

John Coleman

ASSEMBLY BILL

No. 633

Introduced by Assemblyman Foran

January 30, 1975

REFERRED TO COMMITTEE ON LABOR RELATIONS

An act to amend Sections 1411, 1412, 1413, 1419, 1419.7, 1420, and 1432 of the Labor Code, relating to fair employment practices.

LEGISLATIVE COUNSEL'S DIGEST

AB 633, as introduced, Foran (Labor R.). Discrimination in employment.

The existing law provides that it is against public policy, and an unlawful employment practice, for an employer, labor organization, or any person, to discriminate in employment because of the race, religious creed, color, national origin, ancestry, physical handicap or sex of any person.

This bill would, in addition, provide that it is against public policy, and an unlawful employment practice, for any employer, labor organization, or any person to discriminate in employment because of the sexual orientation, as defined, of any person.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1411 of the Labor Code is
- 2 amended to read:
- 3 1411. It is hereby declared as the public policy of this

GAY LAW STUDENTS ASSOCIATION

by George Mendenhall

SACRAMENTO, CA—The California Assembly's Labor Committee passed Assemblyman John Foran's gay employment rights bill (AB-633) Apr. 7 by a 6 to 2 vote. The bill, which would extend Fair Employment Practice Commission concerns to include "sexual orientation," must now be cleared by Foran's Ways and Means Committee, where it seems assured of passage.

The Foran (D-San Francisco) bill passed after a 45-minute hearing punctuated by the Assembly's Speaker, Leo McCarthy, who dramatically rushed committee member Louis Papan (D-Daly City) to the hearing from another meeting for his affirmative vote.

The six "do pass" votes were all Democratic: Committee Chairman Jack Fenton (Montebello), Howard Berman (Sherman Oaks), Richard Alatorre (Los Angeles), Ken Meade (Oakland), Alfred Siegler (Santa Rosa) and Papan.

Expected "no" votes were registered from John Briggs (R-Fullerton) and Mike Antonovich (D-Glendale). Absent from voting were William Cravan (R-LaJolla), V. Thomas (D-San Pedro) and Floyd Mori (D-Hayward). Mori attended the debate but slipped out a side door just before the vote was taken.

Attorney Earl Stokes of San Francisco was chosen by the 30 gay people present at the hearing to represent them and present arguments in favor of the bill.

The California Peace Officers Association, which has consistently opposed victimless crime legislation, sent its executive director, Rodney Blonien, and the Deputy Chief of the Los Angeles Police Department, Robert Vernon, to oppose the bill. They argued that a gay officer would not arrest other homosexuals who violated the law "because of a special affinity they have for each other."

"Would this reasoning also apply to black and Chicano officers?" Assemblyman Berman asked. The police representatives responded that it wouldn't, because "homosexuals are felons."

Berman and Assemblymen Alatorre and Meade then challenged the officers' contention that the mere status of being a homosexual was uniquely different than being a heterosexual when it comes to a person's potential to violate the law.

The officers were apparently dumbfounded by this challenge and made no response.

Blonien then tried another argument—that the community would no longer respect the police if gay officers were hired, which would negatively affect law and order.

"I must protect the community. That is my role," he concluded.

Assemblymen were quick to pounce on this piece of official fibrillation, responding that some heterosexual officers have promiscuously sex lives, but that does not necessarily affect their work performance.

Meade, driven to outrage over the officers' testimony, finally had to be calmed down by the committee chairman. Calling the policemen "self-righteous," he urged them to "join with us who wish to raise the morality of the community by opposing these ridiculous sex laws."

Michael Arnold, representing the League of California Cities, also spoke against the bill, supporting the police contention that gay policemen cause difficulties.

Later, however, pressured by gay activists, the League lobbyist said that the League now had "no position" on AB-633. Arnold admitted that the League had not sought any input from community groups or agencies other than police and fire departments before presenting testimony.

"We are all innocent of any crime until we are convicted," Foran said in his concluding remarks. "Should we refuse to hire people who drink for fear that they may not enforce the alcoholic beverage control laws? We should not discriminate against

people because of their status."

Chairman Fenton chided the three testifying against the bill because they had not submitted any written testimony or documentation before the committee hearing. There had been no opposition to the Foran Bill "whatsoever" before the hearing, Fenton said, although committee members received documented fact sheets, telegrams and letters in support of the measure prior to the hearing.

AB-633, according to gay lobbyist George Raya, could pass through the Assembly before readers receive this issue of the ADVOCATE. If it does, there will be an early consideration of the legislation in the Senate.

Letters and telegrams supporting the Foran bill should be sent to individual senators at their local offices and/or the State Capitol, Sacramento, CA 95814. Fifteen-word public service messages may be sent through Western Union (toll free, 800-648-4100) for \$.95. All communications should mention the number of the bill, AB-633.

Those wishing to assist George Raya, the volunteer gay legislative lobbyist in Sacramento, may do so by sending donations to the Human Rights Fund, c/o Friends Committee on Legislation, 2160 Lake St., San Francisco, CA 94121.

AB 633

ADVOCATE

5-7-75

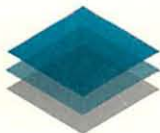
GAY LAW STUDENTS ASSOCIATION

CONTACT 5-28

CALIFORNIA

The Assembly Labor Committee voted out John Foran's bill for gay job rights and housing protections April 7 by a vote of 6 to 2. That sent the San Francisco Democrat's bill to the Ways and Means Committee, which scarcely batted an eyelash in sending the sexual orientation proposal to the Assembly floor. An Assembly vote was expected early in May.

Meanwhile, the Senate was preparing to take up Assemblyman's Willie Brown's bill to legalize consensual sodomy, a measure which the Assembly approved March 6 by a vote of 45 to 25 and which Gov. Edmund Brown Jr. is ready to sign, gay lobbyist George Raya reported. Floor managers for the bill in Sacramento are State Sens. George Moscone, D, and Milton Marks, R, both candidates for mayor of San Francisco and eager to deliver a plum to that city's well-organized gay minority.



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'Gay Rights' Work Bill Clears Hurdle

AB 633

SACRAMENTO — A bill banning discrimination in employment against homosexuals has cleared its first legislative committee.

On a vote of 5-2, the Labor Relations Committee approved a measure, AB 633, by John Foran, D-San Francisco, that would prohibit an employer from using an individual's sexual orientation as a bona fide basis for not hiring him.

The vote capped a two-hour debate between representatives of the gay community and the law enforcement community, whose arguments Foran called "the most un-American I have ever heard."

The core of the law enforcement opposition, as presented by Deputy Chief Robert Vernon of the LAPD, is that police officers, who must be exemplars of the public's morals,

should not engage in homosexuality, "which is repulsive to nearly all persons."

Vernon, who maintained that homosexuals by their nature commit illegal acts, was challenged by committee Chairman Jack Fenton, D-Montebello.

"We all have the potentiality of committing crimes," said Fenton, "but you can't be arrested for potentiality."

Vernon agreed, noting that a burglar cannot be arrested until he commits a burglary, but he added that he had doubts about the ability of gay police officers to enforce statutes on illegal sex acts against other gays.

"That's like saying Chicano police officers cannot enforce the law against other Chicanos," noted Richard Alatorre, D-Los Angeles.

Rod Blonien, executive director of the Peace Officers Association, explained that homosexuals, given a history of discrimination by society, could be expected to have a natural affinity for one another, bringing into question their ability to enforce the law equally.

"You concede that there has been discrimination against homosexuals," replied Howard Berman, D-Sherman Oaks, adding that since blacks and other minorities have performed well in police duties, "why are you opposed to this bill?"

"It's not a crime to be black," replied Blonien.

Both law enforcement officials indicated that even if legislation decriminalizing sex between consenting adults in private is enacted, the key to their opposition was the morale of police forces.

"Policemen are not perfect," replied Foran. They gamble, and that's not legal. "But to assume that a person with a different sexual orientation is presumed guilty of a crime wipes out the constitutional presumption of innocence."

The Foran measure now goes to the Assembly, where a favorable margin of 5-2 would be a surprise.

AB 633

EVN TVM 210DEM12 1220071004

GAY LAW STUDENTS ASSOCIATION

CIVIL RIGHTS

State Employment Rights Bill Scuttled

by George Mendenhall

SACRAMENTO, CA—A surprised Assemblyman John Foran (D-San Francisco) has seen his bill to extend state job rights to gay people go down to a crushing 22-48 defeat in the state Assembly. The vote was taken in the final two hours of the 1975 legislative session by an exhausted body that appeared to rebel against the controversial measure.

Gay activists had hoped that the momentum created by the passage of Assemblyman Willie Brown's (D-San Francisco) bill legalizing private consensual sex acts would prevail. Foran could muster only 22 votes, while the Brown bill, in its sixth year of consideration, passed by 46 votes. Major opposition to the measure, which would have extended the concerns of the state Fair Employment Practices Commission to include "sexual orientation," centered on fear of rebellious constituents. Although the Brown bill will become law in

January, and a statewide referendum attempt to rescind that bill failed, anti-gay lobbyists have been effective in scaring legislators. Many feared a backlash from home, and some who had supported the Brown measure welcomed the Foran bill as an opportunity to now vote "no" on a gay issue—to ease the pressure.

The Assembly Labor Committee passed out the Foran bill earlier with an assist from Speaker Leo McCarthy. Foran had placed the measure on the inactive list and was attempting to "read" what gay activists wanted in his district before proceeding. He said he was pressured to bring the bill out for a vote by these people so they could count the votes. Foran said that lobbying was difficult in advance of the vote because so many legislators refused to commit themselves. Volunteer gay lobbyist George Raya agreed that this had been a problem and was equally surprised by the large negative vote.

