

An Overview of LGBTQA Rights in Michigan

By Marlene Coir

Michigan's total population as of the last census was around 10 million people with an adult population of about 8 million. At that time, approximately 313,000 Michigan adults identified as LGBTQA.¹ Although a number of Michigan cities have local laws or policies that protect the civil rights of LGBTQA individuals, the state has not included LGBTQA persons as a protected class in its civil rights law—the Elliott-Larsen Civil Rights Act.² The state has followed nondiscrimination policies for state employees for some time. Michigan must also follow the United States Supreme Court decision in *Obergefell v Hodges*, which mandates that all states must allow same-sex marriage and extend all the rights and benefits to same-sex couples as they exist for heterosexual couples.³ These rights include medical decision-making authority, stepparent adoption, and joint adoption.⁴

Michigan Attorney General Dana Nessel has championed the rights of same-sex couples to adopt children, and sought to bar faith-based agencies from excluding LGBTQA couples from adoption services when those agencies contract with the state.⁵ It has been argued that the Elliott-Larsen Civil Rights Act extends to members of the LGBTQA community when it prohibits denying an individual “[t]he opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status....”⁶ However, Judge Robert Jonker of the U.S. District Court for the Western District of Michigan has blocked the state from barring faith-based agencies’ exclusion of LGBTQA couples from their

services, stating that the attorney general’s actions “conflicted with state law, existing contracts, and established practice.”⁷

This past June, Governor Gretchen Whitmer and Michigan legislators announced Michigan House Bill 4688, which, if passed, would amend the Elliott-Larsen Civil Rights Act to include an individual’s *sexual orientation, gender identity, or expression* to the classes of persons it protects. The inclusive language of the proposed bill states that “[s]exual orientation’ means having an orientation for heterosexuality, homosexuality, or bisexuality or having a history of such orientation or being identified with such an orientation.”⁸

LGBTQA and job discrimination

The case of *RG and GR Harris Funeral Homes v EEOC* was heard by the United States Supreme Court in October.⁹ Aimee Stephens worked for RG and GR Harris Funeral Homes, a Michigan firm, for approximately six years before announcing she was transgender and would begin presenting as a woman. Stephens was fired two weeks later. The primary legal issue in the complaint was whether Title VII of the federal Civil Rights Act of 1964 protects LGBTQA people from job discrimination.¹⁰ The act protects against sex discrimination but does not specify sexual orientation.

Stephens prevailed in the Sixth Circuit Court of Appeals; RG and GR Harris appealed under the argument that Congress did not contemplate including transgender individuals when drafting and passing the Title VII law.¹¹ The ACLU has posted court documents and docket information for the Sixth Circuit and Supreme Court hearings, including the opinion of the court below.¹²

Same-sex marriage

In 2012, April DeBoer and Jane Rowse challenged Michigan’s ban on same-sex marriage.¹³ The women wanted to jointly adopt each other’s children as a couple but were barred from doing so because they could not be legally married under the Michigan Marriage Amendment.¹⁴ The case started in the U.S. District Court for the Eastern District of Michigan, which ruled against implementing the ban,¹⁵ then went to the Sixth Circuit Court of Appeals, which overturned the district court’s decision.¹⁶ However, the Supreme Court granted certiorari to *DeBoer v Snyder*, which was consolidated with *Obergefell v Hodges* and two other Sixth Circuit cases.¹⁷ The petitioners’ brief presented one question: does the Fourteenth Amendment require states to license marriages between two people of the same sex? The Court ultimately ruled that DeBoer and Rowse and the other petitioners in the consolidated cases had

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the right to marry, which was protected by the Fourteenth Amendment, and that same-sex marriage must be allowed in all states.¹⁸

