Supreme Court of Michigan.
NATIONAL PRIDE AT **WORK**, INC., ET AL
v.
GOVERNOR OF MICHIGAN, Defendant-Appellant, ET AL

481 Mich. 56, 748 N.W.2d 524
Argued Nov. 6, 2007.
Decided May 7, 2008.

MARKMAN, J.
[1] ***60** We granted leave to appeal to consider whether the marriage amendment, Const. 1963, art. 1, § 25, which states that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose," prohibits public employers from providing health-insurance benefits to their employees' qualified same-sex domestic partners. Because we agree with the Court of Appeals that providing such benefits does violate the marriage amendment, we affirm its judgment.
The marriage amendment, Const. 1963, art. 1, § 25, was approved by a majority of the voters on November 2, 2004, and took effect as a provision of the Michigan Constitution on December 18, 2004. At that time, several public employers, including state universities and various city and county governments, had policies or agreements in effect that extended health-insurance benefits to their employees' qualified same-sex domestic partners....

On March 21, 2005, plaintiffs filed this declaratory judgment action against the ****530** Governor, seeking a declaration that the marriage amendment does not bar public employers from providing health-insurance benefits to their employees' qualified same-sex domestic partners....

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The marriage amendment, Const. 1963, art. 1, § 25, provides: "To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose."

****533** [4][5][6] The primary objective in interpreting a constitutional provision is to determine the original meaning of the provision to the ratifiers, "we the people," at the time of ratification.... Thus, the primary objective of constitutional interpretation, not dissimilar to any other exercise in judicial interpretation, is to faithfully give meaning to the intent of those who enacted the law. This Court typically discerns the common understanding of constitutional text by applying each term's plain meaning at the ***68** time of ratification. *Wayne Co. v. Hathcock,* 471 Mich. 445, 468-469, 684 N.W.2d 765 (2004).

[7][8] Plaintiffs argue that "the *only* thing that is prohibited by the [marriage] amendment is the recognition of a same-sex relationship *as a marriage* " and that the public employers here are not

recognizing a domestic partnership "as a marriage." Plaintiff's brief on appeal (Docket No. 133554), p. 23 (emphasis in the original). We respectfully disagree. First, the amendment prohibits the recognition of a domestic partnership "as a marriage *or similar union*...." That is, it prohibits the recognition of a domestic partnership as a marriage or as a union that is similar to a marriage. Second, just because a public employer does not refer to, or otherwise characterize, a domestic partnership as a marriage or a union similar to a marriage does not mean that the employer is not recognizing a domestic partnership as a marriage or a union similar to a marriage. Cf. *id.* at 26 ("In providing benefits to the same-sex partners of their employees, these employers have not *declared* the same-sex partnership to be a marriage or anything similar to marriage.") (emphasis added).

The pertinent question is not whether public employers are recognizing a domestic partnership as a marriage***69** or whether they have declared a domestic partnership to be a marriage or something similar to marriage; rather, it is whether the public employers are recognizing a domestic partnership as a union similar to a marriage. A "union" is "something formed by uniting two or more things; combination; ... a number of persons, states, etc., joined or associated together for some common purpose." *Random House Webster's College Dictionary* (1991). Certainly, when two people join together for a common purpose and legal consequences arise from that relationship, i.e., a public entity accords legal significance to this relationship, a ****534** union may be said to be formed. When two people enter a domestic partnership, they join or associate together for a common purpose, and, under the domestic-partnership policies at issue here, legal consequences arise from that relationship in the form of health-insurance benefits. Therefore, a domestic partnership is most certainly a union.

