CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

No. 2003-9871 **DIVISION "J"** **SECTION: 13**

EUGENE RALPH, GREGORY PEMBO, HELEN ROBINSON, PHYLLIS EVERAGE, LIONEL BRACKITT AND ELLE BENNETT

VERSUS

CITY OF NEW ORLEANS AND THE NEW ORLEANS CITY COUNCIL

FILED:_____ _____
DEPUTY CLERK

INTERVENING DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

MAY IT PLEASE THE COURT:

Defendants-in-Intervention Peter Sabi ("Sabi") and Philip Centanni, Jr. ("Centanni") have lived together in a committed relationship for over ten years. They registered as domestic partners in the City of New Orleans (the "City") on October 31, 2002. At the time this action was filed, Sabi worked for the City and was entitled to have Centanni participate in the City's health insurance program as his domestic partner. Due to Katrina-related layoffs, Sabi no longer works for the City and, therefore, neither Sabi nor Centanni currently receives insurance benefits from the City.

Sabi and Centanni intervened in this case on August 14, 2003 pursuant to Article 1091 of the Louisiana Code of Civil Procedure, which authorizes any third person having an interest in an action to join as a plaintiff or defendant in order to "enforce a right related to or connected with the object of the pending action." An intervention is an incidental demand and therefore can be filed without leave of court at any time prior to the filing of the answer to the principal demand. La. Code. Civ. Pro. Art. 1031, 1033. Sabi and Centanni timely filed their Petition in Intervention in order to protect their status as registered domestic partners. Sabi and Centanni assert that the City acted well within the broad power granted to it by the Louisiana Constitution of 1974 in providing certain limited benefits to domestic partners and ask that this Court deny Plaintiffs' Motion for Summary Judgment.

STATEMENT OF THE CASE

On May 23, 1997 the City issued Circular Memorandum No. 24-97 to announce that the City would offer its employees health insurance coverage for domestic partners under the City's health care program. Pursuant to the program, a City employee may put his or her same-sex domestic partner and any dependent children of the domestic partner onto the City's health care coverage by registering as domestic partners with the Clerk of the City Council and by completing a "Domestic Partner Enrollment Form."

On June 17, 1999 the New Orleans City Council adopted a "Domestic Partnership Registry" by which persons living together in committed relationships may make a public declaration to care for each other and promise to provide for each other's basic living expenses. New Orleans Ord. 87-4. The ordinance governing domestic partnership specifically states that it creates no affirmative rights other than the rights specified in the ordinance. Those rights are quite limited and involve neither rights of the domestic partners vis-à-vis one another nor rights with respect to third parties, but instead are circumscribed to the right to register with the City as domestic partners; the right to dissolve a registered domestic partnership; and the right to receive a certificate as evidence of a domestic partnership. New Orleans Ord. 87-3, 87-5. The Domestic Partnership Registry thus does not create any causes of action nor does it confer any legal benefits. Domestic partners are not treated as legal spouses under either municipal or state law. The registry simply serves as a public declaration that a couple will provide for each other's basic living expenses and care for each other in times of need, nothing more and nothing less. The $35.00 fee charged directly to the domestic partners by the Clerk of the City Council to register pays the cost of maintaining the registry. Defendants-in-Intervention Sabi and Centanni registered as domestic partners with the Clerk of the New Orleans City Council on October 31, 2002.

The establishment of a municipal domestic partner registry is not uncommon. Large cities and small towns across America have established similar mechanisms to show support for committed same-sex couples. Cities and counties offering domestic partner registries include Ann Arbor, MI; Athens-Clarke County, GA; Atlanta, GA; Boulder, CO; Brookline, MA; Broward County, FL; Carrboro, NC; Chapel Hill, NC; Cleveland Heights, OH; Cook County, IL;

