

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

KYLE LAWSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:14-CV-00622-ODS
)	
ROBERT KELLY, et al.,)	
)	
Defendant/Intervenors.)	

**DEFENDANT KELLY'S ANSWER,
DEFENSES, AND AFFIRMATIVE DEFENSES**

Defendant Kelly, by and through counsel, provides the following answer, defenses, and affirmative defenses to Plaintiffs' Petition for Declaratory and Injunctive Relief ("Complaint").

1. Defendant Kelly is the duly appointed Recorder of Deeds for Jackson County. The Recorder of Deeds Department serves as the official record-keeper for Jackson County. It also issues State of Missouri Marriage Licenses. All acts taken by Defendant Kelly, or at his direction, were performed in his official capacity as Recorder of Deeds.

2. As Recorder of Deeds responsible for the issuance of state marriage licenses in Jackson County, Missouri, Defendant Kelly is required to follow and uphold the provisions of the Missouri Constitution and abide by the laws of the State of Missouri relating to marriages. The constitutional provisions and laws that are being challenged by Plaintiffs in this action are

all matters of state law. Defendant Kelly has no discretion regarding compliance with these state law mandates, and must continue to comply with the said provisions of law so long as they remain in force and effect.

3. The claims made by Plaintiffs in this action are properly directed to the State of Missouri, and not to Defendant Kelly. Because Defendant Kelly has been made a defendant to this action he is required to file this responsive pleading. This Answer is based upon the currently existing provisions of the Missouri Constitution and Missouri State law, and Defendant Kelly's obligation to uphold the laws of the State of Missouri and the provisions of the Missouri State Constitution.

4. Paragraphs 7, 8, 19, 21, 22, 24, 26, 27, 31, 34, 35, 36 (including subparagraphs (a) through (l)), 37-39, and 44-49 state legal conclusions, and therefore require no response. To the extent a response is required, Defendant Kelly denies the allegations.

5. Defendant Kelly is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in paragraphs 1-6, 9-13, 15, 16, 25, 28-30, 32, 33, 40-43, 50, and 51, and are therefore unable to admit the allegations. To the extent these paragraphs also state legal conclusions, no response is required and the allegations are therefore denied.

6. Answering paragraph 14 of the Complaint, Defendant Kelly admits that on June 19, 2014, two males sought a marriage license from the

office of the Jackson County Recorder of Deeds in Kansas City and were refused in accordance with Missouri law. Defendant Kelly is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations in paragraph 14, and is therefore unable to admit the allegations. To the extent paragraph 14 also states legal conclusions, no response is required and the allegations are therefore denied.

7. Answering paragraph 17 of the Complaint, Defendant Kelly admits that on June 20, 2014, two females sought a marriage license from the office of the Jackson County Recorder of Deeds in Kansas City and were refused in accordance with Missouri law. Defendant Kelly is without knowledge or information sufficient to form a belief as to the truth of the remaining factual allegations in paragraph 17, and is therefore unable to admit the allegations. To the extent paragraph 17 also states legal conclusions, no response is required and the allegations are therefore denied.

8. Answering paragraph 18 of the Complaint, Defendant Kelly admits that he is the Director of the Jackson County Department of the Recorder of Deeds, and as Director he is responsible for issuing marriage licenses in Jackson County, Missouri. The remainder of paragraph 18 of the Complaint states legal conclusions, and therefore requires no response. To the extent a response is required, Defendant Kelly denies the allegations.

9. Answering paragraph 20 of the Complaint, Defendant Kelly admits.

10. Answering paragraph 23 of the Complaint, Defendant Kelly admits that by public referendum the Missouri Constitution was amended August 3, 2004, with a provision that became Missouri Constitution Article I, § 33. The remainder of paragraph 23 states conclusions of law or restates the constitutional provision, requiring no response. To the extent a response is required, Defendant Kelly denies the allegations.

COUNT I

11. Answering paragraph 52 of the Complaint, Defendant Kelly hereby restates and incorporates the responses to paragraphs 1 through 51, inclusive.

12. Paragraphs 53-55 state legal conclusions and therefore require no response. To the extent a response is required, Defendant Kelly denies the allegations.

13. Defendant Kelly is without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraphs 56-57 of the Complaint, and is therefore unable to admit the allegations. The remaining allegations in paragraphs 56-57 of the Complaint state legal conclusions, and therefore require no response. To the extent a response is required, Defendant Kelly denies the allegations.

14. Defendant Kelly denies the allegations in paragraphs 58-59.

COUNT II

15. Answering paragraph 60 of the Complaint, Defendant Kelly hereby restates and incorporates the responses to paragraphs 1 through 59, inclusive.

16. Paragraphs 61, 63, and 64 state legal conclusions and therefore require no response. To the extent a response is required, Defendant Kelly denies the allegations.

17. Defendant Kelly is without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraphs 62 and 65-68, and is therefore unable to admit the allegations. The remaining allegations in these paragraphs state legal conclusions and therefore require no response. To the extent a response is required, Defendant Kelly denies the allegations.

18. Defendant Kelly denies the allegations contained in paragraphs 69-70 of the Complaint.

COUNT III

19. Answering paragraph 71 of the Complaint, Defendant Kelly hereby restates and incorporate the responses to paragraphs 1 through 70, inclusive.

20. Paragraphs 72, 73, and 75-77 state legal conclusions and

therefore require no response. To the extent a response is required, Defendant Kelly denies the allegations.

21. Defendant Kelly is without knowledge or information sufficient to form a belief as to the truth of any factual allegations in paragraph 74 of the Complaint, and is therefore unable to admit the allegations. Defendant Kelly denies the remaining allegations in paragraph 74 of the Complaint.

22. Defendant Kelly denies the allegations in paragraphs 78-79 of the Complaint.

Defendant Kelly denies Plaintiffs' prayer for relief immediately following paragraph 79, including paragraphs 1 through 5 of the prayer for relief, as well as all other allegations in the Complaint not specifically admitted herein.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant Kelly respectfully requests that the Court deny all relief requested in Plaintiffs' Complaint, dismiss Plaintiffs' Complaint with prejudice, and enter such other relief as the Court deems proper.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint should be dismissed for failure to state a claim upon which relief can be granted.

2. Plaintiffs' Complaint should be dismissed in whole or in part because the claims are not justiciable or Plaintiffs lack standing.

3. Plaintiffs' Complaint should be dismissed because the proposed relief, if granted, would violate separation of powers principles.

4. Plaintiffs' Complaint should be dismissed because the claims present a political question.

5. Plaintiffs' claims are barred by the Tenth Amendment.

6. Defendant Kelly reserves the right to assert further affirmative defenses as may be revealed in the course of litigation.

WHEREFORE, having provided full answers, defenses, and affirmative defenses to Plaintiffs' Complaint, Defendant Kelly respectfully requests that the Court deny all relief requested in Plaintiffs' Complaint, dismiss Plaintiffs' Complaint with prejudice and enter such other relief as the Court deems proper.

Respectfully submitted,

**Office of the County Counselor
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ATTORNEY FOR DEFENDANT KELLY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via electronic mail this 22nd day of July, 2014, to:

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