

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY
SIXTEENTH JUDICIAL CIRCUIT**

Janice Barrier, et al.,)	
)	
Plaintiffs,)	
v.)	
Gail Vasterling, in her official capacity as	)	No. 1416-CV03892
Director of the Missouri Department of Health)	
and Senior Services, et al.,	)	Division 6
)	
Defendants.)	
)	
)	

Plaintiffs' Suggestions in Opposition to Motion to Intervene

I. Introduction.

The motion to intervene should be denied. This Court need not reach the merits because this Court has no authority to grant the motion to intervene now that more than thirty days have passed since entry of final judgment and no authorized post-trial motion has been filed. Furthermore, the motion should be denied because it fails to include a pleading setting forth the defenses for which intervention is sought. Moreover, the motion should be denied because the Missouri General Assembly, on whose behalf the motion is purportedly filed, has not authorized the effort to seek intervention on its behalf in this matter. Should this Court reach the merits, the motion to intervene should be denied because it is untimely and does not meet the requirements for either intervention as of right or permissive intervention.

II. This Court no longer has authority to take action in this case.

A judgment is final thirty days after its entry unless an authorized post-trial motion is filed within that time period. Rule 75.01;¹ Rule 78.04.² “If no authorized after-trial motion is

¹ All Rule references are to Missouri Supreme Court Rules (2014), except as otherwise indicated.

filed within that time period, the judgment becomes final thirty days after entry of the judgment.” *Payne v. Markeson*, 414 S.W.3d 530, 536 (Mo. App. W.D. 2013), *reh'g and/or transfer denied* (Oct. 29, 2013), *transfer denied* (Dec. 24, 2013), *cert. denied*, 135 S. Ct. 67 (2014) (citing Rule 81.05(a)(1)). After a judgment is final, the case is over and the trial court has no authority to take further action, except to enforce the judgment as entered. *See Wiss v. Spitzmiller*, 425 S.W.3d 157, 165 (Mo. App. S.D. 2014).

Assuming, as the movant does, that the operative judgment was entered in this case on October 27, 2014, then the judgment became final, and this Court’s authority to grant relief terminated, on November 26, 2014. The only motion filed during the thirty-day period was the motion to intervene, which is not an authorized post-trial motion. *See Taylor v. United Parcel Serv., Inc.*, 854 S.W.2d 390, 392 fn.1 (Mo. banc 1993) (describing the six types of “authorized post-trial motions” that extend a trial court’s jurisdiction beyond the thirty days after judgment is entered).

City of Montgomery v. Newson, 469 S.W.2d 54 (Mo. Ct. App. 1971), is directly on point. In that case, the “motion [to intervene], although filed within the thirty-day period, was not acted on by the court within that period.” *Id.* at 56. The Court, holding that the trial court had no authority to consider the merits of the motion, explained that “[u]pon the expiration of the thirty-day period, the judgment became final, the court lost jurisdiction to reopen it, and no case was then pending into which [the movant] could intervene.” *Id.* The termination of the case after judgment becomes final is significant because “[i]n order to intervene there must be an action pending into which to intervene.” *Id.* *Newson* is also in accord with the Missouri Supreme

² “For purposes of the rules, a summary judgment proceeding is a trial because it results in ‘[a] judicial examination and determination of the issues between the parties.’” *Taylor v. United Parcel Serv., Inc.*, 854 S.W.2d 390, 393 (Mo. banc 1993) (citation omitted).

Court's affirmance of the denial of intervention where a motion was not heard until after the "judgment had become final and the trial court lost jurisdiction to take any further action in the case." *State ex rel. Wolfner v. Dalton*, 955 S.W.2d 928, 928 (Mo. banc 1997); *see also Frost v. Liberty Mut. Ins. Co.*, 813 S.W.2d 302, 304 (Mo. banc 1991) ("Intervention as contemplated by Rule 52.12 is intervention in a *pending* case." (emphasis added)). An order granting a motion to intervene "not ruled on until ... after the trial court lost jurisdiction" would be "void." *Spicer v. Donald N. Spicer Revocable Living Trust*, 336 S.W.3d 466, 471 (Mo. banc 2011).

Because the judgment has become final, there is no pending case and this Court lacks authority to grant further relief, including that sought by the motion to intervene. Thus, the motion should be denied.

III. The motion should be denied because it does not include a pleading setting forth the movant's defenses.

A motion to intervene is not properly filed where it "d[oes] not include any 'pleading setting forth the claim or defense for which intervention is sought' as required by Rule 52.12(c)." *Dalton*, 955 S.W.2d at 929. Pleadings are the initial filings in a case, and, after the close of pleadings, a party may move for judgment on the pleadings. Rule 55.27(b). The reason a pleading is necessary in this case is apparent: without an answer setting forth the movant's response to the amended petition, nothing is preserved for appellate review.

The motion to intervene does not include a pleading setting forth the movant's defenses or claims. Instead it includes a proposed motion to amend and notice of appeal. Neither is a pleading. *See* Rule 55.01 (listing types of pleadings).³

³ Another difficulty is that, should intervention be allowed and the movant's post-trial motion deemed filed, the motion would be untimely. This is because the time for filing a post-trial motion has by now undoubtedly passed. There is no authority to allow the post-trial motion

Because the movant has not filed a pleading, its motion to intervene is ineffective. What is more, it is too late for the movant to cure its error. Denial of intervention was affirmed where proposed intervenors did “not effectively apply for intervention until after the judgment had become final and the trial court lost jurisdiction of the case.” *Dalton*, 955 S.W.2d at 931. In *Dalton*, as here, a motion to intervene with no pleading attached was filed before the trial court lost jurisdiction; however, intervention was not effective because the error was not correct (by filing a pleading) until more than thirty days after judgment. Thus, the motion to intervene should be denied.

IV. The motion should be denied because the Missouri General Assembly has not authorized an effort to seek intervention.

The motion to intervene was filed by a private attorney and purports to be on behalf of the Missouri General Assembly. Absent from the motion, however, is any explanation of how, or if, the General Assembly has authorized the effort to seek intervention on its behalf in this case. Plaintiffs are aware of no resolution or other authorization by the General Assembly of the effort to intervene in this case on the General Assembly’s behalf. Indeed, in exhibits attached to these suggestions in opposition, Senator Jolie Justus and Representative Michael Colona attest that the General Assembly has not authorized any effort to intervene, or take any other action, in this case on its behalf. *See* Exhibits A & B.⁴ Furthermore, allowing the General Assembly to

to be retroactively filed under these circumstances. To the contrary, “it is ... clear that only a party may trigger the extension of the trial court’s jurisdiction” and “because no party filed an authorized post-trial motion, [the judgment] became final and appealable after 30 days.” *Spicer v. Donald N. Spicer Revocable Living Trust*, 336 S.W.3d 466, 470 (Mo. banc 2011). The movant cannot be deemed to have filed a post-trial motion on a date that it was not a party.

⁴ Relatedly, it is unclear what constitutional or statutory authority exists for the Missouri General Assembly, which is not a corporate body or sovereign entity, to appear or participate as a party to litigation. *See V. S. DiCarlo Const. Co. v. State*, 485 S.W.2d 52, 56 (Mo. 1972) (noting

intervene in this case is likely to oblige the General Assembly to pay attorneys' fees to Plaintiffs if they remain the prevailing party. *See S & R Wrecker Serv., Inc. v. Mecklenburg Cnty., N.C.*, 652 F. Supp. 527, 528-29 (W.D.N.C. 1987) (awarding attorneys' fees under 42 U.S.C. § 1988 against unsuccessful intervenor); *Thompson v. Sawyer*, 586 F. Supp. 635, 638-39 (D.D.C. 1984) (same). Nothing in the record suggests that the General Assembly has agreed to undertake the risk of such liability.

V. The motion should be denied on the merits.⁵

Movant correctly observes that, as a general matter, Rule 52.12 is construed liberally to allow broad intervention. *See, e.g., Underwood v. St. Joseph Bd. of Zoning Adjustment*, 368 S.W.3d 204, 211 (Mo. App. W.D. 2012). Despite this, however, the general rule does not apply in this case for two independent reasons. First, "there is a presumption that a governmental entity adequately represents the interests of citizens at large." *Id.* Second, "[t]here is considerable reluctance on the part of the courts to allow intervention after the action has gone to judgment and a strong showing will be required of the applicant." *Frost v. White*, 778 S.W.2d 670, 673 (Mo. App. W.D. 1989) (quoting 7C C. Wright, A. Miller and M. Kane, *Federal Practice and Procedure*, Civil 2d § 1916 (1986)). Indeed, "'motions for intervention after judgment ordinarily fail to meet this exacting standard and are denied.'" *McClain v. Wagner Elec. Corp.*, 550 F.2d 1115, 1120 (8th Cir. 1977) (quoting 7A Wright & Miller, *Federal Practice & Procedure*, Civil, s

that "the General Assembly has provided that various state agencies and other governmental bodies or public entities may sue or be sued."). This is particularly true in this case, brought under federal law, where there are implications for sovereign immunity.

⁵ "Because Rule 52.12 is essentially the same as Fed. R. Civ. Pro. 24, Missouri courts have looked to interpretations of the federal rule for guidance in construing Rule 52.12." *State ex rel. Strohm v. Bd. of Zoning Adjustment of Kansas City*, 869 S.W.2d 302, 304 (Mo. App. W.D. 1994). Thus, like the movant's suggestions, these suggestions cite to both Missouri cases that discuss Rule 52.12 and federal cases that discuss Federal Rule of Civil Procedure 24.

1916); *accord Frost v. Liberty Mut. Ins. Co.*, 813 S.W.2d 302, 304 (Mo. banc 1991) (noting that “an application for leave to intervene subsequent to trial is unusual and seldom granted.”).

A. The motion is not timely.

The timeliness of a motion to intervene is a threshold issue. *NAACP v. New York*, 413 U.S. 345, 365 (1973). And, while the timeliness of a motion to intervene is within the trial court’s discretion, the court should consider the following: “(1) the extent the litigation has progressed at the time of the motion to intervene; (2) the prospective intervenor’s knowledge of the litigation; (3) the reason for the delay in seeking intervention; and (4) whether the delay in seeking intervention may prejudice the existing parties.” *Am. Civil Liberties Union of Minn. v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1094 (8th Cir. 2011). In addition, when a motion to intervene is made after judgment is entered, it “will be granted only upon a strong showing of entitlement and of justification for failure to request intervention sooner.” *Planned Parenthood of the Heartland v. Heineman*, 664 F.3d 716, 718 (8th Cir. 2011) (citation omitted). “Post-judgment intervention is possible only if substantial justice requires intervention and if intervention would inflict no prejudice on any other party in the case.” *City of Manchester v. Ryan*, 180 S.W.3d 19, 23 fn.1 (Mo. App. E.D. 2005) (citing *City of Pacific v. Metro Dev. Corp.*, 922 S.W.2d 59, 62 (Mo. App. E.D. 1996); *Frost*, 813 S.W.2d at 304).

The factors to be considered in assessing timeliness all weigh against allowing intervention at this stage.

In considering “the extent the litigation has progressed at the time of the motion to intervene,” *ACLU of Minn.*, 643 F.3d at 1094, this Court should note that the movant waited until not only after judgment was entered to submit its application, but also until after the judgment was amended to set the amount of attorneys’ fees to be awarded and until the last possible date

that the judgment became final. This is too late, as a matter of this Court's jurisdiction to act in a pending case, to secure an order allowing intervention. *See* Section II, *supra*. The movant allowed only a few hours for a response, hearing, and ruling. In any event, however, it is impossible for this litigation to have progressed any further than it has. Thus, this factor weighs against a finding of timeliness.

