

**IN THE UNITED STATES 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,)

v.)

SUSAN MOSIER, M.D., in her 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 7th)
Judicial District (Douglas county), and)
BERNIE LUMBRERAS, in her official capacity)
as Clerk of the District Court for the 18th)
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.)

Case No. 14-CV-2518-DDC-TJJ

**DEFENDANTS’ SUGGESTION OF MOOTNESS AND MOTION TO DISMISS WITH
MEMORANDUM IN SUPPORT INCORPORATED**

Defendants submit that there is no longer a justiciable case or controversy for this Court to decide due to defendants’ voluntary compliance with the decision of the United States Supreme Court in *Obergefell v. Hodges*, No. 14-556, 2015 WL 2473451 (U.S. June 26, 2015). No plaintiff is suffering an impairment of federally protected rights at the hands of any of the

defendants. The defendant court clerks continue to issue same-sex marriage licenses as they have done for more than seven months. Defendant Mosier and KDHE continue to treat same sex marriages exactly the same way as opposite sex marriages. Applications for state employee health insurance coverage for same-sex spouses are now being handled routinely in the same manner as applications for opposite-sex spouses. Driver license applications are being handled in the same manner for all married couples whatever the gender of the parties. And Kansas income tax returns filed jointly are now being accepted for all married couples.

Once a case lacks a justiciable case or controversy, the only action a federal court can take is to dismiss it. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 48-49 (1997); *Southern Utah Wilderness Alliance v. Smith*, 110 F.3d 724, 729-30 (10th Cir. 1997) (holding that the case should have been dismissed as moot where given events an injunction would redress no injury and a declaratory judgment would serve no purpose). This lawsuit must be dismissed for lack of Article III jurisdiction given the absence of a justiciable case or controversy. Further, the Eleventh Amendment to the United States Constitution will not permit a lawsuit against state officials acting in their official capacities to proceed when no declaratory or injunctive relief is possible. The *Obergefell* decision has resolved every claim for declaratory relief sought by plaintiffs in their First Amended Complaint. There is no ongoing controversy between plaintiffs and defendants that would provide a basis for federal jurisdiction or justify a grant of prospective injunctive relief.

The arguments offered here will not restate the issues already briefed in defendants' timely-filed motions to dismiss (Docs. 57, 58, 59, 60, 77, 78, 79, 90 and attachments and exhibits thereto), presently pending before the Court, or in defendants' response to plaintiffs' motion for

summary judgment (Doc. 115 and exhibits thereto). This motion supplements those prior briefs by establishing the mootness of claims that should have been dismissed already for the reasons set forth in those earlier motions. The Pretrial Order filed in this matter on May 22, 2015 (Doc. 119) acknowledges Defendants' possible dispositive motion following the Supreme Court's decision in *Obergefell*. (Doc. 119, at § 8.b).

STATEMENT OF MATERIAL FACTS

Plaintiffs and their Claims

1. The original complaint was filed on October 10, 2014, by four unmarried plaintiffs [Marie, Brown, Wilks and DiTrani], who sought to compel three named Kansas officials [District Court Clerks Hamilton and Lumbreras of the 7th and 18th Judicial Districts, respectively, and then-KDHE Secretary Robert Moser, M.D.], to issue marriage licenses to them. (Doc. 1). On November 26, 2014 a First Amended Complaint (Doc. 52) was filed naming six additional plaintiffs and three additional defendants. Pretrial Order (Doc. 119), at p.5-6, ¶ 1.
2. All of the six newly named plaintiffs appearing in the First Amended Complaint allege that they are married persons. Plaintiffs Peters and Mohrman allege that they were married in the state of Iowa in 2010. (Doc. 52, ¶ 8). Plaintiffs Fowler and Braun allege that they were married in the state of Illinois in 2014. (Doc. 52, ¶ 9). Plaintiffs Bohnenblust and Hickman allege that they were married in Kansas during November of 2014. (Doc. 52, ¶ 10). Pretrial Order (Doc. 119), at p.6, ¶ 2.
3. All of the claims asserted by the six new plaintiffs relate to one or another of the newly added defendants, and they make no claims against the original three defendants. (Doc. 52). Pretrial

Order (Doc. 119), at p.6, ¶ 3.

