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16 ARIZONA SUPERIOR COURT

17 MARICOPA COUNTY

18 ARIZONA TOGETHER, an unincorporated
19 association; AMALIA ANTONIOLI, a single
20 person; AL BREZNEY, a single person; GLEN
21 CROMER, a single person; TERESA HEWITT, a
22 single person; PAUL KNOBBE, a single person;
23 ALBERT LANNON, a single person; KAITLIN
24 MEADOWS, a single person; REBECCA
25 MILLER, a single person; FRANK MONTOYA, a
26 single person; and MAXINE PIATT, a single
person,

Plaintiffs,

v.

JANICE K. BREWER, in her official capacity as
Secretary of State for the State of Arizona,

Defendant,

and

PROTECT MARRIAGE ARIZONA, an
unincorporated association

Real Party in Interest.

No. CV2006-010505

**PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF REQUEST FOR
INJUNCTIVE RELIEF**

(Assigned to the Hon. Douglas Rayes)

1 made candidly during the course of a months-long effort to qualify this initiative for the
2 ballot. These statements were not carefully crafted for purposes of litigation.

3 On its current web site, PMA has provided its supporters with eight Talking Points
4 about Proposition 107. The first seven explain what PMA means by “protecting marriage”:

- 5 1. Marriage is under attack. Determined activists are using the
6 courts to redefine marriage in America. If we do not act to
7 protect marriage, activist judges will redefine marriage
8 forever.
- 9 2. The people of Arizona have the right to decide this issue. Let
10 the people decide the definition of marriage in Arizona, not
11 activist judges. A state constitutional amendment allows the
12 people of the state of Arizona to retain the ability to decide
13 the definition of marriage in our state.
- 14 3. A state constitutional amendment provides the strongest
15 possible legal protection for marriage against redefinition by
16 activist state judges.
- 17 4. Marriage benefits Arizona. Arizona promotes marriage
18 because marriage is the fundamental building block of
19 society. Children do better in life when they have the security
20 of living with a married mother and father. Society is strong
21 when the institution of marriage is strong. With all the
22 challenges to marriage in society, the last thing Arizona needs
23 is to fundamentally redefine marriage.
- 24 5. Arizona promotes marriage because marriage benefits
25 society. Redefining marriage, on the other hand, is an
26 untested social experiment.
6. Children do best when they have a mom and a dad. Good
public policy always tries to help children who lack a mother
or father. The government should not, however, assign them
to a redefined “family” in which they will never have a
chance for either a mother or a father.
7. If we allow the courts to redefine the institution of marriage,
where does it stop? What prevents further redefinition of

1 marriage to include polygamy, group marriages, etc.? If
2 marriage is redefined it loses all meaning.

3 Available at <http://www.protectmarriageaz.com/marriage/qa/points.php> (last accessed Aug.
4 2, 2006). None of these statements about protecting marriage from redefinition have any
5 connection to banning domestic partner benefits. So much so, that Talking Point #8 then
6 makes a feeble attempt to appear to disclaim any impact on domestic partner benefits:

- 7 8. This amendment does not take away the existing benefits of
8 state employees or retirees. It merely states that the State of
9 Arizona will only provide marriage benefits to people who
10 are married.

11 *Id.*

12 But PMA's position regarding domestic partner benefits will not last. If this measure
13 is enacted, efforts to ban domestic partner benefits are not far behind. This is the approach
14 taken by PMA's counsel, the Alliance Defense Fund, in Ohio. There, PMA's counsel and
15 ally is arguing that a constitutional amendment substantially similar to Proposition 107
16 prohibits domestic partner benefits.

17 Knowing that the common purpose test used to analyze possible violations of the
18 Separate Amendment Rule is geared to a determination of whether voters would reasonably
19 be expected to support all provisions, PMA attacks the polling data cited by Plaintiffs and
20 argues that Plaintiffs are attempting to encourage the court to "adopt a new subjective test."
21 As explained below, this is not a new or subjective test.

22 PMA also contends that because courts in other states have rejected challenges to
23 other proposed or adopted state constitutional amendments that are similar in content to
24 Proposition 107, this Court should reject Plaintiffs' challenge here. As is explained in detail
25 below, the amendments cited by PMA involved different language and, importantly, the
26 constitutional standard applied in those cases is *less* stringent than the standard applied by
the Arizona Supreme Court.

