

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**KERRY WIESSMANN and
BETH G. RESKO**

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No. 11-cv-

Plaintiffs,

v.

**STATE COLLEGE AREA SCHOOL
DISTRICT,**

Defendant.

VERIFIED COMPLAINT

INTRODUCTION

1. Defendant State College Area School District (“SCASD”) follows a written policy that discriminates in the benefits it offers to employees: the District provides family insurance benefits that include unmarried SCASD employees’ opposite-sex domestic partners, while excluding identically-situated employees’ same-sex domestic partners. The SCASD benefits policy expressly states that, “[d]omestic partners cannot be the same gender.” Kerry Wiessmann is an unmarried SCASD employee who seeks to include her

female domestic partner of over twenty-five years in the family health plan she purchases from SCASD. SCASD's refusal to provide Ms. Wiessmann and her partner, Beth Resko, with the same family health benefits offered to other employees and their families violates their rights under the First and Fourteenth Amendments to the U.S. Constitution including the right to equal protection of the laws without regard to sexual orientation or sex and the right to intimate association; as well as the Equal Rights Amendment of the Pennsylvania Constitution.

JURISDICTION AND VENUE

2. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the United States Constitution and is brought under 42 U.S.C. §1983. The Court has jurisdiction over this civil rights action pursuant to 28 U.S.C. §1331(a) and §1343(a)(3) and (4). This Court has jurisdiction pursuant to 28 U.S.C. §§2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper. The Court has supplemental jurisdiction over Plaintiffs' claims under the Pennsylvania Constitution pursuant to 28 U.S.C. §1367.
3. Plaintiffs' claims arose in Centre County, Pennsylvania, and, therefore, venue

properly lies within the Middle District of Pennsylvania pursuant to 28 U.S.C. §1391(b)(2).

PARTIES

4. Plaintiff Kerry Wiessmann became an employee of the State College Area School District in 2003 and has worked for the District for all but one year since then. Beth G. Resko is Ms. Wiessmann's domestic partner. The two women have shared their lives, home and financial obligations for over twenty-five years. They are also raising two children together. Plaintiffs seek equal access to the family health insurance benefits that Defendant offers to its employees with spouses and opposite-sex domestic partners but denies to employees like Ms. Wiessmann who have same-sex domestic partners like Ms. Resko.
5. Defendant State College Area School District is a political subdivision of the Commonwealth of Pennsylvania. SCASD maintains its administrative office at 131 W. Nittany Avenue, State College, PA 16801. Defendant is located within the Borough of State College.

FACTS

6. Defendant provides family medical benefits to its employees. It provides coverage for children of employees. It covers spouses. And it covers domestic partners but excludes domestic partners who are the same gender as the SCASD employee, even if they otherwise qualify for coverage. The policy provides:

Dependent – Domestic Partner

An individual must qualify as the domestic partner of the subscriber to enroll in this coverage as a dependent domestic partner.

Domestic partners cannot be the same gender.

Capital reserves the right to request documentation evidencing the domestic partnership by submission of proof of three (3) or more of the following documents:

- a domestic partnership agreement;
- a joint mortgage or lease;
- a designation of one of the partners as beneficiary in the other partner's will;
- a durable property and health care powers of attorney;
- a joint title to an automobile, or joint bank account or credit account; or
- such other proof as is sufficient to establish economic interdependency under the circumstances of the particular case.

(Exhibit A)

7. Ms. Resko would qualify as a covered domestic partner under Defendant's policy, if not for the exclusion of same-gender partners.

8. Plaintiffs own their home together in joint tenancy with rights of survivorship and have joint loans secured by the property. They hold their financial assets in accounts with rights of survivorship. They have joint credit accounts. Each contributes her income to the household and all bills are paid from those funds. Their cars are jointly owned and jointly insured.
9. Plaintiffs have executed mutually beneficial wills, durable powers of attorney and health care powers of attorney. They have entered into a Living and Sharing Agreement to define their mutual financial obligations. Plaintiffs each carry life insurance benefiting the other.
10. Plaintiffs are both the legal parents of their two children and share equally in parenting decisions and responsibilities.
11. In short, Plaintiffs qualify as “domestic partners” under SCASD’s employee benefits policy.
12. Ms. Wiessmann has maintained – and paid for – a family medical policy since she became an employee of SCASD. Ms. Wiessmann first sought to include her partner in that family policy when she started employment with SCASD but was told that SCASD did not offer such benefits.
13. Plaintiffs therefore purchased individual health insurance for Ms. Resko, who worked as an independent contractor, at significant cost.

14. In May 2009, Ms. Wiessmann again asked to include her partner in her SCASD family benefits policy. At that time, Ms. Wiessmann learned that SCASD had a provision providing such benefits for domestic partners. But Dennis Guth, the SCASD Director of Human Resources, told her that such benefits were only available to opposite-gender domestic partners.
15. In April 2011, Ms. Wiessmann again asked Mr. Guth for domestic partner coverage as the couple began planning for Ms. Resko's retirement. Mr. Guth denied the request, reiterating that SCASD would cover only opposite-sex domestic partners.
16. Plaintiffs have incurred significant economic and other damages as a result of SCASD's exclusion of same-sex domestic partners from its family benefits plan.
17. For many years, Ms. Resko worked as an independent contractor and the couple purchased individual health insurance for her at considerable cost. In 2007, the couple grew increasingly concerned about the cost of obtaining adequate individual coverage for Ms. Resko. As a result of this concern, Ms. Resko obtained a position as an employee in the same agency for which she had been an independent contractor. That change in employment status provided her with group health coverage, at a current approximate cost of

\$6600 per year. The change also resulted in a significant reduction of Ms.

Resko's income and she has had to work longer hours in an effort to maintain the same level of income she earned as an independent contractor.

