

JUL 24 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD S. BERRY; JEAN D. BERRY;
ROSE QUINTERO,

Plaintiffs - Appellants,

and

ROBERT R. PILKINGTON; DENISE L.
PILKINGTON,

Plaintiffs,

v.

LINDA GRAU; BOARD OF LEGAL
DOCUMENT PREPARERS of the
Arizona Supreme Court; ROLAND J.
STEINLE; VIRLYNN TINELL ROGER
E. HARTLEY; MARGARET J.
KLEINMAN; J. WARD STURM; MARY
ANN CARLTON; SUSAN C. VASQUEZ;
VELLIA M. PINA; CAROL L. WELLS;
DONALD F. STEWARD; NANCY
SWETNAM, members of the Board of
Legal Document Preparers; ALAN
MERRILL; FRAN JOHANSON; STATE
BAR OF ARIZONA,

No. 06-17179

D.C. No. CV-04-02309-SRB

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Defendants - Appellees.

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Argued and Submitted July 18, 2008
San Francisco, California

Before: W. FLETCHER and TALLMAN, Circuit Judges, and
BERTELSMAN,** District Judge.

Richard S. Berry, Jean D. Berry, and Rose Quintero appeal the district court's grant of summary judgment in favor of all defendants and its denial of Richard Berry's motion for partial summary judgment.¹ We have jurisdiction to consider the issues raised on appeal, *see* 28 U.S.C. § 1291; *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 286 (2005), and we affirm the judgment of the district court.

** The Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

¹ Although Robert R. Pilkington and Denise L. Pilkington signed the Amended Notice of Appeal filed with the district court, they have not signed or joined any of the briefs filed with this court, they did not appear at oral argument, and they have not otherwise indicated to this court that they intend to appeal the judgment of the district court. Therefore, we dismiss the appeal as to Robert and Denise Pilkington. *See* Fed. R. App. P. 3(a)(2), 31(c).

First, we affirm the district court’s conclusion that the definition of practice of law in Arizona Supreme Court Rule 31 is not unconstitutionally vague or overbroad. Rule 31 provides “people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” and does not authorize or encourage “arbitrary [or] discriminatory enforcement.” *See Gospel Missions of Am. v. City of Los Angeles*, 419 F.3d 1042, 1047 (9th Cir. 2005) (internal quotation marks omitted); *see also Cal. Pro-Life Council, Inc. v. Randolph*, 507 F.3d 1172, 1189 (9th Cir. 2007); *Cal. Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1151 (9th Cir. 2001).

Second, we affirm the district court’s conclusion that Section 7-208(E)(3)(c)(4) (2003) of the Arizona Code of Judicial Administration is not an unconstitutional bill of attainder as to Richard Berry. We review the 2003 version of the law because Berry argues that it acted as a bill of attainder as to him at that time. The provision reasonably can be said to further nonpunitive legislative purposes. *See SeaRiver Mar. Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 674 (9th Cir. 2002); *Ariz. Code Judic. Admin. § 7-208(C)* (2003) (setting forth the purposes of § 7-208).

Third, we affirm the district court’s rejection of plaintiffs’ equal protection challenge to Section 7-208(E)(3)(d)(7) (2008). Plaintiffs have failed to show that

the distinction between disbarred attorneys and people who have never been attorneys is not rationally related to a legitimate governmental purpose. *See Bd. of Tr. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 366-67 (2001); Ariz. Code Judic. Admin. § 7-208(C) (2008).

AFFIRMED in part and DISMISSED in part.