UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

CIVIL ACTION
NO.

JOANNE PEDERSEN & ANN MEITZEN,
GERALD V. PASSARO II,
LYNDA DEFORGE & RAQUEL ARDIN, and
JANET GELLER & JOANNE MARQUIS,

Plaintiffs,

v.

OFFICE OF PERSONNEL MANAGEMENT,
TIMOTHY F. GEITHNER, in his official capacity as the Secretary of the Treasury, and
HILDA L. SOLIS, in her official capacity as the Secretary of Labor,
MICHAEL J. ASTRUE, in his office capacity as the Commissioner of the Social Security Administration,
UNITED STATES POSTAL SERVICE,
JOHN E. POTTER, in his official capacity as The Postmaster General of the United States of America,
DOUGLAS H. SHULMAN, in his official capacity as the Commissioner of Internal Revenue, and
ERIC H. HOLDER, JR., in his official capacity as the United States Attorney General,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction/Nature of the Action

1. This is a case about federal discrimination against gay and lesbian individuals married to someone of the same sex, and the harm that discrimination has caused each plaintiff.

2. Plaintiffs in this action are variously citizens of the State of Connecticut, the State of Vermont and the State of New Hampshire. They are all citizens of the United States of America. Each of the plaintiffs is, or was until becoming a widower, legally married to a person of the same sex in accordance with the requirements of applicable state law.

3. Although the federal government does not license marriages, a large number of its programs take marital status into account in determining eligibility for federal protections, benefits and responsibilities. Statute, precedent and practice establish state law as the touchstone for determining a couple's marital status for purposes of determining eligibility for federal programs.

4. Each plaintiff, or his or her spouse, has made one or more requests to the appropriate agencies or authorities within the federal government, or the appropriate state agency subject to federal law, for treatment as a married couple, a spouse, or a widower with respect to particular programs or benefits. Yet each of the plaintiffs has been denied and is still being denied legal protections and benefits under federal law that are available to a similarly situated person married to an individual of a different sex under pertinent Connecticut, Vermont or New Hampshire law.

5. With each denial of specific protections or benefits, the defendants, their agents or those subject to their legal directives have invoked the "Defense of Marriage

Act," P.L. 104-199, codified in part as 1 U.S.C. § 7 ("DOMA, 1 U.S.C. § 7") and have stated that the federal government will only respect marriages between a man and a woman.

6. A number of the plaintiffs, as set forth below, seek spousal protections based on their employment with, or their spouse's employment with, the United States government. Plaintiff Joanne Pedersen, a federal retiree from the Department of the Navy, Office of Naval Intelligence, has "Self Only" health insurance coverage and is unable, like similarly-situated federal retirees married to spouses of the opposite sex, to enroll in "Self and Family" coverage to add her spouse, Plaintiff Ann Meitzen, to that plan. Plaintiff Lynda DeForge, a 25-year employee of the United States Post Office, has been denied leave under the Family Medical Leave Act (FMLA) to care for her spouse, Plaintiff Raquel Ardin. Both DeForge and Ardin have "Self-Only" FEHB health insurance plans, and have been denied "Self and Family" coverage to cover the two of them under one policy. In each instance, DOMA, 1 U.S.C. § 7, has barred the plaintiffs' access to benefits routinely granted to others in similar circumstances.

7. One of the plaintiffs, Gerald V. Passaro II, seeks spousal protections afforded by the Social Security program. Specifically, he seeks the "One-Time Lump-Sum Death Benefit" normally available upon the death of a spouse. He is denied this benefit by the Social Security Administration because of DOMA, 1 U.S.C. § 7.

8. In addition, Plaintiff Gerald V. Passaro II has been denied the ERISA-mandated qualified preretirement survivor annuity (QPSA) available under the defined benefit pension plan under which his now-deceased husband was vested through his

employment with the Bayer Corporation. He has been denied this mandatory spousal benefit because of DOMA, 1 U.S.C. § 7.

9. Two of the plaintiffs, as set forth below, are losing the benefit of financial assistance with health insurance coverage under the New Hampshire state retirement system because of the refusal of the Internal Revenue Service ("IRS") to recognize their actual spousal status on the basis of DOMA, 1 U.S.C. § 7. More particularly, Plaintiff Joanne Marquis has applied for the medical cost spousal benefit for her spouse, Plaintiff Janet Geller, and the New Hampshire Retirement System has been required to deny this benefit to Joanne because of its legal obligation to comply with Internal Revenue Code § 401(h), which, because of DOMA, 1 U.S.C. § 7, prohibits the extension of the benefit to a spouse of the same sex as the state retiree.

10. This is an action for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and Fed. R. Civ. P. Rule 57. It seeks a determination that DOMA, 1 U.S.C. § 7, as applied to the plaintiffs, violates the United States Constitution by refusing to recognize lawful marriages for purposes of the laws governing defined benefit pension plans and state retirement plans, the laws governing benefits for federal retirees, the Family Medical Leave Act, the Internal Revenue Code and the Social Security laws. The result of these violations of the Constitution is that each of the plaintiffs has been denied, and will continue to be denied, legal protections and benefits under federal law that would be available to them if their spouses were of the opposite sex.

Jurisdiction and Venue

11. This action arises under the Constitution of the United States and the laws of the United States. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331; 28 U.S.C. §§ 2201-2202; 5 U.S.C. § 8912; 29 U.S.C. § 2617(a)(2); and 42 U.S.C. § 405(g).

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) because more than one of the plaintiffs resides in this district, and the events giving rise to their claims arose in this district.

Parties

13. Plaintiff JOANNE PEDERSEN is a citizen of the State of Connecticut and resides in Waterford, Connecticut.

14. Plaintiff ANN MEITZEN is a citizen of the State of Connecticut and resides in Waterford, Connecticut.

15. Plaintiff GERALD V. PASSARO II is a citizen of the State of Connecticut and resides in Milford, Connecticut.

16. Plaintiff LYNDA DEFORGE is a citizen of the State of Vermont and resides in North Hartland, Vermont.

17. Plaintiff RAQUEL ARDIN is a citizen of the State of Vermont and resides in North Hartland, Vermont.

18. Plaintiff JANET GELLER is a citizen of the State of New Hampshire and resides in Goffstown, New Hampshire.

19. Plaintiff JOANNE MARQUIS is a citizen of the State of New Hampshire and resides in Goffstown, New Hampshire.

20. Defendant OFFICE OF PERSONNEL MANAGEMENT is an independent establishment of the Executive Branch of the government of the United States. Its actions, rules and regulations are subject to review by the federal courts.

21. Defendant TIMOTHY F. GEITHNER is currently the United States Secretary of the Treasury. In his official capacity, the Secretary of the Treasury is responsible – together with the Secretary of Labor – for the administration and enforcement of the Employee Retirement Income Security Act of 1974 (ERISA). In his official capacity, the Secretary of the Treasury is also responsible for the administration and enforcement of the internal revenue laws. See 26 U.S.C. § 7801.

22. Defendant HILDA L. SOLIS is currently the United States Secretary of Labor. In her official capacity, the Secretary of Labor is responsible – together with the Secretary of the Treasury – for the administration and enforcement of ERISA.

23. Defendant MICHAEL J. ASTRUE is currently the Commissioner of the Social Security Administration, an independent agency of the United States Government. In his official capacity, the Commissioner of the Social Security Administration is responsible for the administration and enforcement of the Social Security Act.

24. Defendant UNITED STATES POSTAL SERVICE is an independent establishment of the Executive Branch of the government of the United States, empowered by Congress to sue and be sued in its own name.

25. Defendant JOHN E. POTTER is currently the Postmaster General of the United States of America. In his official capacity, the Postmaster General is responsible

for the administration of employee-related benefits within the United States Postal Service.

26. Defendant DOUGLAS H. SHULMAN is currently the Commissioner of Internal Revenue. In his official capacity, the Commissioner of Internal Revenue is responsible for the administration and enforcement of the internal revenue laws.

