

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.

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT**

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 and pursuant to Rule 56 of the Federal Rules of Civil Procedure file this their Response in Opposition to Plaintiffs' Motion for Summary Judgment and in support thereof states as follows:

1. This action arises from the United States' Supreme Court's recent ruling in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) and involves its application to section 382.013(2) which states that if a woman is married at the time of birth, the name of her husband will be entered into the birth record.
2. Defendants have been sued in their official capacity in relation to their actions on behalf of the Florida Department of Health, a state executive agency.
3. All parties are in agreement that there are no issues of material fact.

4. Defendants recognize that this Court in *Brenner v. Scott*, 999 F. Supp. 2d 1278 (N.D. Fla. 2014) has granted a preliminary injunction instructing the Surgeon General to take no steps to enforce section 741.212, Florida Statutes and Article I, section 27 of the Florida Constitution (exempting same sex couples from the definition of marriage). It is unclear to what extent the Order granting preliminary injunction in the *Brenner* suit is applicable to the statute at issue, the set of facts, and the Plaintiffs in this suit. Defendants have filed a Motion for Clarification as to the scope of the Preliminary injunction and Defendants' authority to issue birth certificates to married same sex couples.
5. As an executive agency, the Department of Health has no authority to invalidate, overrule, or find unconstitutional an existing provision of Florida law. *Palm Harbor Special Fire Control District v. Kelly*, 516 So. 2d 249 (Fla. 1987).
6. Absent judicial or legislative intervention, the Department of Health has no authority to issue birth certificates to same sex married couples pursuant to section 382.013, Florida Statutes.
7. Defendants, therefore, respectfully request that this Court deny Plaintiffs' Motion for Summary Judgment requesting the issuance of a permanent injunction and declaratory relief as unnecessary and unwarranted, as this Court's determination as to the scope of the *Obergefell* ruling at issue in the *Brenner* suit are sufficient to direct the Department of Health on this issue.

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT

INTRODUCTION

This case arises in the wake of the *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) which held that state bans on same sex marriages are unconstitutional, however, left open the question as to the implication of this ruling on state conferred benefits related to marriage such as the vital statistics statute at issue in the instant suit. Defendants, sued in their official capacity in relation to actions on behalf of the Department of Health, an executive agency, lack the authority to invalidate or declare unconstitutional legislation currently in effect.

The scope of the *Obergefell* ruling is at issue in another action pending before this Court, *Brenner v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS. Although the Court has issued a preliminary injunction in the *Brenner* matter, the Court has yet to rule on the final merits and provide guidance on the scope of the ruling in *Obergefell* and its implications on the interpretation of section 382.013. A finding by this Court in the *Brenner* suit that *Obergefell* provides sufficient relief for Plaintiffs in this matter and prevents future harm would obviate the need for declaratory and injunctive relief in the instant case.

INJUNCTIVE RELIEF IS UNWARRANTED

Injunctive relief in the instant case is unwarranted and inappropriate. Defendants' actions in interpreting section 382.013 in accordance with existing Florida law is consistent with the limitation of authority vested in the Department of Health as an executive agency. The law has long been clear that agencies may not nullify or refuse to enforce statutes. *Public Utilities Commission v. United States*, 355 U.S. 534, 539 (1958); *Palm Harbor Special Fire Control District v. Kelly*, 516 So. 2d 249 (Fla. 1987). As detailed above, the holding in *Obergefell* did not

dispositively address the question of the rights and privileges associated with marriage. In *Obergefell* the court noted:

Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have throughout our history made marriage the basis for an expanding list of governmental rights, benefits and responsibilities. These aspects of marital status include: taxation; inheritance and property rights; rules of intestate succession, spousal privilege in the law of evidence; hospital access; medical decision making authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers' compensation benefits; health insurance; and child custody, support and visitation rules.

Obergefell at 2601.

