





1 obtained from the campus payroll/personnel office and  
2 must be used if a common-law spouse is to be enrolled  
in the Plan.

3 2. **Child(ren)** -- An unmarried dependent  
4 child under age 19.

5 3. **Student** An unmarried student  
6 under age 25, who is a dependent of the employee  
7 and/or spouse and dependent on the employee and/or  
8 spouse for support and maintenance, and whose time is  
principally devoted to the attendance of a school or  
college. The Claims Administrator may periodically  
require the submission of proof that student status  
is maintained.

9 Snetsinger and Grayson sought to obtain health  
10 insurance coverage for their domestic partners but were unable  
11 to get coverage because the University System's plan does not  
12 provide benefits to same-sex domestic partners.

13 Plaintiffs have brought this action for declaratory  
14 relief that the University's policy of not extending coverage  
15 to same-sex domestic partners violates their rights under the  
16 Montana constitution.

17 **STANDARD**

18 In deciding a motion to dismiss under Rule 12,  
19 M.R.Civ.P., a court must consider the complaint in the light  
20 most favorable to the plaintiff and all allegations of fact in  
21 the complaint are to be taken as true. **Boreen v. Christensen**,  
22 267 Mont. 405, 408, 884 P.2d 761, 762 (1994). A complaint  
23 should not be dismissed under Rule 12, M.R.Civ.P., unless it  
24 appears that the plaintiff can prove no set of facts in support  
25 of her claim which would entitle her to relief. **Wheeler v.**

1 Moe, 163 Mont. 154, 515 P.2d 679 (1973). "In other words,  
2 dismissal is justified only when the allegations of the  
3 complaint itself clearly demonstrate that plaintiff does not  
4 have a claim." Id. at 161, 515 P.2d at 683. See also Buttrell  
5 v. McBride Land & Livestock Co., 170 Mont. 296, 298, 553 P.2d  
6 407, 408 (1976).

7 Although all allegations of fact are to be considered  
8 as true, this does not apply to legal conclusions which may be  
9 alleged. As the Montana Supreme Court has explained:

10 Again, the United States Court of Appeals,  
11 District of Columbia Circuit, in Pauling v. McElroy,  
107 U.S.App.D.C. 372, 278 F.2d 252, with respect to  
12 motions to dismiss states:

13 "\*\*\*\* While the appellees' motions for  
14 dismissal admit, for purposes of the motion, all  
15 the well pleaded facts in the complaints, such  
admission does not, of course, embrace sweeping  
legal conclusions cast in the form of factual  
allegations."

16 In Volume 1A, Federal Practice and  
17 Procedure, Darron & Moltzoff, respecting motions to  
dismiss under Rule 12, the authors comment:

18 "The truth of allegations in the  
19 complaint is not admitted by a motion to dismiss  
20 if they are in conflict with facts judicially  
21 known to the court, or contradicted by exhibits  
22 attached to or referred to in the complaint."  
pp. 330-331. See also Zeligson v. Hartman Blair,  
Inc., 126 F.2d 595, 597 (10th Cir.1942), wherein  
the court stated:

23 "The motion to dismiss admitted all  
24 facts well pleaded, but it did not admit the  
25 legal effect ascribed by the pleader to the  
writing. The writing was attached to the first  
amended complaint as an exhibit and its legal  
effect is to be determined by its terms rather  
than by the allegations of the pleader."

1 Professor Moore in Moore's Federal  
2 Practice, Vol. 2, p. 2244, puts it this way:

3 "\*\*\*\* For the purposes of the motion,  
4 the well-pleaded material allegations of the  
5 complaint are taken as admitted; but conclusions  
6 of law or unwarranted deductions of fact are not  
7 admitted."

