

1 Jennifer C. Pizer (*Pro Hac Vice*)
2 Tara L. Borelli (*Pro Hac Vice*)
3 LAMBDA LEGAL DEFENSE AND
4 EDUCATION FUND, INC.
5 3325 Wilshire Boulevard, Suite 1300
6 Los Angeles, California 90010
7 jpizer@lambdalegal.org
8 tborelli@lambdalegal.org
9 Telephone: 213.382.7600
10 Facsimile: 213.351.6050

11 Daniel C. Barr (#010149)
12 Rhonda L. Barnes (#023086)
13 James E. Barton II (#023888)
14 PERKINS COIE BROWN & BAIN P.A.
15 2901 North Central Avenue, Suite 2000
16 Phoenix, Arizona 85012-2788
17 DBarr@perkinscoie.com
18 RBarnes@perkinscoie.com
19 JBarton@perkinscoie.com
20 Telephone: 602.351.8000
21 Facsimile: 602.648.7000

22 Attorneys for Plaintiffs
23 Tracy Collins, Keith B. Humphrey, Joseph R.
24 Diaz, Judith McDaniel, Beverly Seckinger,
25 Stephen Russell, Deanna Pflieger, Corey
26 Seemiller, Carrie Sperling and Leslie Kemp

27 UNITED STATES DISTRICT COURT
28 DISTRICT OF ARIZONA

Tracy Collins, Keith B. Humphrey, Joseph R.
Diaz, Judith McDaniel, Beverly Seckinger,
Stephen Russell, Deanna Pflieger, Corey
Seemiller, Carrie Sperling and Leslie Kemp,

Plaintiffs,

v.

Janice K. Brewer, in her official capacity as
Governor of the State of Arizona; David
Raber, in his official capacity as Interim

No. CV09-2402-PHX-JWS

**AMENDED COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

1 Director of the Arizona Department of
2 Administration and Personnel Board; Kathy
3 Peckardt, in her official capacity as Director of
4 Human Resources for the Arizona Department
5 of Administration and Personnel Board; Philip
6 Hamilton, in his official capacity as Assistant
7 Director of the Benefits Services Division of
8 the Arizona Department of Administration and
9 Personnel Board; and Does 1 through 100,
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Defendants.

9 Plaintiffs Tracy Collins, Keith B. Humphrey, Joseph R. Diaz, Judith McDaniel,
10 Beverly Seckinger, Stephen Russell, Deanna Pflieger, Corey Seemiller, Carrie Sperling
11 and Leslie Kemp (collectively “Plaintiffs”) file this Complaint against Defendants Janice
12 K. Brewer, David Raber, Kathy Peckardt, Philip Hamilton, and Does 1 through 100
13 (collectively “Defendants”), and allege as follows:

14 I. INTRODUCTION

15 1. Plaintiffs seek declaratory and injunctive relief regarding the discriminatory
16 elimination of domestic partner health insurance benefits for lesbian and gay employees of
17 the State of Arizona (the “State”) who have a committed same-sex life partner. The
18 elimination of these employee benefits, which are a form of family insurance coverage,
19 from the compensation provided to the State’s lesbian and gay employees violates the
20 Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983.

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

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

1 4. On September 4, 2009, Defendant Arizona Governor Janice K. Brewer
2 reviewed, approved and signed House Bill 2013 (“H.B. 2013”), a budget enactment that
3 includes a statutory provision (“Section O”) eliminating family coverage for lesbian and
4 gay State employees by limiting such family coverage to “spouses,” a status that Arizona
5 has restricted to different-sex life partners only. As detailed further below, duly
6 authorized State officials have announced that Section O will apply and have this effect at
7 the end of the current employee health plan year, on or around October 1, 2010.

8 5. Plaintiffs are lesbian or gay State employees each of whom currently
9 receives family coverage for his or her committed same-sex life partner. The selective
10 withdrawal of family coverage from lesbian and gay State employees—while leaving
11 family coverage intact for heterosexual State employees with a legally recognized
12 spouse—will deny each Plaintiff equal compensation for equal work and discriminatorily
13 inflict upon each Plaintiff and his or her family members anxiety, stress, risk of untreated
14 or inadequately treated health problems, and potentially ruinous financial burdens.

15 6. Plaintiffs will lose health insurance coverage for their committed life
16 partners who need ongoing care for diabetes, high blood pressure and glaucoma, among
17 other chronic conditions. Certain Plaintiffs will lose family coverage for committed life
18 partners who presently are healthy but have had serious illnesses in the past and fear such
19 illness in the future. Other Plaintiffs will lose health coverage for life partners who
20 presently are healthy but who fear future illness and lack the means to purchase individual
21 insurance coverage. One Plaintiff will lose coverage for the child she co-parents with her
22 committed life partner, who is the child’s biological mother.

23 7. Plaintiffs will suffer these harms based on their sexual orientation and their
24 sex in relation to the sex of their committed life partner because the State has enacted
25 legislation that intentionally eliminates family health insurance for lesbian and gay State
26 employees and not heterosexual employees. As a result of the adoption and enforcement
27 of Section O, heterosexual State employees continue to have a way of obtaining family
28 health insurance but the only way lesbian and gay State employees have had to obtain that

1 insurance has been eliminated. The adoption and enforcement of Section O provides that
2 Plaintiffs' heterosexual co-workers will receive privileged treatment—including
3 protection against health-related anxiety, stress, medical risk and financial hardship—
4 based on their sexual orientation and their sex in relation to that of their committed life
5 partners because they are offered a way to qualify immediate family members for health
6 insurance and Plaintiffs are not.

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

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

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

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

27
28

II. PARTIES

A. Plaintiffs

12. Plaintiff Tracy Collins is employed by the State as a senior highway patrol officer with the Arizona Department of Public Safety (“DPS”). Collins is stationed in and is a resident of the town of Quartzsite, Arizona.

13. Plaintiff Keith B. Humphrey is employed by the State as Assistant Vice President for Student Affairs and Adjunct Assistant Professor of the Practice of Higher Education at the University of Arizona (“U of A”). Humphrey is a resident of Tucson, Arizona.

14. Plaintiff Joseph R. Diaz is employed by the State as an Associate Librarian at U of A. Diaz is a resident of Tucson, Arizona.

15. Plaintiff Judith McDaniel is employed by the State as an Adjunct Instructor in the Political Science and Women’s Studies Departments at U of A. McDaniel is a resident of Tucson, Arizona.

16. Plaintiff Beverly Seckinger is employed by the State as a Professor of Media Arts and Interim Director of the School of Media Arts at U of A. Seckinger is a resident of Tucson, Arizona.

17. 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, and Director of the Frances McClelland Institute for Children, Youth, & Families at U of A. Russell is a resident of Tucson, Arizona.

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

19. Plaintiff Corey Seemiller is employed by the State as the Program Director for Curricular Leadership in the Center for Student Involvement & Leadership at U of A. Seemiller is a resident of Tucson, Arizona.

1 20. Plaintiff Carrie Sperling is a Visiting Clinical Associate Professor of Law at
2 Arizona State University. Sperling is a resident of Phoenix, Arizona.

3 21. Plaintiff Leslie Kemp is a Marketing Coordinator at Northern Arizona
4 University. Kemp is a resident of Sedona, Arizona.

5 **B. Defendants**

6 22. Defendant Janice K. Brewer is sued in her official capacity as Governor of
7 the State. Governor Brewer is a person within the meaning of 42 U.S.C. § 1983 and was
8 acting under color of state law at all times relevant to this complaint. As Governor, she
9 has the duty and authority to transact all executive business with the officers of the
10 government and the duty to ensure that the laws are faithfully executed. As Governor, she
11 also is charged to supervise the official conduct of all executive and ministerial officers,
12 and to ensure that all offices are filled and all duties performed. Defendant Brewer
13 reviewed and approved Section O. She was and is directly responsible for the
14 implementation and enforcement of Section O.

