

**IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO**

THOMAS E. BRINKMAN, JR.,
3215 Hardisty Avenue
Cincinnati, Ohio 45208,

Plaintiff,

v.

MIAMI UNIVERSITY,
501 E. High Street
Oxford, Ohio 45056,

and

FRED G. WALL, LAUREL DAWSON,
KATHLEEN M. ZOUHARY, CHANDRA
R. SHAH, LOLITA M. McDAVID, JOHN
CHRISTIE, RICHARD K. SMUCKER, S.
KAY GEIGER, DAVID F. HERCHE,
BRIAN W. SHRODER and TAMIKA
NUNLEY, in their official capacity as
members of the BOARD OF TRUSTEES of
MIAMI UNIVERSITY,
501 E. High Street
Oxford, Ohio 45056,

and

JIM GARLAND, in his official capacity as
PRESIDENT of MIAMI UNIVERSITY,
501 E. High Street
Oxford, Ohio 45056,

Defendants.

Case No.

**COMPLAINT – OTHER CIVIL
(FOR DECLARATORY JUDGMENT AND INJUNCTION)**

Now comes Plaintiff Thomas E. Brinkman, Jr. and for his Complaint against Defendants Miami University, Fred G. Wall, Laurel Dawson, Kathleen M. Zouhary, Chandra R. Shah, Lolita M. McDavid, John Christie, Richard K. Smucker, S. Kay Geiger, David F. Herche, Brian W. Shroder, Tamika Nunley, and Jim Garland (collectively referred to as the “University”) states as follows:

INTRODUCTION

1. Plaintiff brings this action against the University seeking to have enjoined its continuing violation of Article XV, Section 11 of the Ohio Constitution, which forbids the State and its political subdivisions to create or recognize a legal status for nonmarital relationships that intends to approximate marriage in certain enumerated respects. In violation of this constitutional prohibition, the University has created and given recognition to a legal status of “domestic partnership” for a certain form of same-sex cohabitation. The University extends this legal status to relationships containing those who are otherwise qualified to marry under State law, but who do not seek to marry, but rather to maintain a marriage-mimicking relationship with a person of the same sex. Having created this legal status for the relationship, the University then makes available certain benefits to those participants in the relationship.

PARTIES

2. Plaintiff Thomas E. Brinkman, Jr. is a citizen, elector and taxpayer of the State of Ohio who maintains an interest in the execution of the laws of the State, and particularly in having constitutional mandates and prohibitions enforced. Additionally, Mr. Brinkman has paid and continues to pay tuition fees to the University for the education of his daughter and son who are students at that institution. He desires that his tax dollars and tuition payments be utilized

lawfully, and not applied by the University to finance the constitutional violation challenged herein.

3. Defendant Miami University is a public university functioning under the authority of Title XXXIII of the Revised Code, and is an institution and instrumentality of the State of Ohio.

4. Defendants Fred G. Wall, Laurel Dawson, Kathleen M. Zouhary, Chandra R. Shah, Lolita M. McDavid, John Christie, Richard K. Smucker, S. Kay Geiger, David F. Herche, Brian W. Shroder, and Tamika Nunley are each members of the Board of Trustees of Miami University, and are named herein in their official capacities as such. These Defendants' duties include, among others, the formulation and approval of policies for, and the oversight of operation of Miami University. These Defendants bear responsibility for the existence of the policy herein challenged.

5. Defendant Jim Garland is the President of Miami University, and is named herein in his official capacity as such. This Defendant is the chief administrative officer of the University and his duties include, among others, executing the policies of Miami University, and overseeing the operation of that university. This Defendant bears responsibility for the existence and execution of the policy herein challenged.

THE MARRIAGE AMENDMENT

6. Article XV, Section 11 of the Ohio Constitution provides:

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

THE UNIVERSITY'S DOMESTIC PARTNER POLICY

7. The University has created and recognizes a legal status which it has designated variously as “same sex domestic partnership” and “domestic partnership.” The University grants this legal status to same-sex relationships only, because it identifies marriage as a legal option available to those in opposite-sex relationships, and the University seeks to provide a legal status which approximates marriage to those in a relationship whose composition disallows it to qualify for status as a marriage.

