

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

KATHLEEN ANNE MURPHY and )  
NATIONAL COMMITTEE TO PRESERVE )  
SOCIAL SECURITY AND MEDICARE, )

Plaintiffs, )

v. )

CAROLYN W. COLVIN, in her official )  
capacity as Acting Commissioner of the Social )  
Security Administration, )

Defendant. )

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Civil Action No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF**

1. Plaintiffs Kathleen Anne Murphy and the National Committee to Preserve Social Security and Medicare bring this complaint for declaratory, injunctive, and other relief against Defendant Carolyn W. Colvin in her official capacity as Acting Commissioner of the Social Security Administration (“SSA”). Plaintiffs seek to end SSA’s unconstitutional incorporation of discriminatory state marriage laws to deny the spousal status and eligibility for Social Security benefits of spouses, widows, and widowers who validly married partners of the same sex. In support of their claims, Plaintiffs allege as follows:

## INTRODUCTION

2. For decades, Texas residents Kathleen Anne Murphy (“Kathy”) and Sara Elizabeth Barker (“Sara”) shared their lives together. As a loving and committed couple, Kathy and Sara provided emotional and financial support to each other as they navigated transitions in career, geography, health, and life. Three decades after they committed themselves to one another, Kathy and Sara legally married in Massachusetts in 2010. Like other married couples, Kathy and Sara hoped to grow old together and to live out their retirement years in safety, security, and dignity. Sadly, they would not be so fortunate. Sara succumbed to cancer in March 2012, leaving Kathy a widow.

3. As a legally married couple, Kathy and Sara wished only to be treated with the same dignity and respect as their heterosexual counterparts. However, same-sex spouses seeking to vindicate their rights continue to face daunting legal minefields. At present, eighteen states still deny same-sex couples the freedom to marry, refuse to recognize their marriages validly entered in other jurisdictions, and withhold access to state marital benefits.

4. Nonetheless, with increasing frequency, state and federal executives, and courts—including the United States Supreme Court—have recognized the patent discrimination and affront to dignity faced by same-sex couples whose families are denied the protections of marriage.

5. In its landmark 2013 decision, *United States v. Windsor*, 133 S. Ct. 2675, the Supreme Court held that Section 3 of the Defense of Marriage Act (“DOMA”), which denied federal recognition and benefits to same-sex spouses, violates the Fifth Amendment of the United States Constitution and can no longer be enforced. *Windsor* opened the door for legally married same-sex couples and surviving widows and widowers to participate in myriad federal

programs previously foreclosed to them. *Windsor* reaffirmed the Constitution’s guarantee of liberty, equality, and due process under the law for *all*—including those who legally commit to share their lives through marriage with loved ones of the same sex. *Windsor* now serves as a guiding analytical framework for courts examining and overturning unconstitutional state bans on marriages between persons of the same sex.

6. In a statement immediately following *Windsor*, President Obama applauded the decision as “a victory for couples who have long fought for equal treatment under the law; for children whose parents’ marriages will now be recognized, rightly, as legitimate; for families that, at long last, will get the respect and protection they deserve; and for friends and supporters who have wanted nothing more than to see their loved ones treated fairly and have worked hard to persuade their nation to change for the better.”<sup>1</sup> President Obama ordered the Attorney General to work with other federal officials and agencies to implement the *Windsor* decision. To comply with *Windsor* and to ensure broad access to federal benefits for same-sex spouses, the Department of Justice and federal agencies generally endeavored to look to the law of the jurisdiction where a marriage took place (i.e., the “place of celebration”) to determine whether a couple is eligible for federal spousal benefits.

7. Soon after *Windsor* was handed down, Kathy applied to SSA for survivor benefits and a lump-sum death benefit payment—the same Social Security benefits commonly granted to other widows and widowers. These benefits will be critical to Kathy in achieving financial security and in allowing her to live her remaining days in dignity—knowing that the government recognizes her marriage to Sara as valid and deserving of equal protection under the law. Sara

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<sup>1</sup> The White House, Statement by the President on the Supreme Court Ruling on the Defense of Marriage Act (June 26, 2013), <http://www.whitehouse.gov/doma-statement>.

earned these protections for her beloved Kathy through her years of work and contributions to the Social Security system.

8. In June 2014, while Kathy’s application for Social Security benefits was pending, the Department of Justice publicly announced that two key federal agencies—the Social Security Administration and the Department of Veterans Affairs—view themselves as statutorily prohibited from adopting a “place of celebration” standard for certain programs. Under SSA’s interpretation of 42 U.S.C. § 416(h)(1)(A)(i), a provision of the Social Security Act (the “Act”), SSA instead applies a “place of domicile” standard to determine whether SSA will recognize a benefit applicant’s marriage for purposes of eligibility for spousal, survivor, lump-sum death, and other benefits paid to spouses of persons insured by the Social Security program. Under the place of domicile standard, SSA determines marital status by incorporating and applying the law of the insured person’s state of domicile—including of those states that unconstitutionally discriminate against same-sex couples in marriage.

9. SSA is following this place of domicile standard even where the underlying state marriage law it is incorporating to determine federal marital status violates same-sex spouses’ constitutionally-protected rights to due process and equal protection.

10. Applying *Windsor*, a tidal wave of federal courts around the nation—including the Fourth, Seventh, Ninth, and Tenth Circuits, and the District Court for the Western District of Texas, where Kathy lives—have ruled that state laws denying same-sex couples the right to marry within the state or recognition of their marriages obtained outside of the state violate constitutional guarantees of due process and equal protection. On October 6, 2014, the Supreme Court denied petitions for *certiorari* to review the marriage rulings of the Fourth, Seventh, and

Tenth Circuits, and the Ninth Circuit issued its marriage ruling the following day, resulting in commencement of marriages of same-sex couples in states in all four circuits.

11. SSA nonetheless has denied Kathy's application for benefits solely because she and Sara resided in Texas—a state that refused to recognize their marriage—at the time of Sara's death. SSA incorporated, applied, and deferred to Texas's discriminatory marriage laws in reaching this decision. Had Kathy and Sara resided in a state, like Massachusetts, that does not discriminate against same-sex spouses, Kathy would have been granted all the spousal Social Security benefits to which she is otherwise entitled.

