

U.S. District Judge James L. Robart
U.S. Magistrate Judge J. Richard Creatura

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HELEN JOSEPHINE THORNTON, on behalf
of herself and all others similarly situated, and
NATIONAL COMMITTEE TO PRESERVE
SOCIAL SECURITY AND MEDICARE,

Plaintiffs,

vs.

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

Defendant.

Case No. 2:18-cv-01409-JLR-JRC

**SECOND AMENDED COMPLAINT FOR
DECLARATORY, INJUNCTIVE, AND
OTHER RELIEF—CLASS ACTION**

NATURE OF ACTION

1. Plaintiffs Helen Josephine Thornton (“Named Plaintiff” or “Ms. Thornton”), an individual, the members of the Plaintiff Class, and the National Committee to Preserve Social Security and Medicare, an organization (collectively, “Plaintiffs”), file 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

1 social security survivor's benefits to surviving same-sex partners who were unable to marry their
2 loved ones and become eligible for such benefits as spouses. SSA generally relies on marriage
3 to determine federal eligibility for benefits for surviving spouses. Until relatively recent history,
4 however, same-sex couples have been unconstitutionally barred from marriage, and SSA has
5 relied on those unconstitutional barriers to determine federal eligibility for spousal survivor's
6 benefits. Surviving same-sex partners like Ms. Thornton, who did not have the opportunity to
7 marry their loved ones because of unconstitutional marriage laws in effect at the time, are thus
8 barred from accessing spousal survivor's benefits.

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

14 3. For twenty-seven years, Ms. Thornton and Margery B. Brown ("Ms. Brown")
15 were in a loving, committed, and intimate same-sex relationship in the State of Washington.
16 Their relationship began in 1979, when they were both 23 years old, and they remained a couple
17 until 2006, when cancer claimed Ms. Brown's life at 50 years of age. Each was the love of the
18 other's life.

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

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

1 6. When Ms. Thornton applied for survivor’s benefits from SSA in 2015 shortly
2 before her sixtieth birthday—when she would have been eligible to begin collecting survivor’s
3 benefits—her application was denied. SSA denied her application on the grounds that she was
4 not married to Ms. Brown, even though that was a legal impossibility in Washington during the
5 entirety of Ms. Thornton’s relationship with Brown. As a result, Ms. Thornton has been denied
6 several hundred dollars each month that she would have otherwise received, which has had a
7 significant negative impact on her quality of life and stretched finances.

8 7. Ms. Thornton’s experience is mirrored by surviving same-sex partners across the
9 country who wished to enshrine their committed, intimate relationships in marriage but were
10 barred from doing so by unconstitutional laws; whose partners died before the laws barring their
11 marriage were struck down or repealed; who sought or will seek survivor’s benefits from SSA;
12 and who were or will be denied survivor’s benefits from SSA because they were unable to marry
13 before their partner’s death, even though they were unconstitutionally barred from doing so.
14 SSA has denied the members of the Plaintiff Class critical financial protections they would have
15 received but for their illegal exclusion from marriage.

16 8. SSA’s categorical exclusion of surviving same-sex partners like Ms. Thornton
17 and the members of the Plaintiff Class from survivor’s benefits violates their equal protection
18 and due process rights protected by the United States Constitution. Even before the
19 U.S. Supreme Court recognized that the exclusion of same-sex couples from marriage was
20 unconstitutional, courts recognized that the exclusion of same-sex couples from the legal rights
21 associated with marriage was unconstitutional. SSA’s exclusion of same-sex partners from
22 survivor’s benefits—a critical legal protection associated with marriage—violates their equal
23 protection and due process rights.

24 9. The U.S. Supreme Court ultimately recognized in *Obergefell v. Hodges*, 135 S.
25 Ct. 2584 (2015), that the exclusion of same-sex couples from marriage, as well as from the legal
26 rights associated with marriage, was unconstitutional. SSA thus cannot rely upon
27 unconstitutional state laws—including the Washington law that barred Ms. Thornton and
28 Ms. Brown, and parallel laws throughout the country barring members of the Plaintiff Class,

1 from marrying—in determining federal eligibility for survivor’s benefits. The U.S. Supreme
2 Court also recognized in *United States v. Windsor*, 570 U.S. 744 (2013), that the federal
3 government may not withhold spousal benefits from same-sex couples.

