

NO. A07-2433

State of Minnesota
In Court of Appeals

Amy and Sarah Monson,

Appellants,

v.

Rochester Athletic Club and John D. Remick,

Respondents.

**BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION
AND AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA**

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INTEREST OF *AMICI CURIAE*¹

The American Civil Liberties Union ("ACLU") is a nonprofit, nonpartisan membership organization founded in 1920 to protect and advance civil liberties throughout the United States. The ACLU has more than 500,000 members nationwide and a long history of legal advocacy for equal protection under the law for all citizens. The American Civil Liberties Union of Minnesota is its Minnesota affiliate. The ACLU has been involved extensively in litigation to combat discrimination based on sexual orientation in Minnesota and throughout the United States. This case presents an important issue regarding the laws that provide Minnesotans with protection from discrimination based on sexual orientation.

STATEMENT OF THE CASE AND FACTS

Amici Curiae concur with Appellants' Statement of the Case and Facts.

INTRODUCTION

The State of Minnesota has long opposed discrimination based on sexual orientation and has codified prohibitions against discrimination in various aspects of civic life through the Minnesota Human Rights Act (MHRA). The fact that this case arises in the context of a membership to an athletic club does not diminish the importance of the civil rights issue at stake. Laws like the MHRA are aimed at ending inequality that exists

¹No counsel for any party authored this brief in whole or in part. No person or entity, other than *Amici Curiae* ACLU and ACLU-MN, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

in the “transactions and endeavors that constitute ordinary civic life in a free society.” *Romer v. Evans*, 517 U.S. 620, 631 (1996); *Roberts v. United States Jaycees*, 468 U.S. 609, 625-26 (1984) (civil rights laws further society’s interest in “wide participation in political, economic, and cultural life.”). The legislature has recognized that the discrimination prohibited under the MHRA, including discrimination in public accommodations, “threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy.” Minn. Stat. §363A.02(1)(b) (2007). Just as *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970), was not merely about the right to eat at a lunch counter, this case is about much more than the ability to obtain a family membership to an athletic club.

Discrimination based on sexual orientation can take on many forms. By choosing an eligibility criterion for family memberships that, by definition, is only available to heterosexuals, the Rochester Athletic Club (the Club) has chosen to make family memberships available in a manner that facially discriminates based on sexual orientation. Thus, the District Court erred in granting the Club’s motion for summary judgment. In a deeply troubling analysis of the MHRA, the District Court also declared that the provisions of Minn. Stat. §363A.27 authorize sexual orientation discrimination when it is directed at gay and lesbian couples. The District Court’s construction of the statute contradicts the plain meaning of the statute and the general rules of statutory construction.

ARGUMENT

I. MAKING FAMILY MEMBERSHIPS AVAILABLE ONLY TO COUPLES WHO ARE LEGALLY MARRIED FACIALLY DISCRIMINATES ON THE BASIS OF SEXUAL ORIENTATION IN VIOLATION OF THE MHRA.

The District Court erred in holding that the Club's choice to make family memberships available only to couples who are legally married did not discriminate on the basis of sexual orientation.

The MHRA provides that “[i]t is an unfair discriminatory practice to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of . . . sexual orientation” Minn. Stat. §363A.11(1)(a) (2007). The Act also provides that “[i]t is an unfair discriminatory practice for a person engaged in a trade or business or in the provision of a service . . . to intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person's . . . sexual orientation . . . , unless the alleged refusal or discrimination is because of a legitimate business purpose.” Minn. Stat. §363A.17 (2007).

The Club's policy of making family memberships available only to legally married couples and their children impermissibly discriminates because of sexual orientation.

While the Monsons are correct that this policy has a disparate impact on gay people, *see Tanner v. Oregon Health Sciences Univ.*, 971 P.2d 435 (Or. App. 1998); *Levin v. Yeshiva*

Univ., 96 N.Y.2d 484 (N.Y. 2001), this policy also facially discriminates on the basis of sexual orientation. In Minnesota, marriage, by definition, is limited to heterosexual couples. Minn. Stat. §§ 517.01, 517.03 (2007). Thus, legally married couples, by definition, are only heterosexual couples. Making eligibility for a family membership contingent on being legally married when, in Minnesota, legally married people can only be heterosexual couples facially discriminates on the basis of sexual orientation.

