

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

SLOAN GRIMSLEY and JOYCE ALBU;
BOB COLLIER and CHUCK HUNZIKER;
LINDSAY MYERS and SARAH HUMLIE;
ROBERT LOUPO and JOHN FITZGERALD;
DENISE HUESO and SANDRA NEWSON;
JUAN DEL HIERRO and THOMAS GANTT,
JR.; CHRISTIAN ULVERT and CARLOS
ANDRADE; RICHARD MILLSTEIN and
ERIC HANKIN; ARLENE GOLDBERG; and
SAVE FOUNDATION, INC.,

Case No. 4:14-CV-00138-RH-CAS

Plaintiffs,

v.

RICK SCOTT, in his official capacity as
Governor for the State of Florida;
PAM BONDI, in her official capacity as
Attorney General for the State of Florida,
JOHN H. ARMSTRONG, in his official
capacity as Surgeon General and Secretary of
Health for the State of Florida; and
CRAIG J. NICHOLS, in his official capacity
as the Agency Secretary for the Florida
Department of Management Services,

Defendants.

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs are same-sex couples who were lawfully married outside the State of Florida. They bring this action to challenge the constitutionality of Article I, § 27 of the Florida

Constitution and § 741.212, Fla. Stat., which prohibit the State of Florida from recognizing the marriages of same-sex couples that were entered into in other jurisdictions. Florida, like other states, encourages and regulates marriage through hundreds of laws that provide benefits to and impose obligations on married couples. In exchange, Florida receives the well-established benefits that marriage brings: stable, supportive families that contribute to both the social and economic well-being of the State. It is because of the well-recognized benefits of marriage that Florida has traditionally recognized lawful marriages performed in other states.

2. Florida's refusal to recognize Plaintiffs' marriages unlawfully denies them many of the legal protections available to different-sex couples, including, but not limited to, the automatic right to make medical decisions for an incapacitated spouse, access to health insurance and retirement benefits, property protections, and inheritance.

3. The refusal to recognize Plaintiffs' marriages undermines the couples' ability to achieve their life goals and dreams, threatens their mutual economic stability, and denies them "a dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). Moreover, they and their families are stigmatized and relegated to a second-class status by being barred from marriage, a bar that serves no legitimate state interest. The exclusion "tells [same-sex] couples and all the world that their otherwise valid relationships are unworthy" of recognition. *Id.* at 2694. And it "humiliates . . . children now being raised by same-sex couples" and "makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id.*

4. Florida's exclusion of married same-sex couples from the protections and responsibilities of marriage violates the Due Process Clause and the Equal Protection Clause of

the Fourteenth Amendment to the United States Constitution. This discriminatory treatment directly impacts the fundamental right to marry and is not necessary to serve a compelling state interest.

5. Florida's refusal to recognize the marriages of same-sex couples discriminates against such couples on the basis of sexual orientation. It also discriminates against such couples on the basis of sex because the discrimination is based on the sexes of the spouses.

6. The State's discrimination against Plaintiffs and other married same-sex couples is not necessary to serve a compelling state interest, nor is it substantially related to an important state interest. Indeed, it is not rationally related to the furtherance of *any* legitimate state interest.

7. Pursuant to 42 U.S.C. § 1983, Plaintiffs seek: (a) a declaration that Florida's refusal to recognize the marriages of same-sex couples validly entered into outside of the State violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution insofar as Florida refuses to treat same-sex couples legally married in other jurisdictions the same as different-sex couples; and (b) preliminary and permanent injunctions directing Defendants to legally recognize Plaintiffs' marriages validly entered into outside of the State of Florida.

JURISDICTION AND VENUE

8. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violations of civil rights under the Fourteenth Amendment to the United States Constitution.

9. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights).

10. Venue is proper in the Northern District of Florida under 28 U.S.C. § 1391(b) because Defendants reside in this district.

