

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KAIL MARIE, <i>et al.</i>)	
)	
Plaintiffs,)	
v.)	Case No. 14-cv-2518
)	
SUSAN MOSIER, M.D., in her official capacity)	
as Secretary of the Kansas Department of)	
Health and Environment, <i>et al.</i> ,)	
)	
Defendants.)	

**PLAINTIFFS’ RESPONSE IN OPPOSITION TO
DEFENDANTS’ SUGGESTION OF MOOTNESS AND MOTION TO DISMISS**

On July 9, 2015, Defendants filed their Suggestion of Mootness and Motion to Dismiss (Doc. 120) based on the United States Supreme Court’s decision in *Obergefell, et al., v. Hodges, et al.*, No. 14-556, 14-563, 14-571, and 14-574, 2015 WL 213646 (June 26, 2015). For the reasons below, Plaintiffs oppose that motion.

BACKGROUND

On October 10, 2014, Plaintiffs Marie and Brown and Plaintiffs Wilks and DiTrani filed suit challenging the provisions of the Kansas Constitution and statutes that prohibit the issuance of marriage licenses to couples of the same-sex. Doc. 1. On October 31, 2014, the Court heard argument on Plaintiffs’ motion for preliminary injunction. Doc. 28. In a Memorandum and Order dated November 4, 2014, the Court granted Plaintiffs’ motion for preliminary injunction, holding that the Kansas constitutional provision and statutes banning same-sex marriage are unconstitutional and entering a preliminary injunction requiring Defendants Hamilton and Lumbreras to issue marriage licenses to same-sex couples and requiring Defendant Secretary of the Kansas Department of Health and Environment to recognize, process, and index marriage

licenses of same-sex couples on the same basis as marriage licenses of opposite-sex couples. Doc. 29 at 38. The Court stayed the effective date of the preliminary injunction until November 11, 2014, so that Defendants could appeal. *Id.*

On November 5, 2014, Defendants filed a Notice of Appeal, Doc. 30, and on November 6, 2014, Defendants filed with the Tenth Circuit an Emergency Motion for Stay of Preliminary Injunction.¹ In an order filed on November 7, 2014, a two judge panel of the Tenth Circuit denied Defendants' Emergency Motion for Stay. On November 10, 2014, Defendants filed with the United States Supreme Court an Emergency Application to Stay Preliminary Injunction Pending Appeal. On November 12, 2014, the Supreme Court denied the Emergency Application after which the District Court's preliminary injunction took effect. Doc. 41.

On November 26, 2014, Plaintiffs filed a First Amended Complaint to add six additional Plaintiffs and three new Defendants in order to challenge the constitutionality of the Kansas marriage ban as it applied to the State's failure to recognize same-sex marriages entered into in Kansas and other states. Doc. 52. Specifically, Plaintiffs challenged Defendants' enforcement of the Kansas marriage ban so as to prohibit them from filing their state income taxes in a married status, changing their last names on Kansas driver's licenses to conform to new last names taken when they married, and adding same-sex spouses to state employee health insurance benefits as dependents.

¹ Pursuant to Fed. R. Evid. 201(b), Plaintiffs ask the Court to take judicial notice of Defendants' filings in Tenth Circuit Case No. 14-3246 and in U.S. Supreme Court Case No. 14A503. "[F]ederal courts, in appropriate circumstances, may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." *St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp.*, 605 F.2d 1169, 1172 (10th Cir. 1979).

Over the course of the past nine months, Defendants have tenaciously defended the Kansas marriage ban, filing no fewer than three motions to dismiss (Docs. 57, 59, & 79) (not including the present motion), engaging in extensive and time-consuming written discovery, and requiring all ten of the Plaintiffs to come to the Attorney General's office in Topeka for depositions taken over five days from March 30 through April 2, 2015.

