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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HELEN JOSEPHINE THORNTON,

Plaintiff,

vs.

NANCY BERRYHILL, in her official capacity
as the Acting Commissioner of the Social
Security Administration,

Defendant.

Case No. 18-1409

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

NATURE OF ACTION

1. Plaintiff Helen Josephine Thornton (“Plaintiff” or “Ms. Thornton”), an individual, files this Complaint against Defendant Nancy Berryhill (“Defendant”), in her official capacity as Acting Commissioner of the United States Social Security Administration (“SSA”). This action challenges SSA’s denial of social security survivor’s benefits to surviving same-sex partners who were unable to marry their loved ones and become eligible for such benefits as spouses. SSA generally relies on marriage to determine federal eligibility for benefits for surviving spouses. Until relatively recent history, however, same-sex couples have been unconstitutionally barred from marriage, and SSA has relied on those unconstitutional barriers to determine federal

1 eligibility for spousal survivor’s benefits. Surviving same-sex partners like Ms. Thornton, who
2 did not have the opportunity to marry their loved ones because of unconstitutional marriage laws
3 in effect at the time, are thus barred from accessing spousal survivor’s benefits.

4 2. Like other Americans, same-sex couples have paid into social security through
5 mandatory deductions from their income, and these payments have long funded survivor’s
6 benefits for those who were married to different-sex spouses. But Ms. Thornton, now 63 years
7 old, is unable to access the same survivor’s benefits that she would be able to receive in her
8 retirement years if she and her partner had been a different-sex couple who were able to marry.

9 3. For twenty-seven years, Ms. Thornton and Margery B. Brown (“Ms. Brown”)
10 were in a loving, committed, and intimate same-sex relationship in the State of Washington.
11 Their relationship began in 1979, when they were both 23 years old, and they remained a couple
12 until 2006, when cancer claimed Ms. Brown’s life at 50 years of age. Each was the love of the
13 other’s life.

14 4. Ms. Thornton and Ms. Brown demonstrated their desire to marry each other and
15 would have done so but for the unconstitutional laws of the State of Washington barring same-
16 sex couples from marriage, which existed throughout their relationship. They jointly purchased
17 a home, jointly raised a son, jointly shared in their finances, and cared for each other in sickness
18 and in health until Ms. Brown’s death.

19 5. Ms. Brown’s death was both emotionally and financially devastating for
20 Ms. Thornton. Survivor’s benefits serve to mitigate some of the financial disruption experienced
21 by a surviving spouse. That financial disruption was particularly acute for Ms. Thornton because
22 Ms. Brown’s employment was the primary source of income for the couple. The amount of
23 survivor’s benefits one receives is determined by the earning history of the decedent.

24 6. When Ms. Thornton applied for survivor’s benefits from SSA in 2015 shortly
25 before her sixtieth birthday—when she would have been eligible to begin collecting survivor’s
26 benefits—her application was denied. SSA denied her application on the grounds that she was
27 not married to Ms. Brown, even though that was a legal impossibility in Washington during the
28 entirety of Ms. Thornton’s relationship with Brown. As a result, Ms. Thornton has been denied

1 several hundred dollars each month that she would have otherwise received, which has had a
2 significant negative impact on her quality of life and stretched finances.

3 7. SSA's categorical exclusion of surviving same-sex partners like Ms. Thornton
4 from survivor's benefits violates their equal protection and due process rights protected by the
5 United States Constitution. Even before the U.S. Supreme Court recognized that the exclusion
6 of same-sex couples from marriage was unconstitutional, courts recognized that the exclusion of
7 same-sex couples from the legal rights associated with marriage was unconstitutional. SSA's
8 exclusion of same-sex partners from survivor's benefits—a critical legal protection associated
9 with marriage—violates their equal protection and due process rights.

