IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JAMES D. BRENNER, *et al.*,

Plaintiffs-Appellees,

CONSOLIDATED

v.

Case No. 14-14061-AA

SECRETARY, FLORIDA DEP'T OF HEALTH, *et al.*,

Defendants-Appellants.
_____/

SLOAN GRIMSLEY, *et al.*,

Plaintiffs-Appellees,

v.

Case No. 14-14066-AA

SECRETARY, FLORIDA DEP'T OF HEALTH and SECRETARY, FLORIDA DEP'T OF MGMT. SERVS.,

Defendants-Appellants.
_____/

STATE APPELLANTS' SUGGESTION OF MOOTNESS AND NOTICE OF DISTRICT COURT FILING CONCERNING MOOTNESS

1. The Secretary of the Florida Department of Health and the Secretary of the Florida Department of Management Services respectfully file this suggestion of mootness. They further provide notice that on August 25, 2015, appellants raised the issue of mootness for the district court's consideration in the first instance. *See* Ex. A. As appellants stated in the district court, the case is moot

because appellants are committed to following *Obegerfell v. Hodges*, 135 S. Ct. 2584 (2015), so there is no live dispute.

2. Mootness does not prevent the Court from granting appellants' pending request for voluntary dismissal, which appellees have not opposed. *See Searcy v. Att'y Gen.*, No. 15-10295-CC (11th Cir. Aug. 20, 2015) (granting motion for voluntary dismissal following *Obergefell* and directing that "[a]ny questions of mootness . . . should be addressed by the district court in the first instance subject to final judgment appeal").

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of August, 2015, a true copy of the foregoing notice was filed electronically with the Clerk of Court using the Court's CM/ECF system, which will send by e-mail a notice of docketing activity to the registered Attorney Filers listed on the attached electronic service list.

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Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JAMES DORMER BRENNER, *et al.*,

Plaintiffs,

v. Case No. 4:14-cv-107-RH/CAS

RICK SCOTT, in his official capacity as Governor of Florida, *et al.*,

Defendants.
_____/

SLOAN GRIMSLEY, *et al.*,

Plaintiffs,

v. Case No. 4:14-cv-138-RH/CAS

RICK SCOTT, in his official capacity as Governor of Florida, *et al.*,

Defendants.
_____/

DEFENDANTS' OPPOSITION TO *GRIMSLEY* PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' MOTION TO DISMISS AS MOOT

There is no need for anything further from this Court. The United States Supreme Court has held that states must recognize same-sex marriage, and state officials will comply with the Supreme Court's decision. Plaintiffs' requested injunction would serve no purpose, and this Court should dismiss the case as moot.

In *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the Supreme Court held that states cannot "exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples." *Id.* at 2605. In light of the Supreme Court's decision, the laws challenged

in these cases—article I, section 27 of the Florida Constitution and sections 741.212 and 741.04(1), Florida Statutes—no longer prohibit defendants[1] from issuing same-sex marriage licenses or recognizing existing same-sex marriages when applying Florida's laws.

This does not mean, however, that plaintiffs are entitled to a federal court injunction or declaratory judgment. On the contrary, Article III forbids courts from entering judgments when no case or controversy exists, and longstanding principles of equity counsel against issuing needless injunctions and declaratory relief against state officials. Defendants have committed to follow *Obergefell*, and there is no need for further proceedings here.

I. Following *Obergefell*, This Case Is Moot.

Article III of the United States Constitution limits federal jurisdiction to "actual cases or controversies." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) (quotation marks omitted). When a case becomes moot, a court lacks jurisdiction to proceed and must dismiss the case. *BankWest, Inc. v. Baker*, 446 F.3d 1358, 1364 (11th Cir. 2006).

