IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THERESA BASSETT and CAROL KENNEDY, PETER WAYS and JOE BREAKEY, JOLINDA JACH and BARBARA RAMBER, DOAK BLOSS and GERARDO ASCHERI,

Plaintiffs,

vs.

RICHARD SNYDER, in his official capacity as Governor of the state of Michigan,

Defendant.

Case No.

Hon.

COMPLAINT

Plaintiffs, Theresa Bassett, Carol Kennedy, Peter Ways, Joe Breakey, JoLinda Jach, Barbara Ramber, Doak Bloss, and Gerardo Ascheri (collectively "Plaintiffs"), seek declaratory and injunctive relief, pursuant to 42 U.S.C. § 1983, from Public Act 297 of 2011, the Public Employee Domestic Partner Benefit Restriction Act, which violates the Fourteenth Amendment to the United States Constitution by stripping family health care benefits only from the committed same-sex domestic partners of certain gay and lesbian public employees within the State of Michigan while allowing public employees' other family members access to such benefits, and by preventing public employers from offering such benefits to employees' same-sex domestic partners in the future. (Ex. A, 2011 Mich. Pub. Acts 297.)

INTRODUCTION

1. Family health insurance coverage is a valuable part of the compensation Michigan public employees earn. Some municipalities and other government employers extend family

health insurance coverage to employees' unmarried domestic partners (whether of the same or opposite sex).

2. Plaintiffs Bassett, Ways, Jach, and Bloss (the "Public Employee Plaintiffs") are lesbian and gay public employees whose compensation includes family health insurance coverage. Plaintiffs Kennedy, Breakey, Ramber, and Ascheri (the "Domestic Partner Plaintiffs") are the committed same-sex partners of the Public Employee Plaintiffs, who have been covered by the family health insurance voluntarily provided by their partners' employers.

3. The employers of the Public Employee Plaintiffs, and other public employers in Michigan, have established family health benefits programs that extend coverage to individuals who live with and share finances with employees, without regard to the nature of their relationships. These programs comply with the Michigan Constitution and applicable case law.

4. On December 22, 2011, Defendant Michigan Governor Richard Snyder reviewed, approved, and signed House Bill 4770, the Public Employee Domestic Partner Benefit Restriction Act, which then took immediate effect as Public Law 297 of 2011 (the "Act"). (Ex. A.) The Act prohibits certain public entities in Michigan from offering family health coverage to their employees' domestic partners.

5. The Michigan Constitution prohibits same-sex couples from marrying.

6. Because unmarried opposite-sex couples can become eligible for family benefits by marrying, and employers remain free to offer family health care benefits to any other family members, including aunts, nieces, siblings, or cousins, the only family members whom the Public Employee Domestic Partner Benefit Restriction Act bars from receiving family health care benefits are the domestic partners of lesbian and gay workers. The Act therefore imposes

on gay and lesbian employees' families alone the burdens of being uninsured or underinsured: financial hardship, health-related anxiety, stress, and medical risk.

7. Categorically eliminating the possibility of receiving family health coverage for lesbian and gay public employees' domestic partners—while leaving other family members, including opposite-sex spouses, eligible to receive family coverage—discriminates against the Public Employee Plaintiffs by treating them differently from other similarly situated public employees.

8. As described below, each of the Plaintiff couples has been in a committed relationship for between seventeen and twenty-five years. While one Plaintiff couple is legally married, their marriage is not recognized under Michigan law, and thus the phrase "domestic partners" is used in this Complaint to describe the Plaintiffs because the title of the law challenged here makes clear that the State has targeted them for discrimination as "domestic partners."

9. The Public Employee Plaintiffs will lose family health insurance coverage for their committed domestic partners, and all of the Domestic Partner Plaintiffs will lose their present health insurance coverage, or have already lost their coverage. The Act will particularly harm those Domestic Partner Plaintiffs who need ongoing medical care for serious chronic conditions, such as Plaintiff Barbara Ramber, who has glaucoma and arthritis.

10. Plaintiffs will suffer these irreparable harms because of their sexual orientation and sex.

11. The Public Employee Plaintiffs are similarly situated in every relevant respect to their heterosexual coworkers who are married and eligible to receive family coverage for their spouses as part of their employment compensation: Plaintiffs' employment is no less

demanding, and their service to the public no less valuable, than that of their married heterosexual coworkers.

12. There is no legitimate—let alone important or compelling—governmental interest in categorically barring lesbian and gay public employees, including Plaintiffs, from accessing the same health insurance benefits that heterosexual employees can share with their families.

13. The Public Employee Domestic Partner Benefit Restriction Act is the result and expression of discriminatory animus toward gay and lesbian individuals and families, and violates both the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

PARTIES

A. Plaintiffs

Plaintiffs Theresa Bassett and Carol Kennedy

14. Plaintiffs Theresa Bassett and Carol Kennedy are residents of Ann Arbor, Michigan.

15. Theresa works for Ann Arbor Public Schools. She has been employed by the district for twenty-eight years and has earned tenure. Theresa teaches math to sixth- and eighth-graders at Slauson Middle School in Ann Arbor. She has a Master's Degree in Educational Leadership and is currently working on a Master's Degree in Social Work.

