

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

NATIONAL PRIDE AT WORK, INC., a non-profit organization on behalf of its Michigan members; BECKY ALLEN; DOROTHEA AGNOSTOPOULOS; ADNAN AYOUB; MEGHAN BELLANGER; JUDITH BLOCK; MARY M. BRISBOIS; WADE CARLSON; COURTNEY D. CHAPIN; MICHAEL CHAPMAN; MICHELLE CORWIN; LORI CURRY; JOSEPH DARBY; SCOTT DENNIS; JIM ETZKORN; JILL FULLER; SUSAN HALSEY-CERAGH; PETER HAMMER; DEBRA HARRAH; TY HIITHER; JOLINDA JACH; TERRY KORRECK; CRAIG KUKUK; GARY LINDSAY; KEVIN McMANN; A.T. MILLER; KITTY O'NEIL; DENNIS PATRICK; TOM PATRICK; GREGG PIZZI; KATHLEEN POELKER; JEROME POST; BARBARA RAMBER; PAUL RENWICK; DEHLIA SCHWARTZ; ALEXANDRA STERN; GWEN STOKES; KEN CYBERSKI; JOANNE BEEMON; CAROL BORGESON and MICHAEL FALK and MATT SCOTT, and each of them,

Plaintiffs,

v

JENNIFER GRANHOLM, in her official capacity, as Governor of the STATE OF MICHIGAN, and CITY OF KALAMAZOO, a municipal corporation,

Defendants,

and

MICHAEL A. COX, in his official capacity, as Attorney General for the STATE OF MICHIGAN,

Intervening Defendant.

OPINION AND ORDER

Case No. 05-368-CZ

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At a session of said Court held in the City of Lansing, Ingham County, Michigan, on the 27TH day of **September, 2005**, the Honorable Joyce Draganchuk presiding.

This matter is before the Court on Plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant Jennifer Granholm, in her official capacity as Governor of the State of Michigan, and defendant City of Kalamazoo filed separate responses to the Plaintiffs' motion for summary disposition. Defendant Granholm in her response asks this Court to declare that Const 1963, art 1, sec 25 does not prohibit public employers from entering into contractual agreements with their employees to provide domestic partner benefits. Defendant City of Kalamazoo in its response agrees that the matter should be decided by motion for summary disposition and asks this Court to declare whether Const 1963, art 1, sec 25, does or does not preclude public employers from providing same sex domestic partner benefits. Only intervening defendant Michael A. Cox, in his official capacity as Attorney General of the State of Michigan, adopts the position that Const 1963, art 1, sec 25, prohibits public employers from entering into contractual agreements with their employees to provide domestic partner benefits.

Amicus curiae briefs were filed by many organizations. All of the *amicus curiae* briefs urge this Court to conclude that Const 1963, art 1, sec 25 does not prohibit public employers from entering into contractual agreements with their employees to provide domestic partner benefits. The organizations that filed briefs supporting the Plaintiffs' position are: University of Michigan, Wayne State University, International Union, UAW and its Local 6000, The Michigan Conference of the American Association of University Professors, Michigan Pride at Work, The Michigan American Federation of Labor and Congress of Industrial Organizations, The Office and Professional Employees International

Union Local 459, Triangle Foundation, Michigan Equality, Women Lawyers Association of Michigan, Washtenaw County, the City of Ann Arbor, and the Clinton-Eaton-Ingham Community Mental Health Board.

This Court heard oral argument on August 16, 2005, and the matter was taken under advisement. Having fully reviewed the briefs that were filed and the oral argument that was heard, the Court makes the following determinations:

The narrow issue to be decided in this case is whether a public employer may voluntarily, either through the collective bargaining process or otherwise, agree to provide its employees with so-called "same sex benefits." The benefits at issue here consist mainly of medical insurance coverage for a person whom the employee designates. The individual employer sets the criteria as to who may be designated by the employee.

The City of Kalamazoo adopted a policy in 2000 to voluntarily provide health care insurance to an employee and the employee's "domestic partner." The insurance was later made a part of all collective bargaining agreements with the various City unions. To be considered domestic partners for purposes of the City of Kalamazoo, the individuals must be of the same gender and:

1. Be at least 18 and mentally competent to enter into a contract;
2. Share a common residence and have done so for at least six (6) months;
3. Be unmarried and not related by blood closer than would prevent marriage;
4. Share financial arrangements and daily living expenses related to their common welfare;
5. File a statement of termination of previous domestic partnership at least six (6) months prior to signing another Certification of Domestic Partnership

State of Michigan employees represented by UAW, Local 6000, negotiated contracts with the Office of State Employer providing for health care benefits for "covered

dependents." "Covered dependents" are defined as individuals who:

1. Are at least 18 years of age;
2. Share a close personal relationship with the employee;
3. Do not have or have not had a similar relationship with any other person for the prior six months;
4. Are not a member of the employee's immediate family;
5. Are of the same gender;
6. Have jointly shared the same residence for at least six months with an intent to continue doing so indefinitely;
7. Agree they are jointly responsible for basic living expenses, including the cost of food, shelter and other common expenses of maintaining a household.

