

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

HAL F.B. BIRCHFIELD and PAUL G.
MOCKO, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

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 of Vital
Statistics for the State of Florida,

Defendants.

CASE NO. 4:15-cv-00615-RH-CAS

ANSWER

Defendants 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 of Vital Statistics for the State of Florida (collectively, Department of Health (“DOH”)), answer plaintiffs’ complaint, as follows:

INTRODUCTION

1. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph one and therefore denies all factual allegations contained therein. DOH denies that it has violated the U.S. Constitution.

2. DOH admits that plaintiff Birchfield attempted to amend the Florida death certificate of James Merrick Smith revising the decedent's marital status, but failed to obtain a court order as required by §382.016(2), Fla. Stat. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph two concerning plaintiff Mocko's attempts to amend a Florida death certificate, and therefore denies those allegations. DOH is without knowledge as to the remaining factual allegations and these allegations are therefore denied. Paragraph two also sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege DOH has

the authority to grant preferential treatment under the law, allowing same-sex couples but not heterosexual couples to change a decedent's marital status on a previously issued Florida death certificate without court order, contrary to direct statutory mandate, the allegations are denied. To the extent the remaining allegations of paragraph two conflict with Florida law and the protections and security such law affords all the citizens of the Florida against fraud and abuse, they are denied.

3. This Court's decision in *Brenner et al. v. Scott*, 999 F. Supp. 2d 1278 (N.D. Fla. 2014), *order clarified*, No. 4:14-CV-00107-RH-CAS, 2015 WL 44260 (N.D. Fla. Jan. 1, 2015) and the United States Supreme Court's holding in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) speak for themselves. Paragraph three sets forth legal arguments and conclusions, which do not require a response by DOH. To the extent this Court were to characterize anything therein as factual allegations, the allegations are denied. To the extent that plaintiffs allege that DOH is in violation of this Court's Order in *Brenner*, those allegations are denied. To the extent plaintiffs allege that DOH does not apply the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied.

4. Paragraph four sets forth legal arguments and conclusions, which do not require a response from DOH. However, to the extent this Court were to

characterize anything therein as factual allegations, those allegations are denied. To the extent the allegations contained in paragraph four misstate Florida law as permitting DOH to change the marital status of a decedent, regardless of the decedent's sexual orientation, via an amendment to a Florida death certificate without a court order, the allegations are denied. To the extent plaintiffs allege that DOH does not apply the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied.

5. Paragraph five sets forth legal arguments and conclusions, which do require a response from DOH. However, to the extent this Court were to characterize anything therein as factual allegations, those allegations are denied. To the extent the allegations contained in paragraph five misstate Florida law as permitting DOH to change the marital status of a decedent, regardless of the decedent's sexual orientation, via an amendment to a Florida death certificate without a court order, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied.

6. Paragraph six sets forth legal arguments and conclusions, which do require a response from DOH. However, to the extent this Court were to

characterize anything therein as factual allegations, those allegations are denied. To the extent the allegations contained in paragraph six misstate Florida law as permitting DOH to change the marital status of a decedent, regardless of the decedent's sexual orientation, via an amendment to a Florida death certificate without a court order, the allegations are denied. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied.

7. Paragraph seven sets forth legal arguments and conclusions, which do not require a response from DOH. To the extent that this Court were to construe anything therein as factual allegations, the allegations are denied. To the extent that this paragraph purports to set forth a request for relief, plaintiffs' entitlement to such relief is denied.

JURISDICTION AND VENUE

8. Admitted that plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988, but denied that plaintiffs are entitled to any relief under those provisions.

9. Admitted that this Court has jurisdiction over this case.

10. Paragraph ten contains no allegations directed towards DOH.

11. Defendants Armstrong and Jones are sued in their official capacities only, and DOH admits that this Court has jurisdiction over it in this case.

12. Admitted.

PARTIES

A. Named Plaintiffs

13. Denied that plaintiff Birchfield has been harmed by DOH. DOH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph thirteen.

14. Denied that plaintiff Mocko has been harmed by DOH. DOH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph fourteen.