The movant makes no claim that it lacked knowledge of this litigation. This case was filed on February 11, 2014, and was widely reported across Missouri. Here, the movant has failed to show that its motion to intervene is timely. First, the bulk of its suggestions in support is devoted to complaints about the defense the Attorney General mounted in this case. The nature and extent of that defense, however, was known no later than August 5, 2014, when the state defendants filed their suggestions in support of their motion for judgment on the pleadings and in opposition to the plaintiffs' motions for summary judgment. Second, the decision of the Attorney General not to appeal was publicly announced on October 6, 2014. Ex. C (Oct. 6 statement of Attorney General). And, by October 8, 2014, leaders of the General Assembly were making public statements about the Attorney General's decision not to appeal. Ex. D. By October 31, 2014, the House Speaker determined that there was no legal mechanism for the General Assembly to intervene. Ex. E. Therefore, the movant's decision to wait to seek intervention until after it received the Attorney General's letter of November 17, 2014, is no excuse for its delay. For one, the Attorney General's letter merely reiterates his October 6th announcement that he would not appeal. Ex. F (letter from Attorney General). In addition, the reason the letter did not come to the General Assembly until mid-November is because it was in response to a letter that the General Assembly's majority leaders waited until November 7, 2014, to send to the Attorney General. Ex. G. The movant has known the defense asserted by the Attorney General for months

and that there would be no appeal for fifty-two days prior to filing its motion. This factor, too, weighs against a finding of timeliness.

Movant's "reason for the delay in seeking intervention[.]" *ACLU of Minn.*, 643 F.3d at 1094, is also unavailing, for the same reasons. A motion to intervene is untimely when a potential intervener fails to seek intervention at the time it first had reason to become aware that the issue would be considered by the court and would affect its interests. *United States v. Ritchie Special Credit Invs., Ltd.*, 620 F.3d 824, 833 (8th Cir. 2010) (finding intervention untimely where an injunction was already in place). Thus, the third factor also weighs against a finding of timeliness.

Others will be prejudiced by allowing intervention at this late date. Because the intervention effort comes post-judgment, prejudice to others is reason alone to deny it. *City of Manchester v. Ryan*, 180 S.W.3d 19, 23 n.1 (Mo. App. E.D. 2005) ("Post-judgment intervention is possible only ... if intervention would inflict no prejudice on any other party in the case."). After this Court's judgment and the decision of the defendants not to appeal, thousands of married same-sex couples began having their marriages recognized. Moreover, their marriages are now recognized by the federal government for all purposes because of this Court's judgment. Ex. H (showing Social Security Administration's recognition of out-of-state marriages of same-sex couples domiciled in Missouri effective Oct. 6, 2014); Ex. I (same as to Bureau of Veterans' Affairs). "Intervention at such a late stage [may] unduly delay[] enforcement of the remedy to which [the plaintiffs are] entitled." *P.A.C.E. v. Kansas City Mo. Sch. Dist.*, 267 F. App'x 487, 489 (8th Cir. 2008). Furthermore, state and local government entities have begun extending benefits to married couples regardless of sexual orientation. Ex. J (affidavit of Gary O'Bannon regarding implementation of judgment by City of Kansas City); Ex.

K (statement regarding Missouri State Employees' Retirement System); Ex. L (Southeast Missouri State University); Ex. M (Springfield Public Schools); Ex. N (Missouri Consolidated Health Care Plan). The prospect of un-recognizing these marriages (and stripping away benefits) would prejudice not only the couples but also the government entities that have taken the necessary steps toward recognizing the marriages of gay men and lesbians. In addition, Plaintiffs will be entitled to attorneys' fees as the prevailing party in continuing litigation. Defendants, who have already been ordered to pay attorney's fees, will be prejudiced by the exposure to liability for additional fees.

Moreover, Plaintiffs will be prejudiced in this case if the movant is permitted to intervene at this late date. Plaintiffs served contention interrogatories to determine the government interests that the defendants would assert are furthered by the challenged laws and the facts that support those assertions. Ex. O (interrogatories to Chris Koster); Ex. P (interrogatories to Jeremiah Nixon); Ex. Q (interrogatories to Gail Vasterling); Ex. R (interrogatories to City of Kansas City). The answers to those inquiries informed Plaintiffs' decision *not* to conduct additional discovery, including depositions. Had any defendant advanced the discredited interests that the movants now indicate that wish to advance, then Plaintiffs would have conducted additional discovery to demonstrate the paucity of facts that support any rational connection between those interests and the refusal to recognize Plaintiffs' marriages. Allowing the movant to inject new issues post-judgment or in an appeal would prejudice Plaintiffs, who made strategic choices about how to proceed while the movant sat on its hands, content to allow the Attorney General to represent any interest it might have. *ACLU of Minn.*, 643 F.3d at 1094 (observing that "introduction of a new legal theory ... could change the parties' respective strategies or framing of the issues"). Thus, the prejudice to other parties mandates a finding that the motion is untimely.

Finally, substantial justice does not require that the movant be permitted to intervene. *See Ryan*, 180 S.W.3d at 23 n.1 (“Post-judgment intervention is possible only if substantial justice requires intervention[.]”). This case did raise important constitutional questions, but the Attorney General defended this case zealously. He has determined not to appeal because he concluded that there is not a good legal basis for doing so and that an appeal would require the expenditure of resources and expose the State to additional liability for attorneys’ fees. Ex. F. Missouri and her people *have* been represented in this case by the individual they elected to represent their interests in litigation: the Attorney General. Part of representing the public rights and welfare is recognizing when an appeal would be unwise.

The movant’s preference that there be an appeal and its disagreement that widely rejected arguments were not articulated do not constitute a showing that substantial justice requires that the movant intervene. This case is not similar to the few situations in which courts have found that substantial justice requires intervention. Substantial justice might require intervention where the judgment entered was not the product of an adversarial proceeding “calculated to result in a dispassionate appraisal of the issues.” *Frost v. White*, 778 S.W.2d 670, 672 (Mo. App. W.D. 1989). Here, there was an adversarial proceeding. Substantial justice might also require intervention in cases where the party seeking to intervene did not know prior to judgment about the proceedings and, therefore, was not aware that its interests would be affected by an adverse judgment. *State ex rel. Mayberry v. City of Rolla*, 970 S.W.2d 901, 907-08 (Mo. App. S.D. 1998). Here, there is no claim that the movant was unaware of this case or the effect it might have on the movant’s interests. The movant’s conclusory assertion that substantial justice requires intervention is not an adequate substitute for the required showing.

For all these reasons, the motion should be denied because it is untimely.

B. The movant is not entitled to intervention as a matter of right.

“The proposed intervenor ‘carries the burden of establishing the presence of all three elements required for intervention as a matter of right.’” *Prentzler v. Carnahan*, 366 S.W.3d 557, 561 (Mo. App. W.D. 2012) (quoting *Kinney v. Schneider Nat'l Carriers, Inc.*, 200 S.W.3d 607, 611 (Mo. App. W.D. 2006)). Those elements are “(1) an interest relating to the property or transaction which is the subject of the action; (2) that the applicant’s ability to protect the interest is impaired or impeded; and (3) that the existing parties are inadequately representing the applicant's interest.” *State ex rel Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 127 (Mo. banc 2000) (quotation marks and citation omitted).

The movant does not have a distinct interest in this litigation. Movant suggest two interests—representing the public and as an employer. As to the first, the Missouri General Assembly has no cognizable interest in litigating to preserve unconstitutional laws because Missouri statutes vest that responsibility solely in the hands of the Attorney General. “In legal actions on behalf of the state, only the Attorney General may represent the state with sovereign power.” *Neel v. Strong*, 114 S.W.3d 272, 275 (Mo. App. E.D. 2003).

Sections 27.050 and 27.060, RSMo 1978 confer authority on the attorney general as to litigation involving the state. By these statutes, the attorney general manages all appeals in cases where the state is a party and the attorney general is charged with the duty to enforce the rights of the state.

State ex rel. Igoe v. Bradford, 611 S.W.2d 343 (Mo. App. W.D. 1980); accord *State of Missouri v. Homesteaders Life Ass’n*, 90 F.2d 543, 548 (8th Cir. 1937). Thus, as the Court noted in *Bradford*, “[i]t is for the attorney general to decide where and how to litigate issues involving public rights and duties and to prevent injury to the public welfare.” 611 S.W.2d at 347. Other States have adopted statutes that authorize the legislature to intervene to defend the constitutionality of state laws. See N.C.G.S.A. § 1-72.2 (North Carolina statute providing that

“[t]he Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State, shall jointly have standing to intervene on behalf of the General Assembly as a party in any judicial proceeding challenging a North Carolina statute or provision of the North Carolina Constitution”); IC 2-3-9-2 (Indiana statute providing that “the speaker of the house of representatives may employ one (1) or more attorneys necessary to defend a lawsuit ... without obtaining the consent of the attorney general”). No such statute exists in Missouri.

The cases cited by the movant for the proposition that governmental officials may intervene when the subject matter of a litigation concerns their official duties all involved cases in which a state official was allowed to intervene in a case where the State was not an original party in order to defend state interests. *See Hines v. D’Artois*, 531 F.2d 726 (5th Cir. 1976) (allowing Louisiana state official to intervene in litigation between private party and municipality); *Nuesse v. Camp*, 385 F.2d 694, 701 (D.C. Cir. 1967) (allowing Wisconsin state official to intervene in litigation between a Wisconsin bank and U.S. government); *Harris v. Pernsley*, 820 F.2d 592, 602 (3d Cir. 1987) (denying intervention); *Blake v. Pallan*, 554 F.2d 947, 953 (9th Cir. 1977) (same). None of those cases involved a State official intervening to wrest control of litigation away from an elected Attorney General.

As to the General Assembly’s interest in its role as an employer, that interest is no different than any other governmental employer in the State. “An interest necessary for intervention as a matter of right does not include a mere[] consequential, remote[,] or conjectural possibility of being affected as a result of the action, but must be a direct claim upon the subject matter such that the intervenor will either gain or lose by direct operation of judgment.” *Nixon*, 34 S.W.3d at 128. To the extent that Missouri has a sovereign interest in its role as employer, that interest is represented by the Attorney General. To the extent that the General Assembly

might have an economic interest, courts have been clear that an “economic interest in upholding the current ... system simply does not rise to the level of a legally protectable interest necessary for mandatory intervention.” *Curry v. Regents of Univ. of Minn.*, 167 F.3d 420, 422 (8th Cir. 1999). Unlike the City of Kansas City, the movant is part of the state government—not an separate corporate entity—and there is no evidence that the movant makes independent policy choices related to the recognition or non-recognition of marriages between spouses of the same sex.

The movant suggests that governmental employers must have an independent protectable interest because Plaintiffs sued the City of Kansas City as a defendant based on its role in administering employee benefits. That suggestion mixes apples and oranges. The test for whether an entity is an appropriate defendant, which looks at whether the defendant can provide relief to the individual plaintiffs’ injuries, is not the same as the test for intervention, which looks at whether the proposed intervenor has an independent interest in the subject of the litigation.

In any event, post-judgment intervention in this case is unwarranted because the movant’s interests are adequately represented by the Attorney General. The effort to intervene here is premised on the fallacy that the Attorney General has failed to defend the challenged laws. As this Court knows from presiding over this case, the Attorney General presented a diligent defense. Moreover, when the State is a party to a case that concerns a “sovereign interest,” the State is “presumed to adequately represent the interests of all of its citizens,” *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996) (quotation marks and citation omitted), and, thus, it is required that “the party seeking to intervene ... make a strong showing of inadequate representation.” *Little Rock Sch. Dist. v. N. Little Rock Sch. Dist.*, 378 F. 3d 774, 780 (8th Cir. 2004). To rebut the presumption, “[i]t is not sufficient that the party seeking intervention

merely disagrees with the litigation strategy or objectives of the party representing its interests.”

Id.

The movant has not met its burden to show that the decision not to appeal constitutes inadequate representation, much less that the decision was arbitrary and capricious.⁶ In *Chiglo v. City of Preston*, intervention was denied where the alleged inadequate representation was a failure to appeal and the proposed intervenor’s interest coincided with the government-party’s interest as protector of its citizens. 104 F.3d 185, 188 (8th Cir. 1997). “[P]roposed interveners must show something more than mere failure to appeal” to be permitted the right to intervene. *Id.* In *Little Rock School District*, intervention was denied because, even though the proposed intervenor “ha[d] asserted its interest with arguably greater fervor than ha[d] the state and would have made different procedural choices, including a decision to appeal,” this “does not make its interest distinct.” 378 F.3d at 779; accord *State ex rel. Dolgin’s, Inc. v. Bolin*, 589 S.W.2d 106, 110 (Mo. App. W.D. 1979) (rejecting “the view ... that mere failure to appeal ipso facto demonstrates inadequate representation within the purview of Rule 52.12(a)(2) as it is wanting for support in both law and logic. To subscribe to such an inflexible view would be a step towards encouraging frivolous appeals.”).