The next question is whether a domestic partnership is similar to a marriage. Plaintiffs and the dissent argue that because the public employers here do not bestow upon a domestic partnership *all* the legal rights and responsibilities associated with marriage,[FN5] the partnership is not similar to a marriage. Again, we respectfully disagree. "Similar" means "having a likeness or resemblance, [especially] in a general way; having qualities in common [.]" *Random House Webster's College Dictionary* (1991); see also *White v. City of Ann Arbor,* 406 Mich. 554, 572-574, 281 N.W.2d 283 (1979). A union does ***70** not have to possess *all* the same legal rights and responsibilities that result from a marriage in order to constitute a union "similar" to that of marriage. If the marriage amendment were construed to prohibit only the recognition of a union that possesses legal rights and responsibilities identical to those that result from a marriage, the language "or similar union" would be rendered meaningless, and an interpretation that renders language meaningless must be avoided. *Sweatt v. Dep't of Corrections,* 468 Mich. 172, 183, 661 N.W.2d 201 (2003) (opinion by Markman, J.). Further, the dissimilarities identified by plaintiffs are not dissimilarities pertaining to the *nature* of the marital and domestic-partnership unions themselves, but are merely dissimilarities pertaining to the *legal effects* that are accorded these relationships. However, given that the marriage amendment prohibits the recognition of unions similar to marriage "for any purpose," the pertinent question is not whether these unions give rise to all the same legal effects; rather, it is whether these unions are being recognized as unions similar to marriage "for any purpose."

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For these reasons, we respectfully disagree with the trial court's conclusion that the "criteria [used by the ***71** public employers] ... do not recognize a union 'similar to marriage' " because the "criteria, even when taken together, pale in comparison to the myriad of legal rights and responsibilities accorded to those with marital status." Unpublished opinion of the Ingham Circuit Court, issued September 27, 2005, 2005 WL 3048040, p. 5 (Docket No. 05-368-CZ), p. 9. Instead, we agree with the Court of ****535** Appeals that "a publicly recognized domestic partnership need not mirror a marriage in every respect in order to run afoul of article 1, § 25 because the amendment plainly precludes recognition of a 'similar union for any purpose.' "*Nat'l Pride,* 274 Mich.App. at 163, 732 N.W.2d 139.

[9] All the domestic-partnership policies at issue here require the partners to be of a certain sex, i.e., the same sex as the other partner.[FN8] Similarly, Michigan law requires married persons to be of a certain sex, i.e., a different sex from the other. MCL 551.1 ("Marriage is inherently a unique relationship between a man and a ***72** woman.").[FN9] In addition, each of the domestic-partnership policies at issue in this case requires that the partners not be closely related by blood.[FN10] Similarly, Michigan law requires that married persons not be closely related by blood. MCL 551.3 [FN11] and MCL 551.4.... ***74** Because marriages****537** and domestic partnerships share ***75** these "similar" qualities, we believe that it can fairly be said that they "resembl[e]" one another "in a general way." Therefore, although marriages and domestic partnerships are by no means identical, they are similar....

[10] The next question concerns whether public employers are truly recognizing a domestic partnership as a union similar to marriage when they provide health-insurance benefits to domestic partners on the *basis of* the partnership. "Recognize" is defined as "to perceive or acknowledge as existing, true, or valid[.]" *Random House Webster' s College Dictionary* (1991). When a public employer attaches legal consequence to a relationship, that employer is clearly "recognizing" that relationship. That is, by providing legal significance to a relationship, the public employer is acknowledging the validity of that relationship. When public employers provide domestic partners health-insurance benefits on ***76** the basis of the domestic partnership, they are without a doubt recognizing the partnership.

[11] The next question concerns whether public employers are recognizing an "agreement" when they provide health-insurance benefits to domestic partners. An "agreement" is "the act of agreeing or of coming to a mutual arrangement." *Id.*... Obviously, if two people have decided to sign a domestic-partnership agreement or have agreed to be jointly responsible for basic living expenses, they have come to a mutual arrangement.[FN17] Therefore, public employers recognize an agreement when they provide health-insurance benefits to domestic partners on the basis of a domestic partnership.

