

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. 1422-CC09027
)	
JENNIFER FLORIDA,)	Division No. 10
Recorder of Deeds and Vital Records)	
Registrar, City of St. Louis,)	
)	
Defendant.)	

DEFENDANT JENNIFER FLORIDA’S ANSWER, DEFENSES, AND COUNTERCLAIM

COMES NOW Jennifer Florida, Recorder of Deeds and Vital Records Registrar of the City of St. Louis, and files her response to the petition. The original defendant in this action, Sharon Quigley Carpenter, was the Recorder of Deeds and Vital Records Registrar for the City of St. Louis at the time this action was filed. Since then, Florida was appointed the Recorder of Deeds and Vital Records Registrar for the City of St. Louis and, under Rule 52.13(d), was automatically substituted as the defendant. All allegations in the petition directed to Carpenter in her official capacity are therefore construed as allegations against Florida. Accordingly, Florida states the following as her answer, defenses, and counterclaim.

ANSWER

1. Florida admits the allegations in Paragraph 1.
2. Florida admits that she is the duly appointed Recorder of Deeds and Vital Records Registrar for the City of St. Louis.
3. Florida admits the allegations in Paragraph 3.
4. Florida admits the allegations in Paragraph 4.

5. Paragraph 5 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations in Paragraph 5. As a matter of law, Florida has a duty not to follow unconstitutional state laws, and Section 451.022, RSMo., is unconstitutional under the Due Process and Equal Protection Clauses of the Constitution of the United States.

6. Florida admits the allegations in Paragraph 6.

7. Paragraph 7 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida admits that the issuance of a marriage license to a couple of the same sex would be contrary to the terms of § 451.022.3, RSMo., but § 451.022.3, RSMo. is unconstitutional under the Due Process and Equal Protection Clauses of the Constitution of the United States.

8. Paragraph 8 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida admits that the issuance of a marriage license to a couple of the same sex would be contrary to the terms of Article I, § 33 of the Missouri Constitution, but Article I, § 33 of the Missouri Constitution is unconstitutional under the Due Process and Equal Protection Clauses of the Constitution of the United States.

9. Paragraph 9 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations of Paragraph 9.

10. Florida denies the allegations of Paragraph 10 in that the Court has entered an order regarding the issuance of marriage licenses to same-sex couples subject to certain conditions set forth therein.

COUNT I

11. Paragraph 11 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations of Paragraph 11.

12. Paragraph 12 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations of Paragraph 12. Plaintiff is not likely to succeed on the merits of this action because § 451.022, RSMo., and Article I, § 33 of the Missouri Constitution are unconstitutional under the Due Process and Equal Protection Clauses of the Constitution of the United States.

13. Paragraph 13 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations of Paragraph 13.

14. Paragraph 14 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations of Paragraph 14.

WHEREFORE, having fully answered Count I, defendant Jennifer Florida, Recorder of Deeds and Vital Records Registrar of the City of St. Louis, respectfully requests that the Court dismiss with prejudice Count I of plaintiff's Petition, enter judgment in favor of defendant and against plaintiff, award defendant her costs and attorney fees, and for other and further relief as is appropriate and just.

COUNT II

15. Paragraph 15 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations of Paragraph 15.

16. Paragraph 16 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations of Paragraph 16.

17. Paragraph 17 asserts a legal conclusion to which no response is required. To the extent any response is required, Florida denies the allegations of Paragraph 17.

WHEREFORE, having fully answered Count II, defendant Jennifer Florida, Recorder of Deeds and Vital Records Registrar of the City of St. Louis, respectfully requests that the Court dismiss with prejudice Count II of plaintiff's Petition, enter judgment in favor of defendant and against plaintiff, award defendant her costs and attorney fees, and for other and further relief as is appropriate and just.

Affirmative and Additional Defenses

1. Plaintiff's petition fails to state a claim upon which relief can be granted.
2. Plaintiff's petition fails to plead any cause of action recognized in Missouri law.
3. Plaintiff's petition fails to plead any cause of action that is not rendered moot by the unconstitutionality of § 451.022, RSMo., and Article I, § 33 of the Missouri Constitution.
4. Section 451.022, RSMo., is unconstitutional because it violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.
5. Article I, § 33 of the Constitution of Missouri is unconstitutional because it violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.
6. Section 451.022, RSMo., and Article I, § 33 of the Constitution of Missouri are unenforceable.
7. Defendant has the duty to comply with the Constitution of the United States, including in particular the Supremacy Clause of Article VI, Clause 2, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

8. Plaintiff's claim is contrary to the public interest.

9. Florida hereby gives notice that she intends to rely on such other defenses as may become available or ascertained during the course of discovery in this case, and hereby reserve the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully answered, defendant Jennifer Florida, Recorder of Deeds and Vital Records Registrar of the City of St. Louis, respectfully requests that the Court dismiss with prejudice all counts of plaintiff's petition, enter judgment in favor of defendant and against plaintiff, award defendant her costs and attorney fees, and for other and further relief as is appropriate and just.