A half-joking moan swept the chambers as Foran began his opening remarks, with one colleague calling out, "Give it to 'em, sweetie!"

The most vehement conservative, Assemblyman John Briggs (R-Orange County), countered Foran's plea for non-discrimination toward gay people. Briggs said he was "sick and tired" of being "subjected to the morals of

ices. The 'problem' is those who discriminate."

The possible hiring of up-front gay teachers alarmed Assemblyman Mike Antonovich (R-Glen-dale). "People who send their children to school," he stressed, "want to have teachers who are the type of persons who represent what is good, what is healthy and what is normal for their children."

Foran replied, "There are homosexuals who today teach in our schools. If you don't believe this, you are naive. But you shouldn't fire them just because they have a different sexual preference. If they commit a crime, then they should be fired."

More important than "gay teachers" or any other single issue was a hardening of the philosophical differences between the two Parties, according to Foran. He accused "hawk" Republicans with "threatening and cajoling" moderate Republicans before the vote. Not one Republican supported the issue, and if some had, Foran believes, more Democrats would have been encouraged to cast "yes" votes.

All 22 "yes" votes were cast by Democrats, but 24 Democrats chose to vote against the bill, and another 7 did not vote. Several newly elected Assemblymen who had supported the Brown bill defected on job rights. Foran emphatically denied that he brought his bill up at this time in order to

called out for a retreat from the process "of this government interfering in every conceivable way in the lives of people." He said that conservatives should support legislation that will do this. "It seems to me," he said, "that the right to work in this society is a most important ethic. The work ethic. The people who supply jobs have a responsibility to assure that every man, woman and child has a right to a job unless there is some liability that makes them unable to perform the duties that are requested of them."

In blunt agreement, Assemblyman Robert Kapiloff (D-San Diego) asked, "How could anyone here be so twisted—so warped—to want to fire a person because of what he does in his own bedroom?"

John Vasconcellos (D-San Jose) brought absolute quiet to the chambers as he called for an historical perspective. "Just 15 years ago," he began, "in order to be acceptable, employable and even lovable you had to be male, white, not too young or not too old, preferably handsome, not bald or fat, and certainly straight. However, amidst the calamity of the last two decades some real growth has begun to arise in this society which is beginning to value the individual human being."

He continued, "We should realize that we are talking about real, live, warm, breathing human be-

San Francisco," and chided the three Bay Area Assemblymen for supporting measures to liberalize the restrictions against marijuana and private sex. He said that Californians should spend more time enjoying Orange County (home of Disneyland and Knotts Berry Farm) rather than "that San Francisco kind of fun."

Foran emphasized that this "is not a funny issue. It is a serious one." He explained that extensive discrimination was based on a person's private sexual preference. He said the denial of job opportunities to gay people is widespread and is an implied hiring policy of major corporations. Turning to Briggs, he asked if conservatives would rather "see these people on welfare." Legislator Richard Alatorre (D-Los Angeles), who heads the Chicano caucus, agreed and said, "It is the responsibility of legislators to try and rectify unjust-

give these colleagues an opportunity to vote "no" on a gay issue. He said that he is committed to equal rights for gay people.

Jim Foster, gay activist and Democratic Party official, angrily attacked some gay leaders in San Francisco who urged Foran to bring his bill to a vote. Foster said that a "breathing period" was necessary after the passage of the Brown bill. More time was needed, he contended, in order to rebuild the gay lobbying effort. Foster's contention was that a few gay activists who did not like Brown urged Foran to come out with his bill so that Brown's victory could be overwhelmed by a job rights victory. "They did this," Foster claimed, "for their own selfish political reasons." He jokingly added, "I guess there will be a lynch mob formed after they read that one."

During the debate, Assemblyman Ken Meade (D-Oakland)

ings who happen to choose personal relationships in a way that you might not." Vasconcellos emphasized that Foran's bill was another statement about "whether we really trust, accept and value the human being, individual freedom and personal self-determination. If we do—if we value—that in our lives, then it is only a 'yes' vote that makes any coherence, any sense, any rationality and compassion."

The defeat of the job rights issue has not discouraged Foran. Assembly debate was encouraging and that when he re-introduces the bill (or a similar one) in the 1976 session the situation will be more favorable. It is known that he has been urged to opt for a more general bill in the next session which would make the FEPC responsible for all discrimination cases, rather than a listing of specific areas of concern. ●

AB 633 Vote

This is the final tally of votes on Assembly Bill 633, Assemblyman John Foran's bill which would have added "sexual orientation" to the jurisdiction of the California Fair Employment Practices Commission. The vote was 22 in favor, 48 against, with 9 not voting.

In favor: Alatorre (D-Los Angeles), Berman (D-Sherman Oaks), Brown (D-San Francisco), Cullen (D-Long Beach), Dixon (D-Los Angeles), Foran (D-San Francisco), Greene (D-Carmichael), Hart (D-Santa Barbara), Kapiloff (D-San Diego), Keene (D-Eureka), Knox (D-Richmond), Lockyer (D-San Leandro), McCarthy (D-San Francisco), Meade (D-Oakland), Miller (D-Emeryville), Ralph (D-Los Angeles), Rosenthal (D-Los Angeles), Sieroty (D-

Los Angeles), Torres (D-Monterey Park), Vasconcellos (D-San Jose), Warren (D-Los Angeles), Wornum (D-Corte Madera).

Opposed: Antonovich (R-Glendale), Arnett (R-Redwood City), Bane (D-Van Nuys), Bannai (R-Gardena), Boatwright (D-Concord), Briggs (R-Fullerton), Burke (R-Huntington Beach), Campbell (R-Whittier), Carpenter (D-Garden Grove), Chacon (D-San Diego), Chappie (R-Yuba City), Chel (D-Long Beach), Chimbole (D-Lancaster), Cline (R-Northridge), Collier (R-Arcadia), Craven (R-Vista), Davis (D-Portola), Deddeh (D-Chula Vista), Duffy (R-Hanford), Fenton (D-Montebello), Garamendi (D-Lodi), Goggin (D-San Bernardino), Gualco (D-Sacramento), Hayden (R-Cupertino), Hughes (D-Los Angeles), Lancaster (R-Covina), Lanterman (R-Pasadena), Lewis (R-Redlands), Maddy (R-Fresno), McAlister

(D-San Jose), McLennan (R-Downey), McVittie (D-Chino), Mobley (R-Fresno), Montoya (D-La Puente), Murphy (R-Monterey), Nestande (R-Orange), Nimmo (R-San Luis Obispo), Perino (D-Stockton), Priolo (R-Woodland Hills), Robinson (D-Santa Ana), Siegler (D-Santa Rosa), Suitt (D-Palm Springs), V. Thomas (D-San Pedro), W. Thomas (R-Bakersfield), Thurman (D-Modesto), Tucker (D-Inglewood), Vicencia (D-Paramount), Wilson (D-San Diego).

Absent: Badham (R-Newport Beach), Beverly (R-Redondo Beach), Calvo (D-Mountain View), Egeland (D-San Jose), Ingalls (D-Riverside), Keysor (D-San Fernando), MacDonald (D-Ventura), Mori (D-Hayward), Papan (D-Daly City).

(Note: although these legislators listed themselves as "absent," all were present before the vote was taken.) ●

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FROM THE DESK OF P. D. Hardman

8 January 1976

Dear Tom,

I got the enclosed copy of Assemblyman John Foran's bill which he may introduce in the very near future.

Attached is the Legislative Council's Digest, and his opinion....note the opinion indicated that the Leg. Council. is "uncertain as to the meaning "

The wording follows the interpretation of the Unrah Act...

I also have the complete file on the new Initiative Re: Public Decency. It is being filed by the same people who did the Referendum, the name David Depew is on the list of proponants. He was the attorney who was listed on the referendum also. (aj 2127 AB989)

When I get it reproduced I will get a copy to you, I did not want to hold this up until then.

Please take note that Gov. Brown stressed the need for expansion of the FEPC powers to protect all citizens from job discrimination in his speech on the State of the State....Foran will pick up on this when seeking support for his proposal.

Larry & I are setting up a special tax exempt, rip off proof trust fund through the Pride Foundation on behalf of gays in the military. We are working with the principals: Matlovitch, Beller and Hesss...The Attorney for Hess is John Vaisey of SF, Richard Fox of LA is Beller's Attorney. Confidentially: Is Fox OK???not homophobic!!!! Vaisey is a delight!!!! Matlovitch thing a bit screwed up right now---Goodstein problems.

Gay

Open file on "FORAN BILL - Employment"

DEC 22 1975
Req. #21441, 22550

An act to add Section 1412.5 to the Labor Code, relating to fair employment practices.

The people of the State of California do enact as follows:

Section 1. Section 1412.5 is added to the Labor Code, to read:

1412.5. The enumeration in this part of categories and classes of persons that may not be made the basis of discrimination is hereby declared to be illustrative rather than restrictive. All persons are entitled to full and equal opportunities of employment, subject only to a bona fide occupational qualification established by the employer.

The employer shall have the burden of persuasion in establishing that an occupational qualification is bona fide.