ARGUMENT

A. The Plaintiffs' Claims Are Not Moot.

No court has entered a final judgment declaring the Kansas marriage ban unconstitutional or permanently enjoining its enforcement, yet Defendants argue that this case is moot because “*Obergefell* has already established the declaratory relief Plaintiffs’ seek.” Def. Mem. 9. Defendants are in error. While *Obergefell* is clearly controlling Supreme Court precedent that dictates the outcome in this case, the Court in *Obergefell* did not directly strike down the provisions of the Kansas Constitution and statutes that ban the issuance of same-sex marriage licenses and prohibit the recognition of same-sex marriages entered into in Kansas and elsewhere. The only laws directly struck down in *Obergefell* were the marriage exclusions in Michigan, Kentucky, Ohio and Tennessee. *Obergefell* is authority for this Court to grant the remedy sought by Plaintiffs.

In the days and weeks following the Supreme Court’s decision in *Obergefell*, courts across the country have implemented the Supreme Court’s decision by entering final judgment in favor of the Plaintiffs or by lifting stays that had been placed on existing injunctions – not by vacating injunctions and dismissing cases as moot. See *Waters v. Rickets*, No. 15-1452 (8th Cir. June 30, 2015) (lifting stay pending appeal); *Lawson v. Kelly*, 4:14-cv-00622-ODS, ECF #72 (W.D. Mo. July 2, 2015) (same); *Jorgensen v. Montplaisir*, No. 3:14-cv-58, ECF #59 (D.N.D.

June 29, 2015) (entering final judgment); *DeLeon v. Perry*, No. SA-13-CA-00982-OLG, ECF #96 (W.D. Tex. June 26, 2015) (lifting stay on preliminary injunction). The Eighth Circuit’s order in *Waters* – the challenge to Nebraska’s marriage ban – is directly on point. After the Supreme Court ruled in *Obergefell*, the defendants of Nebraska’s marriage bans filed a motion with the Eighth Circuit asking the court to dismiss the appeal as moot and vacate the lower court injunction. *See Waters*, No. 15-142, Motion Dated June 26, 2015. Before the Plaintiffs even responded to the motion, the Eighth Circuit responded by lifting the stay pending appeal and allowing the lower court injunction to go into effect. *See Waters*, No. 15-1452, Order Dated June 30, 2015. The Eighth Circuit did not conclude – as Defendants argue in this case – that the decision in *Obergefell* somehow obviated the need for the lower court’s injunction.

Defendants’ assertion of mootness is really based on nothing more than statements of voluntary cessation.

The voluntary cessation of allegedly unlawful conduct does not necessarily make a case moot, unless defendants can establish no reasonable expectation of the wrong’s recurrence. The latter is a heavy burden, and such a showing must be weighed against the possibility of recurrence and the public interest in having the case decided.

Committee for the First Amendment v. Campbell, 962 F.2d 1517, 1524 (10th Cir. 1992), citing *United States v. W.T. Grant Co.*, 345 U.S. 629, 632–33 (1953). “Standing doctrine ensures, among other things, that the resources of the federal courts are devoted to disputes in which the parties have a concrete stake. Yet by the time mootness is an issue, abandonment of the case may prove more wasteful than frugal.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 170 (2000).

The standard for determining whether a case has been mooted by a defendant’s voluntary conduct is “stringent.” *Id.* at 189-90. “[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely

clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Id.* at 190; *see also Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (this “heavy burden” is on the party asserting mootness). As the Supreme Court explained, “[i]t is no small matter to deprive a litigant of the rewards of its efforts.” *Adarand Constructors, Inc.*, 528 U.S. at 224. Thus, to do so “on grounds of mootness would be justified only if it were absolutely clear that the litigant no longer had any need of the judicial protection that it sought.” *Id.*