Davis, CA; Denver, CO; East Lansing, MI; Eugene, OR; Eureka Springs, AR (effective June 22, 2007); Fulton County, GA; Hartford, CT; Iowa City, IA; Ithaca, NY; Kansas City, MO; Key West, FL; Lacey, WA; Laguna Beach, CA; Long Beach, CA; Los Angeles County, CA; Madison, WI; Marin County, CA; Miami Beach, FL; Milwaukee, WI; Minneapolis, MN; Nantucket, MA; New York, NY; Oak Park, IL; Oakland, CA; Olympia, WA; Palo Alto, CA; Palm Springs, CA; Petaluma, CA; Philadelphia, PA; Portland, OR; Rockland County, NY; Rochester, NY; Sacramento, CA; Santa Clara, CA; Seattle, WA; St. Louis, MO; Travis County, TX; Tucson, AZ; Tumwater, WA; Urbana, IL; and Washington D.C.;. Human Rights Campaign, "Search by City and State for Domestic Partner Registries" http://www.hrc.org/Template.cfm?Section=Get_Informed2&Template=/CustomSource/Agency/AgencySearch1.cfm (last accessed June 6, 2007).

Similarly, many cities that compete with New Orleans for qualified city employees offer domestic partner benefits to the same-sex partners of city employees. Among these cities are Albuquerque, NM; Anchorage, AK; Arlington County, VA; Atlanta, GA; Baltimore, MD; Bellevue, WA; Bloomington, IN; Boulder, CO; Broward County, FL; Carrboro, NC; Chapel Hill, NC; Chicago, IL; Cleveland Heights, OH; Columbus, OH; Cook County, IL; Corvallis, OR; Dallas, TX; Decatur, GA; DeKalb County, GA; Detroit, MI; Durham, NC; East Lansing, WI; Fayetteville, AR; Fulton County, GA; Gainesville, FL; Greenbelt, MD; Greensboro, NC; Hartford, CT; Hyattsville, MD; Iowa City, IA; Jackson County, MO; Juneau, AK; Kansas City, MO; Key West, FL; Lansdowne, PA; Las Cruces, NM; Madison, WI; Mansfield, CT; Miami Beach, FL; Milwaukee, WI; Missoula, MT; Monroe County, FL; Mount Ranier, MD; Oak Park, IL; Orange County, NC; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Portland, ME; Providence, RI; Rockville, MD; Salt Lake City, UT; Scottsdale, AZ; Spokane, WA; St. Louis, MO; St. Paul, MN; Takoma Park, MD; Tampa, FL; Tempe, AZ; Travis County, TX; Tucson, AZ; Tumwater, WA; Washtenaw County, MI; and Wilton Manors, FL. Human Rights Campaign, "Government Sector Benefits" http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=2&searchSubTypeID=1 (last accessed June 6, 2007). Accordingly, the provision of health insurance benefits

for the domestic partners of municipal employees places New Orleans squarely within the mainstream of modern American cities.

ARGUMENT

A. The City of New Orleans Has Broad Authority to Enact Local Laws, Including The Domestic Partner Registry.

Plaintiffs attempt to argue, without citation to authority, that the City's domestic partner registry is unconstitutional because nothing in state law directly authorized the City to enact the registry. This proposition stands the law of Louisiana completely on its head. Due to the breadth of its home rule charter, the City is empowered to enact *any* legislation that is not specifically forbidden by the Louisiana Constitution. Plaintiffs' suggestion that the City cannot enact ordinances unless directly authorized to do so by the Louisiana Legislature is entirely without merit.

A home rule charter enacted prior to the 1974 Louisiana Constitution governs the City. These pre-existing home rule charters were "essentially constitutionalized" by the 1974 Constitution. *New Orleans Firefighters Local 632 v. City of New Orleans*, 2003-1281, p. 11 (La.App. 4 Cir. 5/26/04); 876 So.2d 211, 220, *citing City of New Orleans v. Bd. of Comm'rs of Orleans Levee Dist.*, 93-0690, p. 8 (La. 7/5/94); 640 So.2d 237, 244. The City's home rule charter "stakes a continuing claim to the utmost powers of initiation available to the City under the Constitution." *New Orleans Campaign For a Living Wage v. City of New Orleans*, 2002-0991, p. 3 (La. 9/4/02); 825 So.2d 1098, 1110 (Calogaro, J., Concurring in the result), *citing Bd. of Comm'rs of Orleans Levee Dist.*, 93-0690 at 10; 640 So.2d at 245. As the Fourth Circuit has made perfectly clear, "in affairs of local concern, a home rule charter government possesses 'powers which within its jurisdiction are as broad as that of the state, except when limited by the constitution, laws permitted by the constitution, or its own home rule charter.'" *New Orleans Firefighters Local 632,* 2003-1281 at 11-12; 876 So.2d at 220, *citing Francis v. Morial*, 455 So.2d 1168, 1171 (La.1984).

