

A06-1235

STATE OF MINNESOTA  
IN SUPREME COURT

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Auto Owners Insurance Company,

*Respondent,*

vs.

Chong Suk Perry,

*Appellant.*

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BRIEF OF AMICUS CURIAE  
OUTFRONT MINNESOTA

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OutFront Minnesota hereby submits the following brief<sup>1</sup> respectfully urging this Court to reverse the ruling of the Minnesota Court of Appeals, and to hold that Minn. Stat. § 65B.44 (2006) requires auto insurance companies in Minnesota to provide compensation to *every person* for *all loss* arising from the operation or maintenance of motor vehicles the opportunity to seek compensation.

## **I. INTERESTS OF AMICUS CURIAE**

OutFront Minnesota was founded in 1987 under its previous name, the Gay and Lesbian Community Action Council. Initially organized as primarily a social-service agency, the organization has evolved in the past twenty years to become Minnesota's leading public policy organization working for gay, lesbian, bisexual, and transgender (GLBT) equality. Although OutFront Minnesota routinely provides information, training, consultation, referral, and individual advocacy services across the state, the organization is probably best known for its annual lobby day at the State Capitol in St. Paul. This event grew out of the organization's leadership in successful efforts to secure inclusion of "sexual orientation" within the Minnesota Human Rights Act in 1993.

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<sup>1</sup> Pursuant to Minn. R. Civ. App. P. 129.03, OutFront Minnesota certifies that counsel for neither party authored this brief in whole or in part. No person or entity, other than the amicus curiae, its members, or its counsel, made a monetary contribution to the preparation or submission of the brief.

In recent years, the focus of OutFront Minnesota's work at the Capitol has tended to focus more on the concerns of same-sex couples. The most visible work in this regard has involved coordinating efforts to defeat proposals to amend the Minnesota Constitution to prohibit all forms of legal recognition for same-sex couples. Beginning in 2004, OutFront Minnesota has led public information and education efforts and lobbying work to defeat these proposals in four successive legislative sessions. OutFront Minnesota has been recognized by legislators and advocates on all sides of the amendment proposals as the leader of efforts to oppose it, and has been assigned responsibility for, e.g., coordinating legislative testimony and distributing tickets for legislative hearings to audience members opposing the amendment.

In 2007, OutFront Minnesota led lobbying efforts to secure passage of legislation providing dependent benefits to the domestic partners of State employees, permitting local government employers to offer similar benefits, expanding opportunities for domestic partners to visit one another in health-care facilities, and securing for Minnesota workers the right to use sick-leave time to care for, among others, ill domestic partners. The Legislature approved the first three proposals, but Governor Tim Pawlenty vetoed the first two of those.

OutFront Minnesota has also been active on public policy issues related to same-sex couples at the local level. In 2002, OutFront Minnesota helped write and worked for passage by the City of Minneapolis of its Equal Benefits Ordinance, which requires certain contractors with the City to provide domestic-partner benefits if they also provide spousal benefits. The following year, OutFront Minnesota successfully worked with the City to update its domestic-partner registry ordinance, and its housing and zoning codes, to provide for expanded protections for the many same-sex couples in the City who had registered as domestic partners.

Simply put, OutFront Minnesota has a long-standing commitment to articulating the issues of and advancing the protections available to same-sex couples. It is this commitment that has led the organization to become profoundly concerned by the Minnesota Court of Appeals' ruling in the present case. By ruling that Minn. Stat. § 65B.44 (2006) guarantees the ability to seek compensation for economic losses arising from the operation or maintenance of automobiles only for married spouses (and children), the Court of Appeals excluded same-sex couples completely from the broad protections the Legislature intended this statute to provide. OutFront Minnesota respectfully submits that this ruling, if affirmed, will have a devastating effect on same-sex couples, and many others, across Minnesota.

