

2009 WL 1471476 (C.D.Cal.) (Trial Pleading)  
United States District Court, C.D. California.

Arthur SMELT et al,  
v.  
UNITED STATES OF AMERICA et al.

No. 809CV00286.  
March 9, 2009.

Dept.C10

**Complaint for Declaratory and Injunctive Relief**

Note: This document was obtained from the above titled case. (PDF information below.)

Court: Superior Court of the State of California County of Orange, Central Justice Center

Title: Arthur Smelt and Christopher Hammer, Plaintiffs, Vs. United States of America, State of California, and Does 1 through 1,000, Inclusive, Defendants.

Docket Number: Case No.: 00116748

Date: 03/09/2009

Richard C. Gilbert / SBN 85912, 950 West Seventeenth Street, Suites D & E, Santa Ana, California 92706-3573, Telephone: 714-667-1038, Fax: 714-667-2388, Attorney for Plaintiffs.

Judge Corey S. Cramin.

**INTRODUCTION**

1. Jurisdiction is proper in the California State Superior Court because the State of California is a defendant and the Constitution of the State of California is at issue. Original federal question jurisdiction of this Court is proper pursuant to 28 U.S.C. §§ 1331 and 1343. Jurisdiction for declaratory and injunctive relief is proper under 28 U.S.C. §§ 2201 and 2202, and Rule 65 Fed. R. Civ. Proc.

**STATEMENT OF FACTS**

2. Plaintiffs are a same-sex couple who married lawfully within the State of California on or subsequent to July 10, 2008. A true and correct copy of the License and Certificate of Marriage is attached hereto and incorporated herein as Exhibit "A".

3. The refusal of all states and jurisdictions of the United States of America to recognize the validity of Plaintiffs' lawful marriage results in the denial of hundreds of state law rights, benefits and responsibilities, and more than a thousand federal rights, benefits, and responsibilities, that are automatically bestowed upon opposite-gender couples who marry in every state or jurisdiction of the United States of America that refuses to recognize the validity of Plaintiffs' lawful marriage.

4. Some of these automatic rights, benefits and responsibilities are: The right to social security survivor benefits;

decision-making authority for funeral arrangements and disposition of the body; the right to bereavement leave in the event of a partner's death; the presumption that both spouses are the legal parents of a child born during marriage; and, the right to community property, and a share of separate property, upon the death of a partner who dies intestate.

5. Denial of the recognition of Plaintiffs' lawful marriage has caused Plaintiffs to suffer severe emotional distress, humiliation, mental anguish, a loss of liberty and the pursuit of happiness, a denial of equal protection of the laws, a denial of due process of law, a denial of the exercise of freedom of speech, a denial of freedom of association, a denial of privacy rights, and a denial of the right to travel to establish residency anywhere in the United States with full recognition of the legality of Plaintiffs' marriage.

6. The Federal Definition of Marriage Act (1 U.S.C. § 7) is gender-specific, defining marriage as between one man and one woman at the exclusion of same-gender couples and is, therefore, unconstitutional.

7. Federal law provides that States do not have to recognize or give effect to legal relationships of same-gender couples that are treated as a marriage under the laws of another state (28 U.S.C. § 1738c), and, therefore, restricting same-gender couples' rights to specific jurisdictions, in contrast to opposite-sex couples, is unconstitutional.

8. In this lawsuit, Plaintiffs ask for a permanent injunction compelling the 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. Plaintiffs further seek declaratory judgment establishing any law that restricts Plaintiffs' rights or distinguishes Plaintiffs' rights in any way from any opposite gender married couple to be unconstitutional, under the United States Constitution, including all provisions of the Federal Defense of Marriage Act. 1 U.S.C. § 7 and its sub-parts

## PARTIES

9. Plaintiffs are Arthur Bruno Smelt and Christopher David Hammer. Plaintiffs have been in a committed relationship since January 1, 1997. Plaintiffs have exchanged wedding rings and participated in a marriage ceremony in 1997 as a demonstration of their love and affection for one another, their desire to be married spouses, and a family unit forever. As a further demonstration of Plaintiffs' love and affection for one another, Plaintiffs applied for and received a Declaration of Domestic Partnership from the State of California dated January 10, 2000. Plaintiffs reside in Orange County, California.

10. Defendant is the United States of America. Defendant refuses to give legal recognition to Plaintiffs' marriage license solely based on gender. Plaintiffs are a same-sex couple who married lawfully within the State of California on or subsequent to July 10, 2008. A true and correct copy of the License and Certificate of Marriage is attached hereto and incorporated herein as Exhibit "A".

11. Defendants are the United States of America and DOES 1 through 1,000.

12. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, associate or otherwise of Defendants sued herein as DOES 1 through 1,000, inclusive, and therefore sues said Defendants by such fictitious names and will amend this Complaint to show their true names and capacities when ascertained.

13. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, Defendants, and each of them, were agents, servants, and employees of each of the remaining Co-defendants and were acting within the course and scope of said agency and employment and with the consent and permission of each of the remaining Co-defendants.

14. Plaintiffs are informed and believe and thereon allege that each of said Defendants is responsible in some manner for the events alleged herein and negligently and proximately caused injuries and damage to Plaintiff as hereinafter set forth.