4. Plaintiffs Peters and Mohrman complain that Mohrman's employer, the University of Kansas, refused to add Peters to Mohrman's state employee health insurance because Peters does not meet the definition of a "spouse" under the eligibility rules governing the health care plan. (Doc. 52, ¶¶ 31-33); Pretrial Order (Doc. 119), at p.6, ¶ 4.
5. Plaintiffs Peters and Mohrman also complain that they are not allowed to file a joint Kansas personal income tax return because their marriage is not recognized under Kansas law. (Doc. 52, ¶¶ 34-36).
6. Plaintiffs Fowler and Braun complain that in November of 2014 Fowler was unable to obtain a Kansas drivers' license using the surname Braun because their Illinois marriage is not recognized under Kansas law. (Doc. 52, ¶¶ 38-42). Fowler and Braun state no other complaint. Pretrial Order (Doc. 119), at p.6, ¶ 5.
7. Plaintiffs Bohnenblust and Hickman complain that the Division of Vehicles would not issue a new drivers' license to each of them, restoring the surnames they had used before entering into earlier marriages. (Doc. 52, ¶¶ 44-46). The Amended Complaint does not state whether the prior marriages were entered into in Kansas or some other state, nor does it state where the legal proceedings occurred to dissolve the earlier marriages. Plaintiffs Bohnenblust and Hickman also complain that Bohnenblust's employer, Kansas State University, refused to add Hickman as a spouse on Bohnenblust's health insurance due to the limitation of spousal coverage to opposite-sex spouses. (Doc. 52, ¶¶ 47-48). Pretrial Order (Doc. 119), at p.6, ¶ 6.

Facts Relating to Defendants Hamilton and Lumbreras

8. Since November 13, 2014, Clerks in the 7th and 18th Judicial Districts have been issuing marriage licenses without regard to the gender of the applicants pursuant to Administrative Orders entered by Chief Judges Fairchild and Fleetwood. Seventh Judicial District Administrative Order 14-17, attached to Affidavit of Douglas Hamilton (Doc. 59-1); 18th Judicial District Administrative Order 14-08 (Doc. 59-3); Affidavit of Douglas Hamilton (Doc. 59-1); Affidavit of Bernie Lumbreras (Doc. 59-2).
9. Kansas statutes, including K.S.A. 2014 Supp. 23-2505, the licensing issuance statute, and K.S.A. 20-3102, do not provide for a role for the district court clerks in *recognition* of marriages. *See also*, Affidavit of Douglas Hamilton (Doc. 23-7); Affidavit of Bernie Lumbreras (Doc. 23-8).
10. On November 18, 2014, the Kansas Supreme Court issued its Order in an original action filed by the State on relation of the Attorney General against Tenth Judicial District Chief Judge based upon his Administrative Order (14-11) directing the Clerk to issue same-sex marriage licenses, *State ex rel. Schmidt v. Moriarty*, No. 112,590. In the Order, the Supreme Court held as a matter of Kansas law that in issuing the Administrative Order Chief Judge Moriarty was acting within his jurisdiction as a judge and making a legal determination that same-sex individuals were “legally entitled” to a license as per K.S.A. 2013 Supp. 23-3505(a). A copy of the Kansas Supreme Court’s decision is filed as a matter of record in this case (Doc. 59.6). On June 30, 2015, the Attorney General filed a Notice of Dismissal of this action, stating the controversy was moot in light of *Obergefell*. A copy of this Notice is attached as an exhibit hereto.

Facts Relating to Defendant KDHE Secretary Robert Moser, M.D., now Susan Mosier, M.D.

