

Pursuant to Rule 1028 of the Pennsylvania Rules of Civil Procedure, Defendants Robert Seneca and Stephen Stahl ("Defendants"), by their undersigned counsel, preliminarily object to Plaintiffs' Action for Declaratory Judgment - Complaint. In support of these Preliminary Objections, Defendants state as follows:

1. The present Complaint is brought under the Declaratory Judgments Act, 42 Pa.C.S.A. §§7531-41, by twelve members of the Pennsylvania Legislature who "voted for" or "support" Pennsylvania's Defense of Marriage Act, 23 Pa.C.S.A. § 1704, and Pennsylvania's Marriage Law, 23 Pa.C.S.A. § 1102, as well as Creative Pultrusions, Inc., a private corporation that has alleged only that "its benefits package that cover [sic] spouses will be greatly expanded by allowing a new class of individuals to 'marry' each other." Compl. ¶¶ 1-3, 9-10.
2. In their Complaint, Plaintiffs seek a declaration "that Pennsylvania's Defense of Marriage Act, 23 Pa.C.S.A. § 1704, and the rest of Pennsylvania's Marriage Law, specifically 23 Pa.C.S.A. § 1102, are constitutional under both the Federal and state constitutions even though they do not allow same-sex couples to marry." Compl. at p. 9 ("Wherefore" clause).
3. Defendants Robert Seneca and Stephen Stahl are two individuals who, Plaintiffs allege, "appeared before Bucks County Register of Wills, Barbara G. Reilly for a marriage-license application" and "were refused an application." Compl. ¶ 12-13. Plaintiffs do not allege that Defendants have taken any further legal action on their application.
4. This Court should grant Defendants' Preliminary Objections and dismiss Plaintiffs' Complaint because the Complaint fails to state a claim under the Declaratory Judgments Act, 42 Pa.C.S.A. §§ 7531-41, because it seeks an advisory opinion by failing to state

a claim that is ripe for adjudication, is justiciable, or presents an actual case or controversy, and because Plaintiffs lack standing.

5. Defendants also move to strike paragraphs 27 through 31 of the Complaint because such paragraphs contain scandalous and impertinent matter and improperly cast a derogatory light on Defendants.

FIRST PRELIMINARY OBJECTION
Plaintiffs' Complaint Fails to State a Claim That Is Ripe for Adjudication,
That Is Justiciable, or Presents an Actual Case or Controversy
Demurrer - Rule 1028(a)(4)

6. Defendants incorporate by reference paragraphs 1 through 5 above.

7. Plaintiffs' Complaint has failed to state a claim under the Declaratory Judgments Act, 42 Pa.C.S.A. §§ 7531-41.

8. The Declaratory Judgment Act, 42 Pa.C.S.A. §§7531-41, does not allow legislators who have passed legislation to maintain an action to obtain "a judicial pronouncement upon the constitutionality of [their] own voluntary enactment." *Township of Whitehall v. Oswald*, 161 A.2d 348, 349 (Pa. 1960).

9. Moreover, no facts have been pled by Plaintiffs to demonstrate that a real case or controversy exists, or that this action is ripe or justiciable. Rather, Plaintiffs have improperly sued in anticipation of litigation and events that may never occur. *See Gulnac v. S. Butler County Sch. Dist.*, 587 A.2d 699, 701 (Pa. 1991).

10. Under Pennsylvania law, statutes such as Pennsylvania's Defense of Marriage Act, 23 Pa.C.S.A. § 1704, and Pennsylvania's Marriage Law, 23 Pa.C.S.A. § 1102, are presumed constitutional. *Commonwealth v. McCafferty*, 758 A.2d 1155, 1160 (Pa. 2000).

Plaintiffs have not alleged that this usual presumption of constitutionality attaching to state statutes does not apply here.

11. Moreover, under Pennsylvania law, a party may obtain a declaratory judgment only when there is a real controversy, and a trial court may not reach a constitutional issue when doing so would, as in the present case, have no practical effect on the parties. *Gulnac*, 587 A.2d at 701.

12. Plaintiffs have not alleged that Defendants have taken any legal action to vindicate any rights they may have or that Defendants have taken any steps to infringe upon any legally-protected interests Plaintiffs may have.

13. Plaintiffs have not alleged that any suit or challenge has been brought, or that any court has declared Pennsylvania's Defense of Marriage Act, 23 Pa.C.S.A. § 1704, and Pennsylvania's Marriage Law, 23 Pa.C.S.A. § 1102, unconstitutional under the state or federal constitutions.

14. Plaintiffs have merely alleged that Defendants "wish[] to have a legally recognized marriage," Compl. ¶ 11, "appeared before Bucks County Register of Wills, Barbara G. Reilly for a marriage license," Compl. ¶ 12, were "refused an application because they are two men," Compl. ¶ 13, and have stated that "they plan to challenge the denial of the license in court," Compl. ¶ 17, as unconstitutional under both the federal and state constitutions, Compl. ¶ 18.

15. Moreover, Creative Pultrusions' allegations that "its benefits package that cover [sic] spouses will be greatly expanded by allowing a new class of individuals to 'marry' each other," Compl. ¶ 10, is "merely anticipatory, speculative and too remote to support its claim of direct and immediate harm," *Pennsylvania Dental Hygienists' Ass'n v. State Bd. of Dentistry*,

672 A.2d 414, 417 (Pa. Commw. Ct. 1996), and fails to identify or describe with any specificity how any supposed harm would occur.

16. Plaintiffs seek an advisory opinion and have therefore as a matter of law failed to state a claim that is ripe for adjudication, is justiciable, or presents an actual case or controversy.

