



THE CASE FOR INCLUSION

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New Jersey Residents Sue Department of Banking and Insurance over New Jersey Infertility Mandate

BY BOWDITCH & DEWEY • AUGUST 19, 2016

Many states require an insurance company to pay for medically necessary infertility treatments, but New Jersey has a catch.

The [New Jersey Infertility Mandate](#), enacted in 2001, requires that an insurance provider pay for infertility treatments, and defines infertility as a condition in which either one of the partners in a relationship is medically sterile, or if a woman cannot conceive after one or two years of unprotected sex, depending on the woman's age. In other words, the definition of "infertility" implicitly builds heterosexuality into the Mandate.

Three lesbian couples are [suing the New Jersey Department of Banking and Insurance](#) over that language, alleging that this law violates the Fourteenth Amendment's due process and equal protection clauses, and that it discriminates against them on the basis of their sex and sexual orientation.

The couples allege that the law's wording disproportionately affects same-sex couples because it leaves them no way to prove their infertility under New Jersey law apart from engaging in sexual intercourse with male partners. They further allege that insurance companies rely on this language in denying their claims for infertility treatment.

The repercussions of those words are significant: artificial insemination can cost several thousands of dollars. In vitro fertilization can cost more than \$10,000. Many couples try both forms of infertility treatment, often paying tens of thousands of dollars out of pocket. The result is that non-heterosexual or unpartnered women often have to choose between conceiving a child and financial security.

Although it is impossible to predict the outcome of a case, what is clear is that the issues challenged in this case bring to the forefront longstanding assumptions about who can parent, how to build a family, and what those families look like. While these assumptions are certainly shifting in social contexts throughout the United States, individuals and organizations may need to draw upon rights afforded by the U.S. legal system in order to update previous legislation to

harmonize with rapidly changing societal principles.