B. Defendants

15. Admitted that defendant Armstrong is being sued in his official capacity only. The statutory provisions referenced in paragraph fifteen speak for themselves.

16. Admitted that defendant Jones is being sued in his official capacity only. The statutory provisions referenced in paragraph sixteen speak for themselves.

17. Denied.

C. Class Allegations

18. Admitted that plaintiffs bring this action as a putative class action under Rule 23 of the Federal Rules of Civil Procedure. DOH denies that plaintiffs are entitled to any relief under Fed. R. Civ. P. 23.

19. Admitted only that plaintiffs propose a Class definition, but denied that such a definition is proper at this stage of the litigation.

20. Denied.

21. Denied, including all subparts.

22. Denied.

23. Denied.

STATEMENT OF FACTS

24. Upon information and belief, admitted that plaintiffs are residents of Florida. The remainder of the allegations contained in paragraph twenty-four set forth legal argument and conclusions of law which do not require a response from DOH. To the extent this Court were to construe the remaining allegations as factual, they are denied.

25. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph twenty-five and the allegations are therefore, denied.

26. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph twenty-six and the allegations are therefore, denied.

27. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph twenty-seven and the allegations are therefore, denied.

28. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph twenty-eight and the allegations are therefore, denied.

29. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph twenty-nine and the allegations are therefore, denied.

30. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph thirty and the allegations are therefore, denied.

31. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph thirty-one and the allegations are therefore, denied.

32. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph thirty-two and the allegations are therefore, denied.

33. Florida State Document No. 2013127156 speaks for itself. To the extent any allegation is being made against DOH, such allegation is denied.

34. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph thirty-four and the allegations are therefore, denied.

35. Admitted only that plaintiff Birchfield has not obtained a court order to amend the death certificate as required by §382.016(2), Fla. Stat. All other factual allegations are denied.

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36. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph thirty-six and the allegations are therefore, denied.

37. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph thirty-seven and the allegations are therefore, denied.

38. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph thirty-eight and the allegations are therefore, denied.

39. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph thirty-nine and the allegations are therefore, denied.

40. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph forty and the allegations are therefore, denied.

41. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph forty-one and the allegations are therefore, denied.

42. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph forty-two and the allegations are therefore, denied.

43. Florida State Document No. 2014096174 speaks for itself. To the extent any allegation is being made against DOH, such allegation is denied.

44. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph forty-four and the allegations are therefore, denied.

45. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph forty-five and the allegations are therefore, denied.

46. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph forty-six and the allegations are therefore, denied. Admitted that §382.016(2), Fla. Stat. requires a court order to change the marital status of a decedent via an amendment to the death certificate.

History of Florida's discrimination against married same-sex couples

47. The allegations of paragraph forty-seven purport to set forth legal conclusions, and do not require a response from DOH. To the extent that this Court were to construe anything therein as factual allegations, the allegations are denied. The statutory provisions referenced in paragraph forty-seven speak for themselves.

48. Denied that DOH has violated plaintiff's constitutional rights. To the extent paragraph forty-eight contains allegations that DOH is in violation of this Court's Order in *Brenner*, these allegations are denied. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death

certificates uniformly, without regard to sexual orientation, the allegations are denied.

49. The allegations of paragraph forty-nine purport to set forth legal conclusions, and do not require a response from DOH. However, to the extent this Court were to construe anything therein as factual allegations, the allegations are denied. This Court's Order in *Brenner* speaks for itself.

50. The allegations of paragraph fifty purport to set forth legal conclusions, and do not require a response from DOH. To the extent this Court were to characterize anything therein as factual allegations, the allegations are denied. The United States Supreme Court's holding in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) speaks for itself.

51. The allegations of paragraph fifty-one purport to set forth legal conclusions, and do not require a response from DOH. However, to the extent this Court were to construe anything therein as factual allegations, the allegations are denied.

52. Denied.

Efforts to obtain amended death certificates

53. DOH admits that plaintiff Birchfield attempted to amend the Florida death certificate of James Merrick Smith revising the decedent's marital status, but failed to obtain a court order as required by §382.016(2), Fla. Stat. As to plaintiff

Mocko, DOH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph fifty-three and the allegations are therefore, denied.