The City has been granted very broad power to control local issues and to set compensation for City employees. The Louisiana Supreme Court expansively has held that "Article VI of the 1974 Louisiana Constitution adopts a new philosophy of the state-local

government relationship and strikes a balance in favor of home rule." *Bd. of Comm'rs of Orleans Levee Dist.*, 93-0690; 640 So.2d at 252, *citing Francis*, 455 So.2d at 1173; *City of Shreveport v. Kaufman*, 353 So.2d 995, 996 (La.1977), *City of New Orleans v. State*, 426 So.2d 1318, 1322 (La.1983) (Concurring opinion); Kean, *Local Government and Home Rule*, 21 Loy. L. Rev. 63, 64, 66 (1975); Murchison, *Developments in the Law, 1979-1980: Local Government Law*, 41 La. L. Rev. 481, 487-88 (1981). "Consequently, home rule abilities and immunities are to be broadly construed, and any claimed exception to them must be given careful scrutiny by the courts." *Id.*

Plaintiffs' assertion that there is nothing in state law expressly authorizing the City to provide a domestic partner registry and insurance benefits for municipal employees accordingly is of no consequence. The City does not require authorization from Baton Rouge to confront matters of local concern, such as whether or not the City will recognize committed same-sex couples. In order to challenge a local ordinance enacted under a home rule charter, Plaintiffs must demonstrate "(1) that the local law conflicts with an act of the state legislature, and that (2) the state law is necessary to protect the vital interests of the state as a whole." *City of Baton Rouge v. Williams*, 95-0308 (La. 10/16/95), 661 So.2d 445, 450. Plaintiffs cannot meet either prong of this controlling test. The domestic partnership registry does not conflict with any state law identified by Plaintiffs, and Plaintiffs cannot credibly argue that denying certificates to committed couples in Orleans Parish is somehow necessary to protect the "vital interests of the state as a whole." *Id.*

Accordingly, there is a strong presumption that enactments of the City, such as the domestic partner registry, are authorized and should be upheld by the courts. Plaintiffs' suggestion that the City must be specifically authorized to enact ordinances or provide benefits to its employees is simply incorrect.

Even were this not the case, Louisiana Statutes do, in fact, directly authorize the City to provide employee benefits and recognize partnerships. The Louisiana Statutes specifically empower the City to establish and administer its own health insurance program for its municipal employees.

> **The governing authority of any municipality**, parish, school board, or interlocal risk management agency . . . **may contract for any type of insurance protection for itself or its officers and employees** including self insurance or shared risk programs, provided the term of coverage of such insurance does not exceed ten years, and such governing authority may make such advance payments of the cost of such insurance as it shall deem appropriate. La. Rev. Stat. 33:3062(A) (emphasis added).
>
> **Any municipality or political subdivision of the state may make contracts of insurance with any insurance company legally authorized to do business in this state insuring their employees and officials under policies of group insurance covering hospitalization**, and retirement, for such employees and officials, and may agree to match the payments of the employees and officials for the premiums or charges for any such contracts payable out of the funds of such municipality or political subdivision, respectively. La. Rev. Stat. 33:5151(A).
>
> Nothing in this section or in R.S. 42:851 shall be construed to limit the contribution of a local government subdivision toward the payment of premiums for accident and health protection for its employees or their dependents, or both. La. Rev. Stat. 33:5151(B) (emphasis added).

Nothing in the foregoing statutes places any limit on the authority of a city to offer whatever type of benefit packages it chooses. Nothing in the foregoing statutes even suggests that New Orleans cannot allow the domestic partners of the City's employees and their children to participate in the City's health insurance plan.

Furthermore, the Louisiana Civil Code expressly provides for the recognition of a partnership whenever two or more persons agree to a joint endeavor. La. Civ. Code. Art. 2801. The fact that the City allows persons who have entered into a domestic partnership to register dovetails perfectly with this code provision. Gay and lesbian residents of New Orleans who have decided to enter into a partnership are allowed to register that partnership with the City. Both the City's expansive home rule authority and the express recognition of partnerships in the Civil Code support the City's power to do so.

