MILLER CANFIELD

Same-Sex Domestic Partner Benefits Nixed in Court of Appeals

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Last Thursday, the Michigan Court of Appeals ruled that Michigan's two-year-old constitutional ban on same-sex marriage prohibits public employers from offering employment benefits normally reserved for married employees to employees in same-sex domestic partner relationships. The ruling overturns a September 2005 decision to the contrary from the Ingham County Circuit Court.

The Court of Appeals's decision in the case of *National Pride at Work, Inc., et al. vs. Governor of Michigan, et al.* is the latest round of legal wrangling over the scope of Article 1, Section 25 of the Michigan Constitution, adopted by Michigan voters as "Proposal 2" in 2004. Section 25 provides: "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." (This "Proposal 2" from 2004 should not be confused with the recently-approved "Proposal 2" of the 2006 general election, which restricts public entities from using preference-granting affirmative action programs in public education, employment, and contracting).

The Court of Appeals interpreted the phrase "recognized as a marriage or similar union for any purpose" broadly, finding that the criteria for qualification for same-sex domestic partner benefits was similar to the legal qualifications for marriage, and therefore not allowed under the language of Section 25. The Court stated:

A public employer that requires proof of the existence of a formal domestic partnership agreement to establish eligibility for benefits "recognizes" the validity of a same-sex union as reflected in the "agreement" for the "purpose" of providing the same benefits to a same-sex couple that would be provided to a married couple. This violates the plain language of the amendment prohibiting such unions to be "recognized . . . for any purpose."

The Court of Appeals also dismissed the argument that Section 25 violated the equal treatment rights of same-sex couples, finding that the language was neither "arbitrary nor invidious," and that it furthered the state's long public policy tradition of favoring the institution of marriage.

Finally, the Court ordered that its decision have immediate effect, requiring implementation of the decision while the appeals process continues. The decision is binding on all state and local government entities, including cities, townships, counties, state colleges, community colleges, and universities, and public K-12 school districts.

Because the proposal applies prospectively, the ruling should not affect existing collective

bargaining agreements and employment contracts with same-sex domestic partnership benefits, but will preclude any newly bargained agreements or contracts from offering same-sex domestic partner benefits. The Attorney General opinion which initially concluded Section 25 prohibited benefits to same-sex domestic partners discussed this issue in detail and reached this same conclusion. (See OAG No. 7171, pp. 9-11 (March 16, 2005)).

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The ACLU has indicated that it will appeal the decision to the Michigan Supreme Court.

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