UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

KARI L. CHIN and DEBORAH E. CHIN, ALMA A. VEZQUEZ and YADIRA ARENAS, and EQUALITY FLORIDA INSTITUTE, INC.,	**Case No. 4:15-cv-00399-RH-CAS**
Plaintiffs,	
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.	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

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PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56(a), Plaintiffs Kari L. Chin, Deborah E. Chin, Alma A. Vazquez, Yadira Arenas, and Equality Florida Institute, Inc. ("Plaintiffs") move for summary judgment on all of their claims and for entry of a permanent injunction:

1. Plaintiffs include two married female couples in which one of the spouses gave birth to a child in Florida during the marriage.
2. Plaintiff Equality Florida Institute, Inc. is an organization whose members include married same-sex couples in which one of the spouses has given birth in Florida while the couple was married or intends to do so.
3. Under Florida law, if a married woman gives birth to a child, the Florida Department of Health's Office of Vital Statistics is required to issue a birth certificate that lists the birth mother's spouse as the child's other parent unless a court has determined that someone other than the spouse is the child's other legal parent. Fla. Stat. § 382.013(2)(a).
4. The Office of Vital Statistics routinely complies with Section 382.013(2)(a) when a woman who is married to a man gives birth to a child.
5. When a birth mother is married to another woman, however, the Office of Vital Statistics refuses to comply with Section 382.013(2)(a).

6. Defendants' refusal to apply Section 382.013(2)(a) equally to same-sex spouses who give birth in Florida infringes upon Plaintiffs' fundamental right to marry and denies them their right to equal protection of the laws while advancing no compelling, or even rational, state interest and therefore violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

Plaintiffs are filing an incorporated memorandum of law and also incorporate the Declarations of Kari L. Chin ("K. Chin Decl.," Dkt. 16-1), Deborah E. Chin ("D. Chin Decl.," Dkt. 16-2), Alma A. Vazquez ("Vazquez Decl.," Dkt. 16-3), Yadira Arenas ("Arenas Decl.," Dkt. 16-4), and Equality Florida Institute, Inc. ("EQFL Institute Decl.," Dkt. 16-5) that were filed in support of Plaintiffs' Motion for Preliminary Injunction (Dkt. 16).

Plaintiffs request the issuance of a permanent injunction: (1) Declaring that Defendants' refusal to recognize Plaintiffs' marriages and to issue birth certificates listing both spouses under Section 382.013(2)(a) violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution; (2) enjoining Defendants from refusing to recognize the marriages of same-sex couples and directing them to apply Section 382.013(2)(a) and any other applicable statutes or regulations regarding birth certificates and marriage equally to same-sex spouses who give birth to a child in Florida; and (3) requiring Defendants to issue

corrected birth certificates listing both spouses as parents pursuant to Section 382.013(2)(a) to the Plaintiff couples and, upon request, to other married same-sex couples who were not provided with a birth certificate listing both parents as required by Section 382.013(2)(a), without charging such couples any fees that would otherwise apply to issuance of a corrected birth certificate.

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604-05 (2015), the Supreme Court held that same-sex couples have a fundamental right to marry and to have their marriages treated equally under state law. The Court held that a state violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment when it fails to recognize and give equal effect to a marriage between same-sex spouses with respect to *any* "aspect[] of marital status include[ing] . . . *birth* . . . *certificates*." *Id*. (emphasis added). The Court also expressly held that its broad ruling—requiring the provision of all marital rights and responsibilities to same-sex couples on the same terms and conditions as to married different-sex couples—obviated the need for "slower, case-by-case determination of the required availability of specific public benefits to same-sex couples." *Id.* at 2606. *Obergefell* has been in effect for over five months. Furthermore, Defendants have been under an order from this Court to cease enforcement of Florida's marriage ban since the stay in *Brenner v. Scott* was lifted in January of this year—more than eleven months ago. *See Brenner v. Scott*, No. 14-14061, Order Denying Motion to Extend Stay of Preliminary Injunctions Pending Appeal (11th Cir. Dec. 3, 2014) ("The stay of preliminary injunctions entered by the District Court expires at the end of the day on January 5, 2015."). Yet Defendants continue to enforce Florida's unconstitutional marriage ban by denying

same-sex couples the same rights regarding birth certificates of their children that are given to different-sex married couples. In particular, Defendants refuse to issue birth certificates listing both spouses as parents when a woman who is married to another woman gives birth to a child in Florida as required by an equal recognition of their marriage and an equal application of Florida law.