16. Theresa has been in a committed relationship with her partner, Plaintiff Carol Kennedy, for twenty-five years. Theresa and Carol celebrated their commitment in a Unitarian Universalist Church ceremony in 1990 and were legally married in California in 2008. They also registered as domestic partners with the City of Ann Arbor in 1993. Theresa and Carol are financially interdependent. They own their home jointly and maintain a joint

checking account. In addition, each is the primary beneficiary of the other's will and life insurance policy.

17. Theresa and Carol have raised six children together: Maya, Olivia, Ben, Charlie, Sam, and Finnian ("Finn") Bassett-Kennedy, ranging in age from six to twenty.

18. Carol has worked from the couple's home as a day care provider since 1993. Because she is self-employed, she does not have access to her own employer-provided benefits plan.

19. Carol is currently covered through the school district's "Other Qualified Adult" plan. Theresa pays taxes on the value of this coverage. Carol will lose her health insurance if the Public Employee Domestic Partner Benefit Restriction Act remains effective.

20. Carol's age (fifty) and her family history of breast cancer mean that independent health care coverage for her would be very expensive. To keep her premium down to $250 per month, Carol would have to accept a $2,500 deductible and pay many medical expenses out of pocket; alternatively she could pay a premium of about $800 per month for more comprehensive coverage. This added cost would put considerable pressure on the family's finances, which are already strained by a mortgage and the costs of sending two children to college.

Plaintiffs Peter Ways and Joe Breakey

21. Plaintiffs Peter Ways and Joe Breakey are residents of Ann Arbor, Michigan.

22. Peter is employed by Ann Arbor Public Schools. He has served the school district in multiple capacities: as a consultant, as a central administrator, as a high school dean, and as a teacher. He currently teaches middle school at the Ann Arbor Open School.

23. Peter and his partner, Plaintiff Joe Breakey, have been together for more than twenty years. In 1998, Peter and Joe held a commitment ceremony that was attended by more than one hundred friends and family members. Peter and Joe are financially interdependent. They own their home jointly. They are the primary beneficiaries of each other's wills and have given each other power of attorney for financial and medical decisions.

24. Peter and Joe are together raising their nine-year-old daughter, Aliza Breakey-Ways.

25. Joe has a Master's Degree in Social Work and works as a licensed therapist with his own private practice. He does not have access to his own employer-provided benefits plan because he is self-employed. The flexibility of being self-employed allows Joe to be home when Aliza comes home from school in the afternoons.

26. Peter's health insurance plan through the school district currently covers Joe. Joe also presently receives dental and vision insurance through Peter's employee plan. Peter pays taxes on the value of Joe's benefits.

27. If the Public Employee Domestic Partner Benefit Restriction Act remains in effect, Joe will lose his health coverage and his dental and vision coverage. Because finding comparable individual insurance for Joe would be extremely expensive, Peter and Joe have considered moving back to Washington state, so that Peter could take a job that provides family benefits for which Joe would be eligible.

Plaintiffs JoLinda Jach and Barbara Ramber

28. Plaintiffs JoLinda Jach and Barbara Ramber are residents of Kalamazoo, Michigan.

29. JoLinda has worked for the City of Kalamazoo for twenty-four years. During that time she has held multiple positions in information technology; she currently serves as a senior systems analyst for software applications and project management.

30. JoLinda and her partner, Plaintiff Barbara Ramber, have been in a committed relationship for seventeen years. In 1997, they had a commitment ceremony in California.

31. JoLinda and Barbara are financially interdependent. They jointly own their home. Each has granted the other power of attorney for financial and medical decisions. The couple has two children, Dylan and Jordan Ramber-Jach.

32. Barbara works part-time in the food-service division of Kalamazoo Public Schools.

33. Last year, Barbara was hit in her left eye by a baseball. The injury has permanently damaged her eyesight and she has developed glaucoma. To prevent blindness, she must take daily medication. Barbara has also recently been diagnosed with rheumatoid arthritis, which limits the mobility of her hands and wrists.

34. Through December 31, 2011, Barbara was covered under JoLinda's health care plan provided by the City of Kalamazoo. JoLinda paid taxes on the value of the coverage for Barbara and contributed to the cost of Barbara's premiums.

35. As a result of the Act, Barbara lost her health insurance coverage through the City of Kalamazoo as of January 1, 2012. JoLinda and Barbara are now exploring alternative methods of coverage for Barbara. The severity of her eye injury and her arthritis will make it very difficult for Barbara to find individual health insurance, and if she does find an individual plan that is willing to enroll her, the coverage is likely to be more expensive than the family can afford. Barbara could purchase health insurance coverage from the school

district where she works, but the premiums would cost her $540 per month—more than half of her monthly take-home pay. Her present medications would cost Barbara more than $300 per month if insurance did not cover them.