The district court erred in holding that no discrimination has occurred since all unmarried couples are being treated the same. (A-9). This ignores the reality that the Club has chosen an eligibility criterion for family membership that, on its face, is available only to heterosexuals, despite the ability to make family memberships available on a non-discriminatory basis.

Courts in other jurisdictions that have looked at this question in recent years have rejected the reasoning applied by the District Court and recognized that, where marriage is legally defined to be limited to heterosexual couples, the choice to use marriage as the criterion for a benefit facially discriminates - or constitutes "disparate treatment" - based on sexual orientation.

In *Alaska Civil Liberties Union v. State of Alaska*, 122 P.3d 781 (Alaska 2005), the Alaska Supreme Court held that public employers' policies of limiting family health benefits to married employees constituted facial discrimination against same-sex couples in violation of the Alaska Constitution. The Court explained:

The municipality correctly observes that no unmarried employees, whether they are members of same-sex or opposite-sex couples, can obtain the disputed benefits for their domestic partners. But this does not mean that these programs treat same-sex and opposite-sex couples the same. Unmarried public employees in opposite-sex domestic relationships have the opportunity to obtain these benefits, because employees are not prevented by law from marrying their opposite-sex domestic partners. In comparison, public employees in committed same-sex relationships are absolutely denied any opportunity to obtain these benefits, because these employees are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska. Same-sex unmarried couples therefore have no way of obtaining these benefits, whereas opposite-sex unmarried couples may become eligible for them by marrying. The programs consequently treat same-sex couples differently from opposite-sex couples.

Id., at 788. “Alaska’s definition of the legal status of ‘marriage’ (and, hence, who can be a ‘spouse’) excludes same-sex couples,” the Court noted. *Id.*, at 788-89. Thus, the Court reasoned, “[b]y restricting the availability of benefits to ‘spouses,’ the benefits programs ‘by [their] own terms classif[y]’ same-sex couples ‘for different treatment.’” *Id.*, at 789 (internal citation omitted). The Court “therefore conclude[d] that the benefits programs are facially discriminatory.” *Id.*, at 789.²

A New Hampshire court addressing the same issue reached the same conclusion.

In Bedford v. New Hampshire Community Technical College System, 2006 WL 1217283

²That the Alaska Supreme Court considered the employees’ discrimination claim in a constitutional context does not make this case any less applicable to this Court’s consideration of a statutory claim. *See Duffy v. Wolle*, 123 F.3d 1026, 1036-37 (8th Cir. 1997) (Title VII and constitutional claims relevant to each other’s analysis). In the Alaska case, as here, the issue was whether conditioning a benefit on marriage in a state where marriage, by definition, is limited to heterosexuals, discriminates based on sexual orientation.

(N.H. Super. 2006), the Court held that the denial of health benefits to the domestic partners of gay and lesbian employees while providing such benefits to spouses of employees violates New Hampshire's law prohibiting sexual orientation discrimination in employment. Like the Alaska court, the New Hampshire court rejected the notion that this was not sexual orientation discrimination because unmarried gay couples were treated the same as unmarried heterosexual couples. The Court explained:

The Commission determined that the petitioners were similarly situated to unmarried, heterosexual employees and therefore had not been discriminated against based on their sexual orientation because unmarried, heterosexual employees also cannot receive benefits for their domestic partners. However, New Hampshire law prohibits marriage between persons of the same sex and does not otherwise provide a means for same-sex couples to legally sanction their committed relationship. *See* RSA 457:1, 457:2 (Supp. 2005). Thus, same-sex partners have no ability to ever qualify for the same employment benefits unmarried heterosexual couples may avail themselves of by deciding to legally commit to each other through marriage. For this reason, unmarried, heterosexual employees are not similarly situated to unmarried, gay and lesbian employees for purposes of receiving employee benefits.

