IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA

FLORIDA FAMILY ACTION, INC.,
a Florida corporation not for profit,

Plaintiff,

v.

ARMANDO RAMIREZ, as Clerk of the Circuit Court of Osceola County, Florida, in his official capacity,

Defendant.
_____/

CASE NO. _____

DIVISION _____

VERIFIED COMPLAINT FOR
EMERGENCY ALTERNATIVE WRIT OF MANDAMUS

Plaintiff, FLORIDA FAMILY ACTION, INC., a Florida corporation not for profit ("FFAI"), on an emergency basis, sues Defendant, ARMANDO RAMIREZ, as Clerk of the Circuit Court of Osceola County, Florida, in his official capacity (the "Osceola Clerk"), seeking an alternative writ of mandamus commanding him to perform his official ministerial duty not to issue marriage licenses to same-sex couples. **Unless this Court immediately intervenes prior to 12:01 a.m. on January 6, 2015, the Osceola Clerk has indicated publicly and unequivocally that he will abandon and abrogate his constitutionally-sworn duty to follow and uphold the laws and constitution of Florida**. In support of this Complaint and emergency request for mandamus relief, FFAI further alleges as follows:

Jurisdiction and Nature of Relief Requested

1. This is a complaint for an alternative writ of mandamus under Florida Rule of Civil Procedure 1.630:

> Under Florida Rule of Civil Procedure 1.630(b), a petition for writ of mandamus must contain the facts on which the plaintiff relies

> for relief, a request for the relief sought, and, if desired, argument in support of the petition with citations of authority. **If the complaint shows a prima facie case for relief, a trial court must issue an alternative writ of mandamus, and once an alternative writ has issued, the burden is on the respondent to come forth with facts upon which it refused to perform its legal duty.**

Chandler v. City Of Greenacres, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014) (emphasis added) (internal quotations and citations omitted).

Parties

2. The Osceola Clerk, as a Florida circuit court clerk, is a ministerial constitutional officer. *See, e.g.*, *Alachua County v. Powers*, 351 So. 2d 32, 35 (Fla. 1977); Op. Att'y Gen. Fla. 98-65 (1998). In such capacity he has the official ministerial duty to issue marriage licenses only in accordance with the requirements of Article I, Section 27 of the Florida Constitution (hereinafter, "Amendment 2")[1], and Chapter 741, Florida Statutes. Such official ministerial duties include the duty not to "issue a license for the marriage of any person . . . unless one party is a male and the other party is a female." Fla. Stat. §§ 741.04(1).

3. FFAI is a non-profit 501(c)(4) cultural action organization with thousands of members throughout Florida, including in Osceola County.

4. FFAI's mission is to inform, inspire and rally those who care deeply about the family to greater involvement in the moral, cultural and political issues that face our state. As part of this mission, FFAI works to preserve and protect marriage as a foundational social institution, to educate Floridians on the underlying social goods attendant to the institution of

[1] Amendment 2 provides:

> *Marriage defined*.—Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.

marriage, to strengthen marriages, and to promote a strong foundational basis for raising children and ensuring the future of society.

5. FFAI's members were instrumental in drafting Amendment 2, gathering signatures to place it on the ballot, defending it against legal challenges in Florida courts, including at the Florida Supreme Court, and educating and mobilizing voters to ultimately approve Amendment 2.

6. After Amendment 2 was approved by the Florida Supreme Court and enacted by the people of Florida[2], FFAI's members continued to work throughout Florida, including in Osceola County, to preserve and protect marriage as an institution based upon societal norms that teach, form and transform individuals, and that create stable and optimal foundations for families and for the perpetuation of society. FFAI has worked to strengthen the institution of marriage and to educate Floridians on the inherent social goods which result from strong, natural marriages.

7. The question of the Osceola Clerk's official ministerial duty is one of public right, and the object of the mandamus sought herein is to procure the enforcement of his public duty. FFAI has standing to bring this suit, it being sufficient that FFAI and its members are interested, as citizens, in having the Osceola Clerk's public duty enforced. *See Florida Indus. Com'n v. State ex rel. Orange State Oil Co.*, 21 So. 2d 599, 600-01 (Fla. 1945).