Plaintiffs Doak Bloss and Gerardo Ascheri

36. Plaintiffs Doak Bloss and Gerardo Ascheri are residents of East Lansing, Michigan.

37. Doak has worked for Ingham County for more than thirteen years. He currently serves as Health Equity and Social Justice Coordinator for the County.

38. Doak has been in a committed relationship with his partner, Gerardo Ascheri, for eighteen years. Doak and Gerardo met when they were both working on a musical production for a community theater—Doak was the director and Gerardo was the audition accompanist.

39. Doak and Gerardo are financially interdependent. They have given each other power of attorney for medical and financial decisions.

40. Gerardo is currently self-employed as a piano teacher, giving piano lessons in the couple's home. He taught piano on a part-time basis through Michigan State University's community outreach program for seventeen years, although he no longer does so. For many years, Gerardo has not been able to access health coverage through his own employment.

41. Gerardo has in recent years received health insurance, as well as dental and vision insurance, through Doak's employer, Ingham County. Doak contributed to the premiums and paid taxes on the value of Gerardo's benefits.

42. Gerardo has high blood pressure and high cholesterol, and is currently taking medication for these conditions.

43. If the Act remains in effect, Gerardo will lose his coverage through the County. Gerardo and Doak have looked into purchasing individual coverage for Gerardo; he would have to pay premiums of $500 per month for health insurance with a $1,500 deductible and a 50% co-payment on prescriptions; this coverage would not include dental or vision. Gerardo's present medications would cost the family more than $130 per month if insurance did not cover them.

B. Defendant

44. Defendant Richard Snyder is sued in his official capacity as Governor of Michigan. Governor Snyder is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint. The Governor of Michigan has the duty and authority to transact all executive business with the officers of the government and the duty to ensure that the laws are faithfully executed. Mich. Const. 1963, art. V, § 8. The Governor is also charged with supervising the official conduct of all executive and ministerial officers and ensuring that all offices are filled and all duties performed. *Id.* Governor Snyder reviewed and approved H.B. 4770. He was and is directly responsible for the implementation and enforcement of the Act.

45. Plaintiffs allege that the Defendant intentionally performed, participated in, aided in, and/or abetted the acts averred herein, is liable to Plaintiffs for the relief sought herein, and will injure Plaintiffs irreparably if not enjoined.

JURISDICTION AND VENUE

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

47. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.

48. Venue is proper in this Court under 28 U.S.C. § 1391(b) because, upon information and belief, the Defendant resides within this District, and a substantial part of the events that gave rise to Plaintiffs' claims took place within this District.

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

50. This Court has personal jurisdiction over the Defendant because he is a resident of the State.

FACTUAL BACKGROUND

A. The History of Benefits for Michigan Public Employees' Same-Sex Domestic Partners

51. Public employers in Michigan provide certain valuable health benefits to employees for their families, including subsidized access to health care coverage for employees' opposite-sex spouses.

52. Prior to 2004, a number of Michigan public employers voluntarily provided family health benefits to same-sex domestic partners as well. Each public employer defined its own criteria for who could qualify as a "domestic partner." These programs typically required, among other things, that domestic partners be the same sex as the employee, share a residence, and sign an affidavit or similar document attesting to the committed nature of their relationship and to their obligation to provide each other mutual support.

53. In 2004, the Michigan Constitution was amended to include article I, section 25, which states that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose."

54. In 2005, then-Michigan Attorney General Mike Cox issued an opinion regarding the legality of the City of Kalamazoo's domestic partner benefits. Cox opined that the domestic partner benefit program was impermissible under article I, section 25, because benefits were contingent on the employee and his or her domestic partner's committed relationship. He asserted that

> The provision of benefits itself does not violate the amendment, but the benefits cannot be given based on the similarity of the union or domestic partnership agreement to a legal marriage. In other words, Const 1963, art. 1, § 25 does not prevent the City of Kalamazoo, if it elects to do so, from conferring benefits on persons a city employee may wish to designate as a recipient as long as the benefits are not dependent on the existence of a union that is similar to a marriage as defined by Michigan law.

Constitutionality of City Providing Same-Sex Domestic Partnership Benefits, Mich. Att'y Gen. Op. 7171 (Mar. 16, 2005), *available at* http://www.ag.state.mi.us/opinion/datafiles/2000s/op10247.htm.

55. In 2007, the Michigan Court of Appeals held in *National Pride at Work, Inc. v. Granholm*, 732 N.W.2d 139 (Mich. Ct. App. 2007), that article I, section 25 prohibits public employers from providing health-insurance benefits to their employees' same-sex life partners on the basis of a domestic partnership relationship. The Court of Appeals noted that "[t]he amendment as written does not preclude the extension of employment benefits to unmarried partners on a basis unrelated to recognition of their agreed-upon relationship." *Id.* at 155.

