

**STATE OF MICHIGAN
IN THE SUPREME COURT**

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; DAHLIA SCHWARTZ;
ALEXANDRA STERN; GWEN STOKES;
KEN CYBERSKI, JOANNE BEEMON,
CAROL BORGESON and MICHAEL FALK
and MATT SCOTT, and each of them,

Supreme Court No.: 133554

Court of Appeals No.: 265870

Ingham Co. Circuit Court Case No. 05:368-CZ

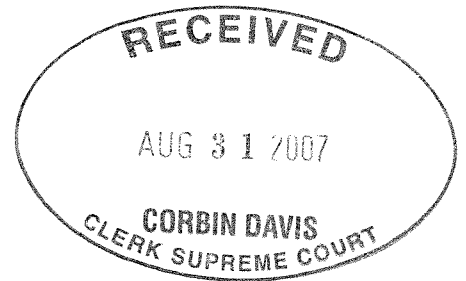
**MICHIGAN PRIDE AT WORK;
SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU) LOCAL 517M;
THE AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATION
MICHIGAN CHAPTER (MI-AFL-CIO);
THE OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION (OPEIU) LOCAL 459;
AND THE LANSING ASSOCIATION OF
HUMAN RIGHTS (LAHR) –AMICUS CURIAE
BRIEF IN SUPPORT OF PLAINTIFF-APPELLANTS**

Plaintiffs,

V.

JENNIFER GRANHOLM, in her official
As Governor of THE STATE OF
MICHIGAN, CITY OF KALAMAZOO,
A municipal corporation

Defendants.



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**MICHIGAN PRIDE AT WORK, THE SERVICE EMPLOYEES
INTERNATIONAL UNION (SEIU) LOCAL 517M; THE AMERICAN
FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS MICHIGAN CHAPTER (MI-AFL-CIO); THE OFFICE AND
PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (OPEIU) LOCAL
459; AND THE LANSING ASSOCIATION OF HUMAN RIGHTS (LAHR)
AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANTS**

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STATEMENT OF JURISDICTION

Michigan Pride at Work, et. al., (MI-PAW) as amicus curiae, concurs in the statement of jurisdiction and venue filed in the Plaintiff-Appellants brief. Pursuant to MCR 7.212 (H) MI-PAW, et. al., requests for amicus participation and under MCR 1.105 the Court has the authority to consider MI-PAWs' amicus curiae brief in its deliberations. See also *Oakland County Board of County Road Commissioners v. Michigan Property & Casualty Association*, 456 Mich. 590, 595 (1988).

QUESTIONS PRESENTED

Whether Article 1 Section 25 of Michigan's Constitution bans public employers from providing health care benefits to their employee's domestic partner?
Amici, Michigan Pride at Work, et. al., says, "No".

AMICUS STATEMENT OF INTEREST

The Michigan Pride at Work (MI-PAW) is the Michigan chapter of Pride At Work. MI-PAW was formed in December of 2003, as a coalition of labor and community activists throughout Michigan. It is a recognized constituency group of the Michigan AFL-CIO for lesbian, gay, bisexual and transgendered (LGBT) workers. Their membership is comprised of both union and non-union workers in a variety of public and private sector employment settings, including school, college and university employees, state and local municipal employees, health care workers, workers in the manufacturing, utilities and building trades. Many of their membership currently enjoy domestic partner benefits; others are pursuing domestic partner benefits through negotiation and/or collective bargaining processes with their employer.

Its mission is to educate the labor community about issues of importance to the LGBT community and educate the LGBT community on the importance of union representation and other labor issues.

According to their bylaws, MI-PAW was formed for the following purpose:

“To mobilize support between Michigan’s organized labor movement and the lesbian, gay, bi-sexual and transgendered (LGBT) communities. We seek full equality of these and all workers, including greater openness and dignity. We oppose all forms of discrimination on the job based on sex, gender, race, national origin, ethnicity, sexual orientation, gender identity and expression, age, disability, religion, political views weight and height.”

In other words, MI-PAW operates within Michigan’s labor movement to be a voice for LGBT union members and workers. Part of their goals, is to advance the interests of LGBT workers through collective bargaining and other means to secure domestic partnership health and welfare coverage and to eliminate discrimination based

on sexual orientation, gender identity and expression. Acting to defend human, civil and employment rights of ALL workers in the spirit of labor's historic motto, "AN INJURY TO ONE IS AN INJURY TO ALL."

