2013 WL 4813529 (D.Ariz.) (Trial Pleading)
United States District Court, D. Arizona.

Joseph R. DIAZ, Beverly Seckinger, Stephen Russell, Deanna Pfleger, and Corey Seemiller, on behalf of themselves and all others similarly situated, Plaintiffs,
v.
Janice K. BREWER, in her official capacity as Governor of the State of Arizona; Brian McNeil, in his official capacity as Director of the Arizona Department of Administration;* and Does 1 through 100, Defendants.

No. CV09-2402-PHX-JWS.
September 9, 2013.

Second Amended Complaint for Injunctive and Declaratory Relief

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Named Plaintiffs Joseph R. Diaz, Beverly Seckinger, Stephen Russell, Deanna Pfleger, and Corey Seemiller file this Complaint against Defendants Janice K. Brewer, Brian McNeil, and Does 1 through 100 (collectively "Defendants"), and allege as follows:

I. INTRODUCTION

1. Named Plaintiffs and Plaintiff Class[1] (collectively "Plaintiffs") are lesbian and gay employees of the State of Arizona (the "State") who seek declaratory and injunctive relief regarding the discriminatory elimination of domestic partner health insurance benefits for those lesbian and gay employees who have a committed same-sex life partner. The elimination of these employee benefits, which are a form of family insurance coverage, from the compensation provided to the State's lesbian and gay employees violates the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983.

2. The State offers valuable employment compensation in the form of family insurance coverage to its heterosexual employees who choose to marry, which includes subsidized participation of State employees' spouses and spouses' qualifying children (also referred to herein as "immediate family members") in the State's employee group health plans.

3. In 2008, the State adopted a regulation that provided similar compensation for lesbian and gay employees in the form of similar family coverage for State employees with a committed same-sex life partner.

4. On September 4, 2009, Defendant Arizona Governor Janice K. Brewer reviewed, approved, and signed House Bill 2013 ("H.B. 2013"), a budget enactment that includes a statutory provision ("Section O") eliminating family coverage for lesbian and gay State employees by limiting such family coverage to "spouses," a status that Arizona has restricted to different-sex life partners only. As detailed further below, duly authorized State officials announced that Section O would apply and have

this effect on January 1, 2011, but have been preliminarily enjoined from enforcing Section O since July 23, 2010, pursuant to this Court's order at Docket No. 47.

5. Named Plaintiffs are lesbian or gay State employees each of whom currently receives family coverage for his or her committed same-sex life partner, or life partner's child. Plaintiff Class are lesbian or gay State employees who are currently eligible or may become eligible in the future to receive family coverage. The selective withdrawal of family coverage from lesbian and gay State employees-while leaving family coverage intact for heterosexual State employees with a legally recognized spouse-will deny each Plaintiff equal compensation for equal work and discriminatorily inflict upon each Plaintiff and his or her family members anxiety, stress, risk of untreated or inadequately treated health problems, and potentially ruinous financial burdens.

6. Named Plaintiffs will lose health insurance coverage for their committed life partners who need ongoing care for diabetes, high blood pressure, and asthma, among other chronic conditions. Certain Named Plaintiffs will lose family coverage for committed life partners who presently are healthy but have had serious illnesses in the past, or who fear future illness and lack the means to purchase individual insurance coverage. One Named Plaintiff will lose access to coverage for the child she co-parents with her committed life partner, who is the child's biological mother.

7. Plaintiffs will suffer these harms based on their sexual orientation and their sex in relation to the sex of their committed life partner because the State has enacted legislation that intentionally eliminates family health insurance for lesbian and gay State employees and not heterosexual employees. As a result of the adoption and enforcement of Section O, heterosexual State employees continue to have a way of obtaining family health insurance but the only way lesbian and gay State employees have had to obtain that insurance has been eliminated. The adoption and enforcement of Section O provides that Plaintiffs' heterosexual co-workers will receive privileged treatment-- including protection against health-related anxiety, stress, medical risk and financial hardship-based on their sexual orientation and their sex in relation to that of their committed life partners because they are offered a way to qualify immediate family members for health insurance and Plaintiffs are not.

8. There is no legitimate, let alone important or compelling, governmental interest to justify compensating lesbian and gay State employees, including Plaintiffs, unequally by denying any means to qualify immediate family members for health insurance.

9. With regard to the workplace, Plaintiffs and their same-sex life partners are similarly situated in every relevant respect to their heterosexual co-workers with different-sex life partners who are provided a way of obtaining family health insurance coverage and who, if they avail themselves of that benefit, are provided it as part of their employment compensation.

10. Plaintiffs' employment is no less demanding, and their service to the public no less valuable, than that of their heterosexual co-workers with the same jobs who, unlike Plaintiffs, are provided a way of obtaining family health insurance coverage and, if they avail themselves of that benefit, will continue to receive family coverage as part of their compensation.

11. By denying Plaintiffs any way to qualify for family coverage upon the effective date of Section O, Defendants subject Plaintiffs to irreparable harm in the form of increased medical risks, emotional injuries, potentially ruinous financial costs, and a stigmatizing government label of inferiority imposed on each of them and all other lesbian and gay State employees, all as described below, without any adequate governmental justification.

II. PARTIES

A. Named Plaintiffs

12. Named Plaintiff Joseph R. Diaz is employed by the State as an Associate Librarian at the University of Arizona ("U of A"). Diaz is a resident of Tucson, Arizona.

13. Named Plaintiff Beverly Seckinger is employed by the State as a Professor of Film & Television in the School of Theatre, Film & Television, and the Head of the Film Production Division at U of A. Seckinger is a resident of Tucson, Arizona.

14. Named Plaintiff Stephen Russell is employed by the State as a professor, Fitch Nesbitt Endowed Chair in Family and Consumer Sciences in the John & Doris Norton School of Family and Consumer Sciences, Director of the Frances McClelland Institute for Children, Youth, & Families, and Interim Director of the Norton School of Family and Consumer Sciences at U of A. Russell is a resident of Tucson, Arizona.

15. Named Plaintiff Deanna Pfleger is employed by the State as a peace officer and presently serves as a Wildlife Manager III for the Arizona Game and Fish Department. Pfleger is a resident of Lake Havasu City, Arizona.

16. Named Plaintiff Corey Seemiller is employed by the State as the Director of Leadership Programs at U of A. Seemiller is a resident of Tucson, Arizona.

