

**IN THE CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI
DIVISION NO. 4**

CHARISSE Y. SPARKS,)	
)	
Petitioner,)	
)	
vs.)	Case No. 07BU-CV04904
)	
JANET YOLANDA PETERS)	
MAUCERI SPARKS,)	
)	
Respondent.)	
)	

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF SENATOR
DELBERT SCOTT**

Senator Delbert Scott moves this Court for leave to file a brief *amicus curiae* in the above captioned case. Senator Scott has an interest in this case because of his support for marriage in the state of Missouri as defined by RSMo, § 451.022, RSMo and Mo. Const. art. I, § 33. Senator Scott was a member of the Missouri House of Representatives from 1986 to 2002. In 2002, he was elected to the 28th Senatorial District for Missouri. As a member of the Legislature, Senator Scott supported and lobbied for both RSMo, § 451.022, RSMo and Mo. Const. art. I, § 33, and has an interest as an *amicus curiae* in their enforcement and interpretation.

Although both parties in this case are partially correct in their arguments, *amicus curiae*'s participation will add argument not addressed by the parties as to why this Court should refuse jurisdiction to hear this petition, and why under Massachusetts law the purported marriage is already void without the need of judicial process.

The proposed *Amicus* Brief is filed contemporaneously with this motion.

Respectfully submitted this 1st day of April, 2008.



KEVIN THERIOT
Missouri Bar No. 55733
JOEL OSTER
Missouri Bar No. 50513
DALE SCHOWENGERDT*
Arizona Bar No. 022684
ALLIANCE DEFENSE FUND
15192 Rosewood
Leawood, Kansas 66224
(913) 685-8000
(913) 685-8001 (fax)

* Of counsel, not yet admitted in this jurisdiction

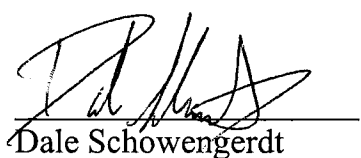
Certificate of Service

I certify that a copy of the Motion for Leave to File Amicus Brief of Senator

Delbert Scott was served April 1, 2008 by facsimile and U.S. mail upon:

William W. Bird
1212 Frederick Avenue,
St. Joseph, Missouri 64501
Facsimile: 816-279-0200

Kay Madden
1627 Main #900
Kansas City, MO 64108
Facsimile: 816-531-2147



Dale Schowengerdt

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BRIEF AMICUS CURIAE OF SENATOR DELBERT SCOTT

Introduction

Both parties in this case are partially correct. The Respondent correctly argues that this Court lacks jurisdiction to adjudicate whether a Massachusetts same-sex “marriage” is valid under Massachusetts law because this Court’s jurisdiction to hear dissolution and annulment proceedings is strictly limited by law. Because state law—as defined by statute and constitutional amendment—prohibits recognition of same-sex marriage “for any purpose,” the Court may not adjudicate whether a same-sex “marriage” certificate issue by Massachusetts is valid. Without a statute giving this Court jurisdiction over same-sex “marriages,” the Court may not even hear, much less determine, a petition for dissolution or annulment.

The Petitioner, on the other hand, asks this Court to declare that the purported marriage is void not only under Missouri law, but also under Massachusetts law. Although she errs in assuming that this Court has subject matter jurisdiction, she correctly points out that Massachusetts prohibits an out-of-state couple from contracting a marriage in Massachusetts if the marriage is prohibited in one of the parties' home states. She argues that because one of the parties resided in Washington, D.C. when they contracted the marriage, and neither party intended to live in Massachusetts, the purported marriage violated Massachusetts law and should be declared void. What she misses is that the Massachusetts Supreme Judicial Court has found that such marriage licenses are automatically null and void without the need of judicial process. So in other words, Petitioner needs no annulment because there is nothing to annul—the purported marriage is automatically void by operation of Massachusetts law.

I. This Court Lacks Jurisdiction to Hear This Petition.

This Court should dismiss the petition for lack of subject matter jurisdiction.¹ “The jurisdiction of Missouri courts to hear and determine suits for dissolution depends upon and is limited by statute. There is no common-law jurisdiction for dissolution proceedings. The statutory provisions, therefore, have been strictly construed on questions of jurisdiction.” *London v. London*, 826 S.W.2d 30, 32 (Mo. Ct. App. W.D.

¹ Amicus recognizes that this Court denied Respondent's motion to dismiss that, in part, challenged this Court's subject matter jurisdiction. However, Amicus urges the Court to reconsider its decision in light of the additional argument offered by Amicus, since jurisdiction may be addressed at any time in the proceedings and “[d]ismissal for lack of subject-matter jurisdiction is proper whenever it appears, by suggestion of the parties or otherwise, that the court is without jurisdiction. *Mo Soybean Ass'n v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 22 (Mo banc. 2003); Rule 55.27 (g)(3).