After the passage of Proposal 2 of 2004 (hereinafter referred to as the marriage amendment), in an effort to protect domestic partner benefits and the right to negotiate them, MI-PAW and submitted a resolution at the Michigan AFL-CIO Convention entitled "**Protecting Bargaining Rights and Domestic Partner Benefits**", which was adopted in March of 2005. The pertinent parts of the resolution are as follows:

"Now therefore be it resolved: That the Michigan AFL-CIO remains steadfast in their goal of protecting ALL workers against social and economic injustice and discrimination; and **Be it finally resolved:** That the Michigan AFL-CIO support and fight alongside their constituency group Michigan Pride at Work to protect the collective bargaining rights and domestic partner benefits of their union brothers and sisters as well as all workers across the state."

This same resolution was submitted and also adopted at the Michigan AFL-CIO Convention in May 2007.

The Service Employees International Union (SEIU) Local 517M, the Office and Professional Employees International Union (OPEIU) Local 459 and the Michigan AFL-CIO are labor organizations representing workers throughout the state of Michigan. Many of the workers they currently represent have domestic partner benefits and other workers they represent are trying to obtain domestic partner benefits through the collective bargaining process.

The Lansing Association of Human Rights is a non-profit human rights organization. Their goal is to improve the lives and welfare of the lesbian and gay, bisexual, transgender (LGBT) community in the Lansing area. In accordance with their

stated mission, LAHR has tried to ensure that the LGBT community and their family members have access to affordable healthcare, including coverage.

Based upon the above, MI- PAW, et. al., are intricately involved in the struggle to protect health care coverage for LGBT workers and their families and submits this amicus curiae brief in support of the Plaintiffs-Appellants brief. We contend that “the Marriage Amendment” does NOT preclude the negotiation of domestic partner benefits in public sector employment.

STATEMENT OF FACTS

In an effort to bolster the Federal and State Defense of Marriage Acts (DOMA) limiting marital status to a union between a man and a woman, the Citizens for the Protection of Marriage (CFPM) filed with Michigan’s Bureau of Elections on July 5, 2004, to amend the Michigan’s Constitution defining marriage. After a split decision by the Board of Canvassers and a subsequent Court of Appeals decision that the “Board of Canvassers should not have considered the merits or lawfulness of the ballot proposal because a substantive challenge to the subject matter of a petition is not ripe for review until after the law is enacted, *Citizens for the Protection of Marriage v. Board of Canvassers*, 263 Mich App 487, 492 (2004), the marriage amendment made it on the ballot for the 2004 election. Prior to the 2004 election the CFPM campaigned for the passage of the “Marriage Amendment”. Their campaign efforts included publishing and

distributing a brochure explaining the marriage amendment, Proposal 2, which provides as follows:

“Proposal 2 is *Only* about marriage. Marriage is a union between husband and wife. Proposal 2 will keep it that way. This is not about rights or benefits or how people choose to live their lives. This has to do with family, children and the way people are. It merely settles the question once and for all what marriage is-for families today and future generations.”

Furthermore, CFPM’s director, Marlene Elwell, emphasized this same message in interviews and press statements throughout the campaign. In particular, she told USA Today, “This has nothing to do with taking benefits away. This is about marriage between a man and a woman.”

On November 2, 2004, the marriage amendment appeared on the ballot and was voted on by Michigan’s electorate. The ballot language Michigan’s electorate voted on provides as follows:

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.

Should this proposal be adopted?

Michigan 2004 Ballot

The above ballot language was approved by 58% of Michigan’s electorate. When this amendment was adopted, several public employers, including state universities, city, county and other local governmental entities, had policies and/or collective bargaining agreements containing domestic partner benefits. Also, the Office of State Employer had negotiated an agreement that included domestic partner benefits with the state employees and their respective unions. In the midst of the public debate surrounding the impact of

the Marriage Amendment, the Office of State Employer and the State Employee unions entered into a letter of intent not to submit the domestic partner provision of their proposed contract to the Civil Service Commission until there was a “determination by any court of competent jurisdiction that the language is lawful.”