B. Defendants

17. Defendant Janice K. Brewer is sued in her official capacity as Governor of the State. Governor Brewer 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. As Governor, she 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. As Governor, she also is charged to supervise the official conduct of all executive and ministerial officers, and to ensure that all offices are filled and all duties performed. Defendant Brewer reviewed and approved Section O. She was and is directly responsible for the implementation and enforcement of Section O.

18. Defendant Brian McNeil is sued in his official capacity as Director of the Arizona Department of Administration ("the Department"). Defendant McNeil 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. As Director of the Department, Defendant McNeil is responsible for the direction, operation and control of the Department and is responsible to the Governor for the direction, control and operation of the Department. Defendant McNeil formulates policies and programs to assess, plan and effectuate the missions and purposes of the Department. He also makes contracts and incurs obligations to carry out the Department's activities and operations, which will include direct responsibility to implement and enforce Section O's termination of domestic partner benefits for lesbian and gay State employees with a same-sex life partner.

19. Plaintiffs are unaware of the true names of those Defendants named herein as Does 1 through 100 inclusive, and hereby seek leave of this Court to allege their true identities after they have been discovered, as though they had been correctly identified herein.

20. Each of the Defendants intentionally performed, participated in, aided and/or abetted in some manner the acts averred herein, proximately caused the harm averred herein, and will injure Plaintiffs irreparably if not enjoined.

III. JURISDICTION AND VENUE

21. 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.

22. 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.

23. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendants reside within the District of Arizona and a substantial part of the events that gave rise to Plaintiffs' claims took place within the District of Arizona.

24. 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.

25. This Court has personal jurisdiction over Defendants because they are residents of the State.

IV. FACTS

A. The State Has Adopted A Discriminatory Employment Compensation System To Deny Family Coverage To Lesbian and Gay State Employees Who Are Similarly Situated To Heterosexual State Employees In All Material Respects.

26. Article 30 § 1 of the Arizona Constitution prevents lesbians and gay men from entering into a civil marriage in the State with a committed same-sex life partner and prohibits the State from honoring a civil marriage validly entered by a committed same-sex couple in another jurisdiction.

27. Article 30 § 1 does not prevent the State from providing family coverage to lesbian and gay employees, nor does it authorize employment discrimination based on sexual orientation or a person's sex in relation to his or her life partner's sex.

28. As part of the State's personnel compensation system, the State provides its heterosexual employees the ability to obtain certain valuable family health benefits, including subsidized access for an employee's different-sex spouse and qualifying children to health care coverage through the health benefits plans offered by the State to its employees.

29. Arizona Administrative Code § R2-5-101 (the "benefits regulation") was amended in 2008 to provide, *inter alia,* lesbian and gay State employees, who had previously been denied access to family coverage, with the ability to obtain subsidized access for a committed same-sex life partner and the partner's qualifying children, and thereby to obtain employment compensation equal to their heterosexual coworkers, if the lesbian or gay employee and her or his life partner satisfied rigorous standards of proof of financial interdependence.

30. Section (22)(a)-(j) of the benefits regulation provided that to qualify for family coverage, an employee must have a committed life partner who:
a. Shares the employee's permanent residence;

b. Has resided with the employee continuously for at least 12 months and is expected to continue to reside with the employee indefinitely;

c. Does not have any other domestic partner or spouse, has not signed a declaration of domestic partnership with any other person, and has not had another domestic partner within the prior 12 months;

d. Is not a blood relative any closer than would prohibit marriage in Arizona;

e. Was mentally competent and of legal age to consent to contract when the domestic partnership began, is not acting under fraud or duress in accepting benefits; and

f. Is financially interdependent with the employee as demonstrated, for example, through joint ownership of real property or significant personal property; joint credit or bank accounts; shared debt; beneficiary designations on life insurance or retirement annuities; and written agreements to assume financial responsibility for each other.

31. Each Named Plaintiff has previously enrolled his or her domestic partner, or partner's qualifying child, for family coverage during an open enrollment period. Each Named Plaintiff and his or her domestic partner, or partner's qualifying child, met the eligibility requirements for family coverage at the time of enrollment and continues to meet those requirements.

32. Shortly after Defendant Brewer assumed the office of Governor, the State repealed the benefits regulation, effective March 7, 2009, although that did not affect the terms of the 2009 benefits plan year for which employees already had enrolled.

33. On August 20, 2009, the Arizona House of Representatives transmitted H.B. 2013 to Defendant Brewer for review, consideration and approval or rejection in her capacity as the Governor of Arizona. [A true and correct copy of House Bill 2013 is attached as Exhibit A.] H.B. 2013, amended, *inter alia,* A.R.S. § 38-651, the statute that authorizes the Department to procure health and accident coverage for State employees and their qualifying dependents. H.B. 2013 added to A.R.S. § 38-651 a section "O," which provides that, "For the purposes of this section" the term " 'dependent' means a spouse under the laws of this state." Defendant Brewer reviewed, approved and then signed H.B. 2013 on September 4, 2009.

34. The purpose and effect of Section O's restriction of family coverage to a "spouse" is to eliminate family coverage for lesbian and gay State employees with a committed same-sex life partner and qualifying children of that partner. While the benefits regulation allowed employees to receive coverage for either a same- or different-sex domestic partner, and Section O also eliminated coverage for heterosexual employees with an unmarried different-sex domestic partner, the law does not discriminatorily preclude these heterosexual employees ever from qualifying for family coverage in the future. But unlike their heterosexual co-workers who are in different-sex partnerships and can marry, lesbian and gay State employees with a same-sex life partner are entirely precluded from obtaining family coverage because Section O limits the ability to get such coverage to those who have a spouse, which excludes lesbians and gay men because current Arizona law does not allow same-sex couples to marry in the State and, if validly married in another state or country, requires that they be treated as unmarried.

35. Section O reverses the State's policy of offering equal compensation in the form of family coverage to lesbian and gay State employees with a committed same-sex life partner.

36. The State's exclusion of its lesbian and gay employees from access to family coverage denies those employees, including Plaintiffs, valuable and equal compensation because of each Plaintiff's sexual orientation and sex in relation to his or her committed life partner.

37. The public policies underlying the State's employment benefits-such as fair compensation and reducing the stress employees undergo during family health emergencies and other family crises--are equally applicable to lesbian and gay State employees who have made a life commitment to a same-sex life partner, including Named Plaintiffs, who have demonstrated the binding and committed, financially interdependent nature of their family partnerships by satisfying the State's criteria for proving an eligible domestic partnership. It does not further these state public policies, and in fact undermines them, for the State to provide only heterosexual State employees who have a different-sex life partner with a way of qualifying for family benefits, and to provide lesbian and gay State employees with a same-sex life partner no way to do so.