The question regarding the impact of the *Obergefell* ruling on the rights and privileges associated with marriage is the crux of the issues pending in a related matter before this Court, *Brenner v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS. Although this Court has entered an Order granting preliminary injunction in the *Brenner* suit, a final order addressing the scope of *Obergefell* on such matters has not been entered. *Brenner v. Scott*, 999 F. Supp. 2d 1278 (N.D. Fla. 2014).

However, should this Court enter a final order in the *Brenner* suit clarifying the scope of the impact of *Obergefell* on vital statistics statutes such as 382.013, the Department of Health would be bound by such an order, making further injunctive relief unnecessary.

Moreover, a finding of success on the merits of the constitutional claim at issue in the *Brenner* suit, while dispositive as to the legal issue in the instant suit, does not automatically entitle the Plaintiffs to injunctive relief. *Wooden v. Bd. Of Regents*, 247 F. 3d 1262, 1283 (11th Cir. 2001). Injunctive relieve is drastic and extraordinary and may only be issued when all four equitable factors are satisfied. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

Here, Plaintiffs cannot show that irreparable injury will occur absent the issuance of an injunction. *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). Defendants cannot enforce laws that have been adjudicated invalid or found unconstitutional, thus no prospective harm is likely to occur in the event the *Brenner* Plaintiffs succeed on the merits. An injunction prohibiting Defendants from enforcing an invalid or unconstitutional law is nothing more than an impermissible injunction prohibiting the Defendants from violating the law. *Elend v. Basham*, 471 F. 3d. 1199, 1209 (11th Cir. 2006) (injunction directing Secret Service to ensure no violation of the First Amendment occurred was impermissible). Therefore, Defendants respectfully request that this Court deny Plaintiffs Motion for injunctive relief as unnecessary and improper.

DECLARATORY RELIEF IS UNNECESSARY

As detailed above, the legal issues at the heart of the instant matter are the same as those at the heart of the related suit pending before this Court, *Brenner*. As a dispositive ruling on the merits of the *Brenner* suit will control in the instant suit, declaratory relief is unnecessary and improper. Here, the Plaintiffs have not and cannot show that there would be a reasonable expectation that the injury they suffered will continue or be repeated in the future. A finding by this Court which clarifies the scope of *Obergefell* as to the rights and privileges associated with marriage by its very nature prevents Defendants from withholding such rights from future same sex married couples. Absent such a likelihood of continued injury in the future, declaratory judgment is improper. *Malowney v. Fed. Collection Deposit Grp.*, 193 F. 3d 1342, 1347 (11th Cir. 1999). Moreover, the Eleventh Amendment prevents the issuance of a declaratory relief related to the lawfulness of a state official's past actions. *Green v. Mansour*, 474 U.S. 64, 73 (1985). Therefore, Plaintiffs are not entitled to declaratory relief.

CONCLUSION

For the foregoing reasons, Defendants respectfully request this Court deny Plaintiffs' Motion for Summary Judgment seeking declaratory and injunctive relief on substantially the same issue pending before the Court in *Brenner v. Scott, et al.*, Case No. 4:14-cv-00107-RH-CAS.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 6, 2016, 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 Email: marybmeeks@aol.com	Elizabeth Schwartz Elizabeth Schwartz, P.A. 690 Lincoln Road Suite 304 Miami Beach, FL 33139 E-mail: eschwartz@sobelaw.com
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I HEREBY CERTIFY that on January 6, 2016, a true and correct copy of the foregoing document and the notice of electronic filing was sent via electronic mail to the following non-CM/ECF participants:

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

/S/ Nichole Geary
Nichole Geary

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the length limitations set forth in the Court's Scheduling Order dated November 4, 2015 and the Northern District of Florida Local Rule 7.1(f). Defendants' Response to Plaintiffs' Motion for Summary Judgment contains 1,376 words and Memorandum of Law in Support is 4 pages long.

/S/ Nichole Geary
Nichole Geary