BERNARD CZESLA
CHIEF DEPUTY

OWEN K. KUNS
EDWARD K. PURCELL
RAY H. WHITAKER

KENT L. DECHAMBEAU
ERNEST H. KUNZI
STANLEY M. LOURIMORE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKEY
EDWARD F. NOWAK
RUSSELL L. SPARLING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814

107 SOUTH BROADWAY
LOS ANGELES 90012

Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California
November 18, 1975

Honorable John F. Foran
3091 State Capitol

Discrimination in Employment - # 21441

Dear Mr. Foran:

Pursuant to your request we have prepared the attached Bill Amendment, relating to the above-named subject. In this connection we call your attention to the possibility that the effect of this enactment might be limited or nullified by reason of:

We are uncertain as to the meaning and effect which would be given to this bill if it should be enacted in the form you have requested.

In the interest of time we have not attempted to analyze the question to determine the extent to which this may present a problem; however, we feel obligated to alert you to the existence of any possible problem for such consideration and action as you may desire.

Very truly yours,

George H. Murphy
Legislative Counsel

By *Verne L. Oliver*
Verne L. Oliver
Deputy Legislative Counsel

VLO:cg

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
JEFFREY D. ARTHUR
CHARLES C. ASBILL
JAMES L. ASHFORD
JOHN CORZINE
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CLINTON J. DEWITT
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CARL NED ELDER, JR.
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JOHN FOSSETTE
HARVEY J. FOSTER
HENRY CLAY FULLER III
ALVIN D. GRESS
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HUGH P. SCARAMELLA
MARY SHAW
JOHN T. STUCEBAKER
MARY ANN VILLWOCK
BRIAN L. WALKUP
THOMAS D. WHELAN
JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

#20000
NOV 18 1975
Req. #21441

An act to add Section 1412.5 to the Labor Code, relating to fair employment practices.

The people of the State of California do enact as follows:

Section 1. Section 1412.5 is added to the Labor

Code, to read:

1412.5. The enumeration in this part of categories and classes of persons that may not be made the basis of discrimination is hereby declared to be illustrative rather than restrictive. All persons are entitled to full and equal - opportunities of employment, subject only to a bona fide occupational qualification established by the employer.

The employer shall have the burden of persuasion in establishing that an occupational qualification is bona fide.

Legislative Counsel's Digest

Labor: discrimination in employment.

The existing law provides that it is against public policy, and an unlawful employment practice, for an employer, labor organization, or any person, to discriminate in employment or membership because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, or sex of any person.

This bill would, in addition, specify that the enumeration of such categories and classes of persons is illustrative rather than restrictive, and that all persons are entitled to full and equal opportunities of employment, subject only to a bona fide occupational qualification established by the employer.

The bill would also specify that the employer has the burden of persuasion in establishing an occupational qualification as bona fide.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

Public Registration

NEW LABOR CODE SECTION

§ 1412.5. Categories of unlawful discrimination
illustrative, not restrictive

The enumeration in sections 1412, _____ and _____ of the labor Code of those categories and classes of persons that may not be made the basis of discrimination by employers is declared to be illustrative rather than restrictive. All persons within the jurisdiction of this State are entitled ~~and~~ to full and equal opportunities of employment, subject only to a bona fide occupational qualification established by the employer.

The employer shall have the burden of persuasion in establishing that an occupational qualification is bona fide.

AMENDED IN ASSEMBLY MAY 7, 1979
AMENDED IN ASSEMBLY FEBRUARY 5, 1979

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL

No. 1

Introduced by Assemblymen Agnos, Alatorre, Bates, Berman,
Willie Brown, Kapiloff, Levine, McCarthy, *Moore*, Roos,
Rosenthal, and Torres
(Coauthors: Senators Marks and Sieroty)

December 4, 1978

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER
AFFAIRS

An act to add Section 1413.5 to the Labor Code, relating to
sex discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1, as amended, Agnos (L., E., & C.A.). Labor: sex
discrimination.

Existing law makes it an unlawful employment practice to
discriminate in employment on the basis of sex, among other
things, but does not define what such discrimination is.

This bill would delineate what constitutes discrimination on
the basis of sex, and would declare the intent of the
Legislature with regard thereto.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

Does the chief justice
of documents bearing on the
of the leaves?
er: "Yes. I have seen and
copies and documents
d by staff at the request of

See Page 20— ANSWERS

Berkeley Judge Is Latest Challenge Prelim Law

By Steven Pressman
her California trial judge
knocked down a 107-year-old
that provides for closed
inary hearings if requested
endants.

aring that Penal Code Sec.
patently violates the First
ment," Berkeley Municipal
Judge Berke Brunn refused
reporters from covering a
inary hearing this week in-
g five robbery suspects.

ow hours before Brunn's rule
e U.S. Supreme Court held
ial judges have an obligation
e pretrial hearings if press
age will lead to prejudicial
ty against defendants.

San Francisco media at-
Edwin Heafey Jr. argued
Brunn that the California
hearing law goes beyond the
ourt decision by requiring
to bar reporters solely on
quest of defendants.

ey was representing the
id Tribune, the San Fran-
Examiner and the East Bay
Club which sought to allow
ers to cover the preliminary
g for the robbery suspects.

ey, meanwhile, said yester-
e is preparing a set of
es to assist reporters who
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oms as a result of this
Supreme Court decision in a
Gannett v. DePasquale.

5-4 decision, the court said
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ple v. Salgado, Crim. 20650,
een retransferred to the Court
eal, Fourth District, Division
for consolidation with the ap-
People v. Ponce, Crim 20454,
etermination in light of
v. Escudero, 23 Cal.3d 800,

Ch. v. Western World In-
Co., L.A. 31015, has been
rred to the Court of Ap-
nd District, Division One,
sideration in light of Royal
urance Co. v. Superior
3d 890.

Judge Philip M. Saeta, in *Kyong
Choe v. Municipal Court*, Docket
No. C286417, issued a writ of man-
date ordering the Municipal Court
to set aside an order overruling the
petitioner's demurrer and to sus-
tain the demurrer.

See Page 7— LABOR CODE

right to cover all judicial pro-
ceedings.

But Heafey said the decision has
a number of "glitches" in it and
denied the decision is a total defeat
for the media.

"Don't let *DePasquale* stand for
the fact that the media has lost
everything. That's not true at all,"
Heafey said.

Another Bay Area judge, mean-
while, also ruled that the press will
be excluded from his courtroom
during hearings to determine the
admissibility of evidence in a
murder trial currently underway.

Oakland Superior Court Judge
Wilmont Sweeney's decision was

See Page 20— PRELIM

Gays' Discrimination Bill Gains Narrow Approval in Committee

SACRAMENTO (UPI) —
Legislation seeking to make it
unlawful to discriminate against
the employment of homosexuals
has won bare approval in the
Assembly Labor, Employment and
Consumer Affairs Committee.

The measure, AB1, by
Assemblyman Art Agnos, D-San
Francisco, was sent to the Ways
and Means Committee on a 7-6 vote.
It had been opposed by a variety of
religious organizations, which called
it "immoral," and business
groups.

Agnos said opposition from the
business community had been
diminished by amendments and
assurances that the bill does not at-
tempt to give homosexuals
preferences in job hirings or
establish "affirmative action" pro-
grams requiring a quota of such
workers.

"The bill simply allows gay peo-
ple to earn a living. It does not
allow anyone to recruit anyone else
or proselytize on the job. It simply
allows them to work," Agnos told
the committee.

"The bill also seek to protect
those who are 'straight' who hap-
pen to fit into the stereotype of be-
ing gay — a thin effete man or a
brutish woman."

Joining Agnos in speaking in
favor of the measure were three
homosexuals and the mother of
another from the San Francisco
Bay area.

"It became evident early in my
life that I had better be careful in

Performance can be unraveled
the testimony taken during three
weeks of public hearings, it could
be the answer to charges members
of the court delayed release of the
case for political gain.

The focus point is Sept. 21, when
to all appearances, the box contain-
ing the *Tanner* opinion and briefs
passed from Justice Mathew
Tobriner to Justice Wiley Manuel.

The date is important because
there are charges Manuel was per-
suaded by either Tobriner or Chief
Justice Rose Bird to write a
separate dissent at this point.

It was the circulation of that dis-
sent and the answers to it which
kept the case from public view until
December.

And it is about that critical point
that all four witnesses disagree.

By Sept. 21, stories had already
appeared in San Francisco and Los
Angeles legal newspapers calling
attention to controversial cases
pending in the Supreme Court, and
relating the delay in their release to
election day.

An article in *New West* magazine
castigating the chief justice's con-
curring opinion in *People v.*
Caudillo had been on the scene for a
month.

Justice William Clark had
already inserted his controversial
footnote referring to the *Caudillo*
case in his dissenting *Tanner* opi-

my actions and I lied to get and
keep jobs," said Sally Gearhart, a
homosexual faculty member of the
San Francisco State University
Communications Department. She
said she had been harassed by the

See Page 20— GAY

Caudillo Denied Prehearing Lawyer Will Consider Prejudic

By Paul Mapes
SAN FRANCISCO—The Califor-
nia Supreme Court, acting without
Chief Justice Rose Bird, has denied
a petition to release convicted
burglar-rapist Daniel Caudillo on
his own recognizance pending a
hearing by the high court of
whether he should now be in prison.

The court acted en banc last
week. The notice of denial was signed
by Justice Mathew Tobriner, acting
as chief in the absence of Bird
who was testifying at that time
before the state Commission on
Judicial Performance.

The commission is investigating
charges that the high court
deliberately held up issuance of
controversial decisions until the
November election had passed, in
order to aid the chances of Bird be-
ing confirmed by the voters.

The case of the rapist, Caudillo,
was then, as now, at the center of a

old carpeting from her office and
had given it to others.