11. Neither the Secretary of the Kansas Department of Health and Environment nor any other KDHE employee participates in evaluating the qualifications of applicants to determine whether they are lawfully entitled to the issuance of a marriage license consistent with the statutory limitations set forth in K.S.A. 2014 Supp 23-2501 *et seq.* Decisions to issue marriage licenses to same-sex couples or to refuse to issue licenses to those couples are made by court personnel, without participation by the Secretary or by any KDHE employee. (Affidavit of Robert Moser, M.D., Doc. 23-6, ¶ 3; Doc. 115-6, ¶ 3); Pretrial Order (Doc. 119), at p.11, ¶¶ 81-84.
12. K.S.A. 2014 Supp. 23-2507 requires the registration of all marriages “under the supervision of the secretary of health and environment as provided in K.S.A. 65-102.” K.S.A. 65-102 directs the KDHE secretary to prepare the blank forms used to gather vital statistics related to marriages that have already been performed. (Affidavit of Robert Moser, M.D., Doc. 23-6, ¶ 4; Doc. 115-6, ¶ 4).
13. K.S.A. 2014 Supp. 23-2509 directs the secretary of health and environment to supply marriage certificate forms and describes how the forms are to be used in recording marriages. This statute gives the KDHE secretary no supervisory authority over court personnel in deciding whether to issue marriage licenses. (Affidavit of Robert Moser, M.D., Doc. 23-6, ¶ 5, Doc. 115-6, ¶ 5).
14. K.S.A. 2014 Supp. 23-2512 directs the KDHE secretary to maintain indexed records of marriages once they have been performed and to provide certified copies when requested. It gives the KDHE secretary no authority over court personnel in deciding whether to issue

marriage licenses. (Affidavit of Robert Moser, M.D., Doc. 23-6, ¶ 6, Doc. 115-6, ¶ 6).

15. Any guidance provided by KDHE employees to court personnel is limited to helping them fill out the forms to report information to the Office of Vital Statistics. None of the advice provided by KDHE employees relates to the performance by court personnel of their role in assuring that marriage licenses are not issued to persons who are not legally entitled to be married. (Affidavit of Robert Moser, M.D., Doc. 23-6, ¶ 7, Doc. 115-6, ¶ 7).
16. Prior to the filing of the First Amended Complaint in the above captioned matter, new marriage license forms were distributed to Kansas district court clerks that delete all references to men, women, husbands, wives, brides or grooms. These new forms are intended for use when applicants of the same sex present themselves to apply for marriage licenses, and the court clerks have been advised to employ the new forms for that purpose. (Affidavit of Timothy E. Keck, December 9, 2014; Doc. 115-7).
17. The Kansas State Employees Health Care Commission is an independent agency of the State of Kansas that is not subordinate to the Kansas Department of Health and Environment. *See* K.S.A. 75-6502.

Facts Related to Defendant Michael

18. Health insurance for state employees and certain of their dependents is regulated by statute and administrative regulations. K.S.A. 2014 Supp. 75-6501(c) gives to the Kansas State Employees Health Care Commission the authority to define what persons may or may not qualify for insurance benefits under the plan. Eligibility rules are not made by the Director of the Kansas State Employee Health Benefits Plan. (Affidavit of Mike Michael, Doc. 115-5, ¶ 3).

19. Participation in the state's health care benefits program is voluntary. Employees decide whether to seek to add a dependent to an employee's health insurance coverage. An employee's dependents have no right to apply for coverage themselves. (Affidavit of Mike Michael, Doc. 115-5, ¶ 4).
20. The current categories of dependent persons who are potentially eligible for coverage if an employee chooses to apply for that coverage are set forth in K.A.R. 108-1-1. This regulation was amended effective January 2, 2015. The regulation requires that the status of dependent spouse be determined under Kansas law, not the law of any other state. The regulation has no language expressly determining whether a spouse can or cannot be a person of the same sex as the employee requesting to add the dependent spouse. (Affidavit of Mike Michael, Doc. 115-5, ¶ 5).
21. As of July 7, 2015, the University of Kansas and Kansas State University where the relevant Plaintiffs are employed have been directed to accept applications for health insurance coverage for same-sex spouses just as they accept applications for opposite-sex spouses. This directive is consistent with the definitions appearing in the administrative regulation because Kansas now recognizes same-sex marriages. (Affidavit of Mike Randol dated July 8, 2015, attached hereto).