12. For Social Security benefit applicants like Kathy, SSA's unconstitutional incorporation of discriminatory state laws replicates and perpetuates the same basic Fifth Amendment violation condemned by the Supreme Court in *Windsor*. *Windsor* explained that marriage confers “a dignity and status of immense import.” *Windsor*, 133 S. Ct. at 2692. Same-sex couples seeking to marry and thus ensure stable, secure lives of mutual emotional and financial support are acknowledged by the place where they celebrate their marriages—and by many other jurisdictions and most federal programs—as worthy of the same recognition and protections afforded to married different-sex couples. Just as DOMA, in the words of the Supreme Court in *Windsor*, undermined “both the public and private significance of state-sanctioned same-sex marriages[,]” *id.* at 2694, SSA's incorporation of discriminatory state laws tells same-sex couples living in those states that their valid marriages are unworthy of federal recognition and equal treatment. And just as DOMA demeaned the dignity of same-sex spouses, “whose moral and sexual choices the Constitution protects,” *id.*, SSA demeans their dignity by refusing to acknowledge their legal status solely due to the discrimination practiced by their place of domicile.

13. SSA's unconstitutional incorporation of discriminatory state marriage bans is a deprivation of the liberty and equality protected by the Fifth Amendment's due process clause. It impermissibly burdens the fundamental right to marry and the fundamental right to travel secured by the U.S. Constitution. And it deprives same-sex spouses and survivors the equal protection of the law based on those individuals' sexual orientation and sex.

14. Kathy is a member of the National Committee to Preserve Social Security and Medicare (the "National Committee"). The National Committee joins this action in furtherance of its mission and in support of Kathy and other similarly-situated members who are wrongfully denied Social Security benefits based on SSA's unconstitutional incorporation of discriminatory state marriage laws.

15. Together, Kathy and the National Committee respectfully ask this Court to declare unlawful and enjoin SSA's unconstitutional incorporation of and reliance on discriminatory state laws when determining spousal Social Security benefits for same-sex spouses and survivors. The Plaintiffs also respectfully ask the Court to enjoin SSA from refusing to recognize a marriage between same-sex spouses where that marriage is valid in the place of celebration.

#### **JURISDICTION AND VENUE**

16. Jurisdiction is proper pursuant to 42 U.S.C. § 405(g) because the Plaintiffs' claims arise under the Act and its implementing regulations. The presentment requirement of 42 U.S.C. § 405(g) was met by Kathy when she completed her claim for Social Security benefits on July 9, 2013, and was met by the National Committee by letter to SSA dated September 18, 2014.

17. As set forth herein, further exhaustion of administrative remedies by Plaintiffs would be futile. Moreover, the action raises a constitutional challenge to SSA's interpretation of the Act and implementing regulations collateral to a determination of benefits and outside SSA's administrative competence to adjudicate.

18. Venue is proper in this judicial district pursuant to 42 U.S.C. § 405(g) because the National Committee maintains its principal place of business in this district. *See also* 28 U.S.C. §§ 1391(e) and 1402(a)(1).

### **THE PARTIES**

19. Plaintiff Kathleen Anne Murphy was born in 1952 and is a citizen of the United States. She is the widow of Sara Elizabeth Barker, who was born in 1950 and who was also a citizen of the United States. Kathy resides in Austin, Texas, where she lived with Sara from 1984 until Sara's death on March 10, 2012. Kathy has not remarried.

20. Plaintiff the National Committee to Preserve Social Security and Medicare is a nationwide membership organization. Kathy is a member of the National Committee.

21. Headquartered in Washington, D.C., the National Committee was founded in 1982 by former Congressman James Roosevelt—son of President Franklin Roosevelt, who signed the Act into law almost eighty years ago. The National Committee has over two million members and supporters nationwide, and its work is supported through annual membership dues and contributions.

22. The National Committee is committed to ensuring that Social Security benefits are widely accessible, including to same-sex spouses. Both before and after the *Windsor* decision, the National Committee and its education and research arm—the National Committee to Preserve Social Security and Medicare Foundation (the “Foundation”)—issued statements,

letters, and reports advocating for access to Social Security benefits for same-sex spouses, widows and widowers, and children of their families. Following the *Windsor* decision, the Foundation also developed the “Know Your Rights” initiative to alert lesbian, gay, bisexual, and transgender elders about Social Security policy developments. The National Committee regularly communicates Social Security developments of relevance to same-sex couples through its website.<sup>2</sup>

23. Defendant Carolyn W. Colvin is the Acting Commissioner of the Social Security Administration. In that capacity, Acting Commissioner Colvin is the federal official responsible for implementing and enforcing SSA’s policies and procedures. Acting Commissioner Colvin is named in her official capacity only.

### **FACTS**

#### **Kathy and Sara’s Life Together, and Their Marriage**

24. Kathy was born in Brownsville, Texas. She attended college at the University of Texas, and worked following graduation at the University of Texas Press. In 1979, Kathy moved to Massachusetts, where she was hired by MIT Press.

25. Sara was born in Massachusetts. After graduating from Goddard College in Vermont, Sara continued her studies at Western Kentucky University.

26. Sara and Kathy met in 1979 at MIT Press, where Sara also worked. They entered into a committed, loving relationship and began living together in Cambridge, Massachusetts the following year.

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<sup>2</sup> E.g., National Committee to Preserve Social Security and Medicare, *Social Security Begins Processing Claims to Same Sex Couples* (2013), <http://www.ncpssm.org/EntitledtoKnow/entryid/2020/Social-Security-Begins-Processing-Claims-to-Same-Sex-Couples>; National Committee to Preserve Social Security and Medicare, *SAME Act Provides Social Security Equity For Same-Sex Couples and their Families* (2014), <http://www.ncpssm.org/EntitledtoKnow/entryid/2070/same-act-provides-social-security-equity-for-same-sex-couples-and-their-families>.



27. In 1984, Kathy and Sara moved to Austin, Texas for personal and financial reasons. Kathy had attended college in Austin and was raised in nearby San Antonio. As a couple, Kathy and Sara aspired to own a home together, and they determined that real estate in Austin was more affordable than in the Boston area. Even while living in Massachusetts, Kathy remained close to her family, and Kathy's mother and three siblings lived near Austin. Following Kathy and Sara's move, both were deeply involved with Kathy's family. Kathy's mother fondly regarded Sara as another daughter. Kathy helped care for her aging mother prior to her mother's recent death in July 2014. Both of Sara's two siblings and their mother eventually relocated to Austin, Texas as well.

