STATE OF MICHIGAN
IN THE COURT OF APPEALS

NATIONAL PRIDE AT WORK, INC., a non-profit organization on behalf of its Michigan Members; et al.,

Plaintiffs-Appellees,

v.

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

Defendants'Appellees,

and

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

Intervening Defendant-Appellant.

Court of Appeals No. 265870

Ingham County Circuit Court
No. 05-368-CZ
Hon. Joyce Draganchuk

BRIEF OF AMICUS CURIAE AMERICAN FAMILY ASSOCIATION OF MICHIGAN

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INTEREST OF AMICUS

Amicus curiae American Family Association of Michigan is the Michigan state affiliate of the American Family Association. AFA-Michigan has been Michigan's leading voice for the preservation of traditional values and institutions such as marriage between one man and one woman. Michigan's Marriage Protection Amendment was first proposed by AFA-Michigan in June 2003 in response to neighboring Ontario, Canada's legalization of so-called homosexual "marriage." AFA-Michigan President Gary Glenn was one of two co-authors of the final language of the Amendment approved by voters in the November 2004 election. As the initial proponent, a co-author, and a leading advocate of the Amendment, AFA-Michigan submits this brief to assist the Court in confirming the intent of the authors of the Amendment and as understood by the citizens who approved it.

SUMMARY OF ARGUMENT

Michigan's Marriage Protection Amendment plainly prohibits the State and its political subdivisions, including in their capacity as public employers, from recognizing a same-sex or other non-marital relationship as being equal or similar to marriage "for any purpose." Thus, the question before the court is: does a public employer's provision of taxpayer-financed benefits to certain employees -- expressly on the basis of their same-sex relationship -- constitute government recognition of that relationship as prohibited by the Constitution? Mindful that *every* action of government is an official public act, we pose a fundamental question of logic and chronology: is it possible for a government employer to offer benefits expressly on the basis of a same-sex relationship and its alleged similarity to marriage *without* first recognizing that relationship as such? Logically and chronologically, the answer is obvious: government cannot extend benefits to any relationship until after it has first *recognized* that relationship. Again, how

could government offer benefits to any relationship without first *recognizing* it? If the first government act, i.e., recognition, is prohibited, any question regarding the second act, i.e., granting benefits, is moot.

The Michigan Marriage Protection Amendment, Const. 1963, art. 1, § 25, states that its purpose is to "secure and preserve the benefits of marriage for our society and for future generations of children." The United States Supreme Court has recognized that marriage is an institution "fundamental to the existence and survival of the race," *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). This case, then, pits the compelling purpose of protecting marriage, endorsed by an overwhelming majority of Michigan voters, against the efforts of isolated state entities to confer special benefits on same-sex couples who "[s]hare a close personal relationship." *See* Appendix A to Attorney General's Brief on Appeal, Letter of Understanding between State of Michigan and the UAW--Local 6000, Art. 43, Sec. C.

The lower court's ruling in favor of the state entities was in error. This brief will narrowly focus on the lower court's treatment of the interpretation of the language of the Amendment in light of the understanding of the citizens who adopted it, and demonstrate that both the plain language of the Amendment and the debate surrounding its passage support the conclusion that the people of the State of Michigan intended the Amendment to prohibit the State and its political subdivisions from formally recognizing same-sex relationships as being equal or similar to marriage "for any purpose," including the conferral of health benefits by public employers on public employees involved in such relationships.

ARGUMENT

The Michigan Marriage Protection Amendment states in full:

> 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.

Const 1963, art 1, § 25.

The Amendment was approved by the voters of Michigan by a 59-41% majority after an intense and often heated public campaign by both proponents and opponents. Amicus AFA-Michigan was a leader in both the preparation of the language of the Amendment and in the battle to secure its passage. During the course of the sometimes heated debate, both the supporters and the opponents of the Amendment – prominently including AFA-Michigan and plaintiffs' counsel, the American Civil Liberties Union of Michigan -- publicly stated that it was intended to and would prohibit government recognition of domestic partnerships and other same-sex relationships, including for the purpose of providing taxpayer-funded employee benefits to public employees involved in such relationships. In fact, during the course of the campaign, the issue of government employers providing taxpayer-financed benefits on such basis was at the forefront of the debate.

