

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

Kyle Lawson and Evan Dahlgren, and	)	
	)	
Angela Curtis and Shannon McGinty,	)	
	)	
Plaintiffs,	)	
	)	Cause No. 1416-CV_____
v.	)	
	)	Division _____
Robert Kelly, in his official capacity as	)	
Director of the Jackson County	)	
Department of Recorder of Deeds,	)	
	)	
Defendant.	)	

**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiffs in this action are same-sex couples who seek the freedom to marry in Missouri and have been denied marriage licenses by the Jackson County Recorder of Deeds. They bring this action to challenge the validity, under the United States Constitution, of Missouri’s laws that bar marriage between two people of the same sex: Missouri Revised Statutes section 451.022; Article I, Section 33 of the Missouri Constitution; and any other statutory or common law preventing same-sex couples from marrying subject to the same terms and conditions as different-sex couples. Plaintiffs seek declaratory and injunctive relief for violations of the Equal Protection and Due Process Clauses of the U.S. Constitution (U.S. Const. amend. XIV, § 1).

2. Marriage is universally recognized and celebrated as the hallmark of a couple’s love for and commitment to each other. When two people marry, they commit personally and publicly to build a life together, and they ask their families, friends, communities, and government to respect, honor, and support that commitment. Marriage has long been recognized

and valued for its beneficial contribution to the welfare of society and to individual happiness. Lesbians and gay men in Missouri are denied the freedom afforded to different-sex couples in this State to have their loving, committed relationships recognized through marriage.

3. Missouri maintains a ban on marriage for same-sex couples. Barring same-sex couples from marrying not only denies loving, committed, same-sex couples the dignity and status that only marriage can confer on their relationships and their families, but it also prohibits the extension to same-sex couples of the same legal protections, duties, and benefits that married couples are allowed by law. Missouri law deprives same-sex couples of these rights and freedoms for no other reasons than their sexual orientation and their sex.

4. Defendant's refusal to issue marriage licenses to plaintiffs excludes them from the many legal protections available to spouses. For example, when one spouse dies, the surviving spouse may face serious financial hardship, including the loss of his or her home, because, without marriage, same-sex couples in Missouri are not allowed to title their joint property in the same way that different-sex married couples can. Because of the refusal to allow plaintiffs to marry, they are also denied many federal protections afforded to married couples, such as the ability to take time off work to care for a sick spouse under the Family Medical Leave Act and access to a spouse's social security retirement benefits.

5. The refusal to allow plaintiffs to marry undermines their ability to achieve their life goals and dreams, threatens their mutual economic stability, and denies them "a dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). Moreover, they and their children are stigmatized and relegated to a second-class status by being barred from marriage. The exclusion tells same-sex couples, and all the world, that their relationships are unworthy of recognition. *Id.* at 2694. And it "humiliates . . . children now being raised by

same-sex couples” and “makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.” *Id.*

6. Our courts and our society have discarded, one by one, marriage laws that violated the Constitution’s mandate of equality, such as anti-miscegenation laws and laws that denied married women legal independence and the right to make decisions for themselves. History has taught us that the vitality of marriage does not depend on maintaining such discriminatory laws. To the contrary, eliminating these unconstitutional restraints on the freedom to marry has enhanced the institution.

7. The exclusion of same-sex couples from the protections and responsibilities of marriage violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This discriminatory treatment is subject to heightened scrutiny because it burdens the fundamental right to marry and because it discriminates based on sex and sexual orientation. But it cannot stand under any level of scrutiny because defendant’s refusal to issue marriage licenses to same-sex couples does not rationally further any legitimate government interest. It serves only to disparage and injure same-sex couples and their families.

8. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983 for declaratory and injunctive relief against defendant. Specifically, plaintiffs seek: (a) a declaration that defendant’s refusal to issue marriage licenses to plaintiffs and Missouri’s failure to recognize marriages of same-sex couples violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and (b) a permanent injunction directing defendant to issue a marriage license to plaintiffs and other same-sex couples who are

eligible for a marriage license except for the fact that they wish to marry someone of the same sex.

