

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

FLORIDA FAMILY ACTION, INC.,
a Florida corporation not for profit,

Plaintiff,

CASE NO. _____
DIVISION _____

v.

TIFFANY MOORE RUSSELL, as Clerk of
the Circuit Court of Orange County, Florida,
in her official capacity,

Defendant.

_____ /

**VERIFIED COMPLAINT FOR
EMERGENCY ALTERNATIVE WRIT OF MANDAMUS**

Plaintiff, FLORIDA FAMILY ACTION, INC., a Florida corporation not for profit ("FFAI"), on an emergency basis, sues Defendant, TIFFANY MOORE RUSSELL, as Clerk of the Circuit Court of Orange County, Florida, in her official capacity (the "Clerk"), seeking an alternative writ of mandamus commanding her to perform her official ministerial duty not to issue marriage licenses to same-sex couples. In support of this Complaint and emergency request for mandamus relief, FFAI further alleges as follows:

Jurisdiction and Nature of Relief Requested

1. This is a complaint for an alternative writ of mandamus under Florida Rule of Civil Procedure 1.630:

Under Florida Rule of Civil Procedure 1.630(b), a petition for writ of mandamus must contain the facts on which the plaintiff relies for relief, a request for the relief sought, and, if desired, argument in support of the petition with citations of authority. **If the complaint shows a prima facie case for relief, a trial court must issue an alternative writ of mandamus, and once an alternative writ has issued, the burden is on the respondent to come forth with facts upon which it refused to perform its legal duty.**

Chandler v. City Of Greenacres, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014) (emphasis added) (internal quotations and citations omitted).

Parties and Standing

2. The Clerk, as a Florida circuit court clerk, is a ministerial constitutional officer. See, e.g., *Alachua County v. Powers*, 351 So. 2d 32, 35 (Fla. 1977); Op. Att'y Gen. Fla. 98-65 (1998); see also *Collins v. Taylor*, 579 So. 2d 332, 333 (Fla. 1st DCA 1991) (“[H]e is without authority to judicially determine the legal significance of a document tendered for filing.”); *Ferlita v. State*, 380 So. 2d 1118, 1119 (Fla. 2d DCA 1980) (“A clerk acts in a purely ministerial capacity, and has no discretion to pass upon the sufficiency of documents presented for filing.”) In such capacity the Clerk has the official ministerial duty to issue marriage licenses only in accordance with the requirements of Article I, Section 27 of the Florida Constitution (hereinafter, “Amendment 2”)¹ and Chapter 741, Florida Statutes. Such official ministerial duties include the duty not to “issue a license for the marriage of any person . . . unless one party is a male and the other party is a female.” Fla. Stat. §§ 741.04(1).

3. FFAI is a non-profit 501(c)(4) cultural action organization with thousands of members throughout Florida, including in Orange County.

4. FFAI’s mission is to inform, inspire and rally those who care deeply about the family to greater involvement in the moral, cultural and political issues that face our state. As part of this mission, FFAI works to preserve and protect marriage as a foundational social institution, to educate Floridians on the underlying social goods attendant to the institution of

¹ Amendment 2 provides:

Marriage defined.—Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

marriage, to strengthen marriages, and to promote a strong foundational basis for raising children and ensuring the future of society.

5. FFAI's members were instrumental in drafting Amendment 2, gathering signatures to place it on the ballot, defending it against legal challenges in Florida courts, including at the Florida Supreme Court, and educating and mobilizing voters to ultimately approve Amendment 2.

6. After Amendment 2 was approved by the Florida Supreme Court and enacted by the people of Florida², FFAI's members continued to work throughout Florida, including in Orange County, to preserve and protect marriage as an institution based upon societal norms that teach, form and transform individuals, and that create stable and optimal foundations for families and for the perpetuation of society. FFAI has worked to strengthen the institution of marriage and to educate Floridians on the inherent social goods which result from strong, natural marriages.

7. The question of the official ministerial duties of the Clerk is one of public right, and the object of the mandamus sought herein is to procure the enforcement of her public duties. FFAI has standing to bring this suit, it being sufficient that FFAI and its members are interested, as citizens, in having the Clerk's public duties enforced. *See Florida Indus. Com'n v. State ex rel. Orange State Oil Co.*, 21 So. 2d 599, 600-01 (Fla. 1945).

² The official results of the November 2008 General Election show that Amendment 2 received 4,890,883 "yes" votes (61.9 percent) and 3,008,026 "no" votes (38.1 percent). Florida Secretary of State, Division of Elections, November 8, 2008 General Election Results, available at <http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/4/2008> (last visited December 28, 2014).

The Brenner Order

8. On August 21, 2014, a federal district judge entered an order preliminarily enjoining the Clerk of Court of **Washington County**, Florida (the “Washington Clerk”), to issue a marriage license to two men who desire to marry. See *Brenner v. Scott*, 999 F. Supp. 2d 1278, 1293 (N.D. Fla. 2014) (hereinafter, the “*Brenner Order*”). The *Brenner Order* also preliminarily enjoined the Florida Secretary of Management Services and the Florida Surgeon General (as head of the Florida Department of Health), and “their officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them,” from enforcing Amendment 2 and related Florida marriage laws prohibiting the marriage of same-sex couples. *Id.* The *Brenner* court temporarily stayed the preliminary injunctions pending the outcome of certain other marriage litigation, and the stay is due to expire on January 5, 2015. *Id.* at 1294.

9. Although the *Brenner Order* encompasses two consolidated cases, involving twenty-two plaintiffs, **only the Washington Clerk has been ordered to issue a marriage license**, and only to two men who are plaintiffs in the case. *Id.* at 1281, 1293. The preliminary injunction against the Secretary of Management Services and the Surgeon General concerns the other twenty plaintiffs, and involves only the legal recognition of the marriages of same-sex couples that occurred outside Florida. *Id.* at 1282-83, 1285-86.

10. FFAI has substantially participated in the *Brenner* case as *amicus curiae*.

11. The law firm Greenburg Traurig, which is legal counsel to the Florida Association of Court Clerks and Comptrollers (the “Florida Clerks”), issued a legal memorandum on December 15, 2014, advising clerks throughout the state not to issue marriage licenses to same-sex couples because the *Brenner Order* does not apply to any clerk outside of Washington

County. A true and correct copy of the Greenburg Traurig memorandum is attached hereto as Exhibit A.

12. The vast majority of Florida clerks outside of Washington County, initially, stated publicly their intentions to follow the advice of the Florida Clerks' legal counsel and perform their official ministerial duties not to issue marriage licenses to same-sex couples.³

13. On December 23, 2015, the Washington County Clerk of Court filed in the *Brenner* case an emergency motion for clarification of the *Brenner Order*, seeking clarification as to whether the clerk was required to issue marriage licenses to same-sex couples other than the two men who are plaintiffs in the case. A true and correct copy of the Washington Clerk's motion is attached hereto as Exhibit B.