## II. SAME-SEX COUPLES ARE PART OF MINNESOTA'S SOCIAL FABRIC.

Although strong statistics regarding the number of GLBT people in Minnesota are often difficult to establish, the United States Census has begun measuring the existence of same-sex couples across the country. "The 2000 census forms included a category for same-sex partner households for the first time," reported the *Star-Tribune*. David Peterson, *A tale of 2 Minnesotas*, Minneapolis Star-Tribune, August 22, 2001 at A1. Both the *Star-Tribune* and *Pioneer Press* prominently reported that the Census revealed that same-sex couples were strongly concentrated in Minnesota, and in the Twin Cities in particular.

Of cities with populations of 100,000 or more, Minneapolis emerges in this new data as having the highest percentage of gay- and lesbian-partner households in the nation's interior. Only a few coastal states have cities with larger concentrations. Minneapolis ranks seventh among the nation's largest cities, with 1.6 percent of its households having same-sex partnerships. ... Minneapolis ... is the only big non-West Coast city to rank among the top 10 for both gays (seventh) and lesbians (sixth).

*Id.* See also H.J. Cummins, *Many gay couples calling area home*, Minneapolis Star-Tribune, August 1, 2001 and Kay Harvey, *Census finds geographic diversity of gay couples*, St. Paul Pioneer Press, August 1, 2001. The same day the *Star-Tribune* reported the observation above, a separate report by the Human Rights Campaign, a national GLBT-rights

organization, established that “gay and lesbian families live in 99.3 percent of all counties in the United States.” David Smith and Gary Gates, *Gay and Lesbian Families in the United States: Same-Sex Unmarried Partner Households*, Human Rights Campaign, August 22, 2001 at 2.<sup>2</sup> The report indicated that across the country, only 22 counties had no self-reporting same-sex couples, and none of those counties was located in Minnesota. *Id.* at 6. Same-sex couples, therefore, are living in each and every one of Minnesota’s 87 counties.

The United States’ 2000 Census was groundbreaking in its impact regarding the number and distribution of households headed by same-sex partners. “Since then, policy debates focusing on marriage and partnership rights for same-sex couples have led academics and policy-makers alike to use these data in hopes of gaining a more complete and accurate understanding of this population.” Gary J. Gates, *Same-sex Couples and the Gay, Lesbian, Bisexual Population: New Estimates from the American Community Survey*, Williams Institute on Sexual Orientation Law and Public Policy, UCLA School of Law, October 2006 at 1.<sup>3</sup> In this report, Gates

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<sup>2</sup> The complete report is available on-line at:  
<http://www.hrc.org/Content/ContentGroups/Publications1/census.pdf>.

<sup>3</sup> The complete report is available on-line at:  
[www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf](http://www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf).

analyzed the results of the 2005 American Community Survey (ACS), “in which the Census Bureau quizzes a statistically representative sample of 1.4 million households.” *Out and Proud Parents*, *The Economist*, June 30, 2007, at 42. Gates found that “the number of same-sex couples in the U.S. grew by more than 30 percent from 2000 to 2005, from nearly 600,000 couples in 2000 to almost 777,000 in 2005.” Gates at 1. Gates did not attribute this increase to a sudden upsurge in the formation of same-sex couples, but to the possibility that “as stigma associated with same-sex partnering and homosexuality in general decreases, more same-sex couples are willing to identify themselves as such on government surveys like the ACS.” *Id.* Gates noted that “the largest percentage increase in the number of same-sex couples occurred throughout the Midwest.” *Id.* According to this analysis, Minnesota had the nation’s third-highest percentage increase in self-reporting same-sex couples as compared to the 2000 Census, an increase of 76 percent. *Id.* at 3.

Analysis of the 2000 and 2005 data establishes that same-sex couples are living in every part of Minnesota, in particular in the Twin Cities metropolitan area, and are identifying themselves with increasing frequency. OutFront Minnesota’s own work in recent years also illustrates the fact that, along with the increasing numbers and visibility of such couples, comes an

increasing need for Minnesota to address the public-policy concerns these families face.

