

Domestic Partner Benefits

**From the Constitution
to the Courtroom
to the Lives of
Michigan Families**



DOMESTIC PARTNER BENEFITS FORUM

Understanding The Implications of Michigan
Court of Appeals Decision Regarding Same-
Sex Domestic Partner Benefits

LOCAL HOSTS:

Partners:



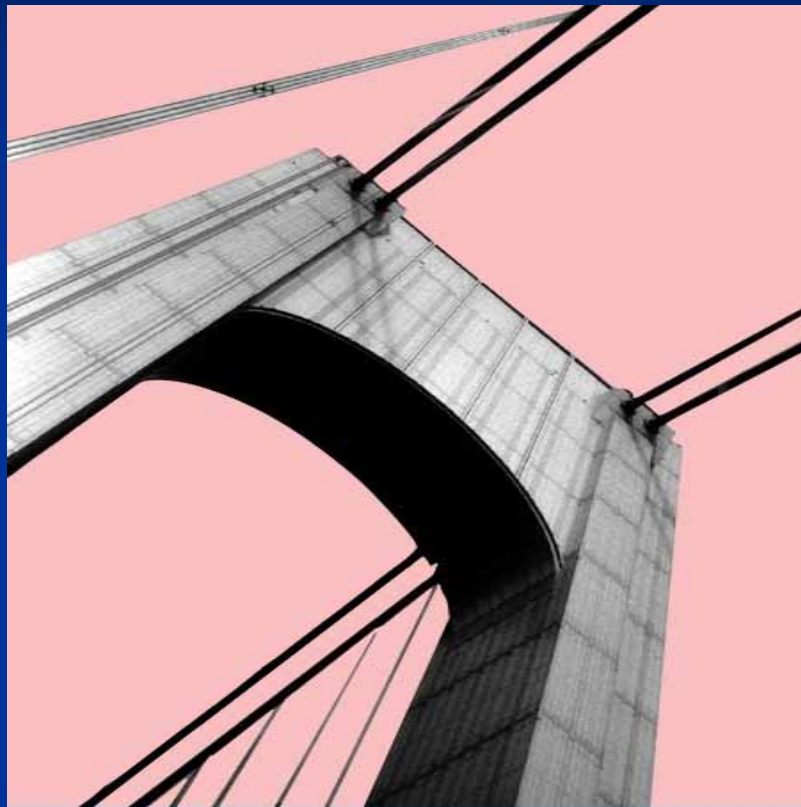
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2004-Proposal 2

- Michigan Constitution: Article 1, Section 25:
- To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.

Background

- In 2004, Proposal 2 passed (58.4%) (41.6%)
- The leading supporters of the bill assured the people of Michigan that this would **NOT** affect Domestic Partner Benefits
- Once it passed supporters began to attack public institutions that gave same-sex domestic partner benefits to their employees

Background

- At the time the amendment was adopted, many public employers were offering same-sex domestic partner benefits.
- In fact, the Office of State Employer (OSE) and the United Auto Workers (UAW) Local 6000 negotiated DP benefits in their contract with the State of Michigan, which would have given DP Benefits to state employees. The contract was ratified and approved by all parties involved including the Governor.

Background

- Gov. Granholm convinced the unions to put the DP Contract on hold after Proposal 2, claiming that there was a “legal cloud” based on the passage.
- On March 16, 2005, the Attorney General issued a formal opinion after a state representative request as to the application of Proposal 2 on the City of Kalamazoo’s ability to offer same-sex domestic partner benefits under current and future contracts.

Attorney General's Opinion

- The opinion stated the amendment was “best interpreted as prohibiting the acknowledgement of both same-sex relationship and unmarried opposite-sex relationships.”
- “Simply put, the only relationship that may be given any recognition or acknowledgement is the union of one man and one woman.”

Therefore, domestic partner benefits were in violation of the constitutional amendment.

Background

- The ACLU of Michigan filed a declaratory judgment action on behalf of National Pride at Work and 21 same-sex couples currently receiving DP Benefits or would be receiving DP benefits from public employers.
- In response to the AG Opinion, the City of Kalamazoo voted that they would no longer offer DP Benefits as of December 31, 2005. (*they never stopped)

**National Pride at Work, et al. vs.
Governor of Michigan and City of
Kalamazoo,
and
Intervening Party-Defendant
Attorney General**

The Players:

Plaintiffs:

- Pride at Work, Inc.
- 21 same-sex couples
- ACLU of Michigan representing them all

Defendants:

- Governor Jennifer Granholm
- City of Kalamazoo

Intervening

- Attorney General Mike Cox

ACLU ARGUMENT

- Plain language of the amendment does not prohibit public employers from offering DP Benefits
- Amendment's supporters assured the public that passage of the amendment would not affect DP Benefits
- If the amendment is interpreted to preclude DP Benefits then it would violate Equal Protection, Public Universities' autonomy under Article 8, section 5 and 6 of the Michigan Constitution and result in a bill of attainder under Article 1, section 10.