38. Section O specified an intended effective date of October 1, 2009. On September 25, 2009 the Department announced on its website that "[b]ased on advice from the Office of the Attorney General" the Department would recognize November 24, 2009 as the effective date for the statute. The Department's announcement also provided that, "[a]ny benefit that has been earned and vested through November 24, 2009, is not subject to being taken away retroactively to October 1, 2009." The announcement stated that, "[o]ther questions raised by H.B. 2013, such as the definition of dependent and its applicability after November 24, 2009, are still under review," and that further information would be posted on the Department's website after the review was complete. [A true and correct copy of the Department's September 25, 2009 statement is attached as Exhibit B.]

39. On October 9, 2009 the Department posted another announcement stating that, "[b]ased upon legal advice from the Office of the Attorney General, the definition of 'dependent' for the State insurance plan year beginning October 1, 2009 is not affected by H.B. 2013 because any interpretation to the contrary would impair the lawful contract expectations of state employees in violation of the Arizona Constitution. The definition of 'dependent' currently in place will remain effective through September 30, 2010. Please note the definition of dependent defined in H.B. 2013 will apply as of October 1, 2010." (emphasis in original). [A true and correct copy of the Department's October 9, 2009 statement is attached as Exhibit C.]

40. Given the ongoing uncertainty about Section O's implementation date, Named Plaintiffs sought a preliminary injunction order enjoining Defendants' enforcement of Section O, which this Court granted on July 23, 2010.

B. Named Plaintiffs Are Similarly Situated To Heterosexual State Employees In All Material Respects And Are Injured By The Discriminatory Elimination Of Their Family Health Insurance Benefits.

41. Named Plaintiffs are highly skilled and valuable State employees whose job duties are neither different from their heterosexual co-workers nor reduced due to their sexual orientation or marital status.

42. Each Named Plaintiff seeks to maintain or restore the family coverage for his or her immediate family members that he or she currently receives or previously received and relies upon as an important part of employment compensation. Each Named Plaintiff established eligibility for such family coverage at the time of enrollment, and remains eligible at the present time. Each Named Plaintiff authorized continued pay check deductions for his or her portion of the health plan premiums, with the intent and desire to continue contributing to and receiving family coverage.

1. Named Plaintiff Joseph R. Diaz.

43. Named Plaintiff Joseph R. Diaz ("Joseph") is an Associate Librarian at U of A, where he has worked since June 1992.

44. Joseph's life partner is Ruben E. Jiménez ("Ruben"). They have spent more than 20 years together as a committed, loving couple and would marry if permitted by Arizona law.

45. Joseph and Ruben have intertwined all of their finances and taken steps to protect each other in the event of a crisis. They hold their checking and savings accounts jointly, and own their house as joint tenants with a right of survivorship. They have named each other as the primary beneficiary in their wills and on their retirement accounts, and as the agent in their durable health care powers of attorney. Joseph and Ruben have supported each other emotionally and financially throughout life's challenges and have exchanged promises to continue to do so throughout the rest of their lives together.

46. When U of A began offering family coverage to lesbian and gay employees in 2008, Joseph enrolled Ruben for family coverage. Ruben then was able to leave his low-wage job with health benefits for a better-paying position without such benefits. It is essential that Joseph and Ruben have insurance coverage for Ruben because he has high cholesterol and Type 2 diabetes, a chronic, lifelong disease. Ruben requires daily medication and testing strips which would cost approximately $300.00 a month out-of-pocket, far more than Ruben's current co-pay through Joseph's family coverage.

47. Joseph and Ruben have investigated whether Ruben will be eligible to receive health coverage through the Arizona Health Care Cost Containment System ("AHCCCS") Medicaid program when Joseph's family coverage is eliminated. They are anxious about having to rely on this less desirable alternative given the ongoing uncertainty that always surrounds such coverage, such as the State's decision in 2011 to freeze access for new childless adult applicants such as Ruben. Even if Ruben could apply for coverage, however, his average monthly income is too high to allow him to qualify based on current eligibility rates.

48. Joseph and Ruben have consulted with a private insurance agent to ascertain whether they will be able to purchase a private insurance plan for Ruben. The agent has informed them that she could not locate any individual insurance plans in Arizona that would cover a person like Ruben with diabetes and high cholesterol.

49. The threat of losing coverage for Ruben through Joseph's State employment places this couple under tremendous pressure and stress. They would be spared this anxiety and the risk of severe financial hardship if Joseph could remain eligible for the same compensation as his heterosexual colleagues, including continued family coverage.

2. Named Plaintiff Beverly Seckinger.

50. Named Plaintiff Beverly Seckinger ("Beverly") is a Professor of Film & Television in the School of Theatre, Film & Television, and the Head of the Film Production Division at U of A, where she has worked since 1991. Beverly is 53 years old.

51. Beverly's beloved life partner is Susan Taunton ("Susan"), who is 59 years old.

52. Beverly and Susan have been in an exclusive, committed relationship for more than 25 years. They own their home together as joint tenants with rights of survivorship. Beverly has named Susan as the beneficiary of Beverly's retirement and life insurance accounts; Susan has not named Beverly as the beneficiary of such accounts only because she has none. The couple shares joint responsibility for their utility and car insurance bills.

53. Beverly and Susan registered as domestic partners with the City of Tucson in October 2005. If the State restricted family coverage to married employees and allowed same-sex couples to marry, Beverly and Susan promptly would do so.

54. When family coverage for lesbian and gay State employees became available in 2008, Beverly immediately enrolled Susan. The ability to obtain health insurance for Susan was an enormous relief for the couple because Susan suffers from acute asthma. She did not have health coverage when the couple moved to Arizona, and had a life-threatening asthma attack during that time. Susan needs medical coverage to manage the risk of similar attacks and regular doctor's appointments to maintain her prescriptions. The cost of this medical care is less expensive through Beverly's family coverage than if the couple had to pay out-of-pocket.

55. Susan also had a breast cancer scare in 2002. The health insurance she had as a graduate student covered much of the cost of the biopsy and related care. Susan had a similar episode in 2005 when she was uninsured. Although the condition again was benign, that experience reinforced to Beverly and Susan how vulnerable they would be without insurance coverage if Susan were to become seriously ill.