56. The Michigan Supreme Court upheld this ruling in 2008, reasoning that public employers' domestic partnership policies that were "defined in terms of *both* gender and the lack of close blood connection" could not share these two unique qualities with marriage without being sufficiently similar that they violated article I, section 25. *National Pride at Work, Inc. v. Granholm*, 748 N.W.2d 524, 537 (Mich. 2008).

57. In light of this decision, some public employers revised their health insurance policies to voluntarily provide family health care benefits to unmarried employees who live with an "Other Qualified Adult." Employers made these changes because both the Attorney General and the Court of Appeals recognized that the provision of benefits to employees' same-sex partners was legal as long as it was not predicated on an agreement establishing or affirming a particular type of relationship.

58. Each public employer that provides such benefits defines its own criteria for an "Other Qualified Adult." These criteria allow an employee to designate a person he or she lives with and shares finances with as an Other Qualified Adult, without any requirement that the relationship be of an intimate nature. They also allow an employee to designate an Other Qualified Adult of either the same sex or the opposite sex. Employees are required to submit documentation of shared residence, and, in some programs, of financial interdependence with the Other Qualified Adult, to confirm eligibility and prevent fraud. (Ex. B, City of Kalamazoo Other Qualified Adult Criteria; Ex. C, Ann Arbor Public Schools Other Qualified Adult Criteria; Ex. D, Ingham County Other Qualified Adult Criteria.)

59. Municipal and county employers that have provided an "Other Qualified Adult" or similar program include the Cities of Ann Arbor and Kalamazoo, and the Counties of

Washtenaw, Ingham, and Eaton. Public school districts that have provided health insurance for unmarried partners include Ann Arbor, Birmingham, and Farmington.

60. Plaintiffs are lesbian and gay public employees and their committed domestic partners who participated in their respective employers' health benefits plans as Other Qualified Adults or a similar benefit offered under a different name. Plaintiff public employees and their Plaintiff domestic partners met the applicable eligibility requirements for coverage at the time of enrollment and continue to meet those requirements.

B. The Public Employee Domestic Partner Benefit Restriction Act

61. On December 7, 2011, the Michigan Senate passed H.B. 4770 and its companion bill, H.B. 4771, which prohibited public employees from collective bargaining with respect to health insurance coverage for unmarried adults. On December 8, 2011, the Michigan House of Representatives passed H.B. 4770 as amended by the Michigan Senate as well as H.B. 4771, and the bills were ordered enrolled. On December 13, 2011, H.B. 4770 and H.B. 4771 were presented to Defendant Richard Snyder for review, consideration, and approval or rejection in his capacity as Governor of Michigan. On December 22, 2011, Defendant Snyder signed H.B. 4770 into law but vetoed H.B. 4771.

62. H.B. 4770, which became Public Act 297 of 2011, is titled the "Public Employee Domestic Partner Benefit Restriction Act."

63. The Act prohibits certain public employers in Michigan from offering health insurance benefits or any other fringe benefits to individuals who share a residence with a public employee and who are not married to the employee, dependents of the employee as

defined in the Internal Revenue Code,[1] or potential heirs of the employee as defined by Michigan intestate succession laws.

C. Anti-Lesbian and Gay Animus Underlying the Public Employee Domestic Partner Benefit Restriction Act

64. The title of the Public Employee Domestic Partner Benefit Restriction Act conveys its direct intent to prevent certain public employers from offering benefits to committed same-sex couples, commonly referred to as "domestic partners."

65. The Act singles out lesbian and gay public employees and categorically denies them, and only them, the ability to obtain employee health insurance benefits for their closest family members—the partners with whom they share their lives. The Act prohibits certain public employers from providing health insurance coverage to the same-sex domestic partners of public employees because Michigan does not recognize the marriages of same-sex couples, its intestate succession laws do not cover domestic partners, and almost no domestic partners would qualify as dependents under the Internal Revenue Code.

66. In contrast, nothing in the Act prevents public employers from providing family health insurance coverage to other family members, such as aunts, uncles, parents, siblings, nieces, nephews, or cousins, all of whom are eligible to inherit from an employee under Michigan's intestate succession laws.

67. The Act facially discriminates against lesbian and gay public employees by conditioning their employers' ability to grant benefits to any domestic partner who is not an IRS dependent on marriage or eligibility under the law of intestate succession, two statuses

[1] Pursuant to the Internal Revenue Code, a taxpayer may claim as a dependent an adult who receives more than 50% of his or her financial support from the taxpayer and has no more than $3,700 in gross annual individual income, and who either lives with the taxpayer or is related to the taxpayer in one of several listed ways by blood, adoption, or federally recognized marriage. 26 U.S.C. §§ 151(d), 152(d) (2011); *Exemptions, Standard Deductions, and Filing Information*, I.R.S. Pub. No. 501, at 12, 16-21 (2011) .

that are unavailable to gay and lesbian employees and their same-sex domestic partners under Michigan law.

68. The House sponsors of the bills also made their discriminatory motivation clear in public statements leading up to the bills' passage. For instance, Representative Pete Lund called one public employer's decision to provide these benefits "an absolute abomination" and decried "this clearly political move that shifts people's hard earned dollars into the pockets of same-sex partners."

