

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

CIRCUIT CIVIL DIVISION

CASE NO. 14-1661 CA 24

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.,

Plaintiffs,

vs.

HARVEY RUVIN, as CLERK OF THE COURTS
of Miami-Dade County, Florida, in his official capacity,
Defendant(s)

**DEFENDANT HARVEY RUVIN'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFFS' COMPLAINT**

Harvey Ruvin, Clerk of Courts ("Clerk"), files his Answer and Affirmative Defenses to the Complaint for Declaratory and Injunctive Relief. The Clerk is a County Constitutional officer whose duties are ministerial, and, as such, he does not exercise discretion in the performance of those statutory duties. He is duty-bound to maintain neutrality in all matters pending before the Court and to obey the law as written unless and until judicially determined otherwise. With regard to the allegations of the Complaint, the Clerk at all times has acted in good faith and in accordance with clearly established law. The Clerk does not have an actual, present, adverse and antagonistic interest in the subject matter of this case for declaratory relief. With regard to the Plaintiffs' claim for injunctive relief, the Clerk stands ready, as in every case before the Court, to discharge the Court's directives.

With regard to the numbered paragraphs of the Complaint, the Clerk states as follows:

1. The Clerk is without knowledge and therefore denies the allegations in paragraph 1.
2. The Clerk admits that the Complaint purports to challenge the constitutionality of the Florida laws that exclude same-sex couples from marriage and for declaratory and injunctive relief, but the Clerk, a ministerial County Constitutional officer, denies that Plaintiffs have stated a cause of action against the Clerk or are entitled to the requested relief.
3. The Clerk is without knowledge and therefore denies the allegations in paragraph 3.
4. The Clerk is without knowledge and therefore denies the allegations in paragraph 4.
5. The Clerk is without knowledge and therefore denies the allegations in paragraph 5.
6. Article I, Section 27 of the Florida Constitution and Sections 741.04 and 741.212, Florida Statutes, are provisions of law that speak for themselves, and therefore the Clerk denies any allegations of paragraph 6 that are inconsistent therewith.
7. The allegations in paragraph 7 cite law and decisions which speak for themselves and state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 7.
8. The allegations in paragraph 8 cite law and decisions which speak for themselves and state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 8.
9. The allegations in paragraph 9 cite law and decisions which speak for themselves and state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 9.
10. The allegations in paragraph 10 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 10.
11. The allegations in paragraph 11 cite law and decisions which speak for themselves and state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 11.

12. The allegations in paragraph 12 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 12.
13. The allegations in paragraph 13 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 13.
14. The allegations in paragraph 14 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk denies the allegations in paragraph 14.
15. The Clerk admits that the Complaint purports to be an action pursuant to 42 U.S.C. §1983 and Fla. Stat. §26.012(2)(c) for declaratory and injunctive relief, but the Clerk, a ministerial County Constitutional officer, denies that Plaintiffs have stated a cause of action against the Clerk or are entitled to the requested relief.
16. Denied.
17. The allegations in paragraph 17 are admitted for venue purposes only.
18. The Clerk is without knowledge and therefore denies the allegations in paragraph 18.
19. The Clerk is without knowledge and therefore denies the allegations in paragraph 19.
20. The Clerk is without knowledge and therefore denies the allegations in paragraph 20.
21. The Clerk is without knowledge and therefore denies the allegations in paragraph 21.
22. The Clerk is without knowledge and therefore denies the allegations in paragraph 22.
23. The Clerk is without knowledge and therefore denies the allegations in paragraph 23.
24. The Clerk is without knowledge and therefore denies the allegations in paragraph 24.
25. The Clerk admits that he is the Clerk of Courts for Miami-Dade County and that, in his official ministerial capacity, the Office of the Clerk of Courts issues and makes a record of marriage licenses within Miami-Dade County. The Clerk admits that the Complaint purports to be an action against him in his official ministerial capacity. The Clerk denies the remaining allegations of paragraph 25.

26. Denied.
27. Section 741.04, Florida Statutes, is a provision of law that speaks for itself, and therefore the Clerk denies any allegations of paragraph 27 that are inconsistent therewith.
28. Section 741.212, Florida Statutes, is a provision of law that speaks for itself, and therefore the Clerk denies any allegations of paragraph 28 that are inconsistent therewith.
29. Article I, Section 27 of the Florida Constitution is a provision of law that speaks for itself, and therefore the Clerk denies any allegations of paragraph 29 that are inconsistent therewith.
30. To the extent that the allegations in paragraph 30 state legal conclusions, no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations of paragraph 30.
31. The Clerk is without knowledge and therefore denies the allegations in paragraph 31.

COUNT I

32. The Clerk restates and reaffirms all responses to the allegations set forth in previous paragraphs.
33. The Clerk admits that the Complaint purports to be an action against the Clerk in his official capacity for purposes of seeking declaratory and injunctive relief, but the Clerk, a ministerial County Constitutional officer, denies that Plaintiffs have stated such a cause of action against the Clerk or are entitled to any such relief as to the Clerk.
34. The Fourteenth Amendment to the United States Constitution is a provision of law that speaks for itself, and therefore the Clerk denies any allegations of paragraph 34 that are inconsistent therewith.
35. The allegations in paragraph 35 state laws that speak for themselves to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 35.
36. The allegations in paragraph 36 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk denies the allegations in paragraph 36.