ATTORNEY GENERAL'S POSITION

- The amendment was “best interpreted as prohibiting the acknowledgement of both same-sex relationship and unmarried opposite-sex relationships.”
- Simply put, the only relationship that may be given any recognition or acknowledgement is the union of one man and one woman.

Circuit Court Decision

- The Ingham County Circuit Court held that the constitutional amendment “does not prohibit public employers from entering into contractual agreements with their employees to provide domestic partner benefits or voluntarily providing domestic partner benefits as a matter of policy.”

Circuit Court's Reasoning

- Health care benefits are not among statutory rights or benefits of marriage (you don't automatically get health care benefits from your employer)
- Health care benefits for a spouse are benefits of employment, not benefits of marriage.
- **Similar union language:** that same sex domestic partner benefits in the subject of employment contracts do not come close to approaching the legal status that marriage holds in society.

Michigan Court of Appeals

- The Michigan Court of Appeals held:
 1. The language of the amendment is unambiguous on its face because it uses only common words that are all easy to define. Therefore, it did not need to look at voter intent (lies told to the public).
 2. **The Amendment Does Not Violate The Equal Protection Clause**

The amendment is unambiguous? What it means:

- A domestic partnership is a “similar union” to marriage because it requires an exclusive relationship between un-related people who have a partnership agreement, just like marriage.
- To give benefits to those couples may not be to *create* a similar union, but it is to *recognize* a similar union.
- Such a similar union may not be recognized for *any purpose*, including the provision of employment benefits.

The Amendment Does Not Violate The Equal Protection Clause

- The Equal Protection Clause only protects classes of persons who have innate characteristics that are guiltless and don't justify disparate treatment (the Court implicitly held that the LGBT community is not such a class).
- To justify its amendment, all the state needs is a legitimate purpose and means rationally related to achieving that purpose (very low standard; easy to meet).

Application of Rational Basis Test:

- The state has a legitimate purpose: to strengthen traditional marriage.
- Preventing same-sex couples from entering into unions similar to marriage is a rational way to strengthen traditional marriage (the Court did not explain how this is so).

The Implications:

- Public employers can not offer domestic partner benefits if they are specifically recognizing the domestic partner relationship.
- Employers can provide health insurance for DP's as long as the criteria used for eligibility do not recognize the relationship or have criteria considered similar to marriage.

Real Life Implications

- Universities and local governments that currently offer domestic partner benefits will have to stop offering them or offer them in a way that does not violate the Michigan Constitution.
- Thousands of Michigan Citizens currently covered under same sex partner benefits will **LOSE THEIR PROTECTIONS**.
- This includes not only same-sex partners but also children.

Next Legal Steps

- The ACLU filed a Leave to Appeal with the Michigan Supreme Court and it was granted. Both sides are preparing their briefs and oral arguments are expected in fall of 2007.
- ACLU will ask to remand (send the case back) to the Circuit Court for fact finding regarding the intent of the voters when the amendment passed.
- **Reasoning:** the difference in interpretation of the amendment from the trial court and the Michigan Court of Appeals shows that this language is ambiguous.

Universities/Local Governments

1. Continue offering DP benefits until there is a ruling from the Michigan Supreme Court.
2. Continue offering DP benefits until their current contracts expire.
3. Work on changing requirements in order not to violate Article 1, section 25 and still being able to cover same-sex partners and their families. (ex. Plus one)

Other Court Cases

American Family Association vs. Board of Trustees of Michigan State University et al.

- AFA sued MSU for offering same-sex domestic partner benefits, claiming that it was in violation of the Michigan Constitution.
- The Court of Appeals affirmed the lower court decision stating that the AFA lacked standing to sue MSU.
- The AFA has filed a Leave to Appeal with the Michigan Supreme Court. No word has been given whether the Supreme Court will grant AFA's Leave to Appeal.

What you can do:

- Share your stories www.michiganequality.org
- Same-sex couples should protect their relationships by creating estate plans
- Sign the pledge to reinstate DP Benefits
- Write a letter to your editor
- Contact your local politicians
- Educate your community on this issue