14. The *Brenner* court entered an order granting the Washington Clerk's motion for clarification on January 1, 2015 (the "*Brenner Clarification*"), a true and correct copy of which is attached hereto as Exhibit C. Though apparently reluctant to concede the limited authority of the *Brenner Order*, the *Brenner* court nonetheless clarified those limits:

In the absence of any request by any other plaintiff for a license, and in the absence of a certified class, no plaintiff now in this case has standing to seek a preliminary injunction requiring the [Washington County] Clerk to issue other licenses. **The preliminary injunction now in effect thus does not require the [Washington County] Clerk to issue licenses to other applicants.**

Brenner Clarification at 3 (emphasis added). Moreover, the *Brenner Clarification* did not purport to bind any other Florida clerk of court to the injunction of *Brenner Order*.⁴

³ Mike Schneider, Melissa Nelson-Gabriel, AP, *Florida clerks won't give gays marriage licenses*, 10 NEWS (Dec. 26, 2014, 5:30 AM), <http://www.wtsp.com/story/news/local/florida/2014/12/26/florida-clerks-wont-give-gays-marriage-licenses/20906817/>.

⁴ In what can only be deemed an advisory opinion to Florida clerks outside Washington County, the *Brenner Clarification* recited Judge Hinkle's conclusion that other Florida clerks of

Grounds for Mandamus Relief

15. Prior to the expiration of the stay in *Brenner*, the Clerk stated publicly and unequivocally that she was preparing to issue marriage licenses to same-sex couples beginning January 6, 2015. In addition, Orlando Mayor Buddy Dyer and Circuit Judge Robert LeBlanc announced their plans to officiate large group wedding ceremonies for same-sex couples on January 6.⁵ Accordingly, on December 30, 2014, FFA filed an emergency complaint seeking writs of mandamus commanding the Clerk to perform her official ministerial duty not to issue marriage licenses to same-sex couples, and commanding Mayor Dyer and Judge LeBlanc not to solemnize any marriages pursuant to invalidly issued marriage licenses.⁶

16. Later on December 30, however, the Clerk filed an “Emergency Petition for Declaratory Judgment” in this Court, **naming no person as defendant with an adverse position**, and seeking “an order determining that she is within her legal right to issue same-sex marriage licenses on January 6, 2015.” A true and correct copy of the petition (without exhibits), assigned Case No. 2014-CA-13275, is attached hereto as Exhibit D.

court “*may* follow” his prior injunction, and a warning that clerks may be sued if they do not (which suits, if any, would require new plaintiffs, burdened with proving their own cases). (*Brenner Clarification* at 3 (emphasis in original)). As reported by some media, the Florida Clerks’ legal counsel did not rescind its prior memorandum concluding that Judge Hinkle’s injunction does not apply to clerks outside Washington County, but instead gave the purely pragmatic advice “that clerks should follow the judge’s ruling for all marriage license applications or face the consequences identified by Judge Hinkle.” As shown herein, however, the *Brenner* court has no authority to relieve any Florida clerk of court of the ministerial duty to obey Florida’s marriage laws, and this Court is not bound by either the *Brenner Order* or the *Brenner Clarification*. (See *infra*, ¶¶ 24-26.)

⁵ *Vowed & Proud*, MBA ORLANDO, <http://business.mbaorlando.org/events/details/vowed-proud-862> (last visited Dec. 29, 2014); *Central Florida Gets Married!!!!*, GLBT CMTY. CTR. OF CENT. FLA., <https://www.facebook.com/events/341433792696246/permalink/341433796029579/> (last visited Dec. 29, 2014).

⁶ *Florida Family Action, Inc. v. Dyer*, Case No. 2014-CA-13260-O.

17. The Clerk's petition was a sham because it named no defendant. "A declaratory judgment proceeding must involve a justiciable controversy **and there must be a named defendant with an adverse position.**" *Jacobs & Goodman, P.A. v. McLin, Burnsed, Morrison, Johnson & Robuck, P.A.*, 582 So. 2d 98, 100 (Fla. 5th DCA 1991) (citing *Brautigam v. MacVicar*, 73 So.2d 863 (Fla.1954)) (emphasis added).

18. Despite the Clerk's facially improper petition, in under twenty-four hours Circuit Judge Timothy R. Shea entered an order "granting" the Clerk's petition. A true and correct copy of Judge Shea's order is attached hereto as Exhibit E. In the order, Judge Shea concludes that the *Brenner Order* "controls the law in the State of Florida," and that based on the *Brenner Order* as "the law of Florida" the Clerk may issue marriage licenses to same-sex couples beginning January 6. Finally, Judge Shea purports to subject his ruling to any subsequent ruling in the federal *Brenner* case. Judge Shea's order is a nullity, however, because the Clerk's petition was invalid *ab initio*. See *State v. Lewis*, 72 So. 2d 823, 825 (Fla. 1954) (holding declaratory judgment issued in case with no defendant to be an inoperative adjudication).

19. Though the Clerk received "adjudication" of her invalid petition in less than twenty-four hours, no action was taken on FFA's emergency complaint until January 5, 2015.⁷ At that time, the Chief Judge of the Ninth Circuit entered an order disqualifying all judges of the Ninth Circuit from hearing FFA's case because Ninth Circuit Judge LeBlanc was a defendant, and providing notice that the Chief Judge would request the Florida Supreme Court to reassign

⁷ The undersigned counsel for FFA represents to the Court that his office, beginning on the filing date of December 30, 2014, initiated multiple communications with the Clerk's office and chambers of the assigned Ninth Circuit judge regarding the handling of the emergency complaint, but received no response until January 5, 2015.

the case to a judge in another circuit.⁸ A true and correct copy of the Chief Judge's order is attached hereto as Exhibit F. To avoid having its case languish further—likely beyond January 6—FFA dropped Judge LeBlanc as a party. The Chief Judge, however, notified the parties that his disqualification order could not be reconsidered.⁹ A true and correct copy of the Chief Judge's notice is attached hereto as Exhibit G. The Chief Judge's request for reassignment was sent to the Supreme Court on January 6, 2015.

20. On January 6, while FFA awaited reassignment of its case, the Clerk issued marriage licenses to 164 same-sex couples, the second highest total in the state.¹⁰ Mayor Dyer officiated a mass wedding for forty-four same-sex couples.¹¹

21. On January 7, 2015, Tenth Circuit Judge Mark H. Hofstad received FFA's case against the Clerk and Mayor Dyer. On January 8, 2015, Judge Hofstad entered an order denying FFA's mandamus request as moot, construing FFA's complaint as directed only to the actions of the Clerk and Mayor Dyer on January 6, which had already passed.¹² A true and correct copy of Judge Hofstad's order is attached hereto as Exhibit H.

⁸ Order of Recusal of Entire Circuit, *Florida Family Action, Inc. v. Dyer*, Case No. 2014-CA-13260-O (Jan. 5, 2015).

⁹ Notice to Parties - Previous Order of Recusal of Entire Circuit, *Florida Family Action, Inc. v. Dyer*, Case No. 2014-CA-13260-O (Jan. 5, 2015).

¹⁰ Charles Minshew, Andrew Gibson, *Orange County ranked No. 2 in same-sex marriage licenses*, ORLANDO SENTINEL (Jan. 7, 2015, 5:07 PM), <http://www.orlandosentinel.com/news/local/os-gay-marriage-florida-license-numbers-20150107-story.html>.