4 10. SSA’s unconstitutional incorporation of, and reliance upon, discriminatory state laws
5 previously barring same-sex couples from marriage replicates and perpetuates the same basic
6 constitutional violations condemned in *Obergefell*, *Windsor*, and many other decisions. SSA’s denial
7 of survivor’s benefits to surviving same-sex partners like Ms. Thornton and members of the Plaintiff
8 Class tells them that they are unworthy of federal recognition and equal treatment and demeans their
9 dignity. Despite *Windsor*’s clear mandate that the federal government may not withhold spousal
10 benefits from same-sex couples, by withholding survivor’s benefits from same-sex couples barred
11 from marriage by state laws, SSA continues to categorically bar individuals like Ms. Thornton and
12 members of the Plaintiff Class from access to this critical safety-net protection to which she and
13 others have contributed through a lifetime of work.

14 11. Ms. Thornton is a member of the National Committee to Preserve Social Security and
15 Medicare (the “National Committee”). The National Committee joins this action in furtherance of its
16 mission and in support of Ms. Thornton and other similarly-situated members who are wrongfully
17 denied Social Security survivor’s benefits based on SSA’s unconstitutional incorporation of, and
18 reliance upon, discriminatory state laws previously barring same-sex couples from marriage.

19 12. Together, Ms. Thornton and the National Committee respectfully ask this Court to
20 declare unlawful and enjoin SSA’s unconstitutional incorporation of, and reliance upon,
21 discriminatory state laws previously barring same-sex couples from marriage when determining
22 eligibility for survivor’s benefits.

23 **PARTIES**

24 13. Named Plaintiff Helen Josephine Thornton is a citizen of the United States. She
25 resides within this judicial district and the State of Washington.

26 14. Plaintiff National Committee to Preserve Social Security and Medicare is a
27 nationwide membership organization. Ms. Thornton is a member of the National Committee.

28 15. Headquartered in Washington, D.C., the National Committee was founded in

1 1982 by former Congressman James Roosevelt—son of President Franklin Roosevelt, who
2 signed the Act into law over eighty years ago. The National Committee has over two million
3 members and supporters nationwide, and its work is supported through annual membership dues
4 and contributions.

5 16. The National Committee is committed to ensuring that social security benefits are
6 widely accessible, including to same-sex spouses. The National Committee and its advocacy
7 arm have long issued statements, letters, and reports advocating for access to social security
8 benefits for same-sex spouses, widows and widowers, and children of their families, and
9 regularly communicates social security developments of relevance to same-sex couples through
10 its website. Following the *Windsor* decision, the National Committee developed the “Know
11 Your Rights” initiative to alert lesbian, gay, bisexual, and transgender elders about social
12 security policy developments, and participated in litigation on behalf of its members to ensure
13 that SSA respected all lawfully-entered marriages of same-sex couples, regardless of
14 discriminatory laws in effect in the couple’s place of domicile.

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

20 **JURISDICTION AND VENUE**

21 18. The Court has jurisdiction under 42 U.S.C. § 405(g) and 28 U.S.C. § 1361.
22 Jurisdiction is proper pursuant to 42 U.S.C. § 405(g) because Plaintiffs’ claims arise under the
23 Social Security Act and its implementing regulations.

24 19. Venue is proper in this judicial district pursuant to 42 U.S.C. § 405(g) and 28
25 U.S.C. § 1391(b) because Ms. Thornton is a resident in this judicial district. Venue is proper in
26 the Seattle Division of this district because a substantial part of the events or omissions giving
27 rise to Plaintiff’s claims occurred in King County, Washington, including that (i) the earning
28 record of Ms. Brown on which Ms. Thornton seeks survivor’s benefits is based in part on work

1 that was performed within King County, (ii) determinations, actions, and decisions on
2 Ms. Thornton's Application occurred within the Seattle Region of SSA, and (iii) the relief
3 requested for Ms. Thornton would flow through Regional Commissioner Mary Lisa
4 Lewandowski, who oversees the Seattle Region, and operations for the Seattle Region are
5 located in King County.

6 CLASS ACTION ALLEGATIONS

7 20. Named Plaintiff brings this action for herself and, pursuant to Rules 23(a) and
8 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of the class of persons similarly
9 situated ("the Class").