15. The Federal Definition of Marriage Act (1 U.S.C. § 7) defines the words "marriage" to mean "only a legal union between one man and one woman as husband and wife," and "spouse" to refer to "only a person of the opposite sex who is a husband or a wife."

16. Federal law provides that “no state... of the United States... may be required to give effect to any public act, record, or judicial proceeding of any other state... respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state... arising from such relationship” (28 U.S.C. § 1738c).

#### CLAIMS FOR RELIEF

17. The Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, violate the individual constitutional rights as prescribed by the United States Constitution, to wit: Violation of the Equal Protection and Due Process Clauses and violation of the Right to Life, Liberty and the Pursuit of Happiness. The prohibition further violates the right to be free from an undue invasion of the Right of Privacy; and violates the Ninth Amendment Right of Reservation of all Rights not Enumerated to the People, and the Right to Travel, and The Right of Free Speech,

18. The Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, violate the liberty interests protected by the Due Process Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

19. The Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, violates and discriminates on the basis of gender in violation of the Equal Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

20. The Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, violates and discriminates on the basis of sexual orientation in violation of the Equal Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

21. The Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, violates the privacy interests protected by the Right to Privacy (*Griswold v. Connecticut*, 381 U.S. 479 (1965)).

22. The Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, additionally violates the Full Faith and Credit Clause of Article Five of the United States Constitution (28 U.S.C. § 1738).

23. The Federal Definition of Marriage Act (28 U.S.C. 1738c), if concluded to exclude same-gender couples, violates the individual constitutional rights as prescribed by the United States Constitution.

24. The Acts violate the liberty interests protected by the Due Process Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

25. The Acts discriminate on the basis of gender in violation of the Equal Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

26. The Acts discriminates on the basis of sexual orientation in violation of Equal Protection Clause of the Fourteenth Amendment (42 U.S.C. § 1983).

27. The Acts violate the privacy interests protected by the Right to Privacy (*Griswold v. Connecticut*, 381 U.S. 479 (1965)).

28. Federal law providing that “no state... of the United States... may be required to give effect to any public act, record, or judicial proceeding of any other state... respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other state...arising from such relationship” (28 U.S.C. § 1738c) is unconstitutional violating Due Process Clause (42 U.S.C. § 1983), the Equal Protection Clause (42 U.S.C. § 1983), and the Right to Privacy (*Griswold v. Connecticut*, 381 U.S. 479 (1965)) of the same-gender couple, and the Full Faith and Credit Clause of the United States Constitution (28 U.S.C. § 1738).

29. Defendant, State of California, caused Proposition 8 to be published on the ballot for the November 4,2008 election. Proposition 8 amends the California Constitution to defined marriage as between a man and a woman and to prohibit same gender marriage. As amended, the State of California Constitution violates the United States Constitution as follows: Violation of the Equal Protection and Due Process Clauses and violation of the Right to Life, Liberty and the Pursuit of Happiness. The prohibition further violates the right to be free from an undue invasion of the Right of Privacy; and violates

the Ninth Amendment Right of Reservation of all Rights not Enumerated to the People, and the Right to Travel, and The Right of Free Speech.

**“FREEDOM MEANS FREEDOM FOR EVERYONE”**

**Vice President Cheney**

WHEREFORE, Plaintiffs pray, and respectfully request that the Court enter judgment:

1. Declaring that the Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, and the Federal Definition of Marriage Act (28 U.S.C. 1738c), and its sub-parts, violate the Due Process, Equal Protection and Right to Privacy Clauses of the United States Constitution;
2. Declaring that the Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, and the Federal Definition of Marriage Act (28 U.S.C. 1738c), and its sub-parts, violates the Due Process, Equal Protection and Right to Privacy Clauses of the United States Constitution;
3. Declaring that the Federal Defense of Marriage Act, Title 1 U.S.C. §7 and all its sub-parts, and the Federal Definition of Marriage Act (28 U.S.C. 1738c), and its sub-parts, violate the Due Process, Equal Protection, Right to Privacy and Full Faith and Credit Clauses of the United States Constitution;
4. Declaring that 28 U.S.C. § 1738c violates the Full Faith and Credit of the United States Constitution;
5. Declaring that the State of California Constitution as amended by Proposition 8 defining marriage as between a man and a woman thereby banning same gender marriage violates the Constitution of the United States of America to wit: Violation of the Equal Protection and Due Process Clauses and violation of the Right to Life, Liberty and the Pursuit of Happiness. The prohibition further violates the right to be free from an undue invasion of the Right of Privacy; and violates the Ninth Amendment Right of Reservation of all Rights not Enumerated to the People, and the Right to Travel, and The Right of Free Speech.
6. Issue an injunctive order mandating and compelling the State of California to eliminate from its Constitution the amendment which bans same gender marriage and defines marriage as between a man and woman commonly known as Proposition 8.
7. Issue an injunctive order mandating the use of gender-neutral terms in all legislation affecting marriage.
8. Costs, including but not limited to attorneys’ fees; and
9. Granting such other and further relief as the Court deems just and proper.

DATED: December 26, 2008