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[2] The official results of the November 2008 General Election show that Amendment 2 received 4,890,883 "yes" votes (61.9 percent) and 3,008,026 "no" votes (38.1 percent). Florida Secretary of State, Division of Elections, November 8, 2008 General Election Results, available at http://election.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/4/2008 (last visited December 28, 2014).

The *Brenner Order*

8. On August 21, 2014, a federal district judge entered an order preliminarily enjoining the Clerk of Court of **Washington County**, Florida (the "Washington Clerk"), to issue a marriage license to two men who desire to marry. See *Brenner v. Scott*, 999 F. Supp. 2d 1278, 1293 (N.D. Fla. 2014) (hereinafter, the "*Brenner Order*"). The *Brenner Order* also preliminarily enjoined the Florida Secretary of Management Services and the Florida Surgeon General (as head of the Florida Department of Health), and "their officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them," from enforcing Amendment 2 and related Florida marriage laws prohibiting the marriage of same-sex couples. *Id*. The *Brenner* court temporarily stayed the preliminary injunctions pending the outcome of certain other marriage litigation, and the stay is due to expire on January 5, 2015. *Id.* at 1294.

9. Although the *Brenner Order* encompasses two consolidated cases, involving twenty-two plaintiffs, **only the Washington Clerk has been ordered to issue a marriage license**, and only to two men who are plaintiffs in the case. *Id.* at 1281, 1293. The preliminary injunction against the Secretary of Management Services and the Surgeon General concerns the other twenty plaintiffs, and involves only the legal recognition of the marriages of same-sex couples that occurred outside Florida. *Id.* at 1282-83, 1285-86.

10. FFAI has substantially participated in the *Brenner* case as *amicus curiae*.

11. The law firm Greenburg Traurig, which is legal counsel to the Florida Association of Court Clerks and Comptrollers (the "Florida Clerks"), issued a legal memorandum on December 15, 2014, advising clerks throughout the state not to issue marriage licenses to same-sex couples because the *Brenner Order* does not apply to any clerk outside of Washington

County. A true and correct copy of the Greenburg Traurig memorandum is attached hereto as Exhibit A.

12. The vast majority of Florida clerks outside of Washington County have publicly stated their intentions to follow the advice of the Florida Clerks' legal counsel and perform their official ministerial duties not to issue marriage licenses to same-sex couples.[3]

13. Despite the *Brenner Order*'s facial limitation to the Washington Clerk and the named same-sex couple in the case, and despite the Florida Clerks' legal counsel's advice that all other Florida clerks should perform their official duty not to issue marriage licenses to same-sex couples because the *Brenner Order* does not apply to them, the Osceola Clerk has stated publicly and unequivocally that "**'there is no reason not to proceed issuing marriage licenses one minute after midnight Jan. 6.'"**[4] **"'We won't waste any time,' he said."**[5]

14. At the time of filing this Complaint, the Osceola Clerk's official website homepage makes the following announcement confirming the clerk's intentions:

The Clerk's office is proud to support marriage equality.

Marriage licenses will be issued on January 6th 2015 at 12:01 A.M. to the first thirty qualified couples who register online.

Registration begins on December 30th 2014 at 8:00 A.M.

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[3] Mike Schneider, Melissa Nelson-Gabriel, AP, *Florida clerks won't give gays marriage licenses*, 10 NEWS (Dec. 26, 2014, 5:30 AM), http://www.wtsp.com/story/news/local/florida/2014/12/26/florida-clerks-wont-give-gays-marriage-licenses/20906817/.

[4] Rene Stutzman, *Ashton: I won't prosecute court clerks if they give marriage licenses to same-sex couples*, ORLANDO SENTINEL (Dec. 23, 2014, 6:45 PM), http://www.orlandosentinel.com/news/breaking-news/os-gay-marriage-florida-orlando-ashton-20141223-story.html (emphasis added). The Osceola Clerk's vow was preceded by the Osceola County Commission's voting on December 15 to open the clerk's office in Kissimmee from 12:01 AM to 2:00 AM on January 6 to allow same-sex couples to get licenses. Rene Stutzman, *Law firm to Florida court clerks: Issuing gay-marriage licenses risks arrest*, ORLANDO SENTINEL (Dec. 17, 2014, 11:19 AM), http://www.orlandosentinel.com/news/breaking-news/os-gay-marriage-florida-clerks-20141216-story.html.