27. Defendant ERIC H. HOLDER, JR. is currently the Attorney General of the United States. In his official capacity, the Attorney General is the chief federal official responsible for the enforcement of all federal statutes in accordance with the Constitution of the United States of America.

Facts Common To All Plaintiffs And All Claims

28. Each plaintiff is a citizen of the State of Connecticut, or the State of Vermont or the State of New Hampshire. Each is a citizen of the United States and has borne the obligations of citizenship by paying taxes and contributing to Social Security.

29. As United States citizens, each of the plaintiffs is entitled to equal consideration and treatment from the federal government with respect to each and every program operated by the federal government, including employment and retirement benefits arising from private employment or employment with the federal or state government, and Social Security.

30. Each of the plaintiffs is, or was until becoming a widower, married to a person of the same sex in accordance with the legal requirements of the state of his or her residence. Each of the plaintiffs married to establish and convey the commitment,

permanency and interconnectedness of a marital relationship, and to nurture and support his or her family. Each of these marriages was duly recognized under state law.

31. DOMA, 1 U.S.C. § 7, burdens the plaintiffs' familial relationships, including their ability to form, support and maintain their marriages and families.

32. Although each of the plaintiffs is similarly situated to all other married or widowed persons in the states of Connecticut, Vermont and New Hampshire, DOMA, 1 U.S.C. § 7, intrudes into their marriages, severs them into "federal" and "state" components, and states that their marriages are not marriages for all federal purposes. DOMA, 1 U.S.C. § 7, thereby burdens and stigmatizes their marital relationships, causing confusion and complexity in a culture where people are expected to have one familial and marital status, whether dealing with private, state or federal entities.

33. DOMA, 1 U.S.C. § 7, requires the plaintiffs to deny the existence of their families and the nature of their familial relationships. For example, DOMA, 1 U.S.C. § 7, forces plaintiffs to misstate their actual marital status and describe themselves as "unmarried" to United States government officials and on United States government forms on pain of civil or criminal sanctions. For example, federal retirees like Plaintiff Joanne Pedersen could face criminal charges for false statements if she claimed Ann as her spouse on a health benefits election form. 18 U.S.C. § 1001. Under the Social Security Act, "any false statement" of a "material fact," including marriage, in connection with an application for benefits, is punishable as a felony. 42 U.S.C. § 408. Federal income tax law requires income tax returns to be signed under the pains and penalties of perjury, 26 U.S.C. § 7206, but DOMA, 1 U.S.C. § 7, forces the plaintiffs to make blatant misrepresentations about their families and their marital status.

34. The requirement, imposed by DOMA, 1 U.S.C. § 7, that plaintiffs inaccurately identify their marital status as "single" or "unmarried" in federal contexts, even though they are legally married, burdens and stigmatizes their family relationships.

35. As sovereign States of the United States of America, the States of Connecticut, Vermont and New Hampshire have, since their ratification of the United States Constitution and, indeed, before then, exclusively established and ordained the legal requirements for civil marriage within their sovereign jurisdiction and the status of spouses to such marriages entered into within their geographical territory.

36. Effective November 12, 2008, with the implementation of the Connecticut Supreme Court's constitutional determination in Kerrigan v. Comm'r of Public Health, 289 Conn.135 (2008), same-sex couples who otherwise complied with the requirements for obtaining a marriage license in the State of Connecticut were and are entitled to marry under the law of the State.

37. Effective September 1, 2009, in accordance with legislation adopted in the State of Vermont, same-sex couples who otherwise complied with the requirements for obtaining a marriage license in the State of Vermont were and are entitled to marry under the law of the State.

38. Effective January 1, 2010, in accordance with legislation adopted in the State of New Hampshire, same-sex couples who otherwise complied with the requirements for obtaining a marriage license in the State of New Hampshire were and are entitled to marry under the law of the State.

39. Since November 12, 2008, the State of Connecticut, pursuant to the Constitution of Connecticut, has created, established, and recognized a single marital

status that is available to every qualifying couple, whether same-sex or different-sex, i.e., regardless of the sex of the two parties to the marriage.

40. Since September 1, 2009, the State of Vermont, by legislative action, has created, established, and recognized a single marital status that is available to every qualifying couple, whether same-sex or different-sex, i.e., regardless of the sex of the two parties to the marriage.

41. Since January 1, 2010, the State of New Hampshire, by legislative action, has created, established, and recognized a single marital status that is available to every qualifying couple, whether same-sex or different-sex, i.e., regardless of the sex of the two parties to the marriage.

42. The State of Connecticut has also made a political determination that different-sex couples and same-sex couples must be treated the same with respect to marriage and its attendant rights and responsibilities. The Connecticut Legislature has expressly codified the Kerrigan decision. See, e.g., Conn. Gen. Stat. § 46b-20.

43. The plaintiffs are similarly situated to persons married to individuals of a different sex and, under Connecticut, Vermont and New Hampshire law, are accorded the same status, responsibilities, and protections as other married persons. Federal law, however, treats same-sex and opposite-sex couples differently in the specific ways set forth in Paragraphs 64 through 178 below.

44. The federal government of the United States has, since its founding and at least until 1996, recognized the exclusive authority every state possesses, as an essential part of its sovereignty, to determine the civil status and capacities of all its inhabitants,

including the absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created.

45. Throughout history and at least until 1996, the United States has consistently deferred to the sovereignty of the States when the marital status of an individual has been used as a marker of eligibility or access to some benefit, right, or responsibility identified by the federal government.

The "Defense of Marriage Act"

46. Congress enacted the so-called "Defense of Marriage Act" ("DOMA, 1 U.S.C. § 7"), P.L. 104-199, in 1996, and it was approved on September 21, 1996.

47. This law responded to "a very particular development in the State of Hawaii." H.R. Rep. No. 104-664, reprinted in 1996 U.S.C.C.A.N. 2905, at 2906. As the controlling House Judiciary Committee Report explained "the state courts in Hawaii appear on the verge of requiring that State to issue marriage licenses to same-sex couples," and that development "threatens to have very real consequences … on federal law…." Id. More specifically,

> [I]f Hawaii does ultimately permit homosexuals to "marry," that development could have profound practical implications for federal law. For to the extent that federal law has simply accepted state law determinations of who is married, a redefinition of marriage in Hawaii to include homosexual couples could make such couples eligible for a whole range of federal rights and benefits.

Id., at 2914.

48. Section 3 of DOMA, 1 U.S.C. § 7, provides in its entirety as follows:

> Sec. 3 DEFINITION OF MARRIAGE.
>
> (a) IN GENERAL – Chapter 1 of title 1, United States Code is amended by adding at the end the following:
>
> §7. Definition of 'marriage' and 'spouse'
>
> "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."
>
> (b) CLERICAL AMENDMENT. – The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by inserting after the item relating to section 6 the following new item:
>
> "7. Definition of 'marriage' and 'spouse'."

49. In passing DOMA, 1 U.S.C. § 7, Congress took the unprecedented step of preemptively nullifying a class of marriages that it expected states would begin to license at some point in the future, that is, marriages of same-sex couples. It withdrew from these marriages, but not from others, all federal financial and other responsibilities and protections.

50. With regard to a gay or lesbian individual married to someone of the same sex, DOMA, 1 U.S.C. § 7, has overridden the longstanding deference of federal to state law in determining the marital status of an individual seeking the benefit or responsibility of any federal law triggered by a person's state-established marital status, and categorically denies both rights and responsibilities.

51. In a 1997 Report, the General Accounting Office ("GAO") estimated that at least 1,049 federal laws were affected by DOMA, 1 U.S.C. § 7, because those laws depended on or in some way related to marital status. U.S. Gen. Accounting Office, GAO/OGC-97-16 Defense of Marriage Act (1997), available at http://www.gao.gov/archive/1997/og97016.pdf. A follow-up study in 2004 found that 1,138 federal laws tied benefits, protections, or responsibilities to marital status. U.S. Gov. Accountability Office, GAO-04-353R Defense of Marriage Act (2004), available at http://www.gao.gov/new.items/d04353r.pdf.

