

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

HEIDI KENNARD,

Plaintiff,

v.

CHRISTINE KLEINDIENST,  
*Callaway County Recorder of Deeds,*

Defendant.

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Case No. 2:14-cv-04017-BCW

**ORDER**

Before the Court is Plaintiff's motion to certify a plaintiff class and a defendant class (Doc. #5), and Plaintiff's motion for preliminary injunction (Doc. #13). Defendant initially opposed both motions. After reviewing the briefs and the parties' stipulation, the Court makes the following rulings.

**I. CLASS CERTIFICATION**

Defendant has withdrawn her opposition to Plaintiff's motion for class certification. See Doc. #28. This Court finds, after review of the parties' briefs, that the proposed classes satisfy the requirements of Rule 23(a) and (b). Therefore, the motion is granted and this Court certifies a Plaintiff Class of all those individuals who seek, or will in the future seek, to marry an individual who is unable to appear in person before a Recorder of Deeds, appoints Heidi Kennard as class representative, and appoints her attorneys as counsel for the Plaintiff Class. This Court further certifies a Defendant Class of all Missouri Recorders of Deeds, appoints Christine Kleindienst as representative of the Defendant Class, and appoints her attorneys as counsel for the Defendant Class.

## II. PRELIMINARY INJUNCTION

Defendant has withdrawn her opposition to Plaintiff's motion for preliminary injunction, but only to the extent that the injunction is limited to individuals unable to appear in person before the recorder of deeds because of incarceration, military service, or disability. See Doc. #28. The parties have agreed that "[i]f a preliminary injunction is granted, then the parties submit that an affidavit substantiating the inability to appear in person should be accepted in lieu of an in-person appearance and, further, the parties will agree to the form of an affidavit for this purpose." Id. In accordance with the foregoing, the parties have agreed to the affidavit attached as Exhibit A.

After considering the briefs filed by the parties, this Court grants the motion for preliminary injunction to the extent the injunction is limited to individuals unable to appear in person before the recorder of deeds because of incarceration, military service, or disability. Defendant and members of the Defendant class, as well as their employees and agents, are prohibited from requiring individuals who are unable to appear in the presence of recorders of deeds or their deputies to execute or sign marriage license applications by reason of incarceration, military service, or disability, to appear in the presence of recorders of deeds or their deputies as a condition for issuance of a marriage license. Further Defendant and members of the Defendant class shall, upon reasonable written proof as to the authenticity of the signature of an applicant on a marriage license application, upon reasonable proof of the fact that the applicant is physically unable to appear in the presence of the recorder of deeds at the time the application is completed, and upon receipt of all fees and other documents required for the issuance of a marriage license under the laws of the State of Missouri, issue marriage licenses to any member of the Plaintiff Class without requiring any such individual applicant to execute or

sign a marriage license application in the presence of the recorder of deeds or any deputy. This preliminary injunction shall remain in effect until further order.

### **III. MEDIATION**

Finally, the parties have jointly asked that “this case be referred to a magistrate judge for mediation, by telephone, if possible, at the earliest opportunity and prior to entry of a scheduling order so that the parties may continue to explore final resolution on the merits.” Doc. #28. Therefore, this Court refers this matter for mediation before Magistrate Judge Whitworth and directs the parties to participate in mediation as representatives of their respective classes at the time and place directed by Judge Whitworth. Accordingly, it is hereby

ORDERED Plaintiff’s Motion for Class Certification (Doc. #5) is GRANTED. It is further

ORDERED Plaintiff’s Motion for Preliminary Injunction (Doc. #13) is GRANTED IN PART and DENIED IN PART. It is further

ORDERED this matter is referred to Magistrate Judge Whitworth for mediation.

Dated: June 24, 2014

/s/Brian C. Wimes  
JUDGE BRIAN C. WIMES  
UNITED STATES DISTRICT COURT

EXHIBIT A

**AFFIDAVIT OF ABSENT APPLICANT AND APPLICATION FOR MARRIAGE  
LICENSE**

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, first being duly sworn on this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, on his/her oath states:

*(Please print all information)*

Name *(First, Middle, Last)* \_\_\_\_\_

Social Security No: \_\_\_\_\_

Please check one: \_\_\_ Groom \_\_\_ Bride

If Bride, state maiden name if different: \_\_\_\_\_

(If do not have a Social Security Number, check here \_\_\_\_\_ )

Age Last Birthday: \_\_\_\_\_ Date of Birth *(Month, Day, Year)*: \_\_\_\_\_

Birthplace *(State or Country)* \_\_\_\_\_

Residence *(City, Town or Location)* \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_ County \_\_\_\_\_

Number of this Marriage: \_\_\_\_\_

If previously married, last marriage ended by \_\_\_ Death; \_\_\_ Dissolution; \_\_\_ Annulment

Date last marriage ended: Month \_\_\_\_\_ Year \_\_\_\_\_

Race: \_\_\_ White; \_\_\_ Black; \_\_\_ American Indian; \_\_\_ Other (Specify) \_\_\_\_\_

Education (Specify highest grade completed) K-12 \_\_\_\_\_ College \_\_\_\_\_

I affirm I am over the age of 18 years of age, am legally competent to make an affidavit and do so on the basis of personal knowledge, and have capacity to enter into a marriage contract.