Facts Related to Defendant Jordan

22. Tax Notice 13-18 has been removed from KDOR's Website and is no longer valid. (Affidavit of Richard Cram dated July 8, 2015, attached hereto).

Facts Related to Defendant Kaspar

23. Issuance of a driver's license to a same-sex spouse now occurs in the same manner as it

would for an opposite-sex spouse. KDOR policies are applied the same to both men and women, whether they are heterosexual couples or otherwise. (Affidavit of Lisa Kaspar dated July 8, 2015, attached hereto).

ARGUMENT AND AUTHORITIES

BECAUSE ALL OF THE DEFENDANTS HAVE ADOPTED POLICIES THAT FULLY COMPLY WITH *Obergefell v. Hodges*, THIS LAWSUIT IS MOOT.

The United States Supreme Court declared on Friday, June 26, 2015 that state laws prohibiting same-sex marriage are unenforceable. The crux of the holding is readily extracted from the majority opinion:

Baker v. Nelson must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

* * *

The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

Obergefell v. Hodges, No. 14-556, 2015 WL 2473451, at *19 and *23 (U.S. June 26, 2015).

Obergefell has already established the declaratory relief Plaintiffs' seek. (Pretrial Order, Doc. 119, at p.19, §5). No further relief is needed or available.

Similarly, there is no unconstitutional conduct that would form the basis for prospective injunctive relief. The original Clerk defendants have been issuing marriage licenses to same-sex couples since November 13, 2014 and Defendant KDHE Secretary revised the marriage forms even prior to the filing of the First Amended Complaint. As to the new Plaintiffs, new claims and new defendants in the Amended Complaint, the defendants in this case have acted promptly to

confirm their obedience to the rulings issued in *Obergefell*. Because there has been prompt and voluntary compliance with all aspects of the *Obergefell* decision this lawsuit no longer provides a vehicle for meaningful judicial relief. It must be dismissed as moot.

MARRIAGE LICENSES ARE AVAILABLE

It is uncontroverted that Plaintiffs now can get marriage licenses anytime they want to pay the fee and fill out the paperwork like any couple would. Past practice is not a basis for injunctive relief consistent with the Eleventh Amendment. There is no rational basis for an inference that any defendant will deny any Plaintiff a marriage license, should they decide to request one; marriage licenses are available to them on the same terms and conditions as any other couple. *Obergefell v. Hodges*, No. 14-556, 2015 WL 2473451, at *19 (U.S. June 26, 2015).

NOTICE 13-18 HAS BEEN WITHDRAWN

Defendant Jordan is alleged to have overseen the issuance of a “guidance document” that describes existing Kansas statutes concerning personal income tax returns filed by married taxpayers. That guidance document, Notice 13-18, has now been withdrawn. Given the change in law effected by *Obergefell* and in accordance with that June 26, 2015 decision, KDOR will accept and process income tax returns submitted by same-sex married couples in the same manner as the returns submitted by opposite sex married couples.

DRIVERS’ LICENSE NAME CHANGES ARE AVAILABLE

Any of the plaintiffs who wishes to obtain a new driver’s license in a marital name is now free to submit an application that will be considered under the same rules and standards that are

applied to opposite-sex married couples.

HEALTH INSURANCE IS AVAILABLE

Plaintiffs are employed by Kansas State University and Kansas University respectively. Health insurance coverage applications are now accepted for same-sex spouses in the same manner as applications for health insurance coverage for an opposite-sex spouse.