I. Rules of Construction.

The lower court correctly noted that a constitutional provision should be construed in a manner consistent with the intent of the people who ratified it. Opinion and Order at 6 (citing *Wayne Co. v. Hathcock*, 471 Mich. 445, 468-69; 684 N.W.2d 765 (2004)). As the Michigan Supreme Court has observed:

> A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.* 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be*

> *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.'

Traverse City School Dist. v. Attorney General, 384 Mich. 390, 405, 185 N.W.2d 9 (1971) (emphasis in original) (quoting 1 Thomas M. Cooley, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES 81 (8th ed. 1868)); *see also Hathcock*, 471 Mich. 445, 468 (same); *accord, County Road Ass'n of Michigan v. Governor*, 474 Mich. 11, 705 N.W.2d 680 (Mich. 2005) ("Our obligation is to give the words of our Constitution a reasonable interpretation consistent with the plain meaning understood by the ratifiers.") (citing *Hathcock*).

Where the intent of the people is clear in the plain language of the amendment, extrinsic evidence is unnecessary. *American Axle & Mfg., Inc. v. City of Hamtramck*, 461 Mich. 352, 362-363, 604 N.W.2d 330, 335 (Mich. 2000) (citing Cooley, *supra*). However, where the meaning is unclear, it is appropriate for a court to consider the circumstances leading up to the adoption of the constitutional amendment. *Bolt v. City of Lansing*, 459 Mich. 152, 160-161, 587 N.W.2d 264, 269 (Mich. 1998) (citing *Traverse City School Dist.*).

AFA-Michigan concurs in the Attorney General's position that the intent to prohibit government recognition of same-sex couples "for any purpose," including for the purpose of conferring health benefits, is clear in the plain language of the Amendment. In the event the Court determines that resort to the circumstances surrounding the adoption of the Amendment would inform the intent of the people, however, AFA-Michigan offers the following to demonstrate that the question of health benefits for same-sex couples was indeed a significant consideration in approving the Amendment.

II. The plain language of the Amendment and the circumstances surrounding its adoption indicate an intent by the people to prohibit government from recognizing or treating same-sex relationships as equal or similar to marriage for any purpose, including conferral of benefits on government employees involved in such relationships.

The plain language of the Amendment prohibits government employers from recognizing same-sex relationships as being equal or "similar" to marriage "for any purpose," including the provision of taxpayer-financed employee benefits. Because employers recognize the validity of marriages between their employees and the employees' spouses, they routinely provide health benefits to such spouses. Similarly, the public employers here provide domestic partnership benefits on the basis of their recognition of domestic partnership agreements as being equal or similar to marriage. That is, the employers provide spousal-like benefits to domestic partners as a direct result of their recognition of the domestic partnerships as being the same or similar to marriage. This recognition of the domestic partnerships as a union similar to marriage for purposes of determining eligibility for health benefits is prohibited under the plain language of the Amendment's final clause.[1] *Recognition* of the "similar union" is a prerequisite to conferral of the benefits.

Should this Court find any ambiguity or uncertainty in the plain language, then in the alternative the circumstances surrounding adoption of the Amendment strongly support the conclusion that the citizens of Michigan were aware of the public employee benefits issue prior to adoption of the Amendment, and by approving the Amendment signaled their intent to prohibit government recognition of domestic partnerships or other same-sex relationships "for

[1] The lower court string cited a number of cases from other jurisdictions that found that domestic partnerships were not similar to marriage. Opinion at 11. None of those cases, however, involved a provision substantially similar to the Amendment and its prohibition on recognition of any "similar union for any purpose." In fact, those cases did not involve marriage protection amendments at all, but dealt instead with claims of infringement of the exclusive right to regulate marriage. They are therefore inapposite.

any purpose," specifically including the conferral of health benefits on same-sex couples by public employers. In fact, high-profile public spokespersons on *both sides* of the election debate publicly argued that the Amendment would have that very effect, and was intended to. For example, *Detroit Free Press* political columnist Dawson Bell, after interviewing AFA-Michigan President Gary Glenn and others, published the following report in question-and-answer format in the paper's September 13, 2004 edition:

> Q: What about employee benefits accorded to domestic partners and their dependents by some municipalities and public universities?
>
> A: *Proponents and opponents* of the amendment say they would be *prohibited* to the extent they mimic benefits for married employees.

