

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARTHUR BRUNO SMELT and
CHRISTOPHER DAVID HAMMER,

Plaintiff(s),

v.

COUNTY OF ORANGE, et al.
(UNITED STATES OF AMERICA,
Intervenor),

Defendant(s).

CASE NO. SA CV04-1042 DOC
(MLGx)

**O R D E R DISMISSING CASE
PURSUANT TO NINTH CIRCUIT
ORDER**

This case comes before the Court on a remand with instructions from the Ninth Circuit. After considering the Ninth Circuit’s direction, as well as the parties’ briefing and oral argument, the Court hereby DISMISSES Plaintiffs’ Defense of Marriage Act (“DOMA”) Claims WITHOUT PREJUDICE and Plaintiffs’ state-law claims WITH PREJUDICE.

On review, the Ninth Circuit considered two rulings of Judge Gary L. Taylor: 1) the decision to abstain from considering the constitutionality of California state laws regarding marriage; and 2) the decision to dismiss their claims challenging the Constitutionality of the DOMA. The latter ruling was based on Plaintiffs’ lack of standing to challenge DOMA § 2 and the merits of their DOMA § 3 claim.

The Ninth Circuit upheld the District Court’s decisions on the state law issues and DOMA § 2 but vacated the decision on DOMA § 3 and ruled as follows:

“[W]e affirm the district court’s decision to abstain until the Marriage Cases are resolved, and the district court’s decision to dismiss as to the DOMA Section 2 claim. However, we vacate its decision regarding the merits of the DOMA Section 3 claim and remand with directions to dismiss that claim.

1 The case was assigned to this Court on remand.

2 After the Ninth Circuit so ruled, the California Supreme Court handed down *In re*
3 *Marriage Cases*, 43 Cal. 4th 757 (2008), which struck down the California state statutes
4 prohibiting same-sex marriage. Plaintiffs' were subsequently married. Although this decision of
5 the California Supreme Court and Plaintiffs' decision to marry is of utmost significance, it does
6 not change the legal landscape. The Ninth Circuit's decision is binding on this Court.

7 With regard to the challenges of California state-law, the California Supreme Court
8 resolved these challenges based on the state Constitution. Thus, there is no need to resolve the
9 Federal Constitutional issues, absent some subsequent change in law. Accordingly, this claim is
10 hereby DISMISSED.

11 With regard to the DOMA § 2 Claim, Plaintiffs argue that they now have standing
12 because they are legally married. Judge Taylor's decision, and that of the Ninth Circuit, were
13 explicitly based on the fact that Plaintiffs lacked standing because they were unmarried.
14 Standing is ordinarily assessed when Plaintiffs file suit. *Lujan v. Defenders of Wildlife*, 504 U.S.
15 555, 569 n.4, 112 S. Ct. 2130 (*Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 830, 109
16 S.Ct. 2218 (1989)). Accordingly, this claim is hereby DISMISSED.

17 Finally, the Ninth Circuit specifically directed the Court to dismiss Plaintiffs' DOMA § 3
18 claim. Accordingly, this claim is hereby DISMISSED.

19 Accordingly, Plaintiffs' DOMA claims are hereby DISMISSED WITHOUT PREJUDICE
20 and Plaintiffs' state law claims are DISMISSED WITH PREJUDICE.

21 IT IS SO ORDERED.

22 DATED: August 29, 2008

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DAVID O. CARTER
26 United States District Judge
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