

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

<b>REP. ALLAN EGOLF,</b>	<b>: No. 2004-03160-28-5</b>
<b>REP. GIBSON C. ARMSTRONG,</b>	<b>:</b>
<b>REP. MATTHEW E. BAKER,</b>	<b>:</b>
<b>REP. THOMAS C. CREIGHTON,</b>	<b>:</b>
<b>REP. GORDON DENLINGER,</b>	<b>:</b>
<b>REP. STEPHEN R. MAITLAND,</b>	<b>:</b>
<b>REP. DARYL METCALFE,</b>	<b>:</b>
<b>REP. MERLE H. PHILLIPS,</b>	<b>:</b>
<b>REP. SAMUEL E. ROHRER,</b>	<b>:</b>
<b>REP. JERRY A. STERN,</b>	<b>:</b>
<b>REP. KATIE TRUE,</b>	<b>:</b>
<b>REP. THOMAS F. YEWICIC, and</b>	<b>:</b>
<b>CREATIVE PULTRUSIONS, INC.</b>	<b>:</b>
	<b>:</b>
<b>vs.</b>	<b>:</b>
	<b>:</b>
<b>ROBERT SENECA and</b>	<b>:</b>
<b>STEPHEN STAHL</b>	<b>:</b>

**ORDER AND OPINION**

This case comes before the Court through Defendants' Preliminary Objections to Plaintiffs' Declaratory Judgment action wherein Plaintiffs have asked this Court to declare Pennsylvania's Defense of Marriage Act, 23 Pa. C.S.A. §1704 and Pennsylvania's Marriage Law, 23 Pa. C.S.A. §1102 constitutional. Defendants assert that Plaintiffs' Complaint should be stricken because Plaintiffs lack standing and due to Plaintiffs failure to state a claim that is ripe for adjudication.

**PROCEDURAL BACKGROUND**

On March 15, 2004, Defendants, Robert Seneca and Stephen Stahl, appeared before the Bucks County Register of Wills to obtain a marriage license. According to Plaintiffs' Complaint, Defendants were "refused an application because they are two men, rather than one man and one woman" (Plaintiff's Complaint, ¶¶ 12-13). To date,

Defendants have not taken any further action regarding their marriage application nor have they challenged the constitutionality of Pennsylvania's Marriage Laws in any court (Plaintiff's Complaint, ¶¶ 12-13).

On May 14, 2004, Plaintiffs filed a Declaratory Judgment Action requesting that we declare the above referenced statutes constitutional. Plaintiffs are twelve (12) State Representatives who “sponsored,” “voted for” or who “support” Pennsylvania's Defense of Marriage Act, 23 Pa.C.S.A. §1704 and Pennsylvania's Marriage Law, 23 Pa.C.S.A. §1102. Creative Pultrusions, Inc., a Pennsylvania corporation, is also a named Plaintiff (Plaintiffs' Complaint, ¶¶ 1-3, 7).

The State Representatives allege they have standing to bring this action because they are either Legislators who voted for §1704 and §1102 or who currently support the legislation and have an interest in seeing that “the will of the legislature be upheld” (Plaintiffs' Complaint, ¶ 9). Creative Pultrusions asserts standing because, as a business, its employee benefits packages that cover spouses would be greatly expanded if a new class of individuals were permitted to marry. Creative Pultrusions also asserts standing on the basis that as a taxpayer it would be affected by additional state spending providing benefits to a new class of married individuals (Plaintiffs' Complaint, ¶ 10).

On June 17, 2004, Defendants filed the preliminary objections to the Complaint wherein they moved for the dismissal of Plaintiffs' Complaint because:

- The Complaint fails to state a claim under the Declaratory Judgment Act, 42 Pa.C.S.A. §§7531-41;
- The Complaint seeks an impermissible advisory opinion from the Court;
- The Complaint fails to state a claim that is ripe for adjudication, is justiciable and does not present an actual case or controversy; and

- Plaintiffs lack standing.

(Defendants' Preliminary Objections, ¶ 4).

Thus, the essence of the issues before this Court are whether Plaintiffs have standing to bring this action and whether Plaintiffs have asserted a claim that is ripe for adjudication. The issue of 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 is not currently before the Court.

### DISCUSSION

It is not often that controlling Supreme Court precedent is directly on point to a case under consideration. As it relates to the issues before this Court, Township of Whitehall v. Oswald, 161 A.2d 348 (Pa. 1960) is that precedent. In Township of Whitehall the Plaintiff Township sought Declaratory Judgment regarding an ordinance prohibiting occupation in any trailer outside a duly permitted trailer park. After passage of the ordinance, two land owners purchased and occupied trailers in the township, outside of a duly permitted trailer park. Without attempting to enforce the ordinance against the trailer owners, the Township filed a Declaratory Judgment action seeking to have the ordinance declared constitutional. The Trial Court agreed to consider the request and found the ordinance constitutional. Township of Whitehall, 161 A.2d at 349-350.