It was just three weeks before At-
ty. Gen. Evelle Younger, making a
desperate bid for the governorship,
accused the court of delaying death
penalty cases and *People v. Tan-
ner*.

The records in the court
secretary's office, which
meticulously trace every move-
ment of the boxes from judge to
judge, inexplicably do not record
the movement of the *Tanner* box on
only one date — Sept. 21.

Also inexplicably, the dates were

Mosk Confronted Tobriner on Case Delay, Says Clark

SAN FRANCISCO—"Justice
Mosk told me, 'Bill, I told Matt
(Tobriner) before election it was
obvious he was holding cases until
after election and if it became ex-
posed he would have to pay the con-
sequences.'"

Thus, Justice William Clark
testified of a conversation between
himself and Justice Stanley Mosk
which took place in January of this
year.

Clark, in his third day of
testimony before the Commission
on Judicial Performance, told the
commission he did not ask Mosk
any questions about what was said.

"We were both down — about the
court, the publicity, the investiga-
tion — I didn't want to know any
more."

The attorneys for Chief Justice
Rose Bird and Tobriner asked that

See Page 7— CLARK

tangle of court actions that gave
Bird's opponents ammunition to
charge that she, as a former public
defender, is soft on crime.

The high court's handling of writ
procedures that have kept Caudillo
in prison from four days before the
election to the present figures prom-
inently in the commission's in-
vestigation of the high court, which
is now beginning its third week.

It was Tobriner, again acting as
chief justice, who signed the order
Nov. 3 which has kept Caudillo in
prison.

According to some accounts, only
Bird, Tobriner, her ally and stau-
chest defender on the court, were
present at the court late that Fri-
day afternoon when the decision to
issue the order was made.

Bird disqualified herself,
presumably because her earlier
opinion in *Caudillo*—that rape in
itself does not constitute great bodi-

During trial, he added, "I try to keep things moving, but I don't cut off an argument or a line of questioning even if I personally think it's a waste of time" without an objection.

In general, the judge does not get involved in attorneys' cases. "I seldom ask questions, nor do I suggest to counsel what they should do," he noted. "I don't know the case as well as the lawyers do. It's not my job to try to save a case for anybody."

Although he will ask questions in non-jury trials occasionally, he prefers jury cases because they are simpler and because he is a "firm believer in the jury system," he said. "I agree with the jury's verdict about 95 percent of the time."

His courtroom is run "more informally informal than formally." The judge uses a formal opening only at the beginning of a new trial. Recalling that he was a "pacer" as a lawyer, he said he does not require attorneys to use a lectern or to ask to approach the bench.

The only thing I'm somewhat strict about as far as courtroom etiquette is concerned is dress, he said. "I expect the attorneys, the jurors and the spectators to dress decently," he noted.

Turner said he is "not a particularly tough judge as far as my treatment of attorneys is concerned. I try to be as polite and courteous as I can be." He will "lay down the law," however, if counsel start interrupting one another or arguing.

When he does get irritated, he tries not to let it affect his rulings. "In fact, I think the more irritated you get at somebody, the more careful you are to be sure you are being fair," he commented.

Judge Turner relaxes by playing golf and traveling. And although he doesn't have a horse at present, he said, "I was raised with horses as a kid, and I'm going to get another one."

Prelim Law

Continued from Page 1

not based on Sec. 868, but was instead based on his agreement to a defense motion that press coverage of those hearings could result in unfair publicity to the defendant.

"If there is some showing made to me that certain evidence, if it is inadmissible, will taint the fairness of a trial . . . I would routinely say no to the press," said Sweeney.

"If the evidence is admissible, the press will get it because the trial is open," the judge added.

Brunn's ruling against Sec. 868 joins him with several other California trial judges who have found the statute unconstitutional in recent months.

Los Angeles Municipal Court Judge George Trammell III has

ty children and are innocent victims and prominent citizens who may be innocent, to hear in an efficient, orderly way fraud cases that involve large numbers of witnesses and defendants, and to protect witnesses who fear for their lives."

Lillard said grand jury hearings follow procedures that guard the rights to witnesses and defendants, and that "we receive the exculpatory evidence that is known to the district attorney."

In the recent past, charges have been leveled at grand juries across the country, alleging that district attorneys often fail to provide grand jury members with information which tends to clear accused persons.

"Nearly all of our indictments are sustained by the verdicts in trial courts," Lillard continued. "No doubt our process of conducting criminal hearings can be improved. The process has improved during the past decade.

"But improvement is now largely, if not wholly, stultified by the *Hawkins* decision."

Gay Rights Bill

Continued from Page 1

faculty and administration at a Texas university and even "paid off a woman neighbor to keep her quiet."

She and Donald Kessler, a Bay Area psychiatrist, told the committee that other homosexuals fear that knowledge or even hints of their sexual preferences would lead to job dismissals.

But the Rev. W.B. Timberlake of the Committee on Moral Concerns said "This is a moral issue.

"This is a question of equal rights for those who are offended by this particular lifestyle," Timberlake said. "It also will not eliminate blackmail because heterosexuals are blackmailed, too."

Pastor Don Bowman, president of the Northern California Evangelical Assn. added that the measure contributes to the "destruction of the family."

He added: "How do you protect against a heterosexual who claims to be a homosexual in order to get or keep a job? Do you require a medical certification?"

Agnos' bill was amended in the Labor Committee to exempt religious institutions from the antidiscrimination clauses, allowing church-related schools, hospitals and other groups to deny jobs to homosexuals based on belief that their sexual preferences were "immoral."

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Younger, reported in the Los Angeles Times.

It was the following week, on Oct. 16 or 17, that she broke her long silent treatment of Clark and they discussed the *Tanner* case, Bird said.

She is reasonably sure of that date because she remembered putting off Clark for some time after the court's appearance in Sacramento, the first week in October.

Clark testified that it was not Oct. 16 or 17, but Oct. 10 when he spoke with the chief justice. He is equally certain of the date because it was before he learned of the Younger charges.

As to Sept. 21, Clark's testimony waivers.

In his deposition he said he visited Tobriner on that date, talked to him about *Tanner*, and suggested the box be moved to Manuel.

In his testimony before the commission, Clark testified to the visit but did not remember making the suggestion.

He did recall that Tobriner had gotten the *Tanner* box from his wall cabinet during that visit and had shown it to him.

Clark was also aware, he testified, that Manuel might be considering a separate dissent by this time.

"Wiley is a very sensitive and sincere person," and he felt caught in the crossfire between Clark and Bird, Clark said.

Clark said he asked Tobriner to help him in dealing with the chief justice, because Tobriner was closer to the chief justice than

justice. He was "no special person" who comforted and advised the chief justice, he told the commission. Manuel's testimony is expected next week.

Answers

Continued from Page 1

counsel."

Question: Does she know of documents regarding the letter prepared by staff other than her own?

Answer: "No."

Question: Does she possess such documents?

Answer: "No."

Question: Does she possess documents from any member of staff not prepared at the request of her counsel?

Answer: "No."

Bird explained that she had nothing in her possession which had not already been given to the commission.

She said the documents she referred to in response to the first question were prepared by members



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According to the National Association of Realtors, since the 1975 Equal Credit Opportunity and Fair Housing Acts were passed, more and more women are buying houses.

The Association reports that last year women bought eight percent of all single family homes, and one third of all condominium sales also went to women.

AB-1 may have no change of passage through the State legislature unless the Senate Industrial Relations committee shows signs of being willing to approve Gay Rights legislation, so says Castro-Street Assemblyman Art Agnos. According to Agnos, the Assembly will not act on AB-1 until there is some success with the Senate committee.

typewritten response, three copies of Bryant's newsletter, a copy of the book "The Anita Bryant Story" and a color photograph of Bryant herself with her family. The cost to the writer is under 20 cents while the cost to Anita Bryant Ministries, PO Box 40-2948, Miami Beach, FL 33140, is over three dollars, and perhaps as high as five dollars. Write On!

"Sources from the House Committee today revealed to the press the newest startling piece in the Kennedy assassination puzzle. On the day of the killing, Lee Harvey Oswald was under the influence of a massive overdose of Twinkies," from an editorial cartoon in *Seattle Gay News*.

Massachusetts' Gay Rights Bill died in the house by a narrow 78-75



AMENDED IN ASSEMBLY FEBRUARY 10, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

ASSEMBLY BILL

No. 1

Introduced by Assemblyman Agnos
(Principal coauthor: Assemblyman Roos)
(Coauthor: Assemblyman Rosenthal)

Compliments of
ART AGNOS
Assemblyman, 10th District

December 1, 1980

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER
AFFAIRS

An act to ~~add Section 12926.5 to amend Sections 12920,~~
~~12921, 12926, 12931, 12940, 12944, and 12993 of, and to add~~
~~Section 12940.5 to, the Government Code, relating to~~
discrimination in employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1, as amended, Agnos (L., E., & C.A.). Discrimination
in employment: sexual orientation.

Existing law makes it an unlawful employment practice to
discriminate in employment on the basis of ~~sex, among other~~
~~things~~ *race, religious creed, color, national origin, ancestry,*
physical handicap, medical condition, marital status, sex, or
age.

This bill would ~~specify that discrimination on the basis of sex~~
~~includes, but is not limited to, discrimination based on or~~
~~because, in addition, make it an unlawful employment~~
practice to discriminate in employment on the basis of sexual
orientation, as defined.