54. DOH admits that plaintiff Birchfield attempted to amend the Florida death certificate of James Merrick Smith revising the decedent's marital status, but failed to obtain a court order as required by §382.016(2), Fla. Stat. All other allegations are denied.

55. DOH admits that its counsel advised plaintiff Birchfield that neither this Court's *Brenner* Order, nor the holding in *Obergefell* negated the statutory requirement of a court order to change the marital status of a decedent via an amendment to a death certificate pursuant to §382.016(2), Fla. Stat. All other allegations are denied.

56. DOH admits that its counsel advised plaintiff Birchfield of the statutory requirement of a court order to change the marital status of a decedent via an amendment to a death certificate pursuant to section §382.016(2), Fla. Stat. All other allegations are denied.

57. DOH admits that the request for amendment was returned with a note advising plaintiff Birchfield to resubmit the request once he obtained the court order to amend the death record required by §382.016(2), Fla. Stat.

58. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph fifty-eight and the allegations are therefore, denied.

59. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph fifty-nine and the allegations are therefore, denied.

60. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph sixty and the allegations are therefore, denied.

61. DOH is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph sixty-one and the allegations are therefore, denied. Admitted that §382.016(2), Fla. Stat. requires a court order to change the marital status of a decedent via an amendment to the death certificate.

Defendants' authority to remedy their unconstitutional non-recognition of same-sex spouses on death certificates

62. The allegations of paragraph sixty-two purport to state a legal conclusion that does not require a response from DOH. To the extent the allegations of paragraph sixty-two misstate Florida law, they are denied. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that {MB218243.1}

Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied.

63. The allegations of paragraph sixty-three purport to state a legal conclusion that does not require a response from DOH. To the extent the allegations of paragraph sixty-three misstate Florida law, they are denied. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied.

64. The allegations of paragraph sixty-four purport to state a legal conclusion that does not require a response from DOH. To the extent the allegations of paragraph sixty-four misstate Florida law, they are denied. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally

based on the sexual orientation and gender of the spouses, the allegations are denied.

65. The allegations of paragraph sixty-five purport to state a legal conclusion that does not require a response from DOH. To the extent the allegations of paragraph sixty-five misstate Florida law, they are denied. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied.

66. The allegations of paragraph sixty-six purport to state a legal conclusion that does not require a response from DOH. To the extent the allegations of paragraph sixty-six misstate Florida law, they are denied. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied.

67. The allegations of paragraph sixty-seven purport to state a legal conclusion that does not require a response from DOH. To the extent the allegations of paragraph sixty-seven misstate Florida law, they are denied. Section 382.016, Fla Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied.

68. The allegations of paragraph sixty-eight purport to state a legal conclusion that does not require a response from DOH.

69. The allegations of paragraph sixty-nine are not directed toward DOH and require no response from DOH.

70. Denied that plaintiffs have suffered harm. Further, to the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH does not apply the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied.

71. Denied that DOH has unconstitutionally harmed plaintiffs. DOH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph seventy-one. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH does not apply the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied.

72. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations in paragraph seventy-two are denied.

73. This Court's decision in *Brenner* speaks for itself. The remaining allegations of paragraph seventy-three are denied. To the extent paragraph seventy-three contains allegations that DOH is in violation of this Court's Order in *Brenner*, these allegations are denied. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the

sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations in paragraph seventy-three are denied.

74. Paragraph seventy-four sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations in paragraph seventy-four are denied.

CLAIMS FOR RELIEF

**COUNT I:
Deprivation of Due Process
U.S. Const. Amend. XIV
(42 U.S.C. § 1983)**

75. DOH reasserts its responses to paragraphs one through seventy-four as if fully set forth herein.

76. Admitted that plaintiffs bring this action against defendant Armstrong and defendant Jones in their official capacities, and that plaintiffs seek declaratory and injunctive relief. DOH denies that plaintiffs are entitled to any such relief.

