

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CATHERINA PARETO and KARLA ARGUELLO; JUAN CARLOS RODRIGUEZ and DAVID PRICE; VANESSA ALENIER and MELANIE ALENIER; TODD DELMAY and JEFFREY DELMAY; SUMMER GREENE and PAMELA FAERBER; DON PRICE JOHNSTON and JORGE DIAZ; and EQUALITY FLORIDA INSTITUTE, INC.,

CASE NO. 2014-1661-CA-01

Plaintiffs,

v.

HARVEY RUVIN, as Clerk of the Courts of Miami-Dade County, Florida, in his official capacity,

Defendant.

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**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Catherina Pareto and Karla Arguello; Juan Carlos Rodriguez and David Price; Vanessa and Melanie Alenier; Todd and Jeffrey Delmay; Summer Greene and Pamela Faerber; Don Price Johnston and Jorge Diaz; and Equality Florida Institute, Inc. ("Plaintiffs"), by and through their attorneys, hereby move for summary judgment on all Counts of Plaintiffs' Complaint. For the reasons set forth more fully in Plaintiffs' contemporaneously filed memorandum, Plaintiffs are entitled to summary judgment on each Count in the Complaint. Specifically, Florida's marriage ban violates Plaintiffs' rights under Due Process and Equal Protection clauses of the United States Constitution.

For the reasons set forth in Plaintiffs' Reply to Defendant's Answer and Affirmative Defenses, which is attached hereto as Exhibit A and is incorporated herein, none of Defendant's

affirmative defenses are valid. In addition, with respect to Defendant's second affirmative defense—that he is “not the person charged with enforcing or promulgating policies relating to the provisions of the Florida Statutes and Florida Constitution that are challenged by Plaintiffs”—Plaintiffs submit Exhibit B, a chart demonstrating that Defendant is the official designated by state law to enforce the marriage laws in his jurisdiction.

WHEREFORE, Plaintiffs respectfully request that this Court grant summary judgment in their favor on all counts of Plaintiffs' Complaint.

DATED: May 1, 2014

Respectfully submitted,

Shannon P. Minter  
Christopher F. Stoll  
David C. Codell  
Asaf Orr  
NATIONAL CENTER FOR  
LESBIAN RIGHTS  
870 Market Street, Suite 370  
San Francisco, CA 94102  
Telephone: (415) 365-1335  
Facsimile: (415) 392-8442  
E-mail: sminter@nclrights.org  
cstoll@nclrights.org  
dcodell@nclrights.org  
aorr@nclrights.org

Elizabeth Schwartz (Fla. Bar No. 114855)  
ELIZABETH F. SCHWARTZ, PA  
690 Lincoln Road, Suite 304  
Miami Beach, FL 33139  
Telephone: (305) 674-9222  
Facsimile: (305) 674-9002  
E-mail: eschwartz@sobelaw.com

s/Nancy J. Faggianelli  
Sylvia H. Walbolt (Fla. Bar No. 33604)  
Luis Prats (Fla. Bar No. 329096)  
Nancy J. Faggianelli (Fla. Bar No. 347590)  
CARLTON FIELDS JORDEN BURT, P.A.  
4221 W. Boy Scout Blvd., Ste. 1000  
Tampa, FL 33601  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133  
Email: swalbolt@cfjblaw.com  
lprats@cfjblaw.com  
nfaggianelli@cfjblaw.com

Jeffrey Michael Cohen (Fla. Bar. No. 91495)  
Cristina Alonso (Fla. Bar. No. 327580)  
CARLTON FIELDS JORDEN BURT, P.A.  
Miami Tower  
100 Southeast 2nd Street  
Suite 4200  
Miami, Florida 33131  
Telephone: (305) 530-0050  
Facsimile: (305) 530-0055  
Email: jmcohen@cfjblaw.com  
calonso@cfjblaw.com