## **THE PARTIES**

### **Plaintiffs**

9. All plaintiffs are residents of Missouri.

10. Kyle Lawson is a math teacher; Evan Dahlgren gives private voice lessons and is a music teacher.

11. When Kyle and Evan met, they discovered that they have many shared interests, including teaching, sports, music, humor, and family values. Evan knew he wanted to marry Kyle after spending Christmas Eve with Kyle's family. He felt like he belonged in the family and was particularly heartened by their warm reception and invitation to attend church services with the family. Kyle understood he wanted to spend his life with Evan when he saw Evan interact with others and realized that Evan makes him smile more than anyone else ever has. They celebrated their anniversary by going on a cruise in May 2014. Alone under the stars on the top deck, Evan felt Kyle place a small box in his hand. He opened it to find a ring. Kyle proposed, and Evan accepted.

12. Marriage is important to Kyle and Evan because they want to spend their lives together as spouses. They each have always dreamt of marriage and, now that they have found the right person, are eager to marry. They understand marriage tells society that a couple loves each other and is committed to each other. They also would like to undertake the responsibilities of marriage under the law as well as experience the benefits and privileges of marriage.

13. It is important to Kyle and Evan that they be married in Kansas City. Kansas City is their home, where they met, and where they plan to live. Also, because so many of their loving

and supportive family members and friends are in Kansas City, it makes sense to them to marry at a place where as many can participate as possible.

14. Kyle and Evan are excited to live together as an engaged couple and had hoped that they would have the right to marry in Missouri before they moved in together. On June 19, 2014, they went to the office of the Jackson County Recorder of Deeds in Kansas City to obtain a marriage license. Although otherwise eligible to obtain a license, they were refused one because they are both men and therefore barred from marrying in Missouri under Missouri Revised Statutes section 451.022 and Article I, Section 33 of the Missouri Constitution.

15. Angela Curtis and Shannon McGinty are both professionals in the private financial sector.

16. Angela and Shannon recently celebrated their eleventh anniversary as a couple. When they first committed to one another, they did not discuss marriage because they did not think it would be available for same-sex couples anytime soon. Nonetheless, they privately exchanged rings as a personal symbol of their commitment to one another and have always considered themselves to be a married couple. Still, they want to be legally married, like their parents and friends. Angela and Shannon believe marriage is an integral part of our culture, and they want their children to understand that their relationship is important, recognized, and respected. They also want to give one another the security that comes with marriage. Finally, marriage will allow them to publicly acknowledge their commitment to each other and their family in a way for which there is no comparable substitute.

17. Angela and Shannon became engaged in November 2013. Since becoming engaged, they have noticed that their children seem to have a better idea of their commitment to each other. And, although they want to be married as soon as possible, they also want to be

married in Missouri. It is important to them that they be married in Missouri so that their children, other family members, and friends can all fully participate in and celebrate their wedding. In addition, being forced to leave their state to marry and secure the obligations, benefits, and privileges of marriage is discriminatory and makes them feel like second-class Missourians. On June 20, 2014, Angela and Shannon went to the office of the Jackson County Recorder of Deeds in Kansas City to obtain a marriage license. Although otherwise eligible to obtain a license, they were refused one because they are both women and, as a same-sex couple, they are barred from marrying in Missouri under Missouri Revised Statutes section 451.022 and Article I, Section 33 of the Missouri Constitution.

**Defendant**

18. Defendant Robert Kelly is sued solely in his official capacity as Director of the Jackson County Department of the Recorder of Deeds. As Director, Kelly is responsible for the issuance of marriage licenses in Jackson County, Missouri.

19. In Missouri, the solemnization of a marriage in which the parties have not obtained a marriage license is a misdemeanor. § 451.120 RSMo. In addition, marriages solemnized without a license are not recognized as valid. § 451.040.1 RSMo.

20. Kelly and his employees and agents are the only persons who can issue a marriage license in Jackson County, Missouri.

21. In performing his duties as Director, and in all acts or omissions described in this petition, defendant Kelly acts under color of state law.

