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,

v.

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. Judge Michael J. Hluchaniuk

REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

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In its opposition to Plaintiffs' motion for preliminary injunction (Dkt. No. 43) ("Response"), the State ignores the central question in this case: Whether the Constitution allows the State to single out a disfavored minority to deprive them of family health insurance benefits while leaving those benefits accessible to everyone else who currently receives them. Plaintiffs have a strong likelihood of success on the merits of their claims that the Domestic Partner Benefit Restriction Act (the "Act") violates equal protection and due process because the case law and the facts gleaned in discovery demonstrate that the Act was impermissibly intended to bar gay and lesbian public employees from receiving family health insurance benefits because of their sexual orientation. The balance of harms weighs strongly in favor of an injunction. Without an injunction, Plaintiffs will continue to suffer anxiety and financial hardship, yet the State will enjoy no legitimate economic or policy benefit from the Act's enforcement. Likewise, no public interest is served when the State enforces a law whose purpose and effect is discrimination. For these reasons, Plaintiffs' motion for preliminary injunction should be granted.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.[1]

A. The Act Violates The Equal Protection Clause.

1. The Act Plainly Discriminates On The Basis Of Sexual Orientation.

Plaintiffs' equal protection claim is likely to succeed because the Act discriminates, on its face and in its operation, against public employees and their families on the basis of sexual orientation. Statutory classifications that might otherwise appear neutral become facially discriminatory when they incorporate or rely upon other statutes or historic practices that

[1] Plaintiffs incorporate by reference the arguments in their response to Defendant's motion to dismiss (Dkt. No. 45), including that the *Burford* doctrine does not provide a basis for the Court to abstain (*id.* at 5–7), and that this case is justiciable because Plaintiffs have standing and the controversy is ripe (*id.* at 8–13).

discriminate. For example, in *Guinn v. United States*, the Supreme Court struck down a law requiring voters to pass a literacy test only if their grandfathers had not been able to vote on January 1, 1866 (*i.e.*, before slavery was abolished), because the law facially discriminated on the basis of race: although the statute "contain[ed] no express words of an exclusion," the standard itself was inherently discriminatory. 238 U.S. 347, 364–65 (1915). Similarly, both the Second and Third Circuits have found that employment policies facially discriminated on the basis of age—without explicitly mentioning age—when they incorporated other policies with explicit age restrictions. *Johnson v. New York*, 49 F.3d 75 (2d Cir. 1995); *Erie Cnty. Retirees Ass'n v. Cnty. of Erie*, 220 F.3d 193 (3d Cir. 2000). Defendant tries to distinguish *Johnson* and *Erie* from this case on the basis that *Johnson* and *Erie* involved a federal anti-discrimination statute and not equal protection. (Resp. 9–10) Yet Defendant fails to explain why the basic analytical point—policies based on another discriminatory classification are themselves discriminatory—would change if the policy were to violate a statute rather than the Constitution.

Moreover, laws that intentionally discriminate include not only facially discriminatory ones, but also those whose "operative effect" is to discriminate. *See, e.g., Williams v. Illinois*, 399 U.S. 235, 242 (1970) (striking state statute exposing only indigent defendants to the risk of imprisonment beyond the statutory maximum). Numerous courts considering laws similar to the Act have found that classifications based on marriage, a legal status that same-sex couples cannot achieve, discriminate on the basis of sexual orientation by barring same-sex couples from receiving benefits. Most pertinent is the Ninth Circuit's recent decision in *Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011), which affirmed the injunction of an Arizona law limiting public employee family benefits to spouses and dependents, thereby eliminating eligibility for gay and lesbian employees' same-sex partners, who cannot marry. Several other courts have reached the

same outcome under either state or federal law. *Dragovich v. U.S. Dep't of the Treasury*, No. C10-01564, 2012 WL 253325 (N.D. Cal. Jan. 26, 2012); *Bedford v. New Hampshire Cmty. Technical Coll. Sys.*, No. 04-E-229, 2006 WL 1217283 (N.H. Super. Ct. May 3, 2006); *Alaska Civil Liberties Union v. Alaska*, 122 P.3d 781 (Alaska 2005).