Defendants' refusal to recognize Plaintiffs' marriages and to treat them equally infringes upon Plaintiffs' fundamental right to marry and to equal protection of the laws, causing many serious harms to Plaintiffs and their families. Defendants' refusal to respect Plaintiffs' marriages serves no legitimate state interest, much less the compelling interest required to justify the infringement of the fundamental right to marry. Defendants' refusal to apply the marital protection established by Section 382.013(2)(a) equally to the marriages of same-sex couples also "denie[s] [them] all the benefits [of marriage] afforded to opposite-sex couples" in violation of the Equal Protection Clause. *Obergefell*, 135 S. Ct. at 2604. This unequal treatment is similarly "unjustified" by any rational, let alone compelling, state interest. *Id.* Plaintiffs therefore request a permanent injunction enjoining Defendants' unconstitutional conduct and requiring them to apply Section 382.013(2)(a), as well as all other statutes and regulations addressing birth certificates and marriage, equally to same-sex spouses who give birth in Florida.

STATEMENT OF FACTS

The following facts are undisputed. Each of the Plaintiff couples was lawfully married when one of the women gave birth in the state of Florida. *See* K. Chin Decl. ¶¶ 3, 4; D. Chin Decl. ¶¶ 3, 4; Vazquez Decl. ¶¶ 3, 4; Arenas Decl. ¶¶ 3,4. They are all tax-paying citizens actively involved in their communities, and each couple has been in a committed relationship with one another for years. *See* K. Chin Decl. ¶ 3; D. Chin Decl. ¶ 3; Vazquez Decl. ¶ 3; Arenas Decl. ¶ 3. Each couple eagerly planned the expansion of their family and used an anonymous sperm donor to get pregnant. *See* K. Chin Decl. ¶4; D. Chin Decl. ¶ 4; Vazquez Decl. ¶ 4; Arenas Decl. ¶ 4. Each couple met every requirement for the issuance of a birth certificate listing both spouses as parents of their children, and accurately reflecting the fact of their marriage. *Id.* Yet, for each couple, Defendants refused to list both spouses as parents on their child's birth certificate, although Defendants routinely do so when a child is born to a woman married to a different-sex spouse. *See* K. Chin Decl. ¶ 5; D. Chin Decl. ¶ 5; Vazquez Decl. ¶ 4; Arenas Decl. ¶ 4.

Plaintiffs Kari L. Chin and Deborah E. Chin have been in a committed relationship for fifteen years. *See* K. Chin Decl. ¶ 3; D. Chin Decl. ¶ 3. The couple married in September 2013 in Massachusetts. *Id.* Kari works as a social worker with a local school district. *See* K. Chin Decl. ¶ 2; D. Chin Decl. ¶ 2. Deborah formerly taught elementary school, but now is a stay-at-home mother to their two

children, one of whom was born before the couple married. *Id.* Kari gave birth to their son in February of 2015, after Florida was ordered to recognize the marriages of same-sex couples. *See* K. Chin Decl. ¶ 4; D. Chin Decl. ¶ 4. When Kari gave birth to the couple's son, the Office of Vital Statistics refused to issue a birth certificate with both spouses' names listed. *See* K. Chin Decl. ¶ 5; D. Chin Decl. ¶ 5. Instead, the Office of Vital Statistics issued a birth certificate inaccurately listing Kari as their son's only parent. *Id.*

Plaintiffs Alma A. Vazquez and Yadira Arenas have been in a committed relationship for three years. Vazquez Decl. ¶ 3; Arenas Decl. ¶ 3. The couple married in New York on June 26, 2013. *Id.* Alma works as a medical assistant in a pediatric office. Vazquez Decl. ¶ 2; Arenas Decl. ¶ 2. Yadira works as a pharmacy technician. *Id.* Both are also attending college. *Id.* Alma gave birth to their daughter in March of 2015, after Florida was required to recognize the marriages of same-sex couples. Vazquez Decl. ¶ 4; Arenas Decl. ¶ 4. When Alma gave birth to the couple's daughter in March of 2015, the Office of Vital Statistics refused to issue a birth certificate with both spouses listed as their daughter's parents. Vazquez Decl. ¶ 4; Arenas Decl. ¶ 4. Instead, Alma was told that in order to get any birth certificate for their child, Alma had to be listed as unmarried on the form. Vazquez Decl. ¶ 4.

Plaintiff Equality Florida Institute, Inc. is the state's largest civil rights organization dedicated to securing full equality for Florida's lesbian, gay, bisexual,

and transgender (LGBT) community. EQFL Institute Decl. ¶ 2. Equality Florida Institute's members include many same-sex couples throughout Florida, including same-sex spouses who have given birth to children in Florida during their marriages or who intend to do so in the future. EQFL Institute Decl. ¶ 4. Equality Florida Institute brings this action in an associational capacity on behalf of its members who are married same-sex couples in which one spouse has given birth to a child or children in Florida during the marriage but were not provided with a birth certificate listing both spouses as parents, or who are married same-sex couples who intend for one spouse to give birth to a child or children in the future and wish to receive a birth certificate listing both spouses as parents, on the same terms and conditions as Defendants issue such birth certificates to married different-sex couples.