Public universities of this state also provide benefits of the type that are at issue in this case. As in the case of the State of Michigan and the City of Kalamazoo, the university employer defines the relationship to which the benefits apply and sets the criteria. For example, the University of Michigan describes the benefits as "domestic partner" benefits and provides them to individuals who:

1. Are at least 18 years of age;
2. Are in a relationship of mutual support, caring and commitment;
3. Share the common necessities of life;
4. Are not related by blood in a manner that would bar marriage in the State of Michigan; and
5. Are not married or in any other domestic partnership

In November 2004, voters approved art 1, sec 25 of the Michigan Constitution. Following the adoption of that amendment, the UAW, Local 6000, and the Office of State Employer mutually agreed to withdraw the proposed benefits provision until there was a judicial ruling on whether the constitutional amendment prohibited the state from providing benefits to the covered dependents.

The City of Kalamazoo continued to provided domestic partner benefits to its

employees. On March 16, 2005, Attorney General Michael A. Cox issued his opinion that Const 1963, art 1, sec 25 prohibits the City of Kalamazoo from providing domestic partner benefits to its employees both under its current contracts and under new contracts. The City of Kalamazoo, while stating its desire to continue to provide these benefits, announced on April 18, 2005 that it would discontinue benefits effective January 1, 2006, absent a judicial ruling on the legality of providing the benefits.

The plaintiffs filed this action requesting that this Court declare that Const 1963, art 1, sec 25 does not bar public employers from providing benefits to their employees' domestic partners and children. The plaintiffs in this case fall mainly into three categories consisting of (1) state employaees who had their benefit provision withheld from their contract, (2) City of Kalamazoo employees who will lose their benefits on January 1, 2006, and (3) employees of various universities who risk losing their benefits if the Attorney General opinion is followed.¹ All parties are in agreement that there are no issues of fact to be decided in this case. It is appropriate for this Court to summarily dispose of a case where there is no genuine issue of material fact. *Hawkeye-Security Ins Co v Vector Construction Co*, 185 Mich App 369; 460 NW2d 329 (1990).

The amendment to the Michigan Constitution that is at issue is contained in art 1, sec 25, and reads as follows:

¹ An opinion of the Attorney General has no precedential force or effect. *Danse Corp v Madison Heights*, 466 Mich 175, 182 n. 6; 644 NW2d 721 (2002). Defendant Granholm had previously filed a motion to dismiss this action on grounds that Plaintiffs had no standing. Defendant Granholm argued, in part, that some of the plaintiffs who were currently receiving benefits and whose employers had expressed no intention of adhering to the Attorney General opinion lacked standing. Defendant Granholm has subsequently withdrawn the motion to dismiss and standing is no longer an issue in this case.

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.

The parties agree on the rules that control interpretation of a constitutional provision.

The technical rules of statutory construction do not apply to construction of constitutional provisions. *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971). The words should be given their plain meaning at the time of ratification. *Wayne Co v Hathcock*, 471 Mich 445, 468-469; 684 NW2d 765 (2004). The meaning must be that which realizes the intent of the people who ratified the Constitution. *Hathcock*, 468. Where the text is plain and unambiguous, further construction is unnecessary. *American Axle & Mfg, Inc v Hamtramck*, 461 Mich 352, 362-63; 604 NW2d 330 (2000). However, to clarify the meaning when necessary to determine the intent of the people, consideration must be given to the circumstances surrounding the provision's adoption and the purpose sought to be accomplished. *Peterman v Dept of Natural Resources*, 446 Mich 177, 184-185; 521 NW2d 499 (1994). It is a well-established rule of Constitutional interpretation that "the Court cannot properly protect the mandate of the people without examining both the origin and purpose of a constitutional provision, because provisions stripped of their content may be manipulated and distorted into unintended meanings." *Peterman*, 185.

Plaintiffs set forth a final rule of constitutional construction that may be applied if necessary. That rule is to construe the provision so it will not conflict with other constitutional provisions. Intervening defendant Cox argues that this rule need not be used because the common meaning of the words evidences the intent of the people. For reasons discussed more fully below, this Court does not have to apply this final rule of

constitutional construction because the words used have a common meaning and the intent of the people is contained in the amendment.

