

# Marriage Law Digest

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**PARTNERS HEALTHCARE SYSTEMS,  
INC. V. SULLIVAN**  
**Civ. Action No. 06-11436-JLT**  
**U.S. District Court, District of  
Massachusetts**  
**June 25, 2007**

[http://pacer.mad.uscourts.gov/dc/cgi-bin/rec\\_entops.pl?filename=tauro/pdf/partners\\_healthcare\\_v\\_sullivan.pdf](http://pacer.mad.uscourts.gov/dc/cgi-bin/rec_entops.pl?filename=tauro/pdf/partners_healthcare_v_sullivan.pdf)

An employer offered employment benefits to same-sex domestic partners but not opposite-sex domestic partners. An employee filed a sexual orientation discrimination charge with the Massachusetts Commission Against Discrimination (MCAD). The employer subsequently sought an injunction against the MCAD claiming that the benefits it offered were regulated by the federal Employee Retirement Income Security Act (ERISA) and so could not be regulated by state law.

The court noted that Massachusetts law prohibits sexual orientation discrimination and would affect how employers would provide benefits covered by ERISA. Thus, Massachusetts law and ERISA conflict. The court said that the state cannot tell employer plans "who can and must be beneficiaries" since doing so "could quickly make it difficult [for an employer operating across states] to administer a fair, uniform plan." Unlike Massachusetts law, federal discrimination law does not list sexual orientation as a protected class and the employee here was not "discriminated against on the basis of any stereotypical sex characteristic demonstrated in the

workplace" (which would have been a violation of federal discrimination law). So the court ordered the MCAD to cease investigation into any benefits provided under ERISA regulated plans.

**FAIRCHILD V. RIVA JEWELRY  
MANUFACTURING, INC.**  
**Index No. 101169/2006**  
**New York County Supreme Court**  
**June 28, 2007**

[http://decisions.courts.state.ny.us/fcas/fcas\\_docs/2007jun/3001011692006001sciv.pdf](http://decisions.courts.state.ny.us/fcas/fcas_docs/2007jun/3001011692006001sciv.pdf)

A former employee sued his employer for sexual orientation discrimination. He claimed the company president expressed "revulsion" of homosexuals, avoided contact with them and "frequently quoted the Bible as evidence that homosexuality is a sin against God" and when the president found out that the plaintiff was gay, he was fired. During the litigation, the plaintiff served the defendant with a number of interrogatories including these two: (1) "State whether defendant Doudak [the company president] believes that 'homosexuality is a sin against God'" and (2) "State whether defendant Doudak believes that 'gays and lesbians are doomed to eternal damnation.'"

The defendant said these questions violated his rights to privacy and freedom of religion. The plaintiff's argument was that the defendant's president "is free to believe whatever he wishes, but he is obligated to reveal those beliefs to the extent they bear directly upon plaintiff's claims that he was terminated as a consequence of his sexual

orientation.” The defendant argued that “compelling a response to such an inquiry would be a state action which would dissuade individuals from membership in certain religions, as the religious teachings themselves may be used against the member in a civil proceeding.” The plaintiff’s reply was that freedom of religion “is not absolute and that [the company president] may be compelled to testify concerning his beliefs to the extent those beliefs demonstrate defendants’ bias and interest to discriminate.”

The court held that the president’s answers to the questions might “lead to evidence establishing that the sexual orientation of the plaintiff was a factor in the plaintiff’s termination” because “the belief, whether founded in religion or not, about a person falling within a category protected under New York State discrimination laws may lead to the conclusion that the decision to terminate plaintiff was based on his sexual orientation.” Thus, “Arguably, Mr. Doudak’s ‘belief’ that plaintiff’s sexual orientation constituted a ‘sin’ or ‘will result in eternal damnation’ was related to defendant’s decision to terminate the plaintiff.” The court also said that, “Any burden upon one’s freedom to exercise one’s religion must be balanced against the State’s paramount duty to insure a fair trial” and that “no person should be permitted to use that right as a cloak for acts of discrimination or as a justification of practices inconsistent with the protections against invidious discrimination proscribed in New York State law.” Since, to the court, “the state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest” (citing *Bob Jones University v. United States*) “[w]hen it appears that one’s religion is relied upon to form a basis of discrimination against a

person who is a member of a protected class, to wit: homosexuals, an inquiry into and balancing of the competing interests favors disclosure in order to uncover evidence from which a jury may infer that the proffered reasons for plaintiff’s termination was prohibited discrimination.” Thus, the questions were allowed.