When a married woman gives birth, Florida law requires Defendants to list both spouses as parents on the child's birth certificate. The Florida Vital Statistics Act requires that "[i]f the mother is married at the time of birth, the name of the husband *shall* be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction." Fla. Stat. § 382.013(2)(a) (emphasis added). This provision is mandatory and requires the Office of Vital Statistics to provide birth certificates to married couples that include the names of both spouses as parents unless a court has declared that a person other than the mother's spouse is the child's parent. When a woman who is married

to a man gives birth to a child in Florida, and no court has issued a contrary order, Defendants routinely list both spouses on the birth certificate. But when a woman who is married to another woman gives birth to a child in Florida and no court has issued a contrary order, Defendants refuse to list both spouses on the birth certificate.

Defendant John H. Armstrong is Surgeon General and Secretary of Health for the State of Florida. In his official capacity, Surgeon General Armstrong directs the Department of Health, which is responsible for "[e]stablish[ing] an Office of Vital Statistics under the direction of a State Registrar for the uniform and efficient registration, compilation, storage, and preservation of all vital records in the state." *See* Fla. Stat. § 382.003(1).

Defendant Kenneth Jones is State Registrar for the State of Florida. In his official capacity, State Registrar Jones is responsible for directing the Office of Vital Statistics, including with respect to the issuance and amendment of birth certificates. *See* Fla Stat. § 382.003(1); *see also* Fla. Stat. §§ 382.013, 382.016.

LEGAL STANDARD

Summary judgment is appropriate where "there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *see also* Fed. R. Civ. P. 56(a). "An issue of fact is 'material' if . . . it might affect the outcome of the case." *Hickson Corp. v. N. Crossarm Co., Inc.*, 357 F.3d 1256, 1259 (11th Cir. 2004). There are no

disputes of material facts in this case. The issue is a purely legal one—whether Defendants are violating the U.S. Constitution by refusing to recognize Plaintiffs' marriages for the purpose of issuing birth certificates listing both spouses as parents of children born to married women in Florida pursuant to the mandatory requirements of Section 382.013(2)(a).

DISCUSSION

The Supreme Court in *Obergefell*, 135 S. Ct. at 2604-05, held that state laws excluding same-sex couples from the fundamental right to marry and from the rights and protections of marriage violate the due process and equal protection guarantees of the federal Constitution. In *Brenner v. Scott*, 999 F. Sup. 2d 1278 (N.D. Fla. 2014) *order clarified*, No. 4:14CV107-RH/CAS, 2015 WL 44260 (N.D. Fla. Jan. 1, 2015), this Court enjoined state officials from enforcing Florida's laws excluding same-sex couples from the freedom to marry and the protections of marriage under state law. Defendants' refusal to issue birth certificates listing both parents when a same-sex spouse gives birth to a child in Florida treats married same-sex couples differently than married different-sex couples, denying married same-sex couples one of the most important protections provided to married couples under state law. Defendants' conduct exposes Plaintiffs and their children to serious harms, while serving no legitimate, much less compelling, state interest. Accordingly, as *Obergefell* and this Court's ruling in *Brenner* make clear, Defendants' refusal to

recognize Plaintiffs' marriages for purpose of issuing birth certificates under Section 382.013(2)(a) violates the Equal Protection and Due Process Clauses of the United States Constitution.

I. Defendants' Refusal To Recognize Plaintiffs' Marriages For Purposes Of Issuing Birth Certificates Under Section 382.013(2)(a) Infringes Upon Plaintiffs' Fundamental Right To Marry And To Have Their Marriages Treated Equally

The Supreme Court in *Obergefell* held that same-sex couples have a fundamental right to marry and to have their marriages recognized equally under state law. 135 S. Ct. at 2604-05. Defendants contravene the Supreme Court's mandate that states must permit same-sex couples to exercise "the fundamental right to marry. . . . on the same terms and conditions as opposite-couples" when they deny Plaintiffs one of the most important legal protections of marriage. *Id.* 2605. Defendants' actions also contravene this Court's ruling in *Brenner*, 999 F. Sup. 2d at 1286 (issuing preliminary injunction "sufficient to provide complete relief" to same-sex couples seeking equal access to marriage).[1]

[1] Numerous other Florida courts have issued similar rulings. *See, e.g.*, *Dousset v. Florida Atlantic University*, No. 4D14–480, 2015 WL 5440809 (Fla. Dist. Ct. App. Sept. 16, 2015) (reversing denial of in-state tuition for Florida resident based on marriage to same-sex spouse); Order Granting Petitioner's Motion for Declaratory Judgment, *Brassner v. Lade*, No. 13-012058 (Fla Cir. Ct. Dec. 8, 2014) (granting declaratory judgment that Florida laws barring same-sex couples from marriage are void and unenforceable); Order on Amended Petition for Administration, *In re Estate of Bangor*, No. 502014CP001857XXXXMB (Fla. Cir. Ct. Aug. 5, 2014) (ordering non-resident surviving same-sex spouse eligible to serve as a Florida Personal Representative in estate context); Order Granting Plaintiffs' Motion for

