as to the requirements or what's  
17 needed to get a marriage license.

18 Q And if they signed an oath certified by an notary  
19 public that they promise to have children one way or the  
20 other, by adoption, in vitro, or by some other means as a  
21 married couple would that change your mind as to whether or  
22 not you would grant them a marriage license?

23 A No, there's no requirement that you have children or  
24 that you say you're going to have children before you can  
25 get married in Michigan.

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1 Q All right. So during your tenure as Oakland County  
2 Clerk and in your investigation into the laws which govern  
3 the granting of a marriage license have you ever used the  
4 ability to procreate as a litmus test as to whether or not  
5 you're going to grant a couple a marriage license?

6 A No, I don't think it would be allowed.

7 Q Okay. Have you ever for opposite sex couples, have you  
8 ever used the potential stability of a couple in making  
9 your determination as to whether or not you should grant a  
10 marriage license?

11 A No.

12 Q Have you ever used or considered the parenting  
13 abilities or the potential future outcome of children sired  
14 or raised by a couple in determining whether you as County  
15 Clerk grant a marriage license to a couple on behalf of the  
16 State of Michigan?

17 A No.

18 Q So then, Ms. Brown, would you concede, in fact, that  
19 the rationales listed by the State in defense of their  
20 requirement that the parties to a marriage license be of  
21 opposite gender that being the ability to procreate, the  
22 future outcomes for the children the couple may have, or  
23 the stability of the couples of that union that those play  
24 no part whatsoever in a determination as to whether or not  
25 a couple can receive a marriage license?

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1 A Right, they play no part. It's not information we ask.  
2 It's not information I'm sure that we can't -- that we  
3 could even ask if we wanted to.

4 Q For opposite couples none of those factors apply at  
5 all.

6 A Correct.

7 MS. BRYA: Your Honor, if I could just have a  
8 moment, please?

9 THE COURT: Of course.

10 MS. BRYA: Thank you.

11 Your Honor, I have no questions for this witness.

12 THE COURT: Okay. Thank you.

13 You may step down. Thank you.

14 It's my understanding that the State defendants  
15 at this point will proceed with their case.

16 You may call your first witness, please.

17 MS. HEYSE: Thank you, your Honor.

18 We ask for just a brief recess to set up some  
19 technology.

20 THE COURT: No problem. Absolutely.

21 We'll take 15 minutes? Will that give you enough  
22 time?

23 MS. HEYSE: Perfect.

24 THE COURT: We'll take a 15-minute recess. We'll  
25 reconvene at about 10:05 or so.



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1 (Court in recessed, 9:50 a.m.)

2 (End of Part A.)

3 -- --- --

4 CERTIFICATE

5

6 I, JOAN L. MORGAN, Official Court Reporter for the  
7 United States District Court for the Eastern District of  
8 Michigan, appointed pursuant to the provisions of Title 28,  
9 United States Code, Section 753, do hereby certify that the  
10 foregoing proceedings were had in the within entitled and  
11 number cause of the date hereinbefore set forth, and I do  
12 hereby certify that the foregoing transcript has been  
13 prepared by me or under my direction.

14

15 S:/ JOAN L. MORGAN, CSR  
16 Official Court Reporter  
17 Detroit, Michigan 48226

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25 March 3, 2014