1992) (emphasis added) (citations omitted).² Missouri code clearly limits a court's jurisdiction to determine dissolution, legal separation, and declarations of invalidity to marriages or purported marriages between two people of the opposite sex.

Indeed, Missouri public policy on the issue of same-sex "marriage" is clear and unequivocal, and has been set by statute and constitutional amendment. The marriage statute reads:

- 1) It is the public policy of this state to recognize marriage only between a man and a woman.
- 2) Any purported marriage not between a man and a woman is invalid.
- 3) No recorder shall issue a marriage license, except to a man and a woman.
- 4) A marriage between persons of the same sex will not be recognized *for any purpose in this state even when valid were contracted.*

§ 451.022, RSMo (emphasis added). The constitution likewise states: "That to be valid and recognized in this state, a marriage shall exist only between a man and a woman." Mo. Const. art. I, § 33.³ This constitutional amendment was approved by the voters in 2004 by a margin of 71%. Thus, a marriage license between persons of the same sex cannot be recognized for any purpose in this state, even if it is valid where contracted.

The Petition for Annulment presumes that there is something to annul. But because Missouri does not recognize same-sex "marriages," whether contracted in Missouri or elsewhere, this Court does not have authority to adjudicate whether a same-sex "marriage" is valid. If the purported marriage had been contracted in Missouri, the

² Although this case is not technically a dissolution proceeding, the Court's authority to hear and determine annulment proceedings is the same as its authority to hear and determine divorce proceedings. Both derive from and are similarly limited by the same body of statutes.

³ <http://www.sos.mo.gov/enrweb/ballotissuereults.asp?arc=1&eid=116>

Court undoubtedly would not hold a hearing to “annul” it, because of Missouri’s strong public policy defining marriage as a union of a man and a woman. It is therefore irrelevant whether the marriage certificate was issued in Massachusetts. Massachusetts law cannot confer jurisdiction on this Court where none exists under Missouri law. The Court simply does not have jurisdiction to parse Massachusetts law to determine whether the couple was validly married under Massachusetts law. Petitioner is incorrect that the only way for the courts to effectuate Rev. Stat. § 451.022 (and Article 1, § 33) is to be empowered to grant annulments. On the contrary, the way for courts to effectuate the law is to refuse recognition of purported out-of-state “marriages” altogether, which includes refusing to recognize them for purposes of granting a dissolution or annulment.

Other courts faced with this issue have done just that. Although Respondent’s arguments have shifted considerably, she correctly notes in her most recent filing that a Connecticut court faced with the identical question at issue here held that it lacked jurisdiction. In *Lane v. Albanese*, 39 Conn. L. Rptr. 3, 2005 WL 896129, 39 (Conn. Dist. Ct. March 18, 2005), a Connecticut same-sex couple traveled to Massachusetts to obtain a marriage certificate and then returned to Connecticut. The court found that because the purported marriage was not recognized under Connecticut law, the court had no jurisdiction to annul it. Importantly, the court made this determination even though, unlike Missouri, Connecticut lacked a strong declaration of public policy prohibiting marriage by persons of the same-sex. *Id.*; see also *Chambers v. Ormiston*, 935 A.2d 956 (R.I. 2007) (Rhode Island Supreme Court ruling that state courts are without jurisdiction to dissolve Massachusetts same-sex “marriages,” even if valid in Massachusetts);

Rosengarten v. Downes, 71 Conn. App. 372, 802 A.2d 170 (Conn. Ct. App. 2002) (declining jurisdiction to dissolve a Vermont civil union). This Court should likewise find that it lacks jurisdiction to annul any purported Massachusetts same-sex “marriage.”

The cases relied on by the Petitioner to support her argument that Missouri courts can exercise jurisdiction over this case are inapposite because they deal with marriages entered into by Missouri residents under Missouri law. *See Nelson v. Marshall*, 869 S.W.2d 132, 134 (Mo. App. W.C. 1993) (holding that a man and woman who were Missouri residents were not validly married where there was a ceremony, but no marriage license);⁴ *Glass v. Glass*, 546 S.W.2d 738, 740 (Mo. App. W.D. 1977) (holding that Missouri woman—who resided in and was married in Missouri—could not collect alimony from first husband when second marriage had been annulled because it was a “voidable,” rather than void marriage); *Bellamy v. Whitsell*, 100 S.W. 514, 515-16 (Mo. App. W.D. 1907) (recognizing the invalidity of a Missouri marriage in which the couple was under age); *Hesington v. Estate of Hesington*, 640 S.W.2d 824 (Mo. App. S.D. 1982) (declaring invalid a common law “marriage” of Missouri residents that was contracted while visiting Oklahoma). This case instead asks whether Missouri can adjudicate the rights of parties to a purported marriage—one that contradicts explicit Missouri public policy—that occurred outside of Missouri when neither party was a Missouri resident.⁵

Finally, Petitioner is also incorrect that a Georgia court had no qualms about exercising subject matter jurisdiction to hold a Vermont same-sex “civil union” void

⁴ The *Nelson* case did not involve a petition for a declaration of nullity. Instead, the “bride” had petitioned the court for a declaration that the marriage was valid in order to enter probate.

