2009 WL 1899555 (C.D.Cal.) (Trial Motion, Memorandum and Affidavit)
United States District Court, C.D. California.

Arthur SMELT et al., Plaintiffs,
v.
UNITED STATES OF AMERICA et al., Defendants,
and
Dennis Hollingsworth et al., Intervenors.

No. SACV-09-286 DOC (MLGx).
June 29, 2009.

Intervenors' Memorandum of Points and Authorities in Support of Motion to Dismiss Action Against Defendant State of California

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Footnotes

The Honorable David O. Carter.

Hearing Date: July 13, 2009

Hearing Time: 8:30 a.m.

Courtroom: 9D

INTRODUCTION

Intervenors Proposition 8 Official Proponents Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson, and Proposition 8 Campaign Committee ProtectMarriage.com - Yes on 8, a Project of California Renewal, (collectively referred to as "Intervenors") join the Motion to Dismiss Action against Defendant State of California, and submit this memorandum in support thereof. Plaintiffs Arthur Smelt and Christopher Hammer allege, among other things, that California's marriage amendment (commonly known as Proposition 8) violates various provisions of the United States Constitution. (Compl. at ¶ 29.) Plaintiffs, however, lack standing to challenge the constitutionality of Proposition 8.

Under Article III of the United States Constitution, a plaintiff in federal court does not have standing to assert a claim unless he demonstrates that (1) he has suffered an "actual or imminent" injury, (2) there is a causal connection between the injury and the complained-of conduct, and (3) the injury will "likely" be "redressed by a favorable decision." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992). Plaintiffs cannot establish any of these elements; thus, their challenge to Proposition 8 should be dismissed for lack of standing.

ARGUMENT

I. Plaintiffs Cannot Satisfy The Three Irreducible Constitutional Requirements of Standing To Challenge Proposition 8.

"The judicial power of the United States defined by [Article] III is not an unconditioned authority to determine the constitutionality of legislative or executive acts." *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.,* 454 U.S. 464, 471 (1982).

> The federal courts are not empowered to seek out and strike down any governmental act that they deem to be repugnant to the Constitution. Rather, federal courts sit solely[] to decide on the rights of individuals, and must refrain from passing upon the constitutionality of an act unless obliged to do so in the proper performance of [the] judicial function, when the question is raised by a party whose interests entitle him to raise it.

Hein v. Freedom From Religion Foundation, Inc., 551 U.S. 587, 127 S. Ct. 2553, 2562 (2007) (quotations, citations, and alterations omitted).

"In every federal case, the party bringing the suit must establish standing to prosecute the action." *Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1, 11 (2004). "[A] plaintiff must demonstrate standing for each claim he seeks to press." *DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 352 (2006). "The irreducible constitutional minimum of standing contains three requirements": "injury in fact, causation, and redressability." *Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 102-03 (1998) (citations omitted). "Injury in fact" is a harm suffered by the plaintiff that is concrete and actual or imminent, not conjectural or hypothetical. *Lujan,* 504 U.S. at 560. "Causation" is "a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant." *Steel Co.,* 523 U.S. at 103. "Redressability" is "a likelihood that the requested relief will redress the alleged injury." *Id.* "The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan,* 504 U.S. at 561. Plaintiffs' allegations do not satisfy these elements; instead, the facts in their complaint show unmistakably that they lack standing to challenge Proposition 8.

First, Proposition 8 has not inflicted, nor threatened to inflict, any concrete or particularized injury on Plaintiffs. According to their complaint, Plaintiffs entered into a legal union "on or subsequent to July 10, 2008," that the State of California considered to be a "marriage." (Compl. at ¶ 2.) Recently, the California Supreme Court held that all same-sex unions entered before the enactment of Proposition 8 in November 2008 and considered to be "marriages" by the State "remain valid in all respects." *Strauss v. Horton,* 207 P.3d 48, 122 (Cal. 2009). Thus, Proposition 8 did not affect Plaintiffs' legal union, and neither did it inflict a legally cognizable injury for purposes of standing analysis.

Second, Plaintiffs cannot demonstrate the requisite causal connection to establish standing. "[A] federal court [may] act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party[.]" *Simon v. E. Ky. Welfare Rights Organization,* 426 U.S. 26, 41-42 (1976). But, here, none of the harm alleged by Plaintiffs can be attributed to the enactment of Proposition 8. For example, Plaintiffs lament "[t]he refusal of all states and jurisdictions of the United States of America to recognize" their legal union. (Compl. at ¶ 3.) Plaintiffs also complain that the refusal of other jurisdictions to recognize their legal union "results in the denial of hundreds of state law rights, benefits[,] and responsibilities, and more than a thousand federal rights, benefits, and responsibilities." (Compl. at ¶ 3.) But the *Strauss* decision makes clear that California continues to grant all "marital" rights, benefits, and responsibilities to Plaintiffs under California law. *Strauss,* 207 P.3d at 122. And the refusal of other States or the federal government to recognize their legal union is not connected to the enactment of Proposition 8. Thus, Plaintiffs' complained-of harm cannot be attributed to Proposition 8.