¹¹ Rene Stutzman, Mark Shlueb, Melanie Dostis, *'We feel ecstatic, excited,' woman declares as gay marriage becomes a Florida reality*, ORLANDO SENTINEL (January 6, 2015, 8:03 PM), <http://www.orlandosentinel.com/news/breaking-news/os-gay-marriage-florida-wedding-day-20150106-story.html>.

¹² The nature of the obstacle that prevented FFA's prior emergency complaint from being considered for nearly a week, even though the Clerk's later-filed "petition" was considered in less than twenty-four hours, remains unknown to FFA.

22. Upon information and belief, the Clerk presently continues to issue marriage licenses to same-sex couples despite having an official ministerial duty to deny any such application.

23. Mandamus relief is appropriate “to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law. A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” *Bennett v. Clerk of Circuit Court Citrus County*, 39 Fla. L. Weekly D2341, 2014 WL 5781221, *1 (Fla. 5th DCA Nov. 7, 2014).

24. As correctly concluded by the Florida Clerks’ legal counsel, the *Brenner Order* does not relieve any Florida clerk outside Washington County of the ministerial duty not to issue marriage licenses to same-sex couples, because such other clerks are not parties over whom the *Brenner* court has jurisdiction for purposes of injunctive relief. *See Taylor v. Sturgell*, 553 U.S. 880, 884 (2008); *Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). An injunction binds only parties to the proceeding, and the parties’ officers, agents, servants, employees, and attorneys, and other persons acting in concert or participation with the parties with regard to property that is the subject of the injunction.¹³ *See Alderwoods Grp., Inc. v.*

¹³ Neither the Florida Secretary of Management Services nor the Florida Surgeon General (as head of the Department of Health) has any authority to issue marriage licenses, which authority is expressly reserved to circuit court clerks and county judges. Fla. Stat. § 741.01(1). While the Department of Health has the express duty and authority to receive and maintain records of marriages as part of its vital records function, and the necessary, related authority to dictate how marriage license applicants’ information is collected on the forms used by circuit clerks for issuing marriage licenses, *see* Fla. Stat. §§ 382.003(1), (2), (7), 382.021, 382.022, the Department’s authority in no way reaches into or alters a clerk’s duty to issue marriage licenses in accordance with Fla. Stat. §§ 741.01(1) and 741.04(1). Thus, with respect to issuing marriage licenses, circuit clerks are neither agents of, nor acting in concert with, the Surgeon General. The Department of Health, hypothetically, could dictate that a clerk’s marriage license form accommodate two male or two female names as applicants, but the Department could not compel any clerk to offer or issue a license to a same-sex couple.

Garcia, 682 F.3d 958, 971-72 (11th Cir. 2012); *Le Tourneau Co. of Ga. v. N.L.R.B.*, 150 F.2d 1012, 1013 (5th Cir. 1945); Fed. R. Civ. P. 65(d)(2). An injunction against a single state official sued in his official capacity does not enjoin all state officials. *Dow Jones & Co., Inc. v. Kaye*, 256 F.3d 1251, 1255 n.3 (11th Cir. 2001).

25. The Florida Clerks' legal counsel also concluded correctly that a federal district court's ruling that a Florida statute is unconstitutional is not binding on any Florida state court, which includes this Court and any other Florida court that lawfully may acquire jurisdiction over the Clerk. *See, e.g., Merck v. State*, 124 So. 3d 785, 803 (Fla. 2013); *Roche v. State*, 462 So. 2d 1096, 1099 n.2 (Fla. 1985); *State v. Dwyer*, 332 So. 2d 333, 335 (Fla. 1976); *Bradshaw v. State*, 286 So. 2d 4,6-7 (Fla. 1973) ("It is axiomatic that a decision of a federal trial court, while persuasive if well-reasoned, is not by any means binding on the courts of a state."); *cf. Doe v. Pryor*, 344 F.3d 1282, 1286 (11th Cir. 2003) ("The only federal court whose decisions bind state courts is the United States Supreme Court").

26. Given the *Brenner* court's lack of authority to bind the Clerk, the *Brenner Order* cannot relieve the Clerk of her ministerial duty not to issue marriage licenses to same-sex couples.

27. Accordingly, a writ of mandamus to the Clerk is appropriate to compel performance of her "indisputable ministerial duty required by law," as to which "there is no room for the exercise of discretion, and the performance being required is directed by law." *Bennett*, 2014 WL 5781221 at *1.

28. Given the Clerk's publicly confirmed abandonment and abrogation of her official ministerial duties, under color of an express (though legally invalid) ruling from a Ninth Circuit judge (*see supra*, ¶¶ 16-18), it is unnecessary for FFAI, any of its members, or any other citizen

to demand that the Clerk perform her duties prior to seeking mandamus relief. *See Fair v. Davis*, 283 So. 2d 377, 378 (Fla. 1st DCA 1973). “[T]he law will not require the performance of useless acts.” *Id.*

29. FFAI has no adequate remedy at law or in equity if the Court does not grant the relief requested herein.

30. All conditions precedent to the commencement and maintenance of this original proceeding have been satisfied, have occurred, or have been waived.

31. Given the Clerk’s continuing issuance of invalid marriage licenses, FFAI requests that this Court expedite consideration of this cause and issue the requested relief on an emergency basis.

WHEREFORE, FFAI respectfully petitions this Court to issue an alternative writ of mandamus commanding the Clerk to perform her ministerial duty to deny any application for a marriage license by a same-sex couple, unless and until she appears before this Court on a day certain and obtains modification or nullification of such writ, together with such other and further relief as the Court deems just and proper.

Respectfully Submitted,

s/ Roger K. Gannam

Mathew D. Staver

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Attorneys for Plaintiff,

Florida Family Action, Inc.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

DATED: January 15, 2015

s/ John Stemberger _____

JOHN STEMBERGER, President
Florida Family Action, Inc.

Notarization not required
pursuant to Fla. Stat. § 92.525.

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.

EXHIBIT A

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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.

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Taylor v. Sturgell, 553 U.S. 880, 884 (2008); *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). In other words, a trial court does not have jurisdiction or power over a non-party. An injunction binds only parties to a proceeding, the parties' officers, agents, servants, employees, and attorneys, and other persons acting in concert or participation with the parties with regard to property that is the subject of the injunction. *Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 971-72 (11th Cir. 2012); *Le Tourneau Co. of Ga. v. N.L.R.B.*, 150 F.2d 1012, 1013 (5th Cir. 1945)¹; Fed. R. Civ. P. 65(d)(2). Notably, it has been specifically held that an injunction against a single state official sued in his official capacity does not enjoin all state officials. *Dow Jones & Co., Inc. v. Kaye*, 256 F.3d 1251, 1255 n.3 (11th Cir. 2001) ("An injunction against a single state official sued in his official capacity does not enjoin all state officials from the prohibited conduct.").

Additionally, every injunction must state in specific terms and reasonable detail the conduct it restrains or requires. *Garrido v. Dudek*, 731 F.3d 1152, 1159 (11th Cir. 2013); Fed. R. Civ. P. 65(d)(1). "The specificity requirements of Rule 65(d) are designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Garrido*, 731 F.2d at 1159.

