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### May 23, 2014: Governor's Move Pure Politics

Bruce Ledewitz

*Duquesne University*, ledewitz@duq.edu

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Title: Governor's Move Pure Politics

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5/23/2014—I am delighted that Pennsylvania is finally recognizing gay marriages through a decision by U.S. District Judge John Jones striking down Pennsylvania's ban on gay marriage. I would have preferred that the legislature did it, however. This kind of judicial decision-making is not as healthy for democracy as is a democratic decision. On the other hand, why should gay couples have to wait for justice? The fault is with the legislature for failing to act. That said, Governor's Corbett's decision not to appeal is pure politics and makes no sense legally. Corbett says that an appeal would certainly fail. Really? In what court? The issue of gay marriage will finally be decided not by a District Judge but by the Supreme Court. I count four votes there to uphold bans on gay marriage—Chief Justice Roberts, Justices Scalia, Thomas and Alito. They do not look to be changing their minds. So Corbett's claim that an appeal would certainly fail amounts to saying that it is certain that Justice Kennedy will vote to strike down bans on same-sex marriage. That is possible of course. But it is not certain. Justice Kennedy was careful not to decide the same-sex issue in the Windsor case. The fact that 14 judges in a row have ruled in favor of gay marriage shows that Kennedy may well vote to strike down such bans. But if he votes the other way, Corbett's refusal to appeal means that the decision striking down the Pennsylvania ban will remain the law, even though in hindsight erroneous. If Corbett were interested in the welfare of the gay couples marrying in the interim, he could have appealed while not asking for a stay. All such marriages would then have remained valid even if the ban on gay marriage had ultimately been upheld. I hate to see hypocrisy like this. Corbett is just trying to cool off the Democratic base as he fights for reelection. It would be one thing if he were convinced that the ban on gay marriage really is unconstitutional—like Attorney General Kane. But the Governor says he is not convinced. Well then, he should have stuck to his guns and appealed. Will the Republican legislature now begin impeachment hearings against the Governor? How is his decision not to appeal any more defensible than that of the Attorney General not to defend Pennsylvania's law?