10 8. The U.S. Supreme Court ultimately recognized in *Obergefell v. Hodges*, 135 S.
11 Ct. 2584 (2015), that the exclusion of same-sex couples from marriage, as well as from the legal
12 rights associated with marriage, was unconstitutional. SSA thus cannot rely upon
13 unconstitutional state laws—including the Washington law that barred Ms. Thornton and
14 Ms. Brown from marrying—in determining federal eligibility for survivor's benefits. The
15 U.S. Supreme Court also recognized in *United States v. Windsor*, 570 U.S. 744 (2013), that the
16 federal government may not withhold spousal benefits from same-sex couples.

17 9. SSA's unconstitutional incorporation of, and reliance upon, discriminatory state laws
18 previously barring same-sex couples from marriage replicates and perpetuates the same basic
19 constitutional violations condemned in *Obergefell*, *Windsor*, and many other decisions. SSA's denial
20 of survivor's benefits to surviving same-sex partners like Ms. Thornton tells them that they are
21 unworthy of federal recognition and equal treatment and demeans their dignity. Despite *Windsor*'s
22 clear mandate that the federal government may not withhold spousal benefits from same-sex couples,
23 by withholding survivor's benefits from same-sex couples barred from marriage by state laws, SSA
24 continues to categorically bar individuals like Ms. Thornton from access to this critical safety-net
25 protection to which she and others have contributed through a lifetime of work.

26 PARTIES

27 11. Plaintiff Helen Josephine Thornton is a citizen of the United States. She resides
28 within this judicial district and the State of Washington.

1 12. Defendant Nancy A. Berryhill is the most recent Acting Commissioner of the
2 Social Security Administration and performs the functions of the Commissioner. Ms. Berryhill
3 is the federal official responsible for implementing and enforcing the Social Security Act and its
4 implementing regulations, SSA’s policies and procedures, and other laws of the United States
5 applicable to SSA administration. Ms. Berryhill is named in her official capacity only.

6 **JURISDICTION AND VENUE**

7 13. The Court has jurisdiction under 42 U.S.C. § 405(g) and 28 U.S.C. § 1361.
8 Jurisdiction is proper pursuant to 42 U.S.C. § 405(g) because Plaintiff’s claims arise under the
9 Social Security Act and its implementing regulations. The presentment requirement of 42 U.S.C.
10 § 405(g) was met by Ms. Thornton when she filed her Application for Widow’s or Widower’s
11 Insurance Benefits (“Application”) in 2015. Ms. Thornton thereafter exhausted her
12 administrative remedies. The July 23, 2018 “Notice of Appeals Council Action” denying review
13 of the Administrative Law Judge decision dated January 10, 2017 is final agency action
14 regarding Ms. Thornton’s Application. This action also raises a constitutional challenge that
15 includes a request for injunctive and declaratory relief that is collateral to an individual determination
16 of benefits and outside SSA’s administrative competence to adjudicate.

17 14. Venue is proper in this judicial district pursuant to 42 U.S.C. § 405(g) and 28
18 U.S.C. § 1391(b) because Ms. Thornton is a resident in this judicial district. Venue is proper in
19 the Seattle Division of this district because a substantial part of the events or omissions giving
20 rise to Plaintiff’s claims occurred in King County, Washington, including that (i) the earning
21 record of Ms. Brown on which Ms. Thornton seeks survivor’s benefits is based in part on work
22 that was performed within King County, (ii) determinations, actions, and decisions on
23 Ms. Thornton’s Application occurred within the Seattle Region of SSA, and (iii) the relief
24 requested for Ms. Thornton would flow through Regional Commissioner Mary Lisa
25 Lewandowski, who oversees the Seattle Region, and operations for the Seattle Region are
26 located in King County.

GENERAL ALLEGATIONS

**The Twenty-Seven Year Committed Relationship of
Helen Thornton and Margery Brown.**

15. For twenty-seven years, Ms. Thornton and Ms. Brown were in a loving, committed, and intimate relationship in Washington. They met through a women’s art group in 1978 and formed a committed relationship with each other in 1979. They began living together in 1979, jointly rented a home starting in 1981, and jointly purchased a home in 1983 where Ms. Brown and Ms. Thornton lived together until Ms. Brown’s death in July 2006.