In *Grimsley* and *Brenner*, the only clerk of court who was a party to the case in the Northern District, and over whom Judge Hinkle had jurisdiction, was the Washington County Clerk. In this regard, Judge Hinkle specifically enjoined only the Washington County Clerk with regard to the issuance of marriage licenses to same-sex couples. While we recognize that there is case law suggesting that a government official may abide by an order of a federal district court issued in a case to which he or she was not a party, we have uncovered no case law stating that a non-party official, or any other non-party, is bound by such order.² Therefore, we do not

¹ Decisions of the Fifth Circuit issued prior to October 1, 1981 are binding precedent for courts of the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

² Cases have been cited by others for the proposition that government officials who are not parties to an action are obligated to abide by a trial court's ruling declaring a statute unconstitutional. However, such cases do not state that non-party officials are bound by a trial court's order. Nor do the suggested cases involve a statute – like the statute at issue here – that specifically criminalizes the conduct involved. See *Made in the USA Found. v. United States*, 242 F.3d 1300, 1309-11 (11th Cir. 2001) (in analyzing plaintiffs' standing, which involved question of whether the President could be ordered to take certain acts, and in finding standing appropriate because lower executive branch officials would be bound by decision, the court observed in dicta "we may assume it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision by the District Court, even though they would not be directly bound by such determination.") (quoting four Justices in *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (emphasis added) (and see *Franklin*, 505 U.S. at 825 expressly disagreeing with the four

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interpret the Order to mean that any clerk other than the Clerk of Washington is bound by it or obligated to abide by it.

Also, we do not believe any clerk other than the Washington County Clerk would be clearly protected by the preemptive effect of the Order from criminal prosecution in another court. As set forth below, the greater weight of authority shows that the Order is not binding precedent on any other court.

Justices' view that an "authoritative interpretation of the census statute and constitutional provision" rendered by the District Court will induce the President to submit a new reapportionment") (Scalia, J., partially concurring)); *Chamber of Commerce v. Edmondson*, 594 F.3d 742, 758 n.16 (10th Cir. 2010) (holding that partial relief is enough to afford standing where complete relief is unavailable, and noting in dicta, "In any event 'we may assume it is substantially likely that [other] officials would abide by an authoritative interpretation of the...provisions...even though they would not be directly bound by such a determination.'" (emphasis added) (citing *Utah v. Evans*, 536 U.S. 452, 460 (2002)); *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 701 (9th Cir. 1992) (affirming decision that the Los Angeles County Bar Association had standing to pursue constitutional challenge to a statute prescribing the number of judges in Los Angeles County stating that "[w]ere this court to issue the requested declaration, we must assume that it is substantially likely that the California legislature, although its members are not all parties to this action, would abide by our authoritative determination." (emphasis added) (citing *Franklin*, 505 U.S. at 803). In each of the cited cases, the courts' assumption that other non-party officials would comply with the trial courts' orders involved officials with the ability or discretion to lawfully comply, which is not the case here.

Similarly, other suggested cases describing plaintiff class qualifications do not provide protection to non-parties faced with criminal liabilities. See *Alliance to End Repression v. Rochford*, 565 F.2d 975, 980 (7th Cir. 1977) (holding that certifying the plaintiff class was appropriate because the case presented an as-applied constitutional challenge, but observing in dicta that a plaintiff class may not be required where a statute is challenged as facially unconstitutional and assuming that if the court declares the statute or regulation unconstitutional the enforcing government officials will discontinue the statute's enforcement); *Soto-Lopez v. New York City Civil Serv. Comm'n*, 840 F.2d 162, 168-69 (2d Cir. 1988) (holding that after Supreme Court had declared a statute unconstitutional, it was appropriate to grant injunctive relief to prohibit enforcement of the statute against other non-party plaintiffs without the requirement of the filing of a class action lawsuit against the defendants) (citing *Cooper v. Aaron*, 358 U.S. 1, 17-18 (1958), which confirmed that the prior Supreme Court precedent of *Brown v. Board of Education*, 347 U.S. 483 (1954), could not be defied by state officials); *Mills v. Dist. of Columbia*, 266 F.R.D. 20, 22 (D.D.C. 2010) (denying a motion for class certification in a facial challenge where enforcement authority was the defendant).

In sum, none of these cases support the proposition that a non-party Florida clerk does not remain subject to Florida's criminalization of clerks' issuance of marriage licenses to same-sex couples, pending binding appellate authority.

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

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Precedential Value of a Federal District Court Holding a State Law Unconstitutional

The Florida Supreme Court has held on multiple occasions that a federal district court's ruling that a Florida statute is unconstitutional is not binding on a state court. E.g., *Merck v. State*, 124 So. 3d 785, 803 (Fla. 2013) (finding a federal district court's determination that Florida's death penalty procedures are unconstitutional was not binding on the Florida Supreme Court); *Roche v. State*, 462 So. 2d 1096, 1099 n.2 (Fla. 1985) (decision of federal district court that Florida statute relating to administrative searches of places of business and vehicles in the cause of agricultural inspections was unconstitutional was not binding on Florida state courts); *State v. Dwyer*, 332 So. 2d 333, 335 (Fla. 1976) (decision of federal court of appeals finding Florida's disorderly conduct statute unconstitutional was not binding on Florida trial court); *Bradshaw v. State*, 286 So. 2d 4, 6-7 (Fla. 1973) ("It is axiomatic that a decision of a federal trial court, while persuasive if well-reasoned, is not by any means binding on the courts of a state."), cert. denied, 417 U.S. 919 (1974). See also *Titus v. State*, 696 So. 2d 1257, 1262 (Fla. 4th DCA 1997) ("[A] Florida District Court of Appeal takes its direction on matters of federal constitutional law first from the United States Supreme Court and, in the absence of definitive precedent from that Court, from the Florida Supreme Court"), approved, 702 So. 2d 706 (Fla. 1998). As pointed out in our July 1 memorandum at footnote six, the Eleventh Circuit Court of Appeals has consistently upheld this rule of law. See, e.g., *Doe v. Pryor*, 344 F.3d 1282, 1286 (11th Cir. 2003) ("The only federal court whose decisions bind state courts is the United States Supreme Court") (citing *Glassroth v. Moore*, 335 F.3d 1282, 1302 n.6 (11th Cir. 2003) ("[S]tate courts when acting judicially, which they do when deciding cases brought before them by litigants, are not bound to agree with or apply the decisions of federal district courts and courts of appeal.") (citing *Arizonans for Official English v. Arizona*, 520 U.S. 43, 58 n.11 (1997))).

Furthermore, a decision of a federal district court judge is not binding precedent on either a federal district court in another jurisdiction, a federal district court or judge in the same jurisdiction, or even upon the same judge in a different case. *Camreta v. Greene*, 131 S.Ct. 2020, 2031 n.7 (2011); *Am. Elec. Power Co. v. Connecticut*, 131 S.Ct. 2527, 2540 (2011).

