

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 14-14061-AA,
14-14066-AA

JAMES BRENNER, *et al.*,

Appellees,

v.

SEC'Y, FLA. DEP'T OF HEALTH, *et al.*

Appellants.

SLOAN GRIMSLEY, *et al.*,

Appellees,

v.

SEC'Y, FLA. DEP'T OF HEALTH and
SEC'Y, FLA. DEP'T OF MGMT. SERVS.,

Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

APPENDIX

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INDEX TO APPENDIX

Instrument	Docket/Tab#
U.S. District Court, Northern District of Florida, Civil Docket Sheet for <i>Brenner</i> Case, Case No. 4:14-cv-107-RH/CAS	A
U.S. District Court, Northern District of Florida, Civil Docket Sheet for <i>Grimsley</i> Case, Case No. 4:14-cv-138-RH/CAS	B
 <u>Filings in <i>Brenner</i> Case, No. 4:14-cv-107</u>	
<i>Brenner</i> Am. Complaint.....	10
<i>Brenner</i> Order Granting Preliminary Injunction	74
Joint Notice of Appeal	77
Answer to <i>Brenner</i> Am. Complaint by Clerk of Court	78
Answer to <i>Brenner</i> Am. Complaint by Secretaries.....	79
 <u>Filings in <i>Grimsley</i> Case, No. 4:14-cv-138</u>	
<i>Grimsley</i> Am. Complaint	16
<i>Grimsley</i> Order Granting Preliminary Injunction.....	23
Joint Notice of Appeal	25
Answer to <i>Grimsley</i> Am. Complaint	26
 <u>Certificate of Service</u>	

A

Case: 14-14061 Date Filed: 11/19/2014 Page: 4 of 202

STAYED, APPEAL, LEAD_CASE

**U.S. District Court
Northern District of Florida (Tallahassee)
CIVIL DOCKET FOR CASE #: 4:14-cv-00107-RH-CAS**

BRENNER et al v. SCOTT et al
Assigned to: JUDGE ROBERT L HINKLE
Referred to: MAGISTRATE JUDGE CHARLES A
STAMPELOS
Case in other court: USCA, 14-14061-A
Cause: 42:1983 Civil Rights Act

Date Filed: 02/28/2014
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff**JAMES DOMER BRENNER**

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Case: 14-14061 Date Filed: 11/19/2014 Page: 5 of 202

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Case: 14-14061 Date Filed: 11/19/2014 Page: 6 of 202

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Case: 14-14061 Date Filed: 11/19/2014 Page: 7 of 202

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Case: 14-14061 Date Filed: 11/19/2014 Page: 9 of 202

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Case: 14-14061 Date Filed: 11/19/2014 Page: 11 of 202

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Case: 14-14061 Date Filed: 11/19/2014 Page: 12 of 202

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Case: 14-14061 Date Filed: 11/19/2014 Page: 14 of 202

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Date Filed	#	Docket Text
02/28/2014	<u>1</u>	COMPLAINT against PAMELA BONDI, RICK SCOTT (Filing fee \$ 400 receipt number 1129-2886351.), filed by JAMES DOMER BRENNER, CHARLES DEAN JONES. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons) (SHEPPARD, WILLIAM) (Entered: 02/28/2014)
02/28/2014	<u>2</u>	MOTION for Preliminary Injunction <i>and Memorandum of Law</i> by JAMES DOMER BRENNER, CHARLES DEAN JONES. (Attachments: # <u>1</u> Exhibit 1) (SHEPPARD, WILLIAM) (Entered: 02/28/2014)
02/28/2014	<u>3</u>	MOTION for Leave to File <i>Memorandum in Excess of Twenty-Five Pages</i> by JAMES DOMER BRENNER, CHARLES DEAN JONES. (SHEPPARD, WILLIAM) (Entered: 02/28/2014)
03/03/2014	<u>4</u>	ORDER SETTING A SCHEDULING CONFERENCE. Telephonic Scheduling Conference set for March 26, 2014, at 9:00 A.M. Signed by JUDGE ROBERT L HINKLE on 3/3/14. (sms) (Entered: 03/03/2014)
03/03/2014	<u>5</u>	

Case: 14-14061 Date Filed: 11/19/2014 Page: 15 of 202

		ORDER INCREASING THE PAGE LIMIT FOR PRELIMINARY-INJUNCTION MEMORANDA - GRANTED <u>3</u> MOTION for Leave to File <i>Memorandum in Excess of Twenty-Five Pages</i> filed by CHARLES DEAN JONES, JAMES DOMER BRENNER. Signed by JUDGE ROBERT L HINKLE on 3/3/14. (sms). (Entered: 03/03/2014)
03/03/2014	6	NOTICE OF TELEPHONIC HEARING: Telephonic Scheduling Conference set for 3/26/14 at 09:00 A.M. before JUDGE ROBERT L HINKLE, United States Courthouse, 111 North Adams St., Tallahassee, Florida 32301. Parties are instructed to call (850) 521-3601 at the time of hearing. <i>NOTE: If you or any party, witness or attorney in this matter has a disability that requires special accommodation, such as, a hearing impairment that requires a sign language interpreter or a wheelchair restriction that requires ramp access, please contact Kimberly Westphal at 850-521-3501 in the Clerk's Office at least one week prior to the hearing (or as soon as possible) so arrangements can be made.</i> <u>s/ Sherrye Stephens</u> Judicial Assistant. (sms) (Entered: 03/03/2014)
03/04/2014	7	Summons Issued as to PAMELA BONDI, RICK SCOTT. (Attachments: # 1 Summon - Scott) (dlt) (Entered: 03/04/2014)
03/11/2014	8	SUMMONS Returned Executed by JAMES DOMER BRENNER, CHARLES DEAN JONES. RICK SCOTT served on 3/6/2014, answer due 3/27/2014. (SHEPPARD, WILLIAM) (Entered: 03/11/2014)
03/11/2014	9	SUMMONS Returned Executed by JAMES DOMER BRENNER, CHARLES DEAN JONES. PAMELA BONDI served on 3/6/2014, answer due 3/27/2014. (SHEPPARD, WILLIAM) (Entered: 03/11/2014)
03/18/2014	10	First AMENDED COMPLAINT <i>for Declaratory and Injunctive Relief</i> against PAMELA BONDI, RICK SCOTT, filed by JAMES DOMER BRENNER, CHARLES DEAN JONES. (Attachments: # 1 Exhibit "A", # 2 Exhibit "B", # 3 Summons (Armstrong), # 4 Summons (Nichols), # 5 Summons (Bazzell)) (SHEPPARD, WILLIAM) Modified on 3/26/2014 to seal Exhibit B, per court Order 19 ORDER SEALING ECF NO 10-2 (kjl). (Entered: 03/18/2014)
03/18/2014	11	Amended MOTION Motion for Declaratory and Injunctive Relief and Memorandum of Law by JAMES DOMER BRENNER, CHARLES DEAN JONES. (Attachments: # 1 Exhibit 1) (SHEPPARD, WILLIAM) (Entered: 03/18/2014)
03/19/2014	12	NOTICE of Appearance by ALLEN C WINSOR on behalf of PAMELA BONDI, RICK SCOTT (WINSOR, ALLEN) (Entered: 03/19/2014)
03/19/2014	13	MOTION to Seal Document <i>Unredacted Exhibit "B" to First Amended Verified Complaint for Declaratory and Injunctive Relief</i> by JAMES DOMER BRENNER, CHARLES DEAN JONES. (Attachments: # 1 Exhibit "B") (SHEPPARD, WILLIAM) (Entered: 03/19/2014)

Case: 14-14061 Date Filed: 11/19/2014 Page: 16 of 202

03/21/2014	14	Summons Issued as to JOHN H ARMSTRONG, HAROLD BAZZELL, CRAIG J NICHOLS. (Attachments: # 1 Summon, # 2 Summon) (dlt) (Entered: 03/21/2014)
03/25/2014	15	NOTICE of Appearance by ADAM SCOTT TANENBAUM on behalf of JOHN H ARMSTRONG, CRAIG J NICHOLS (TANENBAUM, ADAM) (Entered: 03/25/2014)
03/25/2014	19	ORDER SEALING ECF NO 10-2, re: 10 First Amended Complaint (Exhibit B), re: 13 Motion to Seal Document Unredacted Exhibit "B" to First Amended Verified Complaint for Declaratory and Injunctive Relief. The clerk must maintain ECF No. 10-2 under seal. Signed by JUDGE ROBERT L HINKLE on 3/25/2014. (kjl) *Exhibit B sealed. (Entered: 03/26/2014)
03/26/2014	16	Minute Entry for proceedings held before JUDGE ROBERT L HINKLE: Telephonic Scheduling Conference held on 3/26/2014. An order is forthcoming. (Court Reporter Judy Gagnon.) (sms) (Entered: 03/26/2014)
03/26/2014	17	SUMMONS Returned Executed by STEPHEN SCHLAIRET, CHARLES DEAN JONES, OZZIE RUSS, JAMES DOMER BRENNER. JOHN H ARMSTRONG served on 3/24/2014, answer due 4/14/2014. (SHEPPARD, WILLIAM) (Entered: 03/26/2014)
03/26/2014	18	SUMMONS Returned Executed by STEPHEN SCHLAIRET, CHARLES DEAN JONES, OZZIE RUSS, JAMES DOMER BRENNER. CRAIG J NICHOLS served on 3/24/2014, answer due 4/14/2014. (SHEPPARD, WILLIAM) (Entered: 03/26/2014)
03/26/2014	20	ORDER SETTING A CASE-MANAGEMENT CONFERENCE AND EXTENDING THE DEADLINE TO RESPOND TO THE COMPLAINT AND PRELIMINARY-INJUNCTION MOTION. By a separate notice, the clerk must set a case-management conference by telephone for 4/18/2014 09:00 AM in this case and in GRIMSLEY v. SCOTT, No. 4:14cv138-RH-CAS (N.D. Fla). The deadline for the defendants to respond to the complaint and to the preliminary injunction motion is extended to 4/25/2014. Signed by JUDGE ROBERT L HINKLE on 3/26/2014. (kjl) (Entered: 03/26/2014)
03/27/2014	21	<p>NOTICE OF TELEPHONIC HEARING: Telephonic Case Management Conference set for 4/18/2014 at 9:00 A.M. before JUDGE ROBERT L HINKLE, United States Courthouse, 111 North Adams St., Tallahassee, Florida 32301.</p> <p>Parties are instructed to call (888) 684-8852 Access Code: 8131706# Security Code: 0129# at the time of hearing.</p> <p><i>NOTE: If you or any party, witness or attorney in this matter has a disability that requires special accommodation, such as, a hearing impairment that requires a sign language interpreter or a wheelchair restriction that requires ramp access, please contact Elizabeth Lawrence at 850-521-3501 in the Clerk's Office at least</i></p>

Case: 14-14061 Date Filed: 11/19/2014 Page: 17 of 202

		<p><i>one week prior to the hearing (or as soon as possible) so arrangements can be made.</i></p> <p><i>s/ Sherrye Stephens</i> Judicial Assistant (sms) (Entered: 03/27/2014)</p>
04/02/2014	22	MOTION to Intervene <i>as Party Defendant</i> by Florida Family Action, Inc.. (Attachments: # 1 Memorandum In Support, # 2 Proposed Answer and Defenses) (MIHET, HORATIO) (Entered: 04/02/2014)
04/10/2014	23	MOTION Consent to Joint Case Management by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (SHEPPARD, WILLIAM) (Entered: 04/10/2014)
04/11/2014	24	SUMMONS Returned Executed by STEPHEN SCHLAIRET, CHARLES DEAN JONES, OZZIE RUSS, JAMES DOMER BRENNER. HAROLD BAZZELL served on 3/27/2014, answer due 4/17/2014. (SHEPPARD, WILLIAM) (Entered: 04/11/2014)
04/14/2014	25	NOTICE of Appearance by JAMES JEFFERY GOODMAN, JR on behalf of HAROLD BAZZELL (GOODMAN, JAMES) (Entered: 04/14/2014)
04/15/2014	26	ATTORNEY TIME RECORDS by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (SHEPPARD, WILLIAM) (Entered: 04/15/2014)
04/15/2014	27	ATTORNEY TIME RECORDS - SEALED PORTION by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit Statements for Services Rendered) (SHEPPARD, WILLIAM) (Entered: 04/15/2014)
04/15/2014	28	Consent MOTION to Consolidate Cases <i>and To Coordinate Deadline for Responses to Amended Complaint and Preliminary Injunction Motion</i> by JOHN H ARMSTRONG, PAMELA BONDI, CRAIG J NICHOLS, RICK SCOTT. (TANENBAUM, ADAM) (Entered: 04/15/2014)
04/17/2014	29	MOTION for Extension of Time to File Response/Reply <i>to the Plaintiff's Operative Pleading and Motion for Preliminary Injunction</i> by HAROLD BAZZELL. (GOODMAN, JAMES) (Entered: 04/17/2014)
04/18/2014	30	Minute Entry for proceedings held before JUDGE ROBERT L HINKLE:Case Management Conference held on 4/18/2014. Parties discuss motion to consolidate and schedule for the case. Ruling by Court: The motion to consolidate is GRANTED. A schedule is set forth on the case. An order is forthcoming. (Court Reporter Lisa Snyder) (erl) (Entered: 04/18/2014)
04/21/2014	31	MEMORANDUM in Opposition re 22 MOTION to Intervene <i>as Party Defendant</i> filed by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (SHEPPARD, WILLIAM) (Entered: 04/21/2014)
04/21/2014	32	RESPONSE in Opposition re 22 MOTION to Intervene <i>as Party Defendant</i> filed by SLOAN GRIMSLEY, JOYCE ALBU, BOB COLLIER, CHUCK HUNZIKER, LINDSAY MYERS, SARAH HUMLIE, ROBERT LOUPO,

Case: 14-14061 Date Filed: 11/19/2014 Page: 18 of 202

		JOHN FITZGERALD, DENISE HUESO, SANDRA NEWSON, JUAN DEL HIERRO, THOMAS GANTT, JR, CHRISTIAN ULVERT, CARLOS ANDRADE, RICHARD MILSTEIN, ERIC HANKIN, ARLENE GOLDBERG, SAVE FOUNDATION, INC.. (TILLEY, DANIEL) (Entered: 04/21/2014)
04/21/2014	34	ORDER SETTING A PARTIAL SCHEDULE AND CONSOLIDATING THE CASES FOR CASE-MANAGEMENT PURPOSES - These cases are consolidated for case-management purposes only and will be maintained on a common docket under Consolidated Case No. 4:14cv107. The pending motions to consolidate (ECF Nos. 23 & 28 in Case No. 4:14cv107 and ECF No. 15 in Case No. 4:14cv138) are GRANTED to this extent and otherwise denied without prejudice. The defendant Clerks motion to extend time, ECF No. 29 in Case No. 4:14cv107, is GRANTED as set out above.(Internal deadline for referral to judge if Defendant response to complaint not filed earlier: 5/12/2014)., Plaintiff's Memorandum in Opposition to any motion to dismiss due by 5/12/2014 ., Plaintiff's reply Memorandum in Support to preliminary-injunction motion due by 5/27/2014 ., Motion to supplement a preliminary injunction motion or submit evidence in support of preliminary injunction motion due by 4/25/2014 .) Signed by JUDGE ROBERT L HINKLE on 4/21/2014. (dlt) (Entered: 04/22/2014)
04/22/2014	33	MEMORANDUM in Opposition re 22 MOTION to Intervene <i>as Party Defendant Amended</i> filed by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (SHEPPARD, WILLIAM) (Entered: 04/22/2014)
04/22/2014	38	MOTION to Intervene As A Plaintiff by CHRIS SEVIER. (dlt) (Entered: 04/24/2014)
04/22/2014	39	MEMORANDUM in Support re 38 MOTION to Intervene filed by CHRIS SEVIER. (dlt) (Entered: 04/24/2014)
04/23/2014	35	Consent MOTION for Leave to File Excess Pages by SLOAN GRIMSLEY. (KAYANAN, MARIA) (Entered: 04/23/2014)
04/24/2014	36	NOTICE of Supplemental Authorities by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET re 10 Amended Complaint, 11 Amended MOTION Motion for Declaratory and Injunctive Relief and Memorandum of Law (Attachments: # 1 Supplement DeBoer v. Snyder, # 2 Supplement Henry v. Himes) (SHEPPARD, WILLIAM) (Entered: 04/24/2014)
04/24/2014	37	ORDER INCREASING THE PAGE LIMIT FOR PRELIMINARY-INJUNCTION AND MOTION-TO-DISMISS MEMORANDA - GRANTED 35 Consent MOTION for Leave to File Excess Pages filed by SLOAN GRIMSLEY. Signed by JUDGE ROBERT L HINKLE on 4/24/2014. (dlt) (Entered: 04/24/2014)
04/24/2014	40	ORDER DENYING LEAVE FOR FLORIDA FAMILY ACTION TO INTERVENE BUT ALLOWING IT TO PARTICIPATE AS AMICUS - DENIED 22 MOTION to Intervene <i>as Party Defendant</i> and ECF No. 13 in Case No. 4:14cv138, filed by FLORIDA FAMILY ACTION INC. FFA may file a memorandum as amicus curiae on any motion. The clerk must add FFA to the

Case: 14-14061 Date Filed: 11/19/2014 Page: 19 of 202

		docket as an amicus so that its attorneys receive electronic notices of filings. Signed by JUDGE ROBERT L HINKLE on 4/24/2014. (dlt) Modified on 4/25/2014 (dlt). (Entered: 04/24/2014)
04/24/2014	41	ORDER DENYING LEAVE FOR CHRIS SEVIER TO INTERVENE - Mr. Sevier's motion to intervene is DENIED. The clerk must hold for 90 days (and make available for inspection by any person on request) but must not file Mr. Sevier's motion. Mr. Sevier's motion for declaratory and injunctive relief. The clerk must provide a copy of this order to the attorneys of record through the electronic filing system and to Mr. Sevier by mail. The clerk must provide to Mr. Sevier copies of further filings dealing specifically with his attempted intervention but must not add Mr. Sevier to the docket or service list for other documents. CHRIS SEVIER terminated., (Retention period for pleading to be held until 7/25/2014 Pleading will be kept on shelf in case file order in outcard.) Signed by JUDGE ROBERT L HINKLE on 4/24/2014. (dlt) (Entered: 04/25/2014)
04/25/2014	42	MOTION for Preliminary Injunction by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, ARLENE GOLDBERG, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION INC, CHRISTIAN ULVERT. (Attachments: # 1 Exhibit Declarations, # 2 Exhibit Staff Analysis, # 3 Exhibit News Article, # 4 Exhibit Christian Family Coalition Q&A) (TILLEY, DANIEL) (Entered: 04/25/2014)
04/30/2014	43	MOTION to File Amicus Brief by FLORIDA CONFERENCE OF CATHOLIC BISHOPS, INC.. (Internal deadline for referral to judge if response not filed earlier: 5/19/2014). (EMMANUEL, STEPHEN) (Entered: 04/30/2014)
05/02/2014	44	ORDER ALLOWING THE FLORIDA CONFERENCE OF CATHOLIC BISHOPS TO PARTICIPATE AS AMICUS - The motion of the Florida Conference of Catholic Bishops, Inc. ("the Conference") for leave to file a memorandum as amicus curiae, ECF No. 43 , is GRANTED. The clerk must add the Conference to the docket as an amicus so that its attorneys receive electronic notices of filings. Signed by JUDGE ROBERT L HINKLE on 5/2/2014. (dlt) (Entered: 05/02/2014)
05/05/2014	45	Mail Returned as Undeliverable. Mail sent to CHRIS SEVIER Re: 41 ORDER DENYING LEAVE FOR CHRIS SEVIER TO INTERVENE (dlt) (Entered: 05/06/2014)
05/12/2014	46	AMICUS CURIAE BRIEF by FLORIDA CONFERENCE OF CATHOLIC BISHOPS, INC. . (EMMANUEL, STEPHEN) (Entered: 05/12/2014)
05/12/2014	47	MOTION Second Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 05/12/2014)
05/12/2014	48	

Case: 14-14061 Date Filed: 11/19/2014 Page: 20 of 202

		MEMORANDUM in Opposition re 42 MOTION for Preliminary Injunction , 11 Amended MOTION Motion for Declaratory and Injunctive Relief and Memorandum of Law filed by FLORIDA FAMILY ACTION INC. (MIHET, HORATIO) (Entered: 05/12/2014)
05/12/2014	49	MOTION to Dismiss <i>AND OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION</i> by HAROLD BAZZELL. (Internal deadline for referral to judge if response not filed earlier: 5/30/2014). (GOODMAN, JAMES) (Entered: 05/12/2014)
05/12/2014	50	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , MOTION to Dismiss for Lack of Jurisdiction <i>and Memorandum of Law Supporting Dismissal and Opposing Preliminary Injunction Motions</i> (Internal deadline for referral to judge if response not filed earlier: 5/30/2014 .) by JOHN H ARMSTRONG, PAMELA BONDI, CRAIG J NICHOLS, RICK SCOTT. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E) (TANENBAUM, ADAM) (Entered: 05/12/2014)
05/12/2014	51	MOTION FOR RECONSIDERATION, MOTION TO STRIKE, AMEND AND CORRECT, AND ALTERNATIVELY, MOTION TO FILE AN AMICUS CURIE BRIEF, MOTION FOR EFC FILING ACCESS by CHRIS SEVIER. (dlt) (Entered: 05/14/2014)
05/12/2014	52	MEMORANDUM in Support re 51 MOTION for Reconsideration, MOTION To Strike, Amend and Correct, and Alternatively, Motion To File An Amicus Curie Brief, Motion For EFC Filing Access filed by CHRIS SEVIER. (dlt) (Entered: 05/14/2014)
05/12/2014	53	**STRICKEN PER ORDER {55}** First Amended Intervenor COMPLAINT and PETITION For Declaratory and Injunctive Relief, filed by CHRIS SEVIER. (dlt) Modified on 5/16/2014 (dlt). (Entered: 05/14/2014)
05/14/2014	54	Third Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM). (Entered: 05/14/2014)
05/16/2014	55	ORDER DENYING THE SEVIER MOTIONS - Mr. Sevier's motions, ECF Nos. 51 and 52 , are denied. Mr. Sevier's tendered "first amended intervening complaint and petition for declaratory and injunctive relief," ECF No. 53 (capitalization omitted), is struck. Signed by JUDGE ROBERT L HINKLE on 5/15/2014. (dlt) (Entered: 05/16/2014)
05/19/2014	56	MOTION Plaintiffs' Fourth Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 05/19/2014)
05/20/2014	57	MOTION Plaintiffs' Fifth Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES,

Case: 14-14061 Date Filed: 11/19/2014 Page: 21 of 202

		OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 05/20/2014)
05/22/2014	58	Mail Returned as Undeliverable. Mail sent to CHRIS SEVIER Re: 55 ORDER. (tdl) (Entered: 05/23/2014)
05/27/2014	59	RESPONSE in Opposition re 50 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction <i>and Memorandum of Law Supporting Dismissal and Opposing Preliminary Injunction Motions</i> , REPLY to Response to Motion re 42 MOTION FOR PRELIMINARY INJUNCTION filed by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, ARLENE GOLDBERG, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION INC, CHRISTIAN ULVERT. (Attachments: # 1 Exhibit Finstuen v. Edmondson, # 2 Exhibit Obergefell v. Kasich) (TILLEY, DANIEL) (Entered: 05/27/2014)
05/27/2014	60	MEMORANDUM in Opposition re 49 MOTION to Dismiss <i>AND OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION</i> , 50 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM MOTION to Dismiss for Lack of Jurisdiction <i>and Memorandum of Law Supporting Dismissal and Opposing Preliminary Injunction Motions</i> filed by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Appendix "A" - Summary of Persuasive Authority Ruling on Same-Sex Marriage Bans and Anti-Recognition Statutes) (SHEPPARD, WILLIAM) (Entered: 05/27/2014)
06/05/2014	61	NOTICE of Supreme Court Denial of Stay by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET (Attachments: # 1 Exhibit, # 2 Exhibit) (SHEPPARD, WILLIAM) (Entered: 06/05/2014)
06/08/2014	62	NOTICE of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET (Attachments: # 1 Exhibit) (SHEPPARD, WILLIAM) (Entered: 06/08/2014)
06/25/2014	63	NOTICE of Supplemental Authority by SLOAN GRIMSLEY re 42 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit Tenth Circuit Opinion, # 2 Exhibit N.D. Indiana Opinion) (KAYANAN, MARIA) (Entered: 06/25/2014)
07/01/2014	64	Seventh MOTION Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (SHEPPARD, WILLIAM) (Entered: 07/01/2014)
07/11/2014	65	Eighth MOTION Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS,