Id., at *6. The court, thus, concluded that “the petitioners have met their burden under a disparate treatment analysis of establishing that the policy impermissibly discriminates on the basis of sexual orientation” *Id.*, at *10. *See also Tanner v. Oregon Health Sciences Univ.*, 971 P.2d 435, 447-48 (Or. App. 1998) (the assertion that “[a]ll married employees – heterosexual and homosexual alike– are permitted to acquire insurance benefits for their spouses” “misses the point” because “[h]omosexual couples may not marry. Accordingly, the benefits are not made available on equal terms. They are made available on terms that, for gay and lesbian couples, are a legal impossibility.”); *Foray v.*

Bell Atlantic, 56 F. Supp. 2d 327, 330 (S.D.N.Y. 1999) (dismissing claim challenging same-sex only domestic partner benefit plan on grounds that unmarried same-sex and unmarried different-sex couples are not similarly situated because the former are not permitted to marry).

As in these other cases, the Club's policy of conditioning eligibility for family membership on a criterion that, by definition, excludes gay people, is facially discriminatory because the marriage criterion is a proxy for heterosexuality. Courts here and across the country have routinely rejected the use of proxies to engage in prohibited discrimination in other contexts. In *Minn. Mining and Mfg. Co. v. State of Minn.*, 289 N.W. 2d 396, 397-99 (Minn. 1979), the Supreme Court held that discrimination based on pregnancy "is *per se* sex discrimination" under the MHRA, even before the 1977 amendment clarified that pregnancy discrimination was covered in the statute. *See also Erie County Retirees Assn. v. County of Erie*, 220 F.3d 193, 215 (3rd Cir. 2000) (holding that an employer "engaged in explicit age-based discrimination by using a proxy for age - Medicare eligibility - as a basis for differential treatment"); *McWright v. Alexander*, 982 F.2d 222, 228 (7th Cir. 1992) (discrimination against individuals with gray hair would be an impermissible proxy for unlawful age discrimination). This is another case of using a proxy— marriage— to discriminate against a category of persons the law protects against discrimination.

The only contemporary case that reached a different conclusion, *Koebke v.*

Bernardo Heights Country Club, 115 P.3d 1212 (Cal. 2005), was decided in California, where the State has a comprehensive domestic partnership law. In *Koebke*, the plaintiff couple, who were registered domestic partners, had been denied a family membership at a golf club. The Court held that making such memberships available to married couples but not registered domestic partners was impermissible marital status discrimination and issued an injunction against such discrimination. *Id.*, at 1223-24. However, because the plaintiffs also sought damages for years prior to the enactment of the domestic partnership law, the Court also was required to address whether conditioning the family membership on marriage – when there was no legally recognized status for same-sex couples– facially discriminated based on marital status or sexual orientation. After a brief discussion of the issue, the Court held that it did not. It did hold, however, that the record showed evidence of discriminatory application of the club’s policy. Unlike the California Supreme Court, which was faced with an issue that was largely academic in light of its conclusion that registered domestic partners must be treated the same as married spouses and the fact that evidence showed discriminatory application of the policy, at issue in this case is real harm to real people who will continue to face this sort of discrimination if it is endorsed by the Court.³

³ There is also an earlier generation of cases that did not deem marriage-based benefits to constitute sexual orientation discrimination. *See, e.g. Phillips v. Wisconsin Personnel Comm.*, 167 Wis. 2d 205 (Wis. App. 1992). But as discussed above, the majority of the courts now addressing this issue have rejected the reasoning of those courts as illogical. *See also Tanner*, 971 P.2d 435; *Levin*, 96 N.Y.2d 484.

