



Holly Jo Franz  
 Gough, Shanahan, Johnson & Waterman  
 33 S. Last Chance Gulch  
 P.O. Box 1715  
 Helena, MT 59624-1715  
 (406) 442-8560

Beth Brenneman  
 ACLU of Montana  
 Power Block West, Suite 4E  
 Helena, MT 59601  
 (406) 443-8590

Tamara Lange  
 Lesbian & Gay Rights Project  
 American Civil Liberties Union Foundation  
 125 Broad Street, 18th Floor  
 New York, NY 10004  
 (212) 549-2627

Attorneys for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

CAROL SNETSINGER, NANCY SIEGEL,  
 CARLA GRAYSON, ADRIANNE NEFF,  
 and PRIDE, INC., a Montana Non-Profit  
 Corporation,

Plaintiffs,

vs.

Cause No. \_\_\_\_\_

MONTANA UNIVERSITY SYSTEM, STATE  
 OF MONTANA, RICHARD CROFTS, in his  
 official capacity of Commissioner of Higher  
 Education, and MARGIE THOMPSON, ED  
 JASMIN, LYNN MORRISON-HAMILTON,  
 CHRISTIAN HUR, JOHN MERCER, RICHARD  
 ROEHM and MARK SEMMENS, in their official  
 capacities as members of the Board of Regents,  
 Defendants.

**COMPLAINT**

Plaintiffs Carol Snetsinger and Nancy Siegel, Carla Grayson and Adrienne Neff, and PRIDE, Inc. (collectively "Plaintiffs") bring this action against Defendants the Montana University System, the State of Montana, Richard Crofts, in his official capacity as Commissioner of Higher Education for the Montana University System, and Margie Thompson, Ed Jasmin, Lynn Morrison-Hamilton, Christian Hu John Mercer, Richard Roehm, and Mark Semmens in their official capacities as members of the Board of Regents of the Montana University System (collectively "Defendants"), and allege as follows:

### **INTRODUCTION**

1. Plaintiffs seek declaratory relief under the Montana Constitution from Defendants' willful violation of Plaintiffs' constitutional rights. Defendants' exclusion of lesbian and gay employees and their families from the opportunity to enjoy essential employment benefits violates Plaintiffs' fundamental rights under the Montana Constitution, including the right to dignity, the right to privacy and intimate association, the right to equal protection of the laws without regard to sex, sexual orientation or marital status, the right to seek safety, health and happiness and the right to pursue life's basic necessities.

2. The individual Plaintiffs are lesbian couples in committed, intimate relationships. Plaintiffs Carol Snetsinger and Carla Grayson are government employees in the Montana University System who share their lives, homes and financial obligations with their respective same-sex domestic partners, Plaintiffs Nancy Siegel and Adrienne Neff. Plaintiff PRIDE, Inc. is a nonprofit organization of lesbian, gay, bisexual and transgender Montanans and their supporters with members who are gay, lesbian, bisexual or transgendered employees of the Montana University System and members who are same-sex domestic partners of gay, lesbian, bisexual or transgendered employees of the Montana University System. Plaintiffs seek equal access to health insurance, disability coverage and other basic necessities of modern life that Defendants offer to employees with opposite-sex domestic partners or spouses but deny to Plaintiffs.

3. The State of Montana explicitly prohibits same-sex marriage. By conditioning receipt of critical employment benefits on solemnized or common-law marriage while denying lesbians and gay men the right to marry, Defendants deprive Plaintiffs of their fundamental rights under the Montana Constitution.

4. Montana statutes authorize the Montana University System's Board of Regents to establish hospitalization, medical, health, disability, accident and life insurance plans "for the benefit of their officers and employees and their dependents." Mont. Code Ann. § 2-18-702. In administering the health, disability and other insurance plans established for state employees, Defendants have established a policy interpreting "dependents" to include the spouses and opposite-sex domestic partners of heterosexual employees while excluding the same-sex domestic partners of lesbian and gay employees. Under this policy, Defendants determine eligibility for health insurance and other essential benefits on the basis of sexual orientation, sex, and marital status, in violation of the Montana Constitution. In addition, Defendants' policy infringes Plaintiffs' constitutional rights to dignity, privacy and intimate association and denies Plaintiffs their fundamental rights to seek safety, health and happiness and to pursue life's basic necessities.

5. To the extent Defendants' policy of denying insurance benefits to lesbian and gay employees is mandated by Montana statutes or regulations, those statutes and/or regulations violate Plaintiffs' rights under the Montana Constitution.