ELEVENTH AMENDMENT IMMUNITY BARS THIS MOOT ACTION

The Eleventh Amendment bars federal court lawsuits against a state or its officials acting within their official capacities, with a narrow exception allowing for prospective injunctive relief against individual officials for their ongoing violations of federal rights. *See Ex parte Young*, 209 U.S. 123 (1908). When a claim for injunctive relief is brought against a state official who is not involved in the enforcement of an allegedly unconstitutional statute, Eleventh Amendment immunity applies and requires dismissal of the claim. *See Peterson v. Martinez*, 707 F.3d 1197, 1205-1206 (10th Cir. 2013). Given Eleventh Amendment immunity, the only relief available against state officials is *prospective* to remedy *ongoing* violations of federal law. *See, e.g., Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261 (1997). Here, there is no ongoing violation of federal law and no basis for prospective injunctive relief.

The United States Supreme Court has stated in no uncertain terms that declaratory or notice relief regarding prior conduct is barred by the Eleventh Amendment. *Green v. Mansour*, 474 U.S. 64 (1985). *Green* is on point. There, while the action was pending, Congress amended the underlying federal statute, rendering the petitioners' class action claims for AFDC benefits against the Director of the Michigan Department of Social Services moot. The district court dismissed the action, and the Circuit affirmed. The Supreme Court noted that without a

continuing violation of federal law, there was no occasion for an injunction. *Id.*, at 73. Declaratory relief is also unavailable and would run afoul of the Eleventh Amendment. *Id.*, at 73-74.

LACKING A CASE OR CONTROVERSY, DISMISSAL IS MANDATORY

Jurisdictional limits imposed by Article III of the U.S. Constitution require that a plaintiff present a case or controversy that the parties have standing to litigate. “To establish Article III standing, an injury must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *See Clapper v. Amnesty Intern. USA*, __US__, 133 S.Ct. 1138, 1147 (2013):

To establish Article III standing, an injury must be “concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, —, 130 S.Ct. 2743, 2752, 177 L.Ed.2d 461 (2010); *see also Summers*, *supra*, at 493, 129 S.Ct. 1142; *Defenders of Wildlife*, 504 U.S., at 560–561, 112 S.Ct. 2130. “Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is certainly impending.” *Id.*, at 565, n. 2, 112 S.Ct. 2130 (internal quotation marks omitted). Thus, we have repeatedly reiterated that “threatened injury must be certainly impending to constitute injury in fact,” and that “[a]llegations of possible future injury” are not sufficient. *Whitmore*, 495 U.S., at 158, 110 S.Ct. 1717 (emphasis added; internal quotation marks omitted); *see also Defenders of Wildlife*, *supra*, at 565, n. 2, 567, n. 3, 112 S.Ct. 2130; *see DaimlerChrysler Corp.*, *supra*, at 345, 126 S.Ct. 1854; *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 190, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000); *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979). (*Clapper*, 133 S.Ct at p. 1147)

See also, Summers v. Earth Island Institute, 555 U.S. 488 (2009); *Lujan v. Defenders of Wildlife*, 504 U.S. 555(1992); *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). Generalized grievances, “no matter how sincere, [are] insufficient to confer standing. *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2662 (2013).

Although there are many decisions dismissing similar claims based upon mootness, the

Tenth Circuit's decision in *Southern Utah Wilderness Alliance v. Smith*, 110 F.3d 724 (10th Cir. 1997) is an example on point. There, an environmental organization sued federal agency defendants (Bureau of Land Management ("BLM") and the Secretary of Interior), for violation of the Endangered Species Act for failing to consult the Fish and Wildlife Service ("FWS") regarding the impact BLM's actions might have on a threatened species of milkweed. After the case was filed, the complained of consultation with FWS occurred. The district court entered summary judgment for defendants, but also found the claim moot, as did the Circuit on appeal, which held that the case should have been dismissed.

