IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THERESA BASSETT and CAROL KENNEDY, PETER WAYS and JOE BREAKEY, JOLINDA JACH and BARBARA RAMBER, DOAK BLOSS and GERARDO ASCHERI, DENISE MILLER, and MICHELLE JOHNSON,

Plaintiffs,

vs.

RICHARD SNYDER, in his official capacity as Governor of the State of Michigan,

Defendant.

Case No. 2:12-cv-10038

Hon. David M. Lawson
Mag. Michael J. Hluchaniuk

PLAINTIFFS' CORRECTED UNOPPOSED MOTION TO FILE ADDITIONAL MATERIALS IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Theresa Bassett, Carol Kennedy, Peter Ways, Joe Breakey, JoLinda Jach, Barbara Ramber, Doak Bloss, Gerardo Ascheri, Denise Miller, and Michelle Johnson, by counsel, hereby move the Court, pursuant to Local Rule 7.1(g), for leave to file additional materials in support of their Motion for Preliminary Injunction: the Declaration of Mary Lannoye in Support of Plaintiffs' Motion for Preliminary Injunction (Ex. 1); excerpts from third-party Kalamazoo Valley Community College deposition transcripts and responses to discovery requests (Ex. 2); and Defendant's discovery responses (Ex. 3).

Pursuant to Local Rule 7.1(a), Plaintiffs conferred with Defendant on June 7, 2012. Defendant concurred in the relief sought.

ARGUMENT

In support of their Motion to File Additional Materials in Support of Their Motion for Preliminary Injunction, Plaintiffs state as follows:

On January 5, 2012, Plaintiffs Bassett, Kennedy, Ways, Breakey, Jach, Ramber, Bloss, and Ascheri filed a complaint in which they alleged that 2012 P.A. 297, the Public Employee Domestic Partner Benefit Restriction Act ("the Act"), violates the Fourteenth Amendment to the United States Constitution. On February 17, 2012, Plaintiffs filed an amended complaint to add Plaintiffs Miller and Johnson. On March 7, 2012, Plaintiffs filed Plaintiffs' Motion for Preliminary Injunction (Docket No. 18) ("PI Motion") seeking to enjoin the Act. Since that filing, Plaintiffs have received additional information that supports their PI Motion, making this supplemental filing prior to the August 7, 2012 hearing necessary.

Local Rule 7.1(g)(1) authorizes the Court to allow parties to file additional materials "[w]hen a motion, response or written request states that the filing of additional affidavits or other documents in support or opposition is necessary." Courts have "discretion in deciding whether to accept supplemental evidence." *Istvan v. Honda Motor Co., Ltd.,* 455 F. App'x 568, 574 (6th Cir. 2011). When a preliminary injunction motion is before the court, the necessity of supplementing the record is heightened because "[s]uch a motion is heard on an expedited basis, with a record that is continuously developing. The need to continuously supplement the record is obvious . . . ." *Midwest Guar. Bank v. Guar. Bank,* 270 F. Supp. 2d 900, 917–18 (E.D. Mich. 2003).

First, the declaration of Mary Lannoye, the Controller/Administrator for Ingham County, which employs Plaintiff Bloss, describes Ingham County's employee benefits programs, including the number and characteristics of people participating in the Other Qualified Adult

program (Lannoye Decl. ¶¶ 7–8, at Ex. 1), the costs of this program to the county (*id.* ¶¶ 12–16), the source of the funds for this program (*id.* ¶ 17), and the reasons the county believes these benefits are good for the county (*id.* ¶¶ 18–28). This information further supports Plaintiffs' assertions that the Act has no rational basis because the cost savings to local governments are negligible (Br. Supp. Plfs.' Prelim. Inj. Mot. ("PI Br.") 9–10, 16–17), none of the costs of the program are directly borne by the State, and no cost savings from the Act redound to the State. (*Id.* at 7–8, 16–17) Rather, the Act will likely inflict costs on public employers by reducing their ability to attract and retain talented employees. (*Id.* at 10)

