Log Cabin Republicans v. United States of America et al Doc. 100

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. CV 04-8425-VAP (Ex) Date: November 24, 2009

Title: LOG CABIN REPUBLICANS, a non-profit corporation -*v*- UNITED STATES OF AMERICA, et al.

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PRESENT: HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

Marva Dillard Courtroom Deputy	None Present Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
None	None

PROCEEDINGS: MINUTE ORDER DENYING MOTION TO CERTIFY ORDER FOR INTERLOCUTORY APPEAL AND FOR STAY (IN CHAMBERS) [Link & Term Doc. No. 93]

The "Motion to Certify Order for Interlocutory Appeal and Stay of Proceedings Pending Resolution of Motion and Appeal" ("Motion) filed by Defendants United States of America and Robert Gates ("Defendants") came before the Court for a hearing on November 16, 2009. After reviewing and considering all papers filed in support of, and in opposition to, the Motion, the Court DENIES the Motion.

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I. BACKGROUND

Through this action, Plaintiff Log Cabin Republicans ("Plaintiff") challenges the federal government's policy of "don't ask, don't tell" ("DADT Policy") with respect to homosexual members of the armed forces. A more complete recitation of Plaintiff's claims is set forth in the Court's June 9, 2009 Order.

On June 12, 2006, Defendants filed a motion to dismiss Plaintiff's First Amended Complaint. On June 9, 2009, the Court granted in part and denied in part Defendants' motion to dismiss. On July 24, 2009, the Court allowed Plaintiff to proceed with discovery in this action.

On October 16, 2009, Defendants filed this Motion, seeking an order certifying the Court's June 9, 2009 for interlocutory appeal and a stay pending resolution of this Motion and appeal. Plaintiff's Opposition and Defendants' Reply were timely filed.

II. LEGAL STANDARD

The general rule is that an appellate court does not review a district court ruling until after entry of a final judgment. Coopers & Lybrand v. Livesay, 437 U.S. 463, 471 (1978). A district court may certify for appeal an otherwise non-appealable order, however, when the "order involves a controlling question of law as to which there is substantial ground for difference of opinion and . . . an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Section 1292(b) creates an exception to the general rule that appeals may be taken only from final judgments. See James v. Price Stern Sloan, Inc., 283 F.3d 1064, 1068 n.6 (9th Cir. 2002); In re Cement Antitrust Litig., 673 F.2d 1020, 1025–26 (9th Cir. 1982). Only in rare and extraordinary cases should district courts grant motions brought under Section 1292(b) for interlocutory appeal. See Caterpillar Inc. v. Lewis, 519 U.S. 61, 74 (1996); In re Cement Antitrust Litig., 673 F.2d at 1026.

III. DISCUSSION

A. Local Rule 7-3

Plaintiff first argues the Court should deny Defendants' Motion for failure to comply with Local Rule 7-3. (Opp'n at 3:21–4:28.)

Local Rule 7-3 requires moving parties to meet and confer with their opponents at least twenty days before filing most motions, including a motion to certify for interlocutory appeal and for a stay of proceedings. Here, Defendants first notified Plaintiff of their intent to file this motion on October 15, 2009 — the day before it was filed. (See Decl. of Aaron A. Kahn Ex. B.) Defendants thus failed to comply with Local Rule 7-3.

Though the Defendants argue (1) Plaintiff should have been on notice of their intent to file the Motion because of statements Defendants made in the Rule 26(f) report, (see Reply at 1:18–25); (2) the legal issues are identical to those presented in Defendants' motion to dismiss, (see id. at 1:25–2:5); and (3) the issues raised in the Motion are not susceptible to resolution through the meet and confer process, (see id. at 2:6–11), none of these claims excuses Defendants' failure to comply with Local Rule 7-3. Local Rule 7-3 requires more than mere notice of a party's intent to file a motion, it requires parties "to discuss thoroughly . . . the substance of the contemplated motion." Mere notice of a party's intent to file a motion is insufficient to comply with Local Rule 7-3. Furthermore, the legal standards applicable to motions to certify for interlocutory appeal and for a stay vary from that applicable to a motion to dismiss; therefore the Motion necessarily does not present the same legal arguments raised in Defendants' motion to dismiss. Finally, Local Rule 7-3 does not permit parties to ignore its requirements by unilaterally deciding that issues are not susceptible of resolution. The authority relied on by Defendants is not to the contrary. See Stewart v. Wachowski, No. CV03-02873, 2005 WL 6186374, at *10 (C.D. Cal. June 14, 2005) (moving party complied with Local Rule 7-3 by sending a meet and confer letter more than 20 days before filing its motion); In re Heritage Bond Litig., 220 F.R.D. 624, 626 (C.D. Cal. 2004) (addressing party's compliance with Local Rule 37-1, applicable to discovery motions, not Local Rule 7-3, and noting that there was no actual dispute about which to meet and confer).