**III. SAME-SEX COUPLES AND MARRIED COUPLES ARE VIRTUALLY INDISTINGUISHABLE IN PRACTICAL TERMS, INCLUDING EXPERIENCE OF LOSS**

Almost any conversation regarding the concerns or rights of same-sex couples will quickly involve the question of whether it is permissible to exclude such couples from choosing to enjoy the status or rights of marriage, or both. While OutFront Minnesota is disappointed with this Court's ruling on the subject in *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), the issues in this case need not give rise to such a conversation.

That said, high-profile litigation in several other states regarding the legal recognition of same-sex couples has triggered an enormous backlash against such couples. Beginning in the 1990s, the vast majority of states passed "defense of marriage acts" designed to entrench the exclusion of same-sex couples from marriage and to withhold recognition of marriages same-sex couples might enter into legally elsewhere. See, e.g., Minn. Stat. § 517.03 (2006). The present decade has seen numerous successful efforts to amend state constitutions intended to embed these principles even more deeply in states' basic laws. The GLBT community has consequently

witnessed the lives of same-sex couples held up to scorn and ridicule, and exploited for base political gain at their expense.

Nevertheless, discussion of the concerns and rights of same-sex couples continues, not simply as an interesting question of legal philosophy, but because GLBT people, *being people*, frequently seek to form couples and build families even in the face of controversy or the lack of legal status. Efforts to seek legal recognition of such families reflect the reality that these couples construct lives with loved ones that are functionally identical to the lives married couples build. Census statistics and similar reports provide informative numbers, but these families are not data – they are human beings, often with homes, jobs, mortgages, bills, cars, and dreams. They are not a social experiment. The commitments they make, the joys they experience, and the hurts and losses they suffer in life are no less real, nor any less legitimate, because they are denied legal recognition.

These commitments have occasionally wound their way into Minnesota's appellate courts, often as a result of unpleasant developments. One such controversy that continues to haunt the state's GLBT community to this day is recounted in *In re Guardianship of Kowalski*, 478 N.W.2d 790 (Minn. App. 1991), rev. denied (Minn. Feb. 10, 1992). Sharon Kowalski

was seriously injured in an auto accident on November 13, 1983. *Id.* at 791.

As the Court of Appeals described:

At the time of the accident, Sharon was sharing a home in St. Cloud with her lesbian partner, appellant Karen Thompson. They had exchanged rings, named each other as insurance beneficiaries, and had been living together as a couple for four years. *Id.*

The litigation involved an extremely protracted, bitter, and public dispute between Karen Thompson, who wanted to provide Sharon's care as Sharon had been requesting, and Sharon's biological family, which strenuously opposed Karen having any further involvement with Sharon's life. Sharon's family had been successful in the trial court, securing appointment of her father as guardian, not Karen. *Id.* at 791. However, when the father's own health problems forced him to give up guardianship over Sharon, the trial court appointed a third party, again not Karen, to be Sharon's guardian. *Id.* at 791-92. The Court of Appeals reversed the appointment as an abuse of discretion, ordering Karen be appointed guardian. *Id.* at 797. Along the way, the Court of Appeals made the following observations reflecting their relationship:

The testimony was consistent that Thompson: (1) achieves outstanding interaction with Sharon; (2) has extreme interest and commitment in promoting Sharon's welfare; (3) has an exceptional current understanding of Sharon's physical and mental status and needs, including appropriate rehabilitation; and (4) is strongly equipped to attend to Sharon's social and emotional needs. *Id.* at 793-94.

Sharon's caretakers described how Thompson has been with Sharon three or more days per week, actively working with her in therapy and daily care. *Id.* at 794.