Defendant does not—and cannot—distinguish *Diaz*. Instead, Defendant simply claims that *Diaz* was wrongly decided. Defendant asks the Court to ignore the decisions of (1) the district court that enjoined the law; (2) the Ninth Circuit panel that affirmed the injunction; and (3) the nine circuit judges who voted to deny rehearing the case — and instead urges the Court to adopt the dissent from the Ninth Circuit's denial of *en banc* review. (Resp. 14–15) That the State's strongest authority is a dissent to a denial of *en banc* review underscores the weakness of its position.

Defendant also attempts to distinguish *Alaska Civil Liberties Union* and *Bedford* on the basis that they "utilized a different analysis than the rational basis review required here." (Resp. 12) But the Court's task of identifying whether a classification is discriminatory is separate from the question of whether the government's basis for classifying meets the appropriate level of scrutiny. *See Birth Control Ctrs., Inc. v. Reizen*, 743 F.2d 352, 358 (6th Cir. 1984). Decisions like *Alaska Civil Liberties Union* and *Bedford* show that partner-benefit denials impose a discriminatory classification in states like Michigan, where same-sex couples cannot marry.

Notwithstanding the strong precedent on this issue, Defendant argues that the Act does not discriminate on the basis of sexual orientation by mischaracterizing Plaintiffs' claims as a demand for partner benefits on a statewide basis. (Resp. 10–11) Contrary to Defendant's assertion, Plaintiffs do not seek to require all public employers in Michigan to provide benefits to

OQAs. Plaintiffs only assert that the State cannot single out a class of citizens and exclude them from benefits that some local employers have willingly offered.

Moreover, Plaintiffs bring no challenge to the Michigan Constitution, so the doctrine of constitutional conflict (Resp. 11) is inapplicable here.[2] And Defendant's effort to recast this case as an indirect challenge to Article I, Section 25, of the Michigan Constitution fails.[3] (Resp. 11) As Plaintiffs have argued elsewhere (*see, e.g.*, Resp. MTD (Dkt. 45) 20), any suggestion that providing OQA benefits violates the Michigan constitution misstates the holding of *National Pride at Work v. Granholm*, 748 N.W.2d 524 (Mich. 2008). Plaintiffs' employers conditioned benefits on neutral criteria such as age, financial interdependence, and cohabitation, consistent with the holding in *National Pride*. (*See* PI Mot. Exs. B–E) Moreover, the State's own actions demonstrate that OQA benefits do not automatically violate the Michigan Constitution, because ***the State offers such benefits to its own employees***.[4]

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[2] Defendant's "constitutional avoidance" argument (Resp. 11–12) does not actually seek to avoid the question of the Act's constitutionality—rather, Defendant simply seeks to have the statute upheld as constitutional. *See Thomas More Law Ctr. v. Obama*, 651 F.3d 529, 554 (6th Cir. 2011) ("[T]he constitutional-avoidance doctrine . . . allows courts only to choose between a decision with a constitutional ruling and one without a constitutional ruling . . . ." (Sutton, J. concurring) (citations omitted)). Moreover, the doctrine of constitutional avoidance applies only when statutory language is ambiguous, *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 494 (2001), which is not the case here.

[3] Given that neither Michigan's marriage law nor the Federal Defense of Marriage Act are at issue here, Defendant's discussion of *Massachusetts v. U.S. Department of Health & Human Services*, No. 10-2204, 2012 WL 1948017 (1st Cir. May 31, 2012), misses the mark. Moreover, the conclusion Defendant draws from that case—that equal protection and due process guarantees are somehow watered down in states that, like Michigan, do not recognize same-sex marriage, does not follow. Statutes that relate to domestic relations and marriage are not insulated from the federal Constitution's equal protection and due process guarantees. *Lawrence v. Texas*, 539 U.S. 558, 578 (2003); *Moore v. East Cleveland*, 431 U.S. 494 (1977); *Zablocki v. Redhail*, 434 U.S. 374 (1978).

[4] Defendant also makes the perplexing argument that the Act cannot discriminate on the basis of sexual orientation because OQA benefits are not provided on the basis of sexual orientation. (Resp. 10) Again, the issue is whether the Act improperly singles out and discriminates against a group on the basis of sexual orientation—not whether the benefits have ever been provided on the basis of sexual orientation.