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ARGUMENT

I. PROPOSITION 107 IS NOT UNITED BY A COMMON PURPOSE OR PRINCIPLE.

The Arizona Constitution requires that the voters be able to vote separately on each proposed amendment to the Arizona Constitution. *See* Ariz. Const art. XXI, § I. The Arizona Supreme Court has held that an initiative violates this requirement if its provisions on existing law do not all relate to a single, common purpose or principle. *Clean Elections*, 209 Ariz. at 244, 99 P.3d at 573. There is a common purpose or principle only if the provisions “can be said to constitute a consistent and workable whole on the general topic embraced, that, logically speaking, should stand or fall as a whole.” *Id.* citing *Kerby v. Luhrs*, 44 Ariz. 208, 221, 36 P.2d 549, 554 (1934). To determine whether the provisions of a challenged initiative satisfies this test, the Court will analyze objective factors such as:

[W]hether various provisions are facially related; whether all the matters addressed by an initiative concern a single section of the constitution; whether the voters or the legislature historically has treated the matters addressed as one subject; and whether the various provisions are qualitatively similar in their effect on either procedural or substantive law.

Id. at 245; 99 P.3d at 574.

These objective factors point to unconstitutional, separate amendments “if it is not such that the voter supporting [one provision] would be [reasonably] expected to support the principle of the others.” *Id.* at 244, 99 P.3d at 573 (*quoting Kerby*, 44 Ariz. at 221, 36 P.2d at 554). Simply stating that an initiative’s purpose relates to some broad or amorphous topic is insufficient to establish a single, unifying common purpose or principle. *Korte v. Bayless*, 199 Ariz. 173, 178, 16 P.3d 200, 205 (2001). If in analyzing the initiative the court “cannot conclude that the provisions should stand or fall together or that a voter supporting one would reasonably be expected to support the principle of the other,” the court is “obliged to

1 find that [the Initiative] violates the separate amendment rule.” *Clean Elections* 209 Ariz. at
2 246, 99 P.3d at 575.

3 PMA’s Response fails to explain how the provisions and effects of Proposition 107 all
4 relate to a specific “common purpose or principle.” Instead the Response attempts⁴ to relate
5 all of Proposition 107’s topics and effects by grouping them under the broad, general
6 umbrella of “protect[ing] marriage.” This alleged purpose, however, is much too
7 amorphous to be construed as narrow. *See Korte*, 199 Ariz. at 178, 16 P.3d at 205 (state trust
8 lands topic would be too amorphous to relate to a common purpose or principle); *Kerby*, 44
9 Ariz. at 221-22, 36 P.2d at 554-55 (broad purpose of taxation as the only connection between
10 provisions in an initiative is insufficient).

11 Given the PMA’s 7-point explanation of Proposition 107’s purpose of “protecting
12 marriage,” a prohibition against domestic partner benefits is not related — much less
13 sufficiently related — to protecting marriage. Providing healthcare and educational benefits,
14 for example, to unmarried couples is far removed from protecting the definition of marriage
15 as “only a union between one man and one woman.”

16 **A. Voters And The Legislature Have Treated The Multiple Provisions Within**
17 **Proposition 107’s Provisions As Separate Subjects.**

18 As was detailed in our opening brief, legislatures in other states have treated civil
19 unions, domestic partner benefits and marriage as separate topics. For example, Vermont,
20 Connecticut and California have rejected proposals to allow same sex marriage, but have
21 approved various systems of civil unions. And in Utah — a state that allows neither
22 domestic benefits nor civil unions — Salt Lake City is providing domestic partner benefits to
23 its employees. *See Salt Lake City, UT., Code Number 4 of 2006, § 2.52.100. (2006).*

24 This is true in Arizona as well. The Arizona Legislature has enacted laws recognizing
25 valid out-of-state common-law marriages and banning same-sex marriage while remaining

26 ⁴ Resp. at 1.

1 silent about civil unions and State-provided domestic partner benefits. *See* A.R.S. §§ 25-101
2 (banning same sex marriage), 25-112 (validity of out of state marriages). Local governments
3 such as Pima County and the Cities of Phoenix, Scottsdale, Tempe and Tucson provide
4 domestic partner benefits to unmarried same-sex and opposite-sex couples. Tucson has even
5 established a domestic partnership registry, affording unmarried couples certain rights and
6 privileges. *See* Tucson, AZ, Code ch 17, art. IX §§ 17-70 – 17-77 (2003); Morgan Decl. at
7 Ex. 1.

8 In addition, the Legislature has historically treated the multiple provisions of
9 Proposition 107 separately. In the 10 years since Arizona adopted a statutory ban on same
10 sex marriage and six years since Vermont created civil unions, the Arizona Legislature has
11 not enacted a law or amended A.R.S. § 25-101 to include a ban on civil unions. Likewise, the
12 Legislature has never taken any action with respect to domestic partner benefits, despite the
13 fact that these benefits have been offered in Arizona for several years.

14 **B. The Various Provisions Of Proposition 107 Are Not Qualitatively Similar**
15 **Or Facially Related.**

16 Two objective factors to be considered in determining whether parts of a
17 constitutional amendment have a common purpose are “whether [the] various provisions are
18 facially related” and “whether the various provisions are qualitatively similar in their effect
19 on either procedural or substantive law.” *Clean Elections*, 209 Ariz. at 245; 99 P.3d at 574.