Mary B. Meeks (Fla. Bar No. 769533)  
Mary Meeks, P.A.  
P.O. Box 536758  
Orlando, Florida 32853  
Telephone: (407) 362-7879  
Facsimile:  
Email: marybmeeks@aol.com

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was electronically filed with the Clerk of Court through the Florida Courts eFiling Portal to be served this 1<sup>st</sup> day of May 2014, on counsel of record listed below to:

SYLVIA H. WALBOLT  
E-mail: swalbolt@CFJBlaw.com  
Sec. E-mail: rosborne@CFJBlaw.com  
Sec. E-mail: tpaecf@cfdom.net  
LUIS PRATS  
E-mail: lprats@CFJBlaw.com  
Sec. E-mail: lcoffey@CFJBlaw.com  
NANCY J. FAGGIANELLI  
E-mail: nfaggianelli@CFJBlaw.com  
Sec. E-mail: pparrey@CFJBlaw.com  
CARLTON FIELDS JORDEN BURT, P.A.  
Corporate Center Three  
at International Plaza  
4221 W. Boy Scout Boulevard  
Tampa, Florida 33607-5780  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133

Luis G. Montaldo  
P.O. Box 13267  
Miami, FL 33101  
E-mail: cocgencounsel@miamidade.gov  
Sec. E-mail: larruza@miamidade.gov

Eileen Ball Mehta  
BILZIN SUMBERG BAENA PRICE &  
AXELRODLLP  
1450 Brickell Avenue  
Suite 2300  
Miami, FL 33131  
E-mail: emehta@bilzin.com  
Sec. E-mail: eservice@bilzin.com

*Counsel for Defendant*

JEFFREY MICHAEL COHEN  
E-mail: jmcohen@CFJBlaw.com  
Sec. E-mail: pwatson@CFJBlaw.com  
Sec. E-mail: miaecf@cfdom.net  
CRISTINA ALONSO  
E-mail: calonso@CFJBlaw.com  
Sec. E-mail: cschmidle@CFJBlaw.com  
CARLTON FIELDS JORDEN BURT, P.A.  
Miami Tower  
100 Southeast Second Street  
Suite 4200

Miami, Florida 33131  
Telephone (305) 530-0050  
Facsimile (305) 530-0055

Shannon P. Minter  
Christopher F. Stoll  
David C. Codell  
Asaf Orr  
NATIONAL CENTER FOR LESBIAN  
RIGHTS  
870 Market Street, Suite 370  
San Francisco, CA 94102  
E-mail: sminter@nclrights.org  
E-mail: cstoll@nclrights.org  
E-mail: dcodell@nclrights.org  
E-mail: aorr@nclrights.org

Elizabeth F. Schwartz  
ELIZABETH F. SCHWARTZ, P.A.  
690 Lincoln Road, Suite 304  
Miami Beach, FL 33139  
E-mail: eschwartz@sobelaw.com

Mary B. Meeks  
MARY MEEKS, P.A.  
P.O. Box 536758  
Orlando, FL 32853  
E-mail: marybmeeks@aol.com

*Counsel for Plaintiffs*

*s/Nancy J. Faggianelli*

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**PLAINTIFF'S REPLY TO DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

Plaintiffs hereby reply to the defenses asserted in Defendant's Answer and Affirmative Defenses, as follows:

**Reply to First Affirmative Defense**  
**(Alleged Lack of Subject Matter Jurisdiction for Declaratory Relief)**

The Complaint sufficiently establishes subject matter jurisdiction pursuant to the Declaratory Judgment Act. The Clerk is legally adverse to the Plaintiff couples in that the couples appeared in person at the Clerk's office to apply for marriage licenses and were denied solely because they are same-sex couples. Whereas Plaintiffs contend that, pursuant to the United States Constitution, the Clerk must issue marriage licenses to them, the Clerk contends that he is not permitted to issue Plaintiffs marriage licenses.