### **JURISDICTION AND VENUE**

6. Plaintiffs Carol Snetsinger, Nancy Siegel, Carla Grayson and Adrienne Neff are residents of Missoula County, Montana.

7. Plaintiff PRIDE, Inc. is a Montana non profit corporation with its principal offices located in Helena, Montana.

8. Defendants are the Montana University System, the State of Montana, and the Commissioner of

Higher Education and the members of the Board of Regents in their official capacities.

9. Venue in this action is appropriate in Lewis and Clark County pursuant to Mont. Code Ann. §§ 25-2-126 and 25-2-115.

10. This Court has jurisdiction over this action pursuant to the Montana Declaratory Judgments Act. Mont. Code Ann. §§ 27-8-101, et seq.

### **THE PARTIES**

#### **Plaintiffs Carol Snetsinger & Nancy Siegel**

11. Carol Snetsinger and Nancy Siegel have been in an intimate, committed, loving relationship for over seven years and reside together as domestic partners in Missoula, Montana, where they share the expenses of their home.

12. Carol and Nancy consider themselves married and hold themselves out to their families and their community as a couple participating in a committed, marital relationship. They would enter into a civil marriage if it were legal.

13. On June 6th, 1998, Carol and Nancy had a commitment ceremony which was attended by approximately 145 friends and family members.

14. Carol and Nancy own their home together in joint tenancy with rights of survivorship and contribute equally to the mortgage. They have a joint checking account and share all living expenses.

15. Carol and Nancy have executed wills, powers of attorney and health care powers of attorney in order to protect their relationship.

16. Carol has named Nancy as her beneficiary on insurance policies and retirement accounts.

17. Carol is employed as a curriculum and web designer in the biology department at the University of Montana, Missoula (the "University").

18. Carol sought to obtain health insurance benefits for Nancy from Defendants but was told that Nancy could not be covered on Carol's insurance plans because the Montana University System does not provide benefits to same-sex domestic partners.

19. Because Nancy is excluded from all Montana University System insurance contracts and plans, Carol and Nancy pay more to obtain inferior insurance coverage for Nancy, and Nancy is forced to depend upon inferior health-care services.

20. During Carol's first year working at the University, Nancy purchased her own health insurance because Defendants deny insurance benefits to same-sex domestic partners of employees.

21. Nancy now works part-time as a physical therapist and pays for COBRA coverage through a former employer.

22. The health insurance premium for Nancy's coverage under the COBRA plan costs more than Carol and Nancy would have to pay for Nancy's coverage in the Montana University System if Defendants permitted them to obtain insurance coverage for Nancy as Carol's domestic partner. When Nancy's insurance coverage extension rights under COBRA expire in November, 2002, Nancy and Carol will have to purchase an individual health insurance policy for Nancy, which will cost even more.

23. The benefits from Nancy's current insurance coverage are not as good as the benefits available under the plans Defendants offer to employees and their spouses or opposite-sex domestic partners.

24. If Defendants allowed Carol to obtain for Nancy the employment-related benefits that are available to spouses and opposite-sex domestic partners of similarly-situated employees, Carol and Nancy would enroll to receive those benefits.

#### **Plaintiffs Carla Grayson & Adrienne Neff**

25. Carla Grayson and Adrienne Neff have been in an intimate, committed, loving relationship for over six and one-half years and reside together as domestic partners in Missoula, Montana, where they share the expenses of their home.

26. Carla and Adrienne consider themselves married and hold themselves out to their families and their community as a couple participating in a committed, marital relationship. They would enter into a

civil marriage if it were legal.

27. Approximately 150 friends and family members attended Carla and Adrienne's religious wedding ceremony on July 5, 1998. Carla and Adrienne have a certificate of domestic partnership from Ann Arbor, Michigan.

28. Carla and Adrienne share joint finances and own their home together. They have a joint mutual fund and joint checking, savings and money market accounts with survivorship provisions.

29. Carla and Adrienne have named one another in their wills, nominations of guardian, durable powers of attorney and health care powers of attorney in order to protect their relationship.

30. Carla has named Adrienne as her beneficiary on insurance policies and retirement accounts. Adrienne has named Carla as her beneficiary on her life insurance policy.

31. Carla and Adrienne have started a family together, and Carla gave birth to the couple's first child shortly before they moved to Montana in July, 2000.

