

STATE OF NEW YORK
SUPREME COURT MONROE COUNTY

PATRICIA MARTINEZ,

Plaintiff,

COMPLAINT

vs.

THE COUNTY OF MONROE, MONROE
COMMUNITY COLLEGE AND MONROE
COMMUNITY COLLEGE DIRECTOR OF
HUMAN RESOURCES SHERRY
RALSTON, in her Individual and Official
capacity,

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Defendants.

Plaintiff, Patricia Martinez, by her attorney, Jeffrey Wicks, PLLC, for her
Complaint against the defendants, alleges as follows:

INTRODUCTION

1. Plaintiff, Patricia Martinez is an individual who is presently employed by Monroe Community College (hereinafter "MCC"). Plaintiff has been employed at MCC since April 1994. She is also in a loving, long term, committed same sex relationship that has been solemnized in both a marriage in Ontario, Canada and a civil union in the State of Vermont. However, despite the legal status of her relationship with her partner and the language in her employment contract with MCC, MCC has refused to extend health care benefits to Plaintiff's partner.

2. Plaintiff demands equal protection under the law, pursuant to both the New York and United States constitutions, whereby she and her partner should lawfully receive the myriad of benefits, including spousal health benefits,

conferred by a contract of marriage or its equivalent.

THE PARTIES

3. At all times herein alleged, Plaintiff was and is a resident of the County of Monroe, State of New York, currently residing at 23 Stone Barn Road, in the Town of Gates.

4. Upon information and belief, at all times herein alleged, defendant County of Monroe (hereinafter the "County"), was and is a municipal corporation duly organized and existing under the laws of the State of New York, and located in the County of Monroe, State of New York.

5. Upon information and belief, at all times herein alleged, defendant MCC is a unit of the State University of New York, an agency of the State of New York.

6. Upon information and belief, at all times herein alleged, Monroe Community College Director of Human Resources Sherry Ralston was and is a resident of the County of Monroe, State of New York, employed by defendant MCC.

FACTS

7. Plaintiff, a mother of three adult children, has been in a loving, long term, monogamous, committed same sex relationship with her partner, Lisa Ann Golden, since 2000. They own a home together and share financial responsibility for their expenses and for each other's needs. Moreover, they share household duties such as cleaning, cooking, laundry and outdoor chores.

8. To celebrate their relationship on July 5, 2001 the couple entered

into a civil union within the State of Vermont. Said civil union was valid under the laws of the State of Vermont.

9. To celebrate their relationship further, on July 5, 2004, the couple traveled to Ontario, Canada and entered into a marriage. Said marriage was valid under the laws of the Province of Ontario, Canada.

10. Under the laws of the State of Vermont, persons, of the same sex, who enter into a civil union have the same rights and responsibilities as persons, of the opposite sex, who marry within the State of Vermont.

11. Under the laws of the Province of Ontario, Canada, persons of the same sex who marry have the same rights and responsibilities as persons of the opposite sex who marry within Ontario, Canada.

12. Plaintiff and her partner hold themselves out to the public as a married couple and refer to one another as "spouse." Further, they have sought to protect each other, in the event of an emergency or calamity, by drawing up mutual wills, health care proxies and the like, just as many other married couples do.

13. Plaintiff has been employed at MCC since April 1994. Her current position at MCC is a word processing supervisor.

14. MCC is aware of the fact that Plaintiff's relationship with her same sex partner has been solemnized, as set forth above, and Plaintiff has provided MCC with legal documentation thereof.

15. The terms of Plaintiff's employment at MCC are governed by a contract between The Civil Service Employees Association Monroe County

Employee Unit, Local 828 and the County (hereinafter the "CSEA Contract").

Importantly, the CSEA Contract is silent as to whether spousal health benefits or domestic partner health benefits will be provided to employees.

16. Specifically, the CSEA Contract merely states in Article 32 entitled "Health Insurance" that: "Full time employees may, by application, become members of Blue Cross/Blue Shield plan . . ."

17. Pursuant to the CSEA Contract Plaintiff has applied for, received and continues to receive health care benefits through her employment at MCC.

18. Upon information and belief, despite the CSEA Contract's silence as to spousal benefits, MCC and the County have interpreted the CSEA contract to implicitly provide for spousal health care benefits for married couples of the opposite sex. Moreover, upon information and belief, MCC and the County have provided and continue to provide health care benefits to spouses of married couples of the opposite sex for their full time employees.

19. Plaintiff, a full time MCC employee, has repeatedly sought similar health care benefits for her partner through MCC. MCC has repeatedly denied her requests for coverage despite the fact, upon information and belief, that MCC provides these same health care benefits to spouses of its full time employees who are married to an individual of the opposite sex, and that Plaintiff and her same sex partner had their relationship legally solemnized in both the State of Vermont and in Ontario, Canada.

