

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

Kerry Messer, et al.,)
)
 Plaintiffs,)
)
 v.) No. 14AC-CC00009
)
 Jeremiah W. Nixon, in his official)
 capacity as Governor of the)
 State of Missouri, et al.,)
)
 Defendants.)

Answer of Intervenors Scott Emanuel and Ed Reggi to
First Amended Petition for Declaratory Judgment and Injunctive Relief

Intervenors Scott Emanuel and Ed Reggi answer the First Amended Petition for Declaratory Judgment and Injunctive Relief filed against Defendants Jeremiah W. Nixon, John R. Mollenkamp, Department of Revenue, and State of Missouri, by Plaintiffs Kerry Messer, Justin Mosher, Don Hinkle, and Joseph Ortwerth, as follows:

1. Intervenors admit Plaintiffs seek the declaration that they allege they seek in Paragraph 1, but deny they are entitled to such relief.
2. Intervenors admit Plaintiffs seek the injunctive relief they allege they seek in Paragraph 2, but deny they are entitled to such relief.
3. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 3 and, therefore, deny those allegations.
4. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 4 and, therefore, deny those allegations.
5. Intervenors deny the allegations in Paragraph 5.

6. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 6 and, therefore, deny those allegations.
7. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 7 and, therefore, deny those allegations.
8. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 8 and, therefore, deny those allegations.
9. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 9 and, therefore, deny those allegations.
10. Intervenors admit the allegations in Paragraph 10.
11. Intervenors admit the allegations in Paragraph 11.
12. Intervenors admit that Department of Revenue is an Executive Office of the State of Missouri and that it is established by and exists under Article IV, Section 22 of the Constitution of 1945 of the State of Missouri. Intervenors deny the remaining allegations in Paragraph 12.
13. Intervenors admit the allegations in Paragraph 13.
14. Intervenors deny the allegations in Paragraph 14.
15. Intervenors admit the allegations in Paragraph 15.
16. Intervenors admit the allegations in Paragraph 16.
17. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 17 and, therefore, deny those allegations.
18. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 18 and, therefore, deny those allegations.

19. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 19 and, therefore, deny those allegations.
20. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 20 and, therefore, deny those allegations.
21. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 21 and, therefore, deny those allegations.
22. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 22 and, therefore, deny those allegations. Further, Intervenors state that, upon information and belief, the challenged Executive Order will result in an increase in tax revenue and, if anything, processing a combined state income tax return will cost the state less, not more, than processing individual returns of married couples who have filed a joint federal income tax return.
23. Intervenors deny the allegations in Paragraph 23.
24. Intervenors admit that § 451.022, RS Mo. was enacted in 1996 and further admit that the text of the statute is set forth in Paragraph 24. Intervenors deny the remaining allegations in Paragraph 24. Further, Intervenors state that § 451.022 is commonly known as Missouri's Anti-Marriage Statute.
25. Intervenors admit that Article I, Section 33 of the Constitution of 1945 of the State of Missouri is properly quoted in Paragraph 25 and, further, that it was adopted in 2004. Intervenors deny the remaining allegations in Paragraph 25. Further, Intervenors state that Article I, Section 33, is commonly known as Missouri's Anti-Marriage Amendment.

26. Intervenors admit that Missouri's Anti-Marriage Amendment was considered at the August 3, 2004, primary election; that 70.6% of the voters who cast a ballot on the question voted in favor; and that 1,055,771 of Missouri's 6,000,000 residents voted in favor. Intervenors deny the remaining allegations in Paragraph 26.
27. Article II, Section 1 of the Constitution of 1945 of the State of Missouri states, "The powers of government shall be divided into three distinct departments--the legislative, executive and judicial--each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted." Intervenors deny the remaining allegations in Paragraph 27.
28. Intervenors admit the allegations in Paragraph 28.
29. Intervenors admit the allegations in Paragraph 29.
30. Intervenors admit the allegations in Paragraph 30.
31. Intervenors admit the allegations in Paragraph 31. Further, Intervenors assert that Article X of the Constitution of 1945 of the State of Missouri states that "Taxes ... shall be uniform upon the same class or subclass of subjects within the territorial authority levying the tax."
32. Article X, Section 4(d) of the Constitution of 1945 of the State of Missouri states: "In enacting any law imposing a tax on or measured by income, the general assembly may define income by reference to provisions of the laws of the United States as they may be or become effective at any time or from time to time, whether retrospective or prospective in their operation. The general assembly shall in any such law set the rate

or rates of such tax. The general assembly may in so defining income make exceptions, additions, or modifications to any provisions of the laws of the United States so referred to and for retrospective exceptions or modifications to those provisions which are retrospective.” Intervenor deny the remaining allegations in Paragraph 32.

33. Intervenor are without sufficient knowledge or information regarding the allegations in Paragraph 33 and, therefore, deny those allegations.

34. Intervenor admit that Executive Order 13-14 acknowledges Revenue Ruling 2013-17 from the Internal Revenue Service. Except as otherwise admitted, Intervenor deny the allegations in Paragraph 34.

35. Intervenor admit that Executive Order 13-14 acknowledges that Missouri law requires married individuals who file a joint tax return to file a combined Missouri state income tax return. Except as otherwise admitted, Intervenor deny the allegations in Paragraph 35.

