

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

KARI L. CHIN, et al.,

Plaintiffs,

Case No. 4:15-cv-00399-RH-CAS

v.

JOHN H. ARMSTRONG, in his official
capacity as Surgeon General and Secretary
of Health for the State of Florida, and
KENNETH JONES in his official
Capacity as State Registrar,

Defendants.

**THE SECRETARY OF FLORIDA DEPARTMENT OF HEALTH AND REGISTRAR
FOR THE STATE OF FLORIDA'S ANSWER TO PLAINTIFFS' COMPLAINT**

Defendants, Dr. John H. Armstrong in his official capacity as the Secretary of the Florida Department of Health and Florida Surgeon General and Kenneth Jones in his official capacity as Registrar for the State of Florida, by and through their undersigned counsel, herby file their Answer to Plaintiffs' Complaint and Demand for Declaratory and Injunctive Relief and in support there of state as follows:

INTRODUCTION

1. Paragraph 1 sets forth legal arguments and conclusions, which do not require a response. As to the factual allegations contained within Paragraph 1, Defendants are without knowledge and therefore deny all factual allegations contained therein. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

2. Paragraph 2 sets forth legal arguments and conclusions, which do not require a response. Florida's existing laws regarding adoption speak for themselves. To the extent that this Court were to characterize anything therein as factual allegations, the allegations are denied. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

3. As to the allegations contained in Paragraph 3, Defendants are without knowledge and therefore deny the allegations contained therein. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

4. Defendants deny the allegations contained in Paragraphs 4. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

5. Defendants deny the allegations contained in Paragraphs 5. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

6. Defendants deny the allegations contained in Paragraphs 6. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

7. Paragraph 7 sets forth conclusions of law, which do not require a response. To the extent that this Court were to characterize anything therein as factual allegations, the allegations are denied. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

THE PLAINTIFFS

8. As to the allegations contained in Paragraph 8, Defendants admit that Plaintiffs claim a right to the entry of an additional parent to the birth certificate. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS. As to the remaining factual allegations, Defendants are without knowledge and therefore deny the allegations contained therein.

9. As to the allegations contained in Paragraph 9, Defendants admit that Plaintiffs claim a right to the entry of an additional parent to the birth certificate. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS. As to the remaining factual allegations, Defendants are without knowledge and therefore deny the allegations contained therein.

10. As to the allegations contained in Paragraph 10, Defendants admit that Plaintiffs claim a right to the entry of an additional parent to the birth certificate. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-

00107-RH-CAS. As to the remaining factual allegations, Defendants are without knowledge and therefore deny the allegations contained therein.

11. As to the allegations contained in Paragraphs 11, Defendants are without knowledge and therefore deny the allegations contained therein. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

THE DEFENDANTS

12. As to the allegations contained in Paragraph 12, it is admitted that Dr. John H. Armstrong is the Secretary of the Florida Department of Health and the Florida Surgeon General and that he has been purportedly sued in his official capacity for alleged actions taken under the color of state law. The remainder of the allegations in this Paragraph are legal assertions, which do not require a response. Florida Law sets out the duties and responsibilities of the Surgeon denied.

13. As to the allegations general; to the extent the legal assertions of this Paragraph conflict with the law, they are contained in Paragraph 13, it is admitted that Kenneth Jones is the State Registrar for the State of Florida and that he has been purportedly sued in his official capacity for alleged actions taken under the color of state law. The remainder of the allegations in this Paragraph are legal assertions, which do not require a response. Florida law sets out the duties and responsibilities of the State Registrar; to the extent the legal assertions of this Paragraph conflict with the law, they are denied.

JURISDICTION AND VENUE

14. As to the allegations contained in Paragraph 14, it is admitted that the action is brought by Plaintiffs under section 1983, title 42 of the U.S. Code, otherwise denied.

15. As to the allegations contained in Paragraph 15, it is admitted that this Court has subject matter and personal jurisdiction, otherwise denied.

16. As to the allegations contained in Paragraph 16, it is admitted that venue is proper in this district and division, otherwise denied.

17. As to the allegations contained in Paragraph 17, it is admitted that this Court has the authority to render declaratory and injunctive relief. Denied that Plaintiffs are entitled to such relief.

FACTUAL BACKGROUND

18. As to the allegations contained in Paragraphs 18, Defendants admit that Plaintiffs contacted the Bureau of Vital Statistics requesting an amendment to the birth certificate. Defendants further admit that Plaintiffs were advised at that time that this office did not have the authority to amend the certificates, absent legislative changes or a court order. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS. Defendants are without knowledge as to the remaining factual allegations and these allegations are therefore denied.

19. As to the allegations contained in Paragraphs 19, Defendants admit that Plaintiffs contacted the Bureau of Vital Statistics requesting an amendment to the birth certificate. Defendants further admit that Plaintiffs were advised at that time that this office did not have the authority to amend the certificates, absent legislative changes or a court order.

The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS. Defendants are without knowledge as to the remaining factual allegations and these allegations are therefore denied.

20. As to the allegations contained in Paragraph 20, Defendants admit that Plaintiffs contacted the Bureau of Vital Statistics requesting an amendment to the birth certificate. Defendants further admit that Plaintiffs were advised, at that time, that this office did not have the authority to amend the certificates, absent legislative changes or a court order. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS. Defendants are without knowledge as to the remaining factual allegations and these allegations are therefore denied.

