

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

2014 NOV 25 PM 3:41

FILED

**DANIEL WALL-DESOUSA,  
and SCOTT WALL-DESOUSA.**

**Plaintiffs,**

vs.

Case No.: 6:14-cv-1959-ORL-41-DAB

**FLORIDA DEPARTMENT OF  
HIGHWAY SAFETY AND MOTOR  
VEHICLES, TERRY L. RHODES, in  
her official capacity as Director of the  
Florida Department of Highway Safety  
and Motor Vehicles, DIANNE  
DOWMAN, in her individual capacity  
as Supervisor of the Brevard County Tax  
Collector's Office in Indian Harbour Beach,  
and RICK SCOTT, in his official capacity as  
Governor of Florida.**

**Defendants.**

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**VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL**

1. This is an action brought under 42 U.S.C. § 1983 to enforce rights guaranteed to Plaintiffs by the First Amendment and the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States. Plaintiffs are married same-sex citizens of Florida who have been refused Florida driver's licenses that reflect their married names by the Defendants. Plaintiffs seek declaratory and injunctive relief against the refusals by the Defendants to recognize, as evidence of a name change, marriage certificates issued to same-sex couples by other states. Plaintiffs ask that the

policy be declared unconstitutional. The Plaintiffs further request that the Court award damages and reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

### **JURISDICTION AND VENUE**

2. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331, and 1343, as to the federal claims asserted herein. This Court has jurisdiction over Plaintiffs' related state law claim pursuant to 28 U.S.C. § 1367.
3. The suit is authorized by 42 U.S.C. § 1983.
4. Declaratory relief is authorized by 28 U.S.C. § 2201 and 2202.
5. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 1391(b) because the Plaintiffs are residents of Florida and all of the events giving rise to Plaintiffs' claims occurred in this district. Venue is proper in the Orlando Division as Plaintiffs reside in this division and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this division.

### **PARTIES**

6. Plaintiffs Daniel Wall-DeSousa and Scott Wall-DeSousa are adult male residents of Orlando, Brevard County, Florida.
7. Defendant Florida Department of Highway Safety and Motor Vehicles (DHSMV) is an administrative agency of the State of Florida. Defendant, DHSMV, is empowered to issue driver's licenses.
8. Defendant Terry L. Rhodes is the executive director of DHSMV.
9. Defendant Rick Scott is the governor of the State of Florida.
10. As governor of Florida, Defendant Rick Scott is the head of the executive branch of the government of Florida.

11. Defendant Rick Scott took an oath, as part of his acceptance of the office of governor of Florida, that he would preserve, protect, and defend the Constitution of the United States.
12. Despite that oath, Defendant Rick Scott continues to direct Florida state agencies and departments, including DHSMV, to refuse to do any act that would embrace recognition of a lawful, out-of-state, same sex- marriage.
13. Defendant Dianne Dowman is the supervisor of the Indian Harbor Beach office of the Brevard County Tax Collector.
14. The Defendants, both personally and through the conduct of their agents, servants and employees, were and are acting under color of state law at all times relevant to this action.

#### **STATUTORY, REGULATORY AND POLICY FRAMEWORK**

15. Section 741.212, Florida Statutes (2014), provides:

- (1) Marriages between persons of the same sex entered into in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, or relationships between persons of the same sex which are treated as marriages in any jurisdiction, whether within or outside the State of Florida, the United States, or any other jurisdiction, either domestic or foreign, or any other place or location, are not recognized for any purpose in this state.
- (2) The state, its agencies, and its political subdivisions may not give effect to any public act, record, or judicial proceeding of any state, territory, possession, or tribe of the United States or of any other jurisdiction, either domestic or foreign, or any other place or location respecting either a marriage or relationship not recognized under subsection (1) or a claim arising from such a marriage or relationship.
- (3) For purposes 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.

16. Section 741.212, Florida Statutes was held unconstitutional by Brenner v. Scott, 999 F. Supp. 2d 1278 (N.D. Fla. 2014). However, that decision was stayed pending appeal.
17. Section 322.19(4), Florida Statutes (2014) provides:
  - (4) Whenever any person, after applying for or receiving a driver license, changes his or her legal name, that person must within 10 days thereafter obtain a replacement license that reflects the change.
18. To request a name change on a driver's license, an applicant must present proof of their current name, such as a marriage certificate or court order.
19. Defendants refuse to recognize the original marriage certificates presented by the Plaintiffs as evidence of their name changes because the Defendants determined that the Plaintiffs did not have the prerogative to change their names because the person each Plaintiff married was of the same sex.