15 23. Defendant David Raber is sued in his official capacity as Interim Director of
16 the Arizona Department of Administration (“the Department”). Defendant Raber is a
17 person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at
18 all times relevant to this complaint. As Director of the Department, Defendant Raber is
19 responsible for the direction, operation and control of the Department and is responsible to
20 the Governor for the direction, control and operation of the Department. Defendant Raber
21 formulates policies and programs to assess, plan and effectuate the missions and purposes
22 of the Department. He also makes contracts and incurs obligations to carry out the
23 Department’s activities and operations, which will include direct responsibility to
24 implement and enforce Section O’s termination of domestic partner benefits for lesbian
25 and gay State employees with a same-sex life partner.

26 24. Defendant Kathy Peckardt is sued in her official capacity as the Director of
27 Human Resources for the Department. Defendant Peckardt is a person within the
28 meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant

1 to this complaint. Upon information and belief, Defendant Peckardt plays a direct,
2 personal and leading role in determining the structure of, and eligibility for, the State's
3 health benefits plans. Defendant Peckardt led the Department's transition from fully
4 insured to self-insured health benefits plans; established the State's employee portal
5 providing access to human resources information; and oversees the State's Human
6 Resources Information Solution, an integrated benefits, payroll and human resources
7 system. Upon information and belief, these and Defendant Peckardt's other
8 responsibilities require her direct and personal involvement in the implementation of
9 Section O.

10 25. Defendant Philip Hamilton is sued in his official capacity as Assistant
11 Director for the Arizona Department of Administration Services Division. Defendant
12 Hamilton is a person within the meaning of 42 U.S.C. § 1983 and was acting under color
13 of state law at all times relevant to this complaint. As Assistant Director, Defendant
14 Hamilton is the Plan Administrator for the State, which includes managing the group
15 plans through which \$750 million in health, dental, life, disability and vision insurance
16 benefits are provided to approximately 140,000 state employees, retirees, and their
17 dependents. Upon information and belief, these and Defendant Hamilton's other
18 responsibilities require his direct and personal involvement in the implementation of
19 Section O.

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

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

27
28

1 **III. JURISDICTION AND VENUE**

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

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

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

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

13 32. This Court has personal jurisdiction over Defendants because they are
14 residents of the State.

15 **IV. FACTS**

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

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

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

26 35. As part of the State's personnel compensation system, the State provides its
27 heterosexual employees the ability to obtain certain valuable family health benefits,
28 including subsidized access for an employee's different-sex spouse and qualifying

1 children to health care coverage through the health benefits plans offered by the State to
2 its employees.

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

10 37. Section (22)(a)-(j) of the benefits regulation provides that to qualify for
11 family coverage, an employee must have a committed life partner who:

- 12 a. Shares the employee’s permanent residence;
 - 13 b. Has resided with the employee continuously for at least 12 months and is
14 expected to continue to reside with the employee indefinitely;
 - 15 c. Does not have any other domestic partner or spouse, has not signed a
16 declaration of domestic partnership with any other person, and has not
17 had another domestic partner within the prior 12 months;
 - 18 d. Is not a blood relative any closer than would prohibit marriage in
19 Arizona;
 - 20 e. Was mentally competent and of legal age to consent to contract when the
21 domestic partnership began, is not acting under fraud or duress in
22 accepting benefits; and
 - 23 f. Is financially interdependent with the employee as demonstrated, for
24 example, through joint ownership of real property or significant personal
25 property; joint credit or bank accounts; shared debt; beneficiary
26 designations on life insurance or retirement annuities; and written
27 agreements to assume financial responsibility for each other.
- 28

1 38. Each Plaintiff enrolled his or her domestic partner, or partner's qualifying
2 children, for family coverage during the open enrollment period for the 2009 benefits plan
3 year. Each Plaintiff and his or her domestic partner, or partner's qualifying children, met
4 the eligibility requirements for family coverage at the time of enrollment and continues to
5 meet those requirements.

6 39. On August 20, 2009, the Arizona House of Representatives transmitted H.B.
7 2013 to Defendant Brewer for review, consideration and approval or rejection in her
8 capacity as the Governor of Arizona. [A true and correct copy of House Bill 2013 is
9 attached as Exhibit A.] H.B. 2013, amends, *inter alia*, A.R.S. § 38-651, the statute that
10 authorizes the Department to procure health and accident coverage for State employees
11 and their qualifying dependents. H.B. 2013 adds to A.R.S. § 38-651 a section "O," which
12 provides that, "For the purposes of this section, beginning October 1, 2009, 'dependent'
13 means a spouse under the laws of this state, a child who is under nineteen years of age or a
14 child who is under twenty-three years of age and who is a full-time student." Defendant
15 Brewer reviewed, approved and then signed H.B. 2013 on September 4, 2009.

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

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

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

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

18 44. Section O specified an intended effective date of October 1, 2009. On
19 September 25, 2009 the Department announced on its website that “[b]ased on advice
20 from the Office of the Attorney General” the Department would recognize November 24,
21 2009 as the effective date for the statute. The Department’s announcement also provided
22 that, “[a]ny benefit that has been earned and vested through November 24, 2009, is not
23 subject to being taken away retroactively to October 1, 2009.” The announcement stated
24 that, “[o]ther questions raised by H.B. 2013, such as the definition of dependent and its
25 applicability after November 24, 2009, are still under review,” and that further
26 information would be posted on the Department’s website after the review was complete.
27 [A true and correct copy of the Department’s September 25, 2009 statement is attached as
28 Exhibit B.]

1 45. On October 9, 2009 the Department posted another announcement stating
2 that, “[b]ased upon legal advice from the Office of the Attorney General, the definition of
3 ‘dependent’ for the State insurance plan year beginning October 1, 2009 is not affected by
4 H.B. 2013 because any interpretation to the contrary would impair the lawful contract
5 expectations of state employees in violation of the Arizona Constitution. The definition of
6 ‘dependent’ currently in place will remain effective through September 30, 2010. **Please**
7 **note the definition of dependent defined in H.B. 2013 will apply as of October 1,**
8 **2010.”** (emphasis in original). [A true and correct copy of the Department’s October 9,
9 2009 statement is attached as Exhibit C.]

10 46. The Department’s October 9, 2009 announcement confirms that the State’s
11 lesbian and gay employees, including Plaintiffs, will be stripped of their family coverage
12 as of October 1, 2010. Plaintiffs face uncertainty about Section O’s implementation date
13 because, in the absence of an injunction prohibiting enforcement of Section O, the
14 Department may decide at any time to revisit its decision to not enforce Section O before
15 October 1, 2010.

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

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

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

1 ***1. Plaintiff Tracy Collins.***

2 49. Plaintiff Tracy Collins (“Tracy”) has been a loyal and dedicated State
3 employee for 14 years. Tracy began her law enforcement career with the Arizona
4 Department of Corrections and now works as a senior highway patrol officer for the
5 Arizona Department of Public Safety (“DPS”). Tracy enlisted in the United States Air
6 Force Reserve and served from 1990 until her honorable discharge as a Staff Sergeant in
7 1998.

8 50. Tracy’s current station in Quartzsite, Arizona is classified as a “remote duty
9 station” because it lacks city amenities such as easy access to grocery stores and medical
10 facilities, as well as the level of police backup that is available to police officers in cities.
11 Working there, Tracy often must wait much longer for support to arrive from other
12 locations, which can involve greater safety risks and other job challenges.

13 51. Tracy’s responsibilities include enforcement of Arizona’s criminal and
14 traffic codes, drug and weapons interdiction, and monitoring for terrorist activity. Tracy
15 also is a Field Training Instructor responsible for training and evaluating junior officers.
16 She has special expertise in drug recognition enforcement and trains other officers on that
17 subject.