52. If not for the application of DOMA, 1 U.S.C. § 7, to all federal programs, the plaintiffs, as persons married whether under Connecticut, Vermont or New Hampshire law, would receive the same status, responsibilities and protections under federal law as other married persons. Yet when same-sex couples began to marry in Connecticut, Vermont and New Hampshire, DOMA, 1 U.S.C. § 7, operated to single out one class of marriages legally recognized by the States of Connecticut, Vermont and New Hampshire, those of same-sex couples, and to deny their existence for all conceivable ends and purposes of federal law.

53. Plaintiffs have been denied legal protections normally available to spouses under federal law. Despite plaintiffs' willingness to assume the legally imposed responsibilities of marriage at the federal level, just as they do at the state level, they are prevented from doing so by DOMA, 1 U.S.C. § 7.

54. DOMA, 1 U.S.C. § 7, grants preferred legal status and unique privileges to individuals married to someone of a different sex.

55. The official House Report on DOMA, 1 U.S.C. § 7, H.R. Rep. No. 104-664, advances four rationales for why the federal government drew a line between its treatment of an individual married to a person of the same sex versus an individual married to a person of the opposite sex. Those reasons are:

> (1) H.R. 3396 [the bill number] ADVANCES THE GOVERNMENT'S INTEREST IN DEFENDING AND NURTURING THE INSTITUTION OF TRADITIONAL HETEROSEXUAL MARRIAGE.
>
> (2) H.R. 3396 ADVANCES THE GOVERNMENT'S INTEREST IN DEFENDING TRADITIONAL NOTIONS OF MORALITY.
>
> (3) H.R. 3396 ADVANCES THE GOVERNMENT'S INTEREST IN PROTECTING STATE SOVEREIGNTY AND DEMOCRATIC SELF GOVERNANCE.
>
> (4) H.R. 3396 ADVANCES THE GOVERNMENT'S INTEREST IN PRESERVING SCARCE GOVERNMENT RESOURCES.

56. None of these interests is adequate to justify discrimination against married persons in same-sex relationships. The first two rationales have nothing to do with any federal interest and simply reflect a belief that same-sex couples should not be permitted to marry.

57. The first claimed federal "interest" in "defending" "traditional heterosexual marriage" simply restates the government's intent to discriminate against same-sex couples and provides no independent justification for the government's discriminatory action, particularly as to same-sex couples who are *already married*. The federal government has long accepted state determinations of marital status, even in the face of changes in marriage licensing by the states. The only state-licensed marriages it categorically refuses to respect are those of same-sex couples. In short, this "interest"

repeats the distinction drawn by DOMA, 1 U.S.C. § 7, that is, between married couples of the same sex and married couples of different sexes, but it does not explain it.

58. The federal government's refusal to recognize the plaintiffs' marriages does not nurture, improve, stabilize or enhance the marriages of other married couples. Nor would the federal government's recognition of plaintiffs' marriages degrade, destabilize or have any other deleterious effect on the marriages of other married couples.

59. The second claimed federal interest in "morality" was simply a vehicle for Congress to express its "moral disapproval of homosexuality." H.R. Rep. No. 104-664, pp. 15-16. This illegitimate "interest" is nothing more than discrimination for its own sake, based on bare disapproval for a particular group of citizens. Gay men, lesbians and bisexuals have suffered a long history of public and private discrimination. Discrimination for its own sake is not a legitimate purpose upon which disadvantageous classifications may be imposed. Moreover, sexual orientation bears no relation whatsoever to an individual's ability to participate in or contribute to society.

60. The third claimed interest in "protecting state sovereignty" is actually subverted by DOMA, 1 U.S.C. § 7, not advanced by it. Congress contravened inherent constitutional principles of federalism and failed to honor our nation's system of dual sovereignty in enacting DOMA, 1 U.S.C. § 7, because it is the states, and not the federal government, that regulate marriage and determine family status. Congress did not "protect" state sovereignty in enacting DOMA, 1 U.S.C. § 7, since it dishonored the sovereignty of the states that license or recognize marriages of same-sex couples.

61. As to the fourth claimed interest of preserving government resources, the available data from the Congressional Budget Office establishes that recognizing the

marriages of individuals married to a person of the same sex would result in an annual net increase in federal revenue through 2014. Congressional Budget Office, U.S. Congress, The Potential Budgetary Impact of Recognizing Same-Sex Marriages, June 21, 2004. There was and is no factual basis for the claim that DOMA, 1 U.S.C. § 7, "preserve[s] scarce government resources."

62. While the public fisc is always a matter of concern, it is not a legitimate interest in the context of Congressionally provided protections and responsibilities for spouses and families. Congress has yet to identify a reason why gay and lesbian individuals who have met their obligations as taxpaying citizens and who are married to someone of the same sex must be denied protections available to persons who are married to someone of a different sex. Singling out same-sex couples who are married among all married persons is simply an expression of the intent to discriminate against gay people.

63. At root, DOMA, 1 U.S.C. § 7, is motivated by disapproval of gay men and lesbians and their relationships, an illegitimate federal interest.

Facts Particular To Individual Plaintiffs

Plaintiffs Joanne Pedersen and Ann Meitzen

64. Plaintiff Joanne Pedersen ("Joanne") is a retired civil employee of the Department of the Navy, Office of Naval Intelligence. When she retired, Joanne had more than 30 years of service with the federal government.

65. Joanne and her spouse Ann Meitzen ("Ann") have been in a committed relationship for 12 years.

66. Joanne and Ann live in a home they jointly own in Waterford, Connecticut and which they purchased in August 1999.

67. Although marriage was not available to them, in 2003 they decided that it was time to have a commitment ceremony; and so, in August 2004, they made that commitment to each other in a ceremony in their backyard before their family and friends.

68. Ann currently works as a regional supervisor for a private, not-for-profit case management agency that assesses, coordinates and manages care for frail elders and some disabled individuals. She has been doing this work for more than 20 years.

69. On December 22, 2008, a month after marriage became available to same-sex couples in Connecticut, Joanne and Ann were married in strict and complete accordance with Connecticut law.

70. Although Joanne and Ann married to make a public admission of their relationship and its legitimacy, specialness and singularity, they also looked forward to some spousal benefits they expected to receive from the federal government.

71. As a retired federal employee, Joanne is enrolled in the Federal Employees Health Benefits Program ("FEHB").

72. Since her retirement, Joanne has been enrolled in FEHB under a "Self-Only" plan, covering, as the name suggests, herself only.

73. Pursuant to 5 U.S.C. § 8905, 5 C.F.R. § 890.306(g)(1) and the FEHB handbook, an FEHB enrollee is allowed to change her enrollment from "Self Only" to "Self and Family" beginning 31 days before, and ending 60 days after, a change in family status, which includes a change in marital status.

74. According to the FEHB Handbook, "Self and Family" enrollment is described as follows:

> **Self and Family**
>
> A self and family enrollment provides benefits for you and your eligible family members. All of your eligible family members are automatically covered, even if you didn't list them on your Health Benefits Election Form (SF 2809) or other appropriate request. You cannot exclude any eligible family member and you cannot provide coverage for anyone who is not an eligible family member.

FEHB Handbook, Enrollment, Types of Enrollment.

75. According to 5 U.S.C. § 8901(5), "member of family" is defined, in part, to "mean[] the spouse of an employee or annuitant and an unmarried child under 22 years of age . . . ."

76. Within the 60-day period in which to request a change in enrollment following her December 22, 2008 marriage, Joanne telephoned her insurer, Blue Cross Blue Shield, to inform the insurer of her marriage to Ann and to find out how to add Ann to her insurance plan.