**R (ON THE APPLICATION OF  
PLAYFOOT) V. GOVERNING BODY OF  
MILLAIS SCHOOL  
[2007]EWHC 1698 (Admin)  
High Court of England & Wales, Queen’s  
Bench Division (Administrative Court)  
July 16, 2007**

A school dress code forbid wearing jewelry and a student who wanted to wear a ring symbolizing that marriage is the appropriate framework for sexual relations challenged the application of the code to her ring. The judge decided “the act of wearing a ring is not ‘intimately linked’ to the belief in chastity before marriage.” The court noted that the student was “under no obligation, by reason of her belief, to wear the ring” so the European Convention’s religious liberty protection is not implicated.

Plaintiffs attorney had argued that the ring was “a religious artefact and as such not covered by the uniform policy” but the court found that “[w]hatever the ring is intended to symbolize, it is a piece of jewelry. The court also sais the student could put the ring on a purse fo keychain or transfer to a school that would allow wearing jewelry.

The court said the school’s policy served four “important functions”: (1) fostering “School identity and an atmosphere of allegiance, discipline, equality and cohesion,” (2) minimizing distractions related to “wealth and status” differences, (3) reduces the risk of bullying, and (4)

“assists in promoting the highest standards of achievement in all aspects of a young girl’s life, including her attitudes and conduct.” The court distinguished divergences from dress code enforcement for Sikhs and Muslims because those religions require certain clothing.

**SECRETARY FOR JUSTICE V. YAU**  
**FACC No. 12 of 2006**  
**Hong Kong Court of Final Appeal**  
**July 17, 2007**

[http://legalref.judiciary.gov.hk/lrs/common/ju/ju\\_frame.jsp?DIS=57763&currpage=T](http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=57763&currpage=T)

Defendants were charged under the law criminalizing “homosexual buggery committed otherwise than in private.” The magistrate held the law unconstitutional and the appeals court agreed.

The court of final appeal held that under Hong Kong’s Basic Law and Bill of Rights, the right to equality is guaranteed and sexual orientation classifications are “scrutinize[d] with intensity.” Since the charging statute applies only to homosexual acts, it “gives rise to differential treatment on the ground of sexual orientation.” The court found the government has no justification for the differential treatment, so the law is unconstitutional.

**MCD. V. L.**  
**[2007] IESC 28**  
**Ireland Supreme Court**  
**July 19, 2007**

<http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/9351b5533b011b4b8025731d0037655c?OpenDocument>

After a child conceived by artificial insemination, the mother and her same-sex partner entered agreement with father to allow him visitation but not parental rights. When the couple subsequently decided to

move to Australia for a year the father sought an order restraining them from taking the child away. The trial court noted the existence of a father/child bond and, balancing inconvenience to the couple said it was in the best interests of the child to keep the child in Ireland so as not to disturb the father/child relationship for one year.

The supreme court majority agreed with the trial court, basing its decision on “the paramount importance of the welfare of the infant, by the young age of the infant, by the face that a year is a long time in the life of a developing infant, and by the injustice that would be done to the infant if the applicant is ultimately successful in his application.”

The dissent said the mother “has natural and constitutional rights flowing from her relationship to the child.” On the other hand, this judge believed the father “is not the father of the child by virtue of membership of a family based on marriage to his mother” and that he could not “bring himself even within the scope of any relationship approximating to a family.” Thus, he has “no legal or constitutional relationship with the child.” The dissent believed the trial court had assumed parental rights for the father and should not have done so without expert testimony.

**PARMAN V. OREGON**  
**Case No. 0604-03584**  
**Oregon Circuit Court, Multnomah County**  
**July 24, 2007**

A same-sex couple challenged Oregon’s paternity presumption statutes (governing a child born during marriage either as a result of a sexual relationship or of artificial insemination), claiming these laws discriminated on the basis of sex and sexual orientation. One partner in the couple was the biological mother (*via* artificial

insemination) of two children and she was the only partner listed on the birth certificate. A new certificate could only be issued with the other partner's name included if the partner adopted the child.

The court held that an earlier decision of the Oregon Court of Appeals (*Tanner v. Oregon Health Sciences University*) was on point and established that (1) "gay and lesbian domestic partners" are a class for purposes of state constitutional analysis, (2) they are a suspect class and classifications affecting them are subject to strict scrutiny, (3) laws that condition benefits on marriage can violate the state constitution because same-sex couples can't marry, and (4) a law creating differential treatment of married and same-sex couples must have a "biological justification."

Here, the court held that the challenged statutes, since they "do not apply to a child and the lesbian domestic partner of the child's mother, cannot be justified by biological differences existing between married, heterosexual couples and lesbian domestic partners, as the rights and responsibilities of parenthood awarded to the husband under these statutes are not at all conditioned on the biological ability of the male partner to be the father of the mother's child."