56. Susan is self-employed as a freelance website designer, and thus does not have access to health insurance through her employment.

57. Beverly has researched private insurance options for Susan multiple times. The private insurers Beverly contacted consistently have refused to insure Susan. When Beverly last checked, a private insurer informed Beverly that even if the insurer would cover Susan, which it would not guarantee, the cost would range from $700.00 a month for a $250.00 deductible, to $318.00 a month for a $3,000.00 deductible. Beverly's current plan has no deductible.

58. Susan previously qualified for medical coverage through AHCCCS but the couple worries about having Susan rely on an uncertain source of insurance that is inferior to the State's health coverage. Beverly and Susan strongly prefer to maintain family coverage through Beverly's employment at U of A because the quality of coverage and care are better, and because they take pride in contributing to the cost of their care as Beverly currently does by paying a portion of the premium each month. Beverly is insulted and frustrated that she must explore coverage for her life partner through the State's AHCCCS

program when her heterosexual co-workers have a secure option for protecting their immediate family members.

59. Beverly feels deeply rooted in Arizona, having lived in the state for more than 25 years. Prior to the change required by Section O, Beverly had not considered uprooting her life and disrupting her commitment to U of A. But she now worries that she will have no choice but to seek employment elsewhere if she cannot maintain her family coverage for Susan.

3. Named Plaintiff Stephen Russell.

60. Named Plaintiff Stephen Russell ("Stephen") is a professor, Fitch Nesbitt Endowed Chair in Family and Consumer Sciences in the John & Doris Norton School of Family and Consumer Sciences, Director of the Frances McClelland Institute for Children, Youth, & Families, and Interim Director of the Norton School of Family and Consumer Sciences at U of A. Stephen was actively recruited by U of A, and has been a dedicated and valuable employee since he joined the institution's faculty in 2004. Stephen has secured $5 million in federal contracts and research grants, and over $1 million in private gifts for U of A. Stephen's fundraising not only supports his own research, but also helps to support the work of multiple graduate students, postdoctoral scholars, and university staff. Stephen is 46 years old.

61. Stephen has formed a committed relationship with his beloved partner, William Scott Neeley ("Scott"), who is a self-employed architect and does not have health insurance coverage through his employment. Scott is 58 years old.

62. Stephen and Scott met in 1993 and within a year were sharing a home as loving, committed partners. After Stephen began teaching at the University of California, Davis in 1999, the couple registered as domestic partners with the State of California as soon as that status became available in 2000. The couple has assumed, through their state domestic partnership registration, the same rights and responsibilities as spouses under California law, including duties of financial support for each other.

63. Stephen and Scott celebrated their tenth anniversary on April 2, 2003 with their friends and family from across the country, and have considered the event to have been a public recognition of their life commitment. Each partner feels fortunate to have been warmly embraced by the other's family, and when both of Scott's parents passed away, Stephen was included as a full participant in the family grieving process. In April, the couple celebrated twenty years of loving commitment, and look forward to their next twenty years together. Stephen and Scott would marry each other if the State permitted them to do so.

64. Stephen and Scott have been completely financially intertwined since they began living together in 1994. As the income from Scott's self-owned architecture business fluctuated over the years, Stephen supported the couple with his academic salary when Scott earned less. Every home the couple has owned during their relationship has been jointly titled. They have joint bank accounts, and each has named the other as the beneficiary of his retirement account. When the couple moved to Arizona, they retained an attorney to prepare agreements to protect their relationship. Stephen and Scott have named each other as the primary beneficiary in each of their wills and appointed each other to make medical decisions in case of incapacity.

65. Stephen and Scott are raising a teenage boy who joined their family in January of 2009 after suffering years of abuse and neglect.

66. In July of 2009, Scott discovered blood in his urine and needed urology care and tests to assess the possibility of prostate cancer. Having undergone a number of tests, Scott was relieved to learn that his symptoms have a benign cause, but the episode has reminded the couple of how vulnerable they would be if Scott were to contract a serious illness without health insurance coverage.

67. Stephen and Scott previously purchased an individual insurance policy for Scott, but as of fall 2008, the couple paid approximately $500.00 a month for a plan that offered only catastrophic coverage. Stephen accepted the position with U of A

in significant part because, when he was being recruited, the university actively was pursuing family coverage for employees with a committed same-sex partner.

4. Named Plaintiff Deanna Pfleger.

68. Named Plaintiff Deanna Pfleger ("Deanna"), who is 47 years old, has been a dedicated employee of Arizona's Game and Fish Department for more than 20 years.

69. Deanna is a State peace officer who currently serves as a Wildlife Manager III. She has a Bachelor of Science degree in Wildlife Biology, has had police officer training and certification, and has received additional training and is commissioned as a Game Ranger. Deanna's certification authorizes her to enforce all Arizona laws, including the criminal code, but her primary responsibility is to enforce Arizona's game and fish laws. Deanna also works as a wildlife biologist for the State. Her responsibilities include, for example, patrolling waterways, ensuring that people hunt only within legal limits, helping to execute search warrants, and monitoring species' populations for permitting recommendations.

70. Deanna's job often requires her to work in isolation with her nearest neighboring wardens at least an hour-and-a-half away. Both Deanna and her life partner are aware that, if Deanna were to be injured during her work, she would not have immediate assistance and would need back-up from another agency. Deanna faces particular risks when working at night to prevent poaching and illegal hunting, and when doing wildlife survey work by helicopter at low altitude and low speeds.

71. Deanna is in a committed, loving relationship with Mia LaBarbara ("Mia"), and the couple celebrated their twenty-third anniversary on Valentine's Day in 2013. Mia is 46 years old.

72. Deanna and Mia have two children, aged 14 and 11, that they planned for and are raising together as equal co-parents.

73. Deanna and Mia have always wanted to marry each other and recently were able to fulfill that dream in California. Over their more than 20 years together, the couple has become completely interdependent emotionally and financially. They have each nursed each other through illnesses, including surgery and Deanna's hospitalization after a car accident.

74. Deanna and Mia contribute jointly to their household expenses, and they have supported each other financially. Deanna and Mia are both named on the title and the mortgage for their home. They maintain a joint car insurance policy, and joint checking and savings accounts. Each has named the other as the beneficiary of her retirement account. Recognizing the risk inherent in her work, Deanna has purchased additional life insurance to help provide for the family, and Mia is named as the primary beneficiary. Deanna and Mia have prepared agreements and other legal documents to protect their family, and they have each named the other as the primary beneficiary in their wills, and as each other's representative for health care decisions. Deanna, the biological mother of the couple's two children, has named Mia as the guardian of both children in her will.

