

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 09-0286 DOC (MLGx)

Date: July 15, 2009

Title: SMELT ET AL. V. UNITED STATES OF AMERICA, ET AL.

DOCKET ENTRY

[I hereby certify that this document was served by first class mail or Government messenger service, postage prepaid, to all counsel (or parties) at their respective most recent address of record in this action on this date.]

Date: _____ Deputy Clerk: _____

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kristee Hopkins
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS: ATTORNEYS PRESENT FOR DEFENDANTS:

NONE PRESENT

NONE PRESENT

PROCEEDING (IN CHAMBERS): GRANTING MOTION TO DISMISS

Before the Court is Defendant State of California's ("California") Motion to Dismiss (the Motion). After reviewing the moving papers, hearing oral argument, and for the reasons set forth below, the Court hereby GRANTS the Motion.

I. BACKGROUND

On December 29, 2008, Plaintiffs Arthur Bruno Smelt and Christopher David Hammer ("Plaintiffs") filed the instant case in California Superior Court. The case was removed to this Court on March 9, 2009. The Plaintiffs in this case are a same-sex couple who received a Declaration of Domestic Partnership from the State of California on January 10, 2000 and were subsequently married under the laws of California, "on or subsequent to July 10, 2008" – *i.e.*, before Proposition 8 was passed in California's November 4, 2008 election. Plaintiffs allege that "the refusal of all states and jurisdictions" to recognize the validity of their marriage results in the denial to them of numerous rights, benefits and responsibilities bestowed on all other married couples, so long as they are opposite-sex couples. Plaintiffs state that the rights, benefits and responsibilities that they are denied include the

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right to social security survivor benefits, decision-making authority for funeral arrangements and the disposition of a spouse's body, the right to bereavement leave in the event of a spouse's death, the presumption that both spouses are the parent of a child born during marriage, and the right to a certain division of their spouse's separate property and the couple's marital property upon the death of a spouse who dies intestate. Plaintiffs further argue that the denial of such rights, benefits and responsibilities has caused them to suffer severe emotional distress, mental anguish, humiliation, loss of liberty and the pursuit of happiness, denial of equal protection of laws, denial of freedom of association, denial of privacy rights, and denial of the right to travel to establish residency anywhere in the United States with the full recognition of the legality of Plaintiffs' marriage.

Plaintiffs target their action at the federal Defense of Marriage Act, 1 U.S.C. §7; 28 U.S.C. §1738C (the "DOMA"), as well as "Proposition 8". Proposition 8 was a provision on the California state ballot in the November 4, 2008 election that amended the California Constitution to define marriage as between a man and a woman only. Plaintiffs assert that this amendment violates several portions of the U.S. Constitution.

Plaintiffs seek broad relief. Plaintiffs seek a permanent injunction compelling the United States and the State of California ("Defendants") to "take all necessary acts to require the entire nation of the United States of America, all of its territories and jurisdictions, to eliminate any distinction in the law that prejudices the rights of Plaintiffs." Additionally, Plaintiffs seek a declaratory judgment "establishing that any law that restricts Plaintiffs' rights distinguishes Plaintiffs' rights in any way from any opposite gender couple to be unconstitutional, under the United States Constitution, including all provisions of the [DOMA]."

In the instant Motion, California moves to dismiss the claims against it, which pertain only to Proposition 8, arguing that Plaintiffs lack standing to pursue said claims.

II. LEGAL STANDARD

A. Standing

Each element of standing is "an indispensable part of the plaintiff's case," and accordingly "must be supported in the same way as any other matter on which the plaintiff bears the burden, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130 (1992). To establish standing, a plaintiff must demonstrate: (1) an 'injury in fact' – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not 'conjectural' or 'hypothetical'; (2) "there must be a causal connection between the injury and the conduct complained of – the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court;" and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Id.* at 2136 (internal

citations omitted). *See also Bird v. Lewis & Clark College*, 303 F.3d 1015, 1019 (9th Cir. 2002) (internal quotation marks and citations omitted)("In the context of declaratory and injunctive relief, [a plaintiff] must demonstrate that [he or she] has suffered or is threatened with a concrete and particularized legal harm . . . coupled with a sufficient likelihood that [he or she] will again be wronged in a similar way.").

