

A VICTORY ON DOMA FOR KAREN GOLINSKI



Liberty & Justice by Mirko Ilic

Well, while we ponder what will transpire on the mind numbingly restricted “win” for the Perry Plaintiffs in the 9th Circuit, yet another Northern District of California (NDCA) judge has followed in Vaughn Walker’s footsteps and has sent a large and loud message in favor of Constitutional protection of marriage equality. Judge Jeff White has doomed DOMA in the Karen Golinski case!

These motions compel the Court to determine whether the Defense of Marriage Act (“DOMA”), 1 U.S.C. Section 7, as applied to Ms. Golinski, violates the United States Constitution by refusing to recognize lawful marriages in the application of laws governing benefits for federal employees. Having considered the parties’ papers, relevant legal authority, and the record in this case, the Court HEREBY DENIES BLAG’s motion to dismiss; DENIES as moot BLAG’s motion to strike; GRANTS Ms. Golinski’s motion for summary judgment; and GRANTS the OPM’s motion to dismiss.

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Here, having analyzed the factors, the Court holds that the appropriate level of scrutiny to use when reviewing statutory classifications based on sexual orientation is heightened scrutiny. See also *In re Levenson*, 587 F.3d at 931 (holding that “some form of heightened constitutional scrutiny applies”); *Witt*, 527 F. 3d at 824-25 (Canby, J., concurring in part and dissenting in part) (“classifications against homosexuals are suspect in the

equal protection sense” as gay and lesbian individuals have “experienced a history of purposeful unequal treatment [and] been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities” and “they also exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group; and they are a minority.”). In short, this Court holds that gay men and lesbians are a group deserving of heightened protection against the prejudices and power of an often-antagonistic majority.

The finding of heightened scrutiny because sexual orientation is exactly the proper finding and the further step that Judges Stephen Reinhardt and Michael Hawkins cowardly failed to take in the recent Perry decision. It is the right finding.

Judge Whit goes on in Golinski to knock back all the lame justifications given by H8ters for DOMA, much the same way Walker did at the trial level in Perry. Responsible procreation and child-rearing, nurturing the institution of traditional, opposite-sex marriage, defending traditional notions of morality, preserving scarce government resources....he kills them all. As an extremely nice touch, White also frames his decision against the Constitutionality of DOMA on alternate concurrent inspection as well, fully analyzing and finding against it under a rational basis analysis as well as heightened scrutiny. This dual track type of analysis could have, and should have been done by Reinhardt in Perry, but, for some inexplicable reason, was not.

In concluding, White even gets in a shot at ‘Ole Balls & Strikes Roberts:

As Supreme Court Chief Justice John G. Roberts said during his confirmation hearings: “Judges are like umpires.

Umpires don't make the rules, they apply them. ... it's [the judge's] job to call balls and strikes, and not to pitch or bat." Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 56 (2005) (statement of John G. Roberts, Jr., Nominee).

In this matter, the Court finds that DOMA, as applied to Ms. Golinski, violates her right to equal protection of the law under the Fifth Amendment to the United States Constitution by, without substantial justification or rational basis, refusing to recognize her lawful marriage to prevent provision of health insurance coverage to her spouse. Accordingly, the Court issues a permanent injunction enjoining defendants, and those acting at their direction or on their behalf, from interfering with the enrollment of Ms. Golinski's wife in her family health benefits plan. The Clerk is directed to enter judgment in favor of Ms. Golinski and against defendants the Office of Personnel Management and its director John Berry as set out herein pursuant to Federal Rule of Civil Procedure 58.

That is a nice day's work Judge Jeffrey White.
Well done!