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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Nelda Majors, et al.,

Plaintiffs,

vs.

Tom Horne, et al.,

Defendants.

2:14-cv-00518 JWS

ORDER AND OPINION

[Re: Motions at dockets 59 and 82]

I. MOTIONS PRESENTED

At docket 59 plaintiffs move for summary judgment. Defendants respond at docket 83, and plaintiffs reply at docket 85. Defendants move for summary judgment at docket 82. Plaintiffs respond at docket 85, and defendants' reply has not yet been filed. Oral argument was not requested and, given recent developments in the law of the Ninth Circuit, would not be of assistance to the court.

II. BACKGROUND

Plaintiffs are same-sex couples who were married in another jurisdiction and seek to have Arizona recognize their marriages, same-sex couples who wish to wed in Arizona, and an organization that purports to represent the interests of same-sex

1 couples in Arizona. There are provisions of Arizona law that make it impossible for
2 same-sex couples to wed in Arizona and which also make it impossible for Arizona to
3 recognize the validity of same-sex marriages lawfully entered in other jurisdictions. The
4 provisions at issue are Article 30, Section 1, of the Arizona Constitution which states
5 that only a marriage between one man and one woman is valid and recognizable in
6 Arizona; A.R.S. § 25-101(C) which provides that same-sex marriage is prohibited in
7 Arizona; and A.R.S. § 25-125(A) which defines marriage as between a male and female
8 person (collectively “the challenged laws”). Plaintiffs ask the court to declare that the
9 challenged laws deny them equal protection of the law and therefore are invalid under
10 the United States Constitution. They also ask the court to permanently enjoin the
11 enforcement of the challenged laws. Defendants deny that the laws violate the United
12 States Constitution.

13 **III. DISCUSSION**

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15 When the pending motions were filed the law of this circuit was not clear. Thus,
16 resolution of the motions would have required this court to write a lengthy decision.
17 However, the Court of Appeals for the Ninth Circuit recently ruled that substantially
18 identical provisions of Nevada and Idaho law that prohibit same-sex marriages are
19 invalid because they deny same-sex couples equal protection of the law, the right to
20 which is guaranteed by the Constitution of the United States.¹ This court is bound by
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26 ¹*Latta v. Otter*, ___ F.3d ___, Nos. 14-35420, 14-35421, and 12-17668, 2014 WL 4977682
27 (9th Cir. Oct. 7, 2014).

1 decisions of the Court of Appeals for the Ninth Circuit.² For that reason, plaintiffs are
 2 entitled to a declaration that the challenged laws are unconstitutional together with a
 3 permanent injunction prohibiting enforcement of the challenged laws.

4 A stay of this decision to allow defendants to appeal is not warranted. It is clear
 5 that an appeal to the Ninth Circuit would not succeed. It is also clear—based on the
 6 Supreme Court’s denial of petitions for writs of certiorari filed in connection with several
 7 circuit court decisions which held that same-sex marriage must be recognized in
 8 Indiana,³ Oklahoma,⁴ Utah,⁵ Virginia,⁶ and Wisconsin⁷—that the High Court will turn a
 9 deaf ear on any request for relief from the Ninth Circuit’s decision.

10 **IV. CONCLUSION**

11 For the reasons given in the preceding section of this order, plaintiffs’ motion for
 12 summary judgment at docket 59 is granted as follows: this court hereby declares
 13 Article 30, Section 1, of the Arizona Constitution; A.R.S § 25-101©; and A.R.S. § 25-
 14 125(A) unconstitutional because they deny same-sex couples the equal protection of
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 19 ²See *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001) (“Circuit law . . . binds all
 20 courts within a particular circuit, including the court of appeals itself. Thus, the first panel to
 21 consider an issue sets the law not only for all the inferior courts in the circuit, but also future
 22 panels of the court of appeals.”) (citation omitted).

23 ³*Bogan v. Baskin*, No. 14-277, 2014 WL 4425162 (U.S. Oct. 6, 2014).

24 ⁴*Smith v. Bishop*, No. 14-136, 2014 WL 3854318 (U.S. Oct. 6, 2014).

25 ⁵*Herbert v. Kitchen*, No. 14-124, 2014 WL 3841263 (U.S. Oct. 6, 2014).

26 ⁶*McQuigg v. Bostic*, No. 14-251, 2014 WL 4354536 (U.S. Oct. 6, 2014); *Rainey v.*
Bostic, No. 14-153, 2014 WL 3924685 (U.S. Oct. 6, 2014); *Schaefer v. Bostic*, No. 14-225,
 2014 WL 4230092 (U.S. Oct. 6, 2014).

27 ⁷*Walker v. Wolf*, No. 14-278, 2014 WL 4425163 (U.S. Oct. 6, 2014).

1 the law. It is further ordered that defendants are hereby ordered to permanently cease
2 enforcement of those provisions of Arizona law declared unconstitutional by this order.
3 The court declines to stay the effect of this order. Defendants' cross-motion for
4 summary judgment is denied as moot.
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6 DATED this 16th day of October 2014.

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9 /s/ JOHN W. SEDWICK
10 UNITED STATES DISTRICT JUDGE
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