Therefore, because Judge Hinkle's decision is not binding on another court, state or federal, it unfortunately does not provide a clerk of court who was not a party to the case in the Northern District with protection from being criminally penalized in another court for issuing marriage licenses to same-sex couples.³

³ Despite our conclusion regarding the non-binding precedential effect of Judge Hinkle's Order on other courts, as we pointed out in our July 1, 2014 memorandum, a Florida district court of appeal decision pertaining to the same-sex marriage ban would have considerable precedential value. If a Florida district court of appeal affirms a state court trial court's invalidation of the ban, we believe that such decision would bind all Florida trial courts in the absence of contrary precedent from another district court of appeal or the Florida Supreme Court. The decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by [the Florida Supreme] Court. Thus, in the absence of intradistrict conflict,

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

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Conclusion

We realize that it may seem to many that Judge Hinkle's federal district court ruling that Florida's same-sex marriage ban is unconstitutional and violates fundamental rights would permit all Florida clerks of court to lawfully issue marriage licenses to same-sex couples. However, as discussed above, our review of the law indicates that an order and injunction issued at the federal trial level is not binding on any person, including a clerk of court, who is not a named party in the action. Nor does such a ruling bind any other court.

Thus, we remain of the opinion that clerks of court who were not parties to the Northern District case are not bound by Judge Hinkle's Order – or protected by it. Clerks are subject to Florida's criminal penalties for the issuance of marriage licenses to same-sex couples. Until such time as there is a binding appellate ruling (*see* footnote 3, *supra*), we are constrained to advise that despite the Order, clerks remain exposed to Florida's apparently unique criminalization of the issuance of marriage licenses to same-sex couples.

district court [of appeal] decisions bind all Florida trial courts." *Pardo v. State*, 596 So. 2d 665, 666 (1992) (citing *Stanfill v. State*, 384 So. 2d 141, 143 (Fla. 1980)).

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA**

JAMES DOMER BRENNER et al.,

Plaintiffs,

v.

Case No. 4:14cv107-RH/CAS

RICK SCOTT, et al.,

Defendants.

SLOAN GRIMSLEY et al.,

Plaintiffs,

v.

Case No. 4:14cv138-RH/CAS

RICK SCOTT, et al.,

Defendants.

**EMERGENCY MOTION FOR CLARIFICATION
AND MEMORANDUM OF LAW**

Defendant, the Clerk of Court of Washington, County, Florida ("Clerk"), moves for clarification of the Court's Order Denying the Motions to Dismiss, Granting a Preliminary Injunction, and Temporarily Staying the Injunction dated August 21, 2014 ("Injunction"). Specifically, the Clerk requests clarification as to whether the Injunction requires that the Clerk only issue marriage licenses to Stephen Schlairet and Ozzie Russ as specifically set forth in the Injunction, both of whom are parties to this matter, or if the Injunction requires that the Clerk issue

marriage licenses to all same-sex couples who apply once the stay expires at the end of the day on January 5, 2015.

Because this matter presents issues that are extremely time sensitive and require immediate resolution, and because there are criminal penalties associated with the issuance of marriage licenses to same-sex couples in the state of Florida which could place the Clerk in immediate jeopardy if she inadvertently acts outside the scope of the Injunction, the Clerk respectfully requests that the Court waive the time requirements of Local Rule 7.1 and hear this matter on an expedited basis. The more particular grounds for this motion are stated in the supporting memorandum below.

MEMORANDUM OF LAW

The Injunction requires the Clerk to issue a marriage license to Stephen Schlairet and Ozzie Russ, a same-sex couple, “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.” Injunction at 32, ¶ 6. The Court entered a stay of the Injunction pending appeal. *Id.* at 32-33. By order dated December 3, 2014 in Case No. 14-14061, the Eleventh Circuit denied a motion to extend the stay. On Friday, December 19,

2014, the United States Supreme Court also denied an application for stay. Therefore, the stay expires at the end of the day on January 5, 2015.

The Clerk will comply with the Injunction upon the expiration of the stay and, as directed by the Court, will issue a marriage license to Plaintiffs Schlairet and Russ within the time frame as set forth in the Injunction. However, the Clerk anticipates that upon the stay's expiration she will receive other applications for marriage licenses from same-sex couples.

Pursuant to section 741.05, Florida Statutes, it is a misdemeanor of the first degree, punishable by imprisonment of up to one year and a fine of up to \$1,000, for a clerk of court (or county court judge) to issue a marriage license to a same-sex couple. § 741.05, Fla. Stat.; *see also* §§ 741.03, 741.04(3), Fla. Stat. While the Injunction undoubtedly orders the Clerk to issue licenses to Plaintiffs Schlairet and Russ, thus providing the Clerk with protection from criminal prosecution for that action, the Clerk is uncertain whether the Injunction requires her to issue marriage licenses to other same-sex couples. Indeed, the Clerk is aware of confusion among clerks of court of counties throughout Florida as to whether or how to implement the Court's order.

Because of the threat of being in contempt of the Injunction on the one hand, and the jeopardy of being found to have violated her oath to uphold the law and

facing criminal prosecution on the other,¹ the Clerk respectfully requests the Court provide immediate clarification as to the scope of the Injunction and whether it extends to other non-party same-sex couples who apply to the Clerk for a marriage license.

CONCLUSION

Because of the time-sensitive nature of these issues associated with the impending expiration of the stay of the Injunction, and the jeopardy for criminal penalties for actions taken outside the scope of the Injunction, the Clerk respectfully requests expedited clarification as to whether the Injunction requires the Clerk to issue marriage licenses to same-sex couples who are not parties to this proceeding.

RULE 7.1(B) CONFERENCE

Counsel for the Clerk conferred with counsel for Plaintiffs and is authorized to report that Plaintiffs consent to the filing of the motion but object to any relief afforded as a result of this motion that would limit the scope of the Injunction.

¹ Notably, no state attorney is a party to this case and thus, the injunction would presumably not prevent a state attorney from enforcing the criminal penalties under Florida law.

Respectfully submitted,
Jeff Goodman, P.A.

/s/ James J. Goodman, Jr.

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*Counsel for Washington County Clerk of
Court, Harold Bazzell (Defendant)*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of December, 2014, I electronically filed the foregoing with Clerk of the Court by using CM/ECF System which will send a notice of electronic filing to the following:

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JAMES DOMER BRENNER et al.,

Plaintiffs,

v.

CONSOLIDATED

CASE NO. 4:14cv107-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

_____ /

**ORDER ON THE SCOPE OF THE
PRELIMINARY INJUNCTION**

In this consolidated case, the plaintiffs challenge provisions of the Florida Constitution and Florida Statutes banning same-sex marriage. Two plaintiffs are unmarried; they seek issuance of a Florida marriage license. The other plaintiffs are individuals (and an association representing individuals) who were married in other jurisdictions and seek recognition of their marriages in Florida. The defendants, all in their official capacities, are the Secretary of the Florida Department of Management Services, the Florida Surgeon General, and the Clerk of Court of Washington County, where the two unmarried plaintiffs reside.

A preliminary injunction is in place and has been for more than four months. It holds unconstitutional the Florida ban on same-sex marriage. Now the Clerk has filed an emergency motion to clarify the preliminary injunction. She asks whether the injunction requires her to issue marriage licenses to all qualified same-sex applicants or only to the two unmarried *plaintiffs*.