8 Holtz v. Babcock, 143 Mont. 341, 354-55, 389 P.2d 869, 875-76  
9 (1963).

#### 10 DISCUSSION

11 In Montana, marriage is a personal relationship  
12 between a man and a woman and may be contracted and maintained  
13 only as provided by the law of Montana. Section 40-1-103, MCA.  
14 Furthermore, a marriage between persons of the same sex is  
15 expressly prohibited by statute. Section 40-1-401(1)(d), MCA.  
16 Although the Plaintiffs state that they are not challenging the  
17 marriage statutes, they contend that by conditioning receipt of  
18 health insurance on marriage, while denying lesbians and gay  
19 men the right to marry, Defendants are depriving them of their  
20 fundamental rights under the Montana constitution. They ask  
21 for a declaratory judgment that the Defendants' interpretation  
22 and administration of the applicable state statutes and  
23 regulations violate their right to dignity, to privacy, to  
24 equal protection, to seek safety, health and happiness, and to  
25 pursue life's basic necessities. Alternatively Plaintiffs ask  
the Court to declare that the statutes and the regulations  
violate their rights. Plaintiffs also argue that homosexuals  
should be treated as a suspect class, hence requiring strict

1 scrutiny analysis of the statutes and policies they claim  
2 discriminate against them.

3 The University System argues that the marriage  
4 statute is constitutional; that the proper standard for  
5 reviewing the marriage statute is the rational basis test; and  
6 that it acted reasonably by keying who is eligible for health  
7 insurance on the marriage statute.

8 EQUAL PROTECTION

9 Article II, Section 4 of the Montana constitution  
10 guarantees equal protection of the law to all persons. It  
11 provides:

12 The dignity of the human being is  
13 inviolable. No person shall be denied the equal  
14 protection of the laws. Neither the state nor any  
15 person, firm, corporation, or institution shall  
16 discriminate against any person in the exercise of  
17 his civil or political rights on account of race,  
18 color, sex, culture, social origin or condition, or  
19 political or religious ideas.

20 The Montana Supreme Court has stated that

21 [t]o prevail on an equal protection claim, an injured  
22 party must first be able to demonstrate that the law  
23 or governmental action at issue discriminates by  
24 impermissibly classifying persons and treating them  
25 differently on the basis of that classification.

26 State v. Spina, 1999 MT 113, ¶ 85, 294 Mont. 367, ¶ 85, 982  
27 P.2d 421, ¶ 85.

28 The supreme court further has stated that when  
29 analyzing an equal protection challenge, the court "must first  
30 identify the classes involved and determine whether they are  
31 similarly situated." Henry v. State Fund, 1999 MT 116, ¶ 17,

1 294 Mont. 449, ¶ 27, 982 P.2d 456, ¶ 56. The next step is to  
2 apply the appropriate level of scrutiny and in doing so, the  
3 Court "must determine whether a suspect classification is  
4 involved or whether the nature of the individual interest  
5 involves a fundamental right, either of which would trigger a  
6 strict scrutiny analysis." Id., at ¶ 29.

7 **A. Classifications**

8 Plaintiffs contend that the policy of denying  
9 employees the opportunity to purchase health care insurance for  
10 their same-sex domestic partners classifies those employees and  
11 their partners on the basis of sex, sexual orientation, and  
12 marital status.

13 Here, the statute and the policy provide that  
14 University System employees can obtain health insurance for  
15 their dependents and that dependent eligibility is limited to  
16 spouses and certain children. Thus, the classes are those  
17 employees who have dependents and those who do not. On its  
18 face, the policy is neutral with respect to gender and sexual  
19 orientation. It applies to all employees who are not married.  
20 An unmarried employee who has an opposite-sex domestic partner  
21 cannot obtain dependent coverage for his/her domestic partner.

22 Plaintiffs argue that although the policy applies to  
23 unmarried employees who have opposite-sex domestic partners,  
24 those employees have the opportunity to obtain dependent  
25 coverage because, if they choose, they can marry. However,

1 because homosexual employees are prohibited from marrying their  
2 same-sex domestic partners, they are denied the opportunity to  
3 purchase coverage for their partners. While that is correct,  
4 the University System's policy does not discriminate on the  
5 base of sexual orientation. Rather, the distinction is based  
6 on whether the employee has dependents.