18 52. Tracy and Diana Forrest (“Diana”) will celebrate their 11-year anniversary
19 as a loving, committed couple in March 2010. They held a commitment ceremony in May
20 2000, which was a transformative event for them marking not only their profound
21 commitment to each other but also the integration of their families. Tracy and Diana
22 would marry each other if the State permitted them to do so.

23 53. Tracy and Diana are completely financially interdependent. They maintain
24 a joint checking account and credit card, and co-own their car. Diana is the primary
25 beneficiary of Tracy’s retirement account and life insurance policy. Diana has not
26 similarly named Tracy as the beneficiary of her accounts only because she has no such
27 accounts. Tracy and Diana have durable health care powers of attorney naming each
28 other to make medical decisions in the event either is unable to do so.

1 54. Diana brought two daughters to the couple's relationship, and Tracy has
2 helped support them, emotionally and financially, as well as Diana's nephew after he was
3 left homeless at age 15. The couple became his joint legal guardians and cared for him
4 until he became an adult.

5 55. Tracy and Diana have made a mutual commitment to assume responsibility
6 for each other's expenses, including health expenses, and already have supported each
7 other through a financially and emotionally devastating experience with illness. In 1999,
8 Diana developed debilitating pain that caused constant nausea and rendered her unable to
9 work. She was bedridden for five years, forcing their family to live on Tracy's salary
10 alone. Numerous medical specialists tried but could not diagnose Diana's illness. Diana
11 remained ill for seven years.

12 56. Because Diana did not have health insurance coverage for the first two years
13 of her illness, her medical expenses and the cost of supporting their teenage children
14 quickly overwhelmed the couple's finances. Tracy was forced to file bankruptcy.

15 57. Diana began receiving coverage through the Arizona Health Care Cost
16 Containment System ("AHCCCS") Medicaid program two years into her illness, and fully
17 recovered her health in December of 2007. This experience left Tracy and Diana
18 painfully aware of and anxious about their vulnerability if Diana were to experience
19 another serious illness.

20 58. Diana also needs medications to manage her high blood pressure. While
21 each medication is available for a \$10.00 co-pay fee through the family coverage Tracy
22 currently receives for Diana, the couple will have to pay far more out-of-pocket for those
23 medications when Tracy's family coverage is eliminated.

24 59. Diana currently works for La Paz County in a position funded by a grant
25 without employment benefits, but her income disqualifies her from coverage through
26 AHCCCS.

27 60. Tracy and Diana are extremely distressed that Tracy's family coverage will
28 be eliminated because of a selective targeting of lesbian and gay State employees for

1 disfavored treatment. Tracy takes great pride in her work and has never before thought
2 about leaving her career in law enforcement with the State. Tracy now worries that she
3 may have no choice, however, other than to seek work elsewhere to ensure that Diana has
4 the health insurance their family needs.

5 **2. Plaintiff Keith B. Humphrey.**

6 61. Plaintiff Keith B. Humphrey (“Keith”) is the Assistant Vice President for
7 Student Affairs and Adjunct Assistant Professor of Higher Education at the U of A.

8 62. Keith’s life partner is Robert “Brett” Klay (“Brett”). Keith and Brett
9 celebrated their seven-year anniversary in June 2009. They registered as domestic
10 partners with the City of Tucson in 2005, and signed documents for their protection,
11 including a trust for each other’s benefit, wills designating each other as the primary
12 beneficiary, and durable health care powers of attorney and mental health care powers of
13 attorney authorizing the other to make health decisions in the event of either’s incapacity.
14 The couple’s bank accounts are jointly held and they would enter a civil marriage if
15 Arizona law permitted it.

16 63. Brett worked as a factory foreman for over 10 years. In 2006, he left his job
17 to become a stay-at-home father to the couple’s children. Keith and Brett are raising
18 Brett’s 15-year-old biological son and two additional foster children with significant
19 medical needs that require Brett to stay home to care for them.

20 64. When Brett and Keith first became foster parents and Brett left his factory
21 job, family coverage was not available to lesbian and gay State employees. Brett obtained
22 rudimentary coverage for two years through AHCCCS, and Keith enrolled him for family
23 coverage through U of A when it became available in 2008.

24 65. In August of 2009, Brett was diagnosed with a torn carotid artery, a life-
25 threatening condition. He was hospitalized for six days. A tear in the carotid artery
26 cannot be repaired surgically, and instead must heal on its own over a period many
27 months. Brett’s daily regimen of medications and frequent tests must continue until the
28

1 artery heals. If he does not take the medication, he will be at risk for a potentially fatal
2 blood clot.

3 66. Brett's medication would cost approximately \$400.00 a month out-of-
4 pocket, and the tests he needs to monitor his carotid artery would cost approximately
5 \$770.00 out-of-pocket.

6 67. Brett has other serious medical conditions that have required hospitalization
7 and require daily medications and constant medical supervision.

8 68. Because Keith and Brett have placed the home Keith bought in their trust,
9 for which Brett is a beneficiary, Brett is unlikely to qualify for coverage through
10 AHCCCS. Without coverage through Keith's employment at U of A, Brett probably will
11 be unable to get insurance or to afford treatment he will need for his pre-existing
12 conditions.

13 **3. Plaintiff Joseph R. Diaz.**

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

16 70. Joseph's life partner is Ruben E. Jiménez ("Ruben"). They have spent more
17 than 17 years together as a committed, loving couple and would marry if permitted by
18 Arizona law.

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

27 72. When U of A began offering family coverage to lesbian and gay employees
28 in 2008, Joseph enrolled Ruben for family coverage. Ruben then was able to leave his

1 low-wage job with health benefits for a better-paying position without such benefits. It is
2 essential that Joseph and Ruben have insurance coverage for Ruben because he has high
3 cholesterol and Type 2 diabetes, a chronic, lifelong disease. Ruben requires daily
4 medication and testing strips which would cost approximately \$300.00 a month out-of-
5 pocket, far more than Ruben's current co-pay through Joseph's family coverage.

6 73. Joseph and Ruben have investigated whether Ruben will be eligible to
7 receive health coverage through AHCCCS when Joseph's family coverage is eliminated.
8 They discovered that he earns approximately \$100.00 too much per month.

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

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

17 **4. Plaintiff Judith McDaniel.**

18 76. Plaintiff Judith McDaniel ("Judith") is an Adjunct Instructor in the Political
19 Science and Women's Studies Departments at U of A. She has a Ph.D. in English
20 Literature from Tufts University and a Juris Doctor degree from Rutgers School of Law,
21 with a teaching specialty in women and the law. Judith is 66 years old.

22 77. Judith's devoted life partner is Janet Schwartz ("Jan"), who is 62 years old.

23 78. Judith and Jan have known each other since 1983 and have been in a
24 committed, loving relationship for nearly twenty years. They held a commitment
25 ceremony in the tradition of Judith's Quaker faith, have registered as domestic partners
26 with the City of Tucson, and married in Massachusetts on May 17, 2004, the first day that
27 same-sex couples were permitted to marry in that state. Jan has two grandsons who live
28 in Florida, and the couple shares grandparenting responsibilities.

1 79. Judith and Jan have completely commingled their finances over their years
2 together. They share responsibility for their household expenses and maintain joint
3 checking and savings accounts. They hold all credit cards in both names, and own their
4 real property as joint tenants with a right of survivorship. Each has named the other as the
5 primary beneficiary in their wills. They have durable health care powers of attorney
6 naming each other. Judith and Jan are keenly aware of the need to take these legal steps
7 as their ages advance, and Judith's family health insurance coverage for Jan has been a
8 key part of building their domestic security.

9 80. Judith and Jan have supported each other financially at different points in
10 their respective careers. Jan helped pay for Judith's tuition and supported Judith during
11 law school. After Judith graduated, Jan pursued a graduate degree at Prescott College,
12 and Judith supported the couple financially during Jan's studies. Jan previously
13 purchased health coverage as a student through Prescott College, but enrolled for the
14 better family coverage through Judith's employment instead when it became available.
15 Jan graduated in December of 2009 and no longer qualifies for student coverage.