The Clerk's alleged inability to exercise discretion in following the law are irrelevant to the declaratory relief sought here because the Clerk is sued in his official capacity as an agent of the State of Florida. The Clerk's refusal to issue marriage licenses to the Plaintiff couples has caused the harms alleged in the Complaint and places the Clerk, as an agent of the State, in an adverse and antagonistic relationship to Plaintiffs sufficient to sustain a claim for declaratory relief. *See Atwater v. City of Weston*, 64 So.3d 701 (Fla. 1st DCA 2011); *ACLU v. The Florida Bar*, 999 F.2d 1486 (11th Cir. 1993). The alleged ministerial nature of the clerk's duties under state law does not deprive the Court of subject matter jurisdiction. *Cf. Light v. Meginniss*, 156 Fla. 61, 66-67 (1945) (in mandamus proceedings to require county judge to issue marriage license without compliance with statutory waiting period, holding that the respondent county judge's return was "sufficient" to establish jurisdiction and ruling on the merits); *id.* at 66-67 (Brown J., concurring) (explaining that "[w]hen it comes to issuing marriage licenses" any county judge "represents the public generally").

**Reply to Second Affirmative**  
**(Alleged Non-Redressability of Plaintiffs' Claims)**

The Complaint sufficiently establishes the standing of the Plaintiffs to bring this action. Plaintiffs' claims may be redressed by this Court in that Plaintiffs have requested that the Court hold unconstitutional the Florida laws excluding same-sex couples from marriage, as well as order the Clerk to issue marriage licenses to the Plaintiff couples. If the Court grants the requested relief, the Plaintiff couples will be permitted to marry, thereby achieving relief they seek. *See Bostic v. Rainey*, 2:13-CV-395, 2014 WL 561978, at \*8 – 9 (E.D. Va. Feb. 13, 2014) (ruling that because plaintiff same-sex couples sought relief from all laws barring same-sex marriage or prohibiting the recognition of otherwise lawful same-sex marriages, an injunction

would redress their injuries by allowing them to marry or have their marriage recognized in Virginia).

The Clerk is the proper defendant here because he is the official designated by state law with the responsibility of enforcing the marriage license laws in his jurisdiction. *See Bishop v. U.S. ex rel. Holder*, 04-CV-848-TCK-TLW, 2014 WL 116013, at \*14 (N.D. Okla. Jan. 14, 2014) (ruling that court clerk who refused to issue marriage license to plaintiff same-sex couple was a *proper defendant* in lawsuit challenging state-law exclusion of same-sex couples from marriage); *See Bostic*, 2014 WL 561978, at \*8 – 9 (holding that the clerks who refused to issue marriage licenses to plaintiff couples were *proper defendants* in lawsuit challenging state-law exclusion of same-sex couples from marriage)

The Clerk is required by state law (1) to determine whether applicants meet the qualifications necessary for the issuance of a marriage license, and (2) to issue marriage licenses only to those couples who satisfy Florida's statutory and constitutional requirements for marriage under Florida Stat. Section 741.04. In so doing, the Clerk is charged with enforcing Florida's marriage license laws, specifically including the laws barring same-sex couples from marriage.

Plaintiffs dispute, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the Clerk's allegation that Plaintiffs' marriages would still be void and unenforceable under Section 741.212, Florida Statutes and Article I, Section 27, of the Florida Constitution even if Plaintiffs were to prevail and be issued marriage licenses as a result of this litigation because Plaintiffs seek a declaration that those provisions are invalid. The Clerk's contention that he is barred from issuing Plaintiffs' marriage licenses fully supports Plaintiffs' request for a declaration that those provisions are invalid. Plaintiffs sue the Clerk because they wish to receive marriage licenses from the Clerk. Plaintiffs properly challenge all the measures

that prevent the Clerk from issuing the licenses. *See Perez v. Lippold*, 198 P.2d 17 (Cal. 1948) (in historic first appellate court decision invalidating anti-miscegenation statutes—in a lawsuit against a county clerk by an interracial couple seeking a marriage license—finding unconstitutional under federal Equal Protection Clause not only a statutory provision prohibiting issuance of licenses to such couples, but also a statutory provision declaring such marriages “illegal and void”).

