IN THE CIRCUIT COURT FOR
THE 11TH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE
COUNTY, FLORIDA

CIVIL DIVISION

CATHERINA PARETO et al.,

Plaintiffs,

vs.

CASE NO.: 2014-1661-CA-01

HARVEY RUVIN, as Clerk of the
Court of Miami-Dade County, Florida,
in his official capacity,

Defendant.
_____/

ORDER DENYING "VERIFIED MOTION TO INTERVENE AS PARTY-DEFENDANTS BY INTERVENORS FLORIDA FAMILY ACTION, INC., FLORIDA DEMOCRATIC LEAGUE, INC., AND PEOPLE UNITED TO LEAD THE STRUGGLE FOR EQUALITY, INC."

THIS CAUSE came before the Court on the Proposed Intervenors' "Verified Motion To Intervene As Party-Defendants By Intervenors Florida Family Action, Inc. [FFAI], Florida Democratic League, Inc. [FDL], and People United To Lead The Struggle For Equality, Inc. [PULSE]" The Court, having reviewed the motion, the memorandum of law in support of the motion, the Plaintiff's memorandum in opposition thereto, having heard the argument of counsel, and being otherwise fully advised in the premises, hereby finds as follows:

1. The three aforementioned groups have moved to intervene as party-defendants in this case in which the Plaintiffs seek a declaration that Amendment 2 of the Florida Constitution, as well as Florida Statutes sections 741.04 and 741.212, violate the United States Constitution. Each group states that it played an instrumental role in gathering

signatures to place Amendment 2 on the ballot, and in educating and mobilizing voters to support it. In addition, FFAI actually drafted the Amendment.

2. Intervention is governed by Florida Rule of Civil Procedure 1.230 which states:

> Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.

Although the rule regarding intervention should be liberally construed, there is no absolute right to intervention. *Fla. Wildlife Fed'n v. Internal Imp.*, 707 So. 2d 841, 842 (Fla. 5th DCA 1998); *John G. Grubbs v. Suncoast Excavating, Inc.*, 594 So. 2d 346, 347 (Fla. 5th DCA 1992); *Grimes v. Walton County,* 591 So. 2d 1091, 1094 (Fla. 1st DCA 1992).

3. The Florida Supreme Court has stated that:

> [T]he interest which will entitle a person to intervene . . . must be in the matter in litigation, and of such direct and immediate character that the intervenor will either gain or lose by the operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon the property, or some part thereof, which is the subject of litigation.

Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507-08 (Fla. 1992) (citing *Morgareidge v. Howey, et al.*, 78 So. 14, 15 (Fla. 1918)).

4. The Proposed Intervenors assert that they have direct and immediate interests in the constitutional challenge involved in this case, arguing that if this Court were to grant the Plaintiffs' requested relief, it would "disenfranchise [their] members and *millions of other Floridians*, and will infringe [upon] their constitutional right to amend their state Constitution." (Emphasis added.) They cite to *Dubose v. Kelly*, 181 So. 11 (Fla. 1938) for the argument that they have a right to intervene when their votes are threatened. The instant case, however, is entirely different

from *Dubose*. The intervener in *Dubose* was seeking to preserve his right to vote prospectively in an election. An injunction of the election would have prevented him from exercising his right to vote on the recall petition. Here, the Proposed Intervenors will not be prevented from voting on anything. They fully participated in the democratic process and successfully amended Florida's Constitution. Their right to vote was not infringed upon.

5. The Proposed Intervenors also assert that they have a direct and immediate interest in this case because granting the requested relief would infringe upon their rights to free speech, free exercise of religion, and "other rights attendant to operating businesses and non-profit organizations in accordance with the definition of marriage as currently memorialized in the Florida Constitution." However, the instant case will not and could not have any impact upon such rights. Allowing or disallowing the Plaintiffs to marry would simply not affect anyone's right to state their opinions about their marriages, or same-sex marriages in general, and would not interfere with anyone's religion, business, or non-profit organization.

6. The Proposed Intervenors further assert that that they have a direct and immediate interest in preserving societal norms and the social goods which arise from the institution of marriage. This is a valid interest, but not a "direct and immediate" interest. They also have an interest in whether the Amendment is determined to be constitutional or not, but this interest is also not "direct and immediate."

7. The Proposed Intervenors will not "gain or lose" by the operation or effect of the judgment in this case. Respectfully, the Proposed Intervenors share the same generalized interest that "millions of Floridians" share, rather than an interest in anything directly and immediately affecting the Proposed Intervenors or their members. The Proposed Intervenors have cited no case law, and research has revealed no case law, suggesting that that a law's drafters maintain a special relationship with their bills post-enactment. Although they may have been instrumental in amending the Florida Constitution, the Amendment is now a state law of generalized applicability, and state constitutions and laws are only valid if they comply with the decrees of the Federal Constitution.