28. Kathy and Sara built a life in Texas, where they lived together until Sara's death in 2012. Kathy and Sara were active participants in their state and local communities. Both worked for the Texas Department of Transportation, and their relationship was acknowledged by coworkers. As a couple, Kathy and Sara joined Austin's First Unitarian Universalist Church in 1996, and in 2003 became members of Austin's Wildflower Unitarian Universalist Church, again as a couple. They were embraced as a family unit by their church. Reflecting Kathy and Sara's respected status in Wildflower, each held several leadership positions, including Kathy's chairing of Wildflower's ministerial search committee and Sara's service on Wildflower's board of directors.

29. Over the course of their lives together, Kathy and Sara took steps to formalize their relationship legally. On October 18, 1993, they registered as domestic partners with the County Clerk in Travis County, Texas.

30. From the time they began living together, Kathy and Sara were financially interdependent and committed to each other's support—both during their lives together and in

their planning should one of them pass away. They pooled their financial assets and continuously shared a single checking account from which they jointly paid mortgage, utility, credit card, medical, and other household expenses. Kathy and Sara jointly purchased a home together in Austin—their last residence together. They also made charitable donations together. They supported each other as they each pursued advanced degrees and through times of unemployment. Though Kathy and Sara could not legally file their tax returns jointly, Kathy prepared each of their separate tax returns. Kathy also held power of attorney for Sara’s medical matters. Kathy and Sara named each other as executors and beneficiaries of their respective wills and life insurance policies. As employees of the Texas Department of Transportation, Kathy and Sara each designated the other as the recipient of their employee pension.

31. Kathy and Sara also provided emotional and financial support to each other during medical crises. In 1987, Sara was diagnosed with breast cancer—requiring her to receive a lumpectomy, chemotherapy, and radiation treatment. Kathy supported Sara through the duration of her treatment and accompanied her to checkups thereafter. Kathy was identified as Sara’s life partner to all of her treating medical professionals. Likewise, Sara supported Kathy emotionally and financially during Kathy’s surgery in 2002 to remove a pre-cancerous polyp, which required Kathy to take one month off from work.

32. Over the course of their relationship, Kathy and Sara also provided support to each other in other less tangible ways. Kathy helped Sara search for, and reconnect with, a daughter whom Sara had given up for adoption during her youth. With Kathy’s support and encouragement, Sara began a career in employee relations, organizational development, and facilitation and mediation services for the Texas Department of Transportation.

33. On December 14, 2010, Kathy and Sara were validly married in Massachusetts, where same-sex couples have been able to wed since 2004. They celebrated their union in a ceremony at the Unitarian Universalist headquarters in Boston. Fellow members of Kathy and Sara's local church sent cards and well-wishes to Boston for the wedding ceremony. On the Sunday following Kathy and Sara's return home, their marriage was announced at their church. Their congregation congratulated them with a standing ovation, affirming their community's validation and support of their relationship.

34. In 2010, when Sara was 60 years old, she was diagnosed with an aggressive form of cancer. Sara went on an extended sick leave from her position at the Texas Department of Transportation. As part of her medical treatment, Sara had an unsuccessful surgery to remove a tumor from her bile duct, and she received a hysterectomy following the discovery of ovarian cancer. Sara also received chemotherapy. In spring 2011, Sara endured a second unsuccessful surgery to remove a tumor in her bile duct.

35. As she had during Sara's first battle against cancer in the 1980s, Kathy supported Sara throughout her treatment the second time. Kathy took Sara to medical appointments, stayed with Sara during hospital visits, prepared the couple's meals, and maintained their shared home together.

36. As Sara's health worsened, Kathy and Sara resolved to spend Sara's remaining days together. On June 30, 2011, they both retired from their respective positions at the Texas Department of Transportation. Following retirement, Kathy served as Sara's caregiver.

37. During the months after the couple's retirement, Sara's health worsened. Sara died on March 10, 2012. Kathy lost her partner of more than thirty years and the love of her life.

### **Overturn of Section 3 of DOMA and SSA's Response**

38. Section 3 of DOMA (codified at 1 U.S.C. § 7), enacted in 1996, prevented Kathy and Sara from receiving federal spousal benefits during the time of their marriage and at the time of Sara's death. Section 3 barred married same-sex couples from being recognized as "spouses" for the purpose of federal laws or programs—even if a state or foreign government recognized those couples as legally married.<sup>3</sup> DOMA deprived married same-sex couples benefits under more than a thousand federal statutes and programs available to married different-sex couples—including Social Security, immigration, taxation, employment, military, and veterans' benefits.

39. Many current and former federal officials criticized DOMA as incompatible with the Constitution's guarantees of liberty, equality, and due process under the law. In response to then-pending legal challenges to the constitutionality of Section 3 of DOMA, *Windsor v. United States*, No. 1:10-cv-8435 (S.D.N.Y.), and *Pedersen v. OPM*, No. 3:10-cv-1750 (D. Conn.), Attorney General Holder advised Congress in 2011 that "classifications based on sexual orientation warrant heightened scrutiny and that, as applied to same-sex couples legally married under state law, Section 3 of DOMA is unconstitutional."<sup>4</sup> Reflecting the Executive Branch's view, the Department of Justice argued that heightened scrutiny was warranted in challenges to DOMA, and in *Hollingsworth v. Perry*—a case challenging the constitutionality of California's ban on marriages between persons of the same sex.<sup>5</sup> The Attorney General also informed Congress that the Department of Justice would no longer defend the constitutionality of Section

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<sup>3</sup> Section 3 provided, "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

<sup>4</sup> Department of Justice, *Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act* (Feb. 23, 2011), <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html>.

<sup>5</sup> See Brief for the United States as Amicus Curiae Supporting Respondents at 12-16, *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) (No. 12-144), 2013 WL 769326, at \*12-16.

3, but that the Executive Branch would nonetheless continue to enforce it until further action by Congress or the Supreme Court.

40. On June 26, 2013, the Supreme Court held that Section 3 of DOMA is unconstitutional “as a deprivation of the liberty of the person protected by the Fifth Amendment.” *Windsor*, 133 S. Ct. at 2695. The Court observed that, under DOMA, “same-sex married couples have their lives burdened, by reason of government decree, in visible and public ways.” *Id.* at 2694. The Court specifically identified among those burdens the loss of Social Security protections, noting that DOMA “denies or reduces benefits allowed to families upon the loss of a spouse and parent, benefits that are an integral part of family security.” *Id.*, 133 S. Ct. at 2695 (citing SSA, Social Security Survivors Benefits 5 (2012)) (emphasis added). Finally, the Court observed that DOMA “writes inequality into the entire United States Code,” specifically referring, among other things, to eligibility for Social Security benefits. *Windsor*, 133 S. Ct. at 2694.