32. Adrienne is a medical social worker by profession but has been staying home to care for their young child.

33. Carla is an assistant professor at the University of Montana, Missoula.

34. Carla and Adrienne moved to Missoula together from Ann Arbor, Michigan where Carla was an employee at the University of Michigan. The University of Michigan extends health insurance coverage to the domestic partners of gay and lesbian employees. While Carla worked at the University of Michigan, Adrienne received health insurance as Carla's domestic partner. Adrienne and Carla currently obtain health insurance for Adrienne by paying for extension coverage under COBRA.

35. Carla sought to obtain health insurance benefits for Adrienne from Defendants but was told that Adrienne could not be covered on Carla's insurance plans because the Montana University System does not provide benefits to same-sex domestic partners.

36. Because Adrienne is excluded from all Montana University System insurance contracts and plans Carla and Adrienne pay more to obtain inferior insurance coverage for Adrienne, and Adrienne is forced to depend upon inferior health-care services.

37. The health insurance premium for Adrienne's coverage under COBRA extension coverage from the University of Michigan costs more than Adrienne's coverage in the Montana University System would cost if Defendants permitted them to obtain insurance coverage for Adrienne as Carla's domestic partner. When the COBRA extension of coverage expires in March, 2002, Carla and Adrienne will have to pay even more for Adrienne's health insurance.

38. In addition, the benefits from Adrienne's current insurance coverage are not as good as the benefits available under the plans Defendants offer to employees and their spouses or opposite-sex domestic partners.

39. Adrienne and Carla would like for Adrienne to continue to stay home with their young child for as long as possible, but Adrienne may ultimately be forced to work full-time in order to obtain health insurance.

40. If Defendants allowed Carla to obtain for Adrienne the employment-related benefits that are available to spouses and opposite-sex domestic partners of similarly situated employees, Carla and Adrienne would enroll to receive those benefits.

#### Plaintiff PRIDE, Inc.

41. PRIDE, Inc. is a nonprofit organization of lesbian, gay, bisexual and transgender Montanans and their supporters. PRIDE members reside primarily in Montana and are actively involved in promoting PRIDE's mission of securing constitutional rights of privacy, equal protection and dignity for lesbian, gay, bisexual and transgender Montanans.

42. PRIDE appears for itself and on behalf of its aggrieved members. PRIDE has members who are gay, lesbian, bisexual or transgendered employees of the Montana University System and members who are same-sex domestic partners of gay, lesbian, bisexual or transgendered employees of the Montana University System. These PRIDE members are denied equal employment benefits because same-sex domestic partners of Montana University System employees are not permitted to participate in Montana

University System benefit contracts and plans that are made available to similarly-situated employees and their spouses or opposite-sex domestic partners.

#### Defendants

43. The State of Montana promulgated the state statutes and regulations upon which other Defendant base their policy that same-sex domestic partners of employees are not dependents entitled to participate in employee benefit contracts and plans. To the extent Defendants' policy is mandated by the language of the governing statutes and regulations, those statutes and regulations violate the Montana Constitution.

44. The Montana University System has seven campuses: Montana State University - Bozeman; Montana State University - Billings; Montana State University - Northern; Montana State University - Great Falls College of Technology; Helena College of Technology of the University of Montana; Western Montana College of the University of Montana; Montana Tech of the University of Montana; and the University of Montana - Missoula.

45. The Montana University System employs Plaintiffs Carol Snetsinger and Carla Grayson as well as other gay and lesbian employees who are members of PRIDE.

46. Defendant Richard Crofts is named in his official capacity as Commissioner of Higher Education for the Montana University System.

47. Defendants Margie Thompson, Ed Jasmin, Lynn Morrison-Hamilton, Christian Hur, John Merce, Richard Roehm, and Mark Semmens are named in their official capacities as members of the Board of Regents of the Montana University System.

### **GENERAL ALLEGATIONS**

#### Employment Benefits

48. Under Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, under those statutes and regulations themselves, Montana University System employees are eligible to participate in certain benefit contracts or plans, including without limitation hospitalization, medical, health, long-term disability, accident and group life insurance.

49. Employees who elect to participate in such benefit contracts or plans must pay premiums periodically required to maintain insurance coverage.

50. Under Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, under those statutes and regulations themselves, Montana University System employees in opposite-sex relationships may elect to pay additional insurance premiums to extend the coverage of such benefit contracts or plans to their dependents, including spouses or opposite-sex domestic partners.