When governmental defendants cease challenged actions following decisions from the Supreme Court or the relevant circuit court, a challenge to those actions is moot. *See, e.g.*, *Jacksonville Prop. Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266, 1275 (11th Cir. 2011) (city changed policy to comply Eleventh Circuit cases "declar[ing] similar [laws] unconstitutional"); *Christian Coal. of Ala. v. Cole*, 355 F.3d 1288, 1292–93 (11th Cir. 2004) (commitment not to bring ethics charges against judicial candidates in light of "changed . . . legal

[1] Defendants in these consolidated cases are the Secretary of the Florida Department of Health ("DOH"), the Secretary of the Florida Department of Management Services ("DMS"), and Washington County Clerk of Court ("Washington County Clerk"), all of whom are sued in their official capacities. Because it is not clear whether plaintiffs seek relief against the Washington County Clerk, she joins in this response and motion.

landscape," including Supreme Court ruling on similar ethics provision); *Telo Commc'ns, Inc. v. Carbaugh*, 885 F.2d 1225, 1231 (4th Cir. 1989) (state agency conceded that a Supreme Court decision invalidating a "similar" North Carolina law rendered Virginia's law unenforceable). These cases recognize that when governmental defendants change their conduct to conform to developments in case law rendering similar laws unenforceable, there is no reasonable expectation that they will reverse course in the future. *See, e.g.*, *Jacksonville Prop. Rights Ass'n*, 635 F.3d at 1275; *accord Troiano v. Supervisor of Elecs.*, 382 F.3d 1276, 1284 (11th Cir. 2004) ("*only* when there is a substantial likelihood that the offending policy will be reinstated if the suit is terminated" does government's cessation of conduct not moot a case). Indeed, a governmental defendant's voluntary cessation of conduct may moot a case even after the district court has preliminarily enjoined the conduct during the litigation. *See Miller v. Mitchell*, 598 F.3d 139, 146–47 (3d Cir. 2010) (post-injunctive oral representation by counsel that district attorney would not file charges mooted part of case).[2]

Consistent with these principles, the United States District Court for the District of South Carolina recently determined that a challenge to South Carolina's same-sex marriage ban, which the state stopped enforcing after the complaint was filed, was moot because "*Obergefell* foreclos[es] the possibility that South Carolina's same-sex marriage ban will be reinstated." *Haas v. S.C. Dep't of Motor Vehicles*, Civ. A. No. 6:14-cv-04246-JMC, 2015 WL 4879268, at *2 (D.S.C. Aug. 13, 2015). The same result is appropriate here. Before *Obergefell*, neither the United States Supreme Court nor the Eleventh Circuit had held that the Constitution requires

[2] Statements in district court filings suffice to show a change of conduct. *See Christian Coal.*, 355 F.3d at 1292 (mootness determined based on "stat[ement] in a pleading submitted to the district court" that defendants would not enforce challenged rule); *see also Miller*, 598 F.3d at 146 (counsel's statement to appellate court demonstrated cessation of conduct).

states to issue marriage licenses to same-sex couples and recognize same-sex marriages on the same terms as others. *Cf. Obergefell*, 135 S. Ct. at 2606 (noting circuit split). Therefore, defendants enforced the challenged laws, as they were required to do by Florida law.[3] Now that the constitutional issues are settled, defendants have moved to voluntarily dismiss their appeal of the preliminary injunction and will not enforce the challenged laws regardless of the outcome of this case.[4] This case is now moot.

Defendants are aware that the Eighth Circuit rejected Arkansas, Nebraska, and South Dakota officials' similar arguments that their commitment to comply with *Obergefell* mooted claims against them. *See Jernigan v. Crane*, --- F.3d ----, No. 15-1022, 2015 WL 4731342 (8th Cir. Aug. 11, 2015) (per curiam) (Arkansas); *Waters v. Ricketts*, --- F.3d ----, No. 15-1452, 2015 WL 4730972 (8th Cir. Aug. 11, 2015) (per curiam) (Nebraska); *Rosenbrahn v. Daugaard*, --- F.3d ----, No. 15-1186, 2015 WL 4730871 (8th Cir. Aug. 11, 2015) (per curiam) (South Dakota). The court reasoned that the cases were not moot because *Obergefell* ruled on other states' laws (not their own laws) and because voluntary cessation presents a "formidable burden" for the party urging mootness. *E.g.*, *Jernigan*, 2015 WL 4731342, at *1–*2 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000)). These decisions are unpersuasive for two reasons. First, the court did not consider the decisions in other circuits—including the Eleventh Circuit—holding that governmental defendants' changes of policy to comply with controlling authority addressing similar laws *does* moot a case. *See* cases cited

[3] Plaintiffs have never disputed that Florida law prevented defendants from recognizing or licensing same-sex marriages. The only issue in this case was whether those Florida laws violated the United States Constitution.