As demonstrated above, the City enjoys broad discretion to enact ordinances and compensate employees. This authority certainly extends to providing competitive compensation packages for City employees and to providing a means for couples in committed relationships to make public declarations of mutual support. Because the employee benefits and registry that Plaintiffs challenge fall squarely within the powers of New Orleans' home rule charter and specific grants of authority in the Louisiana Statutes, Plaintiffs' Motion for Summary Judgment should be denied.

B. Plaintiffs Misinterpret Article 6, Section 9 of the Louisiana Constitution.

Plaintiffs argue that Article 6, § 9(A) of the Louisiana Constitution somehow prohibits the City from setting its own policies related to employee compensation or giving recognition to committed same-sex couples in Orleans Parish. La. Const. art. 6, §9(A). Plaintiffs argue that the City is somehow barred from merely providing a certificate and registry, without any accompanying legal rights, to same-sex couples. This argument is incorrect.

Article 6, § 9(A) states "[n]o local governmental subdivision shall (1) define and provide for the punishment of a felony; or (2) except as provided by law, enact an ordinance governing private or civil relationships." La. Cont. art. 6 §9(A). Plaintiffs provide no citations to case law or other authority describing the parameters of Article 6 § 9(A), and suggest that the provision creates a broad limitation on municipal power. In fact, the opposite is true. Like the New Orleans city charter, the provision of the Louisiana Constitution that Plaintiffs cite actually was meant to guarantee broad autonomy for local governments. It was first drafted in 1953 by the American Municipal Association (now known as the National League of Cities) as part of a model state constitution under which "all delegable legislative powers would be granted to the local government" and to provide that a "city may exercise *any* legislative power . . . not denied . . . by *general law*." *Bd. of Comm'rs of Orleans Levee Dist.*, 93-0690; 640 So.2d at 243, *citing* National Municipal League, Model State Constitution § 8.02 (6th ed. 1963). Article 6 § 9(A) of the Louisiana Constitution thus is derived from a model constitution whose purpose was to *expand* the authority of local governments. Any interpretation of Article 6 § 9(A) must recognize that it was drafted to give municipalities, including the City, very broad local authority.

There are very few decisions interpreting Article 6 § 9(A), but the decisions that have addressed the topic do not lend any support to the expansive reading proffered by Plaintiffs. In fact, prior decisions indicate that the provision has very limited applicability and does not in any way infringe upon the City's authority to govern matters of local concern, such as providing certificates to domestic partners or providing insurance benefits to the partners of municipal employees and their children. In one such case, the Louisiana Supreme Court has held that a series of ordinances levying a municipal inheritance tax was constitutional, stating, "we disagree

that the ordinances **interfere** with the State's right to govern private or civil relationships." *Hildebrand v. City of New Orleans*, 549 So.2d 1218, 1223 (La.1989) (emphasis added). Despite the fact that levying a municipal tax might discourage bequests, the Supreme Court held that such a law did not run afoul of Article 6 § 9 because "[t]he ordinances at issue do not attempt to **govern** any of the relationships". *Id* at 1223-24. (emphasis added).

Likewise, neither the domestic partner registry nor the provision of insurance benefits "governs" any sort of relationship, and they certainly do not interfere with the state's power to do so. Contrary to Plaintiffs' assertions, the domestic partner registry creates no actionable rights, and the provision of insurance benefits to city employees is merely a component of a benefit plan that expressly is authorized by state statute. Indeed, the domestic partner registry has no sort of enforcement mechanism whatsoever. It does not authorize domestic partners to sue nor does it expressly create any sort of binding obligations between partners. The registry does not provide partners with recourse to the courts nor does it allow third parties to sue one partner for the debts of the other. The registry does not provide for community property or for wrongful death survival benefits. The registry does not even provide modest protections for the registered couples, such as the right to visit an incapacitated loved one in the hospital or even the right to make funeral arrangements for a partner. The only right provided by the registry is the right to make a public attestation of commitment, and the right to receive a certificate from the city evidencing that commitment. There simply is no way that the City's domestic partner registry can be understood to "govern" the domestic partners or their relationship in any legally binding manner.