69. Proponents of H.B. 4770 wrongly characterized granting employee health benefits for lesbian and gay families as "illegal." For example, the legislative analysis of H.B. 4770 and H.B. 4771 completed by the nonpartisan House Fiscal Agency, dated September 6, 2011, upon the report of those bills from committee, states in its "ARGUMENTS: For" section that bill proponents contended these bills were necessary because "any public employer who extends health care insurance to same-sex or opposite-sex domestic partners is clearly breaking the law." The actual holding of *National Pride at Work*, however, was that public employers could not "provide health-insurance benefits to domestic partners *on the basis of a domestic partnership*." 748 N.W.2d 524, 538 (Mich. 2008) (emphasis added).

70. Similarly, the legislative analysis notes that the bill proponents argue "these bills are needed . . . because public employers . . . and their employees have found ways around the law that is now a part of the Michigan Constitution, by avoiding the clearly prohibited language barring health benefits for same-sex partners." The analysis recounts the various ways that the benefit schemes provide benefits to employees' "same-sex partners." This portion of the legislative analysis makes clear the bill proponents' desire to discriminate against lesbian and gay public employees and their families on the basis of their sexual

orientation and sex, as well as the attempted strategy of couching such discrimination in misstatements of existing law.

71. Unlike their heterosexual coworkers, lesbian and gay public employees cannot marry their committed partners in Michigan, nor can they inherit from their same-sex partners under state intestacy laws. Therefore, the Public Employee Domestic Partner Benefit Restriction Act effectively closes every door that would allow public employers to grant health insurance coverage to gay and lesbian employees' same-sex partners.

72. The Act also eliminates the public employers' ability to define their own benefits criteria and develop competitive benefits packages to attract the most qualified candidates for employment. Moreover, the Act reverses many public employers' policies of offering equal compensation in the form of benefits, regardless of an employee's sexual orientation or the sex of an employee's partner. The public policies supporting broad extension of family coverage—providing fair compensation, attracting talent by offering benefits competitive with the marketplace, and reducing the stress inflicted on employees by family health emergencies—apply equally to lesbian and gay public employees like Plaintiffs who have committed same-sex partners.

D. The Effects of the Public Employee Domestic Partner Benefit Restriction Act

73. By designation from the legislature, the Act took immediate effect when Governor Snyder signed it. Under the terms of the Act, coverage is terminated when collective bargaining agreements or contracts that were effective at the time the Act took effect expire, which in some instances is as early as January 1, 2012. Thus, many of Michigan's gay and lesbian public employees, including Plaintiffs, have been stripped or imminently will be stripped of family health care coverage for their domestic partners.

74. Plaintiff public employees are highly skilled and valuable employees, whose job duties and contributions to their workplaces are neither different from nor less valuable than those of their heterosexual married coworkers or of their coworkers who live with another relative qualified under Michigan intestacy law.

75. Each Public Employee Plaintiff seeks to maintain the family health insurance coverage that he or she currently receives and relies upon as an important part of employment compensation. Each Plaintiff established eligibility for such coverage at the time of enrollment and remains eligible at the present time.

E. No Legitimate Governmental Interest Justifies Categorically Barring Localities from Granting Benefits to Domestic Partners

76. No legitimate governmental interest—much less a compelling or important interest—justifies the restrictions imposed by the Domestic Partner Benefit Restriction Act.

77. While proponents of the Act claimed that it would reduce cost to the State, the State will save only negligible costs by barring municipal and local government entities from granting family health benefits to the domestic partners of gay and lesbian public employees. In fact, providing family benefits accessible to gay and lesbian families has numerous financial advantages, in that it allows public employers to attract and keep talented employees. Moreover, retaining such benefits is consistent with Michigan's tradition of nondiscrimination in employment. Not only is the Act disconnected from any valid goals of the State, but it was motivated by prejudice against lesbians and gay men purely because of their sexual orientation and/or the sex of their partners.

78. The Public Employee Domestic Partner Benefit Restriction Act cannot have been motivated by the State's desire to save costs, nor do the claimed cost savings explain the categorical exclusion in the law. First, the costs of domestic partner benefits to public

employers are limited because, among other reasons, the pool of lesbian and gay employees usually is very small, and not all employees in same-sex relationships enroll in such coverage. Further, the Act contains exceptions that will continue to permit public employers' provision of benefits to a wide variety of employees' relatives and to any individuals (regardless of their relationship with the employee) who do not reside with the public employee. These significant omissions belie any contention that the elimination of unmarried partner benefits was merely a cost-reduction measure.

79. An analysis of H.B. 4770 issued by the House Fiscal Agency on June 21, 2011, aggressively assumed that 66% of eligible employees would enroll Other Qualified Adults in their benefits programs. It ignored both the value of the taxes employees currently pay to the State on the benefits at issue and the value that offering family health insurance benefits provides to public employers. This analysis was clearly flawed.