[4] For example, DMS will continue to allow same-sex spouses of state employees to receive health insurance and retirement benefits on the same terms as others, and the Washington County Clerk will continue to issue marriage licenses to same-sex couples on the same terms as others.

supra pp. 2–3.[5] Second, the Eighth Circuit's characterization of the mootness burden as "formidable"—drawn from *Laidlaw*, a case involving a private defendant—is inconsistent with the Eleventh Circuit's "presumption that the objectionable behavior [of a governmental defendant] will *not* recur" once it ceases. *Jacksonville Prop. Rights Ass'n*, 635 F.3d at 1274 (distinguishing *Laidlaw*) (quotation marks omitted). Regardless of whether the Eighth Circuit properly applied its own precedent, these decisions are improper under Eleventh Circuit precedent.

The recently filed action seeking to require DOH to issue birth certificates to female spouses of birth mothers, *see* Compl., *Chin v. Armstrong*, Case No. 4:15-cv-00399-RH-CAS (N.D. Fla. Aug. 13, 2015), also does not affect the mootness analysis. The law at issue in *Chin* is section 382.013(2)(a), Florida Statutes, *see, e.g.*, *Chin* Compl. ¶ 1, a law concerned with "[p]aternity" providing that a birth mother's "husband" is listed as the "father" on a birth certificate. That statute is not at issue in this case,[6] and consequently, issues related to section 382.013(2)(a) are not relevant to whether DOH will enforce the laws at issue in this case post-*Obergefell*.[7]

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[5] Neither the First Circuit nor the Fifth Circuit post-*Obergefell* decisions cited by the Eighth Circuit analyzed whether the case was moot. *See Campaign for S. Equal. v. Bryant*, 791 F.3d 625 (5th Cir. 2015); *Conde-Vidal v. Rius-Armendariz*, No. 14-2184 (July 8, 2015) (cited in, *e.g.*, *Jernigan*, 2015 WL 2015 WL 4731342, at *1).

[6] The *Chin* complaint does not assert that DOH's actions are based on any of the laws preliminarily enjoined here. Similarly, the response filed by *Chin* plaintiff Equality Florida to DOH's motion for clarification nowhere suggests that the dispute in *Chin* involves any of the laws challenged here. *See* DE 114.

[7] Although the preliminary injunction does not mention section 382.013(2)(a), Florida Statutes, out of an abundance of caution, DOH sought clarification as to the injunction's scope. *See* DE 113.

Defendants' commitment not to enforce the challenged laws in light of the Supreme Court's ruling in *Obergefell* renders this case moot.

II. The Eleventh Amendment Bars Any Relief.

The Eleventh Amendment separately bars any relief against the defendants now that they have committed not to enforce the challenged laws. The exception to Eleventh Amendment immunity under *Ex Parte Young*, 209 U.S. 123 (1908), applies only when there is an "ongoing" violation of federal law by state officials; it is not enough that state officials have "violated [federal law] at one time or over a period of time in the past." *Papasan v. Allain*, 478 U.S. 265, 278 (1986).[8] The logic is simple. "Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." *Id.* (quotation marks omitted). "[D]eterrence interests," by contrast, "are insufficient to overcome the dictates of the Eleventh Amendment." *Id.* (quotation marks omitted). Thus, it is immaterial that defendants in the past enforced the challenged laws. Because defendants will not enforce the challenged laws post-*Obergefell*, the Eleventh Amendment bars any relief against them.