A. Section 382.013(2)(a) Requires the Florida Office of Vital Statistics To List Both Spouses As Parents On A Child's Birth Certificate When A Married Woman Gives Birth To A Child In Florida

Section 382.013(2)(a) requires the Office of Vital Statistics to list both spouses as parents when a married woman gives birth to a child in Florida unless a court has determined that someone other than the birth mother's spouse is the child's legal parent. This provision is mandatory and establishes a purely ministerial duty. If a woman who gives birth in Florida is married and no court has ruled that a person other than the birth mother's spouse is the child's legal parent, "the name of the husband *shall be entered* on the birth certificate as the father of the child." Fla. Stat. § 382.013(2)(a) (emphasis added). Under well-settled Florida law, "[t]he word 'shall' is mandatory in nature." *Sanders v. City of Orlando*, 997 So. 2d 1089, 1095 (Fla. 2008).

Accordingly, when a married woman gives birth to a child in Florida, the scope of the Office of Vital Statistics' authority is highly circumscribed: unless presented with a court order declaring that someone other than the birth mother's spouse is the child's legal parent, the Office of Vital Statistics must list the spouse

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Summary Judgment, *Pareto v. Ruvin*, No. 14-1661 CA 24, at 2 (Fla. Cir. Ct. Jul. 25, 2014) ("find[ing] that Florida's statutory and constitutional restrictions on same-sex marriage violate the Due Process and Equal Protection Clauses of the United States Constitution"); Order on Plaintiff's Motion for Summary Judgment, *Huntsman v. Heavilin*, No. 2014-CA-305-K (Fla. Cir. Ct. Jul. 17, 2014) (order granting plaintiffs' motion for summary judgment and declaring Florida's laws barring same-sex couples from marriage to be void and unenforceable).

as a parent on the birth certificate. This duty applies regardless of the circumstances of the child's conception. For example, the Office of Vital Statistics must comply with this provision even if a man other than the birth mother's husband is known to be the child's biological father. *See*, *e.g.*, *S.B. v. D.H.*, 736 So.2d 766, 767 (Fla. Dist. Ct. App. 1999) (holding that, in light of Section 382.013(2)(a), the Office of Vital Statistics had no authority to place a child's biological father rather than the birth mother's husband on the child's birth certificate).

Like birth certificates in other states, a Florida birth certificate is a legal document intended to reflect a child's *legal* parentage.[2] *See*, *e.g.*, *Henry v. Himes*, 14 F. Supp. 3d 1036, 1052 (S.D. Ohio 2014) ("An Ohio birth certificate is a legal document, not a medical record."), *aff'd sub nom Obergefell*, 135 S. Ct. 2584. As such, there are many circumstances under which the persons listed as a child's legal parents on a birth certificate are not necessarily the child's biological progenitors. For example, when a child is adopted, the Office of Vital Statistics must issue a new birth certificate listing the adoptive parents as the child's parents and must place the original certificate under seal. *See* Fla. Stat. § 382.015. The new certificate is indistinguishable from an original birth certificate: "All names and identifying

[2] Being listed as a parent on a child's birth certificate does not *create* a legal parent-child relationship; however, it is presumed to *reflect* such a relationship and, under Florida law, generally constitutes prima facie evidence of parentage. *See* Fla. Stat. § 382.019; *Fla. Dept. of Revenue v. Cummings*, 930 So. 2d 604, 609 (Fla. 2006).

information relating to the adoptive parents entered on the new certificate shall refer to the adoptive parents, but nothing in the certificate shall refer to or designate the parents as being adoptive. All other items not affected by adoption shall be copied as on the original certificate, including the date of registration and filing." *Id.* § 382.015(1)(a).

Similarly—and of particular relevance in this case, which involves children born to married female couples through the use of donated sperm—Florida law provides that when a child is born to a married couple using donated sperm, the mother's spouse—not the sperm donor—is the child's legal parent. *See* Fla. Stat. § 742.11(1) ("Except in the case of gestational surrogacy, any child born within wedlock who has been conceived by the means of artificial or in vitro insemination is irrebuttably presumed to be the child of the husband and wife, provided that both husband and wife have consented in writing to the artificial or in vitro insemination.").[3] In such cases, under Section 382.013(2)(a), the Office of Vital Statistics must list the birth mother's spouse as a parent on the child's birth certificate.

[3] Notably, section 382.013(2)(a) applies only when a married woman "gives birth" to a child in Florida. Married couples who have children through adoption or surrogacy—including many male married couples as well as many married different-sex couples—must obtain court orders declaring that they are the child's legal parents before being listed on the child's birth certificate. Fla. Stat. §§ 382.013(2)(d), 382.015.