In response to an inquiry, on March 16, 2005, Michigan’s Attorney General, Mike Cox, issued a written opinion regarding the legality of domestic partner benefits for the City of Kalamazoo employees. In this opinion he held, “that any new contractual obligation to provide health care benefits by the City of Kalamazoo to its employees domestic partners would violate the above “Marriage Amendment”.

After the Attorney General’s opinion, the Plaintiffs subsequently sought a declaratory ruling and expedited proceeding in Ingham County Circuit Court, on the issue of whether or not the marriage amendment prohibits public employers from providing health care benefits to the domestic partners and children. On September 27, 2005, Ingham County Circuit Court Judge, Joyce Draganchuk issued a decision holding that the “Marriage Amendment” did not prohibit public employers from offering domestic partner benefits. Article 1 Section 25 of Michigan’s Constitution “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 public policy.” (Trial Court Decision, page 13). The plaintiffs, Defendant Granholm and all amici supported the position that domestic partner benefits were not unconstitutional under the Marriage Amendment. Intervening Defendant, Attorney General, Mike Cox, was the only party who argued that the Marriage Amendment precludes such partner benefits. No other party or amici supported this position.

Subsequently, intervening defendant, Attorney General Mike Cox appealed Judge Draganchuk's decision, challenging the trial court's declaratory ruling that the marriage amendment does not ban public employers from providing health care benefits to their employees domestic partners. After briefs and oral argument before Justices Hoestra, Wilder and Zahara, the Court of Appeals reversed the trial court holding "The marriage amendment's plain language prohibits public employers from recognizing same sex unions for any purpose....and further reverse the trial court's order determining that the University of Michigan, Michigan State University and the City of Kalamzoo's domestic partnership policies were not violative of Article 1 Section 25 of the Michigan Constitution." (Court of Appeals Decision, page 15).

ARGUMENT

A. An Employer's Decision to Provide Health Care Insurance Benefits to Employees as Domestic Partners as Part of a Compensation Package does not Constitute Recognition of a Marriage or Marriage Like Relationship Under the *Plain Language* of the Amendment

MI-PAW also concurs with any additional arguments set forth in the plaintiff-appellants' brief and would like to add a couple additional points to their argument.

The Michigan Supreme Court in *Lapeer Co Clerk V. Lapeer Circuit Court*, 469 Mich 146, 156, (2003) set forth the standards for interpreting and constructing constitutional provisions:

“In interpreting a constitutional provision, a court must give to it the interpretation which reasonable minds, the great mass of the people themselves would give it. The intent to ascertain is that of the people rather than the framers, and so the meaning given is within the common understanding.” Furthermore, **“In construing a constitutional provision, words must be given their ordinary meanings, and every provision must be interpreted in light of the constitution as a whole and no provision should be construed to nullify or impair another.”**

The Michigan Supreme Court further expounded upon this constitutional interpretation principal in the case of *Wayne Co. V Heathcock*, 471 Mich. 445, 468, 684 NW 2nd 764 (2004), when interpreting constitutional provisions the court must apply **“common understanding** of constitutional text by applying **each term’s plain meaning at the time of ratification.”**

Justice Cooley provided guidance on how the courts should interpret the phrase “common understanding” in *Traverse City School District V Attorney General* 384 Mich 390 (1971):

“The Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.”

The Court of Appeals in their decision refused to consider the circumstances surrounding the adoption of the marriage amendment in order to ascertain the voters’ intent (Court of Appeals Decision, P. 10). This is misguided because under the *Traverse*

City School District V Attorney General 384 Mich 390 (1971) cited above, the meaning the “ratifiers” would give to the constitutional amendment is paramount. “The primary source for ascertaining the meaning of a constitutional provision is to determine its plain meaning understood by its ratifiers at the time of its adoption, *Kearney v Board of State Auditors*, 189 Mich 666 (1915) In this matter, the ratifiers would be the voters on November 2, 2004.

Looking at the four cases cited above this court must ask itself, what meaning did Michigan’s electorate give to the words of the marriage amendment when presented with it in the voting booth on November 2, 2004, which provides as follows:

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.

Michigan Const. 1963 Article 1, Section 25.