10 21. Named Plaintiff proposes the following Class definition, subject to amendment as
11 appropriate: All persons nationwide who: (i) presented or will present claims for social security
12 survivor's benefits based on the work history of a same-sex partner; (ii) were denied or will be
13 denied social security spousal survivor's benefits based on not satisfying the marriage
14 requirements of the Social Security Act; and (iii) were barred from marrying and otherwise
15 satisfying such requirements because of unconstitutional laws prohibiting same-sex couples from
16 marriage prior to their partner's death.

17 22. Named Plaintiff represents and is a member of the Class.

18 23. The Class is so numerous that joinder of all members is impracticable. While the
19 exact number of class members is currently unknown, on information and belief there are, at a
20 minimum, significantly more than forty surviving same-sex partners who have been deprived of
21 spousal survivor benefits because unconstitutional marriage laws prevented them from marrying.

22 24. There are questions of law and fact common to the Class including:

23 (i) whether SSA's denial of spousal survivor's benefits to those who would have
24 otherwise qualified for those benefits but for their unconstitutional exclusion from marriage
25 violates the right to equal protection guaranteed by the Fifth Amendment to the U.S. Constitution
26 by discriminating against them on the bases of sexual orientation and sex; and

27 (ii) whether SSA's denial of spousal survivor's benefits to those who would have
28 otherwise qualified for those benefits but for their unconstitutional exclusion from marriage

1 violates the right to substantive due process guaranteed by the Fifth Amendment to the U.S.
2 Constitution by infringing their fundamental liberty interests in forming an intimate family
3 relationship with a person of the same sex.

4 25. The claims of Named Plaintiff are typical of those in the Class, in that they arise
5 from the same policy and practice of SSA to deny spousal survivor's benefits to same-sex
6 survivors who were unable to marry because they were unconstitutionally barred from doing so.

7 26. Named Plaintiff can and will fairly and adequately protect the interests of the
8 Class and does not have any interests antagonistic to the Class. Named Plaintiff and the Class all
9 seek a declaration that Defendants' denial of spousal survivor benefits to same-sex partners who
10 were barred from marrying due to unconstitutional marriage laws is itself unconstitutional, as
11 well as injunctive relief requiring Defendants to end this unconstitutional exclusion and process
12 Plaintiffs' claims for benefits.

13 27. SSA's challenged policy and practice apply generally to the Class by precluding
14 all Class members from obtaining spousal survivor's benefits based on their inability to marry
15 due to unconstitutional marriage bans. The final declaratory and injunctive relief sought is
16 appropriate respecting the Class as a whole.

17 PRESENTMENT AND EXHAUSTION

18 28. Ms. Thornton met the presentment requirement of 42 U.S.C. § 405(g) when she
19 filed her Application for Widow's or Widower's Insurance Benefits ("Application") in 2015.
20 Class members have also presented their claims to the Commissioner within the meaning of 42
21 U.S.C. § 405(g).

22 29. The National Committee has met the presentment requirement of 42 U.S.C. § 405(g)
23 both by the actions of their member, Ms. Thornton, and by its letter to SSA dated October 15, 2018.

24 30. Ms. Thornton thereafter exhausted her administrative remedies. The July 23,
25 2018 "Notice of Appeals Council Action" denying review of the Administrative Law Judge
26 decision dated January 10, 2017 is final agency action regarding Ms. Thornton's Application.
27 This action also raises a constitutional challenge that includes a request for injunctive and declaratory
28

1 relief that is collateral to an individual determination of benefits and outside SSA's administrative
2 competence to adjudicate.

3 31. Any exhaustion requirement should be waived as to the Class because Class
4 Members' claims are collateral to their respective claims for benefits, Class Members are irreparably
5 harmed, and exhaustion would be futile.

6 32. The National Committee has met any exhaustion requirement through Ms.
7 Thornton's exhaustion of her administrative remedies and any further exhaustion requirement
8 should be waived.

9
10 **GENERAL ALLEGATIONS**

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

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

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

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

27 36. Ms. Brown and Ms. Thornton jointly shared in all of the costs and responsibilities
28 associated with nurturing, raising, and educating their son. They also jointly assumed the

1 substantial financial costs of Ms. Brown's graduate school education.

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

10 38. Ms. Brown and Ms. Thornton cared for each other in sickness and in health.
11 Ms. Thornton was the primary caretaker of Ms. Brown from Ms. Brown's diagnosis with ovarian
12 cancer in 2003 until her death in 2006. Ms. Brown's chemotherapy and other treatments had
13 horrible side effects. Ms. Brown was unable to keep food down for extended periods of time and
14 was extremely weak. Ms. Thornton provided Ms. Brown's personal care during her three-year
15 battle with cancer.