In stark contrast to the basic registry offered by New Orleans, many municipalities have domestic partnership registries that actually do govern private relationships or create private causes of action. The domestic partnership ordinance in Ann Arbor, Michigan creates a cause of action for any person or organization defrauded by a false statement contained in a declaration of domestic partnership. Ann Arbor Code Chapter 110, § 9:95. Carrboro, North Carolina and Minneapolis, Minnesota not only provide insurance benefits for the domestic partners of municipal workers but, unlike the City, require that municipal contractors offer health insurance benefits and bereavement leave to the registered domestic partners of the contractors' employees.

Carrboro also requires conflict-of-interest disclosures of any financial interests held by the domestic partner of a city official in any city contractor or potential city contractor. Carrboro Ord. Chapter 3, Art. I, § 3-2.1; Chapter 2, Art. IV, § 2-33; Minneapolis Ord. 18.200 et seq. The city of St. Louis provides a registry for domestic partners and requires public hospitals to provide visitation for the domestic partners of patients. St. Louis Rev. Code Chap. 8.37. By contrast, the New Orleans registry confers no similar rights or benefits for registered domestic partners. Accordingly, this Court should reject Plaintiffs' assertion that the domestic partner registry somehow "governs" a private relationship.

The New Orleans domestic partner registry demonstrates that the City supports same-sex couples in committed relationships. The registry demonstrates that the City values her gay and lesbian citizens. The registry demonstrates that New Orleans is a welcoming and diverse place. The registry does not, however, "govern" anything. Accordingly, Plaintiffs' attempts to invoke Article 6 § 9(A) of the Louisiana Constitution is legally misguided and their Motion for Summary Judgment should be denied.

C. Legislative History and Intent Cannot Be Used To Interpret an Unambiguous Statute.

Plaintiffs rely heavily on the minutes and proceedings of the City Council meeting adopting the domestic partner registry to argue that the registry does more than merely provide a mechanism for the City to recognize (but not regulate) committed same-sex couples. This reliance, however, is misplaced. In Louisiana, courts may only look to legislative history and intent when a statute is ambiguous or subject to more than one reasonable interpretation. *State v. McCulloch*, 126 So.2d 191 (La. App. 4th Cir. 1961). These basic rules of statutory interpretation and construction are "as applicable to municipal and parish ordinances as they are to state statutes." *Breaux v. LaFourche Parish Council* 02-1422 (La.App. 1 Cir 12/12/03); 851 So.2d 1173, *citing*, *Liller v. Louisiana Board of Alcoholic Beverage Control*, 59 So.2d 222 (La.App.Orleans 1952).

Chapter 87 of the Code of Ordinances could not be less ambiguous. It provides that couples fill out a form, pay $35.00, and then are entitled to a certificate of registered domestic partnership. The underlying intent of the City Council is completely irrelevant to this Court's

analysis of an unambiguous statute. Accordingly, Plaintiffs' reliance on legislative history is misplaced.

Even if it were appropriate to look to legislative history, that history hardly supports Plaintiffs' assertion that the registry "governs" a civil relationship. During deliberations Councilmember Wilson expressly questioned the purpose of the registry by stating that "the purpose is simply to register so that they can take advantage, so that people who live together and are not married can take advantage of offers made in the private sector, like two for one flights and that sort of thing?" City Attorney Purcell replied to Councilmember Wilson by stating that the registry was simply "an acknowledgement, for one thing, on the part of the City government, of the reality of a situation that has existed for many years." See, Memorandum in Support of Plaintiffs' Motion for Default Judgment or Summary Judgment, Exhibit "B." Mr. Lloyd Bowers, a supporter of the bill, clearly indicated that the primary purpose of the bill was not to "govern" domestic partners, but rather to give domestic partners a form of documentation that could be used to seek domestic partner benefits from private employers. When specifically asked about such private sector programs, Mr. Bowers described the domestic partnership benefits offered by Tulane University, and testified that partners "need a certificate from the city showing that they have registered." *Id.* Accordingly, the legislative history clearly demonstrates that the intent of the registry is simply to document pre-existing relationships, not to govern or create them. Even if this Court were to rely on legislative history, which it should not do, the legislative history does not support Plaintiffs' broad claims.