However, the marriage amendment specifically states that the "only" agreement that can be recognized as a marriage or similar union is the union of one man and ***77** one woman. "Only" means "the single one ... of the kind; lone; sole[.]" *Random House Webster's College Dictionary* (1991). Therefore, a single agreement can be recognized within the state of Michigan as a marriage

or similar union, and that single agreement is the union of one man and one woman. A domestic partnership does not constitute such a recognizable agreement.

Furthermore, the marriage amendment specifically prohibits recognizing "for any purpose" a union that is similar to marriage but is not a marriage. "Any" means "every; all[.]" *Id.* Therefore, if there were any residual doubt regarding whether the marriage amendment prohibits the recognition of a domestic partnership for the purpose at issue here, this language makes it clear that such a recognition is indeed prohibited "for any purpose," which obviously includes for the purpose of providing health-insurance benefits. Whether the language "for any purpose" is essential to reach the conclusion that health-insurance benefits cannot be provided under the instant circumstances, or merely punctuates what is otherwise made clear in the amendment, the people of this state could hardly have made their intentions clearer.

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***80** **540 EXTRINSIC EVIDENCE

[15][16][17][18][19] Plaintiffs and the dissent argue that Citizens for the Protection of Marriage, an organization responsible for placing the marriage amendment on the 2004 ballot and a primary supporter of this initiative during the ensuing campaign, published a brochure that indicated that the proposal would not preclude public employers from offering health-insurance benefits to their employees' domestic partners. However, such extrinsic evidence can hardly be used to contradict the unambiguous language of the constitution.

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[T]he voters here did not vote for or against any brochure produced by Citizens for the Protection of Marriage; rather, they voted for or against a ballot ****541** proposal that contained the actual language of the marriage amendment.[FN22]

> FN22. As an aside, this brochure did not render a verdict on the instant controversy. Rather, it stated:
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> > Marriage is a union between a husband and wife. Proposal 2 will keep it that way. This is not about rights or benefits or how people choose to live their life. This has to do with family, children and the way people are. It merely settles the question once and for all what marriage is-for families today and future generations.
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> We do not read this language as resolving that the marriage amendment would not prohibit domestic partners from obtaining health-insurance benefits. Moreover, statements made by other supporters of the amendment stated that partnership benefits would, in fact, be prohibited by the amendment. See amicus curiae brief of the American Family Association of Michigan, pp. 6-8.

> In addition to the brochure, plaintiffs and the dissent rely on statements made by counsel for Citizens for the Protection of Marriage to the Board of State Canvassers in which he apparently asserted that the amendment would not prohibit public employers from providing health-insurance benefits to domestic partners. *Post* at 546-47, quoting the transcript of the August 23, 2004, hearing before the board, reproduced in the Governor's appendix (Docket No. 133429), p. 68a. Whatever the accuracy of this characterization, cf. amicus curiae brief of the American Family Association of Michigan, p. 8 n. 2, it should bear little repeating that the people ultimately did not cast their votes to approve or disapprove counsel's, or any other person's, statements concerning the amendment; they voted to approve or disapprove the language of the amendment itself....

***82** Moreover, like the Citizens for the Protection of Marriage, the Michigan Civil Rights Commission issued a statement asserting:

If passed, Proposal 2 would result in fewer rights and benefits for unmarried couples, both same-sex and heterosexual, by banning civil unions and overturning existing domestic partnerships. Banning domestic partnerships would cause many Michigan families to lose benefits such as health and life insurance, pensions and hospital visitation rights.[FN23]