The fact remains that by barring only domestic partners from benefits, the Act targets same-sex couples—the only committed life partners who cannot marry. This intent to discriminate is announced by the title of the Act, the classifications incorporated by the Act, and the burden the Act uniquely places on gay and lesbian public employees and their families. (*See* Resp. 9 (conceding that the Act's marriage classification will "impact individuals who are gay and lesbian because they cannot legally marry in Michigan"))

2. The Evidence Demonstrates That Animus Motivated The Act.

The legal standard for assessing discriminatory motivation in an equal protection challenge is well-established: "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Plaintiffs cite numerous pieces of evidence that demonstrate animus: the Act solely burdens employees and their same-sex partners by denying them access to health insurance (PI Mot. (Dkt. No. 18) 14, 18 & Exs. G-1, H, I); the historical background and legislative history of the Act establish that the law is part of a larger effort to deprive Michigan's gay and lesbian couples of rights (*id.* at 18–19 & Exs. F, G-1 to G-13); the Act's scope demonstrates that the Act cannot be a cost-saving measure because it preserves the eligibility of a vast group of people but targets only a narrow and specific group for denial of benefits (*id.* at 15 & Ex. I); and specific statements by legislators and other government officials reflect animus (*see, e.g.*, PI Mot. Ex. G-2 (House bill sponsor calling State's decision to offer OQA benefits an "absolute abomination"); Ex. 1, SOM1113–14 (admission by Michigan Department of Civil Rights official that the bill "attempt[s] to disguise the wolf (anti-gay social policy) by dressing it in sheep's clothing (fiscal

frugality)"); Ex. 2, SOM1125 (Michigan Department of Civil Rights official arguing that law represents "anti-gay social policy," not the exercise of "fiscal conservatism"))[5]

Defendant ignores most of this evidence, objecting primarily to Plaintiffs' use of legislators' statements. In particular, Defendant claims that legislators' statements cannot reflect legislative intent or purpose and thus cannot demonstrate animus. (Resp. 15) Yet the one case Defendant cites to support this argument, *Isle Royale Boaters Ass'n v. Norton*, 330 F.3d 777 (6th Cir. 2003), stands only for the proposition that courts should avoid looking to legislative history when construing the intended scope of an unambiguous statute. *Isle Royale* is inapplicable here because the construction of the Act is not at issue.

In contrast, when assessing whether a discriminatory law was motivated by impermissible animus, courts regularly consider "contemporary statements by members of the decisionmaking body" to be admissible and relevant evidence. *Vill. of Arlington Heights*, 429 U.S. at 268; *United States v. City of Parma*, 494 F. Supp. 1049, 1054 (N.D. Ohio 1980), *aff'd*, 661 F.2d 562, 575 (6th Cir. 1981) (citing "the public statements of two of the highest elected officials" as evidence of animus); *Hidden Vill., LLC v. City of Lakewood, Ohio*, No. 10-0887, 2012 WL 1109988 (N.D. Ohio Mar. 30, 2012) (considering decisionmakers' contemporary statements as evidence of animus underlying zoning decision). Likewise, legislators' statements in this case, taken together with other evidence, are highly probative evidence of animus.

[5] Defendant cites the *Diaz* dissent from denial of en banc review for its claim that "[a] statute is not unconstitutional based on disproportionate impact alone." (Resp. 14) However, as Plaintiffs do here, the plaintiffs and courts in *Diaz* pointed out the uniquely discriminatory effect of the law on lesbians and gays as well as animus shown by the lack of any rational basis for the law. *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011).

3. Neither Cost Savings Nor "Furthering Traditional Marriage" Constitutes A Rational Basis For The Act.

Defendant contends that the Act has a rational basis because it promotes the goals of saving costs and "furthering traditional marriage."[6] But it is not enough for the State to have a legitimate interest in these goals; the Act must bear some relationship to achieving these goals. Facts and logic demonstrate that the Act can achieve neither one.