Finally, it also bears mention that Florida law strongly protects the legal parent-child relationship arising from marriage even when a married woman becomes pregnant by a man other than her husband. When a married woman gives birth to a child, the husband is presumed to be the child's legal father regardless of whether he is the biological father unless and until that presumption is rebutted in a court proceeding, which can be done only in very rare circumstances. *See*, *e.g.*, *Cummings*, 930 So.2d at 608 (collecting cases); *C.G. v. J.R.*, 130 So.3d 776, 781 (Fla. Dist. Ct. App. 2014) (affirming denial of paternity action by biological father of child born into an intact marriage and finding that the "fact that C.G.'s DNA test results established that he was [child's] biological father is 'legally insignificant' for purposes of establishing parental rights"); *I.A. v. H.H.*, 710 So.2d 162 (Fla. Dist. Ct. App. 1998) (holding that a putative biological father has no right to initiate a paternity action concerning the child of a marriage if both the married woman and her spouse object); *S.B.*, 736 So.2d 766 (same); *S.D. v. A.G.*, 764 So.2d 807 (Fla. Dist. Ct. App. 2000) (same). This precedent—strongly protecting the parental rights of husbands even when they are not biological fathers—is consistent with Section 382.013(2)(a)'s strict mandate. In the absence of a court order declaring someone other than a birth mother's husband to be the child's other parent, the Office of Vital Statistics must issue a birth certificate listing the husband as the child's parent even

if it is known that he is not the biological father; the Office of Vital Statistics has no authority to make its own determination of legal parentage. *S.B.*, 736 So. 2d 766.

In sum, section 382.013(2)(a) requires the Office of Vital Statistics to provide a child born to a married woman in Florida with a birth certificate listing the birth mother and her spouse as the child's parents unless a court has declared someone other than the spouse to be the child's parent. That duty is mandatory and purely ministerial. As such, it applies regardless of the circumstances of a child's conception and regardless of whether the birth mother's spouse is a biological as well as a legal parent. The resulting birth certificate is a legal document intended to reflect the child's legal parentage and generally constitutes prima facie evidence that the persons named on the birth certificate are the legal parents. Fla. Stat. § 382.019.

B. *Obergefell* Requires That Section 382.013(2)(a) Must Be Applied Equally When A Woman Who Is Married To Another Woman Gives Birth To A Child In Florida

The Federal Constitution requires that Section 382.013(2)(a) must be applied equally to married same-sex spouses and their children. In both *Obergefell* and *Windsor*, the U.S. Supreme Court recognized that gaining parental recognition based on marriage is a vitally important marital right—one that goes to the heart of the equal dignity and protection that must be extended to married same-sex couples and their families. *Obergefell*, 135 S. Ct. at 2600-01; *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013) (holding that the federal Defense of Marriage Act "humiliates

tens of thousands of 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."). Indeed, in *Obergefell*, the Supreme Court affirmed a district court decision that ordered state officials to provide married same-sex parents with birth certificates listing both spouses, *see Henry*, 14 F. Supp. 3d 1036, and also expressly identified birth certificates as examples of marital protections that must be provided equally to married same-sex couples. 135 S. Ct. at 2601. As the Court explained, legally protected "aspects of marital status include . . . *birth and death certificates*." *Id*. (emphasis added).

The Office of Vital Statistics is violating *Obergefell* by singling out married same-sex couples for adverse treatment and excluding them from one of Florida's most important marital protections. Under Florida law, children born to a married woman have a statutory right to the issuance of a birth certificate listing both spouses as parents regardless of the circumstances of the child's conception so long as a court has not determined that someone other than the birth mother's spouse is the child's other legal parent. Fla. Stat. § 382.013(2)(a). By applying that protection only to children born to different-sex married parents, the Office of Vital Statistics is denying married same-sex couples and their children a right "intertwined with marriage." 135 S. Ct. at 2606. In effect, the Office is refusing to recognize the

marriages of the Plaintiff couples and other similarly situated married same-sex couples for purposes of issuing birth certificates pursuant to Section 382.013(2)(a). That refusal violates Plaintiffs' fundamental right to marry and to have their marriages "deemed lawful on the same terms and conditions as the marriages between persons of the opposite sex." *Id*. at 2593.

The use of the gendered term "husband" in Section 382.013(2)(a) does not immunize the Office of Vital Statistics from complying with *Obergefell*'s ruling. Just as *Obergefell* requires states to issue marriage licenses to same-sex couples notwithstanding the use of gendered terms such as "husband" and "wife" in state marriage laws, so it requires Defendants to apply Section 382.013(2)(a) equally to a woman who gives birth to a child in Florida while married to another woman notwithstanding the reference to "husband" in that law. As *Obergefell* made clear by reversing the Sixth Circuit and affirming the federal district court decisions striking down state laws restricting marriage and marital protections to different-sex couples, when a state law restricts access to marriage or to marital protections to different-sex couples, the U.S. Supreme Court has already determined that such restrictions are unconstitutional, and continuing to apply such a restriction violates the Supreme Court's ruling.[4] Similarly, this Court's ruling in *Brenner*, 999 F. sup.