It is undisputed that Thompson is the only person willing or able to care for Sharon outside an institution. In fact, Thompson has built a fully handicap-accessible home near St. Cloud in the hope that Sharon will be able to live there. *Id.*

[Medical witnesses] testified, however, that Thompson is best able to get Sharon motivated to work through the sometimes painful therapy. Moreover, Thompson is oftentimes the only one who can clean Sharon's mouth and teeth, since Sharon is apparently highly sensitive to invasion of her mouth. ... each said [Thompson] is highly cooperative and exceptionally attentive to what treatments and activities are in Sharon's best interests. The court-appointed social worker also testified that Thompson was attentive to Sharon's needs, and would be a forceful advocate for Sharon's rehabilitation. *Id.*

Finally, there is no evidence in the record about a conflict of interest over Thompson's collection of defense funds ... the money was raised in Thomson's own name to defray the cost of years of litigation and that none of it was used for her personal expenses. Thompson testified that whatever extra money raised was used to purchase special equipment for Sharon, such as her voice machine, motorized wheelchair, hospital bed, and a special lift for transfers. *Id.* at 796.

Thompson testified that anyone who is involved in her life understands that she and Sharon are "a package deal," and that nothing would interfere with her commitment to Sharon's well-being. *Id.*

In ordering that Karen be appointed guardian over Sharon, the Court of Appeals concluded: "... *Thompson and Sharon are a family of affinity, which ought to be accorded respect.*" *Id.* at 797 (emphasis added). The commitment Karen showed Sharon, and her courage in facing such a

daunting challenge, is exactly the sort one would expect to see in a typical married couple.

The formation of same-sex couples and their families is often brought to light in Minnesota's appellate courts, ironically, because the couple separates and cannot resolve all outstanding issues. Quite recently, in fact, this Court dealt with precisely this situation. In *SooHoo v. Johnson*, 731 N.W.2d 815 (Minn. 2007), this Court observed:

Johnson and SooHoo, who lived together and jointly owned a house in Minneapolis, ended a 22-year relationship in the fall of 2003. During the course of that relationship, Johnson adopted two children from China. When Johnson adopted the first child, both she and SooHoo traveled to China. When Johnson adopted the second child, SooHoo remained in Minneapolis and cared for the first child while Johnson went to China. SooHoo did not adopt either of the children, but the record indicates that Johnson and SooHoo co-parented the children, recognized themselves as a family unit with two mothers, and represented themselves to others as such. For example, SooHoo took maternity leave to care for both children upon their arrival in the United States. SooHoo also participated in the selection of child-care providers and schools for the children and shared in the daily parenting responsibilities, including dropping off and picking up the children from day care, helping with school projects and homework, preparing meals for the family, taking the children to doctors appointments (including authorizing the children's immunizations), coordinating extracurricular activities and play dates, providing the sole care while Johnson was away on business, and taking the children to California to visit SooHoo's extended family, all without apparent objection by Johnson. The record further reflects that the children referred to SooHoo as "mommy," and referred to SooHoo's parents as their grandparents. In the information provided to the children's schools, Johnson listed SooHoo as mother number two and listed the last name of one of the children as Johnson-SooHoo. SooHoo attended the children's parent-teacher conferences with Johnson,

during which both women signed off on the teacher's goal setting report as "Parent/Guardian." *Id.* at 818-19.

As with Sharon Kowalski and Karen Thompson, the Johnson-SooHoo household as described above, while intact, was not remarkably different in practical terms from a family headed by a married couple.

Although these two relationships were examined in Minnesota appellate courts because of very unfortunate circumstances, in each case the facts strongly reflected the everyday reality that irrespective of legal status, GLBT people commit themselves to one another, form couples, raise families, and live their lives, even in the face of tragedy. Both the details of these couples' commitments to one another and their responses to adversity, moreover, show that on a very functional level, their experiences and those of married couples are not fundamentally different.

However, the legal backdrop against which their concerns play out is quite different from that married couples experience. Many systems are in place to respond to the losses married couples experience, and generally in Minnesota, these systems are not available to same-sex couples. For example, married couples have the ability to rely on Minnesota's intestacy statute in the event one dies without a will, but same-sex couples do not enjoy this protection. See, e.g., Minn. Stat. § 524.2-103 (2006). Should one spouse in a marriage be killed through the negligence of a third party, the

surviving spouse has standing to bring a “wrongful death” action to seek compensation; a surviving domestic partner may not. See Minn. Stat. § 573.02 (2006). Upon the death of a married spouse, the surviving spouse generally may also apply for a survivor’s benefit through the Social Security Administration. See 42 U.S.C. § 402 (e,f). There is no mechanism by which a surviving domestic partner could seek such compensation, despite the fact the decedent may have been paying for a survivor benefit for decades. Thus, though the losses same-sex and married couples suffer may be virtually identical, the support provided by law to them varies considerably.

