

IN THE SUPREME COURT OF THE STATE OF ALASKA

ALASKA CIVIL LIBERTIES UNION; )  
DAN CARTER/AL INCONTRO; )  
LIN DAVIS/MAUREEN LONGWORTH; )  
SHIRLEY DEAN/CARLA TIMPONE; )  
DARLA MADDEN/KAREN WOOD; )  
AIMEE OLEJASZ/FABIENNE PETER-CONTESSSE; )  
KAREN STURNICK/ELIZABETH ANDREWS; )  
THERESA TAVEL/KAREN WALTER; )  
CORIN WHITTEMORE/GANI RUTHELLEN; and )  
ESTRA BENSUSSEN/CAROL ROSE GACKOWSKI, )  
Appellants, )  
v. )  
STATE OF ALASKA; and )  
MUNICIPALITY OF ANCHORAGE, )  
Appellees. )

Sup. Ct. # S-10459

MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

Pursuant to Appellate Rule 212(c)(9), Mari Billington-Galereave respectfully files this motion for leave to file the accompanying Brief of Amicus Curiae. In support of her motion, Ms. Billington incorporates by reference the Statement of Interest within the accompanying Brief of Amicus Curiae and, in addition, states as follows:

Ms. Billington Has a Substantial Interest in the Issue Presented for Review

1. Ms. Billington and her long-term same-sex partner are Alaskans who have formed a committed lesbian relationship. Ms. Billington and her partner are the joint parents of an adopted child.
2. Ms. Billington is not eligible for employer-sponsored health insurance via any employment of her own. She is a stay-at-home parent.

3. Ms. Billington is not eligible for employer-sponsored health insurance via the employment of her partner. Her partner is a public employee in the State of Alaska whose public employer offers health insurance to the husbands and wives of its straight employees, but not the partners of its lesbian and gay employees.

4. Accordingly, Ms. Billington has a substantial interest in the issue presented for review in this case: whether the denial of health insurance to the partners of lesbian and gay public employees by a public employer is unconstitutional.

Ms. Billington's Participation as Amicus Curiae Would Be of Assistance to the Court

5. Lacking employer-sponsored health insurance and the means to purchase non-employer-sponsored health insurance, Ms. Billington recently applied for health benefits through the Medicaid program of the State of Alaska. The State denied her application, concluding that her income level rendered her ineligible for Medicaid benefits. In determining her income level, the State imputed the income of her partner to her. The State did so because, although Ms. Billington and her partner are not married to each other, they are joint parents. If the State had not imputed the income of her partner to her, Ms. Billington would have been eligible for Medicaid benefits.

6. Accordingly, the government has denied health benefits to Ms. Billington both in spite of and because of her relationship with her partner. In the public employment context, the government denies her health benefits because it does not recognize her relationship with her partner; in the public assistance context, however, the government denies her health benefits because it does recognize her relationship with her partner.

7. Because Ms. Billington's circumstance demonstrates so starkly the inequity that

follows from the denial of health insurance to the partners of lesbian and gay public employees by a public employer, Ms. Billington's participation as amicus curiae in this case would be of assistance to the Court.

For the foregoing reasons, Ms. Billington respectfully requests that the Court grant her motion for leave to file the accompanying Brief of Amicus Curiae.

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

Respectfully submitted,

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Appellants, )

v. )

STATE OF ALASKA; and )  
MUNICIPALITY OF ANCHORAGE, )

Appellees. )

Sup. Ct. # S-10459

ORDER

The Court hereby grants the Motion for Leave to File Brief of Amicus Curiae filed by  
Mari Billington-Galereave.

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

\_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, true and correct copies of the foregoing Motion for Leave to File Brief of Amicus Curiae and accompanying Brief of Amicus Curiae were mailed to:

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THOMAS A. DOSIK

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ESTRA BENSUSSEN/CAROL ROSE GACKOWSKI,) )  
Appellants, )  
v. ) Sup. Ct. # S-10459  
STATE OF ALASKA; and ) Super. Ct. # 3AN-99-11179 CI  
MUNICIPALITY OF ANCHORAGE, )  
Appellees. )  
\_\_\_\_\_ )

APPEAL FROM THE SUPERIOR COURT,  
THIRD JUDICIAL DISTRICT AT ANCHORAGE,  
THE HONORABLE STEPHANIE JOANNIDES, PRESIDING

**BRIEF OF AMICUS CURIAE**

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## INTRODUCTION

Amicus Curiae Mari Billington-Galereave is not eligible for employer-sponsored health insurance through her long-term same-sex partner, a public employee, with whom she has formed a committed lesbian relationship, a circumstance identical to the one presented by Appellants. Ms. Billington submits this brief in support of the arguments made by Appellants.

## STATEMENT OF INTEREST

Ms. Billington has a substantial interest in the issue presented for review in this case: whether the denial of health insurance to the partners of lesbian and gay public employees by a public employer is unconstitutional.