Case: 14-14061 Date Filed: 11/19/2014 Page: 22 of 202

		STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 07/11/2014)
07/17/2014	66	Ninth MOTION Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 07/17/2014)
07/18/2014	67	Tenth MOTION Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit A) (SHEPPARD, WILLIAM) (Entered: 07/18/2014)
07/22/2014	68	MOTION Plaintiffs' Eleventh Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 07/22/2014)
07/24/2014	69	MOTION Plaintiffs' Twelfth Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 07/24/2014)
07/28/2014	70	MOTION Plaintiffs' Thirteenth Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 07/28/2014)
07/28/2014	71	MOTION Plaintiffs' Fourteenth Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 07/28/2014)
08/05/2014	72	MOTION Plaintiffs' Fifteenth Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (SHEPPARD, WILLIAM) (Entered: 08/05/2014)
08/06/2014	73	MOTION Plaintiffs' Sixteenth Notice of Supplemental Authority in Support of Plaintiffs' Amended Complaint and Amended Motion for Declaratory and Injunctive Relief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit "A") (SHEPPARD, WILLIAM) (Entered: 08/06/2014)
08/21/2014	74	ORDER DENYING THE MOTIONS TO DISMISS, GRANTING A PRELIMINARY INJUNCTION, AND TEMPORARILY STAYING THE

Case: 14-14061 Date Filed: 11/19/2014 Page: 23 of 202

		INJUNCTION 2 11 42 49 and 50 Signed by JUDGE ROBERT L HINKLE on 8/21/14. (sms) (Entered: 08/21/2014)
08/26/2014	75	SECURITY fee: \$ 100.00, receipt number 4-23181 as to JAMES DOMER BRENNER, CHARLES DEAN JONES, STEPHEN SCHLAIRET, OZZIE RUSS by WILLIAM J SHEPPARD. (tdl) (Entered: 08/27/2014)
08/28/2014	76	SECURITY Fee: \$ 500.00, receipt number 4-23190 as to JAMES DOMER BRENNER, CHARLES DEAN JONES, STEPHEN SCHLAIRET, OZZIE RUSS by WILLIAM J SHEPPARD. (tdl) (Entered: 08/28/2014)
09/04/2014	77	NOTICE OF APPEAL as to 74 Order by JOHN H ARMSTRONG, HAROLD BAZZELL, CRAIG J NICHOLS. (Filing fee \$505 Receipt Number 1129-3044410.) Transcript Order Form due by 9/18/2014 . (TANENBAUM, ADAM) (Entered: 09/04/2014)
09/04/2014	78	ANSWER to 10 Amended Complaint, by HAROLD BAZZELL. (GOODMAN, JAMES) (Entered: 09/04/2014)
09/04/2014	79	ANSWER to 10 Amended Complaint, by JOHN H ARMSTRONG, CRAIG J NICHOLS. (TANENBAUM, ADAM) (Entered: 09/04/2014)
09/05/2014	80	Appeal Instructions re: 77 Notice of Appeal : The Transcript Request Form is available on the Internet at http://www.flnd.uscourts.gov/forms/Attorney/ECCA_transcript_form_fillable.pdf **PLEASE NOTE** Separate forms must be filed for each court reporter. Transcript Order Form due by 9/19/2014 . (tdl) (Entered: 09/05/2014)
09/05/2014	81	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 77 Notice of Appeal. (tdl) (Entered: 09/05/2014)
09/05/2014		Set Deadlines re 77 Notice of Appeal: Clerk to check status of Appeal on 12/5/2014 . Electronic Availability of ROA by 12/5/2014 . (tdl) (Entered: 09/05/2014)
09/10/2014	82	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Telephonic Scheduling Conference held on 03/26/2014, before Judge ROBERT L. HINKLE. Court Reporter Judy A. Gagnon, Telephone number 850-561-6822. <i>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER.</i> Redaction Request due 9/17/2014 . Release of Transcript Restriction set for 12/16/2014 . (jag) (Entered: 09/10/2014)
09/17/2014	83	TRANSCRIPT REQUEST by JOHN H ARMSTRONG, CRAIG J NICHOLS (TANENBAUM, ADAM) (Entered: 09/17/2014)
09/17/2014	84	Redaction of 77 Notice of Appeal. (GOODMAN, JAMES) (Entered: 09/17/2014)
09/18/2014	85	TRANSCRIPT REQUEST by HAROLD BAZZELL for proceedings held on 09/18/2014 re 80 Appeal Instructions, 77 Notice of Appeal, 81 Transmission of

Case: 14-14061 Date Filed: 11/19/2014 Page: 24 of 202

		Notice of Appeal and Docket Sheet to USCA Transcript due by 9/18/2014 . (GOODMAN, JAMES) (Entered: 09/18/2014)
09/18/2014	86	USCA Case Number 14-14061-A for 77 NOTICE OF APPEAL. (tdl) (Entered: 09/22/2014)
09/19/2014		Appeal Transcript Deadlines Terminated re 77 Notice of Appeal filed by HAROLD BAZZELL, CRAIG J NICHOLS, JOHN H ARMSTRONG. No transcripts ordered. (tdg) (Entered: 09/19/2014)
10/07/2014	87	MOTION to lift stay re 74 Order by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, ARLENE GOLDBERG, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION INC, CHRISTIAN ULVERT. (Attachments: # 1 Fourth Circuit mandate, # 2 Seventh Circuit mandate part 1, # 3 Seventh Circuit mandate part 2, # 4 Tenth Circuit mandate part 1, # 5 Tenth Circuit mandate part 2) (TILLEY, DANIEL) (Entered: 10/07/2014)
10/07/2014	88	MOTION to Dissolve Stay by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (Attachments: # 1 Exhibit 1) (SHEPPARD, WILLIAM) (Entered: 10/07/2014)
10/08/2014	89	ORDER of USCA as to 77 Notice of Appeal. USCA #14-14061-AA.**USCA Order docketed in case 4:14cv138 as to 14-14066 -AA. (tdl) (Entered: 10/09/2014)
10/15/2014	90	NOTICE of <i>Supplemental Authority</i> by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, ARLENE GOLDBERG, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION INC, CHRISTIAN ULVERT re 87 MOTION to lift stay re 74 Order (Attachments: # 1 Latta v. Otter) (TILLEY, DANIEL) (Entered: 10/15/2014)
10/21/2014	91	MOTION for Filing of Amici Curiae Brief by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (SHEPPARD, WILLIAM) (Entered: 10/21/2014)
10/24/2014	92	Joint MOTION to Stay re 87 MOTION to lift stay re 74 Order , 88 MOTION to Dissolve Stay <i>and Opposition to Motions to Lift Stay</i> by JOHN H ARMSTRONG, HAROLD BAZZELL, CRAIG J NICHOLS. (TANENBAUM, ADAM) (Entered: 10/24/2014)
10/28/2014	93	RESPONSE in Opposition re 92 Joint MOTION to Stay re 87 MOTION to lift stay re 74 Order , 88 MOTION to Dissolve Stay <i>and Opposition to Motions to Lift Stay</i> filed by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, ARLENE GOLDBERG, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD

		MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION INC, CHRISTIAN ULVERT. (TILLEY, DANIEL) (Entered: 10/28/2014)
10/30/2014	94	MOTION Adoption and Joinder in Grimsley Plaintiffs' Response to Defendants' Motion to Continue Stay Pending Appeal by JAMES DOMER BRENNER, CHARLES DEAN JONES, OZZIE RUSS, STEPHEN SCHLAIRET. (SHEPPARD, WILLIAM) (Entered: 10/30/2014)
11/05/2014	95	ORDER re 87 , 88 , 92 DENYING THE MOTIONS TO ALTER THE STAY. Signed by JUDGE ROBERT L HINKLE on 11/5/14. (sms) (Entered: 11/05/2014)
11/10/2014	96	ORDER DENYING LEAVE TO FILE AMICUS BRIEF FROM OTHER ACTIONS - ECF No. 91 motion for leave to file amicus briefs prepared for filing in other actions is DENIED AS MOOT. Signed by JUDGE ROBERT L HINKLE on 11/10/2014. (sac) (Entered: 11/13/2014)

PACER Service Center			
Transaction Receipt			
11/18/2014 14:06:44			
PACER Login:	fg2192:4219578:3925453	Client Code:	
Description:	Docket Report	Search Criteria:	4:14-cv-00107-RH-CAS
Billable Pages:	18	Cost:	1.80

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Case: 14-14061 Date Filed: 11/19/2014 Page: 27 of 202

APPEAL, CONSOLIDATED

**U.S. District Court
Northern District of Florida (Tallahassee)
CIVIL DOCKET FOR CASE #: 4:14-cv-00138-RH-CAS**

GRIMSLEY et al v. SCOTT et al
Assigned to: JUDGE ROBERT L HINKLE
Referred to: MAGISTRATE JUDGE CHARLES A
STAMPELOS

Lead case: [4:14-cv-00107-RH-CAS](#)Member case: ([View Member Case](#))

Case in other court: USCA, 14-14066-A

Cause: 42:1983 Civil Rights Act

Date Filed: 03/12/2014

Jury Demand: None

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

Plaintiff**SLOAN GRIMSLEY**

represented by **BENJAMIN JAMES STEVENSON**
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LEAD ATTORNEY

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Case: 14-14061 Date Filed: 11/19/2014 Page: 28 of 202

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Plaintiff**JOYCE ALBU**

represented by **BENJAMIN JAMES STEVENSON**
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TERMINATED: 04/16/2014
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DANIEL BOAZ TILLEY
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ATTORNEY TO BE NOTICED

MARIA KAYANAN
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ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
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(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**BOB COLLIER**

represented by **BENJAMIN JAMES STEVENSON**
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TERMINATED: 04/16/2014
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ATTORNEY TO BE NOTICED

MARIA KAYANAN
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**STEPHEN FREDERICK
ROSENTHAL**

Case: 14-14061 Date Filed: 11/19/2014 Page: 29 of 202

(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**CHUCK HUNZIKER**

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LEAD ATTORNEY

DANIEL BOAZ TILLEY
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ATTORNEY TO BE NOTICED

MARIA KAYANAN
(See above for address)
ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**LINDSAY MYERS**

represented by **BENJAMIN JAMES STEVENSON**
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
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ATTORNEY TO BE NOTICED

MARIA KAYANAN
(See above for address)
ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**SARAH HUMLIE**

represented by **BENJAMIN JAMES STEVENSON**
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
(See above for address)

Case: 14-14061 Date Filed: 11/19/2014 Page: 30 of 202

ATTORNEY TO BE NOTICED

MARIA KAYANAN
(See above for address)
ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**ROBERT LOUPO**

represented by **BENJAMIN JAMES STEVENSON**
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

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ATTORNEY TO BE NOTICED

MARIA KAYANAN
(See above for address)
ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**JOHN FITZGERALD**

represented by **BENJAMIN JAMES STEVENSON**
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

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MARIA KAYANAN
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**STEPHEN FREDERICK
ROSENTHAL**
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Case: 14-14061 Date Filed: 11/19/2014 Page: 31 of 202

Plaintiff**DENISE HUESO**

represented by **BENJAMIN JAMES STEVENSON**
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TERMINATED: 04/16/2014
LEAD ATTORNEY

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MARIA KAYANAN
(See above for address)
ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**SANDRA NEWSON**

represented by **BENJAMIN JAMES STEVENSON**
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
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ATTORNEY TO BE NOTICED

MARIA KAYANAN
(See above for address)
ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**JUAN DEL HIERRO**

represented by **BENJAMIN JAMES STEVENSON**
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
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ATTORNEY TO BE NOTICED

Case: 14-14061 Date Filed: 11/19/2014 Page: 32 of 202

MARIA KAYANAN
(See above for address)
ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

THOMAS GANTT, JR

represented by **BENJAMIN JAMES STEVENSON**
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
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MARIA KAYANAN
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ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

CHRISTIAN ULVERT

represented by **BENJAMIN JAMES STEVENSON**
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TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
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MARIA KAYANAN
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ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

CARLOS ANDRADE

represented by

Case: 14-14061 Date Filed: 11/19/2014 Page: 33 of 202

BENJAMIN JAMES STEVENSON
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
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ATTORNEY TO BE NOTICED

MARIA KAYANAN
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ATTORNEY TO BE NOTICED

**STEPHEN FREDERICK
ROSENTHAL**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

RICHARD MILSTEIN

represented by **BENJAMIN JAMES STEVENSON**
(See above for address)
TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
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MARIA KAYANAN
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**STEPHEN FREDERICK
ROSENTHAL**
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Plaintiff

ERIC HANKIN

represented by **BENJAMIN JAMES STEVENSON**
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TERMINATED: 04/16/2014
LEAD ATTORNEY

DANIEL BOAZ TILLEY
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ATTORNEY TO BE NOTICED

MARIA KAYANAN
(See above for address)

Case: 14-14061 Date Filed: 11/19/2014 Page: 34 of 202

*ATTORNEY TO BE NOTICED***STEPHEN FREDERICK
ROSENTHAL**

(See above for address)

*ATTORNEY TO BE NOTICED***Plaintiff****SAVE FOUNDATION INC**represented by **BENJAMIN JAMES STEVENSON**

(See above for address)

*TERMINATED: 04/16/2014**LEAD ATTORNEY***DANIEL BOAZ TILLEY**

(See above for address)

*ATTORNEY TO BE NOTICED***MARIA KAYANAN**

(See above for address)

*ATTORNEY TO BE NOTICED***STEPHEN FREDERICK
ROSENTHAL**

(See above for address)

*ATTORNEY TO BE NOTICED***Plaintiff****ARLENE GOLDBERG**represented by **DANIEL BOAZ TILLEY**

(See above for address)

ATTORNEY TO BE NOTICED

V.

Defendant**RICK SCOTT***GOVERNOR OF THE STATE OF
FLORIDA*represented by **ALLEN C WINSOR**

FLORIDA ATTORNEY GENERAL -

TALLAHASSEE FL

THE CAPITOL PL-01

TALLAHASSEE, FL 32399-1050

850-414-3688

Fax: 850-410-2672

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*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***ADAM SCOTT TANENBAUM**

ATTORNEY GENERAL - PL-01 -

Case: 14-14061 Date Filed: 11/19/2014 Page: 35 of 202

TALLAHASSEE FL
STATE OF FLORIDA
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ATTORNEY TO BE NOTICED

Defendant

PAMELA BONDI
*IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL STATE OF
FLORIDA*

represented by **ALLEN C WINSOR**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

ADAM SCOTT TANENBAUM
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

JOHN H ARMSTRONG
*SURGEON GENERAL AND
SECRETARY OF HEALTH FOR THE
STATE OF FLORIDA*

represented by **ALLEN C WINSOR**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

ADAM SCOTT TANENBAUM
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

CRAIG J NICHOLS
*AGENCY SECRETARY FOR THE
FLORIDA DEPARTMENT OF
MANAGEMENT SERVICES*

represented by **ALLEN C WINSOR**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

ADAM SCOTT TANENBAUM
(See above for address)
ATTORNEY TO BE NOTICED

V.

Intervenor Defendant

FLORIDA FAMILY ACTION INC

represented by **HORATIO G. MIHET**
LIBERTY COUNSEL
PO BOX 540774
ORLANDO, FL 32854

800-671-1776
 Fax: 407-875-0770
 Email: hmihet@lc.org
 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/12/2014	1	COMPLAINT against All Defendants (Filing fee \$ 400 receipt number 1129-2896463.), filed by ROBERT LOUPO, SAVE FOUNDATION, INC., BOB COLLIER, CHRISTIAN ULVERT, CARLOS ANDRADE, DENISE HUESO, THOMAS GANTT, JR, JOYCE ALBU, LINDSAY MYERS, JOHN FITZGERALD, JUAN DEL HIERRO, ERIC HANKIN, SANDRA NEWSON, CHUCK HUNZIKER, SARAH HUMLIE, RICHARD MILSTEIN, SLOAN GRIMSLEY. (Attachments: # 1 SUMMONS FOR JOHN ARMSTRONG, # 2 SUMMONS FOR PAM BONDI, # 3 SUMMONS FOR CRAIG NICHOLS, # 4 SUMMONS FOR RICK SCOTT) (STEVENSON, BENJAMIN) (Entered: 03/12/2014)
03/12/2014	2	CIVIL COVER SHEET. (STEVENSON, BENJAMIN) (Entered: 03/12/2014)
03/13/2014	3	Summons Issued as to JOHN H ARMSTRONG, PAMELA BONDI, CRAIG J NICHOLS, RICK SCOTT. (Attachments: # 1 Summons, # 2 Summons, # 3 Summons) (pll) (Entered: 03/13/2014)
03/19/2014	4	NOTICE of Pendency of Other or Prior Similar Actions by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION, INC., CHRISTIAN ULVERT (TILLEY, DANIEL) (Entered: 03/19/2014)
03/20/2014	5	SUMMONS Returned Executed . RICK SCOTT served on 3/20/2014, answer due 4/10/2014. (TILLEY, DANIEL) Modified on 3/21/2014 (pll). (Entered: 03/20/2014)
03/20/2014	6	SUMMONS Returned Executed . PAMELA BONDI served on 3/20/2014, answer due 4/10/2014. (TILLEY, DANIEL) Modified on 3/21/2014 (pll). (Entered: 03/20/2014)
03/20/2014	7	SUMMONS Returned Executed . JOHN H ARMSTRONG served on 3/20/2014, answer due 4/10/2014. (TILLEY, DANIEL) Modified on 3/21/2014 (pll). (Entered: 03/20/2014)
03/20/2014	8	SUMMONS Returned Executed . CRAIG J NICHOLS served on 3/20/2014, answer due 4/10/2014. (TILLEY, DANIEL) Modified on 3/21/2014 (pll). (Entered: 03/20/2014)
03/20/2014	9	SUMMONS Returned Executed by ROBERT LOUPO, SAVE FOUNDATION, INC., BOB COLLIER, CHRISTIAN ULVERT, CARLOS ANDRADE, DENISE HUESO, THOMAS GANTT, JR, JOYCE ALBU, LINDSAY MYERS, JOHN FITZGERALD, JUAN DEL HIERRO, ERIC HANKIN, SANDRA NEWSON,

Case: 14-14061 Date Filed: 11/19/2014 Page: 37 of 202

		CHUCK HUNZIKER, SARAH HUMLIE, RICHARD MILSTEIN, SLOAN GRIMSLEY. (TILLEY, DANIEL) (Entered: 03/20/2014)
03/25/2014	10	NOTICE of Appearance by ADAM SCOTT TANENBAUM on behalf of All Defendants (TANENBAUM, ADAM) (Entered: 03/25/2014)
03/26/2014	11	ORDER SETTING A CASE-MANAGEMENT CONFERENCE AND EXTENDING THE DEADLINE TO RESPOND TO THE COMPLAINT. (Answer due by 4/25/2014. , Telephonic Scheduling Conference set in this case and 4:14cv107-RH/CAS for 4/18/2014 09:00 AM in U.S. Courthouse Tallahassee before JUDGE ROBERT L HINKLE.). Signed by JUDGE ROBERT L HINKLE on 3/26/2014. (pll) (Entered: 03/26/2014)
03/27/2014	12	NOTICE OF TELEPHONIC HEARING: Telephonic Case Management Conference set for 4/18/2014 at 9:00 A.M. before JUDGE ROBERT L HINKLE, United States Courthouse, 111 North Adams St., Tallahassee, Florida 32301. Parties are instructed to call (888) 684-8852 Access Code: 8131706# Security Code: 0129# at the time of hearing. <i>NOTE: If you or any party, witness or attorney in this matter has a disability that requires special accommodation, such as, a hearing impairment that requires a sign language interpreter or a wheelchair restriction that requires ramp access, please contact Elizabeth Lawrence at 850-521-3501 in the Clerk's Office at least one week prior to the hearing (or as soon as possible) so arrangements can be made.</i> <i>s/ Sherrye Stephens</i> Judicial Assistant (sms) (Entered: 03/27/2014)
04/02/2014	13	MOTION to Intervene <i>as Party Defendant</i> by Florida Family Action, Inc.. (Attachments: # 1 Memorandum In Support, # 2 Proposed Answer and Defenses) (MIHET, HORATIO) (Entered: 04/02/2014)
04/02/2014	14	NOTICE of Appearance by STEPHEN FREDERICK ROSENTHAL on behalf of All Plaintiffs (ROSENTHAL, STEPHEN) (Entered: 04/02/2014)
04/09/2014	15	Joint MOTION to Consolidate Cases <i>and to Set Briefing Schedule -- Filed Jointly by Plaintiffs and Defendants</i> by JOHN H ARMSTRONG, PAMELA BONDI, CRAIG J NICHOLS, RICK SCOTT. (TANENBAUM, ADAM) (Entered: 04/09/2014)
04/10/2014	16	FIRST AMENDED COMPLAINT against All Defendants All Defendants., filed by ROBERT LOUPO, SAVE FOUNDATION, INC., BOB COLLIER, CHRISTIAN ULVERT, CARLOS ANDRADE, DENISE HUESO, THOMAS GANTT, JR, JOYCE ALBU, LINDSAY MYERS, JOHN FITZGERALD, JUAN DEL HIERRO, ERIC HANKIN, SANDRA NEWSON, CHUCK HUNZIKER,

Case: 14-14061 Date Filed: 11/19/2014 Page: 38 of 202

		SARAH HUMLIE, RICHARD MILSTEIN, SLOAN GRIMSLEY, ARLENE GOLDBERG. (TILLEY, DANIEL) (Entered: 04/10/2014)
04/14/2014	17	MOTION to Withdraw as Attorney (<i>Stevenson</i>) by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, ARLENE GOLDBERG, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION, INC., CHRISTIAN ULVERT. (STEVENSON, BENJAMIN) (Entered: 04/14/2014)
04/15/2014	18	ATTORNEY TIME RECORDS by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, ARLENE GOLDBERG, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION, INC., CHRISTIAN ULVERT. (TILLEY, DANIEL) (Entered: 04/15/2014)
04/15/2014	19	ATTORNEY TIME RECORDS - SEALED PORTION by JOYCE ALBU, CARLOS ANDRADE, BOB COLLIER, JUAN DEL HIERRO, JOHN FITZGERALD, THOMAS GANTT, JR, ARLENE GOLDBERG, SLOAN GRIMSLEY, ERIC HANKIN, DENISE HUESO, SARAH HUMLIE, CHUCK HUNZIKER, ROBERT LOUPO, RICHARD MILSTEIN, LINDSAY MYERS, SANDRA NEWSON, SAVE FOUNDATION, INC., CHRISTIAN ULVERT. (TILLEY, DANIEL) (Entered: 04/15/2014)
04/16/2014	20	ORDER GRANTING 17 LEAVE TO WITHDRAW STEVENSON. Attorney BENJAMIN JAMES STEVENSON terminated. Signed by JUDGE ROBERT L HINKLE on 4/16/2014. (pll) (Entered: 04/16/2014)
04/18/2014	21	Minute Entry for proceedings held before JUDGE ROBERT L HINKLE:Case Management Conference held on 4/18/2014. Parties discuss motion to consolidate and schedule for the case. Ruling by Court: The motion to consolidate is GRANTED. A schedule is set forth on the case. An order is forthcoming. (Court Reporter Lisa Snyder) (erl) (Entered: 04/18/2014)
04/21/2014	22	ORDER SETTING A PARTIAL SCHEDULE AND CONSOLIDATING THE CASES FOR CASE-MANAGEMENT PURPOSES. These cases are consolidated for case-management purposes only and will be maintained on a common docket under Consolidated Case No. 4:14cv107. GRANTED 15 Joint MOTION to Consolidate Cases and to Set Briefing Schedule. The deadline for responding to the motions to intervene, ECF No. 22 in Case No. 4:14cv107 and ECF No. 13 in Case No. 4:14cv138, remains April 21, 2014. Signed by JUDGE ROBERT L HINKLE on 4/21/2014. (dc) (Entered: 04/22/2014)
08/21/2014	23	ORDER DENYING THE MOTIONS TO DISMISS, GRANTING A PRELIMINARY INJUNCTION, AND TEMPORARILY STAYING THE INJUNCTION. Signed by JUDGE ROBERT L HINKLE on 8/21/14. (sms) (Entered: 08/21/2014)
08/28/2014	24	

		Security fee: \$ 500 & \$100, receipt number FLN400023192. (dac) (Entered: 08/28/2014)
09/04/2014	25	NOTICE OF APPEAL as to 23 Order by JOHN H ARMSTRONG, CRAIG J NICHOLS. (Filing fee \$505 Receipt Number 1129-3044426.) Transcript Order Form due by 9/18/2014 . (TANENBAUM, ADAM) (Entered: 09/04/2014)
09/04/2014	26	ANSWER to 16 Amended Complaint, by JOHN H ARMSTRONG, CRAIG J NICHOLS. (TANENBAUM, ADAM) (Entered: 09/04/2014)
09/05/2014	27	Appeal Instructions re: 25 Notice of Appeal : The Transcript Request Form is available on the Internet at http://www.flnd.uscourts.gov/forms/Attorney/ECCA_transcript_form_fillable.pdf **PLEASE NOTE** Separate forms must be filed for each court reporter. Transcript Order Form due by 9/19/2014 . (tdl) (Entered: 09/05/2014)
09/05/2014	28	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 25 Notice of Appeal. (tdl) (Entered: 09/05/2014)
09/05/2014		Set Deadlines re 25 Notice of Appeal: Clerk to check status of Appeal on 12/5/2014 . Electronic Availability of ROA due by 12/5/2014 . (tdl) (Entered: 09/05/2014)
09/17/2014	29	TRANSCRIPT REQUEST by JOHN H ARMSTRONG, CRAIG J NICHOLS (TANENBAUM, ADAM) (Entered: 09/17/2014)
09/25/2014	30	USCA Case Number 14-14066-A for 25 NOTICE OF APPEAL (dac) (Entered: 09/25/2014)
10/08/2014	31	ORDER of USCA as to 25 Notice of Appeal. USCA #14-14066 -AA.**USCA Order docketed in case 4:14cv107 as to 14-14061-AA.** (tdl) (Entered: 10/09/2014)
11/05/2014	32	ORDER DENYING MOTIONS TO ALTER THE STAY. Signed by JUDGE ROBERT L HINKLE on 11/5/14. (sms) (Entered: 11/05/2014)

PACER Service Center			
Transaction Receipt			
11/18/2014 14:12:02			
PACER Login:	fg2192:4219578:3925453	Client Code:	
Description:	Docket Report	Search Criteria:	4:14-cv-00138-RH-CAS
Billable Pages:	13	Cost:	1.30

Filings in *Brenner* Case
No. 4:14-cv-107

DE 10

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

**JAMES DOMER BRENNER,
CHARLES DEAN JONES,
STEPHEN SCHLAIRET and
OZZIE RUSS,**

Plaintiffs,

vs.