**Missouri's Refusal to Allow Same-Sex Couples to Marry**

22. In Missouri, marriage is governed by Chapter 451 of the Revised Statutes, captioned "Marriage, Marriage Contracts, and Rights of Married Women." In 1996, Chapter 451 was revised to prohibit marriage for same-sex couples. The revision provided that "[a]ny

purported marriage not between a man and a woman is invalid [and n]o recorder shall issue a marriage license, except to a man and a woman.” § 451.022 RSMo.

23. At the 2004 primary election, the Missouri Constitution was amended to include a provision, “[t]hat to be valid and recognized in this state, a marriage shall exist only between a man and a woman.” Mo. Const. art. I, § 33

24. As a result, marriage in Missouri is legally available only to different-sex couples. Same-sex couples are not permitted to marry in Missouri, and if they are married elsewhere, their marriages are not recognized in Missouri.

25. Missouri law would allow the plaintiffs to marry and have their marriage recognized here but for the fact that they are same-sex couples. They are not related to one another by blood or marriage. They are not married to anyone else and are over the age of eighteen. They have the capacity to consent to marry.

**Same-Sex and Different-Sex Couples Are Similarly Situated for Purposes of Marriage**

26. The Supreme Court has called marriage “the most important relation in life,” *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (internal quotation marks omitted), and an “expression[] of emotional support and public commitment,” *Turner v. Safley*, 482 U.S. 78, 95 (1987). It is “a far-reaching legal acknowledgement of the intimate relationship between two people . . . .” *Windsor*, 133 S. Ct. at 2692. This is as true for same-sex couples as it is for different-sex couples.

27. Couples such as the plaintiffs are similarly situated to different-sex couples in all of the characteristics relevant to the issuance of a civil marriage license.

28. By applying for a marriage license, the plaintiffs sought to make the same commitment to one another as different-sex couples who enter into a marriage. Like married

different-sex couples, married same-sex couples build their lives together, plan their futures together, and hope to grow old together. Like married different-sex couples, married same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness.

29. Plaintiffs are just as willing and able as married different-sex couples to assume the obligations of marriage.

30. Plaintiffs would benefit no less than different-sex couples from the many legal protections and the social recognition afforded to married couples.

31. There was a time when an individual's sex was relevant to his or her legal rights and duties within the marital relationship. For example, husbands had a duty to support their wives but not vice versa, and husbands also had legal ownership of all property belonging to their wives. But these legal distinctions have all been removed such that the legal rights and duties of husbands and wives are now identical.

**Refusing to Allow Plaintiffs to Marry Causes Them Substantial Harm**

32. Defendant's refusal to issue a marriage license to the plaintiffs and Missouri's ban on marriages between individuals of the same sex deprive the plaintiffs of numerous legal protections that are available to different-sex couples in Missouri by virtue of their marriages.

33. Missouri law requires a decedent's marital status and surviving spouse's name to appear on a death certificate. Mo. Code Regs. Ann. tit. 19, § 10-10.050. Upon their deaths, the plaintiffs want both their own and their spouse's death certificates, issued and maintained by the State of Missouri, to reflect that they are married, but § 451.022 RSMo and Mo. Const. art. I, § 33 prohibit and will continue to prohibit them from marrying and having their marriage recognized absent relief from this Court. Unless enforcement of § 451.022 RSMo and Mo.



Const. art. I, § 33 is enjoined, when each of the plaintiffs die, his or her death certificate will fail to list a spouse.

34. Indeed, because § 451.022 RSMo and Mo. Const. art. I, § 33 prohibit and will continue to prohibit the plaintiffs from marrying or having their marriages recognizes, the state registrar of vital records is prohibited from issuing a copy of a death certificate to the surviving same-sex plaintiff because that person would not be considered a spouse. *See* Mo. Code Regs. Ann. tit. 19, § 10-10.090.