16 81. Judith and Jan recently started an education consulting business together,
17 but make only a modest income through that work at this point.

18 82. Jan has been diagnosed twice with breast cancer, in 1978 and in 1990.
19 Judith and Jan are grateful that Jan has not had recurrences since then, but Jan's cancer
20 history means she must have regular check-ups both to check for a recurrence of the
21 breast cancer and because her history means she may be more susceptible to other types of
22 cancer. Jan's appointments with her obstetrician/gynecologist would cost approximately
23 \$170.00 out-of-pocket, not including the costs of tests. Jan's current co-pay for those
24 appointments through Judith's family coverage is \$20.00.

25 83. Jan also has low-tension glaucoma, a chronic condition that can lead to
26 irreversible vision loss. Yearly eye exams cost approximately \$100.00, in comparison to
27 Jan's current \$20.00 co-pay. The eye pressure exam Jan requires every three months
28 would cost her \$65.00, compared to her current \$20.00 co-pay. Jan requires eye drops for

1 her condition, which would cost approximately \$180.00 every two months if paid out-of-
2 pocket rather than Jan's \$20.00 co-pay fee through Judith's family coverage. Jan may
3 require surgery as her condition deteriorates and she needs exams to monitor her eyes
4 every three months. The appointments require only a \$20.00 co-pay fee now, but would
5 be far more expensive without the family health insurance. Judith and Jan worry that Jan
6 may require expensive eye surgery before she becomes eligible for Medicare coverage in
7 mid-2012. Delaying the surgery would not be a viable option, as time will be of the
8 essence to preserve her sight if she deteriorates enough to need surgery.

9 84. Judith and Jan have explored alternative sources of health insurance for Jan
10 without success. Their insurance broker informed them that private insurers may insure
11 Jan for care that may include cancer, but that Jan's glaucoma is an uninsurable pre-
12 existing condition regardless of price. Among Jan's options for an individual plan to
13 cover her other needs, excluding the glaucoma, the lowest deductible Jan can get is
14 \$2,600.00 for a monthly payment of \$335.00. Judith and Jan have no deductible through
15 the group plan coverage Judith receives through her employment, and their monthly
16 contribution to the premium of \$97.00 covers both of them. Jan's modest income from
17 the couple's business makes her ineligible for coverage through AHCCCS.

18 85. Judith's income as an instructor also is modest, which makes the family
19 coverage offered by U of A extremely important to them. The stripping of family
20 coverage from lesbian and gay State employees like Judith comes at a financially
21 precarious time for this couple, as they approach their retirement in an economic
22 downturn that has significantly reduced their retirement savings.

23 **5. Plaintiff Beverly Seckinger.**

24 86. Plaintiff Beverly Seckinger ("Beverly") is a Professor and Interim Director
25 of the School of Media Arts at U of A, where she has worked since 1991. Beverly is 50
26 years old.

27 87. Beverly's beloved life partner is Susan Taunton ("Susan"), who is 55 years
28 old.

1 88. Beverly and Susan have been in an exclusive, committed relationship for 22
2 years. They own their home together as joint tenants with rights of survivorship. Beverly
3 has named Susan as the beneficiary of Beverly's retirement and life insurance accounts;
4 Susan has not named Beverly as the beneficiary of such accounts only because she has
5 none. The couple shares joint responsibility for their utility and car insurance bills.

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

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

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

22 92. Susan is the primary caregiver for her 88-year-old mother, who has
23 dementia. The care of her mother precludes Susan from obtaining full-time employment.
24 Susan is instead self-employed as a freelance website designer, which allows her flex-
25 ibility to care for her mother, but does not provide access to health insurance coverage.

26 93. Beverly has researched private insurance options for Susan multiple times.
27 The private insurers Beverly contacted consistently have refused to insure Susan. A
28 private insurer recently informed Beverly that even if the insurer would cover Susan,

1 which it would not guarantee, the cost would range from \$700.00 a month for a \$250.00
2 deductible, to \$318.00 a month for a \$3,000.00 deductible. Beverly's current plan has no
3 deductible.

4 94. Susan previously qualified for medical coverage through AHCCCS but it is
5 not clear that she would qualify now. Beverly and Susan strongly prefer to maintain
6 family coverage through Beverly's employment at U of A because the quality of coverage
7 and care are better, and because they take pride in contributing to the cost of their care as
8 Beverly currently does by paying a portion of the premium each month. Beverly is
9 insulted and frustrated that she must explore coverage for her life partner through the
10 State's AHCCCS program when her heterosexual co-workers have a secure option for
11 protecting their immediate family members.

12 95. Beverly feels deeply rooted in Arizona, having lived in the state for 22
13 years. Prior to the change required by Section O, Beverly had not considered uprooting
14 her life and disrupting her commitment to U of A. But she now worries that she will have
15 no choice but to seek employment elsewhere if she cannot maintain her family coverage
16 for Susan.

17 **6. Plaintiff Stephen Russell.**

18 96. Plaintiff Stephen Russell ("Stephen") is a professor, Fitch Nesbitt Endowed
19 Chair in Family and Consumer Sciences in the John & Doris Norton School of Family and
20 Consumer Sciences, and Director of the Frances McClelland Institute for Children, Youth,
21 & Families at U of A. Stephen was actively recruited by U of A, and has been a dedicated
22 and valuable employee since he joined the institution's faculty in 2004. By June 2010,
23 Stephen will have secured more than \$2 million in federal contracts, research grants, and
24 private gifts for U of A. Stephen's fundraising not only supports his own research, but
25 also helps to support the work of graduate students and postdoctoral scholars. Stephen is
26 43 years old.

27

28

1 97. Stephen has formed a committed relationship with his beloved partner,
2 William Scott Neeley (“Scott”), who is a self-employed architect and does not have health
3 insurance coverage through his employment. Scott is 54 years old.

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

10 99. Stephen and Scott celebrated their tenth anniversary on April 2, 2003 with
11 their friends and family from across the country, and have considered the event to have
12 been a public recognition of their life commitment. Each partner feels fortunate to have
13 been warmly embraced by the other’s family, and when both of Scott’s parents recently
14 passed away, Stephen was included as a full participant in the family grieving process.
15 Stephen and Scott would marry each other if the State permitted them to do so.

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

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

27 102. In July of 2009, Scott discovered blood in his urine and needed urology care
28 and tests to assess the possibility of prostate cancer. Having undergone a number of tests,

1 Scott was relieved to learn that his symptoms have a benign cause, but the episode has
2 reminded the couple of how vulnerable they would be if Scott were to contract a serious
3 illness without health insurance coverage.

4 103. Stephen and Scott previously purchased an individual insurance policy for
5 Scott, but as of fall 2008, the couple paid approximately \$500.00 a month for a plan that
6 offered only catastrophic coverage. Stephen accepted the position with U of A in
7 significant part because, when he was being recruited, the university actively was
8 pursuing family coverage for employees with a committed same-sex partner.

9 **7. Plaintiff Deanna Pfleger.**

10 104. Plaintiff Deanna Pfleger (“Deanna”), who is 43 years old, has been a
11 dedicated employee of Arizona’s Game and Fish Department for 17 years.

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

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

27
28

1 107. Deanna is in a committed, loving relationship with Mia LaBarbara (“Mia”),
2 and the couple will celebrate their twentieth anniversary on Valentine’s Day in 2010. Mia
3 is 42 years old.

4 108. Deanna and Mia have two children, aged 10 and 7, that they planned for and
5 are raising together as equal co-parents.

6 109. Mia had worked for over 12 years as a Regional Interpretive Planner with
7 the Interpretive Education Department of the Arizona State Parks, until she was laid off in
8 October of 2009.