#### **FACTUAL ALLEGATIONS**

20. Plaintiffs have been a couple since 2005 and have purchased a house together as a tenancy in common with right of survivorship.
21. Plaintiffs were lawfully married in New York City, New York on December 6, 2013.
22. Plaintiffs' New York marriage certificate reflects their new surname of Wall-DeSousa. The marriage certificate is not stamped "same sex."
23. Plaintiffs visited the Social Security Administration office in Melbourne, Florida on December 27, 2013 and successfully changed their legal names from Daniel Antonio DeSousa and Scott Anthony Wall to Daniel Antonio Wall-DeSousa and Scott Anthony Wall-DeSousa, respectively.

24. The Plaintiffs chose to change their surnames as a public declaration of their love and connection to each other. No one is legally required to change his or her name at any time. The choice of name for the Plaintiffs was public and symbolic.
25. Plaintiff Daniel Wall-DeSousa reported to the Brevard County Tax Collector's Office in Palm Bay, Florida to change his driver's license to reflect the change in his legal name. The Palm Bay office is approximately six miles away from the marital home.
26. At the office, Daniel Wall-DeSousa presented his marriage certificate and new social security card. The office issued Daniel a new driver's license and also changed his vehicle registration card to reflect the name change.
27. After changing his name, Daniel Wall-DeSousa reported the change to Brevard County Public Schools. All documents including insurance cards, payroll paperwork, Florida Retirement System, and official school email address reflect the name change.
28. Plaintiff Scott Wall-DeSousa reported to the Brevard County Tax Collector's Office in Indian Harbour Beach, Florida to change his driver's license to reflect the change in his legal name. The Indian Harbour Beach Office is approximately one mile away from Scott's place of employment. Scott presented his marriage certificate and new social security card. Dianne Dowman, the Supervisor of the Brevard County Tax Collector's Office in Indian Harbour Beach, tossed the marriage certificate back to Scott and indicated that the marriage certificate was not a legal document in the State of Florida. She then told Scott that she would call the Palm Bay office to get Daniel Wall-DeSousa's driver's license cancelled.
29. Subsequently, Scott Wall-DeSousa went to the Brevard Tax Collector's Office in Palm Bay, Florida, where Daniel Wall-DeSousa received his new driver's license, in order to

mitigate any problems and prevent Daniel's driver's license from being cancelled. Scott spoke to the same clerk that had issued Daniel's driver's license. Dianne Dowman had already called the Palm Bay office to prevent Scott Wall-DeSousa from making the change. Scott Wall-DeSousa then called the supervisor at the county level to report Dianne Dowman for her behavior and her threat to cancel Daniel Wall-DeSousa's license.

30. At no time was the authenticity of any of the documents presented by the Plaintiffs as proof of identification questioned by the Defendants as possibly fraudulent.
31. Plaintiffs filed their Federal Income Tax with the Internal Revenue Service jointly as a married couple in February of 2014.
32. In early October of 2014, Kelly Grant Land, assistant to the Brevard County Tax Collector, took Plaintiffs' marriage certificate to Tallahassee to seek guidance regarding the issue. The tax collector reported, that because the marriage certificate was not stamped as "same-sex" and only indicated spouse, Scott Wall-DeSousa could use the document to obtain a driver's license with his legal name. The tax collector then informed Scott that he should take his documentation to another county and change his driver's license. This recommendation was made because the Brevard County Tax Collector knew the marriage was same-sex and therefore could not help, but advised Scott that the tax collector in another county would not be aware nor would they be able to ask.
33. On October 15, 2014, Scott Wall-DeSousa travelled to the Orange County Tax Collector/DHSMV office on 8110 West Colonial Drive. A clerk named Cindy at that office cited a policy letter/change from July 6<sup>th</sup> or 7<sup>th</sup> 2014, which gave the office the

opportunity to change the driver's license as the marriage certificate from New York was not stamped "same-sex" and did not indicate sex. The letter of the policy was a "don't ask, don't tell" approach to handling requests of this type. Scott was required to provide his social security card, marriage certificate, and a USAA car insurance bill with his new legal name. The office then issued Scott a driver's license reflecting his new legal name.