In reversing the Trial Court, the Pennsylvania Supreme Court held that a municipality does not have standing to invoke the jurisdiction of the Court for purposes of having the constitutionality of an ordinance adjudicated in a Declaratory Judgment proceeding. In refusing to grant the Declaratory Judgment and in finding that Plaintiffs

had no standing to bring the action, the Supreme Court frowned upon the concept of a legislative body seeking a judicial pronouncement on the constitutionality of its own statute. The Court found that process to be “unorthodox,” “extraordinary,” and “irresponsible.” The Court further stated that:

To construe the Uniform Declaratory Judgments Act, 12 P.S. §831 et seq., as granting such a right to a governmental body would be to encourage legislative irresponsibility and to constitute the courts the legal advisers of municipalities with respect to their legislative enactments. If a question concerning the constitutionality of an ordinance is to be passed upon by a court, it can be done properly only as the sequence of an actual controversy based upon a sufficient allegation by a complainant that he is being harmed or threatened with imminent harm in violation of his constitutionally protected rights.

Township of Whitehall, 161 A.2d at 349.

Identical to the municipality in Township of Whitehall, the Plaintiff Legislators in the case before us have requested an advisory opinion on their own legislative enactment. Like the Court in Township of Whitehall, we find this request to be “extraordinary,” and respectfully decline to act as the “legal adviser” of the Legislative Branch.

Plaintiffs have also offered no explanation as to why Township of Whitehall does not mandate dismissal of their action except to argue that as Legislators they have an interest to see that their “will” be upheld. Simply being part of a legislative body that passes laws does not grant members of that legislature standing to file a Declaratory Judgment Action on the constitutionality of that law. Township of Whitehall, 161 A.2d at 349.

Nor are we persuaded by the precedent cited by Plaintiffs, which they assert provides a legal basis for their standing to maintain this action. In each of these cases, in which the legislators were found to have standing, the cause of action pertained to

procedural infringements on the legislators' legislative functions. *See Zemprelli v. Daniels*, 436 A.2d 1165 (Pa. 1981) and *Ritter v. Commonwealth*, 548 A.2d 1317 (Pa. Cmwlth. 1988), affirmed, 557 A.2d 1064 (Pa. 1989). Here, however, the Plaintiffs are not challenging infringements on their own legislative functions, but are claiming that they have standing because they sponsored, voted for, or support Pennsylvania Marriage Laws.

Plaintiff Creative Pultrusions, Inc. claims it has standing because if the Marriage Laws in question are declared unconstitutional, its employee benefits package will be affected because it will have to pay more for same-sex partners (Plaintiffs' Complaint, ¶10). We cannot envision a more speculative pleading. This pecuniary interest argument fails because Creative Pultrusions, Inc. has not precisely explained how it will be affected and has not even alleged that any of its employees would attempt to receive such benefits. More to the point, the harm alleged by Creative Pultrusions has not yet occurred.

Nor do the facts alleged in Plaintiffs' Complaint state a claim that is ripe for adjudication. Plaintiffs allege in their Complaint and argued before this Court that they will be harmed because Defendants' challenge to the marriage statutes in question are "imminent" (Plaintiffs' Complaint, ¶ 6). Plaintiffs base this assertion on the fact that: 1) Defendants sought a marriage license; and 2) Defendants announced to the press that they intended to challenge 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. These facts are woefully inadequate to establish that any harm to Plaintiffs is "imminent." *See, Silo v. Ridge*, 728 A.2d 394, 398 (Pa. Cmwlth. 1999) (A declaratory judgment is not appropriate to determine rights in anticipation of events which may never occur but is

appropriate where there is imminent and inevitable litigation.); Boyle v. Commonwealth, 617 A.2d 70, 72 (Pa. Cmwlth. 1992) (Declaratory relief is not available unless an actual controversy exists or is imminent or inevitable.)

Imminent means “threatening to occur immediately.” Webster’s New International Dictionary 1245 (2<sup>nd</sup> Ed. 1938). Whatever the Defendants’ intentions are, their statements to the press, without more, do not, for purposes of deciding whether a controversy is “ripe,” qualify as “imminent.” To hold otherwise would set untenable precedent that posturing before the media equates to “inevitable litigation.”

Defendants have not taken any legal action regarding their marriage application, let alone brought an actual challenge to the constitutionality of Pennsylvania's Marriage Laws in any court. If and when that occurs this Court may have the opportunity to examine 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. At this point in time however, Plaintiffs’ request that we do so is simply not ripe for consideration.

### CONCLUSION

Because Plaintiffs lack standing and there is no actual controversy, Defendants’ Preliminary Objections are hereby sustained and Plaintiffs’ Complaint is dismissed. Our Order follows.

**BY THE COURT:**

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**DATE**

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**MITCHELL S. GOLDBERG, J.**

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