To shed some light on what the electorate thought the marriage amendment meant, there was public opinion research done before and after the election. One poll done by Lake Snell Perry & Associates in August of 2004, based on a survey of 705 likely voters. Their results showed that voters favored the marriage amendment by a margin of 50 to 41%; seventy percent disapproved of a result that would make civil unions illegal; sixty-five percent disapproved of a result that would bar cities and counties from providing domestic partner benefits; and sixty three percent disapproved of a result that would make it illegal for universities and community colleges to offer domestic partner benefits. A post-election survey done by Peter D. Hart Research in November and December of 2004 showed that seventy-six percent of overall voters indicated that they were pretty certain that they had not heard that the marriage

amendment could affect the ability of municipalities, local governments, colleges and universities to offer domestic partner benefits.

This research clearly shows that while there may have been support by Michigan's electorate to restrict legal marriage to opposite sex couples, they clearly did not intend for it to take away an employer's ability to offer health insurance coverage.

B. The Circumstances Surrounding the Adoption of the Marriage Amendment, Did Not Intend to Strip Health Care Benefits Away From Domestic Partners and their Children

Under *Peterman V Department of Natural Resources*, 466 Mich 177 (1994), the court held that to determine the intent of the people, consideration must be given to the circumstances surrounding the constitutional provision's adoption and the purpose sought to be accomplished.

“This 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 context may be manipulated and distorted into unintended meanings.”

The circumstances surrounding the adoption of the marriage amendment shows a pattern of misleading statements, by CFPM. In their campaign literature and statements before the vote on the marriage amendment, CFPM intentionally mislead Michigan's electorate. A central part of CFPM's campaign on the marriage amendment included a brochure that stated as follows:

“Proposal 2 is only about marriage. Marriage is a union between husband and wife. Proposal 2 will keep it that way. This is not about rights or benefits or how people choose to live their lives.” This has to do with family, children, and the

way people are. It merely settles the question once and for all what marriage is—for families today and future generation.” (CFPM Brochure)

Furthermore, the main spokesperson and director of CFPM, Marlene Elwell, in many of her statements to the press emphatically maintained that the marriage amendment had nothing to do with domestic partner benefits, “This amendment has nothing to do with taking benefits away. This is about a marriage between a man and a woman.”¹

Thus, when the electorate went into the voting booth casting their ballot on November 2, 2004, they were under the impression (albeit misleading and perpetrated by the CFPM) that Proposal 2 had absolutely nothing to do with health care benefits and that it would not kick domestic partners and their children off of health care coverage.

These individuals kicked off of health care coverage will continue to need health care services, adding to the already growing ranks of the uninsured or Medicaid recipients. Many of them will turn to doctor’s offices, clinics and hospital emergency rooms, but they will most likely be unable to pay, therefore, forcing providers to “write-off” the uncompensated care. Thus, having a devastating impact on their state’s health care system.

Currently, ninety-six percent of the counties around the country have same-sex couples raising children. Here in the Midwest, it is the second highest in the nation, with 34.6 percent of lesbian couples and 22.9 percent of gay male couples raising children. Our very own Wayne County is ranked sixteenth highest in the country as far as counties with same sex couples raising children under the age of eighteen.² Thus, if the marriage

¹ USA Today, October 15, 2004, “Gay Marriage on the Ballot in 11 states.”

² **The Cost of Marriage Inequality to Children and their Same Sex Parents**, Human Rights Campaign Foundation.

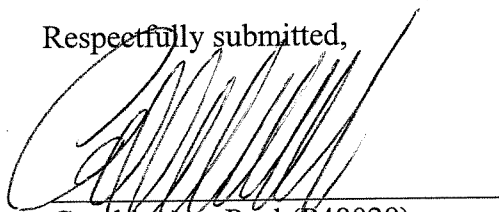
amendment were interpreted by the courts prohibit domestic partner benefits; it would have a devastating impact on thousands of families and children across the state of Michigan in addition to our health care system.

CONCLUSION

The plain language and circumstances surrounding the adoption of the marriage amendment reveals that the voters did not intend to prohibit public sector employers from bargaining and/or offering health care benefits to their employee's domestic partner.

Hereby, the amici respectfully requests that this Honorable Court reverse the Court of Appeals and hold that the marriage amendment does not prohibit public employers from providing same sex domestic partner benefits.

Respectfully submitted,



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