80. A Floor Summary issued by the Senate Fiscal Agency on October 19, 2011, said the bill would result in "an indeterminate amount of savings for the State and local units of government, depending on the number of public employees' domestic partners who would not be eligible for medical and other benefits under the bills, and the cost of the benefits that would not be offered." The summary cited "recent data" from the Civil Service Commission indicating that only 138 employees enrolled "their domestic partners and/or their partners' dependents in the State's Health Care benefits plan." The Commission estimated that the State would save a mere $893,000 in Fiscal Year 2011–2012 were the bill enacted—which is roughly 0.0019% of the State's approximately $47 billion budget for that period. As passed, the law applies to far fewer public employees than its original scope, rendering any cost justification for the bill even more patently phony. Further, the Senate Fiscal Agency's

conservative analysis failed to account for the likelihood that heterosexual couples currently participating in an "Other Qualified Adult" benefits program will marry and thus continue receiving benefits. The numbers offered in this analysis also sharply differ from those shown in the House Fiscal Agency's analysis, indicating that anti-gay animus, rather than concrete and accurate cost data, were the basis for H.B. 4770.

81. Upon information and belief, public employees with same-sex domestic partners comprise a small fraction of Michigan public employees. Additionally, employees receiving health benefits for their same-sex domestic partners are (unlike their colleagues in heterosexual marriages recognized by the State) taxed by the State on the value of those benefits, thus providing the State with additional income tax revenue to offset the costs of those benefits.

82. Public and private employers who offer health benefits to all employees without discrimination achieve a number of economic and business advantages, including the ability to attract talented and highly skilled employees, decrease turnover, and improve employee morale and productivity.

83. In addition to the positive effects it has on recruiting and retaining excellent employees, offering nondiscriminatory health benefits is a core part of employers' commitment to a diverse workforce.

84. In addition, on information and belief, some people who currently receive health coverage through public employers as other eligible adults would otherwise have no access to affordable health insurance and would qualify for publicly funded health care, thereby costing the State additional money.

85. Further, on information and belief, some of the individuals currently receiving health coverage through public employers as other eligible adults or the children of other eligible adults would otherwise go without health insurance or be able to obtain coverage only under plans with fewer covered services, higher co-payments, and/or higher deductibles, which in turn would reduce their access to preventative health care and prompt responsive treatment for health problems, which would ultimately increase the cost of their treatment.

86. Moreover, many of the costs of insuring the domestic partners of public employees are not borne by the State. In many instances, the public employers voluntarily offering these benefits pay for them using locally raised funds; in some cases, the public employees receiving the family benefits pay for them.

87. The Act also permits public employers to provide benefits to a wide range of other family members, including those who can inherit under Michigan's intestacy laws. In addition, the Act bars benefits only for individuals residing in the same household with public employees, allowing public employers, if they so choose, to provide coverage for any individual who does not live with an employee. Given the minimal cost of providing such benefits to gay and lesbian families and the numerous exceptions that permit the governmental entities to continue paying for health benefits for other members of unmarried employees' families, it is clear that the Act is not rationally related to any legitimate interest in cost containment.

88. Because of the positive effects on employee recruitment, retention and morale, and the reduction in costs caused by and to persons forced to go without health insurance, many large and small public employers in Michigan have shown a desire to provide health coverage to a range of other eligible adults, including unmarried partners.

89. Nationally, this type of equal compensation practice has been adopted by increasing numbers of public and private employers. At least twenty-four states and the District of Columbia now offer health benefits to lesbian and gay state employees for their same-sex domestic partners. The majority of Fortune 500 companies offer health benefits to lesbian and gay employees for their same-sex domestic partners.

90. The U.S. Department of Labor's Bureau of Labor Statistics released a report in July 2011 on the number of employers offering unmarried domestic partner benefits.[2] The report found that 33% of state and local government workers and 29% of private sector workers in the United States had access to health care benefits for unmarried domestic partners of the same sex. The report further noted that 33% of state and local government workers and 25% of private sector workers had access to health care benefits for unmarried domestic partners of the *opposite* sex.

91. A number of private employers—who compete with Michigan public employers for talented, skilled employees—extend family health benefits to lesbian and gay employees. Such companies include General Motors, Ford, Chrysler, Dow Chemical, Kellogg, and Whirlpool (all of which are headquartered in Michigan), as well as national employers with presences in Michigan, such as Bank of America, Coca-Cola, MillerCoors, Costco Wholesale, Hilton Hotels, Home Depot, Marriott International, Sears, Target, UPS, Walgreens, and Wells Fargo. In addition to those national companies, dozens of smaller private employers headquartered in Michigan that compete directly with public employers for the most qualified employees offer health benefits to lesbian and gay employees and their families. All of these

[2] The mere fact that the federal government collects and reports this data provides significant evidence of how common it is for employers to extend benefits to their unmarried employees' partners.

private entities have determined that the value of providing benefits to employees' domestic partners exceeds the costs.