In this case, we have the benefit of the Attorney General’s explanation of his decision not to appeal. He explained:

⁶ It is not uncommon for the non-prevailing party to elect not to appeal in a civil case. This is true even where the State is that party. By way of example, no appeal was taken when the United States District Court found that a recently enacted Missouri law was unconstitutional because it conflicts with the contraceptive mandate of the federal Patient Protection and Affordable Care Act. *Missouri Ins. Coal. v. Huff*, 947 F. Supp. 2d 1014, 1015 (E.D. Mo. 2013). And in *Johnston v. Mo. Dep’t of Social Svcs.*, No. 0516-cv-09517, 2006 WL 6903173 (Mo. Cir. Feb. 17, 2006), the Attorney General filed, but quickly dismissed, an appeal from the State’s unsuccessful effort to deny foster-parent licenses to gay men and lesbians (even after the Missouri Supreme Court had stayed the judgment pending appeal). *Johnston v. Mo. Dep’t. of Social Svcs.*, No. SC87601 (Mo.).

In th[is] case, the Court held that Missouri is obligated, under the Fourteenth Amendment's Equal Protection Clause, to recognize same-sex marriages lawfully entered into in other states. As the Court observed in its judgment, Missouri has a policy of recognizing out-of-state marriages even if those marriages could not lawfully have been performed here in Missouri (*e.g.*[,] Missouri recognizes out-of-state marriages between first cousins or between individuals under the age of 18, even though performing such marriages is illegal in this State). The Court found no rational basis for Missouri to treat out-of-state same-sex marriages differently from those out-of-state opposite-sex marriages. In our view, while our federal system empowers Missouri to set policy for itself, it requires us to honor out-of-state contracts in a manner that is both fair and consistent. Further, continuing the litigation is not costless—the State was ordered to pay over \$137,000 to the ACLU in attorney's fees for litigating the case in the circuit court. We did not believe there was a lawful basis to appeal the Court's judgment in *Barrier*, and thus we chose not to expend further resources on such an appeal.

Ex. F. Thus, the Attorney General's decision not to appeal cannot fairly be characterized as arbitrary or capricious.

The movant cannot demonstrate inadequate representation by suggesting, at this late date, that additional justifications for perpetuating discrimination against gay men and lesbians ought to have been advanced in support of the challenged laws. Notably, the justifications the movant sets forth have been widely discredited. The Attorney General likely increased his credibility by not trotting out such worn devices. Even so, for months—through extensive briefing and argument as well as nearly two months after this Court's decision—the movant “w[as] content to remain aloof from this litigation and dependent on [the Attorney General] to adequately represent [its] interests despite [its] knowledge of the case and its progress.” *ACLU of Minn.*, 643 F.3d at 1094-95. The movant did not even bother to file an amicus brief asserting the arguments that it claims the Attorney General was inadequately presenting. Waiting until now to express discontent with the adequacy of representation at best “amout[s] to a ninth-inning-with-two-outs intervention attempt.” *In re Uponor, Inc., F1807 Plumbing Fitting Products Liab. Litig.*, 716

F.3d 1057, 1065 (8th Cir. 2013).⁷ In this case, the Attorney General advanced a plausible non-discriminatory justification for the laws.

The movant is not entitled to intervene as a matter of right.

C. Permissive intervention is unwarranted.

“[P]ermissive intervention is discretionary[.]” *Meyer v. Meyer*, 842 S.W.2d 184, 188 (Mo. App. E.D. 1992) (en banc). A denial of permissive intervention will be affirmed unless “the trial court’s ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration[.]” *State ex rel Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 131 (Mo. banc 2000).

In addition to being untimely and prejudicial, the motion for permissive intervention should be denied because none of the circumstances in which it is allowed are present. “Rule 52.12(b) provides for permissive intervention in three circumstances: (1) when allowed by statute; (2) when an applicant’s claim or defense and the main action have a question of law or fact in common; or (3) when the state is seeking intervention in a case raising constitutional or statutory challenges.” *Johnson v. State*, 366 S.W.3d 11, 21 (Mo. banc 2012). There is no statute that authorizes the movant to intervene, so the first circumstance is inapplicable. And, although this case involved a constitutional and statutory challenge, the state is already a party, so the third circumstance would not allow for intervention. Indeed, the movant appears to rest on its claim that its defense and the main action have a question of law or fact in common.

The movant suggests that it shares a question of law with Plaintiffs’ claims—i.e., whether the challenged provisions violate the federal Constitution—and questions of law and fact with Defendant City of Kansas City. However, the Missouri Supreme Court has explained that

⁷ A better analogy in this case would be waiting until after the final commercial break in the post-game show.

“[p]roposed intervenors are not entitled to permissive intervention if they simply will reassert the same defenses, but intervention can be appropriate when the intervenors can show [an] interest *unique* to themselves.” *Id.* (quotation marks and citation omitted). The movant’s defense here is no different than that of the state defendants, which, curiously, the movant does not mention in its argument about permissive intervention: that the Fourteenth Amendment does not preclude the states from refusing to recognize the lawful marriages of same-sex couples.⁸

When permissive intervention has been allowed after judgment, it has been under unusual circumstances. In *Meyer*, for instance, the County was permitted to intervene for the limited purpose of contesting the taxing of guardian ad litem fees where a statute allowed the trial court to tax such fees to the County without notice to the County or the opportunity for the County to be heard.⁹ There are no such unusual circumstances here.

VI. Conclusion.

For these reasons, the motion to intervene should be denied.

Respectfully submitted,

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⁸ The movant does suggest, in passing, that the Full Faith and Credit Clause permits Missouri to discriminate against gay men and lesbians married elsewhere by selecting them, based on their sexual orientation, for non-recognition. But this argument has no place here because no argument has been advanced to the contrary. Plaintiffs’ claims are premised entirely on the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Any assertion that the Full Faith and Credit Clause provides states with an affirmative right to refuse to recognize Plaintiffs’ marriages would be frivolous.

⁹ Plaintiffs’ research finds no Missouri cases other than *Meyer* in which permissive intervention has been allowed after judgment.

Gillian R. Wilcox, #61278
ACLU of Missouri Foundation
3601 Main Street
Kansas City, Missouri 64111

ATTORNEYS FOR PLAINTIFFS

Certificate of Service

I certify that a copy of the foregoing was filed electronically and made available to counsel of record on December 5, 2014.

/s/ Anthony E. Rothert

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY
SIXTEENTH JUDICIAL CIRCUIT**

Janice Barrier, et al.,)	
)	
Plaintiffs,)	
	)	No. 1416-CV03892
v.)	
	)	Division 6
Gail Vasterling, et al.,)	
)	
Defendants.)	

AFFIDAVIT OF JOLIE JUSTUS

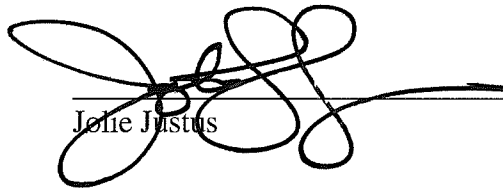
COMES NOW Jolie Justus, being duly sworn, and states on oath the following:

1. My name is Jolie Justus.
2. I am over the age of 18.
3. I have personal and direct knowledge of the facts set forth in this affidavit.
4. I am a Missouri State Senator, representing the Tenth Senate District.
5. I was elected to the Missouri State Senate in 2006.
6. I currently serve as Minority Floor Leader of the Missouri State Senate.
7. Because of my position, I would be aware if the Missouri General Assembly had authorized any effort to intervene in *Barrier v. Vasterling* or had authorized any private attorney to take legal action on behalf of the Missouri General Assembly in that case.
8. The Missouri General Assembly has not authorized any effort to intervene in *Barrier v. Vasterling* on behalf of the Missouri General Assembly.
9. The Missouri General Assembly has not authorized any private attorney to take legal action on its behalf in *Barrier v. Vasterling*.

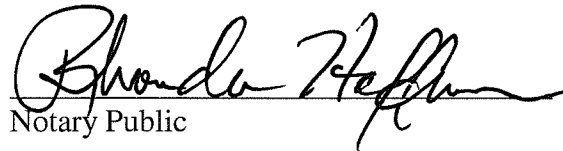
FURTHER AFFIANT SAYETH NOT.

State of Missouri)
County of Jackson)

On this 3rd day of December, 2014, before me personally appeared, Jolie Justus, to me known, and who being first duly sworn by me states that the foregoing is true and correct to the best of his knowledge, information, and belief.


Jolie Justus

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal on the day and year first written above.


Notary Public

RHONDA HOFFMAN
Notary Public - Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires July 30, 2016
Commission # 12486325

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY
SIXTEENTH JUDICIAL CIRCUIT

Janice Barrier, et al.,)	
)	
Plaintiffs,)	
	)	No. 1416-CV03892
v.)	
	)	Division 6
Gail Vasterling, et al.,)	
)	
Defendants.)	

AFFIDAVIT OF MICHAEL COLONA

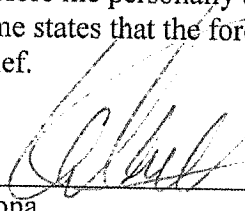
COMES NOW Michael Colona, being duly sworn, and states on oath the following:

1. My name is Michael Colona, I am over the age of 18, and I have personal and direct knowledge of the facts set forth in this affidavit.
2. I am a Missouri State Representative, representing the Eightieth District.
3. I previously have served as the House Minority Whip.
4. Because of my position, I would be aware if the Missouri General Assembly had authorized any effort to intervene in *Barrier v. Vasterling* or had authorized any private attorney to take legal action on behalf of the Missouri General Assembly in that case.
5. To my knowledge, the General Assembly has not considered, debated, or passed a joint resolution authorizing any effort to intervene in *Barrier v. Vasterling* on behalf of the General Assembly.
6. To my knowledge, the Missouri General Assembly has not authorized any effort to intervene in *Barrier v. Vasterling* on behalf of the Missouri General Assembly.
7. To my knowledge, the Missouri General Assembly has not authorized any private attorney to take legal action on its behalf in *Barrier v. Vasterling*.

FURTHER AFFIANT SAYETH NOT.

State of Missouri)
County of City of St Louis)

On this 3 day of December, 2014, before me personally appeared, Michael Colona, to me known, and who being first duly sworn by me states that the foregoing is true and correct to the best of his knowledge, information, and belief.

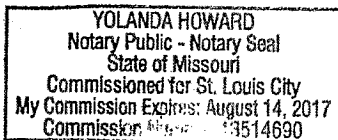


Michael Colona

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal on the day and year first written above.



Notary Public





Missouri Attorney General

Attorney General's News Release

October 6, 2014

Attorney General Koster's statement on his decision not to appeal in Barrier v. Vasterling

Jefferson City, Mo. – Attorney General Chris Koster today released the following statement:

"The circuit court's judgment in Barrier v. Vasterling held that Missouri must recognize marriages lawfully entered into in other states. We will not appeal that judgment. Our national government is founded upon principles of federalism – a system that empowers Missouri to set policy for itself, but also obligates us to honor contracts entered into in other states.

A consequence of this morning's ruling by the United States Supreme Court is that gay marriage will soon be legal in as many as 30 states. At a time when Missouri is competing to attract the nation's premier businesses and most talented employees, we should not demand that certain individuals surrender their marriage licenses in order to live and work among us.

Missouri's future will be one of inclusion, not exclusion."



MISSOURI FAMILY
A Voice for Truth



POLICY COUNCIL
for Missouri Families

A Special Message From Joe Ortwerth

Attorney General Ditches Legal Defense of Missouri Marriage Laws

Attorney General Chris Koster has decided to abandon his responsibilities as the state's chief legal officer on the most critical issue ever addressed by Missouri's court system. Koster has decided his office will not appeal a ruling by a local circuit judge in Kansas City that nullifies Missouri's Marriage Amendment.