Case No.: 4:14-cv-00107-RH-CAS

**RICK SCOTT, in his official
capacity as Governor of Florida;
PAMELA BONDI, in her
official capacity as Attorney
General of Florida;
JOHN H. ARMSTRONG,
in his official capacity as
Surgeon General and Secretary
of Health for the State of Florida;
CRAIG J. NICHOLS, in his official
capacity as Agency Secretary for the
Florida Department of Management
Services; and HAROLD BAZZELL,
in his official capacity as Clerk of Court
and Comptroller for Washington
County, Florida,**

Defendants.

**FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs, James Domer Brenner, Charles Dean Jones, Stephen Schlairet, and Ozzie Russ,

by and through undersigned counsel, hereby sue the Defendants and allege as follows:

INTRODUCTION

Plaintiffs bring this action to challenge the constitutionality of Florida's laws voiding or otherwise refusing to recognize the marriages of same-sex couples entered in other states or countries. In *United States v. Windsor*, --- U.S. ---, 133 S. Ct. 2675 (2013), the United States Supreme Court held that withholding federal recognition and benefits from legally married same-sex couples, as required by Section 3 of the Defense of Marriage Act (DOMA), violates the Federal Constitutional guarantees of equal protection and due process. Plaintiffs seek to apply this holding, and/or the reasoning underlying it, to invalidate and enjoin the enforcement of Florida's State Constitutional provision and statutes prohibiting the marriage of same-sex couples and the recognition of already legally married same-sex couples.

THE PLAINTIFFS

a. Plaintiffs Brenner and Jones

1. Plaintiffs James Domer Brenner and Charles Dean Jones are adult, male residents of Tallahassee, Leon County, Florida, having lived there since the mid-eighties.
2. Plaintiff Brenner has worked for the Florida Forest Service since 1981 and currently serves as a Fire Management Administrator.
3. Plaintiff Jones has worked for the Florida Department of Education since 2003 and currently serves as an Operations and Management Consultant.
4. Plaintiffs Brenner and Jones have been domestic partners in a long term, stable relationship since 1988.

5. Plaintiffs Brenner and Jones, seeking recognition of their relationship, were lawfully married in Alberta, Canada on September 3, 2009 and immediately returned to Tallahassee, Florida to reside as spouses.

6. Like other couples who have made a lifetime commitment to each other, Plaintiffs Brenner and Jones are spouses in every sense, except that their marriage is not currently recognized by the State of Florida.

7. The situation faced by Brenner and Jones is similar to that faced by many other legally married same-sex couples.

8. Plaintiffs Brenner and Jones seek to have their legal marriage recognized in the State of Florida in order to have the same legal protections afforded to legally married opposite-sex couples, including those who married in other jurisdictions.

9. While enrolling in Florida's Deferred Retirement Option Program, Plaintiff Brenner was unable to designate Plaintiff Jones, his lawful husband, as his spouse or joint annuitant under Florida law solely because Plaintiffs are both men.

10. When a state employee, who is in an opposite-sex marriage, enters retirement, he or she may designate his or her spouse as a joint annuitant.

11. The joint annuitant, upon the retiree's death, is entitled to the retiree's monthly benefits under certain retirement options.

12. However, because Florida refuses to recognize Plaintiffs Brenner and Jones' legal marriage, Plaintiff Brenner was prohibited for selecting a retirement option that would continue to provide for his spouse Jones after his death.

b. Plaintiffs Schlairet and Russ

13. Plaintiffs Stephen Schlairet and Ozzie Russ are adult, male residents of Chipley, Washington County, Florida.

14. Plaintiff Schlairet has a Masters Degree in Hospital Administration and over 40 years of healthcare management experience.

15. As of 2013, Plaintiff Schlairet is retired on Social Security and Medicare and volunteers as a horse trainer for a horse rescue in Marianna, Florida.

16. Plaintiff Russ currently works as a manager for McDonald's and has over 27 years of management and customer service experience.

17. Plaintiffs Schlairet and Russ have been in a long-term, stable relationship since 1999.

18. Plaintiffs Schlairet and Russ seek to have their love and commitment for each other recognized, but without being able to legally marry in the State of Florida, then registered as domestic partners in Fort Lauderdale, Florida, on November 4, 2001.

19. Plaintiffs Schlairet and Russ, wishing to publicly recognize their commitment to each other, held a public commitment ceremony with their families and 100 close friends after registering as domestic partners.

20. Since being together, Plaintiffs Schlairet and Russ have resided on a horse ranch in Chipley, Florida.

21. Plaintiffs Schlairet and Russ seek to marry each other, but the State of Florida refuses to issue Plaintiffs Schlairet and Russ a marriage license because both Plaintiffs are males.

22. Plaintiffs Schlairet and Russ, per Florida law, have completed an online premarital counseling course which entitles prospective spouses to the immediate issuance of a marriage license. *See* Exhibit “A,” attached hereto.

23. However, because Plaintiffs Schlairet and Russ are both males, the Washington County Clerk of Court refused to issue Plaintiffs Schlairet and Russ a marriage license. *See* Exhibit “B,” attached hereto.

24. Due to their status as a same-sex couple who cannot legally marry in Florida, Plaintiffs Schlairet and Russ have suffered injury they would not have suffered had they been an opposite-sex couple.

25. The house in which Plaintiffs Schlairet and Russ reside is only titled in Plaintiff Schlairet’s name, and the two do not qualify for homestead protection and are unable to hold the property as tenants by entireties.

26. During interrupted periods of employment, Plaintiffs Schlairet and Russ were unable to have healthcare coverage under each other’s insurance plans due to Florida prohibiting them from marrying.

27. In sum, Plaintiffs Schlairet and Russ seek to legally marry in the State of Florida in order to have the same legal protections and recognition afforded to married opposite-sex couples.

THE DEFENDANTS

28. Defendant Rick Scott is the Governor of the State of Florida. In his official capacity, Governor Scott is the chief executive officer of the State of Florida and is responsible for the faithful execution of the laws of the State of Florida, including the laws that exclude same-sex couples from having their out-of-state marriages recognized.

29. Defendant Pamela Bondi is the Attorney General of the State of Florida. In her official capacity, Attorney General Bondi is the chief legal officer of the State of Florida and is charged with advising state and local officials on questions of Florida and federal law.

30. Defendant John H. Armstrong is sued in his official capacity as the Surgeon General and Secretary of Health for the State of Florida. As head of the Florida Department of Health, Armstrong must “[p]lan, direct, coordinate, and execute the powers, duties, and functions vested in that department.” § 20.05, Fla. Stat. In his official capacity, he is responsible for creating forms for certificates of death, *see* § 382.008(1), Fla. Stat., as well as registering, recording, certifying, and preserving the State’s vital records, *see* § 382.003(7), Fla. Stat., including certificates of death.

31. Defendant Craig J. Nichols is sued in his official capacity as the Agency Secretary for the Florida Department of Management Services. As the head of the Florida Department of Management Services, Nichols must “[p]lan, direct, coordinate, and execute the powers, duties, and functions vested in that department.” § 20.05, Fla. Stat. In his official capacity, he is responsible for administering Florida’s public retirement and pension systems. *See* §121.025, Fla. Stat; *see also* § 121.021, Fla. Stat. (definitions).

32. Defendant Harold Bazzell is the Clerk of Court and Comptroller for Washington County, Florida. In his official capacity, Harold Bazzell is responsible for issuing marriage licenses and performing civil marriage ceremonies in Washington County, Florida.

33. Defendants are, and at all relevant times have been, acting under color of state law, and are sued in their official capacities.

34. By implementing and enforcing the Statute and Florida Constitutional Amendment discussed below, Defendants have deprived, and continue to deprive, Plaintiffs of rights guaranteed by the United States Constitution.

JURISDICTION AND VENUE

35. Plaintiffs bring this action under 42 U.S.C. §§1983 and 1988 to redress the deprivation, under color of state law, of their rights secured by the United States Constitution.

36. This Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1343.

37. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Fed.R.Civ.P. 57 and 65 and 28 U.S.C. §§ 2201 and 2202.

38. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because the Defendants have offices within the district, because Plaintiffs reside in this district, and because the events giving rise to Plaintiffs' claims occurred, continue to occur, and will occur, in this district.

CONSTITUTIONAL AND STATUTORY PROVISIONS CHALLENGED

39. Article I, section 27, of the Florida Constitution, adopted in 2008 provides:

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.

40. Section 741.04(1), Florida Statutes (2013) provides in part:

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, providing the social security numbers

or any other available identification numbers of each party, made and subscribed before some persons authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both parties shall be over the age of 18, except as provided in s. 741.0405; and unless one party is a male and the other party is a female.

41. Section 741.212(1),(2), and (3), Florida Statutes (2013) provides:

- (1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.
- (2) The state, its agencies, and its political subdivisions may not give effect to any public act, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.
- (3) For purposes of interpreting any state statute or rule, the term "marriage" means only a legal union between one man and one woman as husband and wife, and the term "spouse" applies only to a member of such a union.

42. The above-described provisions of Florida law are in violation of the United States Constitution, insofar as they deny Plaintiffs and same-sex couples the rights, privileges, responsibilities and immunities extended to similarly situated opposite-sex couples.

43. Legally married same-sex couples such as Plaintiffs Brenner and Jones are similarly situated to legally married opposite-sex couples in all of the characteristics relevant to recognition of their legal marriages.

44. Florida has no legitimate state interest in treating legally married same-sex couples any differently from legally married opposite-sex couples.

45. Florida has no legitimate state interest in prohibiting same-sex couples from marrying while allowing opposite-sex couples to marry.

46. Florida has no legitimate state interest in enforcing the statutes or Florida constitutional amendment challenged by Plaintiffs in this case.

47. Any purported identifiable state interest is not served in an adequately and narrowly tailored manner by Article I, Section 27, of the Florida Constitution, or the statutes challenged in this litigation.

48. The purposes underlying Article I, Section 27, of the Florida Constitution, §741.04, Fla. Stat. (2013) and §741.212, Fla. Stat. (2013) are specifically forbidden by the United States Constitution in that they are designed specifically to carry out a desire to harm a politically unpopular class of individuals based solely on their sexual orientation.

CLAIMS FOR RELIEF

COUNT I:

DEPRIVATION OF DUE PROCESS

49. Paragraphs 1 through 48 above, are adopted and incorporated by reference herein.

50. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deprive any person of life, liberty, or property, without due process of law.”

51. The right to marry is a fundamental right under the United States Constitution and is protected by the Due Process Clause.

52. Same-sex spouses who have entered into legal marriages have a protected liberty interest in their marital status, and the State's refusal to recognize their marital status impermissibly deprives legally married same-sex spouses of that protected liberty interest.

53. Same-sex spouses who have entered into legal marriages in other jurisdictions have a reasonable expectation that they will continue to be protected by the rights and protections conferred by marriage when they relocate to another jurisdiction.

54. Same-sex spouses have a protected property interest in their marital status and in the comprehensive network of legal protections that marriage provides, including the accrual of certain marital benefits over time.

55. Refusing to allow same-sex couples to enter into the same officially sanctioned relationship as heterosexual individuals stigmatizes same-sex couples and denies the same dignity, respect, and legal standard afforded and officially recognized in heterosexual family relationships.

56. The Due Process Clause also protects choices central to personal dignity and autonomy, including each individual's rights to family integrity and association.

57. Article I, Section 27, of the Florida Constitution and §§ 741.04 and 741.212, Fla. Stat. (2013) violate the due process guarantees of the Fourteenth Amendment facially and/or as applied to Plaintiffs by infringing upon their right to have their marriage recognized in the State of Florida.

58. In addition, Article I, Section 27, of the Florida Constitution and §§ 741.04 and 741.212, Fla. Stat. (2013) conflict with other portions of the Florida Constitution, thereby

depriving same-sex couples of rights otherwise granted to all Florida citizens, thus depriving them of Due Process rights under both the state and federal constitutions.

59. Specifically, Article I, Sections 2, 3, 4, 5, 9, and 23 of the Florida Constitution guarantee the rights to equal protection, religious freedom, freedom of speech, right to associate, due process, the right to be free from governmental intrusions into a person's private life, and the right to enjoy life, all of which are infringed upon by article I, section 27, of the Florida Constitution, §§ 741.04 and 741.212, Fla. Stat. (2013).

COUNT II:
EQUAL PROTECTION

60. Paragraphs 1 through 48, above, are adopted and incorporated by reference herein.

61. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

62. The State of Florida has no legitimate interest in discriminating against citizens on the basis of sexual orientation.

63. The State of Florida has no legitimate interest in discriminating against citizens on the basis of sex.

64. There is no rational basis for the State of Florida to treat same-sex couples differently from opposite-sex couples.

65. There is no rational basis for the State of Florida to treat Florida citizens differently based solely on their sexual orientation.

66. Sexual orientation bears no relation to a person's ability to perform in or contribute to society.

67. By restricting the definition of marriage to “one man and one woman,” and recognizing foreign marriages between opposite sex spouses while failing to recognize foreign marriages between same sex spouses, the State of Florida engages in sex-based discrimination without rational basis or a legitimate interest in doing so.

68. By restricting the definition of marriage to “one man and one woman,” and prohibiting same-sex couples from marrying while allowing opposite-sex couples to marry, the State of Florida also engages in sex-based discrimination without rational basis or a legitimate interest in doing so.

69. Gay and lesbian people have experienced a history of discrimination in the United States and in the State of Florida.

70. Sexual orientation, including homosexuality, is an immutable trait.

71. Gay and lesbian people represent a small minority of the population and thus lack the political power to assert their rights to equal treatment under the law.

72. The purpose of Article I, Section 27, of the Florida Constitution, §§ 741.04 and 741.212, Fla. Stat. (2013) is to impose restrictions and disabilities on same-sex couples.

73. Article I, Section 27, of the Florida Constitution, §§ 741.04 and 741.212, Fla. Stat. (2013) are motivated by a desire to harm a politically unpopular group.

74. Article I, Section 27, of the Florida Constitution, §§ 741.04 and 741.212, Fla. Stat. (2013) also serve the impermissible purpose of enforcing and perpetuating sex stereotypes by

excluding Plaintiffs from being recognized as validly married because Plaintiffs have failed to conform to sex-based stereotypes that men should marry women, and women should marry men.

75. Article I, Section 27, of the Florida Constitution, §§ 741.04 and 741.212, Fla. Stat. (2013) violate the equal protection guarantees of the Fourteenth Amendment facially and/or as applied to Plaintiffs by infringing their right to have their legal marriage recognized in the State of Florida and refusing to allow Plaintiffs to marry.

COUNT III:
FREEDOM OF ASSOCIATION

76. Paragraphs 1 through 48, above, are adopted and incorporated by reference herein.

77. The First Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, ensures the right to freedom of association.

78. Article I, Section 27, of the Florida Constitution, and §§ 741.04 and 741.212, Fla. Stat. (2013) violate the freedom of association guarantees of the First Amendment facially and/or as applied to Plaintiffs by discriminating against them and penalizing them based solely upon the sex of the person they choose to marry, want to marry and/or their sexual orientation.

COUNT IV:
SUPREMACY CLAUSE

79. Paragraphs 1 through 48, above, are adopted and incorporated by reference herein.

80. Article VI, Section II of the United States Constitution provides: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

81. By virtue of the Supremacy Clause, state statutes, constitutions and amendments thereto are subject to applicable prohibitions and limitations of the Federal Constitution.

82. Article I, Section 27, of the Florida Constitution and §§ 741.04 and 741.212, Fla. Stat. (2013) violate the Supremacy Clause by contravening the United States Supreme Court's holding in *Windsor*.

83. The Fourteenth Amendment protects the liberty of individuals to travel throughout the nation, uninhibited by statutes, rules, or regulations that unreasonably burden or restrict their movement.

84. The right to travel prohibits both laws that affirmatively interfere with or prevent a citizen's travel, and also laws that penalize those who choose to migrate to another state.

85. The right extends not only to temporary visits to other states, but also to becoming a permanent resident of another state.

86. Article I, Section 27, of the Florida Constitution, and §§741.04 and 741.212, Fla. Stat. (2013) violate the right to travel as guaranteed by the Fourteenth Amendment facially and/or as applied to Plaintiffs by imposing a penalty on Plaintiffs for choosing to move to and/or reside in the State of Florida in that their residence in Florida requires them to relinquish all rights, privileges, benefits, and responsibilities of marriage.

COUNT V:
ESTABLISHMENT CLAUSE

87. Paragraphs 1 through 48, above, are adopted and incorporated by reference herein.

88. The First Amendment to the United States Constitution states, "Congress shall make no law respecting an establishment of religion . . ."

89. This prohibition is extended to the states through the Fourteenth Amendment.

90. Article I, Section 27, of the Florida Constitution, and §§ 741.04 and 741.212 Fla. Stat. (2013) were enacted for the purpose of establishing a definition of marriage based upon religious beliefs of the majority, and not for a secular legislative purpose.

91. The primary effect of the above legislation is to advance the religious beliefs of the legislative majority.

92. The constitutional amendment and above statutes result in an excessive government entanglement with religion.

COUNT VI:
HARM TO THE PLAINTIFFS AND NEED FOR INJUNCTIVE RELIEF

93. Paragraphs 1 through 48, above, are adopted and incorporated by reference herein.

94. This case presents an actual controversy because Defendants' present and ongoing denial of equal treatment to Plaintiffs subjects them to serious and immediate harms, warranting the issuance of a declaratory judgment.

95. By refusing to recognize Plaintiffs Brenner and Jones' legal marriage from Canada, and prohibiting Plaintiffs Schlairet and Russ from obtaining a marriage license, the State of Florida's laws deprive Plaintiffs of numerous legal protections that are available to opposite-sex couples in Florida.

96. The tangible and intangible harm to Plaintiffs affects virtually every aspect of Plaintiffs' lives, including but not limited to the following:

- a. The right to designate a spouse to receive retirement benefits upon the retiree's death, such as with the benefits for Deferred Retirement Options Program participants. *See generally* §121.091, Fla. Stat. (2013);

- b. The right to be supported financially during marriage, enforced by criminal penalties for non-support. *Killian v. Lawson*, 387 So.2d 960, 962 (Fla. 1980); §§61.09, 856.04, Fla. Stat. (2013);
- c. The right to dissolution of marriage and the rights ensuing therefrom;
- d. The right to spousal benefits under The State Group Insurance Program provided in §110.123, Fla. Stat. (2013);
- e. The right to make medical decisions for an ill or incapacitated spouse without an advance health care directive. §765.401, Fla. Stat. (2013);
- f. The right for spouses of qualified employees to also be exempt from public records. §119.071, Fla. Stat. (2013);
- g. The right to a court-ordered equitable distribution of property upon the dissolution of marriage. §61.075, Fla. Stat. (2013);
- h. The right to receive certain workers' compensation benefits for a deceased spouse who has died as a result of a work-related accident. §440.16, Fla. Stat. (2013).
- i. The right to inherit a share of the estate of a spouse who died without a will. §732.102, Fla. Stat. (2013).
- j. The right to priority in appointment as the personal representative of the estate of a spouse who dies without a will. §733.301, Fla. Stat. (2013).
- k. The right to refuse to testify against their spouse in a court proceeding about confidential communications made during the marriage. §90.504, Fla. Stat. (2013).

- l. The right to claim certain homestead protections. Art. X, §4, Fla. Const.;
- m. The right to hold property as a tenancy by the entirety;
- n. The right to be presumed as parent to a child born to a spouse during marriage. *Fla. Dep't. of Revenue v. Cummings*, 930 So.2d 604, 607 (Fla. 2006); §§742.091 and 741.11(a), Fla. Stat. (2013);
- o. Asset protection benefits available to married couples;
- p. Recognition as surviving spouse on Florida death certificates;
- q. Priority in disposition of a deceased spouse's remains. *See generally* §497.005, Fla. Stat. (2013); and
- r. The right to recover damages for loss of companionship and protection as surviving spouse. *See* §768.21, Fla. Stat. (2013).

97. Under the laws of the State of Florida, Plaintiffs Brenner and Jones and Plaintiffs Schlairet and Russ are treated differently from opposite-sex couples solely because they are in same-sex relationships.

98. If Plaintiffs were legally married opposite-sex couples, they would not suffer any of the harms or potential harms enumerated above.

99. Defendants' deprivation of Plaintiffs' constitutional rights under color of state law violates 42 U.S.C. § 1983.

100. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

101. The State of Florida will incur little to no burden in recognizing the valid marriages of same-sex couples from other jurisdictions on the same terms as opposite-sex

couples or littler or no burden in allowing same-sex couples to marry, whereas the hardship for Plaintiffs of being denied equal treatment is severe, subjecting them to an irreparable denial of their constitutional and statutory rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment that article I, section 27 of the Florida Constitution violates the Due Process, Equal Protection, Freedom of Association, Supremacy, and/or other clauses of the United States Constitution;

B. Enter a declaratory judgment that §741.04, Fla. Stat. (2013), violates the Due Process, Equal Protection, Freedom of Association, Supremacy, and/or other clauses of the United States Constitution;

C. Enter a declaratory judgment that §741.212, Fla. Stat. (2013), violates the Due Process, Equal Protection, Freedom of Association, Supremacy, and/or other clauses of the United States Constitution;

D. Enter an order directing Defendants Scott, Bondi, and Armstrong to recognize marriages in Florida that were validly entered into by Plaintiffs Brenner and Jones and other same-sex couples outside of the State of Florida;

E. Enter an order directing Defendant Bazzell to issue Plaintiffs Schlairet and Russ a marriage license;

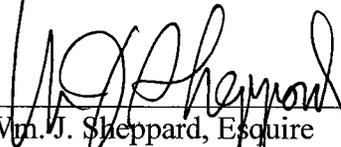
F. Enter an Order directing Defendant Nichols to allow Plaintiff Brenner to designate his spouse, Plaintiff Jones, as a recognized spouse or annuitant for purposes of his state retirement benefits;

G. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C.

§ 1988; and

H. Enter any and all further relief this Court deems just and proper.

Respectfully submitted,



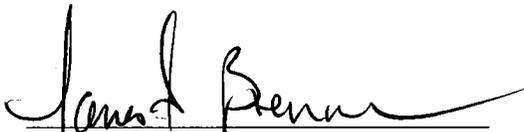
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VERIFICATION

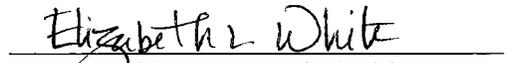
STATE OF FLORIDA }
 } ss.
COUNTY OF DUVAL }

BEFORE ME, the undersigned authority, this day personally appeared **James Domer Brenner and Charles Dean Jones**, who first being duly sworn, say they are the Plaintiffs in this cause; they have read the foregoing First Amended Verified Complaint for Declaratory and Injunctive Relief; have personal knowledge of the facts and matters set forth and alleged; and state that each and all these matters are true and correct.


James Domer Brenner


Charles Dean Jones

The foregoing instrument was acknowledged before me this 15th day of March, 2014, by **James Domer Brenner and Charles Dean Jones**, who are personally known to me or who provided _____ as identification and who did/did not take an oath.


Notary Public - State of Florida

Elizabeth L. White
Name typed, printed or stamped



VERIFICATION

STATE OF FLORIDA }
 } ss.
COUNTY OF DUVAL }

BEFORE ME, the undersigned authority, this day personally appeared **Stephen Schlairet** and **Ozzie Russ**, who first being duly sworn, say they are the Plaintiffs in this cause; they have read the foregoing First Amended Verified Complaint for Declaratory and Injunctive Relief; have personal knowledge of the facts and matters set forth and alleged; and state that each and all these matters are true and correct.