III. The Court Otherwise Lacks Jurisdiction to Grant Relief Under Article III of the United States Constitution.

Even if defendants' commitment not to enforce the challenged laws in light of *Obergefell* were not sufficient to moot all claims and preclude relief under the Eleventh Amendment, Article III of the United States Constitution otherwise prevents the Court from granting relief.

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[8] All three defendants are arms of the state under the Eleventh Amendment. *See Zabriskie v. Court Admin.*, 172 F. App'x 906, 908-09 (11th Cir. 2006) (per curiam) (Florida circuit court administrative employees protected by Eleventh Amendment); *Wenzel v. Bankhead*, 351 F. Supp. 2d 1316, 1325 (N.D. Fla. 2004) (Hinkle, J.) (state secretary protected by Eleventh Amendment).

As to section § 741.04(1), Florida Statutes, which prohibits a county judge or clerk of court from issuing a marriage license "unless one party is a male and the other party is a female," plaintiffs lack standing to challenge the statute. Indeed, the *Grimsley* plaintiffs who now seek injunctive and declaratory relief did not challenge section 741.04(1), *see generally Grimsley* Am. Compl. Insofar as the *Grimsley* plaintiffs now seek injunctive or declaratory relief related to that statute,[9] they lack standing because (as they concede in their separately filed statement of material facts, *see* DE 111-1)[10] they are already married and have no need for a marriage license. The Court has already recognized that "no plaintiff now in this case has standing to seek a preliminary injunction requiring the Clerk to issue other licenses." DE 109, at 3. So too, plaintiffs lack standing to seek a permanent injunction enjoining the statute's enforcement.[11] Regardless, no defendant will enforce that provision after *Obergefell.*

As to article I, section 27 of the Florida Constitution and section 741.212, Florida Statutes, which define marriage as between a man and woman and provide that Florida law will not recognize out-of-state same-sex marriages, no case or controversy is now pending before the Court. Article III of the United States Constitution does not permit plaintiffs "carve[] out" issues that "would not resolve the entire case or controversy," but rather seek a ruling on "a collateral legal issue governing certain aspects of their . . . future suits." *Calderon v. Ashmus*, 523 U.S.

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[9] Plaintiffs' motion does not identify what "marriage bans" they are challenging at this point.

[10] Defendants are not filing a separate response to plaintiffs' separate statement of material facts. *See* DE 34, at 4, ¶12(a).

[11] Plaintiffs' motion identifies no facts suggesting they will be injured by section 741.01(1). Insofar as plaintiffs might claim section 741.04(1) causes a "stigmatizing injury," that would be insufficient to confer standing because they have not shown that they have been "personally denied equal treatment" due to section 741.01(4). *See Allen v. Wright*, 468 U.S. 737, 754 (1984) (no standing for "stigmatizing injury" in racial discrimination case even though "this sort of noneconomic injury is one of the most serious consequences of discriminatory government action").

740, 747–48 (1998) (no jurisdiction to determine what statute of limitations would apply to "underlying controversy" of "whether [the prisoner] is entitled to federal habeas relief" when no "final or conclusive determination" of *habeas* entitlement was sought).[12] That is exactly what the plaintiffs are seeking here. The Amended Complaint lists a variety of specific benefits that *could* be denied *if* the plaintiffs' marriages are not recognized in the future. *Grimsley* Am. Compl. ¶ 28 (*e.g.*, enrollment of surviving spouse for receipt of retirement benefits, death certificates listing both spouses, priority with respect to receipt of remains). Plaintiffs have not, however, sought an injunction requiring defendants to afford those benefits, nor a declaration that they are entitled to those benefits. Indeed, plaintiffs have offered no factual basis to believe that they have sought or will seek those benefits, or that defendants would deny those benefits post-*Obergefell*. They have not even mentioned those benefits in their summary judgment motion. Their motion asks only that the Court "enter a final judgment declaring the marriage bans unconstitutional and permanently enjoining their enforcement." Mot. at 3. This is nothing more than a request that the Court advise on a legal issue—whether the challenged laws are constitutional—related to their entitlement to retirement benefits, death certificates, spousal remains, or some other underlying dispute that may later ripen. *See Jacksonville Prop. Rights Ass'n*, 635 F.3d 1266 (request in similar procedural posture was an advisory opinion on a matter not yet ripe).