The founders of this republic adopted a Constitution and a system for its enforcement. When there are disagreements about what the Constitution requires, those who are affected may seek a definitive ruling in court. These plaintiffs did that in this case. The Secretary and Surgeon General—as duly empowered officials of the State of Florida, represented by the Attorney General—joined issue. So did the Clerk. The result was an explicit ruling that Florida’s same-sex-marriage ban is unconstitutional.

The United States Supreme Court and federal courts of appeals had stayed similar rulings in other cases. I stayed the ruling in this case while those stays were in effect and for 91 more days—long enough to allow the defendants to seek a further stay in the United States Court of Appeals for the Eleventh Circuit and, if unsuccessful there, in the United States Supreme Court. The defendants did that. They lost. The United States Supreme Court allowed the ruling in this case to take effect.

History records no shortage of instances when state officials defied federal court orders on issues of federal constitutional law. Happily, there are many more instances when responsible officials followed the law, like it or not. Reasonable people can debate whether the ruling in this case was correct and who it binds. There should be no debate, however, on the question whether a clerk of court *may* follow the ruling, even for marriage-license applicants who are not parties to this case. And a clerk who chooses not to follow the ruling should take note: the governing statutes and rules of procedure allow individuals to intervene as plaintiffs in pending actions, allow certification of plaintiff and defendant classes, allow issuance of successive preliminary injunctions, and allow successful plaintiffs to recover costs and attorney's fees.

The Clerk has acknowledged that the preliminary injunction requires her to issue a marriage license to the two unmarried plaintiffs. The Clerk has said she will do so. In the absence of any request by any other plaintiff for a license, and in the absence of a certified class, no plaintiff now in this case has standing to seek a preliminary injunction requiring the Clerk to issue other licenses. The preliminary injunction now in effect thus does not require the Clerk to issue licenses to other applicants. But as set out in the order that announced issuance of the preliminary injunction, *the Constitution* requires the Clerk to issue such licenses. As in any

other instance involving parties not now before the court, the Clerk's obligation to follow the law arises from sources other than the preliminary injunction.

For these reasons,

IT IS ORDERED:

The motion to clarify, ECF No. 99, is granted. The preliminary injunction is clarified as set out in this order.

SO ORDERED on January 1, 2015.

s/Robert L. Hinkle
United States District Judge

IN AND FOR THE CIRCUIT COURT OF ORANGE COUNTY, FLORIDA
NINTH JUDICIAL CIRCUIT

HONORABLE TIFFANY MOORE RUSSELL,
ORANGE COUNTY CLERK OF COURTS,
ORANGE COUNTY, FLORIDA,

CASE NO.:

2014-CA-13275.

Petitioner.

EMERGENCY PETITION FOR DECLARATORY JUDGMENT

The Honorable Tiffany Moore Russell, Orange County Clerk of Courts, in and for
Orange County, Florida, by and through her undersigned attorneys files this Emergency
Petition for Declaratory Judgment and asserts:

1. This is an action for an emergency petition for declaratory judgment pursuant to
Chapter 86, Florida Statutes.
2. Venue for this action is properly in the Circuit Court of Orange County, Florida.
3. The Honorable Tiffany Moore Russell, Orange County Clerk of Courts, Orange
County, Florida is the petitioner. As the Clerk of the Courts, the petitioner has taken an oath to
include but not be limited to complying with the laws of the State of Florida.
4. That the petitioner is a member of the Florida Bar, licensed to practice law in the
State of Florida. As a Florida Bar licensed attorney, petitioner has taken an oath to uphold and
comply with the laws of Florida.
5. The petitioner is a Florida elected public official obligated to comply with the
Florida code of ethics for public officials and all Florida laws.
6. That Florida Statute 741.01, specifically provides in pertinent part that

County court judge or clerk of the circuit court to issue marriage license; fee.—

EXHIBIT D

(1) Every marriage license shall be issued by a county court judge or clerk of the circuit court under his or her hand and seal. The county court judge or clerk of the circuit court shall issue such license, upon application for the license, if there appears to be no impediment to the marriage.

Section 741.01, Fla. Stat. (2014)(emphasis added.)

7. That on or about August 2, 2014, a Federal District Court Judge in the Northern District of Florida, issued a ruling finding Florida's same sex marriage laws unconstitutional. *Brenner v. Scott*, 999 F. Supp. 2d 1278 (N.D. Fla. 2014.) This decision takes effect on January 6, 2014. Attached hereto as exhibit "A" is a copy of the decision

8. Both the Federal Eleventh Circuit Court of Appeals and the U.S. Supreme Court declined a request to stay the effect of the Court's decision. Attached as Composite Exhibit "B" is a copy of the December 3, 2014 Order of the Eleventh Circuit Court of Appeals Denying Motion to Extend Stay Pending Appeal and the December 19, 2014 Order of the United States Supreme Court Denying Application to Stay Preliminary Injunctions.

9. Relevant to the decision rendered in *Brenner v. Scott*, petitioner received legal opinions dated July 1, 2014 and December 15, 2014 from the attorneys for the Association of Florida Clerks of Courts interpreting the application of the decision to any clerk outside the named party and on December 23, 2014 an opinion from the National Center for Lesbian Rights and Equality Florida addressing the same issue. The opinions of the attorneys for the Clerks of the Courts Association and the National Center are conflicting and are attached hereto as Exhibit "C".

10. That a motion has been filed this past week with the federal judge who rendered the Brenner decision, asking the judge to clarify the applicability of the decision to clerks outside the named Washington County Clerk of the Courts. As of the filing of this Emergency Petition no clarification has come from the federal judge.

11. That immediately prior to her election as the Clerk of Courts, the petitioner served as a member of the County Commission for Orange County Florida and while on the Commission specifically moved for and obtained approval of a motion for Orange County to sign on to an amicus curiae brief in the federal court action described herein. This brief supported a finding of unconstitutionality of Florida's same sex marriage ban.

12. That notwithstanding the personal advocacy undertaken by the petitioner as a legislative body member, the role of Clerk of Court's requires ministerial adherence to the laws and to the opinions of the courts, rendering a lack of clarity that cannot be resolved absent a determination by this Court.

13. That due to the lack of clarity as to the petitioner's right to issue a same sex marriage license to an applicant on January 6, 2015, the petitioner would be exposed to one or more of three adverse actions described hereinafter if said license was issued and it was determined it was not within her authority to do so:

- A. A criminal complaint;
- B. A Florida Bar complaint; and/or
- C. A Florida Commission on Ethics complaint.

14. In addition to the petitioner, all Orange County Court judges would be exposed to a criminal complaint; Florida Bar complaint and judicial qualifications complaint if they issued a same sex marriage license and it was determined to violate the law.

15. Moreover, the taxpayers of Orange County would be subject to reimbursement of potentially large awards of attorneys' fees if litigation ensues from numerous same-sex couples seeking to enforce their equal protection rights asserted under the Brenner decision, *supra*.