This bill would also specify exceptions and limitations with
regard to discrimination *in employment generally, and with*
regard to discrimination in employment based on or because

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COMMITTEE ON AGING

Assembly California Legislature

RECEIVED FEB 16 1981

ART AGNOS

ASSEMBLYMAN, SIXTEENTH DISTRICT

DEMOCRATIC CAUCUS SECRETARY

February 11, 1981

Mr. Thomas F. Coleman
Attorney at Law
1800 North Highland Avenue, Ste. 106
Los Angeles, California 90028

Dear Mr. Coleman:

Thank you for your recent letter to my District Office.

First, let me convey my appreciation for all the preliminary work you have done on behalf of the gay and lesbian community in the implementation of the Commission on Sexual Privacy and Orientation.

As you may know, I have experienced multiple frustrations over the past four years in moving the administration in the direction of establishing an all-inclusive Task Force On Sexual Orientation.

I have been diligently working behind the scenes ever since the Governor first made reference to the creation of the Commission.

The Governor completed his 15 nominations on January 21st, thus, paving the way for full establishment of the Commission.

You may also be interested in knowing that I am working with Mr. Leroy Walker of the State Personnel Board's Sexual Orientation Project to insure adequate staffing for this project during this next round of legislative budgetary hearings.

Obviously in these days of lean state budgetary resources, no state program (even those less controversial) are secure in their financial status.

Mr. Thomas F. Coleman
Attorney at Law

February 11, 1981

I am enclosing a copy of our recent redraft of AB 1 for your review and study. As it will be evident to you, the new bill not only goes after the discriminatory practices in the private sector, but also branches out into prohibiting discrimination in state licensing which the Executive Order does not cover.

Again, thank you for all your assistance and support.

Please do not hesitate to contact me if I can be of additional help.

Sincerely,

A handwritten signature in black ink, appearing to read "Art Agnos", with a long horizontal flourish extending to the right.

ART AGNOS

AA/el

Enclosure

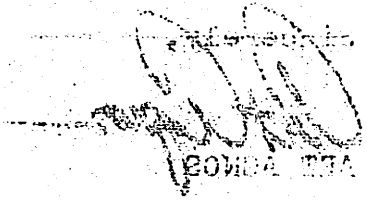
February 11, 1981

Mr. Thomas E. Coleman
Attorney at Law

I am enclosing a copy of our recent report of the
work of the FBI and state police. As it will be evident to you
the new bill not only does not affect the disciplinary practices
in the private sector but also provides for the prohibition
of discrimination in state licensed activities which the Executive Order does
not cover.

Again, thank you for all your assistance and support.

Please do not hesitate to contact me if I can be of ad-
ditional help.



TOM ADAMS

AA/le
Enclosure

AMENDMENTS TO ASSEMBLY BILL NO. 1 Substantive

Amendment 1

In line 1 of the title of the printed bill, strike out "add Section 12926.5 to" and insert:

amend Sections 12920, 12921, 12926, 12931, 12940, 12944, and 12993 of, and to add Section 12940.5 to,

Amendment 2

On page 1, strike out line 1, and insert:

SECTION 1. Section 12920 of the Government Code is amended to read:

12920. It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, ~~or~~ age, or sexual orientation.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interest of employees, employers, and the public in general.

The purpose of this part is to ensure that employers treat employees on an individual basis and judge them on their individual merits, rather than on the basis of stereotypical assumptions.

Further, the practice of discrimination because of race, color, religion, sex, marital status, national origin, or ancestry in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies which will eliminate such discriminatory practices.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

SEC. 2. Section 12921 of the Government Code is amended to read:

12921. The opportunity to seek, obtain and hold employment without discrimination because of race,

religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, ~~or~~ age, or sexual orientation is hereby recognized as and declared to be a civil right.

SEC. 3. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(b) "Employee" does not include any individual employed by his parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(c) "Employer," except as hereinafter provided, includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly; the state or any political or civil subdivision thereof and cities.

"Employer" does not include a religious association or corporation not organized for private profit.

(d) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(e) "Labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(f) "Medical condition" means any health impairment related to or associated with a diagnosis of cancer, for which a person has been rehabilitated or cured, based on competent medical evidence.

(g) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, ~~or~~ age, or sexual orientation.

(h) "Physical handicap" includes impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services.

(i) "Sexual orientation" means an orientation

toward other adults, of either sex, as sexual partners.

SEC. 4. Section 12931 of the Government Code is amended to read:

12931. The department may also provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, ~~or~~ age, or sexual orientation which impair the rights of persons in such communities under the Constitution or laws of the United States or of this state. The services of the department may be made available in cases of such disputes, disagreements, or difficulties only when, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby. The department's services are to be made available only upon the request of an appropriate state or local public body, or upon the request of any person directly affected by any such dispute, disagreement, or difficulty.

The assistance of the department pursuant to this section shall be limited to endeavors at investigation, conference, conciliation, and persuasion.

SEC. 5. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, ~~or~~ sex, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge such person from employment or from a training program leading to employment, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(1) Nothing in this part shall prohibit an employer from refusing to hire or discharging a physically handicapped employee, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of a physically handicapped employee, where the employee, because of his or her physical handicap, is unable to perform his or her duties, or cannot perform

such duties in a manner which would not endanger his or her health or safety or the health and safety of others.

(2) Nothing in this part shall prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform such duties in a manner which would not endanger the employee's health or safety or the health or safety of others. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her duties, or cannot perform such duties in a manner which would not endanger the employee's health or safety or the health or safety of others.

(3) Nothing in this part relating to discrimination on account of marital status shall either (i) affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission, or (ii) prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, ~~or~~ sex, or sexual orientation of any person, to exclude, expel or restrict from its membership such person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, ~~or~~ sex, or sexual orientation of such person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, ~~or~~ sex, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency, unless specifically acting in accordance with federal equal employment opportunity guidelines and regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, ~~or~~ sex, or sexual orientation, or any intent to make any such limitation, specification or discrimination. Nothing in this subdivision shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified or assisted in any proceeding under this part.

(f) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(g) For the governing board of a school district to violate Section 44066 or 87402 of the Education Code.

SEC. 6. Section 12940.5 is added to the Government Code, to read:

12940.5. Nothing in this part relating to discrimination on account of sexual orientation is intended, nor shall be construed, to:

(a) Limit the affirmative defenses available to an employer under this part upon a showing that an employee or prospective employee has been convicted of a crime and a showing that the conduct upon which such a conviction was obtained was job related.

(b) Require the imposition of quotas, goals, or other affirmative actions as relief for discrimination based on, or because of, sexual orientation.

SEC. 7. Section 12944 of the Government Code is

amended to read:

12944. (a) It shall be unlawful for a licensing board to require any examination or establish any other qualification for licensing which has an adverse impact on any class by virtue of its race, creed, color, national origin or ancestry, sex, age, medical condition, ~~or~~ physical handicap, or sexual orientation unless such practice can be demonstrated to be job related.

Where the commission, after hearing, determines that an examination is unlawful under this subdivision, the licensing board may continue to use and rely on such examination until such time as judicial review by the superior court of the determination is exhausted.

If an examination or other qualification for licensing is determined to be unlawful under this section, that determination shall not void, limit, repeal, or otherwise affect any right, privilege, status, or responsibility previously conferred upon any person by such examination or by a license issued in reliance on such examination or qualification.

(b) It shall be unlawful for any licensing board, unless specifically acting in accordance with federal equal employment opportunity guidelines or regulations approved by the commission, to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry, either verbal or through use of an application form, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, sex, ~~or~~ age, or sexual orientation, or any intent to make any such limitation, specification, or discrimination. Nothing in this subdivision shall prohibit any licensing board from making, in connection with prospective licensure or certification, an inquiry as to, or a request for information regarding, the physical fitness of applicants if that inquiry or request for information is directly related and pertinent to the license or the licensed position the applicant is applying for.

(c) It is unlawful for a licensing board to discriminate against any person because such person has filed a complaint, testified, or assisted in any proceeding under this part.

(d) It is unlawful for any licensing board to fail to keep records of applications for licensing or certification for a period of two years following the date

of receipt of such applications.

(e) As used in this section, "licensing board" means any state board, agency, or authority in the State and Consumer Services Agency which has the authority to grant licenses or certificates which are prerequisites to employment eligibility or professional status.

SEC. 8. Section 12993 of the Government Code is amended to read:

12993. (a) The provisions of this part shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this part shall be deemed to repeal any of the provisions of the Civil Rights Law or of any other law of this state relating to discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, ~~or~~ age, or sexual orientation.

(b) Nothing contained in this part relating to discrimination in employment on account of sex or medical condition shall be deemed to affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan, provided such terms or conditions are in accordance with customary and reasonable or actuarially sound underwriting practices.

(c) While it is the intention of the Legislature to occupy the field of regulation of discrimination in employment and housing encompassed by the provisions of this part, exclusive of all other laws banning discrimination in employment and housing by any city, city and county, county, or other political subdivision of the state, nothing contained in this part shall be construed, in any manner or way, to limit or restrict the application of Section 51 of the Civil Code.

Amendment 3

On page 1, strike out lines 2 to 4, inclusive, and strike out pages 2 and 3.

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JAY M. KOHORN
MATTHEW C. ST. GEORGE, JR.
THOMAS F. COLEMAN, OF COUNSEL
April 5, 1983

Assemblyman Art Agnos
STATE CAPITOL
Room 3151
Sacramento, CA 95814

Re: A.B. 1

Dear Art:

I enjoyed our meeting a couple of weeks ago. As you requested, I am submitting to you answers to some of the most pressing questions which we have been asked regarding A.B. 1. I hope these comments will be helpful to you and your staff in your dialogue with colleagues in the legislature. Since these ideas were developed largely through the expertise of Lee Walker and Thomas Coleman, they must be given credit for much of this letter's contents.