THE PARTIES

A. Plaintiffs

Sloan Grimsley and Joyce Albu

11. Plaintiffs Sloan Grimsley and Joyce Albu were married in New York in August 2011. They have been together for 9 years and live in Palm Beach Gardens, Florida. They are raising two young daughters, ages 2 and 5, whom they adopted. Joyce also has two grown sons. Sloan is a firefighter and paramedic for the City of Palm Beach Gardens. Joyce is a consultant for children living with autism, Asperger's Syndrome, ADHD, and other neurodevelopmental disorders. Joyce and Sloan also own a farm where families in which some members are living with neurodevelopmental disorders can engage in a variety of therapeutic activities. Joyce and Sloan are concerned that if something were to happen to Sloan in the line of duty, Joyce would not receive the same support provided by the State to surviving spouses of first responders who might be killed in the line of duty.

Bob Collier and Chuck Hunziker

12. Plaintiffs Chuck Hunziker and Bob Collier were married in New York in July 2013. They have been together for over 50 years and live in Fort Lauderdale, Florida. Bob is 79 years old, and Chuck is 81 years old. Bob served as a Captain in the U.S. Army in the medical corps in the 82nd Airborne Division and Special Forces during the Vietnam War. Chuck is a disabled veteran; he served as an enlisted man in the Navy during the Korean War and spent 18 months in Naval and VA hospitals. For most of their professional lives, Bob and Chuck worked in New York, Chuck for Mobil Corporation and Bob for MetLife, Inc. Having retired in Florida,

they are now involved in local charities, including Tuesday's Angels (which provides emergency assistance to individuals living with HIV/AIDS).

Lindsay Myers and Sarah Humlie

13. Plaintiffs Lindsay Myers and Sarah Humlie were married in Washington, D.C., in December 2012. They have been together for 3 ½ years and live in Pensacola, Florida. Lindsay has a master's degree in theology and currently works for the University of West Florida as a digital content producer for WUWF, a university-licensed NPR affiliate. Lindsay would like the option of designating Sarah as her joint annuitant for pension purposes. Sarah is the Executive Director of the Pensacola Humane Society. Sarah does not receive health insurance through her employer. Because state law prohibits public employers from providing insurance for same-sex spouses of employees, Lindsay cannot get coverage for Sarah on her health insurance plan. As a result, the couple must pay hundreds of dollars per month for private health insurance for Sarah.

Robert Loupo and John Fitzgerald

14. Plaintiffs Robert Loupo and John Fitzgerald were married in New York in November 2013. They have been together for 12 years and live in Coconut Grove in Miami, Florida. Robert has been a school counselor for Miami-Dade County Public Schools for approximately fourteen years and served before that for fourteen years as a high school English teacher. John is retired and worked previously in customer service for Delta Airlines and in the Administrative Office of the Courts for Miami-Dade County in the Traffic Division.

Denise Hueso and Sandra Newson

15. Plaintiffs Denise Hueso and Sandra Newson were married in Massachusetts in August 2009. They have been together for 17 years. They live in Miami, Florida. Denise is the lead clinical care coordinator for the Alliance for GLBTQ Youth, which offers support services for LGB youth. Sandra is the Vice President of Residence Services at Carrfour Supportive Housing, an organization that confronts homelessness by developing affordable housing and providing supportive services as a pathway to self-sufficiency. Together they have a 15-year-old son whom they have cared for since he was 10 years old, first as foster parents and then as adoptive parents. Sandra and Denise used to live in Massachusetts, where their marriage was recognized, but they lost that recognition when they moved to Florida to be closer to family to help care for their son.

Juan del Hierro and Thomas Gantt, Jr.

16. Plaintiffs Juan del Hierro and Thomas Gantt, Jr., were married in Washington, D.C., in December 2010. Before that, they held a symbolic ceremony before friends and family in Miami in July 2010. They have been together for 6 years and live in North Miami Beach, Florida. Juan is the Director of Ministry Empowerment for Unity on the Bay, a spiritual community in Miami. Tom teaches science at a virtual school, having taught for more than a decade in public schools. Their son Lucas, whom they adopted, is fifteen months old. If Tom's marriage to Juan were recognized, Tom would designate Juan as his pension beneficiary.