77. Joanne was informed that she could not add Ann to her health insurance plan.

78. Subsequently, on July 8, 2010, Joanne sent a written request by Certified Mail to the Office of Personnel Management ("OPM") to clarify whether the information she had received in early 2009 was correct and, if not, how and when she could add Ann to her health insurance plan. Joanne has yet to receive any response from OPM. The letter was signed for by OPM on July 12, 2010. Letter from Joanne G. Pedersen to OPM, Retirement Operations Center, Boyer, PA, Certified Mail No. 7009-2250-0001-0238-0700 (dated July 7, 2010; mailed July 8, 2010).

79. On November 8, 2010, during the open enrollment period, Joanne again attempted, using the online option, to change her health insurance enrollment from "Self-Only" to "Self and Family" to add Ann as her spouse; and she was rebuffed. After adding all the required information on the "Dependent Information" screen, the next screen provided the following message, "We are unable to process your request. If you think the family member you wish to enroll is eligible, please call us …."

80. As a result of OPM's application of DOMA, 1 U.S.C. § 7, Joanne has been denied health insurance benefits available to the spouses of federal retirees even though she is legally Ann's spouse under Connecticut law.

81. As a result of this exclusion from benefits, Joanne and Ann have suffered specific and concrete financial harms to themselves and to their household. In particular, because Ann has Hypersensitivity Pneumonitis and Asthmatic Bronchitis, chronic lung conditions that have resulted in recurrent bouts of pneumonia and have taxed her ability to work, she would be substantially benefited if she could retire from her full-time employment and instead work part-time. However, Ann has been forced to continue to struggle with full-time employment because she cannot be without the health insurance her job provides when the cost of private insurance, if she retired, is prohibitive. For Ann, access to the FEHB program would improve her life and the life of her family.

Plaintiff Gerald V. Passaro II

82. Plaintiff Gerald V. Passaro II ("Jerry") is the surviving spouse of Thomas M. Buckholz ("Tom"), who died in January 2009 after a long battle with lymphoma.

83. Jerry and Tom had been in a committed relationship for 13 years when they married at home in Milford, Connecticut on November 26, 2008. They married to formalize and commemorate their long-time union and partnership in the State of Connecticut.

84. Tom worked as a chemist for the Bayer Corporation ("Bayer") in West Haven, Connecticut for more than 20 years until he was laid off in January 2007.

85. Based upon his years of employment with Bayer, Tom was fully vested in the Bayer Corporation Pension Plan ("the Bayer Plan") and had "earned a monthly benefit, expressed as an unreduced Single Life Annuity, of $1,169.01." (Bayer document: "Salaried Plan Statement of Deferred Vested Benefit 04-03-2007," pg. 1).

86. Tom could have received this single life annuity starting on February 1, 2026, reflecting Tom having reached the age of 65. In addition, Tom was eligible to receive a benefit (possibly reduced) "as early as February 01, 2016," because the Bayer Plan allowed participants with Tom's work history to take early retirement at age 55.

87. Tom was born on xxxxxxx xx, 1961 and died on January 9, 2009, just shy of his 48th birthday.

88. Tom named Jerry as his beneficiary under the Bayer Plan, and Bayer acknowledged this by identifying Jerry by his birth date in a document sent to Tom in April 2007. (Bayer document: "Salaried Plan Calculation Statement 04-03-2007," pg. 1).

89. Following Tom's death, Jerry contacted the Bayer Benefits Department and was informed that because he (Jerry) was a man, Bayer would not be paying on Tom's pension as Jerry and Tom were "not legally married."

90. Jerry then contacted the United States Department of Labor and spoke to a Ross Boull, who contacted the supervisor of the Bayer Benefits Department. From this, Jerry was informed again that DOMA, 1 U.S.C. § 7, was being cited as the reason why he would receive no benefit under the Bayer Plan.

91. On August 26, 2009, Jerry wrote to Bayer formally requesting that Bayer provide him benefits as the beneficiary of Tom's pension and also requesting that, after a series of telephone communications, all future communications be in writing. (Passaro Letter to Bayer, August 26, 2009).

92. On January 6, 2010, Jerry contacted Vanguard, the administrator of the Bayer Plan. Jerry was advised that no benefits were going to be payable to him under the Bayer Plan because of DOMA.

93. On January 12, 2010, Vanguard sent Jerry the appeals letter, notifying him of his right to have the Bayer Corporation Review Committee review his claim. (Employee Benefits Claim Review Request form).

94. Jerry filled out the appeal request form; signed it; and dated it February 2, 2010.

95. Jerry also mailed a separate letter to Bayer, dated March 23, 2010, appealing the denial of his late spouse's pension. That letter included, as an attachment, the Salaried Plan Calculation Statement, dated 04-03-2007, received by Thomas Buckholz and identified in Paragraph 88, above. (Passaro Letter to Bayer "Chairman, Central HR/Benefits Department," March 23, 2010).

96. Vanguard responded to Jerry's January 6, 2010 contact with a letter, dated January 27, 2010. That letter attempted to explain to Jerry how DOMA operated to

prohibit a pension plan from treating "a participant in a same-sex marriage as 'married' for purposes of the QJSA [Qualified Joint and Survivor Annuity] rules." (Vanguard Letter to Passaro, January 27, 2010).

97. Bayer acknowledged receipt of Jerry's appeal by letter dated March 26, 2010. (Bayer Letter to Passaro, March 26, 2010).

98. By letter dated May 14, 2010, the Bayer ERISA Review Committee informed Jerry that it was upholding the denial of his request for pension benefits. In support of its decision, the Review Committee stated that the Bayer Plan is governed by federal law, including DOMA, and that, as a result, "same-sex marriage is not recognized under the Plan." (ERISA Review Committee Letter to Passaro, May 14, 2010).

99. Pursuant to an offer contained in that May 14, 2010 letter, Jerry requested copies of all information relevant to his claim. That material was provided to Jerry under a cover letter, dated July 21, 2010, from Bayer Senior Counsel, William M. Hassan. (Hassan Letter to Passaro, July 21, 2010).

100. The claim materials provided to Jerry indicate a single reason for the denial of pension benefits to Jerry, and that single reason is DOMA.

101. By letter dated July 30, 2010, Vanguard provided a further response to Jerry's June 16, 2010 written request to Vanguard seeking answers to a series of questions. Among other things, Vanguard stated,

> The [Vanguard] letter dated January 27, 2010 stated that under the Defense of Marriage Act (DOMA), a plan cannot treat a participant in a same-sex marriage as "married" for purposes of the QJSA rules. This is per ERISA and the Internal Revenue Code and not a plan rule, therefore this specific information would not be found in the employee benefit plan. You can however find this information on the Department of Labor website, www.dol.gov.

(Vanguard Letter to Passaro, July 30, 2010; Passaro Letter to Vanguard, June 16, 2010).

102. Under the terms of the Bayer Plan, and in compliance with applicable federal law, where a Participant, like Thomas Buckholz, who has vested and has a nonforfeitable right to benefits under the Bayer Plan, dies prior to his annuity start date, the Participant's surviving spouse shall be paid a Preretirement Survivor Annuity. (Bayer Plan, §5.6(a)).

103. As a result of the application of DOMA, 1 U.S.C. § 7, through ERISA and the Internal Revenue Code, Jerry has been denied the vested qualified preretirement survivor annuity (QPSA) available to all spouses of vested participants in defined benefit pension plans in the equivalent situation as Jerry finds himself today even though he is legally Tom's surviving spouse under Connecticut law.

104. As a result of the negation of the otherwise mandated QPSA, Jerry has suffered specific, concrete and anticipated harms, financial and otherwise.

105. At the time of Tom's death, he was insured under the Social Security program, and he and Jerry had been living together in the same household in Milford, Connecticut.

106. Under 42 U.S.C. § 402(i) and 20 C.F.R. §§ 404.390-404.391 and § 404.347, a surviving spouse is entitled to a lump-sum death payment of $255 if the surviving spouse was "living in the same household with the deceased at the time of death," if the surviving spouse applies for the benefit "prior to the expiration of two years after the date of death …," and if the deceased spouse was "fully or currently insured" at the time of death.