20 The provisions effects on substantive law are quite dissimilar. For example, the first
21 clause of Proposition 107 — by defining marriage as between one man and one woman —
22 has the single purpose of prohibiting same-sex marriage. The second clause goes into much
23 different territory by precluding civil unions between same-sex and *opposite sex-couples* and
24 has the further effect of prohibiting government from offering its employees’, both same-sex
25 and *opposite-sex* unmarried couples, even limited domestic partner benefits such as health
26 insurance and tuition waivers. Offering minimal domestic partner benefits to a Phoenix

1 fireman and his girlfriend or an opposite-sex elderly couple does not have any relation, let
2 alone a sufficient relation, to protecting the traditional definition of marriage.

3 PMA addresses domestic partner benefits in but one sentence. PMA states⁵ that “*the*
4 *purported third amendment, which Arizona Together views as a second effect of precluding a*
5 *legal status similar to marriage, is not even necessarily an effect – the Amendment says*
6 *nothing about benefits and does not preclude extending benefits to all government employees*
7 *on an equal basis.*” (emphasis added). PMA’s statement is a gross misrepresentation. First,
8 PMA cannot deny that the prohibition of domestic partner benefits is a central purpose of
9 this initiative. It *never* disputes that Peter Gentala of PMA asserted that the Initiative seeks
10 to prevent the offering of domestic partner benefits. Nor does it dispute that Cathi Herrod of
11 the Center for Arizona Policy, intends for the Initiative to not only ban civil unions, but ban
12 domestic partner benefits. And it is no surprise that PMA does not expressly deny the fact
13 that Proposition 107 will prohibit the State and its political subdivisions from providing
14 domestic benefits because PMA’s counsel, The Alliance Defense Fund, is making that same
15 argument in Ohio in relation to a state constitutional provision substantially similar to
16 Proposition 107.⁶ See Ohio Const. art. 15, § 11; Complaint filed in *Brinkman v. Miami*
17 *University*, CV2005 11 3736 (Butler Co. Common Pleas Court) (attached at Tab 1).

18 Finally, these provisions do not satisfy the “facially related” factor because it is clear
19 that the question of whether government can provide benefits to unmarried employees is not
20 facially related to the question of who can marry.

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⁵ Resp. at 5.

24 ⁶ The Ohio Constitution reads: “Only a union between one man and one woman may be a
25 marriage valid in or recognized by this state and its political subdivisions. This state and its
26 political subdivisions shall not create or recognize a legal status for relationships of
unmarried individuals that intends to approximate the design, qualities, significance or effect
of marriage.”

1 **C. Voters Supporting A Ban On Same-Sex Marriage Would Not Be Expected**
2 **To — And Do Not — Support Banning Civil Unions Or Domestic Partner**
3 **Benefits.**

4 The foregoing analysis of the objective factors is further supported by objective,
5 statistical evidence supporting the conclusion that Arizona voters could support one
6 provision of Proposition 107 but not “reasonably be expected to support the principle of the
7 others.” *Kerby*, 44 Ariz. at 221; 36 P.2d at 554; *see also* Revised Harstad Decl. at 10 (50%
8 of Arizona voters polled were in favor of proposed amendment to ban same-sex marriage
9 while only 27% indicated they would still favor such an amendment if it denied domestic
10 partner benefits to opposite-sex and same-sex partners); Revised Lake Decl. at 10 (60% of
11 Arizonans support a constitutional definition of marriage as between one man and one
12 woman while only 48% support a ban on legal recognition of any relationship other than
13 marriage and 51% of voters favored a proposal that would allow gay and lesbian couples in a
14 committed relationship to enter into legally recognized domestic registries that extend certain
15 benefits to them).

16 In addition, despite PMA’s argument to the contrary, Plaintiffs do *not* propose a new
17 test. PMA incorrectly suggests that Arizona courts “do not ask whether it is possible that
18 voters could favor some effects or provisions while disfavoring others.”⁷ To the contrary,
19 case after Arizona Supreme Court case does just that: “if it is not such that the voter
20 supporting [one provision] would be [reasonably] expected to support the principle of the
21 others, then there are in reality two or more amendments.” *Clean Elections*, 209 Ariz. at
22 244, 99 P.3d at 573 (*quoting Kerby*, 44 Ariz. at 221, 36 P.2d at 554). In *Clean Elections*, the
23 Court rejected an initiative stating “we cannot conclude from any objective factor that voters
24 favoring one proposition would likely favor the other.” 209 Ariz. at 247, 99 P.3d at 576. In
25 *Tilson v. Mofford*, the Court specifically stated it believed because there was one purpose

26 ⁷ Resp. at 12.