Christian Ulvert and Carlos Andrade

17. Plaintiffs Christian Ulvert and Carlos Andrade were married in Washington, D.C., in July 2013. They have been together for four years and live in Miami, Florida. Christian

previously worked in the state legislature and now works as a political consultant; if given the option, Christian would designate Carlos as his pension beneficiary. Carlos is the new media director of EDGE Communications and also owns an online jewelry store. Christian and Carlos would like to have children one day.

Richard Milstein and Eric Hankin

18. Plaintiffs Richard Milstein and Eric Hankin were married in Iowa in March 2010. They have been together for 12 years and live in Miami Beach, Florida. Richard is an attorney who specializes in trusts, estates, and family services, with a particular focus on vulnerable adults and children. Richard has been an active leader in the Florida and Dade County Bars and in the Miami-Dade community for decades, volunteering numerous hours to a variety of civic causes. Eric is an architect who currently teaches architecture and design in a nationally recognized magnet public school in Miami.

Arlene Goldberg

19. Plaintiff Arlene Goldberg married Carol Goldwasser in New York in October 2011. Carol died on March 13, 2014, after she and Arlene had been together for 47 years. Carol was the toll facilities director for Lee County, Florida for 17 years. Arlene is retired from her previous position as a facilities manager for a call center and currently works part time at Target. Arlene and Carol had been living with and taking care of Carol's parents, ages 89 and 92, but now Arlene is caring for them alone. Arlene's primary income is her Social Security payment; Carol had been receiving a higher Social Security payment. Because Florida's marriage recognition ban precludes Arlene from obtaining Social Security survivor's benefits, she has been concerned that she will not be able to properly care for herself or Carol's parents, and

therefore—for that reason only—she will have to sell her home, and Carol’s parents are looking for another place to live. Further, Arlene would like to amend Carol’s death certificate—which lists, for marital status, “NEVER-MARRIED” and, for spouse, “NONE”—but in order to do so, she needs Fla. Const. Art. I, § 27, and § 741.212, Fla. Stat., to be declared unconstitutional.

SAVE Foundation, Inc.

20. Plaintiff SAVE Foundation, Inc. is one of the leading organizations in Florida dedicated to promoting, protecting, and defending equality for people who are lesbian, gay, bisexual, and transgender. Established in 1993, SAVE Foundation accomplishes this mission through education initiatives, outreach, grassroots organizing, and advocacy. Starting with the landmark passage of Miami’s Human Rights Ordinance in 1998 to recent enactments of domestic partner benefit policies, SAVE Foundation continues to fight for LGBT equality through grassroots action. Plaintiff SAVE Foundation brings this suit on behalf of its members who are same-sex couples who have entered into lawful marriages outside of Florida.

B. Defendants

21. Defendant Rick Scott is sued in his official capacity as the Governor of the State of Florida. The supreme executive power is vested in the Governor. Fl. Const. Art. IV, § 1(a). It is his duty to take care that the laws, including Fla. Const. Art. I, § 27, and § 741.212, Fla. Stat., are faithfully executed in Florida. *Id.*

22. Defendant Pam Bondi is sued in her official capacity as the Attorney General of the State of Florida. As Attorney General, Bondi is the State’s chief legal officer. She is required to “appear in and attend to, in behalf of the state, all suits or prosecutions, civil or criminal or in

equity, in which the state may be a party, or in anywise interested, in the Supreme Court and district courts of appeal of this state.” § 16.01(4), Fla. Stat.