The Circuit noted there are two different mootness doctrines, Article III mootness and prudential mootness. "Article III mootness is 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.*, at 727 (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997)). The doctrine of prudential mootness relates to the Court's remedial discretion and has "particular applicability in cases, such as this one, where the relief sought is an injunction against the government." *Id.* (citations omitted). Under both doctrines, "the central inquiry is essentially the same: have circumstances changed since the beginning of the litigation that forestall any occasion for meaningful relief." *Id.* The Circuit found that since the requested consultation had already occurred, an injunction would redress no injury and a declaratory judgment was also unavailable as it would serve no purpose. *Id.*, at 729-30. The Court found that even if the suit were not moot in the Article III sense, it would be moot on considerations of prudential mootness. *Id.*, at 730.

When a dispute has become moot, the only thing a federal court can and should do is to

dismiss it. *See, e.g., Arizonans for Official English v. Arizona*, 520 U.S. 43, 48-49 (1997); *Southern Utah Wilderness Alliance v. Smith*, 110 F.3d 724, 729-30 (10th Cir. 1997) (holding that the case should have been dismissed as moot where given events an injunction would redress no injury and a declaratory judgment would serve no purpose).

This action must be dismissed forthwith for lack of jurisdiction.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT

s/ Steve R. Fabert

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Attorney for Defendants Hamilton and Lumbreras

CERTIFICATE OF SERVICE

This is to certify that on this 9th day of July, 2015, a true and correct copy of the above and foregoing was filed and served via the Court's electronic filing system upon Plaintiffs' counsel of record, Stephen Douglas Bonney, ACLU Foundation of Kansas, 3601 Main Street, Kansas City, MO 64111, Mark P. Johnson, Dentons US, LLP, 4520 Main Street, Suite 1100, Kansas City, MO 64111, dbonney@aclukansas.org and Mark.johnson@dentons.com and Joshua A. Block, American Civil Liberties Foundation, 125 Broad Street, 18th Floor, New York, NY 100004, jblock@aclu.org.

s/Steve R. Fabert

Steve R. Fabert

*Attorney for Defendants Mosier, Jordan, Kaspar
and Michael*

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capacity as Director of the State Employee)
Health Plan,)

Defendants.)

AFFIDAVIT OF RICHARD CRAM

STATE OF KANSAS)

) ss:

COUNTY OF SHAWNEE)

RICHARD CRAM, after being duly sworn upon his oath states as follows:

1. I am the Director of Policy and Research for the Kansas Department of Revenue.

- 2. I am personally knowledgeable about the matters described in the first amended complaint filed in the above proceeding insofar as they relate to the role of the Kansas Department of Revenue in the handling of personal income tax returns for married taxpayers.
- 3. Notice 13-18 has been removed from the Kansas Department of Revenue's website and is no longer valid.

FURTHER AFFIANT SAITH NAUGHT

Richard Cram

 RICHARD CRAM

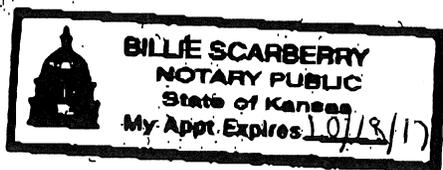
BE IT REMEMBERED, that on this 8th day of July, 2015, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came RICHARD CRAM who is personally known to me as the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, on this the 8th day of July, 2015.

Billie Scarberry

 NOTARY PUBLIC

My Appointment Expires: October 18, 2017



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capacity as Director of the State Employee)
Health Plan,)

Defendants.)

AFFIDAVIT OF LISA KASPAR

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

LISA KASPAR, after being duly sworn upon her oath states as follows:

- 1. I am Director of the Kansas Department of Revenue's Division of Vehicles.

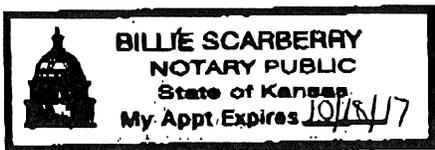
- 2. I am personally knowledgeable about the matters described in the first amended complaint filed in the above proceeding insofar as they relate to the role of the Kansas Department of Revenue's Division of Vehicles. in the issuance of driver licenses to applicants who seek to change a name pursuant to K.S.A. 23-2506.
- 3. In full compliance with the U.S. Supreme Court's recent decision in *Obergefell*, issuance of a driver's license to a same-sex spouse now occurs in the same manner as it would for an opposite-sex spouse. KDOR policies are applied the same to both men and women, whether they are heterosexual couples or otherwise.

