

Cases Addressing 1 U.S.C. § 7

I. Statutory Background

Federal Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (Sept. 21, 1996)

Federal Marriage Limitation in “Defense of Marriage Act” (aka DOMA section 3)

“In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” 1 U.S.C. §7(3).

Federal Limitation on States’ Respect for Marriages of Same-Sex Couples (aka DOMA section 2)

“No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.” 28 U.S.C. § 1738C.

II. Cases

Ninth Circuit

In re Kandu, 315 B.R. 123 (W.D. Wash. 2004)

- **Facts and Legal Issues**
Two women married in Canada filed a voluntary joint bankruptcy petition (chapter 7) under 11 U.S.C. § 302. That statute allows a joint bankruptcy petition to be filed by a debtor and his or her “spouse,” but 1 U.S.C. § 7 limits the term “spouse” to a “person of the opposite sex who is also a husband or a wife.” The US Trustee challenged the joint filing as improper and briefing commenced on an Order to Show Cause for Improper Joint Filing.
- **Tenth Amendment**
The Debtor argued the spousal limitation violated the Tenth Amendment because it regulates marriage and Congress lacks the power to regulate marriage. The Court ruled that the limitation did not “overstep[] the boundary between federal and state authority. ... The Court concludes that the definition of marriage in DOMA is not binding on states

and, therefore, there is no federal infringement on state sovereignty. States retain the power to decide for themselves the proper definition of the term marriage.” Id. at 132. Nor did the federal government improperly preempt state law since Washington state law and federal law identically define marriage. Id. at 133.

- Comity

The Court also rejected the argument that the doctrine of comity was enough to validate her marriage for purposes of a joint filing in light of “the strong and countervailing policy” of the United States regarding marriage in contrast to Canada where the couple was married. Id. at 133-134.

- Due Process and Equal Protection

The Court overcame an objection by the US Trustee that it could not consider these challenges to the federal law based on the U.S. Supreme Court’s summary decision in Baker v. Nelson, 291 Minn. 310, 191 N.W.2d 185 (1971), appeal dismissed, 409 U.S. 810, 93 S.Ct. 37 (1972). The Baker case involved federal constitutional challenges to a state’s denial of a marriage license to a male couple. However, due to the statutory differences underlying that case and the present case, as well specific statutory history of the challenged law, the limited precedential value of summary affirmances and dismissals, and the possible impact of Supreme Court decisions like Lawrence v. Texas, the Court held Baker was not binding precedent. Id. at 138.

The Bankruptcy Court declined to find that marriage of same-sex couples is a fundamental right under controlling precedent or analysis and that rational basis review would be applied. Id. at 140-141.

The Court also applied rational basis review to the equal protection claim, rejecting claims for heightened scrutiny based on gender or sexual orientation classifications. Id. at 142-143. The Trustee asserted, and the Court accepted as “not wholly irrelevant to the achievement of the government’s interest” the idea that 1 U.S.C. § 7 promotes “the stability and legitimacy of” heterosexual unions for the benefit of offspring. Id. at 145 – 146. It further rejected the idea that the federal law was “so exceptional and unduly broad as to render UST’s reasons for its enactment ‘inexplicable by anything but animus’ toward same-sex couples.” Id. at 148.

- Lower Court Information & Decision: U.S. Bankruptcy Court, Western District of Washington. Decision available at: <http://www.domawatch.org/cases/9thcircuit/InreKanduBkrDecision.pdf>.

- The Federal District court dismissed the appeal for failure to prosecute after the Washington marriage case Andersen v. King County, 138 P.3d 963 (Wash. 2006), was decided.

Smelt v. Orange County, 447 F.3d 673 (9th Cir. 2006) cert. denied., 127 S. Ct. 396 (U.S. Oct. 10, 2006) (No. 06-5742). Lower Court opinion: 374 F. Supp. 2d 861 (C.D. Cal 2005).

- Facts and Issues

Two men denied a license to marry each other sued local and state officials over the license denial on a variety of federal constitutional grounds. In addition, they challenged both parts of the so-called Defense of Marriage Act and the United States intervened to defend the constitutionality of that law. The District Court abstained as to their claim that the California marriage laws are unconstitutional given the ongoing proceedings in that state addressing the constitutionality of California's marriage limitation.

- Abstention

The 9th Circuit agreed that the District Court properly abstained under Pullman abstention doctrine because, among other factors, the constitutionality of the California marriage laws are a subject of ongoing litigation and will likely resolve the issue within that state. See generally 447 F.3d at 678-682.

- Interstate Recognition

The 9th Circuit agreed with the District Court that since the men are not married in any state, they have no standing to challenge Section 2 of the Defense of Marriage Act, 28 U.S.C. §1738C. Id. at 683.

