

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. 14-1661 CA 24

CATHERINA PARETO and KARLA
ARGUELLO; JUAN CARLOS RODRIGUEZ
and DAVID PRICE; VANESSA ALENIER
and MELANIE ALENIER; TODD DELMAY
and JEFFREY DELMAY; SUMMER GREENE and
PAMELA FAERBER; DON PRICE JOHNSTON
and JORGE DIAZ; and EQUALITY FLORIDA
INSTITUTE, INC.,

Plaintiffs,

vs.

HARVEY RUVIN, as CLERK OF THE COURTS
of Miami-Dade County, Florida, in his official capacity,

Defendant(s)

**DEFENDANT HARVEY RUVIN'S MOTION FOR
CLARIFICATION AND MOTION TO EXPEDITE**

HARVEY RUVIN, as Clerk of the Courts ("Clerk") files this Motion for Clarification and Motion to Expedite with regard to the Court's Order Granting Plaintiffs' Motion for Summary Judgment ("Order") entered on July 25, 2014. Specifically, due to changes in circumstances since the issuance of the Order, the Clerk seeks clarification regarding the provision of the Order imposing a stay of the Order pending appeal.

On July 25, 2014, the Court issued its Order holding that Florida's same-sex marriage ban violates the Due Process and Equal Protection Clauses of the United States Constitution. Among other things, the Order included the following provision on page 35:

7.) Understanding its ruling is unlikely to be the "final word" on the topic of same-sex marriage, the Court immediately stays this Order pending the outcome of the expected appeal(s). Although this Court recognizes that a person should not be denied a fundamental right for even one day, it feels the uncertainty that could arise if same-sex couples were to marry pursuant to an order that is subsequently reversed on appeal warrants a stay. If affirmed, the Party-Defendants are hereby required to issue marriage licenses to the Plaintiffs and to all otherwise qualified same-sex couples who apply for marriage licenses, subject to the same restrictions and limitations applicable to opposite-sex couples.

The State, as anticipated, appealed the Order to the Third District Court of Appeal. That appeal is currently pending.

Thereafter, Judge Hinkle of the United States District Court for the Northern District of Florida entered his Order Denying Motions to Dismiss, Granting a Preliminary Injunction, and Temporarily Staying the Injunctions in the consolidated cases of *Grimsley v. Scott*, Case No. 4:14-cv-00107-RH/CAS and *Brenner v. Scott*, Case No. 4:14-cv-138-RH/CAS. Consistent with this Court's Order, Judge Hinkle found that Florida's same-sex marriage bans are unconstitutional.

Judge Hinkle's stay of injunction pending appeal expires on January 5, 2015. The State of Florida asked both the United States Court of Appeals for the Eleventh Circuit and the United States Supreme Court to extend the stay beyond January 5. On Friday, December 19, 2014, the United States Supreme Court refused the State's application for stay. (Copy attached as Exhibit "A").

Court clerks throughout the State have been advised by counsel to the Florida Association of Court Clerks ("FACC") that Judge Hinkle's order is binding only on the Clerk for Washington

County, the only court clerk in the state named as a party in the proceedings before Judge Hinkle. (Copy attached as Exhibit "B"). Clerks in counties other than Washington County have been advised by counsel to the FACC that they are subject to criminal penalties pursuant to Section 741.05, Florida Statutes, if they issue marriage licenses to same-sex couples after January 5, 2015. By contrast, attorneys representing Grimsley and Brenner have publicly stated their position that Judge Hinkle's order applies statewide to all court clerks. These conflicting opinions have created confusion among the clerks of court as well as the public, including same-sex couples in Florida who are planning their weddings and are eager to obtain marriage licenses after January 5.

Unlike the clerk's in other counties throughout Florida, this Court's Order expressly provides that "The Clerk of Courts shall **NOT** be prosecuted under section 741.05, Florida Statutes, for attempting to comply with this Order." However, the Clerk remains bound by the stay entered pursuant to the Order notwithstanding the import of Judge Hinkle's order.