See http://www.freep.com/news/mich/gaymarriage13e_20040913.htm (emphasis added).

Attorney General Cox, opining on "the intent of the people of the State of Michigan who ratified" Prop 2, wrote:

> Looking at the circumstances surrounding adoption of Proposal 2, therefore, *the issue of domestic partner benefits based on an (sic) union similar to marriage was at the forefront of the public debate* as voters prepared to go to the polls, regardless of whether there was agreement regarding the effect the Proposal might have on domestic partner benefits. One thing that would certainly have been evident to voters was that the benefits provided based on the recognition of "similar union" were at issue and might be eliminated if the measure passed.

See Appendix D to Attorney General's Brief on Appeal, OAG, 2005, N0. 7171, Formal Opinion of Robert H. Cinabro, City Attorney for Kalamazoo, dated April 12, 2005, at 2-3 (quoting AG's Formal Opinion No. 7171). General Cox's conclusion is well supported by the pre-election statements of both the supporters and the opponents of the Amendment.

A. AFA-Michigan argued clearly and consistently that the proposal would, and was intended to, prohibit the State and its political subdivisions -- in their capacity as public employers -- from recognizing same-sex relationships as being equal or similar to marriage "for any purpose," expressly including for the purpose of granting taxpayer-financed benefits to government employees involved in such relationships.

Perhaps the most compelling testimony to AFA-Michigan's pre-election argument that the Amendment would prohibit benefits offered on the basis of such recognition, and that the people voting on the Amendment understood its intended effect on such benefits for same-sex couples, came from the Coalition for a Fair Michigan, the registered ballot campaign committee organized to *oppose* the Amendment, which on June 24, 2004, issued the following news release:

> The Coalition for a Fair Michigan (CFM) said today that they were happy to find common ground with the Michigan affiliate of the American Family Association (AFA), one of the lead proponents of the proposed constitutional amendment that would ban legal recognition of any relationships other than opposite-sex marriage. Last night, at a forum on the amendment held at the Resurrection Lutheran Church in Saginaw, *both sides agreed* that the amendment would go much further than defining marriage *by also eliminating any government-sanctioned domestic partnership benefits.* "I'm glad we could find common ground with the AFA, and I want to thank Gary Glenn for his willingness to be upfront on this point," said Wendy Howell, Campaign Manager for CFM.

See http://www.fairmichiganmajority.org/CFM/press_releases/6_24.htm (emphasis added).

The non-partisan Citizens Research Council of Michigan also reported in its September 2004 *CRC Memorandum:*

> According to the American Family Association of Michigan, voter approval of the (Amendment) would *ensure that taxpayers would not be liable for governmentally funded benefits to same-sex couples* already accorded to heterosexual marriages, including social security death benefits.

See http://crcmich.org/PUBLICAT/2000s/2004/memo1076.pdf (emphasis added).

AFA-Michigan President Gary Glenn said in a news release dated September 28, 2004, that the "Amendment will not stop any employer in the future from offering benefits to anyone the employer chooses, *so long as it's not on the basis of* formally recognizing homosexual relationships as equal or similar to marriage." Glenn noted in the release, as does the Attorney General in his brief, that while the Amendment *does* prohibit a government employer from granting benefits to employees *on the basis of recognizing same-sex relationships as being equal or similar to marriage,* the Amendment *would not* block government employees involved in such relationships from receiving benefits offered as part of a more *broadly-based* plan available to *all* employees – that is, a benefits plan *not* based in any way on recognizing same-sex relationships.

"A government employer could adopt an 'anything goes' policy," Glenn explained in the release, "allowing employees to add *anyone they wish* to their health care coverage -- a sick relative, a neighbor, *or even their homosexual partner* -- so long as the offer is available to all employees and not only to those involved in a homosexual relationship." (Emphasis added.)