Last Friday, Jackson County Circuit Judge J. Dale Youngs ruled that the State of Missouri must recognize the same-sex unions of "couples" who claim they were legally "married" in other states and countries. His decision neuters Missouri's constitutional amendment defining marriage as the union of one man and one woman. Same-sex "couples" in Missouri will now

simply schedule their "weddings" in Illinois, Iowa, or another state, and then return home as legally "married" Missourians.

Chris Koster announced late Monday that he is going to abrogate his duties and not appeal the decision of Judge Youngs to the Missouri Supreme Court. By his inaction, the Attorney General is allowing a single outlaw judge in Kansas City to overturn the will of the 71% of Missourians who voted to preserve traditional marriage in 2004. This is a wholesale dereliction of duty on the part of the Attorney General.

Judge Youngs has issued an arrogant and abusive decision that violates Missouri's Constitution, Missouri state statutes, federal law, and U.S. Supreme Court precedent. Yet the man charged with defending the rule of law in Missouri is now refusing to fulfill his legally prescribed duties.

Why is that? Well, the answer is pretty simple. Chris Koster badly wants to be elected as Missouri's next Governor. It is an article of faith in his political party that any candidate for higher office must genuflect at the altar of the homosexual rights movement. Koster has now done so in the most symbolic way possible. He has decided that he is willing to discard the Constitution of our state to appease the "gay rights" movement and advance his own political aspirations.



Koster says that his decision not to appeal the ruling is based on "principles of federalism," and that Missouri is bound to "honor contracts entered into in other states." This is a false statement from both a public policy and legal standpoint, and Koster knows it. The federal Defense of Marriage Act grants the state of Missouri the authority to decline to recognize out-of-state marital



unions that do not reflect the historic definition of marriage. The Supreme Court reiterated earlier this year that states and their citizens have the legal prerogative to define marriage as they choose, and that the federal government has no business intruding into those decisions.

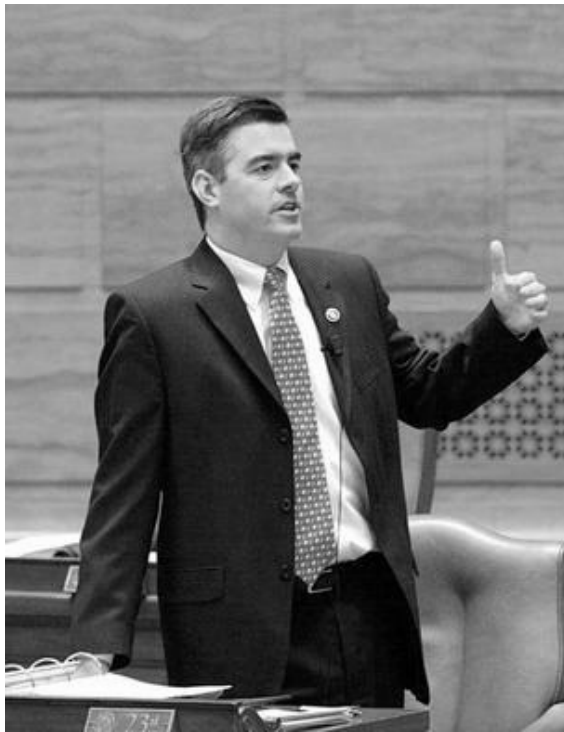
Missouri state statutes declare that "the attorney general SHALL appear on behalf of the state in the court of appeals and in the supreme court and have the management of and represent the state in all appeals to which the state is a party..." Yet Chris Koster has now decided that he will turn his back on his sworn public duty

to further his personal political ambitions.

Missouri State Senate President Pro Tem Tom Dempsey assailed Koster's misconduct. "The Attorney General is simply hiding behind thin legal justifications as he seeks to undermine the will of Missouri voters. This ruling

Ex. D

by one local judge stands in direct contradiction to our constitution which was approved by a statewide vote. I urge Chris Koster to do his duty as the state's lawyer and defend the law the voters enshrined in our Constitution."



"If the Attorney General wants to substitute his own opinions in place of the clear will of the people, perhaps he should make his views a plank in his campaign for Governor," Dempsey added. "However, at present he is still the Attorney General of our great state and as such he has a duty to defend the law as actually written, not as he wishes it to be."

Missouri Senate Majority Leader Ron Richard echoed Senator Dempsey's comments. "Each state has the authority to establish laws governing the institution of marriage. Missouri voters spoke loud and clear in 2004 by passing the constitutional amendment. This issue should now be brought to the Missouri Supreme

Court for their review of the lower court's decision. To do that, we will need the support of our Attorney General."

Earlier this year, Koster made clear his support of redefining marriage to include same sex-unions. Yet he said at the time that his job was to defend the law, whether he liked it or not. Koster was quoted as saying: "Missourians may have changed their sentiments on marriage equality, but they have yet to change their Constitution."

Well, Missourians still have not changed their Constitution, and no federal court has said they have to. What has changed is the Attorney General's resolve to stand by his oath of office and do the job he swore before the citizens of this state he would do. If Chris Koster is unwilling to keep his oath of office as the state's top lawyer, why should he be trusted to keep his oath of office in any other position of high office that calls for public integrity?

In announcing his decision to walk away from his official duties, Koster made a statement that sounds like a campaign slogan, rather than a comment of legal jurisprudence. He said: "Missouri's future will be one inclusion, not exclusion." It would seem clear that what that means for the Attorney General is inclusion of his zealous pursuit of the Governor's Mansion, and exclusion of the Constitution he is sworn to defend.

This is a shameful moment in the history of our state, and the most shameless character in this sorry episode is the man who should be personifying the rule of law. Presidents through the centuries have reaffirmed the statement made



by Founding Father John Adams that we have "a government of laws, not of men." But in the world of men like Judge J. Dale Youngs and Chris Koster, we are not a nation of laws, but a nation of men abusing power for their individual ends.

Thanks to them, the institution of marriage in Missouri has now been perverted in ways our God has called an abomination. May God have mercy on our state and nation.

10/8/14



Joe Ointment

Â

DECEMBER 2, 2014

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Missouri House finds no way to challenge same-sex marriage ruling

October 31, 2014 by [Mike Lear](#)

State lawmakers have found that there is nothing they can do to fight to uphold Missouri's prohibition of same-sex marriage, but the Speaker of the House tells Missourinet the issue might not be settled.

Attorney General Chris Koster announced October 6 he would not challenge the ruling of a Kansas City judge that would mean Missouri must recognize same-sex marriages from other states. Some Republican state lawmakers looked for ways they could step in and defend the state's statutes and constitutional amendment against gay marriage, but House Speaker Tim Jones says they found none.

"House research and our House counsel's office looked into that issue," says Jones. "They determined that there is no mechanism for this; a constitutional provision that allows the legislature to intervene."

The judge's order becomes final Monday, and ten days remain to file an appeal after that.

Jones thinks Missouri might not be done with the issue, however, and it could come up in the legislature next year.



House Speaker Tim Jones (photo courtesy; Tim Bommel, Missouri House Communications)

"The senate leaders issued a very strong statement on this. I don't know exactly where [Speaker-elect John] Diehl and the next [House] leadership team stand, but I can tell you I've heard from a lot of my caucus members. This is going to be a priority for them in 2015."

Jones believes there are "a lot of possible remedies the General Assembly as a whole could pursue," but doesn't elaborate on what those are. He won't be in the legislature after the end of this year, as he is term-limited from running again in the House.

Two more court challenges to Missouri's same-sex marriage ban are awaiting rulings.

Earlier stories:

[Judge rules Missouri must recognize out-of-state same-sex marriages](#)

[AG: will not appeal ruling that Missouri must recognize same-sex marriages](#)

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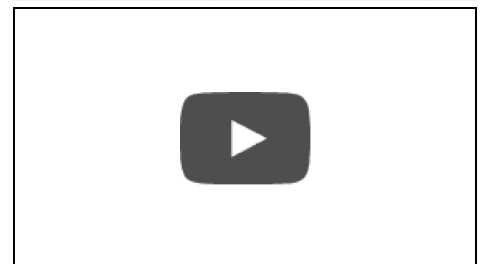
Previous Post [Drafting begins on state energy plan \(AUDIO\)](#)

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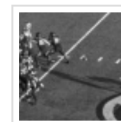


ROAD TO THE SEC CHAMPIONSHIP

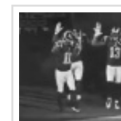


[Click here for more SEC news.](#)

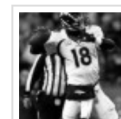
SPORTS



Pinkel said kickers are lucky enough to make 1 of every 4 from 50+ yards. Baggett did it twice to earn SEC honors (AUDIO)



STL Police Officer's Association critical of Rams player's pregame gesture. Three of the players explain their actions (AUDIO)



Manning strikes early then lets the running game do the rest as Chiefs drop sixth straight to Denver

Total domination, Mason goes for three scores, defense gets five takeaways in Rams blowout win over Oakland

Ex. E



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

CHRIS KOSTER
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

November 17, 2014

The Honorable Tom Dempsey
201 W Capitol Ave., Rm. 326
Jefferson City, MO 65101

The Honorable Timothy Jones
201 W Capitol Ave., Rm. 308
Jefferson City, MO 65101

The Honorable John Diehl
201 W Capitol Ave., Rm. 302A
Jefferson City, MO 65101

Dear Senator Dempsey, Speaker Jones, and Speaker-designee Diehl,

Thank you for your November 7, 2014, letter expressing your thoughts about the three cases—*Barrier v. Vasterling* (No. 1416-CV03892), *State v. Florida* (No. 1422-CC09027), and *Lawson v. Kelly* (No. 4:14-CV-00622-ODS)—currently pending in Missouri state and federal courts regarding same-sex marriage.

We have announced our intent to appeal the rulings of the circuit and district courts in *Florida* and *Lawson*, respectively. These cases squarely present the central question regarding same-sex marriage: does a state constitutional provision or statute prohibiting same-sex marriage licenses from being issued within the state violate the Equal Protection or Due Process Clauses of the Fourteenth Amendment to the United States Constitution? As you acknowledge in your letter, my office has defended the validity of Missouri's definition of marriage in both the state and federal courts, and we intend to continue that defense in the appellate courts.

In pursuing these appeals, my office will continue to defend Missouri's laws with the arguments that in our judgment are legally supportable. I understand, however, that other arguments may exist that you believe should also be presented to the court. To that end, my office will not oppose the submission of an *amicus* brief by the General Assembly in defense of Missouri's definition of marriage, and we are willing to share a portion of our oral argument time in these cases with the author of the brief. By filing an

EXHIBIT 2 Motion to Intervene

Ex. F

amicus brief and participating in oral argument, the legislature can ensure that no argument is left unmade on appeal, though my office may disassociate itself from any argument that we believe is offensive or unsupportable.

As you note, my office has decided not to appeal the Jackson County Circuit Court's ruling in *Barrier*. In that case, the Court held that Missouri is obligated, under the Fourteenth Amendment's Equal Protection Clause, to recognize same-sex marriages lawfully entered into in other states. As the Court observed in its judgment, Missouri has a policy of recognizing out-of-state marriages even if those marriages could not lawfully have been performed here in Missouri (*e.g.* Missouri recognizes out-of-state marriages between first cousins or between individuals under the age of 18, even though performing such marriages is illegal in this State). The Court found no rational basis for Missouri to treat out-of-state same-sex marriages differently from those out-of-state opposite-sex marriages. In our view, while our federal system empowers Missouri to set policy for itself, it requires us to honor out-of-state contracts in a manner that is both fair and consistent. Further, continuing the litigation is not costless—the State was ordered to pay over \$137,000 to the ACLU in attorney's fees for litigating the case in circuit court. We did not believe there was a lawful basis to appeal the Court's judgment in *Barrier*, and thus we chose not to expend further resources on such an appeal.