9 110. Deanna and Mia would marry each other if Arizona law permitted and hope
10 that they will be able to fulfill that dream within their lifetimes. Over their nearly 20 years
11 together, the couple has become completely interdependent emotionally and financially.
12 They have each nursed each other through illnesses, including surgery and Deanna’s
13 hospitalization after a car accident.

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

24 112. Deanna enrolled Mia for family coverage through her employment in 2008,
25 and again during open enrollment in 2009, after the couple realized that covering Mia
26 under a “family plan” through Deanna’s employment did not cost any additional money
27 for their family or the State, while insuring Mia as an individual through her own
28 employment cost the State approximately \$500.00 per month. Deanna and Mia will now

1 lose both forms of health insurance coverage for Mia because Mia has lost her job, and the
2 couple is being stripped of Deanna's family coverage.

3 113. Mia is likely to have difficulty qualifying for coverage through AHCCCS
4 because it appears that her unemployment benefits exceed the income eligibility
5 requirements. Deanna has researched the cost of insuring Mia through a private health
6 insurance plan but has been informed that the least expensive plan, for a \$64.00 monthly
7 premium, would come with a \$14,000.00 deductible. The plan with the lowest deductible,
8 of \$3,000.00, would cost the couple \$171.00 per month, an amount this family of four can
9 ill afford now that Mia is unemployed. The family coverage Deanna receives through her
10 employment carries no deductible. Far more frightening for the couple, Deanna has
11 learned that Mia's recent diagnosis of high blood pressure means that her application for
12 private insurance would not even be considered by at least some insurers.

13 114. The loss of family coverage for Mia comes at a particularly stressful time
14 for the couple. Mia began experiencing significant abdominal pain in spring of 2009, and
15 despite undergoing numerous tests, Mia has not received any diagnosis. While the pain
16 has been lessening, its intensity is unpredictable, and in July of 2009 Mia had an episode
17 so acute that she required treatment from an emergency room.

18 115. During the course of her tests, Mia's doctor came to suspect that she may
19 have had ovarian cancer. Mia recently had surgery to remove the ovary and while the
20 doctors have since ruled out ovarian cancer, she will require regular monitoring to ensure
21 that her other ovary remains healthy. Deanna and Mia are particularly worried about this
22 development because Mia previously was diagnosed as being at heightened risk for colon
23 cancer. Mia requires a colonoscopy to monitor her condition every three to five years,
24 which would cost approximately \$3,500.00 out-of-pocket, far more than the \$50.00 co-
25 pay under Deanna's family coverage.

26 116. Mia continues to have periodic abdominal pain, and Deanna and Mia find
27 the prospect of coping with that condition in addition to the need for periodic cancer
28

1 screening and the possibility of a cancer diagnosis, all without family coverage, to be
2 extremely stressful and threatening medically, emotionally and financially.

3 117. Allowing Deanna to continue receiving family coverage through the family
4 plan would not cost the State any additional amount in insurance premiums. Deanna
5 already purchases a “family plan” that covers Deanna and her two biological children.
6 There is no additional cost, for either the employee or the State, to include an additional
7 family member to that plan.

8 **8. Plaintiff Corey Seemiller.**

9 118. Plaintiff Corey Seemiller (“Corey”) is the Program Director for Curricular
10 Leadership in the Center for Student Involvement & Leadership (“Center”) at the U of A,
11 and she has worked full-time for the university since July of 2002. Corey oversees U of
12 A’s classes in student leadership and the Arizona Blue Chip Program, a leadership
13 program at the Center that serves 450 students. Corey has a unique and specialized
14 knowledge of U of A’s leadership programming because she designed eleven of U of A’s
15 leadership courses for the Department of Educational Leadership while she completed her
16 doctoral degree at U of A, and the department is now relying on her specialized expertise
17 to help design a Minor in Leadership Studies. Corey is 36 years old.

18 119. Corey’s committed life partner is Karrie Mitchell (“Karrie”). Karrie is a
19 counselor at Pima Community College, and is 34 years old.

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

25 121. Corey and Karrie have blended their financial assets and responsibilities and
26 are completely interdependent financially. The couple has jointly owned their home since
27 2003. They maintain joint checking and savings accounts. They treat all of their
28 household expenses as mutual. They have each purchased life insurance and named the

1 other as the beneficiary. The couple has executed power of attorney forms authorizing
2 each other to make medical and financial decisions in the event of the other's incapacity.

3 122. Corey and Karrie have a nine-month-old baby girl, K.S.M. The couple
4 planned every aspect of Karrie's pregnancy together and they have equally parented
5 K.S.M. since she was born.

6 123. Karrie is the biological mother of K.S.M. Because Arizona's statutes
7 currently do not permit a lesbian or gay co-parent to adopt a child without terminating the
8 existing legal parent's rights, Corey is unable to secure her relationship to K.S.M. through
9 adoption. Corey and Karrie accordingly have taken additional life planning steps to
10 provide as much security as possible to their child, including executing a co-parenting
11 agreement and a power of attorney document that allows Corey to make decisions about
12 K.S.M.'s medical care and education, and creating a trust so that K.S.M. is financially
13 provided for in the event that either Corey or Karrie passes away.

14 124. When K.S.M. was born, the couple initially enrolled her to receive health
15 coverage through Karrie's employment, but quickly realized that the \$330.00 monthly
16 premium was unaffordable for them. Because Corey was allowed to provide family
17 coverage to the child of her qualifying domestic partner, Corey was able to enroll K.S.M.
18 for family coverage through U of A for a premium of \$30.00 per month, which relieved
19 the couple of an enormous financial burden. To secure the coverage for K.S.M., Corey
20 had to submit an affidavit of domestic partnership and supporting documentation on the
21 same terms as other State employees seeking family coverage for a committed same-sex
22 life partner. Because Corey and Karrie continue to meet the eligibility criteria for family
23 coverage, K.S.M. remains eligible for family coverage as a child of Corey's domestic
24 partner.

25 125. Corey and Karrie were extremely worried after H.B. 2013 was approved and
26 signed by Defendant Brewer that the designated October 1, 2009 effective date for Section
27 O would leave K.S.M. without health coverage unless they acted quickly to secure
28 alternative insurance. Before the Department announced that it would recognize

1 November 24, 2009 as the effective date for H.B. 2013, the couple arranged coverage for
2 K.S.M. through Karrie's employment based on the qualifying life event of K.S.M.'s
3 expected loss of insurance, and accordingly they did not re-enroll K.S.M. for family
4 coverage during Corey's open enrollment period. Karrie was able to secure a reduced
5 premium rate of approximately \$230.00 per month when she enrolled K.S.M. as her child,
6 but this is still significantly more than the \$40.00 the couple would pay through the plan
7 Corey selected during the 2009 open enrollment period.

8 126. Absent another qualifying life event, Corey has lost the opportunity to re-
9 enroll K.S.M. for family coverage because she relied upon Section O's stated effective
10 date of October 1, 2009, and took responsible steps to secure alternative coverage for
11 K.S.M.

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

19 **9. Plaintiff Carrie Sperling.**

20 128. Plaintiff Carrie Sperling ("Carrie") is a Visiting Clinical Associate Professor
21 of Law at Arizona State University ("ASU"), where she has taught since 2007. Carrie is
22 43 years old.

23 129. Carrie's life partner is Sue Shapcott ("Sue"), who is 40 years old. Sue is
24 self-employed as a golf instructor and does not have health insurance through her
25 employment. During the 2009 open enrollment period, Carrie enrolled Sue for family
26 coverage.

27 130. Carrie and Sue have been in a committed, loving relationship since 2006. In
28 May of 2008 they traveled to Great Britain, where Sue was born, and entered into a civil

1 partnership that grants them the same rights and responsibilities accorded to spouses under
2 British law. Carrie and Sue solemnized their partnership before over two dozen of their
3 family and friends. Carrie and Sue would marry each other if Arizona law permitted.