[5] Schneider, *supra* note 3 (emphasis added).

A true and correct copy of the homepage showing the above announcement is attached hereto as Exhibit B.

15. Mandamus relief is appropriate "to enforce an established legal right by compelling a person in an official capacity to perform an indisputable ministerial duty required by law. A duty or act is ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law." *Bennett v. Clerk of Circuit Court Citrus County*, 39 Fla. L. Weekly D2341, 2014 WL 5781221, *1 (Fla. 5th DCA Nov. 7, 2014).

16. As correctly concluded by the Florida Clerks' legal counsel, the *Brenner Order* does not relieve the Osceola Clerk of his ministerial duty not to issue marriage licenses to same-sex couples, because the Osceola Clerk is not a party over whom the *Brenner* court has jurisdiction for purposes of injunctive relief. *See Taylor v. Sturgell*, 553 U.S. 880, 884 (2008); *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd*, 484 U.S. 97, 104 (1987). An injunction binds only parties to the proceeding, and the parties' officers, agents, servants, employees, and attorneys, and other persons acting in concert or participation with the parties with regard to property that is the subject of the injunction.[6] *See Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 971-72 (l1th Cir. 2012); *Le Tourneau Co. of Ga. v. NL.R.B.*, 150 F.2d 1012, 1013 (5th Cir.

[6] Neither the Florida Secretary of Management Services nor the Florida Surgeon General (as head of the Department of Health) has any authority to issue marriage licenses, which authority is expressly reserved to circuit court clerks and county judges. Fla. Stat. § 741.01(1). While the Department of Health has the express duty and authority to receive and maintain records of marriages as part of its vital records function, and the necessary, related authority to dictate how marriage license applicants' information is collected on the forms used by circuit clerks for issuing marriage licenses, *see* Fla. Stat. §§ 382.003(1), (2), (7), 382.021, 382.022, the Department's authority in no way reaches into or alters a clerk's duty to issue marriage licenses in accordance with Fla. Stat. §§ 741.01(1) and 741.04(1). Thus, with respect to issuing marriage licenses, circuit clerks are neither agents of, nor acting in concert with, the Surgeon General. The Department of Health, hypothetically, could dictate that a clerk's marriage license form accommodate two male or two female names as applicants, but the Department could not compel any clerk to offer or issue a license to a same-sex couple.

1945); Fed. R. Civ. P. 65(d)(2). An injunction against a single state official sued in his official capacity does not enjoin all state officials. *Dow Jones & Co., Inc. v. Kaye*, 256 F.3d 1251, 1255 n.3 (11th Cir. 2001).

17. The Florida Clerks' legal counsel also concluded correctly that a federal district court's ruling that a Florida statute is unconstitutional is not binding on any Florida state court, which includes this Court or any other Florida court that lawfully may acquire jurisdiction over the Osceola Clerk. *See, e.g., Merck v. State,* 124 So. 3d 785, 803 (Fla. 2013); *Roche v. State,* 462 So. 2d 1096, 1099 n.2 (Fla. 1985); *State v. Dwyer,* 332 So. 2d 333, 335 (Fla. 1976); *Bradshaw v. State,* 286 So. 2d 4,6-7 (Fla. 1973) ("It is axiomatic that a decision of a federal trial court, while persuasive if well-reasoned, is not by any means binding on the courts of a state."); *cf. Doe v. Pryor*, 344 F.3d 1282, 1286 (1Ith Cir. 2003) ("The only federal court whose decisions bind state courts is the United States Supreme Court").

18. Accordingly, a writ of mandamus to the Osceola Clerk is appropriate to compel performance of his "indisputable ministerial duty required by law," as to which "there is no room for the exercise of discretion, and the performance being required is directed by law." *Bennett,* 2014 WL 5781221 at *1.

