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July 5, 1980

Honorable Edmund G. Brown Jr.
Governor of California
State Capitol
Sacramento, CA 95814

Re: Sexual Orientation Discrimination Executive Orders

Dear Governor Brown:

In early 1979 I communicated with you regarding the possibility of an Executive Order prohibiting sexual orientation discrimination in state employment. Actually my contact with you in this regard dates back to 1975 when former Governor Milton Shapp of Pennsylvania wrote to you at my request urging you to take such action.

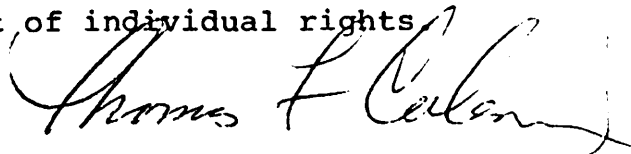
On April 4, 1979 you issued Executive Order B-54-79 prohibiting sexual orientation discrimination in state employment. Since that time I have worked closely with Tony Kline and other members of your staff as well as with the State Personnel Board to implement that order in the most effective ways possible. We have made great progress.

The State Personnel Board now has a Sexual Orientation Project. A very competent attorney, Leroy S. Walker, now manages that project. Your administration was the first in the country to hire someone on a full time basis to work on such a sexual orientation discrimination project.

I am enclosing a copy of a letter which I just sent to the Attorney General. He has recognized your authority to issues such Executive Orders. This has great significance in at least two ways. It strengthens the existing Executive Order mentioned above and it paves the way for the issuance of the proposed expanded order which is on your desk for signature.

The proposed new order covers not only sexual orientation discrimination (primarily affecting gay people) but bolsters sexual privacy protection for all persons. It extends the prohibitions to areas other than employment. There is unanimous opinion in the gay community that this new order is needed. I urge you to sign it now.

Thank you for your continuing support of individual rights



EXECUTIVE ORDER B-54-79

As Amended
April 4, 1980

WHEREAS, Article I of the California Constitution specifically guarantees to every person the inalienable right to privacy;¹ and recognizing that personal sexual conduct is a fundamental right, protected by the right to privacy because of the transcendental importance of sex to the human condition, the intimacy of the conduct, and its relationship to a person's right to control his or her own body;² and

WHEREAS, the California Legislature has adopted this principle by enacting the Consenting Adults Act;³ and

WHEREAS, California must expand its investment in human capital by enlisting the talent and harnessing the diversity of all members of society;⁴ and recognizing that the equal protection clauses of both the United States and the California Constitutions clearly prohibit the state or any governmental entity—whether or not under the jurisdiction of the Governor—from engaging in arbitrary discrimination;⁵ and

WHEREAS, the California Legislature has prohibited arbitrary discrimination with respect to housing and public accommodations by enacting the Unruh Civil Rights Act,⁶ and with respect to delivery of services and contracting by enacting Government Code sections 11135 through 11139.5,⁷ and the California Supreme Court has adopted this principle with respect to sexual orientation discrimination in employment,⁸ public accommodations,⁹ and state licensing¹⁰ in its decisions over the past three decades;

NOW THEREFORE, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this Order to become effective immediately:

1. No agency, department, board, commission, or other official entity within the Executive Branch of state government under the jurisdiction of the Governor, or representative thereof, shall discriminate against any person for reason of the person's sexual orientation, or shall unreasonably infringe upon any person's right to sexual privacy, in any matter of employment, housing, credit, contracting, delivery of services, licensing, or any other matter whatsoever.

2. The Secretaries of the Health and Welfare Agency, State and Consumer Services Agency, Business and Transportation Agency, Resources Agency, and Correctional Services Agency, and the Directors of the Industrial Relations Department and Military Department shall each designate a person at management level from an existing position from within their respective agencies or departments to ensure compliance with this Order. Such management personnel shall report directly to the appropriate agency Secretary or, in the case of the Industrial Relations Department and the Military Department, the Directors.

3. Compliance with this Order shall include but not be limited to:

(a) Notifying persons affected by this Order of its substance where appropriate, including available remedies;

(b) Receiving and processing complaints alleging noncompliance with this Order;

(c) Keeping records of all complaints and their dispositions, maintaining the confidentiality of complainants whenever appropriate;

(d) Working to educate state personnel and the public regarding their rights and duties concerning the subject matter of this Order; and

(e) Taking whatever measures are necessary to ensure that those local agencies and private enterprises receiving benefits from or administering state programs funded by the governmental entities subject to this Order, whether by contract, grant, or otherwise, shall not discriminate for reasons of sexual orientation or infringe upon sexual privacy in any matter described in paragraph 1., above.¹¹

4. There is established an interagency planning and operations committee (Interagency Committee) to coordinate the efforts of each agency to comply with this Order. The Interagency Committee shall be composed of the persons designated to ensure compliance as set forth in paragraph 2., above.¹²

5. The Interagency Committee shall be provided with whatever resources, facilities, and personnel are necessary to carry on its assignment from within the existing structures of state government.¹³ The Governor's Executive Secretary shall ensure that all necessary resources are made available to the Interagency Committee.