34. On October 30, 2014, Plaintiffs spoke to news anchor Jorge Estevez from WFTV Channel 9 on a televised broadcast. Plaintiffs wanted to make sure that others knew of the DMV's policy and the possibility to help individuals experiencing the same issues with the DMV.
35. On November 7, 2014, Plaintiffs received a letter, dated November 5, 2014, from DHSMV in Tallahassee indicating that their licenses would be cancelled indefinitely as of November 25, 2014.
36. On November 11, 2014 Plaintiffs reached back out to WFTV Channel 9 and a follow-up story was aired.
37. On November 13, 2014, Scott Wall-DeSousa called DHSMV in Tallahassee requesting them to reconsider their action. A supervisor at DHSMV in Tallahassee named Racheal, in a scripted manner, told Scott that they could make no comment other than to direct him to apply for an administrative hearing. When Scott questioned the DHSMV's decision the official indicated that the DHSMV/Tax Collector's offices were, "following the letter of the law but not the spirit of the law."
38. At all times material to this case, Plaintiffs possessed valid Florida driver's licenses that were not suspended or revoked.

39. A marriage certificate, along with an updated Social Security card showing a married individual's change of name due to the marriage, is routinely accepted by DHSMV, per the policies and procedures of DHSMV, as entitling the married individual to the issuance of a driver's license reflecting the new name.

40. The sole reason stated by the DHSMV for refusing to issue a driver's license to the Plaintiffs that reflects their new married names is because Section 741.212, Florida Statutes decrees that the Plaintiffs not be treated under Florida law as though they were married.

**COUNT I**  
**42 USC §1983: SUBSTANTIVE DUE PROCESS**

41. The Plaintiffs repeat and incorporate all allegations contained in paragraphs 1 - 40.

42. Section 741.212, Florida Statutes, and the policies, procedures, and regulations of DHSMV violate the mandate of the Due Process Clause, both on their face and as applied to Plaintiffs.

43. The court should declare the same.

44. The court should enjoin the Defendants to issue the Plaintiffs a Florida driver's license reflecting their new names.

**COUNT II**  
**42 U.S.C § 1983: EQUAL PROTECTION**

45. The Plaintiffs repeat and incorporate all allegations contained in paragraphs 1 – 40.

46. Section 741.212, Florida Statutes, and the policies, procedures, and regulations of DHSMV violate fundamental liberties that are protected by the Equal Protection Clause, both on their face and as applied to Plaintiffs.



47. The court should declare the same.

48. The court should enjoin the Defendants to issue the Plaintiffs a Florida driver's license reflecting their new names.

**COUNT III**  
**42 U.S.C. § 1983: FREEDOM OF SPEECH**

49. The Plaintiffs repeat and incorporate all allegations contained in paragraphs 1 - 40.

50. Section 741.212, Florida Statutes, and the policies, procedures, and regulations of DHSMV violate the fundamental rights to speech and expression that are protected by the First Amendment, both on their face and as applied to Plaintiffs.

51. The court should declare the same.

52. The court should enjoin the Defendants to issue the Plaintiffs a Florida driver's license reflecting their new names.

**COUNT IV**  
**42 U.S.C. § 1983: FIRST AMENDMENT RETALIATION**

53. The Plaintiffs repeat and incorporate all allegations contained in paragraphs 1 - 40.

54. Plaintiffs' speech was constitutionally protected.

55. Defendants engaged in retaliatory conduct that adversely affected the Plaintiffs' protected speech.

56. Defendants' retaliatory conduct caused the adverse effect on Plaintiff's speech.

57. The court should declare the same.

58. The court should enjoin the Defendants to issue the Plaintiffs a Florida driver's license reflecting their new names.

**COUNT V**  
**42 USC §1983: FULL FAITH AND CREDIT**

59. The Plaintiffs repeat and incorporate all allegations contained in the paragraphs 1 - 40.

60. Section 741.212, Florida Statutes, and the policies, procedures, and regulations of DHSMV violate the mandate of the Full Faith and Credit Clause, both on their face and as applied to Plaintiffs.

61. The court should declare the same.

62. The court should enjoin the Defendants to issue the Plaintiffs a Florida driver's license reflecting their new names.