Despite the frequent demonization or dismissal of same-sex couples and their concerns, the basic reality is this: the lives of same-sex couples and their families are fundamentally like those of married couples; they face adversity and loss that are fundamentally like those married couples face; their fortitude in the face of such pain and loss is fundamentally like that of married couples. For an auto insurance company to suggest otherwise – that the painful losses that same-sex couples may suffer matter less, or not at all, in comparison to those of married couples, and to deny them the basic dignity of handing them a claim form – is to gratuitously demean these people’s lives. It is doubly painful that such disregard is based on their

“failure” to marry, when they don’t have access to that choice in the first place.

Joy and pain, success and loss, are a part of the human experience irrespective of whether one’s relationship or family is legally recognized. The law should recognize this reality whenever possible, and the statute at the heart of the instant case does precisely that.

#### **IV. MINNESOTA’S “ECONOMIC LOSS BENEFITS” STATUTE COMPENSATES LOSS, NOT MARRIAGE.**

The statute at the center of this dispute is Minn. Stat. § 65B.44 (2006). The focus of litigation in the trial court and the Court of Appeals has been on the following portion of this statute:

**Subd. 6. Survivors economic loss benefits.** Survivors economic loss benefits, in the event of death occurring within one year of the date of the accident, caused by and arising out of injuries received in the accident, are subject to a maximum of \$200 per week and shall cover loss accruing after decedent's death of contributions of money or tangible things of economic value, not including services, that surviving dependents would have received from the decedent for their support during their dependency had the decedent not suffered the injury causing death. *For the purposes of definition under sections 65B.41 to 65B.71, the following described persons shall be presumed to be dependents of a deceased person: (a) a wife is dependent on a husband with whom she lives at the time of his death; (b) a husband is dependent on a wife with whom he lives at the time of her death; (c) any child while under the age of 18 years, or while over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom the child is living or from whom the child is receiving support regularly at the time of the death of such parent. Questions of the existence and the extent of dependency shall be*

*questions of fact, considering the support regularly received from the deceased.* Minn. Stat. § 65B.44, subd. 6 (2006) (emphasis added).

This statute sets out the minimum scope of economic-loss benefits to be offered through auto-insurance policies in Minnesota. Respondent concedes that:

In Minnesota, insurance companies may not create exclusions in an insurance policy that reduce coverage below what is minimally required by the Minnesota No-fault Act, as doing so would conflict with the purpose of the Act. Resp. App. Br. at 9, citing *Iverson v. St. Farm Mut. Auto Ins. Co.*, 295 N.W.2d 573, 575-76 (Minn. 1980).<sup>4</sup>

Respondent Auto Owners Insurance Company nevertheless chose to interpret the statute, particularly the language emphasized above, as requiring its policies to provide economic-loss benefits solely to surviving married spouses and to children; its policy in this case conforms to this interpretation. See *Auto Owners Insurance Agency v. Perry*, 730 N.W.2d 282, 285 (Minn. App. 2007). The Minnesota Court of Appeals affirmed a trial court ruling upholding Respondent's interpretation. *Id.*

The Court of Appeals' interpretation of the statute is erroneous as a matter of law. The crux of the Court of Appeals' misinterpretation of the law is reflected in a single sentence of its opinion: "The act defines a 'dependent' for the purposes of survivor's economic loss benefits, as a

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<sup>4</sup> "Resp. App. Br." refers to Respondent's Brief to the Minnesota Court of Appeals.

‘wife’ or ‘husband’ of the deceased, of ‘any child’ of a deceased parent.” *Id.* at 285.