16. Ms. Brown and Ms. Thornton demonstrated their lasting love and commitment by deciding to raise a family together. In 1984, they welcomed the birth of their son, Asa Brown Thornton, whom Ms. Thornton carried and Ms. Brown adopted. Ms. Brown and Ms. Thornton are listed as the parents on the birth certificate of Asa Brown Thornton that is filed with, and recognized by, the State of Washington.

17. Ms. Brown and Ms. Thornton publicly held themselves out as the loving and committed couple that they were. They and their son attended many extended family events (holidays, birthdays, anniversaries, and family reunions) together as a family. Their friends and family also recognized them as a family.

18. Ms. Brown and Ms. Thornton jointly shared in all of the costs and responsibilities associated with nurturing, raising, and educating their son. They also jointly assumed the substantial financial costs of Ms. Brown’s graduate school education.

19. Ms. Brown and Ms. Thornton were an integrated economic unit, jointly sharing each other’s income, assets, and liabilities. Ms. Brown worked as an instructor, and Ms. Thornton worked for many years as a staff person at a food coop and later as a film programmer at an independent theater. Ms. Brown and Ms. Thornton maintained a joint checking account throughout their relationship and deposited all of their income into the joint checking account, which they used to pay for living expenses. Ms. Brown and Ms. Thornton jointly borrowed funds to acquire their home, to pay for the education of their son, and to pay for other costs of raising and caring for their family.

1 20. Ms. Brown and Ms. Thornton cared for each other in sickness and in health.
2 Ms. Thornton was the primary caretaker of Ms. Brown from Ms. Brown's diagnosis with ovarian
3 cancer in 2003 until her death in 2006. Ms. Brown's chemotherapy and other treatments had
4 horrible side effects. Ms. Brown was unable to keep food down for extended periods of time and
5 was extremely weak. Ms. Thornton provided Ms. Brown's personal care during her three-year
6 battle with cancer.

7 21. Ms. Thornton also assumed major responsibility for caring for Ms. Brown's sister,
8 Kathy Brown, when Kathy Brown was also diagnosed with ovarian cancer in 2004. Ms. Brown
9 and Ms. Thornton jointly borrowed funds to pay for Kathy Brown's expenses during her illness.

10 22. Ms. Brown similarly cared for Ms. Thornton during their relationship. Indeed,
11 even in the final hours of Ms. Brown's life, she continued to express concerns about
12 Ms. Thornton's well-being, knowing that her death would be a devastating loss for
13 Ms. Thornton.

14 23. Ms. Thornton made all the arrangements for Ms. Brown's funeral and burial. The
15 gravestone lists the dates of Ms. Brown's life and also is engraved with Ms. Thornton's name
16 and date of birth. Ms. Thornton plans to be buried next to Ms. Brown.

17 24. The Will executed by Ms. Brown states that Ms. Brown is in a domestic
18 partnership with Ms. Thornton, and that Asa Brown Thornton is Ms. Brown's son. Ms. Brown
19 designated Ms. Thornton as her personal representative, and bequeathed her estate to
20 Ms. Thornton, demonstrating Ms. Brown's intent for whatever financial resources she had at the
21 end of her life to care for Ms. Thornton. Ms. Thornton's Will states that she is in a domestic
22 partner relationship with Ms. Brown, designated Ms. Brown as her personal representative, and
23 bequeathed her estate to Ms. Brown.

24 **Ms. Thornton and Ms. Brown Would Have Married But For the**
25 **Unconstitutional Exclusion of Same-Sex Couples from Marriage.**

26 25. On many occasions during their 27-year relationship, Ms. Thornton and
27 Ms. Brown discussed and demonstrated their desire to marry to each other and to be recognized
28 by the State of Washington and by the United States as a married couple with the same status and

1 legal rights as married different-sex couples. Throughout their relationship, however, and until
2 2012, six years after Ms. Brown’s death, Washington barred same-sex couples from marriage.