8. The University's policy directs that before benefits may be extended to the “domestic partner” of a University employee, that employee with a domestic partner must qualify his relationship by means of filing an affidavit provided by the University (identified as “Affidavit of Same Sex Domestic Partnership,” and attached hereto as **Exhibit A**).

9. The University requires that before a relationship may be accorded “same sex domestic partnership” status, it must be shown that the employee and the domestic partner:

- share a residence;
- are in a long-term committed relationship and have been in this relationship for at least six months;
- are of the same sex as each other and are each other's sole domestic partner and intend to remain so indefinitely;
- are responsible for each other's common welfare;
- are at least eighteen years of age;
- are not legally married to anyone;
- are not related by blood closer than would bar marriage in the State of Ohio;
- are mentally competent to consent to contract; and
- share financial obligations, as demonstrated by at least two of the following conditions: joint ownership of a residence; joint ownership of motor vehicle,

checking account, credit account or lease; designation of domestic partner as primary beneficiary of a will or life insurance policy.

10. The University requires notice upon termination of the domestic partnership, by means of a form provided by the University entitled, "Affidavit of Termination of Domestic Partner Status." (A copy of this document is attached hereto as **Exhibit B.**)

11. In establishing and maintaining the domestic partnership status and the system of benefits attending to qualifying domestic partners, the University has used and continues to use funds obtained through taxation from the State's taxpayers, and from tuition moneys paid by and on behalf of students at Miami University, including the tuition moneys of Plaintiff Tom Brinkman.

PUBLIC IMPORT AND INTEREST

12. The people of the State of Ohio have recently amended their Constitution to prohibit the government from nouveau policy experimentation further impacting the already embattled institution of marriage.

13. The enforcement of Article XV, Section 11 of the Ohio Constitution is a matter of great public import and interest, implicating the foundational matter of the rule of law, and more specifically whether the people's amendment of their Constitution to bind the state to limited exercises of authority may be disregarded, thus upending the role of constitutional government.

14. In addition to the structural constitutional importance of this case, the enforcement of Article XV, Section 11 is also of significant import and public interest for reasons of fundamental social policy. The State's use of its singular position and powers to publicly affirm, validate and support a nonmarital, marriage-mimicking relationship that has been historically suspect and impugned, inescapably carries with it an implicit negative

commentary on that historic social posture, and diminishes the legally unique status accorded the socially fundamental institution of marriage, to its detriment.

CLAIM FOR RELIEF

15. Plaintiff incorporates the allegations in Paragraphs 1 through 14 as if set forth fully herein.

16. The University has violated and continues to violate the Ohio Constitution, Article XV, Section 11, in that through the enactment and implementation of its “Domestic Partnership” policy it has created and recognizes a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

WHEREFORE, Plaintiff prays for judgment against Defendants and that the Court:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court’s Orders;
- B. Pursuant to R.C. Chapter 2721, declare that the University’s “Domestic Partnership” policy violates Article XV, Section 11 of the Ohio Constitution;
- C. Permanently enjoin the University from enforcing the “Domestic Partnership” policy which violates Article XV, Section 11 of the Ohio Constitution;
- D. Pursuant to R.C. 2335.39 and other applicable law, award Plaintiff his costs and expenses incurred in bringing this action, including his reasonable attorney fees.

