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Municipalities barred from joining lawsuit over gay rights

By SCOTT BAUER  
 Associated Press Writer

MADISON, Wis. (AP) – The question of whether the state should provide benefits to same-sex partners wasn't decided in a split-decision ruling Thursday by the Wisconsin Supreme Court.

But in the course of barring eight municipalities from joining the lawsuit, court members lashed out at one another in sharply written separate opinions.

Chief Justice Shirley Abrahamson, writing for the four-member majority, accused the three justices in the minority of stirring "the cauldron of hot-button issues" with a dissent addressing abortion, the influence of the American Civil Liberties Union and gay rights.

The Supreme Court's ruling simply upheld two lower courts' decisions preventing eight Wisconsin municipalities from joining a lawsuit filed against the state in 2005. It was brought by 12 current or former state employees and the ACLU.

The municipalities were Green Bay, Watertown, Oostburg, Cottage Grove, Caledonia, Hobart and the school boards of New Berlin and Raymond School District No. 14.

The lawsuit claims the state's refusal to provide health insurance to the gay employees' partners violates the equal protection clause of the Wisconsin Constitution. The employees argue that their rights are violated because only heterosexual workers can receive health insurance, sick leave and family leave benefits for their spouses.

The lawsuit, which names several state agencies as defendants and seeks an order requiring them to provide the benefits, has yet to be ruled on in any court.

Gay rights opponents have argued that if the workers prevail, the case could lay the groundwork for overturning the state's marriage laws. Wisconsin voters approved a constitutional amendment in 2006 defining marriage as being between one man and one woman.

In Thursday's 91-page ruling, the justices went far-afeld from the underlying issue.

In the dissent, Justice David Prosser questioned the legitimacy of the U.S. Supreme Court's ruling in the Roe v. Wade case that legalized abortion.

In response, Abrahamson accused Prosser and the two other justices in the minority - Annette Ziegler and Pat Roggensack - of turning to "political considerations and appeals to emotions."

The case at hand is about procedure, Abrahamson said: The court does not even come close to addressing the issue of whether gay state workers should have benefits equal to heterosexuals.

Prosser argued in the dissent that the case was not about procedure but rather "one of the great social and political controversies of our time."

Michael Dean, a lawyer representing the municipalities, said the ruling is "cold comfort" to municipalities and school boards across the state that could be affected by the case. He said an argument will be submitted, but the impact will be muted since the court won't let the municipalities be an actual party to the case.

Larry Dupuis, legal director of the ACLU of Wisconsin, said he was relieved by the decision.

"The judicial system would grind to a halt if everyone who was concerned about an issue had a right to get involved as a party," he said.

Abrahamson was joined in the majority by justices Louis Butler, Patrick Crooks and Ann Walsh Bradley.

Butler, who is up for election, felt compelled to write his own concurring opinion to the majority. He is being challenged for a seat on the court by Burnett County Circuit Judge Michael Gableman, a self-professed conservative. The election is April 1.

Butler argued the nature of the underlying lawsuit was irrelevant. The real issue, he wrote, is whether the court should allow outside groups to intervene in lawsuits merely because they have an interest in the outcome.

The case could result in every pro- and anti-gay rights group - both nationally and in state - political leaders, church groups, social conservatives and others attempting to join, Butler said.

Allowing the municipalities to intervene would only open the door to "large organizations with deep pockets" joining lawsuits to argue their interests, Butler said. It would drive up costs to the point that "the average Joe can no longer afford to be heard," he said.

Gableman has accused Butler of being an activist judge who has attempted to reinterpret state law with his rulings.

"I know that the court, from this case, acted in a limited way," said Sachin Chheda, Butler's campaign director. "If somebody has a problem with the court acting in a limited way, then they're arguing for a more activist court."

Gableman's campaign adviser Darrin Schmitz said the case could have a profound impact on Wisconsin.

"We're not surprised by Louis Butler's vote," he said.

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