51. The opportunity to participate in such benefit contracts or plans is a privilege of employment.

52. Under Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, under those statutes and regulations themselves, Montana University System employees in same-sex relationships are denied a privilege of employment because they are not permitted to pay additional insurance premiums to extend the coverage of such benefit contracts or plans to their dependents, including same-sex domestic partners and the children of same-sex domestic partners.

53. Opposite-sex domestic partners who have not obtained a solemnized marriage may obtain access to such benefits by signing an affidavit of common-law marriage.

54. The Plaintiff employees would sign an affidavit of domestic partnership and would pay additional insurance premiums to extend the coverage of such benefit contracts or plans to their domestic partners if they were permitted to do so.

55. Defendants intentionally deny Plaintiffs and other lesbian and gay employees and their families equal access to a privilege of employment.

#### Restriction of Marriage to Opposite-Sex Couples

56. The State of Montana intentionally excludes gay men and lesbians from the institution of marriage.

57. A solemnized marriage between persons of the same sex is prohibited. Mont. Code Ann. § 40-1-401.

58. Likewise, common-law marriage between persons of the same sex is prohibited. Mont. Code Ann. § 40-1-401.

59. Montana law prohibits the Plaintiff couples from entering into either solemnized or common-law marriage.

#### Conditioning Benefits on Marriage

60. For an employee's domestic partner to qualify as a "dependent" under Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, under those statutes and regulations themselves, the employee and his or her partner must enter into a solemnized marriage or sign an affidavit of common-law marriage.

61. Gay and lesbian employees are not permitted to obtain coverage for their same-sex domestic partners because Defendants intentionally condition the receipt of such benefits on marriage while denying lesbians and gay men the right to marry.

62. Defendants' only motives for denying equal employment benefits to lesbian and gay employees and their families are to express disapproval of and to disadvantage lesbians and gay men.

63. Lesbians and gay men have faced and continue to face legal disabilities, a long history of intentional unequal treatment and systemic, egregious discrimination based on sexual orientation. Such legal disabilities, intense social stigma, and the small percentage of lesbians and gay men in the general population have rendered and continue to render lesbians and gay men politically powerless.

64. Defendants condition the benefits at issue on marriage precisely because doing so precludes lesbian and gay employees and their families from enjoying these benefits.

#### Certain Employment Benefits Are Basic Necessities of Modern Life

65. Under Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, under those statutes and regulations themselves, same-sex domestic partners are denied participation in employee benefit contracts or plans including hospitalization, medical, health, long-term disability, accident and group life insurance.

66. Hospitalization, medical, health, long-term disability, accident and group life insurance, retirement benefits, day care and other such employment benefits are basic necessities of modern life and are essential to safety, health and happiness.

### **VIOLATIONS OF THE MONTANA CONSTITUTION**

#### The Right to Dignity

67. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1 to 66.

68. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, deny Plaintiffs the opportunity to control their own lives by negatively affecting Plaintiffs' most intimate and personal choices about their lives and identities including decisions about whom to choose as a life partner and decisions about how and when to have children. Such decisions about how to structure family life and how to forge one's own identity are fundamental aspects of a self-directed life.

69. Denial of equal employment benefits to lesbians and gay men and their families interferes with and burdens Plaintiffs' right to basic human dignity by interfering with fundamental life decisions in order to enforce a particular set of individual values that condemns lesbians and gay men and their families as unnatural and immoral.

70. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, infringe the rights of lesbians and gay men, including Plaintiffs, to individual dignity under Article II, Section 4 of the Montana Constitution.

71. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the

alternative, those statutes and regulations themselves, advance no state interest.

#### The Right to Privacy and Intimate Association

72. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1 to 71.

73. Plaintiffs have reasonable and actual expectations of privacy in their intimate and personal decisions about how to structure their family relationships, including decisions about whom to choose as a life partner and decisions about how and when to have children. Such decisions are generally considered private.

74. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, denies equal employment benefits to lesbians and gay men and their families and thereby interferes with and unlawfully burdens Plaintiffs' rights to privacy and intimate association under Article II, Section 10 of the Montana Constitution by enforcing a particular set of individual values that condemns lesbians and gay men and their families as unnatural and immoral.

75. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, infringe the rights of lesbians and gay men, including Plaintiffs, to privacy under the Montana Constitution, including the right to personal autonomy and intimate association, by interfering with Plaintiffs' intimate and personal life choices.

76. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, advance no state interest.

#### The Right to Equal Protection Without Regard to Sexual Orientation

77. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1 to 76.