The court concluded that the violation it identified would be remedied by the domestic partnership statute approved by the legislature earlier in 2007.

**STATE V. CARSWELL**  
**2007-Ohio-3723**  
**Supreme Court of Ohio**  
**July 25, 2007**

<http://www.sconet.state.oh.us/rod/newpdf/0/2007/2007-Ohio-3723.pdf>

A man indicted for abuse of his unmarried companion in cohabitation challenged the challenging statute which applies domestic violence protection to "persons living as a spouse." He claimed the statute conflicted with the state's marriage amendment which provides in part: "This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage." The trial court held the statute and amendment in conflict but the court of appeals disagreed.

The supreme court said it would not find a conflict unless such a conflict is clear. The court interpreted the amendments as providing that "the state cannot create or recognize a legal status for unmarried persons that bears all the attributes of marriage—a marriage substitute." The court said the purpose of the amendment was to prevent "a legal status deemed to be the equivalent of a marriage of a man and a woman." The second sentence, to the court, "prohibits the state and its political subdivisions from circumventing the mandate of the first sentence [defining marriage] by recognizing a legal status similar to marriage (for example, a civil union)." The court held the statute at issue "does not create any special or additional rights, privileges, or benefits for family or household members." The court noted that cohabitation is not a status created by the state but rather a relationship created by individuals. Thus, the term "person living as a spouse" in the statute "merely identifies a particular class of persons for the purposes of the domestic-violence statute" and "does not create or recognize a legal relationship that approximates the designs, qualities, or significance of marriage."

One dissenter argued that coverage in the

domestic partner statute does create a legal status because individuals living together have “standing under law to prosecute the other person for an act of domestic violence.” The dissent believed this coverage gives cohabitants additional rights beyond those of other assault victims. The dissent said the statute “clearly expresses an intent to give an unmarried relationship a legal status that approximates the ‘effect of marriage.’” Thus, this judge believed the statute “inherently equates cohabitating unmarried persons with those who are married and extends the domestic violence statutes because their relationship approximates the significance or effect of marriage.”

**AMES RENTAL PROPERTY  
ASSOCIATION V. CITY OF AMES**

**No. 38/05-0463**

**Supreme Court of Iowa**

**July 27, 2007**

[http://www.judicial.state.ia.us/Supreme\\_Court/Recent\\_Opinions/20070727/05-0463.pdf?search=+Ames+Rental+#\\_1](http://www.judicial.state.ia.us/Supreme_Court/Recent_Opinions/20070727/05-0463.pdf?search=+Ames+Rental+#_1)

A city ordinance permitting only single-family dwellings in certain parts of the city, defined family as “any number of related persons or no more than three unrelated persons.” A landlord association claimed the ordinance violated the state and federal equal protection clauses.

The court first held that there was no violation of the federal constitution because the U.S. Supreme Court had earlier upheld a stricter zoning ordinance.

The court said the zoning ordinance treats related and unrelated persons differently. The court held this case does not involve suspect class or a fundamental right so rational basis scrutiny would be applied to the ordinance. The city said the ordinance

promoted interests in “a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles and controlled transiency.” The court concluded “governing bodies have a legitimate interest in promoting and preserving neighborhoods that are conducive to families—particularly those with young children. The court also held the other objectives of the ordinance to be valid. The court noted that “groups of unrelated persons typically have different living styles in comparison to groups of related persons” and that these characteristics were relevant to the interests the ordinance was meant to promote. The court rejected the idea that the ordinance was unconstitutional because there could be examples of related persons living together who do not promote the city’s goals as well as some unrelated people might, calling these examples “extreme.” The court concluded that if “the ordinance proves to be ineffective, then the elected city counsel may change course and amend or repeal it.”

Three judges dissented. They believed the city’s purposes were valid but that there was no evidence that “a group of more than three related persons will portray different or desirable behavior or living patterns than a group of more than three unrelated persons. The dissent believed the ordinance was both over- and under-inclusive “because it is irrational to suppose the type of relationship persons residing in a home have to each other has any rational bearing on the character or behavior of those persons.” The dissent noted that the ordinance would allow a larger group of related than unrelated persons to live together , thus potentially undermining some of the city’s goals. The dissent believed the ordinance inappropriately distinguished based on persons’ relationships rather than conduct and that it “is irrational for a city to

attempt to promote a sense of community by intruding into its citizens' homes and differentiating, classifying, and eventually barring its citizens from the community solely based on type of relationship a person has to other persons residing in their home." The dissent concluded that the examples of nontraditional household arrangements considered "extreme" by the majority are actually "closer to the norms than to the extremes."