19. Given the Osceola Clerk's publicly and unequivocally stated intention to abandon and abrogate his official ministerial duty, despite the clear advice of the Florida Clerks' legal counsel and compliance by the vast majority of his peers, it is unnecessary for FFAI, any of its members, or any other citizen to demand that the Osceola Clerk perform his duty prior to seeking mandamus relief. *See Fair v. Davis*, 283 So. 2d 377, 378 (Fla. 1st DCA 1973). "[T]he law will not require the performance of useless acts." *Id.*

20. FFAI has no adequate remedy at law or in equity if the Court does not grant the relief requested herein.

21. All conditions precedent to the commencement and maintenance of this original proceeding have been satisfied, have occurred, or have been waived.

22. Given the Osceola Clerk's express intention not to perform his official ministerial duty beginning "one minute after midnight" January 6, 2015, FFAI requests that this Court expedite consideration of this cause and issue the requested relief on an emergency basis.

WHEREFORE, FFAI respectfully petitions this Court to issue an alternative writ of mandamus prior to January 6, 2015, commanding the Osceola Clerk to perform his ministerial duty to deny any application for a marriage license by a same-sex couple, unless and until he appears before this Court on a day certain and obtains modification or nullification of such writ, together with such other and further relief as the Court deems just and proper.

Respectfully Submitted,

s/ *Roger K. Gannam*
Mathew D. Staver
Florida Bar No. 0701092
Horatio G. Mihet
Florida Bar No. 0026581
Roger K. Gannam
Florida Bar No. 240450
LIBERTY COUNSEL
P.O. BOX 540774
Orlando, FL 32854-0774
Telephone: (800) 671-1776
Telefacsimile: (407) 875-0770

Attorneys for Plaintiff,
Florida Family Action, Inc.

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

DATED: December 29, 2014

s/ *John Stemberger*
JOHN STEMBERGER, President
Florida Family Action, Inc.

Notarization not required
pursuant to Fla. Stat. § 92.525.

GREENBERG TRAURIG

MEMORANDUM

To: FACC

From: Fred Baggett, Esq.
John Londot, Esq.
Hope Keating, Esq.
Michael Moody, Esq.

Date: December 15, 2014

Re: Addendum to July 1, 2014 Memorandum

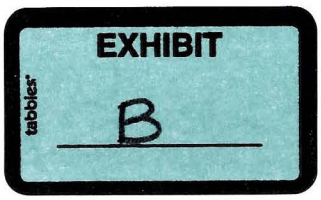
Background

On July 1, 2014 our firm provided you with a memorandum, pursuant to your request, detailing the obligations of Florida's clerks of court in light of the possibility that either Florida's state courts or the United States District Court for the Northern District of Florida would find Florida's same-sex marriage ban unconstitutional. A copy of our July 1, 2014 memorandum is attached hereto.

In the memorandum, we concluded that "[t]he likelihood of a near-future invalidation of Florida's same-sex marriage ban, as set forth in sections 741.212 and 741.04(1), Florida Statutes, and article I, section 27 of the Florida Constitution, appears strong." We further concluded:

> Clerks who are not named defendants in the litigation would not technically be bound by a decision of the Northern District of Florida, or by the circuit courts. While such Clerks might feel public pressure to follow the guidance of the decision of a court of competent jurisdiction (but no precedential authority), Florida's same-sex marriage ban would still be in place unless they were named parties in one of the lawsuits striking the ban. Thus, issuing same-sex marriage licenses would place them at risk of criminal violation of Florida's same-sex marriage ban – if and until the ban is invalidated by a Florida district court of appeal (absent inter-district conflict), the Florida Supreme Court, or the U.S. Supreme Court.

Our conclusion was based on rules of law that a person who is not a party to the litigation cannot be bound by a trial court's order or injunction, and that a federal district court's order (or a Florida circuit court's order) does not have binding precedential effect on other courts, state or federal.