4 131. Carrie and Sue have made mutual pledges to support each other emotionally
5 and financially. They own their Phoenix home as joint tenants with rights of survivorship,
6 have a joint mortgage, and both contribute to their household expenses. They have joint
7 bank accounts, and each has designated the other as the beneficiary of their life insurance.
8 Carrie and Sue have named each other as the primary beneficiary in their wills, and as
9 each other's representative in their durable health care powers of attorney.

10 132. Carrie and Sue lived in Dallas, Texas before Carrie accepted her current
11 position with ASU. At the time Carrie accepted her current position, she knew the State
12 was pursuing family coverage for domestic partners. This was a significant factor in
13 Carrie's decision to accept and to continue in the job, and the couple's decision to move
14 away from the thriving business Sue had built in Dallas.

15 133. Sue has researched private insurance plan options and has confirmed that
16 the individual plans available on the market are more expensive. While Carrie pays
17 approximately \$80.00 per month to insure both Carrie and Sue with a \$1,200.00
18 deductible through Carrie's employment, the couple would have to pay at least an
19 additional \$122.00 per month for an individual plan for Sue with a \$3,000.00 deductible.
20 This would be a frustrating burden for the couple after they sacrificed significant income
21 by leaving Sue's business in Dallas so Carrie could accept her current position at ASU.

22 **10. Plaintiff Leslie Kemp.**

23 134. Plaintiff Leslie Kemp ("Leslie") is a Marketing Coordinator at Northern
24 Arizona University ("NAU"). Leslie has worked for NAU since 2005. She is 39 years
25 old.

26 135. Leslie's life partner is Jennifer Morris ("Jennifer"), who is 37 years old.

27 136. During the 2009 open enrollment period, Leslie enrolled Jennifer for family
28 coverage.

1 137. Leslie and Jennifer have been a committed couple since 2004. They held a
2 commitment ceremony in 2005, attended by many friends and both of their families.
3 Leslie and Jennifer would marry each other if Arizona law permitted.

4 138. Leslie and Jennifer have combined their finances and exchanged promises to
5 provide for each other's financial needs. They have named each other as the primary
6 beneficiary in their respective wills, and have designated each other to make medical
7 decisions in their durable health care powers of attorney. They own a home as joint
8 tenants with rights of survivorship and a joint mortgage, which they now rent to a tenant
9 having relocated closer to the NAU campus for Leslie's job. The couple now jointly
10 leases an apartment. Leslie and Jennifer have joint bank accounts, own their car together,
11 and have joint home and car insurance policies. Leslie has named Jennifer as the
12 beneficiary of her life insurance policy.

13 139. Jennifer is a senior tour guide with a small jeep tour company in Sedona,
14 Arizona. Although Jennifer is eligible for health insurance through her employment, the
15 coverage is more expensive and inferior to what is available for her through Leslie's
16 employment. Leslie currently contributes approximately \$100.00 a month for family
17 insurance covering Leslie, Jennifer and their two-and-a-half-year-old son. Purchasing
18 insurance for Jennifer through Jennifer's job would cost approximately \$175.00 per month
19 with a \$1,500.00 deductible, and the plan would not cover most doctor's office visits.

20 140. With a young son, and Leslie expecting to give birth to a second son in early
21 2010, Leslie and Jennifer do not have the means to purchase the more expensive plan
22 available through Jennifer's job. Without Leslie's family coverage, they would have to
23 forego health insurance for Jennifer in order to save for the arrival of their second child.

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

26 141. Public and private employers who offer family coverage on
27 nondiscriminatory grounds to all employees achieve a number of economic and business
28

1 advantages, including the ability to attract more talented and highly skilled employees,
2 decrease turnover, and improve employee morale and productivity.

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

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

11 144. The costs of domestic partner benefits to employers generally are limited
12 because, among other reasons, the pool of lesbian and gay employees usually is very
13 small, and not all employees in same-sex relationships enroll for domestic partner
14 benefits.

15 145. Arizona's total state budget for the 2008-2009 fiscal year was approximately
16 \$9.9 billion. Alan Ecker, a spokesperson for the Department, has reported that the
17 elimination of family coverage for State employees' unmarried partners will affect
18 approximately 800 employees and will save \$3.3 million—or about 0.5%—of the State's
19 annual employee health care budget of \$650 million. This amounts to a state budget
20 savings of approximately 0.033%. Upon information and belief, State employees with a
21 committed same-sex life partner comprise a small fraction of the 800 employees receiving
22 benefits for an unmarried partner, meaning that family coverage for lesbian and gay State
23 employees with a same-sex life partner costs far less than the half-of-one-percent-of-
24 health-costs figure (or thirty-three-thousandths-of-one-percent-of-overall-state-costs
25 figure) attributable to unmarried domestic partners generally. In other words, offering this
26 important benefit to the small pool of lesbian and gay State employees who otherwise are
27 categorically barred from family coverage because they cannot marry causes only
28 negligible costs for the State.

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

8 147. Public employers in Arizona have confirmed the lack of disproportionate
9 costs of domestic partner health coverage, the related cost-savings, and the positive effects
10 on employee retention and positive morale. Municipal employers in Arizona now
11 offering family coverage to their lesbian and gay employees include Pima County and the
12 Cities of Phoenix, Tempe, Scottsdale, and Tucson. Nationally, this equal compensation
13 practice has been adopted by increasing numbers of public and private employers. At
14 least 18 states and the District of Columbia now offer family coverage to lesbian and gay
15 state employees. More than eighty percent of the Fortune 100 companies offer family
16 coverage to lesbian and gay employees, as do a majority of the Fortune 500 companies.

17 148. Many major private employers who compete with the State for talented,
18 skilled employees now offer family coverage to lesbian and gay employees. A
19 representative sampling of such companies includes American Express, Bank One, Bank
20 of America, Banner Health Systems, Costco Wholesale, Cox Communications, Gannett,
21 Hilton Hotels, Home Depot, Honeywell, IBM, Intel, Intuit, Marriott International,
22 Medtronic, Morgan Stanley, Motorola, Qwest, Raytheon, Sears, Target, Texas
23 Instruments, UPS, Walgreen's and Wells Fargo. In addition to those national companies,
24 dozens of private employers headquartered in Arizona that compete directly with the State
25 for the most qualified employees offer family coverage to lesbian and gay employees.
26 Among the top ten universities participating in the Pacific10-Conference (a college
27 athletic conference that operates in the western United States), ASU and UA would be the
28 only two universities to not offer domestic partner benefits to lesbian and gay employees.

1 Moreover, the top 10 universities ranked by U.S. News and World Report all offer
2 domestic partner benefits, as do all Ivy League schools.

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

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

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

19 152. The State's explicit policy of discrimination inflicts significant harm upon
20 Plaintiffs, including depriving them of their constitutional right to equally respectful
21 treatment and protection, imposing financial deprivations and emotional distress, and
22 sending a strong message of stigma and devaluation of Plaintiffs, the State's other lesbian
23 and gay employees and their families, all because of their sexual orientation and their sex
24 in relation to the sex of their committed life partner.

25 153. Employment benefits provided to employees routinely are valued at
26 between one-fifth and one-third of total compensation. Thus, family coverage for a
27 spouse or same-sex life partner is valuable financially as well as emotionally for most
28 employees. The State's deliberate elimination of domestic partner benefits, while

1 maintaining spousal benefits and denying its lesbian and gay employees any way to
2 qualify for family benefits, unlike their heterosexual counterparts, accordingly requires
3 those lesbian and gay employees to perform equal work for less compensation.

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

7 **FIRST CLAIM FOR RELIEF**

8 **Equal Protection on the Basis of Sexual Orientation and Sex**

9 **U.S. Const. Amend. XIV, 42 U.S.C. § 1983**

10 155. Plaintiffs incorporate by reference and reallege paragraphs 1 to 154 of this
11 complaint.