Additionally, while the *Florida* and *Lawson* cases are pending on review, we will not ask the lower courts to stay their rulings. We are guided by the repeated decisions of the United States Supreme Court in recent weeks declining to issue stays in Idaho, Alaska, and Kansas, effectively permitting same-sex marriages to proceed in these jurisdictions while the cases involving the constitutionality of their state prohibitions are pending on appeal. By refusing to issue stays, the Supreme Court has effectively ratified the decisions of its agents—the lower federal courts—in striking down state constitutional bans and permitting same-sex marriages to go forward. In its most recent action, the Court lifted the stay requested by Kansas even after the Sixth Circuit Court of Appeals upheld the traditional definition of marriage, creating a circuit split. The circumstances here are identical to those posed in other circuits and do not support a different approach.

I hope that this explanation addresses the concerns expressed in your letter. I look forward to continuing to work positively with the General Assembly on this and the many other issues important to the citizens we serve.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Koster", with a stylized flourish at the end.

CHRIS KOSTER
Attorney General



MISSOURI GENERAL ASSEMBLY
JEFFERSON CITY

November 7, 2014

Attorney General Chris Koster
Supreme Court Building
207 W. High St.
Jefferson City, MO 65102

Dear Attorney General Koster:

It has come to our attention that Judge Burlison has issued an Order (State of Missouri vs. Florida, 1422-CC09027) that has a strong bearing on the ability of the citizens of our state to establish by public vote the social constructs under which they will live.

The issue raised by this case is very controversial but even leaving aside the subject matter at hand, there is great concern that state statutes and provisions of the Missouri Constitution will not be given the benefit of a zealous defense before the judicial branch. The legislature clearly spoke on this issue in 2001 with the passage of Sec. 451.022 RSMo and again in 2004 with the passage of SJR 29, which put the issue of what constitutes a marriage squarely before the voters. The citizens of the state then spoke directly on the matter by passing SJR 29 with over seventy percent of the vote and we believe the executive branch is bound to follow their direction.

There is concern that a ruling of a single circuit court judge which declared both the statute and the Missouri Constitutional provision to be invalid will be allowed to go into effect before the appeal can be heard by our state's highest Court on this very important issue. Allowing this ruling to take effect will cause confusion while awaiting a clear decision by the Supreme Court, marriages could occur and then be set aside. This sets a dangerous precedent and undermines the very fabric of a system of government where a balance between the three co-equal branches is essential to the protection of the liberties enjoy by its citizens.

Ex. G

Although many arguments could be made, the arguments made by your own team of attorneys in recent weeks are accurate:

“...the ‘people’ of the State of Missouri voted this policy into the Missouri Constitution by passing a constitutional amendment providing:

That to be valid and recognized in this state, a marriage shall exist only between a man and a woman.

MO. CONST. ART. I, SEC. 33 (adopted 2004).

The question in this case, again, is whether the State of Missouri can define the domestic relationship of marriage under its own laws and Constitution without interference by federal authority. The United States Supreme Court says “yes”. See Windsor, 133 S.Ct. 2675 (recognizing the states’ rights to define marriage); see also Baker v. Nelson, 409 U.S. 810 (1972) (rejecting on the merits a due process and equal protection challenge to a state law defining marriage as between a man and a woman). And the United States Court of Appeals for the Eighth Circuit says “yes”. See Citizens for Equal Protection v. Bruning, 455 F.3d 859 (8th Cir. 2006) (upholding the state law definition of marriage as between a man and a woman).

This Court is bound by controlling precedent and, therefore, should grant the State of Missouri judgment on the pleadings.”


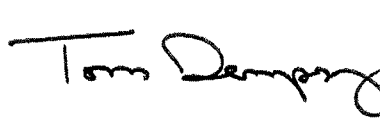
See page 2 of Plaintiff State of Missouri’s Suggestions in Support of Judgment on the Pleadings, State of Missouri v. Carpenter, No. 1422-CC09027 (St. Louis City Circuit Court, 2014).

We recognize there may be occasions where an attorney general may be personally averse to arguing a position codified in state law. This appears to be just such a case. Therefore, we would request that you name a special assistant attorney general to perform the duties of your office in regard to the issue at hand. There is strong precedent for such an arrangement dating back to the hiring of Jordan Cherrick in State of Missouri v. Planned Parenthood of Mid-Missouri and Eastern Kansas, 37 S.W.3d 222 (Mo. Banc 2001) under your predecessor. This outside attorney was paid with state funds and was able to provide the necessary “adversarial” tension required for a case to be fully vetted by a court. As the United States Supreme Court has found, “prudential considerations, however, demand that there be ‘concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.’ Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691”, United States v. Windsor, 133 S.Ct. 2675 (2013).

Specifically, we are asking that you promptly appeal the decision of the circuit court in the case of Barrier v. Vasterling (1416-CV03892) or, in the alternative, appoint a special assistant attorney general to perform this important duty of your office.

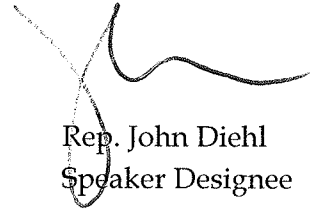
Furthermore, we respectfully urge you to expeditiously seek a Stay of the Order in the Florida case (1422-CC09027) until such time as the case can be heard and decided by the Supreme Court. Likewise, as requested above, should you feel personally unable to zealously defend the existing statutory and Constitutional provisions as approved by the voters, that you retain outside counsel to bring an appeal, and that you support intervention by the Speaker and Majority Leader of the Missouri House of Representatives and the President Pro Tem of the Missouri Senate in their official capacities.

Sincerely,



Sen. Tom Dempsey
President Pro Tem

Rep. Tim Jones
Speaker of the House



Rep. John Diehl
Speaker Designee

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Program Operations Manual System (POMS)

TN 10 (06-14)

GN 00210.003 Same-Sex Marriage – Dates States Permitted or Recognized Same-Sex Marriage

A. State Chart for Same-sex Marriage Permission and Recognition

As set out in GN 00210.002, consult this chart to determine:

- which states have laws permitting same-sex marriages;
- the date(s) when the states listed permitted same-sex marriages; and
- the dates states recognize same-sex marriages.

COLUMN I	COLUMN II	COLUMN III
State	Date Same-Sex Marriages Were Permitted in the State	Date Same-Sex Marriages from Any Other State Were Recognized
Alaska	October 17, 2014	October 17, 2014
Arizona	October 17, 2014	October 17, 2014
California (See GN 00210.003B.1.)	June 16, 2008 – November 4, 2008 June 26, 2013 - present	June 16, 2008 – November 4, 2008 June 26, 2013 - present
Colorado	October 7, 2014	October 7, 2014
Connecticut	November 12, 2008	November 12, 2008
Delaware	July 1, 2013	July 1, 2013

Ex. H

District of Columbia	March 9, 2010	July 7, 2009
Hawaii	December 2, 2013	December 2, 2013
Idaho	October 15, 2014	October 15, 2014
Illinois	December 16, 2013	February 21, 2014
Indiana	October 6, 2014 Hold claims involving marriages prior to October 6, 2014 per instructions in GN 00210.005.	October 6, 2014 Hold claims involving NH domiciled in, or couple making permanent home in, Indiana prior to October 6, 2014 per instructions in GN 00210.005.
Iowa	April 20, 2009	April 30, 2009
Kansas	Hold per instructions in GN 00210.005	Hold per instructions in GN 00210.005
Maine	December 29, 2012	December 29, 2012
Maryland	January 1, 2013	February 23, 2010
Massachusetts	May 17, 2004	May 17, 2004
Michigan (See GN 00210.003B.2.)	March 21 – 22, 2014	March 21 – 22, 2014
Minnesota	August 1, 2013	August 1, 2013
Missouri	Hold claims involving a same-sex marriage celebrated in Missouri per instructions in GN 00210.005.	October 6, 2014
Montana	Hold per instructions in GN 00210.005	Hold per instructions in GN 00210.005
Nevada	October 9, 2014	October 9, 2014
New Hampshire	January 1, 2010	January 1, 2010
New Jersey	October 21, 2013	Continue to hold per instructions in GN 00210.005.
New Mexico	August 21, 2013 Per GN 00210.005, hold all claims in which same-sex couples allege	January 4, 2011

Ex. H

	a ceremonial marriage in New Mexico based on a marriage license issued by Sandoval County in 2004.	
New York	July 24, 2011	February 1, 2008
North Carolina	October 10, 2014	October 10, 2014
Oklahoma	October 6, 2014	October 6, 2014
Oregon	May 19, 2014	October 16, 2013
Pennsylvania	May 20, 2014 Per GN 00210.005, hold all claims in which same-sex couples allege a marriage in Pennsylvania based on a marriage license issued prior to this date.	May 20, 2014
Rhode Island	August 1, 2013	February 20, 2007
South Carolina	Hold per instructions in GN 00210.005	Hold per instructions in GN 00210.005
Utah	October 6, 2014 Hold claims involving marriages prior to October 6, 2014 per instructions in GN 00210.005.	October 6, 2014 Hold claims involving NH domiciled in, or couple making permanent home in, Utah prior to October 6, 2014 per instructions in GN 00210.005.
Vermont	September 1, 2009	September 1, 2009
Virginia	October 6, 2014	October 6, 2014
Washington	December 6, 2012	December 6, 2012
West Virginia	October 9, 2014	October 9, 2014
Wisconsin	October 6, 2014 Hold claims involving marriages prior to October 6, 2014 per instructions in GN 00210.005.	October 6, 2014 Hold claims involving NH domiciled in, or couple making permanent home in, Wisconsin prior to October 6, 2014 per instructions in GN 00210.005.

Ex. H

Wyoming

October 21, 2014

October 21, 2014

B. State-specific Guidance

1. California marriages

California recognizes same-sex marriages celebrated in California as valid from June 16, 2008 to present.

For example, if a claimant married a number holder (NH) in California on October 30, 2008, and the NH died while domiciled in California on October 30, 2011, we would recognize the marriage as having duration of three full years for purposes of determining the claimant's entitlement to survivor benefits or the lump sum death payment.

2. Michigan marriages

For two days, March 21 and 22, 2014, Michigan permitted same-sex couples to marry. We can now process claims and appeals involving this time period

a. Instructions for processing Title XVI claims and appeals involving same-sex marriage in Michigan

For SSI purposes, a couple must be married as of the first moment of the month. Therefore, do not consider an SSI recipient or applicant married for the month of March 2014, based on a valid marriage in Michigan, or based on a permanent home in Michigan in March 2014.

b. Instructions for processing Title II claims and appeals involving same-sex marriage in Michigan

1. For Title II applications pending on March 21 or 22, 2014.

For Title II applications filed or pending on March 21 or 22, 2014, and based on the marriage of a NH domiciled in Michigan, consider Michigan a state that recognized same-sex marriage.

2. For Title II applications where the NH died on March 21 or 22, 2014.

For Title II applications based on the same-sex marriage of a NH who died while domiciled in Michigan on March 21 or 22, 2014, consider Michigan a state that recognized the same-sex marriage.

3. For Title II applications filed on or after March 23, 2014 with NH domiciled in Michigan.

For Title II applications filed on or after March 23, 2014, based on the same-sex marriage

of a NH who is domiciled in Michigan, do **NOT** consider Michigan a state that recognizes the marriage for benefits purposes.

4. For Title II applications based on a same-sex marriage from Michigan where the NH is domiciled, or died while domiciled in other states.

If the NH is domiciled or died domiciled in a state that recognizes same-sex marriage, and a Title II application is filed based on a same-sex marriage celebrated on March 21 or 22, 2014, in Michigan, consider the Michigan marriage recognized for benefits purposes.

EXAMPLE:

Louis entered a same-sex marriage with Maurice in Michigan on March 21, 2014. Louis and Maurice then moved to Massachusetts and established domicile there. While domiciled in Massachusetts, Maurice filed for aged spouse benefits based on Louis's record. We find that the marriage was validly celebrated in Michigan and recognized by Massachusetts at the time of the application. We recognize the marriage for purposes of determining entitlement to benefits.