As recognized by the Court in the Order, the Clerk is duty-bound to remain neutral in this case. The Clerk's office has been inundated, however, with telephone calls and visits from couples seeking clarity as to their ability to obtain a marriage license after January 5. The Clerk respectfully submits that it serves the public interest to provide a clear response to those inquiries. This Court has jurisdiction to extend, impose lawful conditions or vacate the stay pending appeal pursuant to Rule 9.310(b), Florida Rules of Appellate Procedure.

WHEREFORE, the Clerk respectfully moves the Court to clarify whether the stay imposed in the Order shall remain in effect after January 5 while this case is pending on appeal. The Clerk further moves for entry of an order expediting this matter, affording both the Plaintiffs and the State

an opportunity to present their respective positions so that, if so inclined, the Court can enter an order with regard to the stay on or before January 5.

Respectfully submitted,
HARVEY RUVIN

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on **December 22, 2014** via email generated by the Florida Courts E-Filing Portal to: **Nancy J. Faggianelli, Esq., Sylvia H. Walbolt, Esq. and Luis Prats, Esq.,** CARLTON FIELDS JORDEN BURT, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, Florida 33601, swalbolt@cfjblaw.com, lprats@cfjblaw.com, nfaggianelli@cfjblaw.com; **Jeffrey Michael Cohen, Esq., and Cristina Alonso, Esq.,** CARLTON FIELDS JORDEN BURT, P.A., Miami Tower, 100 Southeast 2nd Street,

Suite 4200, Miami, Florida 33131, jmcohen@cfjblaw.com, calonso@cfjblaw.com; **Elizabeth Schwartz, Esq.**, ELIZABETH SCHWARTZ, P.A., 690 Lincoln Road, Suite 304, Miami Beach, Florida 33169, eschwartz@sobelaw.com; **Mary B. Meeks, Esq.**, MARY MEEKS, P.A., P.O. Box 53678, Orlando, Florida 32853, marybmeeks@aol.com; **Allen Winsor, Esq.** and **Adam S. Tanenbaum, Esq.**, Office of the Attorney General, The Capitol - PL 01, Tallahassee, FL 32399-1050, allen.winsor@myfloridalegal.com, adam.tanenbaumadam@myfloridalegal.com; **Horatio G. Mihet, Esq.**, P.O. Box 540774, Orlando, FL 32854, hmihet@lc.org; **Robert F. Rosenwald, Esq.** and **Nicholas E. Kallergis, Esq.**, 1700 Convention Center Drive, 4th Floor, Miami Beach, FL 33139, robertrosenwald@miamibeachfl.gov; nickkallergis@miamibeachfl.gov; **John J. Hearn, Esq.**, 1001 N.W. 119th Avenue, Coral Springs, FL 33071, attyhearn@aol.com; **AND via U.S. Mail to: Shannon P. Minter, Esq., Christopher F. Stoll, Esq., David C. Codell, Esq. and Asaf Orr, Esq.**, 870 Market Street, Suite 370, San Francisco, California, 94102, sminter@nclrights.org, cstoll@nclrights.org, dcodell@nclrights.org.

By: /s/ Luis G. Montado
Luis G. Montaldo

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(ORDER LIST: 574 U.S.)

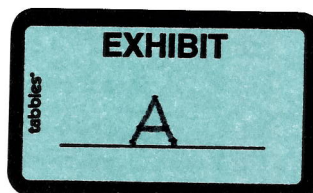
FRIDAY, DECEMBER 19, 2014

ORDER IN PENDING CASE

14A650 ARMSTRONG, JOHN H., ET AL. V. BRENNER, JAMES D., ET AL.

The application for stay presented to Justice Thomas and by him referred to the Court is denied.

Justice Scalia and Justice Thomas would grant the application for stay.



GREENBERG TRAURIG

MEMORANDUM

To: FACC

From: Fred Baggett, Esq.
John Londot, Esq.
Hope Keating, Esq.
Michael Moody, Esq.