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

14 157. The Fourteenth Amendment to the United States Constitution, enforceable
15 pursuant to 42 U.S.C. § 1983, provides that no state shall deny to any person the equal
16 protection of the laws. Defendants' conduct violates Plaintiffs' right to equal protection
17 of the laws, and specifically Plaintiffs' right not to be denied equal protection on the basis
18 of sexual orientation or sex.

19 158. Defendants deny equal compensation to lesbian and gay State employees by
20 their withdrawal of domestic partner coverage, and by their categorical refusal to offer any
21 other way for employees to qualify a same-sex life partner within the State's family health
22 insurance plans, with no constitutionally adequate reasons for this knowing and
23 intentional withdrawal and refusal, unlike Defendants' treatment of their heterosexual
24 employees. Defendants' conduct and omissions, and policies and practices in their
25 establishment and administration of the health benefits plans for State employees,
26 including in particular Defendants' implementation of Section O, subjects Plaintiffs to
27 intentionally differential, adverse and inferior treatment because of Plaintiffs' sexual
28

1 orientation as lesbians and gay men and because of each Plaintiff's sex in relation to the
2 sex of his or her committed life partner.

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

9 160. All of Defendants' acts or omissions and policies and practices alleged
10 herein were, and if not enjoined, will continue to be committed intentionally and
11 purposefully because of Plaintiffs' sexual orientation and sex in relation to the sex of each
12 one's committed life partner.

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

16 162. Defendants' denial of equal compensation to lesbian and gay State
17 employees as a class by Defendants' elimination of domestic partner benefits, and by
18 Defendants' categorical refusal to allow State employees any means to qualify a same-sex
19 life partner or partner's children for family coverage, reflects moral disapproval and
20 antipathy toward lesbians and gay men, including Plaintiffs, serves no legitimate
21 government interest and is, therefore, invalid under any form of constitutional scrutiny.

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

28

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

7 165. All of Defendants' acts or omissions and policies and practices alleged
8 herein were, and if not enjoined, will continue to be committed intentionally and
9 purposefully because of Plaintiffs' sexual orientation and sex in relation to the sex of each
10 one's committed life partner.

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

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

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

28

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

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

21 171. Defendant Raber has direct and personal responsibility for the direction,
22 operation and control of the Department, and is responsible to the Governor for the
23 direction, control and operation of the Department, which includes formulating plans and
24 programs, and making contracts, to implement employment policies required by statute,
25 such as and specifically including Section O. In this capacity, unless enjoined, Defendant
26 Raber will be personally involved in decisions and actions that will violate Plaintiffs' right
27 to equal protection by implementing Section O and discriminatorily stripping Plaintiffs of
28 family coverage, thereby proximately causing them injury.

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

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

22 174. Defendant Peckardt plays a direct, personal and leading role in determining
23 the structure of, and eligibility for, the State's health benefits plans. Defendant Peckardt
24 led the Department's transition from fully insured to self-insured health benefits plans;
25 established the State's employee portal providing access to human resources information;
26 and oversees the State's Human Resources Information Solution, an integrated benefits,
27 payroll and human resources system. Upon information and belief, these and Defendant
28 Peckardt's other responsibilities require that, unless enjoined, Defendant Peckardt

1 necessarily will be involved personally in decisions and actions that will violate Plaintiffs'
2 right to equal protection by implementing Section O and discriminatorily stripping
3 Plaintiffs of family coverage, thereby proximately causing them injury.

4 175. Defendant Peckardt, upon acting personally, purposefully and intentionally
5 to enforce Section O, has or will set in motion acts by others to enforce and implement
6 Section O which Defendant Peckardt knows, or reasonably should know, will cause others
7 to inflict these constitutional injuries upon Plaintiffs. Upon information and belief,
8 Defendant Peckardt knowingly has refused to prevent anticipated action by others under
9 her supervision to implement Section O, is culpable for her actions and inactions in her
10 supervision and control of subordinates who are charged to implement Section O, has
11 acquiesced in this constitutional deprivation to be effectuated by her purposeful actions
12 and those of her subordinates, and has engaged in conduct demonstrating a reckless and
13 callous indifference to Plaintiffs' constitutional rights to be treated equally in their
14 compensation, which must include an equal opportunity to qualify immediate family
15 members for health coverage.

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

25 177. As Assistant Director, Defendant Hamilton is the Plan Administrator for the
26 State, which requires that he manage the group plans through which \$750 million in
27 health, dental, life, disability and vision insurance benefits are provided to approximately
28 140,000 State employees, retirees, and their dependents. Upon information and belief,

1 these and Defendant Hamilton's other responsibilities require that, unless enjoined,
2 Defendant Hamilton necessarily will be involved personally in decisions and actions that
3 will violate Plaintiffs' right to equal protection by implementing Section O and
4 discriminatorily stripping Plaintiffs of family coverage, thereby proximately causing them
5 injury.

6 178. Defendant Hamilton, upon acting personally, purposefully and intentionally
7 to enforce Section O, has or will set in motion acts by others to enforce and implement
8 Section O which Defendant Hamilton knows, or reasonably should know, will cause
9 others to inflict these constitutional injuries upon Plaintiffs. Upon information and belief,
10 Defendant Hamilton knowingly has refused to prevent anticipated action by others under
11 his supervision to implement Section O, is culpable for his actions and inactions in his
12 supervision and control of subordinates who are charged to implement Section O, has
13 acquiesced in this constitutional deprivation to be effectuated by his purposeful actions
14 and those of his subordinates, and has engaged in conduct demonstrating a reckless and
15 callous indifference to Plaintiffs' constitutional rights to be treated equally in their
16 compensation, which must include an equal opportunity to qualify immediate family
17 members for health coverage.

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

22 180. Section O's categorical denial of equal compensation in the form of family
23 coverage for lesbian and gay State employees with a committed same-sex life partner, and
24 Defendants' conduct and omissions and policies and practices to effectuate Section O's
25 withdrawal of this coverage from this class of State employees, impairs Plaintiffs'
26 protected liberty interest in having an intimate relationship with another consenting adult
27 as part of each Plaintiff's private life on the discriminatory basis of Plaintiffs' sexual
28 orientation and sex with respect to the sex of each one's life partner. Defendants have

1 previously and are now discriminating against lesbian and gay State employees, including
2 Plaintiffs, based on sexual orientation with respect to the exercise of Plaintiffs'
3 fundamental rights. Discriminatory treatment based on Plaintiffs' sexual orientation and
4 sex, and with respect to Plaintiffs' exercise of fundamental rights, subjects Defendants'
5 conduct to strict or at least heightened scrutiny, which Defendants' conduct cannot
6 withstand.

7 181. The categorical denial of equal compensation in the form of family coverage
8 to lesbian and gay State employees with a committed same-sex life partner violates the
9 Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
10 Defendants have been and are acting under color of state law at all relevant times in their
11 implementation of Section O and their resulting and purposeful violation of Plaintiffs'
12 constitutional rights. Defendants' actions and omissions, and practices and policies, both
13 facially and as applied to Plaintiffs, violate Plaintiffs' clearly established constitutional
14 rights, of which a reasonable person would have known, to equal treatment without regard
15 to sexual orientation or sex, under the Fourteenth Amendment to the United States
16 Constitution.

17 **SECOND CLAIM FOR RELIEF**

18 **Substantive Due Process**

19 **U.S. Const. Amend. XIV, 42 U.S.C. § 1983**

20 182. Plaintiffs incorporate by reference and reallege paragraphs 1 to 181 of this
21 complaint.

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

24 184. The Fourteenth Amendment to the United States Constitution, enforceable
25 pursuant to 42 U.S.C. § 1983, provides that no state shall deprive any person of life,
26 liberty, or property without due process of law. The above-described conduct by
27 Defendants infringes upon Plaintiffs' fundamental rights and protected liberty interests,
28 and in so doing violates Plaintiffs' right not to be deprived of substantive due process.