Moreover, the test for dismissing a case as moot is *not* the same as the test for dismissing a claim for lack of standing. Defendants quote dicta from old case law for the proposition that “Article III mootness is the doctrine of standing set in a time frame.” Def. Mem. 13 (internal quotation marks omitted). But the Supreme Court has subsequently repudiated that dicta as flawed. *Friends of the Earth*, 528 U.S. at 170 (“Careful reflection, however, reveals that this description of mootness is not comprehensive.”). Unlike standing, where the burden is on the plaintiff to demonstrate that absent litigation, the defendant’s injurious conduct will likely occur or continue, when a defendant claims that its voluntary compliance moots a case, that defendant bears the burden of showing that the conduct will not happen again. *Id.* at 189-90; *id.* at 189 (noting that “the Court of Appeals confused mootness with standing” when it dismissed a case for mootness); *see also Adarand Constructors, Inc.*, 528 U.S. at 221 (reversing dismissal of case as moot, noting that the circuit “‘confused mootness with standing’ . . . ‘and as a result placed the burden of proof on the wrong party.’”), *quoting Friends of the Earth, Inc.*, 528 U.S. at 189; *Friends of the Earth, Inc.*, 528 U.S. at 190 (“[T]here are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness.”).

In this case, the Defendants have failed to carry their heavy burden of showing that this case is moot. Critically, the marriage recognition claims related to the coverage of spouses in the Kansas health insurance plan and the filing of income taxes do not relate to one-time occurrences. Plaintiffs must enroll in health insurance and file taxes each year. Defendants must therefore demonstrate, not only that they are currently complying with *Obergefell* as they allege, but also that there is no risk of noncompliance in the future. Defendants cannot make that showing.

First, Plaintiffs' claims are not moot because Kansas's Constitution and statutes continue to ban same-sex marriage:

- a. KAN. CONST., art. 15, § 16: “(a) The marriage contract is to be considered in law as a civil contract. Marriage shall be constituted by one man and one woman only. All other marriages are declared to be contrary to the public policy of this state and are void. (b) No relationship, other than a marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage.”
- b. Kan. Stat. Ann. § 23-2501: “The marriage contract is to be considered in law as a civil contract between two parties who are of opposite sex. All other marriages are declared to be contrary to the public policy of this state and are void. The consent of the parties is essential. The marriage ceremony may be regarded either as a civil ceremony or as a religious sacrament, but the marriage relation shall only be entered into, maintained or abrogated as provided by law.”
- c. Kan. Stat. Ann. § 23-2508: “All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state. It is the strong public policy of

this state only to recognize as valid marriages from other states that are between a man and a woman.”

These provisions remain on the books in Kansas. The people of Kansas have not amended the Kansas Constitution to remove or change KAN. CONST., art. 15, § 16, and the Legislature has not repealed or amended Kan. Stat. Ann. §§ 23-2501 or 23-2508. The fact that these unconstitutional statutes have not been repealed sharply distinguishes this case from other cases that have been dismissed for mootness because the challenged laws or ordinances were repealed in response to litigation. *Cf. Citizen Ctr. v. Gessler*, 770 F.3d 900, 908 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 1896 (2015) (“[A] defendant’s voluntary cessation moots a case when a challenged regulation is repealed and the government does not openly express intent to reenact it”); *Camfield v. City of Oklahoma City*, 248 F.3d 1214, 1222 (10th Cir. 2001) (dismissing First Amendment challenge as mooted because “the Oklahoma Legislature’s significant revision of its child pornography and obscenity laws during the pendency of this appeal”). Without an actual repeal, mere “suspension of the operation of extant laws” is not sufficient to moot a case. *Anderson v. Spear*, 356 F.3d 651, 656 (6th Cir. 2004), *cert. denied*, 543 U.S. 956 (2004).

Even if, in the affidavits filed in support of Defendants’ Suggestion of Mootness, the state officials affirmatively stated that they will not enforce these provisions in the future (which the affidavits do not do), such assertions do not bind future office holders and are, thus, insufficient to make this case moot. Some later office holder may enforce the Kansas marriage ban as long as these laws remain on the books and there is no final judgment declaring them unconstitutional and enjoining state officials from enforcing them.