1 “voters reasonably [could] be expected to vote for or against the amendment as whole.” 153
2 Ariz. 468, 472, 737 P.2d 1367, 1371 (1987). PMA cannot ignore this part of the test and the
3 public’s desire to vote on these three amendments separately.

4 The common purpose test uses objective factors, however, as Justice Hurwtiz
5 recognized, there is a component of subjectivity. Moreover, while the Court does not want to
6 subjectively predict whether voters would be likely to support each individual provision of
7 Proposition 107, the polling information offered by plaintiffs offers objective evidence about
8 voters' views on these issues. The Proponents *never* dispute that the polls show a split on
9 three issues or that voters have different opinions on same-sex marriage, civil unions, and
10 domestic partner benefits.

11 No Arizona court has ever held that objective, reliable polling data reflecting how a
12 rational voter would treat the separate provisions of a proposed Initiative cannot be used to
13 elucidate – along with the other objective factors applied in *Korte* and *Clean Elections* –
14 whether that proposed Initiative furthers a common purpose or principle. In any event, the
15 objective, empirical statistical evidence presented here, viewed in conjunction with the
16 objective factors relevant to whether Proposition 107’s provisions share a common purpose
17 or principal, leads to one conclusion: The provisions of Proposition 107 do not all relate to a
18 single common purpose or principle and should not be included on the general election
19 ballot. *Clean Elections*, 209 Ariz. at 244, 99 P.3d at 573.

20 **D. PMA Misapplies Arizona’s Separate Amendment Rule Cases.**

21 PMA argues that the purpose of Proposition 107 is to “protect marriage,” and
22 compares the multiple provisions of its initiative to those upheld by the Arizona Supreme
23 Court. But this comparison fails because the provisions of the initiatives upheld in Arizona’s
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1 previous Separate Amendment Rule cases were related to a single, unifying and narrowly
2 drawn common purpose or principle.⁸

3 In *Tilson*, the court rejected a challenge to an initiative proposing that the Legislature
4 have regulatory authority over non-monetary damages, attorneys' fees and costs and
5 payment methods for monetary damages all within the narrow context of tort cases. 153
6 Ariz. at 472, 737 P.2d at 1371. Because these are all elements of a plaintiff's total tort
7 award, the court held that each of these provisions were unified by the common purpose of
8 regulating awards in a specific type of legal action, a tort action. *Id.*

9 Similarly, in *Regner v. Bayless*, 199 Ariz. 182, 16 P.3d 209 (2001), the court held that
10 the two provisions proposed in the initiative (competitive telecommunications rates and
11 eliminating "the fair value method" for setting rates) both furthered the specific purpose of
12 deregulating telecommunications rates. *Id.* at 183, 16 P.3d at 210.

13 *Slayton* rejected a separate amendment rule challenge to the Victims' Rights
14 Initiative, Ariz. Const. art. II, § 2.1, which established ten different procedural rights for
15 crime victims and (subject to a limiting construction by the court) provided to the Legislature
16 power to enact rules that would protect those rights. 166 Ariz. at 92, 800 P.2d at 595. The
17 court held that it "might reasonably be expected [that voters would] support the concept of
18 legislative oversight over effectuation of those specific provisions." *Id.*

19 In *Korte*, 199 Ariz. 173, 16 P.3d 200, the court held that a proposed amendment to
20 Article 10 of the Constitution satisfied the Separate Amendment Rule because it proposed a
21 comprehensive system of proposals that all related to "the general topic of managing [state]
22 trust land in ways that encompass issues of growth and development." *Id.* at 178, 16 P.3d at

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24 ⁸ *State ex rel. Jones v. Lockhart*, 76 Ariz. 390, 265 P.2d 447 (1953), and *Hood v. State*, 24
25 Ariz. App. 457, 539 P.2d 931 (1975), each applied a "reasonable relationship" test that has
26 since been rejected by the Arizona Supreme Court. *Slayton v. Shumway*, 166 Ariz. 87, 91,
800 P.2d 590, 594 (1990) (holding that "*Kerby* sets forth the proper test" and disapproving of
the *Lockhart* analysis).

1 205. The court's decision was based, in part, on the fact that such a comprehensive
2 amendment to Article 10 was a "complex solution to modern legislative problems," meaning
3 that separate ballot measures on each of the measure's provisions "would entail a significant
4 risk that some measures would pass while others would fail, potentially resulting in
5 conflicting constitutional provisions or rendering those portions of the plan that passed
6 ineffective alone." *Id.* at 177-78, 16 P.3d at 204-05.

7 The provisions of Proposition 107, however, are related to one another only through
8 PMA's unsubstantiated claim that, if enacted, they will "protect marriage." Proposition
9 107's definition of marriage as a union between one man and one woman is related to
10 "protecting marriage." But it is unclear how marriage can be protected by prohibiting the
11 government from enacting civil union laws. It is even more unclear how marriage can be
12 protected by prohibiting the government from conferring domestic partner benefits to its
13 employees.