- Standing and Marriage Limitation

The 9th Circuit held that the District Court should not have reached the issue of the constitutionality of the federal marriage limitation because the plaintiff couple's "legal union" is not a "marriage" and only married couples having standing to challenge section 3. Id. at 683-84. (Compare District Court opinion at 374 F.Supp.2d at 871.) It added, "[N]o state has determined that they are married for state purposes, and they do not suggest that they have applied for and been denied some federal benefit." Id. at 682. In addition to constitutional standing, the Court would also reject their claim on prudential standing grounds. Id. at 684.

- Government Justifications for Section 3

Since the 9th Circuit found the plaintiff couple lacked standing to challenge section 3, it vacated that part of the District Court decision on the merits of that claim. Id. at 686. Compare District Court ruling, 374 F.Supp. 2d at 880 (upholding section 3 as rationally related to "the legitimate government interest of encouraging procreation, or of encouraging the creation of stable relationships that facilitate rearing children by both biological parents.).

Tenth Circuit

Bishop v. Oklahoma ex. rel. Edmondson, 447 F.Supp.2d 1239 (N.D.Okla. 2006) (NO. 04 CV 848 TCK SAJ)

- Facts and Issues

Two couples challenged the constitutionality of Oklahoma's marriage restriction as well as 1 U.S.C. §7 and 28 U.S.C. § 1738C under the federal constitution seeking declaratory and injunctive relief. One couple had a religious ceremony but no legal marriage. The other couple had a civil union in Vermont and also married in British Columbia. The latter couple wanted both state and federal authorities to recognize both their civil union and their marriage as valid. Both the state and federal defendants moved to dismiss under F.R.Civ.P. 12 (b)(6).

- Standing

The Court dismissed on standing grounds the challenge of the couple joined in civil union and marriage (in Canada) to the part of federal law that excuses states from recognizing same-sex marriage performed in other states. First, a civil union is not a marriage. Id. at 1247. Second, as to the marriage in Canada, 28 U.S.C. § 1738C speaks only to marriages in other states within the United States and not to foreign countries. Id. at 1248-49.

The District Court also addressed the plaintiffs' standing to address 1 U.S.C. §7 even though the government did not raise the issue. Id. at 1249. The couple who aspired to marry but had not married lacked standing because "they cannot show that such definition has caused them or could imminently cause them a particularized injury." Id. at 1249. On the other hand, the couple joined in civil union and marriage in Canada had standing to address the federal limitation on the basis of both their civil union and marriage. Id. at 1251. The Court then reserved the issue of prudential standing since the plaintiffs had not identified any particular federal marital protection they had been denied, and reserved ruling until such time as further factual and legal arguments are before the Court. Id. at 1251.

- Equal Protection and Due Process

The Court held these claims survived a motion to dismiss and concluded they are more appropriately decided at the summary judgment stage when there are "specific factual findings related to the purpose and justifications for the law." Id. at 1252-1253. It also rejected challenges to 1 U.S.C. §7 based on the Privileges and Immunities Clause and the Full Faith and Credit Clause.

Eleventh Circuit

Wilson v. Ake, 354 F. Supp. 2d 1298 (M.D. Fla. 2005)

- Facts and Issue

Florida couple married in Massachusetts and then returned home, and “asked their local county clerk to accept their Massachusetts marriage certificate for purposes of their status in Florida.” When the clerk declined, the filed a Complaint for a Declaratory Judgment seeking to declare both state and federal marriage limitations unconstitutional.

Note: The government moved to dismiss under F.R.Civ.P. 12 (b)(6). Id. at 1302. Rather than address the merits, the U.S. and the court could have instead addressed the threshold issues of the couple’s standing as well as the validity of their marriage. See Cote-Whitacre v. Dept. of Public Health, 446 Mass. 350, 844 N.E.2d 623 (Mass. 2006) (explaining application of Massachusetts “reverse evasion” statute and finding that Massachusetts properly closed its borders to nearly all non-resident same-sex couples from other states).

- Marriage Recognition

As to the question of whether or not Florida had to honor their marriage under the Full Faith and Credit Clause, Article IV, Section 1 of the Constitution, the Court ruled that Congress properly allowed states to make their own decisions about respecting marriages of same-sex couples. Id. at 1304, relying on Section 2 of DOMA, 28 U.S.C. 1738C.

- Marriage Limitation

As to the couple’s equal protection and due process challenge to the federal limitation on what constitutes a “marriage” or “spouse,” the District Court held that Baker v. Nelson (discussed above at In re Kandu) was controlling precedent and required dismissal of the claims. Id. at 1305.

The District Court ruled that 11th Circuit precedent also constrained it from finding a constitutionally protected right to marry for same-sex couples, noting that that Circuit has not interpreted Lawrence v. Texas “to create a fundamental right in private sexual intimacy.” Id. at 1306.

Finally, applying rational basis review to the equal protection claim, it accepted as unrebutted the government’s two justifications: (1) “that DOMA fosters the development of relationship that are optimal for procreation, thereby encouraging ‘stable generational continuity of the United States’” “by adopting the traditional definition of marriage for purposes of federal statutes;” and (2) “encourage[ing] the creation of stable relationships that facilitate the rearing of children by both of their biological parents.” Id. at 1308.