D. <u>Whether or Not the Registry "Defines" a Relationship is Irrelevant.</u>

Plaintiffs suggest that the "define and provide" language from subsection (1) of Article 6 § 9(A) is applicable to subsection (2) which contains no such language. This argument fails as a basic matter of interpretation. The constitutional language clearly says that a city may not "define and provide" for a felony. It makes no such statement about civil relationships. Contrary to Plaintiffs' argument, the doctrine of *in pari materia* does not permit a court to ignore the plain intent to include language in one subsection and not in the immediately following subsection. Statutes *in pari materia* are those "relating to the same person or thing." Black's Law Dictionary 711 (5th ed. 1979). Since the punishment of felonies is in no way "related to the

same person or thing" as civil relationships, Plaintiffs' suggestion that the Court insert terms governing the punishment of felonies into an entirely separate provision of the Louisiana Constitution is simply incorrect. Accordingly, the fact that Section 87-1 of the New Orleans Code of Ordinances may simply "define" a domestic partnership does not render it subject to challenge under Article 6, Section 9 of the Louisiana Constitution.

E. The Courts of Many Other States Have Upheld Similar Local Enactments.

Plaintiffs cite a handful of cases in which domestic partner registries or benefits have been overturned. However, they fail to mention that these cases are clearly distinguishable because the cities in question did not have broad home rule authority or because the ordinance in question in those cases directly ran afoul of a specific state law. Plaintiffs also fail to cite the numerous cases upholding similar ordinances in other jurisdictions. These failures are fatal to their argument.

Many other courts considering similar ordinances enacted by home rule cities have found that domestic partnership ordinances similar to, or even broader than, the City's fell well within the power granted municipalities. *See Devlin v. City of Philadelphia*, 862 A.2d 1234 (Pa.2004); *Tyma v. Montgomery County*, 801 A.2d 148 (Md.App. 2002); *Schaefer v. City and County of Denver*, 973 P.2d 717, 719-21 (Colo.App.1998); *Lowe v. Broward County*, 766 So.2d 1199, 1205-06 (Fla.App.2000); *Crawford v. City of Chicago*, 710 N.E.2d 91, 98 (Ill.App.1999), *pet. to appeal denied*, 720 N.E.2d 1090 (Ill.1999); *Slattery v. City of New York*, 686 N.Y.S.2d 683, 686-88 (N.Y.Sup.1999), *aff'd*, 697 N.Y.S.2d 603 (App.Div.1999), *appeal dismissed*, 727 N.E.2d 1253 (N.Y. 2000); *City of Atlanta v. McKinney*, 454 S.E.2d 517 (Ga.1995). Many courts have upheld domestic partner benefits based on a home rule city's express or inherent right to determine the compensation for its employees and their dependents. The court in *Slattery* recognized the need to provide governments with flexibility in order to allow them to recruit good employees. *Id.* The court recognized that the domestic partnership ordinance at issue in that case was both legally defensible and represented good local policy:

> Finally, in light of the undisputed legislative intent to grant local governments the power to give their employees competitive salary and benefits packages; and the general trend toward giving greater, albeit limited, rights and recognition to unmarried domestic partners and nontraditional family units in general, it is not

> unreasonable for defendants to interpret the law in a fashion that allows them to keep pace with this societal as well as legislative trend.

Id. at 693; *see also Schaefer*, 973 P.2d at 719 (upholding Denver domestic partnership ordinance and recognizing that the "authority to define the scope of employee compensation, including benefits, is of particular importance to a local government because of its impact on a city's ability 'to both hire and retain qualified individuals.'").

In *Crawford v. City of Chicago*, the court noted that "[t]he power to extend to its employees both compensation and benefits is ineluctably essential to the operation of local governmental units such as the City in the present case." 710 N.E.2d at 98, *citing Nevitt v. Langfelder*, 623 N.E.2d 281 (Ill.1993). Accordingly, the court held that Chicago legally could provide domestic partner insurance benefits similar to those offered by the City here. The Supreme Court of Georgia likewise has held that Atlanta can extend insurance benefits to the domestic partners of its city employees. In *City of Atlanta v. Morgan*, 492 S.E.2d 193 (Ga.1997), the court held that Atlanta was free to define "dependents" for insurance purposes to include the domestic partners of city employees. *Id.* at 195. The court noted that the Georgia Statutes specifically granted the authority to provide insurance for the dependents of municipal employees, and that the state statutes did not place any limits on whom the city could classify as a dependent. *Id.* The City similarly is empowered by statute to provide benefits for the dependents of municipal workers. La. Rev. Stat. 33:5151. As was the case in Georgia, the Louisiana statutes do not limit whom a city can classify as a dependent under municipal law. The reasoning of *City of Atlanta v. Morgan* is directly applicable to the present case. Accordingly, the Motion for Summary Judgment should be denied.

