

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS NURSES ASSOCIATION,)	
Plaintiff)	
)	
v.)	Civ. Action No. 06cv11238-NG
)	
ESSENT HEALTHCARE OF)	
MASSACHUSETTS, INC. d/b/a)	
MERRIMACK VALLEY HOSPITAL)	
Defendant)	
GERTNER, D.J.:		

REQUEST FOR AMICUS BRIEFING

June 22, 2007

I. BACKGROUND

In this case, a Massachusetts-based employer has extended health insurance benefits, under an ERISA-covered employee welfare plan, to "legal spouses" of employees, but has expressly limited that coverage to legal spouses "of the opposite sex." This policy was the subject of arbitration between the employer and a labor organization representing employees at the employer's workplace. The arbitrator determined that the policy does not violate the terms of a collective bargaining agreement in place between the employer and the labor organization. The case comes to the Court on appeal from the arbitrator's decision.

Among the issues presented is the question of whether the arbitrator's decision was in violation of "clear public policy." See Eastern Associated Coal Corp. v. United Mine Workers of Amer., 531 U.S. 57 (2000); Boston Medical Center v. Service Employees Int'l Union Local 285, 260 F.3d 16, 21 (1st Cir. 2001).

II. REQUEST FOR AMICUS BRIEFING

The Court seeks guidance from amici on the following questions:

1. Is there is a "clear public policy" against sexual-preference discrimination and/or in favor of same-sex marriage in Massachusetts, that meets the standards of Eastern Associated, 531 U.S. at 62, and if so, what are its sources in positive law, i.e. regulations, statutes, constitution, jurisprudence?
2. Is that state public policy - if it exists - preempted by the breadth of ERISA preemption? 29 U.S.C. § 1144(a). Is there any difference in the reach of the ERISA preemption clause when it is applied to an area - marriage - that is traditionally a core area of state authority, as compared to when it is applied to preempt state laws concerning other forms of discrimination, as in Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983), Air Transp. Ass'n of Am. v. City & County of San Francisco, 992 F. Supp. 1149, 1172 (N.D. Cal. 1998), or Catholic Charities of Me., Inc. v. City of Portland, 304 F. Supp. 2d 77, 90-93, 96 (D. Me. 2004). Can ERISA preempt a provision of a state constitution?

Amicus briefs on this topic are due August 1, 2007. Amici are invited to apply to the Court for permission to file before that date.

SO ORDERED.

Date: June 22, 2007

/s/ Nancy Gertner

NANCY GERTNER, U.S.D.C.