Despite Defendant's conclusory assertions to the contrary (*see* Resp. 13), the facts in this case demonstrate that the Act does not serve the purpose of reducing local employers' medical benefits costs. The State has admitted that it neither pays for local employers' benefits nor receives any cost savings from cutting those benefits. (Resp. to Plfs.' 1st Interrogs. Nos. 1–7, 11, 13, at Mot. Add'l Mats. (Dkt. No. 47), Ex. 3.A; Supp. Ans. to Plfs.' Interrog. No. 1, at Mot. Add'l Mats., Ex. 3.G; Executive Communications About H.B. 4770 at Mot. Add'l Mats., Ex. 3.J at SOM1076; Ans. to Plfs.' 2nd Set of Interrogs., at Mot. Add'l Mats., Ex. 3.I; Ans. to Plfs.' Reqs. Admis. Nos. 3–9, at Mot. Add'l Mats., Ex. 3.F).

Nor is it likely that the Act will save local employers significant money, if any. OQA benefits comprise only a tiny fraction of Plaintiffs' employers' health care budgets. (*See* Lannoye Decl. ¶ 13, at Mot. Add'l Mats., Ex. 1; Collard Decl. ¶ 12, at PI Mot., Ex. V-1; Comsa Decl. ¶ 11, PI Mot., at Ex. V-2) And according to Plaintiffs' employers, whatever miniscule savings the Act creates will likely be offset by the increased difficulty these employers will have attracting and retaining talented employees—particularly those who cannot marry. (*See* Lannoye Decl. ¶¶ 21, 23, 25, 27; Schlack Dep. 48–49, at Mot. Add'l Mats., Ex. 2.B; Collard Decl. ¶¶ 20–

[6] Because Defendant only addresses rational basis review, Plaintiffs do not repeat the reasons that heightened scrutiny applies here, having already explained that gays and lesbians meet all the criteria of a suspect class and that the cases Defendants cite in arguing for a rational basis standard all rely on Sixth Circuit authority predating *Lawrence v. Texas*. (*See* PI Mot. 20–24) Because the Act fails rational basis review, it cannot withstand heightened scrutiny.

25; Comsa Decl. ¶¶ 15, 17–19, 23; Badgett Decl., PI Mot. Ex. U, ¶¶ 29-33)[7] At the same time, the Act leaves employers free to include intestate successors and certain cohabitating non-partner adults, large groups that neither Plaintiffs' employers nor the State itself actually cover, and which, if covered, could dramatically increase employers' insurance costs.

Defendant's other purported justification for the Act, "furthering traditional marriage" (Resp. 9), both defies logic and contradicts Defendant's prior statements. The State itself asserts that the Act will not change anyone's relationship status and thus cannot further marriage: "[I]t strains credulity to believe that a couple would marry simply to obtain health benefits, or would acquiesce to participation in a relationship they might not otherwise choose in order to qualify for the benefit." (MTD (Dkt. No. 17) 24) The Act has nothing to do with this purported goal. Thus, Defendant's conclusory assertion that "PA 297 serves the purpose of furthering the State's policy of recognition of 'traditional marriage'" (Resp. 13) cannot rationally justify the Act.

Defendant urges the Court not to assess whether the Act rationally relates to the legislation's purported goals, because it would require "the very line-drawing the Court must avoid in deference to the Legislature." (Resp. 13) But courts must do more than rubber stamp legislative decisions—otherwise, rational basis review would be no review at all. At a minimum, the Court is obligated to ensure a basic fit between the State's purported goals and the actual impact of the Act. *See Romer v. Evans*, 517 U.S. 620, 632 (1996) (noting that courts "insist on knowing the relation between the classification adopted and the object to be attained"). When the purported justifications for legislation are so far removed from the burdens it imposes, courts

[7] Plaintiffs' employers all voluntarily offered these benefits as part of a larger policy of inclusion. (Lannoye Decl. ¶ 19; Schlack Dep. 48–49; Collard Decl. ¶¶ 19, 24; Comsa Decl. ¶¶ 19, 20) The State may not use cost savings to justify forcing these employers to abandon voluntarily adopted policies that are "applicable only within th[ose] jurisdiction[s] and [implemented] solely via local governmental apparatuses." *Equal. Found. of Greater Cincinnati, Inc. v. City of Cincinnati*, 128 F.3d 289, 300 (6th Cir. 1997). Moreover, any state involvement in matters of local government must still comport with the Constitution. *Gomillion v. Lightfoot*, 364 U.S. 339, 344–45 (1960).

apply a more searching form of review because this disjunction demonstrates that the law exhibits nothing more than "a desire to harm a politically unpopular group." *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring); *Massachusetts v. U.S. Dep't of Health & Human Servs*, No. 10-2204, 2012 WL 1948017, at *5 (1st Cir. May 31, 2012).