Date: December 15, 2014

Re: Addendum to July 1, 2014 Memorandum

Background

On July 1, 2014 our firm provided you with a memorandum, pursuant to your request, detailing the obligations of Florida's clerks of court in light of the possibility that either Florida's state courts or the United States District Court for the Northern District of Florida would find Florida's same-sex marriage ban unconstitutional. A copy of our July 1, 2014 memorandum is attached hereto.

In the memorandum, we concluded that "[t]he likelihood of a near-future invalidation of Florida's same-sex marriage ban, as set forth in sections 741.212 and 741.04(1), Florida Statutes, and article I, section 27 of the Florida Constitution, appears strong." We further concluded:

Clerks who are not named defendants in the litigation would not technically be bound by a decision of the Northern District of Florida, or by the circuit courts. While such Clerks might feel public pressure to follow the guidance of the decision of a court of competent jurisdiction (but no precedential authority), Florida's same-sex marriage ban would still be in place unless they were named parties in one of the lawsuits striking the ban. Thus, issuing same-sex marriage licenses would place them at risk of criminal violation of Florida's same-sex marriage ban – if and until the ban is invalidated by a Florida district court of appeal (absent inter-district conflict), the Florida Supreme Court, or the U.S. Supreme Court.

Our conclusion was based on rules of law that a person who is not a party to the litigation cannot be bound by a trial court's order or injunction, and that a federal district court's order (or a Florida circuit court's order) does not have binding precedential effect on other courts, state or federal.



To: FACC
From: Greenberg Traurig, P.A.
Date: December 15, 2014
Re: Addendum to July 1, 2014 Memorandum

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In the memorandum we specifically discussed the consolidated cases of *Grimsley v. Scott*, Case No. 4:14-cv-00107-RH/CAS, and *Brenner v. Scott*, Case No. 4:14-cv-138-RH/CAS, which were then pending in the United States District Court for the Northern District of Florida. On August 21, 2014, Judge Hinkle entered his *Order Denying Motions to Dismiss, Granting a Preliminary Injunction, and Temporarily Staying the Injunctions* (“Order”). In the Order, Judge Hinkle held “marriage is a fundamental right as that term is used in cases arising under the Fourteenth Amendment’s Due Process and Equal Protection Clauses, that Florida’s same-sex marriage provisions thus must be reviewed under strict scrutiny, and that, when so reviewed, the provisions are unconstitutional.” Judge Hinkle awarded injunctive relief, in pertinent part, directing that the Washington County Clerk issue a marriage license to the two un-wed plaintiffs, as follows:

The defendant Clerk of Court of Washington County, Florida, must issue a marriage license to Stephen Schlairet and Ozzie Russ. The deadline for doing so is the later of (a) 21 days after any stay of this preliminary injunction expires or (b) 14 days after all information is provided and all steps are taken that would be required in the ordinary course of business as a prerequisite to issuing a marriage license to an opposite-sex couple. The preliminary injunction set out in this paragraph will take effect upon the posting of security in the amount of \$100 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Clerk of Court and his officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

Order, ¶ 6. Thus, while the Order declares Florida’s same-sex marriage ban unconstitutional, the injunctive relief granted by Judge Hinkle was specific to the parties before the court.

Judge Hinkle entered a stay of the injunction pending appeal, but the stay expires at the end of the day on January 5, 2015. In light of the pending expiration of the stay, you have now requested that we specifically address the Order and the scope of its application. Our evaluation of this issue requires an analysis of (1) whether Judge Hinkle’s injunctive relief applies to clerks of court who were not a party to the Northern District case, and (2) whether other courts in Florida are bound by Judge Hinkle’s ruling so as to prevent the prosecution of non-party clerks of court. Significantly, unlike other states that have imposed bans on same-sex marriage, Florida imposes criminal penalties specifically on clerks of court who issue same-sex marriage licenses.

Analysis

Scope of Injunctive Relief

It is a general principle of law, derived from federal and state due process requirements, that a person is not bound by a trial court’s judgment in litigation in which he or she is not designated as party or to which he or she has not been made a party by service of process.