107. On October 21, 2010, less than two years after Tom's death in January 2009, Jerry talked to a Social Security representative, Ms. Andrea McCalla, and completed an application for Social Security benefits for widower's insurance benefits, including the lump-sum death benefit of $255. Social Security Document, SG-SSA-10, "Application Summary for Widow's or Widower's Insurance Benefits" (October 21, 2010).

108. Upon information and belief relating to the actions of the Social Security Administration ("SSA") on applications for the lump-sum death benefit by widowers in Massachusetts seeking the benefit as the result of the death of their spouses of the same sex, the SSA will – solely because of the existence and operation of DOMA, 1 U.S.C. § 7 – deny Jerry's application for the $255 death benefit otherwise available to him under 42 U.S.C. § 402(i).

109. Because the SSA does not recognize Jerry's marriage, Jerry will certainly be denied the Social Security lump-sum death benefit and thus has suffered specific and concrete financial harm.

The Plaintiffs Lynda DeForge and Raquel Ardin

110. The Plaintiff Lynda DeForge ("Lynda"), now age 54, is and was at all relevant times, a full-time employee of the United States Postal Service.

111. In 1977, Lynda met her spouse Raquel Ardin ("Raquel"), now age 56.

112. On September 7, 2009, after more than 30 years together, Lynda and Raquel married in their home State of Vermont in strict accordance with Vermont law.

Raquel's father, who had received legal permission to do so, performed the ceremony at their home.

113. Lynda and Raquel married because they have always been married in their hearts. They wanted to make their marriage one that others would understand as a marriage and as a commitment "forever," including in their community, among strangers, and in the legal system.

114. When they met, Lynda was a United States Navy Corpsman working at the Pensacola (FL) Naval Hospital. Raquel was a surgical patient in that Hospital. Raquel had fractured and dislocated her neck in 1976 while abroad in the service of the United States Navy. She had two neck fusion surgeries at the Pensacola Naval Hospital.

115. Raquel obtained a medical discharge from the Navy in 1978. After working odd jobs, she obtained work with the Postal Service and began working at a Pensacola (FL) Post Office in October 1980.

116. Lynda's military service spanned the years of November 1976 until July 1980, when she obtained a hardship discharge so that she could travel regularly to care for her mother who was living with Alzheimer 's disease in Vermont.

117. Because the frequent travel between Florida and Vermont was difficult, and her mother's condition had worsened, Lynda and Raquel moved to Lynda's parents' home in Montpelier, Vermont in October 1982. Lynda then cared for her parents on a full-time basis. Raquel obtained a transfer to the White River Junction (VT) Postal Center and supported the family.

118. After Lynda's mother's death in 1984, Lynda obtained a job working with disabled children in a public school, and rented an apartment with Raquel in a community halfway between their respective job sites.

119. In June 1985, Lynda obtained a job with the White River Postal Center as well, and in August, they purchased the home in North Hartland that they still share.

120. For many years, Raquel and Lynda both worked at the same facility: the White River Junction Processing and Distribution Center in White River Junction, VT. From the beginning, their colleagues and supervisors fully acknowledged their relationship. When the couple had a Vermont Civil Union ceremony in 2000, colleagues congratulated them and even held a shower for them. They also experienced an outpouring of support when they married in 2009.

121. Lynda and Raquel have cared for both of Raquel's parents at their apartment and later at their home in North Hartland. Raquel's mother lived with them for nearly a year after a stroke, and much of the time was cared for by Lynda, until she was well enough to go back and live with Raquel's father in September 1985. Since 2007, Raquel's widowed father has made their home his base as well, although he is currently in good health.

122. Raquel worked for the Postal Service for 25 years – from 1980 until 2005. By 2005, the degenerative arthritis in her neck had resulted in an inability to move her head, unless it moved from involuntary spasms, and required intensive pain management with medications. She was forced into a disability retirement, and the Veterans' Administration determined she was "unemployable."

123. Lynda, as Raquel's partner and now spouse, has always taken the lead in caring for Raquel's serious health conditions.

124. Under the FMLA, Congress provided that a covered "employer" must provide to an "eligible employee" 12 workweeks of unpaid leave in any 12-month period in order, among other things, "to care for the spouse … of the employee, if such spouse … has a serious health condition." 29 U.S.C. § 1612(a)(1)(C). A "serious health condition" means, *inter alia*, an "impairment" or "physical … condition" that involves "continuing treatment by a health care provider." 29 U.S.C. § 2611(11).

125. The United States Postal Service is, and was at all relevant times, an employer within the meaning of Title I of the FMLA. 29 U.S.C. § 2611(4)(A)(iii-iv)("employer"); 29 U.S.C. § 203(x)(U.S. Postal Service).

126. Since 2005, Raquel has required quarterly treatments of botox injections into her neck, three on each side of her spinal cord, to address her immobility, spasms and pain caused by degenerative arthritis and the scar tissue from her surgeries. These injections are painful and also require bandaging of her neck for bleeding.

127. The nearest Veterans Administration facility at which these injections are administered is in Newington, Connecticut, a two and a half hour drive from their home in Vermont. By the time of treatments, and often well before, Raquel is unable or barely able to move her neck, making it impossible for her to drive herself to or from these appointments.

128. Lynda has always transported Raquel to and from her quarterly injection appointments in Connecticut, including such appointments subsequent to their marriage.

129. Lynda is, and was at the time of her spouse's neck injections from September 2009 forward, an eligible employee under the terms of Title I of the FMLA.

130. Lynda did not apply for FMLA leave for the first three injection appointments after their marriage, believing she would be denied leave to care for her spouse.

131. However, Lynda did apply for FMLA leave on May 7, 2010. Pursuant to Raquel's physician's direction, she sought "one day every three months" for "treatment for medical condition due to fracture dislocation of C6 and 7" and explained that "patient requires transportation to and from VA Medical Center in Newington Ct. for Botox injections." (APWU Form 2, dated May 7, 2010). That same form contained a signed certification of Raquel's physician.

132. With respect to a request for FMLA leave to care for a spouse, Lynda satisfied all the operative requirements for leave under the terms of the FMLA and the Department of Labor regulations.

133. Lynda's supervisors accepted her FMLA leave request, and then, per standard procedures, sent it for further approval to the district supervisor overseeing their facility.

134. The FMLA request was rejected, stating that "the FMLA does not apply to your leave request." A notation was made on the form further explaining: "Please be advised that your FMLA request is not approved, as same sex marriage is not recognized by Federal Law under the Defense of Marriage Act." (Form WH-382, dated May 13, 2010).

135. Raquel was scheduled to have knee surgery on June 3, 2010, and did so. Since Lynda had recently received a denial of FMLA leave to care for Raquel based upon DOMA, 1 U.S.C. § 7, she believed it was futile to apply again to take FMLA leave for Raquel's knee surgery and, therefore, took vacation days to care for Raquel.

136. Early next year, Raquel will undergo bariatric surgery, requiring 2-4 days of hospitalization and one week of an intense convalescence immediately when she returns home. Based on the denial of FMLA leave by the Post Office in May 2010, Lynda believes it is futile to apply again.

137. As a result of the United States Postal Service's application of DOMA, 1 U.S.C. § 7, Lynda has been unable to take FMLA leave.

138. Only the operation of DOMA, 1 U.S.C. § 7, has precluded Lynda from obtaining FMLA leave to care for Raquel vis a vis Raquel's past injection appointments and knee surgery as well as Raquel's upcoming surgery.

139. Lynda has made sure to be there for Raquel and take care of her no matter what. Without FMLA coverage, Lynda has to take annual leave/vacation days in order to get time off. However, if Lynda were allowed to take FMLA leave to care for Raquel, she would have the choice of "unpaid leave," use of accrued sick leave or annual leave, i.e., vacation pay.

140. Lynda anticipates having her own knee surgery in the Spring of 2011. Right now, she has not accrued enough sick and vacation time to ensure that she is paid for all or nearly all of that time off, in part because she has to take vacation time to care for Raquel.