Glenn and another prominent supporter of the Amendment repeated the point in the October 20, 2004 issue of *Metro Times,* a weekly newsmagazine published in Detroit:

> Conservative Oakland County Commissioner Tom McMillin, who sponsored a successful resolution supporting the proposed amendment, is satisfied with the language, and claims Prop 2 opponents overstate the amendment's potential effect on employers' ability to provide benefits. "(An employer) can say, 'Anybody who has benefits as of 2004 can still have them,'" McMillin says. "*The basis just cannot be that it's marriage or something similar to marriage.*"
>
> This position is echoed by Gary Glenn, president of the American Family Association of Michigan, who says, "Under that policy (cited above by McMillin), every single person currently receiving any kind of benefit would continue to do so. But it would not be on the basis of a government employer singling out homosexual relationships for the special treatment of being recognized as equal or similar to marriage."

See http://www.metrotimes.com/editorial/story.asp?id=6866 (emphasis added).

As Glenn explained in scores of public appearances, debates, and media interviews in 2004, the issue before the court is not one of government *benefits*, but government *recognition.* That government employers may continue to offer employee benefits that *include*, but are not *limited* to, employees who are involved in same-sex relationships, based on broader, more inclusive criteria and not on singling out employees involved in same-sex relationships for special treatment and recognition as if they are equal or similar to marriage, has apparently been anticipated by one of the state's largest public employers, the University of Michigan.

The Michigan Daily is the student newspaper of the University of Michigan at Ann Arbor. On February 14, 2005, the *Daily* reported:

> (University of Michigan) spokeswoman Julie Peterson said (the Graduate Employees Organization) has no reason to fear it will lose its (same-sex) benefits, even if a court ruled a new arrangement unconstitutional because of its violation of Proposal 2 – an amendment to the state constitution that defines marriage as between a man and a woman. The University will *change the mechanics* of its benefits system to continue to offer benefits to gay couples, Peterson said.

See http://www.michigandaily.com/vnews/display.v/ART/2005/02/14/42108d1456d7a (emphasis added).

Between the Lines, a weekly publication distributed statewide in Michigan which touts itself as a source of "news for gays, bisexuals, transgenders and friends,"[2] on March 23, 2005, reported on a benefits proposal by the labor union representing graduate employees of the university, a "designated beneficiary" plan designed precisely as Glenn, in multiple public statements prior to the 2004 election, had suggested would be permitted under the Amendment:

[2] The same publication also reported just how small is the number of individuals actually affected by the prohibition on government recognition of same-sex relationships for the purpose of conferring taxpayer-financed employee benefits to employees of the State and its political subdivisions. *See* http://www.pridesource.com/article.shtml?article=14005&section=news (reporting that *only 217 employees* at nine state universities actually receive the benefits).

> The (University of Michigan Graduate Employees Organization) remains concerned about two related issues. First, they said, is the administration's refusal to respond to the union's proposal to extend insurance eligibility to a "designated beneficiary," allowing GEO members to insure an additional adult *without regard to marital or partner status.* The "Designated Beneficiary" eligibility structure would safeguard benefits currently offered to same-sex domestic partners that are under threat of legal challenge (under the new Marriage Protection Amendment).

See http://www.pridesource.com/article.shtml?article=13048§ion=news (emphasis added).

B. The ACLU of Michigan, a leading public *opponent* of the Amendment, argued that it would prohibit government recognition of same-sex couples for the purpose of providing taxpayer-financed benefits to government employees involved in such relationships.

The American Civil Liberties Union of Michigan took an active role in opposing the Amendment. ACLU Central Michigan chair, John Scalise, in an op-ed piece dated Oct. 11, 2004, wrote:

> *Proposal 2*, an initiative that will be on the November ballot, is a constitutional amendment that *would prohibit state recognition of all relationships other than a marriage between a man and a woman*.
>
> The advocates of this amendment would like you to believe that it is only about banning gay marriages, an issue that appears to have popular support. However, Michigan already has two laws that prohibit same sex marriage, making an amendment to the Constitution redundant and unnecessary. *The real goal of this measure is to ban not only gay marriage, but also civil unions for both straight and gay couples, and to prohibit the granting of domestic partnership benefits to non-married couples.*

See http://www.aclumich.org/modules.php?name=ExtraNews&file=article&sid=26 (emphasis added).