35. Missouri law provides a “right of sepulcher” that allows an individual “the right to choose and control the burial, cremation, or other final disposition of a dead human body.” § 194.119 RSMo. The statute assigns the right of sepulcher to a hierarchical list of persons. “The surviving spouse” appears third on the list, preceded only by “[a]n attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact” and in cases where the decedent “was on active duty in the United States military at the time of death[.]” *Id.* Upon one of their deaths, the plaintiffs want the other to choose and control the burial, cremation, or other final disposition of his or her body. Absent a valid power of attorney, § 451.022 RSMo and Mo. Const. art. I, § 33’s prohibition on the entry into and recognition of a marriage by the plaintiffs will give the right of sepulcher to the decedent’s surviving adult child, surviving minor child’s guardian, surviving parent, surviving sibling, or “[t]he next nearest surviving relative of the deceased by consanguinity or affinity” in precedence to any right claimed by the individual he or she wishes to marry. § 194.119 RSMo.

36. There are many other ways in which the refusal to allow same-sex couples to marry and to recognize their marriages causes the plaintiffs and others like them to be treated unequally. By way of example only:

- a. A married person is entitled to private visits with his or her spouse in a nursing home, and, if both are residents at the same facility, spouses are permitted to share a room. § 198.088 RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they are not permitted to share a room.
- b. A different-sex spouse may give consent for an experimental treatment, test, or drug on behalf of his or her spouse who is incapable of giving informed consent. § 431.064 RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they may not.
- c. Different-sex spouses are not required to testify against their spouse in a criminal trial. § 546.260 RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they could be compelled to testify against one another.
- d. Different-sex spouses have priority to bring an action for wrongful death if their spouse is killed. § 537.080 RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they cannot bring a wrongful death action if one of them is killed.
- e. Different-sex spouses may file a claim for compensation on behalf of an incapacitated or disabled spouse. § 537.684 RSMo. Because the

plaintiffs cannot marry in Missouri and have their marriage recognized, they cannot.

- f. Different-sex spouses may petition for maintenance when they are abandoned without good cause and without maintenance. § 452.130 RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they cannot.
- g. A different-sex spouse whose husband or wife is the victim of a drunk driver may apply for the installation of a drunk-driving victim memorial sign. § 227.295 RSMo; Mo. Code Regs. Ann. tit. 7, § 10-27.010. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they cannot.
- h. Surviving different-sex spouses are entitled to remainder of workers' compensation payments for permanent total disability of their decedent spouse. § 287.200.4(5) RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they are not.
- i. Surviving different-sex spouses are entitled to continued coverage under their spouse's health, dental, vision, or prescription-drug insurance plans. § 376.892 RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they are not.
- j. The surviving different-sex spouse of a public employee with five or more years of service who dies before retirement would receive a survivorship benefit. § 104.140 RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they would not.

k. A surviving different-sex spouse of an individual killed in an automobile accident may obtain a copy of the coroner's report. § 58.449 RSMo.

Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they would be required to seek a subpoena. *Id.*

l. A bank deposit made by different-sex spouses will be considered held in a tenancy by the entirety. § 362.470 RSMo. Because the plaintiffs cannot marry in Missouri and have their marriage recognized, they cannot hold an account as tenants by the entirety.

37. By refusing to allow the plaintiffs to enter into a legal marriage, the defendant excludes the plaintiffs and other similarly situated couples from the foregoing— and many other— protections provided to married couples under Missouri law.

38. Refusing to allow the plaintiffs to marry and refusal to recognize the legal marriages of same-sex couples also denies them eligibility for numerous federal protections afforded to married couples. “[C]ountless government benefits are tied to marriage, as are many responsibilities[.]” *Wolf v. Walker*, 14-CV-64-BBC, 2014 WL 2558444, at \*1, \*2 (W.D. Wis. June 6, 2014).

39. Some of the federal protections for married couples are available only to couples if their marriages are legally recognized in the state in which they live. *See, e.g.*, 42 U.S.C. § 416(h)(1)(A)(i) (marriage for eligibility for social security benefits based on law of state where couple resides at time of application); 29 C.F.R. § 825.122(b) (same for Family Medical Leave Act). Thus, even if plaintiffs were to leave Missouri to be married in one of the neighboring states that would issue marriage licenses and allow them to marry, they could not access such

federal protections as long as they live in Missouri and Missouri refuses to recognize their marriage.

