

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**JAMES DOMER BRENNER and  
CHARLES DEAN JONES,**

**Plaintiffs,**

**vs.**

**Case No.:**

**RICK SCOTT, in his official  
capacity as Governor of Florida,  
and PAMELA BONDI, in her  
official capacity as Attorney  
General of Florida,**

**Defendants.**

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**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, James Domer Brenner and Charles Dean Jones, by and through undersigned counsel, hereby sue the Defendants and allege as follows:

**INTRODUCTION**

Plaintiffs bring this action to challenge the constitutionality of Florida's laws voiding or otherwise refusing to recognize the marriages of same-sex couples entered in other states or countries. In *United States v. Windsor*, --- U.S. ---, 133 S. Ct. 2675 (2013), the United States Supreme Court held that withholding federal recognition and benefits from legally married same-sex couples, as required by Section 3 of the Defense of Marriage Act (DOMA), violates the Federal Constitutional guarantees of equal protection and due process. Plaintiffs seek to apply this

holding, and/or the reasoning underlying it, to invalidate and enjoin the enforcement of Florida's State Constitutional provision and statute prohibiting recognition of legally married same-sex couples.

**THE PLAINTIFFS**

1. Plaintiffs James Domer Brenner and Charles Dean Jones are adult, male residents of Tallahassee, Leon County, Florida.

2. Plaintiff Brenner has lived in Tallahassee since 1984.

3. Plaintiff Jones has lived in Tallahassee since 1985.

4. Plaintiff Brenner has worked for the Florida Forest Service since 1981 and currently serves as a Fire Management Administrator.

5. Plaintiff Jones has worked for the Florida Department of Education since 2003 and currently serves as an Operations and Management Consultant.

6. Plaintiffs have been domestic partners in a long term, stable relationship since 1988.

7. Plaintiffs, seeking recognition of their relationship, were lawfully married in Alberta, Canada on September 3, 2009 and immediately returned to Tallahassee, Florida to reside as spouses.

8. Like other couples who have made a lifetime commitment to each other, the Plaintiff couple are spouses in every sense, except that their marriage is not currently recognized by the State of Florida.

9. The situation faced by this couple is similar to that faced by many other legally married same-sex couples.

10. Plaintiffs seek to have their legal marriage recognized in the State of Florida in order to have the same legal protections afforded to legally married opposite-sex couples, including those who married in other jurisdictions.

11. While in enrolling in Florida's Deferred Retirement Option Program, Plaintiff Brenner was unable to designate Plaintiff Jones, his lawful husband, as his spouse or joint annuitant under Florida law solely because Plaintiffs are both men.

12. When a state employee, who is in an opposite-sex marriage, enters retirement, he may designate his spouse as a joint annuitant.

13. The joint annuitant, upon the retiree's death, is entitled to the retiree's monthly benefits under certain retirement options.

14. However, because Florida refuses to recognize Plaintiffs' legal marriage, Plaintiff Brenner was prohibited for selecting a retirement option that would continue to provide for his husband after his death.

#### **THE DEFENDANTS**

15. Defendant Rick Scott is the Governor of the State of Florida. In his official capacity, Governor Scott is the chief executive officer of the State of Florida and is responsible for the faithful execution of the laws of the State of Florida, including the laws that exclude same-sex couples from having their out-of-state marriages recognized.

16. Defendant Pamela Bondi is the Attorney General of the State of Florida. In her official capacity, Ms. Bondi is the chief legal officer of the State of Florida and is charged with advising state and local officials on questions of Florida and federal law.

17. Defendants are, and at all relevant times have been, acting under color of state law,

and are sued in their official capacities.

18. By implementing and enforcing the Statute and Florida Constitutional Amendment discussed below, Defendants have deprived, and continue to deprive, Plaintiffs of rights guaranteed by the United States Constitution.

### **JURISDICTION AND VENUE**

19. Plaintiffs bring this action under 42 U.S.C. §§1983 and 1988 to redress the deprivation, under color of state law, of their rights secured by the United States Constitution.

20. This Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1343.

21. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

22. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because the Defendants have offices within the district, because Plaintiffs reside in this district, and because the events giving rise to Plaintiffs' claims occurred, continue to occur, and will occur, in this district.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS CHALLENGED**

23. Article I, Section 27, Florida Constitution, adopted in 2008 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.

24. Section 741.212(1),(2), and (3), Florida Statutes (2013) 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, 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.