I affirm this proposed marriage is NOT a marriage between parent and child, between grandparent and grandchild of any degree, between brother and sister of the half or the whole blood, between uncle and niece, between aunt and nephew or between first cousins.

I also affirm that I have not been adjudged incapacitated.

I have attached a copy of one or more government issued identifications, which contain my photo.

(If no photo is available/attached, check here \_\_\_\_\_)

I affirm I am making this Affidavit and Application for Marriage License to marry the following person:

Name (*First, Middle, Last*): \_\_\_\_\_

I am unable to appear in the presence of the Recorder of Deeds for \_\_\_\_\_

County, Missouri, for the reason selected below, which is confirmed by the Verification attached to this affidavit:

(Select one that applies)

☐ I am currently incarcerated at \_\_\_\_\_; or

☐ I am currently on active military duty out of the State of Missouri or country at \_\_\_\_\_; or

☐ I have been diagnosed with a significant disability subject to the Americans with Disabilities Act .

I, \_\_\_\_\_ (Absent Applicant) solemnly swear (or

Affirm) that the information I have given in this Affidavit of Absent Applicant and completed

Application for Marriage License to obtain a marriage license for the State of Missouri is true and correct.

Signature of Absent Applicant \_\_\_\_\_

State of Missouri )

)

County of \_\_\_\_\_ )

Subscribed and sworn to before me by \_\_\_\_\_, who personally appeared before me and is known to me to be the person described in and who executed the foregoing Affidavit of Absent Applicant and Application for Marriage License and acknowledged that the facts set forth herein are true and correct to the best of his/her knowledge and information and that he/she executed the Affidavit of Absent Applicant and Applicant for Marriage License as his/her free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(Seal)

Signature \_\_\_\_\_

(Print name) \_\_\_\_\_

Title \_\_\_\_\_

My commission expires: \_\_\_\_\_

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VERIFICATION OF INCARCERATED PERSON

I \_\_\_\_\_ (Professional, Official or Designee) am currently over the age of 18 years of age; am legally competent to make an affidavit; and do so on the basis of personal knowledge.

I hereby certify that I am the professional or official (or the designee of such person) who directs the operations of the following jail or prison:

\_\_\_\_\_ and that (Name of Incarcerated Person) \_\_\_\_\_

is the person who executed this Affidavit of Absent Applicant and Application for Marriage License and is currently incarcerated within the said institution. I also certify that the social security number listed by (Name of Incarcerated Person) \_\_\_\_\_

on the Affidavit of Absent Applicant and Application for Marriage License is consistent with the records maintained by the foregoing institution.

Signature \_\_\_\_\_  
(Print name beneath signature)

Title \_\_\_\_\_

Date \_\_\_\_\_

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VERIFICATION OF PERSON ON ACTIVE MILITARY DUTY  
OUT OF THE STATE OF MISSOURI OR COUNTRY

I \_\_\_\_\_ (Commanding  
Officer or Designee) hereby certify that I am the Commanding Officer (or the commander's  
designee) of (Name of Military Person/Applicant) who is located at:

\_\_\_\_\_ [military unit designation and location], am  
currently over the age of 18 years of age; am legally competent to make an affidavit; and do so  
on the basis of personal knowledge.

I certify that \_\_\_\_\_ (Name of Absent Applicant) is  
the person who executed this Affidavit of Absent Applicant and Application for Marriage  
License and is currently stationed out of the State of Missouri or country at

\_\_\_\_\_. I  
also certify that the social security number listed by (Name of Military Person/Applicant)  
\_\_\_\_\_ on the Affidavit of Absent  
Applicant and Application for Marriage License is consistent with the records maintained by the  
foregoing military.

Signature \_\_\_\_\_  
(Print name beneath signature)

Title/Rank or Grade \_\_\_\_\_

Date \_\_\_\_\_



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VERIFICATION OF PERSON DIAGNOSED PURSUANT TO THE  
AMERICANS WITH DISABILITIES ACT

I, \_\_\_\_\_ being first duly sworn upon my oath,  
state the following:

I am currently over the age of 18 years of age; am legally competent to make an affidavit; and  
do so on the basis of personal knowledge.

I am a(n) \_\_\_\_\_ (physician [MD or DO],  
chiropractor, nurse [LPN or RN], physical therapist, occupational therapist, psychologist,  
professional counselor, or clinical social worker) who holds a valid license for the state of  
\_\_\_\_\_ to practice in such field.

Based on my education, training, and experience and as a result of my evaluation of  
\_\_\_\_\_ (Name of Absent Applicant), who has been diagnosed  
with a significant disability that prevents him/her from appearing before the Recorder of Deeds  
or the Recorder's deputy for \_\_\_\_\_ County, Missouri to execute a marriage  
license application in the presence of such official.

To the best of my personal knowledge, the applicant has not been adjudged incapacitated.

Signature \_\_\_\_\_  
(Print name beneath signature)

Title \_\_\_\_\_

State License No. \_\_\_\_\_

Date \_\_\_\_\_