

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

JUDITH ANN HAAS (aka JUDITH
ANN MORALES), DAMARI INDART)
(aka DAMARI CRESPO) and BRANDON)
LEE VELEZ (aka BRANDON LEE)
COLEMAN),)

Plaintiffs,)

v.)

SOUTH CAROLINA DEPARTMENT OF)
MOTOR VEHICLES and KEVIN A.)
SHWEDO, in his official capacity as)
Executive Director of the South Carolina)
Department of Motor Vehicles,)

Defendants.)
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COMPLAINT
(Non-Jury)

NATURE OF THE CASE

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 clause of the Fourteenth Amendment of the Constitution of the United States. Plaintiffs are gay and lesbian citizens of South Carolina who have been refused South Carolina driver's licenses that reflect their married names by the Defendants. In the case of Plaintiff Indart, she has been refused any South Carolina driver's license because the state will not recognize her chosen name, yet her previous name does not match the name on her Social Security card. Plaintiffs seek declaratory and injunctive relief against the refusals by the Defendants to recognize as evidence of a name change marriage

licenses issued to same-sex couples by other states. Plaintiffs ask that the policy be declared unconstitutional and that the Defendants be required to issue a correction of the South Carolina Driver's license held by Plaintiff Haas to reflect her chosen name, to issue a correction of the South Carolina driver's license held by Velez to reflect his chosen name and to allow Plaintiff Indart to apply for a South Carolina driver's license in her chosen name. 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.

3. This 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 District of South Carolina pursuant to 28 U.S.C. § 1391(b) because the Plaintiffs and Defendant Shwedo are residents of South Carolina and all of the events or omissions giving rise to Plaintiffs' claims occurred in this district. Venue is proper in the Greenville Division as Plaintiffs Indart and Haas Shwedo reside in this division and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this division. Local Rule 3.01 (a)(1) DSC.

PARTIES

6. Plaintiff Judith Haas is an adult resident of the City of Greenville in the state of South Carolina. Plaintiff Damari Indart is an adult resident of the City of Greenwood in the state of

South Carolina. Plaintiff Brandon Lee Velez is an adult resident of the City of North Charleston in the state of South Carolina.

7. Defendant South Carolina Department of Motor Vehicles (“SCDMV”) is an administrative agency of the state government. Pursuant to Title 56 of the South Carolina Code of Laws, SCDMV is empowered to issue driver’s licenses.

8. Defendant Kevin A. Shwedo (“the Executive Director”) is the executive Director of the South Carolina Department of Motor Vehicles. He is charged by law with administering the operations of SCDMV, promulgating policies and procedures for SCDMV, and supervising SCDMV employees. The Executive Director is sued in his official capacity, as are his agents and successors in office.

9. 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

10. S.C. Code Ann. §56-1-230 provides:

Whenever any person after applying for or receiving a driver’s license shall move permanently from the address named in such application or in the license issued to him or when the name of the licensee is changed by marriage or otherwise, such a person shall within ten days thereafter notify the Department of Motor Vehicles in writing of his old and new address or of such former and new name and of the number of any license then held by him.

11. To request a name change on a driver’s license, an applicant must complete SCDMV form 4057. A copy of that form is attached. For a name change, an applicant must present a court order or a marriage license.

12. In an internal *Operational Newsbreak* issued October 9, 2012, a copy of which is attached,

SCDMV clerks were reminded that “men and women have the prerogative to change their middle or last name at the time of marriage. Either party may choose to keep their pre-married name, or to adopt some combination of middle and last name from either spouse.”

13. The official website of the SCDMV includes the following information:

Additional Documentation Required

If your name has changed since birth, you must provide all legal documents (adoption records, marriage certificate, certificate of naturalization, court ordered name change) supporting all name changes from birth to present.

Social Security Number

You must provide proof of your Social Security number, preferably with your social security card. The name on your social security card must match the name on your identity documents.

United States Citizen With Credentials From Other States

If you are a new resident to South Carolina, you must meet the same requirements as any other United States citizen. In addition to your out-of-state driver's license or ID card, you must provide proof of identity, proof of your social security number, proof of residency and, if applying for a driver's license, your automobile liability insurance information. Before you obtain your SC credential, you must surrender all out-of-state licenses and/or identification cards.