⁵ *Amicus* addresses the issue of Full Faith and Credit and Comity, *supra*, Section III.

under a statute similar to Missouri's. In *Burns v. Burns*, 253 Ga. App. 600, 560 S.E.2d 47 (Ga. Ct. App. 2002), the question was not whether the civil union was void. *Burns* dealt with a divorced couple who had entered a consent decree that prohibited their children from visiting either party when he or she "cohabits with or has overnight stays with any adult to which such party is not legally married." *Id.* at 600. The question was whether the former wife's Vermont civil union with her female partner meant that she was legally married and therefore not acting in violation of the consent decree when she had her children spend the night with her partner. The case did not involve dissolution, annulment, or any other issue of legal recognition of the civil union. Indeed, the Georgia court noted that Georgia would not give the civil union any legal effect and was without jurisdiction to give the parties to the civil union any ruling on their respective rights. *Id.* at 602.

II. The Marriage License In this Case Is An Automatic Nullity Under Massachusetts Law Without the Need of Judicial Process.

Even assuming that this Court has jurisdiction to annul a Massachusetts same-sex "marriage" under Massachusetts law, here there is nothing to annul because the parties illegally contracted the purported "marriage." Massachusetts law provides that: "No marriage shall be contracted in this commonwealth by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this commonwealth in violation hereof shall be null and void." Mass. Gen. Laws ch. 207, § 11. The Massachusetts Supreme Court has explained that "[u]nder Massachusetts law, not only are such

marriages not to be contracted in the first place, but to the extent that such marriages may be erroneously contracted, either intentionally or unintentionally, they are considered 'null and void' in Massachusetts and everywhere else." *Cote-Whitacre v. Department of Public Health*, 446 Mass. 350, 359-60, 844 N.E.2d 623, 636 (2006) (emphasis added). The Court also explained that because the marriage is void, it "is an absolute nullity and is not entitled to any recognition or legal status." *Id.* at n. 8. The Court compared the status of a same-sex "marriage" contracted in violation of Mass. Gen. Laws ch. 207, § 11 to a "marriage" contracted in violation of the state's consanguinity laws, finding that such marriages are "void without a judgment of divorce or other legal process." *Id.* (quoting C.P. Kindregan, Jr., & M.L. Inker, *Family Law and Practice* § 19:2, at 736 (3d ed. 2002)).

Therefore, under Massachusetts law the purported marriage is a nullity "without a judgment of divorce or other legal process," because Respondent resided in Washington D.C. when she contracted the marriage, and had the intent to continue residing there. Petition, ¶ 4.⁶ In short, there is nothing to annul—the purported "marriage" between petitioner and respondent is automatically null and void.

This is precisely what the Connecticut district court found in *Lane v. Albanese*, discussed above, where one party, like Petitioner, sought a declaration of annulment on the grounds that the purported marriage was void under Massachusetts law. The court

⁶ Same-sex marriage is prohibited in Washington, D.C. *See Dean v. District of Columbia*, 653 A.2d 307 (D.C. 1995).

found that under Mass. Gen. Laws ch. 207, § 11, the marriage was null and void without the need of legal process and therefore “Connecticut has nothing to dissolve or annul.” *Lane*, 2005 WL 896129, at *4.

III. The Purported Marriage Is Not Entitled to Full Faith and Credit Or Comity.

The question of whether Missouri must recognize a same-sex “marriage” contracted in Massachusetts under the Full Faith and Credit clause of the U.S. Constitution has been laid to rest by enactment of the federal Defense of Marriage Act (“DOMA”). DOMA protects states from having to recognize or give any legal effect to a purported same-sex “marriage” contracted outside its borders:

No state, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

28 U.S.C. §1738C (1996). Both parties appear to agree that DOMA relieves Missouri from any obligation to give foreign same-sex “marriages” any legal effect. *See* Petitioner’s Suggestions in Opp., at 3; Respondents Suggestions Supplemental Suggestions, at ¶¶ 3-4.