> FN23. Other opponents made similar statements concerning the adverse consequences of the amendment. See, generally, amicus curiae brief of the American Family Association of Michigan, pp. 9-12. The dissent contends that "[i]t is reasonable to assume that the public relied heavily on the proponents of the amendment to explain its meaning and scope." *Post* at 548-49 n. 35. We see no basis for this argument. Contrary to the dissent, it is no more likely that the voters relied on proponents' views rather than opponents' views of the amendment. Indeed, one might conceivably think that at least some of the people would be significantly more likely to rely on an assessment of the amendment from an official agency of the government than from a private organization with an obvious stake in the passage of the amendment. Similarly, it might be expected that at least some might be influenced by the characterizations of newspapers such as the *Detroit Free Press,* in which its political columnist stated in a question-answer format on September 13, 2004:
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> *Q.* What about employee benefits accorded to domestic partners and their dependents by some municipalities and public universities?
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> *A.* Proponents and opponents of the amendment say they would be prohibited to the extent they mimic benefits for married employees.
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> Because we cannot read voters' minds to determine whose views they relied on and whose they ignored-and because in the end this would not be relevant-we must look to the actual language of the amendment. The dissent inadvertently illustrates the principal infirmity of reliance upon legislative history, namely that it affords a judge essentially unchecked discretion to pick and choose among competing histories in order to select those that best

support his own predilections. In relying on what she describes as the "wealth of extrinsic information available," *post* at 548 n. 34, the dissenting justice refers only to information supporting her own viewpoint, while disregarding the abundant "wealth of extrinsic information" that does not.

****542 *83** Therefore, all that can reasonably be discerned from the extrinsic evidence is this: before the adoption of the marriage amendment, there was public debate regarding its effect, and this debate focused in part on whether the amendment would affect domestic-partnership benefits. The people of this state then proceeded to the polls, they presumably assessed the actual language of the amendment in light of this debate, and a majority proceeded to vote in favor.[FN24] The role of this Court is not to determine ***84** who said what about the amendment before it was ratified, or to speculate about how these statements may have influenced voters. Instead, our responsibility is, as it has always been in matters of constitutional interpretation, to determine the meaning of the amendment's actual language.[FN25]

FN25. The dissent chastises us for failing to consider extrinsic evidence, given that we considered such evidence in *People v. Nutt,* 469 Mich. 565, 588-592, 677 N.W.2d 1 (2004), and *Lapeer Co. Clerk v. Lapeer Circuit Court,* 469 Mich. 146, 156-160, 665 N.W.2d 452 (2003). *Post* at 548 n. 34. In those cases, we considered the Official Record of the Constitutional Convention and the Address to the People. These are hardly comparable to campaign statements made by private organizations. Further, we recognized in those cases that "constitutional convention debates and the *Address to the People*... are ... not controlling." *Lapeer Co. Clerk,* 469 Mich. at 156, 665 N.W.2d 452. To say the least, neither case stands for the dissent's apparent proposition that any stray bit of historical flotsam or jetsam can serve as guidance in giving meaning to the constitution. In a similar vein, the dissent would trump the actual language of the constitution by relying on a telephone survey conducted three months before the election that indicated that a majority of those surveyed were not opposed to domestic-partnership benefits.

When the dissent accuses the majority of "condon[ing] and even encourag [ing] the use of misleading tactics in ballot campaigns,"*post* at 552, we can only surmise from this that the dissent believes that this Court must defer in its constitutional interpretations, not to the language of the constitution, but to myriad statements from private individuals and organizations, some of which may have ascribed meanings to the constitution utterly at odds with its actual language. We do not believe the people of this state have acquiesced in this delegation of judicial responsibility from the courts to private interest groups.

CONCLUSION

.... [W]e conclude that the marriage amendment, Const. 1963, art. 1, § 25, which states that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose," prohibits public employers from providing health-insurance benefits to their employees' qualified same-sex domestic partners.

****544** MARILYN J. KELLY, J. (*dissenting*).
The issue we decide is whether the so-called "marriage amendment" [FN1] of the Michigan Constitution prevents public employers from voluntarily providing health benefits to their employees' same-sex domestic partners. The majority has determined that it does. I disagree.