37. The allegations in paragraph 37 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk denies the allegations in paragraph 37.
38. The allegations in paragraph 38 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk denies the allegations in paragraph 38.
39. The allegations in paragraph 39 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 39.
40. Denied.

COUNT II

41. The Clerk restates and reaffirms all responses to allegations set forth in previous paragraphs.
42. The Clerk admits that the Complaint purports to be an action against the Clerk in his official capacity for purposes of seeking declaratory and injunctive relief, but the Clerk, a ministerial County Constitutional officer, denies that Plaintiffs have stated such a cause of action against the Clerk or are entitled to any such relief as to the Clerk.
43. The Fourteenth Amendment to the United States Constitution is a provision of law that speaks for itself, and therefore the Clerk denies any allegations of paragraph 34 that are inconsistent therewith.
44. The allegations in paragraph 44 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk denies the allegations in paragraph 44.
45. The allegations in paragraph 45 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk denies the allegations in paragraph 45.
46. The allegations in paragraph 46 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk denies the allegations in paragraph 46.
47. The Clerk is without knowledge and therefore denies the allegations in paragraph 47.
48. The Clerk is without knowledge and therefore denies the allegations in paragraph 48.

49. The Clerk is without knowledge and therefore denies the allegations in paragraph 49.
50. The Clerk is without knowledge and therefore denies the allegations in paragraph 50.
51. The allegations in paragraph 51 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk denies the allegations in paragraph 51.
52. The allegations in paragraph 52 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 52.
53. The allegations in paragraph 53 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 53.
54. Article I, § 27 of the Florida Constitution is a provision of law that speaks for itself. To the extent that an answer is required, the Clerk denies the allegations in paragraph 54.
55. The allegations in paragraph 55 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 55.
56. The allegations in paragraph 56 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 56.
57. The allegations in paragraph 57 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 57.
58. The allegations in paragraph 58 state legal conclusions to which no answer is required. To the extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 58.
59. The allegations in paragraph 59 state legal conclusions to which no answer is required. To the

extent that an answer is required, the Clerk is without knowledge and therefore denies the allegations in paragraph 59.

60. Denied.

As to the unnumbered paragraphs of the Complaint, and all of the relief requested in the subparagraphs thereto, the Clerk denies that any grounds exist for declaratory or injunctive relief or any other relief against the Clerk and for Plaintiffs. The Clerk denies all captions, headings, titles, introductory paragraphs and each and every allegation in the Complaint that is not specifically admitted by the Clerk in this Answer.

AFFIRMATIVE DEFENSES

By way of affirmative defenses, the Clerk asserts the following. By virtue of asserting these defenses, the Clerk does not assume any burden of proof not otherwise legally assigned to him.

FIRST DEFENSE

Lack of Subject Matter Jurisdiction for Declaratory Relief

The Clerk, a ministerial officer, is not and cannot be an antagonistic party with respect to the Plaintiffs. To obtain declaratory relief, Plaintiffs must show, *inter alia*, that there is some person or persons who have, or reasonably may have an actual, present, *adverse and antagonistic* interest in the subject matter. In the absence of such a showing, the Court lacks subject matter jurisdiction to entertain an action for declaratory relief.

Section 741.04, Florida Statutes, sets forth the criteria for issuance of a marriage license. The Clerk lacks authority to issue marriage licenses in violation of section 741.04, Florida Statutes. Issuance of a marriage license in violation of the criteria set forth in Section 741.04, Florida Statutes, is a misdemeanor of the first degree, which is punishable by a definite term of imprisonment not to exceed one year and a fine of \$1,000. §§ 741.05, 775.082, and 775.083, Fla. Stat. The Clerk is duty-bound to adhere to the statute and as a ministerial officer he lacks standing to challenge or defend the validity or constitutionality of the statute. The absence of the requisite adversarial interest in the subject matter deprives the Court of jurisdiction.

SECOND DEFENSE

Plaintiffs' Claims are Not Redressable by the Clerk

The Clerk is a County Constitutional officer whose duties are ministerial. He is not a policy-maker, nor does he exercise discretion in the performance of his duties. The Clerk 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. Unlike the Florida Department of Health, Office of Vital Statistics, for example, the Clerk does not have statutory authority to promulgate, approve or modify the form of the marriage license nor to enforce uniformly the law throughout the state nor to adopt and enforce rules statewide.

Plaintiffs fail to state a justiciable cause of action because their injuries are not redressable by the Clerk. The Clerk is the sole defendant named in the Complaint. However, the Clerk cannot, solely by his actions, give Plaintiffs the relief they seek. The Clerk's only function with respect to the subject matter of the Complaint is to issue and make a record of a marriage license pursuant to Section 741.04, Florida Statutes. The Plaintiffs challenge Section 741.04. However, they also attack 741.212, Florida Statutes, and Article I, Section 27, of the Florida Constitution, two provisions with which the Clerk has no interaction whatsoever.