Stephen Schlairet
Stephen Schlairet

Ozzie Russ
Ozzie Russ

The foregoing instrument was acknowledged before me this 15th day of March, 2014, by **Stephen Schlairet and Ozzie Russ**, who are personally known to me or who provided _____ as identification and who did/did not take an oath.

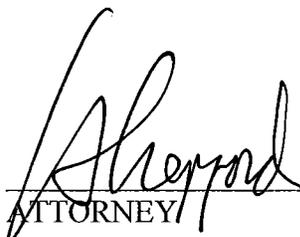
Elizabeth L. White
Notary Public - State of Florida

Elizabeth L. White
Name typed, printed or stamped



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **Allen C. Winsor, Esquire**, Florida Solicitor General, State of Florida, The Capitol PL-01, Tallahassee, Florida 32399-1050 (allen.winsor@myfloridalegal.com); and **Adam S. Tanenbaum, Esquire**, Chief Deputy Solicitor General, State of Florida, The Capitol, Suite PL-01, Tallahassee, Florida 32399-1050 (adam.tanenbaum@myfloridalegal.com), by Electronic Mail and United States First Class Mail; and to **John H. Armstrong, M.D., F.A.C.S**, Office of the State General Surgeon, 2585 Merchants Row Boulevard, Suite 140, Tallahassee, Florida 32399; **Craig J. Nichols**, Department of Management services, Office of the Secretary, 4050 Esplanade Way, Tallahassee, Florida 32399; and to **Harold Bazzell**, Clerk of Court and Comptroller of Washington County, Florida, 1293 Jackson Avenue, Chipley, Florida 32428, by delivering same to a Process Server for Service , this 18th day of March, 2014.



ATTORNEY

ldh[brenner.james.complaint.amend]

DE 74

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

JAMES DOMER BRENNER et al.,

Plaintiffs,

v.

CASE NO. 4:14cv107-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

_____ /

SLOAN GRIMSLEY et al.,

Plaintiffs,

v.

CASE NO. 4:14cv138-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

_____ /

**ORDER DENYING THE MOTIONS TO DISMISS,
GRANTING A PRELIMINARY INJUNCTION, AND
TEMPORARILY STAYING THE INJUNCTION**

The issue in these consolidated cases is the constitutionality of Florida's refusal to allow same-sex marriages or to recognize same-sex marriages lawfully entered elsewhere.

The founders of this nation said in the preamble to the United States Constitution that a goal was to secure the blessings of liberty to themselves and their posterity. Liberty has come more slowly for some than for others. It was 1967, nearly two centuries after the Constitution was adopted, before the Supreme Court struck down state laws prohibiting interracial marriage, thus protecting the liberty of individuals whose chosen life partner was of a different race. Now, nearly 50 years later, the arguments supporting the ban on interracial marriage seem an obvious pretext for racism; it must be hard for those who were not then of age to understand just how sincerely those views were held. When observers look back 50 years from now, the arguments supporting Florida's ban on same-sex marriage, though just as sincerely held, will again seem an obvious pretext for discrimination. Observers who are not now of age will wonder just how those views could have been held.

The Supreme Court struck down part of the federal Defense of Marriage Act last year. *United States v. Windsor*, 133 S. Ct. 2675 (2013). Since that decision, 19 different federal courts, now including this one, have ruled on the constitutionality of state bans on same-sex marriage. The result: 19 consecutive

victories for those challenging the bans. Based on these decisions, gays and lesbians, like all other adults, may choose a life partner and dignify the relationship through marriage. To paraphrase a civil-rights leader from the age when interracial marriage was first struck down, the arc of history is long, but it bends toward justice.

These consolidated cases are here on the plaintiffs' motions for a preliminary injunction and the defendants' motions to dismiss. This order holds that 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. The order dismisses the claims against unnecessary defendants but otherwise denies the motions to dismiss. The order grants a preliminary injunction but also grants a temporary stay.

All of this accords with the unbroken line of federal authority since *Windsor*. Indeed, except for details about these specific parties, this opinion could end at this point, merely by citing with approval the circuit decisions striking down state bans on same-sex marriage: *Bostic v. Schaefer*, Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014).

I. Background

This order addresses two cases that have been consolidated for pretrial purposes. The order sometimes refers to Case No. 4:14cv107 as the “Brenner case.” The order sometimes refers to Case No. 4:14cv138 as the “Grimsley case.”

A. The Plaintiffs

The combined total of 22 plaintiffs in the two cases includes 9 sets of same-sex spouses who were lawfully married in New York, the District of Columbia, Iowa, Massachusetts, or Canada; the surviving spouse of a New York same-sex marriage; 2 individuals who have been in a same-sex relationship for 15 years, are not married, but wish to marry in Florida; and an organization asserting the rights of its members who lawfully entered same-sex marriages outside Florida. All the individual plaintiffs live in Florida. The details follow.

The first two Brenner-case plaintiffs are James D. Brenner and Charles D. Jones. Mr. Brenner has worked for the Florida Forest Service since 1981. Mr. Jones has worked for the Florida Department of Education since 2003. They were married in Canada in 2009. Mr. Brenner asserts that the state’s refusal to recognize their marriage eliminates a retirement option that would provide for Mr. Jones after Mr. Brenner’s death.

Brenner-case plaintiffs Stephen Schlairet and Ozzie Russ live in Washington County, Florida. They are not married in any jurisdiction. They meet all

requirements for marriage in Florida except that they are both men. They wish to marry and have applied to the defendant Washington County Clerk of Court for a marriage license. During breaks in employment, they have been unable to obtain healthcare coverage under one another's insurance plans because of Florida's challenged marriage provisions. Based solely on those provisions, the Clerk refuses to issue a license.

Grimsley-case plaintiffs Sloan Grimsley and Joyce Albu have been together for 9 years and were married in New York in 2011. They have two adopted minor children. Ms. Grimsley is a firefighter and paramedic for the City of Palm Beach Gardens, Florida. Ms. Grimsley and Ms. Albu are concerned that if something happens to Ms. Grimsley in the line of duty, Ms. Albu will not receive the same support the state provides to surviving opposite-sex spouses of first responders.

Grimsley-case plaintiffs Chuck Hunziker and Bob Collier have been together for over 50 years. They lived most of their lives in New York and were married there in 2013. They now are retired and live in Florida.

Grimsley-case plaintiffs Lindsay Myers and Sarah Humlie have been together for nearly 4 years and were married in the District of Columbia in 2012. They live in Pensacola, Florida. Ms. Myers works for the University of West Florida. Ms. Myers seeks the option to designate Ms. Humlie as her joint annuitant for pension purposes. Ms. Humlie does not receive health insurance through her

employer. Because state law prohibits public employers from providing insurance for same-sex spouses, Ms. Myers cannot get coverage for Ms. Humlie on Ms. Myers's health plan. The couple makes substantial payments each month for private health insurance for Ms. Humlie.

Grimsley-case plaintiffs Robert Loupo and John Fitzgerald have been together for 12 years. They were married in New York in 2013. Mr. Loupo is employed with the Miami-Dade County public schools. Mr. Fitzgerald is retired but previously worked for Miami-Dade County. Mr. Loupo wishes to designate Mr. Fitzgerald as his retirement-plan joint annuitant.

Grimsley-case plaintiffs Denise Hueso and Sandra Newson were married in Massachusetts in 2009. They lived in Massachusetts, but now they live in Miami. They have had custody of their now 15-year-old son for 5 years, first as foster parents and now as adoptive parents.

Grimsley-case plaintiffs Juan del Hierro and Thomas Gantt, Jr., have been together for 6 years and were married in Washington, D.C., in 2010. They live in North Miami Beach. They have an adopted son under age 2. Mr. Gantt taught for more than a decade in public schools but now works at a virtual school. If their marriage were recognized, Mr. Gantt would designate Mr. del Hierro as his pension beneficiary.

Grimsley-case plaintiffs Christian Ulvert and Carlos Andrade live in Miami. They have been together for 4 years and were married in the District of Columbia in 2013. Mr. Ulvert previously worked for the Florida Legislature and wishes to designate Mr. Andrade as his pension beneficiary. They wish to someday adopt children.

Grimsley-case plaintiffs Richard Milstein and Eric Hankin live in Miami Beach. They have been together for 12 years and were married in Iowa in 2010.

Grimsley-case plaintiff Arlene Goldberg married Carol Goldwasser in New York in 2011. Ms. Goldwasser died in March 2014. The couple had been together for 47 years. Ms. Goldwasser was the toll-facilities director for Lee County, Florida, for 17 years. Ms. Goldberg is retired but works part time at a major retailer. The couple had been living with and taking care of Ms. Goldwasser's elderly parents, but now Ms. Goldberg cares for them alone. Social-security benefits are Ms. Goldberg's primary income. Florida's refusal to recognize the marriage has precluded Ms. Goldberg from obtaining social-security survivor benefits. Ms. Goldberg says that for that reason only, she will have to sell her house, and Ms. Goldwasser's parents are looking for another place to live. Ms. Goldberg also wishes to amend Ms. Goldwasser's death certificate to reflect their marriage.

Grimsley-case plaintiff SAVE Foundation, Inc. was established in 1993 and is dedicated to promoting, protecting, and defending equality for lesbian, gay, bisexual, and transgendered people. SAVE's activities include education initiatives, outreach, grassroots organizing, and advocacy. In this action SAVE asserts the rights of its members who are same-sex couples and have lawfully married outside of Florida.

B. The Defendants

The Brenner and Grimsley cases have four defendants in common. The Brenner case adds a fifth.

The defendants in common are State of Florida officers, all in their official capacities: the Governor, the Attorney General, the Surgeon General, and the Secretary of the Department of Management Services. This order sometimes refers to these four defendants as the "state defendants." The order sometimes refers to the Secretary of the Department of Management Services as "the Secretary."

The fifth defendant in the Brenner case is the Clerk of Court of Washington County, Florida, again in his official capacity. This order sometimes refers to him as the "Clerk of Court" or simply "the Clerk."

C. The Claims

In each case, the plaintiffs have filed an amended complaint. Each amended complaint asserts that the Florida same-sex marriage provisions violate the Fourteenth Amendment's Due Process and Equal Protection Clauses. On the Equal Protection claim, the Brenner plaintiffs say the challenged provisions improperly discriminate based on sexual orientation, while the Grimsley plaintiffs assert improper discrimination based on both sexual orientation and sex (that is, gender). The Brenner plaintiffs assert additional claims based on the First Amendment's right of association, the Establishment Clause, and the Supremacy Clause.

D. The Challenged Provisions

The Brenner and Grimsley plaintiffs all challenge Article I, § 27, of the Florida Constitution, and Florida Statutes § 741.212. The Brenner plaintiffs also challenge Florida Statutes § 741.04(1).

Article I, § 27 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.

Florida Statutes § 741.212 provides:

(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either

domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.

(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.

(3) For purposes of interpreting any state statute or rule, the term “marriage” means only a legal union between one man and one woman as husband and wife, and the term “spouse” applies only to a member of such a union.

Florida Statutes § 741.04(1) provides:

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person . . . unless one party is male and the other party is female.

E. The Pending Motions

In each case, the plaintiffs have moved for a preliminary injunction barring enforcement of the challenged provisions. The defendants oppose the motions and assert that if a preliminary injunction is granted, it should be stayed pending appeal.

In each case, the state defendants have moved to dismiss the amended complaint. They do not contest the standing of most of the plaintiffs to bring these

cases. They acknowledge that the Secretary of the Department of Management Services is a proper defendant, but they assert that the Governor, Attorney General, and Surgeon General are not. They say these defendants have no role in enforcing the challenged provisions. On the merits, the state defendants say the state's same-sex marriage provisions are constitutional.

The Clerk of Court has moved to dismiss the Brenner amended complaint—the only one in which the Clerk is named as a defendant—on the ground that he has done nothing more than comply with state law, that he therefore is not a proper defendant, and that, in any event, the state's same-sex marriage provisions are constitutional.

All parties have agreed that these motions should be decided based on the existing record, without further evidence.

II. Standing

The plaintiffs whose financial interests are directly affected by the Florida marriage provisions plainly have standing to challenge them. This apparently includes most or all of the individual plaintiffs. The effect is the most direct for current or former public employees who are unable to obtain for themselves or their spouses the same benefits—primarily retirement benefits and healthcare coverage—as are available to opposite-sex couples. The defendants do not challenge the plaintiffs' standing in this respect.

The defendants question only Ms. Goldberg's standing to pursue a change in Ms. Goldwasser's death certificate or to seek social-security benefits based on their marriage. But Ms. Goldberg has standing on each basis. The death certificate says Ms. Goldwasser was "never married" and, in the blank for listing a spouse, says "none." That a spouse would find this offensive and seek to have it changed is neither surprising nor trivial. Ms. Goldberg has a sufficient personal stake in pursuing this relief to have standing.

III. The Proper Defendants

Under *Ex parte Young*, 209 U.S. 123 (1908), a plaintiff may pursue a federal constitutional claim for prospective relief against an official-capacity state defendant who "is responsible for the challenged action" or who, " 'by virtue of his office, has some connection' with the unconstitutional act or conduct complained of." *Luckey v. Harris*, 860 F.2d 1012, 1015-16 (11th Cir. 1988) (quoting *Ex parte Young*, 209 U.S. at 157).

The state defendants acknowledge that the Secretary meets this test. The Secretary administers the retirement and healthcare provisions that apply to current and former state employees. As required by the challenged provisions, the Secretary refuses to recognize same-sex marriages. The plaintiffs assert that the Secretary thus violates the United States Constitution.

The Surgeon General also meets the test. The Surgeon General is the head of the Department of Health. The Surgeon General thus must “execute the powers, duties, and functions” of the department. Fla. Stat. § 20.05(1)(a). Those functions include establishing the official form for death certificates, which must include the decedent’s “marital status.” *Id.* § 382.008(6). The official form includes a blank for listing the decedent’s spouse. The Department may change a death certificate’s marital information when the name of a “surviving spouse” is omitted or based on an order from “a court of competent jurisdiction.” *Id.* § 382.016(2). This is a court of competent jurisdiction, Ms. Goldberg seeks such an order, and the person to whom such an order should properly be directed is the Surgeon General. He is a proper defendant in this action.

Whether the Governor and Attorney General are proper defendants is less clear. It also makes no difference. As the state defendants acknowledge, an order directed to the Secretary—or, for matters relating to the death certificate, to the Surgeon General—will be sufficient to provide complete relief. The Eleventh Circuit has held that a district court may dismiss claims against redundant official-capacity defendants. *See Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991) (approving the dismissal of official-capacity defendants whose presence was merely redundant to the naming of an institutional defendant). The prudent course here is to dismiss the Governor and Attorney General on this basis. *See generally*

Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 341, 345-46 (1936) (Brandeis, J., concurring) (setting out fundamental principles of constitutional adjudication, including that, “The Court will not ‘anticipate a question of constitutional law in advance of the necessity of deciding it’ ”) (quoting earlier authorities in part); *see also Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988) (“A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.”), *quoted with approval in United States v. \$242,484.00*, 318 F.3d 1240, 1242 n.2 (11th Cir. 2003).

If it turns out later that complete relief cannot be afforded against the Secretary and Surgeon General, any necessary and proper additional defendant can be added.

Finally, the Clerk of Court for Washington County is plainly a proper defendant. The Clerk denied a marriage license to Mr. Schlairet and Mr. Russ and would properly be ordered to issue the license if they prevail on their claims in this action. That the Clerk was acting in accordance with state law does not mean he is not a proper defendant. Quite the contrary. The whole point of *Ex parte Young* is to provide a remedy for unconstitutional action that is taken under state authority, including, as here, a state constitution or laws.

In sum, this action will go forward against the Secretary, the Surgeon General, and the Clerk. The claims against the Governor and Attorney General will be dismissed without prejudice as redundant.

IV. The Merits

The Fourteenth Amendment provides, among other things, that a state shall not “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The amendment was added to the Constitution after the Civil War for the express purpose of protecting rights against encroachment by state governments. By that time it was well established that a federal court had the authority—indeed, the duty—to strike down an unconstitutional statute when necessary to the decision in a case or controversy properly before the court. The State of Florida has itself asked federal courts to do so. So the suggestion that this is just a federalism case—that the state’s laws are beyond review in federal court—is a nonstarter.

That this case involves marriage does not change this result. The Supreme Court recognized this in *Loving v. Virginia*, 388 U.S. 1 (1967). There the Court struck down a Virginia statute that prohibited interracial marriage. The defendants say interracial marriage is different from same-sex marriage. But on the question of whether a federal court has the authority—indeed, the duty—to strike down a state marriage provision if it conflicts with a party’s rights under the Fourteenth

Amendment, *Loving* is on point and controlling. So are *Zablocki v. Redhail*, 434 U.S. 374 (1978), and *Turner v. Safley*, 482 U.S. 78 (1987), where the Court invalidated state provisions restricting marriage. Further, in *Windsor*, the Court said—three times—that a state’s interest “in defining and regulating marital relations” is “subject to constitutional guarantees.” 133 S. Ct. at 2691, 2692. In short, it is settled that a state’s marriage provisions must comply with the Fourteenth Amendment and may be struck down when they do not.

It bears noting, too, that the defendants’ invocation of Florida’s prerogative as a state to set the rules that govern marriage loses some of its force when the issue raised by 20 of the 22 plaintiffs is the validity of marriages lawfully entered in other jurisdictions. The defendants do not explain why, if a state’s laws on marriage are indeed entitled to such deference, the State of Florida is free to ignore the decisions of other equally sovereign states, including New York, Iowa, and Massachusetts.

In sum, the critical issue is whether the challenged Florida provisions contravene the plaintiffs’ rights to due process and equal protection. The general framework that applies to such claims is well settled.

First, the Due Process Clause includes a substantive element—a check on a state’s authority to enact certain measures regardless of any procedural safeguards the state may provide. Substantive due process is an exceedingly narrow concept

that protects only fundamental rights. When governmental action impinges on fundamental rights and is challenged in a case properly before a court, the court reviews the governmental action with strict scrutiny. Whether some actions that impinge on fundamental rights are properly subject to a lower level of scrutiny—sometimes labeled intermediate scrutiny—is unsettled and ultimately makes no difference here.

Second, under the Equal Protection Clause, a court applies strict scrutiny to governmental actions that impinge on fundamental rights or employ suspect classifications. Most other governmental actions are subject to only rational-basis review. Some actions are properly subject to intermediate equal-protection scrutiny, but the scope of actions subject to intermediate scrutiny is unsettled and ultimately makes no difference here.

So the first step in analyzing the merits in these cases, as both sides agree, is determining whether the right asserted by the plaintiffs is a fundamental right as that term is used in due-process and equal-protection jurisprudence. Almost every court that has addressed the issue since the Supreme Court's 2013 decision in *Windsor* has said the answer is yes. That view is correct.

The right asserted by the plaintiffs is the right to marry. The Supreme Court has repeatedly recognized that this is a fundamental right. Thus, for example, in *Loving*, the Court held that Virginia's ban on interracial marriage violated the Due

Process and Equal Protection Clauses, even though similar bans were widespread and of long standing. The Court did not cast the issue as whether the right to *interracial* marriage was fundamental. *See Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1202 (D. Utah 2013) (“Instead of declaring a new right to interracial marriage, the Court held [*in Loving*] that individuals could not be restricted from exercising their existing right to marry on account of the race of their chosen partner.”).

Similarly, in *Zablocki*, the Court labeled the right to marry fundamental and struck down, on equal-protection grounds, a Wisconsin statute that prohibited residents with unpaid court-ordered child-support obligations from entering new marriages. The Court did not ask whether the right not to pay child support was fundamental, or whether the right to marry while owing child support was fundamental; the Court started and ended its analysis on this issue with the accepted principle that the right *to marry* is fundamental.

The Court took the same approach in *Turner*. A Missouri regulation prohibited prisoners from marrying other than for a compelling reason. The Court said the state’s interests in regulating its prisons were insufficient to overcome the prisoners’ fundamental right to marry. The Court did not ask whether there is a fundamental right to marry while in prison, as distinguished from the more general right to marry.

In other cases, too, the Court has said the right to marry is fundamental. Indeed, the Court has sometimes listed marriage as the very paradigm of a fundamental right. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (refusing to recognize assisted suicide as a fundamental right, listing rights that *do* qualify as fundamental, and placing the right to marry first on the list); *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (including the right to marry in the fundamental right to privacy); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) (labeling marriage “one of the basic civil rights of man”); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (saying that “[w]ithout doubt” the right “to marry” is within the liberty protected by the Due Process Clause); *Maynard v. Hill*, 125 U.S. 190, 205 (1888) (labeling marriage “the most important relation in life”).

Perhaps recognizing these authorities, the defendants do not, and could not plausibly, assert that the right to marry is not a fundamental right for due-process and equal-protection purposes. Few rights are *more* fundamental. The defendants assert, though, that the right at issue in the cases at bar is the right to marry a person of the same sex, not just the right to marry. In support of this assertion, the defendants cite a principle derived from *Glucksberg*: due-process analysis requires a “ ‘careful description’ of the asserted fundamental liberty interest.” 521 U.S. at 721 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

A careful description means only an accurate one, determined at the appropriate level of generality. Indeed, *Glucksberg* itself said the right to marry is fundamental, describing the right at that level of generality. 521 U.S. at 720. And *Loving*, *Zablocki*, and *Turner* applied the right to marry at that level of generality, without asking whether the specific application of the right to marry—to interracial marriage or debtor marriage or prisoner marriage—was fundamental when viewed in isolation.

This approach makes sense. The point of fundamental-rights analysis is to protect an individual's liberty against unwarranted governmental encroachment. So it is a two-step analysis: is the right fundamental, and, if so, is the government encroachment unwarranted (that is, does the encroachment survive strict scrutiny)? At the first step, the right to marry—to choose one's own spouse—is just as important to an individual regardless of whom the individual chooses to marry. So the right to marry is just as important when the proposed spouse is a person of the same race and different sex (as in the most common marriages, those that have been approved without controversy for the longest period), or a person of a different race (as in *Loving*), or a person with unpaid child-support obligations (as in *Zablocki*), or a prisoner (as in *Turner*), or a person of the same sex (as in the cases at bar).

It is only at the second step—on the question of whether the government encroachment is unwarranted—that the nature of the restriction becomes critical. The governmental interest in *overriding* a person’s fundamental right to marry may be different in these different situations—that certainly was the case in *Zablocki* and *Turner*, for example—but that is a different issue from whether the right itself is fundamental. The right to marry is as fundamental for the plaintiffs in the cases at bar as for any other person wishing to enter a marriage or have it recognized.

That leaves for analysis the second step, the application of strict scrutiny. A state may override a fundamental right through measures that are narrowly tailored to serve a compelling state interest. A variety of justifications for banning same-sex marriages have been proffered by these defendants and in the many other cases that have plowed this ground since *Windsor*. The proffered justifications have all been uniformly found insufficient. Indeed, the states’ asserted interests would fail even intermediate scrutiny, and many courts have said they would fail rational-basis review as well. On these issues the circuit decisions in *Bostic*, *Bishop*, and *Kitchen* are particularly persuasive. All that has been said there is not repeated here.

Just one proffered justification for banning same-sex marriage warrants a further note. The defendants say the critical feature of marriage is the capacity to procreate. Same-sex couples, like opposite-sex couples and single individuals, can

adopt, but same-sex couples cannot procreate. Neither can many opposite-sex couples. And many opposite-sex couples do not wish to procreate.

Florida has never conditioned marriage on the desire or capacity to procreate. Thus individuals who are medically unable to procreate can marry in Florida. If married elsewhere, their marriages are recognized in Florida. The same is true for individuals who are beyond child-bearing age. And individuals who have the capacity to procreate when married but who voluntarily or involuntarily become medically unable to procreate, or pass the age when they can do so, are allowed to remain married. In short, the notion that procreation is an essential element of a Florida marriage blinks reality.

Indeed, defending the ban on same-sex marriage on the ground that the capacity to procreate is the essence of marriage is the kind of position that, in another context, might support a finding of pretext. It is the kind of argument that, in another context, might be “accompanied by a suspicion of mendacity.” *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993). The undeniable truth is that the Florida ban on same-sex marriage stems entirely, or almost entirely, from moral disapproval of the practice. Properly analyzed, the ban must stand or fall on the proposition that the state can enforce that moral disapproval without violating the Fourteenth Amendment.

The difficulty for the defendants is that the Supreme Court has made clear that moral disapproval, standing alone, cannot sustain a provision of this kind. *Windsor* so indicates. Further, in *Bowers v. Hardwick*, 478 U.S. 186 (1986), the Court upheld a state law prohibiting sodomy, basing the decision on the state's prerogative to make moral choices of this kind. But later, in *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court revisited the issue, struck down a statute prohibiting gay sex, and expressly overruled *Bowers*. In his *Lawrence* dissent, Justice Scalia made precisely the point set out above—that a ban on same-sex marriage must stand or fall on the proposition that the state can enforce moral disapproval of the practice without violating the Fourteenth Amendment. Justice Scalia put it this way: “State laws against . . . same-sex marriage . . . are likewise sustainable only in light of *Bowers*' validation of laws based on moral choices.” *Lawrence*, 539 U.S. at 590 (Scalia, J., dissenting).