14 **II. PMA'S ATTEMPT TO RELY ON NON-ARIZONA AUTHORITY FAILS.**

15 Finally, PMA argues that because other states have rejected challenges to initiatives
16 that seek to ban same-sex marriage and civil unions so should this court. But those
17 jurisdictions apply Separate Amendment Rule tests that are not as stringent as the one
18 adopted by our Supreme Court and most recently reaffirmed in *Clean Elections*. Indeed, by
19 relying on these cases, PMA proposes that this Court ignore the well-established Arizona
20 standard in favor of any one of the different tests of five other states. This approach has been
21 solidly rejected by the Arizona Supreme Court. *Slayton*, 16 Ariz. at 90-91, 800 P.2d at 593-
22 94 (rejecting tests from states such as California and Illinois that have less restrictive tests).

23 **A. Florida's Initiative Contained Narrower Language And The Court** 24 **Applied A Test Not Recognized In Arizona.**

25 PMA's reliance on *Advisory Opinion To Attorney General re Florida Marriage*
26 *Protection Amendment*, 926 So.2d 1229 (Fla. 2006), is misplaced. Florida's constitution

1 only requires that all proposed amendments “shall embrace but one subject and matter
2 directly connected therewith.” *Id.* (emphasis omitted). There must only be “a natural
3 relation and connection as component parts or aspects of a single dominant plan or scheme.”
4 *Id.* At 1234. Finally, the court only involves itself if the political process has been “clearly
5 and conclusively violated.” *Id.* at 1233.

6 The Florida test has been rejected in Arizona. *Clean Elections* 209 Ariz. 244, 99 P.3d
7 at 573 (“[A]lthough statutes comply with the single-subject rule if they ‘embrace but one
8 subject and matters properly connected therewith’ Article 21 includes no reference to matters
9 ‘connected with’ a proposed constitutional amendment.” (emphasis omitted)). In Arizona, a
10 mere showing that sections relate to the same general subject of the title is not satisfactory.
11 *Id.*, at 244, 99 P.3d at 573. Rather, proposed constitutional provisions must be “sufficiently
12 related to a *common purpose or principle* that the proposal can be said to constitute a
13 consistent and workable whole on the general topic embraced, that, logically speaking,
14 should stand or fall as a whole.” *Id.* (quoting *Kerby*, 44 Ariz. at 221, 36 P.2d at 554).
15 Finally, Arizona does not apply a “clear and conclusive” test before finding a violation of the
16 Separate Amendment Rule.

17 The initiatives are also vastly different. The issue of domestic partner benefits was
18 not at issue before the Court, and the language of Florida’s initiative was much narrower.
19 “[T]he plain language of the proposed amendment is clear that the legal union of a same-sex
20 couple that is *not* the ‘substantial equivalent’ of marriage is not within the ambit of this
21 constitutional provision.” 922 So.2d at 1234. Here, the Initiative is broader, prohibiting
22 recognition of relationships that are “similar to that of marriage.”

23 **B. Massachusetts’ Initiative Contained Narrower Language And The Court**
24 **Applied A Test Not Recognized In Arizona.**

25 PMA cites *Albano v. Attorney General*, 769 N.E. 2d 1242 (Mass. 2002) to support
26 their position. Again, the initiative and the test applied by the Massachusetts Supreme Court

1 are different. In Massachusetts, an initiative “can address more than one subject if those
2 subjects are related.” *Id.* at 1247. To be related, there must be a common purpose to which
3 each subject can reasonably be said to be germane. *Id.*

4 Arizona rejects a germaneness test with constitutional initiatives. *Clean Elections*, 209
5 Ariz. 244, 99 P.3d at 573 (a mere showing that sections relate to the same general subject of
6 the title is not satisfactory). Arizona courts require more than some relation; provisions must
7 be “sufficiently related” to a common purpose or principle and must be presented so that
8 voters supporting [one provision] would be reasonably expected to support the principle of
9 the others. *Id.*

10 Furthermore, the language of Proposition 107 is broader than Massachusetts’
11 amendment. The Massachusetts amendment had a common purpose of “restricting the
12 benefits and incidents of marriage to opposite-sex couples.” *Albano*, 769 N.E. 2d at 1247.
13 Here, the Initiative is much broader: it restricts “marriage” to opposite-sex couples, while
14 also prohibiting civil unions and domestic partner benefits for opposite-sex and same-sex
15 couples.