78. Under Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, under those statutes and regulations themselves, Defendants use solemnized and common-law marriage as the exclusive touchstones for determining whether similarly-situated employees may enroll their family members in insurance benefit contracts and plans and extend to their family members the benefits of other privileges of employment.

79. Defendants, or in the alternative, the governing Montana statutes and regulations, deny to lesbian and gay employees with same-sex domestic partners employment benefits that are provided to heterosexual employees with opposite-sex domestic partners, thereby depriving Plaintiffs of the right to equal protection under Article II, § 4 of the Montana Constitution.

80. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, advance no state interest.

#### The Right to Equal Protection Without Regard to Sex

81. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1 to 80.

82. Under Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, under those statutes and regulations themselves, a female employee with a female partner is treated less favorably than a male employee with a female partner. Similarly, a male employee with a male partner is treated less favorably than a female employee with a male partner.

83. Defendants' less favorable treatment of certain employees on the basis of their sex and/or the sex of their domestic partners deprives Plaintiffs of the right to equal protection and discriminates against Plaintiffs on the basis of sex in violation of Article II, § 4 of the Montana Constitution.

84. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, advance no state interest.

#### The Right to Equal Protection without Regard to Marital Status

85. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1 to 84.

86. Defendants, or in the alternative, the governing Montana statutes and regulations, deny to unmarried employees certain employment benefits that are provided to married employees, thereby

depriving Plaintiffs of the right to equal protection under Article II, § 4 of the Montana Constitution.

87. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, advance no state interest.

#### The Right to Seek Safety, Health and Happiness

88. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1 to 87.

89. As a practical matter, employment provides Plaintiffs' only means of securing health insurance and other employment benefits that are essential to safety, health and happiness.

90. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, infringes Plaintiffs' fundamental and inalienable rights to seek safety, health and happiness.

91. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, advance no state interest.

#### The Right to Pursue Life's Basic Necessities

92. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1 to 91.

93. Health insurance and other employment benefits are as essential to modern life as are salaries themselves.

94. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, infringes Plaintiffs' fundamental and inalienable right to pursue life's basic necessities.

95. Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, advance no state interest.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For a declaratory judgment that Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, violate Plaintiffs' right to individual dignity under Article II, Section 4 of the Montana Constitution;

2. For a declaratory judgment that Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, violate Plaintiffs' rights to privacy and intimate association under Article II, Section 10 of the Montana Constitution;

3. For a declaratory judgment that Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, violate Plaintiffs' right to equal protection under Article II, Section 4 of the Montana Constitution by denying gay and lesbian employees and their same-sex domestic partners employment benefits that are available to similarly-situated heterosexual employees and their spouses or opposite-sex domestic partners because of sexual orientation;

4. For a declaratory judgment that Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, violate Plaintiffs' right to equal protection and right to be free from sex discrimination under Article II, Section 4 of the Montana Constitution by denying employees with same-sex domestic partners employment benefits that are available to similarly-situated employees with spouses or opposite-sex domestic partners because of sex;

5. For a declaratory judgment that Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, violate Plaintiffs' right to equal protection under Article II, Section 4 of the Montana Constitution by denying employees with same-sex domestic partners employment benefits that are available to similarly-situated employees with spouses or opposite-sex domestic partners because of marital status;

6. For a declaratory judgment that Defendants' interpretation and administration of applicable state

statutes and regulations, or, in the alternative, those statutes and regulations themselves, violate Plaintiffs fundamental right under the Montana Constitution to seek safety, health and happiness;

7. For a declaratory judgment that Defendants' interpretation and administration of applicable state statutes and regulations, or, in the alternative, those statutes and regulations themselves, violate Plaintiffs fundamental right under the Montana Constitution to pursue life's basic necessities;

8. For a declaratory judgment that the Montana Constitution requires that Defendants provide lesbian and gay employees and their same-sex domestic partners the same employment benefits provided to similarly-situated employees and their spouses or opposite-sex domestic partners, including by classifying same-sex domestic partners of employees of the Montana University System as dependents for purposes of participation in all employee benefit contracts and plans;

9. For costs and attorneys' fees;

10. For such other and further relief as the Court may deem appropriate.

Dated this \_\_\_\_ the day of February, 2002.

GOUGH, SHANAHAN, JOHNSON &  
WATERMAN

---

Holly Jo Franz

AMERICAN CIVIL LIBERTIES UNION

---

Beth Brenneman

Attorneys for Plaintiffs

---

[Click here to return to the ACLU of Montana](#)

©2002 by the American Civil Liberties Union of Montana  
All Rights Reserved.