STATE OF MICHIGAN

COURT OF APPEALS

ATTORNEY GENERAL,

Plaintiff-Appellant,

v

CIVIL SERVICE COMMISSION and STATE PERSONNEL DIRECTOR,

Defendant-Appellees,

UNITED AUTO WORKERS and UNITED AUTO WORKERS LOCAL 6000,

Amicus Curiae.

UNPUBLISHED
January 8, 2013

No. 306685
Ingham Circuit Court
LC No. 11-000538-CZ

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

RIORDAN J. (*dissenting*)

For the reasons set forth below, I respectfully dissent from the majority's opinion.

A rational basis standard of review is highly deferential and compels "a challenger [to] show that the legislation is arbitrary and wholly unrelated in a rational way to the objective of the statute." *Crego v Coleman*, 463 Mich 248, 259; 615 NW2d 218 (2000) (quotation marks and citation omitted). "A classification reviewed on this basis passes constitutional muster if the legislative judgment is supported by any set of facts, either known or which could reasonably be assumed, even if such facts may be debatable." *Heidelberg Bldg, LLC v Dep't of Treasury*, 270 Mich App 12, 18; 714 NW2d 664 (2006).

There are no facts in the record to support the trial court's conclusory holding that the OEAI provision is, or is not, supported by a rational basis. Despite the attorney general's contention that the proffered reasons were illogical, the trial court performed no inquiry into whether they were supported by anything, even if debatable, in the record. Instead, the trial court simply adopted the proffered justifications as being factual.

Undoubtedly, a rational basis standard of review is highly deferential. However, that deference is not the equivalent of there being no standard of review at all. A court may not abdicate its duty to actually review the proffered justifications and any opposition to them. It must discern whether there is anything in the record to undermine or, in the alternative, support

the justifications. From my review of the record, it cannot be said that the OEAI provision is directed at any identifiable purpose or discrete objective in relation to the proffered goal of attracting and retaining a qualified work force.

Further, if the purpose of the OEAI provision is to attract and retain a qualified work force, there is no rational basis to arbitrarily draw the line between unmarried and married employees or related and unrelated individuals. This arbitrary distinction is irrational, as there is nothing in the record to suggest that unmarried individuals or individuals with unrelated cohabitants are somehow more qualified, superior employees or that it is much more difficult for the State to attract such persons to become employees and then retain them. In essence, "[t]he *breadth* of the [provision] is so far removed from these particular justifications that" it is "impossible to credit them." *Romer v Evans*, 517 US 620, 635; 116 S Ct 1620; 134 L Ed 2d 855 (1996) (emphasis added).

While honoring the collective bargaining process certainly is important, it cannot be done in violation of the constitution. The OEAI provision endorses an arbitrary distinction between classes of people based on familial relations, with no rational basis and no factual basis for such a distinction. Thus, it is a status-based enactment divorced from any factual context from which could be discerned a relationship to legitimate state interests. *Romer*, 517 US at 635. "[I]t is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit." *Id*.

Equal protection is not achieved through the indiscriminate imposition of inequalities. Respect for this principle explains why laws singling out a certain class of citizens for disfavored legal status, or general hardship, are rare. *Romer*, 517 US at 633. Because the OEAI provision makes it impermissible for one group of citizens, as opposed to another, to receive a government benefit, without there being any identifiable, rational basis for doing so, it is a denial of equal protection under the law.

For these reasons, the OEAI provision "is arbitrary and wholly unrelated in a rational way to the objective of the [provision]." *Crego*, 463 Mich at 259. As it is written, the OEAI provision is unlawful and the lower court's opinion should be reversed.

/s/ Michael J. Riordan