Reference:

GN 00210.002 Same-Sex Marriage - Determining Marital Status for Title II and Medicare Benefits
EM-14052 Changes to policy involving same-sex marriage in Michigan One-Time-Only
Instruction

To Link to this section - Use this URL:


<http://policy.ssa.gov/poms.nsf/lnx/0200210003>

GN 00210.003 - Same-Sex Marriage - Dates States Permitted or Recognized





Same-Sex Marriage - 10/31/2014

Batch run: 11/07/2014

Rev:11/07/2014



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Important Information on Marriage

The Department of Veterans Affairs (VA) offers a variety of benefits and services that depend on "spouse" and "surviving spouse" status. For the purpose of VA benefits, spousal status is predicated on a valid marriage under state law. Under the current Federal law, [38 U.S.C. § 103\(c\)](#), VA may recognize a Veteran's marriage for VA purposes if:

- the marriage was legal in the place where the Veteran or the Veteran's spouse lived at the time of the marriage; or
- the marriage was legal in the place where the Veteran or the Veteran's spouse lived when he or she filed a VA claim or application (or a later date when the Veteran became eligible for benefits).

VA is providing information about when it can recognize a marriage on its application form instructions and through public outreach. VA generally accepts a claimant's or applicant's statement that he or she is married as sufficient evidence to establish a Veteran's marriage for the purpose of VA benefits.

VA is dedicated to serving all eligible Servicemembers, Veterans and their families and providing them the benefits they have earned.


How To Determine If VA Will Recognize a Marriage?


SCENARIO	IF	THEN, FOR PURPOSES OF VA, VETERAN AND SPOUSE ARE...
1	The Veteran and/or spouse live in a state that recognizes their marriage at the time of the claim... or The surviving spouse lives in a state that recognizes their marriage at the time of the claim...	Married
2	The Veteran is deceased, and the Veteran's last state of residence during his/her lifetime recognizes the marriage at the time of the claim...	Married
3	The Veteran and/or spouse lived in a state that recognized their marriage when they were married...	Married
4	The Veteran and spouse lived in a state that did not recognize their marriage when they were married (having traveled to a recognition state to get married), live in a state that does not recognize their marriage at the time of the claim, but then the Veteran and/or spouse move to a state that does recognize their marriage while the claim is pending... or The Veteran is deceased. The Veteran and surviving spouse lived in a state that did not recognize their marriage when they were married (having traveled to a recognition state to get married). At the time of the claim, the state of the deceased Veteran's last residence and the state where the surviving spouse lived when the claim was filed do not recognize their marriage. However, while the claim is pending, the surviving spouse	Note: VA generally interprets "when the right to benefits accrued" (per 38 U.S.C. § 103(c)) to mean "at the time of the claim." However, the right to benefits can also accrue at a later time after the claim is submitted, when all the requirements for entitlement are met.


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Important Information on Marriage

moves to a state that does recognize their marriage...

5	<p>The Veteran and spouse lived in a state that did not recognize their marriage when they were married (having traveled to a recognition state to get married) and continue to live in a state that does not recognize their marriage at the time of the claim... or</p> <p>The Veteran is deceased. The Veteran and surviving spouse lived in a state that did not recognize their marriage when they were married (having traveled to a recognition state to get married). Also, at the time of the claim, the state of the deceased Veteran's last residence and the state where the surviving spouse currently lives do not recognize their marriage...</p>	Not married for purposes of VA benefits
---	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------

***** Programs to which section 103(c) is NOT applicable because spousal eligibility is not based on marriage to a "Veteran"*

- Servicemembers' Group Life Insurance (SGLI)
- Family Servicemembers' Group Life Insurance (FSGLI), including the process of converting a spouse's FSGLI coverage to an individual policy spouse of a
- Veterans' Group Life Insurance (VGLI)
- Post 9/11 GI Bill Benefits (VA's recognizes all DoD-approved transfers to dependents)
- Survivors' and Dependents' Educational Assistance if the relationship is based on marriage to a Servicemember.
- Burial or memorialization benefits if the relationship is based on marriage to certain reservists, certain members of the reserve officer training corps, certain wartime allies of the U.S., and certain individuals entitled (or who would have been entitled but for their age) to retirement pay. (**For more information, see** www.cem.va.gov/cem/burial_benefits/eligible.asp#natlguard)

For these programs, the law requires VA to recognize marriages based on the law of the place where the marriage occurred, which is the same standard as used by the Department of Defense (DoD). If you have additional questions, please contact one of our Call Centers at **1-800-827-1000**.

List of States That Have Recognized Same-Sex Marriage:

STATE NAME	DATE SAME-SEX MARRIAGES WERE PERMITTED IN THE STATE (use this column if the place where the marriage occurred is the same as the place of residence)	DATE SAME-SEX MARRIAGES FROM ANY OTHER STATE WERE RECOGNIZED (use this column if the place where the marriage occurred is different from the place of residence)
Alaska	October 17, 2014	October 17, 2014
Arizona	October 17, 2014	October 17, 2014
California	June 17, 2008 – November 4, 2008 June 26, 2013 – present	June 17, 2008 – November 4, 2008 June 26, 2013 – present
Colorado	October 7, 2014	October 7, 2014
Connecticut ^{1,2}	November 12, 2008	November 12, 2008
Delaware ²	January 1, 2012	July 1, 2013
District of Columbia	March 9, 2010	July 7, 2009
Hawaii	December 2, 2013	December 2, 2013
Idaho	October 15, 2014	October 15, 2014
Illinois	December 16, 2013	December 16, 2013
Indiana	October 6, 2014	October 6, 2014
Iowa	April 20, 2009	April 30, 2009

Important Information on Marriage

Maine	December 29, 2012	December 29, 2012
Maryland	January 1, 2013	February 23, 2010
Massachusetts	May 17, 2004	May 17, 2004
Michigan	March 21, 2014 to March 22, 2014	March 21, 2014 to March 22, 2014
Minnesota	August 1, 2013	August 1, 2013
Missouri		October 6, 2014
Nevada	October 9, 2014	October 9, 2014
New Hampshire ²	January 1, 2010	January 1, 2010
New Jersey	October 21, 2013	October 21, 2013
New Mexico	August 21, 2013	January 4, 2011
New York	July 24, 2011	February 1, 2008
North Carolina	October 10, 2014	October 10, 2014
Oklahoma	October 6, 2014	October 6, 2014
Oregon	May 19, 2014	October 16, 2013
Pennsylvania	May 20, 2014	May 20, 2014
Rhode Island	August 1, 2013	May 14, 2012
Utah	October 6, 2014	October 6, 2014
Vermont	September 1, 2009	September 1, 2009
Virginia	October 6, 2014	October 6, 2014
Washington	December 6, 2012	December 6, 2012
West Virginia	October 9, 2014	October 9, 2014
Wisconsin	October 6, 2014	October 6, 2014
Wyoming	October 21, 2014	October 21, 2014

- Both Connecticut (effective October 1, 2010) and Rhode Island (effective August 1, 2013) recognize out-of-state domestic partnerships and civil unions as "marriages".
- Several States have passed laws converting civil unions or domestic partnerships that were previously performed within the state to "marriages". On October 1, 2010, Connecticut (CT) converted existing in-state civil unions to marriages with an effective date of October 1, 2010 (CT civil unions permitted as of October 1, 2005). On January 1, 2011, New Hampshire (NH) converted existing in-state civil unions to marriages with an effective date of January 1, 2011 (NH civil unions permitted as of January 1, 2008). On June 30, 2014, Washington (WA) will convert existing in-state domestic partnerships, in which either of the partners is not over the age of 62, to marriages effective on the date that the domestic partnership was performed (WA domestic partnerships permitted as of July 23, 2007). On July 1, 2014, Delaware (DE) will convert existing in-state civil unions to marriages, effective the date the civil union was performed (DE civil unions permitted as of January 1, 2012).
- From June 1, 2014 to May 31, 2015, couples who have an Illinois (IL) civil union will have the option of having their IL civil union converted to a marriage, effective the date the civil union was performed (IL civil unions permitted as of June 1, 2011).

Important: VA is in the process of updating all forms that request marital status information in order to provide information on its marriage-validity determination criteria.

If you have additional questions about how these recent changes regarding same-sex marriage may affect your claim for benefits, please refer to our frequently asked questions below.

Frequently Asked Questions

[Collapse all](#) | [Expand all](#)

- ▶ **Q:** Who is considered a spouse for purposes of VA benefits?
- ▶ **Q:** What supporting evidence do I have to submit with my claim or application to add my spouse as a dependent?
- ▶ **Q:** What does a claimant's or applicant's "assertion" entail?
- ▶ **Q:** Will VA pay retroactive compensation and pension benefits for claims involving same-sex spouses? What will be the effective date?
- ▶ **Q:** Does VA apply different requirements when evaluating my same-sex marriage? Will VA apply different requirements to a same-sex marriage?
- ▶ **Q:** I filed my claim or application the day after the Attorney General's

Important Information on Marriage

announcement in September and still haven't received a decision? Why?

- ▶ **Q:** Can I transfer my Post 9/11 GI Bill benefits to my same-sex spouse, even if my marriage is not recognized for the purpose of other VA benefits and services?
- ▶ **Q:** What if I currently live in a state that recognizes same-sex marriage?
- ▶ **Q:** What if I resided in a state that recognized same-sex marriage at the time I was married?
- ▶ **Q:** What if I have never lived in a state that recognized same-sex marriage, but I traveled to a recognition state to marry?
- ▶ **Q:** Does VA recognize common law marriages?
- ▶ **Q:** How long do I have to live in a state for VA to consider the state my residence?
- ▶ **Q:** Can I have more than one place of residence?
- ▶ **Q:** What if my spouse and I lived in different places when we were married?
- ▶ **Q:** What if my home state changed its laws to recognize same-sex marriage after I traveled to be married somewhere else?
- ▶ **Q:** What if I move to a state that recognizes same-sex marriage while my claim or application is pending?
- ▶ **Q:** What if I move to a state that recognizes same-sex marriage after my claim or application was denied?
- ▶ **Q:** What if I got married outside of the United States?
- ▶ **Q:** What if I resided outside of the United States at the time of my marriage or when I filed my claim?
- ▶ **Q:** The Department of Defense recognized my marriage-will VA?
- ▶ **Q:** What if VA has recognized my marriage for a different benefit?
- ▶ **Q:** What if I move to a state that recognizes same-sex marriage after my Veteran spouse dies?
- ▶ **Q:** I am a Veteran enrolled in VA health care. Will this change in the law affect my eligibility?
- ▶ **Q:** I am considering applying for VA health care or previously applied for VA health care and was denied based on income. Will this change in the law affect my eligibility?
- ▶ **Q:** If my marriage is recognized for the purposes of VA benefits, what benefits may I be eligible for?
- ▶ **Q:** What benefits may my spouse be eligible for?
- ▶ **Q:** Will VA recognize my domestic partnership or civil union for purposes of VA benefits?
- ▶ **Q:** What States Recognize Same-Sex Marriage?
- ▶ **Q:** Can VA confirm that the surviving same-sex spouse of a deceased Veteran, who is already interred in a VA national cemetery, will be eligible for interment with the Veteran?

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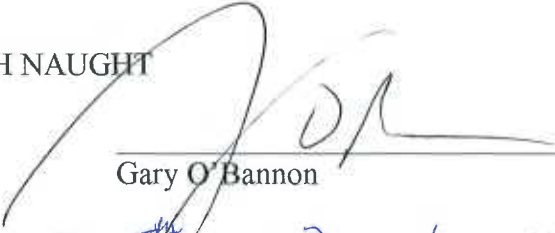
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Veterans Health Administration
Veterans Benefits Administration
National Cemetery Administration

7. The City made these policy changes in reliance on the finality of the Judgment, as all defendants had declined to appeal the Judgment.
8. Since the change in City policies, employees have been eligible to enroll their same-sex spouse in the City's Benefits. The change in City policies has resulted in additional enrollment in the City's Benefits.
9. The City and those having enrolled their same-sex spouse in the City's Benefits plans would be prejudiced by allowing an intervenor to act contrary to the actions of the named defendants.

FURTHER AFFIANT SAYETH NAUGHT



Gary O'Bannon

Subscribed and sworn to before me this 5th day of December, 2014.



Notary Public

My Commission Expires:





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Regents Extend University Benefits to Same-Sex Spouses of Employees, Retirees

October 28, 2014 | [Board of Regents](#), [Campus](#), [Faculty and Staff](#), [Home Page](#)



CAPE GIRARDEAU, Mo., Oct. 28, 2014 – The Southeast Missouri State University Board of Regents today extended University benefits to same-sex spouses of employees or retirees, effective immediately.