141. Lynda would prefer to take a few unpaid days occasionally as necessary to care for Raquel, as she would be permitted to do with FMLA leave. However, because she must take vacation time to care for Raquel, she runs the risk that she will not have enough accrued sick and vacation time when she has her own major surgery, and thus go for a significant period without any pay.

142. As an employee of the United States Postal Service, Lynda is enrolled in the Federal Employees Health Benefits Program ("FEHB").

143. As a former employee and qualified annuitant of the United States Postal Service, Raquel is also enrolled in the FEHB.

144. To date, both Lynda and Raquel have each been separately enrolled in FEHB under two "Self-Only" plans, covering, as the name suggests, each of them as an individual.

145. According to the FEHB Handbook, "Self and Family" enrollment is described as follows:

> **Self and Family**
>
> A self and family enrollment provides benefits for you and your eligible family members. **All of your eligible family members are automatically covered, even if you didn't list them on your Health Benefits Election** Form (SF 2809) or other appropriate request. You cannot exclude any eligible family member and you cannot provide coverage for anyone who is not an eligible family member.
>
> You may enroll for self and family coverage before you have any eligible family members. Then, **a new eligible family member (such as a newborn child or a new spouse) will be automatically covered by your family enrollment from the date he/she becomes a family member.** When a new family member is added to your existing self and family enrollment, you do not have to complete a new SF 2809 or other appropriate request, but your carrier may ask you for information about your new family member. You will send the requested information directly to the carrier. *Exception*: if you want to add a foster child to your

> coverage, you must provide eligibility information to your employing office.

FEHB Handbook, Enrollment, Types of Enrollment (emphasis supplied).

146. According to 5 U.S.C. § 8901(5), "member of family" is defined, in part, to "mean[] the spouse of an employee or annuitant and an unmarried child under 22 years of age …."

147. Because the cost of their two Self-Only plans – one as a retiree and one as an employee – exceeds the cost of one Self and Family plan covering both of them, Lynda and Raquel seek to change from "Self-Only" coverage to "Self and Family."

148. Lynda sought to change her enrollment from Self-Only to the FEHB Self and Family Plan on November 8, 2010, during the open enrollment period that commenced on that day, through the PostalEASE system on her home computer, using her employee identification number and unique pin number.

149. On a screen called "Federal Employee Health Benefits" discussing "Family Member Eligibility," three bullet points of information were provided. The first bullet point notes that FEHB regulations define family members as "Your spouse…" The third bullet point, however, states, "Same sex spouses are not considered eligible family members under FEHB."

150. Lynda persisted in trying to enroll in a Self and Family Plan despite the explicit statement that "same-sex spouses" are not "eligible family members."

151. When Lynda attempted to add Raquel as her spouse for health insurance, the system returned a message indicating that her transaction had successfully been recorded and providing Lynda with a confirmation number of 781192. It also indicated that the transaction would be processed on December 14, 2010 at 5:00 p.m. Central Time.

152. Lynda then spoke with Blue Cross and Blue Shield Customer Service, which said there would be no coverage and referred Lynda back to Shared Services. Lynda then called Shared Services and spoke to a Michelle, who put Lynda on hold, called OPM and then reported to Lynda that "FEHB does not accept or approve family plans for same sex marriages."

153. As a result of the United States Postal Service's application of DOMA, 1 U.S.C. § 7, Lynda is prohibited from covering herself and Raquel under a FEHB "Self and Family" plan.

154. As a result of DOMA, 1 U.S.C. § 7, their marriage is being treated as invalid by the federal government, and the denial of FMLA leave and the denial of family health insurance has caused Lynda and Raquel specific and concrete financial harms.

Plaintiffs Joanne Marquis and Janet Geller

155. Plaintiff Joanne Marquis ("Jo"), 70 years old, is a retired New Hampshire employee, having worked as a teacher in the New Hampshire public school systems for over 30 years.

156. Jo and her spouse, Plaintiff Janet Geller ("Jan"), have been in a committed relationship since 1979.

157. Jan, 64 years old, is also a retired New Hampshire employee, having also worked as a teacher in the New Hampshire schools for over 25 years.

158. In 1980, Jo and Jan bought a house in Goffstown, New Hampshire, where they lived for 29 years along with a series of rescue dogs that they adopted. They

recently sold their house to rent a smaller home in their retirement years. They also began spending their winters in a retirement community in Florida four years ago.

159. After 31 years together, on their anniversary, Jan proposed to Jo while at a dance in their retirement community in Florida, in front of their close neighbors and friends.

160. Jo and Jan married in their home in Goffstown on May 3, 2010. They had a small and simple ceremony that was officiated by their town clerk, one of Jan's former high school students, and witnessed by their close friends. Jo and Jan decided to get married soon after it was possible to do so in New Hampshire so that they could finally protect each other legally after their many years of commitment to each other.

161. In 2004, Jan retired after a total of over 25 years of teaching.

162. In 2005, Jo retired from the Manchester School District after a total of 43 years of teaching.

163. As qualified state retirees, Jo and Jan both receive a pension through the New Hampshire Retirement System (NHRS).

164. The NHRS provides and administers a medical cost benefit that can be used to purchase health insurance for a qualified retiree and his or her spouse or dependent. N.H.R.S. § 100-A:52-a. This medical cost benefit, while administered by New Hampshire, is part of a "401(h) subtrust" of the NHRS, as established by the federal Internal Revenue Code. See N.H.R.S. § 100-A:53-c.

165. Generally speaking, a pension plan, such as the NHRS, that is qualified under I.R.C. § 401(a) is not permitted to provide medical benefits without losing its tax-qualified status. 26 U.S.C. § 401; 26 C.F.R. § 1.401-1(b)(1)(i).

166. The only exception is a pension plan that provides medical benefits pursuant to I.R.C. § 401(h), which permits a tax-qualified pension plan to provide for the payment of benefits for medical expenses of retired employees, their spouses and their dependents, provided that certain conditions are met. I.R.C. § 401(h) provides in relevant part that "a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization and medical expenses of retired employees, their spouses and their dependents . . . ." 26 U.S.C. § 401(h); see also 26 C.F.R. § 1.401-14.

167. DOMA, 1 U.S.C. § 7, defines "spouse" for purposes of IRC § 401(h).

168. As a state retiree of New Hampshire with over 30 years of service, Jo is eligible for this medical cost benefit. N.H.R.S. § 100-A:52-a. In June 2005, she applied for and received this benefit as an individual to help pay for her own Medicare Part B supplemental insurance premium.

169. Just a week after marrying Jan in New Hampshire, Jo applied for the medical cost spousal benefit for Jan on May 11, 2010 through her benefits coordinator at the Manchester School District, who processed her application with the NHRS. The medical cost spousal benefit for Jan was set at $375.56.

170. A week later, the benefits coordinator called Jo to inform her that the NHRS had denied her the medical cost benefit for Jan, because, due to DOMA, 1 U.S.C. § 7, the spousal benefit was available to heterosexual married couples only.

171. On September 27, 2010, Jo received a letter from Denise M. Call, Director of the NHRS Employer Services, confirming NHRS's denial of the medical cost spousal benefit for Jan. As her reason, Ms. Call stated in her letter that "because of DOMA the term 'spouses' as used in Code Section 401(h) does not include a civil union partner or a

same-sex spouse. Therefore, if NHRS were to provide a medical subsidy on behalf of a retiree's civil union partner or same-sex spouse, NHRS would fail to satisfy Code Section 401(h). Paying a medical subsidy other than in accordance with the terms of Code Section 401(h) would cause NHRS to lose its tax qualified status."

172. In addition, New Hampshire law states that nothing in New Hampshire's domestic relationships law, including New Hampshire's licensing and recognition of marriages of same-sex couples, shall apply to the statutes governing the NHRS "to the extent that such application will violate the Internal Revenue Code of 1986, as amended, or other federal law." N.H.R.S. § 100-A:2-b.