Third, Plaintiffs cannot satisfy the redressability requirement. Redressability requires "that prospective relief will remove the [alleged] harm." *Warth v. Seldin,* 422 U.S. 490, 505 (1975). "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court." *Steel Co.,* 523 U.S. at 107. Instead, the plaintiff must show "that he personally would benefit in a tangible way from the court's intervention." *Warth,* 422 U.S. at 508. In this case, Plaintiffs request an injunction "mandating and compelling the State of California to eliminate" Proposition 8 from its Constitution. (Compl. at Prayer for Relief ¶ 6.) But that relief would not redress any harm alleged by Plaintiffs. Even with Proposition 8 in place, California

continues to recognize and affirm Plaintiffs' legal union "in all respects." *Strauss,* 207 P.3d at 122. Invalidating and eradicating that provision from California's Constitution would not affect Plaintiffs' legal union nor remedy any harm alleged by them. As a result, they cannot satisfy the redressability requirement of standing. *See, e.g., Linda R.S. v. Richard D.,* 410 U.S. 614, 618 (1973) (finding no standing where the plaintiff did not demonstrate "the 'direct' relationship between the alleged injury and the claim sought to be adjudicated").

II. Prudential-Standing Considerations Further Demonstrate That Plaintiffs Lack Standing To Challenge Proposition 8.

Prudential-standing considerations additionally weigh against finding that Plaintiffs have standing to challenge the constitutionality of Proposition 8. On the issue of prudential standing, the Supreme Court has said:

> The command to guard jealously and exercise rarely our power to make constitutional pronouncements requires strictest adherence when matters of great national significance are at stake. Even in cases concededly within our jurisdiction under Article III, we abide by a series of rules under which we have avoided passing upon a large part of all the constitutional questions pressed upon us for decision. Always we must balance the heavy obligation to exercise jurisdiction[] against the deeply rooted commitment not to pass on questions of constitutionality unless adjudication of the constitutional issue is necessary[.]

Newdow, 542 U.S. at 11 (quotations, alterations, and citations omitted). "One of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations." *Id.* at 12. "[I]n general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts." *Id.* at 13.

Plaintiffs' challenge to Proposition 8 raises issues of great national significance involving domestic relations. Twenty-nine other States, in addition to California, have enacted constitutional amendments similar or identical to Proposition 8.1 Plaintiffs' challenge to Proposition 8 threatens all these state constitutional provisions defining marriage-- society's most fundamental domestic relation. Thus, prudential-standing considerations further demonstrate that Plaintiffs lack standing to challenge Proposition 8.

* Admitted pro hac vice.

CONCLUSION

For the foregoing reasons, the Court should grant the Motion to Dismiss Action against Defendant State of California.2

1 *See* Ala. Const. art. I, § 36.03; Alaska Const. art. 1, § 25; Ariz. Const. art. XXX § 1; Ark. Const. amend. 83, § 1-3; Col. Const. art. II, §31; Fla. Const. art. I § 27; Ga. Const. art. I, §IV; Haw. Const. art. I, § 23; Idaho Const. art. II, 28; Kan. Const. art. XV, § 16; Ky. Const. § 233A; La. Const. art. XII, 15; Mich. Const. art. I, §25; Miss. Const. art. XIV, § 263A; Mo. Const. art. I § 33; Mont. Const. art. XIII, § 7; Neb. Const. art. I, § 29; Nev. Const. art. I, 21; N.D. Const. art. IX, § 28; Ohio Const. art. XV, § 11; Okla. Const. art. II, 35: Or. Const. art. XV, § 5a; S.C. Const. art. XVII, 15; S.D. Const. art. XXI, § 9; Tenn. Const. art. XI, § 18; Tex. Const. art. I, § 32; Utah Const. art. I, 29; Va. Const. art. I, § 15-A; Wis. Const. art. XIII, § 13.

Dated: June 29, 2009

/s/Brian W. Raum

Brian W. Raum (NY Bar No. 2856102)*

2 Intervenors emphasize that their interests and involvement in this case will not cease if the Court finds that Plaintiffs lack standing to challenge Proposition 8 directly. As discussed in Intervenors' Memorandum of Points and Authorities in Support of their Motion to Intervene, their significantly protectable interests in Proposition 8 might be adversely affected by a finding that the Federal Defense of Marriage Act's definitional provision, which defines "marriage" for federal purposes as the "legal union between one man and one woman as husband and wife," 1 U.S.C. § 7, violates the Due Process or Equal Protection Clauses of the United States Constitution. The relevant legal analysis in resolving Plaintiffs' claims against Federal DOMA will require this Court to determine

whether the federal government's definition of marriage is rationally related to a legitimate government purpose. *See Kimel v. Fla. Bd. of Regents,* 528 U.S. 62, 83-84 (2000) (defining rational-basis review for equal-protection analysis). If this Court were to find that the government lacks a rational basis for defining marriage as the union of a man and a woman, and thus conclude that Federa DOMA's definitional provision violates the United States Constitution, it would create a judicial precedent that gravely jeopardizes the federal constitutionality of Proposition 8, which defines marriage the same as Federal DOMA. This clear and significant precedential impact on Proposition 8 demonstrates that Intervenors' interests very well might be impaired by this Court's ruling on Plaintiffs' challenge to Federal DOMA. For this reason, as well as others, Intervenors will continue to zealously litigate this case even if this Court dismisses Plaintiffs' direct claims against Proposition 8.

ATTORNEYS FOR PROPOSED INTERVENORS

* Admitted *pro hac vice*