

Sixth Circuit Creates Circuit Split on Same-Sex Marriage; Tees Up Issue for Possible Supreme Court Review

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By [Rebecca J. Bennett](#)

Yesterday afternoon, in *DeBoer v. Snyder*, the Sixth Circuit Court of Appeals issued an eagerly-awaited opinion, upholding laws in Ohio, Kentucky, Michigan, and Tennessee banning same-sex marriage. The court held that laws banning same-sex marriage in these states do not violate the Fourteenth Amendment of the U.S. Constitution. The crux....

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The decision creates a disagreement among federal circuit courts on the legality of same-sex marriage, as other circuit courts have struck down similar bans. [The Supreme Court of the United States recently declined to review seven petitions challenging those rulings](#) in the Fourth, Seventh, and Tenth Circuits, with many commentators speculating that the Court would not review the issue unless and until a split among the circuit courts existed. If appealed, the Sixth Circuit decision may present a circuit split that could cause the Supreme Court to reach the issue of the legality of gay marriage.

The *DeBoer* decision is a consolidation of appeals from six separate cases. The Sixth Circuit disagreed with the rulings of all of the lower courts, each of which had concluded separately and under different factual scenarios that laws in Michigan, Kentucky, Ohio, and Tennessee failed to satisfy the rational basis review and violated constitutional rights.

The plaintiffs, 16 gay and lesbian couples, may request an *en banc* review of the decision, meaning that the issue could be reviewed by the full court before a request for review to the Supreme Court of the United States is made.

For employers located in Ohio, Kentucky, Michigan and Tennessee, the decision creates no change in the manner in which employers must treat gay couples for purposes of employee benefits. Currently, despite the existence of same-sex marriage bans in these states, employers must still recognize certain federal leave and benefits rights for same-sex couples who have been legally married in one of the 19 states (and District of Columbia) that recognizes same-sex marriage, as well as the five states that are currently bound by federal courts of appeals decisions striking down same-sex marriage bans in their states. Ogletree Deakins' Employee Benefits Practice Group recently summarized the current status of benefits for employees on this issue in its post, ["Impact of Supreme Court's Recent Actions on Employee Benefits."](#)

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