75. Mia had worked for more than 12 years as a Regional Interpretive Planner with the Interpretive Education Department of the Arizona State Parks, until she was laid off in October of 2009. Mia currently works as a seasonal Park Ranger with limited hours that do not qualify her for health insurance.

76. Mia is likely to have difficulty qualifying for coverage through AHCCCS because it appears that her part-time salary exceeds the income eligibility requirements. After Section O was enacted, Deanna researched the cost of insuring Mia through a private health insurance plan but was informed that the least expensive plan, for a $64.00 monthly premium, would come with a $14,000.00 deductible. The plan with the lowest deductible, of $3,000.00, would cost the couple $171.00 per month, an amount this family of four can ill afford now that Mia is only employed part-time. The family coverage Deanna receives through her employment carries no deductible. Far more frightening for the couple, Deanna has learned that Mia's diagnosis of high blood pressure means that her application for private insurance would not even be considered by at least some insurers.

77. The enactment of Section O came at a particularly stressful time for the couple. Mia began experiencing significant abdominal pain in spring of 2009, which required undergoing numerous tests. In July of 2009 Mia had an episode so acute that she required treatment from an emergency room.

78. During the course of her tests, Mia's doctor came to suspect that she may have had ovarian cancer. While she was not ultimately diagnosed with cancer, Mia has since had both ovaries removed at her doctor's recommendation to guard against that risk. Deanna and Mia are particularly worried about this development because Mia previously was diagnosed as being at heightened risk for colon cancer. Mia requires a colonoscopy to monitor her condition every three to five years, which would cost approximately $3,500.00 out-of-pocket, far more than the $50.00 co-pay under Deanna's family coverage.

79. Deanna and Mia find the prospect of coping with the need for ongoing cancer screening and the possibility of a cancer diagnosis, all without family coverage, to be extremely stressful and threatening medically, emotionally and financially.

80. Upon information and belief, allowing Deanna to continue receiving family coverage through the family plan would not cost the State any additional amount in insurance premiums. Deanna already purchases a "family plan" that covers Deanna and her two biological children. Upon information and belief, there is no additional cost, for either the employee or the State, to include an additional family member to that plan.

5. Named Plaintiff Corey Seemiller.

81. Named Plaintiff Corey Seemiller ("Corey") is the Director of Leadership Programs at the U of A, and she has worked full-time for the university since July of 2002. Corey oversees U of A's leadership courses and Minor in Leadership Studies and Practice; the Arizona Blue Chip Program, a four-year leadership program that serves 450 students; the ATLAS Leadership Program, a workshop-based program that serves 500 students; and several other conferences, retreats, trainings, and programs that serve more than 7,000 students annually. Corey has a unique and specialized knowledge of U of A's leadership programming because she has designed 17 of U of A's leadership courses housed in the College of Education, and the university is now relying on her specialized expertise to coordinate and instruct in the Minor in Leadership Studies and Practice. Corey is 39 years old.

82. Corey's committed life partner is Karrie Mitchell ("Karrie"). Karrie is a counselor at Pima Community College, and is 37 years old.

83. Corey and Karrie have been a loving, committed couple since June of 2002, and have made a life-long pledge to care for and support each other. They registered as domestic partners with the County of Pima on April 16, 2004, followed by a commitment ceremony to celebrate with family and friends. Corey and Karrie would marry each other if the State permitted them to do so.

84. Corey and Karrie have blended their financial assets and responsibilities and are completely interdependent financially. The couple has jointly owned their home since 2003, and jointly purchased an investment property in 2012. They maintain joint checking and savings accounts as well as a joint investment account for their daughter's college fund. They treat all of their household expenses as mutual. They have each purchased life insurance and named the other as the beneficiary. The couple has executed power of attorney forms authorizing each other to make medical and financial decisions in the event of the other's incapacity and created a trust together.

85. Corey and Karrie have a four-year-old daughter, K.S.M. The couple planned every aspect of Karrie's pregnancy together and they have equally parented K.S.M. since she was born.

86. Karrie is the biological mother of K.S.M. Because Corey and Karrie were advised that Arizona's statutes currently do not permit a lesbian or gay co-parent to adopt a child without terminating the existing legal parent's rights, Corey has been

unable to secure her relationship to K.S.M. through adoption. Corey and Karrie accordingly have taken additional life planning steps to provide as much security as possible to their child, including executing a co-parenting agreement and a power of attorney document that allows Corey to make decisions about K.S.M.'s medical care and education, and creating a trust so that K.S.M. is financially provided for in the event that either Corey or Karrie passes away.

87. When K.S.M. was born, the couple initially enrolled her to receive health coverage through Karrie's employment, but quickly realized that the $278.52 monthly premium was unaffordable for them. Because Corey was allowed to provide family coverage to the child of her qualifying domestic partner, Corey was able to enroll K.S.M. for family coverage through U of A for a premium of $68.00 per month, which relieved the couple of an enormous financial burden. To secure the coverage for K.S.M., Corey had to submit an affidavit of domestic partnership and supporting documentation on the same terms as other State employees seeking family coverage for a committed same-sex life partner. Because Corey and Karrie continue to meet the eligibility criteria for family coverage, K.S.M. remains eligible for family coverage as a child of Corey's domestic partner.

88. Corey and Karrie were extremely worried after H.B. 2013 was approved and signed by Defendant Brewer that the designated October 1, 2009 effective date for Section O would leave K.S.M. without health coverage unless they acted quickly to secure alternative insurance. Before the Department announced that it would recognize November 24, 2009 as the effective date for H.B. 2013, the couple arranged coverage for K.S.M. through Karrie's employment based on the qualifying life event of K.S.M.'s expected loss of insurance, and accordingly they did not re-enroll K.S.M. for family coverage during Corey's open enrollment period. The couple now pays approximately $300.00 per month for K.S.M.'s health care, significantly more than the approximately $60.00 the couple would pay through the plan Corey would choose for K.S.M. today.

89. Corey and Karrie continue to pay these premiums for K.S.M.'s coverage because of the uncertainty surrounding future access to the coverage. The State has posted warnings on its website that "same-sex domestic partners are ADVISED and CAUTIONED that the preliminary injunction possibly could be lifted" in this case, and in that event the State "reserves the right to immediately discontinue offering benefits to qualified same-sex domestic partners." *See* http://benefitoptions.az.gov/bsd% 20eligibility3.html (emphasis in original). Corey and Karrie thus must shoulder the stressful burden of higher healthcare costs to ensure that their daughter is not vulnerable to a potential loss of coverage.