First, the language of the amendment itself prohibits nothing more than the recognition of same-sex marriages or similar unions. It is a perversion of the amendment's language to conclude that, by voluntarily offering the benefits at issue, a public employer recognizes a union similar to marriage. Second, the circumstances surrounding the adoption of the amendment strongly suggest that Michigan voters did not intend to prohibit public employers from offering health-care benefits to their employees' same-sex partners. The majority decision does not represent "the law which the people have made, [but rather] some other law which the words of the constitution may possibly be made to express." [FN2] Accordingly, I dissent.

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As always, when interpreting the Michigan Constitution, this Court's "duty is to enforce the law which the people have made, and not some other law which the words of the constitution may possibly be made to express." [FN11] The initial step in determining what law the people have made is to examine the specific language used. In so doing, "it is not to be supposed that [the people] have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed."[FN12] And, since our task is a search for intent, it is often necessary to "consider the circumstances surrounding the adoption of the provision and the purpose it is designed to accomplish." [FN13]

THE CIRCUMSTANCES SURROUNDING THE ADOPTION OF THE AMENDMENT

Beginning in 1993 with the Hawaii Supreme Court case of *Baehr v. Lewin,* [FN14] a number of state courts and state legislatures joined in a national discussion on the constitutionality of barring same-sex marriages. In *Baehr,* the court held that Hawaii's statute limiting ***91** marriage to one man and one woman was presumptively unconstitutional under the Hawaii Constitution. It held that the state had the burden of showing a compelling state interest in limiting marriage to male/female unions.[FN15] Following *Baehr,* the Vermont Supreme ****546** Court issued a decision in 1999 ordering the state legislature to create a legal form that would afford same-sex couples a status similar to that of married couples.[FN16] Then, in 2003, in the famous case of *Goodridge v. Dep't of Pub. Health,* [FN17] the Massachusetts Supreme Judicial Court held that barring two people of the same sex from marrying violated the equal protection guarantees of the Massachusetts Constitution.[FN18] That same year, the California Legislature granted registered domestic partners "the same rights, protections, and benefits ... as are granted to and imposed upon spouses." [FN19]

It was against this background that the Michigan Christian Citizens Alliance commenced an initiative to amend the Michigan Constitution to bar same-sex marriage. The alliance formed the

Citizens for the Protection of Marriage committee (CPM) "in response to the debate taking place across the country over the definition of marriage." [FN20] The committee's stated goal was to place the issue of same-sex marriage on the ballot so that Michigan voters would have the ultimate say in the matter.[FN21]

***92** During CPM's campaign, concerns arose regarding exactly what the amendment would prohibit. CPM attempted to address these concerns at an August 2004 public certification hearing before the Board of State Canvassers.[FN22] Specifically, CPM addressed whether the amendment, which it had petitioned to place on the ballot, would bar public employers from providing benefits to their employees' same-sex domestic partners. CPM's representative, attorney Eric E. Doster, assured the board that it would not. Mr. Doster stated:

> [T]here would certainly be nothing to preclude [a] public employer from extending [health-care] benefits, if they so chose, as a matter of contract between employer and employee, to say domestic dependent benefits ... [to any] person, and it could be your cat. So they certainly could extend it as a matter of contract.
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> [A]n employer, as a matter of contract between employer and employee, can offer benefits to whomever the employer wants to. And if it wants to be my spouse, if it wants to be my domestic partner-however that's defined under the terms of your contract or my cat, the employer can do that.... [FN23]

Mr. Doster reiterated this point several times throughout the proceedings.