173. Jan is not eligible for the medical cost benefit through the NHRS based upon her own years of service.

174. Jan also does not qualify as a dependent of Jo's, as defined by 26 C.F.R. § 1.401-14(b)(4)(i), such as to be otherwise eligible for Jo's medical cost benefit.

175. Jan is currently paying $650.60 per month for private group health insurance coverage through Jo's former employer, the Manchester School District.

176. But for DOMA, 1 U.S.C. § 7, the NHRS, under New Hampshire law, would be providing Jo with the medical cost spousal benefit to help pay for Jan's private health insurance premium.

177. As a result of this denial, Jo and Jan are being denied $375.56 per month to help pay for Jan's health insurance premium costs.

178. Jo and Jan are suffering $375.56 per month in financial harm since July 2010 from the discriminatory denial of the medial cost benefit for Jan. That results in a financial harm of slightly more than $4,500 per year as a result of DOMA, 1 U.S.C. § 7.

COUNT I
(Joanne Pedersen and Ann Meitzen v. Office of Personnel Management)

179. Plaintiffs Joanne Pedersen and Ann Meitzen repeat and reallege the allegations set forth in Paragraphs 13-14, 28-63, and 64-81 as if fully set forth herein.

180. The FEHB program is a creature of federal statute, Chapter 89 of Title 5 of the United States Code. See generally 5 U.S.C. §§ 8901 et seq.

181. Pursuant to Congressional authority, 5 U.S.C. § 8913, OPM prescribes all regulations to carry out Chapter 89 of Title 5 of the United States Code.

182. The pertinent regulations promulgated by OPM are contained in Part 890 of Title 5 of the Code of Federal Regulations.

183. The FEHB Program extends to qualified annuitants such as the Plaintiff Joanne Pedersen. See 5 U.S.C. §§ 8901, 8905.

184. Under existing FEHB statutory and regulatory provisions, a qualified annuitant may elect "Self and Family" coverage and enroll her spouse for health insurance benefits under the FEHB program.

185. Under existing FEHB statutory and regulatory provisions, Joanne would be able to enroll Ann in a "Self and Family" plan but for OPM's application of DOMA, 1 U.S.C. § 7, which denies spousal health insurance coverage to a retired federal employee's spouse if that spouse is of the same sex.

186. Under existing FEHB statutory and regulatory provisions, Ann would be enrolled in Joanne's "Self and Family" plan but for OPM's application of DOMA, 1 U.S.C. § 7, which denies spousal health insurance coverage to a retired federal employee's spouse if that spouse is of the same sex.

187. To the extent that the disparity of treatment with regard to federal employment-related benefits available to Joanne and Ann is, in fact, mandated by DOMA, 1 U.S.C. § 7, that disparity of treatment creates a classification that treats similarly situated individuals differently without justification in excess of Congressional authority in violation of the right of equal protection secured by the Fifth Amendment of the Constitution of the United States.

188. An actual controversy exists between and among the parties.

COUNT II
(Gerald V. Passaro II v. Timothy F. Geithner, Hilda L. Solis and Michael J. Astrue)

189. Plaintiff Gerald V. Passaro II repeats and realleges the allegations set forth in Paragraphs, 15, 28-63, and 82-109 as if fully set forth herein.

190. The Bayer Pension Plan in which Thomas Buckholz was a vested Participant as of December 31, 2005, is a defined benefit plan that intended to and does qualify under Section 401(a) of the Internal Revenue Code, 26 U.S.C. § 401(a).

191. As a qualified defined benefit plan, the Bayer Plan is obligated to provide: (a) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant in the form of a qualified joint and survivor annuity; and (b) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified survivor annuity to the surviving spouse of the participant. 29 U.S.C. §§ 1055(a) and (b)(1)(A); 26 U.S.C. § 401(a)(11).

192. Definitions of "qualified joint and survivor annuity" and "qualified preretirement survivor annuity" are set forth in 29 U.S.C. §§ 1055(d)(1) and (e), respectively, and 26 U.S.C. §§ 417(b) and (c), respectively. See also 26 C.F.R.

§ 1.401(a)-11 ("Qualified joint and survivor annuities").

193. Both the Secretary of Labor and the Secretary of the Treasury, in their official capacities, are responsible for the enforcement and administration of ERISA.

194. The Secretary of the Treasury, in consultation with the Secretary of Labor, is authorized to promulgate regulations concerning the requirements of joint and survivor annuities and preretirement survivor annuities. 29 U.S.C. § 1055(l).

195. In accordance with federal law, the Bayer Plan offers a Preretirement Survivor Annuity to a Participant with a vested, nonforfeitable right to an accrued benefit in the form of an annuity payable to the Participant's surviving spouse in an amount "equal [to] the amounts which would have been payable as a survivor annuity under the Qualified Joint and Survivor Annuity under the Plan …." (Bayer Plan, §§ 5.6(a)-(b)).

196. Under the Bayer Plan, the Qualified Joint and Survivor Annuity "shall be 50% of the amount of the annuity which is payable during the joint lives of the Participant and the spouse." (Bayer Plan, § 6.1(d)).

197. As a person legally married under Connecticut law at the time of his spouse's death, Jerry would be declared, as a matter of right under the Bayer Plan, a recipient of a preretirement survivor annuity but for DOMA, 1 U.S.C. § 7, which precludes a qualified defined benefit plan from extending the statutorily required ERISA survivor annuities to the surviving spouse of a married same-sex couple.

198. Solely as a result of the application of DOMA, 1 U.S.C. § 7, Jerry finds himself without any right as a surviving spouse to any survivor annuity whatsoever under the Bayer Plan.

199. Jerry has therefore, by definition, been denied equal treatment as compared to other similarly situated widowers; and he is required to currently live without the assurance of the QPSA and thus with the attendant and enhanced risks and anxieties concerning his future financial welfare.

200. The operation of DOMA, 1 U.S.C. § 7, is the cause of this present harm to Jerry.

201. DOMA, 1 U.S.C. § 7, creates a classification with respect to qualified defined benefit plans that treats similarly situated individuals differently without justification in excess of Congressional authority in violation of the rights of equal protection secured by the Fifth Amendment of the Constitution of the United States.

202. The Social Security Act is codified in Chapter 7 of Title 42 of the United States Code. See generally 42 U.S.C. §§ 301 et seq.

203. Pursuant to Congressional authority, 42 U.S.C. § 902, defendant Michael J. Astrue enforces federal law relative to eligibility of benefits through his supervision of the SSA.

204. The pertinent regulations promulgated by the SSA are contained in Parts 400 to 499 of Title 20 of the Code of Federal Regulations.

205. Under 42 U.S.C. § 402(i), the widower of a deceased person shall receive a lump-sum benefit of $255 after the death of his spouse.

206. Under existing Social Security statutory and regulatory provisions, Jerry would be entitled to the $255 death benefit as the legal surviving spouse of Thomas Buckholz but for DOMA, 1 U.S.C. § 7, which denies the benefit to an otherwise qualifying surviving spouse if that spouse is of the same sex.

207. DOMA, 1 U.S.C. § 7, as applied by the SSA, creates a classification with respect to Social Security benefits that treats similarly situated individuals differently without justification in excess of Congressional authority in violation of the right of equal protection secured by the Fifth Amendment of the Constitution of the United States.

208. Jerry's constitutional claims are ripe for review by this Court.

209. Jerry's application for the lump-sum benefit raises no disputed issues of fact.

210. DOMA, 1 U.S.C. § 7, alone bars Jerry from receiving the lump-sum benefit.

211. It would be futile for Jerry to pursue any further administrative process because the SSA has consistently taken the position that DOMA, 1 U.S.C. § 7, is its sole basis for barring surviving spouses of same-sex couples, including in equivalent litigation now on appeal in the District of Massachusetts, from receiving the lump-sum death benefit. In addition, Jerry's claim raises a constitutional issue that is beyond the SSA's purview.