The intent of the people who approved art 1, sec 25 is contained in the very language of the amendment. The stated purpose of the amendment is "to secure and preserve the benefits of marriage for our society and for future generations of children." Health care benefits are not among the statutory rights or benefits of marriage. An individual does not receive health care benefits for his or her spouse as a matter of legal right upon getting married. If a spouse receives health care benefits, it is as a result of a contractual provision or policy directive of the employer. Likewise, health care benefits are not limited to those who are married. Within the confines of what the health insurance provider offers, an employer may choose to offer coverage to any person who bears an employer-defined relationship to the employee. Health care benefits for a spouse are benefits of employment, not benefits of marriage.

Following the initial statement of purpose in the amendment, it proceeds to require that only the union of one man and one woman in marriage shall be "recognized as a marriage or similar union." Intervening defendant Cox argues that the common meaning of the word "recognize" is to acknowledge the existence of something and that any benefit at all that is provided to a same-sex union would acknowledge the existence of that union. The Plaintiffs argue that "recognize" refers to the State of Michigan in its sovereignty conferring some status or rights on the union.

Neither the common meaning of recognize nor examination of that word in isolation allows for a determination of the intended meaning.² The amendment must be interpreted to give reasonable effect to all, not just some, of its parts. *House Speaker v Governor*, 443 Mich 560, 579; 506 NW2d 190 (1993). The Court must look at the constitutional provision not only in a strict grammatical sense but also in light of the general purpose for which the provision was adopted. *Livingston Co v Dept of Management & Budget*, 430 Mich 635; 425 NW2d 65 (1988). Therefore, the Court views the phrase in its entirety to determine its purpose. The provision requires that only a union between one man and one woman will be recognized "as a marriage or similar union." The employer-defined criteria for obtaining the health insurance benefits in this case are not based on marriage. The question is whether the criteria act as recognition of "a union similar to marriage."

The criteria used by the employers in the present case do not recognize "a union." There is no "union" that arises out of the employers' criteria. The criteria are no more than a collection of characteristics the employer has identified for purposes of extending health insurance benefits. Moreover, the criteria can hardly be said to recognize a union when the criteria differ by employer. Nor can the criteria be said to create a union where one does not exist according to law. Civil unions are not recognized in this state. Employer-defined criteria for the receipt of health care benefits cannot create a union where one does not exist.

² One definition of "recognize" is "to acknowledge by special notice, approval or sanction; to treat as valid, as having existence or as entitled to consideration; to take notice of (a thing or person) in some way." *The Compact Edition of the Oxford English Dictionary*, 1971.

Plaintiffs argue that intervening defendant Cox's interpretation would substitute the word "relationship" for the word "union." In fact, the benefits at issue are not entirely based upon a relationship at all. The state of Michigan criteria include that the "covered dependent" share a close personal relationship with the employee. The University of Michigan requires a relationship of mutual support, caring and commitment. However, there is no such requirement for the receipt of benefits from the City of Kalamazoo. In the case of all the employers, the fact that the benefits are not based on a relationship is evident from the fact that the benefits terminate upon termination of employment even if a relationship between the parties continues. Likewise, a relationship between the parties may exist without qualification for benefits if one of the other criteria is not met.

Intervening defendant Cox's interpretation of the amendment would, in effect, disregard the word "union" and instead prohibit receipt of health care benefits based on any employer-defined set of criteria between two people of the same gender. There is nothing in the amendment that evidences the intent of the people to go beyond disallowing same sex marriage and civil unions to preventing employers from voluntarily providing health insurance benefits to those who meet certain criteria that the employer has established.

The criteria also do not recognize a union "similar to marriage." The criteria, even when taken together, pale in comparison to the myriad of legal rights and responsibilities accorded to those with marital status.

The prerequisites for forming a marriage require state approval in the form of a marriage license. The benefits in the present case are available merely upon the parties certifying or agreeing that they meet the requirements. No state or governmental approval

is required or available. Once formed, marriage carries with it a host of legal rights and responsibilities. Just some of the hundreds of legal rights identified by plaintiffs are: the equal right to property acquired during the marriage (MCL 557.204); the right to hold property as joint tenants (MCL 554.45); the right to joint ownership of personal property (MCL 557.151); the right to file joint income tax returns (MCL 206.311); the right to transfer property and be exempt from use tax (MCL 205.93); and the right to invoke spousal immunity to prevent one spouse from testifying against another spouse (MCL 600.2162).