40. Refusing to allow the plaintiffs to marry denies them of stabilizing effects of marriage, which helps keep couples together during times of crisis or conflict.

41. Refusing to allow the plaintiffs to marry harms them, their children, and their existing and future children by denying them the social recognition that comes with marriage. Marriage has profound social significance both for the couple that gets married and the family, friends, and community that surround them. The terms “married” and “spouse” have understood meanings that command respect for a couple’s relationship and the commitment they have made.

42. Refusing to recognize the legal marriages of same-sex couples also demeans and stigmatizes lesbian and gay couples and their children by sending the message that they are less worthy and valued than families headed by different-sex couples.

43. The plaintiffs understand that being married in Missouri entails both benefits to and obligations on the spouses, and they welcome both.

***None of the Potential Justifications for Missouri’s Refusing to Allow Same-Sex Couples to Marry Can Withstand Heightened Scrutiny or Even Rational-Basis Review***

44. Because Missouri’s ban on marriages of same-sex couples infringes on their fundamental rights and is a classification based on sex and sexual orientation, Missouri’s marriage ban can withstand constitutional review only if they survive heightened scrutiny. But even if heightened scrutiny did not apply, the potential justifications for Missouri’s marriage bans are not rationally related to a legitimate government interest.

**Moral Opposition to Marriage for Same-Sex Couples and  
Support of the Traditional Family**

45. Neither tradition nor moral disapproval of same-sex relationships or marriage for lesbian and gay couples is a legitimate basis for unequal treatment of same-sex couples under the law. The fact that a discriminatory law is long-standing does not immunize it from constitutional scrutiny. And the Supreme Court of the United States has made clear that the law cannot, directly or indirectly, give effect to private biases and has expressly rejected moral disapproval of marriage for same-sex couples as a legitimate basis for discriminatory treatment of lesbian and gay couples. *Windsor*, 133 S. Ct. at 2693 (holding an “interest in protecting [] traditional moral teachings reflected in heterosexual-only marriage laws” was not a legitimate justification for federal Defense of Marriage Act).

**Preserving the Public Fisc and the Coffers of Private Business**

46. Missouri cannot justify its marriage bans by claiming an interest in preserving the public fisc or the coffers of private business. Saving money is not a justification for excluding a group from a government benefit without an independent rationale for why the cost savings ought to be borne by the particular group denied the benefit. Moreover, the notion that allowing same-sex couples to marry will burden the State financially or constitute a burden on businesses lacks any factual basis and defies common sense.

**Protection of Children**

47. Missouri’s refusal to allow the plaintiffs to marry is not rationally related to child welfare concerns. The government has a vital interest in protecting the well-being of children, but the exclusion of same-sex couples from marriage bears no relation to this interest. To the contrary, it harms children in the State.

48. Moreover, there is no valid basis to assert a preference for childrearing by different-sex couples over same-sex couples. There is a consensus within the scientific community, based on over thirty years of research, that children raised by same-sex couples are just as well adjusted as children raised by different-sex couples. This is recognized by every major professional organization dedicated to children’s health and welfare, including the American Academy of Pediatrics, the American Psychological Association, the American Medical Association, the National Association of Social Workers, and the Child Welfare League of America.

49. Other courts have found, after trials involving expert testimony, that there is no rational basis for favoring parenting by heterosexual couples over gay and lesbian couples. *See, e.g., DeBoer v. Snyder*, 973 F. Supp. 2d 757, 772 (E.D. Mich. Mar. 21, 2014) (“There is ... no logical connection between banning same-sex marriage and providing children with an ‘optimal environment’ or achieving ‘optimal outcomes.’”); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 980 (N.D. Cal. 2010) (finding that the research supporting the conclusion that “[c]hildren raised by gay or lesbian parents are as likely as children raised by heterosexual parents to be healthy, successful and well-adjusted” is “accepted beyond serious debate in the field of developmental psychology”), *aff’d sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012), *vacated for lack of standing sub nom Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *In re Adoption of Doe*, 2008 WL 5006172, at \*1, \*20 (Fla. Cir. Ct. Nov. 25, 2008) (“[B]ased on the robust nature of the evidence available in the field, this Court is satisfied that the issue is so far beyond dispute that it would be irrational to hold otherwise; the best interests of children are not preserved by prohibiting homosexual adoption.”), *aff’d sub nom Fla. Dep’t of Children & Families v. Adoption of X.X.G.*, 45 So.3d 79 (Fla. Dist. Ct. App. 2010); *Howard v. Child*

