

local news

The attorney general's office is sending a terrible and unmistakable message to gay and lesbian people that, at least in the eyes of the State of Oregon, they and their families are less than equal citizens. That is tragic," says Portland attorney Carl Kiss, who represents three lesbian couples who sued the State of Oregon and Oregon Health Sciences University to obtain fringe benefits automatically granted to married heterosexuals.

Multnomah County Circuit Judge Stephen L. Gallagher Jr. ruled on Aug. 8 that domestic partners of gay men and lesbians have a constitutional right to spousal health benefits.

In his opinion, thought to be the first of its kind in the nation, Gallagher held that the state and OHSU illegally discriminate against their gay and lesbian employees by offering insurance benefits to heterosexual employees' spouses, but not to gay and lesbian employees' domestic partners.

Gallagher found the state's benefits policy violates Oregon's statute prohibiting employment discrimination and state constitutional guarantees of equal privileges and immunities. He ordered the state and OHSU to make their insurance benefits equally available to the domestic partners of their gay and lesbian employees.

The ruling was prompted by a 1992 lawsuit brought by two OHSU nursing professors and a pharmacy supervisor who, joined by their partners, sued to obtain medical, dental and life insurance benefits.

On Aug. 30, the state attorney general's office announced it would appeal the ruling. Kiss says he and his clients are extremely disappointed by that decision, which Kiss estimates could keep the case entangled in the courts for at least another year.

"If the attorney general's office had chosen not to appeal, gay and lesbian couples would have immediately been treated equally with respect to spousal benefits," he says. "Now they will have to wait and continue to be subjected to unequal and discriminatory treatment by the state."

Kiss is also concerned the decision will have a chilling effect on potential anti-discrimination cases involving gay and lesbian citizens.

"Gay people who feel they are being discriminated against may look at this situation—the time commitment, the struggle—and decide they just can't subject themselves to such a time-consuming and emotionally costly experience. I hope it doesn't deter people, but it may."

Kiss and his clients aren't the only people upset about the appeal. Oregon state Rep. Gail Shibley, the state's first openly gay lawmaker, sent a letter to both the governor and Attorney General Ted Kulongoski urging them to not appeal Gallagher's ruling.

Shibley maintained it would send a negative message to the public about the state's commitment to equal rights. She also argued that the state

Not without a fight

The state decides to appeal a recent court order to provide health benefits to its employees' same-sex partners

by Inga Sorensen

should not waste its limited financial resources appealing a ruling that simply called for the equal treatment of its employees.

Barry Pack, executive director of Right to Privacy, a gay, lesbian and bisexual rights organization, says he and RTP board members, via telephone and face-to-face meetings, implored the governor and attorney general to let the ruling stand.

"We believe there was a valid interpretation of Gallagher's ruling that the attorney general could have used to decide against an appeal," he says.

Pack met with the governor recently as part of an ongoing roundtable between the chief execu-

should demand clear and consistent leadership."

Peter Cogswell, a spokesman with the attorney general's office, defends the decision to appeal.

"This ruling could have a substantial impact on state policy, and we feel it makes sense that a circuit court decision dictating public policy should be reviewed by the appellate court," says Cogswell, adding he has "no idea" how much it will cost the state to appeal.

Dan Kennedy, administrator of the State of Oregon's Human Resources Division, recently told *The New York Times* that domestic partner benefits could be provided for "minimal cost."



Attorney General Ted Kulongoski

tive and gay and lesbian citizens.

"This obviously came up," says Pack. "The governor simply said he didn't know what Ted [Kulongoski] was going to do."

Though Kulongoski and Kitzhaber have been viewed as allies of gay and lesbian rights, Pack asks, somewhat rhetorically: "Do we settle for nine out of 10, or should we demand 10 out of 10? Our community has been attacked so much and experienced so much rampant discrimination that we have to draw a line. I think our policymakers have to be held accountable, and I believe we

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"It would have been very rare for us not to appeal," continues Cogswell, who previously told *Just Out* that while appeals are typical they are "not automatic."

Cogswell further said the attorney general alone had the ability to proceed with an appeal, but acknowledged a request from the governor was "certainly something we would pay attention to."

Last summer Gov. John Kitzhaber directed Kulongoski to submit an amicus brief to the nation's high court outlining Oregon's opposition to Amendment 2.

Ironically, Gallagher noted in his opinion his review and re-review of materials submitted by counsel, including the recent *Romer vs. Evans* opinion, the U.S. Supreme Court ruling that deemed Colorado's anti-gay Amendment 2 unconstitutional.

When asked about the apparent incongruity involving state officials' actions relating to Amendment 2 and the Gallagher ruling, Cogswell said: "It's totally different. The Supreme Court essentially found that Amendment 2 fenced a group of people out of the political process. Gays can still utilize the political process if they want to change the law with regard to marriage."

Following the state's decision to appeal this case, Cogswell would only say that the attorney general "advised the governor of his decision to appeal."

Just Out called the governor's office several times to ask whether Kitzhaber recommended the ruling be appealed. None of our calls were returned by press time.

"This isn't a case of sexual orientation discrimination," argues Cogswell. "This has do with marital status. The fact that gays can't get married is not the issue here. That's a separate matter."

In his ruling, Gallagher stated that all of the couples "conducted themselves as members of a 'family.' Each couple has enjoyed a long-term and committed relationship identical to marriage, with the usual indices of such a union. In all respects, each couple has successfully maintained a loving, functional, cohesive family-type relationship which they wish to maintain until parted by death. But for state law prohibiting same-sex marriages, each couple would have at all times... gladly and voluntarily exchanged the vows of marriage between themselves to achieve that legal status. Of this, the Court has no doubt."

Despite the setback, Kiss is encouraging gay and lesbian couples seeking spousal benefits to obtain sworn affidavits pertaining to their commitment to each other and "go through the regular channels" when applying for spousal benefits from an employer.

In his ruling, Gallagher highlighted a number of criteria that could be used as sufficient conditions for domestic partnerships. Among the guidelines, the couples must be same sex; cannot be legally married; cannot be related by blood; would be married if the law permitted; must be 18 or older; should share financial accounts and be responsible for each other's welfare; must have lived together continuously as a family; and have an exclusive, loving and close personal relationship.

"Perhaps Gallagher's ruling will prompt an employer to extend benefits," says Kiss. "If not, getting affidavits and applying may lay the groundwork for future liability."

Three states—New York, Massachusetts and Vermont—extend benefits to domestic partners and have done so without a court mandate.

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