The action follows a Jackson County Circuit Court judge's order Oct. 3 requiring same-sex couples who were legally married in another state to be recognized by the state of Missouri, according to Kathy Mangels, vice president for finance and administration. The Missouri Attorney General's Office announced Oct. 6 the state of Missouri would not appeal the judgment. Since then, the state of Missouri's main healthcare and retirement plans have expanded benefits to same-sex spouses with a valid marriage certificate.

Southeast Missouri State will follow the action of Missouri's benefit plans for state employees and expand the definition of "spouse" under Southeast's benefit plans to include same-sex spouses of employees and retirees, Mangels said. The Board's action today is considered a qualifying event under the University's benefit plans, allowing enrollment to begin immediately.

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Upcoming Events

- **Benjie Heu**
October 31, 2014 - January 25, 2015
- **Crystal Wagner: Immersion**
November 7, 2014 - January 25, 2015
- **BFA Graduating Seniors Fall Exhibition, Part II**
December 1, 2014 - December 5, 2014
- **Southeast Bookstore First Friday Sale**
December 5, 2014
- **BFA Graduating Seniors Ex. L**

Under today's action, the definition of "spouse" in the procedures of the University's Business Policies and Procedures Manual will be updated, Mangels said. "Spouse" will be defined as "a legally married spouse, as evidenced by a valid marriage certificate."

It is anticipated that the cost to Southeast in implementing this change will be minimal. The University currently supplements spouse health insurance premiums by \$125 per month and offers a 50 percent reduction on the cost of undergraduate courses taken by a spouse.

Fall Exhibition, Part II Reception

December 5, 2014 5:00 PM - 7:00 PM

- **Compassion & Change**
December 6, 2014 12:00 PM - 6:00 PM
- **Southeast Women's Basketball**
December 6, 2014 2:00 PM
- **Southeast Men's Basketball**
December 6, 2014 6:00 PM
- **BFA Graduating Seniors Fall Exhibition, Part III**
December 8, 2014 - December 12, 2014
- **Wind Symphony: Divergence**
December 9, 2014 7:30 PM

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6:46 AM WED NOVEMBER 19, 2014

Springfield Board of Education Approves Benefits for Same-Sex Couples

By [MICHELE SKALICKY](#) (/PEOPLE/MICHELE-SKALICKY) & [SCOTT HARVEY](#) (/PEOPLE/SCOTT-HARVEY)



The Springfield School Board has voted to extend healthcare benefits to married, same-sex couples. The [amendment](#)

<http://mediad.publicbroadcasting.net/p/ksmumain/files/201411/sps.JPG>

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[http://www.boarddocs.com/mo/sps/Board.nsf/files/9QV3TR6FB71B/\\$file/Health%20Plan%20Amendment%20%238%20-%2011.18.14.pdf](http://www.boarddocs.com/mo/sps/Board.nsf/files/9QV3TR6FB71B/$file/Health%20Plan%20Amendment%20%238%20-%2011.18.14.pdf) to the district health plan changes the definition of spouse to include same-sex spouses married in a state that legally recognizes same-sex marriage.

The decision was unanimous, 7-0.

Chief Human Resources Officer Parker McKenna told the board that the proposal will help ensure competitiveness and meet the needs of employees, some of whom have requested the change. He also cited recent court rulings on gay marriage in Missouri, as well as the city's amended non-discrimination ordinance.

"It's also worth noting that the premium associated with the cost of that same-sex spouse would be treated just as our opposite-sex spouses, which is solely at the cost of the participant, so the district does not fund any portion of that premium," McKenna said.

Board member Annie Busch said she has no trouble supporting the amendment.

"I also think that that's the direction things are moving and I believe it's the right thing to do," said Busch.

One citizen spoke against the amendment during the public comment section of

Tuesday's meeting. Dan Cumming said the school board was too quick to react to recent court rulings on gay marriage in Missouri, which are both being appealed.

"I don't understand why the push is. These rulings were just made, what, a week and a half ago and that was the impetus for making that change in definition? What is the rationale?" he said.

Board member Gerry Lee expressed some concern with the amendment, noting that given a lack of legal direction the board may be "overextending our responsibility and authority to do some of this." He did say he did feel comfortable with the amendment language referring same-sex spouses married in states where it's legal to do so.

Andy Hosmer noted it's not the first time the court has left the district with no guidance; and Denise Frederick said there are other local employers that offer similar benefits.

It is not immediately clear how many additional employees will take part in the amended plan. The district's self-insured health plan, with more than 6,000 current participants, is the largest in Springfield.

The amendment expanding the definition of "spouse" in the district's healthcare plan takes effect December 1st.

TAGS: [Springfield Board of Education \(/term/springfield-board-education/\)](/term/springfield-board-education/) [Same Sex Marriage \(/term/same-sex-marriage/\)](/term/same-sex-marriage/)

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Privacy

Missouri opens health plan to same-sex spouses

10/09/2014 10:31 AM | Updated: 10/09/2014 10:31 AM

JEFFERSON CITY, Mo. – The health care plan for Missouri employees has opened coverage to same-sex spouses following a recent court ruling.

The Missouri Consolidated Health Care Plan says it will enroll same-sex spouses of state employees and retirees who have valid marriage licenses from other states.

That decision comes after a Jackson County Circuit judge ruled last week that Missouri must recognize same-sex marriages legally performed elsewhere – even though the Missouri Constitution forbids gay marriage. Attorney General Chris Koster decided not to appeal.

The state health care plan covers about 96,500 people, including state employees and retirees and their spouses and children.

It's not clear how many same-sex spouses will seek coverage, but a spokeswoman for the health plan says there already have been some inquiries about it.

AdChoices 

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY
SIXTEENTH JUDICIAL CIRCUIT**

Janice Barrier, et al.,)	
)	
Plaintiffs,)	
v.	)	No. 1416-CV03892
)	
Gail Vasterling, et al.,	)	Division 6
)	
Defendants.)	

PLAINTIFFS' FIRST INTERROGATORIES
TO DEFENDANT CHRIS KOSTER

COME NOW PLAINTIFFS, by and through their undersigned attorneys, and propound the following First Interrogatories directed to Defendant Chris Koster, as follows:

DEFINITIONS

As used in these interrogatories,

1. "You," "your," or "defendant" refers to the Defendant Chris Koster and his agents and attorneys.
2. "Document" includes any written, recorded, or graphic material, however produced or reproduced including, but not limited to, the original or any copies of records, reports, audio, or videotape record, video or movie tapes, photographs, negatives, correspondence, memoranda, notes, written communications, e-mails, articles, journals, publications, blueprints, drawings, sketches, telegrams and cables, notes of oral or telephonic communications, diaries, schedules, calendars, contracts, agreements, releases, instructions, minutes or notes of meetings, checks, messages and preliminary versions, drafts or revisions of any of the foregoing.

3. “Identify,” when used in reference to a natural person, means to state in the answer in each instances his/her full name, present or last known residence address, and his/her occupation or business, including the name and address of his/her present employer and position, if known.

4. “Identify,” when used in reference to a writing or documents, means to state in the answer in each instance whether or not such document is known to be in existence at that time of making the answer, and (a) the date, type of document, and (b) the present or last known location and custodian of the document and all copies thereof. If any such document is no longer in your possession or subject to your control, state what disposition was made of it, the date thereof, and identify the policy, rule, order or other authority by which such disposition was made.

5. “Describe” or “description,” when used in reference to a document, shall include:

- a. a summary of substance;
- b. its date
- c. its present or last known location;
- d. the identity of its author;
- e. the identity of any signer
- f. the identity of all addressees;
- g. the identity of all recipients of the document;
- h. the identity of its custodian;
- i. the type of document; and,
- j. the disposition made of it, if it is no longer in your control, and the date of such disposition. Your attention is directed to the requirement that a

reasonably diligent inquiry must be undertaken to locate documents not immediately known or accessible.

6. “Describe” or “description” when used in reference to any communication, shall include:

- a. a summary of substance;
- b. its date;
- c. its location;
- d. its medium (telephonic, in person, etc),
- e. the identity of all persons participating in it;
- f. the identity of all persons known or believed to have heard it; and,
- g. the identity of all documents which relate to it.

7. “Describe” or “description” when used in reference to any occurrence, shall include:

- a. a summary of its substance;
- b. its date;
- c. its location;
- d. the identity of all persons participating in it; and,
- e. the identity of all persons known or believed to have witnessed it.

8. “Relating to” or “related to” shall refer to communications or documents, the contents of which embody, mention, describe, refer to, comment upon, record, corroborate, question, support, contradict, constitute or otherwise contain information or observations about the matter under inquiry.

9. “The marriage ban” means Missouri Revised Statutes Sections 451.022 and

104.012 and Article I, Section 33 of the Missouri Constitution.

INTERROGATORIES

1. Identify each person whom you might call as an expert witness at trial by providing such expert's name, address, occupation, place of employment and qualifications to give an opinion, or if such information is available on the expert's curriculum vitae, produce such curriculum vitae as an attachment to the Interrogatory answers as a full response to said interrogatory, and state the general nature of the subject matter on which the expert is expected to testify, and the expert's hourly deposition fee.

ANSWER:

2. Identify each non-retained expert witness, including a party, who you might call at trial to provide expert witness opinion testimony by providing the expert's name, address, and field of expertise.

ANSWER:

3. Identify all persons whom you might call as a witness at the trial of this case, or upon whose testimony you will rely at trial.

ANSWER :

4. Identify all documents that you believe may be marked or introduced as evidence by you at trial.

ANSWER :

5. Do you contend that the marriage ban serves a compelling government interest?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

6. Do you contend that the marriage ban is narrowly tailored to serve a government interest?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

7. Do you contend that there is a rational basis for the classification made in the marriage ban (i.e., that the marriage ban is rationally related to a legitimate government interest)?

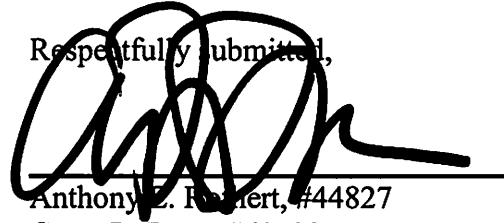
- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

8. Identify all documents that support your answers to these interrogatories.

ANSWER :

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Trothert', is written over a horizontal line.

Anthony E. Trothert, #44827

Grant R. Doty, #60788

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ACLU Foundation

125 Broad Street, 18th Floor

New York, New York 10004

jblock@aclu.org

ATTORNEYS FOR PLAINTIFFS

)

)

i

____ day of _____, 2014

No. B 11'

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY
SIXTEENTH JUDICIAL CIRCUIT**

Janice Barrier, et al.,)	
)	
Plaintiffs,)	
v.	)	No. 1416-CV03892
)	
Gail Vasterling, et al.,	)	Division 6
)	
Defendants.)	

PLAINTIFFS' FIRST INTERROGATORIES
TO DEFENDANT JEREMIAH W. NIXON

COME NOW PLAINTIFFS, by and through their undersigned attorneys, and propound the following First Interrogatories directed to Defendant Jeremiah W. Nixon, as follows:

DEFINITIONS

As used in these interrogatories,

1. "You," "your," or "defendant" refers to the Defendant Jeremiah W. Nixon and his agents and attorneys.
2. "Document" includes any written, recorded, or graphic material, however produced or reproduced including, but not limited to, the original or any copies of records, reports, audio, or videotape record, video or movie tapes, photographs, negatives, correspondence, memoranda, notes, written communications, e-mails, articles, journals, publications, blueprints, drawings, sketches, telegrams and cables, notes of oral or telephonic communications, diaries, schedules, calendars, contracts, agreements, releases, instructions, minutes or notes of meetings, checks, messages and preliminary versions, drafts or revisions of any of the foregoing.

3. "Identify," when used in reference to a natural person, means to state in the answer in each instances his/her full name, present or last known residence address, and his/her occupation or business, including the name and address of his/her present employer and position, if known.

