



U.S.

Federal Judge Strikes Down Michigan's Ban on Same-Sex Marriage

By ERIK ECKHOLM MARCH 21, 2014

A federal judge in Detroit struck down Michigan's ban on same-sex marriage on Friday, the latest in a string of court decisions across the country to rule that denying marriage to gay and lesbian couples is a violation of the Constitution.

"The guarantee of equal protection must prevail," wrote Judge Bernard A. Friedman of Federal District Court.

Soon after the decision was issued late Friday afternoon, the Michigan attorney general, Bill Schuette, filed notice that the state would make an emergency request to the United States Court of Appeals for the Sixth Circuit, in Cincinnati, asking the panel to stay the ruling and reconsider it.

In his opinion, Judge Friedman did not state that he was delaying implementation until it could be considered by the higher court, although that has been the practice in other states and was required by the United States Supreme Court after a district judge overturned Utah's ban. Oakland, Muskegon and Washtenaw Counties said they would issue licenses on Saturday unless a higher court took action, The Associated Press reported.

The two-week trial, which ended March 7, drew special attention because it was the first in several years to include testimony from social-science researchers on the potential impact of same-sex marriage on families and children. The state, arguing that it would be risky to change the definition of marriage, cited studies concluding that children raised by same-sex couples had worse outcomes in life.

Lawyers for the plaintiffs described the scholars who appeared for the state as religiously motivated and part of a "desperate fringe," and subjected them to

withering cross-examination. Judge Friedman agreed with the criticism, describing the state's witnesses as "unbelievable" and calling their studies deeply flawed.

He wrote with particular animus about the best-known — and most widely discredited — of the researchers, Mark Regnerus, a sociologist at the University of Texas. Mr. Regnerus was the author of a 2012 report that, he said, raised questions about the prospects for children of same-sex parents.

Judge Friedman, citing evidence that the study had been commissioned and paid for by conservative opponents of same-sex marriage, wrote, "The funder clearly wanted a certain result, and Regnerus obliged."

Judge Friedman in turn praised several scholars called by the plaintiffs, who described a virtual consensus in the field that other things like income and stability being equal, children fared just as well with same-sex parents.

The extensive trial record could strengthen Judge Friedman's ruling in the appeals process, and his assessment of the research record is likely to be cited in other cases. Dozens of challenges to marriage restrictions have been filed in state and federal courts across the country, and several cases, like Michigan's are headed for federal appeals courts.

Judge Friedman was appointed to the federal seat in the eastern district of Michigan in 1988, by President Ronald Reagan.

At the trial, Michigan argued that it was wrong for federal courts to overturn a policy adopted by public referendum in 2004, and that Michigan voters should decide if change was needed. But Judge Friedman ruled that state authority "cannot trump federal constitutional limitations."

The case was brought by April DeBoer and Jayne Rowse, nurses who live together in a Detroit suburb and who each adopted children born with special needs and are raising them as one family. They originally sued in 2012 to overturn a state law that prevents them, as unmarried parties, from adopting their three children as a couple. They wanted to do so to protect their parental interests in the event one of them dies.

They later expanded their suit to challenge Michigan's ban on same-sex marriage or even civil unions. "Our family is ecstatic!" Ms. DeBoer said Friday evening after learning of the ruling.

In the opinion, Judge Friedman expressed the hope that the plaintiffs and

other families with same-sex parents could enjoy the security and benefits of marriage. “In attempting to define this case as a challenge to ‘the will of the people,’ ” he wrote, “state defendants lost sight of what this case is truly about: people.”

He said the current decision affirmed that “regardless of whoever finds favor in the eyes of the most recent majority, the guarantee of equal protection must prevail.”

Since June, when the United States Supreme Court struck down part of the federal Defense of Marriage Act, federal judges in Utah, Oklahoma, Virginia, Texas and now Michigan have declared that state amendments and laws limiting marriage to a man and a woman are unconstitutional.

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Michigan Courtroom Deals Fake Anti-Gay Research Strategy A Stinging Blow

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By [Nathaniel Frank](#)



Mark Regnerus: "entirely

unbelievable and not worthy of serious consideration."

Baylor University.