14. SCDMV refused to recognize the original marriage licenses presented by each of the Plaintiffs as evidence of a name change because the SCDMV determined that the Plaintiffs did not have the prerogative to change names as the person each plaintiff married was of the same sex.

FACTS

15. On October 13, 2013, Judith Ann Morales married Kirsten Elizabeth Haas in the State of Massachusetts. Her name of choice after the marriage is recorded on the marriage certificate to be Judith Ann Haas. After the marriage, Plaintiff Haas submitted her marriage certificate to the Social Security Administration and requested that her SSA records reflect her name to be Judith Ann Haas. She was issued a Social Security card in her chosen name.

16. Sometime later in 2013, Plaintiff Haas took her marriage certificate and her new Social Security card to the DMV office in Fountain Inn, South Carolina to record her name change as is required by statute.

17. The clerk at the SCDMV office rudely refused to issue record the name change on Plaintiff Haas' driver's license. She was told that she needed to go to court and a court might let her change her name. She was specifically instructed that she must marry a man to change her name at the SCDMV.

18. On January 17, 2014, the American Civil Liberties Union of South Carolina, on behalf of Plaintiff Haas, sent a letter to Defendant Shwebo outlining the reasons why SCDMV should issue a corrected driver's license in Plaintiff Haas' chosen name. Shwebo refused the request citing the sections of the South Carolina Code and Constitution which prohibit marriages of same-sex couples, or recognition of the valid out-of-state marriages of gay and lesbian couples. Shwebo was acting under color of law.

19. On October 6, 2014, the U.S. Supreme Court denied the petition for certiorari in all the cases which asked the Court to review circuit court decisions striking down similar bans on marriage for same-sex couples. See *McQuigg v. Bostic*, No. 14-251, 2014 WL 4354536 (U.S. Oct. 6, 2014). That denial rendered final *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014), the

Fourth Circuit's decision that the state bans on marriage for same-sex couples violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. That decision is binding on all states in the 4th Circuit including South Carolina. Regardless of whether the marriage ban were a legitimate reason for the SCDMV to refuse to recognize the authenticity of foreign marriage licenses as evidence of a name change when the license recorded a same sex marriage, once *Bostic* became a final decision that excuse lost all legal validity.

20. Since October of 2013, Defendant Haas has been damaged in that she has been unable to use her chosen name in any formal context. Because the Social Security Administration has recognized her change of name, she has had inconsistent SSA records and identity records. Her ability to travel, seek public benefits, change employment and vote has been put in jeopardy. Her dignity was injured by the treatment she received by the DMV staff. She has been unable to comply with legal obligations placed upon her by South Carolina statutes.

21. A certificate of marriage issued by the City of New York in the State of New York records that Brandon Lee Coleman and Ricky James Velez were married on February 25, 2014. The certificate records Coleman's new surname as Velez.

22. On or about March 6, 2014, Plaintiff Velez reported his name change by presenting his marriage certificate to the SCDMV West Ashley office in Charleston, South Carolina. The clerk at that office issued a new driver's license in his new name. Several hours later, personnel from the SCDMV called Plaintiff Velez and demanded that he return immediately to their office and surrender the newly issued driver's license. He was told that his license would be revoked if he

failed to follow their instructions. He returned to the office, surrendered the newly issued driver's license and was issued a license in his prior name.

23. On May 29, 2014, Attorney A. Peter Shahid, Jr., on behalf of Plaintiff Velez, sent a letter to Defendant Shwebo demanding that SCDMV issue a corrected driver's license in Plaintiff Velez' chosen name. On July 10, 2014 the "Office of Constituent Services" refused the demand citing the Section 20-1-15 of the South Carolina Code and recommending that Velez pursue a name change in Family Court.

24. Since October of 2013, Defendant Velez has been damaged in that he has been unable to use his chosen name in any formal context. His ability to travel, seek public benefits, change employment and vote has been put in jeopardy. His dignity was injured by the treatment he received by the DMV staff. He has been unable to comply with legal obligations placed upon him by SC statutes.