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

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

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

26 42. The Will executed by Ms. Brown states that Ms. Brown is in a domestic
27 partnership with Ms. Thornton, and that Asa Brown Thornton is Ms. Brown's son. Ms. Brown
28 designated Ms. Thornton as her personal representative, and bequeathed her estate to

1 Ms. Thornton, demonstrating Ms. Brown’s intent for whatever financial resources she had at the
2 end of her life to care for Ms. Thornton. Ms. Thornton’s Will states that she is in a domestic
3 partner relationship with Ms. Brown, designated Ms. Brown as her personal representative, and
4 bequeathed her estate to Ms. Brown.

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

7 43. On many occasions during their 27-year relationship, Ms. Thornton and
8 Ms. Brown discussed and demonstrated their desire to marry to each other and to be recognized
9 by the State of Washington and by the United States as a married couple with the same status and
10 legal rights as married different-sex couples. Throughout their relationship, however, and until
11 2012, six years after Ms. Brown’s death, Washington barred same-sex couples from marriage.

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

15 45. In December 1999, Ms. Brown and Ms. Thornton, along with other similarly-
16 situated same-sex couples, filed a legal claim against the State of Washington challenging the
17 denial of health insurance benefits to same-sex partners of employees of the State of
18 Washington. Ms. Brown was a state employee, and she and Ms. Thornton successfully
19 advocated for the State to provide the same health insurance benefits to the same-sex partners of
20 state employees as those provided to the different-sex spouses of state employees.

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

24 47. Pursuant to the settlement of the claim against the State of Washington, on
25 November 8, 2000, Ms. Thornton and Ms. Brown executed, and the State of Washington
26 acknowledged, a State of Washington “Declaration of Marriage/Same-Sex Domestic
27 Partnership” form. The form required affirmation of several facts concerning their relationship
28 under penalty of perjury, including, among other things, that: they were in a same-sex domestic

1 partnership; they shared the same residence; they agreed to joint responsibility for basic living
2 expenses; they were each other's sole domestic partner and were responsible for each other's
3 common welfare; and they were "same-sex partners who are barred from a lawful marriage."

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

7 49. The uncontested evidence introduced by Ms. Thornton in the administrative
8 process on the Application demonstrated that Ms. Brown and Ms. Thornton would have married,
9 but for the then-existence of Washington law barring same-sex couples from marriage. The
10 evidence introduced by Ms. Thornton in the administrative proceedings documents that on many
11 occasions Ms. Thornton and Ms. Brown discussed their desire to be married and to be
12 recognized by the State of Washington and the United States as a married couple with the same
13 status and legal rights as married different-sex couples.

14 50. Throughout Ms. Thornton and Ms. Brown's committed relationship, they were
15 barred from marriage by state law. In 1971, a same-sex couple in Washington filed suit arguing
16 that the exclusion of same-sex couples from marriage violated the Washington Constitution, but
17 the Washington Court of Appeals ruled against the couple, *Singer v. Hara*, 11 Wash. App. 247
18 (1974), and the Washington Supreme Court denied review, *Singer v. Hara*, 84 Wash. 2d 1008
19 (1974).

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

27 52. In 1998, the Washington Legislature enacted a statutory ban barring same-sex
28 couples from marriage. Governor Gary Locke vetoed the legislation, noting that Washington

1 law already barred marriages between same-sex couples, but the Legislature overrode his veto.
2 In 2006, the Washington Supreme Court upheld the law against state constitutional challenge in
3 *Andersen v. King County*, 158 Wash. 2d 1 (2006).

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

8 54. Washington’s law excluding same-sex couples from marriage was also void *ab*
9 *initio* in light of the Supreme Court’s decision in *Obergefell*. As a result of this unconstitutional
10 law, Ms. Brown and Ms. Thornton were barred from marriage and unable to be recognized as
11 spouses at the time of Ms. Brown’s death.

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

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

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

1 remains as true today as in 1938.