In the memorandum we specifically discussed the consolidated cases of *Grimsley v. Scott,* Case No. 4:14-cv-00107-RH/CAS, and *Brenner v. Scott,* Case No. 4:14-cv-138-RH/CAS, which were then pending in the United States District Court for the Northern District of Florida. On August 21, 2014, Judge Hinkle entered his *Order Denying Motions to Dismiss, Granting a Preliminary Injunction, and Temporarily Staying the Injunctions* ("Order"). In the Order, Judge Hinkle held "marriage is a fundamental right as that term is used in cases arising under the Fourteenth Amendment's Due Process and Equal Protection Clauses, that Florida's same-sex marriage provisions thus must be reviewed under strict scrutiny, and that, when so reviewed, the provisions are unconstitutional." Judge Hinkle awarded injunctive relief, in pertinent part, directing that the Washington County Clerk issue a marriage license to the two un-wed plaintiffs, as follows:

> The defendant Clerk of Court of Washington County, Florida, must issue a marriage license to Stephen Schlairet and Ozzie Russ. The deadline for doing so is the later of (a) 21 days after any stay of this preliminary injunction expires or (b) 14 days after all information is provided and all steps are taken that would be required in the ordinary course of business as a prerequisite to issuing a marriage license to an opposite-sex couple. The preliminary injunction set out in this paragraph will take effect upon the posting of security in the amount of $100 for costs and damages sustained by a party found to have been wrongfully enjoined. The preliminary injunction binds the Clerk of Court and his officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

Order, ¶ 6. Thus, while the Order declares Florida's same-sex marriage ban unconstitutional, the injunctive relief granted by Judge Hinkle was specific to the parties before the court.

Judge Hinkle entered a stay of the injunction pending appeal, but the stay expires at the end of the day on January 5, 2015. In light of the pending expiration of the stay, you have now requested that we specifically address the Order and the scope of its application. Our evaluation of this issue requires an analysis of (1) whether Judge Hinkle's injunctive relief applies to clerks of court who were not a party to the Northern District case, and (2) whether other courts in Florida are bound by Judge Hinkle's ruling so as to prevent the prosecution of non-party clerks of court. Significantly, unlike other states that have imposed bans on same-sex marriage, Florida imposes criminal penalties specifically on clerks of court who issue same-sex marriage licenses.

Analysis

Scope of Injunctive Relief

It is a general principle of law, derived from federal and state due process requirements, that a person is not bound by a trial court's judgment in litigation in which he or she is not designated as party or to which he or she has not been made a party by service of process.

Taylor v. Sturgell, 553 U.S. 880, 884 (2008); *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd,* 484 U.S. 97, 104 (1987). In other words, a trial court does not have jurisdiction or power over a non-party. An injunction binds only parties to a proceeding, the parties' officers, agents, servants, employees, and attorneys, and other persons acting in concert or participation with the parties with regard to property that is the subject of the injunction. *Alderwoods Grp., Inc. v. Garcia,* 682 F.3d 958, 971-72 (11th Cir. 2012); *Le Tourneau Co. of Ga. v. N.L.R.B.,* 150 F.2d 1012, 1013 (5th Cir. 1945)[1]; Fed. R. Civ. P. 65(d)(2). Notably, it has been specifically held that an injunction against a single state official sued in his official capacity does not enjoin all state officials. *Dow Jones & Co., Inc. v. Kaye,* 256 F.3d 1251, 1255 n.3 (11th Cir. 2001) ("An injunction against a single state official sued in his official capacity does not enjoin all state officials from the prohibited conduct.").

Additionally, every injunction must state in specific terms and reasonable detail the conduct it restrains or requires. *Garrido v. Dudek,* 731 F.3d 1152, 1159 (11th Cir. 2013); Fed. R. Civ. P. 65(d)(1). "The specificity requirements of Rule 65(d) are designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Garrido,* 731 F.2d at 1159.

In *Grimsley* and *Brenner,* the only clerk of court who was a party to the case in the Northern District, and over whom Judge Hinkle had jurisdiction, was the Washington County Clerk. In this regard, Judge Hinkle specifically enjoined only the Washington County Clerk with regard to the issuance of marriage licenses to same-sex couples. While we recognize that there is case law suggesting that a government official may abide by an order of a federal district court issued in a case to which he or she was not a party, we have uncovered no case law stating that a non-party official, or any other non-party, is bound by such order.[2] Therefore, we do not

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[1] Decisions of the Fifth Circuit issued prior to October 1, 1981 are binding precedent for courts of the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