Given that in Minnesota legally married couples, by definition, can only be heterosexual couples, the Club's choice to hinge family membership on being legally married was a decision to exclude gay couples from accessing such memberships. Such a policy foreseeably excludes all gay and lesbian couples. If businesses are permitted to deny goods or services to same-sex couples based on the fact that they are not married, then as long as marriage is limited to heterosexual couples in Minnesota, businesses will be able to use this as a cloak for sexual orientation discrimination. This would significantly undermine the MHRA's goal of securing freedom from discrimination. Minn. Stat. §363A.02(1) (2007). Indeed, counsel for the Appellee acknowledged to the District Court that heterosexual couples who say they are married are taken at face value and there is no investigation into whether or not they are actually married, and there is a good possibility that there are unmarried heterosexual couples who have received the family discount. (A-29, 41-42). In this instance, it is evident that marriage is simply an impermissible cloak for sexual orientation discrimination because heterosexual couples simply have to say that they are married in order to obtain a family membership. The District Court even acknowledged that, if the Club gave family memberships to unmarried heterosexual couples, the Monson's claim would survive summary judgment. (A-10). *See also Koebke supra*. (holding evidence of discriminatory application of marriage requirement warranted remand); *Snetsinger v. Montana Univ. Sys.*, 104 P.3d 445, 451-52 (Mont. 2004) (court deemed policy that purportedly made family health

benefits available to married employees of public employer to constitute sexual orientation discrimination in violation of Montana Constitution because employer allowed unmarried different-sex couples to obtain benefits by signing affidavit of common law marriage).

II. THE LEGISLATURE DID NOT AUTHORIZE DISCRIMINATION AGAINST LESBIAN AND GAY COUPLES

The District Court erred in holding that the MHRA authorizes discrimination against gay couples. In rejecting the Monsons' claim, the Court said that the Club "has the legal right to define family as excluding same-sex domestic couples as our legislature has expressly permitted such a definition by unequivocally stating that gay and lesbian lifestyle should neither be condoned nor recognized." (A-10). The court went on to say:

The consequence of interpreting the MHRA to prohibit discrimination against [same]-sex domestic partners would negate the legislature's specific intent that couples such as the Monsons not be recognized as a family unit and, by logical extension, that they not be recognized as a legal entity. In fact, such a holding would directly contravene the specific statutory language of Minnesota Statutes section 363A.27.

(A-10). Thus, the court concluded, "[t]he Monsons, as a couple, are not a protected class under MHRA and not entitled to any of its perceived protections." (A-10). The court's reasoning and conclusion are based on an impossible reading of §363A.27.

Statutory interpretation is a question of law subject to de novo review. *Boubelik v. Liberty State Bank*, 553 N.W.2d 393, 402 (Minn. 1996). Consequently, the Court of Appeals does not owe any deference to the trial court's interpretation or application of the

facts to the law. *Id.* It is the role of the Appellate Court to determine and apply legislative intent. Minn. Stat. §645.16 (2007). In doing so, the Court must first look to the specific language of the statute and “be guided by its natural and most obvious meaning”. *State v. Nelson*, 671 N.W.2d 586, 589 (Minn. App. 2003). If the language is “plain and unambiguous,” statutory construction is unnecessary and impermissible. Minn. Stat. § 645.16 (2007). The law provides “[n]o room for judicial construction when the statute speaks for itself.” *Comm. of Revenue v. Richardson*, 302 N.W.2d 23, 26 (Minn. 1981).

A. The Plain Meaning of Minn. Stat. §363A.27 Does Not Bar Anti-Discrimination Protection for Lesbian and Gay Couples

The relevant statutory language of Minn. Stat. §363A.27 states:

CONSTRUCTION OF LAW.

Nothing in this chapter shall be construed to:

(1) mean the state of Minnesota condones homosexuality or bisexuality or any equivalent lifestyle;

... or

(4) authorize the recognition of or the right of marriage between persons of the same sex.