92. Michigan itself has declared a commitment to treating gay and lesbian public employees equally. Executive Directive 2003-24, signed by Governor Jennifer M. Granholm on December 23, 2003, prohibits discrimination on the basis of sexual orientation in public employment. The Directive says: "[S]tate employment policies and procedures that encourage non-discriminatory and equal employment practices provide desirable models for the private sector and local governments and build upon successful policies and procedures of private and public sector employees."

93. This commitment notwithstanding, through the Public Employee Domestic Partner Benefit Restriction Act, the State has instituted a policy of discrimination explicitly designed to trump public employers' voluntary provision of equal compensation to their lesbian and gay public employees.

94. The Act also fails to advance any legitimate state interests related to the promotion of marriage. First, the Act does not limit the family members who can receive health insurance benefits to spouses, but allows access to benefits for siblings, parents, uncles, and cousins, among other relatives, as well as allowing benefits to be provided to any individual who does not reside with the public employee. Second, providing family coverage to unmarried employees with long-term partners does not promote marriage as applied to lesbian and gay employees, because the law does not permit lesbian and gay couples to marry in Michigan, and Michigan law forbids the State and its localities from recognizing valid same-sex marriages performed elsewhere (including the marriage of Plaintiffs Bassett and Kennedy).

95. The State's explicit policy of discrimination inflicts significant harm upon Plaintiffs, including depriving them of their constitutional right to equal protection of the law and imposing financial deprivations and emotional distress, all because of their sexual orientation and their sex.

FIRST CLAIM FOR RELIEF

Equal Protection on the Basis of Sexual Orientation and Sex

96. Plaintiffs incorporate by reference all of the foregoing paragraphs as though set forth fully herein.

97. Plaintiffs state this cause of action against Defendant in his official capacity for purposes of seeking declaratory and injunctive relief.

98. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

99. Defendant's conduct violates Plaintiffs' right to equal protection of the laws, and specifically Plaintiffs' right not to be denied equal protection on the basis of their sexual orientation or sex.

100. Defendant denies equal compensation to Public Employee Plaintiffs by prohibiting their employers from voluntarily offering "Other Qualified Adult" health insurance coverage, with no constitutionally adequate reasons for this knowing and intentional prohibition. Defendant's conduct, policies, and practices in limiting public employers' health benefits plans, including in particular Defendant's implementation and enforcement of the Public Employee Domestic Partner Benefit Restriction Act, subjects Plaintiffs to intentionally

differential, adverse, and inferior treatment because of Plaintiffs' sexual orientation and because of each Plaintiff's sex in relation to the sex of his or her committed domestic partner.

101. Certain lesbian and gay public employees and their same-sex domestic partners are excluded from obtaining family health insurance coverage because of their sexual orientation and sex, since the Act restricts public employers from granting family health insurance coverage to any person who lives with the public employee but is not married to the public employee, a dependent of the employee, or eligible to inherit from the employee under Michigan's intestacy laws. Thus, the Act discriminates both facially and as applied against lesbian and gay public employees, including Plaintiffs, based on their sexual orientation and sex.

102. The Act is invalid under any form of constitutional scrutiny because it was enacted for the improper purpose of disadvantaging a specific class, is founded in animus against lesbian and gay Michiganders, and serves no legitimate government interest.

103. Defendant's acts, omissions, policies, and practices alleged herein were—and if not enjoined, will continue to be—committed intentionally and purposefully because of Plaintiffs' sexual orientation and sex in relation to the sex of each one's committed domestic partner.

104. Public Employee Plaintiffs are similarly situated in every relevant respect to the heterosexual public employees who are not barred from receiving benefits under the Act because they can marry under Michigan law, or to employees with any of the multiple family members identified in Michigan's intestacy law who remain eligible for benefits under the Act.

105. Defendant's intentional exclusion of lesbian and gay public employees, including Plaintiffs, from eligibility to provide health insurance for their domestic partners purposefully singles out a minority group that historically has suffered unjust and discriminatory treatment in law and society based on group members' sex and sexual orientation.

106. Defendant's categorical exclusion of Public Employee Plaintiffs from those employees eligible to be granted family coverage based on their sexual orientation and sex is subject to strict or at least intermediate constitutional scrutiny, which Defendant's conduct cannot withstand because it serves no legitimate governmental interests, let alone any important or compelling interests.

107. The categorical bar on granting family health insurance to the class of lesbian and gay public employees with committed same-sex domestic partners violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Defendant has been and is acting under color of state law at all relevant times in his implementation of the Act and his resulting and purposeful violation of Plaintiffs' constitutional rights. Defendant's actions and omissions, and practices and policies, both facially and as applied to Plaintiffs, violate Plaintiffs' constitutional rights to equal treatment without regard to sexual orientation or sex, under the Fourteenth Amendment to the United States Constitution.