3 26. Ms. Thornton and Ms. Brown demonstrated their intent and desire to be married
4 under the laws of the State of Washington by their public commitment to each other, by raising a
5 family together, and by their other public actions throughout their 27-year relationship.

6 27. In December 1999, Ms. Brown and Ms. Thornton, along with other similarly-
7 situated same-sex couples, filed a legal claim against the State of Washington challenging the
8 denial of health insurance benefits to same-sex partners of employees of the State of
9 Washington. Ms. Brown was a state employee, and she and Ms. Thornton successfully
10 advocated for the State to provide the same health insurance benefits to the same-sex partners of
11 state employees as those provided to the different-sex spouses of state employees.

12 28. A newspaper article reported on the legal action. It quoted Ms. Brown and
13 described her desire to marry Ms. Thornton: “‘You can’t get benefits because you can’t get
14 married,’ Brown said, adding that she and Thornton would gladly marry if state law allowed it.”

15 29. Pursuant to the settlement of the claim against the State of Washington, on
16 November 8, 2000, Ms. Thornton and Ms. Brown executed, and the State of Washington
17 acknowledged, a State of Washington “Declaration of Marriage/Same-Sex Domestic
18 Partnership” form. The form required affirmation of several facts concerning their relationship
19 under penalty of perjury, including, among other things, that: they were in a same-sex domestic
20 partnership; they shared the same residence; they agreed to joint responsibility for basic living
21 expenses; they were each other’s sole domestic partner and were responsible for each other’s
22 common welfare; and they were “same-sex partners who are barred from a lawful marriage.”

23 30. Criteria similar to those used in the form described above were widely employed
24 by public and private entities to provide and administer domestic partnership benefits to same-
25 sex couples who were barred from marriage.

26 31. The uncontested evidence introduced by Ms. Thornton in the administrative
27 process on the Application demonstrated that Ms. Brown and Ms. Thornton would have married,
28 but for the then-existence of Washington law barring same-sex couples from marriage. The

1 evidence introduced by Ms. Thornton in the administrative proceedings documents that on many
2 occasions Ms. Thornton and Ms. Brown discussed their desire to be married and to be
3 recognized by the State of Washington and the United States as a married couple with the same
4 status and legal rights as married different-sex couples.

5 32. Throughout Ms. Thornton and Ms. Brown's committed relationship, they were
6 barred from marriage by state law. In 1971, a same-sex couple in Washington filed suit arguing
7 that the exclusion of same-sex couples from marriage violated the Washington Constitution, but
8 the Washington Court of Appeals ruled against the couple, *Singer v. Hara*, 11 Wash. App. 247
9 (1974), and the Washington Supreme Court denied review, *Singer v. Hara*, 84 Wash. 2d 1008
10 (1974).

11 33. In 1996, the United States enacted the so-called Defense of Marriage Act, which
12 prohibited federal recognition of marriages between same-sex couples. Although no state
13 permitted same-sex couples to marry at the time, the law was enacted in response to fears that
14 that could change. As the U.S. Supreme Court explained in *Windsor*, the law's "purpose [was]
15 to discourage enactment of state same-sex marriage laws" and the goal of Congress "was 'to put
16 a thumb on the scales and influence a state's decision as to how to shape its own marriage
17 laws.'" 570 U.S. at 771.

18 34. In 1998, the Washington Legislature enacted a statutory ban barring same-sex
19 couples from marriage. Governor Gary Locke vetoed the legislation, noting that Washington
20 law already barred marriages between same-sex couples, but the Legislature overrode his veto.
21 In 2006, the Washington Supreme Court upheld the law against state constitutional challenge in
22 *Andersen v. King County*, 158 Wash. 2d 1 (2006).