COUNTERCLAIM

1. Defendant/counterclaim plaintiff Jennifer Florida is the Recorder of Deeds of the City of St. Louis.

2. Florida has a duty to issue a marriage license to any couple "legally entitled" to a marriage license under §§ 451.080 and 451.130, RSMo.

3. Florida has the duty to comply with the Constitution of the United States as the supreme law of the land.

4. Florida has a duty to not enforce unconstitutional state laws.

5. Florida must collect fees for each marriage license issued and recorded under §§ 59.319, 451.151, and 488.445, RSMo.

6. On their face, § 451.022, RSMo. and Article I, § 33 of the Missouri Constitution prohibit issuing marriage licenses to same-sex couples.

7. Section 451.022, RSMo. and Article I, § 33 of the Missouri Constitution are unconstitutional because they violate the Due Process and the Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States.

8. If enforced, § 451.022, RSMo. and Article I, § 33 of the Missouri Constitution would operate as a complete bar to marriage for same-sex couples.

9. If enforced, § 451.022, RSMo. and Article I, § 33 of the Missouri Constitution would result in a recorder of deeds, such as Florida, refusing to issue marriage licenses to individuals on the basis of sexual orientation.

10. If enforced, § 451.022, RSMo. and Article I, § 33 of the Missouri Constitution would result in a recorder of deeds, such as Florida, refusing to issue marriage licenses to individuals on the basis of sex.

11. Section 451.022, RSMo. and Article I, § 33 of the Missouri Constitution cannot survive any level of constitutional scrutiny because the laws are not rationally related to any legitimate government interest.

12. One year before plaintiff filed this lawsuit, the United States Supreme Court struck down part of the Defense of Marriage Act in *United States v. Windsor*, 133 S. Ct. 2675, 2691 (2013).

13. Over the past year, courts in these 19 states have ruled that laws similar to § 451.022, RSMo. and Mo. Const., Art. I, § 33 are unconstitutional:

- a. Arkansas (*Wright v. Arkansas*, No. 60CV-13-2662, 2014 WL 1908815 (Ark. Cir. Ct. May 9, 2014));

- b. Colorado (*Brinkman v. Long*, No. 13-CV-32572, 2014 WL 3408024 (Co. Dist. Ct. July 9, 2014); *Burns v. Hickenlooper*, No. 14-CV-01817-RM-KLM, 2014 WL 3634834 (D. Colo. July 23, 2014));
- c. Florida (*Huntsman v. Heavilin*, No. 2014-CA-305-K (Fla. Cir. Ct. July 17, 2014));
- d. Idaho (*Latta v. Otter*, 1:13-CV-00482-CWD, 2014 WL 1909999 (D. Idaho May 13, 2014));
- e. Illinois (*Gray v. Orr*, No. 13-C-8449, 2013 WL 6355918 (N.D. Ill. Dec. 5, 2013); *Lee v. Orr*, 13-CV-8719, 2014 WL 683680 (N.D. Ill. Feb. 21, 2014));
- f. Indiana (*Baskin v. Bogan*, No. 1:14-CV-00355-RLY, 2014 WL 1814064 (S.D. Ind. May 8, 2014));
- g. Kentucky (*Bourke v. Beshear*, No. 3:13-CV-750-H, 2014 WL 556729 (W.D. Ky. Feb. 12, 2014); *Love v. Beshear*, No. 3:13-CV-750-H, 2014 WL 2957671 (W.D. Ky. July 1, 2014));
- h. Michigan (*DeBoer v. Snyder*, 973 F. Supp. 2d 757 (E.D. Mich. 2014));
- i. New Jersey (*Garden State Equal. v. Dow*, 82 A.3d 336 (N.J. Ch. Div. 2013));
- j. New Mexico (*Griego v. Oliver*, 316 P.3d 865 (N.M. 2013));
- k. Ohio (*Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013)); *Henry v. Himes*, No. 1:14-CV-129, 2014 WL 1418395 (S.D. Ohio Apr. 14, 2014));