90. These circumstances have placed Corey and her family under significant stress that her heterosexual colleagues do not face because they can insure the qualifying child of a spouse. While Corey previously has supplemented the couple's income with consulting work and adjunct teaching in the evenings, she felt pressed to take on many more consulting and evening teaching duties to help pay for K.S.M.'s health insurance. Given Corey's full-time job at U of A, these additional duties are exhausting and deprive Corey of time she otherwise would spend at home with her family.

C. No Adequate Governmental Interests Exist To Justify The State's Discriminatory Employment Compensation System.

91. Public and private employers who offer family coverage on nondiscriminatory grounds to all employees achieve a number of economic and business advantages, including the ability to attract more talented and highly skilled employees, decrease turnover, and improve employee morale and productivity.

92. In addition to the positive effects on recruitment and retention of excellent employees, many employers offer nondiscriminatory family benefits as a core part of their commitment to a diverse workforce. That the State has shared this interest in its role as an employer is evidenced by former Governor Napolitano's Executive Order No. 2003-22 prohibiting discrimination in State employment based on sexual orientation.

93. Providing equal family coverage to lesbian and gay State employees not only fosters the important goal of diversity but allows major State employers to compete for and retain talented, trained employees.

94. The costs of domestic partner benefits to employers generally 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 for domestic partner benefits.

95. Alan Ecker, a spokesperson for the Department, reported in December of 2012 that 230 active lesbian and gay State employees were receiving domestic partner health coverage. Upon information and belief, that figure was approximately the same for 2011, when the Department reported around 128,000 total members in the State's health plan in its 2011 Annual Report. In 2011, domestic partners thus constituted approximately 0.0017% of the State's health plan members, or less than two-tenths of one percent. Upon information and belief, offering this important benefit to the small pool of lesbian and gay State employees who otherwise are categorically barred from family coverage because they cannot marry causes only negligible costs for the State.

96. Upon information and belief, the minimal costs of offering family coverage to lesbian and gay State employees is offset by the resulting reduced use of AHCCCS, which is more costly on average to the State than allowing employees to share the cost of their health insurance by paying a portion of the premium for family coverage. Additionally, employees receiving family coverage for a same-sex life partner are taxed by the State on the value of those benefits, unlike their heterosexual counterparts, providing the State with additional income tax revenue.

97. Public employers in Arizona have confirmed the lack of disproportionate costs of domestic partner health coverage, the related cost-savings, and the positive effects on employee retention and positive morale. Municipal employers in Arizona now offering family coverage to their lesbian and gay employees include Pima County and the Cities of Phoenix, Tempe, Scottsdale, and Tucson. Nationally, this equal compensation practice has been adopted by increasing numbers of public and private employers. At least 20 other states and the District of Columbia now offer family coverage to lesbian and gay state employees. More than eighty percent of the Fortune 100 companies offer family coverage to lesbian and gay employees, as do more than sixty percent of the Fortune 500 companies.

98. Many major private employers who compete with the State for talented, skilled employees now offer family coverage to lesbian and gay employees. A representative sampling of such companies includes American Express, Bank One, Bank of America, Banner Health Systems, Costco Wholesale, Cox Communications, Gannett, Hilton Hotels, Home Depot, Honeywell, IBM, Intel, Intuit, Marriott International, Medtronic, Morgan Stanley, Motorola, Qwest, Raytheon, Sears, Target, Texas Instruments, UPS, Walgreen's and Wells Fargo. In addition to those national companies, dozens of private employers headquartered in Arizona that compete directly with the State for the most qualified employees offer family coverage to lesbian and gay employees. Among the twelve universities participating in the Pacific 12-Conference (a college athletic conference that operates in the western United States), Arizona State University and U of A would be the only two universities to not offer domestic partner benefits to lesbian and gay employees. Moreover, the top 10 universities ranked by U.S. News and World Report all offer domestic partner benefits, as do all Ivy League schools.

99. Section O was adopted to withdraw equal treatment from lesbian and gay State employees, including Plaintiffs, and to exclude such employees and to deem them and their families unworthy of concern and protection based on their sexual orientation and sex in relation to their respective life partner's sex.

100. Although government may have a valid interest in cost containment, it may not pursue that interest by making invidiously discriminatory distinctions between classes of its citizens and offering valuable benefits to some, while selectively withholding those benefits from others, such as Plaintiffs here, without adequate justification for that differential treatment.

101. Although government may have a valid interest in preventing fraud in its benefits programs, the State's domestic partner benefits program has had rigorous eligibility criteria that limit family coverage to employees in financially interdependent, committed relationships. No disproportionate fraud exists to justify the State's discriminatory withdrawal of valuable family coverage from lesbian and gay employees with a same-sex life partner while continuing such coverage for heterosexual employees who marry.

102. The State's explicit policy of discrimination inflicts significant harm upon Plaintiffs, including depriving them of their constitutional right to equally respectful treatment and protection, imposing financial deprivations and emotional distress, and sending a strong message of stigma and devaluation of Plaintiffs, all because of their sexual orientation and their sex in relation to the sex of their committed life partner.

103. Employment benefits provided to employees routinely are valued at between one-fifth and one-third of total compensation. Thus, family coverage for a spouse or same-sex life partner is valuable financially as well as emotionally for most employees. The State's deliberate elimination of domestic partner benefits, while maintaining spousal benefits and denying its lesbian and gay employees any way to qualify for family benefits, unlike their heterosexual counterparts, accordingly requires those lesbian and gay employees to perform equal work for less compensation.

104. There is no legitimate, let alone compelling, governmental interest served by denying lesbian and gay State employees, including Plaintiffs, equal compensation in the form of family coverage.

V. CLASS ACTION ALLEGATIONS

105. Named Plaintiffs bring this action on their own behalf and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all lesbian and gay employees of the State who are now, or will in the future, be eligible under the criteria specified in former Ariz. Admin. Code § R2-5-101 to obtain State health insurance benefits for their committed same-sex partners and their partners' dependents (the "Plaintiff Class").

106. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). As of December 2012, there are approximately 230 lesbian and gay State employees who receive domestic partner health insurance benefits from the State. In addition, other lesbian and gay State employees may be eligible or may qualify in the future to receive family coverage. Section 0, if enforced and implemented by Defendants, prevents all of those employees from obtaining health insurance benefits from the State for their domestic partners and their partners' dependents.

107. There are questions of law and fact common to the members of the class. Fed. R. Civ. P. 23(a)(2). Such questions include, but are not limited to:
(a) whether Defendants denied equal compensation to lesbian and gay State employees with committed same-sex partners by eliminating their family coverage but continuing family coverage for heterosexual State employees with legally recognized spouses,

(b) whether implementation and enforcement of Section O violates the Equal Protection Clause of the Fourteenth Amendment by discriminating without a legitimate justification, let alone one that is adequately tailored and important or compelling, against lesbian and gay State employees on the basis of their sexual orientation and sex in relation to the sex of their committed partners.

Defendants are expected to raise common defenses to those claims, including that implementation and enforcement of Section O does not violate the law.

108. The claims of the Named Plaintiffs are typical of those of the Plaintiff Class, *see* Fed. R. Civ. P. 23(a)(3), as their claims arise from implementation and enforcement of Section O and are based on the same theory of law.

109. Named Plaintiffs are capable of fairly and adequately protecting the interests of the Plaintiff Class because they do not have any interests antagonistic to the class. Named Plaintiffs as well as the Plaintiff Class all seek to enjoin implementation and enforcement of Section O by the Defendants. Moreover, Named Plaintiffs are represented by counsel experienced in civil rights litigation and complex class action litigation.

110. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of separate actions by individuals would create a risk of inconsistent and varying adjudications, resulting in some lesbian and gay State employees receiving family coverage from the State and others who do not. In addition, prosecution of separate actions by individual members could result in adjudications with respect to individual members that, as a practical matter, would substantially impair the ability of other members to protect their interests.

111. This action is also maintainable as a class action under Fed. R. Civ. P. 23(b)(2) because Defendants' implementation and enforcement of Section O will preclude all class members from obtaining family coverage from the State for their committed same-sex partners and their partners' dependents. The injunctive and declaratory relief sought is appropriate and will apply to all members of the Plaintiff Class.

FIRST CLAIM FOR RELIEF

Equal Protection on the Basis of Sexual Orientation and Sex U.S. Const. Amend. XIV, 42 U.S.C. § 1983

112. Named Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint.

113. Named Plaintiffs state this cause of action against Defendants in their official capacities for purposes of seeking declaratory and injunctive relief.

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

115. Defendants deny equal compensation to lesbian and gay State employees by their withdrawal of domestic partner coverage, and by their categorical refusal to offer any other way for employees to qualify a same-sex life partner within the State's family health insurance plans, with no constitutionally adequate reasons for this knowing and intentional withdrawal and refusal, unlike Defendants' treatment of their heterosexual employees. Defendants' conduct and omissions, and policies and practices in their establishment and administration of the health benefits plans for State employees, including in particular Defendants' implementation of Section O, subjects Plaintiffs to intentionally differential, adverse and inferior treatment because of their sexual orientation as lesbians and gay men and because of each Plaintiff's sex in relation to the sex of his or her committed life partner.

116. By exclusively conditioning the receipt of family coverage on the legal relationship status of "spouse," from which lesbian and gay State employees, including Plaintiffs, categorically are excluded because of their sexual orientation and each one's sex in relation to the sex of his or her life partner, Section O and Defendants' actions to implement Section O discriminate against lesbian and gay employees, including Plaintiffs, both facially and as applied, based on Plaintiffs' sexual orientation and sex.

117. All of Defendants' acts or omissions and 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 life partner.

118. Plaintiffs are similarly situated in every relevant respect to the heterosexual State employees who Defendants permit to qualify their different-sex life partners and partners' children for family coverage through marriage.

119. Defendants' denial of equal compensation to lesbian and gay State employees as a class by Defendants' elimination of

domestic partner benefits, and by Defendants' categorical refusal to allow State employees any means to qualify a same-sex life partner or partner's children for family coverage, reflects moral disapproval and antipathy toward lesbians and gay men, including Plaintiffs, serves no legitimate government interest and is, therefore, invalid under any form of constitutional scrutiny.

120. Defendants' intentional stripping of family coverage from lesbian and gay State employees, including Plaintiffs, and denial to that class of employees of any way to qualify for family coverage for a same-sex life partner or partner's children, purposefully singles out a minority group that historically has suffered unjust and discriminatory treatment in law and society based on group members' sexual orientation and sex in relation to the sex of each one's committed life partner.

121. Defendants' categorical denial of equal compensation to Plaintiffs based on their sexual orientation and sex in relation to the sex of each one's committed life partner subjects Defendants' conduct to strict or at least heightened scrutiny, which Defendants' conduct cannot withstand because Defendants' conduct does not even serve any legitimate governmental interests, let alone any important or compelling such interests, nor does it serve any such interests in an adequately tailored manner.

122. Defendant Brewer, through her own individual actions, has acted personally, purposefully and intentionally to violate Plaintiffs' rights to equal protection under the Fourteenth Amendment to the United States Constitution. Defendant Brewer acted with discriminatory purpose in approving Section O and did so because of Section O's adverse effects on lesbian and gay State employees, including Plaintiffs, based on their sexual orientation and sex in relation to the sex of each one's committed life partner.

123. Defendant Brewer acted personally, purposefully and intentionally when she reviewed and approved Section O by signing H.B. 2013, thereby knowingly and deliberately effectuating that section's purpose of limiting family coverage to heterosexual employees, who can qualify if they have a different-sex spouse, and stripping lesbian and gay State employees of any way to obtain family coverage.

124. Upon information and belief, Defendant Brewer has the duty and authority to ensure that the Department implements Section 0, and through her own individual actions, has acted and, if not enjoined, will continue to act personally to violate Plaintiffs' right to equal protection by implementing Section O to strip Plaintiffs discriminatorily of access to family coverage for a committed same-sex life partner, thereby proximately causing them injury.

125. Defendant Brewer, having acted personally, purposefully and intentionally to review and approve Section O by signing H.B. 2013, directly caused actions by others to enforce and implement Section O which Defendant Brewer knew, or reasonably should have known, would cause others to inflict these constitutional injuries upon Plaintiffs. Upon information and belief, Defendant Brewer knowingly has refused to prevent anticipated action by others who are charged to implement State law and policies under her supervision, including Section O's elimination of family coverage for Plaintiffs, is culpable for her actions and inactions in her supervision and control of subordinates who will unconstitutionally deprive Plaintiffs of family coverage, has caused and acquiesced in this constitutional deprivation to be effectuated by her subordinates, and has engaged in conduct demonstrating a reckless and callous indifference to the constitutional rights of Plaintiffs.