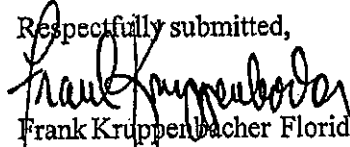
16. That the petitioner desires to issue the same sex marriage licenses applied for by any individuals in Orange County, Florida on January 6, 2015 and in so doing desires to assure she will not be exposed to a criminal, Florida Bar and/or Florida Commission on Ethics complaint and that in issuing said license the legal integrity of the couple's union would be protected.

17. That the Honorable Jeff Ashton has been provided notice of the filing of this Emergency Petition for Declaratory Judgment. Mr. Ashton has previously publicly stated he would not prosecute the clerk for issuing such a license on January 6, 2015.

18. Because Florida Statutes also provide for pre-requisites to be met prior to a valid marriage license being issued, including either completion of a premarital course or abiding by a three-day waiting period, a ruling on an emergency basis on or prior to January 3, 2015 is required to properly allow the Clerk and the citizens of Orange County to be meaningfully advised of their rights in advance of January 6, 2015.

WHEREFORE, the petitioner, the Honorable Tiffany Moore Russell, respectfully requests this Court enter an order determining that she is within her legal right to issue same-sex marriage licenses on January 6, 2015.

Respectfully submitted,


Frank Kruppenbacher Florida
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Orlando, Florida 32836

Nicholas A. Shannin
Florida

Bar No.: 009570

407.836.6324

ADM-ContactAdminDiv@myorangeclerk.com

Attorneys for the Petitioner

Tiffany Moore Russell,

Orange County Clerk of Courts

IN AND FOR THE CIRCUIT COURT OF ORANGE COUNTY, FLORIDA NINTH
JUDICIAL CIRCUIT

HONORABLE TIFFANY MOORE RUSSELL,
ORANGE COUNTY CLERK OF COURTS,
ORANGE COUNTY, FLORIDA,

PETITIONER,

CASE NO.: 2014-013275-0

FILED IN OFFICE
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2014 DEC 31 PM 12:43
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ORDER GRANTING EMERGENCY PETITION FOR DECLARATORY JUDGMENT

THIS MATTER, having come on to be heard on the Petitioner's Emergency Petition for Declaratory Judgment, and the court having reviewed the pleadings; exhibits attached thereto; applicable case law and argument, it is,

ORDERED AND ADJUDGED as follows:

1. The court finds there is a bona fide, actual, present and practical need for the declaration.
2. There currently exists within Florida a confusing legal landscape regarding what is or is not the applicable law regarding the issuance of same-sex marriage licenses. This confusion currently exists in all counties with the exception of Washington County, Florida. The results of this confusion include, but are not limited to, placing in doubt the authority of the Petitioner to issue a marriage license to applicants for a same-sex marriage.
3. In so doing, it potentially places the Petitioner at legal risk. Further, the county; the clerk of the court; and, ultimately; the taxpayers of Orange County would potentially be at

EXHIBIT E

administrative and financial risk for the burden and cost of litigation, attorney's fees, and costs in fending off challenges to the current state of the law.

4. The court finds the Orange County Clerk of Courts has filed this petition in a manner that exemplifies the best in public leadership; i.e., the bona fide exercise of her responsibility to serve all the people of Orange County in a legal, efficient, economical and prudent manner.

5. The court finds there is no dispute regarding the statement of facts underlying this petition but there does exist continuing legal jousting.

6. The court finds that the right or lack thereof of the Petitioner to legally issue a same-sex marriage license is dependent upon the clarity of applicable law.

7. The court finds that the Petitioner provided advance notice to the Office of the State Attorney for the Ninth Judicial Circuit, Orange County, Florida, of the Clerk's intent to issue the licenses that form the core of this controversy.

8. The court has carefully analyzed the morass of legal opinions regarding the issue of same-sex marriage within the State of Florida.

9. This court has concluded that the ruling of the United State District Court for the Northern District of Florida in Brenner v. Scott, 999 F.Supp. 2d 1278 (N.D. Fla. 2014), is an excellent, well-thought-out, legally sound decision that controls the law in the State of Florida. This Court could not state the issues and the correct legal conclusion better than Judge Hinkle did in the Brenner, supra, case.¹ That is, Florida's same-sex marriage provision violates the due process and equal protection clauses of the Constitution of the United States of America.

¹ "Marriage survived when bans on interracial marriage were struck down, and the institution will survive when bans on same-sex marriage are struck down. Liberty, tolerance, and respect are not zero-sum concepts. Those who enter opposite-sex marriages are harmed not at all when others [] are given the liberty to choose their own life partners and are shown the respect that comes with formal marriage. Tolerating views with which one disagrees is a hallmark of civilized society."

Based upon the aforementioned findings and the emergency need to provide clarification and the declaration for the Orange County clerk of courts and to protect the constitutional rights of the public as set forth in the Constitution of the United States of America, this Court does further issue this Declaratory Statement:

A. The Honorable Tiffany Moore Russell, Orange County Clerk of Courts, Orange County, Florida may rely upon the decision in Brenner v. Scott, 999 F.Supp. 2d 1278 (N.D. Fla. 2014) as the law of Florida and in so doing issue a same-sex marriage license commencing on the expiration of the temporary stay issued by Judge Hinkle in *Brenner* (January 6, 2014).

B. That in issuing a same-sex marriage license the Honorable Tiffany Moore Russell, Orange County Clerk of Court for Orange County, Florida would not be engaging in a violation of either criminal or civil laws of the State of Florida. Specifically, the clerk would not be engaging in any element sufficient to justify a conclusion that there was any intent to engage in any criminal act nor was there any violation of any oath of office.

C. This Order shall remain in effect unless modified by a subsequent ruling from the Federal District Court in the Brenner, supra case or subsequently modified by a court of competent jurisdiction.

DONE and ORDERED this 30 day of December, 2014 in Orlando, Orange County, Florida.



Timothy R. Shea, Circuit Judge

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR ORANGE
COUNTY, FLORIDA

FLORIDA FAMILY ACTION, INC.,
a Florida corporation not for profit,

CASE NO.: 2014-CA-13260-O

Plaintiff,

vs.

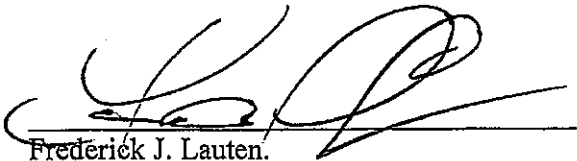
BUDDY DYER, Mayor of City of Orlando,
Florida, in his official capacity as a person
authorized to solemnize marriage, ROBERT
LEBLANC, Circuit Judge, Ninth Judicial Circuit
Court of Florida, in his official capacity as a person
authorized to solemnize marriage, and TIFFANY
MOORE RUSSELL, as Clerk of the Circuit Court
of Orange County, Florida, in her official capacity,

Defendants.

ORDER OF RECUSAL OF ENTIRE CIRCUIT

Because a current Circuit Judge is specifically named as a Defendant herein, in my capacity as Chief Judge of the Ninth Judicial Circuit, I hereby recuse the entire Circuit from hearing this action. A request will be submitted this date to the Chief Justice of the Supreme Court of Florida for assignment to this case of a Judge from another Circuit.