The only acts the Clerk could possibly take to address Plaintiffs' alleged injuries would be to issue and to make a record of a marriage license in violation of Section 741.04, Florida Statutes. However, even if the Clerk were to issue and make a record of such a marriage license, the other statutory and constitutional provisions, with which the Clerk is not involved, would still render the marriage void and, therefore, not entitled to recognition for any purpose. Accordingly, the relief Plaintiffs request as to the Clerk is illusory because even if the Court granted the relief requested as to the Clerk, Plaintiffs' alleged injuries would not be redressed. As a result, Plaintiffs' claims are not justiciable.

THIRD DEFENSE

Failure to State a Cause of Action

For the reasons stated in the First and Second Defenses, the Complaint fails to state a cause of action upon which relief can be granted.

FOURTH DEFENSE

Failure to Join Indispensable Parties

For the reasons stated in the First and Second Defenses, Plaintiffs have failed to join indispensable parties charged with enforcing the provisions of the Florida Statutes and Florida Constitution that are challenged by Plaintiffs.

FIFTH DEFENSE

No County Policy or Custom Alleged

The Clerk is a County Constitutional officer pursuant to Article VIII, Florida Constitution. Under 42 U.S.C. §1983 an official capacity action against a county officer is deemed to be an action against the county.

Plaintiffs have failed to allege that the purported constitutional violation was caused by a policy or custom of Miami-Dade County, as would be required to state a claim under 42 U.S.C. §1983. Miami-Dade County does not establish the criteria for issuance of marriage licenses; state law does. A county officer who, in his official capacity, adheres to state law to avoid criminal liability under state law does not do so pursuant to a county or municipal custom or policy. An allegation that a county official followed state law is not sufficient to state a cause of action against a county under 42 U.S.C. § 1983.

SIXTH DEFENSE

Immunity

The Clerk is also a Constitutional officer pursuant to the Article of the Florida Constitution pertaining to the Judiciary. Art. V, Sec. 16, Fla. Const. (1968). To the extent that the Plaintiffs would claim that the Clerk's statutory duties pertaining to marriage licenses are court-related, arising under Article V of the Florida Constitution rather than Article VIII, the Clerk would be acting as a judicial officer and would have judicial or quasi-judicial immunity from suit under 42 U.S.C. § 1983. Furthermore, costs and attorney's fees pursuant to Section 1988 are not available in a Section 1983 action brought against a judicial officer for an act or omission taken by such officer acting in his judicial capacity unless such action was clearly in excess of the officer's jurisdiction. 42 U.S.C. § 1988. Plaintiffs have not alleged that the acts of the Clerk and his deputies with respect to the issuance of marriage licenses were taken in excess of the Clerk's jurisdiction. Therefore, neither relief pursuant to Section

1983 nor attorney's fees pursuant to Section 1988 are available against the Clerk for official acts or omissions relating to the issuance of marriage licenses.

RESERVATION OF RIGHT TO AMEND

The Clerk hereby reserves the right to assert such additional defenses and counterclaims as may be warranted as the case proceeds.

WHEREFORE, the Clerk respectfully requests that this Court enter judgment in favor of the Clerk, award the Clerk attorney's fees and costs pursuant to 42 U.S.C. §1988; and grant such further relief as the Court deems just, equitable, and proper.

Dated this 11th day of February, 2014

Respectfully submitted,
HARVEY RUVIN

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on **February 11, 2014** via email generated by the Florida Courts E-Filing Portal to: **Nancy J. Faggianelli, Esq.**, CARLTON FIELDS JORDEN BURT, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, Florida 33601, swalbolt@cfjblaw.com, lprats@cfjblaw.com, nfaggianelli@cfjblaw.com; **Jeffrey Michael Cohen, Esq.**, and **Cristina Alonso, Esq.**, CARLTON FIELDS JORDEN BURT, P.A., Miami Tower, 100 Southeast 2nd Street, Suite 4200, Miami, Florida 33131, jmcohen@cfjblaw.com, calonso@cfjblaw.com; **Elizabeth Schwartz, Esq.**, ELIZABETH SCHWARTZ, P.A., 690 Lincoln Road, Suite 304, Miami Beach, Florida 33169, eschwartz@sobelaw.com; **Mary B. Meeks, Esq.**, MARY MEEKS, P.A., P.O. Box 53678, Orlando, Florida 32853, marybmeeks@aol.com AND via U.S. Mail to: **Shannon P. Minter, Esq.**, **Christopher F. Stoll, Esq.**, **David C. Codell, Esq.** and **Asaf Orr, Esq.**, (*Pro Hac Vice Applications Pending*), NATIONAL CENTER FOR LESBIAN RIGHTS, 870 Market Street, Suite 370, San Francisco, California, 94102, sminter@nclrights.org, cstoll@nclrights.org, dcodell@nclrights.org.

By: /s/ Luis G. Montaldo
Luis G. Montaldo