23 35. It was not until 2012, by which point Ms. Brown was deceased, that Washington
24 ultimately permitted same-sex couples to marry, when Washington voters repudiated the state
25 law excluding same-sex couples from marriage through the adoption of Referendum Measure
26 No. 74. Wash. Rev. Code § 26.04.010.

27 36. Washington's law excluding same-sex couples from marriage was also void *ab*
28 *initio* in light of the Supreme Court's decision in *Obergefell*. As a result of this unconstitutional

1 law, Ms. Brown and Ms. Thornton were barred from marriage and unable to be recognized as
2 spouses at the time of Ms. Brown's death.

3 **The Social Security Act Provisions Regarding Surviving Spouse Benefits**

4 37. On August 14, 1935, President Franklin Roosevelt signed into law the Social Security
5 Act, Pub. L. 74-271, 49 Stat. 620, now codified at 42 U.S.C. ch. 7. Enacted during the Great
6 Depression, the Act authorizes the collection of funds to allow the federal government to provide
7 financial assistance to elderly and disabled individuals. The Act in its current form provides for,
8 among other things, the payment of old-age insurance benefits, survivor's benefits for widows and
9 widowers, and lump-sum death benefits. As stated in a 1955 report of the House of Representatives
10 Committee on Ways and Means, "[t]he old-age and survivors insurance system is the basic program
11 which provides protection for America's families against the loss of earned income upon the
12 retirement or death of the family provider." H.R. Rep. No. 1189, 84th Cong., 1st Sess. 2. (1955)

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

21 12. Americans earn the right to participate in social security by working and contributing
22 to the program throughout their working lives. Through payroll deductions over the course of their
23 employment, workers earn the security of being able to rely on social security benefits, and for their
24 spouses to rely on such benefits, after the workers' retirement, death, or disability.

25 13. Generally, an individual must be fully insured under the social security program
26 before benefits may be paid—whether directly to the individual or to his or her spouse or survivors.
27 With some exceptions, status as an insured person is earned through years worked and wages earned.
28 To be fully insured, generally a worker needs at least one quarter of covered work for each

1 calendar year between the time he or she turned 21 and the earliest of: (1) the year before the
2 worker attained age 62; (2) the year before the worker died; or (3) the year before the worker
3 became disabled. 42 U.S.C. §§ 413-14; 20 C.F.R. 404.110.

4 14. Under the Act and SSA's interpreting regulations, the surviving spouse of a
5 deceased insured person is eligible to be paid monthly survivor's benefits. 42 U.S.C. § 402(e)
6 (widow's insurance benefits) and 42 U.S.C. § 402(f) (widower's insurance benefits); *see also* 20
7 C.F.R. 404.335. A widow or widower may receive full survivor's benefits at full retirement age,
8 which is age 66 for widows or widowers born during the years 1945 to 1956. Reduced survivor's
9 benefits can be received as early as age 60 (or age 50 if the individual is disabled).

10 15. Section 216 of the Social Security Act provides the primary means by which a person
11 may qualify as a surviving spouse for social security benefits. It provides in relevant part: "[a]n
12 applicant is the . . . widow, or widower of a fully or currently insured individual . . . if . . . the courts
13 of the State in which he was domiciled at the time of death . . . would find that such applicant and
14 such insured individual were validly married . . . at the time he died." 42 U.S.C. § 416(h)(1)(A)(i).

15 16. Surviving same-sex partners like Ms. Thornton are categorically excluded from
16 meeting that eligibility criterion because they were barred from marriage by laws that have since
17 been held unconstitutional.

18 17. The exclusion of surviving same-sex partners like Ms. Thornton from eligibility
19 for survivor's benefits based on discriminatory marriage laws deprives them of an important
20 legal protection. As the Supreme Court recognized in *Windsor*, the federal government's refusal
21 to recognize same-sex couples' relationships "denies or reduces benefits allowed to families
22 upon the loss of a spouse and parent, benefits that are an integral part of family security."
23 570 U.S. at 773. The Supreme Court again recognized in *Obergefell* that it was unconstitutional
24 to deprive same-sex couples of "the rights and benefits of survivors" afforded through marriage.
25 135 S. Ct. at 2601.