25. The above-described provisions of Florida law are in violation of the United States Constitution, insofar as they deny Plaintiffs and same-sex couples the rights, privileges, responsibilities and immunities extended to similarly situated opposite-sex couples.

26. Legally married same-sex couples such as the Plaintiff couple are similarly situated to legally married opposite-sex couples in all of the characteristics relevant to recognition of their legal marriages.

27. Florida has no legitimate state interest in treating legally married same-sex couples any differently from legally married opposite-sex couples.

28. Florida has no legitimate state interest in enforcing the statute or Florida constitutional amendment challenged by Plaintiffs in this case.

29. Any purported identifiable state interest is not served in an adequately and narrowly tailored manner by Article I, Section 27, Florida Constitution, or the statutes challenged in this litigation.

30. The purposes underlying Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) are specifically forbidden by the United States Supreme Court in that they are designed specifically to carry out a desire to harm a politically unpopular group.

**CLAIMS FOR RELIEF**

**COUNT I:**  
**DEPRIVATION OF DUE PROCESS**

31. Paragraphs 1-30, above, are adopted and incorporated by reference herein.

32. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

33. The right to marry is a fundamental right under the U.S. Constitution and is protected by the Due Process Clause.

34. Same-sex spouses who have entered into legal marriages have a protected liberty interest in their marital status, and the State's refusal to recognize their marital status impermissibly deprives legally married same-sex spouses of that protected liberty interest.

35. Same-sex spouses who have entered into legal marriages in other jurisdictions have a reasonable expectation that they will continue to be protected by the rights and protections conferred by marriage when they relocate to another jurisdiction.

36. Same-sex spouses have a protected property interest in their marital status and in the comprehensive network of legal protections that marriage provides, including the accrual of

certain marital benefits over time.

37. The Due Process Clause also protects choices central to personal dignity and autonomy, including each individual's rights to family integrity and association.

38. Article I, Section 27, Florida Constitution, and §741.212 Fla. Stat. (2013) violate the due process guarantees of the Fourteenth Amendment facially and/or as applied to Plaintiffs by infringing upon their right to have their marriage recognized in the State of Florida.

39. In addition, Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) conflict with other portions of the Florida Constitution, thereby depriving same-sex couples of rights otherwise granted to all Florida citizens and thus depriving them of Due Process rights under both the state and federal constitutions.

40. Specifically, Article I, Sections 2, 3, 4, 5, 9, and 23 of the Florida Constitution guarantee the rights to equal protection, religious freedom, freedom of speech, right to associate, due process, the right to be free from governmental intrusions into a person's private life, and the right to enjoy life, all of which are infringed upon by Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) .

**COUNT II:**  
**EQUAL PROTECTION**

41. Paragraphs 1-30, above, are adopted and incorporated by reference herein.

42. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

43. The State of Florida has no legitimate interest in discriminating against citizens on the basis of sexual orientation.

44. The State of Florida has no legitimate interest in discriminating against citizens on the basis of sex.

45. There is no rational basis for the State of Florida to treat same- sex couples differently from opposite-sex couples.

46. There is no rational basis for the State of Florida to treat Florida citizens differently based solely on their sexual orientation.

47. Sexual orientation bears no relation to a person's ability to perform in or contribute to society.

48. By restricting the definition of marriage to one man and one woman,” and recognizing foreign marriages between opposite sex spouses while failing to recognize foreign marriages between same sex spouses, the State of Florida engages in sex-based discrimination without rational basis or a legitimate interest in doing so.

49. Gay and lesbian people have experienced a history of discrimination in the United States and in the State of Florida.

50. Sexual orientation, including homosexuality, is an immutable trait.

51. Gay and lesbian people represent a small minority of the population and thus lack the political power to assert their rights to equal treatment under the law.

52. The purpose of Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) is to impose restrictions and disabilities on same-sex couples.

53. Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) are motivated by a desire to harm a politically unpopular group.

54. Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) also serve



the impermissible purpose of enforcing and perpetuating sex stereotypes by excluding Plaintiffs from being recognized as validly married because Plaintiffs have failed to conform to sex-based stereotypes that men should marry women, and women should marry men.

55. Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) violate the equal protection guarantees of the Fourteenth Amendment facially and/or as applied to Plaintiffs by infringing their right to have their legal marriage recognized in the State of Florida.

**COUNT III:**  
**FREEDOM OF ASSOCIATION**

56. Paragraphs 1-30, above, are adopted and incorporated by reference herein.

57. The First Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, ensures the right to freedom of association.

58. Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) violate the freedom of association guarantees of the First Amendment facially and/or as applied to Plaintiffs by discriminating against them and penalizing them based solely upon the sex of the person they choose to marry, and/or their sexual orientation.

**COUNT IV:**  
**SUPREMACY CLAUSE**

59. Paragraphs 1-30, above, are adopted and incorporated by reference herein.

60. Article VI, Section II of the United States Constitution provides: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

61. By virtue of the Supremacy Clause, state statutes, constitutions and amendments thereto are subject to applicable prohibitions and limitations of the Federal Constitution.

62. Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) violate the Supremacy Clause by contravening the United States Supreme Court's holding in *Windsor*.

63. The Fourteenth Amendment protects the liberty of individuals to travel throughout the nation, uninhibited by statutes, rules, or regulations that unreasonably burden or restrict their movement.

64. The right to travel prohibits both laws that affirmatively interfere with or prevent a citizen's travel, and also laws that penalize those who choose to migrate to another state.

65. The right extends not only to temporary visits to other states, but also to becoming a permanent resident of another state.

66. Article I, Section 27, Florida Constitution, and §741.212, Fla. Stat. (2013) violate the right to travel as guaranteed by the Fourteenth Amendment facially and/or as applied to Plaintiffs by imposing a penalty on Plaintiffs for choosing to move to and/or reside in the State of Florida in that their residence in Florida requires them to relinquish all rights, privileges, benefits, and responsibilities of marriage.

**COUNT V:**  
**ESTABLISHMENT CLAUSE**

67. Paragraphs 1-30, above, are adopted and incorporated by reference herein.

68. The First Amendment to the United States Constitution states, "Congress shall make no law respecting an establishment of religion . . ."

69. This prohibition is extended to the states through the Fourteenth Amendment.

70. Article I, Section 27, Florida Constitution, and §741.212 Fla. Stat. (2013) were

enacted for the purpose of establishing a definition of marriage based upon religious beliefs of the majority, and not for a secular legislative purpose.

71. The primary effect of the above legislation is to advance the religious beliefs of the legislative majority.

72. The constitutional amendment and above statutes result in an excessive government entanglement with religion.

**COUNT VI:**  
**HARM TO THE PLAINTIFFS AND NEED FOR INJUNCTIVE RELIEF**

73. Paragraphs 1-30, above, are adopted and incorporated by reference herein.

74. This case presents an actual controversy because Defendants' present and ongoing denial of equal treatment to Plaintiffs subjects them to serious and immediate harms, warranting the issuance of a declaratory judgment.

75. By refusing to recognize their legal marriage from Canada, the State of Florida's laws deprive Plaintiffs of numerous legal protections that are available to legally married opposite-sex couples who reside in Florida but were married in Canada.

76. The tangible and intangible harm to Plaintiffs created by Florida's failure to recognize their legal marriage affect virtually every aspect of Plaintiffs' lives, including but not limited to the following:

- a. The right to designate a spouse to receive retirement benefits upon the retiree's death, such as with the benefits for Deferred Retirement Options Program participants. *See generally* §121.091, Fla. Stat. (2013);
- b. The right to be supported financially during marriage, enforced by criminal penalties for non-support. *Killian v. Lawson*, 387 So.2d 960, 962 (Fla. 1980);

§§61.09, 856.04, Fla. Stat. (2013);

- c. The right to spousal benefits under The State Group Insurance Program provided in §110.123, Fla. Stat. (2013);
- d. The right to make medical decisions for an ill or incapacitated spouse without an advance health care directive. §765.401, Fla. Stat. (2013);
- e. The right for spouses of qualified employees to also be exempt from public records. §119.071, Fla. Stat. (2013);
- f. The right to a court-ordered equitable distribution of property upon the dissolution of marriage. §61.075, Fla. Stat. (2013);
- g. The right to receive certain workers' compensation benefits for a deceased spouse who has died as a result of a work-related accident. Fla. Stat. §440.16 (2013).
- h. The right to inherit a share of the estate of a spouse who died without a will. Fla. Sta. §732.102 (2013).
- i. The right to priority in appointment as the personal representative of the estate of a spouse who dies without a will. §733.301, Fla. Stat. (2013).
- j. The privilege not to have a spouse testify in a court proceeding about confidential communications made during the marriage. §90.504, Fla. Stat. (2013).
- k. The right to claim certain homestead protections. Art. 10, §4, Florida Constitution; and
- l. The right to hold property as a tenancy by the entirety.