The questions asked and answered are:

1. What are some of the protections against sexual orientation discrimination in employment which presently exist in California?
2. If protection against sexual orientation discrimination in employment already exists, why is A.B. 1 necessary?
3. What will be the fiscal impact of A.B. 1?
4. How do we know that sexual orientation discrimination in employment in California is enough of a problem to merit the protections afforded by A.B. 1?
5. Shouldn't statutory protection be limited to persons experiencing discrimination because of their "unchangeable" or "immutable" characteristics such as race rather than matters which involve "personal choice"?
6. Isn't this just another unnecessary regulation hindering business?

Please call if any of us may be of additional assistance to you in this project. Best wishes.

Yours,


Jay M. Kohorn

SOME COMMON QUESTIONS
RELATED TO A.B. 1

1. WHAT ARE SOME OF THE PROTECTIONS AGAINST SEXUAL ORIENTATION DISCRIMINATION IN EMPLOYMENT WHICH PRESENTLY EXIST IN CALIFORNIA?

Present sources of protection against sexual orientation discrimination in employment depend upon many factors, such as the city in which the discrimination takes place, how "out of the closet" the victim is, and whether the employer is public or private, state or local, or under civil service rules or the jurisdiction of the governor.

Local ordinances, such as those found in Los Angeles, San Francisco, and Berkeley, often provide some of the most complete protection for both private and public sector employees. Other jurisdictions have passed ordinances which specifically prohibit sexual orientation discrimination in government employment. These jurisdictions include Cupertino, Palo Alto, Mountain View, San Mateo County, Santa Cruz County, Santa Clara County, and the City of Santa Barbara. Some municipalities have acknowledged their responsibility not to engage in such discrimination in their collective bargaining agreements with local government employee unions. Contra Costa County is an example.

The state Constitution is an important source of protection. It requires, either explicitly or through interpretation:

(a) that civil service be administered through a merit system; therefore, merit system employers may not discriminate against an applicant or employee on account of any non-merit related factor, such as his or her sexual orientation (Article VII, §1(b); 63 Ops.Cal.Atty.Gen. 583, 586 (1980));

(b) that public and private employers refrain from prying into the sexual orientation of applicants or employees and must refrain from sharing or using sexual orientation information in a manner which may have an adverse impact on an applicant or employee (Article I, §1, right of privacy as an inalienable right, which right restricts the overbroad collection, retention, and use of unnecessary personal information [i.e., not related to job fitness] by both government and business interests; and many appellate cases interpreting this provision); and

(c) that public employers afford equal opportunities to lesbians and gay men on the same terms as opportunities and benefits are afforded to applicants or employees with a heterosexual orientation (Article I, §7, equal protection).

In addition, the United States Constitution, while not explicitly addressing sexual orientation, does implicitly mandate that government agencies engage in no invidious discrimination against persons of one sexual orientation and refrain from taking any arbitrary action against employees or applicants (Fourteenth Amendment's equal protection and due process clauses).

Further, some state statutes, either explicitly or through interpretation, provide a basis for protection, requiring:

(a) that state agencies governed by state civil service rules not discriminate on the basis of the sexual orientation of applicants or employees (Government Code §18500 et seq.); and

(b) that public and private employers refrain from pressuring employees to remain "in the closet" or discriminating against those who identify themselves as lesbians and gay men or who are involved in gay-rights activities (Government Code §3201 et seq.; Labor Code §§1101 and 1102; Gay Law Students Association v. Pacific Telephone (1979) 24 Cal.3d 458).

The Governor's Executive Order B-54-79, as construed by the California Attorney General (63 Ops.Cal.Atty.Gen. 583 (1980)) also bans such discrimination in state employment within the jurisdiction of the governor.

Interrogations of applicants or employees about their sexual orientation may constitute a violation of the common law tort of privacy, being an intrusion into their private affairs. Sexual orientation discrimination in employment may also give rise to a number of other civil or tort causes of action, including sexual harassment, breach of contract, and intentional infliction of emotional distress.

Thus, there is a somewhat comprehensive, if not confusing, patchwork of protection already in existence within the state. The value of these legal foundations is questionable, however, without an adequate mechanism for practical implementation.

2. IF PROTECTION AGAINST SEXUAL ORIENTATION DISCRIMINATION IN EMPLOYMENT ALREADY EXISTS, WHY IS A.B. 1 NECESSARY?

(1) NOTICE

The present law is a complex hodge-podge of constitutional provisions, statutes, common law, opinions, and interpretations. It is, at times, ambiguous and is difficult for lawyers to deal with, let alone lay employers and employees. There is no uniformity,

either in requirements or in remedies, and no articulated state-wide policy which provides notice to employers so that they know their duties under the law or sufficient notice to employees regarding their rights. As a consequence, most victims of such discrimination do not even know that they have legal recourse.

Because of the ambiguities and lack of uniformity in the law, employers are not equipped to evaluate and remedy such discrimination problems internally through their personnel departments. Instead, they must use their attorneys, which often has the consequence of escalating an otherwise solvable problem.

A.B. 1 would provide the necessary statement of a state-wide and uniform policy barring employment discrimination based upon sexual orientation.

(2) ADEQUATE REMEDY

Even with the large body of existing law on the subject, there is very little in the way of administrative processes to monitor and handle sexual orientation discrimination in employment in California. In other words, provisions for implementation of the law are severely lacking. The present law invites costly and lengthy litigation to determine not only the remedies available, but even the procedures which are proper. Existing remedies are problematic for several other reasons:

(a) high exposure and visibility for employees: employees wishing to claim a violation of their right of privacy in their personal relationships and associations aggravate the loss of privacy when it is necessary to bring a lawsuit which throws their private information into the public arena; this alone is often enough to keep victims from asserting their right;

(b) high exposure and visibility for employers: employers would prefer private conciliatory procedures rather than having their dirty linen aired in the public arena of state court or federal court litigation; and

(c) cost, complexity, and time-consumption: current remedies are litigation-oriented and are thus expensive, usually require the retention of attorneys, and can drag on for years.

A.B. 1 would amend the Fair Employment and Housing Act to allow complaints to be processed through the administrative framework of the Department of Fair Employment and Housing. This agency's procedures are free, simple to understand for employees and employers, uniform, and quick (with settlements sometimes within 2 months and completion usually within a year), with an emphasis on conciliation, with low visibility for employee and employer, and with the professional expertise in this type of problem-solving which

exists nowhere else in either the public or private sectors. Investigating and handling discrimination is all the agency does, 100% of the time. Another benefit of implementation through the D.F.E.H. would accrue whenever there were multiple reasons for discrimination, such as in the case of a woman who is also lesbian and black suffering discrimination. The procedures of the Department could handle the entire investigation and determination in such a case.

3. WHAT WILL BE THE FISCAL IMPACT OF A.B. 1?

The fiscal impact of including sexual orientation discrimination in employment within the purview of the D.F.E.H. is insignificant. This conclusion is based upon several factors:

(a) most employers, it may be assumed, will simply obey the law once they know what the law is;

(b) the previous experience of adding "women" as a protected class did not immediately result in an overwhelming increase in the number of complaints filed;

(c) statistics from jurisdictions where protection is already afforded, including the cities of Los Angeles and San Francisco, the state of Wisconsin, and California state services as administered through the State Personnel Board, show that the quantity of complaints did not increase dramatically as a result of adding this protection; and

(d) the "closet factor," which often keeps individuals from admitting or recognizing sexual orientation discrimination.

For those complaints which are brought, the expense of the conciliation process through the D.F.E.H. is more than offset by the savings to the state in costs of litigation through the courts. The D.F.E.H. procedures also save the employer in staff and attorney time necessary to process and respond to complaints and lawsuits as well as costs of paying out damage awards or settlements. Legal fees and costs are saved by employees as well.

Finally, it must be remembered that to permit discrimination against any group has a costly negative impact on the human resource, the most valuable resource the state possesses, in that such discrimination limits the full participation in and contribution to society of a significant portion of the state's population. Thus, discrimination is not a cost-effective activity.

4. HOW DO WE KNOW THAT SEXUAL ORIENTATION DISCRIMINATION IN EMPLOYMENT IN CALIFORNIA IS ENOUGH OF A PROBLEM TO MERIT THE PROTECTIONS AFFORDED BY A.B. 1?

(1) THE STATISTICAL APPROACH

Statistics do not provide the best measure of sexual orientation discrimination because adequate statistics simply do not exist; there has never been a good scientific controlled sample:

(a) in jurisdictions without protection, there is no place from which to gather statistics; there would be few inquiries except in the most aggravated circumstances, and, even then, the "closet factor" would often keep an employee from asserting his rights; many employees simply do not want to be identified as gay; and

(b) in jurisdictions with some protection, there may often have been little or no publicity about the protection because of a lack of any system for processing complaints in an organized or uniform way; additionally, there has often been a lack of technical skill and sensitivity in intaking, processing, and investigating claims of such discrimination, so what statistical information which is extant is not very accurate.