*Welfare Agency Review Bd.*, Nos. 1999-9881, 2004 WL 3154530, at \*1, \*9 and 2004 WL 3200916, at \*1, \*3-4 (Ark. Cir. Ct. Dec. 29, 2004) (holding based on factual findings regarding the well-being of children of gay parents that “there was no rational relationship between the [exclusion of gay people from becoming foster parents] and the health, safety, and welfare of the foster children.”), *aff’d sub nom Dep’t of Human Servs. v. Howard*, 238 S.W.3d 1 (Ark. 2006).

50. Refusing to allow same-sex couples to marry has no conceivable benefit to children of heterosexual couples. It does not encourage different-sex couples who have children to marry or stay married for the benefit of their children. And, regardless of whether the marriages of same-sex couples are allowed or recognized, the children of different-sex spouses will continue to enjoy the same benefits and protections that flow from their parents’ marriage.

51. Refusing to allow same-sex couples to marry harms the children raised by lesbian and gay couples by denying their families significant benefits and by branding their families as inferior and less deserving of respect and, thus, encouraging private bias and discrimination. According to data from the 2010 United States Census, there are over 1,900 same-sex couples raising children in Missouri. The State’s interest in the welfare of children of lesbian and gay parents is, or should be, as great as its interest in the welfare of other children.



## CLAIMS FOR RELIEF

### COUNT I

#### **Deprivation of the Fundamental Right to Marry in Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)**

52. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

53. The Fourteenth Amendment to the United States Constitution precludes any State from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Governmental interference with a fundamental right may be sustained only upon a showing that the legislation is closely tailored to serve an important governmental interest.

54. The Supreme Court has long recognized that marriage is a fundamental right and that choices about marriage, like choices about other aspects of family life, are a central part of the liberty protected by the Due Process Clause.

55. Courts in Missouri have recognized marriage as a fundamental right. *See Glass v. Trowbridge*, No. 14-CV-3059-S-DGK, 2014 WL 1878820, at \*1, \* 3 (W.D. Mo. May 12, 2014) (recognizing “fundamental right to marry”); *Amos v. Higgins*, —F. Supp. 2d—, No. 14-004011-CV-C-GAF, 2014 WL 572316, at \*1, \*2 (W.D. Mo. Feb. 6, 2014); *Nichols v. Moyers*, 4:13CV735 CDP, 2013 WL 2418218, at \*1 (E.D. Mo. June 3, 2013); *Fuller v. Norman*, 936 F. Supp. 2d 1096, 1097 (W.D. Mo. 2013); *Komosa v. Komosa*, 939 S.W.2d 479, 483 (Mo. App. E.D. 1997).

56. Missouri law denies the plaintiffs and other same-sex couples this fundamental right by refusing to issue them a marriage license or to recognize marriages between persons of the same sex.

57. There is no important interest to justify denying the plaintiffs this fundamental right. Indeed, the denial is not tailored to any legitimate interest at all.

58. Missouri's refusal to issue marriage licenses to same-sex couples or to recognize marriages entered into by same-sex couples violates the Due Process Clause.

59. Defendant, acting under color of state law, is depriving plaintiffs of rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

## **COUNT II**

### **Discrimination on the Basis of Sexual Orientation in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)**

60. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

61. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

62. By denying the plaintiffs and other lesbian and gay couples the ability to enter into a marriage in Missouri, defendant disadvantages lesbian and gay people on the basis of their sexual orientation. Denial of a marriage license in turn denies couples significant legal protections. And, it "degrade[s] [and] demean[s]" them by "instruct[ing] . . . all persons with

whom same-sex couples interact, including their own children,” that their relationship is “less worthy” than the relationships of others. *Windsor*, 133 S. Ct. at 2696.