Second, no high level state office-holder in Kansas has issued any official directive or even a statement indicating that the State of Kansas acknowledges the binding effect of

Obergefell on the State of Kansas and all of its government office-holders, employees, and agents. Specifically, neither Governor Brownback nor Attorney General Schmidt has issued any such directives or made any such clear statements to the public or the press. The only affidavits are from lower-level officials, who Defendants still insist have no power to actually grant any of the relief Plaintiffs seek. Def. Mem. ¶ 18.

Governor Brownback's statements have been equivocal at best. On the day the Supreme Court decided *Obergefell*, Governor Brownback issued the following statement, "Activist courts should not overrule the people of this state, who have clearly supported the Kansas Constitution's definition of marriage as being between one man and one woman. We will review the ruling carefully to understand its effects on the people of Kansas." Statement of Gov. Brownback, June 26, 2015, available on-line at <http://governor.ks.gov/media-room/media-releases/2015/06/26/governor-sam-brownback-responds-to-supreme-court-ruling-in-obergefell-v-hodges> (last checked July 12, 2015). Although on July 7, 2015, the Governor issued an Executive Order regarding the rights of religious organizations and people to refuse to participate in same-sex marriages, <http://governor.ks.gov/media-room/media-releases/2015/07/07/governor-sam-brownback-issues-executive-order-protecting-the-religious-freedom-of-kansas-clergy-and-religious-organizations>, he has not issued any other Executive Orders or further statements regarding *Obergefell*'s "effects on the people of Kansas." This is in marked contrast to Executive Order 15-04, in which Missouri Governor Jay Nixon "Order[ed] all departments, agencies, boards and commissions in the executive branch to immediately take all necessary measures to ensure compliance with the Obergefell decision in all aspects of their operations." Mo. Exec. Order 15-04, July 7, 2015, available on-line at

<http://governor.mo.gov/news/executive-orders/executive-order-15-04> (last checked July 12, 2015).

Third, the specific affidavits filed in support of Defendants’ Suggestion of Mootness fall short of indicating an intent to comply with *Obergefell*:

- In his affidavit, Richard Cram, the Director of Policy and Research for the Kansas Department of Revenue, merely states that “Notice 13-18 has been removed from the Kansas Department of Revenue’s website and is no longer valid.” Doc. 120-1, ¶ 3. Significantly, Mr. Cram does not state that the Kansas Department of Revenue (“KDOR”) will accept state income tax returns filed by same-sex married couples who file their taxes as “married filing jointly” or as “married filing separately.” Nor does he state that the KDOR will process such returns in the same manner as the KDOR processes the state income tax returns of opposite-sex married couples who file their tax returns using a married filing status. In fact, as of close of business on Monday, July 13, 2015 – several days after Defendants filed their Suggestion of Mootness and Motion to Dismiss – the KDOR was not accepting state income tax returns from same-sex couples using a married filing status and was not processing those returns and was, according to an e-mail from Mr. Cram, still awaiting guidance from the Governor’s lawyers. Declaration of Nolin Christensen, ¶¶ 4-6 & Decl. Ex. A.
- The affidavit of Lisa Kaspar, Director of the KDOR’s Division of Vehicles, does not directly address name changes on Kansas driver’s licenses of same-sex spouses who change their names when they marry. Instead, Ms. Kaspar states that “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.” This statement is vague and is insufficient to carry the Defendants’ heavy burden of demonstrating mootness. In fact, as of Friday, July 10, 2015, the KDOR’s Division of Vehicles office at the Docking State Office Building in Topeka, Kansas, was not issuing new driver’s licenses to married same-sex persons who had changed their names when marrying. *See* Declaration of Matt Lara, ¶ 5.

- Similarly, in his affidavit, Mike Randol, Director of the Kansas Division of Health Care Finance, indicates that:

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.

