

Spectrum Institute

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May 15, 1997

Councilman Angel Ortiz
City Hall
Philadelphia, PA

Re: Domestic Partnership Proposals

Dear Councilman Ortiz:

I enjoyed meeting with you and your staff members this week. I hope that my presentation at city hall was beneficial and that my subsequent meeting with community leaders helped to clarify various options for the successful passage of domestic partnership legislation in Philadelphia.

I spoke with Shoshana Bricklin yesterday and shared with her some observations and suggestions. I will memorialize them here for your benefit.

1. Separating Public Registration from Employee Benefits

It is clear that the issue of employee benefits is almost totally within the jurisdiction of the various unions. The city pays money to the unions and the amount of money is negotiated, but the actual allocation of that money and the criteria for benefits is determined by the board of trustees of each union. As a result, except for exempt employees and nonrepresented workers, who make up a very small portion of the city's workforce, the issue of domestic partner benefits for city employees is a matter that should be addressed to the unions rather than to the city council. The unions, in turn, must then negotiate the cost and criteria for some of these benefits, such as health and dental care, with the providers. Thus, it makes a lot of sense to separate the issue of city employee benefits from the domestic partnership legislation and to develop a totally separate strategy for employee benefits.

The issue of public registration of domestic partners, and various humanitarian and legal protections that will follow from such registration, is a separate issue that would properly be addressed to the city council.

Most of the community leaders with whom I met on Tuesday evening, seemed to agree with the need to separate city employee benefits from the issue of public registration and its resulting protections.

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2. Public Registration: Same-sex only, or inclusive, or "superinclusive"

My meeting with community leaders focused heavily on whether a public registration bill should be limited to same-sex couples or should more inclusive (to include opposite-sex couples which would bring seniors on board) or should be "superinclusive" (so that any two adults, including blood relatives, who meet the other criteria could register).

After discussing the pros and cons of all three options, a majority of the community leaders appeared to support a superinclusive bill because of the advantages of such an approach.

Let me clarify again, a superinclusive bill would allow any two unmarried adults who live together, who consider each other to be immediate family members, and who agree to share the common necessities of life, to register as domestic partners. The partners could be two sisters, an aunt and a nephew, an unmarried senior citizen couple, two people of the same sex, or any other combination of two unmarried adults who are living together as a family unit.

Since a domestic partnership registration of this type is not intended to mimic a marriage, but is intended to recognize the partners as a generic family unit, there is no presumption that the partners are engaged in a sexual relationship. These are family relationships that involve mutual caring and economic interdependence. Sexual conduct is irrelevant to the formation of the partnership and whether sex is or is not involved should be a private matter between the parties and not a legitimate concern of the city government.

As a result of making the domestic partnership bill superinclusive, and removing any presumption of sexual conduct from it, there should be no reason for religious organizations to oppose the bill. Also, by making it more inclusive, senior citizen groups should become part of the coalition supporting the bill.

A superinclusive bill of this kind was adopted in the District of Columbia with minimal opposition from religious leaders. Also, experience in California has shown that that the Conference of Catholic Bishops would not oppose legislation that allows for registration of any two adult household members, including blood relatives, because such a bill would not be intended to be a substitute form of marriage but rather is a recognition of a household family unit.

I really saw a sense of enthusiasm among most of the community leaders with whom I met, especially the women, who appeared to favor the superinclusive approach very much.

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3. Starting with Modest Proposals and Adding Protections Incrementally

The community leaders also discussed the merits and demerits of pushing for comprehensive protections at this time. The current bills basically would prohibit any and all types of discrimination against domestic partners by the city government, by city contractors, by private employers, by landlords, and by public accommodations. Such a sweeping approach is unprecedented and some of the provisions may be invalid inasmuch as they may be preempted by state or federal law.

After a lengthy discussion about the scope of a domestic partnership bill, a majority of the community leaders appeared to support starting with more modest reforms and later seeking additional protections. High empathy, low cost, humanitarian protections might come first.

For example, a superinclusive public registration bill might contain some of the following protections: (1) requiring hospitals and nursing homes in the city to provide visitation rights to registered domestic partners on the same terms as visitation is allowed to spouses and immediate family members; (2) exempting the transfer of property from one domestic partner to another from transfer tax upon the death of one of the partners; and (3) having the Department of Records provide blank forms for a durable power of attorney for health care to people when they obtain forms to register as domestic partners (although executing the power of attorney form would not be required in order to register as domestic partners).

A word search of the city's codes and regulations for the terms "spouse," "marriage," "family," and "dependent," might result in identifying other basic protections to include in the new domestic partner registration bill.

Every city in the nation that has adopted a domestic partnership public registry has started with basic protections, such as hospital visitation rights. Some of them later added other protections. Philadelphia might follow this same pattern.

4. Deferring Action on City Contractor Provision

Both of the current bills include provisions requiring businesses that contract with the city to provide domestic partner benefits to their employees or the city will refuse to contract with them. This regulation is patterned after what the City of San Francisco has done. Its new law is scheduled to go into effect on June 1, 1997.

However, just this week an association of airlines filed a lawsuit in federal court against

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San Francisco seeking an injunction against the contractor provision. The association claims that the new law is preempted by several federal statutes.

It may be wise to postpone trying to regulate city contractors in Philadelphia in this manner until the San Francisco lawsuit has come to a conclusion.

5. Drafting a New Bill

Now that you have had the benefit of the informational briefing and now that some of the community leaders have expressed their interest in taking a new approach, you might want to have Shoshana draft a new bill that would contain the following features: (1) be superinclusive which would remove any presumption of sexual activity; (2) contain a public registration system; and (3) include a few basic humanitarian and legal protections. She might also draft one or more additional bills to deal with other issues, such as benefits for nonrepresented city employees, public accommodations discrimination and housing discrimination, discrimination by labor organizations, and city retirement benefits. These other bills could be considered separately and would pass or fail on their own individual merits.

I have indicated to Shoshana that if I receive a request from your office to do so, I would be willing to lend assistance in the drafting of the primary bill dealing with public registration and basic humanitarian and legal protections.

6. Meeting with Elected Officials

Several community leaders told me they would like me to come back to Philadelphia to meet privately with other council members and with the mayor. One of the leaders even offered to pay for my travel expenses. The purpose of these meetings would be to give private informational briefings and to answer any questions that such officials might have.

When the time is right, and if this is something that you would like, I would be willing to participate in such private briefings. However, this stage should only occur after the new primary bill has been drafted and receives your approval.

I would like to compliment you on your leadership and perseverance on this issue over the past few years. If you continue on the path of inclusion and fairness, and with the excellent skills of staff members such as Shoshana, I have no doubt that you will ultimately prevail.

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Finally, I was impressed with the willingness of many of the community leaders to be flexible and to switch gears from a narrow same-sex only bill to a superinclusive measure that would be designed to build a winning coalition, to gain maximum support by the council and mayor, and which would help the largest number of people possible. My discussion with these leaders on Tuesday, both at the council briefing and in the evening, demonstrated to me that most of the leaders were not seeking special interest legislation to help only lesbians and gay men, but they were genuinely interested in helping others at the same time as they help the gay and lesbian community. In an era when selfish political motives appear everywhere, the politics of inclusion of many of these leaders was particularly refreshing to see.

I look forward to assisting you in any way that you feel I may be of help.

Yours truly,

A handwritten signature in cursive script, appearing to read "Thomas F. Coleman".

THOMAS F. COLEMAN
Executive Director

cc: Shoshana Bricklin