8. The proposed intervenors are now in same position as "millions of other Floridians" who have an opinion about the constitutionality of the Amendment. They have no "personal stake" in defending the Amendment's constitutionality of the Amendment that is distinguishable from the general interest of every citizen of Florida. They will not be directly and immediately affected if others enter into a same-sex marriage, or are prevented from entering into a same-sex marriage. The validity of their own marriages will not be affected. The judgment in this case will not order them to do or refrain from doing anything. It will not have any legal impact upon them. If the Proposed Intervenors had a right to intervene in the instant case, then so would anyone who has a strongly held belief regarding the constitutionality of the Amendment and statutes at issue in this suit and anyone with an opinion about the societal norms and the social goods which arise from the institution of marriage. Like the Petitioners in *Hollingsworth v. Perry*, 133 S. Ct. 2652 (U.S. 2013), the Proposed Intervenors will suffer no concrete and particularized injury as a result of this case.

9. The Proposed Intervenors cite *National Wildlife Federation, Inc. v. Glissen*, 531 So. 2d 996 (Fla. 1st DCA 1988) to support the argument that they should be allowed to intervene. *Glissen* involved a challenge to an amendment of a development plan which would curtail development in a particular area and preserve that area's natural habitat and wildlife. A number of individuals filed suit challenging the amendment's validity, and a wildlife organization sought to intervene. Six members of this wildlife organization testified as to their personal use of the area in question as well as the potential impact on their lives and business should the plaintiffs prevail. The First District Court of Appeal found that the proposed intervenors had "clearly demonstrated an interest of such a direct and immediate character that they would either gain or lose by the direct legal operation of the judgment in the plaintiffs' suit."

10. The instant case is distinguishable. Since the proposed intervenors in *Glissen* actually used the land which was the subject of the case, the case had a direct impact upon them. They would gain or lose by the direct legal operation of the judgment in that case, because the judgment would

affect the land they used. Here though, whether or not the Plaintiffs are allowed to marry will not directly impact the Proposed Intervenors. They do not have any kind of connection with the Plaintiffs' relationships such as the *Glissen* proposed intervenors had with the land at issue in that case.

11. The Proposed Intervenors also assert there is no party to argue against the Plaintiffs position, and therefore, they should be allowed to intervene for the sake of zealous advocacy and robust debate. They emphasize that the Clerk of the Court, the Defendant in this case, has taken a neutral position, and that the State of Florida is not a party to this case. However, the fact remains that a Defendant does exist in this case. Just because the Proposed Intervenors do not like the position taken by the Clerk does not give it the right to intervene. Furthermore, the State of Florida has a statutory right to intervene in this case, but so far has chosen not to do so. If the State wishes to advocate its position as to the constitutionality of the Amendment and statutes in question, it could do so. It does not need the Proposed Intervenors to argue on its behalf. Furthermore, the desire for zealous advocacy, by itself, is not a recognized ground for intervention.

12. This Court recognizes that this case involves issues concerning fundamental interests and constitutional rights of the highest importance, but it is capable of analyzing these issues without an intervening party. Nevertheless, amicus memoranda may be useful, and therefore, this Court will allow the Proposed Intervenors to file them if they wish. *See, generally, Union Central Life Ins. Co. v. Carlisle*, 593 So. 2d 505 (Fla. 1992).

Therefore, for the reasons stated herein, it is hereby **ORDERED** and **ADJUDGED** that:

1. The motion to intervene is **DENIED.**

2. FFAI, FDL, and PULSE may file a memorandum as amicus curiae on any motion. The deadline for doing so is the corresponding deadline for the memorandum of the party whose position the amicus curiae support, except when the amicus curiae supports the moving party, the deadline for the

amicus memorandum in support of the motion is the earlier of (a) the deadline for filing the motion, if there is a deadline, or (b) seven days after the filing of the motion. As to the motion for summary judgment, which was filed on May 1, 2014, and is scheduled to be heard on July 2, 2014, if FFAI, FDL, or PULSE which to file an amicus memorandum in regard to it, they must do so within seven days of the signing of this order.

3. If FFAI, FDL, or PULSE file an amicus memorandum as to any motion, their attorney may also present an oral argument at the hearing on that motion. This is not an invitation for the general public to present their arguments at any hearings on this matter, but only for the attorney representing these specific groups to present legal arguments as amicus curiae.

4. The clerk must add FFAI, FDL, and PULSE to the docket as amicus curiae so that their attorneys receive electronic notices of filings.

DONE and **ORDERED** in Miami-Dade County, Florida, this 3 day of June, 2014.

SARAH ZABEL
Circuit Court Judge

ORIGINAL

JUDGE SARAH I. ZABEL