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In its campaign to win over voters, CPM made a number of additional public statements that were consistent with Mr. Doster's testimony before the Board of State Canvassers. For example, Marlene Elwell, the campaign director for CPM, was quoted in *USA Today* as stating that "[t]his has nothing to do with taking benefits away. This is about marriage between a man and a woman." [FN25] Similarly, CPM communications director Kristina Hemphill was quoted as stating that "[t]his Amendment has nothing to do with benefits.... It's just a diversion from the real issue." [FN26]

CPM also made clear on its webpage that it was "not against anyone, [CPM is] **for** defining **marriage as the union of one man and one woman. Period.**" [FN27] Instead, CPM contended that its reason for proposing the amendment was its belief that "[n]o one has the right to redefine marriage, to change it for everyone else. Proposal 2 will keep things as they are and as they've been. And by amending Michigan's constitution, we can settle this question once and for all." [FN28]

CPM even distributed a brochure that asserted that the amendment would not affect any employer health-benefit plan already in place. The brochure stated:

Proposal 2 is *Only* about Marriage

> ***94** Marriage is a union between a husband and wife. Proposal 2 will keep it that way. This is not about rights or benefits or how people choose to live their life. This has to do with family, children and the way people are. It merely settles the question once and for all what marriage is-for families today and future generations.[FN29]

It can be assumed that the clarifications offered by CPM, the organization that successfully petitioned to place the proposal on the ballot, carried considerable weight with the public. Its statements certainly encouraged voters who did not favor a wide-ranging ban to vote for what they were promised was a very specific ban on same-sex marriage.

And a poll conducted shortly before the election indicates that CPM's public position was in line with public opinion. The poll results indicated that, whereas the public was in favor of banning same-sex marriage, it was not opposed to employer programs granting benefits to same-sex domestic partners.

In an August 2004 poll of 705 likely voters,[FN30] 50 percent of respondents favored the amendment while only 41 percent planned to vote against it. But 70 percent specifically disapproved of making domestic partnerships and civil unions illegal.[FN31] ****548** Sixty-five percent disapproved of barring cities and counties from providing domestic-partner benefits.[FN32] And 63 percent ***95** disapproved of prohibiting state universities from offering domestic-partner benefits.[FN33]

Accordingly, the circumstances surrounding the adoption of the amendment indicate that the lead proponents of the amendment worked hard to convince voters to adopt it.[FN34] CPM told voters that the "marriage amendment" would bar same-sex marriage but would not prohibit public employers from providing the benefits***96** at issue. It is reasonable to conclude that these statements led the ratifiers to understand that the amendment's purpose was limited to preserving the traditional definition of marriage.[FN35] And it seems that a ****549** majority of likely voters favored an amendment that would bar same-sex marriage but would go no further. Therefore, this Court's majority errs by holding that the amendment not only bars same-sex marriage but also prohibits the benefits at issue. The error of the majority decision is confirmed by examining the amendment's language.

> FN34. The majority claims that I rely on extrinsic sources to trump the amendment's language. As I will explain in more detail, my interpretation is consistent with the amendment's language, not a trump card.
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> > The majority attempts to justify its disregard of the extrinsic sources available by concluding that the "marriage amendment" is unambiguous. As can be discerned by any reader of the amendment, the vague language used is ambiguous in regard to the resolution of the question presented by this case. Clearly, the amendment does not unambiguously state whether public employers are barred from providing health benefits to their

> employees' same-sex partners. It says nothing about these benefits. Accordingly, it is necessary to engage in judicial construction to resolve that question.
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> Since the amendment is ambiguous in regard to the proper resolution of the issue presented, I disagree with the majority's choice to ignore the extrinsic sources available. Because our goal is to discern the law that the people have made, when extrinsic sources exist that shed light on this intent, I believe it is essential to consider them. And given that every United States Supreme Court justice sitting today considers sources outside the language in ascertaining the correct interpretation of a constitutional provision, my methods are hardly unusual. Accordingly, contrary to the majority's allegations, it is not a "delegation of judicial responsibility from the courts to private interest groups" to consider these extrinsic sources. *Ante* at 542. It is a widely accepted means of interpretation....