25. On June 2, 2009, Damari Crespo married Odalys Indart in the State of Connecticut. After the marriage, Plaintiff Indart chose to use the name Damari Indart. On June 25, 2009, she was issued a Social Security card in her new name after presenting her marriage certificate. At the time of her marriage, she was a resident of Florida. She presented her marriage license to the Florida DMV in order to record her new name on her driver's license in that state. Florida DMV issued a driver's license in her married name. She has consistently been known as Damari Indart since that time.

26. In 2013, Defendant Indart moved to Greenwood, South Carolina. In March of 2013, she went to the SCDMV office in Greenville, SC to apply for a SC Driver's license. In September of 2013, she went to the SCDMV office in Fountain Inn to apply for a SC driver's license. In April

2014, she went to the SCDMV office in Greenwood, SC. At all three locations, she presented her Social Security Card and her marriage license as proof of her identity. She also presented her valid driver's license from Florida in her chosen name. All three locations refused her application. At each location she was told that her marriage license was not evidence of her name change and that her name must match her Social Security number. She was told that she could apply for a license under her prior name of Crespo, but only if her Social Security documentation matched that name.

27. Out of frustration, Plaintiff Indart returned to the Social Security Administration to ask if she could return to her prior name. Because the federal government does recognize her marriage and the name change on her marriage license, she was informed that she could only change her name if she got a divorce or a court order.

28. Since March of 2013, Defendant Indart has been damaged in that she has been unable to use her chosen name in any formal context. She cannot obtain consistent SSA records and identity records in her resident state. Her ability to travel, seek public benefits, change employment and vote has been put in jeopardy. Her dignity was injured by the treatment he received by the DMV staff. She has been unable to comply with legal obligations placed upon her by SC statutes.

29. The Plaintiffs are informed and believe that a married heterosexual person who presents a marriage certificate from New York State, Massachusetts, Connecticut or any other state may change his or her name upon request at the SCDMV.

30. At no time did any agent of SC DMV ever question the authenticity of any of the documents presented by any of the Plaintiffs as proof of identification.

31. Despite having had an adequate opportunity to do so, SCDMV and Defendant Shwebo have failed to correct the unconstitutional policies of SCDMV, to the detriment of all of the Plaintiffs.

FOR A FIRST CAUSE OF ACTION

(Violation of 42 USC §1983- Freedom of Speech)

32. The Plaintiffs repeat and incorporate all allegations contained in the preceding paragraphs.

33. The First Amendment guarantees freedom of speech and expression. Any adult man or woman has the right to choose his or her name so long as the name change is not fraudulent. Each of the Plaintiffs in this case choose to change his or her surname as a public declaration of his or her connection to the person he or she chose to marry. 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.

34. SC DMV allows all individuals the prerogative to change his or her name on a driver's license upon the presentation of a marriage license or certificate. In doing so the SC DMV creates a limited public forum. SC DMV discriminates against individuals like the Plaintiffs when it allows the publication of the name choice of individuals after a heterosexual marriage licensed or certified in another state and denies the name change of individuals after a same sex marriage licensed or certified in another state who present documentation of the same authenticity.

35. SC DMV has the administrative authority to determine authenticity of documentation in order to issue a driver's license, which has become an official proof of identity. The SC DMV

does not have the authority to adjudicate whether or not a marriage is valid. The Plaintiffs reported to the SC DMV their changes of name and they presented the required documentation as evidence of the change. They did not ask SC DMV to recognize the underlying marriage or to grant any benefits.

36. SCDMV's refusal to accept documentation from another state denies the Plaintiffs legal recognition of his or her chosen name. In the case of Plaintiffs Haas and Velez, it forces them to continue to use names they have chosen to change. In the case of Plaintiff Indart, it makes it impossible for her to obtain a South Carolina drivers license in her chosen name, despite the fact that she has been using that name legally for years. And she is unable to obtain a South Carolina driver's license in her prior name as that name does not match the name on her Social Security card.

37. Official proof of identity has become essential to full participation in modern society. Proof of identify must match Social Security records or E-verify, which is required for employment in South Carolina, will reported a job applicant as non-conforming. Official identification is now required to travel, to access public benefits, to access financial aid for education, to obtain medical care, to vote and to marry.