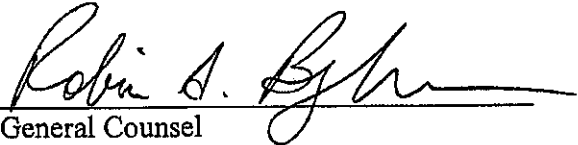
DONE AND ORDERED in chambers at Orlando, Orange County, Florida on this 5th day of January, 2015.



Frederick J. Lauten.
Chief Judge of the Ninth Judicial Circuit Court

CERTIFICATE OF SERVICE

I certify that the foregoing Order has been furnished to Mathew D. Staver, Horatio G. Mihet, and Roger K. Gannam, (liberty@LC.org) and to David B. King and Tea Sisic (dking@kbzwlaw.com, aprice@kbzwlaw.com, courtfilings@kbzwlaw.com and tsisic@kbzwlaw.com) by e-mail on January 5, 2015.


General Counsel

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR ORANGE
COUNTY, FLORIDA

FLORIDA FAMILY ACTION, INC.,
a Florida corporation not for profit,

CASE NO.: 2014-CA-13260-O

Plaintiff,

vs.

BUDDY DYER, Mayor of City of Orlando,
Florida, in his official capacity as a person
authorized to solemnize marriage, ROBERT
LEBLANC, Circuit Judge, Ninth Judicial Circuit
Court of Florida, in his official capacity as a person
authorized to solemnize marriage, and TIFFANY
MOORE RUSSELL, as Clerk of the Circuit Court
of Orange County, Florida, in her official capacity,

Defendants.

NOTICE TO PARTIES – PREVIOUS ORDER OF RECUSAL OF ENTIRE CIRCUIT

This Court entered an Order recusing the entire Circuit from hearing this case because a sitting Circuit Judge had been named as a Defendant. Shortly thereafter, Plaintiff filed a “Notice of Dropping Party Defendant Robert LeBlanc.” Judge LeBlanc was the Circuit Judge originally named as a Defendant. It is believed Plaintiff dropped Judge LeBlanc as a Defendant in the hope the recusal order would be withdrawn and that this proceeding could then be heard by this Court without delay.

After receiving the Notice of Dropping Party Defendant Robert LeBlanc, this Court researched the issue as to whether once a recusal order is entered, can it then be withdrawn and the case proceed as initially assigned if the reason for the recusal was removed. Surprisingly, it appears it cannot. It is now clear that once an order of recusal is entered, it cannot be withdrawn even if entered in error.

Goolsby v. State, 914 So. 2d 494 (Fla. 5th DCA 2005); Jenkins v. Motorola, Inc., 911 So. 2d 196 (Fla. 3d DCA 2005). “Once a trial judge enters an order of disqualification, he or she may not reconsider the

decision to disqualify.” Jenkins v. Motorola, Inc., 911 So. 2d 196, 197 (Fla. 3d DCA 2005)(citation omitted). Moreover, any “order entered by a trial judge who has been disqualified is void.”¹ Id.

Therefore, as originally indicated, the Chief Justice of the Supreme Court of Florida will be asked to name a Judge from outside this Circuit to preside over this matter.

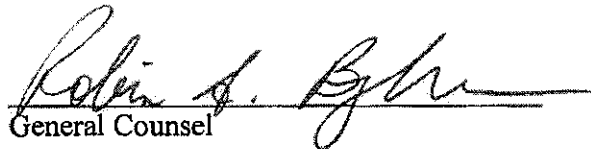
Dated this 5th day of January, 2015.



Frederick J. Lauten.
Chief Judge of the Ninth Judicial Circuit Court

CERTIFICATE OF SERVICE

I certify that the foregoing Order has been furnished to Mathew D. Staver, Horatio G. Mihet, and Roger K. Gannam, (liberty@LC.org) and to David B. King and Tea Sisic (dking@kbzwlaw.com, aprice@kbzwlaw.com, courtfilings@kbzwlaw.com and tsisic@kbzwlaw.com) by e-mail on January 5, 2015.



General Counsel

¹ Pursuant to the cited cases, even though this document is entitled a “Notice,” it is most likely void. This Court, however, was at a loss as to how to notify the parties that the recusal was still effective.

**IN THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

FLORIDA FAMILY ACTION, INC.,
a Florida corporation not for profit,
Plaintiff,

v.

Case No.: 2014-CA-13260-O
Section: 34

BUDDY DYER, Mayor of City of Orlando,
Florida, in his official capacity as a person
authorized to solemnize marriage;
ROBERT LEBLANC, Circuit Judge, Ninth
Judicial Circuit Court of Florida, in his official
capacity as a person authorized to solemnize
marriage; and TIFFANY MOORE RUSSELL,
as Clerk of the Circuit Court of Orange County,
Florida, in her official capacity,
Defendants.

**ORDER DENYING AMENDED VERIFIED COMPLAINT FOR EMERGENCY
ALTERNATIVE WRIT OF MANDAMUS**

THIS MATTER is before the Court upon Plaintiff's Amended Verified Complaint for Emergency Alternative Writ of Mandamus, received by email from the Plaintiff on January 7, 2015. The Court, having reviewed the pleading, applicable case law, and otherwise being informed in the matter, finds as follows:

Plaintiff filed this action in January of 2015, in Orange County, FL. The circuit judge named as a Defendant entered an order recusing the entire ninth circuit on January 5, 2015. The Florida Supreme Court reassigned the case to the Honorable Mark H. Hofstad in the Tenth Judicial Circuit on January 6, 2015. Judge Hofstad received the case on January 7, 2015. Plaintiff's requested relief was for the court to issue an alternative writ of mandamus prior to January 6, 2015, to command the Mayor and the Judge to deny solemnization of any marriage of a same-sex couple and to command the Clerk to deny any application for a marriage license by a same-sex couple. According to the Orlando Sentinel, Mayor Buddy Dyer performed a mass wedding with 44 couples and the Clerk issued marriage licenses to same-sex couples. See Rene Stutzman, Mark

Shlueb and Melanie Dostis, '*We feel ecstatic, excited,*' woman declares as gay marriage becomes a Florida reality, Orlando Sentinel (January 6, 2015, 8:03 PM), <http://www.orlandosentinel.com/news/breaking-news/os-gay-marriage-florida-wedding-day-20150106-story.html>. Thus, this Court finds the requested relief is moot.

Therefore, it is **ORDERED AND ADJUDGED** that Plaintiff's Amended Verified Complaint for Emergency Alternative Writ of Mandamus is hereby **DENIED** as moot.

DONE AND ORDERED in Bartow, Polk County, Florida on this 8 day of January, 2015.

/s/ Mark H. Hofstad, Circuit Judge

MARK H. HOFSTAD, Circuit Judge

Copies to:

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Tiffany Moore Russell
Clerk of the Circuit Court
Orange County Courthouse
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Orlando, Florida 32801

The Honorable Mayor Buddy Dyer
City Hall
400 South Orange Avenue
Orlando, Florida 32801

Honorable Robert LeBlanc
Judge of the Circuit Court
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