

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

MARCIE FISHER-BORNE, for herself and  
as guardian *ad litem* for M.F.-B., a minor;  
*et al.*;

Plaintiffs,

v.

JOHN W. SMITH, in his official capacity as  
the Director of the North Carolina  
Administrative Office of the Courts; *et al.*;

Defendants, and

ROY COOPER, in his representative  
capacity as the Attorney General of North  
Carolina,

Intervenor.

CIVIL ACTION NO. 12-cv-00589

**AFFIDAVIT OF SHANA CARIGNAN**

SHANA CARIGNAN, being duly sworn, deposes and says:

1. I am over 18 years of age, legally competent to give this affidavit and have personal knowledge of the facts set forth in this affidavit.
2. I am a citizen and resident of Greensboro, North Carolina where I have lived my whole life.
3. I submit this affidavit to the court in order to explain that, since the filing of the Amended Complaint in July of 2013, the deprivations my family suffers from North Carolina's

refusal to recognize my legal marriage to my spouse, Megan Parker, now pose a risk of imminent harm. Our son J.C. is at particular risk: he has cerebral palsy, which means that he cannot walk and has limited ability to control his limbs or communicate verbally. J.C. suffers from numerous, serious medical issues, and has frequent emergencies. Because I am unable to obtain a legal parent-child relationship with J.C. under North Carolina law, he cannot obtain private health insurance under my plan. He is suffering physical harms and developmental delays because he is not receiving the quality of care that he could be under my insurance plan.

4. In June 2012, Megan, J.C. and I were part of a group of plaintiffs that filed this lawsuit seeking to have our relationships with our children recognized under North Carolina law. The Complaint was amended in July of 2013 to include marriage claims in light of the Supreme Court's holding in *Windsor v. United States*, 133 S. Ct. 2675 (2013).

5. Since filing the original and the amended Complaints, new circumstances have made the deprivations we suffer an emergency. At the time of the original Complaint, J.C. was four years old and in pre-school at a special education school. He is now six, and enrolled as a special education student at a public school. I am informed and believe that he is at a critical point in his development.

6. As detailed below, each day that passes, J.C. is missing opportunities that will affect the way he grows and develops. I believe, and have been told by J.C.'s medical providers, that the care and attention he receives now will shape the rest of his life, and determine his overall health, his ability to successfully cope with his disabilities and his well-being for the rest of his life. Providing the care later from which J.C. can now benefit is not a substitute. As he grows, the care he could be receiving now has less and even no impact if it is provided later.

### My Family

7. On September 13, 2012, I legally married my wife, Megan Parker, in the Commonwealth of Massachusetts. Megan and I have been in a loving and respectful relationship since 2008.

8. We intend and expect to be together forever. Megan is 100% my wife. However, our marriage is not recognized under North Carolina law.

9. Megan adopted our son J.C. on March 24, 2011. We both underwent careful scrutiny to become certified as foster parents and committed to share equally in all of our parental responsibilities for the rest of our lives when we adopted J.C., but only one of us could legally adopt under current North Carolina law.

10. I cannot obtain a second parent adoption of J.C. under North Carolina law, and because the State does not recognize my marriage to Megan, I cannot adopt J.C. as a stepparent under the laws of the State. I cannot become J.C.'s legal parent unless Megan relinquishes her legal relationship with our son. As a result, there are many ways in which J.C.—and all three of us as a family—are denied financial, emotional, medical and other benefits.

11. Megan and I share the joys and challenges of caring for J.C. Because of his cerebral palsy, he requires constant care from both Megan and me. For example, J.C. is currently on a feeding tube at all times. The tube has to be vented every few hours, including overnight. This procedure requires a knowledgeable adult to do it correctly, and Megan and I do it when he is at home. Each day before sending him to school, we bathe him, give him medication, tend to his surgery wounds, and help him with his wheelchair, communications system and feeding tube. At night we go through a similar process and are careful to position his body with pillows and other equipment in a way that reduces his pain.

12. J.C. desperately needs the medical treatments described below, and without a legal relationship with me, he cannot receive them. As detailed below, each day that passes, J.C. is missing opportunities that will have an impact on the way he grows and develops.

**J.C.'s Medical Needs Are Not Being Met**

13. Because J.C. was adopted from foster care, he only has health insurance through Medicaid. Megan is also covered by Medicaid because of a stroke that she had last year. I am covered by Blue Cross Blue Shield through my employment.