FN35. It has been pointed out that, before the election, opponents of the amendment suggested that the amendment would prohibit the benefits at issue. These statements are relevant. But it does not follow that the opponents' suggestion coupled with the election results shows that the people actually intended to prohibit the benefits. First, in determining a law's meaning, one logically assumes that the statements of its drafters and lead supporters carry more weight than the concerns of those who voted against it. Second, it was the opponents' suggestion that prompted the proponents to publicly state that the amendment would not bar the benefits at issue. Because the proponents' statements were in response to the opponents' suggestion, the statements become even stronger indicators of voter intent. The opponents' suggestion indicates that there was confusion regarding what the amendment would prohibit. It is reasonable to assume that the public relied heavily on the proponents of the amendment to explain its meaning and scope.

> The majority is "perplexed" by my conclusion that it is reasonable to afford the statements of the proponents more weight than the statements of the opponents. It appears that they do not agree with me that, if one wishes to understand the meaning of an author's words, the best source is the author himself. The best source is not the author's critics. Similarly, I believe it reasonable to conclude that, in deciding what the amendment's language meant, the people turned to the organization that proposed the amendment. They did not turn to the organizations that were opposed to its approval.

THE LANGUAGE OF THE "MARRIAGE AMENDMENT"

The "marriage amendment" provides:

> ***97** To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.[FN36]

It has two parts. The first lists the amendment's purpose: "[t]o secure and preserve the benefits of

marriage for our society and for future generations of children....” The second discusses how that purpose is to be accomplished. Both are relevant in determining whether public employers are prohibited from providing the benefits at issue in this case.

The “marriage amendment” undertakes to accomplish its purpose of protecting the benefits of marriage by providing that “the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.” Through this language, the amendment prohibits the recognition of same-sex “[1] marriage or [2] similar union[s].”

It is clear that the employee-benefit programs at issue do not recognize same-sex marriage. Therefore, if the programs violate the amendment, it must be by recognizing a union similar to marriage. For a union to be “similar” to marriage, it must share the same basic characteristics or qualities of a marriage.[FN37] Thus, in deciding whether the public employers violate the amendment by providing the benefits at issue, we must first consider what a marriage entails.

Marriage has been called “the most important relation in life....” [FN38] It “is a coming together for better or ***98** for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects.” [FN39]

“[B]ut [marriage] is not a pure private contract. It is affected with a public interest and by a public policy.” [FN40] Therefore, the state retains control to define and regulate the marriage union. It does so by defining who is qualified to marry,[FN41] what must be done for a marriage to take ****550** place,[FN42] and the methods for the solemnification and dissolution of marriage.[FN43]

And the state confers many rights, benefits, and responsibilities solely as the result of a marriage. As the United States Supreme Court has said, “[t]he relation once formed, the law steps in and holds the parties to various obligations and liabilities.” [FN44] It would take pages to list each of the state statutes that name legal rights and responsibilities that stem from a marriage. Examples of a few are: Each spouse has an equal right to property acquired during the marriage.[FN45] Each spouse has the right to pension and retirement benefits accrued during the marriage.[FN46] Each spouse has the right to invoke spousal immunity to prevent the other spouse's testimony.[FN47] And each has the right to damages ***99** for the wrongful death of his or her spouse.[FN48] In addition, there are more than 1,000 federal laws conferring even more benefits and privileges on married couples.[FN49]

Accordingly, it is obvious that there are two separate elements to marriage: There is the private bond between two people, which the state recognizes by solemnifying the marriage. And there are the benefits, rights, and responsibilities that the state confers on individuals solely by virtue of their status of being married. Both elements are necessary and important components of marriage. Hence, for a union to be similar to marriage, it must mirror more than the manner in which the private bond is recognized. It must also carry with it comparable benefits, rights, and responsibilities.[FN50]