**COUNT V**  
**STATE LAW: EQUITABLE ESTOPPEL**

63. The Plaintiffs repeat and incorporate all allegations contained in the paragraphs 1 - 40.

64. Defendants are estopped from denying Plaintiffs the use of their updated driver's licenses.

65. There was a representation as to a material fact that is contrary to a later asserted position.

66. Plaintiffs relied on the representation.

67. Plaintiffs underwent a detrimental change in position caused by the representation and reliance thereon.

68. The court should declare the same.

69. The court should enjoin the Defendants to issue the Plaintiffs a Florida driver's license reflecting their new names.

**RELIEF**

70. A real and actual controversy exists between the parties.

71. Plaintiffs have no adequate remedy at law other than this action for declaratory and injunctive relief.

72. Plaintiffs are suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

**WHEREFORE**, Plaintiffs respectfully pray that this Court:

(1) take original jurisdiction over this case;

(2) enter a declaratory judgment that Defendants' policy refusing to accept, as evidence of a name change, authentic marriage certificates issued by another state only when the parties to the license or certificate are of the same-sex violates rights guaranteed by the First and Fourteenth Amendments of the Constitution of the United States;

(3) enter a permanent injunction prohibiting any Defendants from refusing to accept, as evidence of a name change, authentic marriage certificates issued by other states only when the parties to the license or certificate are of the same-sex;

(4) order the Defendants to accept each of the Plaintiffs' marriage certificates as evidence of his chosen name for purpose of changing his name on his existing Florida driver's license;

(5) award judgment against Defendant Dowman for actual, general, special, compensatory and punitive damages pursuant to 42 U.S.C. §1988;

(6) award Plaintiffs the costs of this action together with their reasonable attorneys' fees pursuant to 42 U.S.C. §1988.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury on all issues so triable.

Respectfully submitted,



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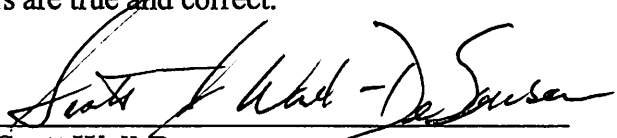
Wm. J. Sheppard, Esquire  
Florida Bar No.: 109154  
Elizabeth L. White, Esquire  
Florida Bar No.: 314560  
Matthew R. Kachergus, Esquire  
Florida Bar No.: 503282  
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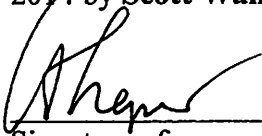
**VERIFICATION**

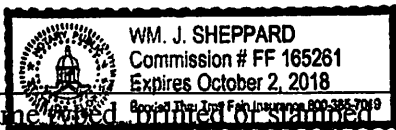
STATE OF FLORIDA     }  
  } ss.  
COUNTY OF DUVAL     }

BEFORE ME, the undersigned authority, this day personally appeared **Scott Wall-Desousa**, who first being duly sworn, says he is a Plaintiff in the above sought cause; he has read the foregoing Verified Complaint; he has personal knowledge of the facts and matters set forth and alleged; and attests that each and all these matters are true and correct.

  
\_\_\_\_\_  
**Scott Wall-Desousa**

The foregoing instrument was acknowledged before me this 20 day of November, 2014 by **Scott Wall-Desousa**, who is personally known to me and who did take an oath.

  
\_\_\_\_\_  
Signature of person taking oath  
Notary Public - State of Florida



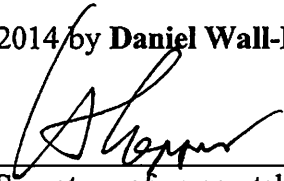
**VERIFICATION**

STATE OF FLORIDA     }  
  } ss.  
COUNTY OF DUVAL     }

BEFORE ME, the undersigned authority, this day personally appeared **Daniel Wall-Desousa**, who first being duly sworn, says he is a Plaintiff in the above sought cause; he has read the foregoing Verified Complaint; he has personal knowledge of the facts and matters set forth and alleged; and attests that each and all these matters are true and correct.

  
\_\_\_\_\_  
**Daniel Wall-Desousa**

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of November, 2014 by **Daniel Wall-Desousa**, who is personally known to me and who did take an oath.

  
\_\_\_\_\_  
Signature of person taking oath  
Notary Public - State of Florida

  
Name WM. J. SHEPPARD, printed or stamped