63. Same-sex couples seeking marriage licenses in Missouri and different-sex married couples seeking marriage licenses in Missouri are similarly situated for purposes of marriage, except for the fact that different-sex couples will be issued marriage licenses and have their marriages recognized.

64. Classifications based on sexual orientation demand heightened scrutiny.

65. Lesbians and gay men are members of a discrete and insular minority that has suffered a history of discrimination in Missouri and across the United States.

66. Sexual orientation bears no relation to an individual’s ability to perform or contribute to society.

67. Sexual orientation is a core, defining trait that is so fundamental to one’s identity that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment. Sexual orientation is generally fixed at an early age and highly resistant to change through intervention. Efforts to change a person’s sexual orientation through interventions by medical professionals have not been shown to be effective. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and many—including the American Psychological Association and the American Psychiatric Association— have adopted policy statements cautioning professionals and the public about these treatments.

68. Prejudice against lesbians and gay men continues to seriously curtail the operation of the political process, preventing this group from obtaining redress through legislative means. Lesbians and gay men lack statutory protection against discrimination in employment, public

accommodations, and housing at the federal level and in more than half of the states, including Missouri. Lesbians and gay men have far fewer civil rights protections at the state and federal level than women and racial minorities had when sex and race classifications were declared to be suspect or quasi-suspect. Lesbians and gay men have been stripped of the right to marry through thirty state constitutional amendments, and have been targeted through the voter initiative process more than any other group.

69. For all of these reasons, classification based on sexual orientation should be reviewed under heightened scrutiny, but the classification challenged here cannot survive under any level of constitutional scrutiny. The refusal to issue marriage licenses to same-sex couples is not rationally related to any legitimate governmental interest. All it does is disparage and injure lesbian and gay couples who want to marry and their children.

70. Defendant, acting under color of state law, is depriving plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

### **COUNT III**

#### **Discrimination on the Basis of Sex in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)**

71. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

72. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

73. Missouri's codified public policy is "to recognize marriage only between a man and a woman." § 451.022 RSMo. In addition, the statute states that "[n]o recorder shall issue a marriage license, except to a man and a woman[,]” and “[a] marriage between persons of the same sex will not be recognized for any purpose in this state even when valid where contracted.” *Id.*

74. By refusing marriage licenses to couples that are not of different sexes, defendant discriminates on the basis of sex. Plaintiffs were refused a marriage license because they seek to marry someone of the same sex; if they sought to marry someone of a different sex, then they would have been issued a license. The only reason they cannot obtain a marriage license is the sex of the person they want to marry.

75. The Supreme Court of the United States has made clear that perpetuation of traditional gender roles is not a legitimate government interest.

76. Given that there are no longer legal distinctions between the duties of husbands and wives, there is no basis for the sex-based eligibility requirements for marriage.

77. The defendant can demonstrate no exceedingly persuasive justification for this discrimination based on sex.

78. State law prohibiting the issuance of marriage licenses by recorders and the recognition of marriage for same-sex couples thus violates the Equal Protection Clause.

79. Defendant, acting under color of state law, is depriving plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that this Court:

1. Enter a declaratory judgment that § 451.022 RSMo; Mo. Const. art. I, § 33; and any other provision of Missouri statutory or common law barring same-sex couples from marrying violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
2. Enter a declaratory judgment that § 451.022 RSMo; Mo. Const. art. I, § 33; and any other provision of Missouri statutory or common law barring same-sex couples from marrying violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
3. Enter an injunction directing defendant to issue marriage licenses to same-sex couples upon completion of an application for a marriage license and receipt of all fees and other documents required for the issuance of a marriage license under the laws of the State of Missouri.
4. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
5. Enter all further relief to which plaintiffs may be justly entitled.

Respectfully submitted,

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