

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2014-091906

07/18/2014

HON. DAVID K. UDALL

CLERK OF THE COURT  
K. Gilmet  
Deputy

CELESTE KELLY, et al.

TIMOTHY DAVID KELLER

v.

VICTORIA WHITMORE, et al.

VICTORIA WHITMORE  
NO ADDRESS ON RECORD

CHRISTINA BERTCH-MUMAW  
NO ADDRESS ON RECORD  
ANDY BIGGS  
NO ADDRESS ON RECORD  
JAMES CHRISTENSEN  
NO ADDRESS ON RECORD  
DEB GULLETT  
NO ADDRESS ON RECORD  
LES HATFIELD  
NO ADDRESS ON RECORD  
TOM HORNE  
NO ADDRESS ON RECORD  
JIM LOUGHEAD  
NO ADDRESS ON RECORD  
JULIE MUMFORD  
NO ADDRESS ON RECORD  
BRIAN SERBIN  
NO ADDRESS ON RECORD  
ANDY TOBIN  
NO ADDRESS ON RECORD  
MARY D WILLIAMS  
DARREN WRIGHT  
NO ADDRESS ON RECORD  
JULIE YOUNG  
NO ADDRESS ON RECORD

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UNDER ADVISEMENT RULING

The Court took this matter under advisement after Oral Argument was held on July 16, 2014 regarding Defendants' *Motion to Dismiss*. The Court having considered the pleadings and the arguments of counsel makes the following findings and enters the following orders.

THE COURT FINDS that Motions to Dismiss under Rule 12(b)(6) Ariz.R.Civ.Proc. are not favored.

THE COURT FURTHER FINDS the Court should accept all properly plead pleadings by the parties as true and accurate. The Court will imply all reasonable inferences to be in favor of Plaintiffs in this case.

THE COURT FURTHER FINDS if there is any potential presence of a factual dispute that the Motion to Dismiss should be denied.

With respect to Count V of the Plaintiffs' Complaint regarding Privileges or Immunities,

THE COURT FINDS the *Slaughter House Cases* involve the right to travel.

THE COURT FURTHER FINDS that does not exist in this case. Therefore,

**IT IS ORDERED** dismissing Count V, the Privileges and Immunities claim, of Plaintiffs' Complaint.

With respect to Counts II and IV, the Equal Protection claim, and Counts I and II, the Due Process claim,

THE COURT FINDS that, based on the pleadings, there is a potential that factual disputes may exist amongst the parties and that a constitutional review of those facts would place a burden on the Plaintiffs proving there is no rational basis for the State's statutory scheme.

With respect to massage therapy,

The Court believes it is important for the Plaintiffs to have the opportunity to complete discovery and present evidence to meet this burden. Therefore,

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**IT IS ORDERED** denying Defendants' Motion to Dismiss with respect to Counts I, II, III, and IV.

With respect to Defendants' request to dismiss this matter as to Stacey Kollman due to lack of standing, the Court will not make a ruling on that issue at this time.