21. As to the allegations contained in Paragraph 21, Defendants admit that Plaintiffs contacted the Bureau of Vital Statistics requesting an amendment to the birth certificate. Defendants further admit that Plaintiffs were advised, at that time, that this office did not have the authority to amend the certificates, absent legislative changes or a court order. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS. Defendants are without knowledge as to the remaining factual allegations and these allegations are therefore denied.

GENERAL ALLEGATIONS

22. Paragraph 22 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied. Florida's existing laws regarding the recordation of vital statistics speak for themselves. To the extent the allegations contained in Paragraph 22 conflict with Florida law, they are denied.

23. Paragraph 23 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied. Florida's existing laws regarding the recordation of vital statistics speak for themselves. To the extent the allegations contained in Paragraph 23 conflict with Florida law, they are denied.

24. Paragraph 24 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied. The United States Supreme Court's holding in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) speaks for itself.

25. Paragraph 25 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

26. Paragraph 26 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied. Florida's existing laws regarding the recordation of

vital statistics speak for themselves. To the extent the allegations contained in Paragraph 26 conflict with Florida law, they are denied. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

27. Paragraph 27 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

28. Paragraph 28 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied.

29. Paragraph 29 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied.

30. Paragraph 30 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied.

31. Paragraph 31 sets forth conclusions of law, which do not require a response. However, to the extent this Court were to characterize anything therein as a factual allegation, the allegations are denied. The Department of Health is seeking clarification

on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

COUNT I:
INFRINGEMENT OF THE FUNDAMENTAL RIGHT TO MARRY

32. In response to Paragraph 32, Defendants incorporate by reference their responses to Paragraphs 1 through 31 as if fully set forth herein.

33. As to the allegations contained in Paragraph 33, the Fourteenth Amendment and Section 1983, title 42 of the U.S. Code speak for themselves. This paragraph does not require a response.

34. Defendants deny the allegations contained in Paragraph 34. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

35. As to the allegations contained in Paragraph 35, the United States Supreme Court's holding in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) speaks for itself. Paragraph 35 sets forth legal arguments and conclusions that do not require a response here. To the extent that this Court were to characterize anything therein as factual allegations, the allegations are denied. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

36. Defendants deny the allegations contained in Paragraph 36. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses

as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

37. Defendants deny the allegations contained in Paragraph 37.

38. Paragraph 38 sets forth legal assertions and arguments, which do not require a response here.

39. Defendants deny the allegations contained in Paragraph 39.

COUNT II:
DENIAL OF EQUAL PROTECTION OF THE LAWS

40. In response to Paragraph 40, Defendants incorporate by reference their responses to Paragraphs 1 through 39 as if fully set forth herein.

41. As to the allegations contained in Paragraph 41, the Fourteenth Amendment and Section 1983, title 42 of the U.S. Code speak for themselves. This paragraph does not require a response.

42. Defendants deny the allegations contained in Paragraph 42. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

43. As to the allegations contained in Paragraph 43, the United States Supreme Court's holding in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) speaks for itself. Paragraph 43 sets forth legal arguments and conclusions that do not require a response here. To the extent that this Court were to characterize anything therein as factual allegations, the allegations are denied. The Department of Health is seeking clarification on its authority

to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

44. Defendants deny the allegations contained in Paragraph 44. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

45. Defendants deny the allegations contained in Paragraph 45. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

46. Paragraph 46 sets forth legal assertions and arguments, which do not require a response here. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

47. Defendants deny the allegations contained in Paragraphs 47. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

48. Defendants deny the allegations contained in Paragraphs 48. The Department of Health is seeking clarification on its authority to issue birth certificates listing both spouses as a parent to married same-sex couples in *Brenner et al. v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

49. Defendants deny the allegations contained in Paragraphs 49.

50. Paragraph 50 sets forth legal assertions and arguments, which do not require a response here.

51. Defendants deny the allegations contained in Paragraph 51.

52. *The Secretary of the Florida Department of Health and the State Registrar for the State of Florida deny each and every allegation not specifically admitted above.*

WHEREFORE, the Secretary of the Florida Department of Health and the State Registrar for the State of Florida pray that the Court deny the relief requested by Plaintiffs and that Plaintiffs take nothing from this action, and that judgement be entered in favor of the defendants.

Respectfully submitted this 9th day of September, 2015.

MARK J.HENDERSON
Chief Legal Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 9, 2015, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF System which will send a notice of electronic filing to the following:

Mary B. Meeks Mary Meeks, P.A. P.O. Box 536758 Orlando, FL 32853	Elizabeth Schwartz Elizabeth Schwartz, P.A. 690 Lincoln Road Suite 304 Miami Beach, FL 33139
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I HEREBY CERTIFY that on September 9, 2015, a true and correct copy of the foregoing document and the notice of electronic filing was sent via U.S. and electronic mail to the following non-CM/ECF participants:

Shannon P. Minter*
Christopher F. Stoll*
Amy Whelan*
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* Admission to N.D. Fla. Pending

/S/Mark J. Henderson
MARK J. HENDERSON