The Court of Appeals’ focus, as well as that of Respondent Auto Owners Insurance Company, on the “definition” of “dependent” is fundamentally misplaced. Minn. Stat. § 65B.44, subd. 6 (2006) does not “define” a dependent. (Interestingly, neither does the “definitions” provisions of the Minnesota No-Fault Automobile Insurance Act. See Minn. Stat. § 65B.43 (2006).) It *presumes* certain people are dependents, namely married spouses and children. The fact that the statute *presumes* that married spouses and children are dependents by no means precludes others from being considered dependents of a policy-holder.<sup>5</sup> It merely means that such other people will not enjoy this *presumption* of dependency. The statute, in fact, contemplates this possibility: “Questions of the *existence* and the extent of dependency shall be questions of fact ... .” Minn. Stat. § 65B.44 (2006) (emphasis added). If, as the Court of Appeals held, spouses and children (exclusively) are “defined” as dependents, how could the very existence of such dependencies be questioned in the first place? See *Peevy v. Mutual Services Cas. Ins. Co.*, 346 N.W.2d 120, 122 (Minn. 1984) (“If

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<sup>5</sup> In fact, this Court has already held that a “general conclusion” regarding Minn. Stat. § 65B.44, subd.6, is that “dependency is a question of fact in situations where dependency is not presumed.” *Dahle v. Aetna Cas. and Sur. Ins. Co.*, 352 N.W.2d 397, 400 (Minn. 1984).

dependency were limited to the presumed categories, there would be no need for further inquiry into the *existence* of dependency based on regular receipt of support.”) (emphasis in original).

In addition, the Court of Appeals reasoned: “the act does not offer a broader classification of ‘dependent’ that would raise a question of fact regarding whether respondent’s policy should be read to include appellant as a ‘dependent’ to satisfy the compensation purpose of the act.” *Auto Owners Insurance Company v. Perry*, 730 N.W.2d at 285. However, the Court of Appeals did not analyze the “compensation purpose of the act” itself; had it done so, the unavoidable conclusion is that the Legislature unambiguously intended people like Ms. Perry to be able to seek compensation through insurance policies governed by this provision.

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.” Minn. Stat. § 645.16 (2006). Similarly, “the legislature intends the entire statute to be effective and certain.” Minn. Stat. § 645.17(2) (2006). The Legislature’s overarching purpose in enacting the Minnesota No-Fault Automobile Insurance Act was to address “the detrimental impact of automobile accidents on uncompensated injured persons, [and] upon the orderly and

efficient administration of justice in this state ... .” Minn. Stat. § 65B.42

(2006). Among the specific issues the Legislature intended the Act to address are:

- (1) to relieve the severe economic distress of uncompensated victims of automobile accidents ...
- (2) to prevent the overcompensation of those automobile accident victims suffering minor injuries ...
- (3) to encourage appropriate medical and rehabilitation treatment ...
- (4) to speed the administration of justice, to ease the burden of litigation on the courts of this state, and to create a system of small claims arbitration ... [and]
- (5) to correct imbalances and abuses in the operation of the automobile accident tort liability system ... .” *Id.*

Nowhere in this list of purposes did the Legislature evince any intent to limit the compensation of “injured persons” to some subset of that group, or to reward the act of marriage.

The Legislature emphasized the intended broad scope of this statute in two other places. “Basic economic loss benefits shall provide reimbursement for *all loss* suffered through injury arising out of the maintenance or use of a motor vehicle ... .” Minn. Stat. § 65B.44, subd.1(a) (2006) (emphasis added). As OutFront Minnesota asked rhetorically in its motion for leave to participate as *amicus*, “How can ‘all loss’ be reimbursed unless ‘all claims’ may be submitted?” Motion at 3. Further, the Legislature specifically included an additional provision articulating its intended policy regarding economic-loss benefits:

If the accident causing injury occurs in this state, *every person suffering loss* from injury arising out of maintenance or use of a motor vehicle or as a result of being struck as a pedestrian by a motorcycle *has a right to basic economic loss benefits.*

Minn. Stat. § 65B.46, subd.1 (2006) (emphasis added)

How can “every person suffering loss ... ha[ve] a right to basic economic loss benefits” if insurance companies may arbitrarily prevent some people from seeking them?