Doc. 120-3, ¶ 3. This statement is insufficient to carry the Defendants’ heavy burden of establishing mootness because the “administrative regulation” Mr. Randol seems to be referring to is K.A.R. 108-1-1, which provides that “[a]ny person enrolled in the health care benefits program as a primary participant may enroll the following dependents, subject to the same conditions and limitations that apply to the primary participant: (A) The primary participant’s lawful wife or husband, as recognized by Kansas law and subject to documentation requirements of the commission or its designee[.]” K.A.R. § 108-1-1(g)(1). Since the Kansas Constitutional provision and statutes banning the recognition of same-sex marriages remain on the books, the

assertion that “Kansas now recognizes same-sex marriages” rings hollow and is insufficient to change the status or meaning of K.A.R. § 108-1-1(g)(1).²

Fourth, Defendants have not dismissed their appeal of the District Court’s preliminary injunction order, and Defendants’ Suggestion of Mootness and Motion to Dismiss suggests that Defendants continue to defend the Kansas marriage ban. In particular, Defendants’ “Statement of Material Facts” and arguments regarding jurisdiction and the Eleventh Amendment are strikingly similar to the arguments Defendants made in support of their earlier-filed motions to dismiss. *See* Doc. 57, 59, & 79. Where a government continues to defend unconstitutional policies “indirectly by its arguments . . . that jurisdiction is lacking” and where “defendant has never revoked the offending provisions,” those factors weigh heavily against a finding of mootness based on voluntary cessation. *Roe v. Cheyenne Mountain Conf. Resort, Inc.*, 124 F.3d 1221, 1230-31 (10th Cir. 1997).

For all of these reasons, Defendants have failed to shoulder their heavy burden of proving that this suit is moot based on the alleged voluntary acquiescence of some Kansas officials in the Supreme Court’s decision in *Obergefell*.

B. If the Court Concludes an Injunction Is Unnecessary, Plaintiffs’ Request for a Declaratory Judgment Would Still Not Be Moot.

In the Order filed on July 9, 2015, the Court asked that “plaintiffs’ response [to Defendants’ Suggestion of Mootness] address the following question: If plaintiffs’ request for injunctive relief is moot because governmental officials have stopped enforcing Kansas’ ban

² Curiously, Mr. Randol’s affidavit mentions acceptance of applications for insurance coverage, while the regulation addresses actual enrolment. Application for coverage is not the same as enrolment, as applications can be rejected. So even with this “change” in policy, same-sex couples may be subject to different treatment than heterosexual couples.

against same-sex marriages, do plaintiffs nevertheless have standing to assert a claim for declaratory relief?”

As argued above, Plaintiffs contend that their request for injunctive relief is not moot because it is not clear that governmental officials have stopped enforcing Kansas’ ban against same-sex marriages and, most critically, because the challenged provisions of Kansas law remain on the books, neither amended nor repealed. But, even if State officials had unequivocally abandoned enforcement of the Kansas laws that prohibit the recognition of same-sex marriages, Plaintiffs would still have standing to assert a claim for declaratory relief.

In stating the issue above, the District Court correctly recognized that the question of jurisdiction to issue a declaratory judgment is separate from the question of jurisdiction to issue an injunction. In *Zwickler v. Koota*, the Supreme Court held that “a federal district court has the duty to decide the appropriateness and the merits of the declaratory request irrespective of its conclusion as to the propriety of the issuance of the injunction.” 389 U.S. 241, 254 (1967). Even assuming *arguendo* that Plaintiffs’ claims for injunctive relief are moot, “the parties to the principal controversy [the constitutionality of the Kansas constitutional and statutory bans on same-sex marriage] . . . may still retain sufficient interests and injury as to justify the award of declaratory relief.” *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 122 (1974). “Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941).