At least 45 Michigan cities have enacted ordinances protecting the LGBTQA community with regard to housing, employment, and public accommodation. A few more have provided protection only with regard to housing discrimination.¹⁹ At the state level, Michigan provides no overall legal protection from discriminatory practices by private establishments. Michigan also has no ban on conversion therapy, which attempts to change an individual's sexual orientation. However, at least one city (Huntington Woods) has banned this practice.²⁰

While the state has not passed any extreme anti-LGBTQA legislation, it is not considered LGBTQA-friendly. However, the Whitmer administration appears to be more favorable to extending anti-discriminatory protection to the LGBTQA community, perhaps through expansion of the Elliott-Larsen Civil Rights Act.²¹ ■



Marlene Coir is a reference librarian at Wayne State University's Arthur Neef Law Library and has been a member of the State Bar of Michigan since 1990. She is also an active member of the Association of American Law Libraries and serves on the Executive Board of its Michigan chapter.

ENDNOTES

1. Movement Advancement Project, *Michigan's Equality Profile* <http://www.lgbtmap.org/equality-maps/profile_state/MI> [<https://perma.cc/4NVD-J39V>]. All websites cited in this article were accessed November 15, 2019.
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3. *Obergefell v Hodges*, 576 US ___; 135 S Ct 2584; 192 L Ed 2d 609 (2015).
4. *Id.*
5. Egan, *Gov. Whitmer, Michigan Lawmakers Announce Legislation to Protect LGBTQ Rights*, Detroit Free Press (June 4, 2019) <<https://www.freep.com/story/news/local/michigan/2019/06/04/michigan-civil-rights-law-lgbtq/1337643001/>> [<https://perma.cc/6UVQ-75VE>].
6. MCL 37.2202.
7. Eggert, *Judge: Michigan Adoption Agencies Can Turn Away LGBT Couples*, AP News (September 26, 2019) <<https://www.apnews.com/18aa2e0bcb0546939e0ea033c32168ab>> [<https://perma.cc/279Z-JYSR>].
8. 2019 HB 4655.
9. *RG & GR Harris Funeral Homes v EEOC*, ___ US ___ (October 8, 2019) (No. 18-107).
10. *EEOC v RG & GR Harris Funeral Homes*, 884 F3d 560 (CA 6, 2018).
11. *EEOC v RG & GR Harris Funeral Homes*, 884 F3d 560 (CA 6, 2018), cert granted, ___ US ___; 139 S Ct 1599; 203 L Ed 2d 754 (2019).
12. *RG & GR Harris Funeral Homes v EEOC*, Cases, ACLU (September 10, 2019) <<https://www.aclu.org/cases/rg-gr-harris-funeral-homes-v-eeoc-aimee-stephens>> [<https://perma.cc/QR4C-4T6A>].
13. Fore, *DeBoer v Snyder: A Case Study in Litigation and Social Reform*, 22 Mich J Gender & L 169, 178 (2015), available at <<https://repository.law.umich.edu/mjgl/vol22/iss1/4>> [<https://perma.cc/Q4YK-E5JH>].
14. The Michigan Marriage Amendment, also known as Proposal 2, was approved by state voters in 2004. The referendum amended Michigan's constitution to include a ban on same-sex marriage. Const 1963, art I, § 25 and *Michigan Same-Sex Marriage Amendment*, Ballotpedia (2016) <[https://ballotpedia.org/Michigan_Same-Sex_Marriage_Amendment_\(2016\)](https://ballotpedia.org/Michigan_Same-Sex_Marriage_Amendment_(2016))> [<https://perma.cc/N4T2-RAE9>].
15. *DeBoer v Snyder*, 973 F Supp 2d 757 (ED Mich, 2014).
16. *DeBoer v Snyder*, 772 F3d 388 (CA 6, 2014).
17. *Obergefell v Hodges*. See also *Case Profile: DeBoer v Snyder*, Civil Rights Litigation Clearinghouse, Univ of Mich Law School <<https://www.clearinghouse.net/detail.php?id=12811>> [<https://perma.cc/HFT9-PLBB>].
18. *Id.*
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