A reading of the plain language of this statutory language does not support the District Court’s conclusions. Subd. (1) simply makes clear that, by providing protection from discrimination in public accommodations and other areas of civic life, the legislature was not stating approval of or making any value judgment about homosexuality or same-sex relationships. Given the diversity of views people hold about homosexuality, it is hardly surprising that the legislature chose to avoid taking a side in the moral or religious debate about this subject. Similarly, Subd. (4) merely clarifies that the law prohibiting

sexual orientation discrimination would not extend to the legal recognition of or the right to same-sex marriage.

This clarifying language in no way diminishes the MHRA's clear prohibition against discrimination based on sexual orientation, nor does it suggest that the law does not protect against discrimination when that discrimination is directed at a couple. The trial court engaged in impermissible statutory construction with its breathtaking holding that §363A.27 means that "[t]he Monsons, as a couple, are not a protected class under MHRA and are not entitled to any of its perceived protections." (A-10). In §363A.27, the legislature never said the State opposes same-sex relationships. It never said gay couples shouldn't or couldn't be recognized as families. And it certainly never endorsed discrimination against same-sex couples in public accommodations.

Indeed, the Minnesota Department of Human Rights (MDHR) has recognized that sexual orientation discrimination directed at a same-sex couple violates the MHRA. In MDHR Case Numbers 44406-44409⁴, a lesbian couple filed with the MDHR against a bed and breakfast for turning them away when they tried to check into a room. The owners told the couple that they did not approve of their lifestyle. The MDHR found probable cause to believe that the owners engaged in unlawful discrimination based on sexual orientation. The fact that the discrimination targeted them as a couple did not

⁴ A copy of the probable cause determination of the MDHR is appended to this brief.

make the conduct any less actionable.⁵

New Hampshire's law against sexual orientation discrimination has language similar to §363A.27. The statute's definition of "sexual orientation" includes the statement that it "does not confer legislative approval of" the status of being heterosexual, bisexual or homosexual. NH Stat. §354-A:1(XIV-c). Indeed, the statement of intent in the bill that added protection against sexual orientation discrimination to New Hampshire's civil rights laws stated that "the State of New Hampshire does not intend to promote or endorse any sexual lifestyle other than the traditional marriage-based family." 1997 N.H. Sess. Laws, ch. 108, §1. But this language did not prevent the court in *Bedford*, 2006 WL 1217283, from holding an employer liable for sexual orientation discrimination by limiting family health benefits to legally married couples. The court certainly did not deem this language to deprive gay and lesbian couples of protection against discrimination in employment.

The notion that protecting gay and lesbian couples from discrimination runs afoul of state policy limiting marriage to different-sex couples is without basis. Indeed a state's policies limiting marriage to different-sex couples do not affect its commitment to

⁵ An agency interpretation is entitled to deference unless the interpretation conflicts with the purpose of the act or the legislature's intent. *In re American Iron and Supply Co.*, 604 N.W.2d 140, 144 (Minn.App. (2000) citing *Geo. A. Hormel & Co. v. Asper*, 428 N.W.2d 47, 50 (Minn.1988). This Court has recognized that only the legislature and the Supreme Court have the authority to overrule an agency's reasonable interpretation of a statute. *Id.* citing *In re Univ. of Minn.*, 566 N.W.2d 98, 103 (Minn.App.1997) (*internal citations omitted*).

ending sexual orientation discrimination against same-sex couples. As Chief Judge Kaye of the New York Court of Appeals stated in *Levin*,

[I]t is immaterial that State law permits only heterosexual marriage. The City Human Rights Law specifically bans housing discrimination on the basis of sexual orientation. The State marriage law merely defines who can and cannot marry; it was not intended to permit landlords to violate New York City's laws against housing discrimination.

Levin, 754 N.E.2d 1099, at 1111 (Kaye, C.J., concurring in part). See also *Smith v. Fair Employment & Hous. Comm'n*, 913 P.2d 909, 918 (Cal. 1996) (“One can recognize marriage as laudable, or even as favored, while still extending protection against housing discrimination to persons who do not enjoy that status.”); *McCready v. Hoffius*, 586 N.W.2d 723, 727 (Mich. 1998) (quoting *Smith*), vacated in part, 593 N.W.2d 545 (1999).