**Reply to Third Affirmative Defense**  
**(Alleged Failure to State a Cause of Action)**

The Clerk’s third affirmative defense merely incorporates by reference “reasons stated in the First and Second Defenses. The third affirmative defense fails to adequately allege a failure to state a cause of action or any viable affirmative defense recognized by Florida law, including without limitation because of the reasons stated above in the Replies to the Clerk’s First and Second Affirmative Defenses.

**Reply to Fourth Affirmative Defense**  
**(Alleged Failure to Join Indispensable Parties)**

Despite pleading failure to join indispensable parties, Defendant has not identified any such purported party, and there is no indispensable party who must be joined in this action. The Clerk is being sued in his official capacity as an agent of the State of Florida who is charged with enforcing within his district the Florida laws prohibiting the issuance of marriage licenses to same-sex couples.

Plaintiffs have complied with all of the prerequisites to suit. They have sued the proper defendant in his official capacity as an agent of the State of Florida, and they have provided notice to the Attorney General of their constitutional challenge as required by Fla. Stat. Section 86.091 and Fla. R. Civ. P. 1.071.



**Reply to Fifth Affirmative Defense**  
**(Alleged Failure to Allege County Policy or Custom)**

The inquiry under 42 U.S.C. Section 1983 as to whether an official acts as a municipal official or as a state official is not dependent upon the official's title as a county or state official; rather, it is "which government body, under state law, had direct control over how the [official] fulfilled [the duty at issue]." *Grech v. Clayton County, Ga.*, 335 F.3d 1326, 1331 (11th Cir. 2003). Here, the Clerk's issuance or refusal to issue marriage licenses to same-sex couples is directly controlled by the State of Florida, not by Miami-Dade County.

The Florida Constitution establishes the position of clerk of the circuit court in Section 16 of Article V, concerning the state's Judiciary. Although the Florida Constitution also refers to the Clerk as a "County Officer," *see* Fla. Const., art. VIII, § 6.1(b), the Clerk is not an agent of the County for all purposes.

The Clerk has autonomy from Miami-Dade County in ways that other County officials do not. The Clerk is an independent constitutional officer elected by the voters; the County does not control the Clerk, nor does it have the authority to appoint or remove him. Moreover, even if the County wished to abolish the post of the Clerk of the Circuit Court, it lacks the power to do so. *See* Article VIII, Section 6.

The Clerk's actions with regard to his issuance of marriage licenses—which are valid throughout the State of Florida, not merely within Miami-Dade County—are those of an agent of the State of Florida. *See Light*, 156 Fla. at 66-67 (Brown J., concurring) (any county judge "represents the public generally" in issuing marriage licenses). This conclusion is mandated by the Florida statutory scheme pertaining to the issuance and recordation of marriage licenses, as well as the Clerk's own admissions. There simply can be no dispute that the State has direct

control over how the Clerk fulfills his duties with regard to the issuance and recordation of marriage licenses.

For example, Fla. Stat. Section 741.01 provides that marriage licenses are to be issued by county court judges or clerks of the circuit court upon receipt of an application meeting the statutory requirements. Fla. Stat. Section 741.04 then establishes the requirements for a marriage license that must be confirmed by the Clerk upon application and affidavit, specifically including that the applicants are a man and a woman as currently required by the challenged Florida laws. Other similar statutes contained in Chapter 741 dictate the requirements the Clerk must follow, including the inclusion of the final date on which the license is valid, the circumstances where the Clerk may issue marriage licenses to persons under 18 years of age, the recording of marriage licenses, the fees to be charged, and the transmittal of information to the Department of Health.

In contrast, no Miami-Dade County ordinance regulates the issuance of marriage licenses. The Clerk admits as much in his affirmative defenses where he concedes that state law, not county policy or custom, governs his actions in issuing marriage licenses. As a result, in issuing—or refusing to issue—marriage licenses, the Clerk is an agent of the State of Florida, not Miami-Dade County.