Had we begun with a clean slate, one might have expected the defendants to lead off their arguments in this case by invoking the state's moral disapproval of same-sex marriage. But the defendants did not start there, undoubtedly because any such defense would run headlong into the Supreme Court's decisions in *Lawrence* and *Windsor*. See also *Romer v. Evans*, 517 U.S. 620 (1996) (striking down a state constitutional amendment that discriminated based on sexual orientation). Each of these decisions rejected moral disapproval of same-sex

orientation as a legitimate basis for a law. *See also Bowers*, 478 U.S. at 216 (Stevens, J., dissenting) (“[T]he fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice; neither history nor tradition could save a law prohibiting miscegenation from constitutional attack.”).

In short, we do not write on a clean slate. Effectively stripped of the moral-disapproval argument by binding Supreme Court precedent, the defendants must fall back on make-weight arguments that do not withstand analysis. Florida’s same-sex marriage provisions violate the Due Process and Equal Protection Clauses.

In reaching this conclusion, I have not overlooked the defendants’ reliance on *Baker v. Nelson*, 409 U.S. 810 (1972), and *Lofton v. Sec’y of Dep’t of Children & Family Servs.*, 358 F.3d 804 (11th Cir. 2004).

In *Baker*, the Supreme Court dismissed for want of a substantial federal question an appeal from a state supreme court decision rejecting a constitutional challenge to the state’s ban on same-sex marriage. Such a summary disposition binds lower federal courts unless “doctrinal developments” in the Supreme Court undermine the decision. *See Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975) (holding that a summary disposition binds lower courts “except when doctrinal developments indicate otherwise”) (quoting *Port Auth. Bondholders Protective*

Comm. v. Port of New York Auth., 387 F.2d 259, 263 n.3 (2d Cir. 1967) (Friendly, J.)). The Eleventh Circuit has recognized this principle:

Doctrinal developments need not take the form of an outright reversal of the earlier case. The Supreme Court may indicate its willingness to reverse or reconsider a prior opinion with such clarity that a lower court may properly refuse to follow what appears to be binding precedent. Even less clear-cut expressions by the Supreme Court can erode an earlier summary disposition because summary actions by the Court do not carry the full precedential weight of a decision announced in a written opinion after consideration of briefs and oral argument. The Court could suggest that a legal issue once thought to be settled by a summary action should now be treated as an open question, and it could do so without directly mentioning the earlier case. At that point, lower courts could appropriately reach their own conclusions on the merits of the issue.

Hardwick v. Bowers, 760 F.2d 1202 (11th Cir. 1985) (citations omitted), *rev'd on other grounds*, *Bowers v. Hardwick*, 478 U.S. 186 (1986), *overruled by Lawrence v. Texas*, 539 U.S. 558 (2003).

Every court that has considered the issue has concluded that the intervening doctrinal developments—as set out in *Lawrence*, *Romer*, and *Windsor*—have sapped *Baker*'s precedential force.

In *Lofton*, the plaintiffs challenged a Florida statute that prohibited adoptions by gays. Circuit precedent held, and both sides agreed, that adoption was *not* a fundamental right. The court said sexual orientation was not a suspect classification. With no fundamental right and no suspect classification, the court

applied only rational-basis scrutiny, not strict or intermediate scrutiny. And the court said that, because of the primacy of a child's welfare, "the state can make classifications for adoption purposes that would be constitutionally suspect in other arenas." 358 F.3d at 810. The court criticized the Supreme Court's *Lawrence* decision, 358 F.3d at 816-17, and apparently gave it little or no sway. The court upheld the Florida statute. The statute—the last in the nation banning gay adoption—was later struck down by Florida's own courts. *See Florida Dep't of Children & Families v. Adoption of X.X.G.*, 45 So. 3d 79, 81 (Fla. 3d DCA 2010).

The plaintiffs argue, with considerable force, that *Lofton* does not square with *Lawrence*, *Romer*, and *Windsor*. But *Lofton* is the law of the circuit. It establishes that, at least for now, sexual orientation is not a suspect classification in this circuit for equal-protection purposes. But *Lofton* says nothing about whether marriage is a fundamental right. *Lofton* does not change the conclusion that Florida's same-sex marriage provisions violate the Due Process and Equal Protection Clauses.

The institution of 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, including these plaintiffs, 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.

V. Preliminary Injunction

As a prerequisite to a preliminary injunction, a plaintiff must establish a substantial likelihood of success on the merits, that the plaintiff will suffer irreparable injury if the injunction does not issue, that the threatened injury outweighs whatever damage the proposed injunction may cause a defendant, and that the injunction will not be adverse to the public interest. *See, e.g., Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc).

For the reasons set out above, the plaintiffs are likely to prevail on the merits. The plaintiffs also meet the other requirements for a preliminary injunction. The plaintiffs will suffer irreparable harm if an injunction is not issued. Indeed, the ongoing unconstitutional denial of a fundamental right almost always constitutes irreparable harm. The threatened injury to the plaintiffs outweighs whatever damage the proposed injunction may cause the defendants, that is, the state. And a preliminary injunction will not be adverse to the public interest. Vindicating constitutional rights almost always serves the public interest.

This order requires the plaintiffs' to give security for costs in a modest amount. Any party may move at any time to adjust the amount of security.

VI. Stay

A four-part test governs stays pending appeal: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). *See also Venus Lines Agency v. CVG Industria Venezolana De Aluminio, C.A.*, 210 F.3d 1309, 1313 (11th Cir. 2000) (applying the same test).

The four-part test closely tracks the four-part test governing issuance of a preliminary injunction. Because the governing four-part tests are so similar, it is a rare case in which a preliminary injunction is properly stayed pending appeal. This is the rare case.

As set out above, the state’s interest in refusing to allow or recognize the plaintiffs’ same-sex marriages is insufficient to override the plaintiffs’ interest in vindicating their constitutional rights. The public interest does not call for a different result. So the preliminary injunction will issue, eliminating any delay in this court, and allowing an enjoined party to go forward in the Eleventh Circuit.

But at the stay-pending-appeal stage, an additional public interest comes into play. There is a substantial public interest in implementing this decision just once—in not having, as some states have had, a decision that is on-again, off-

again. This is so for marriages already entered elsewhere, and it is more clearly so for new marriages. There is a substantial public interest in stable marriage laws. Indeed, there is a substantial public interest in allowing those who would enter same-sex marriages the same opportunity for due deliberation that opposite-sex couples routinely are afforded. Encouraging a rush to the marriage officiant, in an effort to get in before an appellate court enters a stay, serves the interests of nobody.

A stay thus should be entered for long enough to provide reasonable assurance that the opportunity for same-sex marriages in Florida, once opened, will not again close. The stay will remain in effect until stays have been lifted in *Bostic*, *Bishop*, and *Kitchen*, and for an additional 90 days to allow the defendants to seek a longer stay from this court or a stay from the Eleventh Circuit or Supreme Court.

There is one exception to the stay. The exception is the requirement to correct Ms. Goldwasser's death certificate. The correction is important to Ms. Goldberg. There is little if any public interest on the other side of the scale. There is no good reason to further deny Ms. Goldberg the simple human dignity of being listed on her spouse's death certificate. Indeed, the state's refusal to let that happen is a poignant illustration of the controversy that brings us here.

VII. Filing

Because this is an appealable order, it will be filed separately in each of the consolidated cases. Any notice of appeal must be filed separately in each case to which it applies.

VIII. Conclusion

The Supreme Court has repeatedly recognized the fundamental right to marry. The Court applied the right to interracial marriage in 1967 despite state laws that were widespread and of long standing. Just last year the Court struck down a federal statute that prohibited federal recognition of same-sex marriages lawfully entered in other jurisdictions. The Florida provisions that prohibit the recognition of same-sex marriages lawfully entered elsewhere, like the federal provision, are unconstitutional. So is the Florida ban on entering same-sex marriages.

For the reasons set out in this order,

IT IS ORDERED:

1. The state defendants' motion to dismiss, ECF No. 50 in Case No. 4:14cv107, is granted in part and denied in part. All claims against the defendant Governor and Attorney General are dismissed without prejudice as redundant. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b). In all other respects the motion to dismiss is denied.

2. The defendant Clerk of Court's motion to dismiss, ECF No. 49 in Case No. 4:14cv107, is denied.
3. The plaintiffs' motions for a preliminary injunction, ECF Nos. 2, 11, and 42 in Case No. 4:14cv107, are granted against the remaining defendants.
4. The defendant Secretary of the Florida Department of Management Services and the defendant Florida Surgeon General must take no steps to enforce or apply these Florida provisions on same-sex marriage: Florida Constitution, Article I, § 27; Florida Statutes § 741.212; and Florida Statutes § 741.04(1). The preliminary injunction set out in this paragraph will take effect upon the posting of security in the amount of \$500 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Secretary, the Surgeon General, and their 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.
5. The defendant Florida Surgeon General must issue a corrected death certificate for Carol Goldwasser showing that at the time of her death she was married to Arlene Goldberg. The deadline for doing so is the later of (a) September 22, 2014, or (b) 14 days after all information is provided that would be required in the ordinary course of business as a prerequisite to listing an opposite-sex spouse on a death certificate. 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 Surgeon General 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.

6. 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.

The preliminary injunctions set out in paragraphs 4 and 6 are stayed and will not take effect until 91 days after stays have been denied or lifted in *Bostic v. Schaefer*,

Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014). The stay may be lifted or extended by further order.

SO ORDERED on August 21, 2014.

s/Robert L. Hinkle
United States District Judge

DE 77

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

JAMES DOMER BRENNER, *et al.*,

Plaintiffs,

v.

Case No. 4:14-cv-107-RH/CAS

RICK SCOTT, in his official capacity
as Governor of Florida, *et al.*,

Defendants.

JOINT NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that **Dr. John H. Armstrong**, in his official capacity as Secretary of the Florida Department of Health and Florida Surgeon General; **Craig J. Nichols**, in his official capacity as Secretary of the Florida Department of Management Services; and **Harold Bazzell**, in his official capacity as Clerk of Court and Comptroller for Washington County, Florida—defendants in the above-named case—hereby jointly appeal to the United States Court of Appeals for the Eleventh Circuit from the order entered in this action by the district court on August 21, 2014, (DE 74), granting a preliminary injunction against said defendants in this action.

[continued on next page]

Respectfully submitted by:

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ James J. Goodman, Jr.

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*Counsel for the Secretary of the Florida
Department of Health and for the
Secretary of the Florida Department of
Management Services*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this fourth day of September, 2014, a true copy of the foregoing joint notice of appeal has been filed with the Court utilizing its CM/ECF system, which will transmit a notice of said electronic filing to all plaintiffs' and defendants' counsel of record registered with the Court for that purpose; and that a true copy of the foregoing was served via electronic mail, upon written consent, to Samuel Jacobson, Esquire; at Bledsoe, Jacobson, Schmidt, Wright, Lang & Wilkinson, at email addresses sam@jacobsonwright.com and kathy@jacobsonwright.com.

/s/ Adam S. Tanenbaum

ADAM S. TANENBAUM
Florida Bar No. 117498

DE 78

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

JAMES DORMER BRENNER *et al.*,

Plaintiffs,

v.

FILE NO. : 4:14-cv-107-RH/CAS

RICK SCOTT, in his official capacity as
GOVERNOR of Florida, *et al.*,

Defendants.

**DEFENDANT HAROLD BAZZELL'S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS' FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

COMES NOW, Defendant, Harold Bazzel, in his official capacity as Clerk of Court and Comptroller for Washington County, Florida, by and through the undersigned counsel and would answer the Plaintiffs' First Amended Verified Complaint for Declaratory and Injunctive Relief and state related affirmative defenses as follows:

THE PLAINTIFFS

a. Plaintiffs Brenner and Jones

1. Without knowledge and therefore denied.
2. Without knowledge and therefore denied.
3. Without knowledge and therefore denied.
4. Without knowledge and therefore denied.
5. Without knowledge and therefore denied.

6. Without knowledge and therefore denied.
7. Admitted to the extent that their alleged marriage is not currently recognized by the State of Florida. Without knowledge and therefore denied as to the remainder.
8. Admitted with respect to the wishes of the Plaintiffs. Without knowledge and therefore denied as to the remainder.
9. Without knowledge and therefore denied.
10. Admitted.
11. Admitted.
12. Admitted to the extent that their alleged marriage is not currently recognized by the State of Florida. Without knowledge and therefore denied as to the remainder.

b. Plaintiffs Schlairet and Russ

13. Admitted.
14. Without knowledge and therefore denied.
15. Without knowledge and therefore denied.
16. Without knowledge and therefore denied.
17. Without knowledge and therefore denied.
18. Admitted to the extent that the Plaintiffs desire to have their commitment recognized and with respect to the limitations currently allowed pursuant to Florida Law. Without knowledge and therefore denied as to the remainder.

19. Without knowledge and therefore denied.
20. Admitted for jurisdictional purposes only.
21. Admitted to the extent that their desired marriage is not currently recognized by the State of Florida. Without knowledge and therefore denied as to the remainder.
22. Admitted as to what is shown in Exhibit "A".
23. Admitted in so much as the denial was pursuant to Florida Statute 741.212.
24. Denied.
25. Without knowledge and therefore denied.
26. Without knowledge and therefore denied.
27. Admitted with respect to the desires of the Plaintiff. Without knowledge and therefore denied as to the remainder.

THE DEFENDANTS

28. Admitted for jurisdictional purposes regarding official capacity of Defendant.
29. Admitted for jurisdictional purposes regarding official capacity of Defendant.
30. Admitted for jurisdictional purposes regarding official capacity of Defendant.
31. Admitted for jurisdictional purposes regarding official capacity of Defendant.
32. Admitted for jurisdictional purposes regarding official capacity of Defendant.
33. Admitted for jurisdictional purposes regarding official capacity of Defendants.

34. Denied.

JURISDICTION AND VENUE

35. Admitted for jurisdictional purposes but denied with respect to the validity of the actions brought.

36. Admitted for jurisdictional purposes but denied with respect to the validity of the proposed relief sought.

37. Admitted for jurisdictional purposes.

38. Admitted for jurisdictional purposes.

CONSTITUTIONAL AND STATUTORY PROVISIONS CHALLENGED

39. Admitted.

40. Admitted.

41. Admitted.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

CLAIMS FOR RELIEF

COUNT I: DEPRIVATION OF DUE PROCESS

49. The responses in paragraphs 1 through 48 above are adopted and incorporated by reference herein.

50. Admitted.

51. Admitted.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

COUNT II: EQUAL PROTECTION

60. The responses in paragraphs 1 through 59 above are adopted and incorporated by reference herein.

61. Admitted.
62. Denied.
63. Denied.
64. Denied.
65. Denied.
66. Denied.
67. Denied.
68. Denied.
69. Without knowledge and therefore denied.
70. Denied.
71. Without knowledge and therefore denied.
72. Denied.
73. Denied.
74. Denied.
75. Denied.

COUNT III: FREEDOM OF ASSOCIATION

76. The responses in paragraphs 1 through 75 above are adopted and incorporated by reference herein.

77. Admitted.

78. Denied.

COUNTY IV: SUPREMACY CLAUSE

79. The responses in paragraphs 1 through 78 above are adopted and incorporated by reference herein.

80. Admitted.

81. Admitted only in that the Supremacy Clause places certain limitations on State Law(s) in direct contradiction with certain Federal Law. Denied with respect to any addition thereto or the application of the Supremacy Clause in this instance and under these facts.

82. Denied.

83. Admitted with respect to the protection of travel of individuals but denied with respect as to the application of the Fourteenth Amendment in this matter.

84. Denied.

85. Denied.

86. Denied.

COUNT V: ESTABLISHMENT CLAUSE

87. The responses in paragraphs 1 through 86 above are adopted and incorporated by reference herein.

88. Admitted.

89. Admitted.

90. Denied.

91. Denied.

92. Denied.

COUNT VI: HARM TO THE PLAINTIFFS AND NEED FOR INJUNCTIVE RELIEF

93. The responses in paragraphs 1 through 92 above are adopted and incorporated by reference herein.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

PRAYER FOR RELIEF

WHEREFORE, the Defendant, Harold Bazzel respectfully request that this Honorable Court:

A. Deny the Plaintiffs' request to enter a declaratory judgment that article I, section 27 of the Florida Constitution violates the Due Process, Equal Protection, Freedom of Association, Supremacy, and/or other clauses of the United States Constitution;

B. Deny the Plaintiffs' request to enter a declaratory judgment that Section 741.04, Florida Statutes (2013), violates the Due Process, Equal Protection, Freedom of Association, Supremacy, and/or other clauses of the United States Constitution;

C. Deny the Plaintiffs' request to enter a declaratory judgment that Section 741.212, Florida Statutes (2013), violates the Due Process, Equal Protection, Freedom of Association, Supremacy, and/or other clauses of the United States Constitution;

D. Deny the Plaintiffs' request to enter an order directing Defendants Scott, Bondi, and Armstrong to recognize marriages in Florida that were allegedly validly entered into by Plaintiffs Brenner and Jones and other same-sex couples outside of the State of Florida;

E. Deny the Plaintiffs' request to enter an order directing Defendant Bazzel to issue Plaintiffs Schlairet and Russ a marriage license;

F. Deny the Plaintiffs' request to enter an order directing Nichols to allow Plaintiff Brenner to designate his spouse, Plaintiff Jones, as a recognized spouse or annuitant for purposes of his state retirement benefits;

G. Deny the Plaintiffs' request to receive the award costs of suit, including any requested attorneys' fees; and

H. To enter any and all further relief as this Court deems just and proper.

AFFIRMATIVE DEFENSES

By way of affirmative defenses, Harold Bazzel asserts the following.

First Defense

- I. Lack of Subject Matter Jurisdiction for Declaratory Relief over the Washington County Clerk of Court.

The Clerk, as a ministerial officer, is not an antagonistic party with respect to the Plaintiffs and has no adverse interest opposed to the Plaintiffs. In the absence of such relationship, the Court lacks subject matter jurisdiction to entertain the action for declaratory relief. Further, Section 741.04, Florida Statutes, sets forth the criteria for the issuance of a marriage license. The Clerk lacks authority to issue any license outside of said statute. This is substantiated by the issuance of such marriage license being a misdemeanor in the first degree. In this matter, the Clerk is duty-bound to adhere to the statute(s) and arguably lacks standing to challenge or defend the validity or constitutionality of the statute. Thus, the Clerk has no adversarial interest as required in a request for declaratory relief.

Second Defense

- II. The Plaintiffs' Claims are not Redressable by the Clerk and thus the Plaintiffs have Failed to State a Cause of Action.

The Plaintiffs have failed to state a cause of action because their injuries are not redressable by the Washington County Clerk of Court. The Clerk cannot, solely by his action, provide the Plaintiffs the relief they seek. The Clerk's only function with respect to the subject matter of the Complaint is to issue and make a record of a marriage license pursuant to Section 741.04, Florida Statutes. Essentially, the Plaintiffs request that the Clerk execute and make a

record of a marriage license in violation of Section 741.04, Florida Statutes, which is arguably criminal. Further, even if the Clerk performed said acts, the other statutory and constitutional provisions at issue would make said license null and void. The Clerk's duties being ministerial in nature do not allow him to provide the relief requested by the Plaintiffs in this matter. As a result, Plaintiffs' claims are not justiciable.

Third Defense

III. No County Policy or Custom Alleged.

The Clerk is a County Constitutional officer pursuant to Article VIII, Florida Constitution. Under 42 U.S.C. §1983 an official capacity action against a county officer is deemed to be an action against the county.

Plaintiffs have failed to allege that the purported constitutional violation was caused by a policy or custom of Washington County, as would be required to state a claim in this matter. Washington County does not establish the criteria for issuance of marriage licenses; state law does. A county officer who, in his official capacity, adheres to state law to avoid criminal liability under state law does not do so pursuant to a county or municipal custom or policy. An allegation that a county official followed state law is not sufficient to state a cause of action against a county in this matter.

Fourth Defense

IV. Immunity.

The Clerk is also a Constitutional officer pursuant to the Article of the Florida Constitution pertaining to the Judiciary. Art. V, Sec. 16, Fla. Const. (1968). To the extent that

the Plaintiffs would claim that the Clerk's statutory duties pertaining to marriage licenses are court-related, arising under Article V of the Florida Constitution rather than Article VIII, the Clerk would be acting as a judicial officer and would have judicial or quasi-judicial immunity from suit in this matter. Finally, Plaintiffs have not alleged that the acts of the Clerk and his deputies with respect to the issuance of marriage licenses were taken in excess of the Clerk's jurisdiction.

Reservation of Right to Amend

The Clerk hereby reserves the right to assert such additional defenses and counterclaims as may be warranted as the case proceeds.

WHEREFORE, the Clerk respectfully requests that this Court enter judgment in favor of the Clerk, award the Clerk attorney's fees and costs; and grant such further relief as the Court deems just, equitable, and proper.

Dated this 4th day of September, 2014.

Respectfully submitted,
JEFF GOODMAN, P.A.

/s/ James J. Goodman, Jr.
James J. Goodman, Jr.
Florida Bar No. 0071877
946 Main Street
Chipley, Florida 32428
850-638-9722 Phone
850-638-9724 Fax
office@jeffgoodmanlaw.com
Counsel for Washington County Clerk of Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of September, 2014, a true copy of the foregoing has been filed with the Court utilizing its CM/ECF system, which will transmit a notice of said electronic filing to the plaintiff⁷ counsel of record, who are registered with the Court for that purpose; and that a true copy of the foregoing was served by first-class mail on Samuel Jacobson, Esquire, at Bledsoe, Jacobson, Schmidt, Wright, Lang & Wilkinson, at email addresses sam@jacobsonwright.com and Kathy@jacobsonwright.com.

/s/ James J. Goodman, Jr.
James J. Goodman, Jr.

DE 79

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

JAMES DOMER BRENNER, *et al.*,

Plaintiffs,

v.

Case No. 4:14-cv-107-RH/CAS

RICK SCOTT, in his official capacity
as Governor of Florida, *et al.*,

Defendants.

**ANSWER TO AMENDED VERIFIED COMPLAINT
BY SECRETARY OF FLORIDA DEPARTMENT OF HEALTH AND
SECRETARY OF FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**

COME NOW, Dr. John H. Armstrong, in his official capacity as the Secretary of the Florida Department of Health and Florida Surgeon General; and Craig J. Nichols, in his official capacity as Secretary of the Florida Department of Management Services (“DMS Secretary”); and answer, paragraph by paragraph, the factual allegations of the plaintiffs’ amended complaint (DE 10) as follows:

Paragraph labeled, “**Introduction**”: This paragraph makes purely legal assertions and does not require an answer.

1. Without knowledge, so denied.
2. Admitted that Brenner worked for the Florida Division of Forestry starting in 1981. Without knowledge regarding Brenner’s current employment, so otherwise denied.
3. Admitted that Jones is an active state employee. Without knowledge

regarding the details of Jones's current employment, so otherwise denied.

4. Without knowledge, so denied.
5. Without knowledge, so denied.
6. Florida's existing laws on marriage speak for themselves. Otherwise, without knowledge, so denied.
7. Without knowledge, so denied.
8. Without knowledge, so denied.
9. Admitted that Brenner entered Florida's Deferred Retirement Option Program ("DROP"), effective October 1, 2011. Admitted that had Brenner chosen option 3 or option 4 when he entered DROP, he would have been required to name a joint annuitant, but he would have been unable to name Jones as a joint annuitant, as that term is defined by Florida law. Otherwise without knowledge as to the circumstances of Brenner's decisions while enrolling in DROP, so denied.
10. This paragraph makes purely legal assertions and does not require an answer. The term "joint annuitant" is defined at section 121.021(28), Florida Statutes; and the Florida Retirement System is governed by Chapter 121, Florida Statutes, and related administrative rules.
11. This paragraph makes purely legal assertions and does not require an answer. The term "joint annuitant" is defined at section 121.021(28), Florida Statutes; and the Florida Retirement System is governed by Chapter 121, Florida Statutes, and related administrative rules.
12. Admitted that Brenner entered Florida's Deferred Retirement Option

Program (“DROP”). Admitted that had Brenner chosen option 3 or option 4 when he entered DROP, he would have been required to name a joint annuitant, but he would have been unable to name Jones as a joint annuitant, as that term is defined by Florida law. Otherwise without knowledge as to the circumstances of Brenner’s decisions while enrolling in DROP, so denied.

13. Without knowledge, so denied.

14. Without knowledge, so denied.

15. Without knowledge, so denied.

16. Without knowledge, so denied.

17. Without knowledge, so denied.

18. Florida’s existing laws on marriage speak for themselves. Otherwise, without knowledge, so denied.

19. Without knowledge, so denied.

20. Without knowledge, so denied.

21. Florida’s existing laws on marriage speak for themselves. Otherwise, without knowledge, so denied.

22. The attached document speaks for itself, but without knowledge of the circumstances and facts relating to the document; those allegations are denied. Otherwise without knowledge, so denied.