4. "Identify," when used in reference to a writing or documents, means to state in the answer in each instance whether or not such document is known to be in existence at that time of making the answer, and (a) the date, type of document, and (b) the present or last known location and custodian of the document and all copies thereof. If any such document is no longer in your possession or subject to your control, state what disposition was made of it, the date thereof, and identify the policy, rule, order or other authority by which such disposition was made.

5. "Describe" or "description," when used in reference to a document, shall include:

- a. a summary of substance;
- b. its date
- c. its present or last known location;
- d. the identity of its author;
- e. the identity of any signer
- f. the identity of all addressees;
- g. the identity of all recipients of the document;
- h. the identity of its custodian;
- i. the type of document; and,
- j. the disposition made of it, if it is no longer in your control, and the date of such disposition. Your attention is directed to the requirement that a

reasonably diligent inquiry must be undertaken to locate documents not immediately known or accessible.

6. “Describe” or “description” when used in reference to any communication, shall include:

- a. a summary of substance;
- b. its date;
- c. its location;
- d. its medium (telephonic, in person, etc),
- e. the identity of all persons participating in it;
- f. the identity of all persons known or believed to have heard it; and,
- g. the identity of all documents which relate to it.

7. “Describe” or “description” when used in reference to any occurrence, shall include:

- a. a summary of its substance;
- b. its date;
- c. its location;
- d. the identity of all persons participating in it; and,
- e. the identity of all persons known or believed to have witnessed it.

8. “Relating to” or “related to” shall refer to communications or documents, the contents of which embody, mention, describe, refer to, comment upon, record, corroborate, question, support, contradict, constitute or otherwise contain information or observations about the matter under inquiry.

9. “The marriage ban” means Missouri Revised Statutes Sections 451.022 and

104.012 and Article I, Section 33 of the Missouri Constitution.

INTERROGATORIES

1. Identify each person whom you might call as an expert witness at trial by providing such expert's name, address, occupation, place of employment and qualifications to give an opinion, or if such information is available on the expert's curriculum vitae, produce such curriculum vitae as an attachment to the Interrogatory answers as a full response to said interrogatory, and state the general nature of the subject matter on which the expert is expected to testify, and the expert's hourly deposition fee.

ANSWER:

2. Identify each non-retained expert witness, including a party, who you might call at trial to provide expert witness opinion testimony by providing the expert's name, address, and field of expertise.

ANSWER:

3. Identify all persons whom you might call as a witness at the trial of this case, or upon whose testimony you will rely at trial.

ANSWER :

4. Identify all documents that you believe may be marked or introduced as evidence by you at trial.

ANSWER :

5. Do you contend that the marriage ban serves a compelling government interest?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

6. Do you contend that the marriage ban is narrowly tailored to serve a government interest?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

7. Do you contend that there is a rational basis for the classification made in the marriage ban (i.e., that the marriage ban is rationally related to a legitimate government interest)?

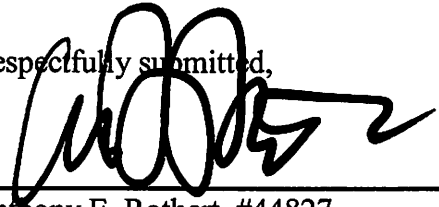
- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

8. Identify all documents that support your answers to these interrogatories.

ANSWER :

Respectfully submitted,



Anthony E. Rothert, #44827
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ACLU of Missouri Foundation
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ACLU Foundation
125 Broad Street, 18th Floor
New York, New York 10004
jblock@aclu.org

ATTORNEYS FOR PLAINTIFFS

COUNTY OF _____) SS.
)

SIGNED: _____

PRINT NAME: _____

Subscribed and sworn to before me this ____ day of _____, 2014

Notary Public

My Commission Expires:

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY
SIXTEENTH JUDICIAL CIRCUIT**

Janice Barrier, et al.,)	
)	
Plaintiffs,)	
v.	)	No. 1416-CV03892
)	
Gail Vasterling, et al.,	)	Division 6
)	
Defendants.)	

PLAINTIFFS' FIRST INTERROGATORIES
TO DEFENDANT GAIL VASTERLING

COME NOW PLAINTIFFS, by and through their undersigned attorneys, and propound the following First Interrogatories directed to Defendant Gail Vasterling, as follows:

DEFINITIONS

As used in these interrogatories,

1. "You," "your," or "defendant" refers to the Defendant Gail Vasterling and her agents and attorneys.
2. "Document" includes any written, recorded, or graphic material, however produced or reproduced including, but not limited to, the original or any copies of records, reports, audio, or videotape record, video or movie tapes, photographs, negatives, correspondence, memoranda, notes, written communications, e-mails, articles, journals, publications, blueprints, drawings, sketches, telegrams and cables, notes of oral or telephonic communications, diaries, schedules, calendars, contracts, agreements, releases, instructions, minutes or notes of meetings, checks, messages and preliminary versions, drafts or revisions of any of the foregoing.

3. “Identify,” when used in reference to a natural person, means to state in the answer in each instances his/her full name, present or last known residence address, and his/her occupation or business, including the name and address of his/her present employer and position, if known.

4. “Identify,” when used in reference to a writing or documents, means to state in the answer in each instance whether or not such document is known to be in existence at that time of making the answer, and (a) the date, type of document, and (b) the present or last known location and custodian of the document and all copies thereof. If any such document is no longer in your possession or subject to your control, state what disposition was made of it, the date thereof, and identify the policy, rule, order or other authority by which such disposition was made.

5. “Describe” or “description,” when used in reference to a document, shall include:

- a. a summary of substance;
- b. its date
- c. its present or last known location;
- d. the identity of its author;
- e. the identity of any signer
- f. the identity of all addressees;
- g. the identity of all recipients of the document;
- h. the identity of its custodian;
- i. the type of document; and,
- j. the disposition made of it, if it is no longer in your control, and the date of such disposition. Your attention is directed to the requirement that a

reasonably diligent inquiry must be undertaken to locate documents not immediately known or accessible.

6. “Describe” or “description” when used in reference to any communication, shall include:

- a. a summary of substance;
- b. its date;
- c. its location;
- d. its medium (telephonic, in person, etc),
- e. the identity of all persons participating in it;
- f. the identity of all persons known or believed to have heard it; and,
- g. the identity of all documents which relate to it.

7. “Describe” or “description” when used in reference to any occurrence, shall include:

- a. a summary of its substance;
- b. its date;
- c. its location;
- d. the identity of all persons participating in it; and,
- e. the identity of all persons known or believed to have witnessed it.

8. “Relating to” or “related to” shall refer to communications or documents, the contents of which embody, mention, describe, refer to, comment upon, record, corroborate, question, support, contradict, constitute or otherwise contain information or observations about the matter under inquiry.

9. “The marriage ban” means Missouri Revised Statutes Sections 451.022 and

104.012 and Article I, Section 33 of the Missouri Constitution.

INTERROGATORIES

1. Identify each person whom you might call as an expert witness at trial by providing such expert's name, address, occupation, place of employment and qualifications to give an opinion, or if such information is available on the expert's curriculum vitae, produce such curriculum vitae as an attachment to the Interrogatory answers as a full response to said interrogatory, and state the general nature of the subject matter on which the expert is expected to testify, and the expert's hourly deposition fee.

ANSWER:

2. Identify each non-retained expert witness, including a party, who you might call at trial to provide expert witness opinion testimony by providing the expert's name, address, and field of expertise.

ANSWER:

3. Identify all persons whom you might call as a witness at the trial of this case, or upon whose testimony you will rely at trial.

ANSWER :

4. Identify all documents that you believe may be marked or introduced as evidence by you at trial.

ANSWER :

5. Do you contend that the marriage ban serves a compelling government interest?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

6. Do you contend that the marriage ban is narrowly tailored to serve a government interest?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

7. Do you contend that there is a rational basis for the classification made in the marriage ban (i.e., that the marriage ban is rationally related to a legitimate government interest)?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

8. If a person who marries someone of the same-sex in another jurisdiction recognizing that marriage as valid later dies in the State of Missouri, is the surviving spouse recognized as such on the deceased person's death certificate; and, if the surviving same-sex spouse is not recognized on the death certificate, is the deceased person

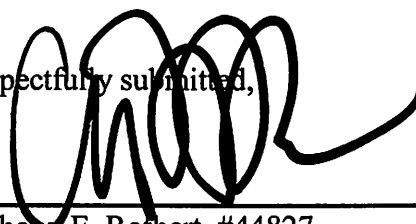
identified as single and/or never married at the time of their death?

ANSWER :

9. Identify all documents that support your answers to these interrogatories.

ANSWER :

Respectfully submitted,



Anthony E. Rothert, #44827
Grant R. Doty, #60788
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Joshua Block
LGBT & AIDS Project
ACLU Foundation
125 Broad Street, 18th Floor
New York, New York 10004
jblock@aclu.org

ATTORNEYS FOR PLAINTIFFS

COUNTY OF _____) SS.
)

SIGNED: _____

PRINT NAME: _____

Subscribed and sworn to before me this ____ day of _____, 2014

Notary Public

My Commission Expires:

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT KANSAS CITY
SIXTEENTH JUDICIAL CIRCUIT**

Janice Barrier, et al.,)	
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Plaintiffs,)	
v.)	No. 1416-CV03892
)	
Gail Vasterling, et al.,)	Division 6
)	
Defendants.)	

**PLAINTIFFS' FIRST INTERROGATORIES
TO DEFENDANT CITY OF KANSAS CITY**

COME NOW PLAINTIFFS, by and through their undersigned attorneys, and propound the following First Interrogatories directed to Defendant City of Kansas City, as follows:

DEFINITIONS

As used in these interrogatories,

1. "You," "your," or "defendant" refers to the Defendant City of Kansas City and its agents and attorneys.
2. "Document" includes any written, recorded, or graphic material, however produced or reproduced including, but not limited to, the original or any copies of records, reports, audio, or videotape record, video or movie tapes, photographs, negatives, correspondence, memoranda, notes, written communications, e-mails, articles, journals, publications, blueprints, drawings, sketches, telegrams and cables, notes of oral or telephonic communications, diaries, schedules, calendars, contracts, agreements, releases, instructions, minutes or notes of meetings, checks, messages and preliminary versions, drafts or revisions of any of the foregoing.

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ANSWER:

2. Identify each non-retained expert witness, including a party, who you might call at trial to provide expert witness opinion testimony by providing the expert's name, address, and field of expertise.

ANSWER:

3. Identify all persons whom you might call as a witness at the trial of this case, or upon whose testimony you will rely at trial.

ANSWER :

4. Identify all documents that you believe may be marked or introduced as evidence by you at trial.

ANSWER :

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- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

6. Do you contend that the marriage ban is narrowly tailored to serve a government interest?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

7. Do you contend that there is a rational basis for the classification made in the marriage ban (i.e., that the marriage ban is rationally related to a legitimate government interest)?

- a. If yes, then identify all facts that support that contention.
- b. If yes, then identify all witnesses that support that contention.

ANSWER :

8. Do you provide benefits to employees based on their marital status (including, but not limited to, benefits to an employee's current and/or surviving spouse)?

- a. If yes, please identify the benefits.
- b. If yes, please identify which of these benefits are, and which are not, provided to current and/or surviving domestic partners.

ANSWER :

9. If an employee adds a domestic partner to their healthcare coverage, is the coverage of their domestic partner considered imputed income to the employee?

ANSWER :

10. Do you provide protections against discrimination based on marital status:

- a. If yes, please identify those protections.
- b. If yes, please identify which of those protections are, and which are not, provided based on domestic partner status.

ANSWER :

11. Identify all documents that support your answers to these interrogatories.

ANSWER :

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anthony E. Rothert', is written over a horizontal line.

Anthony E. Rothert, #44827

Grant R. Doty, #60788

ACLU of Missouri Foundation

454 Whittier Street

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Joshua Block

LGBT & AIDS Project

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125 Broad Street, 18th Floor

New York, New York 10004

jblock@aclu.org

ATTORNEYS FOR PLAINTIFFS

COUNTY OF _____) SS.
)

SIGNED: _____

PRINT NAME: _____

Subscribed and sworn to before me this ____ day of _____, 2014

Notary Public

My Commission Expires: