

NO. A12-0591

4

State of Minnesota
In Court of Appeals

HEALTHSTAR HOME HEALTH, INC., a Minnesota corporation;
 V-CARE HOME HEALTH, INC., a Minnesota corporation;
 BREAK-THRU HOME HEALTH CARE, INC., a Minnesota
 corporation; UNITED HOME HEALTH CARE, INC., a Minnesota
 corporation; CARE PLANNERS INC., a Minnesota corporation;
 ABBEYCARE, INC., a Minnesota corporation; LIFE FOUNTAIN,
 HOME HEALTH CARE, INC., a Minnesota corporation;
 JEAN ROGERS, an individual; NANCY LARSON, an individual;
 ANNIE PEARL BROWN, an individual; MA LEE, an individual;
 WANG LAO YANG, an individual; DAVID KUE, an individual;
 PEE TEE, an individual; FREDDIE TINSLEY, an individual;
 MAI IA HER, an individual; CHRISTOPHER JOHNSON, an individual;
 FELISA VILLACAMPA, an individual; KENNER HARROWAY, an
 individual; DEONTE FRANKLIN, an individual; SAMMIE BANKS, an
 individual; SUSAN ARELLANO, an individual; TERRY STRICKLAND,
 an individual; and JOHNNELL LANE, an individual,

Appellants,

vs.

MARK DAYTON, in his official capacity as Governor of the State of
 Minnesota; and LUCINDA JESSON, in her official capacity as
 Commissioner of Human Services,

Respondents.

APPELLANTS' BRIEF AND ADDENDUM

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUE

Does the 2011 Amendment to Minn. Stat. § 256B.0659, subd. 11, deprive Appellants of equal protection of the laws under Art. 1, § 2 of the Minnesota Constitution because it classifies relative and non-relative personal care assistants (“PCAs”) for different treatment?

Appellants and Respondent made cross-motions for summary judgment on this issue (AA089,91), and the District Court granted summary judgment for Respondent, holding that the 2011 Amendment to Minn. Stat. § 256B.0659, subd. 11, meets the requirements of the applicable rational basis Constitutional analysis and does not deprive Appellants of equal protection of the laws guaranteed by the Minnesota Constitution. Appellants timely filed their Notice of Appeal on April 2, 2012. (AA132).

APPOSITE CASES

Gluba ex rel. Gluba v. Bitzan & Ohren Masonry, 735 N.W.2d 713 (Minn. 2007).

State v. Russell, 477 N.W.2d 886 (Minn. 1991).

Murphy v. Comm’r of Human Services, 765 N.W.2d 100 (Minn. Ct. App. 2009).

Mitchell v. Steffen, 487 N.W.2d 896 (Minn. Ct. App. 1992), *aff’d*, 504 N.W.2d 198 (Minn. 1993).

STATEMENT OF THE CASE

On October 12, 2011, Appellants brought this action in the District Court for the Fourth Judicial District, Ramsey County, against Respondent Lucinda Jesson, in her official capacity as Commissioner of the Department of Human Services, to challenge the constitutionality of the 2011 amendments to Minn. Stat. § 256B.0659, specifically subdivision 11(c) of the statute (hereinafter the “20% Relative PCA Pay Cut”), on the

grounds that it violates Appellants' equal protection rights under Article 1, § 2 of the Minnesota Constitution.¹ (See the attached Appellants' Addendum for the complete text of Minn. Stat. § 256B.0659). Arguments were heard in the district court by the Honorable Judge Dale B. Lindman on October 26, 2011, on Appellants' motion for a temporary restraining order ("TRO") and temporary injunction to enjoin and restrain the Commissioner from enforcing or implementing the 20% Relative PCA Pay Cut. On October 27, 2011, the court issued a TRO, ordering that the 20% Relative PCA Pay Cut shall not take effect until the court decided the issues on the merits. (Appellants' Appendix ("AA") 085-86). The parties then brought cross-motions for summary judgment, which the court heard on January 5, 2012. (AA089, 91). The district court granted the Commissioner's motion for summary judgment, and on March 23, 2012, entered the Findings of Fact, Conclusion of Law and Order that is the subject of this appeal. (AA122-31).

STATEMENT OF THE FACTS

The Agency Appellants

Appellants Healthstar Home Health, Inc., V-Care Home Health, Inc., Break-Thru Home Care, Inc., United Home Health Care, Inc., Hmong Home Health Care, Inc., Care Planners Inc., AbbeyCare, Inc., and Life Fountain Home Health Care, Inc. (the "Agency Appellants") are all enrolled with the Department of Human Services ("DHS") as Minnesota PCA and/or PCA Choice Agencies that employ PCAs who provide services to

¹ By agreement of the parties, and Order of October 27, 2011, Appellants' claims against Governor Dayton were dismissed.

persons with disabilities and special care needs. (AA012, 14, 16, 18, 20-21, 24-25, 50-52, 54-57, 123).²

The Individual Appellants

Appellants Jean Rogers, Annie Pearl Brown, David Kue, Freddie Tinsley, Mai Ia Her, Kenner Harroway, Deonte Franklin, Terry Strickland, and Johnnell Lane (the “PCA Appellants”) are all Minnesota PCAs who currently provide PCA services to relatives. (AA004-5, 12, 14-15, 17, 19, 21-22, 24, 45-46, 50-55, 57, 123).

Appellants Nancy Larson, Ma Lee, Wang Lao Yang, Pee Tee, Christopher Johnson, Felisa Villacampa, and Sammi Banks (the “Recipient Appellants”), are all authorized by DHS to receive PCA services, and all are being cared for by relative PCAs. Appellant Susan Arellano is the mother of a PCA recipient who is being cared for by a relative PCA. (AA004-5, 12, 16-18, 20, 23, 45-46, 50, 52-54, 56, 124).

The Respondent

Respondent Lucinda Jesson (“Commissioner Jesson” or the “Commissioner”) is the Commissioner of DHS, and she is charged with administering the Minnesota Medical Assistance Program, Minnesota Care, and Minnesota Alternative Care, all of which pay for personal care assistance services, and is a party in her official capacity. (AA005, 46, 124; *see also* Minn. Stat. Ch. 256B).

The 2011 Amendment to Minn. Stat. § 256B.0659, subd.11 (“20% Relative PCA Pay Cut”)

On July 19, 2011, the Minnesota Legislature passed an amendment to Minn. Stat.

² Appellants also submitted 25 supporting affidavits to the district court that are part of the official record but which were not reproduced in the Appendix.

§ 256B.0659, subd.11 (2010), which provides, in relevant part, that:

When the personal care assistant is a relative of the recipient, the commissioner shall pay 80 percent of the provider rate. For purposes of this section, relative means the parent or adoptive parent of an adult child, a sibling aged 16 years or older, and adult child, a grandparent, or a grandchild.

(hereafter the “20% Relative PCA Pay Cut”). (AA002, 27, 44, 58; *see also* 2011 First Special Session Laws of Minnesota, chapter 9, article 7, section 10). Governor Dayton signed the 20% Relative PCA Pay Cut into law on July 20, 2011, and it became effective on October 1, 2011. (AA002, 27, 44, 58, 124; *see also id.*).

Governor Dayton’s Public Comment

In a publicly-recorded interview in August, 2011, at the Minnesota State Fair, Governor Dayton was asked the following question, to which he gave the following response:

Q: What I want to know is if a relative of a special needs child is being docked 22% of reimbursement this year and yet the state will assign a total stranger and give them full reimbursement. Can you explain just how much the state is saving by doing that?

A: That’s one of the outcomes of the session I feel worse about and I will do everything I can starting the next session to remedy that. That was a mistake and oversight on my part and the commissioner’s part and it is absolutely wrong.

(AA027, 58 (emphasis added)).³

Representative Abeler’s Public Comments

In a publicly-recorded interview on May 19, 2011, Representative Jim Abeler,

³ An audio / video recording of the interview is publicly available at <http://minnesota.cbslocal.com/video/6189042-gov-dayton-stops-by-wcco-fair-booth>.

Chair of the House Health and Human Services Finance Committee, and the principal author and proponent of the 20% Relative PCA Pay Cut, offered the following as the Legislature's rationale for treating relative PCAs differently from non-relative PCAs:

Many people care for their disabled child and don't get paid anything. And some people are in the same circumstance and get paid quite a number of hours a week. I talked to the Department about it and they thought if we reduced the rate, that most people would still do it. And so it was meant to be a way to get some savings while not affecting services.

(AA027-28, 41, 58).

The Federal and State Medical Assistance Programs

Medicaid was established by the U.S. Congress in 1965 as Title XIX of the Social Security Act, codified at 42 U.S.C. § 1396. (AA006, 47). In accordance with Title XIX, states are reimbursed by the federal government for part of the cost of providing the required medical services. (AA006, 47; *see also* 42 U.S.C. § 1936; 42 CFR Ch. 4).

Medicaid is administered at the federal level by the Center for Medicare and Medicaid Services ("CMS"), an agency within the Department of Health and Human Services. (AA006, 47; *see also* 42 CFR Ch. 4; Center for Medicare and Medicaid Services website at <http://www.cms.gov>). CMS issues regulations and guidelines for Medicaid that states are required to follow, codified in Title 42 of the Code of Federal Regulations. (AA006, 47; *see also* 42 CFR Ch. 4, subchapter C (Grants to States for Medical Assistance Programs)).

Minnesota's Medical Assistance program was established by the Legislature in January 1966, and is a jointly-funded, federal-state program that pays for health care services provided to low-income individuals. (AA006-7, 47; *see also* Minn. Stat. §§

256B.23 and 256B.041, subd. 7; *see also* DHS website at <http://www.dhs.state.mn.us> (Medical Assistance)). Statutes governing Minnesota's Medical Assistance program, including Minnesota's personal care assistance, are codified, for the most part, at Minn. Stat. Ch. 256B, and include eligibility requirements, administrative requirements such as the duties of DHS and the counties, and provisions for the central disbursement of Medical Assistance payments to providers. (AA007, 47, 125; *see also* Minn. Stat. Ch. 256B).

DHS manages the administration of Medical Assistance for eligible recipients by the county agencies and oversees a statewide system for the centralized disbursement of medical assistance payments to vendors. (AA007, 47; *see also* Minn. Stat. § 256B.041, subd. 1). County agencies are authorized to administer medical assistance in their respective counties under the supervision of DHS. (AA007, 47; *see also* Minn. Stat. § 256B.041, subd. 1(a)).

Eligibility to Receive PCA Services

To be eligible to receive personal care assistance services, a recipient must be eligible for Medical Assistance or MinnesotaCare Expanded coverage. (AA007, 47; *see also* Minnesota Department of Human Services website at http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&dDocName=id_003867&RevisionSelectionMethod=LatestReleased). The PCA services eligible for payment include services and support furnished to an individual to assist in activities of daily living, health-related procedures and tasks, observation and redirection of behaviors, and instrumental activities of daily

living. (AA007, 47, 125; *see also* Minn. Stat. § 256B.0659, subd. 2).

The amount of PCA services authorized by DHS are based on the recipient's home-care rating, which is determined by the DHS Commissioner's designee, based on the total number of dependencies of activities of daily living and presence of complex health-related needs, and in consideration of the presence of Level I behavior, *i.e.*, physical aggression towards self, others, or destruction of property that requires the immediate response of another person. (AA007-8, 47-48; *see also* Minn. Stat. § 256B.0652, subd. 6(b)).

The methodology to determine total time for PCA services for each home-care rating is based on the median paid units-per-day for each home-care rating, and additional time is added through, among other things, the assessment and identification of 30 additional minutes per day for a dependency in each critical activity of daily living, 30 additional minutes per day for each complex health-related function, and 30 additional minutes per day for each behavior issue. (AA008, 48; *see also* Minn. Stat. § 256B.0652, subd. 6(c)). A limit of 96 units of qualified professional supervision may be authorized for each recipient receiving personal care assistance services, unless otherwise approved by the DHS Commissioner. (AA008, 48; *see also* Minn. Stat. § 256B.0652, subd. 6(d)).

Agency Eligibility to Receive Medical Assistance Reimbursement for PCA Services

Pursuant to Minn. Stat. Ch. 256B, the DHS Commissioner may allow private entities ("PCA Agencies") to enroll in the Medical Assistance and MinnesotaCare programs to provide PCA services to program recipients. (AA008, 48-49; *see also* Minn. Stat. §§ 256B.0652 and 256B.041, subd. 6). PCA Agencies are defined by State law as

medical assistance enrolled providers that provide or assist with providing PCA services to recipients, and include personal care assistance provider organizations, personal care assistance choice agencies, class A licensed nursing agencies, and Medicare-certified home health agencies. (AA008, 49; *see also* Minn. Stat. § 256B.0659, subd. 1(l)). PCA Agencies are required to comply with Minn. Stat. Ch. 256B, and rules promulgated thereunder by DHS. (AA008, 49, 125).

To receive reimbursement for PCA services provided to Medical Assistance and Minnesota Expanded Care recipients, PCA Agencies must, among other things:

- (a) enroll with DHS as a Medicaid provider meeting all provider standards, including completion of the required provider training;
- (b) comply with general medical assistance coverage requirements;
- (c) demonstrate compliance with the law and policies of the PCA Program;
- (d) comply with background study requirements;
- (e) verify and keep records of hours worked by the PCA and qualified professional;
- (f) not engage in any agency-initiated direct contact or marketing in person, by phone, or other electronic means to potential recipients, guardians, or family members;
- (g) pay the PCA and qualified professional based on actual hours of services provided;
- (h) withhold and pay all applicable federal and state taxes; and
- (i) document that the agency uses a minimum of 72.5 percent of the revenue generated by the medical assistance rate for PCA services for employee personal care assistant wages and benefits.

(AA008-9, 49; *see also* Minn. Stat. § 256B.0659, subd. 24).

DHS may also allow a recipient of PCA services to be directly responsible for the hiring, training, scheduling, and firing of PCAs according to the terms of a written agreement with a PCA Choice Agency, which acts as a fiscal intermediary responsible for managing payroll, including payroll-related taxes and insurance, invoicing the State, and providing the consumer training and support in managing the recipient's personal care assistance services (the "PCA Choice Option"). (AA009, 49; *see also* Minn. Stat. § 256B.0659, subd. 18). With limited exceptions, PCA Choice Agencies must meet all PCA Agency standards and comply with all statutory and regulatory provisions relating to PCA services that apply to a recipient using the PCA Choice Option. (AA009, 49; *see also* Minn. Stat. § 256B.0659, subs. 18, 19 and 20).

In addition, to receive reimbursement for PCA services provided to Medical Assistance and Minnesota Expanded Care recipients, PCA Choice Agencies must, among other things:

- (a) be the employer of the PCA and the qualified professional for employment law and related regulations including, but not limited to, purchasing and maintaining workers' compensation, unemployment insurance, surety and fidelity bonds, and liability insurance;
- (b) bill the medical assistance program for PCA services and qualified professional services;
- (c) request and complete background studies that comply with the requirements for PCAs and qualified professionals;
- (d) pay the PCA and qualified professional based on actual hours of services provided;
- (e) withhold and pay all applicable federal and state taxes;
- (f) verify and keep records of hours worked by the personal care assistant and qualified professional;

- (g) make the arrangements and pay taxes and other benefits, if any, and comply with any legal requirements for a Minnesota employer;
- (h) enroll in the medical assistance program as a PCA Choice Agency; and
- (i) use a minimum of 72.5 percent of the revenue generated by the medical assistance rate for PCA services for employee personal care assistant wages and benefits.

(AA009-10, 49; *see also* Minn. Stat. § 256B.0659, subd. 19).

Eligibility to Work as a PCA

A personal care assistant (“PCA”) is defined by State law as an individual employed by a PCA Agency or PCA Choice Agency who provides PCA services to recipients, namely human assistance and support to persons of any age with disabilities and special care needs, living independently in the community. (AA010, 49, 125; *see also* Minn. Stat. § 256B.0659, subd. 1(m) and subd. 2). PCAs are required to comply with Minn. Stat. Ch. 256B and rules promulgated thereunder by DHS. (AA010, 49, 125).

To provide PCA services under the Medical Assistance, Minnesota Care Expanded Coverage, and Alternative Care programs, PCAs must, among other things:

- (a) be at least 18 years of age (subject to limited exceptions);
- (b) be employed by a PCA Agency or PCA Choice Agency;
- (c) enroll with DHS as a PCA after clearing a background study;
- (d) be able to effectively communicate with the recipient and PCA Agency;
- (e) be able to provide covered PCA services according to the recipient’s personal care assistance care plan, respond appropriately to recipient needs, and report changes in the recipient’s condition to the supervising qualified professional or physician;
- (f) not be a consumer of personal care assistance services;
- (g) maintain daily written records including, but not limited to, time sheets;

- (h) complete standardized training including basic first aid, vulnerable adult, child maltreatment, OSHA universal precautions, basic roles and responsibilities of PCAs including information about assistance with lifting and transfers of recipients, emergency preparedness, orientation to positive behavioral practices, fraud issues, and completion of time sheets;
- (i) complete training and orientation on the needs of the recipient within the first seven days after the services begin; and
- (j) be limited to providing and being paid for 275 hours per month of PCA services regardless of the number of recipients being served or the number of personal care assistance provider agencies enrolled with.

(AA010-11, 49; *see also* Minn. Stat. § 256B.0659, subd. 11).

Consistent with a personal assistance care plan developed by a qualified professional that meets the requirements of a service plan developed by a public health nurse, PCAs may assist recipients with: (i) activities of daily living, including, among other things, dressing, grooming, bathing, eating, basic personal hygiene and skin care, eating, mobility and positioning, and toileting; (ii) health-related procedures and tasks, including, among other things, range of motion and passive exercise to maintain a recipient's strength and muscle functioning, assistance with self-administered medication, interventions for seizure disorders and other activities considered within the scope of the personal care service; (iii) observation and redirection of behaviors as necessary for the recipient to remain safe; and (iv) instrumental activities of daily living including, among other things, accompanying the recipient to medical appointments and community activities, assisting with payment of bills and with telephone and other communications, performing household tasks, and planning and preparing for meals and shopping for food, clothing, and other essential items. (AA011, 50; *see also* Minn. Stat. § 256B.0659, subds. 1, 2 and 7).

The District Court's Ruling

After initially granting Appellants' motion for a TRO on October 27, 2011, the district court heard oral arguments on the parties' cross-motions for summary judgment on January 5, 2012. While Appellants requested that the court evaluate whether the 20% Relative PCA Pay Cut constitutes a violation of the right to equal protection under the law guaranteed in Art. 1, § 2 of the Minnesota Constitution, the district court expressed its unease at having to make such an evaluation:

Somehow, however, it doesn't seem correct that I should be making the decision. This is a decision that should be and was made by the legislature. I'm not the legislature. . . . And I'm sitting here today and throughout this particular trial charged with the responsibility of making a decision that really should be made by the legislature. . . . I do have a difficulty with the fact that you folks are in here asking me to make a decision that should be made by the other branch of government.

(January 5, 2012 Hearing Transcript ("Hr'g Tr.") at 31). Following oral arguments, the district court issued its Findings of Fact, Conclusions of Law, and Order on March 23, 2012.

The district court began its analysis with a finding that relative and non-relative PCAs are similarly situated. (AA127 at ¶ 8). In so finding, the court noted that both relative and non-relative PCAs are "required to comply with the same statutes, rules and regulations that specify mandatory training, skills and qualifications," and that "[a]ll services provided must be consistent with a personal assistance care plan developed by a public health nurse, and be limited to the same maximum hours based upon the recipient's home care rating." (*Id.*). The court went on to say that, "[t]he work

completed and the services provided by relative and non-relative PCAs are expected and required to be the same in nature.” (*Id.*).

Because relative and non-relative PCAs are similarly situated, the district court concluded that the State must have a rational basis for discriminating amongst them, and that the burden is on the Commissioner to show that each element of the rational basis test has been met. (AA127 at ¶ 6, 9). Citing to *Gluba v. Bitzan & Ohren Masonry*, 735 N.W.2d 713, 721 (Minn. 2007), the district court articulated Minnesota’s rational basis test as follows:

(1) the distinctions which separate those included within the class from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine and relevant to the purpose of the law, that is there must be an evident connection between the distinctive need peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the legislature can legitimately attempt to achieve.

(AA127 at ¶ 7).

Applying the facts to the law, the district court first examined whether the Commissioner had met her burden of showing that the “distinctions that separate the two classes are genuine and substantial.” (AA127 at ¶ 9). In holding that she had, the district court found that the “rationale behind the distinction between relative PCAs and non-relative PCAs is based on the moral obligations that relative PCAs have towards helping their family members and the valid assumption that relative PCAs will continue to provide care even if affected by a pay cut.” (AA128 at ¶ 11 (emphasis added)). To support that conclusion, the district court pointed to similar distinctions based on familial

status present in: (i) federal law; (ii) prior, unchallenged versions of Minnesota's Medical Assistance statutes; and (iii) current, unchallenged Minnesota law that prohibits PCAs from receiving payment for services rendered to their legal dependents. (*Id.*). The district court also noted that other constitutions allow states to discriminate between relatives and non-relatives. (*Id.*).

Next, the district court found that the Commissioner had met her burden of showing that "the classification is genuine and relevant to the purpose of the law." (AA128-29 at ¶ 12). According to the district court, "[t]he purpose of Medical Assistance Reimbursement for PCA services is to allow those who qualify to remain in their homes to avoid moving to nursing homes, intermediate care facilities, or group homes." (*Id.*). However, the district court reasoned that "[l]imiting the amount of funds received by relative PCAs is not contradictory to the purpose of the statute" because "[t]he Amendment does not estop qualifying individuals from receiving necessary services." (AA129 at ¶ 13). While the court also noted that the expressed legislative purpose for the 20% Relative PCA Pay Cut was to reduce expenditures, it did not address whether sufficient evidence had been submitted to show that the questioned classification would do so. (*Id.*).

The district court also found that the Commissioner had met her burden of proving that the "statutory purpose is one that the legislature can legitimately attempt to achieve" because "reducing medical expenditures is a permissible governmental goal," and "[s]upporting individuals who are caring for their close family members is a legitimate governmental goal," and that "[c]ontinuing to allow Medical Assistance payment for

PCA services provided by a close relative, even at a reduced rate, advances that goal.” (AA129-30 at ¶¶ 14, 16).

Finally, the district court concluded that, “[a]lthough the Amendment has an effect on relative PCAs the purpose of the Amendment is not based on [the Commissioner’s] disfavor of relative PCAs,” as can “easily be seen by the fact that the Amendment only reduces the amount of pay received by relative PCAs rather than removing payment in its entirety.” (AA129-30 at ¶ 16). “Therefore,” the court held, “Minnesota Statute § 256B.0659, subd. 11(c) meets the requirements of the rational basis tests and does not deprive Plaintiffs of equal protection of the laws guaranteed by the Minnesota Constitution.” (AA130 at ¶ 17).

ARGUMENT

“The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.” Eisenstadt v. Baird, 405 U.S. 438, 455 (1972) (citations omitted).

I. STANDARD OF REVIEW.

A. Appellate Review of a Grant of Summary Judgment.

The constitutionality of a statute is a question of law which appellate courts review *de novo*. *Gluba*, 735 N.W.2d at 719. In reviewing a district court's grant of summary judgment, appellate courts apply a *de novo* standard of review to all questions of law and view all evidence in the light most favorable to the one against whom summary judgment was granted. *Kratzer v. Welsh Cos., LLC*, 771 N.W.2d 14, 18 (Minn. 2009). The appellate court's role in reviewing the district court's decision is to determine whether there are any genuine issues of material fact and whether the trial court erred in applying the law. *Id.*

B. The Minnesota Constitution's Guarantee of Equal Protection.

Equal protection is an inherent but unenumerated right found and confirmed in Art. 1, § 2 of the Minnesota Constitution. *Price v. Amdal*, 256 N.W.2d 461, 468 (Minn. 1977); *Studor, Inc. v. State*, 781 N.W.2d 403, 408 (Minn. Ct. App. 2010); *Murphy v. Comm'r of Human Services*, 765 N.W.2d 100, 106 (Minn. Ct. App. 2009). Minnesota's Constitution requires the State to treat similarly situated individuals alike, unless a rational basis exists for discriminating among them which is reasonably related to a legitimate legislative purpose and is not manifestly arbitrary or fanciful. *Studor*, 781 N.W.2d at 408; *In re Welfare of M.L.M.*, 781 N.W.2d 381, 388 (Minn. Ct. App. 2010); *Murphy*, 765 N.W.2d at 106; *State v. Bradley*, 629 N.W.2d 462, 465 (Minn. Ct. App. 2001).

C. The Rational Basis Standard of Review.

The rational basis standard used to review equal protection challenges that do not involve a fundamental right requires courts to determine whether the challenged statutory classification has a legitimate purpose, and whether it was reasonable for the legislature to believe that use of the challenged classification would promote that purpose. *Gluba*, 735 N.W.2d at 721; *Murphy*, 765 N.W.2d at 106. To survive an equal protection challenge under Minnesota's rational basis test, proponents of the challenged statute have the burden to show the following:

(1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; **and** (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Gluba, 735 N.W.2d at 721 (emphasis added).

Unlike the more deferential federal equal protection analysis, when considering an equal protection claim under the Minnesota Constitution, courts are unwilling to hypothesize a rational basis to justify a classification; the Minnesota test instead requires a reasonable connection between the actual, and not the theoretical, effect of the challenged classification and the statutory goals. *Id.*; *State v. Russell*, 477 N.W.2d 886, 889-90 (Minn. 1991); *Murphy*, 765 N.W.2d at 106. In order for a challenged statute to pass scrutiny under a rational-basis test, the State must prove more than anecdotal support for a classification that adversely affects one group over another. *Russell*, 477 N.W.2d at

889-90; *Mitchell v. Steffen*, 487 N.W.2d 896, 904 (Minn. Ct. App. 1992), *aff'd*, 504 N.W.2d 198 (Minn. 1993).

II. THE DISTRICT COURT ERRED IN HOLDING THAT MINN. STAT. § 256B.0659, SUBD. 11, AS AMENDED, DOES NOT VIOLATE THE MINNESOTA CONSTITUTION'S GUARANTEE OF EQUAL PROTECTION.

A. Relative and Non-Relative PCAs Are Similarly Situated.

Minnesota's rational basis test applies to legislation in which the State fails to treat similarly situated individuals alike. *Murphy*, 765 N.W.2d at 106. In this case, the district court correctly held that relative and non-relative PCAs are similarly situated. (AA127 at ¶ 8). The district court ruled, and the parties do not dispute the fact, that relative PCAs and non-relative PCAs are each required to comply with the same statutes, rules, and regulations, including, but not limited to, those mandating minimum training, knowledge, skills, and qualifications, specifying the types of services that may be provided and maximum hours worked, and mandating employment by an enrolled PCA Agency or PCA Choice Agency. (AA028, 58-59). By statute and rule, all PCAs are required to have the same qualifications, and are authorized to provide identical services to assist mentally and physically disabled people to remain in their homes. (AA127 at ¶ 8). The detailed statutory requirements both for eligibility to receive PCA services, and to work as a PCA, make the existence of any familial relationship between PCA and recipient entirely irrelevant to the type, quality, or frequency of services for which the State will pay. (*Id.*).

All PCAs -- regardless of familial status -- are required to possess the same minimum qualifications, and all are limited to providing authorized services as determined necessary by a qualified professional and under the supervision of a public health nurse up to a maximum of 275 hours per month. (*Id.*). Relative PCAs do not perform any less or different work, or perform any services that are of a lesser or different quality than non-relative PCAs. (*Id.*). Consequently, and as the district court correctly found, because all of the services recipients are eligible to receive, and all of the services PCAs are authorized to provide, are entirely independent of the familial relationship between PCA and recipient, relative and non-relative PCAs, as a matter of fact and law, are similarly situated.

B. The District Court Erred in Holding that the Commissioner Proved All Elements of the Rational Basis Test.

While the district court correctly concluded that relative and non-relative PCAs are similarly situated, it erred in holding that there is a rational basis for discriminating between them. This Court should reverse the district court because: (i) the classifications are not based on genuine and substantial differences between the two groups; (ii) the classifications are not genuine nor relevant to the purpose of the law; and (iii) the reasons for distinguishing between the legislatively-created classes are not reasonably related to a legitimate legislative purpose. *Gluba*, 735 N.W.2d 713 at 721; *Murphy*, 765 N.W.2d at 106.

In applying the rational basis test, it is well established that courts in Minnesota will not “hypothesize a rational basis to justify a classification, as the more deferential

federal standard requires.” *Russell*, 477 N.W.2d at 889. Further, Minnesota courts require “a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals.” *Id.* Purely anecdotal evidence, such as that presented by the Commissioner and relied upon by the district, court does not suffice to establish a rational basis for the challenged classification. *Id.* at 889-90; *Mitchell*, 487 N.W.2d at 904.

The district court found that the “genuine and substantial differences” prong of Minnesota’s rational basis test was satisfied because “[t]he affection, familial bond, and knowledge of the Medical Assistance recipients’ needs and preferences that are present when a close relative is providing PCA services does not exist when personal care assistants are not related to the individuals under their care.” (AA128 at ¶ 11). In other words, the district court held that genuine and substantial differences exist between relative and non-relative PCAs because familial bonds allow relative PCAs to provide a higher level of care. That, however, is a hypothetical assumption with no basis in the record facts.

The district court also found that the “genuine or relevant” prong of the rational basis test had been satisfied because the purpose of the Medical Assistance statutes is to “allow those who qualify to remain in their homes to avoid moving to nursing homes, intermediate care facilities, or group homes.” (AA128-29 at ¶ 12-13). The district court reasoned that this purpose was not contradicted by the 20% Relative PCA Pay Cut because, “[a]lthough the Amendment has an effect on the individuals providing services . . . it does not take away services from those who qualify.” (AA129 at ¶ 13).

But this finding came on the heels of the court's previous statement that "knowledge of the Medical Assistance recipients' needs . . . does not exist when personal care assistants are not related to the individuals under their care." (AA128 at ¶ 11). Thus, according to the district court, a genuine and substantial difference exists between relative and non-relative PCAs because relative PCAs are capable of providing a higher level of care -- and are, according to the court, the only ones with any knowledge of the recipient's needs -- yet an amendment discouraging PCAs from working with relatives is not contrary to the purpose of the Medical Assistance statute because it will have no effect on qualifying recipients. Not only is the court's logic contradictory, but the court completely ignored the fact that the Commissioner submitted no evidence -- and the legislature considered no evidence -- as to how many PCA service recipients will lose PCA services when their relative PCA can no longer afford to work with them and geographic, language, or cultural barriers prevent the service recipient from being served by a non-relative PCA.

Finally, the district court found that the "reasonably related" prong of the rational basis test was satisfied because the 20% Relative PCA Pay Cut saves money without completely eliminating all funding for relative PCAs. (AA129-30 at ¶ 16). But that finding is in direct contradiction to binding Minnesota precedent denying the legitimacy of legislative acts that reduce expenditures by creating invidious distinctions between classes of residents. *See Mitchell*, 487 N.W.2d at 903 (citing *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969)). The justifications cited by the district court, therefore, are simply not enough to satisfy Minnesota's rational basis test, and this Court should reverse.

1. The Classifications Created by the 20% Relative PCA Pay Cut Are Not Rationally Based on Genuine and Substantial Differences Between the Classes.

Under the first prong of Minnesota’s rational basis test, the Commissioner had the burden to show that the legislature created the challenged classifications based on genuine and substantial differences between the two groups. *Gluba*, 735 N.W.2d at 721; *Murphy*, 765 N.W.2d at 106. In determining whether such a showing has been made, courts in Minnesota are “unwilling to hypothesize a rational basis to justify a classification.” *Russell*, 477 N.W.2d at 889; *see also Gluba*, 735 N.W.2d at 721; *Murphy*, 765 N.W.2d at 106. Anecdotal support for a classification is not enough. *Russell*, 477 N.W.2d at 889-90; *Mitchell*, 487 N.W.2d at 904.

In *Russell*, defendants charged with possession of crack cocaine moved to dismiss the charges on the ground that the statutory distinction drawn between the quantity of crack cocaine possessed and the quantity of cocaine powder possessed violated the equal protection guarantee of the Minnesota Constitution. 477 N.W.2d at 887. The constitutional question was certified to this Court, and eventually reached the Minnesota Supreme Court. *Id.* In applying the first prong of Minnesota’s rational basis test, the Court examined the evidence upon which the legislature had based its decision to distinguish between crack and powder cocaine in creating the sentencing requirements. *Id.* at 889-90. Holding that the statutory distinction failed to satisfy the first prong of the rational basis test, the Court explained that the anecdotal testimony of a small number of individuals is not enough to establish a genuine and substantial distinction between classes. *Id.*

In *Murphy*, the Court applied the rational basis test to a Minnesota law that distinguished between individuals whose parental rights had been involuntarily terminated and individuals whose parental rights had been terminated voluntarily. 765 N.W.2d at 107. The State argued that a voluntary termination of parental rights should be treated differently because it indicates acceptance, understanding, and acknowledgment that one's conduct was harmful, and that classifying individuals in this way constitutes a rational basis for predicting the risk of future harm to others. *Id.* at 107. The Court rejected that argument and held that the first prong of the rational basis test requires more than mere assumptions lacking in factual foundation:

But to accept the commissioner's argument, we would have to assume that what distinguishes a parent who contested a termination petition from a parent who agreed to a voluntary termination is that the parent who contested a petition did not recognize and acknowledge the accuracy and validity of the allegations . . . while the parent who agreed to a voluntary termination accepted the petition as accurate and valid. The commissioner has not presented any basis for such an assumption

Id. Because such a distinction did not provide a rational basis for predicting the risk of future harm to others, the Court held that the statute violated the right to equal protection under Minnesota's Constitution. *Id.* at 107-08.

Similarly, *Mitchell* involved a group of indigent residents who brought suit challenging a state statute that provided reduced general assistance and work readiness benefits to persons who had resided in the state less than six months. 487 N.W.2d at 889. In holding for the plaintiffs, the Court noted that the only support for the creation of the classification at issue was anecdotal, and that the statutory language was not considered by legislative committee. *Id.* at 900, 904. Anecdotal evidence of "individuals moving to

Minnesota ‘just for the welfare benefits’ and of the general perception that welfare benefits in Minnesota are higher and easier to collect than in other states” did not, the Court said, amount to the level of factual support necessary to constitute a genuine and substantial distinction. *Id.*

As was the case in *Russell* and *Mitchell*, the distinction between relative and non-relative PCAs is based on purely anecdotal evidence, not actual data. *See Russell*, 477 N.W.2d at 889-90; *Mitchell*, 487 N.W.2d at 900, 904. While the Commissioner offers generalized observations about family relationships, bonds, and dynamics, there is no evidence that the legislature ever considered any of these factors. The district court, therefore, upheld the distinction based not on evidence, but on assumption. Indeed, the court admitted that “[t]he rationale behind the distinction between relative PCAs and non-relative PCAs is based on the . . . assumption that relative PCAs will continue to provide care even if affected by a pay cut.” (AA128 at ¶ 11) (emphasis added). But despite acknowledging that the 20% Relative PCA Pay Cut was, in fact, enacted based on assumptions, the district court upheld the amendment. That alone is reversible error.

Furthermore, even if the legislature had considered the types of issues relating to family relationships, bonds, and dynamics emphasized by the Commissioner -- which it did not -- no evidence has been offered to suggest that the differences between relative and non-relative PCAs rise to a level required to satisfy the first prong of the rational basis test. The Commissioner’s burden was to show that the distinctions between relative and non-relative PCAs are genuine and substantial. *Gluba*, 735 N.W.2d at 721. Yet she did not offer a single piece of evidence to the district court to show how familial

relationships actually affect the way in which relative PCAs perform their duties. The district court, therefore, erred in holding that the Commissioner met her burden.

While the Court in *Russell* did not deny that some differences exist between crack and powder cocaine, it concluded that any such differences were not genuine and substantial enough to justify the creation of separate legal classifications. 477 N.W.2d at 889-90. Likewise, while some potential differences between individuals who had voluntarily terminated parental rights and those who had their rights terminated involuntarily were acknowledged by the Court in *Murphy*, the Court ultimately held that these potential differences were not genuine and substantial under the rational basis test. 765 N.W.2d at 107. Here, as in those cases, there is no evidence of any genuine and substantial distinction between relative and non-relative PCAs.

The parties agree, and the district court held that PCAs are required by law to take the same training, have the same qualifications, do the same work, and provide the same services regardless of whether they are caring for a family member or a stranger. (AA010-11, 49-50, 127 ¶ 8). For her part, the Commissioner did not offer any evidence to show that relative PCAs are in any way different than non-relative PCAs. But, nevertheless, the district court held that the first prong of Minnesota's rational basis test had been satisfied because: (i) it is assumed that PCAs provide a heightened level of care when working with relatives; (ii) Minnesota law does not allow reimbursement to be paid to PCAs who provide services for their legal dependents (a law which is not here, nor has yet ever been, subjected to equal protection challenge); and (iii) federal courts have upheld distinctions between relatives and non-relatives. (AA127-28 at ¶¶ 10-11). The

three cases cited by the district court, *Youakim v. Miller*, 374 F. Supp. 1204 (N.D. Ill. 1974), *Lipscomb v. Simmons*, 962 F.2d 1374 (9th Cir. 1992), and *Carter v. Gregoire*, 672 F. Supp. 2d 1146 (W.D. Wa. 2009), are simply not applicable. (AA128 at ¶ 11). The cited cases examined whether certain state statutes violate the federal Constitution, and therefore the more deferential federal equal protection standard was at issue. In Minnesota, a different and higher standard is applied to equal protection analysis. See *Russell*, 477 N.W.2d at 889 (“Nothing prevents this court from applying a more stringent standard of review as a matter of state law We therefore hold that under our state constitutional standard of rational basis review the challenged statute cannot stand.”); *Gluba*, 735 N.W.2d at 721 (applying a “higher standard” under Article 1, § 2 of the Minnesota Constitution); *Murphy*, 765 N.W.2d at 106 (identifying the federal standard as being “more deferential”).

Accordingly, in the absence of any actual evidence showing substantial differences in the way that relative and non-relative PCAs do their jobs, the distinction drawn by the legislature in the 20% Relative PCA Pay Cut cannot stand under the Minnesota rational basis test. It is not for the courts to “hypothesize a rational basis to justify a classification.” *Russell*, 477 N.W.2d at 889. Because the Commissioner failed to produce any evidence that there are genuine and substantial differences between relative and non-relative PCAs, or that the legislature considered them, the district court erred in holding that the first prong of the rational basis test had been satisfied.

2. The Classifications Created by the 20% Relative PCA Pay Cut Are Not Genuine or Relevant to the Purpose of the Law.

The second prong of Minnesota's rational basis test requires the Court to uphold the 20% Relative PCA Pay Cut only if the classification created by the legislature is genuine or relevant to the purpose of the law. *Gluba*, 735 N.W.2d at 721; *Murphy*, 765 N.W.2d at 106. Minnesota courts require "a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *Russell*, 477 N.W.2d at 889 (emphasis added). Purely anecdotal evidence does not suffice to establish a rational basis for creating a classification. *Russell*, 477 N.W.2d at 889-90; *Mitchell*, 487 N.W.2d at 904.

In *Russell*, the Court held that the crack cocaine distinction at issue did not further the purported statutory purpose of penalizing street level drug dealers. 477 N.W.2d at 891. The statute attempted to achieve this goal by setting the threshold for a third degree offense for crack cocaine possession at three grams, but the threshold for powder cocaine possession at ten grams. *Id.* at 887. The legislature reasoned that at these levels the possessor could be assumed to be a dealer, rather than a recreational user, thus warranting a higher penalty. *Id.* at 891. Because the State failed to present evidence sufficient to prove its asserted dealership levels of drug possession, the *Russell* Court held that there was no rational basis to believe that the statute's purpose would be achieved. *Id.*

The purpose of the statute at issue in *Mitchell* was to reduce expenditures by making the receipt of public assistance benefits a neutral factor in a person's decision to move to Minnesota. 487 N.W.2d at 903. When considering the amount of evidence

necessary to pass scrutiny under the rational basis test, the *Mitchell* Court found it important that “the statutory language was not considered by legislative committee, and was offered for the first time in the form of amendments to separate companion bills on the floor of each house of the legislature.” *Id.* at 900. Ultimately, the Court held that, absent “more evidence to support the effect the reduced levels of assistance will have on an indigent’s decision to migrate to Minnesota, the statute does not further its statutory objective.” *Id.* at 904.

In this case, the purpose asserted by Representative Abeler for the 20% Relative PCA Pay Cut is to reduce spending without affecting services, yet the legislature had no evidence before it to verify that this purpose could be effected. The district court held that, “[l]imiting the amount of funds received by relative PCAs is not contradictory to the purpose of the statute” because “[t]he Amendment does not estop qualifying individuals from receiving necessary services.” (AA129 at ¶ 13). However, the Commissioner did not offer, and the court did not cite to, any evidence to support this conclusion.

Just as in *Mitchell*, prior to passing the 20% Relative PCA Pay Cut there were no legislative hearings at which relative PCAs, disabled persons or their advocates, or economic or other experts were allowed to testify, and there was no real evidence before the legislature as to what percentage of relative PCAs actually would, or could, continue to work if their pay were cut by 20%. Nor was there any evidence before the legislature regarding how many recipients will suffer a decrease in their quality of care if a non-relative PCA is substituted for a relative caregiver, how many do not have the option of a

non-relative due to geographic, language, or cultural barriers, or how many disabled persons may end up institutionalized if relative PCA care is no longer available.

