

THE
ROGER
BALDWIN
FOUNDATION
OF ACLU,
INC.

SUITE 2300
180 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601-1287
(312) 201-9740
FAX (312) 201-9760
WWW.ACLU-IL.ORG



December 28, 2011

VIA U.S. MAIL, FACSIMILE, AND EMAIL

Mayor J. Michael Houston
City of Springfield
800 E. Monroe, Room 300
Springfield, IL 62701
Fax: 217-789-2109
susan.shelton@cwlp.com

Dear Mayor Houston:

I write on behalf of the ACLU of Illinois, regarding Springfield's denial of spousal health insurance benefits to city employees who have entered civil unions.¹ This policy is contrary to the purpose and intent of the Illinois Religious Freedom Protection and Civil Unions Act. It also discriminates against city employees on the basis of sexual orientation and marital status in violation of the Illinois Human Rights Act, Springfield's equal employment policy, and the equal protection provisions of the United States and Illinois Constitutions.²

The press reports that Springfield believes it may set this discriminatory policy because it is self-insured. Presumably, Springfield intends to claim that the state civil rights laws are preempted because self-insured plans are covered by the Employee Retirement Income Security Act ("ERISA"). However, ERISA explicitly excludes governmental plans, including health

¹ See Deana Stroisch, *City won't offer health insurance to civil-union partners*, The State Journal-Register, Dec. 21, 2011.

² 775 ILCS 5/2-101(B)(c) (covering municipal employers); 775 ILCS 5/2-101(B)(c) (prohibiting discrimination in "terms, privileges or conditions" of employment); Springfield City Ordinance § 36.02 (equal employment policy prohibiting employment discrimination on the basis of marital status and sexual orientation); U.S. Const. amend. XIV § 2; Ill. Const. art. I § 2 ("no person shall . . . be denied equal protection of the laws").

insurance plans provided by cities like Springfield.³ Therefore, state laws are not preempted and city employees are protected by the state civil rights laws cited above.

Just like all other employers in Illinois whose plans are not covered by ERISA, the City of Springfield has had a legal obligation, since June 1, 2011, to provide insurance benefits to civil union partners of employees on equal terms to the spouses of employees. We ask that you immediately offer spousal benefits to civil union partners of city employees. If you have any questions, please contact me. My telephone number is 312-201-9740 ext. 335 and my email address is jknight@aclu-il.org.

Yours truly,



John Knight

Cc: Mark K. Cullen, Corporation Counsel, via U.S. Mail, Facsimile, and Email
Frank Edwards, Alderman, via U.S. Mail
Gail M. Simpson, Alderman, via U.S. Mail
Doris Turner, Alderman, via U.S. Mail
Frank Lesko, Alderman, via U.S. Mail
Sam Cahnman, Alderman, via U.S. Mail
Cory Jobe, Alderman, via U.S. Mail
Joe McMenamin, Alderman, via U.S. Mail
Kristofer D. Theilen, Alderman, via U.S. Mail
Steven T. Dove, Alderman, via U.S. Mail
Tim Griffin, Alderman, via U.S. Mail

³ 29 U.S.C.A. § 1003 (b)(1) (“The provisions of this subchapter shall not apply to any employee benefit plan if such plan is a governmental plan[.]”); 29 U.S.C.A. § 1002 (32) (“The term “governmental plan” means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.”); *Northwestern Memorial Hosp. v. Village of South Chicago Heights Health and Welfare Fund*, 2004 WL 1687057, at *3 (N.D. Ill. 2004) (holding that a village’s health care plan is a “governmental plan” which is exempted from ERISA); *Krystyniak v. Lake Zurich Comm. Unit Dist. No. 95*, 783 F. Supp. 354, 356 (N.D. Ill. 1991) (holding that governmental employers may not “opt in” to ERISA because such plans are exempted).