This case involves “a substantial controversy . . . of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Id.* This is so because the unconstitutional laws

remain on the books in Kansas and because no high level office holder of the State of Kansas has issued any order or directive to lesser State officials, employees, and agents regarding the State's acquiescence in *Obergefell*. In fact, such lesser officials, employees, and agents were at loose ends to determine how they should proceed in the absence of such a clear order or directive from the Governor. Moreover, the fact that Kansas officials vigorously defended the constitutionality of the Kansas constitutional provision and statutes even in the face of clear circuit precedent indicating that those provisions were unconstitutional and even after this Court declared those laws unconstitutional indicates that a declaratory judgment finding that the challenged Kansas laws violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment is vital. Such a declaratory judgment will provide a necessary directive to current and future officials throughout the State of Kansas regarding the unconstitutionality of the Kansas ban on same-sex marriages and the recognition of those marriages.

The fact that KAN. CONST., art. 15, § 16, and Kan. Stat. Ann. §§ 23-2501 and 23-2508 remain on the books without amendment or repeal is perhaps the most crucial fact in this analysis. As the Supreme Court noted in *Super Tire Engineering Co.*, “the challenged governmental activity in the present case is not contingent, has not evaporated or disappeared, and, by its continuing and brooding presence, casts what may well be a substantial adverse effect on the interests of the . . . parties.” 416 U.S. at 122. The constitutional and statutory provisions at issue here “are fixed and definite . . . not contingent upon executive discretion.” *Id.* at 124. Thus, as long as these laws remain on the books, there is a real and on-going possibility that some lesser official, employee, or agent of the State of Kansas will enforce them. That is sufficient to permit this Court to issue a declaratory judgment in this case.

Conclusion

For these reasons, Plaintiffs request that the Court deny Defendants' Suggestion of Mootness and Motion to Dismiss.

Respectfully submitted,

By: /s/ Stephen Douglas Bonney

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ATTORNEYS FOR PLAINTIFFS

Certificate of Service

I certify that, on July 14, 2015, the foregoing document was served on counsel for all defendants per the Court's ECF system.

/s/ Stephen Douglas Bonney

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY DIVISION**

KAIL MARIE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 14-cv-2518
SUSAN MOSIER, M.D., in her official)	
capacity as Secretary of the Kansas Department)	
of Health and Environment, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF NOLIN CHRISTENSEN

1. I, Nolin Christensen, operate a tax preparation service known as Christensen Financial Services in Wichita, Kansas. I have personal knowledge of the matters stated in this Declaration and could and would competently testify to these facts.

2. I am currently trying to assist same-sex married clients in filing a state income tax return for tax year 2014 using a married filing status.

3. On Thursday, July 2, 2015, I sent an e-mail to the Kansas Department of Revenue in which I inquired about the current status of my clients' 2014 Kansas income tax return. Bob Clelland in the Office of the Secretary of KDOR replied that the "issue is under review by our attorneys because of the recent supreme court ruling, but at this time it [my clients' return] will not be accepted."

4. On Friday, July 10, 2015, I followed up with an e-mail to Mr. Clelland in which I once again asked about the status of my clients' joint married 2014 state income tax return. Mr. Clelland responded that "We are not accepting joint returns yet, legal is reviewing it. On this return, it was filed married filing joint, I will have to change it to separate filing."

5. On Monday, July 13, 2015, I followed up with an e-mail to Mr. Clelland in which I directed him to a news report about possible changes in the KDOR's policy regarding same-sex tax returns. Later that morning, Mr. Clelland forwarded me an e-mail from Richard Cram at KDOR, who indicated that they were awaiting further directions from the Governor's office regarding same-sex marriage.

6. Attached to this Declaration as Exhibit A is a true and correct copy of the e-mail string between the KDOR and me regarding same-sex married tax returns.

I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

Executed on July 14, 2015.