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

6 58. Generally, an individual must be fully insured under the social security program
7 before benefits may be paid—whether directly to the individual or to his or her spouse or survivors.
8 With some exceptions, status as an insured person is earned through years worked and wages earned.
9 To be fully insured, generally a worker needs at least one quarter of covered work for each
10 calendar year between the time he or she turned 21 and the earliest of: (1) the year before the
11 worker attained age 62; (2) the year before the worker died; or (3) the year before the worker
12 became disabled. 42 U.S.C. §§ 413-14; 20 C.F.R. 404.110.

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

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

24 **SSA Denies Ms. Thornton's Application for Benefits**

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

28 62. On June 11, 2015, Ms. Thornton timely filed a Request for Reconsideration of the

1 denial of her Application with SSA.

2 63. By letter dated December 8, 2015, and received by Ms. Thornton on
3 December 15, 2015, SSA denied Ms. Thornton's Request for Reconsideration.

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

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

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

16 67. On October 18, 2016, the ALJ conducted a hearing on Ms. Thornton's
17 Application. Ms. Thornton presented additional testimony, and Ms. Thornton's counsel
18 presented argument. No witness contested any of the evidence introduced by Ms. Thornton
19 during the hearing.

20 68. The ALJ kept the hearing record open to provide an opportunity to Ms. Thornton
21 to submit additional evidence in support of her Application. On November 4, 2016,
22 Ms. Thornton provided additional factual evidence to the ALJ supporting her Application,
23 including the "Declaration of Marriage/Same-Sex Domestic Partnership" form described above.

24 69. The ALJ issued a decision dated January 10, 2017 concluding that Ms. Thornton
25 is not eligible for surviving spouse benefits, because "the claimant was not legally married to the
26 insured."

27 70. On March 9, 2017, Ms. Thornton timely filed a Request for Appeals Council
28 Review of the ALJ Decision with the SSA.

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

4 72. On August 31, 2017, Ms. Thornton filed a Statement of Facts and Law with
5 SSA’s Office of Disability Adjudication and Review.

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

12 74. Taken together, SSA’s actions violate the holdings of *Obergefell*, *Windsor*, and
13 similar lower court decisions. The denial of Ms. Thornton’s application is based on SSA’s
14 reliance on Washington’s unconstitutional and discriminatory marriage law that was void *ab*
15 *initio*, including throughout the relationship of Ms. Thornton and Ms. Brown and at the time of
16 Ms. Brown’s death.

17 75. Because Ms. Thornton was deemed ineligible for spousal survivor benefits, she began
18 collecting social security benefits at age 62 based on her own work record. Had she been eligible for
19 survivor’s benefits, she would have been able to delay collecting benefits based on her own work
20 record until age 66 or later. Receiving social security benefits based on her own record at the early
21 retirement age of 62 reduces Ms. Thornton’s retirement benefits throughout her life. See 20 C.F.R.
22 404.410(c)(1) (setting forth reduction of benefits received prior to full retirement age).

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

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

6 78. Ms. Thornton has fully exhausted her administrative remedies and SSA has not
7 reversed its denial of her request for survivor benefits.

8 79. Following SSA’s final denial of Ms. Thornton’s application for survivor benefits,
9 on October 15, 2018, Plaintiff National Committee sent a “presentment” letter to Defendant SSA
10 Commissioner Berryhill on behalf of Ms. Thornton and all other similarly-situated members of
11 the National Committee. In the letter, the National Committee “request[ed] that SSA cease
12 applying unconstitutional state marriage bans to deny Social Security benefits to surviving same-
13 sex partners and deem those surviving partners who would have married but for those
14 unconstitutional laws barring marriage between same-sex couples eligible for survivor’s
15 benefits.” The National Committee requested a response from SSA by November 2, 2018.

16 80. The National Committee’s support of Ms. Thornton is in furtherance of its overall
17 mission to protect, preserve, promote, and ensure the financial security, health, and well-being of
18 current and future generations of Americans. A central focus of that mission is the protection of
19 social security. In addition to its support of Ms. Thornton, the National Committee represents
20 the interests of other similarly-situated aging and disabled members and their same-sex spouses
21 and survivors, many of whom would suffer irreparable harm if denied the support of social
22 security benefits at this stage of life.

23 81. On November 8, 2018, SSA responded to the National Committee’s presentment
24 letter, noting that the matters addressed therein are the subject of this pending litigation.

25 82. Pursuant to SSA’s official position, surviving same-sex partners like
26 Ms. Thornton are categorically excluded from qualifying for benefits as a surviving spouse
27 because they were barred from marriage by laws that have since been held unconstitutional.