B. The District Court's Interpretation of Minn. Stat. §363A.27 is Contrary to the Rules of Statutory Construction

It is clear that §363A.27 does not exclude same-sex couples from the protection of the MHRA. But even if this Court were to find that the language of §363A.27 is ambiguous, Minnesota's rules of statutory construction would compel the same conclusion that the trial court erred in holding that the Monsons are not entitled to the protections of the MHRA.

In ascertaining the legislative intent behind ambiguous statutory language, the court should first consider its context by viewing the section “in light of its surrounding sections, in order to avoid conflicting interpretations of the statute.” *All Parks Alliance For Change v. Uniprop Manufactured Hous. Communities. Income Fund*, 732 N.W.2d

189, 193 (Minn. 2007). Additionally, Chapter 363A is remedial in nature, thus it should be liberally construed in order to accomplish its objectives. *Minnesota Ins. Guar. Ass'n v. Integra Telecom Inc.*, 697 N.W.2d 223, 228 (Minn.Ct.App. 2005), citing *Miklas v. Parrott*, 684 N.W.2d 458, 461 (Minn. 2004). See also Minn. Stat. §363A.04 (2007) (“The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof.”). It is well settled that the Court’s statutory construction should not operate to frustrate the objectives of remedial statutes. *Miller v. Color Tyme, Inc.*, 518 N.W.2d 544, 548 (Minn. 1994). Finally, a court may not interpret the language of a statute in a manner that creates an unreasonable or irrational result, or makes the statute a nullity. *Krumm v. R.A. Nadeau Co.*, 276 N.W.2d 641 (Minn. 1979); *Knopp v. Gutterman*, 102 N.W.2d 689 (Minn. 1960).

A reading of §363A.27 in the broader context of Chapter 363A shows that there is simply no support for the conclusion that the section was intended to act as a carve-out to allow sexual orientation discrimination against couples. Chapter 363A regulates unfair discriminatory conduct. The law prohibiting sexual orientation discrimination is focused on the discriminatory actions of the wrongdoer rather than the status of the victim. The law applies broadly to discriminatory practices that are based on either actual or perceived sexual orientation. Minn. Stat. §363A.03 Subd. 44 (2007). Thus the primary concern of the statute is to prohibit unfair discriminatory conduct by the wrongdoer, while the actual status of the victim as a member of the protected class is not relevant.

The District Court erroneously suggests that, “[i]f the Legislature had intended to protect same-sex domestic couples and other types of domestic partners it should have expressly said so.” (A-11). But it is clear from a reading of §363A.27 in the context of the surrounding statutory provisions that the Legislature intended to prohibit discriminatory conduct that is based on sexual orientation regardless of the status of the victim as an individual, a couple or a family, and that the Monsons are entitled to its protections. The law does not carve out from its protection discrimination experienced by gay couples.⁵ Thus, there is no basis to read such an exception into the statute.

Instead of construing this remedial statute liberally in order to accomplish its objectives, the District Court’s holding sharply narrows the reach of Chapter 363A, impermissibly frustrating its primary purpose of eliminating and punishing discriminatory practices and leading to an absurd and irrational result- that discrimination based on sexual orientation is permitted as long as it is against a couple rather than an individual.⁶

As discussed above, §363A.27 is not ambiguous, so there is no need to turn to principles of statutory construction, let alone legislative history. Nevertheless, a review of the legislative history of §363A.27 also shows that this statute was not meant to exclude same-sex couples from the protection of the MHRA. The record of the House

⁶To the extent that §363A.27 could be considered a specific Legislative condemnation or disapproval of “homosexuality or bisexuality or any equivalent lifestyle,” such a declaration would raise concerns under the Equal Protection Clauses of the U.S. and Minnesota Constitutions because it would amount to targeting a group for public scorn

floor hearing on the bill indicates that the authors of the bill approved the inclusion of § 363.27, pertaining to the construction of the MHRA, as a means to address the specific concerns of opponents of the bill that it would provide “special treatment” or “special rights” to gay and lesbian people.⁷ And opponents asserted that the inclusion of gay and lesbian people in the MHRA would require the recognition of gay marriages.⁸

In the House floor debate on § 363A.27, Subdivision 1 of the section is never explicitly addressed.⁹ That part provides that nothing in the MHRA shall be construed to “mean the State of Minnesota condones homosexuality or bisexuality or any equivalent lifestyle”. The only potential clarification of the meaning of that part came from Rep. Bishop, a proponent of the Bill.