18. The couple remains concerned about their ability to maintain health coverage for Ms. Resko. Ms. Resko is of retirement age and would like to reduce her work hours in the near future. If she does that, however, she will lose her group health benefits. Ms. Resko may not be able to obtain individual health insurance that provides the coverage she needs, or the couple may have to pay exorbitant rates for that insurance, because Ms. Resko has an existing medical condition that requires ongoing treatment.
19. In addition to the economic consequences of SCASD's discrimination, Ms. Wiessmann has suffered, and will continue to suffer, emotional pain and suffering because her longtime employer views and treats her as a second-class employee deserving of less compensation, for reasons having nothing to do with the value of her work. SCASD's policy demonstrates disrespect for Ms. Wiessmann as a person and reinforces stigma against her as a member of a minority group.
20. There is not, and cannot be, any legitimate basis for this discrimination.

21. SCASD's discrimination on the basis of sexual orientation violates the non-discrimination law of State College Borough.

CLAIMS

Count I: Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 (Sexual Orientation Discrimination)

22. Plaintiffs incorporate herein by reference the allegations of the preceding paragraphs.
23. Defendant's policy denies employment benefits to lesbian and gay employees and their families that it provides to similarly situated heterosexual employees and their families, thereby depriving Plaintiffs of the right to equal protection under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
24. Defendant's discrimination on the basis of sexual orientation in the provision of employment benefits advances no legitimate state interest, let alone an important or compelling interest.
25. These constitutional abuses directly and proximately cause Plaintiffs emotional pain and suffering, violations of their civil rights, and economic

harm.

26. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from continuing its policy of discriminating in its provision of employee benefits on the basis of the sexual orientation of its employees and/or their domestic partners.

**Count II: Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution and 42
U.S.C. § 1983
(Sex discrimination)**

27. Plaintiffs incorporate herein by reference the allegations of the preceding paragraphs.
28. Defendant's policy provides differential treatment on the basis of sex. It disadvantages Plaintiffs based on sex because the only reason Ms. Resko is denied family health insurance coverage is that Ms. Wiessmann is female (and because Ms. Resko is female). If Ms. Wiessmann were a similarly situated male, she would be entitled to coverage for her female partner (or if Ms. Resko were male, she would be covered).
29. Defendant's less favorable treatment of Plaintiffs on the basis of their sex deprives Plaintiffs of the right to equal protection under the Fourteenth

Amendment to the United States Constitution.

30. Defendant's discrimination on the basis of sex in the provision of employment benefits advances no legitimate state interest, much less an important or compelling one.
31. These constitutional abuses directly and proximately cause Plaintiffs emotional pain and suffering, violations of their civil rights, and economic harm.
32. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from continuing its policy of discriminating in its provision of employee benefits on the basis of the sex of its employees and/or their domestic partners.

Count III: Violation of the Equal Rights Amendment (Pa. Const. Art. I § 28)

33. Plaintiffs incorporate herein by reference the allegations of the preceding paragraphs.
34. Defendant's policy provides differential treatment on the basis of sex. It disadvantages Plaintiffs based on sex because the only reason Ms. Resko is denied family health insurance coverage is that Ms. Wiessmann is female

(and because Ms. Resko is female). If Ms. Wiessmann were a similarly situated male, she would be entitled to coverage for her female partner (or if Ms. Resko were male, she would be covered).

35. Defendant's less favorable treatment of Plaintiffs on the basis of their sex denies Plaintiffs equality of rights under law because of sex in violation of Pennsylvania's Equal Rights Amendment.
36. Defendant's discrimination on the basis of sex in the provision of employment benefits advances no legitimate state interest, much less an important or compelling one.
37. These constitutional abuses directly and proximately cause Plaintiffs emotional pain and suffering, violations of their civil rights, and economic harm.
38. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from continuing its policy of discriminating in its provision of employee benefits on the basis of the sex of its employees and/or their domestic partners.

**Count IV: Violation of the Right to Intimate Association Under the
First and Fourteenth Amendments to the United States
Constitution and 42 U.S.C. § 1983**

39. Plaintiffs incorporate herein by reference the allegations of the preceding paragraphs.
40. Defendants' family benefits policy penalizes employees who exercise the right to form intimate relationships with same-sex domestic partners by denying them access to coverage for their domestic partners.
41. Defendant's policy of penalizing employees because of their exercise of this fundamental right violates the First and Fourteenth Amendments to the United States Constitution.
42. Defendant has no legitimate interest to support penalizing the exercise of this right, let alone an important or compelling one.
43. As a direct and proximate result of those constitutional abuses, Plaintiffs have suffered, and will continue to suffer, emotional pain and suffering, and loss of liberty, as well as economic harm.
44. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant is enjoined from continuing its policy of penalizing employees for exercising the right to

form intimate relationships with same-sex domestic partners.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request that this Court provide the following relief:

(a) Declare that the Defendant's exclusion of same-sex domestic partners from its employee benefit plans violates Plaintiffs' right to equal protection guaranteed by the Fourteenth Amendment to the U.S Constitution, the right to intimate association under the First and Fourteenth Amendments to the U.S. Constitution, and deprives Plaintiffs of equality of rights under law because of sex in violation of Pennsylvania's Equal Rights Amendment, Pa. Const. Art. I § 28;

(b) Issue preliminary and permanent relief enjoining Defendant from continuing to exclude health insurance coverage for employees' same-sex domestic partners;

(c) Award Plaintiffs compensatory damages;

(d) Award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C.

§1988; and

(e) Grant such other relief as this Court deems just and appropriate.

Respectfully submitted,

Date: May 17, 2011.

/s/ Andrew J. Shubin

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*Admission *pro hac vice* anticipated