28 83. The exclusion of surviving same-sex partners like Ms. Thornton from eligibility

1 for survivor’s benefits based on discriminatory marriage laws harms these surviving partners and
2 deprives them of an important legal protection. As the Supreme Court recognized in *Windsor*,
3 the federal government’s refusal to recognize same-sex couples’ relationships “denies or reduces
4 benefits allowed to families upon the loss of a spouse and parent, benefits that are an integral part
5 of family security.” 570 U.S. at 773. The Supreme Court again recognized in *Obergefell* that it
6 was unconstitutional to deprive same-sex couples of “the rights and benefits of survivors”
7 afforded through marriage. 135 S. Ct. at 2601.

8 84. Survivor’s benefits are as important to surviving same-sex partners who would
9 have married their loved ones but for discriminatory marriage laws, as they are to surviving
10 different-sex spouses who had the opportunity to marry their loved ones. Both groups are
11 similarly situated in every relevant respect. The only distinction between them is the
12 unconstitutional barrier to marriage faced by the same-sex partners.

13 85. There is no rational—let alone important or compelling—justification for
14 excluding same-sex surviving partners like Ms. Thornton from survivor’s benefits. The cost of
15 providing survivor’s benefits to surviving same-sex partners is not greater than the cost of
16 providing survivor’s benefits to surviving different-sex spouses. The administration of benefits
17 to surviving same-sex partners like Ms. Thornton is also no more burdensome than the factual
18 determinations that SSA makes in adjudicating other spousal benefits, including where SSA
19 determines whether a common law marriage existed between a couple.

20 86. SSA’s incorporation of, and reliance upon, discriminatory state laws previously
21 barring same-sex couples from marriage in making a federal benefits determination violates the
22 constitutional rights of Ms. Thornton and other similarly situated surviving same-sex partners,
23 including National Committee members, to equality and liberty.

24 **CLAIMS FOR RELIEF**

25 **FIRST CLAIM:**

26 **VIOLATION OF EQUAL PROTECTION**

27 87. Plaintiffs reallege paragraphs 1 through and including paragraph 71 as if fully set
28 forth herein.

1 88. Defendant has violated the right to equal protection under the Fifth Amendment
2 of the U.S. Constitution by treating Ms. Thornton and other surviving same-sex partners barred
3 from being married to their deceased partners by unconstitutional laws differently than surviving
4 different-sex spouses for purposes of eligibility for surviving spouse benefits under the Social
5 Security Act.

6 89. Defendant's differential treatment—including its incorporation of, and reliance upon,
7 discriminatory state laws excluding same-sex couples from marriage—discriminates on the basis of
8 sexual orientation, and is therefore subject to heightened scrutiny, which Defendant's actions cannot
9 withstand. Defendant's application of discriminatory state marriage restrictions to deny benefits
10 discriminates against Ms. Thornton and other same-sex surviving partners because of their sexual
11 orientation.

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

14 91. Sexual orientation bears no relation to an individual's ability to contribute to
15 society.

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

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

25 94. Lesbians and gay men are a discrete and insular minority, and ongoing prejudice
26 against them continues seriously to curtail the operation of those political processes that might
27 ordinarily be relied upon to protect minorities. Lesbians and gay men lack express statutory
28 protection against discrimination in employment, public accommodations, and housing at the federal

1 level and in more than half the states. They are systematically underrepresented in federal, state, and
2 local democratic bodies. And 30 states have historically sought to strip them of the right to marry by
3 passing state constitutional amendments barring them from marriage.

4 95. Defendant's differential treatment also discriminates based on sex, by applying
5 standards to deny social security benefits based on state laws barring marriage to a person of the
6 same sex. Defendant's application of this sex-based classification deprives surviving same-sex
7 partners of survivor's benefits because of their sex; if Ms. Thornton were a man, the laws of the
8 State of Washington would have allowed Ms. Thornton and Ms. Brown to marry, and Ms. Thornton
9 and Ms. Brown would be recognized as married for purposes of social security benefits. Such sex-
10 based classifications are subject to intermediate scrutiny.

11 96. This discrimination also impermissibly enforces conformity with sex stereotypes by
12 excluding Ms. Thornton and other surviving same-sex partners from social security benefits because
13 they have failed to conform to the sex-based stereotypes that women should marry men, and that
14 men should marry women. This, too, evokes intermediate scrutiny.