In contrast, all of the individual Appellants in this case have attested to the fact that relative PCAs, just like non-relatives, are able to serve only if they are making enough money on which to live. (*See* Affidavits submitted by each PCA Appellant). As it is, PCAs earn only \$10 to \$11 per hour, and all of the PCA Appellants faced with a 20% reimbursement reduction submitted affidavits explaining that they will have two choices: (i) continue to work for less and seek other public assistance to make up for the shortfall (assistance that the Commissioner has argued may be unavailable), or (ii) find a new job outside the home that pays more. (*Id.*). The Commissioner, on the other hand, did not produce any evidence whatsoever that the legislature considered the consequences of its action. Instead, the legislature just presumed that a 20% Relative PCA Pay Cut would result in a 20% cost savings with no effect on services. There were no legislative committee hearings to determine how many relative PCAs would leave the profession and be replaced by non-relatives who are reimbursed for their services at 100%, or to determine how many relative PCAs would, as a result of a 20% wage reduction, become eligible for other forms of public assistance, for which the State would pay. Nor were there any hearings or evidence regarding the effect the 20% Relative PCA Pay Cut will have on families, many of which depend on the relative PCAs income for basic necessities.

In short, the district court utterly failed to address the fact that the Commissioner offered no evidence to show that the distinction between relative and non-relative PCAs

“further[s] its statutory purpose.” *Russell*, 477 N.W.2d at 891; *see also Mitchell*, 487 N.W.2d at 904. The district court simply went along with the legislature’s unfounded assumption that the 20% Relative PCA Pay Cut would reduce expenditures without affecting services. Such assumptions, however, do not establish a rational basis under Minnesota law. *See Russell*, 477 N.W.2d at 889-90; *Mitchell*, 487 N.W.2d at 904.

Additionally, the 20% Relative PCA Pay Cut not only fails to further its asserted statutory purpose of cutting costs without affecting services, it also fails to further the larger purposes of the Medical Assistance statutes. In *Mitchell*, the Court ruled that the State failed to prove that the general assistance benefits residency requirement was relevant to its asserted purpose because:

[W]ithout more evidence to support the effect the reduced levels of assistance will have on an indigent’s decision to migrate to Minnesota, the statute does not further its statutory objective. Moreover, the statute is largely inconsistent with the purpose of the general assistance statute[,] . . . [which is] to provide residents with an amount “necessary to maintain a subsistence reasonably compatible with decency and health.”

487 N.W.2d at 904-05. The *Mitchell* Court accordingly concluded that classifying newer residents differently for purposes of general assistance benefits does not pass the rational basis test, because the classification is contrary to the purpose of providing general assistance. *Id.*

Like the residency restriction in *Mitchell*, the 20% Relative PCA Pay Cut at issue here fails to further its statutory objective because it is entirely inconsistent with the purpose of the Medical Assistance statutes. It is undisputed that the elderly and mentally and/or physically disabled people who are eligible to receive PCA services must be poor

enough to qualify for Medical Assistance or Minnesota Care Expanded Benefits.

Furthermore, as a matter of public policy, Medical Assistance for needy persons whose resources are not adequate to meet the cost of such care is of “state concern,” and a statewide program of medical assistance, with free choice of vendor, was established to provide such care. (AA032, 60; *see also* Minn. Stat. § 256B.01). As a part of this program, personal care assistance services are intended to allow those who qualify to remain in their homes and avoid moving to nursing homes, intermediate care facilities, or group homes. (AA067, 138-39 at ¶ 12; *see also* Minn. Stat. § 256B.01).

Yet, directly contrary to policy that (i) designates all poor people in need of care to be “of state concern,” (ii) encourages choice of care providers, and (iii) has as its goal to allow disabled persons to remain in their home, the legislature has determined that it will reimburse qualified relative PCAs at lower rates solely on the basis of their familial relationship to the recipient. Cutting the pay of relative PCAs, however, neither reflects “concern” for needy recipients, nor furthers their right to receive care from the vendor of their choice at their home, as opposed to an institution.

The Commissioner argued to the district court that the 20% Relative PCA Pay Cut furthers the larger purpose of the Medical Assistance statute, pointing to the history of PCA reimbursement in Minnesota to show that an 80% reimbursement level is better than nothing. By this logic, the cut actually encourages PCAs to work with relatives -- thus furthering the larger goals of the Medical Assistance statute -- because, instead of being paid nothing, Minnesota is still willing to pay them something. Inexplicably, the district court seems to have gone along with the Commissioner’s argument, stating: “Continuing

to allow Medical Assistance payment for PCA services provided by a close relative, even at a reduced rate, advances [the goal of supporting individuals who are caring for their relatives].” (AA129-30 at ¶ 16).

While 80% is, mathematically, better than nothing, the legislature did not go from paying relative PCAs nothing to paying them at an 80% reimbursement level. Instead, the legislature went the other direction, changing the law so that, rather than treat all PCAs the same, relative PCAs would be paid less than non-relative PCAs for the same work. It is important not to confuse the issue here, as the district court apparently did. The issue before this Court is not whether allowing PCAs who work with relatives to receive some level of reimbursement furthers the purposes of the Medical Assistance statute; but whether it is constitutional for the Minnesota Legislature to treat relative and non-relative PCAs differently. When looked at this way, cutting the pay of relative PCAs does not further the purposes of the Medical Assistance statute, but in fact does just the opposite by providing a disincentive for relative PCAs to provide services, and by potentially removing the last option many recipients have for home care.

Because the Commissioner offered no evidence that the legislatively-created distinction between relative and non-relative PCAs furthers the amendment’s purpose of reducing expenditures without affecting services, and because the 20% Relative PCA Pay Cut is contrary to the Medical Assistance statute and state policy, the district court erred in holding that the 20% Relative PCA Pay Cut satisfies the second prong of Minnesota’s rational basis test.

3. The Classifications Created by the 20% Relative PCA Pay Cut Are Not Reasonably Related to a Legitimate Legislative Purpose.

The final prong of Minnesota’s rational basis test requires the Commissioner to show that the reasons for distinguishing between the legislatively-created classes are reasonably related to a legitimate legislative purpose. *Gluba*, 735 N.W.2d at 721; *Murphy*, 765 N.W.2d at 106. However, even when aimed at a legitimate legislative purpose, a legislatively created classification fails the rational basis test if the means employed by the legislature to achieve that purpose are illegitimate. *Russell*, 477 N.W.2d at 891; *Mitchell*, 487 N.W.2d at 905. “While a state may legitimately attempt to limit its expenditures, it may not accomplish such a purpose by ‘invidious distinctions’ between classes of its residents.” *Mitchell*, 487 N.W.2d at 903 (citing *Shapiro*, 394 U.S. at 633 (“[A] State may not accomplish such a [valid] purpose by invidious distinctions between classes of its citizens.”)); *Memorial Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 263 (1974) (“[A] State may not protect the public fisc by drawing an invidious distinction between classes of its citizens.”); *see also Judelang v. Holder*, 132 S.Ct. 476, 490 (2011) (“Cost is an important factor for agencies to consider in many contexts. But cheapness alone cannot save an arbitrary policy. (If it could, flipping coins would be a valid way to determine an alien’s eligibility for a waiver).”).