14. Medicaid coverage in North Carolina is complicated and bureaucratic, and often involves significant delays between the time a procedure, surgery or device is prescribed and the time we receive it. The delays can last a year or more, and are a problem no matter how proactive Megan and I are (and we are as proactive as possible about J.C.'s care). Many medical professionals in North Carolina are unwilling to accept patients insured only by Medicaid because it requires voluminous paperwork and delays in payment. As a consequence, patients who have private medical insurance like mine receive more prompt medical treatment, and have a greater range of providers who are willing to work with them.

15. For example, J.C. will be having surgery in May to rebuild his hip sockets, repair tendons, fix issues with his feet and extricate one of his testicles from his pelvis. J.C. has needed this surgery for at least a year. Because he is only insured by Medicaid, there have been numerous delays in scheduling it. We could have scheduled it much more promptly if J.C. were covered by private insurance. During the period of this delay, J.C. has been growing, which has, in turn, complicated the surgery significantly. J.C.'s doctor tells us that he has been suffering—and continues to suffer—serious pain during this period of delay. His hips frequently come out

of their sockets. When he crosses his legs, they get stuck in that position. It is devastating to watch J.C. suffer because Megan and I cannot control his medical treatments under the Medicaid system as we would be able to with private insurance. This leaves us feeling powerless over the health and well-being of our child.

16. J.C. has numerous medical needs which either are not covered under Medicaid, or are delayed significantly with Medicaid (versus with private insurance). While we are able to provide for ourselves as a family, our resources do not allow us to privately pay for the costs of all the care that J.C. needs and Medicaid either does not provide, or will not provide until months or years have passed. If we were treated as any other loving, legal family under North Carolina without regard to our gender or sexual orientation, J.C.'s needs could be better met.

17. There is a North Carolina program, the North Carolina Health Insurance Premium Payment Program, under which the state would pay premiums for J.C. to receive secondary coverage for the expenses Medicaid does not cover through a legal parent's private insurance. Because I have private insurance through Blue Cross Blue Shield, I would qualify for this program, and be able to provide J.C. with my insurance benefits, if I were his legal parent.<sup>1</sup> But because North Carolina does not respect our marriage or allow me to become a legal parent to my son, J.C.'s health and development are being critically harmed. If J.C. could obtain secondary insurance through my plan as my legal son, it would allow him to take advantage of unique developmental opportunities that would vastly improve his quality of life.

18. For example, J.C. receives some occupational, physical and speech therapies at his school each week, but he is frequently out of school with medical issues and we believe he

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<sup>1</sup> Blue Cross Blue Shield recently announced a new policy to allow same-sex couples to receive benefits through their partner's plan. In light of this policy I have tried to get J.C. covered under my employer's Blue Cross Blue Shield plan. However, because J.C. is not my legal child, they will not afford him coverage under my plan.

would greatly benefit from private therapy sessions at home. Although Medicaid will cover some private therapy, in practice private practitioners will not take Medicaid due to the long delays in payments and other issues. There are private practitioners that we would love for J.C. to work with, but they refuse because J.C. does not have private health care coverage.

19. We are especially concerned about his speech therapy. Because J.C. is non-verbal, this entails learning to use books with picture icons to show us how he is feeling, and more recently a communications system which allows him to finally become an advocate for himself. In the past, J.C. has been unable to communicate with us when he has been in pain, so medical issues have gone untreated and he has suffered with no relief because of this lack of communication.

20. If J.C. does not receive these sorts of therapies and opportunities now, he will not be able to develop to the fullest extent possible with his condition. Obtaining these therapies when he is older will not fix the damage that is being done now.

21. J.C. is confined to a wheelchair. When we adopted him, he had no wheelchair and the waitlist for a Medicaid chair would have left him unable to function for months or longer. Therefore, we had to buy J.C. a manual wheelchair out-of-pocket. Because of J.C.'s growth and development over the last four years, he has been through periods when he has only an ill-fitting wheelchair, when he has only been able to use a borrowed chair from his school, and when his chair has been in need of repairs that are not covered by Medicaid. Medicaid will only pay for one wheelchair, and although we ordered a power chair for him through Medicaid last June, J.C. is still on a waitlist to get one. In the meantime, J.C. only has access to a manual wheelchair, which is not as suited to his needs. For example, the assistant at J.C.'s school accidentally broke the brakes on one side of his wheelchair. Because he is still on the waitlist for

a new power wheelchair, Medicaid would not cover the costs to repair it. Megan and I paid out of pocket to have it fixed. Under my insurance, we would be able to buy J.C. a wheelchair that fits his needs and he could be comfortable and safe.