23. Defendant John H. Armstrong is sued in his official capacity as the Surgeon General and Secretary of Health for the State of Florida. As the head of the Florida Department of Health, Armstrong must “[p]lan, direct, coordinate, and execute the powers, duties, and functions vested in that department.” § 20.05 (1)(a), Fla. Stat. In his official capacity, he is responsible for creating forms for certificates of death, *see* § 382.008(1), Fla. Stat., as well as registering, recording, certifying, and preserving the State’s vital records, *see* § 382.003(7), Fla. Stat., including certificates of death. All Plaintiffs wish that when they die their marriage and surviving spouse are recognized on their death certificate.

24. Defendant Craig J. Nichols is sued in his official capacity as the Agency Secretary for the Florida Department of Management Services. As the head of the Florida Department of Management Services, Nichols must “[p]lan, direct, coordinate, and execute the powers, duties, and functions vested in that department.” § 20.05(1)(a), Fla. Stat. In his official capacity, he is responsible for administering Florida’s public retirement and pension systems. *See* § 121.025, Fla. Stat; *see also* § 121.021, Fla. Stat. (definitions). Plaintiffs Sloan Grimsley, Lindsay Myers, Robert Loupo, Thomas Gantt, Jr., Christian Ulvert, and Eric Hankin are or have been public employees, and upon vesting they and their spouses would be eligible for pension-related spousal protections but for the marriage ban.

GENERAL ALLEGATIONS

25. In Florida, marriage is governed by Chapter 741 of the Florida Statutes, captioned “Marriage; Domestic Violence.” In 1997, Chapter 741 was revised to prohibit marriage for same-sex couples. The relevant statute, § 741.212, 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.

26. In addition, in a stark departure from Florida’s usual recognition of marriages entered into in other states, Florida’s Constitution was amended in 2008 to prevent recognition of same-sex marriages entered into in other states. Article I, § 27 of the Florida Constitution provides:

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.

27. As a result, marriage in Florida is legally available only to different-sex couples. Same-sex couples may not marry in Florida, and if they are married elsewhere, their marriages are not recognized in Florida.

28. Florida’s refusal to recognize the marriages of same-sex couples denies those couples numerous protections afforded to different-sex married couples. By way of example only:

- a. The State of Florida’s retirement system provides benefits to the different-sex surviving spouses of public employees. *See, e.g.,* Survivor Benefits,

https://www.myfrs.com/portal/server.pt/community/comparing_the_plans/235/survivor_benefits/1843 (accessed April 10, 2014) ;
The Florida Retirement System Pension Plan,
http://www.myfrs.com/portal/server.pt/community/pension_plan/233
(accessed April 10, 2014). Such benefits are not available to same-sex surviving spouses in Florida.

- b. The different-sex surviving spouse of a first responder in Florida receives financial support from the State if the first responder dies in the line of duty. *See* § 112.191, Fla. Stat. Such support is not available to same-sex surviving spouses in Florida.
- c. The different-sex surviving spouse of a teacher or school administrator receives support from the State if the teacher or administrator is killed or injured on the job under certain circumstances. *See* § 112.1915, Fla. Stat. Such support is not available to same-sex surviving spouses in Florida.
- d. Death certificates in Florida include information regarding the decedent's marital status and identify the surviving different-sex spouse. *See* State of Florida Bureau of Vital Statistics, Vital Records Registration, December 2012 Revision, at 83, available at http://www.floridahealth.gov/certificates-and-registries/certificates/EDRS/_documents/HB2012Final.pdf (accessed April 10, 2014). A surviving same-sex spouse is not named on death certificates in Florida.