Nevertheless, despite Defendants' failure to comply with Local Rule 7-3, the Court will consider the Motion. Any future failures to comply with Local Rule 7-3 by counsel for the government will be met with an award of sanctions, and the Court may decline to consider such motions.

B. Defendants' Motion is Untimely and Would Not Expedite This Action

Defendants argue the Court's June 9, 2009 Order involved controlling issues of law as to which there is a substantial ground for difference of opinion, and an interlocutory appeal will materially advance the ultimate resolution of this action. As the Court finds Defendants have delayed unjustifiably in seeking certification of the subject order and interlocutory appeal would not advance materially the resolution of this action, the Court does not address Defendants' argument that the subject order involved controlling issues of law as to which there is a substantial ground for difference of opinion.

Section 1292(b) provides that the Court may certify its June 9, 2009 order for interlocutory appeal if, in the Court's view, an *immediate* appeal would materially advance the ultimate termination of the litigation. Defendants' Motion, however, is anything but immediate. Defendants waited more than four months to file the Motion, and apparently only did so after being served with discovery requests by Plaintiff. Defendants offer no persuasive explanation for their delay, arguing only that they "sought certification within a month of receiving plaintiff's requests for production of documents on September 21, 2009." (Reply at 3:27–4:1.) The date on which Plaintiff served discovery requests is irrelevant. Defendants had been aware of the subject order for more than four months — and of the Court's order allowing discovery to proceed for nearly three months — at the time they filed the Motion. Defendants' unexplained delay in seeking certification of the Court's June 9, 2009 Order belies its contention that its objective is to expedite this action.

Defendants further fail to establish that certifying the June 9, 2009 Order for appeal would advance materially the ultimate termination of the litigation. Instead of demonstrating how an interlocutory appeal would lead to a more efficient resolution of this action, Defendants merely argue that the discovery sought by Plaintiff is burdensome and unjustified. (See Mot. at 12:6–13:8; Reply at 3:11–7:9.) The

proper means of challenging the nature and scope of discovery requests is by serving objections to those requests, however, not by seeking an interlocutory appeal.[1] Defendants do nothing to demonstrate that an appeal is likely to lead to a more expedient resolution of this action than allowing it to proceed according to its current pre-trial schedule. Standing alone, a showing that discovery may be burdensome is insufficient to meet Defendants' burden. As Plaintiff notes, rather than advancing the ultimate termination of this action, an appeal at this time is likely to delay it. (Opp'n at 7:7–8:2.)

C. A Stay of This Action Is Inappropriate

Defendants separately argue that the Court should stay these proceedings because the President of the United States has indicated he supports repeal of the DADT Policy and because Congress intends to hold hearings concerning "the continued wisdom" of that policy. (Mot. at 13:9–22.) Upon transfer of this case to this Court, the Court inquired of defense counsel regarding the Defendants' position regarding their intentions regarding the continued defense of this action; defense counsel responded that its instructions to defend the case had not changed. Not until served with discovery has the defense informed the Court of a change, or potential change, in its position.

Furthermore, Defendants cite no authority for the proposition that district courts should stay litigation concerning the constitutionality of federal laws for an indefinite period merely because the legislative and executive branches have expressed doubts concerning the continued wisdom of the challenged laws. Indeed, such a rule would allow Congress effectively to insulate federal laws from constitutional challenge merely by continually holding hearings concerning those laws. This Court declines to adopt such a rule, and finds that Defendants have not demonstrated that a stay of this action is appropriate.

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[1]Plaintiff notes the deadline for Defendants to respond to these requests for production was October 20, 2009 and Defendants failed to serve a response or seek an extension of time respond. (Opp'n at 3:16–20.)

IV. CONCLUSION

For the foregoing reasons, the Court DENIES Defendants' Motion.

IT IS SO ORDERED.