[2] Cases have been cited by others for the proposition that government officials who are not parties to an action are obligated to abide by a trial court's ruling declaring a statute unconstitutional. However, such cases do not state that non-party officials are bound by a trial court's order. Nor do the suggested cases involve a statute – like the statute at issue here – that specifically criminalizes the conduct involved. *See Made in the USA Found. v. United States,* 242 F.3d 1300, 1309-11 (11th Cir. 2001) (in analyzing plaintiffs' standing, which involved question of whether the President could be ordered to take certain acts, and in finding standing appropriate because lower executive branch officials would be bound by decision, the court observed in dicta "we may assume it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision by the District Court, even though <u>they would not be directly bound by such determination.</u>") (quoting four Justices in *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (emphasis added) (*and see Franklin*, 505 U.S. at 825 expressly disagreeing with the four

interpret the Order to mean that any clerk other than the Clerk of Washington is bound by it or obligated to abide by it.

Also, we do not believe any clerk other than the Washington County Clerk would be clearly protected by the preemptive effect of the Order from criminal prosecution in another court. As set forth below, the greater weight of authority shows that the Order is not binding precedent on any other court.

Justices' view that an "'authoritative interpretation of the census statute and constitutional provision' rendered by the District Court will induce the President to submit a new reapportionment") (Scalia, J., partially concurring)); *Chamber of Commerce v. Edmondson*, 594 F.3d 742, 758 n.16 (10th Cir. 2010) (holding that partial relief is enough to afford standing where complete relief is unavailable, and noting in dicta, "In any event 'we may assume it is substantially likely that [other] officials would abide by an authoritative interpretation of the...provisions...even though they would not be directly bound by such a determination.'") (emphasis added) (citing *Utah v. Evans*, 536 U.S. 452, 460 (2002)); *Los Angeles Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 701 (9th Cir. 1992) (affirming decision that the Los Angeles County Bar Association had standing to pursue constitutional challenge to a statute prescribing the number of judges in Los Angeles County stating that "[w]ere this court to issue the requested declaration, we must assume that it is substantially likely that the California legislature, although its members are not all parties to this action, would abide by our authoritative determination.") (emphasis added) (citing *Franklin,* 505 U.S. at 803). In each of the cited cases, the courts' assumption that other non-party officials would comply with the trial courts' orders involved officials with the ability or discretion to lawfully comply, which is not the case here.

Similarly, other suggested cases describing plaintiff class qualifications do not provide protection to non-parties faced with criminal liabilities. *See Alliance to End Repression v. Rochford*, 565 F.2d 975, 980 (7th Cir. 1977) (holding that certifying the plaintiff class was appropriate because the case presented an as-applied constitutional challenge, but observing in dicta that a plaintiff class may not be required where a statute is challenged as facially unconstitutional and assuming that if the court declares the statute or regulation unconstitutional the enforcing government officials will discontinue the statute's enforcement); *Soto-Lopez v. New York City Civil Serv. Comm'n*, 840 F.2d 162, 168-69 (2d Cir. 1988) (holding that after Supreme Court had declared a statute unconstitutional, it was appropriate to grant injunctive relief to prohibit enforcement of the statute against other non-party plaintiffs without the requirement of the filing of a class action lawsuit against the defendants) (citing *Cooper v. Aaron*, 358 U.S. 1, 17-18 (1958), which confirmed that the prior Supreme Court precedent of *Brown v. Board of Education*, 347 U.S. 483 (1954), could not be defied by state officials); *Mills v. Dist. of Columbia*, 266 F.R.D. 20, 22 (D.D.C. 2010) (denying a motion for class certification in a facial challenge where enforcement authority was the defendant).

In sum, none of these cases support the proposition that a non-party Florida clerk does not remain subject to Florida's criminalization of clerks' issuance of marriage licenses to same-sex couples, pending binding appellate authority.