WHEREFORE, Defendants respectfully request that the Complaint be dismissed for legal insufficiency because the Complaint fails to state a claim under the Declaratory Judgment Act, and seeks an advisory opinion by failing to state a claim that is ripe for adjudication, is justiciable, or presents an actual case or controversy.

SECOND PRELIMINARY OBJECTION
Plaintiffs Lack Standing to Bring the Present Action
Demurrer – Rule 1028(a)(4)
Lack of Capacity to Sue - Rule 1028(a)(5)

17. Defendants incorporate by reference paragraphs 1 through 16 above.

18. Plaintiffs Egolf, Armstrong, Baker, Metcalfe, Phillips, Stern, True, and Yewcic (Plaintiff Legislator Group 1) allege that they voted for or, if they were not legislators at the time, later supported 23 Pa. C.S.A. §§ 1102, 1704, and have an interest “in the will of the legislature being upheld.” Compl. ¶ 9.

19. Plaintiffs Creighton, Denlinger, Maitland, and Rohrer (Plaintiff Legislator Group 2) have alleged that they voted for or, if they were not legislators at the time, later supported 23 Pa.C.S.A. §§ 1102, 1704, Compl. ¶ 2, but have not alleged any interest.

20. Under Pennsylvania law, in order to have standing, Plaintiffs must assert and show an adverse effect on a direct and substantial interest in the outcome of this action and a sufficiently close causal connection between the matter at issue and their asserted injury so that

Plaintiffs' interest in the action is immediate rather than remote or speculative. *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 286 (Pa. 1975); *Wilt v. Beal*, 363 A.2d 876, 879 (Pa. Commw. Ct. 1976). Persons not adversely affected or aggrieved in any way by the matter at issue or who assert only the abstract or common interest of the public have no standing to obtain a judicial resolution of a matter. *Wm. Penn Parking Garage*, 346 A.2d at 280-82.

21. Neither Plaintiff Legislator Group 1 nor Plaintiff Legislator Group 2 has alleged any direct, substantial, and immediate interest that has been adversely affected by Defendants. "So long as [a statute] is unquestioned, its constitutional validity remains established" and Plaintiff Legislators are "therefore, without standing to invoke the jurisdiction of [the Court] for the purpose of having the constitutionality of [the statute] adjudicated in a declaratory judgment proceeding." *Township of Whitehall*, 161 A.2d at 349.

22. Furthermore, Plaintiff Legislator Group 1's stated interest in having the will of the legislature upheld is not as a matter of law a sufficient basis upon which it can assert standing. Rather, after "votes which they are entitled to make have been cast and duly counted, their interest as legislators ceases. Some other nexus must be found" to provide legislators with standing to litigate in support of the effectiveness of legislation for which they voted. *Wilt*, 363 A.2d, at 881.

23. Plaintiff Creative Paltrusions has alleged that it has standing as a private business based on the possibility of its benefits package being "greatly expanded." Compl. ¶ 10.

24. Plaintiff Creative Paltrusions, as a private business, has failed to allege any direct, substantial, and immediate interest in this litigation. See *Wm. Penn Parking Garage*, 346 A.2d at 286. Instead, the only harm it alleges is "anticipatory, speculative and too remote" to support standing. *Pennsylvania Dental Hygienists' Ass'n*, 672 A.2d at 418.

25. Plaintiff Creative Pultrusions has also alleged that it has standing as a taxpayer based on the "additional state spending required to give benefits to a new class of 'married' individuals." Compl. ¶ 10.

26. Plaintiff Creative Pultrusions, as a taxpayer, has failed to allege a sufficient basis for taxpayer standing. See *Application of Biester*, 409 A.2d 848, 851-52 (Pa. 1979); *Wm. Penn Parking Garage*, 346 A.2d at 286.

WHEREFORE, Defendants respectfully request that the Complaint be dismissed because Plaintiffs do not have standing to seek a declaratory judgment in this action.

THIRD PRELIMINARY OBJECTION
Motion to Strike Scandalous and Impertinent Matter in Paragraphs 27 Through 31
Inclusion of Scandalous or Impertinent Matter - Rule 1028(a)(2)

27. Defendants incorporate by reference paragraphs 1 through 26 above.

28. Pursuant to Pa.R.C.P. 1028(a)(2), the Court may strike scandalous and impertinent matter from a complaint.

29. Allegations are scandalous and impertinent if they are immaterial or inappropriate to the proof of a cause of action or improperly cast a derogatory light on a party. *Common Cause/Pennsylvania v. Commonwealth*, 710 A.2d 108, 115 (Pa. Commw. Ct. 1998); *Dep't of Environ. Resources v. Peggs Run Coal Co.*, 423 A.2d 765, 769 (Pa. Commw. Ct. 1980).

30. Paragraphs 27 through 31 of Plaintiffs' Complaint contain conclusory allegations that are improperly designed to cast a derogatory light on Defendants and upon same-sex couples generally and, are immaterial and inappropriate because they do not provide a rational basis for the constitutionality of Pennsylvania's Defense of Marriage Act, 23 Pa.C.S.A. § 1704, and Pennsylvania's Marriage Law, 23 Pa. C.S.A. § 1102, and therefore should be stricken.

WHEREFORE, Defendants respectfully request that the Court strike paragraphs 27 through 31 of Plaintiffs' Complaint as scandalous and impertinent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Linda Alle-Murphy, hereby certify that on this 17 day of June, 2004, I served a true and correct copy of the foregoing Preliminary Objections of Defendants Robert Seneca and Stephen Stahl to Plaintiffs' Complaint by U.S. First Class Mail, postage prepaid, upon the following:

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