23. The attached document speaks for itself, but without knowledge of the circumstances and facts relating to the document; so those allegations are denied. Otherwise without knowledge, so denied.

24. Denied that Schlairet and Russ have suffered legal injury. Otherwise without knowledge, so denied.

25. Without knowledge, so denied.

26. Without knowledge, so denied.

27. Without knowledge, so denied.

28. Admitted that Governor Rick Scott is the Governor of Florida. The remainder of the allegations in this paragraph are legal assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the Governor; to the extent the assertions of this paragraph conflict with the law, the assertions are denied. The claims against the Governor have been dismissed.

29. Admitted that Attorney General Pamela Jo Bondi is the Attorney General of Florida. The remainder of the allegations in this paragraph are legal assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the Attorney General; to the extent the assertions of this paragraph conflict with the law, the assertions are denied. The claims against the Attorney General have been dismissed.

30. Admitted that Dr. John H. Armstrong is the Secretary of the Florida Department of Health and the Florida Surgeon General. The remainder of the allegations in this paragraph are legal assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the Surgeon General; to the extent the assertions of this paragraph conflict with the law, the assertions are denied.

31. Admitted that Craig J. Nichols is the Secretary of the Florida Department of Management Services. The remainder of the allegations in this paragraph are legal

assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the secretary and his agency; to the extent the assertions of this paragraph conflict with the law, the assertions are denied.

32. Admitted that Harold Bazzell is the current Clerk of Court and Comptroller for Washington County, Florida. The remainder of the allegations in this paragraph are legal assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the clerk; to the extent the assertions of this paragraph conflict with the law, the assertions are denied.

33. Admitted that the Secretary of the Florida Department of Health and the DMS Secretary purportedly have been sued in their official capacities regarding alleged acts taken under color of state law. Otherwise, denied.

34. Denied.

35. Admitted that this action purports to travel under section 1983, title 42, of the U.S. Code. Otherwise, denied.

36. Admitted.

37. Admitted that this Court has the authority to render declaratory and injunctive relief. Denied that the plaintiffs are entitled to that relief.

38. Admitted that venue is proper in this district and division. Otherwise, denied.

39. The quoted provision speaks for itself. This paragraph does not require a response.

40. The quoted provision speaks for itself. This paragraph does not require a

response.

41. The quoted provision speaks for itself. This paragraph does not require a response.

42. Denied.

43. This paragraph makes purely legal assertions and argument and does not require an answer. To the extent the Court were to characterize anything therein as a factual allegation, denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. The responses to paragraphs one through 48 set out above are incorporated by reference as if repeated here.

50. The Fourteenth Amendment and section 1983, title 42, of the U.S. Code speak for themselves. This paragraph does not require an answer.

51. This paragraph makes purely legal assertions and argument, which do not require a response here.

52. This paragraph makes purely legal assertions and argument, which do not require a response here.

53. This paragraph makes purely legal assertions and argument, which do not require a response here.

54. This paragraph makes purely legal assertions and argument, which do not require a response here.

55. Denied.

56. This paragraph makes purely legal assertions and argument, which do not require a response here.

57. Denied.

58. Denied.

59. This paragraph makes purely legal assertions and argument and does not require a response here. But denied that article I, section 27, of the Florida Constitution; and sections 741.04 and 741.212, Florida Statutes; violate the Florida Constitution or otherwise are unconstitutional.

60. The responses to paragraphs one through 48 set out above are incorporated by reference as if repeated here.

61. The Fourteenth Amendment and section 1983, title 42, of the U.S. Code speak for themselves. This paragraph does not require a response.

62. This paragraph makes purely legal assertions and argument, which do not require a response here.

63. This paragraph makes purely legal assertions and argument, which do not require a response here.

64. Denied.

65. Denied.

66. This paragraph makes purely legal assertions and argument, which do not

require a response here.

67. Denied.

68. Denied.

69. This paragraph makes purely legal assertions and argument, which do not require a response here.

70. This paragraph makes purely legal assertions and argument, which do not require a response here.

71. This paragraph makes purely legal assertions and argument, which do not require a response here.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. The responses to paragraphs one through 48 set out above are incorporated by reference as if repeated here.

77. The First Amendment and section 1983, title 42, of the U.S. Code speak for themselves. This paragraph does not require a response.

78. Denied.

79. The responses to paragraphs one through 48 set out above are incorporated by reference as if repeated here.

80. Article VI, section 2 of the United States Constitution speaks for itself. This paragraph does not require a response.

81. The Supremacy Clause of the United States Constitution speaks for itself. This paragraph otherwise makes purely legal assertions and argument, which do not require a response here.

82. Denied.

83. The Fourteenth Amendment speaks for itself. This paragraph does not require a response.

84. This paragraph makes purely legal assertions and argument, which do not require a response here.

85. This paragraph makes purely legal assertions and argument, which do not require a response here.

86. Denied.

87. The responses to paragraphs one through 48 set out above are incorporated by reference as if repeated here.

88. The First Amendment speaks for itself. This paragraph does not require an answer.

89. This paragraph makes purely legal assertions and argument, which do not require a response here.

90. Denied.

91. Denied.

92. Denied.

93. The responses to paragraphs one through 48 set out above are incorporated by reference as if repeated here.

94. Denied.

95. This paragraph makes purely legal assertions and argument, which do not require a response here.

96. This paragraph makes purely legal assertions and argument, which do not require a response here.

97. This paragraph makes purely legal assertions and argument, which do not require a response here.

98. This paragraph makes purely legal assertions and argument, which do not require a response here.

99. Denied.

100. This paragraph makes purely legal assertions and argument, which do not require a response here.

101. This paragraph makes purely legal assertions and argument, which do not require a response here.

The Secretary of the Florida Department of Health and the DMS Secretary deny each and every allegation not specifically admitted above.

WHEREFORE, the Secretary of the Florida Department of Health and the Secretary of the Florida Department of Management Services pray that the Court deny the relief requested by the plaintiffs, that the plaintiffs take nothing from this action, and that judgment be entered in favor of the defendants.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Adam S. Tanenbaum

ALLEN WINSOR (FBN 16295)

Solicitor General

ADAM S. TANENBAUM (FBN 117498)

Chief Deputy Solicitor General

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*Counsel for the Secretary of the Florida
Department of Health and for the Secretary
of the Florida Department of Management
Services*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this fourth day of September, 2014, a true copy of the foregoing answer was filed with the Court utilizing its CM/ECF system, which will transmit a notice of said electronic filing to all parties' counsel of record registered with the Court for that purpose; and that a true copy of the foregoing was served via electronic mail, upon written consent, to Samuel Jacobson, Esquire; at Bledsoe, Jacobson, Schmidt, Wright, Lang & Wilkinson, at email address sam@jacobsonwright.com and kathy@jacobsonwright.com.

/s/ Adam S. Tanenbaum

ADAM S. TANENBAUM
Florida Bar No. 117498

Filings in *Grimsley* Case

No. 4:14-cv-138

DE 16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

SLOAN GRIMSLEY and JOYCE ALBU;
BOB COLLIER and CHUCK HUNZIKER;
LINDSAY MYERS and SARAH HUMLIE;
ROBERT LOUPO and JOHN FITZGERALD;
DENISE HUESO and SANDRA NEWSON;
JUAN DEL HIERRO and THOMAS GANTT,
JR.; CHRISTIAN ULVERT and CARLOS
ANDRADE; RICHARD MILSTEIN and
ERIC HANKIN; ARLENE GOLDBERG; and
SAVE FOUNDATION, INC.,

Case No. 4:14-CV-00138-RH-CAS

Plaintiffs,

v.

RICK SCOTT, in his official capacity as
Governor for the State of Florida;
PAM BONDI, in her official capacity as
Attorney General for the State of Florida,
JOHN H. ARMSTRONG, in his official
capacity as Surgeon General and Secretary of
Health for the State of Florida; and
CRAIG J. NICHOLS, in his official capacity
as the Agency Secretary for the Florida
Department of Management Services,

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs are same-sex couples who were lawfully married outside the State of Florida. They bring this action to challenge the constitutionality of Article I, § 27 of the Florida

Constitution and § 741.212, Fla. Stat., which prohibit the State of Florida from recognizing the marriages of same-sex couples that were entered into in other jurisdictions. Florida, like other states, encourages and regulates marriage through hundreds of laws that provide benefits to and impose obligations on married couples. In exchange, Florida receives the well-established benefits that marriage brings: stable, supportive families that contribute to both the social and economic well-being of the State. It is because of the well-recognized benefits of marriage that Florida has traditionally recognized lawful marriages performed in other states.

2. Florida's refusal to recognize Plaintiffs' marriages unlawfully denies them many of the legal protections available to different-sex couples, including, but not limited to, the automatic right to make medical decisions for an incapacitated spouse, access to health insurance and retirement benefits, property protections, and inheritance.

3. The refusal to recognize Plaintiffs' marriages undermines the couples' ability to achieve their life goals and dreams, threatens their mutual economic stability, and denies them "a dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). Moreover, they and their families are stigmatized and relegated to a second-class status by being barred from marriage, a bar that serves no legitimate state interest. The exclusion "tells [same-sex] couples and all the world that their otherwise valid relationships are unworthy" of recognition. *Id.* at 2694. And it "humiliates . . . children now being raised by same-sex couples" and "makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id.*

4. Florida's exclusion of married same-sex couples from the protections and responsibilities of marriage violates the Due Process Clause and the Equal Protection Clause of

the Fourteenth Amendment to the United States Constitution. This discriminatory treatment directly impacts the fundamental right to marry and is not necessary to serve a compelling state interest.

5. Florida's refusal to recognize the marriages of same-sex couples discriminates against such couples on the basis of sexual orientation. It also discriminates against such couples on the basis of sex because the discrimination is based on the sexes of the spouses.

6. The State's discrimination against Plaintiffs and other married same-sex couples is not necessary to serve a compelling state interest, nor is it substantially related to an important state interest. Indeed, it is not rationally related to the furtherance of *any* legitimate state interest.

7. Pursuant to 42 U.S.C. § 1983, Plaintiffs seek: (a) a declaration that Florida's refusal to recognize the marriages of same-sex couples validly entered into outside of the State violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution insofar as Florida refuses to treat same-sex couples legally married in other jurisdictions the same as different-sex couples; and (b) preliminary and permanent injunctions directing Defendants to legally recognize Plaintiffs' marriages validly entered into outside of the State of Florida.

JURISDICTION AND VENUE

8. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violations of civil rights under the Fourteenth Amendment to the United States Constitution.

9. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights).

10. Venue is proper in the Northern District of Florida under 28 U.S.C. § 1391(b) because Defendants reside in this district.

THE PARTIES

A. Plaintiffs

Sloan Grimsley and Joyce Albu

11. Plaintiffs Sloan Grimsley and Joyce Albu were married in New York in August 2011. They have been together for 9 years and live in Palm Beach Gardens, Florida. They are raising two young daughters, ages 2 and 5, whom they adopted. Joyce also has two grown sons. Sloan is a firefighter and paramedic for the City of Palm Beach Gardens. Joyce is a consultant for children living with autism, Asperger's Syndrome, ADHD, and other neurodevelopmental disorders. Joyce and Sloan also own a farm where families in which some members are living with neurodevelopmental disorders can engage in a variety of therapeutic activities. Joyce and Sloan are concerned that if something were to happen to Sloan in the line of duty, Joyce would not receive the same support provided by the State to surviving spouses of first responders who might be killed in the line of duty.

Bob Collier and Chuck Hunziker

12. Plaintiffs Chuck Hunziker and Bob Collier were married in New York in July 2013. They have been together for over 50 years and live in Fort Lauderdale, Florida. Bob is 79 years old, and Chuck is 81 years old. Bob served as a Captain in the U.S. Army in the medical corps in the 82nd Airborne Division and Special Forces during the Vietnam War. Chuck is a disabled veteran; he served as an enlisted man in the Navy during the Korean War and spent 18 months in Naval and VA hospitals. For most of their professional lives, Bob and Chuck worked in New York, Chuck for Mobil Corporation and Bob for MetLife, Inc. Having retired in Florida,

they are now involved in local charities, including Tuesday's Angels (which provides emergency assistance to individuals living with HIV/AIDS).

Lindsay Myers and Sarah Humlie

13. Plaintiffs Lindsay Myers and Sarah Humlie were married in Washington, D.C., in December 2012. They have been together for 3 ½ years and live in Pensacola, Florida. Lindsay has a master's degree in theology and currently works for the University of West Florida as a digital content producer for WUWF, a university-licensed NPR affiliate. Lindsay would like the option of designating Sarah as her joint annuitant for pension purposes. Sarah is the Executive Director of the Pensacola Humane Society. Sarah does not receive health insurance through her employer. Because state law prohibits public employers from providing insurance for same-sex spouses of employees, Lindsay cannot get coverage for Sarah on her health insurance plan. As a result, the couple must pay hundreds of dollars per month for private health insurance for Sarah.

Robert Loupo and John Fitzgerald

14. Plaintiffs Robert Loupo and John Fitzgerald were married in New York in November 2013. They have been together for 12 years and live in Coconut Grove in Miami, Florida. Robert has been a school counselor for Miami-Dade County Public Schools for approximately fourteen years and served before that for fourteen years as a high school English teacher. John is retired and worked previously in customer service for Delta Airlines and in the Administrative Office of the Courts for Miami-Dade County in the Traffic Division.

Denise Hueso and Sandra Newson

15. Plaintiffs Denise Hueso and Sandra Newson were married in Massachusetts in August 2009. They have been together for 17 years. They live in Miami, Florida. Denise is the lead clinical care coordinator for the Alliance for GLBTQ Youth, which offers support services for LGBT youth. Sandra is the Vice President of Residence Services at Carrfour Supportive Housing, an organization that confronts homelessness by developing affordable housing and providing supportive services as a pathway to self-sufficiency. Together they have a 15-year-old son whom they have cared for since he was 10 years old, first as foster parents and then as adoptive parents. Sandra and Denise used to live in Massachusetts, where their marriage was recognized, but they lost that recognition when they moved to Florida to be closer to family to help care for their son.

Juan del Hierro and Thomas Gantt, Jr.

16. Plaintiffs Juan del Hierro and Thomas Gantt, Jr., were married in Washington, D.C., in December 2010. Before that, they held a symbolic ceremony before friends and family in Miami in July 2010. They have been together for 6 years and live in North Miami Beach, Florida. Juan is the Director of Ministry Empowerment for Unity on the Bay, a spiritual community in Miami. Tom teaches science at a virtual school, having taught for more than a decade in public schools. Their son Lucas, whom they adopted, is fifteen months old. If Tom's marriage to Juan were recognized, Tom would designate Juan as his pension beneficiary.

Christian Ulvert and Carlos Andrade

17. Plaintiffs Christian Ulvert and Carlos Andrade were married in Washington, D.C., in July 2013. They have been together for four years and live in Miami, Florida. Christian

previously worked in the state legislature and now works as a political consultant; if given the option, Christian would designate Carlos as his pension beneficiary. Carlos is the new media director of EDGE Communications and also owns an online jewelry store. Christian and Carlos would like to have children one day.

Richard Milstein and Eric Hankin

18. Plaintiffs Richard Milstein and Eric Hankin were married in Iowa in March 2010. They have been together for 12 years and live in Miami Beach, Florida. Richard is an attorney who specializes in trusts, estates, and family services, with a particular focus on vulnerable adults and children. Richard has been an active leader in the Florida and Dade County Bars and in the Miami-Dade community for decades, volunteering numerous hours to a variety of civic causes. Eric is an architect who currently teaches architecture and design in a nationally recognized magnet public school in Miami.

Arlene Goldberg

19. Plaintiff Arlene Goldberg married Carol Goldwasser in New York in October 2011. Carol died on March 13, 2014, after she and Arlene had been together for 47 years. Carol was the toll facilities director for Lee County, Florida for 17 years. Arlene is retired from her previous position as a facilities manager for a call center and currently works part time at Target. Arlene and Carol had been living with and taking care of Carol's parents, ages 89 and 92, but now Arlene is caring for them alone. Arlene's primary income is her Social Security payment; Carol had been receiving a higher Social Security payment. Because Florida's marriage recognition ban precludes Arlene from obtaining Social Security survivor's benefits, she has been concerned that she will not be able to properly care for herself or Carol's parents, and

therefore—for that reason only—she will have to sell her home, and Carol’s parents are looking for another place to live. Further, Arlene would like to amend Carol’s death certificate—which lists, for marital status, “NEVER-MARRIED” and, for spouse, “NONE”—but in order to do so, she needs Fla. Const. Art. I, § 27, and § 741.212, Fla. Stat., to be declared unconstitutional.

SAVE Foundation, Inc.

20. Plaintiff SAVE Foundation, Inc. is one of the leading organizations in Florida dedicated to promoting, protecting, and defending equality for people who are lesbian, gay, bisexual, and transgender. Established in 1993, SAVE Foundation accomplishes this mission through education initiatives, outreach, grassroots organizing, and advocacy. Starting with the landmark passage of Miami’s Human Rights Ordinance in 1998 to recent enactments of domestic partner benefit policies, SAVE Foundation continues to fight for LGBT equality through grassroots action. Plaintiff SAVE Foundation brings this suit on behalf of its members who are same-sex couples who have entered into lawful marriages outside of Florida.

B. Defendants

21. Defendant Rick Scott is sued in his official capacity as the Governor of the State of Florida. The supreme executive power is vested in the Governor. Fl. Const. Art. IV, § 1(a). It is his duty to take care that the laws, including Fla. Const. Art. I, § 27, and § 741.212, Fla. Stat., are faithfully executed in Florida. *Id.*

22. Defendant Pam Bondi is sued in her official capacity as the Attorney General of the State of Florida. As Attorney General, Bondi is the State’s chief legal officer. She is required to “appear in and attend to, in behalf of the state, all suits or prosecutions, civil or criminal or in

equity, in which the state may be a party, or in anywise interested, in the Supreme Court and district courts of appeal of this state.” § 16.01(4), Fla. Stat.

23. Defendant John H. Armstrong is sued in his official capacity as the Surgeon General and Secretary of Health for the State of Florida. As the head of the Florida Department of Health, Armstrong must “[p]lan, direct, coordinate, and execute the powers, duties, and functions vested in that department.” § 20.05(1)(a), Fla. Stat. In his official capacity, he is responsible for creating forms for certificates of death, *see* § 382.008(1), Fla. Stat., as well as registering, recording, certifying, and preserving the State’s vital records, *see* § 382.003(7), Fla. Stat., including certificates of death. All Plaintiffs wish that when they die their marriage and surviving spouse are recognized on their death certificate.

24. Defendant Craig J. Nichols is sued in his official capacity as the Agency Secretary for the Florida Department of Management Services. As the head of the Florida Department of Management Services, Nichols must “[p]lan, direct, coordinate, and execute the powers, duties, and functions vested in that department.” § 20.05(1)(a), Fla. Stat. In his official capacity, he is responsible for administering Florida’s public retirement and pension systems. *See* § 121.025, Fla. Stat; *see also* § 121.021, Fla. Stat. (definitions). Plaintiffs Sloan Grimsley, Lindsay Myers, Robert Loupo, Thomas Gantt, Jr., Christian Ulvert, and Eric Hankin are or have been public employees, and upon vesting they and their spouses would be eligible for pension-related spousal protections but for the marriage ban.

GENERAL ALLEGATIONS

25. In Florida, marriage is governed by Chapter 741 of the Florida Statutes, captioned “Marriage; Domestic Violence.” In 1997, Chapter 741 was revised to prohibit marriage for same-sex couples. The relevant statute, § 741.212, provides:

- (1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.
- (2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.
- (3) For purposes of interpreting any state statute or rule, the term “marriage” means only a legal union between one man and one woman as husband and wife, and the term “spouse” applies only to a member of such a union.

26. In addition, in a stark departure from Florida’s usual recognition of marriages entered into in other states, Florida’s Constitution was amended in 2008 to prevent recognition of same-sex marriages entered into in other states. Article I, § 27 of the Florida Constitution provides:

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.

27. As a result, marriage in Florida is legally available only to different-sex couples. Same-sex couples may not marry in Florida, and if they are married elsewhere, their marriages are not recognized in Florida.

28. Florida’s refusal to recognize the marriages of same-sex couples denies those couples numerous protections afforded to different-sex married couples. By way of example only:

- a. The State of Florida’s retirement system provides benefits to the different-sex surviving spouses of public employees. *See, e.g.*, Survivor Benefits,

https://www.myfrs.com/portal/server.pt/community/comparing_the_plans/235/survivor_benefits/1843 (accessed April 10, 2014);

The Florida Retirement System Pension Plan,

http://www.myfrs.com/portal/server.pt/community/pension_plan/233

(accessed April 10, 2014). Such benefits are not available to same-sex surviving spouses in Florida.

- b. The different-sex surviving spouse of a first responder in Florida receives financial support from the State if the first responder dies in the line of duty. *See* § 112.191, Fla. Stat. Such support is not available to same-sex surviving spouses in Florida.
- c. The different-sex surviving spouse of a teacher or school administrator receives support from the State if the teacher or administrator is killed or injured on the job under certain circumstances. *See* § 112.1915, Fla. Stat. Such support is not available to same-sex surviving spouses in Florida.
- d. Death certificates in Florida include information regarding the decedent's marital status and identify the surviving different-sex spouse. *See* State of Florida Bureau Vital Statistics, Vital Records Registration, December 2012 Revision, at 83, available at http://www.floridahealth.gov/certificates-and-registries/certificates/EDRS/_documents/HB2012Final.pdf (accessed April 10, 2014). A surviving same-sex spouse is not named on death certificates in Florida.

- e. A different-sex surviving spouse has automatic priority with respect to numerous rights pertaining to the disposition of a deceased individual's remains. *See* § 497.171(5), Fla. Stat. (identification of human remains); § 497.384(3), Fla. Stat. (disinterment and reinterment); § 497.607(1), Fla. Stat. (cremation); § 497.152(8)(c)-(d), Fla. Stat. (prohibiting the taking of possession or embalming absent authorization from a legally authorized person); *see also* § 497.005, Fla. Stat. (defining "legally authorized person," including listing of priority). Such automatic priority is not granted to same-sex surviving spouses in Florida.
- f. A different-sex surviving spouse receives certain homestead protections under the Florida Constitution. *See* Fla. Const. Art. X, § 4. These protections do not apply to surviving same-sex spouses in Florida.
- g. A different-sex surviving spouse may receive certain workers' compensation benefits for his or her deceased spouse who died in a work-related accident. *See* § 440.16, Fla. Stat. This protection does not apply to surviving same-sex spouses in Florida.
- h. If an individual dies without a will, his or her different-sex spouse has a right to inherit a share of the estate, *see* § 732.102, Fla. Stat., and receives automatic preference in appointment as personal representative of the estate, *see* § 733.301, Fla. Stat. These protections do not apply to same-sex spouses in Florida.

- i. If an individual dies with a will, his or her different-sex spouse may receive an elective share of the estate. *See* § 732.201, Fla. Stat. This protection does not apply to same-sex spouses in Florida.
- j. Different-sex spouses are generally not required to testify against their spouse regarding confidential communications made during the marriage. *See* § 90.504, Fla. Stat. This protection is not afforded to same-sex spouses in Florida.
- k. In a wrongful-death action, different-sex spouses may recover for loss of the decedent's "companionship and protection and for mental pain and suffering from the date of injury." § 768.21, Fla. Stat. This protection does not apply to same-sex surviving spouses in Florida.
- l. A different-sex spouse has a right to financial support during marriage, § 61.09, Fla. Stat., enforced by criminal penalties for non-support, § 856.04, Fla. Stat. This protection and responsibility does not apply to same-sex spouses in Florida.
- m. A child born to a married couple by means of artificial or in vitro insemination is irrebuttably presumed to be the child of the couple. § 742.11(a), Fla. Stat. This protection and responsibility does not apply to same-sex married couples in Florida.
- n. If an incapacitated individual has not executed an advance directive, the patient's spouse has priority to make health care decisions for the individual over every other class other than the patient's guardian, if one

exists. § 765.401(1), Fla. Stat. This protection and responsibility does not apply to same-sex spouses in Florida.

- o. Upon dissolution of their marriage, couples in Florida may obtain court-ordered equitable distribution of property. *See* § 61.075, Fla. Stat. This protection does not apply to same-sex couples in Florida.
- p. Some of the federal protections for different-sex married couples are only available to couples if their marriages are legally recognized in the state in which they live. *See, e.g.*, 42 U.S.C. § 416(h)(1)(A)(i) (marriage for eligibility for social security benefits based on law of state where couple resides at time of application); 29 C.F.R. § 825.122(b) (same for Family Medical Leave Act). Thus, even though Plaintiffs were married in other states, they cannot access such federal protections while living in Florida because Florida refuses to recognize their existing marriages.