41. During a June 2013 press conference, President Obama hailed the *Windsor* decision as a “victory for American democracy.” He then expressed his “personal belief...that if you’ve been married in Massachusetts and you move someplace else, you’re still married, and that under federal law you should be able to obtain the benefits of any lawfully married couple.”

42. Following *Windsor*, SSA encouraged surviving spouses of married same-sex couples to apply for Social Security benefits. In a press release dated July 17, 2013, SSA issued a statement announcing “[w]e are working with the Department of Justice to determine how the decision affects our programs, and to develop appropriate instructions for our personnel. We encourage individuals who believe they may be eligible for Social Security benefits to apply

now, to protect against the loss of any potential benefits. We will process these claims as soon as we have finalized our instructions.”<sup>6</sup>

43. Similarly, in a press release dated December 16, 2013, Acting Commissioner Colvin stated, “I am pleased to announce that, effective today, Social Security is processing some widow’s and widower’s claims by surviving members of same-sex marriages and paying benefits where they are due. In addition, we are able to pay some one-time lump sum death benefit claims to surviving same-sex spouses. As I stated shortly after the Supreme Court decision on Section 3 of the Defense of Marriage Act, our goal is to treat all Americans with dignity and respect.”<sup>7</sup>

### **The Legal Framework for Social Security Benefits**

44. By overturning DOMA, *Windsor* should have given married same-sex couples access to the full range of Social Security benefits regularly granted to married different-sex couples. For decades, Social Security benefits have been profoundly important to many millions of people around the nation, allowing aging and incapacitated workers and their families to live with financial security and dignity.

45. On August 14, 1935, President Franklin Roosevelt signed into law the Social Security Act, Pub. L. 74–271, 49 Stat. 620, now codified at 42 U.S.C. ch. 7. Enacted during the Great Depression, the Act authorizes the collection of funds to allow the federal government to grant financial assistance to elderly and disabled individuals. The Act in its current form provides for, among other things, the payment of old-age insurance benefits, spousal benefits, survivor benefits for widows and widowers, and lump-sum death benefits. As stated in a 1955

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<sup>6</sup> SSA, *Update on the Supreme Court Decision Regarding the Defense of Marriage Act and Its Implications for Social Security Benefits* (July 17, 2013), <http://www.ssa.gov/news/press/releases.html#!/post/7-2013-1>.

<sup>7</sup> SSA, *Statement of Carolyn W. Colvin, Acting Commissioner of Social Security, on New Payments to Same-Sex Married Couples* (Dec. 16, 2013), <http://www.socialsecurity.gov/news/press/releases.html#!/post/12-2013-2>.

report of the House of Representative’s Committee on Ways and Means, “[t]he old-age and survivors insurance system is the basic program which provides protection for America’s families against the loss of earned income upon the retirement or death of the family provider.”

H. R. Rep. No. 1189, 84th Cong., 1st Sess. 2.

46. The Act as initially passed did not include survivor benefits for widows or widowers. However, the need for greater financial protection for workers’ family members was recognized as early as 1938 by the Advisory Council on Social Security, a government-appointed body representing employees, employers, and the general public. In 1939, Congress amended the Act to adopt the Advisory Council’s recommendation that Social Security benefits should be granted to workers’ dependents, including their widows. The Advisory Council’s core observation—that financial benefits are critical to the security, stability, and dignity of aging and surviving spouses—remains as true today as in 1938.

47. Americans earn the right to participate in Social Security by working and contributing to the program throughout their working lives. Through payroll deductions over the course of their employment, workers earn the security of being able to rely for themselves and their spouses on Social Security benefits after the workers’ retirement, death, or disability.

48. Under the current scheme, SSA is the federal agency tasked with administering the Act. SSA promulgates regulations interpreting the Act. In addition, SSA employees are guided by-SSA’s Program Operations Manual System (“POMS”). The POMS is a primary source of information used by SSA staff to process claims for Social Security benefits.

49. Generally, an individual must be fully insured under the Social Security program before benefits may be paid—whether directly to the individual or to his or her spouse or survivors. With some exceptions, status as an insured person is earned through years worked

and wages earned. To be fully insured, generally a worker needs at least one quarter of covered work for each calendar year between the time he or she turned 21 and the earliest of: (1) the year before the worker attained age 62; (2) the year before the worker died; or (3) the year before the worker became disabled. 42 U.S.C. §§ 413-14; 20 C.F.R. 404.110.

50. Under the Act and SSA's interpreting regulations, an individual aged 62 or older may receive "wife's" or "husband's" insurance benefits (collectively, "spousal benefits") if her or his spouse or ex-spouse is receiving, or is eligible for, retirement or disability benefits. 42 U.S.C. § 402(b) (wife's insurance benefits) and 42 U.S.C. § 402(c) (husband's insurance benefits); *see also* 20 C.F.R. 404.330. The surviving spouse of a deceased insured person is eligible to be paid monthly survivor benefits. 42 U.S.C. § 402(e) (widow's insurance benefits) and 42 U.S.C. § 402(f) (widower's insurance benefits); *see also* 20 C.F.R. 404.335. A widow or widower may receive full survivor benefits at full retirement age, which is age 66 for widows or widowers born during the years 1945 to 1956. Reduced widow's or widower's benefits may be received as early as age 60 (age 50 if the individual is disabled). And a one-time lump-sum death payment of \$255 may be paid to a surviving spouse if he or she was living with the deceased. 42 U.S.C. § 402(i); *see also* 20 C.F.R. 404.390.

51. 42 U.S.C. § 416(h)(1)(A)(i) provides the primary means by which a person may qualify as a spouse or surviving spouse for Social Security spousal benefits. It provides:

[a]n applicant is the wife, husband, widow, or widower of a fully or currently insured individual. . . if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.



52. SSA's interpretive regulations provide that an individual "may be eligible for benefits if [the individual is] related to the insured person as a wife, husband, widow, or widower. To decide [the individual's] relationship to the insured, [SSA] look[s] first to State laws." 20 C.F.R. 404.344. Similarly, 20 C.F.R. 404.345 states, "To decide [the individual's] relationship as the insured's wife or husband, we look to the laws of the State where the insured had a permanent home when you applied for wife's or husband's benefits. To decide [an individual's] relationship as the insured's widow or widower, [SSA] look[s] to the laws of the State where the insured had a permanent home when he or she died."