126. If not enjoined, Defendant McNeil, through his own individual actions, will act personally to violate Plaintiffs' rights to equal protection under the Fourteenth Amendment to the United States Constitution by implementing and directing subordinates to implement Section O to discriminatorily strip Plaintiffs of access to family coverage, thereby proximately causing them injury. Defendant McNeil will act personally and with discriminatory purpose and intent in enforcing Section O because of Section O's adverse effects on lesbian and gay State employees, including Plaintiffs, based on each Plaintiff's sexual orientation and sex in relation to the sex of his or her committed life partner.

127. Defendant McNeil has direct and personal responsibility for the direction, operation and control of the Department, and is responsible to the Governor for the direction, control and operation of the Department, which includes formulating plans and programs, and making contracts, to implement employment policies required by statute, such as and specifically including Section O. In this capacity, unless enjoined, Defendant McNeil will be personally involved in decisions and actions

that will violate Plaintiffs' right to equal protection by implementing Section O and discriminatorily stripping Plaintiffs of family coverage, thereby proximately causing them injury.

128. Defendant McNeil, upon acting personally, purposefully and intentionally to enforce Section 0, has or will set in motion acts by others to enforce and implement Section O which Defendant McNeil knows, or reasonably should know, will cause others to inflict these constitutional injuries upon Plaintiffs. Upon information and belief, Defendant McNeil knowingly has refused to prevent anticipated action by others under his supervision to implement Section O, is culpable for his actions and inactions in his supervision and control of subordinates who are charged to implement Section 0, has acquiesced in this constitutional deprivation to be effectuated by his purposeful actions and those of his subordinates, and has engaged in conduct demonstrating a reckless and callous indifference to the constitutional rights of Plaintiffs to be treated equally in their compensation, including an equal opportunity to qualify immediate family members for health coverage.

129. Upon information and belief, Does 1 through 100 are in some manner responsible and culpable for Plaintiffs' injuries, and if not enjoined will act personally to violate Plaintiffs' rights to equal protection under the Fourteenth Amendment to the United States Constitution.

130. Section O's categorical denial of equal compensation in the form of family coverage for lesbian and gay State employees with a committed same-sex life partner, and Defendants' conduct and omissions and policies and practices to effectuate Section O's withdrawal of this coverage from this class of State employees, impairs Plaintiffs' protected liberty interest in having an intimate relationship with another consenting adult as part of each Plaintiff's private life on the discriminatory basis of Plaintiffs' sexual orientation and sex with respect to the sex of each one's life partner. Defendants have previously and are now discriminating against lesbian and gay State employees, including Plaintiffs, based on sexual orientation with respect to the exercise of Plaintiffs' fundamental rights. Discriminatory treatment based on Plaintiffs' sexual orientation and sex, and with respect to Plaintiffs' exercise of fundamental rights, subjects Defendants' conduct to strict or at least heightened scrutiny, which Defendants' conduct cannot withstand.

131. The categorical denial of equal compensation in the form of family coverage to lesbian and gay State employees with a committed same-sex life partner violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Defendants have been and are acting under color of state law at all relevant times in their implementation of Section O and their resulting and purposeful violation of Plaintiffs' constitutional rights. Defendants' 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 equal treatment without regard to sexual orientation or sex, under the Fourteenth Amendment to the United States Constitution.

DECLARATORY AND INJUNCTIVE RELIEF

28 U.S.C. § 2201, Federal Rules of Civil Procedure, Rules 57 and 65

132. Named Plaintiffs incorporate by reference and reallege all of the preceding paragraphs of this complaint.

133. This case presents an actual case or controversy because there is an existing, ongoing, real and substantial controversy between Named Plaintiffs and Defendants, who have adverse interests. This controversy is sufficiently immediate, substantial and real to warrant the issuance of a declaratory judgment because Plaintiffs will be stripped of family coverage when the law is enforced by Defendants.

134. 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 before Plaintiffs' family coverage is eliminated.

135. Plaintiffs' claims are not speculative or hypothetical, but rather involve the validity of a statute that was approved and put into force by Defendant Brewer; will be implemented and enforced by Defendants Brewer, McNeil, and Does 1 through 100; will apply to all lesbian and gay State employees with a committed same-sex partner and each Plaintiff; will control each Plaintiff's ability to continue receiving family coverage for his or her committed same-sex life partner or partner's child; and will deprive Plaintiffs of the constitutional rights pleaded herein.

136. The injury Plaintiffs will suffer if Section O were enforced is real, immediate, actual, concrete and particularized and is not just threatened but certain. No further events need take place to determine that Defendants will enforce Section O if permitted. Defendants Brewer's, McNeil's, and Does 1 through 100's direct and personal involvement in enforcing Section O have and will proximately cause Plaintiffs' irreparable injuries.

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

138. 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 equitable remedy could effectively cure or compensate for the invasion of Plaintiffs' constitutional rights, the bodily harm Plaintiffs' same-sex life partners or partner's child or children 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.

139. The burden on the State of maintaining family coverage for its 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 strongly in favor of Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

A. Declaring that the suit is maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1) and (2);

B. Declaring that the provisions and enforcement by Defendants of the portion of A.R.S. § 38-651(0) that limits eligibility for family coverage to State employees that have a "dependent" who is a "spouse," and by extension, a spouse's child, to the exclusion of lesbian and gay State employees with a committed same-sex life partner, violates Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

C. Permanently enjoining enforcement by Defendants of the portion of A.R.S. § 38-651(0) that limits eligibility for family coverage to State employees that have a "dependent" who is a "spouse," and by extension, a spouse's child, to the exclusion of lesbian and gay State employees with a same-sex life partner, including Plaintiffs;

D. Requiring Defendants in their official capacities to maintain family coverage, on terms equal to the family coverage Defendants offer to heterosexual State employees who marry a different-sex life partner, for Plaintiffs' qualifying domestic partners and domestic partners' children;

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

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

Dated: September 9, 2013

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Footnotes

[*] Pursuant to Federal Rule of Civil Procedure 25(d), Brian McNeil is substituted for his predecessor, David Raber.

[1] Plaintiff Class is fully defined in Section V.