As did the State in *Mitchell*, the Commissioner argued to the district court that the legislature’s classification of relative PCAs for different treatment is justified by the anticipated cost savings. (AA075). Citing *Mitchell*, 487 N.W.2d at 903, the district court concluded that “[r]educing medical expenditures is a permissible governmental goal.”

(AA129 at ¶ 14). In so doing, the district court not only ignored the larger message of the Court in *Mitchell*, but also ignored the second half of the sentence it quoted and relied upon. The *Mitchell* Court actually explained that, “[w]hile a state may legitimately attempt to limit its expenditures, it may not accomplish such a purpose by ‘invidious distinctions’ between classes of residents.” 487 N.W.2d at 903 (citing *Shapiro*, 394 U.S. at 633) (emphasis added). The Court went on to say that, because “a State may not protect the public fisc by drawing an invidious distinction between classes of its citizens,” the State “must do more than show that denying free medical care to new residents saves money.” *Id.* (quoting *Memorial Hosp.*, 415 U.S. at 263). Similar to the holding in *Mitchell*, the Court in *Russell* determined that, although the crack-cocaine classification was “perhaps aimed at the legitimate purpose of eradicating street level drug dealers,” the means employed to achieve that purpose were illegitimate and therefore unconstitutional because the classification created an “irrebuttable presumption of fact [that those in possession of three grams of crack cocaine were dealing, not merely using].” 477 N.W.2d at 891. By missing the *Mitchell* Court’s point regarding “invidious distinctions,” the district court erred in holding that the amendment’s classifications were reasonably related to a legitimate purpose.

The district court, citing *Lipscomb*, 962 F.2d at 1380, stated that, “[t]he Constitution does not empower the court to second-guess state officials charged with the difficult responsibility of allocating funds. This is a policy decision and the only analysis left to the Court is to determine whether the decision meets the requirements of the rational basis test.” (AA129 at ¶ 14). While the allocation of funds may be a policy

decision, the Minnesota Constitution not only empowers but requires the district court and this Court to determine whether the legislature's decision to employ a discriminatory policy based on arbitrary distinctions meets the requirements of the third prong of the rational basis test. Applying this test, it is clear that the legislature has attempted to do exactly what the *Mitchell* Court prohibited: limiting expenditures by creating invidious distinctions between citizens. *Mitchell*, 487 N.W.2d at 903; *see also Memorial Hosp.*, 415 U.S. at 263; *Shapiro*, 394 U.S. at 633. This is simply not a permissible means of achieving a legislative goal.

As the Supreme Court pointed out in *Shapiro*:

Implicit in any such distinction is the notion that indigents who enter a State with the hope of securing higher welfare benefits are somehow less deserving than indigents who do not take this consideration into account. But we do not perceive why [such an individual] should be regarded as less deserving because she considers, among other factors, the level of a State's public assistance. Surely such [an individual] is no less deserving than [another] who moves into a particular State in order to take advantage of its better educational facilities.

Shapiro, 394 U.S. at 631-32. Just like the implicit assumption that people who consider the amount of assistance available when deciding to move to this State are "less deserving," implicit in the 2011 legislature's determination that relative PCAs will continue to work for reduced pay is that they too are somehow less deserving of equal pay for equal work. As *Mitchell* and *Shapiro* made clear, however, classifications based on such assumptions are impermissible.

Relative PCAs cannot be denied equal pay for equal work solely because Representative Abeler assumes they will all care for their disabled relatives anyway, thus

allowing the State to theoretically save an unspecified amount of money at their expense. They are “no less deserving” of equal pay than non-relative PCAs who perform identical services, and they must be treated equally under the law. To do otherwise is to create an invidious distinction for the sole purpose reducing expenditures, and this is not a permissible legislative purpose under the rational basis test. Because the district court ignored the fact that limiting expenditures may not always be, and is not in this case, a legitimate legislative goal, this Court must reverse the district court.

III. THE PLAINTIFFS ARE ENTITLED TO AN AWARD OF THEIR FEES AND COSTS.

Minnesota’s Equal Access to Justice Act provides, in relevant part:

If a prevailing party other than the state, in a civil action or contested case proceeding other than a tort action, brought by or against the state, shows that the position of the state was not substantially justified, the court or administrative law judge shall award fees and other expenses to the party unless special circumstances make an award unjust.

Minn. Stat. § 15.472(a). The party seeking an award of fees shall, within 30 days of final judgment, submit a fee request, including an itemized statement from the attorney stating the actual time expended and the rate at which fees were computed. Minn. Stat. § 15.472(b). Minn. Stat. § 555.10 similarly provides that, in any proceeding for a declaratory judgment, the court may make such award of costs as may seem equitable and just.

This is a civil action brought against the State, other than a tort action, and a declaratory judgment is sought pursuant to Minn. Stat. Ch. 555. Because, as explained above, the State’s defense of the 20% Relative PCA Pay Cut brought forth by the 2011

Amendment to Minn. Stat. § 256B.0659, subd.11 is not substantially justified, Appellants are entitled to an award of their costs and fees.

Below, in opposition to Appellants' attorneys' fees request, Respondent argued that Appellants failed to show that they qualify for an MEAJA award because they have produced no evidence that any of them are "an unincorporated business, partnership, corporation, association, or organization having not more than 500 employees at the time the action was filed . . . whose annual revenues did not exceed \$7,000,000." (AA118). But such a showing is nether a jurisdictional, nor a pleading requirement. Rather, the Court should hold that an attorneys' fee award is appropriate, and direct the district court to have Appellants submit affidavits to confirm their eligibility, as well as the amount of fees due.

The Appellants are, alternatively, entitled to an award under the UDJA, which clearly applies to actions against the State. The UDJA says that, "[i]n any proceeding under this chapter, the court may make such award of costs as may seem equitable and just." Minn. Stat. § 555.10 (emphasis added). The term "any proceeding" is all-inclusive, this is a "proceeding under" the declaratory judgment chapter, and there is no indication that the legislature, in any way, intended to exclude actions against the State. If it had so intended, it could easily have said that the cost provision applies to "any proceeding under this chapter, except those against the State." It did not.

CONCLUSION

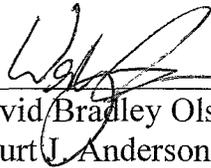
For all of the foregoing reasons, the holding of the district court should be overturned, the Court should declare the 2011 Amendment to Minn. Stat. 256B.0659 to

be unconstitutional, Respondent Jesson should be permanently enjoined and restrained from enforcing the unconstitutional statute, and the Appellants should be awarded their costs and attorneys' fees.

Respectfully submitted,

HENSON & EFRON, P.A.

Dated: July 6, 2012

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