

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Joseph Connolly, et al.,)	
)	
Plaintiffs,)	2:14-cv-00024 JWS
)	
vs.)	ORDER AND OPINION
)	
Chad Roche in his official capacity as Clerk of the Superior Court of Pinal County, Arizona, et al.,)	[Re: Motion at docket 48]
)	
Defendants.)	
)	

I. MOTION PRESENTED

At docket 48, defendants Chad Roche, Michael K. Jeanes, and Deborah Young (hereinafter collectively “the Clerks”) move pursuant to Fed. R. Civ. P. 12(c) to dismiss the claim for nominal damages pled by plaintiffs Joseph Connolly, *et al.* (“Plaintiffs”). Plaintiffs’ response is at docket 61. Clerks’ reply is at docket 76. Oral argument was not requested and would not be of assistance to the court.

II. BACKGROUND

The gay and lesbian couples who are Plaintiffs in this case sued the Clerks seeking a declaration that two Arizona statutes, A.R.S. §§ 25-101(C) and 25-125(A), together with Article 30, § 1 of the Arizona Constitution (collectively “the Challenged

Laws”) are void. Plaintiffs contend that by denying gay and lesbian couples the opportunity to marry the Challenged laws violate the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution. The Clerks are named as defendants because they refused to issue marriage licenses to Plaintiffs. Each of the Clerks is sued in his or her official capacity as a Clerk of the Superior Court for the State of Arizona in their respective counties.

III. STANDARD OF REVIEW

“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.”¹ Because “Rules 12(b)(6) and 12(c) are substantially identical,”² a motion for judgment on the pleadings is assessed under the standard applicable to a motion to dismiss for failure to state a claim upon which relief may be granted under Rule 12(b)(6).³

Rule 12(b)(6) tests the legal sufficiency of a plaintiff’s claims. In reviewing such a motion, “[a]ll allegations of material fact in the complaint are taken as true and construed in the light most favorable to the nonmoving party.”⁴ To be assumed true, the allegations, “may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.”⁵ Dismissal for failure to state a claim can be based on

¹Fed. R. Civ. P. 12(c).

²*Strigliabotti v. Franklin Resources, Inc.*, 398 F. Supp. 2d 1094, 1097 (N.D. Cal. 2005).

³*See Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980).

⁴*Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir. 1997).

⁵*Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

either “the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”⁶ “Conclusory allegations of law . . . are insufficient to defeat a motion to dismiss.”⁷

IV. DISCUSSION

In addition to their request for a declaration of rights and a permanent injunction against enforcement of the Challenged Laws, Plaintiffs ask this court to award them nominal damages pursuant to 42 U.S.C. § 1983.⁸ The Clerks argue that they are entitled to immunity from the nominal damages claim by virtue of the Eleventh Amendment. As the Ninth Circuit has explained: “The Eleventh Amendment bars suits for money damages in federal court against a state, its agencies, and state officials acting in their official capacities.”⁹

Plaintiffs raise a number of arguments in opposition to the motion. First, they contend that the counties, not the state of Arizona, are the real parties in interest. This argument is not tenable. At the heart of the lawsuit lies Plaintiffs’ contention that state statutes and a provision in the state constitution are void. There is no attack on any county action or standard that does not flow from the proposition that the Clerks are following state law.

Plaintiffs next assert that because any judgment awarding nominal damages would be paid by the counties rather than the state the Clerks are county rather than

⁶*Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

⁷*Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001).

⁸Doc. 15 at 20 ¶ 144.

⁹*Aholelei v. Dept. of Public Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007).

state officials. The Clerks concede that point, but argue correctly that under Ninth Circuit law, who would pay a judgment is not the only consideration bearing on their status. Although that factor is predominant,¹⁰ additional factors to consider are whether the Clerks perform a state government function, whether the Clerks may sue or be sued, whether the Clerks have the power to take property in their own names or only in the state's name, and the Clerks' corporate status.¹¹

The Clerks are engaged in the operation of the Arizona trial courts in their respective counties. In that capacity they are officials in what is clearly a statewide system of civil and criminal justice. As the Clerks' briefing points out, Arizona's judicial power is vested by its constitution in an integrated judicial system that includes the Arizona Supreme Court and other courts, including the Arizona Superior Courts, as provided by state law.¹² Further evidencing the statewide nature of the system is the fact that the Arizona Supreme Court is given administrative supervision of all other state courts.¹³ It is also noteworthy that the state constitution establishes a superior court in each county with a number of judges to be set by law,¹⁴ and expressly states that the superior courts "constitute a single court."¹⁵ Thus, the various superior courts are neither separate courts nor are they established by the counties.

