

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THERESA BASSETT and CAROL
KENNEDY, PETER WAYS and JOE
BREAKEY, JOLINDA JACH and BARBARA
RAMBER, DOAK BLOSS and GERARDO
ASCHERI DENISE MILLER and
MICHELLE JOHNSON,

No. 2:12-cv-10038

HON. DAVID M. LAWSON

Plaintiffs,

MAG. MICHAEL J. HLUCHANIUK

v

RICHARD SNYDER, in his official capacity
as Governor of the State of Michigan,

Defendant.

**DEFENDANT'S SUPPLEMENTAL BRIEF
SCOPE OF INJUNCTIVE RELIEF**

Generally, neither a preliminary nor permanent injunction may grant relief to third parties or enjoin non-parties not controlled by or in privity with a name defendant. *Tesmer v. Granholm*, 333 F.3d 683, 701-702 (6th Cir. 2003); *Sharpe v. Cureton*, 319 F.3d 259, 273-274 (6th Cir. 2003); *Warshak v. U.S.*, 532 F.3d 521, 531 (6th Cir. 2008). The cited cases have adopted the reasoning and analysis of three significant cases with respect to this issue. First, declaratory judgment is effective as to only the plaintiffs who obtained it. Thus, neither “declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs.” *Doran v Salem Inn, Inc.*, 422 U.S. 922, 931; 95 S. Ct. 2561; 45 L.Ed. 2d 648 (1975). Second, when a class has not been certified, only the interests of the named plaintiff are of concern – a wrong

done to plaintiff in the past does not authorize prospective class-wide relief unless a class has been certified. *McKenzie v. Chicago*, 118 F.3d 552, 555 (7th Cir. 1997). Third, a declaratory judgment finding a state statute unconstitutional is binding only upon parties named in the action. *YWCA of Princeton v. Kugler*, 463 F.2d 203, 204 (3rd Cir. 1972).

Applying these general principles here compels the conclusion that a preliminary injunction, should one issue, may only benefit the named plaintiffs. In other words, the statute itself should not be preliminarily enjoined – that would effectively grant the relief sought in the complaint. Nor should benefits be restored to unnamed third parties through injunction. This would require enjoining unnamed parties and providing benefits to unnamed third-parties. Thus, if issued, a preliminary injunction should be limited to enjoining application of the challenged statute to the Plaintiffs only. *Sharpe*, 319 F.3d at 273; 532 F.3d at 531. Accord: *Lee v. City of Columbus, Ohio*, 2008 U.S. Dist. LEXIS 82078, *12-14 (6th Cir. 2008). (Attachment 1.) The limited scope of such a preliminary injunction comports with the applicable law; provides relief to the named Plaintiffs; and avoids unnecessarily enjoining the governmental units that provide the health coverage benefits to OEAs – each governmental unit may determine to voluntarily cease providing such benefits as opposed to the compelled cessation challenged here and an injunction directed to them would improperly prohibit such a choice.

A permanent injunction requires similar limitations. A declaratory judgment finding a state statute unconstitutional is binding only upon parties named in the action. *Tesmer*, 333 F.3d at 701 citing *Doran*, 463 422 U.S. at 931 and *YWCA of*

Princeton 463 F.3d at 204. “Thus under *Doran*, and authority from sister circuits, we hold that the declaration and injunction applies only insofar as it states the rights of the named attorney-plaintiffs.” *Tesmer, Id.* Again, “class-wide” relief is completely unnecessary to provide the named plaintiffs the relief to which they are entitled as prevailing parties. *Sharpe*, 319 F.3d at 273. Indeed, as with a preliminary injunction, such sweeping permanent relief would prevent a local government from voluntarily ceasing OEA benefits, an action Plaintiffs do not challenge.

While an injunction should be narrowly tailored to give only the relief to which named plaintiffs are entitled, particularly when, as here, no class action has been certified, at least one exception to this general rule has been recognized – if such breadth is necessary to give prevailing parties the relief to which they are entitled. *Lee*, 2008 U.S. Dist. LEXIS 82078 *14, *15 (citing *Easyridders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th Cir. 1996) quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987)). As in the cited cases, this litigation does not present a case where broad relief is appropriate or required in either a preliminary or permanent injunction. It is possible to grant effective relief to the individually named Plaintiffs without covering those within a possible class. “It is not necessary to demand a change in how non-parties are treated in order to change how the named moving parties are treated.” *Lee, Id.* at * 15. Additionally, should the Court issue the requested declaratory judgment finding 2011 PA 297 unconstitutional, a permanent injunction enjoining Defendant’s enforcement of the statute provides sufficient and adequate relief. It also provides the local

governments the appropriate freedom and opportunity to voluntarily cease OEA benefits should that be their individual decision, an action that is not challenged by Plaintiffs.

Respectfully submitted,

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Dated: August 21, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such.

s/Margaret A. Nelson

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