Similarly, the ACLU prepared flyers in opposition to the Amendment asking rhetorically,

> 3. If the first sentence of the proposal talks about limiting marriage to one man and one woman, *why is there additional language that says "or similar union for any purpose*?"
> 4. What does the sentence "or similar union for any purpose" mean? *Would that prohibit* civil unions, domestic partnerships, *domestic partner benefits*?

* * *

6. *Wouldn't this proposal prevent the state and local governments from recognizing domestic partnerships or providing domestic partner benefits*?

7. *Wouldn't this proposal prevent public school districts and state universities and colleges from recognizing domestic partnerships or providing domestic partner benefits*?

* * *

10. Wouldn't this proposal take away the rights of cities, municipalities and local governments to choose what kind of benefits they would like to offer? What about home rule and local control?[3]

See http://www.aclumich.org/proposal2/flyer.pdf (emphasis added); *see also* http://www.aclumich.org/proposal2/helpfulquestions.pdf (highlighting language "or similar union for any purpose" and asserting that if passed, the Amendment could "ban domestic partnerships for same-sex and heterosexual unmarried couples" and "prohibit state and local governments from providing domestic partner benefits to unmarried couples").

C. Special interest newspapers that *opposed* the Amendment argued that it would ban taxpayer-financed benefits for government employees involved in same-sex relationships.

On February 27, 2004, many months before the issue went to the ballot box, *Between the Lines* published an article entitled, "THE MICHIGAN 'MARRIAGE AMENDMENT' - What It Means for the LGBT Community in Non-Legalese." The article stated the following as to the effect of the Amendment:

> *The amendment* would prohibit Michigan from having civil unions. It *would prevent local governments from providing domestic partner benefits. Cities like Ann Arbor and Kalamazoo, which currently provide such benefits to their employees could no longer do so. The amendment would prevent school districts from offering domestic partner benefits to its employees (both Ann Arbor and Birmingham school districts currently provide such benefits). State colleges and universities would also be prohibited from recognizing domestic partners of both employees and students.* Recognition of domestic partners by employers frequently includes health care coverage. Children who live with a gay or lesbian family member will be at risk for losing health care coverage.

See http://www.pridesource.com/article.shtml?article=6642 (emphasis added).

[3] The numbering sequence reflects the specific numbered items from the ACLU brochure.

D. Leading homosexual activists who opposed the Amendment argued that it would ban taxpayer-financed benefits for government employees involved in same-sex relationships.

In the same way, the Triangle Foundation, which describes itself as "Michigan's leading organization serving the gay, lesbian, bisexual, transgender and allied communities," recognized the effect the Amendment would have on domestic partnership benefits offered by government employers. Sean Kosofsky, Director of Policy for the Foundation, was quoted in the *State News* of East Lansing on Sept. 13, 2004, stating that "if the amendment were passed, it would have unintended consequences including *taking away health insurance and domestic partner benefits* for heterosexual unmarried couples and gay couples."

E. Coalition for a Fair Michigan (CFM), the registered campaign committee that opposed the Amendment during the 2004 election, expressly advised voters that the Amendment would ban taxpayer-financed benefits for government employees involved in same-sex relationships.

CFM aired a paid television commercial prior to the November 2004 election which told voters that the Amendment "could *take away benefits* we have now, like pensions and healthcare, even from children." *See* http://www.fairmichiganmajority.org/CFM/TVad.htm (emphasis added). CFM's campaign web site also featured a "Frequently Asked Questions" web page which repeatedly told voters prior to the election that the Amendment would prohibit government employers from recognizing same-sex relationships for the purpose of providing taxpayer-financed employee benefits:

> In fact, it would prohibit ANY legal recognition of unmarried partners, gay or straight, which means that *benefits* currently provided to those partners – like health care or retirement benefits – *would be taken away.*
>
> It would ban any form of civil unions or domestic partnerships and *take away benefits* that people have enjoyed for years, like health care, retirement, and prescription benefits.

> Many unions have negotiated for domestic partnership *benefits* (employer-sponsored benefits, like health insurance and pensions, for unmarried couples) in their contracts. And more plan to do so in the future. Proposal 2 could *permanently take those benefits off of the bargaining table.*

See http://www.fairmichiganmajority.org/CFM/faq.htm (emphasis added).