Valuable personal experience and case histories can be documented through talking with individuals such as Susan McGrievy of the A.C.L.U. in Southern California; Los Angeles attorney Steve Kelber as well as the undersigned; San Francisco attorneys Donna Hitchens, Matt Coles, and Leonard Graff of Gay Rights Advocates; the staff of the State Personnel Board; the administrators and others associated with the Gay and Lesbian Community Services Center in Los Angeles, including Steve Schulte and Judge Rand Schrader, and other such centers throughout the state; Joy Fisher with the Fair Employment and Housing Commission; and attorneys who wrote the primary and amicus curiae briefs in the Supreme Court case Gay Law Students Association v. Pacific Telephone, cited above.

(2) PRE-EXISTING PREJUDICES

It is clear from the experience of the black, hispanic, and women's movements that pre-existing prejudices naturally spill over into the work-place. No one would deny the prejudice against homosexuals, ranging from extreme hatred and disgust to fear and suspicion, which is felt and expressed by much of the society. Given these factors, denial of the existence of such discrimination is unrealistic at best. It should also be remembered that discrimination against black people was often denied until the consciousness of the black community as well as society's institutions was raised, which takes time. Recognizing the types of discrimination exercised against gay people especially requires the development of skill and

sensitivity. Besides the more overt denial of employment, firing, or changes of job position or location, the types of discrimination include:

(a) the attitude, often heard expressed, that "there would be no problem if gays simply remain closeted"; not allowing the individual to express his or her personality and social choices is an insidious type of discrimination;

(b) generalizations based upon myths and false stereotypes about people and their relationships and associations, used to limit employment opportunities or to decide ability or appropriateness to work in certain job settings; such myths are discussed in the Report (at page 340 et seq.) and Executive Summary (at page 40 et seq.) of the Commission on Personal Privacy, and include "gays are child molesters" (often used as a rationale for excluding gays from educational positions), "homosexuality is a mental illness," "contact with or exposure to homosexuals is dangerous," and "a proper justification for sexual orientation discrimination is that homosexuality is unnatural";

(c) subtle limitations on normal societal rights, such as having the picture of one's family partner on one's workdesk, talking with fellow employees about one's date the previous evening, and taking one's family partner to workplace-related social functions; and

(d) the demeaning jokes and offensive language which many minorities have, at different times, had to endure; because gay people often cannot be seen as gay, this type of discrimination has the effect of encouraging the victim to remain closeted.

5. SHOULDN'T STATUTORY PROTECTION BE LIMITED TO PERSONS EXPERIENCING DISCRIMINATION BECAUSE OF THEIR "UNCHANGABLE" OR "IMMUTABLE" CHARACTERISTICS SUCH AS RACE RATHER THAN MATTERS WHICH INVOLVE "PERSONAL CHOICE"?

The classifications presently given statutory protection include religion and marital status; a member's "unchangeable" or "immutable" characteristics have never been the sole criteria for determination of whether a class should be protected. Even if this were a proper factor, the most significant body of scientific research suggests that sexual orientation is far less a "choice" than religion or marital status. But the factor is not proper because it is not relevant to job performance; the use of this factor in personnel and employment decisions is unconstitutionally arbitrary.

6. ISN'T THIS JUST ANOTHER UNNECESSARY REGULATION HINDERING BUSINESS?

Anti-discrimination laws do constitute a limitation on business, just as do child labor and minimum wage laws. The restrictions against employment discrimination are tolerable, however, based upon the assertion that the society is better served by suffering the diversity and individuality of its members than by suppressing them, especially in a life sustaining activity as basic as employment. The greater cost of discrimination is the limitation in the marketplace of a significant portion of the human resource of the state. As a practical matter, anti-discrimination laws are here to stay; therefore, they should be fair, just, complete, and even-handedly implemented.

CONCLUSION

One last comment is appropriate. As citizens and taxpayers of the state, gay men and lesbians have an inherent right to equal justice under the law. This would include equal administrative remedies for unconstitutional or unlawful discrimination in employment. Such a right should not even have to be justified; the principle of basic fairness would dictate that result. This does not mean that all of society must condone homosexuality. Judgments of this type may be appropriate for and within the proper jurisdiction of a religious group or may be held as a personal conviction. For example, many religious leaders either disapprove of or remain neutral on homosexuality. Yet many of these same leaders defend the right of gay people to have equal opportunity in employment, housing, and public accommodations. If these are denied one minority, is any other safe from discrimination? The fundamental strength of our particular constitutional form of government remains the rule of law protecting minorities against the majoritarian rule, especially when what is being protected is not a fringe benefit or a luxury. What could be more basic and necessary to life than the right to earn a living and to be a productive part of the society?

* * *

If we can be of further assistance, please contact us.

Most sincerely,

Jay M. Kohorn

Lee Walker

Thomas F. Coleman

/kr

Mom... Guess What

N E W S P A P E R

FOR WOMEN AND MEN OF THE GAY COMMUNITY AND FRIENDS IN THE CAPITAL AND NORTHERN CALIFORNIA

ISSUE #52

DEADLINE: 15TH OF THE MONTH

1983 MARCH, 15



Assemblyman Art Agnos gave a polished presentation.
Photo by Frank Lawler

AB 1 Clears First Committee

by Richard La Voie

Assembly Bill One, the gay employment rights bill, was approved by the Assembly Committee on Labor and Employment by a vote of 7-5 on February 22nd. The bill now moves to the Ways and Means Committee, where passage seems fairly certain.

Assemblyman Art Agnos (D-San Francisco), who has carried the bill for seven years, opened the hearing with a well-planned 25-minute presentation by systematically debunking a series of common misconceptions and stereotypes about gay people. Agnos referred to passage of the Consenting Adults bill in 1976, saying that opponents of that bill had predicted widespread proselytizing by gays if sexual acts between consenting adults were decriminalized.

The arguments used against passage of that bill, which are almost identical to fears regarding passage of AB1, have failed to materialize, Agnos pointed out. Agnos assured committee members that AB1, if passed, would not lead to open "flaunting" of alternate lifestyles in the workplace, particularly in schools, where it is already forbidden.

Agnos refuted claims by fundamentalist religious opponents that homosexuality is a "chosen practice" which can be cured. "Homosexuality is not taught," he said, "it is felt." Agnos pointed out that all attempts to change sexual orientation had failed, including one experiment involving brain surgery. "What we got was brain damaged people," he said.

Agnos concluded by telling the committee what the bill would not

do, such as allow transvestism or political advocacy on the job, or establish a system of quotas employers would have to meet.

Testifying for the bill were representatives of three major religious denominations, a state corrections employee who had been discriminated against, a representative of the AFL-CIO labor organization, a Fair Employment and Housing Commission official, and the mother of a lesbian.

Rabbi Lester Frazen of the Congregation B'Nai Israel of Sacramento, expressed his surprise that AB1 had not been passed by now in a state that values personal liberty. A representative of Sacra-

Continued on pg. 5

The Committee On Moral Concerns:

By Mark Vandervelden

Material for this article was drawn from a recent interview conducted by California Public Radio as part of its continuing coverage of Assembly Bill

A Profile Of The Opposition To AB 1

The Reverend ambles slowly up the steps of the State Capitol, expressionless, lost in thought. On this morning he has an appointment with a Contra Costa County assemblyman who hasn't made up his mind on AB 1. He stops to chat with a reporter. The

protect the moral standards embedded in our society's Judeo-Christian tradition.

Rev. W.B. Timberlake is a lawyer/pastor turned lobbyist for the Carmichael-based Committee On Moral Concerns. Along with his wife Louzelle, Timberlake



Panel Passes Bill Against Job Bias

Measure Prohibits Discrimination Against Homosexuals

By JERRY GILLAM, *Times Staff Writer*

SACRAMENTO—A bill to prohibit job discrimination against homosexuals was approved Wednesday by the Assembly Ways and Means Committee, sending the politically sensitive issue to the lower house floor for a showdown vote.

The sponsor of the measure, a San Francisco assemblyman who represents a district that includes a large homosexual population, predicted that it will pass the Assembly but conceded that he has only a "long-shot" chance of Senate approval.

Democrat Art Agnos recalled that he moved a similar bill as far as the Assembly floor in 1979, but did not take it up for a final vote because, he said, he did not want to give singer Anita Bryant's anti-gay national crusade of that era any additional ammunition.

"This time I will bring it up for a vote come hell or high water," Agnos said.

In brief, the legislation would prohibit all public and profit-making private employers with five or more workers from firing, refusing to hire or refusing to promote people because of their sexual orientation.

It would not apply to nonprofit corporations or religious groups or to people who have been convicted of sex crimes who are applying for a job where they might come in contact with children. Employers also would be able to continue to enforce codes

specifying modes of dress.

The state Department of Fair Employment and Housing would be the chief enforcement agency.

Twelve Democrats on the 21-member Ways and Means Committee voted yes on the bill; six Republicans voted no.

"No request is more legitimate in our society," Agnos said, "than the freedom to live and work in peace, free from discrimination."

"What this bill does is to allow people to work, to earn a living without fear of losing their job for what they can legally do in the privacy of their own bedroom."

Opponents, led by the Rev. W. B. Timberlake of the Committee on Moral Concerns, predicted that the cost of the homosexual discrimination complaint caseload would be "very expensive" to state taxpayers.

But the Ways and Means Committee chairman, Assemblyman John Vasconcellos (D-Santa Clara), who voted for the bill, responded that, "the most costly practice ever is discrimination."

A 1975 state law, sometimes called the "homosexual bill of rights," legalized all private sex acts between consenting adults. And in 1979, former Gov. Edmund G. Brown Jr. signed an executive order for state employees prohibiting sexual job discrimination.