¹⁰*Beentjes v. Placer Cnty. Air Pollution Control Dist.*, 397 F.3d 775, 778 (9th Cir. 2005).

¹¹*Savage v. Glendale Union High School*, 343 F.3d 1036, 1040 (9th Cir. 2003).

¹²Ariz. Const. Art VI, § 1.

¹³*Id.*, Art. VI, § 3.

¹⁴*Id.*, Art. VI, § 10.

¹⁵*Id.* Art. VI, § 13.

The state constitution also addresses the supervision of the superior court by providing for presiding judges¹⁶ and clerks of court.¹⁷ As recounted in the Clerk's briefing, the Arizona Supreme Court held in *Royalston v. Pima County*¹⁸ that despite statutes listing court clerks as county officers, superior court clerks are under the supervision of the Arizona Supreme Court. The Arizona legislature thereafter revised the statutory scheme to remove references to the court clerks from the title covering counties, Title 11, and placed statutes relating to court clerks in the judiciary title, Title 12.¹⁹ Given the discussion in this and the preceding paragraph, it is clear that when acting in their official capacities the Clerks are engaged in a state function.

The third factor relating to the capacity to sue or be sued is somewhat difficult to apply within the Arizona statutory framework. However, the court agrees with the discussion in the Clerk's motion papers demonstrating that the Clerks do have the capacity to sue or be sued.²⁰ It may be added that Plaintiffs must agree that the Clerks have the capacity to be sued, because Plaintiffs sued the Clerks. The third factor weighs in favor of treating the Clerks as state officials.

The fourth factor concerns whether the Clerks may take property in their own names. This factor also supports the conclusion that the Clerks are state officials, for

¹⁶*Id.*, Art. VI, § 11

¹⁷*Id.*, Art. VI, § 23.

¹⁸475 P.2d 233, 234 (Ariz. 1970).

¹⁹1982 Ariz. Sess. Laws, ch. 168. See Title 12, Chapter 2, Article 8 of the Arizona Revised Statutes.

²⁰Doc. 48 at 6-7.

they are not authorized to take or accept property other than for the courts themselves.

The final factor is the Clerk's status as entities separate from the state. As explained in the discussion above, the Clerks' only official status is their role in the statewide court system. Therefore, this factor also supports the proposition that the Clerks are state officials.

The conclusion to which the relevant constitutional provisions, the statutory provisions in Title 12, and the other factors discussed above ineluctably point is that in their official capacities the Clerks perform a state function. However, Plaintiffs raise additional objections to dismissal of their nominal damages claim.

Plaintiffs contend that the claim for nominal damages is properly entertained even if the Clerks are state officials under the doctrine of *Ex Parte Young*.²¹ In this Plaintiffs err. The doctrine of *Ex Parte Young* permits claims against state officials in federal courts for prospective relief such as a declaratory judgment or an injunction. It does not apply to retroactive relief such as a claim for damages.²²

Plaintiffs also contend that nominal damages should be treated differently than compensatory damages for purpose of the Eleventh Amendment on the theory that nominal damages are the functional equivalent of declaratory relief. Plaintiffs cite no authority for that proposition, and the court is not aware of any. Moreover, nominal damages are a form of relief utilized when a plaintiff cannot prove actual damages. They do not function as a stand-in for declaratory relief, but rather as a substitute for

²¹209 U.S. 123 (1908).

²²*E.g., Brown v. Oregon Dept. of Corrections*, 751 F.3d 983, 989 (9th Cir. 2014).

compensatory damages. In sum, Plaintiffs attempt to avoid the application of the Eleventh Amendment to their nominal damages claim using *Ex Parte Young* and related considerations fails.

There is another reason why Plaintiffs cannot pursue a § 1983 claim against them for the recovery of nominal damages. The Supreme Court succinctly stated that reason in its holding in *Will v. Michigan Dept. of State Police*: “We hold that neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983.”²³

V. CONCLUSION

For the reasons discussed above, the motion at docket 48 to dismiss Plaintiffs’ claim for nominal damages is GRANTED.

DATED this 29th day of July 2014.

/s/

JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

²³491 U.S. 58, 71 (1989).