

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

MIDWEST FREEDOM COALITION, LLC, ET AL.;

Plaintiff

MICAH RIGGS

Appellant

v.

CHRIS KOSTER, ATTORNEY GENERAL

Respondent

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DOCKET NUMBER WD74767

DATE: March 5, 2013

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Jon Edward Beetem, Judge

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Appellate Judges:

Division Two  
Karen King Mitchell, P.J., Thomas H. Newton, and Lisa White Hardwick, JJ.

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Attorneys:

Michael Gunter, Kansas City, MO

Counsel for Appellant

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Attorneys:

Jeremiah Morgan, Jefferson City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

MIDWEST FREEDOM COALITION, LLC, ET AL., Plaintiff; MICAH RIGGS,  
Appellant, v. CHRIS KOSTER, ATTORNEY GENERAL, Respondent

**WD74767**

**Cole County**

Before Division Two Judges: Mitchell, P.J., Newton, and Hardwick, JJ.

Midwest sought a declaratory judgment and injunction against the Attorney General. It asked the court to declare certain provisions of a newly enacted bill unconstitutional and to enjoin the Attorney General from enforcing them. Riggs later joined the action as member of Midwest in response to the Attorney General's first motion to dismiss. Again, the Attorney General moved for dismissal, claiming that the Attorney General was not the proper party to sue. The circuit court found that the Attorney General was not the proper party to sue and dismissed the case. Midwest and Riggs appeal.

**AFFIRMED.**

**Division Two Holds:**

Midwest and Riggs argue that the circuit court erred in dismissing their action because the Attorney General was the proper party in that section 527.110 provides that the Attorney General is always a party to declaratory judgment actions challenging the constitutionality of a statute. In essence, Midwest and Riggs argue that the Attorney General is a necessary party. We disagree.

A petition is properly dismissed if it fails to state a claim upon which relief can be granted. A petition that has an improper party as the sole defendant fails to state a claim upon which relief can be granted. A justiciable controversy must exist between the parties to maintain a declaratory judgment action. In actions challenging the constitutionality of the statute, the justiciable controversy is between the official charged with the duty to enforce the law and the petitioner.

Here, the local prosecuting attorney and not the Attorney General is the official charged with enforcing the law challenged by Midwest and Riggs. Contrary to their argument, neither case law nor the language within the statute setting forth the declaratory judgment action provides that the Attorney General is a necessary party to all declaratory actions challenging the constitutionality of a statute. Consequently, the circuit court did not err in finding that the Attorney General was not the proper party. Midwest and Riggs's point is denied.

Opinion by Thomas H. Newton, Presiding Judge

March 5, 2013

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