20. In an informal opinion, dated March 3, 2004 (2004 WL 551537 [N.Y.A.G.]), the Attorney General of the State of New York, concluded that: "New

York law presumptively requires that parties to such [civil] unions [solemnized by the State of Vermont] must be treated as spouses for the purposes for New York law." Moreover, the State of New York has recognized solemnized marriages which could not have been solemnized in New York.

21. New York Courts have consistently recognized, under New York common law and the Full Faith and Credit Clause, marriages between individuals of the opposite sex, solemnized in other states that could not be solemnized within the State of New York.

22. New York courts have consistently recognized, under principles of comity, marriages, between individuals of the opposite sex, solemnized in foreign countries that could not be solemnized with the State of New York.

23. Recognition of plaintiff's Vermont civil union would not violate any public policy of the State of New York.

24. Recognition of plaintiff's Ontario marriage would not violate any public policy of the State of New York.

25. Article I, Section 11 of the State of New York Constitution provides: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof."

26. Defendants' failure to recognize Plaintiff's civil union is in violation of Plaintiff's civil rights.

27. The State of New York's choice of law rules require the enforcement of foreign laws governing marriage.

28. Defendants' failure to recognize Plaintiff's Canadian marriage is in

violation of Plaintiff's civil rights.

29. Plaintiff has been harmed by her partner's exclusion from health care benefits routinely provided to the spouses of other married full time MCC employees simply because of the nature of her legally recognized relationship – to an individual of the same sex. Plaintiff seeks nothing more than an order requiring governmental employers, like MCC, to adopt fair and equitable health care policies that will allow individuals in similar same sex relationships to take on the rights and responsibilities that all other New Yorkers in solemnized relationships already have or may seek without constraint.

AS AND FOR A FIRST CAUSE OF ACTION

30. Plaintiff repeats and realleges paragraphs 1-29 as if set forth in full.

31. New York has a long and rich history of giving recognition to marriages, or its legal equivalent, performed outside of this State regardless of whether the union at issue would be permitted under the New York's Domestic Relations Law. Moreover, New York is unique in its history of recognition of such marriages on the grounds of Equal Protection pursuant to Article I, Section 11 of the State of New York Constitution, which provides that: "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof."

32. The only exceptions to said recognition by the State of New York occur where recognition has been expressly prohibited by statute, or the union is abhorrent to New York's public policy. Neither exception is applicable here.

33. By not according plaintiff health benefits, which defendants otherwise make available to employees and their partners in opposite sex marriages, defendants have willfully violated plaintiff's civil rights, as guaranteed by the State of New York pursuant to its Constitution, and the case law of New York.

34. Plaintiff's civil rights, as guaranteed under the Constitution, statutes, common law, and case law of the State of New York were willfully violated by the acts set forth above.

AS AND FOR A SECOND CAUSE OF ACTION

35. Plaintiff repeats and realleges paragraphs 1-34 as if set forth in full.

36. Article 15 of the State of New York's Human Rights Law, as forth in Section 296 of the Executive Law, provides that it is illegal for an employer to discriminate against any individual, in terms of compensation, terms, conditions or privileges, because of sexual orientation.

37. By their refusal to accord plaintiff health benefits, which defendants otherwise make available to employees and their partners in opposite sex marriages, defendants have willfully violated Article 15 of the State of New York's Human Rights Law, as forth in Section 296 of the Executive Law

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. An Order declaring that Defendant's failure to recognize Plaintiff's marriage solemnized in the Province of Ontario, Canada is in violation of Plaintiff's constitutional right pursuant to the State of New York

Constitution and Article 15 of the Human Right's Law;

- B. An Order declaring that Defendants' failure to recognize Plaintiff's civil union solemnized in the State of Vermont is in violation of Plaintiff's constitutional right pursuant to the State of New York Constitution and Article 15 of the Human Right's Law;
- C. Awarding Plaintiff money damages in an amount to be determined at trial for Defendants violations of Article I, Section 11 of the State of New York Constitution because Defendants willfully denied Plaintiff equal protection under the law;
- D. Awarding Plaintiff money damages in an amount to be determined at trial for Defendants violations of Article 15 of the State of New York's Human Rights Law, as forth in Section 296 of the Executive Law;
- E. Awarding Plaintiff the costs and disbursements of this action; and
- F. For such other and further relief as to this Court may seem just and

proper.

DATED: January ____, 2005

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SUMMONS

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YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Monroe County as the place of trial. The basis of venue is residence of Plaintiff. Plaintiff resides at 23 Stone Barn Road, Gates, New York.

DATED: January __, 2005

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