

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

<b>THOMAS E. BRINKMAN, JR.,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	<b>Case No. CV 2005 11 3736</b>
<b>v.</b>	:	
	:	<b>Judge Charles L. Pater</b>
<b>MIAMI UNIVERSITY, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

**DEFENDANTS' ANSWER TO THE COMPLAINT**

The Defendants, Miami University, its Board of Director and President, for their answer state as follows:

1. Defendants admit that Plaintiff has brought this action to enjoin Miami University from providing certain employment benefits to its faculty and staff in accordance with its domestic partner benefits policy, but otherwise deny the allegations in paragraph 1 of the Complaint.

2. Defendants admit that Thomas E. Brinkman, Jr. is a citizen, elector and taxpayer of the State of Ohio and that he has paid tuition fees to the University on behalf of his son and daughter, but otherwise deny the allegations in paragraph 2 of the Complaint.

3. Defendants admit, in response to paragraph 3 of the Complaint, that Miami University is a state university as defined in Ohio Rev. Code § 3345.011 and that it functions in part under certain provisions contained in the Ohio Revised Code, including some of the provisions contained in Title XXXIII of the Ohio Revised Code.

4. Defendants admit that Defendants Fred G. Wall, Laurel Dawson, Kathleen M. Zouhary, Chandra R. Shah, Lolita M. McDavid, John Cristie, Richard K. Smucker, S. Kay

Geiger, and David F. Herche are each members of the Board of Trustees of Miami University and are named in the Complaint in their official capacity as such; admit that the duties of these trustees include, among other things, the formulation and approval of University policies and the oversight of the Miami University; and admit that they bear some responsibility for the existence of the University's domestic partner benefits. Defendants deny the allegations of the paragraph 4 of the Complaint relating to Defendants Brian W. Shroder and Tamika Nunley for the reason that they are the student representatives to the Board of Trustees, are not voting members of the Board of Trustees, and do not bear responsibility for the adoption of University policies or for oversight over the University.

5. Defendants admit the allegations in paragraph 5 of the Complaint.

6. Defendants admit the allegations in paragraph 6 of the Complaint.

7. Defendants deny the allegations in paragraph 7 of the Complaint.

8. Defendants admit that Exhibit A to the Complaint is a true and accurate copy of the "Affidavit of Same Sex Domestic Partnership" that must be submitted by an employee who desires to receive domestic partner benefits, but otherwise deny the allegations in paragraph 8 of the Complaint.

9. Defendants admit that the Affidavit attached as Exhibit A to the Complaint requires the employee to certify the facts stated in the Affidavit before being entitled to obtain domestic partner benefits but otherwise deny the allegations in paragraph 9 of the Complaint.

10. Defendants admit that Exhibit B to the Complaint is a true and accurate copy of the "Affidavit of Termination of Domestic Partner Status" that a University employee must submit to terminate domestic partner benefits, but otherwise deny the allegations in paragraph 10 of the Complaint.

11. Defendants admit that in the prior school year it used funds obtained through taxation or tuition payments to fund its provision of domestic partner benefits, but otherwise deny the allegations in paragraph 11 of the Complaint.

12. Defendants admit that the Article XV, Section 11 of the Ohio Constitution was adopted by the voters at the November 2, 2004 general election, but otherwise deny the allegations in paragraph 12 of the Complaint.

13. Defendants deny the allegations in paragraph 13 of the Complaint, and further answering state that Article XV, Section 11 of the Ohio Constitution does not prohibit the employment benefits offered under the University's domestic partner benefits policy.

14. Defendants deny the allegations in paragraph 14 of the Complaint, and further answering state that Plaintiff's attempt to apply Article XV, Section 11 of the Ohio Constitution to prohibit the employment benefits offered under the University's domestic partner benefits policy is not proper.

15. Defendants incorporate their response to paragraphs 1 through 14 of the Complaint as if set forth fully in response to paragraph 15.

16. Defendants deny the allegations in paragraph 16 of the Complaint.

**First Affirmative Defense**

17. The court lacks subject matter jurisdiction over this case because Plaintiff does not have standing sufficient to establish a justiciable case or controversy.

**Second Affirmative Defense**

18. The Complaint fails to state a claim upon which relief may be granted.

**Third Affirmative Defense**

19. Plaintiff's erroneous interpretation of Ohio Constitution Art. XV, § 11 results in a finding that Art. XV, § 11 violates Ohio Constitution Article XVI, Section 1.

**Fourth Affirmative Defense**

20. Plaintiff's erroneous interpretation of Ohio Constitution Art. XV, § 11 must be rejected because the application of Art. XV, § 11 to prohibit a university from offering equal employment benefits to its faculty and staff violates the United States Constitution, and specifically the equal protection and/or due process protections set forth in the Fourteenth Amendment of the United States Constitution.

**Fifth Affirmative Defense**

21. Plaintiff's erroneous interpretation of Ohio Constitution Art. XV, § 11 must be rejected because the application of Art. XV, § 11 to prohibit a university from continuing to honor its existing domestic partner employment benefits policy violates United States Constitution, Article I, Section 10.


**Sixth Affirmative Defense**

22. There is no statutory basis for an award of attorney fees in this case, and any such award would be contrary to Ohio Constitution Article I, Section 16.

WHEREFORE, Defendants respectfully request that the Court dismiss the Complaint in its entirety with prejudice and grant such other and further relief as the Court deems proper, including an award of their attorneys' fees and the costs and disbursements associated with defending this action.

Respectfully submitted,

JIM PETRO (0022096)  
OHIO ATTORNEY GENERAL  
By Special Counsel



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**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that a true copy of the foregoing Answer to the Complaint was served by ordinary U.S. Mail, postage pre-paid, on the following counsel of record on December 20, 2005:

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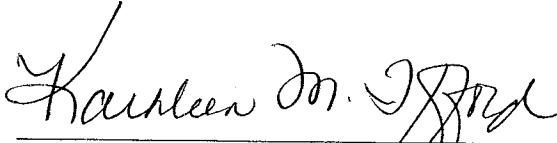
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A copy was also served upon Ohio Attorney General Jim Petro, 30 East Broad Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215-3428.

  
An Attorney for Defendants