Thus, the only reason Missouri would recognize a foreign marriage is comity. “As a matter of comity, Missouri will recognize a marriage valid where contracted unless to do so would violate the public policy of this state.” *Hesington v. Estate of Hesington*, 640 S.W.2d 824, 826 (Mo. Ct. App. 1982). Comity is a discretionary principle and is

purely a matter of accommodating another state's laws. *Id.* It is generally defined as “[t]he principle in accordance with the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect.” Blacks’ Law Dictionary 242 (5th ed. 1979). To determine whether a marriage should be recognized, “[b]oth statutes and judicial decisions have a bearing in ascertaining the public policy of a state, but statutes are the very *highest evidence of public policy* and binding on the courts.” *Hesington*, 640 S.W.2d at 827 (quoting *Browner v. Browner*, 327 S.W.2d 808, 812 (Mo. banc 1959)). As detailed above, Missouri public policy is unambiguous—purported “marriages” between members of the same sex cannot be recognized “for any purpose in this state even when valid were contracted.” § 451.022, RSMo (emphasis added).⁷ This public policy is so strong that the people saw fit to place it in the constitution.

Thus, it is beyond dispute that Missouri need not, and indeed cannot, adjudicate a marital dispute between members of the same sex.

IV. Respondent Has Abandoned Her Constitutional Challenge.

In her original response, Respondent raised an allegation that Missouri’s public policy prohibiting same-sex “marriage” violates the federal and state constitutions. Respondent has apparently abandoned that argument in her supplemental suggestions and has conceded that the laws are constitutional. In any event, her cursory allegation in her

⁷ Missouri courts may recognize common law marriages contracted out-of-state, even though Missouri does not recognize common law marriages contracted within Missouri. *Doyle v. Doyle*, 497 S.W.2d 846 (Mo. Ct. App. 1973). However, Missouri law is explicit that no such treatment is extended to same-sex “marriage.” RSMo § 451.022(4).

original motion to dismiss did not give any basis for why she believed the law is unconstitutional, beyond the general assertion that it violates due process and equal protection. Because there is insufficient basis to know what Respondent's argument may have been, and because that argument is now abandoned, *Amicus* will not address it, unless directed otherwise by the Court.

However, it should be noted that appellate courts around the country have uniformly rejected constitutional challenges to state marriage laws. The lone exception is Massachusetts. *See, e.g., Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8th Cir. 2006); *Conaway v. Deane*, 932 A.2d 571 (Md. 2007); *Hernandez v. Robles*, 855 N.E.2d 1 (N.Y. 2006); *Andersen v. King County*, 138 P.3d 963 (Wa. 2006); *Kerrigan v. State*, 904 A.2d 137 (Conn. 2006); *In re Marriage Cases*, 49 Cal. Rptr.3d 675 (Cal. Ct. App. 2006); *Morrison v. Sadler*, 821 N.E.2d 15 (Ind. 2005); *Standhardt v. Superior Ct. ex rel. County of Maricopa*, 77 P.3d 451 (Az. Ct. App. 2004); *see also Smelt v. Orange County*, 374 F.Supp.2d 861 (C.D. Cal. 2005) (rejecting challenge to federal DOMA); *Wilson v. Ake*, 354 F. Supp. 2d 1298 (M.D. Fla. 2005) (same).

Conclusion

This Court should dismiss this action because it lacks jurisdiction to hear or adjudicate the rights of parties to a same-sex “marriage” under Massachusetts law. Moreover, this Court should also dismiss the petition because there is nothing to annul—the marriage is automatically a nullity without the need of judicial process because it was contracted in violation of Massachusetts law.

Respectfully submitted this 1 st day of April, 2008.



KEVIN THERIOT

Missouri Bar No. 55733

JOEL OSTER

Missouri Bar No. 50513

DALE SCHOWENGERDT*

Arizona Bar No. 022684

ALLIANCE DEFENSE FUND

15192 Rosewood

Leawood, Kansas 66224

(913) 685-8000

(913) 685-8001 (fax)

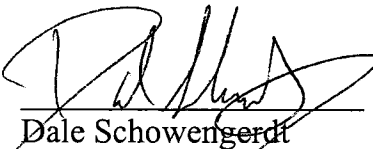
* Of Counsel, not yet admitted in this jurisdiction

Certificate of Service

I certify that a copy of the Amicus Brief of Senator Delbert Scott was served April 1, 2008 by facsimile and U.S. mail upon:

William W. Bird
1212 Frederick Avenue,
St. Joseph, Missouri 64501
Facsimile: 816-279-0200

Kay Madden
1627 Main #900
Kansas City, MO 64108
Facsimile: 816-531-2147



Dale Schowengerdt