In its Response to Ms. Perry’s Petition for Review, Respondent Auto Owners Insurance Company noted that a 1975 amendment to Minn. Stat. 65B.44, subd.6 reworded the second sentence of the second paragraph as follows:

Prior to amendment: “In all other cases, questions of the existence and extent of dependency shall be determined in accordance with the facts at the time of the death.”

Following amendment: “Questions of the existence and extent of dependency shall be questions of fact, considering the support regularly received from the deceased.”

See Response at 3. Respondent argues that the removal of the words “In all other cases” indicates that the Legislature intended to deprive any claimants besides surviving spouses and children from the ability to seek economic-loss benefits. *Id.* With those words in place, the extent of spouses’ and children’s dependency may not be questioned, unlike the dependency of others; without them, the extent of their dependency may be questioned as

well. See *Hoper v. Mutual Service Cas. Ins. Co.*, 359 N.W.2d 318, 321 (Minn. App. 1984) (surviving spouse and child are dependents, but not entitled to economic-loss benefits, “at least in the absence of evidence that ... actual support has diminished.”) Removing these words merely transforms an irrebuttable presumption favoring spouses and children into a rebuttable presumption.

The Respondent’s misinterpretation also continues to conflict with the Legislature’s plainly-stated emphasis on guaranteeing *every person* the opportunity to seek compensation for *all loss*. Moreover, this Court has already observed that the sponsor intended to make “no substantive changes” to the law, and that “the legislative history supports a conclusion that there can be dependents under the statute other than the presumed dependents.” *Peevy*, 346 N.W.2d at 122.

Additionally, Respondent conspicuously fails to acknowledge a different amendment to this exact statutory subdivision in 1975. Prior to this amendment, the final paragraph of Minn. Stat. 65B.44, subd.6, referred specifically to “Payments to the surviving spouse ... [and] payments to a dependent child ...” and the conditions upon which these payments would terminate. The amendment, however, removed references to “surviving spouse” and “dependent child” and replaced them with the all-encompassing

phrase, “Payments shall be made to the dependent ... ,” followed again by a description of the conditions that would trigger termination of payments to “the recipient.” See Minn. Stat. 65B.44, subd.6 (2006). Far from foreclosing the possibility of economic-loss benefits for people other than surviving spouses and children, the Legislature specifically eliminated language that could be construed to impose such a limit. Had the Legislature intended to restrict economic-loss benefit eligibility solely to surviving spouses and children, it would have had no reason to remove this language. In stark contrast to the interpretation offered by Respondent, this post-amendment language is fully consistent with the Legislature’s overarching goal of providing the opportunity to seek compensation to *every person* experiencing *all loss*.

The Legislature wisely, and humanely, focused on *loss* and on compensating *every person* who experienced loss. In doing so, the Legislature employed straightforward and unambiguous language: “all loss” and “every person.” The Court of Appeals’ construction of the statute to require compensation for *some loss* suffered by *certain persons* works substantial damage to the Legislature’s plain and clearly-expressed intent in the Act to assure compensation in the broadest possible terms. This construction also clearly disregards the Legislature’s direction that full effect

be given to the statute and to each of its parts and words. That the Court of Appeals' construction depends, in significant part, on the existence of a legal marriage between a policy-holder and a claimant inflicts substantial damage on those claimants who lack such a marriage, *particularly those claimants who cannot marry their partners in the first place.*

Chong Suk Perry and Daniel Savage could have married. They did not. This is irrelevant. For the Legislature, the critical issue was not whether they were married, but whether Ms. Perry experienced loss. The Legislature has a long-standing public policy of promoting marriage, see Minn. Stat. § 517.01 (2006) *et seq.*, which it advanced by conferring upon surviving married spouses a presumption of dependence. Contrary to Respondent's assertion, confirming that *every person* who experiences loss may seek compensation does not render "the enumerated classes set forth in the No-Fault Act ... meaningless." Resp. App. Br. at 12. Those classes continue to enjoy a presumption conferred upon no others. By guaranteeing *every person* the opportunity to seek compensation under these painful circumstances, the Legislature implicitly acknowledged that joy and pain, success and loss, are a part of the human experience irrespective of whether one's relationship or family is legally recognized. It is a recognition that regardless of whether they are married, couples form, they build families,

they experience loss. This is not dependent on being married; it is dependent on being human.