1 185. The Fourteenth Amendment's Due Process Clause has a substantive
2 component that protects against government interference with fundamental rights and
3 protected liberty interests. Each Plaintiff has a protected, fundamental right and liberty
4 interest in his or her private intimate conduct and family relationship with his or her
5 committed same-sex life partner.

6 186. The categorical denial of equal compensation in the form of family coverage
7 to lesbian and gay State employees with a committed same-sex life partner, and
8 Defendants' conduct and omissions, and policies and practices in connection therewith,
9 impermissibly infringe upon, intrude upon, and subject Plaintiffs to punishment and
10 penalty based upon Plaintiffs' exercise of their fundamental right and protected liberty
11 interest without compelling, substantial or otherwise sufficient reason, or adequate
12 tailoring, in violation of Plaintiffs' rights under the Due Process Clause of the Fourteenth
13 Amendment.

14 187. The categorical denial of equal compensation in the form of family coverage
15 for lesbian and gay State employees with a committed same-sex life partner, and
16 Defendants' conduct and omissions, and policies and practices in connection therewith,
17 select for disfavored treatment lesbian and gay State employees who exercise this
18 fundamental right and liberty interest with a same-sex life partner, and provide favored
19 treatment to heterosexual employees who may obtain greater compensation by marrying a
20 different-sex life partner, impermissibly burdening and infringing upon Plaintiffs' exercise
21 of their protected rights. There is no compelling, important, legitimate or otherwise
22 adequate state interest to justify this intrusion by Defendants into the personal and private
23 lives of Plaintiffs, and this burdening of their exercise of fundamental rights and
24 enjoyment of protected liberty interests therein, and Defendants' actions and omissions
25 and policies and practices in this regard are arbitrary, irrational and indefensible.

26 188. The discriminatory denial of equal compensation in the form of family
27 coverage for lesbian and gay State employees with a committed same-sex life partner, and
28 Defendants' conduct and omissions, and policies and practices in connection therewith, do

1 not satisfy applicable standards for the infringement of Plaintiffs' fundamental rights and
2 liberty interests protected by the Due Process Clause of the Fourteenth Amendment
3 because they are not supported by, do not significantly further, and are not necessary to,
4 any legitimate or important, let alone compelling, governmental interests. As described
5 above, the legitimate goal of government cost-savings may not be pursued by selectively
6 and invidiously subjecting one group of public employees to unequal treatment based on
7 an unjustifiable classification, and there are no disproportionate costs or administrative
8 burdens involved in providing equal family coverage which explain or justify elimination
9 of this portion of Plaintiffs' employment compensation and that of other lesbian and gay
10 State employees.

11 189. As alleged above, Defendants' conduct and omissions and policies and
12 practices of selecting for disfavored treatment lesbian and gay State employees who
13 exercise their protected right to form and maintain an intimate family relationship with a
14 same-sex partner were intentional and purposeful, and undertaken to effectuate Section
15 O's purpose of encouraging heterosexual relationships and discouraging same-sex
16 relationships.

17 190. Upon information and belief, Does 1 through 100 are in some manner
18 responsible and culpable for Plaintiffs' injuries, and if not enjoined will act personally to
19 violate Plaintiffs' rights to substantive due process under the Fourteenth Amendment to
20 the United States Constitution.

21 191. The discriminatory denial of equal compensation in the form of family
22 coverage for lesbian and gay State employees with a committed same-sex life partner
23 violates the Due Process Clause of the Fourteenth Amendment to the United States
24 Constitution. Defendants have been and are acting under color of state law at all relevant
25 times in their implementation of Section O and their resulting and purposeful violation of
26 Plaintiffs' constitutional rights.

27
28

DECLARATORY AND INJUNCTIVE RELIEF

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

192. Plaintiffs incorporate by reference and reallege paragraphs 1 to 191 of this complaint.

193. This case presents an actual case or controversy because there is an existing, ongoing, real and substantial controversy between 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.

194. 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.

195. 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, Raber, Peckardt, Hamilton 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; and will deprive Plaintiffs of the constitutional rights pleaded herein.

196. 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 H.B. 2013 will take effect on October 1, 2010. Defendants Brewer's, Raber's, Peckardt's, and Hamilton's and Does 1 through 100's direct and personal involvement in enforcing Section O have and will proximately cause Plaintiffs' irreparable injuries.

1 197. Plaintiffs seek permanent injunctive relief to protect their constitutional
2 rights and avoid the injuries described above. A favorable decision enjoining Defendants
3 would redress and prevent the irreparable injuries to Plaintiffs’ identified herein.

4 198. The irreparable injuries Plaintiffs will suffer absent injunctive relief have no
5 adequate remedy at law or in equity. An injunction is the only way of adequately
6 protecting Plaintiffs from harm because no legal or equitable remedy could effectively
7 cure or compensate for the invasion of Plaintiffs’ constitutional rights, the bodily harm
8 Plaintiffs’ same-sex life partners or partner’s child will suffer in the absence of family
9 coverage to address their urgent, ongoing health needs, and the emotional harms of
10 anxiety about family members and of government-imposed rejection and exclusion of
11 one’s family.

12 199. The burden on the State of maintaining family coverage for its lesbian and
13 gay employees will be minor, given the small number of such employees who are eligible
14 and who have enrolled for family coverage, and the negligible cost of providing the
15 family coverage, whereas the hardship for Plaintiffs of going without access to this
16 insurance coverage is extreme, and subjects Plaintiffs to enormous financial hardship and
17 risk of potential catastrophe in the event of a partner’s serious illness. The balance of
18 hardships thus tips strongly in favor of Plaintiffs.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

21 A. Declaring that the provisions and enforcement by Defendants of the portion
22 of A.R.S. § 38-651(O) that limits eligibility for family coverage to State employees that
23 have a “dependent” who is a “spouse,” and by extension, a spouse’s child, to the exclusion
24 of lesbian and gay State employees with a committed same-sex life partner, violates
25 Plaintiffs’ rights under:

- 26 1. the Equal Protection Clause of the Fourteenth Amendment of the
27 United States Constitution; and
28

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

3 B. Permanently enjoining enforcement by Defendants of the portion of A.R.S.
4 § 38-651(O) that limits eligibility for family coverage to State employees that have a
5 “dependent” who is a “spouse,” and by extension, a spouse’s child, to the exclusion of
6 lesbian and gay State employees with a same-sex life partner, including Plaintiffs;

7 C. Requiring Defendants in their official capacities to maintain family
8 coverage, on terms equal to the family coverage Defendants offer to heterosexual State
9 employees who marry a different-sex life partner, for Plaintiffs and other qualifying
10 lesbian and gay State employees with a committed same-sex life partner who satisfy the
11 relevant eligibility criteria specified in Ariz. Admin. Code § R2-5-101;

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

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

15 Dated: January 7, 2010

**LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.**

Jennifer C. Pizer
Tara L. Borelli

PERKINS COIE BROWN & BAIN P.A.

By: s/ James E. Barton II

Daniel C. Barr
Rhonda L. Barnes
James E. Barton II
2901 N. Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788

Attorneys for Plaintiffs
Tracy Collins, Keith B. Humphrey, Joseph
R. Diaz, Judith McDaniel, Beverly
Seckinger, Stephen Russell, Deanna
Pfleger, Corey Seemiller, Carrie Sperling
and Leslie Kemp

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2010, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Alisa Ann Blandford
alisa.blandford@azag.gov

Charles Arnold Grube
charles.grube@azag.gov

Kathryn J Winters
kathryn.winters@azag.gov

I hereby certify that on January 7, 2010, I served the attached document by first class mail on Judge John W. Sedwick, United States District Court of Arizona, 401 West Washington Street, Phoenix, Arizona 85003-2118.

s/ Janet Roe

17525167.1