29. The Supreme Court has called marriage “the most important relation in life,” *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (internal quotation marks omitted), and an “expression[] of emotional support and public commitment,” *Turner v. Safley*, 482 U.S. 78, 95 (1987); *see also Loving v. Virginia*, 388 U.S. 1, 12 (1967) (“The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free [people].”). It is “a far-reaching legal acknowledgement of the intimate relationship between two people” *Windsor*, 133 S. Ct. at 2692. This is as true for same-sex couples as it is for different-sex couples.

30. Same-sex married couples such as Plaintiffs are similarly situated to different-sex married couples in all of the characteristics relevant to the recognition of their legal marriages.

31. When they marry, same-sex couples make the same commitment to one another as different-sex couples do. Like married different-sex couples, married same-sex couples build their lives together, plan their futures together, and hope to grow old together. Like married different-sex couples, married same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness.

32. Like many married different-sex couples, many married same-sex couples—such as Plaintiffs Sloan Grimsley, Joyce Abu, Juan del Hierro, Thomas Gantt, Jr., Denise Hueso, and Sandra Newson—are parents raising children together.

33. Plaintiffs have accepted and are willing to assume the legal obligations that would flow from having their marriages recognized under Florida law.

34. Plaintiffs were all married legally under the laws of other jurisdictions, and their marriages would be recognized by the State but for the fact that each is married to a person of the same sex.

35. Refusing to recognize the marriages of same-sex couples harms the children raised by lesbian and gay couples—including the children of Plaintiffs Sloan Grimsley, Joyce Abu, Juan del Hierro, Thomas Gantt, Jr., Denise Hueso, and Sandra Newson—by denying their families significant benefits and by branding their families as inferior to families headed by different-sex couples and less deserving of respect, thereby encouraging private bias and discrimination.

36. By refusing to recognize the legal marriages of same-sex couples, Florida excludes those couples from the myriad of protections the State affords other married couples.

37. Article I, § 27 of the Florida Constitution and § 741.212, Fla. Stat., have the “purpose and effect to disparage and injure” lesbian and gay couples. *Windsor*, 133 S. Ct. at 2696.

CLAIMS FOR RELIEF

COUNT I

Deprivation of the Fundamental Right to Marry in Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

38. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

39. The Fourteenth Amendment to the United States Constitution precludes any State from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Governmental interference with a fundamental right may be sustained only upon a showing that the legislation is closely tailored to serve an important governmental interest.

40. Florida law states that “[m]arriages between persons of the same sex . . . are not recognized for any purpose in this state.” § 741.212(1), Fla. Stat.

41. In addition, Florida law provides that “[f]or purposes of interpreting any state statute or rule, the term ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the term ‘spouse’ applies only to a member of such a union.” § 741.212(3), Fla. Stat.

42. The Florida Constitution also provides that “[i]nasmuch 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.” Fla. Const. Art. I, § 27.

43. Marriage is a fundamental right, and choices about whom to marry are a central part of the liberty protected by the Due Process Clause.

44. Florida law denies Plaintiffs and other same-sex couples this fundamental right by refusing to recognize the lawful marriages they entered into in other jurisdictions.

45. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions is not necessary to serve a compelling state interest.

46. Florida's refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates the Due Process Clause.

47. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

48. As a result, Plaintiffs have been or will be harmed and therefore seek the relief set forth in the Prayer for Relief below.

COUNT II

Discrimination on the Basis of Sexual Orientation in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

49. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

50. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

51. Florida law states that “[m]arriages between persons of the same sex . . . are not recognized for any purpose in this state.” § 741.212(1), Fla. Stat.

52. In addition, Florida law provides that “[f]or purposes of interpreting any state statute or rule, the term ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the term ‘spouse’ applies only to a member of such a union.” § 741.212(3), Fla. Stat.

53. The Florida Constitution also provides that “[i]nasmuch 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.” Fla. Const. Art. I, § 27.

54. Same-sex married couples and different-sex married couples are similarly situated for purposes of marriage.

55. By denying Plaintiffs and other lesbian and gay couples the ability to have their out-of-state marriages recognized, the State discriminates against lesbians and gay men on the basis of their sexual orientation by denying them significant legal protections.

56. Classifications based on sexual orientation demand heightened scrutiny.

57. Lesbians and gay men are members of a discrete and insular minority that has suffered a history of discrimination in Florida and across the United States.

58. Sexual orientation bears no relation to an individual’s ability to perform or contribute to society.

59. Sexual orientation is a core, defining trait that is so fundamental to one’s identity that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment. Sexual orientation generally is fixed at an early age and highly

resistant to change through intervention. Efforts to change a person's sexual orientation through interventions by medical professionals have not been shown to be effective. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and many—including the American Psychological Association and the American Psychiatric Association—have adopted policy statements cautioning professionals and the public about these treatments.

60. Prejudice against lesbians and gay men continues to seriously curtail the operation of the political process, preventing this group from obtaining redress through legislative means. Lesbians and gay men lack statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half of the states, including Florida. They have been stripped of the right to marry through 30 state constitutional amendments and have been targeted through the voter initiative process more than any other group.

61. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions is not necessary to serve a compelling state interest.

62. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions is not substantially related to an important state interest.

63. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions is not rationally related to any legitimate state interest.

64. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions violates the Equal Protection Clause.

65. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

66. As a result, Plaintiffs have been or will be harmed and therefore seek the relief set forth in the Prayer for Relief below.

COUNT III

Discrimination on the Basis of Sex in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

67. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

68. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

69. Florida law states that "[m]arriages between persons of the same sex . . . are not recognized for any purpose in this state." § 741.212(1), Fla. Stat.

70. In addition, Florida law provides that "[f]or purposes of interpreting any state statute or rule, the term 'marriage' means only a legal union between one man and one woman as husband and wife, and the term 'spouse' applies only to a member of such a union." § 741.212(3), Fla. Stat.

71. The Florida Constitution also provides that "[i]nasmuch 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.” Fla. Const. Art. I, § 27.

72. If Plaintiffs had different-sex spouses, the State would recognize their marriages. As a result, Plaintiffs would enjoy the legal protections and be subject to the legal obligations of different-sex married couples.

73. By limiting the recognition of marriage in Florida to different-sex couples, the State is discriminating against Plaintiffs on the basis of sex.

74. The State’s unequal treatment of Plaintiffs based on their sex is not substantially related to an important state interest. State law prohibiting recognition of marriage for same-sex couples thus violates the Equal Protection Clause.

75. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

76. As a result, Plaintiffs have been or will be harmed and therefore seek the relief set forth in the Prayer for Relief below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter a declaratory judgment that § 741.212, Fla. Stat., and Fla. Const. Art. I, § 27 violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution insofar as they refuse to treat same-sex couples legally married in other jurisdictions the same as different-sex couples;
2. Enter a declaratory judgment that § 741.212, Fla. Stat., and Fla. Const. Art. I, § 27 violate the Equal Protection Clause of the Fourteenth Amendment to the

United States Constitution insofar as they refuse to treat same-sex couples legally married in other jurisdictions the same as different-sex couples;

3. Enter a preliminary injunction directing Defendants to recognize marriages validly entered into by Plaintiffs outside of the State of Florida;
4. Enter a permanent injunction directing Defendants to recognize marriages validly entered into by Plaintiffs outside of the State of Florida;
5. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
6. Enter all further relief to which Plaintiffs may be justly entitled.

Dated: April 10, 2014

Respectfully submitted,

/s/ Daniel B. Tilley

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*Admission to N.D. Fla. forthcoming

Certificate of Service

I certify that on April 10, 2014, I electronically filed this document with the Clerk of Court using CM/ECF, which automatically serves all counsel of record via electronic transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Daniel B. Tilley
Daniel B. Tilley

DE 23

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

JAMES DOMER BRENNER et al.,

Plaintiffs,

v.

CASE NO. 4:14cv107-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

_____ /

SLOAN GRIMSLEY et al.,

Plaintiffs,

v.

CASE NO. 4:14cv138-RH/CAS

RICK SCOTT, etc., et al.,

Defendants.

_____ /

**ORDER DENYING THE MOTIONS TO DISMISS,
GRANTING A PRELIMINARY INJUNCTION, AND
TEMPORARILY STAYING THE INJUNCTION**

The issue in these consolidated cases is the constitutionality of Florida's refusal to allow same-sex marriages or to recognize same-sex marriages lawfully entered elsewhere.

The founders of this nation said in the preamble to the United States Constitution that a goal was to secure the blessings of liberty to themselves and their posterity. Liberty has come more slowly for some than for others. It was 1967, nearly two centuries after the Constitution was adopted, before the Supreme Court struck down state laws prohibiting interracial marriage, thus protecting the liberty of individuals whose chosen life partner was of a different race. Now, nearly 50 years later, the arguments supporting the ban on interracial marriage seem an obvious pretext for racism; it must be hard for those who were not then of age to understand just how sincerely those views were held. When observers look back 50 years from now, the arguments supporting Florida's ban on same-sex marriage, though just as sincerely held, will again seem an obvious pretext for discrimination. Observers who are not now of age will wonder just how those views could have been held.

The Supreme Court struck down part of the federal Defense of Marriage Act last year. *United States v. Windsor*, 133 S. Ct. 2675 (2013). Since that decision, 19 different federal courts, now including this one, have ruled on the constitutionality of state bans on same-sex marriage. The result: 19 consecutive

victories for those challenging the bans. Based on these decisions, gays and lesbians, like all other adults, may choose a life partner and dignify the relationship through marriage. To paraphrase a civil-rights leader from the age when interracial marriage was first struck down, the arc of history is long, but it bends toward justice.

These consolidated cases are here on the plaintiffs' motions for a preliminary injunction and the defendants' motions to dismiss. This order holds that 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. The order dismisses the claims against unnecessary defendants but otherwise denies the motions to dismiss. The order grants a preliminary injunction but also grants a temporary stay.

All of this accords with the unbroken line of federal authority since *Windsor*. Indeed, except for details about these specific parties, this opinion could end at this point, merely by citing with approval the circuit decisions striking down state bans on same-sex marriage: *Bostic v. Schaefer*, Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014).

I. Background

This order addresses two cases that have been consolidated for pretrial purposes. The order sometimes refers to Case No. 4:14cv107 as the “Brenner case.” The order sometimes refers to Case No. 4:14cv138 as the “Grimsley case.”

A. The Plaintiffs

The combined total of 22 plaintiffs in the two cases includes 9 sets of same-sex spouses who were lawfully married in New York, the District of Columbia, Iowa, Massachusetts, or Canada; the surviving spouse of a New York same-sex marriage; 2 individuals who have been in a same-sex relationship for 15 years, are not married, but wish to marry in Florida; and an organization asserting the rights of its members who lawfully entered same-sex marriages outside Florida. All the individual plaintiffs live in Florida. The details follow.

The first two Brenner-case plaintiffs are James D. Brenner and Charles D. Jones. Mr. Brenner has worked for the Florida Forest Service since 1981. Mr. Jones has worked for the Florida Department of Education since 2003. They were married in Canada in 2009. Mr. Brenner asserts that the state’s refusal to recognize their marriage eliminates a retirement option that would provide for Mr. Jones after Mr. Brenner’s death.

Brenner-case plaintiffs Stephen Schlairet and Ozzie Russ live in Washington County, Florida. They are not married in any jurisdiction. They meet all

requirements for marriage in Florida except that they are both men. They wish to marry and have applied to the defendant Washington County Clerk of Court for a marriage license. During breaks in employment, they have been unable to obtain healthcare coverage under one another's insurance plans because of Florida's challenged marriage provisions. Based solely on those provisions, the Clerk refuses to issue a license.

Grimsley-case plaintiffs Sloan Grimsley and Joyce Albu have been together for 9 years and were married in New York in 2011. They have two adopted minor children. Ms. Grimsley is a firefighter and paramedic for the City of Palm Beach Gardens, Florida. Ms. Grimsley and Ms. Albu are concerned that if something happens to Ms. Grimsley in the line of duty, Ms. Albu will not receive the same support the state provides to surviving opposite-sex spouses of first responders.

Grimsley-case plaintiffs Chuck Hunziker and Bob Collier have been together for over 50 years. They lived most of their lives in New York and were married there in 2013. They now are retired and live in Florida.

Grimsley-case plaintiffs Lindsay Myers and Sarah Humlie have been together for nearly 4 years and were married in the District of Columbia in 2012. They live in Pensacola, Florida. Ms. Myers works for the University of West Florida. Ms. Myers seeks the option to designate Ms. Humlie as her joint annuitant for pension purposes. Ms. Humlie does not receive health insurance through her

employer. Because state law prohibits public employers from providing insurance for same-sex spouses, Ms. Myers cannot get coverage for Ms. Humlie on Ms. Myers's health plan. The couple makes substantial payments each month for private health insurance for Ms. Humlie.

Grimsley-case plaintiffs Robert Loupo and John Fitzgerald have been together for 12 years. They were married in New York in 2013. Mr. Loupo is employed with the Miami-Dade County public schools. Mr. Fitzgerald is retired but previously worked for Miami-Dade County. Mr. Loupo wishes to designate Mr. Fitzgerald as his retirement-plan joint annuitant.

Grimsley-case plaintiffs Denise Hueso and Sandra Newson were married in Massachusetts in 2009. They lived in Massachusetts, but now they live in Miami. They have had custody of their now 15-year-old son for 5 years, first as foster parents and now as adoptive parents.

Grimsley-case plaintiffs Juan del Hierro and Thomas Gantt, Jr., have been together for 6 years and were married in Washington, D.C., in 2010. They live in North Miami Beach. They have an adopted son under age 2. Mr. Gantt taught for more than a decade in public schools but now works at a virtual school. If their marriage were recognized, Mr. Gantt would designate Mr. del Hierro as his pension beneficiary.

Grimsley-case plaintiffs Christian Ulvert and Carlos Andrade live in Miami. They have been together for 4 years and were married in the District of Columbia in 2013. Mr. Ulvert previously worked for the Florida Legislature and wishes to designate Mr. Andrade as his pension beneficiary. They wish to someday adopt children.

Grimsley-case plaintiffs Richard Milstein and Eric Hankin live in Miami Beach. They have been together for 12 years and were married in Iowa in 2010.

Grimsley-case plaintiff Arlene Goldberg married Carol Goldwasser in New York in 2011. Ms. Goldwasser died in March 2014. The couple had been together for 47 years. Ms. Goldwasser was the toll-facilities director for Lee County, Florida, for 17 years. Ms. Goldberg is retired but works part time at a major retailer. The couple had been living with and taking care of Ms. Goldwasser's elderly parents, but now Ms. Goldberg cares for them alone. Social-security benefits are Ms. Goldberg's primary income. Florida's refusal to recognize the marriage has precluded Ms. Goldberg from obtaining social-security survivor benefits. Ms. Goldberg says that for that reason only, she will have to sell her house, and Ms. Goldwasser's parents are looking for another place to live. Ms. Goldberg also wishes to amend Ms. Goldwasser's death certificate to reflect their marriage.

Grimsley-case plaintiff SAVE Foundation, Inc. was established in 1993 and is dedicated to promoting, protecting, and defending equality for lesbian, gay, bisexual, and transgendered people. SAVE's activities include education initiatives, outreach, grassroots organizing, and advocacy. In this action SAVE asserts the rights of its members who are same-sex couples and have lawfully married outside of Florida.

B. The Defendants

The Brenner and Grimsley cases have four defendants in common. The Brenner case adds a fifth.

The defendants in common are State of Florida officers, all in their official capacities: the Governor, the Attorney General, the Surgeon General, and the Secretary of the Department of Management Services. This order sometimes refers to these four defendants as the "state defendants." The order sometimes refers to the Secretary of the Department of Management Services as "the Secretary."

The fifth defendant in the Brenner case is the Clerk of Court of Washington County, Florida, again in his official capacity. This order sometimes refers to him as the "Clerk of Court" or simply "the Clerk."

C. The Claims

In each case, the plaintiffs have filed an amended complaint. Each amended complaint asserts that the Florida same-sex marriage provisions violate the Fourteenth Amendment's Due Process and Equal Protection Clauses. On the Equal Protection claim, the Brenner plaintiffs say the challenged provisions improperly discriminate based on sexual orientation, while the Grimsley plaintiffs assert improper discrimination based on both sexual orientation and sex (that is, gender). The Brenner plaintiffs assert additional claims based on the First Amendment's right of association, the Establishment Clause, and the Supremacy Clause.

D. The Challenged Provisions

The Brenner and Grimsley plaintiffs all challenge Article I, § 27, of the Florida Constitution, and Florida Statutes § 741.212. The Brenner plaintiffs also challenge Florida Statutes § 741.04(1).

Article I, § 27 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.

Florida Statutes § 741.212 provides:

(1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either

domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.

(2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.

(3) For purposes of interpreting any state statute or rule, the term “marriage” means only a legal union between one man and one woman as husband and wife, and the term “spouse” applies only to a member of such a union.

Florida Statutes § 741.04(1) provides:

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person . . . unless one party is male and the other party is female.

E. The Pending Motions

In each case, the plaintiffs have moved for a preliminary injunction barring enforcement of the challenged provisions. The defendants oppose the motions and assert that if a preliminary injunction is granted, it should be stayed pending appeal.

In each case, the state defendants have moved to dismiss the amended complaint. They do not contest the standing of most of the plaintiffs to bring these

cases. They acknowledge that the Secretary of the Department of Management Services is a proper defendant, but they assert that the Governor, Attorney General, and Surgeon General are not. They say these defendants have no role in enforcing the challenged provisions. On the merits, the state defendants say the state's same-sex marriage provisions are constitutional.

The Clerk of Court has moved to dismiss the Brenner amended complaint—the only one in which the Clerk is named as a defendant—on the ground that he has done nothing more than comply with state law, that he therefore is not a proper defendant, and that, in any event, the state's same-sex marriage provisions are constitutional.

All parties have agreed that these motions should be decided based on the existing record, without further evidence.

II. Standing

The plaintiffs whose financial interests are directly affected by the Florida marriage provisions plainly have standing to challenge them. This apparently includes most or all of the individual plaintiffs. The effect is the most direct for current or former public employees who are unable to obtain for themselves or their spouses the same benefits—primarily retirement benefits and healthcare coverage—as are available to opposite-sex couples. The defendants do not challenge the plaintiffs' standing in this respect.

The defendants question only Ms. Goldberg's standing to pursue a change in Ms. Goldwasser's death certificate or to seek social-security benefits based on their marriage. But Ms. Goldberg has standing on each basis. The death certificate says Ms. Goldwasser was "never married" and, in the blank for listing a spouse, says "none." That a spouse would find this offensive and seek to have it changed is neither surprising nor trivial. Ms. Goldberg has a sufficient personal stake in pursuing this relief to have standing.

III. The Proper Defendants

Under *Ex parte Young*, 209 U.S. 123 (1908), a plaintiff may pursue a federal constitutional claim for prospective relief against an official-capacity state defendant who "is responsible for the challenged action" or who, " 'by virtue of his office, has some connection' with the unconstitutional act or conduct complained of." *Luckey v. Harris*, 860 F.2d 1012, 1015-16 (11th Cir. 1988) (quoting *Ex parte Young*, 209 U.S. at 157).

The state defendants acknowledge that the Secretary meets this test. The Secretary administers the retirement and healthcare provisions that apply to current and former state employees. As required by the challenged provisions, the Secretary refuses to recognize same-sex marriages. The plaintiffs assert that the Secretary thus violates the United States Constitution.

The Surgeon General also meets the test. The Surgeon General is the head of the Department of Health. The Surgeon General thus must “execute the powers, duties, and functions” of the department. Fla. Stat. § 20.05(1)(a). Those functions include establishing the official form for death certificates, which must include the decedent’s “marital status.” *Id.* § 382.008(6). The official form includes a blank for listing the decedent’s spouse. The Department may change a death certificate’s marital information when the name of a “surviving spouse” is omitted or based on an order from “a court of competent jurisdiction.” *Id.* § 382.016(2). This is a court of competent jurisdiction, Ms. Goldberg seeks such an order, and the person to whom such an order should properly be directed is the Surgeon General. He is a proper defendant in this action.

Whether the Governor and Attorney General are proper defendants is less clear. It also makes no difference. As the state defendants acknowledge, an order directed to the Secretary—or, for matters relating to the death certificate, to the Surgeon General—will be sufficient to provide complete relief. The Eleventh Circuit has held that a district court may dismiss claims against redundant official-capacity defendants. *See Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991) (approving the dismissal of official-capacity defendants whose presence was merely redundant to the naming of an institutional defendant). The prudent course here is to dismiss the Governor and Attorney General on this basis. *See generally*

Ashwander v. Tenn. Valley Auth., 297 U.S. 288, 341, 345-46 (1936) (Brandeis, J., concurring) (setting out fundamental principles of constitutional adjudication, including that, “The Court will not ‘anticipate a question of constitutional law in advance of the necessity of deciding it’ ”) (quoting earlier authorities in part); *see also Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988) (“A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.”), *quoted with approval in United States v. \$242,484.00*, 318 F.3d 1240, 1242 n.2 (11th Cir. 2003).

If it turns out later that complete relief cannot be afforded against the Secretary and Surgeon General, any necessary and proper additional defendant can be added.

Finally, the Clerk of Court for Washington County is plainly a proper defendant. The Clerk denied a marriage license to Mr. Schlairet and Mr. Russ and would properly be ordered to issue the license if they prevail on their claims in this action. That the Clerk was acting in accordance with state law does not mean he is not a proper defendant. Quite the contrary. The whole point of *Ex parte Young* is to provide a remedy for unconstitutional action that is taken under state authority, including, as here, a state constitution or laws.

In sum, this action will go forward against the Secretary, the Surgeon General, and the Clerk. The claims against the Governor and Attorney General will be dismissed without prejudice as redundant.

IV. The Merits

The Fourteenth Amendment provides, among other things, that a state shall not “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The amendment was added to the Constitution after the Civil War for the express purpose of protecting rights against encroachment by state governments. By that time it was well established that a federal court had the authority—indeed, the duty—to strike down an unconstitutional statute when necessary to the decision in a case or controversy properly before the court. The State of Florida has itself asked federal courts to do so. So the suggestion that this is just a federalism case—that the state’s laws are beyond review in federal court—is a nonstarter.

That this case involves marriage does not change this result. The Supreme Court recognized this in *Loving v. Virginia*, 388 U.S. 1 (1967). There the Court struck down a Virginia statute that prohibited interracial marriage. The defendants say interracial marriage is different from same-sex marriage. But on the question of whether a federal court has the authority—indeed, the duty—to strike down a state marriage provision if it conflicts with a party’s rights under the Fourteenth

Amendment, *Loving* is on point and controlling. So are *Zablocki v. Redhail*, 434 U.S. 374 (1978), and *Turner v. Safley*, 482 U.S. 78 (1987), where the Court invalidated state provisions restricting marriage. Further, in *Windsor*, the Court said—three times—that a state’s interest “in defining and regulating marital relations” is “subject to constitutional guarantees.” 133 S. Ct. at 2691, 2692. In short, it is settled that a state’s marriage provisions must comply with the Fourteenth Amendment and may be struck down when they do not.

It bears noting, too, that the defendants’ invocation of Florida’s prerogative as a state to set the rules that govern marriage loses some of its force when the issue raised by 20 of the 22 plaintiffs is the validity of marriages lawfully entered in other jurisdictions. The defendants do not explain why, if a state’s laws on marriage are indeed entitled to such deference, the State of Florida is free to ignore the decisions of other equally sovereign states, including New York, Iowa, and Massachusetts.

In sum, the critical issue is whether the challenged Florida provisions contravene the plaintiffs’ rights to due process and equal protection. The general framework that applies to such claims is well settled.

First, the Due Process Clause includes a substantive element—a check on a state’s authority to enact certain measures regardless of any procedural safeguards the state may provide. Substantive due process is an exceedingly narrow concept

that protects only fundamental rights. When governmental action impinges on fundamental rights and is challenged in a case properly before a court, the court reviews the governmental action with strict scrutiny. Whether some actions that impinge on fundamental rights are properly subject to a lower level of scrutiny—sometimes labeled intermediate scrutiny—is unsettled and ultimately makes no difference here.

Second, under the Equal Protection Clause, a court applies strict scrutiny to governmental actions that impinge on fundamental rights or employ suspect classifications. Most other governmental actions are subject to only rational-basis review. Some actions are properly subject to intermediate equal-protection scrutiny, but the scope of actions subject to intermediate scrutiny is unsettled and ultimately makes no difference here.

So the first step in analyzing the merits in these cases, as both sides agree, is determining whether the right asserted by the plaintiffs is a fundamental right as that term is used in due-process and equal-protection jurisprudence. Almost every court that has addressed the issue since the Supreme Court's 2013 decision in *Windsor* has said the answer is yes. That view is correct.