- l. Oklahoma (*Bishop v. United States*, 962 F. Supp. 2d 1252 (N.D. Okla. 2014); *Bishop v. Smith*, No. 14-5003, 2014 WL 3537847, at *8 (10th Cir. July 18, 2014));
- m. Oregon (*Geiger v. Kitzhaber*, No. 6:13-CV-01834, 2014 WL 2054264 (D. Or. May 19, 2014));
- n. Pennsylvania (*Whitewood v. Wolf*, No. 1:13-CV-1861, 2014 WL 2058105 (M.D. Pa. May 20, 2014))
- o. Tennessee (*Tanco v. Haslam*, No. 3:13-CV-01159, 2014 WL 997525 (M.D. Tenn. Mar. 14, 2014));
- p. Texas (*De Leon v. Perry*, No. SA-13-CA-00983-OLG, 2014 WL 715741 (W.D. Tex. Feb. 26, 2014));
- q. Utah (*Kitchen v. Herbert*, 961 F. Supp. 2d 1181 (D. Utah 2013); *Kitchen v. Herbert*, 13-4178, 2014 WL 2868044 (10th Cir. June 25, 2014));
- r. Virginia (*Bostic v. Rainey*, No. 2:13-CV-395, 2014 WL 561978 (E.D. Va. Feb. 13, 2014); *Bostic v. Schaefer*, No. 14-1167, 2014 WL _____ (4th Cir. July 28, 2014)); and
- s. Wisconsin (*Wolf v. Walker*, No. 14-CV-64-BBC, 2014 WL 2558444 (W.D. Wis. June 6, 2014)).¹

14. Same-sex couples who satisfy the legal requirements for marriage other than § 451.022, RSMo. and Article I, § 33 of the Missouri Constitution, are legally entitled to a marriage license.

¹ These opinions are attached as Exhibits 1 through 26.

15. A recorder, such as Florida, may not refuse to issue a marriage license to a same-sex couple for the reason that they are a same-sex couple.

16. Florida's predecessor in office issued four marriage licenses to same-sex couples, and recorded those licenses. Florida plans and intends to continue issuing marriage licenses to same-sex couples because such couples cannot be denied marriage licenses without violating rights guaranteed by the United States Constitution.

17. This Court has the authority to declare the duties, rights, status, or other legal issues regarding Florida's obligations under state and federal law. § 527.010 *et seq.*, RSMo. Among other things, Florida files this counterclaim to ask the Court to clarify how she should perform her duties as Recorder of Deeds given the conflict between the requirements of Missouri law and the requirements of the Constitution of the United States. Florida also seeks the Court's declaration that she is authorized to issue marriage licenses to same-sex couples.

18. The Court has subject matter jurisdiction over the parties and the claims asserted in the counterclaim in that Florida has no adequate remedy at law.

19. The claims and allegations herein demonstrate that this counterclaim presents a real, substantial, and presently-existing controversy between the parties that is justiciable and is ripe for judicial determination.

20. Florida has standing to bring the claims asserted in her counterclaim in that she has legally protectable interests at stake consisting of a pecuniary or personal interests directly at issue and subject to immediate or prospective consequential relief.

21. Florida lacks an adequate remedy at law.

22. Plaintiff/counterclaim defendant Chris Koster, on behalf of the State of Missouri, is in sued in his official capacity as the Attorney General of the State of Missouri. As Attorney


General, Koster is the State's chief law enforcement officer. § 27.060, RSMo. He is also authorized by statute to appear in any proceeding in which Missouri's interests are involved. At all relevant times, the Koster is acting under color of state law and are sued in his official capacity.

WHEREFORE defendant-counterclaim plaintiff Jennifer Florida, the Recorder of Deeds and Vital Records Registrar of the City of St. Louis, respectfully requests that the Court:

- a. declare that § 451.022, RSMo., is unconstitutional because it violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States;
- b. declare that Article I, § 33 of the Missouri Constitution is unconstitutional because it violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States;
- c. declare that she, as the Recorder of Deeds of the City of St. Louis, has the authority to issue marriage licenses to same-sex couples who satisfy all requirements to be married in Missouri law other than being different-sex couples;
- d. declare that any same-sex couple who satisfies the legal requirements for marriage other than being an different-sex couple is legally entitled to a marriage license under § 451.130.1, RSMo.;
- e. enjoin the counterclaim defendant from enforcing § 451.022, RSMo., and Article I, § 33 of the Missouri Constitution against Florida; and
- f. declare, decree, and enter such further relief as the Court deems just and appropriate.

Respectfully submitted,

WINSTON E. CALVERT, CITY COUNSELOR

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ATTORNEYS FOR JENNIFER FLORIDA,
RECORDER OF DEEDS AND VITAL
RECORDS REGISTRAR, CITY OF ST. LOUIS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of July, 2014, a true and correct copy of the foregoing document was served via electronic mail upon the following:

James Layton
Solicitor General
Attorney General Office of Missouri
Supreme Court Building
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