**Reply to Sixth Affirmative Defense**  
**(Alleged Immunity)**

Defendant is not entitled to absolute immunity or qualified immunity from suit because this lawsuit seeks only declaratory and injunctive relief. *Bradsheer v. Florida Dept. of Highway Safety & Motor Vehicles*, 20 So.3d 915, 921 (Fla. 1st DCA 2009); *Depaola v. Town of Davie*, 872 So.2d 377, 380-81 (Fla. 4th DCA 2004). The Clerk is not entitled to judicial or quasi-judicial immunity for the same reason. *See Shuler v. Swatek*, 465 Fed. Appx. 900, 903 (11th Cir.

2012), citing *Pulliam v. Allen*, 466 U.S. 522, 536–37, (1984) (“judicial immunity does not bar claims brought under § 1983 seeking injunctive and declaratory relief”); *See also Bishop*, 2014 WL 116013, at \*14, citing *Guiden v. Morrow*, 92 Fed. Appx. 663, 665 (10th Cir.2004) (“because the suit is one for declaratory and injunctive relief, [county clerk] Smith is not entitled to judicial or quasi-judicial immunity”).

DATED: March 3, 2014

Respectfully submitted,

Shannon P. Minter  
Christopher F. Stoll  
David C. Codell  
Asaf Orr  
(*Pro Hac Vice* applications  
pending for above attorneys)  
NATIONAL CENTER FOR  
LESBIAN RIGHTS  
870 Market Street, Suite 370  
San Francisco, CA 94102  
Telephone: (415) 365-1335  
Facsimile: (415) 392-8442  
E-mail: sminter@nclrights.org  
cstoll@nclrights.org  
dcodell@nclrights.org

Elizabeth Schwartz (Fla. Bar No. 114855)  
ELIZABETH F. SCHWARTZ, PA  
690 Lincoln Road, Suite 304  
Miami Beach, FL 33139  
Telephone: (305) 674-9222  
Facsimile: (305) 674-9002  
E-mail: eschwartz@sobelaw.com

Mary B. Meeks (Fla. Bar No. 769533)  
Mary Meeks, P.A.  
P.O. Box 536758  
Orlando, Florida 32853  
Telephone: (407) 362-7879  
Facsimile:  
Email: marybmeeks@aol.com

s/Nancy J. Faggianelli  
Sylvia H. Walbolt (Fla. Bar No. 33604)  
Luis Prats (Fla. Bar No. 329096)  
Nancy J. Faggianelli (Fla. Bar No. 347590)  
CARLTON FIELDS JORDEN BURT, P.A.  
4221 W. Boy Scout Blvd., Ste. 1000  
Tampa, FL 33601  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133  
Email: swalbolt@cfjblaw.com  
lprats@cfjblaw.com  
nfaggianelli@cfjblaw.com

Jeffrey Michael Cohen (Fla. Bar. No. 91495)  
Cristina Alonso (Fla. Bar. No. 327580)  
CARLTON FIELDS JORDEN BURT, P.A.  
Miami Tower  
100 Southeast 2nd Street  
Suite 4200  
Miami, Florida 33131  
Telephone: (305) 530-0050  
Facsimile: (305) 530-0055  
Email: jmcohen@cfjblaw.com  
calonso@cfjblaw.com

Alexandra D. Blye (Fla. Bar. No. 71499)  
CARLTON FIELDS JORDEN BURT, P.A.  
525 Okeechobee Boulevard, Suite 1200  
West Palm Beach, Florida 33401  
Telephone: (561) 659-7070  
Facsimile: (561) 659-7368  
Email: ablye@cfjblaw.com

*Counsel for Plaintiffs*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on March 3, 2014 via email generated by the Florida Courts E-Filing Portal to: Luis G. Montaldo, Esquire, Counsel to the Clerk of Courts, P.O. Box 13267, Miami, Florida 33101, [cocgencounsel@miamidade.gov](mailto:cocgencounsel@miamidade.gov); and to Eileen Ball Mehta, Esquire, Bilzin Sumberg Baena, Price & Axelrod LLP, 1450 Brickell Avenue, Suite 2300, Miami, Florida 33131, [emehta@bilzin.com](mailto:emehta@bilzin.com), [eservice@bilzin.com](mailto:eservice@bilzin.com).