A federal judge in Michigan today [struck down](#) the state's ban on same-sex marriage in a [closely watched case](#) that challenged both the state's marriage ban and its restrictions on adoption by same-sex parents. Judge Bernard A. Friedman of Federal District Court in Detroit, a Regan appointee, [ruled](#) that the anti-gay law "impermissibly discriminates against same-sex couples in violation of the Equal Protection Clause because the provision does not advance any conceivable legitimate state interest."

The ruling marked the 14th consecutive court loss for anti-gay advocates in nine months, adding to an emerging constitutional consensus that gay marriage bans are clearly unconstitutional. But its real significance is broader. The trial laid bare the dishonest strategy that religious conservatives have tested in recent years to battle gay equality—and the court's rebuke is yet another major failure for the forces of anti-modernity.

The [strategy](#) is for sociological experts to sow just enough doubt about the wisdom of change such that preserving the status quo seems the only reasonable path. As [the New York Times](#) recently reported, in 2010 the conservative Heritage Foundation gathered social conservatives consisting of Catholic intellectuals, researchers, activists and funders at a Washington meeting to plot their approach. The idea was for conservative scholars to generate research claiming that gay marriage harms children by placing them in

unstable gay homes and by upending marital norms for straights. A solid consensus of actual scholarship—not the fixed kind being ginned up at Heritage—has [consistently found](#) that gay parenting does not disadvantage kids, and no research has shown gay marriage having any impact on straight marriage rates. But trafficking in truth was not the plan. The plan was to tap into a sordid history of linking gay people with threatening kids, and to produce skewed research that could be used as talking points to demagogue the public.

In attendance were scholars such as Mark Regnerus, a sociologist who [sparked controversy](#) after he published a 2012 [journal article](#) funded by religious conservatives arguing that children of same-sex parents fared worse than others—even though he never studied children of same-sex parents. Regnerus' study was [condemned in a letter](#) by 200 scholarly peers and his own university department [issued a stern rebuke](#) calling the study “fundamentally flawed on conceptual and methodological grounds.” An internal [audit found](#) “serious flaws and distortions” and concluded the paper never should have been published.

But the Heritage plan was not to get invited to the cocktail parties of tenured radicals. It was to get Regnerus and other conservative thinkers on the witness stand to combat the airing of real research with enough fake research to create the illusion of a genuine debate. They hoped to avoid an embarrassing repeat of the 2010 Prop 8 trial in defense of California's gay marriage ban, wherein the state's witnesses [withered](#) under cross-examination. At one point, an expert witness was nearly disqualified after acknowledging he had never done any research on same-sex marriage and had only published two scholarly articles ever, one on Victorian cabinetmakers.

The grooming of conservative experts appeared to be falling into place when Michigan called Regnerus and three other witnesses to describe research allegedly showing gay marriage and parenting harms kids. Regnerus [testified](#) that, based on his research, he believed “we aren't anywhere near saying there's conclusive evidence” that children of gay parents fare as well as others, and that, “until we get more evidence, we should be skeptical” of any such claims. “The most prudent thing to do,” he [concluded](#), “is wait and evaluate some of these changes over time before making any radical moves around marriage.”

But on [cross-examination](#) by the ACLU's Leslie Cooper, Regnerus' testimony quickly broke down. Cooper forced Regnerus to admit that he had sought to conceal the role of conservative funders and of his religious faith in influencing his research, both of which were later [revealed with smoking gun evidence](#) from his [prior words](#). He acknowledged that he was “not a fan of same sex marriage” before he started his research and that his opposition to it was not primarily based on his research conclusions. And he had to concede that he had singled out gay couples in opposing their right to marry based on alleged family instability: Aware that African-Americans, the poor, step-families and divorced people are all at higher statistical risk of marital collapse and family instability, he nonetheless had no strong opinion on whether those folks should be banned from marrying—just gays, strongly suggesting his views are rooted in bias above all.

Other witnesses fared no better. Canadian economist Douglas Allen, who produced a study with the exact [same flaws](#) as Regnerus' study, [told the court he believed](#) that “without repentance,” gays are going to hell. Still, ignoring the clear scholarly consensus on child outcomes, he tried to pass off his opposition to same-sex marriage as a product of his research, echoing the talking point that “The state should be very cautious in making such a fundamental change to such a fundamental issue where there's no evidence on the child outcome issue.” A third witness was disqualified altogether.