- e. A different-sex surviving spouse has a automatic priority with respect to numerous rights pertaining to the disposition of a deceased individual's remains. *See* § 497.171(5), Fla. Stat. (identification of human remains); § 497.384(3), Fla. Stat. (disinterment and reinterment); § 497.607(1), Fla. Stat. (cremation); § 497.152(8)(c)-(d), Fla. Stat. (prohibiting the taking of possession or embalming absent a authorization from a legally authorized person); *see also* § 497.005, Fla. Stat. (defining “legally authorized person,” including listing of priority). Such a automatic priority is not granted to same-sex surviving spouses in Florida.
- f. A different-sex surviving spouse receives certain homestead protections under the Florida Constitution. *See* Fla. Const. Art. X, § 4. These protections do not apply to surviving same-sex spouses in Florida.
- g. A different-sex surviving spouse may receive certain workers' compensation benefits for his or her deceased spouse who died in a work-related accident. *See* § 440.16, Fla. Stat. This protection does not apply to surviving same-sex spouses in Florida.
- h. If an individual dies without a will, his or her different-sex spouse has a right to inherit a share of the estate, *see* § 732.102, Fla. Stat., and receives automatic preference in appointment as personal representative of the estate, *see* § 733.301, Fla. Stat. These protections do not apply to same-sex spouses in Florida.

- i. If an individual dies with a will, his or her different-sex spouse may receive an elective share of the estate. *See* § 732.201, Fla. Stat. This protection does not apply to same-sex spouses in Florida.
- j. Different-sex spouses are generally not required to testify against their spouse regarding confidential communications made during the marriage. *See* § 90.504, Fla. Stat. This protection is not afforded to same-sex spouses in Florida.
- k. In a wrongful-death action, different-sex spouses may recover for loss of the decedent's "companionship and protection and for mental pain and suffering from the date of injury." § 768.21, Fla. Stat. This protection does not apply to same-sex surviving spouses in Florida.
- l. A different-sex spouse has a right to financial support during marriage, § 61.09, Fla. Stat., enforced by criminal penalties for non-support, § 856.04, Fla. Stat. This protection and responsibility does not apply to same-sex spouses in Florida.
- m. A child born to a married couple by means of artificial or in vitro insemination is irrebuttably presumed to be the child of the couple. § 742.11(a), Fla. Stat. This protection and responsibility does not apply to same-sex married couples in Florida.
- n. If an incapacitated individual has not executed an advance directive, the patient's spouse has priority to make health care decisions for the individual over every other class other than the patient's guardian, if one

exists. § 765.401(1), Fla. Stat. This protection and responsibility does not apply to same-sex spouses in Florida.

- o. Upon dissolution of their marriage, couples in Florida may obtain court-ordered equitable distribution of property. *See* § 61.075, Fla. Stat. This protection does not apply to same-sex couples in Florida.
- p. Some of the federal protections for different-sex married couples are only available to couples if their marriages are legally recognized in the state in which they live. *See, e.g.*, 42 U.S.C. § 416(h)(1)(A)(i) (marriage for eligibility for social security benefits based on law of state where couple resides at time of application); 29 C.F.R. § 825.122(b) (same for Family Medical Leave Act). Thus, even though Plaintiffs were married in other states, they cannot access such federal protections while living in Florida because Florida refuses to recognize their existing marriages.

29. The Supreme Court has called marriage “the most important relation in life,” *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (internal quotation marks omitted), and a n “expression[] of emotional support and public commitment,” *Turner v. Safley*, 482 U.S. 78, 95 (1987); *see also Loving v. Virginia*, 388 U.S. 1, 12 (1967) (“The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free [people].”). It is “a far-reaching legal acknowledgement of the intimate relationship between two people” *Windsor*, 133 S.Ct. at 2692. This is as true for same-sex couples as it is for different-sex couples.

30. Same-sex married couples such as Plaintiffs are similarly situated to different-sex married couples in all of the characteristics relevant to the recognition of their legal marriages.

31. When they marry, same-sex couples make the same commitment to one another as different-sex couples do. Like married different-sex couples, married same-sex couples build their lives together, plan their futures together, and hope to grow old together. Like married different-sex couples, married same-sex couples support one another emotionally and financially and take care of one another physically when faced with injury or illness.