### **SSA Denies Kathy's Application for Benefits**

53. As Sara approached her 62<sup>nd</sup> birthday, she applied to SSA for retirement benefits, to commence after she turned 62. Sara was owed her first Social Security retirement benefit payment at the time of her death. Reflecting Sara's status as an insured individual for purposes of Social Security benefits, SSA sent a letter to Sara and Kathy's home dated October 31, 2012, and addressed to "FAMILY OF SARA ELIZABETH BARKER, DEC'D," in which SSA wrote:

Our records show that SARA ELIZABETH BARKER is deceased and was due Social Security Payments at the time of death.

The Social Security Act provides that amounts due a deceased beneficiary may be paid to the next of kin or the legal representative of the estate under priorities established in the law.

As the designated legal representative of Sara's estate, Kathy received a check from SSA for \$1,210.

54. Following *Windsor*, on July 9, 2013, as Sara's surviving legal spouse, Kathy completed an application to SSA for widow's insurance benefits (survivor benefits) and a lump-sum death benefit payment. As Sara's spouse, Kathy was entitled to receive widow's benefits equal to the amount of Sara's monthly retirement benefit, which she expected would be about

\$1,210. Kathy had also worked the requisite number of years to qualify for Social Security benefits in her own right.

55. The anticipated receipt of widow's benefits was, and continues to be, an important part of Kathy's financial planning. Kathy planned to use her widow's benefits to supplement her pension and for maintenance of the home she and Sara once shared together. Significantly, Kathy also planned to use the benefits to allow her to delay applying for Social Security retirement benefits on her own behalf. Under SSA rules, surviving spouses eligible for both retirement benefits and widow's or widower's benefits may elect first to receive widow's or widower's benefits and delay receipt of their own retirement benefits until retirement age or later—when retirement benefits are higher—thus maximizing the total Social Security benefits surviving spouses may receive. Kathy's anticipated widow's benefit is a key component of her overall plan for financial stability in retirement and part of her effort to construct a secure, peaceful, and dignified life for herself in the wake of the loss of her wife.

56. If Kathy could receive survivor's benefits as a widow, she would be able to afford delaying application for Social Security retirement benefits based on her own work record until age 66—full retirement age for Social Security benefits. Kathy's retirement benefits at age 66 would have been \$2,130 per month. Receiving Social Security benefits based on her own record at the early retirement age of 62 reduces Kathy's retirement benefits to \$1,547 per month throughout her life. *See* 20 C.F.R. 404.410(c)(1) (setting forth reduction of benefits received prior to full retirement age). Thus if she could collect widow's benefits until she became eligible for her full retirement benefit at age 66, Kathy could expect beginning after her 66<sup>th</sup> birthday to receive \$583 more per month than she would otherwise receive by collecting her own Social

Security benefits at age 62. These added monthly life-long benefits would make a significant difference in the quality of Kathy's life as she ages.

57. Kathy continued to await a determination on her application for widow's benefits. After the *Windsor* decision and into June 2014, SSA followed a practice of holding applications for spousal and survivor benefits from same-sex spouses, widows, and widowers while it conferred with the Department of Justice regarding how to evaluate the marital status of claimants domiciled in states that disrespect their validly entered marriages.

58. After discussion with her SSA claims representative and understanding that she might not be able to count on receiving widow's benefits if SSA determined to apply a place of domicile standard and deny recognition to her marriage, Kathy reluctantly submitted an application for benefits based on her own account. She simply could not afford to forego all Social Security benefits until age 66. She was assured by her SSA representative that if her claim for widow's benefits was ultimately approved, she could withdraw her claim for retirement benefits on her own account within 12 months of approval. Following Kathy's 62<sup>nd</sup> birthday, as of April 1, 2014, she began receiving reduced retirement benefits of \$1,547 per month on her own account. Meanwhile, she awaited a determination on her application for widow's benefits.

59. In late June 2014, SSA issued a press release announcing that SSA had "consulted with the Department of Justice and determined that the Social Security Act requires the agency to follow state law in Social Security cases."<sup>8</sup> Notwithstanding SSA's expressed commitment following *Windsor* to treat all Americans with "dignity and respect," SSA is applying a "place of domicile" standard, codified in 42 U.S.C. § 416(h)(1)(A)(i), and discriminatory state laws

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<sup>8</sup> SSA, *Social Security Defines Policy for Same-Sex Married Couples* (June 20, 2014), <http://www.socialsecurity.gov/news/press/releases.html#!/post/6-2014-1>.

unconstitutionally incorporated via that standard, to determine the marital status of same-sex spouses, widows, and widowers.

60. After the announcement, SSA updated its POMS to reflect SSA’s reliance on state marital law for benefits determinations. POMS provisions GN 00210.100 B (“Policy for spouse benefits involving same-sex couples”), GN 00210.400 B (“Instructions for same-sex surviving spouse claims: determining the status and duration of the relationship”), and GN 00210.600 B (“Instructions for processing [lump- sum death payment] claims involving same-sex marriage”) instruct SSA staff to consult POMS GN 00210.002 C (“How to determine marital status for same-sex couples”) to determine whether SSA will recognize a marriage between persons of the same sex. Steps 10 and 11 of the 13-step process set forth in POMS GN 00210.002 C, in turn, direct SSA staff to consult POMS GN 00210.003 (“Same-Sex Marriage – Dates States Permitted or Recognized Same-Sex Marriage”)—which sets forth a list of U.S. jurisdictions purportedly permitting or recognizing marriages between persons of the same sex. If the insured person does not reside in one of the jurisdictions listed on POMS GN 00210.003 (*e.g.*, if the insured person resides in Texas, which is not on the list), step 13 of POMS GN 00210.002 C directs SSA staff employees to find that the applicants are “not in a marriage that can be recognized for purposes of determining entitlement.”<sup>9</sup>

61. POMS GN 00210.003 also sets forth purported dates on which “Same-Sex Marriages from Any Other State Were Recognized” by jurisdictions that now do respect the

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<sup>9</sup> In October 2014, SSA issued revised POMS GN 00210.003 following the Supreme Court’s October 6, 2014 denial of review of Fourth, Seventh, and Tenth Circuit decisions declaring state marriage bans unconstitutional, and the Ninth Circuit’s October 7, 2014 decision similarly striking down state marriage bans. In addition to Texas, other states not listed in POMS GN 00210.003 include Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Tennessee. POMS GN 00210.003 currently instructs SSA workers to “Hold per instructions in GN 00210.005” applications involving domiciliaries of Indiana, Kansas, Montana, South Carolina, Utah and Wyoming. POMS GN 00210.002 C and POMS GN 00210.003 are attached as Exhibit A.

marriages of same-sex couples. SSA's selection and application of those dates may also operate to deny benefits to spouses with marriages valid where entered if the state of domicile purportedly did not yet recognize the marriage at the relevant point for determining spousal status for benefits purposes.