Despite (or perhaps because of) a clownish showing by the expert witnesses, the defense's legal team pressed on with its effort to project doubt about what we know of gay parenting outcomes. “The evidence shows that there are benefits to a child being raised by a mom and a dad,” [said the state's attorney](#), Kristin Heyse, in her closing argument (abandoning the superlative “best climate” claims in favor of the much vaguer “there are benefits” claim). “Social science is just too uncertain.” At times, Heyse's claims sounded like a parody of some bozo grasping at rationales she once heard uttered by the learned: “It's about science and data,” she [stammered](#) at one point. “It's about what's best for the children of the state of Michigan.”

After the trial, the state sought to amplify the message that the science on gay parenting is disputed, and

caution is in order. Joy Yearout, a spokeswoman for the state Attorney General Bill Schuette, [said](#), "The trial ended on Dr. Allen's comment that the science on this remains unsettled." She [added](#), "The strongest argument we have is that [voters] decided it's best for kids to be raised by a mom and dad." If that's the strongest argument the state has, buckle up for change: The question of optimality in child-rearing is not something voters can decide—that's the whole point of bringing in experts on what the research says. As the old adage goes, you're entitled to your own opinion but not your own facts.

Judge Friedman didn't fall for any of it. "The Court finds Regnerus's testimony entirely unbelievable and not worthy of serious consideration," he wrote in what must be one of the most stinging and decisive repudiations of an expert witness in memory. He cited evidence that the conservative research was "hastily concocted at the behest of a third-party funder" which clearly expressed its wish for skewed results. Dismissing the defense's other witnesses just as strongly, the judge wrote that "The Court was unable to accord the testimony of Marks, Price, and Allen any significant weight." He concluded that "The most that can be said of these witnesses' testimony is that the 'no differences' consensus has not been proven with scientific certainty, not that there is any credible evidence showing that children raised by same-sex couples fare worse than those raised by heterosexual couples."

The facts-are-disputed-so-let's-wait strategy that failed today in Michigan comes from an old playbook that's also failed in the past. At both the front and tail ends of the battle over "don't ask, don't tell," the gay ban's defenders deployed an elaborate plan to spread the message that too little was known about gay service to risk the nation's security. When Bill Clinton tried to lift the gay ban in 1993, Georgia Senator Sam Nunn took what I call a "thorny questions" approach, throwing dozens of repetitive questions at his fellow senators to make change seem impossibly risky. The military must be able to "study this for whatever time they'd like," he said, so we can determine "what would be the impact of changing the current policy on" recruiting, retention, morale, discipline, combat effectiveness, housing, pay, benefits and entitlements. Delaying change wasn't prejudice, Nunn insisted, but "prudence." The Pentagon [commissioned a RAND](#) study on the issue that concluded it would be just fine to let open gays service, but by then Nunn's doubt had infused Congress, the study was ignored, and we got "don't ask, don't tell."

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"But the religious right is not going away, and clearly the plan is to keep churning out skewed research to create the illusion of a good-faith debate where none actually exists. More...

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Nunn re-emerged in 2010 as DADT was being debated again to call, again, for "a Pentagon study." Defense Secretary Robert Gates agreed, seeking to delay repeal by [saying](#), "The truth is, we don't have any facts" even though more than 50 years of government and academic studies had shown openly gay service worked just fine. Conservative religious foot soldiers backed up the plan, [seeking gay "horror stories"](#) to turn the public against openly gay service, even though leaked emails showed that such stories would be "very difficult to find"—more evidence that the horrible consequences social conservatives claim gay equality will have must be routinely made up.

The right wing's playbook is wide open. It failed in the past, and it failed today in court. But the religious right is not going away, and clearly the plan is to keep churning out skewed research to create the illusion of a good-faith debate where none actually exists. At a certain point, delaying justice when you know you'll lose becomes bitter and even vengeful. Were I funding this petty nonsense, I'd start to think twice about where to invest my dollars and my heart.