26 18. Survivor's benefits are as important to surviving same-sex partners who would
27 have married their loved ones but for discriminatory marriage laws, as they are to surviving
28 different-sex spouses who had the opportunity to marry their loved ones. Both groups are

1 similarly situated in every relevant respect. The only distinction between them is the
2 unconstitutional barrier to marriage faced by the same-sex partners.

3 19. Because Ms. Thornton was deemed ineligible for spousal survivor benefits, she began
4 collecting social security benefits at age 62 based on her own work record. Had she been eligible for
5 survivor's benefits, she would have been able to delay collecting benefits based on her own work
6 record until age 66 or later. Receiving social security benefits based on her own record at the early
7 retirement age of 62 reduces Ms. Thornton's retirement benefits throughout her life. See 20 C.F.R.
8 404.410(c)(1) (setting forth reduction of benefits received prior to full retirement age).

9 20. Although Ms. Thornton began collecting benefits on her own work record (receiving
10 approximately \$900 per month), her monthly benefits would be greater by several hundred dollars a
11 month if she were eligible to receive survivor's benefits based on Ms. Brown's work record. Upon
12 information and belief, that disparity would remain even if Ms. Thornton had chosen to collect
13 survivor's benefits at the earliest possible age of 60, based on the estimated monthly survivor's
14 benefits communicated to her by SSA (approximately \$1,600 per month).

15 21. The denial of survivor's benefits has had a significant negative impact on
16 Ms. Thornton's quality of life and stretched finances. Ms. Thornton's monthly income consists of her
17 social security payments and a modest amount of income she earns from taking care of animals. She
18 has had to put off house repairs, such as insulation that needs to be replaced particularly when
19 temperatures drop, and she limits visits to see friends in neighboring cities because of gas costs.

20 22. There is no rational—let alone important or compelling—justification for
21 excluding same-sex surviving partners like Ms. Thornton from survivor's benefits. The cost of
22 providing survivor's benefits to surviving same-sex partners is not greater than the cost of
23 providing survivor's benefits to surviving different-sex spouses. The administration of benefits
24 to surviving same-sex partners like Ms. Thornton is also no more burdensome than the factual
25 determinations that SSA makes in adjudicating other spousal benefits, including where SSA
26 determines whether a common law marriage existed between a couple.

27 23. SSA's incorporation of, and reliance upon, discriminatory state laws previously
28 barring same-sex couples from marriage in making a federal benefits determination violates the

1 constitutional rights of Ms. Thornton and other similarly situated surviving same-sex partners.

2 **Administrative Proceedings**

3 24. Ms. Thornton exhausted her administrative remedies regarding the claims herein.

4 25. In January 2015, approximately three months before turning 60 years old,
5 Ms. Thornton filed with SSA the Application for surviving spouse benefits under the Social
6 Security Act. SSA denied the Application.

7 26. On June 11, 2015, Ms. Thornton timely filed a Request for Reconsideration of the
8 denial of her Application with SSA.

9 27. By letter dated December 8, 2015, and received by Ms. Thornton on
10 December 15, 2015, SSA denied Plaintiff's Request for Reconsideration.

11 28. SSA's denial of reconsideration stated that the reason Ms. Thornton was denied
12 survivor's benefits on the record of Ms. Brown "was because at the time of Ms. Brown's death,
13 they did not live in a State that recognized same-sex marriages."

14 29. SSA's denial of reconsideration further stated, "In order for Helen J Thornton to
15 be eligible for Widow Benefits, she would have to be legally married to Margery B Brown . . .
16 and be living in a State that recognizes the same-sex relationship." It noted, however, that "[t]he
17 law in effect in the State of Washington at the time of Ms. Brown's death does not recognize
18 same-sex marriages." SSA thus denied reconsideration because "Ms. Thornton does not meet
19 the eligibility requirement of being the widow of Margery B Brown, because at the time of
20 Ms. Brown's death in 2006, the State of Washington did not recognize same-sex marriages."