62. By letter dated July 29, 2014, SSA communicated its formal denial of widow's benefits to Kathy, stating:

We are writing to tell you that you do not qualify for widow's benefits.

You do not qualify for the lump-sum death payment because you are not Sara Elizabeth Barker's widow or child.

To qualify for benefits as a widow, you must meet one of these requirements:

- You and Sara Elizabeth Barker must have been married under the laws of Texas, where Ms. Sara Elizabeth Barker lived when she died, or
- You went through a ceremony which you thought resulted in a legal marriage with Ms. Sara Elizabeth Barker and you were still living with her when she died, or
- You have the same rights as a spouse to inherit from Ms. Sara Elizabeth Barker under the laws of Texas.

The facts we have do not show that any of these requirements is met.

63. SSA's refusal to recognize that Sara and Kathy are spouses and entitled to legal respect and earned Social Security protections from the federal government is based solely on its importation of the unconstitutional discrimination in Texas law. This refusal is a profound affront to Kathy and the memory of her beloved Sara, who treasured their marriage together and commitment to one another. For Kathy, it is almost as though the Supreme Court's *Windsor* decision had never happened. She suffers the loss of important financial protections Sara

provided for her through years of work and contributions into the Social Security system. And she suffers the humiliation of the federal government's pronouncement "that their marriage is less worthy than the marriages of others." *Windsor*, 133 S. Ct. at 2696.

64. On September 18, 2014, Kathy filed with SSA a timely request for reconsideration of denial of benefits.<sup>10</sup>

65. Following the denial of Kathy's application for benefits, on September 12, 2014, Plaintiff National Committee sent a "presentment" letter to Defendant SSA Commissioner Colvin on behalf of Kathy and all other similarly-situated members of the National Committee. In the letter, the National Committee "request[ed] that SSA cease applying unconstitutional state law bans on recognition of marriages between persons of the same sex to deny Social Security benefits to legally married applicants." The National Committee requested a response from SSA by September 30, 2014.<sup>11</sup>

66. The National Committee's support of Kathy is in furtherance of its overall mission to protect, preserve, promote, and ensure the financial security, health, and well-being of current and future generations of Americans. A central focus of that mission is the protection of Social Security. In addition to its support of Kathy, the National Committee represents the interests of other similarly-situated aging and disabled members and their same-sex spouses and survivors, many of whom would suffer irreparable harm if denied the support of Social Security benefits at this stage of life.

67. To date, SSA has not responded to the National Committee's presentment letter.

68. SSA has not reversed its denial of Kathy's request for Social Security benefits.

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<sup>10</sup> SSA's denial and Kathy's request for reconsideration are attached as Exhibit B.

<sup>11</sup> The National Committee's September 12, 2014 presentment letter is attached as Exhibit C.

69. It would be futile for Kathy to seek further administrative review of her application because SSA has based its decision on discriminatory Texas state law, a provision of the Act that incorporates discriminatory Texas law, and implementing regulations and POMS provisions—which unconstitutionally require that Kathy be denied benefits based on her and Sara’s domicile in Texas. SSA’s final, official position that the Act requires SSA to administer the Social Security program in a way that denies benefits to Kathy and similarly-situated applicants is established by POMS GN 00210.002, GN 00210.003, GN 00210.400, GN 00210.600, and SSA’s June 2014 press release.

70. Kathy’s constitutional challenge is collateral both to her claim of entitlement to benefits and to the amount of those benefits. SSA’s continued practice of incorporating discriminatory state marital laws to deny spousal retirement, survivor, lump-sum death, and other benefits to otherwise eligible married same-sex spouses and survivors is a violation of the U.S. Constitution independent of SSA’s failure to pay Kathy the widow’s and lump-sum death benefits she seeks.

71. SSA harms Kathy and all similarly-situated spouses by predicating awards of spousal, survivor, lump-sum death, and other benefits for lesbian and gay spouses on the marital laws of an insured person’s state of domicile where those laws discriminate against the couple based on their sexual orientation and the sexes of the spouses. These legally married same-sex couples, and the surviving spouses of such marriages, are ineligible for Social Security benefits that would be extended to them if they had been different-sex couples.

72. Since the Supreme Court’s *Windsor* decision, a multitude of courts across the country have declared unconstitutional state laws barring marriages between persons of the same sex or precluding state recognition of such marriages. In Kathy and Sara’s home state of Texas,

for example, a same-sex couple who sought to marry in Texas and a same-sex couple who married in Massachusetts challenged Texas’s statutory provisions prohibiting marriages between people of the same sex and the legal recognition of such marriages. *De Leon v. Perry*, 975 F. Supp. 2d 632 (W.D. Tex. 2014), *appeal docketed*, No. 14-50196 (5th Cir. Mar. 1, 2014). In *De Leon*, the district court recognized that Texas’s discriminatory ban on marriage within the state unlawfully restricted same-sex couples’ fundamental right to marry, and noted that Texas’s ban could not survive strict scrutiny because Texas did not identify any rational—much less compelling—interests served by denying same-sex couples that fundamental right. *Id.* at 656-60. Texas’s laws barring recognition of out-of-state marriages of same-sex couples also failed rational basis review: “Defendants have not provided any specific grounds that justify the refusal to recognize lawful, out-of-state same-sex marriages that is not related to the impermissible expression of disapproval of same-sex married couples.” *Id.* at 662 (citation omitted).