Benjamin W. Bull
(AZ Bar No. 009940)
Glen Lavy
(AZ Bar No. 022922)
ALLIANCE DEFENSE FUND
15333 N. Scottsdale Road, Ste. 165
Scottsdale, Arizona 85260
Telephone: (480) 444-0020
Facsimile (480) 444-0028

Respectfully submitted,



David R. Langdon (0067046)
Joshua B. Bolinger (0079594)
11175 Reading Road, Ste. 103
Cincinnati, Ohio 45241
Telephone: (513) 577-7380
Facsimile: (513) 577-7383

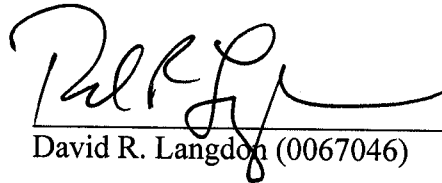
Jeffrey A. Shafer (0067802)
ALLIANCE DEFENSE FUND
801 G Street, N.W., Ste. 509
Washington, D.C. 20001
Telephone: (202) 637-4610
Facsimile: (202) 347-3622

Trial Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that, pursuant to R.C. 2721.12, a copy of the foregoing Complaint was served by regular mail, this 22nd day of November, 2005, upon the following:

Jim Petro
Ohio Attorney General
30 E. Broad Street, 17th Floor
Columbus, OH 43215-3428



David R. Langdon (0067046)

Affidavit of Same Sex Domestic Partnership

I, _____, hereby certify that _____
Faculty/Staff Member (Print) Domestic Partner (Print)

is my domestic partner and that:

1. We share a residence (unless residing in different cities, states, or countries on a temporary basis).
We are in a long-term committed relationship and have been in this relationship for at least six (6) months.
2. We are of the same sex as each other and we are each other's sole domestic partner and intend to remain so indefinitely.
3. We are responsible for each other's common welfare.
4. We are at least eighteen (18) years of age or older.
5. We are not legally married to anyone.
6. We are not related by blood closer than would bar marriage in the State of Ohio.
7. We are mentally competent to consent to contract.
8. We share financial obligations, as demonstrated by the existence of at least two of the following conditions (please check those that apply):

_____ A. We have common or joint ownership of a residence
(house, condominium, or mobile home).

- _____ B. We share at least two of the following:
- (1) Joint ownership of a motor vehicle
 - (2) Joint checking account
 - (3) Joint credit account
 - (4) Residential lease identifying both partners as tenants

_____ C. My domestic partner has been designated as a primary beneficiary of at least one of the following:

- (1) My Miami University Group Term Life Insurance
- (2) My will

NOTE: Documentation may be required to prove the existence of the above-mentioned conditions.

I agree to file, within 30 days of the dissolution of my domestic partnership, an Affidavit of Termination of Domestic Partnership with the Office of Benefits Services affirming that the domestic partnership has been terminated and that a copy of the Affidavit of Termination of Domestic Partner Status has been mailed to my previous partner.

I understand that another Affidavit of Domestic Partnership cannot be filed until six (6) months after the most recent domestic partnership has been terminated. I also understand that an Affidavit of Termination of Domestic Partner Status must be filed with the Office of Benefit Services and also mailed to the previous domestic partner.

I understand the information in this affidavit will be used by the University for the sole purpose of determining my eligibility for domestic partnership benefits. This information will be treated as confidential to the extent permitted by Ohio law and will be used solely for the administration of benefits by the Office of Benefit Services. I understand that availability of these benefits is based on eligibility requirements and subject to changes in program provisions.

Signature of Faculty/Staff

Date of Birth

Date

Banner ID Number: _____

Signature of Witness

Date

Return Form to: Office of Benefit Services
15 Roudebush Hall
Miami University
Oxford, OH 45056

Affidavit of Termination of Domestic Partner Status

I, _____
Faculty/Staff Member (Print) Banner ID Number

certify that I previously filed an Affidavit of Domestic Partnership.

I now inform the University that _____
Name of Former Domestic Partner (Print)

is no longer my domestic partner as of _____
Date

I understand that the former domestic partner identified above is no longer eligible for domestic partner benefits through Miami University and that current benefits will terminate as of the last day of the month in which this Affidavit of Termination is filed.

I certify that a copy of this Affidavit of Termination has been mailed to the former domestic partner identified above. I understand that another Affidavit of Domestic Partnership cannot be filed until six (6) months after the most recent domestic partnership has been filed with the Benefits Office.

Signature of Faculty/Staff Date

Return Form to: Office of Benefit Services
15 Roudebush Hall
Miami University
Oxford, OH 45056