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Cohabitant Benefits for Michigan State Workers Upheld

Appeals panel rejects attorney general's suit even as it decries "absurd" policy

BY ARTHUR S. LEONARD

A 2-1 panel of the Court of Appeals of Michigan, an intermediate-level appellate bench, has ruled that a State Civil Service Commission policy extending health insurance benefits to non-marital cohabitants of state employees does not violate Michigan's 2004 anti-gay marriage amendment.

The January 8 ruling came in response to a lawsuit from the Republican attorney general, who also claimed the policy violated the equal protection requirements of the Michigan Constitution because of the distinctions it drew based on marital status and biological relationships.

The Court of Appeals panel, in an unsigned opinion, upheld the policy despite finding that those distinctions are "absurd."

In an earlier case — brought in the wake of the voter-approved constitutional amendment prohibiting the state from recognizing any "agreement" other than "the union of one man and one woman in marriage" as "a marriage or similar union for any purpose" — the Michigan Supreme Court had ruled, in response to a suit from National Pride at Work, that the state could not provide domestic partnership benefits for state employees' same-sex partners.

Unions representing state workers effectively sidestepped that conclusion by negotiating an agreement with the Civil Service Commission creating benefits eligibility for cohabitants, regardless of gender, provided the employee was not legally married and the cohabitants were not blood relatives. The beneficiary was referred to as the "other eligible adult individual" (OEAI), who would have access to the same package of benefits as the spouse of an employee.

After Democratic Governor Jennifer Granholm was succeeded by Republican Rich Snyder in 2011, the new GOP attorney general, Bill Schuette, filed suit seeking to have the Civil Service Commission policy invalidated, based on both the marriage amendment and equal protection grounds. Schuette also argued the policy exceeded the Commission's authority over employee compensation.

The court easily concluded there was no violation of the marriage amendment. The policy, it noted, "does not depend on the employee being in a close relationship of any particular kind with the OEAI beyond a common residence. The Marriage Amendment prohibits recognizing certain kinds of agreements as 'marriages or similar unions'; it does not in any way prohibit incidentally benefiting such agreements, particularly where it is clear that an employee here could share benefits with a wide variety of other people." The Civil Service Commission established a program with "completely gender-neutral" provisions, the court found, and, in light of society's wide array of household arrangements, it would be "unreasonable to predict same-sex domestic partnerships to



Michigan Attorney General Bill Schuette

necessarily be the most-benefitted group under this policy."

Schuette's equal protection challenge posed a tougher issue. He argued the policy discriminated against married employees — who can only offer eligibility to their spouses and no one else — and against employees who might want to share benefits with a cohabiting parent or sibling. There was no rational basis, the attorney general argued, for drawing the eligibility line where the Civil Service Commission had.

Since neither marital status nor blood relation has been identified as a classification subject to heightened scrutiny by courts, the panel applied the deferential standard of rational basis review to the beneficiary policy. In other words, the burden fell on the attorney general to prove that it lacked any rational basis at all — a tall order.

"Quite bluntly," wrote the majority, "we agree wholeheartedly that those restrictions strike us as absurd and unfair. The restrictions excluding married employees from sharing their benefits with persons other than their spouses and excluding employees from sharing their benefits with blood relatives strike us as ridiculous." A state employee could sign up his fraternity brother roommate, but not his biological brother who might be rooming with him, the panel noted.

But ridiculous does not equal unconstitutional, said the court.

"Defendant's policy was crafted through negotiation and bargaining with the unions, and pursuant to the negotiations the policy

excluded married persons and close relatives," the panel found. "The exclusion of the cited groups from the OEAI benefits policy does not clearly demonstrate that the policy is arbitrary or unrelated to the state's interests. The policy appears to serve the negotiated, bargained-for needs of the individuals affected, and so we conclude that the policy passes muster under rational basis scrutiny."

The panel added, "We do hope, however, that defendants will see fit and be able to strengthen the policy by eliminating the exceptions we have discussed."

Rejecting the attorney general's argument that the Civil Service Commission exceeded

The court easily concluded there was no violation of the 2004 anti-gay marriage amendment, but Schuette's equal protection challenge posed a tougher issue.

its constitutional authority to set government employee compensation, the court found that the benefits in question fall within the scope of its powers, absent a statutory definition of "compensation" to the contrary.

In dissent, Judge Michael J. Riordan argued, "Despite the attorney general's contention that the proffered reasons were illogical, the trial court performed no inquiry into whether they were supported by anything, even if debatable, in the record. Instead, the trial court simply adopted the proffered justifications as being factual." The conclusion, for Riordan, naturally followed: "Equal protection is not achieved through the indiscriminate imposition of inequalities. Respect for this principle explains why laws singling out a certain class of citizens for disfavored legal status, or general hardship, are rare."

The majority opinion, in pointing to the policy's emergence out of negotiations between state employee unions and the Civil Service Commission, might, however, offer clues as to the rationale for its adoption. In response to expansive demands from the unions, the Commission might have been amenable to a more tailored approach that would extend coverage to employees' significant others — the group of beneficiaries of greatest interest to the unions — without creating an open-ended and potentially very expensive eligibility standard.

Schuette's office is not content to give the Court of Appeals the final word, telling the Detroit News the day after the ruling, "This is an important case, and we will appeal to the Michigan Supreme Court."