Second, the depositions of Marilyn Schlack and Sandra Bohnet, respectively the President and Vice President for Human Resources at Kalamazoo Valley Community College ("KVCC") (plaintiff Denise Miller's employer), demonstrate the number and characteristics of people participating in KVCC's "Household Member" program (Schlack Dep. 41, 42–46, 49, 53–55, at Ex. 2.A ("Schlack Dep."); Bohnet Dep. 20–21, 42–43, at Ex. 2.B ("Bohnet Dep."); KVCC Resp. to Plfs.' RFP Nos. 4–5, 13, at Ex. 2.C; KVCC Household Member Program, at Ex. 2.D; Employees by Assigned Position, at Ex. 2.J), the costs of this program to KVCC (Schlack Dep. 49–50, 57–58; Bohnet Dep. 17, 23, 35–36, 39–40, 45–46, 51; Ex. 2.C Nos. 14–15, 19–20; COBRA 2011, at Ex. 2.E; COBRA 2012, at Ex. 2.F; Household Member Program, at Ex. 2.G; FRNGS—Compiled Expenses, at Ex. 2.K; COBRA, at Ex. 2.L), the source of the funds for this program (Schlack Dep. 26, 29–30, 34–36; Bohnet Dep. 36–37, 39, 45; KVCC 2011–2012 Budget, at Ex. 2.H), the reasons KVCC chose to offer and terminate these benefits (Schlack Dep. 14–16, 41, 47–52; Bohnet Dep. 13, 49, 50–52; Ex. 2.D; H.B. 4770, at Ex. 2.I), and the fact that program participants pay taxes on the value of these benefits. (Bohnet Dep. 27–30). This information supports Plaintiffs' assertions that the Act has no rational basis because the cost

savings to public employers is negligible (PI Br. 9–10, 16–17), none of the program's costs are directly borne by the State, and no cost savings from the Act redound to the State. (*Id.* at 7–8, 16–17) Rather, the Act will likely inflict costs on public employers by reducing their ability to attract and retain talented employees. (*Id.* at 10) This information also supports the assertion that Plaintiffs are similarly situated to opposite-sex married couples. (*Id.* at 10–12, 13–14)

Third, Defendant's responses to Plaintiffs' discovery requests demonstrate that the State has no information indicating whether or how much the Act would save local employers (Resp. to Plfs.' 1st Interrogs. Nos. 1–7, at Ex. 3.A; Supp. Ans. to Plfs.' Interrog. No. 1, at Ex. 3.G; Executive Communications About H.B. 4770, Bates No. SOM 1076, at Ex. 3.J); that local employers' cost savings resulting from the Act will not redound to the State (Ex. 3.A Nos. 1–6, 11; Ans. to Plfs.' 2nd Set of Interrogs., at Ex. 3.I); that State funding to local employers is unrelated to the type of insurance benefits these employers provide (Ex. 3.A Nos. 1–6, 13; Ans. to Plfs.' Reqs. Admis. Nos. 3–9, at Ex. 3.F); that the State's initial cost savings estimates were inflated (State Correspondence About OEAI Benefits, Bates Nos. SOM 26–30, at Ex. 3.B; Insurance Enrollment Analyses, Bates Nos. SOM 607–780, at Ex. 3.E); that public employees pay taxes on domestic partner benefits (Taxation of Other Eligible Adult Individual (OEAI) Benefits, Bates No. MDOC 386, at Ex. 3.C); that such benefits are a form of compensation that can attract qualified employees (Ex. 3.A No. 9; Civil Service Commission Meeting Minutes, Bates Nos. SOM 881–83, at Ex. 3.D; Supp. Resp. Interrog. No. 10 & Bates Nos. 1015, 1018, 1019–20, at Ex. 3.H; Ex. 3.J Bates Nos. SOM 1035, 1077–85); and that the Act's prohibition on local governments' provision of domestic partner benefits was motivated by the desire to "[u]phold[] the intent of Const 1963, art 1 sec 25," the amendment barring same-sex marriage (Ex. 3.A No. 11).

This information supports Plaintiffs' assertions that the Act bears no rational relationship to legitimate state goals because the Act provides no cost savings to the State (PI Br. at 6–10, 16–17), and because the stated goal of "enforcing" the constitutional amendment is a pretext for discrimination against gay and lesbian families (*id.* at 3–6, 18–20).

For the foregoing reasons, Plaintiffs respectfully move for the entry of an order granting Plaintiffs leave to supplement the record.

Dated: June 13, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June, 2012, I caused *Plaintiffs' Corrected Unopposed Motion to File Additional Materials in Support of Their Motion for Preliminary Injunction* to be served by electronic mail and U.S. Mail to the following counsel:

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Dated: June 13, 2012

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