Even the termination of a marriage differs significantly from termination of the criteria necessary for receipt of benefits. Termination of a marriage requires judicial intervention. The importance of the marital relationship and the interest of the state in protecting it compel the state to grant rights even after the relationship terminates. Upon a dissolution of marriage, a spouse has a right to pension and retirement benefits accrued during marriage (MCL 552.18) and may enjoy a right to custody of children (MCL 552.15). Upon death of a spouse, the surviving spouse has the right to one-half of the property acquired during the marriage (MCL 557.264); dower rights in land (MCL 558.1); the right to sue for wrongful death (MCL 600.2922); the right to claim exemption on taxes for spousal inheritance (MCL 205.202); and the right of intestate succession (MCL 700.2102). To the contrary, the relationship upon which employment benefits is based may be terminated without any legal process or judicial intervention. The relationship may be terminated unilaterally. Moreover, the benefits cease upon termination of employment. Far from being similar to marriage, the criteria represent the conditions precedent to the receipt of health insurance benefits.

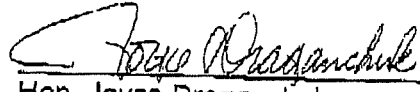
Courts in other states have also compared marriage to domestic partner relationships defined by local laws. Those courts have concluded that there are substantial differences between them. They have held that the domestic partner relationship was not similar to marriage, with all of its legal rights and responsibilities. *Tyma v Montgomery Co*, 369 Md 497, 514; 801 A2d 148 (Md App Ct 2002) ("Nothing in the [county's domestic partnership] Act purports to, or can be construed to, create an alternate form of marriage, authorize common law marriage or create any legal relationship"); *Slatterly v New York City*, 697 NYS2d 603, 605; 266 AD2d 24 (Supreme Court of New York, Appellate Division 1999) ("there are enormous differences between marriage and domestic partnership, and, in light of those very substantial differences, the [Domestic Partners Law] cannot reasonably be construed as impinging upon the State's exclusive right to regulate the institution of marriage"); *Lowe v Broward Co*, 766 So 2d 1199 (Fla Dist Ct App 2000) ("the [county's domestic partnership] Act does not address the panoply of statutory rights and obligations exclusive to the traditional marriage relationship"); *Knight v Superior Ct of Sacramento Co*, 26 Cal Rptr 3d 687, 694 128 Cal App 4th 14 (2005) ("factors indicate marriage is considered a more substantial relationship and is accorded a greater stature than a domestic partnership"); *Heinsma v Vancouver*, 144 Wash 2d 556, 563; 29 P3d 709 (Wash Sup Ct 2001) ("The domestic partner only receives insurance benefits whereas a spouse receives many other legal rights and responsibilities"); *Crawford v Chicago*, 304 Ill App 3d 818, 828; 710 NE2d 91 (1999) ("the [Domestic Partnership Ordinance] does not create marital relationship or status, but simply defines the type of insurance of which City employees can avail themselves").

The criteria in the present case do not come close to approaching the legal status that marriage holds in our society. The relationship between the employee and the covered dependent, not being defined by law, is left to the parties to define privately. The criteria neither reflect that nor recognize that. The criteria define eligibility for health insurance benefits and do not act as recognition of a union similar to marriage.

The Court must also give meaning to the final phrase of the amendment, "for any purpose." Intervening defendant Cox argues that this language is intended to prevent circumvention of the plain meaning of the amendment. The Court takes these words to mean what they say in the context of the entire amendment. If the employers in this case were recognizing a marriage or similar union, then they would be prohibited from doing so for any purpose. However, as discussed above, this Court cannot conclude that the employers are recognizing a marriage or similar union. On the facts of this particular case, the "for any purpose" language does not apply. Intervening defendant Cox's interpretation of this phrase would go beyond purposes of non-circumvention and would actually negate the language that preceded it.

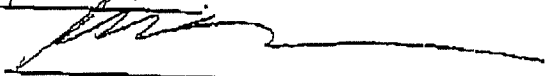
By voluntarily providing domestic partner health care benefits to an employer-defined group of people, the Plaintiffs' employers are not "recognizing a marriage or similar union." Furthermore, the health care benefits are not benefits of marriage and cannot be construed as "benefits of marriage" that are prohibited by Const 1963, art 1, sec 25. Plaintiffs' employers are not prohibited by Const 1963, art 1, sec 25, from voluntarily providing these health care benefits and using criteria which do not recognize a union similar to marriage to determine those who will receive these benefits of employment.

IT IS ORDERED, therefore, that Plaintiffs' motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(10) and this Court declares that Const 1963, art 1, sec 25, 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.


Hon. Joyce Draganchuk
Circuit Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the above order upon Plaintiffs, Defendants and Intervening Defendant by faxing said order and by placing said order in a sealed envelope addressed to each with full postage prepaid thereon and placing said envelope in the United States Mail at Lansing, Michigan, on 9-27-05


Michael G. Lewycky