Associated Press

Art Agnos

LA TIMES 3-24-83

Part 1, P. 3

Lake Tahoe in 1980 was sentenced to seven years in federal prison after pleading guilty. The government dropped three additional counts against Willis Brown, 51, in a plea-bargaining agreement after he admitted transporting explosives in interstate commerce. U.S. District Judge Walter Craig said that under terms of the sentence, Brown could be released whenever parole and probation officials decide that it is appropriate. Two others, John Birges Sr., 61, and Terry Lee Hall, 26, were convicted in Las Vegas federal court last year. The bomb tore a five-story hole in the casino, but there were no injuries. Birges said that he demanded \$3 million not to detonate the bomb because he needed money to pay off a loan-shark. Ella Joan Williams, 48, will be tried later. LA Times p. 2

2-23-83
A bill to prohibit job discrimination against homosexuals was narrowly approved, 7 to 5, by a state Assembly committee. The controversial legislation, introduced by Assemblyman Art Agnos (D-San Francisco) was sent by the Labor Committee to Ways and Means for further consideration. The measure

of their sexual orientation. It would not apply, however, to nonprofit religious organizations or to persons who have been convicted of sex crimes and who want to apply for jobs where they might come into contact with children.

With the leaders of last week's strike shipped away to Folsom Prison, the state Department of Corrections declared San Quentin Prison back to normal. "The strike is over," said department spokeswoman Helen Krogh. "Everybody's back at work. There were no concessions." She added, however, that "possibly something will be worked out to make working inmates a little happier," indicating that visiting and gymnasium periods might be extended. The work stoppage began with a boycott of jobs in the kitchen, laundry, offices, maintenance shops and prison industries in protest against prison routine changes.

A double murder suspect surrendered to a newspaper reporter at San Francisco's Hall of Justice. Carlos (Goofy) Miranda, 22, wanted in the Jan. 21 shooting deaths of Peter Jiunti, 21, and Julio Petterson,

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Assembly California Legislature



ART AGNOS

ASSEMBLYMAN, SIXTEENTH DISTRICT

DEMOCRATIC CAUCUS SECRETARY

CHAIRMAN

WAYS AND MEANS SUBCOMMITTEE ON HEALTH AND WELFARE

April 19, 1983

Dear Friend:

The campaign for AB 1 is under way.

On Wednesday, March 23, the Assembly Ways and Means Committee approved AB 1 by a vote of 12 to 8. The full Assembly will vote for the first time on this issue in mid-June.

AB 1 will not succeed without your help. Only a massive campaign, one that involves the entire gay and lesbian community and all of its friends will secure the passage of AB 1.

I am sponsoring a one-day seminar for supporters of AB 1 on Saturday, May 21, 1983, from 10:00 a.m. to 5:00 p.m. in Room 4202 of the State Capitol in Sacramento. I hope that you will be able to attend this important program of workshops designed to build a coordinated and effective state-wide campaign for AB 1.

I also hope that you will take the time today to write again to your representatives in the Legislature. Enclosed you will find the names and addresses of all members of the Assembly and State Senate, as well as a registration form for the AB 1 seminar. As seating is limited, I must request that you register in advance by mail. There is no charge for the seminar.

We are very close to a major victory for human rights. Every supporter of human rights in California has an important role to play in achieving that victory.

I look forward to meeting you on May 21.

Sincerely,


ART AGNOS

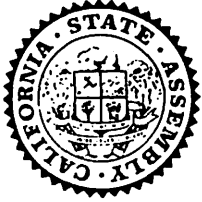
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Enclosures

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ART AGNOS

ASSEMBLYMAN, SIXTEENTH DISTRICT

DEMOCRATIC CAUCUS SECRETARY

CHAIRMAN

WAYS AND MEANS SUBCOMMITTEE ON HEALTH AND WELFARE

February 10, 1984

Dear Friend:

I need your help.

The gay and lesbian employment rights bill, AB 1, will be heard by the Assembly Committee on Labor and Employment at 4:00 p.m. on Tuesday, February 22, 1983.

With its passage, California will take an important step forward in the campaign for human rights.

Last year Wisconsin became the first state in the nation to extend equal protection of the law to lesbians and gay men. Recent public opinion polls show an increasing majority of Americans oppose discrimination on the basis of sexual orientation. Major religious leaders, labor unions, businesses and professional associations have gone on record in support of non-discrimination policies. Throughout the United States the gay and lesbian communities are better organized and stronger than ever before.

But our opponents are also strong.

Those who would turn back the clock on human rights claim that this legislation would sanction an immoral lifestyle; that gay people somehow threaten traditional family values. Under the guise of religion, they preach a doctrine of hate and prejudice. They too have organizations, and their names are familiar: Moral Majority, Committee on Moral Concerns, Christian Voice. They have powerful allies and they are well financed.

As the representative of a large gay and lesbian constituency, I have witnessed firsthand the often devastating effects of anti-gay prejudice on the lives of individual lesbians and gay men. Like you, I believe that discrimination against any group of people cannot be tolerated in a free society.

- OVER -

With your help, AB 1 will become law.

Please take the time to write today to your representatives in the California Legislature. I have enclosed a list of the members of the Assembly Committee on Labor and Employment. A strong vote in support of AB 1 by this committee is essential.

A very valuable process of education has continued over the years on this issue. More and more legislators understand that gay and lesbian people are entitled to the same rights and responsibilities as other citizens.

I am proud to carry this legislation. I look forward to working with you in the weeks and months ahead.

Sincerely,



ART AGNOS

AA:cjb

Enclosures

P. S. I have also enclosed a form for supporters of AB 1 to sign and return. I'd appreciate your help in circulating this form.

Wilson's Surprise on Gay Job Rights

By Greg Lucas

Chronicle Sacramento Bureau

Sacramento

After weeks of weighing the arguments, Governor Wilson in late September finally vetoed a bill protecting gays and lesbians from job discrimination because he said small businesses would suffer and the number of work-related lawsuits would increase.

A month later, the Wilson administration quietly authorized essentially the same protections granted in the bill by ordering the Department of Industrial Relations to handle sexual orientation job discrimination cases under state labor laws.

There is speculation now that Wilson's later action may place greater burdens on small businesses and could cost taxpayers more money.

"Wilson trapped himself. He shot himself in the foot," said Thomas F. Coleman, a Los Angeles lawyer specializing in sexual orientation and marital status issues. "He hurt the very people he said he was trying to protect in his veto message."

If AB101 had become law, nonprofit religious groups — some of which opposed the measure, claiming it would force them to hire gays — would have been exempt from its requirements. But now, under the labor code, they have no exemption.

Any employer — regardless of size — that violates the labor code faces criminal penalties. Prosecutions of AB101 violations would have been civil cases.

"AB101 was a very simple, good public policy measure,"

said Laurie McBride, who lobbied in behalf of the bill. "What we have now are the same protections but it's a more chaotic remedy."

Bill Livingstone, Wilson's press secretary, said he was unfamiliar with the procedures for investigating discrimination claims under the labor code and so could not comment.

Taking Bias Claims

After talking with members of the governor's staff, the Division of Labor Standards Enforcement within the state Department of Industrial Relations began accepting claims of hiring or employment discrimination based on sexual ori-

entation at its 27 district offices on October 30.

So far 15 complaints have been filed.

Coleman contends that the small number of complaints is due to a nonexistent outreach effort by the department.

No effort has been made to announce the new policy but a spokesman for the department said a press release will be issued soon to report on the department's progress.

In the past, the department has handled a few sexual orientation discrimination claims but only those involving "overt political activity."

A 1987 legal opinion by the then Labor Commissioner Lloyd Aubrey said there was no requirement to handle complaints from persons who were discriminated against but silent about their homosexuality.

Aubrey took the opposite position of a 1986 attorney general's opinion that Wilson cited in his veto, which said two sections of the labor code provided protection against any job discrimination based on sexual orientation.

But one month after Wilson's September 29 veto of AB101, Aubrey — now the director of the Department of Industrial Relations — ordered his staff to accept all job discrimination claims filed by gays and lesbians.

The move came just days after a state appellate court in San Francisco agreed with the attorney general's opinion and said state law covers all types of discrimination involving sexual orientation.

Minimal Cost Impact

If AB101 were law, the duty of investigating such complaints would have been given to the Department of Fair Employment and Housing, which already handles complaints of housing discrimination based on sexual orientation.

"To add one new class of complaint to their current responsibilities would have been minimal in cost," said Coleman.

Only 10 percent of the labor division's investigations involve discrimination issues, said Victoria Bradshaw, the new labor commissioner. Investigators are now being trained to handle discrimination complaints based on sexual orientation.

"We're trying very hard to make sure we handle these cases appropriately and we are giving them the special attention that at this point they warrant," she said.

Bradshaw said there are now six investigators and two hearing officers being trained to handle sexual orientation complaints. "As the caseload increases," she said, "those numbers will increase." Handling discrimination cases under labor laws instead of under fair employment laws is a double-edged sword for both violators and victims.

Fair employment laws, except in cases of harassment, do not apply to businesses of under five employees. Labor laws do.

"Obviously, if (AB101) wouldn't have applied to employers of less than five employees then the answer is this system is more burdensome (to them)," said Bradshaw, adding that most of the complaints received since October 30 involve businesses with more than five employees.

Nonprofit religious groups also enjoy no exemptions in the labor code.

Violations of fair employment laws carry only civil penalties. Violations of the labor code sections being used to protect gays and lesbians from discrimination carry criminal penalties of \$1,000 for individuals and \$5,000 for a corporation.

San Francisco Chronicle

FRIDAY, DECEMBER 6, 1991