22. As well as the long delays in receiving procedures and equipment that is covered by Medicaid, there are many treatments and procedures that Medicaid simply will not cover at all. Megan and I pay for as many of J.C.'s uncovered medical expenses as we can afford. This has been extremely expensive for us. Over the last four years, I estimate that we have paid out of pocket thousands of dollars for medical care for J.C. that we otherwise would not have had to pay if the law recognized the reality that J.C. is my son. Even so, there are some things that we simply cannot afford, and that we believe my health insurance would provide that I am informed by medical providers would be of great benefit to J.C. if they were afforded now.

23. For example, J.C. is now uncircumcised. Because of his condition, he needs, and will always need, assistance cleaning his genital area. Without receiving proper cleaning, he has a high risk of getting an infection. I have been told by doctors that a circumcision would make this cleaning process more efficient and more effective against preventing infection. With a circumcision, we can be better assured that we (and any other caretakers who might assist us in caring for him in the future) can better prevent infections. Medicaid will not cover a separate surgery to circumcise J.C. We had hoped the surgeon would allow time for J.C.'s circumcision, but because of the complexity of the surgery, our request has been denied. J.C. will have to wait for another surgery in order for Medicaid to cover it. I am told Blue Cross would cover this procedure if J.C. were recognized as my legal child.

24. J.C. is potty-trained, but it is often impossible for him to use restrooms when we are not at home because he has a special chair that is not easily transportable. As a consequence,

when we go out in public, he has to wear a diaper. He is six years old and he feels this is undignified, and he is embarrassed. As an alternative to diapers, J.C. could wear a condom catheter, which is a specially fitted, easy-to use device that is more discrete and comfortable than a diaper. However, Medicaid will not cover a condom catheter that fits him, so J.C. continues to wear diapers. I believe my insurance would cover the cost of this catheter, so J.C. would no longer have to suffer the embarrassment and indignity of always wearing a diaper when he is in public.

25. Because J.C. is on a on a continuous feeding tube right now because of a recent stomach surgery which had complications, leaving him in the hospital for 10 days, he has a need to urinate more frequently. He is in between the toddler and child-size diapers, and the types of diapers provided by Medicaid are of poor quality and have actually left marks on his body. If J.C. were recognized as my legal child, Blue Cross would allow us to provide him with the quality of diapers that he could be comfortable in.

26. J.C. requires medical equipment to function on a day-to-day basis. For example he uses a communications system to help him interact with others. This system is extremely important for him because it allows him to explain to us when he is in pain or has other medical issues. Medicaid will only cover one mount for his communication device, which is permanently affixed to his wheelchair. Because of his orthopedic issues, he must sit in different positions throughout the day and, currently, he can only use his communication device if in his wheelchair. It would be ideal if J.C. could have a mount for his power chair when it comes and a rolling mount that he could use when in a positioning chair or potty chair inside the house, but Medicaid denied these types of mounts.



27. J.C. also wears glasses, which sometimes get scratched, broken or lost. Medicaid will not cover repairs, and if we order a new pair through Medicaid it takes at least ten weeks to arrive. J.C. cannot function without glasses, so practically this means that we have to pay out of pocket for any repairs or replacements. J.C. has a hard time finding glasses that fit the bridge of his nose because he was born with Fetal Alcohol Syndrome. There is a very small selection of glasses provided by Medicaid and none of them fit perfectly. The bridge of his nose is wide and it causes the glasses to ride up so that the glasses push against his eyelashes. Because he does not have the dexterity to reach his face with his hands nor the ability to tell us with verbal communication, this is often uncomfortable for him and impedes his vision. Megan and I are constantly adjusting his frames, but we are not with him 24/7. We have purchased frames out of pocket, but at the rate that he is growing, he needs to have the frames adjusted every few months, and very few stores will actually accept Medicaid for his eyewear needs.

28. I am told and believe that these and similar expenses would be covered under my plan through Blue Cross Blue Shield. The impediment to J.C. receiving better care and leading a better life is North Carolina law that refuses to recognize my marriage and refuses to allow me to adopt my child. Providing relief in either respect—requiring the State to recognize my marriage or allow me to adopt—would cause an immediate improvement in the life of J.C. and our family.