By: /s/ Nancy J. Faggianelli

**CHART OF STATUTORY PROVISIONS DELEGATING FUNCTIONS  
THAT IMPLEMENT FLORIDA'S MARRIAGE LAWS**

| <b>FL STATUTE</b> | <b>DESCRIPTION</b>                     | <b>COUNTY<br/>COURT<br/>JUDGE</b> | <b>CLERK OF<br/>CIRCUIT<br/>COURT</b> | <b>HEALTH<br/>DEPT.</b> |
|-------------------|--|-----------------------------------|---------------------------------------|-------------------------|
| <b>741.01</b>     | approve applications                   | ✓                                 | ✓                                     |                         |
| <b>741.01</b>     | ensure no impediments                  | ✓                                 | ✓                                     |                         |
| <b>741.01</b>     | transmit child info                    | ✓                                 | ✓                                     |                         |
| <b>741.01</b>     | collect/disburse fees                  | ✓                                 | ✓                                     |                         |
| <b>741.01</b>     | reduce fees for confirmed prep course  | ✓                                 | ✓                                     |                         |
| <b>741.01</b>     | issue license under seal               | ✓                                 | ✓                                     |                         |
| <b>741.01</b>     | receive child info                     |                                   |                                       | ✓                       |
| <b>741.11</b>     | accept installment payments            |                                   | ✓                                     |                         |
| <b>741.02</b>     | collect additional fee                 | ✓                                 | ✓                                     |                         |
| <b>741.03</b>     | no blank license                       | ✓                                 | ✓                                     |                         |
| <b>741.0305</b>   | register course providers              |                                   | ✓                                     |                         |
| <b>741.0306</b>   | provide Family Law Handbooks           |                                   | ✓                                     |                         |
| <b>741.0306</b>   | provide list of course providers       |                                   | ✓                                     |                         |
| <b>741.04</b>     | confirm statutory requirements         | ✓                                 | ✓                                     |                         |
| <b>741.04</b>     | <i>*confirm man/woman</i>              | ✓                                 | ✓                                     |                         |
| <b>741.04</b>     | verify prep course and handbook        | ✓                                 | ✓                                     |                         |
| <b>741.04</b>     | delay effective date if no prep course | ✓                                 | ✓                                     |                         |
| <b>741.04</b>     | waive prep course                      | ✓                                 | ✓                                     |                         |

| STATUTE       | DESCRIPTION                             | COUNTY COURT JUDGE | CLERK OF CIRCUIT COURT | HEALTH DEPT. |
|---------------|---|--------------------|------------------------|--------------|
| 741.0405      | issuance to persons under 18            | ✓                  | ✓                      |              |
| 741.041       | insert exp. date                        | ✓                  | ✓                      |              |
| 741.05        | penalties for violations                | ✓                  | ✓                      |              |
| 741.08        | receive cert. of solemnization          | ✓                  | ✓                      |              |
| 741.09        | record all licenses and info            | ✓                  | ✓                      |              |
| 741.10        | confirm proof of marriage               | ✓                  | ✓                      |              |
| 382.021       | transmit licenses and reports to state  | ✓                  | ✓                      |              |
| 382.021       | receive licenses and reports            |                    |                        | ✓            |
| 382.022       | transmit fees to state                  | ✓                  | ✓                      |              |
| 382.022       | receive fees                            |                    |                        | ✓            |
| 382.025(2)(a) | cert. copies and commemorative licenses |                    |                        | ✓            |