16 **C. Georgia’s Initiative Contained Narrower Language And The Court**
17 **Applied A Test Not Recognized In Arizona.**

18 PMA relies on *Perdue v. O’Kelley*, no. 506A1574, 2006 WL 1843103 (Ga. July 6,
19 2006), but this case is also inapposite. The test applied in Georgia is not recognized in
20 Arizona. Georgia merely requires the parts of a proposed constitutional amendment to be
21 germane to the accomplishment of one objective. *Perdue*, 2006 WL 1843103 at *1.
22 Additionally, in Georgia, a finding of multiple subjects requires the amendment to “embrace
23 two or more dissimilar and discordant subjects that by no fair intendment can be considered
24 as having any logical connection with or relation to each other.” *Id.* at *2. Significantly,
25 Arizona does not apply a “germaneness” test when considering separate amendment
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1 challenges to proposed constitutional amendments. *See Clean Elections* 209 Ariz. at 244, 99
2 P.3d at 573.

3 The Georgia amendment was different. It *only* banned civil unions between *same-sex*
4 *couples*. It did not ban civil unions or domestic partner benefits between opposite-sex
5 couples. In fact, it did not address domestic partner benefits at all.

6 **D. Louisiana’s Initiative Contained More Narrow Language And The Court**
7 **Applied A Test Not Recognized In Arizona**

8 PMA’s reliance on *Forum for Equality PAC v. McKeithen*, 893 So.2d 715 (La. 2005)
9 is also misplaced. While the court cited law from several states, including Arizona, in its
10 single-subject challenge analysis, the court concluded that as long as there is a single plan
11 and each plan is germane to that plan, an amendment is valid. *Id.* at 732. The court also
12 stated that it gives substantial deference to the legislature that crafted the amendment. *Id.*
13 Again, not only does Arizona does not apply a “germaneness” test, but deference to the
14 legislature in an Arizona separate amendment challenge is irrelevant. Moreover, the
15 Louisiana court never had to address the issue of domestic partner benefits – a substantial
16 purpose of Proposition 107.

17 **E. Colorado’s Initiative Challenge Is Not Comparable To The Challenge**
18 **Here.**

19 Finally, PMA relies on the Colorado Supreme Court’s one line affirmation of a Title
20 Board’s decision that the initiative did not violate Colorado’s Single Subject Rule. Again, the
21 facts and law are distinguishable.

22 In Colorado, an initiative has more than one subject and violates the rule when the
23 initiative “relate[s] to more than one subject and has at least two distinct and separate
24 purposes which are not dependent upon or connected with each other. But a proposed
25 measure that tends to effect or to carry out one general objective or purpose presents only
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1 one subject.” *In re Title, Ballot Title and Submission Clause, and Summary for 1999-2000*
2 *No. 265, 3 P.3d 1210 (Colo. 2000)*. This “tends to” test does not meet Arizona’s standard.

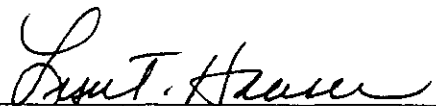
3 More importantly, PMA misstates the entire basis for the Colorado challenge. In their
4 unsuccessful challenge before the Title Board, the challengers asserted that the phrase
5 “similar to marriage” was too broad and that voters could not be clear on what they were
6 voting for or against. In their briefing to the Colorado Supreme Court, the challengers stated
7 the Issue Presented: whether the “ballot title set for Initiative #109 violates the single subject
8 requirement because its central phrase, “similar to marriage,” is inherently ambiguous, such
9 that voters may enact a measure that changes the law in ways they could not anticipate.
10 (PMA’s Resp., Exh. 4) The Colorado Supreme Court affirmed the Title Board in a one line
11 Order. In short, the real issue before the Court was ambiguity and not the single subject rule.

12 **Conclusion**

13 The Initiative proposes three separate and distinct amendments that prohibit (1) same-
14 sex marriages, (2) civil unions for both same-sex and opposite-sex couples, and (3) the
15 government from conferring domestic partner benefits. These three purposes are not
16 sufficiently related, as evidenced by Proponents failure to show any connection between
17 protecting marriage and the denial of domestic partner benefits. Accordingly, the Initiative
18 must not be certified.

19 Dated: August 2, 2006.

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COPY of the foregoing hand-delivered
this 2nd day of August, 2006, to:


The Honorable Douglas Rayes
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TAB 1

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BUTLER COUNTY, OHIO

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IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

THOMAS E. BRINKMAN, JR.,
3215 Hardisty Avenue
Cincinnati, Ohio 45208,

Case No.

Plaintiff,

v.