Relocating to the State of Alaska upon graduation from college in 1981, Ms. Billington has lived virtually all of her adulthood as an Alaskan.

Ms. Billington is a lesbian in a long-term same-sex relationship. Ms. Billington and her partner made a lifetime commitment to each other in 1994 and, since then, have shared a family existence virtually identical to that of a married heterosexual couple. Indeed, Ms. Billington and her partner would marry each other but for the fact that they are precluded from doing so as a matter of state law.<sup>1</sup>

A couple of years ago, Ms. Billington and her partner became the adoptive parents of an infant. Since then, the welfare of their child, who is their greatest joy, has been their

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<sup>1</sup>Alaska Const. art. I, § 25; Alaska Stat. §§ 25.05.011(a), 25.05.013(a).

first priority.

In December of 2001, Ms. Billington experienced a medical emergency: bleeding in one of her eyes. A doctor indicated that laser surgery might be required to restore her compromised vision. Laser surgery, however, was a medical procedure costing thousands of dollars, which Ms. Billington and her partner were unable to afford.

Ms. Billington lacked health insurance to cover such a medical expense. Ms. Billington was not eligible for employer-sponsored health insurance via any employment of her own. She is a stay-at-home parent. Moreover, Ms. Billington was not eligible for employer-sponsored health insurance via the employment of her partner. Her partner is a public employee in the State of Alaska whose public employer offers health insurance to the husbands and wives of its straight employees, but not the partners of its lesbian and gay employees. Ms. Billington and her partner lacked the means to purchase non-employer-sponsored health insurance.

Turning to the safety net of public assistance, Ms. Billington applied for health benefits through the Medicaid program of the State of Alaska. The State, however, denied her application, concluding that her income level rendered her ineligible for Medicaid benefits. In determining her income level, the State imputed the income of her partner to her. The State did so because, although Ms. Billington and her partner are not



married to each other, they are joint parents.<sup>2</sup> If the State had not imputed the income of her partner to her, Ms. Billington would have been eligible for Medicaid benefits.

Ms. Billington did not undergo laser surgery. Nevertheless, she and her partner incurred approximately \$850 in out-of-pocket medical expenses associated with her medical emergency. Ms. Billington anticipates additional out-of-pocket medical expenses of the same magnitude.

Ms. Billington's circumstance starkly demonstrates the inequity that follows from the denial of health insurance to the partners of lesbian and gay public employees by a public employer. In the public employment context, the government denies her health benefits because it does not recognize her relationship with her partner; in the public assistance context, however, the government denies her health benefits because it does recognize her relationship with her partner. Thus, the government denies health benefits to Ms. Billington both in spite of and because of her relationship with her partner, a double bind that results from the unconstitutional denial of health insurance to the partners of lesbian and gay public employees by a public employer.

### **ARGUMENT**

Appellants include nine lesbian or gay public employees or retirees and their long-term same-sex partners with whom they have formed committed lesbian or gay

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<sup>2</sup>Medical Assistance Eligibility Manual for Medicaid and Denali KidCare, § 5104-1 ([http://health.hss.state.ak.us/dma/elig/PDF/change\\_24.pdf](http://health.hss.state.ak.us/dma/elig/PDF/change_24.pdf)).

relationships. They challenge the fact that the State of Alaska and the Municipality of Anchorage offer employment benefits to the husbands and wives of their straight employees and retirees, but not the partners of their lesbian and gay employees and retirees. Appellants argue that the marriage requirement for employment benefits, which they cannot satisfy as a matter of state law,<sup>3</sup> violates the equal protection clause of the state constitution.<sup>4</sup>

Ms. Billington and her partner suffer the same constitutional harm as Appellants: They and their heterosexual counterparts are treated unequally, without justification, by a public employer. Ms. Billington's constitutionally objectionable predicament is a particularly compelling illustration of the harm. Ms. Billington and her partner are in a long-term committed relationship. They are the joint parents of an adopted child, whom they have raised from infancy. By any definition, Ms. Billington, her partner, and their child are a family unit. Indeed, the government recognizes their family relationship. When the State denied Ms. Billington's application for Medicaid benefits, it did so because it understood that Ms. Billington, her partner, and their child constitute an indivisible household.

While Ms. Billington does not object to the denial of Medicaid benefits in and of itself, she does object to the double bind in which she has been placed as a result of the

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<sup>3</sup>Alaska Const. art. I, § 25.

<sup>4</sup>Alaska Const. art. I, § 1.

unconstitutional denial of health insurance to the partners of lesbian and gay public employees by a public employer. Ms. Billington's circumstance is a powerful example of the serious injury that follows from the governmental discrimination that Appellants challenge.

Ms. Billington incorporates by reference the arguments made by Appellants in their brief.

### CONCLUSION

Ms. Billington respectfully requests that the Court repudiate the fallacious reasoning, and reverse the erroneous ruling, of the trial court.

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

Respectfully submitted,

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