77. The allegations of paragraph seventy-seven purport to state legal conclusions that do not require a response from DOH. The statutory provisions referenced in paragraph seventy-seven speak for themselves. To the extent any allegation is made that DOH has violated the U.S. Constitution, such allegation is denied.

78. No response from DOH is required to paragraph seventy-eight. To the extent any allegation is made that DOH has violated the U.S. Constitution, such allegation is denied.

79. No response from DOH is required to paragraph seventy-nine. To the extent any allegation is made that DOH has violated the U.S. Constitution, such allegation is denied.

80. Paragraph eighty sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations are denied.

81. Paragraph eighty-one sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of

Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations are denied.

82. Paragraph eighty-two sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations are denied.

83. Denied.

COUNT II:
Deprivation of Equal Protection
U.S. Const. Amend. XIV
(42 U.S.C. § 1983)

84. DOH reasserts its responses to paragraphs one through seventy-four as if fully set forth herein.

85. Admitted that plaintiffs bring this action against defendant Armstrong and defendant Jones in their official capacities, and that plaintiffs seek declaratory and injunctive relief. DOH denies that plaintiffs are entitled to any such relief.

86. The allegations of paragraph eighty-six purport to state legal conclusions that do not require a response from DOH. The statutory provisions referenced in paragraph eighty-six speak for themselves. To the extent any allegation is made that DOH has violated the U.S. Constitution, such allegation is denied.

87. The allegations of paragraph eighty-seven purport to state legal conclusions that do not require a response from DOH. The United States Supreme Court's holding in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) speaks for itself. To the extent any allegation is made that DOH has violated any constitutional provision, such allegation is denied.

88. Paragraph eighty-eight sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender

of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations are denied.

89. Paragraph eighty-nine sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations are denied.

90. Paragraph ninety sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs

allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations are denied.

91. Paragraph ninety-one sets forth legal arguments and conclusions, which do not require a response by DOH. However, DOH denies plaintiff's misstatement of Florida law. Section 382.016, Fla. Stat. requires a court order for any change in marital status of a decedent via an amendment to the death certificate, regardless of the sexual orientation of the decedent and surviving spouse. To the extent plaintiffs allege that Florida's law with regard to amendment of death certificates applies unequally based on the sexual orientation and gender of the spouses, the allegations are denied. To the extent plaintiffs allege that DOH has not applied the mandates of §382.016, Fla. Stat. concerning amendment of Florida death certificates uniformly, without regard to sexual orientation, the allegations are denied. All remaining factual allegations are denied.

DECLARATORY AND INJUNCTIVE RELIEF
28 U.S.C. §§ 2201 and 2202;
Federal Rules of Civil Procedure 57 and 65

92. DOH reasserts its responses to paragraphs one through seventy-four as if fully set forth herein.

93. Denied.

94. Admitted that plaintiffs seek injunctive relief. Denied that they are entitled to same.

95. Denied.

96. 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.

Plaintiffs' Prayer for Relief requires no response from DOH. Out of an abundance of caution, however, DOH denies that plaintiffs are entitled to the relief requested therein.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs fail to satisfy the requirements of Fed. R. Civ. P. 23, and no class is warranted.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred under *Ex parte Young* and its progeny because there is no ongoing violation of federal law and therefore no injunctive relief is warranted.

FOURTH AFFIRMATIVE DEFENSE

Section 382.016, Fla. Stat. and any other applicable Florida statutes and regulations at issue here, are constitutional on their face and as applied. Accordingly, plaintiffs' alleged constitutional violations fail.

FIFTH AFFIRMATIVE DEFENSE

Some or all of the claims are barred because plaintiffs lack standing.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs failed to satisfy all conditions precedent prior to filing suit. DOH reserves the right to include additional affirmative defenses as this case progresses.

Respectfully submitted,

/s/ Kirkland E. Reid

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CERTIFICATE OF SERVICE

I certify that on February 15, 2016, I filed the foregoing using the CM/ECF system, which will send notification to all counsel of record.

/s/ Kirkland E. Reid

Kirkland E. Reid