[12] This rule has been applied in various contexts. *Williams v. BASF Catalysts LLC*, 765 F.3d 306 (3d Cir. 2014) (refusing injunction or declaration that would affect subsequent tort case); *Auto-Owners Ins. Co. v. Madison at Park W. Prop. Owners Ass'n, Inc.*, 495 F. App'x 383 (4th Cir. 2012) (litigation of issues that might arise in future coverage dispute); *Miller v. F.C.C.*, 66 F.3d 1140, 1145 (11th Cir. 1995) (explaining, in challenge to FCC political advertising regulation, that "[b]y asking this court to decide what another court should do in a future case, petitioners are posing a hypothetical question, the answer to which would be an advisory opinion").

IV. Injunctive Relief Is Unwarranted.

Even if the Court has jurisdiction, it would be inappropriate to issue injunctive relief. Plaintiffs invite the Court to issue an injunction for no reason other than that *Obergefell* renders the challenged laws invalid. But even succeeding "on the merits of a constitutional claim does not mean that the party is automatically entitled to prospective injunctive relief." *Wooden v. Bd. of Regents*, 247 F.3d 1262, 1283 (11th Cir. 2001); *see also Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008) ("An injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course."). An injunction is a "drastic and extraordinary remedy," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010), and may only be issued when all four traditional equitable factors are satisfied, *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). Plaintiffs have not even attempted to satisfy these requirements. Their request fails for at least three reasons.

First, Plaintiffs cannot show that "irreparable injury will be suffered unless the injunction issues." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (no injunction may issue absent "showing of any real or immediate threat that the plaintiff will be wronged again"). Defendants have committed not to enforce the challenged laws, a commitment this Court must presume will continue regardless of any injunctive relief. *See Jacksonville Prop. Rights Ass'n*, 635 F.3d at 1274; *see also Jernigan*, 2015 WL 4731342, at *2 (noting relevance of a commitment to follow *Obergefell* to the "necessity of continued injunctive relief"). The motion identifies no future harm that will result if plaintiffs do not obtain an injunction. They specify no actions they wish to take, nor any basis to believe that defendants will prevent them from taking such actions. Indeed, the only facts that they have identified in their accompanying statement of material facts is that they are

married. They offer no evidence that anything would be different with the injunction they seek than without it.

Second, plaintiffs' request fails because they appear to seek a forbidden "obey the law" injunction. Although plaintiffs have not specified exactly what they would want an injunction to say, it appears that they simply desire an injunction enjoining, in general terms, the enforcement of the challenged laws, pursuant to the Supreme Court's decision in *Obergefell*.[13] But it is "well-established in this circuit that an injunction that a party do nothing more specific than 'obey the law' is impermissible." *Elend v. Basham*, 471 F.3d 1199, 1209 (11th Cir. 2006); *see also* Charles Alan Wright *et al.*, *Federal Practice & Procedure* § 2955 (courts "uniformly" reject "orders simply requiring defendants to 'obey the law'"). Rather, an injunction must explain "exactly what conduct the court has prohibited and what steps they must take to conform their conduct to the law," *Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health & Rehab. Servs.*, 225 F.3d 1209, 1222 (11th Cir. 2000)—that is, it must "be phrased in terms of objective actions, not legal conclusions." *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1203 (11th Cir. 2001).

A command to comply with *Obergefell* by not enforcing the challenged statutes is precisely the sort of "obey the law" injunction the Eleventh Circuit has invalidated time and again. *See, e.g.*, *Elend*, 471 F.3d at 1209 (injunction directing Secret Service to "ensure there's no violation of the First Amendment" could not be granted); *A.P. ex rel. Bazerman v. Feaver*, 293 F. App'x 635, 639 & n.11 (11th Cir. 2008) (striking injunction requiring state official to

[13] Before filing this motion, plaintiffs' counsel asked defendants by e-mail to consent to an injunction "applying *Obergefell* to the Florida marriage exclusions," but despite defense counsel's request, plaintiffs' counsel declined to specify any prospective harm that would justify such an injunction.