On another page of its web site, CFM flatly informed voters: "(The Amendment) would also *prohibit any form of domestic partnership benefits* (such as health care and prescription benefits) from being offered to public-sector employees."

See http://www.fairmichiganmajority.org/CFM/press_releases/10_13.htm (emphasis added).

CFM's campaign web site also featured a "Press Room" web page, which on the page itself or through web links provided on the page, quoted multiple pre-election public statements by elected officials, organizations, and newspaper editorials, all of which advised voters that the Amendment would, if passed, prohibit employee benefits offered on the basis of government employers recognizing same-sex relationships as being equal or similar to marriage. For example, CFM's web site linked to the Michigan Civil Rights Commission, which stated:

> If passed, Proposal 2 would result in fewer rights and benefits for unmarried couples, both same-sex and heterosexual, by banning civil unions and overturning existing domestic partnerships. Banning domestic partnerships would cause many Michigan families *to lose benefits* such as health and life insurance, pensions and hospital visitation rights.

CFM also quoted Kary Moss, executive director of the ACLU of Michigan, who stated: "Proposal 2 goes too far and is too broad. By also *prohibiting domestic partnership benefits* and civil unions, it denies gays and lesbians the legal rights that heterosexuals are afforded." (Emphasis added.) Similarly, CFM quoted Michigan AFL-CIO President Mark Gaffney, who said that the AFL-CIO opposed the measure because it would take away benefits that had already been negotiated into union contracts. The Michigan Education Association was quoted as

saying: "This proposal would *ban domestic partner benefits* offered by public employers, including state universities and school districts." (Emphasis added.)

In a Detroit Free Press editorial column quoted on CFM's web site, Governor Jennifer Granholm was quoted as saying that Proposal 2 "goes far beyond the issue of same-sex marriage. . . .It could *eliminate existing domestic partner benefits* for same-sex and heterosexual couples, and it would outlaw civil unions. …It may result in people losing their health insurance coverage and even being denied the ability to make medical decisions for their loved ones." In like fashion, numerous newspaper editorials were quoted to the same effect, from the Port Huron Times-Herald, to the Adrian Daily Telegram, to the Petoskey News-Review, the Travers City Record-Eagle, the Saginaw News, the Oakland Press, the Macomb Daily, the Lansing State Journal, the Grand Rapids Press, the Monroe Evening News, the Muskegon Chronicle, and the Flint Journal. *See* http://www.fairmichiganmajority.org/CFM/press_releases.htm (emphasis added).

In fact, CFM even led voters to believe that the Amendment would also prohibit *private sector* employers from offering employee benefits on the basis of recognizing and treating same-sex relationships as being equal or similar to marriage. Prior to the November 2004 election, AFA-Michigan publicly characterized such claims about the Amendment's effect on private sector employers as false. CFM's assertion that the Amendment prohibits same-sex benefits for *government* employees, however, is also reported by the non-partisan Citizens Research Council of Michigan in its September 2004 *CRC Memorandum*:

> The Coalition for a Fair Michigan also asserts that passage *would eliminate existing domestic partner benefits that are provided by state universities and some other government employers,* which give health care and other benefits to the unmarried partners of employees. . . . The Coalition, as well as other opponents

> of the proposal, suggest that this clause could be interpreted as a basis for *invalidating same-sex domestic benefits offered by public employers*, including the University of Michigan and Wayne State University, the Ann Arbor, Kalamazoo, and Port Huron school districts, and the City of Kalamazoo.

See http://crcmich.org/PUBLICAT/2000s/2004/memo1076.pdf (emphasis added).

The overwhelming weight of this evidence makes clear that leading public spokespersons on *both sides* of the debate – prominently including Amendment co-author AFA-Michigan on one side, and plaintiffs' counsel, ACLU of Michigan on the other -- *agreed* in their pre-election public statements that the Amendment would prohibit public employee benefits offered on the basis of government *recognition* of same-sex relationships as being equal or similar to marriage. In light of such overwhelming evidence, plaintiffs and their amici cannot credibly argue that voters were unaware of the intended effects of the Amendment or that by approving the Amendment the voters did not intend to ban such benefits..

