

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

Andrea “Andi” Mooneyham,)	
)	
Plaintiff,)	
)	
v.)	No. 6:14-cv-3496
)	
Ozark Fire Protection District, a political)	
subdivision of the State of Missouri)	
and municipal corporation,)	
)	
Defendant.)	

COMPLAINT

Introduction

1. In *Barrier v. Vasterling*, a Missouri state court declared that Missouri’s statutory and constitutional provisions that deny legal recognition to the marriages of same-sex couples violate the Fourteenth Amendment to the United States Constitution and issued a permanent injunction barring their enforcement. *Barrier v. Vasterling*, No. 1416-CV03892, 2014 WL 4966467 (Mo. Cir. Ct. Oct. 3, 2014), *amended by*, 2014 WL 5469888 (Mo. Cir. Ct. Oct. 27, 2014). The State of Missouri, through Governor Jeremiah (Jay) Nixon and Attorney General Chris Koster, in their official capacities, was a party to the proceedings and is therefore bound by the injunction and declaratory judgment. The defendants in *Barrier* declined to appeal, and the *Barrier* decision is now the law for all government subdivisions of the State of Missouri.

2. Plaintiff, Andrea “Andi” Mooneyham, is a woman who is lawfully married to another woman. Her employer, Defendant Ozark Fire Protection District, is a political subdivision of the State of Missouri and a municipal corporation. Despite Missouri’s recognition of Plaintiff’s marriage following the decision in *Barrier*, Defendant refuses to recognize her

marriage and, on the basis of that refusal, prevents Plaintiff from obtaining the same spousal benefits provided to Defendant's other employees, including health, dental, and vision coverage.

3. Defendant's refusal to provide Plaintiff with the same spousal benefits it provides to employees with different-sex spouses violates Plaintiff's rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

4. Plaintiff seeks declaratory and injunctive relief, as well as compensatory damages.

Jurisdiction and Venue

5. This action arises under the Constitution of the United States and the provisions of 42 U.S.C. § 1983. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1331 & 1343(a).

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2) because the defendant resides in Christian County, which is located in this judicial district, and a substantial portion of the events or omissions giving rise to the claims occurred in Christian County.

7. Venue is proper in the Southern Division pursuant to L.R. 3.1 (a)(3)(a) and L.R. 3.1 (b)(1).

Parties

8. Plaintiff is a resident of Missouri.

9. Defendant is a political subdivision of the State of Missouri and a municipal corporation created and existing pursuant to Mo. Rev. Stat. § 321.010, *et seq.* See *Cnty. Fire Prot. Dist. of St. Louis Cnty. v. Bd. of Ed. of Pattonville Consol. Sch. Dist. R-3*, 315 S.W.2d 873, 877 (Mo. Ct. App. 1958).

10. Defendant has acted, and continues to act, under color of state law at all times relevant to this Complaint.

Facts

11. Plaintiff is a Captain in the Ozark Fire Protection District.
12. Plaintiff has been an employee of Defendant since December 28, 2006.
13. On July 25, 2013, Plaintiff married Tara Muck in California.
14. Same-sex couples may lawfully marry in California and were permitted to do so at the time of Plaintiff's marriage.
15. Both Plaintiff and her spouse are women.
16. Defendant offers its full-time employees benefits that include full health, dental, and vision insurance coverage for their spouses.
17. Plaintiff is a full-time employee of Defendant.
18. If either Plaintiff or her spouse were male, then they would have been eligible to receive spousal benefits from Defendant upon their marriage.
19. Defendant is authorized to provide spousal benefits pursuant to Mo. Rev. Stat. § 321.220(15).
20. Defendant maintains a policy of refusing to extend spousal benefits to employees who are married to an individual of the same sex.
21. Defendant appears to justify its policy by relying upon Mo. Rev. Stat. § 451.022 and Art. I, § 33 of the Missouri Constitution, both of which purport to prohibit recognition of marriages entered into by persons of the same sex.
22. On October 3, 2014, the Circuit Court of Jackson County declared that Mo. Rev. Stat. § 451.022 and Art. I, § 33 of the Missouri Constitution violate the Fourteenth Amendment to the United States Constitution insofar as they prohibit the recognition of marriages of same-sex couples married in jurisdictions where marriage of same-sex couples is lawful. *See Barrier v.*

Vasterling, No. 1416-CV03892, 2014 WL 4966467 (Mo. Cir. Ct. Oct. 3, 2014), *amended by*, 2014 WL 5469888 (Mo. Cir. Ct. Oct. 27, 2014).

23. The *Barrier* judgment is final and is in full force and effect.

24. The State of Missouri, through its Governor and Attorney General in their official capacities, was a party to the *Barrier* case.

25. No appeal was taken from the judgment declaring Mo. Rev. Stat. § 451.022 and Art. I, § 33 of the Missouri Constitution unconstitutional, and the time for an appeal has expired.

26. The Attorney General is vested with authority to conduct all litigation in the name of the State of Missouri. Mo. Rev. Stat. § 27.060. The final results of such litigation are binding on the State of Missouri may not be collaterally attacked by other governmental officials. *See State ex rel. Missouri Pac. Ry. Co. v. Williams*, 120 S.W. 740, 749 (Mo. 1909).

27. Defendant has repeatedly refused to reconsider its policy of discriminating against Plaintiff because of her sexual orientation and her sex and the sex of her spouse.

28. Defendant's refusal to extend equal benefit to Plaintiff and her spouse is caused by its policy of refusing to recognize marriages of same-sex couples.

Count I

*42 U.S.C. § 1983—Fourteenth Amendment
Discrimination on the Basis of Sexual Orientation
in Violation of the Equal Protection Clause*

29. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth here.

30. Defendant's policy of refusing to recognize Plaintiff's marriage and failing to provide to her the benefits provided to other married employees and their spouses disadvantages and discriminates against Plaintiff because of her sexual orientation.

31. Plaintiff is similarly situated to Defendant's other married full-time employees.

32. There is no rational, substantial, or compelling governmental interest justifying Defendant's discriminatory policy.

33. Defendant's refusal to provide Plaintiff and her spouse with the same spousal benefits as other married employees violates the Equal Protection Clause under any standard of scrutiny.

Count II

*42 U.S.C. § 1983—Fourteenth Amendment
Discrimination on the Basis of Sex
in Violation of the Equal Protection Clause*

34. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth here.

35. Defendant's policy of refusing to recognize Plaintiff's marriage and failing to provide to her and her spouse the benefits provided to other married employees disadvantages and discriminates against Plaintiff because both she and her spouse are women.

36. There is no exceedingly persuasive justification for Defendant's policy of refusing to recognize Plaintiff's marriage and failing to provide to her the benefits provided to other married employees on the basis of sex.

37. Defendant's refusal to recognize Plaintiff's marriage because of her sex violates the Equal Protection Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

- A. Enter a declaration, pursuant to 42 U.S.C. § 1983, that Defendant's policy of refusing to recognize Plaintiff's marriage and failing to provide to her and her same-sex spouse the benefits provided to other

married employees violates the Equal Protection Clause of the Fourteenth Amendment;

- B. Enter a permanent injunction prohibiting Defendant from treating Plaintiff differently than any other similarly situated married employees;
- C. Award compensatory damages;
- D. Award Plaintiff's costs, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
- E. Allow such other and further relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Anthony E. Rothert
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