Precedential Value of a Federal District Court Holding a State Law Unconstitutional

The Florida Supreme Court has held on multiple occasions that a federal district court's ruling that a Florida statute is unconstitutional is not binding on a state court. *E.g., Merck v. State,* 124 So. 3d 785, 803 (Fla. 2013) (finding a federal district court's determination that Florida's death penalty procedures are unconstitutional was not binding on the Florida Supreme Court); *Roche v. State,* 462 So. 2d 1096, 1099 n.2 (Fla. 1985) (decision of federal district court that Florida statute relating to administrative searches of places of business and vehicles in the cause of agricultural inspections was unconstitutional was not binding on Florida state courts); *State v. Dwyer,* 332 So. 2d 333, 335 (Fla. 1976) (decision of federal court of appeals finding Florida's disorderly conduct statute unconstitutional was not binding on Florida trial court); *Bradshaw v. State,* 286 So. 2d 4, 6-7 (Fla. 1973) ("It is axiomatic that a decision of a federal trial court, while persuasive if well-reasoned, is not by any means binding on the courts of a state."), *cert. denied,* 417 U.S. 919 (1974). *See also Titus v. State,* 696 So. 2d 1257, 1262 (Fla. 4th DCA 1997) ("[A] Florida District Court of Appeal takes its direction on matters of federal constitutional law first from the United States Supreme Court and, in the absence of definitive precedent from that Court, from the Florida Supreme Court"), *approved,* 702 So. 2d 706 (Fla. 1998). As pointed out in our July 1 memorandum at footnote six, the Eleventh Circuit Court of Appeals has consistently upheld this rule of law. *See, e.g., Doe v. Pryor,* 344 F.3d 1282, 1286 (11th Cir. 2003) ("The only federal court whose decisions bind state courts is the United States Supreme Court") (citing *Glassroth v. Moore,* 335 F.3d 1282, 1302 n.6 (11th Cir. 2003) ("[S]tate courts when acting judicially, which they do when deciding cases brought before them by litigants, are not bound to agree with or apply the decisions of federal district courts and courts of appeal.") (citing *Arizonans for Official English v. Arizona,* 520 U.S. 43, 58 n.11 (1997))).

Furthermore, a decision of a federal district court judge is not binding precedent on either a federal district court in another jurisdiction, a federal district court or judge in the same jurisdiction, or even upon the same judge in a different case. *Camreta v. Greene,* 131 S.Ct. 2020, 2033 n.7 (2011); *Am. Elec. Power Co. v. Connecticut,* 131 S.Ct. 2527, 2540 (2011).

Therefore, because Judge Hinkle's decision is not binding on another court, state or federal, it unfortunately does not provide a clerk of court who was not a party to the case in the Northern District with protection from being criminally penalized in another court for issuing marriage licenses to same-sex couples.[3]

[3] Despite our conclusion regarding the non-binding precedential effect of Judge Hinkle's Order on other courts, as we pointed out in our July 1, 2014 memorandum, a Florida district court of appeal decision pertaining to the same-sex marriage ban would have considerable precedential value. If a Florida district court of appeal affirms a state court trial court's invalidation of the ban, we believe that such decision would bind all Florida trial courts in the absence of contrary precedent from another district court of appeal or the Florida Supreme Court. "The decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by [the Florida Supreme] Court. Thus, in the absence of interdistrict conflict,

Conclusion

We realize that it may seem to many that Judge Hinkle's federal district court ruling that Florida's same-sex marriage ban is unconstitutional and violates fundamental rights would permit all Florida clerks of court to lawfully issue marriage licenses to same-sex couples. However, as discussed above, our review of the law indicates that an order and injunction issued at the federal trial level is not binding on any person, including a clerk of court, who is not a named party in the action. Nor does such a ruling bind any other court.

Thus, we remain of the opinion that clerks of court who were not parties to the Northern District case are not bound by Judge Hinkle's Order – or protected by it. Clerks are subject to Florida's criminal penalties for the issuance of marriage licenses to same-sex couples. Until such time as there is a binding appellate ruling (*see* footnote 3, *supra*), we are constrained to advise that despite the Order, clerks remain exposed to Florida's apparently unique criminalization of the issuance of marriage licenses to same-sex couples.

district court [of appeal] decisions bind all Florida trial courts." *Pardo v. State,* 596 So. 2d 665, 666 (1992) (citing *Stanfill v. State,* 384 So. 2d 141, 143 (Fla. 1980)).