FN50. It is by relying exclusively on the personal commitments expressed in the domestic-partnership agreements that the majority determines that the benefit programs at issue violate the amendment. The majority attempts to justify its disregard of the legal incidents that flow from the marital status by relying on the language "for any purpose." It concludes that, because of this language, a union can be similar to marriage even if it carries with it none of the rights, benefits, or responsibilities of marriage. This is preposterous. The language "for any purpose" does not modify the word "similar." It modifies the word "recognize": "the union of one man and one woman in marriage shall be the only agreement *recognized* as a marriage or similar union *for any purpose*." (Emphasis added.) Thus, it is error to conclude that the phrase "for any purpose" alters the word "similar." In any event, as already discussed, the word "similar" requires a comparison of essentials. Essential aspects of a marriage include the legal incidents that flow from it. Therefore, it is not I who misreads the meaning of the word "similar" but the majority. It distorts the amendment's language when it concludes that, in deciding whether a union is similar to marriage, the framers intended we consider solely the personal commitments expressed by individuals. The majority's holding contradicts the amendment's express purpose: "To secure and preserve the benefits of marriage for our society and for future generations of children...." This language indicates that the amendment's drafters and ratifiers did not ignore the important-perhaps more important-rights, benefits, and responsibilities of marital status. Nor did they intend to equate the sacred benefits of marriage with the mundane benefits of employment.

****551 *100** The employer benefit programs at issue do not grant same-sex couples the rights, responsibilities, or benefits of marriage. The most that can be said is that the programs provide health-insurance coverage to same-sex partners. But health coverage is not a benefit of marriage. Although many benefits are conferred on the basis of the status of being married, health benefits are not among them. Notably absent is any state or federal law granting health benefits to married couples. Instead, the health coverage at issue is a benefit of employment. And the fact that the coverage is conferred on the employee's significant other does not transform it into a benefit of marriage; the coverage is also conferred on other dependents, such as children.

But even if health coverage were a benefit of marriage, it is the only benefit afforded to the same-sex couples in this case. The same-sex couples are not granted any of the other rights, responsibilities, or benefits of marriage. It is an odd notion to find that a union that shares only one of the hundreds of benefits that a marriage provides is a union similar to marriage. It follows that the amendment is not violated because the employee-benefit programs do not constitute recognition of same-sex "marriage or [a] similar union." [FN51]

Determining that the amendment does not prohibit public employers from providing health benefits to same-sex domestic partners is consistent with the purpose***101** explicitly expressed in the amendment. The amendment's stated purpose is "[t]o secure and preserve the benefits of marriage for our society and for future generations of children[.]" As discussed earlier, the state is not required to provide health benefits to spouses. Therefore, it makes no sense to find that health benefits are benefits of marriage just because some public employers voluntarily provide those

benefits to spouses. Instead, the health benefits at issue are benefits of employment. The amendment's stated purpose does not protect or restrict employment benefits. Therefore, barring public employers from providing the benefits at issue does nothing to further the purpose of the amendment. This is another fact that weighs in favor of my interpretation.

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****552 *102** CONCLUSION

The majority decides that the "marriage amendment" prevents public employers from voluntarily entering into contractual agreements to provide health benefits to their employees' same-sex domestic partners. Its decision is contrary to the people's intent as demonstrated by the circumstances surrounding the adoption of the amendment and as expressed in the amendment's language. For those reasons, I must dissent.

Furthermore, by proceeding as it does, the majority condones and even encourages the use of misleading tactics in ballot campaigns by ignoring the extrinsic evidence available to it. CPM petitioned to place the "marriage amendment" on the ballot, telling the public that the amendment would not prohibit public employers from offering health benefits to their employees' same-sex domestic partners. Yet CPM argued to this Court that the "plain language of Michigan's Marriage Amendment" prohibits public employers from granting the benefits at issue.[FN52] Either CPM misrepresented the meaning of the amendment to the State Board of Canvassers and to the people before the election or it misrepresents the meaning to us now. Whichever is true, this Court should not allow CPM to succeed using such antics. The result of the majority's disregard of CPM's preelection statements is that, in the future, organizations may be encouraged to use lies and deception to win over voters or the Court. This should be a discomforting thought for us all.