108. For the above stated reasons, the Domestic Partner Benefit Restriction Act deprives Plaintiffs of their rights to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States constitution, in violation of 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

Substantive Due Process

109. Plaintiffs incorporate by reference all of the foregoing paragraphs as though set forth fully herein.

110. 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. The above-described conduct by Defendant infringes upon Plaintiffs' fundamental rights and protected liberty interests, and in so doing violates Plaintiffs' right not to be deprived of substantive due process.

111. The Fourteenth Amendment's Due Process Clause has a substantive component that protects against government interference with fundamental rights and protected liberty interests. All Plaintiffs have protected fundamental rights and liberty interests in their private intimate conduct and family relationships with their committed same-sex domestic partners.

112. The Act's categorical denial of eligibility for family coverage to the class of lesbian and gay public employees with committed same-sex domestic partners, coupled with the continued ability to provide family coverage to heterosexual employees' legally recognized spouses, various other dependents and relatives eligible for intestate succession, and individuals who do not live with the employees, and Defendant's conduct and omissions, and policies and practices in connection therewith, selectively, disproportionately, and impermissibly burden Plaintiffs' intimate family relationships and subject Plaintiffs to punishment and penalty based upon Plaintiffs' exercise of their fundamental rights and protected liberty interests without compelling, legitimate, or otherwise adequate reason, in violation of Plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment.

113. The categorical denial of eligibility for family coverage for lesbian and gay public employees with committed same-sex domestic partners, and Defendant's conduct and omissions, and policies and practices in connection therewith, do not satisfy applicable standards for the infringement of Plaintiffs' fundamental rights and liberty interests protected by the Due Process Clause of the Fourteenth Amendment because they are not supported by, do not significantly further, and are not necessary to, any legitimate or important, let alone compelling, governmental interests.

114. The categorical denial of equal compensation in the form of family coverage for lesbian and gay public employees with committed same-sex domestic partners violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Defendant has been and is acting under color of state law at all relevant times in his implementation of the Act and his resulting and purposeful violation of Plaintiffs' constitutional rights. Defendant's intentional and purposeful actions and omissions and practices and policies, both facially and as applied to Plaintiffs, violate Plaintiffs' clearly established constitutional rights, of which a reasonable person would have known, to due process under the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM FOR RELIEF

DECLARATORY AND INJUNCTIVE RELIEF

115. Plaintiffs incorporate by reference all of the foregoing paragraphs as though set forth fully herein.

116. This case presents an actual case or controversy because there is an existing, ongoing, real, and substantial controversy between Plaintiffs and Defendant, who have adverse interests. This controversy is sufficiently immediate, substantial and real to warrant

the issuance of a declaratory judgment because Plaintiffs have been stripped of family coverage.

117. This case is ripe for consideration because it presents issues suitable for an immediate and definitive determination of the legal rights of the parties in this adversarial proceeding, and Plaintiffs will each be subjected to irreparable injury and significant hardship if this dispute is not heard.

118. Plaintiffs' claims are not speculative or hypothetical, but rather involve the validity of a law that was approved and put into force by Defendant Snyder; will apply to each Plaintiff and other lesbian and gay public employees with a committed same-sex partner; will control each Public Employee Plaintiff's ability to continue receiving family coverage for his or her committed same-sex domestic partner; and will deprive Plaintiffs of the constitutional rights pleaded herein.

119. The Act took immediate effect on December 22, 2011. The injury Plaintiffs have suffered and will suffer from the Act's enforcement is real, immediate, actual, concrete and particularized.

120. Plaintiffs seek permanent injunctive relief to protect their constitutional rights and avoid the injuries described above. A favorable decision enjoining Defendant would redress and prevent the irreparable injuries to Plaintiffs identified herein.

121. The irreparable injuries Plaintiffs will suffer absent injunctive relief have no adequate remedy at law or in equity. An injunction is the only way of adequately protecting Plaintiffs from harm because no legal or other equitable remedy could effectively cure or compensate for the invasion of Plaintiffs' constitutional rights, the harm the Plaintiff partners will suffer in the absence of family coverage to address their urgent, ongoing health needs,

and the emotional harms of anxiety about family members and of government-imposed rejection and exclusion of one's family.

122. The burden on the State of allowing public employers affected by the Act to maintain family coverage for their lesbian and gay employees will be minor, given the small number of such employees who are eligible and who have enrolled for family coverage, and the negligible cost of providing the family coverage, whereas the hardship for Plaintiffs of going without access to this insurance coverage is extreme and subjects Plaintiffs to enormous financial hardship and risk of potential catastrophe in the event of a partner's serious illness. The balance of hardships thus tips heavily in favor of Plaintiffs.

123. Declaratory relief under 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 is appropriate, and the standards for injunctive relief under Federal Rule of Civil Procedure 65 are met.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

1. Declaring that the provisions and enforcement by Defendant of the Act, which forbids public employers from offering family coverage to lesbian and gay public employees with a committed same-sex domestic partner, violates Plaintiffs' rights under:

    a. the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and

    b. the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

2. Permanently enjoining enforcement by Defendant of the Act;

3. Awarding Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

4. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

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