15 97. Moreover, Defendant denied Ms. Thornton and other surviving same-sex partners of
16 equal access to and protections for their fundamental liberty interests in forming an intimate family
17 relationship with a person of the same sex.

18 98. Defendant cannot articulate any legitimate or rational basis—let alone a
19 compelling or important and sufficiently-tailored government interest—for discriminating
20 against Ms. Thornton and other surviving same-sex partners.

21 **SECOND CLAIM:**

22 **VIOLATION OF DUE PROCESS**

23 99. Plaintiffs reallege and incorporate by reference all allegations contained in
24 paragraphs 1 through and including paragraph 71 as if set forth fully herein.

25 100. Defendant has violated the right to substantive due process under the Fifth
26 Amendment of the U.S. Constitution by denying spousal survivor's benefits to Ms. Thornton and
27 other surviving same-sex partners barred from being married to their deceased partners by
28 unconstitutional laws.

1 101. Ms. Thornton and other surviving same-sex partners have a fundamental liberty
2 interest in forming an intimate family relationship with a person of the same sex without
3 intrusion, interference, or penalty by the government. Defendant’s deprivation of survivor’s
4 benefits, which are an integral part of family security, substantially infringes upon that liberty
5 interest.

6 102. Defendant’s incorporation of, and reliance upon, discriminatory and
7 unconstitutional state laws denying same-sex couples of the right to marry violates the liberty
8 interests recognized in *Obergefell* and *Windsor*. Defendant denies same-sex couples like
9 Ms. Thornton and Ms. Brown of any recognition of their relationships and the important social
10 security protections that flow from that recognition.

11 103. Defendant cannot articulate any legitimate or rational basis—let alone a
12 compelling or important government interest—for infringing upon the liberty interests of Ms.
13 Thornton and other surviving same-sex partners.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Certify this action to be a proper class action pursuant to Fed. R. Civ. P. 23, establishing a Class the Court deems appropriate, finding that Named Plaintiff is a proper representative of the Class, and appointing the lawyers and law firms representing the Named Plaintiff as Counsel for the Class.

2. Declare that Defendant’s denial of social security survivor’s benefits to Ms. Thornton and other surviving same-sex partners who were barred from marrying their deceased partners by unconstitutional marriage laws excluding same-sex couples is unconstitutional.

3. 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 is unconstitutional and cannot be used as a basis for denying benefits to Ms. Thornton and other surviving same-sex partners who were barred from marrying their deceased partners by unconstitutional marriage laws.

4. 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.

5. 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 barred from marrying by unconstitutional laws from eligibility for social security spousal survivor’s benefits; and
- (2) applying laws excluding same-sex couples from marriage to the determination of eligibility for social security survivor’s benefits;

1 b) requiring Acting Commissioner Berryhill, her successors in officer, her
2 agents, employees, and all persons acting in concert with her or her
3 successors to reverse and re-adjudicate all of Class Members' claims
4 that had been denied, and cease to deny future claims, for spousal
5 survivor's benefits based solely on a claimant's lack of marital
6 relationship to a deceased worker of the same sex due to
7 unconstitutional marriage bans;

8 c) requiring Acting Commissioner Berryhill, her successors in office, her
9 agents, employees, and all persons acting in concert with her or her
10 successors to recognize Helen Josephine Thornton as entitled to social
11 security widow's benefits based on the work history of Margery B.
12 Brown;

13 d) ordering Acting Commissioner Berryhill, her successors in office, her
14 agents, employees, and all persons acting in concert with her or her
15 successors to revise any agency rules or regulations that apply or rely
16 upon laws barring same-sex couples from marriage for social security
17 benefit determinations;

18 e) requiring Acting Commissioner Berryhill, her successors in office, her
19 agents, employees, and all persons acting in concert with her or her
20 successors to direct all SSA staff who render social security benefit decisions
21 at any level to correct any internal guidelines, directives, or other written
22 material that apply or rely upon laws barring same-sex couples from
23 marriage for social security benefit determinations.

24 6. Award reasonable attorneys' fees and allowed costs pursuant to the Equal
25 Access to Justice Act, 28 U.S.C. § 2412, or any other applicable statutory
26 provision.

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

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1 Date: March 21, 2019

2 Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that all participants in the case are registered CM/ECF users and that service of the foregoing document will be accomplished by the CM/ECF system on March 21, 2019.

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