[4] Moreover, the Florida statutes themselves provide: "In construing these statutes and each and every word, phrase, or part hereof, where the context will permit . . . Gender-specific language includes the other gender and neuter." Fla. Stat. § 1.01(2).

2d at 1293, enjoined the enforcement of all of Florida's measures limiting marriage and marital protections only to different-sex spouses, including Florida Statute Section 741.212(3), which previously provided: "For purpose 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." Under *Obergefell* and this Court's ruling in *Brenner*, the Plaintiff couples' right to marry includes all of the related rights, responsibilities, and incidents of marriage, including the right to a birth certificate listing the birth mother's spouse as a parent of the couple's child.

Were that not the case, *Obergefell*'s and this Court's mandate of equality for married same-sex couples and their families would be hollow, as many state law protections related to marriage use gendered terms. For example, if gendered terms such as "husband" and "wife" may not be applied to same-sex spouses, then married same-sex couples in Florida would be excluded from, among other protections: the spousal privilege, Fla. Stat. § 90.504(1) (protecting "communications which were intended to be made in confidence between the spouses while they were husband and wife"); many laws protecting the property rights of married couples, *see, e.g.*, *id.* § 689.115 (referring to "[a]ny mortgage . . . made to two persons who are husband and wife"); laws protecting the property rights of divorced spouses, *see*, *e.g.*, *id.* §

736.1105 (providing for the revocation upon divorce of a revocable trust "executed by a husband or wife as settlor prior to annulment of the marriage"); laws protecting spouses in tort actions, *see*, *e.g.*, *id.* § 46.031 (referring to "any action brought by a husband and his wife"); protections for children born to married couples through assisted reproduction, *see, .e.g., id.* § 742.11(1) (providing that such children are "irrebuttably presumed to be the child[ren] of the husband and wife"); the right to adopt jointly as a married couple, *id.* § 63.042(2)(a) (providing that "a husband and wife jointly" may adopt); and protections against marriage by fraud, duress or undue influence, *id.* § 732.805 (referring to voluntary cohabitation "as husband and wife"). Conversely, important limitations on the right to marry would not apply to same-sex couples, such as the prohibition against marrying family members in Section 741.21 ("A man may not marry any woman to whom he is related by lineal consanguinity . . . . A woman may not marry any man to whom she is related by lineal consanguinity.").

This Court's ruling in *Brenner* and *Obergefell*'s mandate that same-sex couples have an equal right to marry and to the protections of marriage require that all of these marital rights, responsibilities, and limitations be applied equally to same-sex and different-sex couples.

II. Defendants Cannot Justify The Harms Caused By Their Refusal To Recognize Plaintiffs' Marriages Under Section 382.013(2)(a).

A. The Office Of Vital Statistics' Refusal To Apply Section 382.013(2)(a) Equally To Same-Sex Spouses Inflicts Serious Harms On Plaintiffs And Other Similarly-Situated Families

In *Obergefell*, the Court held that by depriving the children of same-sex couples of "the recognition, stability, and predictability marriage offers," "[t]he marriage laws at issue here . . . harm and humiliate the children of same-sex couples." 135 S. Ct. at 2600-01. As a result, "[s]ame-sex couples are consigned to an instability many opposite-sex couples would deem intolerable in their own lives." *Id.* at 2601. The same analysis applies here: Defendants' refusal to recognize Plaintiffs' marriages for purposes of Section 382.013(2)(a) is demeaning and exposes Plaintiffs and their children to serious instability and harms.

Birth certificates are vitally important documents. As the Florida Supreme Court has recognized, being listed as a parent on a child's birth certificate has "significant practical and legal implications." *Cummings*, 930 So. 2d at 609 (citing Florida cases that considered birth certificates in determining whether a child is a survivor in a wrongful death suit and whether a person is a parent under a kidnapping statute). In *Obergefell*, the U.S. Supreme Court affirmed the district court decision in *Henry*, which ordered state officials to apply Ohio laws regarding the issuance of birth certificates equally to married same-sex and different-sex couples. As the district court in *Henry* noted: "Identification on the child's birth certificate is . . . .

the only common governmentally-conferred, uniformly recognized, readily-accepted record that establishes identity, parentage, and citizenship, and it is required in an array of legal contexts." 14 F. Supp. 3d at 1050. "The birth certificate can be critical to registering the child in school; determining the parents' (and child's) right to make medical decisions at critical moments; obtaining a social security card for the child; obtaining social security survivor benefits for the child in the event of a parent's death; establishing a legal parent-child relationship for inheritance purposes in the event of a parent's death; claiming the child as a dependent for purposes of federal income taxes; and obtaining a passport for the child and traveling internationally." *Id.* (internal citations omitted).