/s/ Nolin Christensen
Nolin Christensen

Fw: where in processing is this return

Page 1 of 6

From: Bob.Clelland@kdor.ks.gov
To: CHRISTENSEN FINANCIAL SVCS
Date: Monday, July 13, 2015 9:35:07 AM
Subject: Fw: where in processing is this return

The official response at this time. Thanks

Bob Clelland
Office of the Secretary
Kansas Department of Revenue
785-296-2473
Fax: 1-866-637-0858
email: bob.clelland@kdor.ks.gov

----- Forwarded by Bob Clelland/Revenue/KDOR on 07/13/2015 08:34 AM -----

From: Richard Cram/Revenue/KDOR
To: Bob Clelland/Revenue/KDOR@KDOR,
Date: 07/13/2015 08:31 AM
Subject: Re: Fw: where in processing is this return

Bob, The AG filed an affidavit signed by me stating that we had pulled Notice 13-18 (our notice stating we do not recognize same sex marriages for state income tax purposes) from our website as "no longer valid." However, we are still waiting to hear from the Governor's legal staff on exactly what that will mean, i.e., can we now accept "married filing joint" returns from validly married same sex couples, and if so, for which tax years? I'm hoping we will hear something early this week. Richard

From: Bob Clelland/Revenue/KDOR
To: Richard Cram/Revenue/KDOR@KDOR,
Date: 07/13/2015 07:01 AM
Subject: Fw: where in processing is this return

Please advise

Bob Clelland
Office of the Secretary
Kansas Department of Revenue
785-296-2473
Fax: 1-866-637-0858
email: bob.clelland@kdor.ks.gov

----- Forwarded by Bob Clelland/Revenue/KDOR on 07/13/2015 07:01 AM -----

From: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
To: Bob.Clelland@kdor.ks.gov,
Date: 07/10/2015 05:09 PM
Subject: Re: where in processing is this return

Bob

Christensen Declaration Exhibit A

Fw: where in processing is this return

Page 2 of 6

I found this on KWCH channel 12 dated 07/09/2015 (I copied and pasted the one paragraph).

"The state's lawyers submitted an affidavit from Department of Revenue policy director Richard Cram. He said the agency's policy against joint tax returns for same-sex couples is no longer valid."

Thanks

Nolin

-----Original Message-----

From: <Bob.Clelland@kdor.ks.gov>
Sent 7/10/2015 5:10:53 PM
To: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
Subject: Re: where in processing is this return

We are not accepting joint returns yet, legal is reviewing it. On this return, it was filed married filing joint, I will have to change it to separate filing. Is income from both included in this?

Bob Clelland
Office of the Secretary
Kansas Department of Revenue
785-296-2473
Fax: 1-866-637-0858
email: bob.clelland@kdor.ks.gov

From: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
To: Bob.Clelland@kdor.ks.gov,
Date: 07/10/2015 04:07 PM
Subject: Re: where in processing is this return

Bob

re: - KS state return

I've check with the clients and there is no bankruptcy related to this return. As you can see from the string of correspondence, this is a same sex return.

Can we get this processed so I can update the clients on what it happening with the return? They keep calling asking what is going on with it.

Please let me know if there is anything I need to do on this end since the original return that was transmitted from H&R to the state was screwed up (from the preparer trying to make it a single). If you need a copy of the original return as is should be, I'll have to get a copy from the clients (since they were not mine originally.)

Christensen Declaration Exhibit A

Fw: where in processing is this return

thank you

Also, a colleague asked me this afternoon whether or not if a same sex return for 2014 was originally filed as single for the state, can we go back and amend to make it a marriage return? Do you know that the take on this is yet? I told her I didn't know but i would ask since I was following up on the above return.

Sincerely

Nolin Christensen

Christensen Financial Services

-----Original Message-----

From: <Bob.Clelland@kdor.ks.gov>
Sent 7/7/2015 2:14:07 PM
To: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
Subject: Re: where in processing is this return

It is suspended, bankruptcy

Bob Clelland
Office of the Secretary
Kansas Department of Revenue
785-296-2473
Fax: 1-866-637-0858
email: bob.clelland@kdor.ks.gov

From: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
To: Bob.Clelland@kdor.ks.gov,
Date: 07/07/2015 01:10 PM
Subject: Re: where in processing is this return

Bob

What is the status of this return?

thanks

Nolin

Christensen Declaration Exhibit A

Fw: where in processing is this return

-----Original Message-----

From: <Bob.Clelland@kdor.ks.gov>
Sent 7/2/2015 11:56:21 AM
To: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
Subject: Re: where in processing is this return

This issue is under review by our attorneys because of recent supreme court ruling, but at this time it will not be accepted.