212. An actual controversy exists between and among the parties.

COUNT III
(Lynda DeForge and Raquel Ardin v. United States Postal Service, John E. Potter and Office of Personnel Management)

213. Plaintiffs Lynda DeForge and Raquel Ardin repeat and reallege the allegations set forth in Paragraphs 16-17, 28-63 and 110-154 as if fully set forth herein.

214. Congress enacted the FMLA in 1993 relying on "its Article I commerce power and its power under § 5 of the Fourteenth Amendment to enforce that

Amendment's guarantees." Nevada Dept. of Human Resources v. Hibbs, 538 U.S. 721, 726-727 and n.1 (2002).

215. Congress expressly set forth its purposes in adopting the FMLA: (a) to balance workplace and family needs; (b) to promote the preservation of family integrity; (c) to create reasonable leave for employees so that, among other reasons, they can care for a spouse with a serious health condition; (d) to accomplish the foregoing with employer interests in mind; (e) to also accomplish the foregoing on a gender-neutral basis in order to minimize sex discrimination in employment; and (f) to promote equal employment opportunity for men and women. See 29 U.S.C. § 2601(b).

216. The term "spouse" was specifically defined in the FMLA to mean "a husband or wife as the case may be." 29 U.S.C. § 1611(13).

217. The Department of Labor regulations governing Title I of the FMLA provide: "Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized." 29 C.F.R. § 825.113(a).

218. The official House Report on DOMA specifically cites FMLA as one of two examples by which married gay and lesbian couples could become "eligible for a whole range of federal rights and benefits." (H. Rpt., pp. 10-11).

219. DOMA, 1 U.S.C. § 7, has overridden and superseded the definition of "spouse" contained in the FMLA in 29 U.S.C. § 2611(13) as well as the definition of "spouse" contained in the Department of Labor regulations in 29 C.F.R. § 825.113(a).

220. At all relevant times, the Postal Service is an employer subject to the FMLA and Lynda was an employee-spouse eligible for leave to care for her spouse.

221. Under the existing FMLA statutory and regulatory provisions, Lynda would be able to take FMLA leave to care for Raquel but for the Postal Service's application of DOMA, 1 U.S.C. § 7, which denies FMLA leave to a Postal Service employee if that employee seeks to care for a spouse of the same sex.

222. Although Vermont has determined that different-sex couples and same-sex couples must be treated the same and are, in fact, treated the same in Vermont vis a vis marriage and the recognition of their marital status under state law, federal law operates to treat different-sex couples and same-sex couples differently.

223. The disparity of treatment with regard to benefits available under the FMLA that is mandated by DOMA, 1 U.S. C. § 7, creates a classification that treats similarly-situated individuals differently without justification in violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

224. As to the FEHB program, Plaintiffs Lynda DeForge and Raquel Ardin also repeat and reallege the allegations set forth in Paragraphs 180-182, above, as if fully set forth herein. The FEHB program extends to qualified employees such as Lynda. See 5 U.S.C. §§ 8901, 8905.

225. Under existing FEHB statutory and regulatory provisions, an employee may elect "Self and Family" coverage and enroll his or her spouse for health insurance benefits under the FEHB program.

226. Under existing FEHB statutory and regulatory provisions, Lynda would be able to enroll Raquel in a "Self and Family" plan but for OPM's application of DOMA, 1 U.S.C. § 7, which denies spousal health insurance coverage to a federal employee's spouse if that spouse is of the same sex.

227. The disparity of treatment with regard to benefits available under the FMLA is mandated by DOMA, 1 U.S.C. § 7, and to whatever extent the disparity of treatment with regard to federal employment-related benefits available to Lynda and Raquel is, in fact, mandated by DOMA, 1 U.S.C. § 7, this disparity of treatment creates a classification that treats similarly-situated individuals differently without justification in violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

COUNT IV
(Janet Geller and Joanne Marquis v. Timothy F. Geithner and Douglas H. Shulman)

228. Plaintiffs Janet Geller and Joanne Marquis repeat and reallege the allegations set forth in Paragraphs 18-19, 28-63 and 155-178 as if fully set forth herein.

229. The New Hampshire Retirement System ("NHRS") is a state pension system receiving favorable tax qualification status under I.R.C. § 401(a).

230. The Secretary of the Treasury is responsible for the enforcement and administration of the Internal Revenue Code, including the qualification of pension plans. 26 U.S.C. § 7801.

231. The Commissioner of Internal Revue is responsible for the enforcement and administration of the Internal Revenue Code, including the qualification of pension plans.

232. Under I.R.C. § 401(h), the NHRS, as a tax-qualified pension plan, is permitted to provide for payment of "medical subsidy" benefits for sickness, accident, hospitalization and medical expenses for retired employees, their spouse and dependents.

233. Under existing I.R.C. statutes and regulations as well as New Hampshire state law, Jo would receive a medical subsidy spousal benefit from the NHRS to help pay for her legal spouse Jan's private health insurance premiums, but for DOMA, 1 U.S.C. § 7, which prohibits the NHRS as a tax-qualified plan from providing the benefit to an otherwise qualified retiree's spouse if that spouse is of the same sex.

234. DOMA, 1 U.S.C. § 7, creates a classification with respect to tax-qualified pension benefits that treats similarly situated individuals differently without justification in excess of Congressional authority in violation of the right of equal protection secured by the Fifth Amendment of the Constitution of the United States.

235. An actual controversy exists between and among the parties.

PRAYERS FOR RELIEF

WHEREFORE, the plaintiffs pray that this Court:

1. Declare DOMA, 1 U.S.C. § 7, unconstitutional as applied to the plaintiffs.

2. Declare that DOMA, 1 U.S.C. § 7, is unconstitutional and void as applied to deny claims of federal employees to enroll their spouses in the FEHB program where those spouses are lawfully recognized as spouses under Connecticut and Vermont law.

3. Declare that DOMA, 1 U.S.C. § 7, is unconstitutional and void as applied to deny surviving spouses the ERISA-mandated qualified preretirement survivor annuity (QPSA) where those surviving spouses are lawfully recognized as spouses under Connecticut law.

4. Declare that DOMA, 1 U.S.C. § 7, is unconstitutional and void as applied to deny surviving spouses the one-time Social Security lump-sum death benefit where those surviving spouses are lawfully recognized as spouses under Connecticut law.

5. Declare that DOMA, 1 U.S.C. §7, is unconstitutional and void as applied to deny claims for leave under the FMLA to care for a spouse lawfully recognized as a spouse under Vermont law.

6. Declare that DOMA, 1 U.S.C. § 7, is unconstitutional and void as applied to prohibit the New Hampshire Retirement System, as a tax-qualified pension plan, from providing a § 401(h) medical subsidy spousal benefit to a retiree whose spouse is lawfully recognized as a spouse under New Hampshire law.

7. Enjoin the defendants from continuing to discriminate against the plaintiffs by treating them differently from similarly situated individuals who are married to persons of the opposite sex.

8. Permanently enjoin the defendants United States Postal Service and John E. Potter from administering the FEHB program in contradiction to the Court's declaration in Prayer 2.

9. Permanently enjoin the defendants Secretary of the Treasury and Secretary of Labor from administering and enforcing the provisions of ERISA in contradiction to the Court's declaration in Prayer 3.

10. Permanently enjoin the defendant Michael J. Astrue to review applications for the one-time, lump sum death benefit under 42 U.S.C. § 402(i) without regard to DOMA, 1 U.S.C. § 7, and in accordance with the Court's declaration in Prayer 4.

11. Permanently enjoin the defendants United States Postal Service and John E. Potter from administering and enforcing the FMLA in contradiction to the Court's declaration in Prayer 5.

12. Permanently enjoin the defendants Secretary of the Treasury and the Commissioner of Internal Revenue from administering and interpreting §§ 401(a) and 401(h) of the Internal Revenue Code in contradiction to the Court's declaration in Prayer 6.

13. Award attorney's fees and costs to plaintiffs pursuant to 28 U.S.C. § 2412 or any other applicable statutory provision.

14. Grant such other relief as is just and appropriate.

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