MIAMI UNIVERSITY,
501 E. High Street
Oxford, Ohio 45056,

and

FRED G. WALL, LAUREL DAWSON,
KATHLEEN M. ZOUHARY, CHANDRA
R. SHAH, LOLITA M. McDAVID, JOHN
CHRISTIE, RICHARD K. SMUCKER, S.
KAY GEIGER, DAVID F. HERCHE,
BRIAN W. SHRODER and TAMIKA
NUNLEY, in their official capacity as
members of the BOARD OF TRUSTEES of
MIAMI UNIVERSITY,
501 E. High Street
Oxford, Ohio 45056,

and

JIM GARLAND, in his official capacity as
PRESIDENT of MIAMI UNIVERSITY,
501 E. High Street
Oxford, Ohio 45056,

Defendants.

COMPLAINT - OTHER CIVIL
(FOR DECLARATORY JUDGMENT AND INJUNCTION)

Now comes Plaintiff Thomas E. Brinkman, Jr. and for his Complaint against Defendants Miami University, Fred G. Wall, Laurel Dawson, Kathleen M. Zouhary, Chandra R. Shah, Lolita M. McDavid, John Christie, Richard K. Smucker, S. Kay Geiger, David F. Herche, Brian W. Shroder, Tamika Nunley, and Jim Garland (collectively referred to as the "University") states as follows:

INTRODUCTION

1. Plaintiff brings this action against the University seeking to have enjoined its continuing violation of Article XV, Section 11 of the Ohio Constitution, which forbids the State and its political subdivisions to create or recognize a legal status for nonmarital relationships that intends to approximate marriage in certain enumerated respects. In violation of this constitutional prohibition, the University has created and given recognition to a legal status of "domestic partnership" for a certain form of same-sex cohabitation. The University extends this legal status to relationships containing those who are otherwise qualified to marry under State law, but who do not seek to marry, but rather to maintain a marriage-mimicking relationship with a person of the same sex. Having created this legal status for the relationship, the University then makes available certain benefits to those participants in the relationship.

PARTIES

2. Plaintiff Thomas E. Brinkman, Jr. is a citizen, elector and taxpayer of the State of Ohio who maintains an interest in the execution of the laws of the State, and particularly in having constitutional mandates and prohibitions enforced. Additionally, Mr. Brinkman has paid and continues to pay tuition fees to the University for the education of his daughter and son who are students at that institution. He desires that his tax dollars and tuition payments be utilized

lawfully, and not applied by the University to finance the constitutional violation challenged herein.

3. Defendant Miami University is a public university functioning under the authority of Title XXXIII of the Revised Code, and is an institution and instrumentality of the State of Ohio.

4. Defendants Fred G. Wall, Laurel Dawson, Kathleen M. Zouhary, Chandra R. Shah, Lolita M. McDavid, John Christie, Richard K. Smucker, S. Kay Geiger, David F. Herche, Brian W. Shroder, and Tamika Nunley are each members of the Board of Trustees of Miami University, and are named herein in their official capacities as such. These Defendants' duties include, among others, the formulation and approval of policies for, and the oversight of operation of Miami University. These Defendants bear responsibility for the existence of the policy herein challenged.

5. Defendant Jim Garland is the President of Miami University, and is named herein in his official capacity as such. This Defendant is the chief administrative officer of the University and his duties include, among others, executing the policies of Miami University, and overseeing the operation of that university. This Defendant bears responsibility for the existence and execution of the policy herein challenged.

THE MARRIAGE AMENDMENT

6. Article XV, Section 11 of the Ohio Constitution provides:

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

THE UNIVERSITY'S DOMESTIC PARTNER POLICY

7. The University has created and recognizes a legal status which it has designated variously as "same sex domestic partnership" and "domestic partnership." The University grants this legal status to same-sex relationships only, because it identifies marriage as a legal option available to those in opposite-sex relationships, and the University seeks to provide a legal status which approximates marriage to those in a relationship whose composition disallows it to qualify for status as a marriage.

8. The University's policy directs that before benefits may be extended to the "domestic partner" of a University employee, that employee with a domestic partner must qualify his relationship by means of filing an affidavit provided by the University (identified as "Affidavit of Same Sex Domestic Partnership," and attached hereto as **Exhibit A**).

9. The University requires that before a relationship may be accorded "same sex domestic partnership" status, it must be shown that the employee and the domestic partner:

- share a residence;
- are in a long-term committed relationship and have been in this relationship for at least six months;
- are of the same sex as each other and are each other's sole domestic partner and intend to remain so indefinitely;
- are responsible for each other's common welfare;
- are at least eighteen years of age;
- are not legally married to anyone;
- are not related by blood closer than would bar marriage in the State of Ohio;
- are mentally competent to consent to contract; and
- share financial obligations, as demonstrated by at least two of the following conditions: joint ownership of a residence; joint ownership of motor vehicle,

checking account, credit account or lease; designation of domestic partner as primary beneficiary of a will or life insurance policy.