Defendants' refusal to issue Plaintiffs birth certificates reflecting both of their children's parents exposes their families to similar harms. *See* K. Chin Decl. ¶ 7; D. Chin Decl. ¶ 7; Vazquez Decl. ¶ 6; Arenas Decl. ¶ 6. Defendants' policy makes it difficult or impossible for the same-sex spouse of a woman who gives birth in Florida to be recognized as a parent in a wide array of circumstances, including: enrolling a child in school, Fla. Stat. § 1003.21(4)(a), daycare, Fla. Stat. § 1002.53(4)(b), and many extracurricular activities; obtaining a passport for a child and traveling with a child internationally, *Passports for Minors Under 16*, U.S. Dep't of State, http://travel.state.gov/content/passports/english/passports/under-16.html (last visited Dec. 8, 2015); obtaining a Social Security card for a child, *Learn What*

Documents You Need To Get A Social Security Card, Social Security Administration, http://www.ssa.gov/ssnumber/ss5doc.htm (last visited Dec. 8, 2015); making medical decisions for a child; and applying for Social Security survivor benefits for a child in the event of a parent's death, *Benefits for Children*, Social Security Administration, http://www.ssa.gov/pubs/EN-05-10085.pdf (last visited Dec. 8, 2015).

Perhaps most starkly, both for the Plaintiff couples and for the members of organizational Plaintiff Equality Florida Institute who are married same-sex couples in which one of the spouses has given birth or intends to do so in the future, Defendants' unconstitutional policy exposes these families to the risk that if the birth mother dies, the child will have no living parent listed on his or her birth certificate, and the surviving parent's ability to make decisions and care for the child may be severely impaired.

Exposing children born to same-sex spouses to these harms relegates the children and their families to a "second-tier" status—the very injury that the Supreme Court in both *Windsor* and *Obergefell* held to be constitutionally impermissible. *Windsor*, 133 S. Ct. at 2694; *Obergefell*, 135 S. Ct. at 2604. The denial of a birth certificate that lists both of a child's parents is stigmatizing and humiliating, *see* K. Chin Decl. ¶¶ 5, 6; D. Chin Decl. ¶¶ 5, 6; Vazquez Decl. ¶¶ 5, 6; Arenas Decl. ¶¶ 5, 6, and "tells those couples, and all the world" that their families

are inferior. *Windsor*, 133 S. Ct. at 2694 Plaintiff Alma Vazquez describes how "deeply humiliated and distressed" she was by the State's refusal to identify her wife Yadira Arenas on their daughter's birth certificate: "We want our daughter, and any people with whom she comes in contact to know that we are a family and recognized and protected by the state of Florida." Vazquez Decl. at ¶¶ 4, 7. Plaintiff Deborah Chin, who stays home so that she can be a full-time parent to the couple's two children, D. Chin Decl. at ¶ 2, explains: "Every day, we are both parents to our son, but his birth certificate does not reflect that," and does not identify the mother who cares for him every day as his parent, *id.* at ¶ 6.

In short, Defendants have told the Plaintiff couples and their children that they do not have real families, and have deprived them of the stability, security, and vitally important practical and legal protections that derive from having both parents recognized as such on their children's birth certificates.

B. There Is No Legitimate, Much Less Compelling, State Interest That Justifies These Harms

The Office of Vital Statistics has no rational, much less compelling, state interest in withholding the vital protections secured by Section 382.013(2)(a) from a woman who gives birth to a child in Florida while married to another woman. Defendants have offered no substantive reason for their discriminatory treatment of Plaintiffs and other similarly situated couples, nor does any such reason exist—much

less a reason that would meet the strict scrutiny that applies to government action that infringes upon a fundamental right.

Defendants may contend that they cannot comply with the constitutional guarantees of due process and equal protection in their treatment of married same-sex couples pursuant to Section 382.013(2)(a) because they purportedly must undertake additional administrative review or adopt new administrative procedures to implement this Court's and the Supreme Court's rulings. Those arguments have no merit. Defendants must comply with the orders in *Brenner* and *Obergefell now*, not at some undefined future point in time. Further, it is well settled that the government cannot rely on alleged administrative burdens to justify a constitutional violation even under rational basis review, much less under the heightened due process and equal protection scrutiny that applies in this case. *See*, *e.g.*, *Reed v. Reed*, 404 U.S. 71, 76-77 (1971) (rejecting administrative burden as a sufficient rationale for gender-based discrimination under the rational basis standard); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (same); *Plyler v. Doe*, 457 U.S. 202 (1982) (rejecting administrative cost-saving as a sufficient rationale for discrimination against undocumented children).