III. DISCUSSION

This is the second time that Plaintiffs have come before this Court, presenting substantially similar arguments each time. In *Smelt, et al. v. County of Orange, California, et al.*, SACV04-1042 DOC (MLGx), Plaintiffs filed suit before Judge Gary L. Taylor, arguing that they had applied for, and been denied, a marriage license by the County Clerk of Orange County, California, in violation of the U.S. Constitution. More specifically, Plaintiffs argued that Section 2 of the DOMA violates the United States Constitution's Due Process, equal protection rights under the Fifth Amendment, the Right to Privacy and the Full Faith and Credit Clause. Additionally, they argued that Section 3 of the DOMA violates the "liberty interests protected by the Due Process Clause"; discriminates "on the basis of gender" and "sexual orientation" in violation of equal protection; and violates "the privacy interest protected by the Right to Privacy." Plaintiffs also argued that the California Family Code violated the U.S. Constitution. Plaintiffs sought a declaratory judgment that the relevant sections of the California Family Code and the DOMA were unconstitutional as well as injunctive relief "[m]andating the use of gender-neutral terms and issuing a marriage license to [them]."

Judge Taylor (1) abstained from deciding the constitutionality of the challenged sections of the California Family Code until the resolution of cases then-pending before the California Court of appeal concerning whether the portions of the California Family Code that limit marriage to opposite-sex couples violated the California Constitution, (2) held that Plaintiffs had no standing to challenge Section 2 of the DOMA, and (3) held that Plaintiffs had no standing to challenge Section 3 of the DOMA but that that section did not violate the U.S. Constitution. In *Smelt v. County of Orange*, 374 F.Supp.2d 861, 685 (C.D. Cal. 2005), the Ninth Circuit reviewed Judge Taylor's ruling in SACV04-1042 DOC (MLGx), upholding his decision to abstain as to Plaintiffs' challenge to the California Family Code, upholding his decision that Plaintiffs did not have standing to challenge either Section 3 or Section 2 of the DOMA as Plaintiffs were not married (and as they presented abstract and generalized grievances), and vacating his decision regarding the merits of the DOMA Section 3 claim as, given the "abstract facial attack made," no one could "know whether in the context of some particular statute as applied to some particular person in some particular situation Congress's use of the word 'marriage' [would] amount to an unconstitutional classification."

On remand, the case was transferred to this Court. On August 29, 2008, this Court dismissed the case, as directed by the Ninth Circuit. The Plaintiffs filed the instant lawsuit on November 3, 2008, this time including the fact that, after the filing of the initial lawsuit, they had been married under California law.

Once again, the instant Motion turns not on the merits of the dispute, but on standing. California correctly asserts that Plaintiffs no longer have standing to pursue their claims against the State of California, as they relate to the enforcement of Proposition 8. Proposition 8, as codified in Section 7.5 to Article I of the California Constitution, was recently held by the California Supreme Court to present no bar to the recognition of Plaintiffs' marriage within California, as said marriage was performed before Proposition 8 was passed. *Strauss v. Horton*, 46 Cal.4th 364 (Cal. 2009). As Plaintiffs' marriage is valid within California, they cannot present an injury with respect to the recognition of their marriage by the State of California under *Lujan* and, therefore, they do not have standing to pursue their claims against the State of California. 504 U.S. 555.

IV. OUTCOME

For the foregoing reasons, the Motion is GRANTED and the State of California is HEREBY DISMISSED WITHOUT PREJUDICE.

The Clerk shall serve this minute order on all parties to the action.