21 30. On February 8, 2016, Thornton timely filed a Request for Hearing by an
22 Administrative Law Judge ("ALJ") along with supporting evidence.

23 31. On October 18, 2016, the ALJ conducted a hearing on Ms. Thornton's
24 Application. Ms. Thornton presented additional testimony, and Ms. Thornton's counsel
25 presented argument. No witness contested any of the evidence introduced by Ms. Thornton
26 during the hearing.

27 32. The ALJ kept the hearing record open to provide an opportunity to Ms. Thornton
28 to submit additional evidence in support of her Application. On November 4, 2016,

1 Ms. Thornton provided additional factual evidence to the ALJ supporting her Application,
2 including the “Declaration of Marriage/Same-Sex Domestic Partnership” form described above.

3 33. The ALJ issued a decision dated January 10, 2017 concluding that Ms. Thornton
4 is not eligible for surviving spouse benefits, because “the claimant was not legally married to the
5 insured.”

6 34. On March 9, 2017, Ms. Thornton timely filed a Request for Appeals Council
7 Review of the ALJ Decision with the SSA.

8 35. By letter dated August 11, 2017, SSA’s Office of Disability Adjudication and
9 Review sent a letter to Ms. Thornton inviting the submission of a statement of the facts and law
10 or additional evidence regarding the above matter.

11 36. On August 31, 2017, Ms. Thornton filed a Statement of Facts and Law with
12 SSA’s Office of Disability Adjudication and Review.

13 37. By letter dated July 23, 2018, received by Ms. Thornton on July 30, 2018, SSA’s
14 Office of Appellate Operations sent to Ms. Thornton a “Notice of Appeals Council Action.” The
15 Notice states “We found no reason under our rules to review the Administrative Law Judge’s
16 decision. Therefore, we have denied your request for review.” The Notice of Appeals Council
17 Action provides no other justification for, or any facts in support of, the denial of Plaintiff’s
18 request for review of the ALJ Decision.

19 38. Taken together, SSA’s actions violate the holdings of *Obergefell*, *Windsor*, and
20 similar lower court decisions. The denial of Ms. Thornton’s Application is based on SSA’s
21 reliance on Washington’s unconstitutional and discriminatory marriage law that was void *ab*
22 *initio*, including throughout the relationship of Ms. Thornton and Ms. Brown and at the time of
23 Ms. Brown’s death.

24 **CLAIMS FOR RELIEF**

25 **FIRST CLAIM:**

26 **VIOLATION OF EQUAL PROTECTION**

27 39. Plaintiff realleges paragraphs 1 through and including paragraph 38 as if fully set
28 forth herein.

1 40. Defendant has violated the right to equal protection under the Fifth Amendment
2 of the U.S. Constitution by treating Plaintiff and other same-sex surviving partners who would
3 have married if permitted to do so differently than surviving different-sex spouses for purposes
4 of eligibility for surviving spouse benefits under the Social Security Act.

5 41. Defendant's differential treatment—including its incorporation of, and reliance upon,
6 discriminatory state laws excluding same-sex couples from marriage—discriminates on the basis of
7 sexual orientation, and is therefore subject to heightened scrutiny, which Defendant's actions cannot
8 withstand. Defendant's actions discriminated against Plaintiff because she is a lesbian.

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

11 43. Sexual orientation bears no relation to an individual's ability to contribute to
12 society.

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

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

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

1 47. Defendant's differential treatment also discriminates based on sex, by applying
2 standards to deny social security benefits based on state laws barring marriage to a person of the
3 same sex. Defendant's application of this sex-based classification deprives Plaintiff of survivor's
4 benefits because she is a woman and not a man; if she were a man, the laws of the State of
5 Washington would have allowed Ms. Thornton and Ms. Brown to marry, and Ms. Thornton and
6 Ms. Brown would be recognized as married for purposes of social security benefits. Such sex-based
7 classifications are subject to intermediate scrutiny.