Bob Clelland
Office of the Secretary
Kansas Department of Revenue
785-296-2473
Fax: 1-866-637-0858
email: bob.clelland@kdor.ks.gov

From: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
To: Bob.Clelland@kdor.ks.gov,
Date: 07/02/2015 10:51 AM
Subject: Re: where in processing is this return

yes it is. H&R originally filed the return as Joint but jerry-rigged the amounts on KS and thus this generated the KDOR letter.

I have a POA from them, which I'm attaching.

Wanting to know what I need to do at this point.

thanks

Nolin

-----Original Message-----

From: <Bob.Clelland@kdor.ks.gov>
Sent 7/2/2015 11:08:05 AM
To: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
Subject: Re: where in processing is this return

Nolin, Is this a same sex marriage?

Christensen Declaration Exhibit A

Fw: where in processing is this return

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Bob Clelland
Office of the Secretary
Kansas Department of Revenue
785-296-2473
Fax: 1-866-637-0858
email: bob.clelland@kdor.ks.gov

From: "CHRISTENSEN FINANCIAL SVCS" <481905@1040.com>
To: taxpayer.advocate@kdor.ks.gov,
Date: 07/02/2015 10:04 AM
Subject: where in processing is this return

Hello guys

I'm needing to know where in your processing is the following return:

They received a letter from KDOR requesting complete federal return, proof of KS withholding and copies of wage (W-2).

Just needing to know what is happening with the return since the taxpayer has not received any additional correspondence.

thank you

Sincerely yours

Nolin Christensen

Christensen Financial Services

☐☐☐☐☐☐☐☐☐☐[attachmer

deleted by Bob Clelland/Revenue/KDOR]

Christensen Declaration Exhibit A

Fw: where in processing is this return

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Christensen Declaration Exhibit A

file:///C:/Users/NCHRIS~1/AppData/Local/Temp/Low/BL9DUOL5.htm

7/13/2015

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY DIVISION**

KAIL MARIE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Case No. 14-cv-2518
SUSAN MOSIER, M.D., in her official)	
capacity as Secretary of the Kansas Department)	
of Health and Environment, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF MATT LARA

1. I, Matt Lara, am a resident of Topeka, Kansas. I have personal knowledge of the matters stated in this Declaration and could and would competently testify to these facts.

2. In May 2015, my husband Ruben Lara and I obtained a marriage license in Shawnee County, Kansas, and married each other in a ceremony performed in Shawnee County on May 2, 2015.

3. Except for the fact that my husband and I are both men, we meet all of the qualifications to have our marriage recognized in Kansas.

4. On our Kansas marriage license, I changed my last name from Rinehart to Lara.

5. Over the lunch hour on July 10, 2015, I went to the Kansas Division of Vehicles' drivers' license office at the Docking State Office Building in Topeka, Kansas, and asked to change the last name shown on my Kansas driver's license from Rinehart to my married last name, Lara. At that time, I was told that the Department of Revenue's Division of Vehicles has not updated its policies to allow me to change my driver's license. Later the same day, I called

the Division of Vehicles and spoke to a man named “Chris” who confirmed that the Division could not issue me a driver’s license in my married name because of a failure to update policies.

6. On Monday, July 13, 2015, I received a telephone call from the Division advising me that I am able to change my name on my Kansas driver’s license to match my new married name.

I declare under penalty of perjury that the foregoing statements, including all statements in this Declaration, are true and correct.

Executed on July 14, 2015.

/s/ Matt Lara
Matt Lara