



June 21, 2011

Good afternoon, My name is Jay Kaplan and I am a staff attorney with the ACLU of Michigan. I am here to speak in opposition of House Bills 4770 and 4771. As introduced by Representative Agema, HB 4770 would prohibit public entities, which include state and local governments, public school districts, colleges and universities from providing health insurance benefits to persons other than legally recognized spouses, family members, or IRS dependents of employees. HB 4771 would prohibit public employers from collectively bargaining with employee unions to offering health insurance benefits to designated others of employees, aside from legally recognized spouses, family members, or IRS dependents. The ACLU strongly opposes this ill-advised proposed legislation for the following reasons:

First, as Governor Snyder's own legal counsel, Michael Gadola, indicated in a May 18th joint letter to Senator Richardson and Representative Bolger, legislation such as 4770 and 4771 is both unconstitutional and unenforceable. Article 8, sections 5 and 6 of Michigan's constitution confer autonomy on state universities, including their ability to establish terms and rates of compensation for its employees. The Constitutional provisions grant a university board "general supervision of its institution and control and direction of all expenditures from the institution's funds." Courts have long recognized that the legislature may not interfere with the university board's institutional management and control. *Regents of the University of Michigan*, 395 Mich 52 (1975), nor pass laws and policies that invade the university's constitutional autonomy. *Federated Publications Inc. v Board of Trustees of Michigan State University*, 460 Mich 75 (1999).

Second, in addition to interfering with the ability of public employers to collectively bargain in good faith with employee unions, these bills violate Section 22 of Article 7 of Michigan's constitution which gives local governments and municipalities the ability to adopt employment policies and practices that relate to their own local concerns, including the decision of whom to provide health insurance coverage to. Michigan has been strongly committed to the concept of home rule. As the Michigan Supreme Court held in the case of *City of Detroit v Walker*, 445 Mich 682, 690 (1994), local governments are empowered to form for themselves a plan of government suited to their unique needs and upon local matters, exercise the treasured right of self-governance.

Should the legislature pass these constitutionally flawed pieces of legislation, in can be assured that there be legal challenges from state colleges and universities, from local governments and municipalities, from labor unions, and from the ACLU of Michigan.

Aside the unconstitutional infirmities of these bills, one has to wonder why, in the face of Michigan's economic downslide, with unemployment rates the highest in the country, with families struggling to make ends meet, would the legislature want to take away health insurance

from people, rendering them unable to access health care? Surely this able body recognizes that in today's economic climate if people lose their health insurance coverage they will have to rely upon state funded health insurance programs, at an additional cost to our State.

Why, given the urgent need of Michigan to attract new businesses and industries to our state, would the legislature severely interfere with and hamper the ability of public employers to set its own terms of compensation in order to attract that best talent and entrepreneurship that it takes to develop new technologies? Why when Michigan has one the highest exodus of college graduates from our state would it consider a policy that not only deters economic opportunities, but is exclusionary, unwelcoming, and unsupportive of the diversity of many of Michigan's families?

There is no economic sensibility behind this proposed legislation and one is left to believe that the true motivation behind these bills is a cynical, mean-spirited attempt to attack and harm people that certain members of this legislature do not like or approve of. However, the United States Supreme Court in *Romer v Evans* made it very clear that animus towards a particular group of people does not provide a constitutional basis for discriminatory public policy. House Bills 4770 and 4771 are wrong. They are unfair. They are unconstitutional and they will not fly. The ACLU of Michigan strongly urges this Committee to vote against them.

Thank you,

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