"adhere to the commands of the Florida statutes and regulations governing the care of dependent children"); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1200–01 (11th Cir. 1999) (no injunction prohibiting city from discriminating in future annexation decisions pursuant to Voting Rights Act); *Payne v. Travenol Labs, Inc.*, 565 F.2d 895, 897 (5th Cir. 1978) (vacating injunction prohibiting "discriminating on the basis of color, race, or sex in employment practices or conditions of employment").[14]

Third, if plaintiffs were to obtain the broad injunction they seek, they (or anyone who might intervene in this case, *see* DE 109, at 3) could seek to bypass the ordinary civil adjudication process, with its established procedural protections and limitations, in favor of abbreviated contempt proceedings any time they want to claim defendants have violated *Obergefell*. *See S.E.C. v. Smyth*, 420 F.3d 1225, 1233 n.14 (11th Cir. 2005) (explaining that obey-the-law injunctions remove important procedural safeguards for defendants); *E.E.O.C. v. Fla. Inst. for Neurologic Rehab., Inc.*, No. 8:09-cv-716-T-23MAP, 2009 WL 3816859, at *1 (M.D. Fla. Nov. 13, 2009) (refusing the "expedient of filing a motion to enforce [an obey-the-law] consent decree, thereby circumventing important procedural, jurisdictional, and constitutional requirements"). Plaintiffs have offered no reason that issues concerning the scope of *Obergefell* should be litigated by way of contempt proceedings rather than the ordinary civil judicial process. Defendants' "obligation to obey the law arises from sources other than [an] injunction," DE 109, at 4, and plaintiffs remain free to file lawsuits if they believe defendants or anyone else has violated the law. *See Patterson v. Newspaper Mail & Deliverers' Union of N.Y.*

[14] *Accord Keyes v. Sch. Dist. No. 1*, 895 F.2d 659, 669 n.5 (10th Cir. 1990) (striking injunction prohibiting defendants "from discriminating on the basis of race, color or ethnicity in the operation of the school system" and directing defendants "to use their expertise and resources to comply with the constitutional requirement of equal education opportunity").

& Vicinity, 797 F. Supp. 1174, 1184 (S.D.N.Y. 1992) (no need for injunction where defendants were under obligation to follow law).

For these reasons, injunctive relief should be denied even if the Court determines that the case is justiciable.

V. Declaratory Relief Is Inappropriate.

As with injunctive relief, declaratory relief is not "an absolute right," *Wilton v. Seven Falls Co.*, 515 U.S. 277, 287 (1995); it is appropriate only if plaintiffs have "a reasonable expectation that the injury they have suffered will continue or be repeated in the future," *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1347 (11th Cir. 1999); *see also Emory v. Peeler*, 756 F.2d 1547, 1552 (11th Cir. 1985) (declaration that judge's comments violated plaintiff's constitutional rights would be "nothing more than a gratuitous comment without any force or effect" (quotation marks omitted)). In cases involving governmental action, a court should not grant declaratory relief unless the need is clear. *Eccles v. Peoples Bank of Lakewood Vill.*, 333 U.S. 426, 431 (1948). Indeed, under the Eleventh Amendment, courts cannot issue declaratory relief simply to declare "the lawfulness of [a state official's] past actions." *Green v. Mansour*, 474 U.S. 64, 73 (1985). Plaintiffs have made no attempt to show that they need declaratory relief. *See Eccles*, 333 U.S. at 431. Regardless, because no declaratory relief is available as to past actions and defendants have committed not to enforce the challenged laws, there is no need for declaratory relief.

CONCLUSION

In light of the Supreme Court's decision in *Obergefell*, the defendants will not enforce the laws challenged in this case. The Court should dismiss this case as moot and deny the motion for summary judgment.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished to counsel of record through use of the Court's CM/ECF system on August 25, 2015.

/s/ Allen Winsor
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