6. All state agencies, departments, boards, and commissions are hereby directed to assist and cooperate with the Interagency Committee in carrying out its responsibilities.¹⁴

7. Any alleged acts of employment discrimination in state government in violation of this directive shall be reported directly to the State Personnel Board for resolution.¹⁵

8. Nothing in this Order shall be construed to require any review or statistical analysis of the composition of the work force or other class of persons affected hereby.¹⁶

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of April, 1980.

ANNOTATIONS TO EXECUTIVE ORDER B-54-79

AS AMENDED APRIL 4, 1980

¹Article I, Section 1, of the California Constitution states:

All people are by nature free and independent, and have certain inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

The argument in favor of this 1972 Amendment to the State Constitution states:

The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with people we choose.

See also: White v. Davis (1975) 13 Cal.3d 757, 774-775, in which the Supreme Court acknowledged the propriety of judicial resort to such ballot arguments as an aid in construing such amendments.

This right of privacy is self executing and operates against infringements by individuals as well as the state. Porter v. University of San Francisco (1976) 64 Cal.App.3d 825.

²See: People v. Onofre, ___ N.Y.S.2d ___, Appellate Division of the New York Supreme Court, Fourth Department, Case No. 914/1979, decided January 24, 1980.

See also: H.L.A. Hart, Law, Liberty, and Morality (Stanford, California, 1963), p. 43; State v. Pilcher (Iowa, 1976) 242 N.W.2d 348; State v. Saunders (N.J., 1977) 381 A.2d 333; Buchanon v. Batchelor (N.D.Tex., 1970) 308 F.Supp. 729, 732-733 (reversed on procedural grounds only); Mindell v. U.S. Civil Service Commission (N.D.Cal., 1970) 312 F.Supp. 584, 587; Bruns v. Pomerleau (D.Md., 1970) 319 F.Supp. 58; Stanley v. Georgia (1969) 394 U.S. 557, 564-565; Atkisson v. Kern County Housing Authority (1976) 59 Cal.App.3d 89.

³California Statutes, 1975, Chapter 71, Section 10 and Chapter 877, Section 2.

⁴Inaugural Address, Governor Edmund G. Brown Jr., January 8, 1979; Report to the Legislature by Edmund G. Brown Jr., January 16, 1979.

⁵Gay Law Students Association, et al., v. Pacific Telephone and Telegraph Company, et al. (Cal., 1979) 156 Cal.Rptr. 14.

⁶California Civil Codes, Section 51. See also: Department of Industrial Relations, Division of Fair Employment and Housing Practices, Directive Transmittal No. 044, Revised September 25, 1979, which stated in pertinent part:

. . . The Act has also been interpreted by the California Supreme Court to prohibit arbitrary discrimination by business establishments on any basis, whether or not that basis is enumerated in the Unruh Act itself [T]he Division will accept complaints within our Unruh Act jurisdiction, i.e., complaints alleging discrimination on bases other than those enumerated in the Act or in the FEP Act or Rumford Act. This includes . . . discrimination in housing against gay people.

⁷These code sections were enacted by the California Legislature in 1977; however, their mandate is being realized in practice in 1980.

⁸Gay Law Students Association v. Pacific Telephone, note 5, *supra*.

⁹Stoutman v. Reilly (1951) 234 Pac.2d 449. See also: In re Cox (1970) 90 Cal.Rptr. 24.

¹⁰Morrison v. Board of Education (1969) 1 Cal.3d 214.

¹¹This aspect of compliance parallels the protection given by the California Legislature in Government Code Sections 11135 through 11139.5. These code sections proscribe and provide remedies for discrimination on the basis of "ethnic group identification, religion, age, sex, color, or physical or mental disability."

¹²One duty of the Interagency Committee shall be to ensure that Article IV, Section 16 of the California Constitution is followed, both in spirit and in letter. That section states:

Laws of a general nature shall have uniform operation.

¹³Secretarial services; use of office supplies, equipment, and space; telephones; postage; photocopying; and library materials should be made available to the Interagency Committee by appropriate governmental entities on both a short-term and long-range basis. In addition, funds should be made available to the Interagency Committee from existing budgets of appropriate governmental entities for such expenses as consulting fees, research costs, travel expenses, or other expenses which are necessary to carry out the mandate of this Order.

¹⁴This cooperation should include but not be limited to funding; use of equipment, supplies, services, and personnel; supplying of statistical, financial, procedural, and substantive information requested by the Interagency Committee; and providing support and cooperation in achieving the substantive goal of this Order. In addition, all governmental entities should work with the Interagency Committee in its educational projects in furtherance of this Order.

¹⁵The State Personnel Board received this grant of authority from Executive Order B-54-79, issued by Governor Edmund G. Brown Jr., on April 4, 1979. The State Personnel Board has created a position within its Public Employment and Affirmative Action Division to coordinate compliance with this aspect of the Executive Order.

¹⁶The "quota" type of affirmative action is inappropriate in that it would take into account only persons who are public about their sexual lifestyles. Since a vast majority of people are private in this area and choose to remain so, this Order must take into account their right to privacy and not compel them to reveal their preference or orientation.