

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

Kyle Lawson, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:14-cv-00622-ODS
)	
Robert Kelly,)	
Defendant.)	
_____)	
State of Missouri,)	
)	
Intervenor.)	

SUGGESTIONS IN SUPPORT OF MOTION FOR PERMANENT INJUNCTION

I. Introduction

State of Missouri has availed itself of this Court’s jurisdiction by intervening in this case to defend the constitutionality of Missouri’s laws excluding same-sex couples from marriage— Mo. Rev. Stat. § 451.022, Mo. Const. art. I, § 33, and any other provision of Missouri statutory or common law barring same-sex couples from marrying (Missouri’s “marriage exclusion”). Plaintiffs filed this case in state court against Defendant Robert Kelly, in his official capacity, alleging that Missouri’s marriage exclusion violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

State of Missouri intervened and removed the case to this Court.

Plaintiffs have moved for summary judgment. In their suggestions in support of summary judgment, Plaintiffs explain why they are entitled to a permanent injunction against Missouri’s enforcement of the marriage exclusion. So there is no confusion about what request Plaintiffs have sought, Plaintiffs now specifically request a permanent injunction prohibiting Intervenor-

Defendant State of Missouri, including its political subdivisions, their officers, agents, servants, employees, attorneys, and all persons acting in concert with them, or in connection with them, from enforcing § 451.022 RSMo; Mo. Const. art. I, § 33; and any other provision of Missouri statutory or common law barring same-sex couples from marrying.

II. Argument

To obtain a permanent injunction, plaintiffs must show the following: (1) actual success on the merits; (2) that they face irreparable harm; (3) that the harm to them outweighs any harm to others; and (4) that an injunction serves the public interest. *Bank One, Utah v. Guttau*, 190 F.3d 844, 847 (8th Cir. 1999) (“The standard for granting a permanent injunction is essentially the same as for a preliminary injunction, except that to obtain a permanent injunction the movant must attain success on the merits”); *Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (preliminary injunction standards).

A permanent injunction against the State of Missouri is appropriate in a case where Missouri intervenes to defend the constitutionality of a statute that is determined to be unconstitutional. *Snider v. City of Cape Girardeau*, 752 F.3d 1149, 1155 (8th Cir. 2014) (affirming grant of permanent injunction prohibiting Missouri from enforcing Mo. Rev. Stat. § 578.095 where Missouri intervened to defend constitutionality of statute).

For the reasons explained in Plaintiffs’ suggestions in support of their motion for summary judgment (Doc. # 23) and their suggestions in opposition to Missouri’s motion for judgment on the pleadings (Doc. # 19), which are incorporated herein by reference, Plaintiffs are entitled to summary judgment and a permanent injunction.

Respectfully submitted,

/s/ Anthony E. Rothert

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ATTORNEYS FOR PLAINTIFFS

Certificate of Service

I certify that a copy of the forgoing was filed electronically on September 15, 2014, and made available to counsel of record.

/s/ Anthony E. Rothert