#### **Denial of My Rights as a Parent**

29. Because I am not J.C.'s legal parent, Megan and I often are faced with situations where my role in J.C.'s life as his mother is not recognized, and I cannot assume the parental responsibilities that I otherwise would be able to exercise. These situations hurt us as a family, and present a serious risk of harm for J.C. These harms continue regularly and based on

experience will occur again in the immediate future unless we are granted the relief sought by this motion.

30. Because I do not have a legal relationship with J.C., I have to ask special permission to take time off to be with him for a meeting at his school or when he is in the hospital. I feel very fortunate to work for an organization that respects my family, but there is only so much they can legally allow. If J.C. were my legal son, I would be able to take “short term disability leave” for his extensive hospital stays instead of using my sick and vacation time to be there for my family. If J.C. were my legal child, my employer would recognize my commitments as a legal parent and it would be easier to be there when J.C. has medical issues.

31. In the summer of 2010, J.C. required a surgical procedure at UNC-Chapel Hill to correct a digestive problem that caused him to vomit constantly. Because I have no legal parental relationship to J.C., the hospital staff did not permit me to stay with J.C. without Megan present. After several days, Megan was exhausted from staying up most of the night caring for our son, and I wanted nothing more than to take a turn being the devoted mom, allowing her to go get a good night’s sleep at a friend’s house nearby. However, we were told that Megan had to be the one to stay because I could not make decisions if there were an emergency. If I had a legal relationship with J.C. I could be there to support him in his times of need and could share in the burdens and anxieties Megan is forced to face alone. I feel that these are my responsibilities as a parent to J.C. and a wife to Megan, but because I cannot obtain a legal relationship with J.C., I cannot be there for my family.

32. Megan and I do our best to prevent situations where I would be deprived of the ability to be there for her and J.C. We have filled out powers of attorney and, when given the opportunity, we make every effort to go to hospitals and doctors that respect our family

relationship. But given J.C.'s frequent emergencies, we are not always able to choose the hospital or doctor we use. Because of our history, Megan and I worry that at any particular moment J.C. might require medical attention, and the state might deny me the right to make decisions for him. When J.C. and I spend time together without Megan, I constantly fear that something could happen to him and I would not be able to act in his best interests.

33. Megan recently was called into J.C.'s school because they are implementing a new system, and, as a non-legal parent, I can no longer be identified as a parent to J.C. I am now listed on J.C.'s school forms as an "emergency contact" and have none of the rights conferred to a parent. This frustrates my desire and need to be there for my son when he needs me. I constantly worry about a situation in which Megan is unavailable and I am denied access to or the right to make decisions for my son. It also hurts me that my relationship with my son has been demoted in the eyes of the school system and that I have been deemed unworthy as a parent to J.C.

34. I am J.C.'s mother, so if Megan were to die or become incapacitated, we both believe it would be in J.C.'s best interests for me to continue to raise J.C. as his parent. However, absent a legal parent-child relationship with J.C., there is no way to ensure that I would be legally permitted to do so. Especially in light of Megan's health issues, including her stroke last year, we live in a state of uncertainty because of my not having a legal relationship with J.C. The insecurity and uncertainty in my relationship with J.C. leaves me in a perpetual state of fear and anxiety. Both Megan and I worry about this issue each and every day.

35. Megan and I were aware of the challenges of J.C.'s condition when we decided to bring him into our home. He has been a constant source of joy for us. Caring for him is an important part of our lives, and we are committed to providing as high a quality of life for him as possible. Neither Megan nor I are looking for sympathy or charity—we simply want the legal recognition we are entitled. We both want to be recognized as J.C.'s loving mothers so that we can provide him with the benefits I have described in this statement, as well as many others, that we cannot now provide for the sole reason that North Carolina will not recognize me as J.C.'s legal parent.

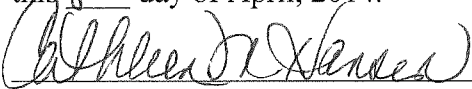
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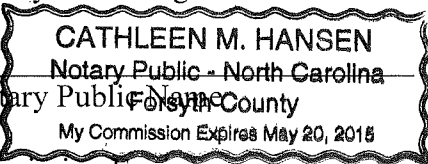
This the 8 day of April, 2014.

  
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Shana Carignan

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

Sworn to and subscribed before me  
this 8 day of April, 2014.

  
\_\_\_\_\_  
Notary Public Signature

  
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Notary Public  
My Commission Expires: \_\_\_\_\_