IN THE UNITED STATED DISTRICT COURT FOR THE DISTRICT OF KANSAS

KAIL MARIE and MICHELLE L. BROWN,)
and KERRY WILKS, Ph.D., and DONNA)
DITRANI, JAMES E. PETERS and GARY A.)
MOHRMAN; CARRIE L. FOWLER and)
SARAH C. BRAUN; and DARCI JO)
BOHNENBLUST and JOLEEN M.)
HICKMAN,	(
Plaintiffs,) Case No. 14-CV-2518-DDC-TJJ
v.)
)
ROBERT MOSER, M.D., in his official capacity)
as Secretary of the Kansas Department of)
Health and Environment and)
DOUGLAS A. HAMILTON, in his official)
Capacity as Clerk of the District Court for the 7 th)
Judicial District (Douglas county), and)
BERNIE LUMBRERAS, in her official capacity)
as Clerk of the District Court for the 18 th)
Judicial District (Sedgwick County),)
NICK JORDAN, in his official capacity as)
Secretary of the Kansas Department of Revenue,)
LISA KASPAR, in her official capacity as Director)
of the Kansas Department of Revenue's Division)
of Vehicles, and MIKE MICHAEL, in his official)
capacity as Director of the State Employee)
Health Plan,)
Defendants.)
)

MOTION TO DISMISS AMENDED COMPLAINT

Defendants Douglas A. Hamilton and Bernie Lumbreras, Clerks of the District Court of the 7th and 18th Judicial Districts respectively, move the Court for an Order dismissing them from this action.

The Chief Judges in both the 7th and 18th Judicial Districts, Judge Fairchild and Judge Fleetwood, respectively, the appointing authorities for Hamilton and Lumbreras, have entered

Administrative Orders providing that marriage licenses will be issued to same-sex applicants on the

same basis as other applicants. The Amended Complaint seeks no relief against the Clerks and indeed

none can be afforded that has not already been made available to these Plaintiffs. The claim against the

Clerks must be dismissed for lack of standing, lack of a present case or controversy, or as moot; this

claim is not within the Article III jurisdiction of this Court, or is prudentially moot. The claim against

the Clerks is also barred by Eleventh Amendment immunity. In the alternative, Plaintiffs have failed to

join necessary and indispensable parties as required by Fed. R. Civ. P. 19.

As required by D. Kan. 7.6, a memorandum in support of the motion to dismiss is submitted

herewith.

This action against the Clerks must be dismissed for lack of jurisdiction. For this reason and as

elaborated upon in the attached Memorandum, Douglas A. Hamilton, Clerk of the District Court for

the 7th Judicial District, and Bernie Lumbreras, Clerk of the District Court for the 18th Judicial District,

move this Court for an Order dismissing them from this action.

Respectfully Submitted,

OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT

/s M.J. Willoughby

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Attorney for Defendants Hamilton and Lumbreras

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CERTIFICATE OF SERVICE

This is to certify that on this 10th day of December, 2014, a true and correct copy of the above and foregoing was filed by electronic means via the Court's electronic filing system which serves a copy upon Plaintiffs' counsel of record, Stephen Douglas Bonney, ACLU Foundation of Kansas, 3601 Main Street, Kansas City, MO 64111 and Mark P. Johnson, Dentons US, LLP, 4520 Main Street, Suite 1100, Kansas City, MO 64111, dbonney@aclukansas.org and Mark.johnson@dentons. com with a courtesy copy served by email upon Joshua A. Block, American Civil Liberties Foundation, 125 Broad Street, 18th Floor, New York, NY 100004, jblock@aclu.org and Steve R. Fabert, Assistant Attorney General, Attorney for Defendant Robert Moser.

/s M.J. Willoughby
M.J. Willoughby, Assistant A.G.
Attorney for Defendants Hamilton and Lumbreras