The right asserted by the plaintiffs is the right to marry. The Supreme Court has repeatedly recognized that this is a fundamental right. Thus, for example, in *Loving*, the Court held that Virginia's ban on interracial marriage violated the Due

Process and Equal Protection Clauses, even though similar bans were widespread and of long standing. The Court did not cast the issue as whether the right to *interracial* marriage was fundamental. *See Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1202 (D. Utah 2013) (“Instead of declaring a new right to interracial marriage, the Court held [*in Loving*] that individuals could not be restricted from exercising their existing right to marry on account of the race of their chosen partner.”).

Similarly, in *Zablocki*, the Court labeled the right to marry fundamental and struck down, on equal-protection grounds, a Wisconsin statute that prohibited residents with unpaid court-ordered child-support obligations from entering new marriages. The Court did not ask whether the right not to pay child support was fundamental, or whether the right to marry while owing child support was fundamental; the Court started and ended its analysis on this issue with the accepted principle that the right *to marry* is fundamental.

The Court took the same approach in *Turner*. A Missouri regulation prohibited prisoners from marrying other than for a compelling reason. The Court said the state’s interests in regulating its prisons were insufficient to overcome the prisoners’ fundamental right to marry. The Court did not ask whether there is a fundamental right to marry while in prison, as distinguished from the more general right to marry.

In other cases, too, the Court has said the right to marry is fundamental. Indeed, the Court has sometimes listed marriage as the very paradigm of a fundamental right. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (refusing to recognize assisted suicide as a fundamental right, listing rights that *do* qualify as fundamental, and placing the right to marry first on the list); *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965) (including the right to marry in the fundamental right to privacy); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942) (labeling marriage “one of the basic civil rights of man”); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (saying that “[w]ithout doubt” the right “to marry” is within the liberty protected by the Due Process Clause); *Maynard v. Hill*, 125 U.S. 190, 205 (1888) (labeling marriage “the most important relation in life”).

Perhaps recognizing these authorities, the defendants do not, and could not plausibly, assert that the right to marry is not a fundamental right for due-process and equal-protection purposes. Few rights are *more* fundamental. The defendants assert, though, that the right at issue in the cases at bar is the right to marry a person of the same sex, not just the right to marry. In support of this assertion, the defendants cite a principle derived from *Glucksberg*: due-process analysis requires a “ ‘careful description’ of the asserted fundamental liberty interest.” 521 U.S. at 721 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

A careful description means only an accurate one, determined at the appropriate level of generality. Indeed, *Glucksberg* itself said the right to marry is fundamental, describing the right at that level of generality. 521 U.S. at 720. And *Loving*, *Zablocki*, and *Turner* applied the right to marry at that level of generality, without asking whether the specific application of the right to marry—to interracial marriage or debtor marriage or prisoner marriage—was fundamental when viewed in isolation.

This approach makes sense. The point of fundamental-rights analysis is to protect an individual's liberty against unwarranted governmental encroachment. So it is a two-step analysis: is the right fundamental, and, if so, is the government encroachment unwarranted (that is, does the encroachment survive strict scrutiny)? At the first step, the right to marry—to choose one's own spouse—is just as important to an individual regardless of whom the individual chooses to marry. So the right to marry is just as important when the proposed spouse is a person of the same race and different sex (as in the most common marriages, those that have been approved without controversy for the longest period), or a person of a different race (as in *Loving*), or a person with unpaid child-support obligations (as in *Zablocki*), or a prisoner (as in *Turner*), or a person of the same sex (as in the cases at bar).

It is only at the second step—on the question of whether the government encroachment is unwarranted—that the nature of the restriction becomes critical. The governmental interest in *overriding* a person’s fundamental right to marry may be different in these different situations—that certainly was the case in *Zablocki* and *Turner*, for example—but that is a different issue from whether the right itself is fundamental. The right to marry is as fundamental for the plaintiffs in the cases at bar as for any other person wishing to enter a marriage or have it recognized.

That leaves for analysis the second step, the application of strict scrutiny. A state may override a fundamental right through measures that are narrowly tailored to serve a compelling state interest. A variety of justifications for banning same-sex marriages have been proffered by these defendants and in the many other cases that have plowed this ground since *Windsor*. The proffered justifications have all been uniformly found insufficient. Indeed, the states’ asserted interests would fail even intermediate scrutiny, and many courts have said they would fail rational-basis review as well. On these issues the circuit decisions in *Bostic*, *Bishop*, and *Kitchen* are particularly persuasive. All that has been said there is not repeated here.

Just one proffered justification for banning same-sex marriage warrants a further note. The defendants say the critical feature of marriage is the capacity to procreate. Same-sex couples, like opposite-sex couples and single individuals, can

adopt, but same-sex couples cannot procreate. Neither can many opposite-sex couples. And many opposite-sex couples do not wish to procreate.

Florida has never conditioned marriage on the desire or capacity to procreate. Thus individuals who are medically unable to procreate can marry in Florida. If married elsewhere, their marriages are recognized in Florida. The same is true for individuals who are beyond child-bearing age. And individuals who have the capacity to procreate when married but who voluntarily or involuntarily become medically unable to procreate, or pass the age when they can do so, are allowed to remain married. In short, the notion that procreation is an essential element of a Florida marriage blinks reality.

Indeed, defending the ban on same-sex marriage on the ground that the capacity to procreate is the essence of marriage is the kind of position that, in another context, might support a finding of pretext. It is the kind of argument that, in another context, might be “accompanied by a suspicion of mendacity.” *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993). The undeniable truth is that the Florida ban on same-sex marriage stems entirely, or almost entirely, from moral disapproval of the practice. Properly analyzed, the ban must stand or fall on the proposition that the state can enforce that moral disapproval without violating the Fourteenth Amendment.

The difficulty for the defendants is that the Supreme Court has made clear that moral disapproval, standing alone, cannot sustain a provision of this kind. *Windsor* so indicates. Further, in *Bowers v. Hardwick*, 478 U.S. 186 (1986), the Court upheld a state law prohibiting sodomy, basing the decision on the state's prerogative to make moral choices of this kind. But later, in *Lawrence v. Texas*, 539 U.S. 558 (2003), the Court revisited the issue, struck down a statute prohibiting gay sex, and expressly overruled *Bowers*. In his *Lawrence* dissent, Justice Scalia made precisely the point set out above—that a ban on same-sex marriage must stand or fall on the proposition that the state can enforce moral disapproval of the practice without violating the Fourteenth Amendment. Justice Scalia put it this way: “State laws against . . . same-sex marriage . . . are likewise sustainable only in light of *Bowers*' validation of laws based on moral choices.” *Lawrence*, 539 U.S. at 590 (Scalia, J., dissenting).

Had we begun with a clean slate, one might have expected the defendants to lead off their arguments in this case by invoking the state's moral disapproval of same-sex marriage. But the defendants did not start there, undoubtedly because any such defense would run headlong into the Supreme Court's decisions in *Lawrence* and *Windsor*. See also *Romer v. Evans*, 517 U.S. 620 (1996) (striking down a state constitutional amendment that discriminated based on sexual orientation). Each of these decisions rejected moral disapproval of same-sex

orientation as a legitimate basis for a law. *See also Bowers*, 478 U.S. at 216 (Stevens, J., dissenting) (“[T]he fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice; neither history nor tradition could save a law prohibiting miscegenation from constitutional attack.”).

In short, we do not write on a clean slate. Effectively stripped of the moral-disapproval argument by binding Supreme Court precedent, the defendants must fall back on make-weight arguments that do not withstand analysis. Florida’s same-sex marriage provisions violate the Due Process and Equal Protection Clauses.

In reaching this conclusion, I have not overlooked the defendants’ reliance on *Baker v. Nelson*, 409 U.S. 810 (1972), and *Lofton v. Sec’y of Dep’t of Children & Family Servs.*, 358 F.3d 804 (11th Cir. 2004).

In *Baker*, the Supreme Court dismissed for want of a substantial federal question an appeal from a state supreme court decision rejecting a constitutional challenge to the state’s ban on same-sex marriage. Such a summary disposition binds lower federal courts unless “doctrinal developments” in the Supreme Court undermine the decision. *See Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975) (holding that a summary disposition binds lower courts “except when doctrinal developments indicate otherwise”) (quoting *Port Auth. Bondholders Protective*

Comm. v. Port of New York Auth., 387 F.2d 259, 263 n.3 (2d Cir. 1967) (Friendly, J.)). The Eleventh Circuit has recognized this principle:

Doctrinal developments need not take the form of an outright reversal of the earlier case. The Supreme Court may indicate its willingness to reverse or reconsider a prior opinion with such clarity that a lower court may properly refuse to follow what appears to be binding precedent. Even less clear-cut expressions by the Supreme Court can erode an earlier summary disposition because summary actions by the Court do not carry the full precedential weight of a decision announced in a written opinion after consideration of briefs and oral argument. The Court could suggest that a legal issue once thought to be settled by a summary action should now be treated as an open question, and it could do so without directly mentioning the earlier case. At that point, lower courts could appropriately reach their own conclusions on the merits of the issue.

Hardwick v. Bowers, 760 F.2d 1202 (11th Cir. 1985) (citations omitted), *rev'd on other grounds*, *Bowers v. Hardwick*, 478 U.S. 186 (1986), *overruled by Lawrence v. Texas*, 539 U.S. 558 (2003).

Every court that has considered the issue has concluded that the intervening doctrinal developments—as set out in *Lawrence*, *Romer*, and *Windsor*—have sapped *Baker*'s precedential force.

In *Lofton*, the plaintiffs challenged a Florida statute that prohibited adoptions by gays. Circuit precedent held, and both sides agreed, that adoption was *not* a fundamental right. The court said sexual orientation was not a suspect classification. With no fundamental right and no suspect classification, the court

applied only rational-basis scrutiny, not strict or intermediate scrutiny. And the court said that, because of the primacy of a child's welfare, "the state can make classifications for adoption purposes that would be constitutionally suspect in other arenas." 358 F.3d at 810. The court criticized the Supreme Court's *Lawrence* decision, 358 F.3d at 816-17, and apparently gave it little or no sway. The court upheld the Florida statute. The statute—the last in the nation banning gay adoption—was later struck down by Florida's own courts. *See Florida Dep't of Children & Families v. Adoption of X.X.G.*, 45 So. 3d 79, 81 (Fla. 3d DCA 2010).

The plaintiffs argue, with considerable force, that *Lofton* does not square with *Lawrence*, *Romer*, and *Windsor*. But *Lofton* is the law of the circuit. It establishes that, at least for now, sexual orientation is not a suspect classification in this circuit for equal-protection purposes. But *Lofton* says nothing about whether marriage is a fundamental right. *Lofton* does not change the conclusion that Florida's same-sex marriage provisions violate the Due Process and Equal Protection Clauses.

The institution of 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, including these plaintiffs, 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.

V. Preliminary Injunction

As a prerequisite to a preliminary injunction, a plaintiff must establish a substantial likelihood of success on the merits, that the plaintiff will suffer irreparable injury if the injunction does not issue, that the threatened injury outweighs whatever damage the proposed injunction may cause a defendant, and that the injunction will not be adverse to the public interest. *See, e.g., Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005); *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc).

For the reasons set out above, the plaintiffs are likely to prevail on the merits. The plaintiffs also meet the other requirements for a preliminary injunction. The plaintiffs will suffer irreparable harm if an injunction is not issued. Indeed, the ongoing unconstitutional denial of a fundamental right almost always constitutes irreparable harm. The threatened injury to the plaintiffs outweighs whatever damage the proposed injunction may cause the defendants, that is, the state. And a preliminary injunction will not be adverse to the public interest. Vindicating constitutional rights almost always serves the public interest.

This order requires the plaintiffs' to give security for costs in a modest amount. Any party may move at any time to adjust the amount of security.

VI. Stay

A four-part test governs stays pending appeal: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). *See also Venus Lines Agency v. CVG Industria Venezolana De Aluminio, C.A.*, 210 F.3d 1309, 1313 (11th Cir. 2000) (applying the same test).

The four-part test closely tracks the four-part test governing issuance of a preliminary injunction. Because the governing four-part tests are so similar, it is a rare case in which a preliminary injunction is properly stayed pending appeal. This is the rare case.

As set out above, the state’s interest in refusing to allow or recognize the plaintiffs’ same-sex marriages is insufficient to override the plaintiffs’ interest in vindicating their constitutional rights. The public interest does not call for a different result. So the preliminary injunction will issue, eliminating any delay in this court, and allowing an enjoined party to go forward in the Eleventh Circuit.

But at the stay-pending-appeal stage, an additional public interest comes into play. There is a substantial public interest in implementing this decision just once—in not having, as some states have had, a decision that is on-again, off-

again. This is so for marriages already entered elsewhere, and it is more clearly so for new marriages. There is a substantial public interest in stable marriage laws. Indeed, there is a substantial public interest in allowing those who would enter same-sex marriages the same opportunity for due deliberation that opposite-sex couples routinely are afforded. Encouraging a rush to the marriage officiant, in an effort to get in before an appellate court enters a stay, serves the interests of nobody.

A stay thus should be entered for long enough to provide reasonable assurance that the opportunity for same-sex marriages in Florida, once opened, will not again close. The stay will remain in effect until stays have been lifted in *Bostic*, *Bishop*, and *Kitchen*, and for an additional 90 days to allow the defendants to seek a longer stay from this court or a stay from the Eleventh Circuit or Supreme Court.

There is one exception to the stay. The exception is the requirement to correct Ms. Goldwasser's death certificate. The correction is important to Ms. Goldberg. There is little if any public interest on the other side of the scale. There is no good reason to further deny Ms. Goldberg the simple human dignity of being listed on her spouse's death certificate. Indeed, the state's refusal to let that happen is a poignant illustration of the controversy that brings us here.

VII. Filing

Because this is an appealable order, it will be filed separately in each of the consolidated cases. Any notice of appeal must be filed separately in each case to which it applies.

VIII. Conclusion

The Supreme Court has repeatedly recognized the fundamental right to marry. The Court applied the right to interracial marriage in 1967 despite state laws that were widespread and of long standing. Just last year the Court struck down a federal statute that prohibited federal recognition of same-sex marriages lawfully entered in other jurisdictions. The Florida provisions that prohibit the recognition of same-sex marriages lawfully entered elsewhere, like the federal provision, are unconstitutional. So is the Florida ban on entering same-sex marriages.

For the reasons set out in this order,

IT IS ORDERED:

1. The state defendants' motion to dismiss, ECF No. 50 in Case No. 4:14cv107, is granted in part and denied in part. All claims against the defendant Governor and Attorney General are dismissed without prejudice as redundant. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b). In all other respects the motion to dismiss is denied.

2. The defendant Clerk of Court's motion to dismiss, ECF No. 49 in Case No. 4:14cv107, is denied.

3. The plaintiffs' motions for a preliminary injunction, ECF Nos. 2, 11, and 42 in Case No. 4:14cv107, are granted against the remaining defendants.

4. The defendant Secretary of the Florida Department of Management Services and the defendant Florida Surgeon General must take no steps to enforce or apply these Florida provisions on same-sex marriage: Florida Constitution, Article I, § 27; Florida Statutes § 741.212; and Florida Statutes § 741.04(1). The preliminary injunction set out in this paragraph will take effect upon the posting of security in the amount of \$500 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Secretary, the Surgeon General, and their 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.

5. The defendant Florida Surgeon General must issue a corrected death certificate for Carol Goldwasser showing that at the time of her death she was married to Arlene Goldberg. The deadline for doing so is the later of (a) September 22, 2014, or (b) 14 days after all information is provided that would be required in the ordinary course of business as a prerequisite to listing an opposite-sex spouse on a death certificate. 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 Surgeon General 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.

6. 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.

The preliminary injunctions set out in paragraphs 4 and 6 are stayed and will not take effect until 91 days after stays have been denied or lifted in *Bostic v. Schaefer*,

Nos. 14–1167, 14–1169, 14–1173, 2014 WL 3702493 (4th Cir. July 28, 2014); *Bishop v. Smith*, Nos. 14–5003, 14–5006, 2014 WL 3537847 (10th Cir. July 18, 2014); and *Kitchen v. Herbert*, No. 13–4178, 2014 WL 2868044 (10th Cir. June 25, 2014). The stay may be lifted or extended by further order.

SO ORDERED on August 21, 2014.

s/Robert L. Hinkle
United States District Judge

DE 25

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

SLOAN GRIMSLEY, *et al.*,

Plaintiffs,

v.

Case No. 4:14-cv-138-RH/CAS

RICK SCOTT, in his official capacity
as Governor of Florida, *et al.*,

Defendants.

JOINT NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that **Dr. John H. Armstrong**, in his official capacity as Secretary of the Florida Department of Health and Florida Surgeon General; and **Craig J. Nichols**, in his official capacity as Secretary of the Florida Department of Management Services—defendants in the above-named case—hereby jointly appeal to the United States Court of Appeals for the Eleventh Circuit from the order entered in this action by the district court on August 21, 2014, (DE 23), granting a preliminary injunction against said defendants in this action.

[continued on next page]

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Adam S. Tanenbaum
ALLEN WINSOR (FBN 16295)
Solicitor General
ADAM S. TANENBAUM (FBN 117498)
Chief Deputy Solicitor General

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*Counsel for the Secretary of the Florida
Department of Health and for the Secretary
of the Florida Department of Management
Services*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this fourth day of September, 2014, a true copy of the foregoing joint notice of appeal has been filed with the Court utilizing its CM/ECF system, which will transmit a notice of said electronic filing to all plaintiffs' and defendants' counsel of record registered with the Court for that purpose.

/s/ Adam S. Tanenbaum
ADAM S. TANENBAUM
Florida Bar No. 117498

DE 26

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

SLOAN GRIMSLEY, *et al.*,

Plaintiffs,

v.

Case No. 4:14-cv-138-RH/CAS

RICK SCOTT, in his official capacity
as Governor of Florida, *et al.*,

Defendants.

**ANSWER TO AMENDED COMPLAINT
BY SECRETARY OF FLORIDA DEPARTMENT OF HEALTH AND
SECRETARY OF FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**

COME NOW, Dr. John H. Armstrong, in his official capacity as the Secretary of the Florida Department of Health and Florida Surgeon General; and Craig J. Nichols, in his official capacity as Secretary of the Florida Department of Management Services (“DMS Secretary”); and answer, paragraph by paragraph, the factual allegations of the plaintiffs’ amended complaint (DE 16) as follows:

1. Without knowledge as to the factual allegation in the first sentence, so denied. The remainder of the paragraph is legal argument and does not require a response.
2. This paragraph makes purely legal assertions and does not require an answer. To the extent the Court were to characterize anything therein as a factual allegation, without knowledge, so denied.
3. This paragraph makes purely legal assertions and does not require an

answer. To the extent the Court were to characterize anything therein as a factual allegation, without knowledge, so denied.

4. Denied.
5. Denied.
6. Denied.
7. Denied that the plaintiffs are entitled to the relief they seek.
8. Admitted that this action purports to travel under section 1983, title 42, of the U.S. Code. Otherwise, denied.
9. Admitted that the Court has federal question jurisdiction over this matter, and that it has Article III subject matter jurisdiction as it relates to the DMS Secretary. Otherwise denied.
10. Admitted that venue is proper in this district and division.
11. Without knowledge, so denied.
12. Without knowledge, so denied.
13. Without knowledge, so denied.
14. Without knowledge, so denied.
15. Without knowledge, so denied.
16. Without knowledge, so denied.
17. Without knowledge, so denied.
18. Without knowledge, so denied.
19. Without knowledge, so denied.
20. Without knowledge, so denied.

21. Admitted that Governor Rick Scott is the Governor of Florida. The remainder of the allegations in this paragraph are legal assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the Governor; to the extent the assertions of this paragraph conflict with the law, the assertions are denied. The claims against the Governor have been dismissed.

22. Admitted that Attorney General Pamela Jo Bondi is the Attorney General of Florida. The remainder of the allegations in this paragraph are legal assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the Attorney General; to the extent the assertions of this paragraph conflict with the law, the assertions are denied. The claims against the Attorney General have been dismissed.

23. Admitted that Dr. John H. Armstrong is the Secretary of the Florida Department of Health and Florida Surgeon General. The remainder of the allegations in this paragraph are legal assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the Secretary of the Florida Department of Health and the Florida Surgeon General; to the extent the assertions of this paragraph conflict with the law, the assertions are denied. Any assertion characterized as a factual allegation also is denied.

24. Admitted that Craig J. Nichols is the Secretary of the Florida Department of Management Services. Admitted that Ms. Grimsley and Ms. Myers and Messrs. Loupo, Gantt, Ulvert, and Hankin are or have been public employees. Without knowledge regarding the remainder of the allegations in the last sentence of this paragraph, so denied. The remainder of the assertions in this paragraph are legal

assertions, not requiring a response here. Florida law sets out the duties and responsibilities of the DMS Secretary and his agency; to the extent the assertions of this paragraph conflict with the law, the assertions are denied.

25. This paragraph makes purely legal assertions and argument, which do not require a response here. The referenced provision speaks for itself.

26. This paragraph makes purely legal assertions and argument, which do not require a response here. The referenced provision speaks for itself.

27. This paragraph makes purely legal assertions and argument, which do not require a response here.

28. This paragraph makes purely legal assertions and argument, which do not require a response here. The referenced provisions speak for themselves.

29. This paragraph makes purely legal assertions and argument, which do not require a response here.

30. This paragraph makes purely legal assertions and argument, which do not require a response here.

31. This paragraph makes purely legal assertions and argument, which do not require a response here.

32. Admitted that some same-sex couples raise children together. Without knowledge as to the specific circumstances of the plaintiffs identified in this allegation, so otherwise denied.

33. Without knowledge, so denied.

34. Without knowledge, so denied.

35. Denied.

36. This paragraph makes purely legal assertions and argument, which do not require a response here.

37. Denied.

38. The responses to paragraphs one through 37 set out above are incorporated by reference as if repeated here.

39. The Fourteenth Amendment speaks for itself, and this paragraph otherwise makes only legal assertions and arguments. This paragraph does not require a response here.

40. The statute speaks for itself, and this paragraph does not require a response here.

41. The statute speaks for itself, and this paragraph does not require a response here.

42. Article I, section 27, of the Florida Constitution speaks for itself, and this paragraph does not require a response here.

43. This paragraph makes only legal assertions and arguments and does not require a response here.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied that the plaintiffs are entitled to relief.

49. This incorporation statement constitutes improper pleading. Nonetheless, the responses to the preceding paragraphs are incorporated by reference as if repeated here.

50. The Fourteenth Amendment speaks for itself, and this paragraph does not require a response here.

51. The statute speaks for itself, and this paragraph does not require a response here.

52. The statute speaks for itself, and this paragraph does not require a response here.

53. Article I, section 27, of the Florida Constitution speaks for itself, and this paragraph does not require a response here.

54. Denied.

55. Denied.

56. Denied.

57. This paragraph makes purely legal assertions and argument, which do not require a response here.

58. This paragraph makes purely legal assertions and argument, which do not require a response here.

59. Without knowledge regarding policy statements of professional organizations, so denied. This paragraph otherwise makes purely legal assertions and argument, which do not require a response here.

60. Federal and state laws speak for themselves. This paragraph otherwise

makes purely legal assertions and argument, which do not require a response here.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied that the plaintiffs are entitled to relief.

67. This incorporation statement constitutes improper pleading. Nonetheless, the responses to the preceding paragraphs are incorporated by reference as if repeated here.

68. The Fourteenth Amendment speaks for itself, and this paragraph does not require a response here.

69. The statute speaks for itself, and this paragraph does not require a response here.

70. The statute speaks for itself, and this paragraph does not require a response here.

71. Article I, section 27, of the Florida Constitution speaks for itself, and this paragraph does not require a response here.

72. This paragraph makes only legal assertions and arguments and does not require a response here.

73. Denied.

74. Denied.

75. Denied.

76. Denied that the plaintiffs are entitled to relief.

The Secretary of the Florida Department of Health and the DMS Secretary deny each and every allegation not specifically admitted above.

WHEREFORE, the Secretary of the Florida Department of Health and the Secretary of the Florida Department of Management Services pray that the Court deny the relief requested by the plaintiffs, that the plaintiffs take nothing from this action, and that judgment be entered in favor of the defendants.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Adam S. Tanenbaum

ALLEN WINSOR (FBN 16295)

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of the Florida Department of Management
Services*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this fourth day of September, 2014, a true copy of the foregoing answer has been filed with the Court utilizing its CM/ECF system, which will transmit a notice of said electronic filing to all parties' counsel of record registered with the Court for that purpose.

/s/ Adam S. Tanenbaum

ADAM S. TANENBAUM
Florida Bar No. 117498

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 19th day of November, 2014, a true copy of the foregoing appendix was filed electronically with the Clerk of Court using the Court's CM/ECF system, which will send by e-mail a notice of docketing activity to the registered Attorney Filers listed on the attached electronic service list; and a true copy in paper form was served by first-class mail on the following unregistered counsel: Stephen C. Emmanuel, Ausley & McMullen, P.A., Post Office Box 391, Tallahassee, Florida 32302-0391, *Counsel for Amicus*.

/s/ Adam S. Tanenbaum

ADAM S. TANENBAUM
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