Finally, no such administrative hurdle exists. Florida Statute Section 382.003(7) empowers the Department of Public Health to "[a]pprove all forms used in registering, recording, certifying, and preserving vital records." The Office of

Vital Statistics already routinely issues birth certificates listing both same-sex parents when a child is adopted by a same-sex couple. *See* Fla. Stat. § 382.015. As is true of all new birth certificates issued to adopted children, these birth certificates are indistinguishable from an original birth certificate and list the same-sex adopted parents as the child's legal parents from the time of the child's birth. *Id*. There is no reason, administrative or otherwise, why the Office of Vital Statistics cannot use the same, already-existing birth certificate forms to issue legally accurate birth certificates when a woman who is married to another woman give birth to a child in Florida.

C. Other Courts Have Uniformly Concluded That States Must Apply Similar State Laws Regarding Birth Certificates Equally To Children Born To Married Same-Sex Couples.

Defendants' constitutional duty is to treat married same-sex and different-sex couples equally. The great majority of other states across the country are complying with this mandate and issuing birth certificates to children born to married same-sex parents that list both parents, just as they do for children born to married different-sex parents. Defendants are constitutionally required to do the same, as other courts have recognized in similar cases brought in the handful of other states in which state officials have refused to treat married same-sex couples equally with respect to the issuance of birth certificates. *See, e.g.*, *Henry*, 14 F. Supp. 3d at 1062 (granting permanent injunction and declaratory relief requiring issuance of birth certificates

for plaintiffs' children identifying both of the children's married same-sex parents); Order, *De Leon v. Abbott,* SA-13-CA-00982-OLG (Aug. 11, 2015) (ECF No. 113) (ordering Texas officials to implement "policy guidelines recognizing same-sex marriages . . . in birth certificates issued by the State of Texas and to grant "all pending applications for . . . birth certificates involving same-sex couples, assuming the applications are otherwise complete and qualify for approval."); *Roe v. Patton*, No. 2:15-cv-00253-DB, 2015 WL 4476734, at *1 (D. Utah July 22, 2015) (granting preliminary injunction requiring issuance of birth certificates to same-sex spouses on same terms and conditions as opposite-sex spouses); *Pavan v. Smith*, No. 60CV-15-3153 (Ark. Cir. Ct. Dec. 1, 2015) (granting summary judgment "afford[ing] the plaintiffs, as same-sex couples, the same constitutional rights with respect to the issuance of birth certificates and amended birth certificates as opposite-sex couples"); *see also Gartner v. Iowa Dept. of Pub. Health*, 830 N.W.2d 335, 341 (Iowa 2013) (holding that marriage equality based on state constitutional principles also required the issuance of birth certificates listing a birth mother's same-sex spouse despite statute's use of gendered language).

D. Plaintiffs Are Entitled To The Requested Permanent Injunction

As demonstrated above, Plaintiffs are entitled to a permanent injunction: (1) their claims succeed on their merits, *see KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1268 (11th Cir. 2006), (2) they will suffer irreparable injury unless an

injunction issues, (3) the injury they are threatened with "outweighs whatever damage the proposed injunction may cause the opposing party," and (4) "if issued, the injunction would not be adverse to the public interest," *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). Defendants are violating mandates of this Court and the United States Supreme Court, *see supra* Secs. I, II.B., II.C, and causing irreparable harm to Plaintiffs and their families, *see supra* Sec. II.A; *see also Brenner*, 999 F. Supp. 2d at 1291 ("the ongoing unconstitutional denial of a fundamental right almost always constitutes irreparable harm"); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (same); *Johnson v. Mortham*, 926 F. Supp. 1540, 1543 (N.D. Fla. 1996) ("Deprivation of a fundamental right, such as . . . Equal Protection . . , constitutes irreparable harm."). No burden to Defendants outweighs these injuries, *see supra* Sec. II.B. An injunction is in the public interest because "it is always in the public interest to prevent the violation of a party's constitutional rights." *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012).

CONCLUSION

For the reasons set forth above, Plaintiffs request that the Court enter summary judgment for Plaintiffs and issue the permanent injunction requested in their accompanying motion. *See supra* at viii-ix.

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Respectfully Submitted,

/s/ Catherine P. Sakimura

Catherine P. Sakimura (Cal. Bar No. 246463)
csakimura@nclrights.org
Shannon P. Minter (Cal. Bar No. 168907)
sminter@nclrights.org
Christopher F. Stoll (Cal. Bar No. 179046)*
cstoll@nclrights.org
Amy Whelan (Cal. Bar No. 215675)*
awhelan@nclrights.org
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, California 94102
Telephone: (415) 392-6257
Facsimile: (415) 392-8442

*Admission to N.D. Fla. forthcoming

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

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

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the length limitation set forth in the Court's Scheduling Order of November 4, 2015, and Northern District of Florida Local Rule 7.1(F). Plaintiffs' Motion For Summary Judgment is 493 words and Plaintiffs' Memorandum Of Law In Support Of Motion For Summary Judgment is 25 pages.

/s/ Catherine P. Sakimura
Catherine P. Sakimura