77. Under the laws of the State of Florida, Plaintiffs are treated differently from legally married opposite-sex couples solely because they are in same-sex relationships.

78. If Plaintiffs were legally married opposite-sex couples, they would not suffer any of the harms or potential harms enumerated above.

79. Defendants' deprivation of Plaintiffs' constitutional rights under color of state law violates 42 U.S.C. § 1983.

80. Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

81. The State of Florida will incur little to no burden in recognizing the valid marriages of same-sex couples from other jurisdictions on the same terms as opposite-sex couples, whereas the hardship for Plaintiffs of being denied equal treatment is severe, subjecting them to an irreparable denial of their constitutional and statutory rights.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

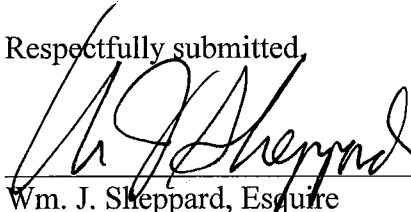
A. Enter a declaratory judgment that Article I, Section 27 of the Florida Constitution violates the Due Process, Equal Protection, Freedom of Association, Supremacy, and/or other clauses of the United States Constitution;

B. Enter a declaratory judgment that §741.212, Fla. Stat. (2013), violates the Due Process, Equal Protection, Freedom of Association, Supremacy, and/or other clauses of the United States Constitution;

C. Enter an order directing Defendants to recognize marriages validly entered into by the Plaintiff couples and other same-sex couples outside of the State of Florida;

- D. Enter an Order allowing Plaintiff Brenner to designate his spouse, Plaintiff Jones, as a recognized spouse or annuitant for purposes of his state retirement benefits;
- E. Award costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988; and
- F. Enter any and all further relief this Court deems just and proper.

Respectfully submitted,



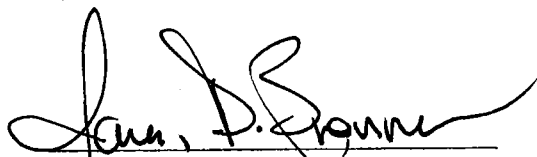
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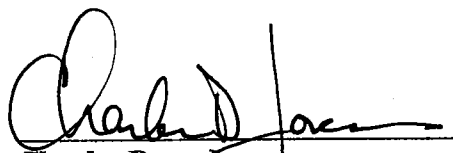
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**VERIFICATION**

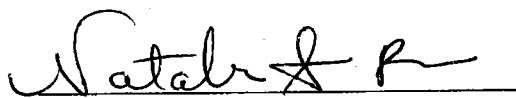
STATE OF FLORIDA        }  
  } ss.  
COUNTY OF LEON        }

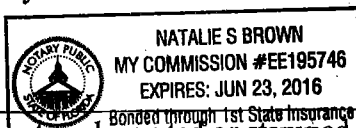
BEFORE ME, the undersigned authority, this day personally appeared **James Domer Brenner and Charles Dean Jones**, who first being duly sworn, say they are the Plaintiffs in this cause; they have read the foregoing Verified Complaint for Declaratory and Injunctive Relief; have personal knowledge of the facts and matters set forth and alleged; and state that each and all these matters are true and correct.

  
James Domer Brenner

  
Charles Dean Jones

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 2014, by **James Domer Brenner and Charles Dean Jones**, who are personally known to me or who provided \_\_\_\_\_ as identification and who did/did not take an oath.

  
Notary Public - State of Florida



Name typed, printed or stamped

mlh[brenner.james.complaint]

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **Governor Rick Scott**, State of Florida, The Capitol, 400 S. Monroe St., Tallahassee, Florida 32399-0001; and two copies have been furnished to the **Office of Attorney General**, State of Florida, The Capitol PL-01, Tallahassee, Florida 32399-1050 by Certified Mail on this 28<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
ATTORNEY

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