

PENNSYLVANIA SUPREME COURT UPHOLDS BENEFITS TO SAME-SEX PARTNERS OF CITY EMPLOYEES

In Devlin v. City of Philadelphia, 862 A.2d 1234 (Pa. 2004), the Pennsylvania Supreme Court upheld a city ordinance requiring employers to offer benefits to “Life Partners” of employees, but struck down a related ordinance that exempted transfers of real property between Life Partners from the local real estate tax.

Philadelphia’s ordinance defines “Life Partners” as unmarried individuals of the same gender in a long-term, committed relationship who 1) are at least 18 years old and competent to contract; 2) are not related in a way that would prohibit marriage; 3) are the sole Life Partner of the other person; 4) have not been a member of a different Life Partnership for the past twelve months (unless the prior life partnership ended as a result of the death of another Life Partner); 5) agree to share the common necessities of life and to be responsible for each other’s common welfare; 6) share at least one residence with the other Life Partner; and 7) agree under penalty of law to notify the Philadelphia Commission on Human Relations of any change in the status of the Life Partnership. The ordinance requires employers in Philadelphia to offer employee benefits to Life Partners of employees in the same manner as those benefits are provided to an employee’s dependents. A separate ordinance was enacted exempting transfers of real property between Life Partners from local real estate taxation.

Citizens of Philadelphia brought a declaratory judgment action seeking to have these ordinances nullified. Plaintiffs argued that by enacting these ordinances, Philadelphia was legislating on the subject of marriage and was therefore in violation of its home rule charter, which limits its authority to matters of purely local concern. The Pennsylvania Supreme Court disagreed as to the employee benefits ordinance:

While we acknowledge certain facial similarities between marriage and Life Partnership, we simply do not agree that they are sufficient to establish that the City has legislated in the area of marriage here.

862 A.2d at 1243.

The Supreme Court explained that, because the ordinance did not confer on Life Partnership significant rights and privileges that are characteristic of marriage, it did not touch an area of statewide concern:

Given that the Legislation merely creates and defines the *un* married status of Life Partnership and gives Life Partners only very limited rights that do not even begin to mirror the extensive fabric of rights and obligations that the Commonwealth has afforded to married couples, we reject the ... finding that the City exceeded its municipal powers by legislating in the preempted area of marriage...

The City’s legislative powers in relation to topics on which the General Assembly has already spoken concern only laws in relation to substantive matters of State-wide concern, such as the health, safety, security and general welfare of all the inhabitants of the State, *and not to matters affecting merely*

the personnel and administration of the offices local to Philadelphia and which are no concern to citizens elsewhere.

862 A.2d at 1245. (Emphasis in original, Internal Citations Omitted).

The Pennsylvania Supreme Court agreed with the plaintiffs and invalidated the ordinance exempting transfers of property between Life Partners from the local real estate tax, however, because it treated unmarried same-sex couples differently than unmarried opposite-sex couples. For this reason (and this reason only) the ordinance violated the Uniformity Clause in Article VIII Section 1 of the Pennsylvania Constitution, which requires taxes to be uniform upon the “classes” subject to it.

The Supreme Court’s finding that these ordinances are “of no concern” to those living outside of Philadelphia notwithstanding, both public and private employers should take note that this case provides a clear blueprint for municipal ordinances requiring employment benefits for same-sex partners of employees.