73. Other courts across the nation have similarly held unconstitutional state laws that restrict access to, or recognition of, marriages of same-sex couples—including the Fourth, Seventh, Ninth, and Tenth Circuits, as well as numerous lower federal and state courts. *See Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014), *cert. denied*, \_\_S. Ct.\_\_, No. 14-225, 2014 WL 4230092 (Oct. 6, 2014); *Baskin v. Bogan*, No. 14-2386, 2014 WL 4359059 (7th Cir. Sept. 4, 2014), *cert. denied*, \_\_S. Ct.\_\_, No. 14-277, 2014 WL 4425162 (Oct. 6, 2014); *Latta v. Otter*, No. 14-35420, 2014 WL 4977682 (9th Cir. Oct. 7, 2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014), *cert. denied*, \_\_S. Ct.\_\_, No. 14-124, 2014 WL 3841263 (Oct. 6, 2014); *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014), *cert. denied*, \_\_S. Ct.\_\_, No. 14-136, 2014 WL 3854318 (Oct. 6, 2014); *see also, e.g., Majors v. Jeanes*, No. 2:14-cv-00518 JWS; 2014 WL



4541173 (D. Ariz. Sept. 12, 2014); *Wright v. Arkansas*, No. 60CV-13-2662, 2014 WL 1908815 (Ark. Cir. Ct. May 9, 2014), *appeal docketed*, No. CV-14-414 (dismissed for lack of jurisdiction) and No. CV-14-427 (Ark. Sup. Ct. May 16, 2014); *Brinkman v. Long*, Nos. 13-CV-32572, 14-CV-30731, 2014 WL 3408024 (Colo. Dist. Ct. July 9, 2014); *Brenner v. Scott*, 999 F. Supp. 2d 1278 (N.D. Fla. 2014), *appeal docketed*, Nos. 14-14061, 14-14066 (11th Cir. Sept. 19, 2014); *Bourke v. Beshear*, 996 F. Supp. 2d 542 (W.D. Ky. 2014), *appeal docketed*, No. 14-5291 (6th Cir. Mar. 19, 2014); *Love v. Beshear*, 989 F. Supp. 2d 536 (W.D. Ky. 2014), *appeal docketed*, No. 14-5818 (6th Cir. July 8, 2014); *Costanza v. Caldwell*, No. 2013-0052 D2, slip op. (La. 15th Jud. Dist. Ct. Sept. 22, 2014); *DeBoer v. Snyder*, 973 F. Supp. 2d 757 (E.D. Mich. 2014), *appeal docketed*, No. 14-1341 (6th Cir. Mar. 21, 2014); *Barrier v. Vasterling*, No. 1416-CV03892, slip op. (Mo. Cir. Ct. Jackson Co. Oct. 3, 2014); *Garden State Equality v. Dow*, 82 A.3d 336 (N.J. Super. Ct. 2013); *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013); *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013), *appeal docketed*, No. 14-3057 (6th Cir. Jan. 22, 2014); *Henry v. Himes*, No. 1:14-cv-129, 2014 WL 1418395 (S.D. Ohio Apr. 14, 2014), *appeal docketed*, No. 14-3464 (6th Cir. May 9, 2014); *Geiger v. Kitzhaber*, 994 F. Supp. 2d 1128 (D. Or. 2014); *Whitewood v. Wolf*, 992 F. Supp. 2d 410 (M.D. Pa. 2014); *Tanco v. Haslam*, No. 3:13-cv-01159, 2014 WL 997525 (M.D. Tenn. Mar. 14, 2014), *appeal docketed*, No. 14-5297 (6th Cir. Mar. 19, 2014).

74. There is no rational—let alone important or compelling—basis for discriminating, at the federal level, against same-sex couples, as SSA does, by applying 42 U.S.C. § 416(h)(1)(A)(i) unconstitutionally to incorporate and defer to discriminatory state marital statutes when making federal benefits determinations. Defendant’s continued incorporation of discriminatory state statutes to make Social Security benefits determinations violates the

constitutional rights of Kathy and other similarly-situated same-sex spouses and widows and widowers, including National Committee members. Such rights include their right to due process and equal protection, their fundamental right to marry, and their fundamental right to travel.

## **CAUSES OF ACTION**

### **COUNT I: VIOLATION OF RIGHT TO EQUAL PROTECTION**

75. Plaintiffs reallege and incorporate by reference all allegations contained in paragraphs 1-74 as if set forth fully herein.

76. Pursuant to 42 U.S.C. § 416(h)(1)(A)(i), the Act requires SSA to interpret and apply the law of the state of domicile when determining whether a Social Security benefit applicant was legally married, and therefore eligible for spousal benefits under 42 U.S.C. § 402(b) and (c), survivor benefits under 42 U.S.C. § 402(e) and (f), a lump-sum death payment benefit under 42 U.S.C. § 402(i), and benefits under other provisions.

77. SSA's application of 42 U.S.C. § 416(h)(1)(A)(i), 20 C.F.R. 404.344, 20 C.F.R. 404.345, POMS GN 00210.002 and GN 00210.003, and other policies and procedures compels the federal government to treat legally married same-sex couples and survivors living in states that do not recognize their marriages differently than other married spouses and survivors, and differently than same-sex spouses living in states where their marriages are recognized.

78. This differential treatment discriminates on the basis of sexual orientation and sex, and is therefore subject to strict or at least heightened scrutiny, which Defendant's actions cannot withstand.

79. SSA's application of discriminatory state marriage restrictions that target lesbians and gay men and deny recognition to their marriages discriminates against Kathy and other same-sex spouses and survivors on the basis of their sexual orientation.

80. Lesbians and gay men have suffered a long and painful history of discrimination in the United States.

81. Sexual orientation bears no relation to an individual's ability to contribute to society.

82. Sexual orientation is a core, defining trait so fundamental to one's identity and conscience that a person may not legitimately be required to abandon it (even if that were possible) as a condition of equal treatment.

83. Sexual orientation is generally fixed at an early age and is highly resistant to change through intervention. No credible evidence supports the notion that such interventions are either effective or safe; indeed, they often are harmful and damaging. No mainstream mental health professional organization approves interventions that attempt to change sexual orientation, and virtually all of them have adopted policy statements cautioning professionals and the public about these treatments.

84. Lesbians and gay men are a discrete and insular minority, and ongoing prejudice against them continues seriously to curtail the operation of those political processes that might ordinarily be relied upon to protect minorities. Lesbians and gay men lack express statutory protection against discrimination in employment, public accommodations, and housing at the federal level and in more than half the states. They are systematically underrepresented in federal, state, and local democratic bodies. And they have seen 30 states attempt to strip them of the right to marry by passing state constitutional amendments barring them from marriage.

85. SSA also discriminates on the basis of sex, by applying standards to deny Social Security benefits that bar same-sex couples from recognition of their marriages solely because each member of the couple wishes to marry a life partner of the same sex. SSA's application of this sex-based classification deprives Kathy of Social Security spousal benefits because she is a woman and not a man; if she were a man, her marriage to Sara would be recognized for purposes of Social Security benefits.

