IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

HAL B. BIRCHFIELD and PAUL G. MOCKO, on behalf of themselves and all others similarly situated,

Plaintiffs,

v. CASE NO. 4:15-cv-00615

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 of Vital Statistics for the State of Florida,

Defendants.
_____/

ORDER GRANTING SUMMARY JUDGMENT

In *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the Supreme Court held unconstitutional state laws prohibiting or refusing to recognize same-sex marriages. Prior to that time, Florida law prohibited same-sex marriages in Florida and did not recognize same-sex marriages lawfully entered in other jurisdictions. As a result, when a party to a same-sex marriage that was lawfully entered in

another jurisdiction died in Florida, the death certificate omitted any reference to the marriage and surviving spouse.

The State of Florida now has acquiesced in *Obergefell*, including by listing same-sex spouses on death certificates. But the State still refuses to correct any pre-*Obergefell* death certificate unless the surviving spouse obtains an individual court order approving the correction. In this class action, the plaintiffs—survivors of same-sex spouses who died in Florida before the state recognized same-sex marriages—challenge the State's insistence on individual court orders.

I

The plaintiff Hal Birchfield lawfully married James Merrick Smith in New York in 2012. Mr. Smith died in Florida in 2013. The plaintiff Paul Mocko lawfully married William Gregory Patterson in California in 2014. Mr. Patterson died in Florida later that year.

At the time of those deaths, the Florida Constitution and Florida Statutes provided that marriage was a relationship between one man and one woman, that no same-sex marriage could be entered into in Florida, and that no same-sex marriage entered into elsewhere could be recognized in Florida, even if the marriage was lawful where entered. *See* Fla. Const. art. I, § 27; Fla. Stat. § 741.212; Fla. Stat. § 741.04(1).

Death certificates are issued in the jurisdiction where a person dies. As required by the later-invalidated Florida provisions that were then in effect, the death certificates for Mr. Smith and Mr. Patterson did not refer to their marriages and surviving spouses.

Prior to *Obergefell*, lower-court decisions called into question the constitutionality of the Florida same-sex-marriage provisions. *Obergefell* then settled the issue; the provisions are unconstitutional. Had Mr. Smith and Mr. Patterson died after *Obergefell*, the state would have issued death certificates noting their marriages and listing the surviving spouses. But the deaths occurred and death certificates were issued earlier. When the surviving spouses who were omitted from the certificates, Mr. Birchfield and Mr. Mocko, sought to have the death certificates corrected, the state said it could not correct a previously issued death certificate without an individual court order addressing the specific certificate.

Mr. Birchfield and Mr. Mocko filed this action on behalf of themselves and all others similarly situated. They named as defendants two state officials—first, the Surgeon General, who also holds the title of Secretary of Health, and second, the State Registrar of Vital Statistics. The Surgeon General is the head of the Department of Health, whose responsibilities include issuing death certificates. The State Registrar directs the Office of Vital Statistics, which is a unit of the

Department of Health responsible for preservation of vital records, including death certificates.

The plaintiffs have moved to certify a class and for summary judgment. A separate order certifies a class. This order grants summary judgment.

II

History records instances in which state officials have stubbornly resisted federal constitutional rulings. This is not one of them. The defendants make no claim that the state's prior ban on same-sex marriages retains any force at all. But they point to a generally applicable state statute having nothing to do with same-sex marriage:

> CERTIFICATE OF DEATH AMENDMENTS.—Except for a misspelling or an omission on a death certificate with regard to the name of the surviving spouse, the department may not change the name of a surviving spouse on the certificate *except by order of a court of competent jurisdiction*.

Fla. Stat. § 382.016(2) (emphasis added). The defendants read this provision to require an individual court order before a death certificate is amended to recognize a marriage and list a surviving spouse.

One might plausibly read this provision differently. One might conclude that the explicit exception to the court-order requirement—the exception for "an omission on a death certificate with regard to the name of the surviving spouse"—applies to a death certificate that both omits the fact that the decedent was married

and omits the name of the surviving spouse. But long before this controversy arose, the Department adopted a rule interpreting the statute differently. *See* Fla. Admin. Code 64V-1.007(3)(e), (3)(f) & (5) (allowing an amendment to marital status or the name of the surviving spouse—but not both—without a court order). The defendants refuse to depart from that interpretation. And the plaintiffs cannot obtain relief in this court based on any assertion that state law allows issuance of amended certificates without a court order. *See, e.g.*, *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984) (holding that the Eleventh Amendment bars any claim in federal court against a state or against a state officer based on state law).

As a matter of federal constitutional law, a state cannot properly refuse to correct a federal constitutional violation going forward, even if the violation arose before the dispute over the constitutional issue was settled. *See, e.g.*, *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993) ("When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and *as to all events, regardless of whether such events predate or postdate our announcement of the rule*.") (emphasis added); *see also Glazner v. Glazner*, 347 F.3d 1212, 1218 (11th Cir. 2003) (en banc). If the law were otherwise, the schools might still be segregated.

The defendants take no issue with this principle. They are willing to correct any pre-*Obergefell* constitutional violation. But the defendants insist that, as a prior condition to any correction, an affected party must obtain an order in response to an individual claim in state court. Not so. As the Supreme Court said long ago, 42 U.S.C. § 1983 affords a person whose federal constitutional rights have been violated "a federal right in federal courts." *Monroe v. Pape*, 365 U.S. 167, 180 (1961); *see also Ex parte Young*, 209 U.S. 123 (1908) (allowing injunctive relief against a state official for violations of federal law). In short, a federal court has jurisdiction to remedy a federal violation, including, when otherwise proper, through a class action. There are exceptions, but none applies here.

This is precisely such a case. The plaintiffs are entitled to appropriate injunctive relief correcting the state's prior, unremedied violation of the plaintiffs' constitutional rights. To the extent the defendant state officials simply need a clear resolution of the perceived conflict between the federal constitutional requirement and the state statute, this order provides it.

III

The state of course has every right to insist on appropriate documentation before amending a death certificate. In Rule 64V-1.007(3)(e), 3(f), and (5), the state has provided that a death certificate's information about marital status or a spouse's identity, but not both, can be corrected without a court order upon

submission of an application, affidavit, and appropriate documentary evidence. This order provides that, upon submission of the same materials, the defendants must correct a constitutional error that affected a death certificate's information on both marital status and a spouse's identity.

IV

For these reasons,

IT IS ORDERED:

1. The plaintiffs' summary-judgment motion, ECF No. 28, is granted.

2. The defendants must amend any Florida death certificate, without a court order other than this one, when these conditions are met:

(a) at the time of death, the decedent was a party to a same-sex marriage that was recognized as lawful in the jurisdiction where it was entered; and

(b) the surviving spouse submits an application to amend the certificate and an affidavit and supporting documentation equivalent to an application, affidavit, and supporting documentation that would be sufficient to obtain an amended certificate as to a decedent for whom, on an original death certificate, *either* an opposite-sex marriage was not noted *or* a surviving spouse was not correctly identified.

3. This injunction binds the defendants and their 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.

4. The clerk must enter judgment and close the file.

5. The court reserves jurisdiction to enforce the injunction and to award costs and attorney's fees under Local Rules 54.1 and 54.2.

SO ORDERED on March 23, 2017.

s/Robert L. Hinkle
United States District Judge