

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY BISHOP and SHARON BALDWIN,	)	
et al.,	)	
	)	
Plaintiffs,	)	No. 4:04-CV-00848-TCK-TLW
	)	
v.	)	
	)	
UNITED STATES OF AMERICA, et al.,	)	
	)	
Defendants.	)	
_____	)	

MOTION TO DISMISS BY UNITED STATES OF AMERICA  
AND ERIC H. HOLDER, JR., ATTORNEY GENERAL

The United States of America and Eric H. Holder, Jr., in his official capacity as Attorney General of the United States (hereinafter collectively referred to as the United States), by their undersigned counsel, hereby move to dismiss the claims of plaintiffs Susan Barton and Gay Phillips against the United States regarding Section 2 of the Defense of Marriage Act ("DOMA"), 28 U.S.C. § 1738C, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

1. Plaintiffs lack standing to pursue their claims regarding the constitutionality of Section 2, in that they have not sought recognition of their California marriage in Oklahoma and that, in any event, any refusal by Oklahoma to recognize plaintiffs' marriage would be attributable to Oklahoma law rather than to Section 2. The grounds for this aspect of the United States' motion to dismiss are more fully set forth in the accompanying Brief in Support of Motion to Dismiss by United States of America and Eric H. Holder, Jr., Attorney General, and Brief in Partial Opposition to Plaintiffs' Motion for Summary Judgment.

2. The United States also respectfully requests that the Court rule on plaintiffs' challenge to the constitutionality of Section 3 of DOMA, 1 U.S.C. § 7. As the President and the Attorney General have stated, the Department of Justice will no longer defend the constitutionality of Section 3 as applied to legally married same-sex couples. Pursuant to the President's direction, however, Executive departments and agencies will continue to comply with Section 3 unless and until it is repealed by Congress or there is a definitive ruling by the Judicial Branch that Section 3 is unconstitutional. The United States is named as a defendant in this case, and the Department of Justice represents this defendant. Only a judgment against the United States could afford plaintiffs the relief they seek, and only a judgment for or against the United States can definitively resolve the case or controversy between these parties.

The Bipartisan Legal Advisory Group ("BLAG") of the United States House of Representatives has intervened in this case for the limited purpose of defending the constitutionality of Section 3 of DOMA (Doc. 178). BLAG is scheduled to file a cross-motion for summary judgment as an intervenor regarding plaintiffs' constitutional challenge to Section 3 (Doc. 191). The Department of Justice believes that Congress's interest in the constitutional validity of a law does not itself confer standing to enter an action as a party. The Attorney General is committed, however, to providing Congress a full and fair opportunity to participate in this litigation. Accordingly, although the Department intends to file a brief, in response to BLAG's cross-motion for summary judgment, that presents the government's position on plaintiffs' constitutional challenge to Section 3 (Doc. 191), the United States submits this motion as a procedural matter, to ensure that this Court can consider arguments on both sides of the constitutional issue and to ensure that this Court has jurisdiction to enter judgment on the basis of those arguments.

If this Court agrees with BLAG on the constitutionality of Section 3 of DOMA, it should dismiss plaintiffs' claim against Section 3 and enter judgment for the United States on that issue. If this Court agrees with plaintiffs and the United States as to the constitutionality of Section 3, it should not dismiss that claim, but rather should enter such relief as is appropriate given the procedural posture of this action at the time of such determination.

Dated this 19th day of October, 2011.

Respectfully submitted,

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Assistant Attorney General

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United States Attorney

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s/ W. Scott Simpson

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UNITED STATES OF AMERICA  
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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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s/ W. Scott Simpson

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W. SCOTT SIMPSON