8 48. This discrimination also impermissibly enforces conformity with sex stereotypes by
9 excluding Plaintiff and other surviving same-sex partners from social security benefits because they
10 have failed to conform to the sex-based stereotypes that women should marry men, and that men
11 should marry women. This, too, evokes intermediate scrutiny.

12 49. Moreover, Defendant denied Plaintiff and other surviving same-sex partners of equal
13 access to and protections for their fundamental liberty interests in forming an intimate family
14 relationship with a person of the same sex.

15 50. Defendant cannot articulate any legitimate or rational basis—let alone a
16 compelling or important and sufficiently-tailored government interest—for discriminating
17 against Plaintiff and other surviving same-sex partners.

18 **SECOND CLAIM:**

19 **VIOLATION OF DUE PROCESS**

20 51. Plaintiff realleges and incorporates by reference all allegations contained in
21 paragraphs 1 through and including paragraph 50 as if set forth fully herein.

22 52. Defendant has violated the right to substantive due process under the Fifth
23 Amendment of the U.S. Constitution by denying spousal survivor's benefits to Plaintiff and other
24 surviving same-sex partners who would have married if permitted to do so.

25 53. Plaintiff and other surviving same-sex partners have a fundamental liberty interest
26 in forming an intimate family relationship with a person of the same sex without intrusion,
27 interference, or penalty by the government. Defendant's deprivation of survivor's benefits,
28 which are an integral part of family security, substantially infringes upon that liberty interest.

1 54. Defendant’s incorporation of, and reliance upon, discriminatory and
2 unconstitutional state laws denying same-sex couples of the right to marry violates the liberty
3 interests recognized in *Obergefell* and *Windsor*. Defendant denies same-sex couples like
4 Ms. Thornton and Ms. Brown of any recognition of their relationships and the important social
5 security protections that flow from that recognition.

6 55. Defendant cannot articulate any legitimate or rational basis—let alone a
7 compelling or important government interest—for infringing upon the liberty interests of
8 Plaintiff and other surviving same-sex partners.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Declare that Defendant’s denial of social security survivor’s benefits to Plaintiff and other surviving same-sex partners who would have married but for laws excluding same-sex couples from marriage is unconstitutional.

2. Declare that the Defendant’s incorporation of, and reliance upon, laws excluding same-sex couples from marriage to determine eligibility for social security survivor’s benefits—including the laws of the State of Washington in effect at the time of Ms. Brown’s death in 2006—is unconstitutional and cannot be used as a basis for denying benefits to Plaintiff and other surviving same-sex partners who would have married but for laws excluding same-sex couples from marriage.

3. Issue an order requiring Defendant to approve the Application of Helen Josephine Thornton for social security survivor’s benefits, including a recalculation of benefits to the extent necessary to afford complete relief.

4. Grant a permanent injunction:

a) prohibiting Acting Commissioner Berryhill, her successors in office, her agents, employees, and all persons acting in concert with her or her successors from:

(1) excluding same-sex surviving partners who would have married but for laws barring marriage between same-sex couples from eligibility for social security survivor’s benefits; and

(2) applying laws excluding same-sex couples from marriage to the determination of eligibility for social security survivor’s benefits;

b) requiring Acting Commissioner Berryhill, her successors in office, her agents, employees, and all persons acting in concert with her or her successors to recognize Helen Josephine Thornton as entitled to social security widow’s benefits based on the work history of Margery B.

Brown;

c) ordering Acting Commissioner Berryhill, 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 or rely upon laws barring same-sex couples from marriage for social security benefit determinations;

d) requiring Acting Commissioner Berryhill, 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 or rely upon laws barring same-sex couples from marriage for social security benefit determinations.

6. 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.

7. Grant such other relief as the Court may deem just and proper.

Date: September 25, 2018

Respectfully submitted,

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