10. The University requires notice upon termination of the domestic partnership, by means of a form provided by the University entitled, "Affidavit of Termination of Domestic Partner Status." (A copy of this document is attached hereto as **Exhibit B.**)

11. In establishing and maintaining the domestic partnership status and the system of benefits attending to qualifying domestic partners, the University has used and continues to use funds obtained through taxation from the State's taxpayers, and from tuition moneys paid by and on behalf of students at Miami University, including the tuition moneys of Plaintiff Tom Brinkman.

PUBLIC IMPORT AND INTEREST

12. The people of the State of Ohio have recently amended their Constitution to prohibit the government from nouveau policy experimentation further impacting the already embattled institution of marriage.

13. The enforcement of Article XV, Section 11 of the Ohio Constitution is a matter of great public import and interest, implicating the foundational matter of the rule of law, and more specifically whether the people's amendment of their Constitution to bind the state to limited exercises of authority may be disregarded, thus upending the role of constitutional government.

14. In addition to the structural constitutional importance of this case, the enforcement of Article XV, Section 11 is also of significant import and public interest for reasons of fundamental social policy. The State's use of its singular position and powers to publicly affirm, validate and support a nonmarital, marriage-mimicking relationship that has been historically suspect and impugned, inescapably carries with it an implicit negative

commentary on that historic social posture, and diminishes the legally unique status accorded the socially fundamental institution of marriage, to its detriment.

CLAIM FOR RELIEF

15. Plaintiff incorporates the allegations in Paragraphs 1 through 14 as if set forth fully herein.

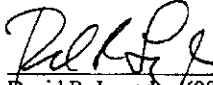
16. The University has violated and continues to violate the Ohio Constitution, Article XV, Section 11, in that through the enactment and implementation of its "Domestic Partnership" policy it has created and recognizes a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

WHEREFORE, Plaintiff prays for judgment against Defendants and that the Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;
- B. Pursuant to R.C. Chapter 2721, declare that the University's "Domestic Partnership" policy violates Article XV, Section 11 of the Ohio Constitution;
- C. Permanently enjoin the University from enforcing the "Domestic Partnership" policy which violates Article XV, Section 11 of the Ohio Constitution;
- D. Pursuant to R.C. 2335.39 and other applicable law, award Plaintiff his costs and expenses incurred in bringing this action, including his reasonable attorney fees.

Benjamin W. Bull
(AZ Bar No. 009940)
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Respectfully submitted,


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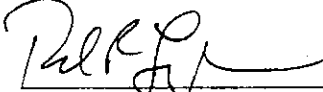
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Facsimile: (202) 347-3622

Trial Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that, pursuant to R.C. 2721.12, a copy of the foregoing
Complaint was served by regular mail, this 22nd day of November, 2005, upon the following:

Jim Petro
Ohio Attorney General
30 E. Broad Street, 17th Floor
Columbus, OH 43215-3428



David R. Langdon (0067046)

Affidavit of Same Sex Domestic Partnership

206 11 3 0

I, _____, hereby certify that _____
Faculty/Staff Member (Print) Domestic Partner (Print)

is my domestic partner and that:

1. We share a residence (unless residing in different cities, states, or countries on a temporary basis).
We are in a long-term committed relationship and have been in this relationship for at least six (6) months.
2. We are of the same sex as each other and we are each other's sole domestic partner and intend to remain so indefinitely.
3. We are responsible for each other's common welfare.
4. We are at least eighteen (18) years of age or older.
5. We are not legally married to anyone.
6. We are not related by blood closer than would bar marriage in the State of Ohio.
7. We are mentally competent to consent to contract.
8. We share financial obligations, as demonstrated by the existence of at least two of the following conditions (please check those that apply):

_____ A. We have common or joint ownership of a residence (house, condominium, or mobile home).

- _____ B. We share at least two of the following:
- (1) Joint ownership of a motor vehicle
 - (2) Joint checking account
 - (3) Joint credit account
 - (4) Residential lease identifying both partners as tenants

_____ C. My domestic partner has been designated as a primary beneficiary of at least one of the following:

- (1) My Miami University Group Term Life Insurance
- (2) My will

NOTE: Documentation may be required to prove the existence of the above-mentioned conditions.

EXHIBIT A

Affidavit of Termination of Domestic Partner Status

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I, _____
Faculty/Staff Member (Print) Banner ID Number

certify that I previously filed an Affidavit of Domestic Partnership.

I now inform the University that _____
Name of Former Domestic Partner (Print)

is no longer my domestic partner as of _____
Date

I understand that the former domestic partner identified above is no longer eligible for domestic partner benefits through Miami University and that current benefits will terminate as of the last day of the month in which this Affidavit of Termination is filed.

I certify that a copy of this Affidavit of Termination has been mailed to the former domestic partner identified above. I understand that another Affidavit of Domestic Partnership cannot be filed until six (6) months after the most recent domestic partnership has been filed with the Benefits Office.

Signature of Faculty/Staff Date



EXHIBIT B