32. Like many married different-sex couples, many married same-sex couples—such as Plaintiffs Sloan Grimsley, Joyce Abu, Juan del Hierro, Thomas Gantt, Jr., Denise Hueso, and Sandra Newson—are parents raising children together.

33. Plaintiffs have accepted and are willing to assume the legal obligations that would flow from having their marriages recognized under Florida law.

34. Plaintiffs were all married legally under the laws of other jurisdictions, and their marriages would be recognized by the State but for the fact that each is married to a person of the same sex.

35. Refusing to recognize the marriages of same-sex couples harms the children raised by lesbian and gay couples—including the children of Plaintiffs Sloan Grimsley, Joyce Abu, Juan del Hierro, Thomas Gantt, Jr., Denise Hueso, and Sandra Newson—by denying their families significant benefits and by branding their families as inferior to families headed by different-sex couples and less deserving of respect, thereby encouraging private bias and discrimination.

36. By refusing to recognize the legal marriages of same-sex couples, Florida excludes those couples from the myriad of protections the State affords other married couples.

37. Article I, § 27 of the Florida Constitution and § 741.212, Fla. Stat., have the “purpose and effect to disparage and injure” lesbian and gay couples. *Windsor*, 133 S. Ct. at 2696.

CLAIMS FOR RELIEF

COUNT I

Deprivation of the Fundamental Right to Marry in Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

38. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

39. The Fourteenth Amendment to the United States Constitution precludes any State from “depriv[ing] any person of life, liberty, or property, without due process of law.” U. S. Const. amend. XIV, § 1. Governmental interference with a fundamental right may be sustained only upon a showing that the legislation is closely tailored to serve an important governmental interest.

40. Florida law states that “[m]arriages between persons of the same sex . . . are not recognized for any purpose in this state.” § 741.212(1), Fla. Stat.

41. In addition, Florida law provides that “[f]or 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.” § 741.212(3), Fla. Stat.

42. The Florida Constitution also provides that “[i]nasmuch 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.” Fla. Const. Art. I, § 27.

43. Marriage is a fundamental right, and choices about whom to marry are a central part of the liberty protected by the Due Process Clause.

44. Florida law denies Plaintiffs and other same-sex couples this fundamental right by refusing to recognize the lawful marriages they entered into in other jurisdictions.

45. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions is not necessary to serve a compelling state interest.

46. Florida's refusal to recognize marriages entered into by same-sex couples in other jurisdictions violates the Due Process Clause.

47. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

48. As a result, Plaintiffs have been or will be harmed and therefore seek the relief set forth in the Prayer for Relief below.

COUNT II

Discrimination on the Basis of Sexual Orientation in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

49. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

50. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

51. Florida law states that “[m]arriages between persons of the same sex . . . are not recognized for any purpose in this state.” § 741.212(1), Fla. Stat.

52. In addition, Florida law provides that “[f]or 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.” § 741.212(3), Fla. Stat.

53. The Florida Constitution also provides that “[i]nasmuch 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.” Fla. Const. Art. I, § 27.

54. Same-sex married couples and different-sex married couples are similarly situated for purposes of marriage.

55. By denying Plaintiffs and other lesbian and gay couples the ability to have their out-of-state marriages recognized, the State discriminates against lesbians and gay men on the basis of their sexual orientation by denying them significant legal protections.

56. Classifications based on sexual orientation demand heightened scrutiny.

57. Lesbians and gay men are members of a discrete and insular minority that has suffered a history of discrimination in Florida and across the United States.

58. Sexual orientation bears no relation to an individual’s ability to perform or contribute to society.

59. Sexual orientation is a core, defining trait that is so fundamental to one’s identity that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment. Sexual orientation generally is fixed at an early age and highly

resistant to change through intervention. Efforts to change a person's sexual orientation through interventions by medical professionals have not been shown to be effective. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and many—including the American Psychological Association and the American Psychiatric Association—have adopted policy statements cautioning professionals and the public about these treatments.