36. Intervenor admit that under Revenue Ruling 2013-17 all couples who were legally married at a place where the marriage is recognized are required to file federal income tax returns as married, regardless of the domicile or sexual orientation. Except as otherwise admitted, Intervenor deny the allegations in Paragraph 36.

37. Missouri Revised Statutes Section 143.091 states: “Any term used in sections 143.011 to 143.996 shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the provisions of sections 143.011 to 143.996. Any reference in sections 143.011 to 143.996 to the laws of the United

States shall mean the provisions of the Internal Revenue Code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective, at any time or from time to time, for the taxable year.” Intervenors deny the remaining allegations in Paragraph 37.

38. The Amended Petition cites Missouri Revised Statutes Section 143.031.1 but omits a portion. Section 143.031.1 states: “A husband and wife who file a joint federal income tax return shall file a combined return. A husband and wife who do not file a joint federal income tax return shall not file a combined return.” Missouri statutes do not address those not treated as a husband and wife by Missouri who file a joint federal tax return, other than by reference to the laws of the United States. *See* 143.091, RSMo. Intervenors deny the remaining allegations in Paragraph 38.

39. Intervenors deny the allegations in Paragraph 39. Executive Order 13-14 states, in relevant part, “the Department of Revenue, under section 143.091, RSMo, must apply the same meaning to the phrase ‘husband and wife’ as is applied under federal law pursuant to Revenue Ruling 2013-17.”

40. Intervenors admit the allegations in Paragraph 40.

41. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 41 and, therefore, deny those allegations.

42. Intervenors deny the allegations in Paragraph 42. Intervenors further assert that, upon information and belief, in many cases, the Department of Revenue will collect more tax from those married couples who file a combined return.

43. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 43 and, therefore, deny those allegations.
44. Intervenors admit that Paragraph 44 correctly quotes from the Missouri 2013 Form MO-1040 Instructions as revised on December 13, 2013.
45. Intervenors deny the allegations in Paragraph 45.
46. Intervenors admit that Paragraph 46 asserts what Plaintiffs contend. Except as otherwise admitted, Intervenors deny the allegations in Paragraph 46.
47. Intervenors deny the allegations in Paragraph 47.
48. Intervenors deny the allegations in Paragraph 48.
49. Intervenors deny the allegations in Paragraph 49.
50. Intervenors deny the allegations in Paragraph 50.
51. Intervenors admit that Plaintiffs seek declaratory judgment. Except as otherwise admitted, Intervenors deny the allegations in Paragraph 51.
52. Intervenors admit that Plaintiffs seek to enjoin Defendants as described. Except as otherwise admitted, Intervenors deny the allegations in Paragraph 52.
53. Intervenors deny the allegations in Paragraph 53.
54. Intervenors are without sufficient knowledge or information regarding the allegations in Paragraph 54 and, therefore, deny those allegations.
55. Intervenors deny the allegations in Paragraph 55.
56. Intervenors deny the allegations in Paragraph 56.
57. Intervenors deny the allegations in Paragraph 57.
58. Intervenors deny the allegations in Paragraph 58.
59. Intervenors deny the allegations in Paragraph 59.

60. Intervenors deny the allegations in Paragraph 60.

Additional Facts and Affirmative Defenses

61. Upon information and belief, no Plaintiff is a party to an out-of-state marriage that is not accorded full recognition in Missouri.
62. Upon information and belief, no Plaintiff has a spouse of the same sex.
63. Intervenors Scott Emanuel and Ed Reggi were married on May 1, 2009, in Iowa City, Iowa.
64. Intervenors are required to file their federal income tax return as married jointly or married filing separately.
65. Intervenors are required to file a Missouri income tax return.
66. Missouri requires taxpayers to include a copy of the federal income tax return with their state income tax return.
67. Missouri requires taxpayers to reference figures from their federal income tax return when completing their state income tax return.
68. Missouri law requires Intervenors to file a combined Missouri income tax return if they file a joint federal income tax return.
69. Missouri makes no inquiry into the validity of the marriages of those Missouri taxpayers who file a joint federal income tax return.
70. Missouri has no mechanism to inquire into the validity of the marriage of those who file a joint federal income tax return.
71. Missouri has always required spouses who file a federal joint income tax return to file a combined Missouri income tax return regardless of whether the marriage of those

spouses would have been valid if performed in Missouri and regardless of whether Missouri recognizes the marriage of those spouses.

72. Currently and historically, Missouri does not inquire into the sex of taxpayers who file a combined state income tax return based on having filed a federal joint income tax return.
73. Plaintiffs' proposed relief would require Defendants to discriminate against certain couples lawfully married in other jurisdictions who file federal joint income tax returns based on the sex of the individuals and based on the sexual orientation of the individuals.

First Affirmative Defense

74. Plaintiffs lack standing in that no statute confers them with standing and the Executive Order they challenge does not adversely affect them.
75. Plaintiffs lack taxpayer standing in that they cannot sufficiently identify a direct expenditure of state funds.

WHEREFORE, Intervenors ask this Court to deny the relief sought by Plaintiffs.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was sent by first class mail,
postage prepaid on February 24, 2014, to:

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A handwritten signature in black ink, appearing to read "Michael K. Whitehead", is written over a horizontal line.