38. SCDMV and Defendant Shwebo acted under color or state law when they denied each of the Plaintiffs the prerogative to change his or her name for purposes of obtaining a driver's license and, thereby, obtain official proof of his or her identity while granting such a prerogative to individuals whose name changes apparently reflect a declaration that the government favors.

FOR A SECOND CAUSE OF ACTION

(Violation of 42 USC §1983- Equal Protection)

39. The Plaintiffs repeat and incorporate all allegations contained in the preceding paragraphs.

40. The Fourteenth Amendment to the Constitution of the United States provides in relevant part: “nor shall any State...deny to any person within its jurisdiction the equal protection of the laws.”

41. Official proof of identity is essential to full participation in modern society. One’s name is a fundamental element of one’s identity.

42. The Plaintiffs are informed and believe that they have a fundamental right to use their chosen names. SCDMV has adopted a policy that denies the Plaintiffs the prerogative to chose his or her name while granting that prerogative to others with the same documentation. This inequitable application should be subject to strict scrutiny.

43. The SCDMV’s only basis for denying any name change request should be prevention of fraud. As a result SCDMV requires documentation of name changes. SCDMV accepts marriage certificate and marriage licenses as documentation of a change of name. The sex of the persons applying for a marriage license or certificate does not affect the authenticity of a marriage license issued by a state that grants marriage licenses or certificates to same sex couple and heterosexual couples. SCDMV accepts marriage license and certificates as evidence of a name change as such a name change is not likely to be fraudulent. People are unlikely to get married in order to change names and hide identity. And once a documented marriage has occurred, that marriage cannot be ended without the hassle, expense and delay of a divorce, annulment or other

adjudication setting aside the marriage. There is no evidence that individuals in same-sex relationships who present authentic marriage licenses or certificates as evidence of their chosen name are any more likely to do so fraudulently than those in heterosexual relationships.

44. SCDMV's policy appears to require that the Plaintiffs obtain a court order to record his or her chosen name change when similarly situated individuals with exactly the same documentation are granted the prerogative to change his or her name. To obtain such a court order in South Carolina, if actually needed, requires a filing fee of \$150.00, a criminal background check which costs \$35.00, law enforcement fingerprint card, a DSS child abuse registry check, and usually court hearing. The statutory procedure is not simple, convenient, inexpensive, private, or speedy.

45. SCDMV's refusal to grant the Plaintiffs the same name change prerogative that it grants to individuals with the same documentation violates the guarantee afforded to the Plaintiffs by the Fourteenth Amendment of the United States Constitution. Said refusal cause damages to the Plaintiffs.

FOR A THIRD CAUSE OF ACTION

(Violation of 42 USC §1983- Substantive Due Process)

46. The Plaintiffs repeat and incorporate all allegations contained in the preceding paragraphs.

47. SCDMV's refusal to issue to the Plaintiffs official identification in his or her chosen name upon the required documentation implicates the Plaintiffs fundamental rights to identity, to work, to travel, to vote and to participate as a full member in society. The policy of denying the validity of a marriage license based upon the sex of the persons to whom the license was issues

impermissibly interferes with these fundamental rights. The enforcement of this policy has caused the Plaintiffs to suffer damages.

FOR A FOURTH CAUSE OF ACTION

(Violation of 42 USC §1983- Procedural Due Process)

48. The Plaintiffs repeat and incorporate all allegations contained in the preceding paragraphs.

49. The Fourteenth Amendment to the Constitution of the United States provides in relevant part: “Nor shall any State deprive any person of life, liberty or property, without due process of law....”

50. The Plaintiffs have liberty and property interests in his or her identity and his or her chosen name.

51. By refusing to accept authentic marriage license as evidence of non-fraudulent name change, the Defendant deprived the Plaintiff of property and liberty interests without due process guaranteed to the Plaintiffs by the Fourteenth Amendment. Said refusal cause the Plaintiffs to suffer damages.

RELIEF

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

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

54. 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 licenses or certificates issued by other 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 licenses or 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 the Plaintiffs' marriage license or marriage certificates as evidence of his or her chosen name for purpose of changing his or her name on his or her existing South Carolina driver's license or for proof of name when applying for the issuance of a South Carolina driver's license;

(5) award judgment against the Defendants 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.

Respectfully submitted,

s/Susan K. Dunn

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