F. An independent poll immediately prior to the November 2004 election indicated that Michigan voters opposed government provision of taxpayer-financed benefits to the same-sex partners of government employees by a percentage nearly identical to, and even slightly higher than those who planned to vote for the Amendment.

In the midst of public debate on the issue, roughly one month prior to the 2004 election, the *Detroit Free Press* conducted and published a poll of registered voters. In addition to asking whether voters supported the Amendment generally, the *Free Press* also asked specifically whether voters favored or opposed domestic partnership benefits for government employees. On October 2, 2004, the *Detroit Free Press* reported: "In a poll of 830 registered voters conducted Sept. 22-28, support for (the marriage amendment) was at 53 percent...*Even more (54 percent) say local governments and universities should not provide benefits, such as health and life insurance, to the partners of gay and lesbian employees*."

See http://www.freep.com/news/politics/marriagepoll2e_20041002.htm (emphasis added).

This evidence compels the conclusion that not only did the opposition understand the intent of the Amendment to bar government employers from offering taxpayer-financed benefits based on recognition of same-sex relationships, but the citizens of Michigan did as well.

III. The Lower Court Engaged in a Flawed Analysis.

The lower court found the intent of the people in adopting the Amendment "is contained in the very language of the amendment." Opinion and Order at 7. While the court was correct as far as it went, it did not go far enough. The Amendment does not end there; the court should not have ended there, either. The Amendment goes on to specify the *means* by which it proposed to protect marriage, namely by recognizing only one agreement "as a marriage or similar union for any purpose." It is this language over which the dispute as to intent arose.

The lower court incorrectly couched the intent question in the abstract, asking only what the people of Michigan intended to do *generally*, which is to protect marriage. The proper question to be analyzed here is whether the people in enacting the Amendment intended to protect marriage *specifically* by prohibiting the conferral of taxpayer-financed benefits on same-sex couples. It is this question that entails consideration of the circumstances surrounding adoption of the Amendment, and to which we must turn to ascertain the peoples' intent.

When the court did turn to a consideration of the actual language of the Amendment, it did so in a choppy, piecemeal fashion. *See* Opinion at 7-8 (analyzing term "recognize"); 8-9 (analyzing term "union"); and 12 (analyzing phrase "for any purpose"). The lower court's piecemeal approach to analyzing the simple, one-sentence Amendment did violence to its meaning. The rules of constitutional construction require that context be considered:

> [W]hile intent must be inferred from the language used, it is not the meaning of the particular words only in the abstract or their strictly grammatical construction alone that governs. The words are to be applied to the subject matter and to the general scope of the provision, and they are to be considered in light of the

> general purpose sought to be accomplished or the evil sought to be remedied by the constitution or statute.

White v. Ann Arbor, 406 Mich. 554, 562, 281 N.W.2d 283 (1979) (citation omitted).

Applying this analysis here, it is clear from both the context in which the Amendment was proposed and the inclusion of the "for any purpose" language that the intent of the Amendment was to bar government employers from *recognizing* same-sex relationships as being equal or similar to marriage in any form for any purpose, including for the purpose of conferring -- at taxpayers' expense -- so-called "domestic partner" health or other benefits on government employees involved in such relationships.

CONCLUSION

Under both a plain language analysis and a contextual analysis, the Michigan Marriage Protection Amendment should be interpreted as prohibiting government recognition of same-sex relationships as being equal or similar to marriage "for any purpose," including the extension of taxpayer-funded health or other benefits by public employers to public employees involved in such relationships. The Amendment's prohibition against recognition of any "similar union for any purpose" plainly reaches domestic partnership benefits. Moreover, the circumstances surrounding passage of the Amendment similarly support the conclusion that the voters intended to prohibit the government from recognizing same-sex relationships as equal or similar to marriage "for any purpose," including the offering of taxpayer-financed health or other benefits to government employees under the guise of domestic partnership or other same-sex agreements.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this ____ day of January, 2006, she served, by first class mail, postage prepaid, a copy of the foregoing Brief of Amicus Curiae American Family Association of Michigan upon all counsel of record addressed as follows:

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