FURTHER AFFIANT SAITH NAUGHT

Lisa Kaspar
LISA KASPAR

BE IT REMEMBERED, that on this ___ day of July, 2015, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came LISA KASPAR who is personally known to me as the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, on this the 8th day of July, 2015.



Billie Scarberry
NOTARY PUBLIC

My Appointment Expires: October 18, 2017

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Case No. 14-CV-2518-DDC-TJJ

AFFIDAVIT OF MIKE RANDOL

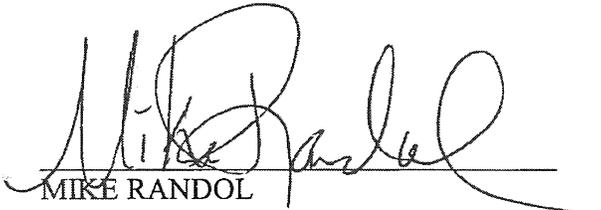
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

MIKE RANDOL, after being duly sworn upon his oath states as follows:

1. I am Director of the Division of Health Care Finance.

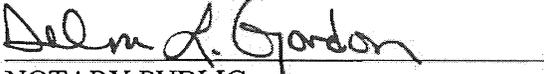
- 2. I am personally knowledgeable about the role of the Kansas State Employee Health Benefits Plan in administering the health insurance benefits of state employees.
- 3. As of July 7, 2015, all state agencies have been directed to accept applications for health insurance coverage for same-sex spouses just as they accept applications for opposite-sex spouses. This directive is consistent with the definitions appearing in the administrative regulation because Kansas now recognizes same-sex marriages.

FURTHER AFFIANT SAITH NAUGHT

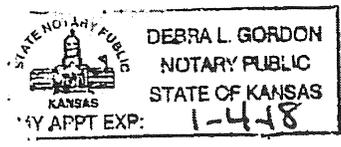

 MIKE RANDOL

BE IT REMEMBERED, that on this 8th day of July, 2015, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came MIKE RANDOL who is personally known to me as the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, on this the 8th day of July, 2015.


 NOTARY PUBLIC

My Appointment Expires: 1-4-18



importance, the dispute concerning the validity of the decision of the Chief Judge of the Tenth Judicial District to require issuance by the clerk of a marriage license to same-sex couples notwithstanding Kansas' constitutional prohibition of marriages between persons of the same sex. Although there are still issues in this case concerning the propriety of *sua sponte* district court orders that disregard facially valid legal precedents of this Court, these issues are not, in the current posture of this case post-*Obergefell*, properly characterized as matters of statewide interest and public importance.

The unique circumstances of this case are unlikely to arise again in the foreseeable future and therefore no advice is needed from this Court to avoid a recurrence of the dispute between the parties.

Therefore, Petitioner State of Kansas, on the relation of Attorney General Derek Schmidt, gives notice pursuant to Kan. Sup. Ct. R. 5.04(a) that it is dismissing this action because the controversy between the parties is now moot.

Respectfully Submitted,

OFFICE OF THE ATTORNEY GENERAL
DEREK SCHMIDT

A handwritten signature in black ink, appearing to read "Derek Schmidt", written over a horizontal line.

Derek Schmidt, #17781
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2015, two copies of the foregoing Suggestion of Mootness and Motion to Dismiss were deposited in the U.S. mail, first class postage prepaid, addressed to:

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I further certify that on this 30th day of June, 2015, eight true and accurate copies of the above and foregoing brief were delivered to the office of:

Heather L Smith
Clerk of the Court
Kansas Judicial Center
Topeka, Kansas 66612


Derek Schmidt