The incongruity between the State's purported goals and the facts demonstrate that the Act is nothing more than a pretext for discrimination. The decision in *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), is directly on point. The challenged legislation in that case "simply d[id] not operate so as rationally to further" the asserted governmental interest. *Id.* at 537. Here, too, Defendant's assertion that the "context and history" of the Act "rest entirely on budgetary considerations" (Resp. 14) is plainly contrary to the facts, which demonstrate that the Act followed from the uproar over the Civil Service Commission's early 2011 decision to offer partner benefits to same-sex employees. (PI Mot. 3–4 & Exs. G-1 to G-13, I; *see* Mot. Compel Reply (Dkt. No. 49), Ex. 1 (admission of Michigan Department of Civil Rights official that Act constitutes "divisive social meddling" enacted "out of fear a gay couple might benefit" from local government benefits)) Particularly when viewed in light of the discriminatory backdrop of the Act, the disconnect between the State's proffered justifications and the Act's actual impact makes it likely that Plaintiffs will succeed on their equal protection claim.

B. Plaintiffs Will Succeed On The Merits Of Their Due Process Claim.

The State misstates the legal standard governing substantive due process claims when it argues that heightened scrutiny does not apply because classifications based on sexual orientation are not suspect.[8,9] (Resp. 16) Legislation that burdens fundamental rights must

[8] Contrary to Defendant's assertion (Resp. 3), Plaintiffs do indeed argue the merits of their substantive due process claim in their brief supporting preliminary injunction. (PI Mot. 24–25)

withstand strict scrutiny regardless of the identity of the class burdened. *See Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006). Given that the Act fails even rational basis review, it cannot meet heightened scrutiny.

Defendant's citation to *Lawrence v. Texas* (cited at Resp. 16–17) is misplaced because the majority opinion in that case does not discuss the standard of review, as Defendant claims. In fact, *Lawrence* supports ***Plaintiffs'*** position. In both *Lawrence* and this case, a state law burdened the right to intimate association.[10] *Lawrence*, 539 U.S. at 578. Unlike the statute challenged in *Lawrence*, the Act does not criminalize the exercise of that right. But denying benefits to Plaintiffs because of their exercise of the right violates due process. *See Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307, 321 (6th Cir. 1998) ("Allowing the government to penalize conduct it cannot directly ban raises concerns that the government will be able to curtail by indirect means what the Constitution prohibits it from regulating directly.").

II. THE OTHER FACTORS FAVOR AN INJUNCTION.

Plaintiffs' request for an injunction should be granted because: (1) they will suffer irreparable harm if the Act is enforced; (2) the balancing of the equities favors Plaintiffs because denial of the injunction would harm Plaintiffs much more than granting the injunction would harm the State; and (3) the public interest favors the enjoinment of an unconstitutional law.

Defendant is also incorrect that Plaintiffs assert a procedural due process claim—as the State itself pointed out in an earlier brief, "Plaintiffs have not alleged a procedural due process claim." (MTD (Dkt. No. 17) 17)

[9] Two of the cases Defendant cites for support are not on point because they raise no due process claims. *See Davis v. Prison Health Servs.*, 679 F.3d 433 (6th Cir. 2012) (equal protection claim); *Scarbrough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250 (6th Cir. 2006) (First Amendment and equal protection claims).

[10] Defendant's repeated contention that Plaintiffs assert a "fundamental right to public employer provided medical benefits to an employee's domestic partner" (Resp. 17; *see* MTD 17) is incorrect.