60. Prejudice against lesbians and gay men continues to seriously curtail the operation of the political process, preventing this group from obtaining redress through legislative means. Lesbians and gay men lack statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half of the states, including Florida. They have been stripped of the right to marry through 30 state constitutional amendments and have been targeted through the voter initiative process more than any other group.

61. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions is not necessary to serve a compelling state interest.

62. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions is not substantially related to an important state interest.

63. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions is not rationally related to any legitimate state interest.

64. Florida's refusal to recognize Plaintiffs' marriages and the marriages of other same-sex couples entered into in other jurisdictions violates the Equal Protection Clause.

65. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

66. As a result, Plaintiffs have been or will be harmed and therefore seek the relief set forth in the Prayer for Relief below.

COUNT III

Discrimination on the Basis of Sex in Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983)

67. Plaintiffs incorporate by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

68. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

69. Florida law states that "[m]arriages between persons of the same sex . . . are not recognized for any purpose in this state." § 741.212(1), Fla. Stat.

70. In addition, Florida law provides that "[f]or 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." § 741.212(3), Fla. Stat.

71. The Florida Constitution also provides that "[i]nasmuch 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.” Fla. Const. Art. I, § 27.

72. If Plaintiffs had different-sex spouses, the State would recognize their marriages. As a result, Plaintiffs would enjoy the legal protections and be subject to the legal obligations of different-sex married couples.

73. By limiting the recognition of marriage in Florida to different-sex couples, the State is discriminating against Plaintiffs on the basis of sex.

74. The State’s unequal treatment of Plaintiffs based on their sex is not substantially related to an important state interest. State law prohibiting recognition of marriage for same-sex couples thus violates the Equal Protection Clause.

75. Defendants, acting under color of state law, are depriving Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

76. As a result, Plaintiffs have been or will be harmed and therefore seek the relief set forth in the Prayer for Relief below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter a declaratory judgment that § 741.212, Fla. Stat., and Fla. Const. Art. I, § 27 violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution insofar as they refuse to treat same-sex couples legally married in other jurisdictions the same as different-sex couples;
2. Enter a declaratory judgment that § 741.212, Fla. Stat., and Fla. Const. Art. I, § 27 violate the Equal Protection Clause of the Fourteenth Amendment to the

United States Constitution insofar as they refuse to treat same-sex couples legally married in other jurisdictions the same as different-sex couples;

3. Enter a preliminary injunction directing Defendants to recognize marriages validly entered into by Plaintiffs outside of the State of Florida;
4. Enter a permanent injunction directing Defendants to recognize marriages validly entered into by Plaintiffs outside of the State of Florida;
5. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
6. Enter all further relief to which Plaintiffs may be justly entitled.

Dated: April 10, 2014

Respectfully submitted,

/s/ Daniel B. Tilley

Daniel B. Tilley

Florida Bar No. 102882

ACLU Foundation of Florida

4500 Biscayne Blvd., Suite 340

Miami, FL 33137

(786) 363-2700

dtalley@aclufl.org

Stephen F. Rosenthal

Florida Bar No. 131458

Podhurst Orseck, P.A.

25 West Flagler Street, Suite 800

Miami, FL 33130

(305) 358-2800

srosenthal@podhurst.com

Maria Kayanan

Florida Bar No. 305601

ACLU Foundation of Florida

4500 Biscayne Blvd., Suite 340

Miami, FL 33137

(786) 363-2700

mkayanan@aclufl.org

Leslie Cooper*

ACLU Foundation

125 Broad Street, 18th Floor

New York, New York 10004

(212) 549-2627

LCooper@aclu.org

ATTORNEYS FOR PLAINTIFFS

*Admission to N.D. Fla. forthcoming

Certificate of Service

I certify that on April 10, 2014, I electronically filed this document with the Clerk of Court using CM/ECF, which automatically serves all counsel of record via electronic transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Daniel B. Tilley
Daniel B. Tilley