As such I have understood that it is not the intention of the bill to promote any particular lifestyle but only to prohibit the discrimination against someone in very specific categories for particular nature, not for behavior. . . . I think this is an appropriate amendment to clear up what in many cases is a misperception of the purpose of this bill. This bill has to have a very limited application. And under no circumstances have I understood that it was intended to promote homosexuality or the lifestyle, but only to prohibit discrimination in very limited circumstances.¹⁰

Nothing about Rep. Bishop’s comments evidence an intent to exempt discrimination against gay couples. His comments merely show his intent to make

and foster discrimination against that group in the absence of a sufficient justification. *See Romer v. Evans*, 517 U.S. 620 (1996).

⁷ *See generally*, House Floor Session Audio, March 18, 1993: H.F. 585.

⁸ House Judiciary Committee, March 5, 1993: H.F. 585.

⁹ House Floor Session Audio, March 18, 1993: H.F. 585.

¹⁰ House Floor Session Audio, March 18, 1993: H.F. 585. Statements by Rep. Bishop.

it clear that the extension of anti-discrimination protection to sexual orientation did not constitute promoting homosexuality.

The rest of the discussion of the amendment was centered on its latter three sections pertaining to education, affirmative action and marriage for same-sex couples.¹¹ When the amendment was offered on the House floor, the author of the amendment, Rep. Weaver, explained that it was a redundant clarification for those making a “slippery slope” argument. Specifically, Rep. Weaver explained that it was:

embarrassing to have to offer it. This law is not going to require schools to teach homosexuality is good, it’s not going to require affirmative action or quotas, it’s not going to require same sex marriages. But people have legitimate concerns, so the purpose of the amendment is to make it clear, despite that it is not a real concern.¹²

Rep. Weaver’s comments further illustrate that the section was intended to address the concerns of some legislators about taking a particular position on matters that are clearly outside the purview of a law prohibiting discriminatory conduct that is based on sexual orientation. There is no indication from any part of

¹¹ *Id.* Specifically, the latter three sections provide that:
Nothing in this chapter shall be construed to:

- ...
- (2) authorize or permit the promotion of homosexuality or bisexuality in education institutions or require the teaching in education institutions of homosexuality or bisexuality as an acceptable lifestyle;
 - (3) authorize or permit the use of numerical goals or quotas, or other types of affirmative action programs, with respect to homosexuality or bisexuality in the administration or enforcement of the provisions of this chapter; or
 - (4) authorize the recognition of or the right of marriage between persons of the same sex.

the legislative history that §363A.27 was meant to create an exception to allow discrimination based on sexual orientation when directed at gay and lesbian couples.

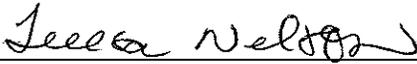
CONCLUSION

The Rochester Athletic Club has created an eligibility criterion that, by definition, excludes gay and lesbian couples. As such, the Club has engaged in impermissible discrimination based on sexual orientation. The District Court erred when it granted summary judgment to the Appellees in this case. The court compounded that error when it opined that the MHRA does not provide protection from discrimination to the Monsons as a couple and a family. The District Court's reading of the statute is contrary to the plain language of the law and is not supported by the rules of statutory construction. For these reasons *amici curiae* respectfully requests this court to reverse the decision of the District Court.

Dated: March 24, 2008.

¹² *Id.* Statements by Rep. Weaver.

Respectfully submitted,



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