A. Plaintiffs Will Suffer Irreparable Harm If The Act Is Not Enjoined.

To demonstrate irreparable harm, Plaintiffs need not show that harm is immediately upon them. They need only demonstrate that the harm is not "speculative or unsubstantiated." *Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6th Cir. 2006). Plaintiff Johnson has gone without health insurance since her partner's employer eliminated her coverage in December 2011 to comply with the Act (Johnson Decl. ¶ 5, at PI Mot., Ex. T-10; Bohnet Dep. 47, at Mot. Add'l Mats., Ex. 2.B)—two years before the earliest date the benefit program would have otherwise terminated (Bohnet Dep. 47).[11] And there is no question that Plaintiffs Ramber and Ascheri will lose their benefits in December 2012, less than four months after the preliminary injunction hearing. (Resp. 18; Ramber Decl. ¶ 8, at PI Mot., Ex. T-6; Ascheri Decl. ¶ 8, at PI Mot., Ex. T-8) Under ample Sixth Circuit precedent, a threatened loss of insurance benefits is irreparable harm. *Wood v. Detroit Diesel Corp.*, 213 F. App'x 463, 471–72 (6th Cir. 2007) (loss of health insurance benefits constituted irreparable harm); *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 657 (6th Cir. 1996) (same); *Int'l Res., Inc. v. New York Life Ins. Co.*, 950 F.2d 294, 302 (6th Cir. 1991) (interrupting care would inflict irreparable harm).

B. The Balance Of The Equities Favors Plaintiffs.

The balance of the equities favors Plaintiffs because the State's imagined cost savings cannot outweigh the harm to Plaintiffs who either already have lost or certainly will lose their insurance benefits. In cases where denying an injunction would terminate individuals' insurance

[11] Defendant insists that being deprived of insurance benefits does not constitute harm to Plaintiff Johnson because she only had medical benefits for a short time before losing them. (Resp. 18) This is legally irrelevant, because the question is whether the Act inflicts irreparable harm on Plaintiffs by barring the partner benefits they had or have—not whether at some prior point they were harmed by their employers' failure to offer the benefits or by other forms of lack of access to health care. Further, it is the nature of the harm rather than its severity that is most important for purposes of this analysis. *See Johnson v. City of Memphis*, 444 F. App'x 856, 860 (6th Cir. 2011) (citing *Sampson v. Murray,* 415 U.S. 61, 90 (1974)).

benefits, courts find that the monetary harm caused by an injunction cannot outweigh the harm to those who are threatened with losing their benefits. *See, e.g.*, *Golden*, 73 F.3d at 657; *Blum v. Caldwell*, 446 U.S. 1311, 1316 (1980). This is all the more true here, where the State does not pay for the benefits.

C. The Public Interest Favors An Injunction.

Finally, the public interest clearly favors injunction because the "public is certainly interested in the prevention of enforcement of [laws] which may be unconstitutional." *Planned Parenthood Ass'n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987). Defendant's framing of this issue as "the public's interest in the exercise of . . . the recognition of the validity of state laws and the proper motives of state legislators" (Resp. at 18) is confused; while the public may have an interest in having ***valid*** laws upheld, it has no interest in the maintenance of discriminatory laws borne of improper motives, like the Act.

CONCLUSION

For the foregoing reasons and the reasons set forth in Plaintiffs' Motion for Preliminary Injunction, Plaintiffs respectfully request that the Court enjoin Defendant's enforcement of the Act. Moreover, because the motion for preliminary injunction has been pending for several months and is being decided on a fulsome record, there is little need for further discovery in this case.[12] Plaintiffs thus respectfully request that the Court grant a permanent injunction. *See Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 466 F.3d 391, 398 (6th Cir. 2006) ("Unless disputed questions of material fact exist, no trial or evidentiary hearing is necessary for the district court to enter a permanent injunction.").

[12] While Plaintiffs have moved to compel a Rule 30(b)(6) deposition of Defendant, they hope to have that motion resolved and the deposition completed prior to resolution of the preliminary injunction motion.

Dated: July 6, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2012, I caused *Reply in Support of Plaintiffs' Motion for Preliminary Injunction* to be served by electronic mail and U.S. Mail to the following counsel:

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