86. This discrimination also impermissibly enforces conformity with sex stereotypes by excluding Kathy and other same-sex spouses from Social Security benefits because they have failed to conform to the sex-based stereotypes that women should marry men, and that men should marry women.

87. Moreover, SSA affords Kathy and other same-sex spouses unequal access to and protections for their fundamental rights of marriage, family integrity and association, and to travel, subjecting SSA's discrimination to strict or at least heightened scrutiny.

88. Defendant cannot articulate any legitimate or rational basis—let alone a compelling or important and sufficiently-tailored government interest—for discriminating against Social Security benefit applicants.

89. SSA's unconstitutional incorporation, pursuant to 42 U.S.C. § 416(h)(1)(A)(i), 20 C.F.R. 404.344, 20 C.F.R. 404.345, POMS GN 00210.002 and GN 00210.003, and other policies and procedures, of discriminatory and unconstitutional state laws barring recognition of marriages between persons of the same sex mandates unequal treatment for same-sex couples living in states where their marriages are not recognized—rendering legal marriages between persons of the same sex non-existent for the purposes of Social Security benefits without constitutional justification. Consequently, Kathy, other similarly-situated same-sex spouses and

members of the National Committee have been and will continue to be denied Social Security benefits that are extended to their peers in different-sex relationships. This disparate treatment based on the sex and sexual orientation of the applicant violates the right of equal protection secured by the due process clause of the Fifth Amendment of the Constitution of the United States.

**COUNT II:**  
**VIOLATION OF THE FUNDAMENTAL RIGHT TO MARRY**

90. Plaintiffs reallege and incorporate by reference all allegations contained in paragraphs 1-89 as if set forth fully herein.

91. SSA's unconstitutional incorporation, pursuant to 42 U.S.C. § 416(h)(1)(A)(i), 20 C.F.R. 404.344, 20 C.F.R. 404.345, POMS GN 00210.002 and GN 00210.003, and other policies and procedures, of discriminatory and unconstitutional state statutes barring recognition of marriages between persons of the same sex for Social Security benefit determinations denies recognition to same-sex spouses' fundamental right to marry. To obtain the full status and dignity of marriage in the federal government's eyes, same-sex spouses must domicile themselves in jurisdictions that recognize their marriages. This imposes an unconstitutional condition on the exercise of the fundamental constitutional right to marry the person of one's choice, secured by the due process clause of the Fifth Amendment of the Constitution of the United States.

92. Defendant cannot articulate any legitimate or rational basis—let alone a compelling or important government interest—for restricting in this fashion Kathy's and similarly-situated same-sex spouses' fundamental right to marry.

93. SSA denies Kathy, other similarly-situated same-sex spouses, and members of the National Committee benefits that are an integral part of family security and married life without

constitutional justification. The unconstitutional incorporation of discriminatory state marriage statutes allows SSA to deny a legally married same-sex spouse the right to be recognized as married under the law and denies access to the federal benefits flowing from marital status that are extended to different-sex married couples and same-sex married couples domiciled in states that do not discriminate against their marriages.

**COUNT III:  
VIOLATION OF THE FUNDAMENTAL RIGHT TO TRAVEL**

94. Plaintiffs reallege and incorporate by reference all allegations contained in paragraphs 1-93 as if set forth fully herein.

95. Article IV, Section 2, Clause 1 of the United States Constitution states that “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

96. Article IV’s Privileges and Immunities Clause protects the fundamental right to travel and migrate interstate.

97. Other constitutional provisions, including the Fifth Amendment, also protect the fundamental right to travel.

98. SSA’s incorporation of discriminatory and unconstitutional state statutes barring recognition of marriages between persons of the same sex for Social Security benefit determinations infringes and imposes an unconstitutional condition on the exercise of the fundamental constitutional right to travel. To obtain Social Security benefits while remaining married, legally married same-sex couples would have to limit their domiciles to states recognizing their marriages.

99. Due to SSA’s actions, same-sex spouses do not enjoy the same freedom to travel and relocate between states as enjoyed by different-sex spouses. Defendant cannot articulate any

legitimate or rational basis—let alone compelling or important and sufficiently-tailored government interest—for restricting in this fashion Kathy’s, similarly-situated same-sex spouses’, and National Committee members’ fundamental right to travel.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that the Social Security Administration’s refusal to recognize the spousal status of Plaintiff Kathleen Anne Murphy and other same-sex spouses, widows, and widowers who validly married in the place of celebration is unconstitutional;

2. Declare that the Social Security Administration’s unconstitutional incorporation, pursuant to 42 U.S.C. § 416(h)(1)(A)(i), 20 C.F.R. 404.344, 20 C.F.R. 404.345, POMS GN 00210.002 and GN 00210.003, and other policies and procedures, of discriminatory and unconstitutional state statutes barring recognition of marriages between persons of the same sex to determine eligibility for Social Security benefits is unconstitutional and cannot be used to deny benefits to Plaintiff Kathleen Anne Murphy and other same-sex spouses, widows, and widowers who validly married in the place of celebration.

3. Grant a permanent injunction:

(a) prohibiting Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors from applying discriminatory and unconstitutional state statutes barring recognition of marriages between persons of the same sex to make Social Security benefit decisions;

(b) requiring Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to apply the law

of the place of celebration to determine whether a benefit applicant is or was married to a same-sex spouse;

(c) requiring Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to recognize Kathleen Anne Murphy as entitled to Social Security spousal benefits based on her status as the widow of Sara Elizabeth Barker;

(d) allowing Kathleen Anne Murphy to withdraw her claim for Social Security retirement benefits on her own behalf pursuant to 20 C.F.R. 404.640, without regard to the 12 month time limit mandated by 20 C.F.R. 404.640(b)(4)(i);

(e) requiring Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to reclassify and treat any Social Security retirement benefits provided to Kathleen Anne Murphy as widow's benefits;

(f) ordering Acting Commissioner Colvin and her successors in office, her agents, employees, and all persons acting in concert with her or her successors to revise any agency rules or regulations that apply discriminatory and unconstitutional state statutes barring recognition of marriages between persons of the same sex for Social Security benefit determinations;

(g) requiring Acting Commissioner Colvin, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to direct all SSA staff who render Social Security benefit decisions at any level to correct any internal guidelines, directives, or other written material that apply discriminatory and unconstitutional state statutes



barring recognition of marriages between persons of the same sex for Social Security benefit determinations.

4. Award reasonable attorneys' fees and allowed costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other applicable statutory provision;
5. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

By:



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