7           Although the question of whether classifications  
8 based on sexual orientation are suspect has not been decided by  
9 the Montana Supreme Court, the Court does not need to address  
10 that issue. Here, the classification is not based on sexual  
11 orientation but rather it is based on marriage. It is marriage  
12 that makes a "domestic partner" a dependent. Classifications  
13 based on marriage are not suspect. Califano v. Jobst, 434 U.S.  
14 47, 53-54 (1977). This is consistent with almost all the cases  
15 which have considered similar issues. See Hinman v. Dep't of  
16 Pers. Admin., 167 Cal. App. 3d 516, 213 Cal. Rptr. 410 (1985);  
17 Phillips v. Wisconsin Personnel Comm'n, 167 Wis. 2d 205, 212-  
18 23, 482 N.W.2d 121, 123 (1992); Ross v. Denver Dep't of Health  
19 and Hospitals, 883 P.2d 516, 520 (Colo. App. 1994); Rutgers  
20 Council of AAUP Chapters v. Rutgers, the State Univ., 689 A.2d  
21 828 (N.J. Super. Ct. App. Div. 1997); and Bailey v. City of  
22 Austin, 972 S.W.2d 180 (Tex. App. 1998).

23           **B. Fundamental Right**

24           Plaintiffs assert that strict scrutiny should be  
25 applied because they are being denied certain fundamental

1 rights guaranteed by the Montana constitution and a  
2 considerable part of their argument discusses various cases  
3 which have addressed those rights. However, none of those  
4 rights are at issue here. This case involves an employment  
5 benefit which the University System provides its employees.  
6 The Montana Supreme Court has held that the right to receive  
7 worker's compensation benefits is not a fundamental right.  
8 Stratemeyer v. Lincoln Co., 259 Mont. 147, 151, 855 P.2d 506,  
9 509 (1993). The same reasoning applies to dependent health  
10 insurance which an employer makes available to its employees.

11 **C. Rational Basis Test**

12 Because a classification based on marriage is not  
13 suspect, and because no fundamental right is involved, the  
14 rational basis test is the appropriate one to apply to the  
15 University System's policy. Applying that test, the Court  
16 concludes that the policy is constitutional. It is reasonable  
17 for a governmental agency to provide its employees as a benefit  
18 of their employment the opportunity to purchase health  
19 insurance for their dependents at a reasonable cost. Marriage  
20 is recognized in law for many purposes. Furthermore, marriage  
21 is a reasonable and objective standard to determine who is a  
22 dependent. The marriage relationship imposes on a married  
23 person certain legal responsibilities, including the duty of  
24 support. Section 40-2-102, MCA. Although the named Plaintiffs  
25 have committed relationships with their respective partners,

1 they are not subject to the legal responsibilities and  
2 obligations which are imposed on married persons.

3 The Court is aware that in other parts of the country  
4 governmental bodies have extended insurance coverage to  
5 domestic partners and the same could be done in Montana; but  
6 that is a decision for the legislature or the governing body,  
7 not the Court.

8 For the foregoing reasons,

9 **IT IS ORDERED** that Defendants' motion to dismiss IS  
10 **GRANTED.**

11 DATED this 22nd day of November, 2002.

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17 pc: Holly Jo Franz/Tamara Lange  
18 Beth Brenneman  
19 LeRoy H. Schramm

20 Snetsinger#1-m&o mo to dis

21 k

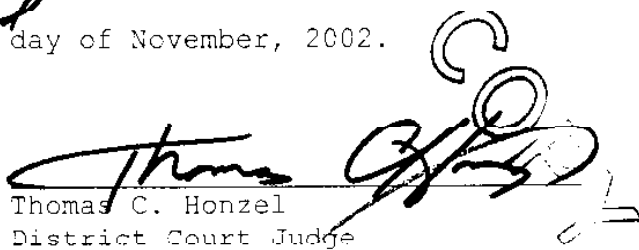
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Thomas C. Honzel  
District Court Judge