In upholding Broward County's domestic partner registry, Florida's Fourth District Court of Appeal rejected virtually every argument advanced by the Plaintiffs in this suit. *Lowe*, 766 So.2d 1199. The Court began its analysis by noting that local governments are accorded "broad self-governing powers." *Id.* at 1204. The court went on to hold that the domestic partnership registry and insurance benefits for the domestic partners of municipal employees did not infringe upon the state's right to govern domestic relations. *Id.* at 1205. The court held that the domestic partner registry did not violate Florida's ban on same-sex marriage because the registry did not

"create the plethora of rights and obligations that create a traditional marriage." *Id.* at 1208. Finally, the court held that the Florida statute authorizing municipalities to provide insurance benefits for the dependents of employees authorized Broward County to define "dependents" to include domestic partners. *Id.* at 1209.

Under strikingly similar circumstances, the Ohio Court of Appeals upheld a domestic partner registry enacted by referendum in the City of Cleveland Heights. *City of Cleveland Heights ex rel. Hicks v. City of Cleveland Heights*, 832 N.E.2d 1275 (App. Ct. 2005). The court noted that, as is the case in Louisiana, the Ohio Constitution "grants broad powers of local self-government upon municipalities." *Id.* at 1277, *citing Buckeye Community Hope Foundation v. City of Cuyahoga Falls* (1998), 82 Ohio St.3d 539, 541, 697 N.E.2d 181. Cleveland Heights, like New Orleans, operates under a home rule charter that the Ohio court recognized granted the municipality broad power over local issues. *Id.* Accordingly, the domestic partner registry was upheld.

The cases cited by Plaintiffs are wholly distinguishable. While it is true that the Supreme Court of Virginia held that Arlington County did not have the authority to provide domestic partner benefits, Virginia operates under "Dillon's Rule," which provides that local governing bodies only have that power which is expressly granted to them by the state legislature. *Arlington County v. White*, 528 S.E2d 706, 708 (Va.2000). The narrow power municipalities possess in Virginia is the polar opposite of the broad authority granted to home rule municipalities in Louisiana. Accordingly, Plaintiffs' reliance on *Arlington County* is entirely misplaced.

The decision of the Supreme Judicial Court of Massachusetts in *Conners v. City of Boston*, 714 N.E.2d 335 (Mass.1999) is similarly distinguishable. In that decision, the court relied on the fact that Massachusetts law forbade municipalities from offering a level of insurance benefits that was broader than those offered by the state. *Id.* at 339. No similar limitation exists in Louisiana. Similarly, the Court of Appeals of Minnesota held that a Minneapolis policy providing health care benefits to the domestic partners of city employees was improper because the statute authorizing municipalities to provide insurance coverage for employees specifically defined "dependents" as to only include the employee's spouse and

dependent children. *Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. App. 1995). No such statutory limitation exists in Louisiana, so Plaintiff's reliance on *Lilly* also is entirely misplaced.

CONCLUSION

Home rule municipalities in Louisiana enjoy broad power to enact ordinances addressing issues of local concern. New Orleans' decision to offer a means for committed same-sex couples publicly to declare their commitment falls squarely within that power. Similarly, Louisiana law clearly permits municipalities to craft insurance plans for their employees that best serve the needs of those municipalities. New Orleans acted well within its discretion in providing insurance benefits for the same-sex domestic partners of municipal employees and their children. Nothing in the Louisiana Constitution prevents the City from offering these modest protections for gay and lesbian families. Accordingly, Plaintiffs' Motion for Summary Judgment should be denied.

WHEREFORE Defendants-in-Intervention Peter Sabi and Philip Centanni, Jr. ask that Plaintiffs' Motion for Summary Judgment be denied and further request that this Court grant any and all further relief to which they may be entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on all counsel of record, via facsimile and United States Mail, postage prepaid and properly addressed, on this 7th day of June, 2007.

_____