Can it really be doubted that if Sharon Kowalski had been killed in that auto accident, instead of “just” critically injured, Karen Thompson would have experienced loss? Or that if Nancy SooHoo had been killed in an auto accident, that the children she was raising – children to whom she had no legal relationship – would have experienced loss? Can it really be imagined that the Legislature intended that Karen Thompson or Nancy SooHoo’s children would not be “persons,” and as such entitled to seek compensation for their losses? Respondent shamefully characterizes the idea of permitting such survivors to seek compensation as an “absurd result.” Resp. App. Br. at 12.<sup>6</sup>

The 2000 Census and 2005 American Community Survey results show that there are thousands of Minnesotans in same-sex couples who could find themselves in precisely the same circumstances as Chong Suk Perry. They could find themselves wholly excluded from the State’s

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<sup>6</sup> Insurance companies are in the business of pricing and assuming risk; they are fully capable of pricing and assuming the risk that unmarried domestic partners might suffer economic loss as the result of the operation or maintenance of automobiles in Minnesota. If they are prepared to compensate the losses suffered by spouses, there is no reason they are unable to compensate the comparable losses suffered by domestic partners.

intestacy and wrongful-death statutes, and from the Social Security survivors-benefit program, among other protections. The one avenue of compensation for their pain could be economic-loss benefits under an auto-insurance policy: an avenue that the decisions of the lower courts in this case have substantially jeopardized.

OutFront Minnesota respectfully submits that Chong Suk Perry is a person, a person who lost her partner – the sort of loss with which the GLBT community is sadly familiar. Members of the GLBT community are also familiar with the experience of having doors closed to them because of a lack of a legal marriage. In this case, however, such a restrictive interpretation of statute flies in the face of the Legislature’s plain intent, and this Court should reject it. Respondent has created exclusions in its insurance policy that reduce coverage below what is minimally required by the Minnesota No-Fault Automobile Insurance Act, and doing so conflicts with the purpose of the Act.

### **CONCLUSION**

Chong Suk Perry has asserted that she suffered loss as a result of Mr. Savage’s tragic death in 2005. Respondent Auto Owners Insurance Company has thus far refused her the opportunity to seek the compensation Minnesota law requires its policies to offer, and Minnesota courts have

upheld the Respondent's position. If this Court affirms the rulings below, OutFront Minnesota respectfully submits that within hours of this Court's decision, every insurer doing business in Minnesota will carefully review its policies to assure that surviving domestic partners, people like Chong Suk Perry or like many of OutFront Minnesota's constituents, will never be able to seek compensation for their painful losses. Such an outcome would be fundamentally at odds with the Legislature' clearly-stated intent, and would compound loss, not compensate it.

OutFront Minnesota respectfully – but urgently – asks this Court to reverse the holding of the Minnesota Court of Appeals, and hold that the Minnesota No-Fault Automobile Insurance Act guarantees *every person* the opportunity to seek compensation for *all loss* arising from the operation or maintenance of an automobile in this state.

Date: Aug. 17, 2007

Respectfully submitted,

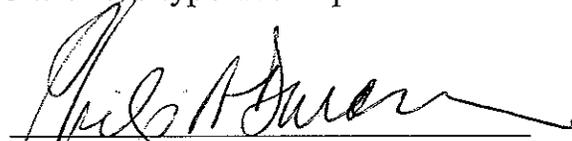


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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word-count requirements of Minn. R. Civ. App. P. 132.01, subd.3(c). This brief was prepared using Microsoft Office Word 2003, complies with the typeface requirements of said Rule, and contains 5,588 words.

Date: Aug. 17, 2007

  
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