

2009 WL 1683907 (C.D.Cal.) (Trial Pleading)
United States District Court, C.D. California,
Southern Division.

Arthur SMELT et al., Plaintiffs,
v.
UNITED STATES OF AMERICA et al., Defendants,
and
Proposition 8 Official Proponents Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson; and ProtectMarriage.com - Yes on 8, a Project of California Renewal, Interveners.

No. SACV-09-286 DOC (MLGx).
April 10, 2009.

Answer of Proposition 8 Official Proponents and Campaign Committee

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Footnotes

The Honorable David O. Carter.

Interveners Proposition 8 Official Proponents Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson (collectively referred to as “Proponents”), and Proposition 8 Campaign Committee ProtectMarriage.com - Yes on 8, a Project of California Renewal (the “Committee”), by and through counsel, answer Plaintiffs’ Complaint for Declaratory and Injunctive Relief as follows:

1. Paragraph 1 of the Complaint contains Plaintiffs’ allegations of jurisdiction, which do not require a response. To the extent a response is required, Interveners admit that this Court has federal-question jurisdiction pursuant to 28 U.S.C. § 1331. Interveners lack sufficient information to respond to the remaining allegations concerning jurisdiction; thus those allegations are deemed denied.
2. Interveners lack sufficient information to respond to the allegations in Paragraph 2 of the Complaint; thus they are deemed denied.
3. Interveners deny the allegations in Paragraph 3 of the Complaint, except to admit that state and federal law imposes many responsibilities and bestows many benefits on married couples.
4. Interveners admit that state and federal law imposes many responsibilities and bestows many benefits on married couples. But Interveners lack sufficient information regarding each marital responsibility or benefit identified in Paragraph 4 of the Complaint; thus those particular allegations are deemed denied.

5. Intervenor lack sufficient information to respond to the allegations about emotional distress, humiliation, and mental anguish in Paragraph 5 of the Complaint; thus they are deemed denied. Intervenor deny the remaining allegations in Paragraph 5 of the Complaint.

6. Intervenor deny the allegations in Paragraph 6 of the Complaint, except to admit that the Federal Defense of Marriage Act, 1 U.S.C. § 7, defines the word “marriage” as “a legal union between one man and one woman as husband and wife”

7. Intervenor deny the allegations in Paragraph 7 of the Complaint, except to admit that the Federal Defense of Marriage Act, 28 U.S.C. § 1738c, states that “[n]o State ... shall 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 ... or a right or claim arising from such relationship.”

8. Intervenor acknowledge that Plaintiffs request a very broad injunction in Paragraph 8 of the Complaint, but Intervenor deny that Plaintiffs are entitled to such relief and further deny that this Court has jurisdiction to grant such relief. Intervenor acknowledge that Plaintiffs request a declaratory judgment in Paragraph 8 of the Complaint, but Intervenor deny that Plaintiffs are entitled to such relief and further deny that this Court has jurisdiction to grant such relief.

9. Intervenor lack sufficient information to respond to the allegations in Paragraph 9 of the Complaint; thus they are deemed denied.

10. Intervenor lack sufficient information to respond to the allegations in Paragraph 10 of the Complaint; thus they are deemed denied.

11. Intervenor acknowledge that Plaintiffs have asserted claims against the United States of America and DOES 1 through 1,000, but Intervenor deny that Plaintiffs are entitled to any remedy or relief against those Defendants.

12. The allegations in Paragraph 12 of the Complaint are directed solely at DOES 1 through 1,000; thus Intervenor need not respond to those allegations. To the extent a response is required, Intervenor deny that Plaintiffs are entitled to any relief against DOES 1 through 1,000.

13. The allegations in Paragraph 13 of the Complaint are directed solely at Defendants; thus Intervenor need not respond to those allegations. To the extent a response is required, Intervenor lack sufficient information to respond to those allegations; thus they are deemed denied.

14. The allegations in Paragraph 14 of the Complaint are directed solely at Defendants; thus Intervenor need not respond to those allegations. To the extent a response is required, Intervenor deny those allegations.

15. Intervenor admit the allegations in Paragraph 15 of the Complaint.

16. Intervenor admit the allegations in Paragraph 16 of the Complaint, except to note that Plaintiffs have slightly misquoted the language of 28 U.S.C. § 1738c.

17. Intervenor deny the allegations in Paragraph 17 of the Complaint.

18. Intervenor deny the allegations in Paragraph 18 of the Complaint.

19. Intervenor deny the allegations in Paragraph 19 of the Complaint.

20. Intervenor deny the allegations in Paragraph 20 of the Complaint.

21. Intervenor deny the allegations in Paragraph 21 of the Complaint.

22. Intervenor deny the allegations in Paragraph 22 of the Complaint.

23. Intervenors deny the allegations in Paragraph 23 of the Complaint.

24. Intervenors deny the allegations in Paragraph 24 of the Complaint.

25. Intervenors deny the allegations in Paragraph 25 of the Complaint.

26. Intervenors deny the allegations in Paragraph 26 of the Complaint.

27. Intervenors deny the allegations in Paragraph 27 of the Complaint.

28. Intervenors deny the allegations in Paragraph 28 of the Complaint.

29. Intervenors deny the allegations in Paragraph 29 of the Complaint, except to admit that Proposition 8 appeared on California's November 2008 ballot, and that Proposition 8 amended the California Constitution to state that "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Const. art. I, § 7.5.

30. The remainder of the Complaint is a prayer for relief that does not require a response. To the extent that a response is required, Intervenors deny that Plaintiffs are entitled to, or that this Court has jurisdiction to grant, the relief requested.

31. Intervenors deny each and every allegation not expressly admitted herein.

First Affirmative Defense

Plaintiffs have failed to state a claim upon which relief can be granted.

Second Affirmative Defense

Plaintiffs lack standing to assert the claims in their Complaint.

Third Affirmative Defense

Defendants are immune from suit.

Fourth Affirmative Defense

Defendants' acts were not the proximate cause of Plaintiffs' alleged injuries.

Fifth Affirmative Defense

Neither the challenged provisions nor Defendants have deprived Plaintiffs of any right or privilege guaranteed by the United States Constitution.

WHEREFORE, Intervenors respectfully request that this Court dismiss Plaintiffs' claims with prejudice, deny Plaintiffs' prayer for relief, order Plaintiffs to pay Intervenors' costs and attorneys' fees, and grant other relief deemed just and proper.

Dated: April 8, 2009

<<signature>>

Andrew P. Pugno (CA Bar No 206587)

ATTORNEYS FOR PROPOSED Intervenors

* Pro hac vice applications to be filed