



June 19, 2007

VIA EMAIL (MAYORCOUNCIL@REDMOND.GOV) AND FACSIMILE (425-556-2110)

Mayor Rosemarie Ives  
Councilmember Kimberly Allen  
Councilmember Richard Cole  
Councilmember John Marchione  
Councilmember Nancy McCormick  
Councilmember John Resha  
Councilmember Jim Robinson  
Councilmember John P. Vache  
City of Redmond, 4NEX  
P.O. Box 97010  
Redmond, Washington 98073-9710

Re: *Letter Supporting the Request of City of Redmond's Gay and Lesbian Employees for Domestic Partner Benefits*

Dear Mayor Ives and Members of the Redmond City Council:

Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") submits this letter in support of the request of the City of Redmond's (the "City") lesbian and gay employees for domestic partner benefits. We are writing to inform you that Lambda Legal has been retained by Police Department Commander Kristi Wilson and Police Department Lieutenant Betsy Lawrence to provide them with legal advice related to the City of Redmond's current denial of equal family benefits to its employees in committed same-sex relationships. Lambda Legal understands that the request for equal benefits (via adoption of a domestic partner benefits plan) has been made repeatedly through collective bargaining and other efforts annually since at least 2002 by Ms. Wilson, Ms. Lawrence and others, and will be renewed at this evening's City Council meeting. We offer this letter to explain the City's obligations to its gay and lesbian employees under Washington law and the sound fiscal policy underlying family benefits plans that treat employees equally irrespective of sex, sexual orientation and marital status.

Lambda Legal is the oldest and largest nonprofit legal organization advocating nationally for full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work. Since 1973, Lambda Legal has appeared as counsel or *amicus curiae* in hundreds of cases in state and federal courts on behalf of lesbians and gay men who have suffered discrimination because of their



sexual orientation, including many cases seeking and defending domestic partnership protections for same-sex couples. Lambda Legal's "relationship recognition" litigation in Washington has included the *deGroen, et al. v. City of Bellevue, et al.* case in King County Superior Court (Case No. 07-2-12286-9 SEA), resulting in a unanimous June 4, 2007 vote by the Bellevue City Council to approve domestic partner benefits for city employees. Lambda Legal has also litigated relationship recognition issues in the Washington Supreme Court, including *Heinsma v. City of Vancouver*, 144 Wn.2d 556 (2001) (helping to defend the city of Vancouver's authority to provide domestic partner benefits); and *Vasquez v. Hawthorne*, 145 Wn.2d 103 (2001) (helping to establish that surviving same-sex partners are to be treated the same as surviving different-sex unmarried partners regarding fair division of property after a breakup or the death of a partner in whose name the couple's property was titled).<sup>1</sup> Lambda Legal also works cooperatively with public and private sector employers to assist with implementation of domestic partner legislation and benefits programs, including providing technical assistance to Washington State elected officials regarding Substitute Senate Bill 5336, which established Washington's new statewide domestic partnership registry and related protections for registered domestic partners; advising Seattle elected officials concerning Seattle's "equal benefits" ordinance (requiring city contractors to offer domestic partner benefits to their employees); and consulting with staff of the Washington State Human Rights Commission on implementation of Washington's law against sexual orientation and gender identity discrimination.

Ms. Wilson and Ms. Lawrence are two of the City's outstanding gay and lesbian employees who have proven loyal and dedicated to their jobs, despite the City's painful denial of equal treatment to them. Ms. Wilson and Ms. Lawrence have served the City in the Police Department for 14 and 17 years, respectively. Ms. Wilson has been in a loving, committed relationship of 8 years with her devoted partner, with whom she has adopted their two small children. The City's policy, however, places a burden on their family that Ms. Wilson's heterosexual colleagues are not forced to bear. Ms. Wilson's partner, who does not work outside the home in order to raise their children, is denied health care coverage through the City's plan. When Ms. Wilson was diagnosed with breast cancer in January 2007, the couple was reminded of their vulnerability in the absence of family employment benefits. Had Ms. Wilson's partner received the diagnosis instead, they would have faced financial ruin in an attempt to finance her

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<sup>1</sup> Outside Washington, Lambda Legal's work to secure significant legal advances for non-marital partners has included participating in *Knight v. Superior Court*, 128 Cal. App. 4th 14 (2005) (upholding California's comprehensive domestic partnership law), pet. for review denied 2005 Cal. LEXIS 7127 (2005); *Snetsinger v. Mont. Univ. Sys.*, 325 Mont. 148 (2004) (establishing that university cannot discriminate against lesbian and gay workers within family benefits plan); *S.D. Myers, Inc. v. City & County of San Francisco*, 336 F.3d 1174 (9th Cir. 2004) (upholding San Francisco's equal benefits ordinance); *Air Transp. Ass'n of Am. v. City & County of San Francisco*, 266 F.3d 1064 (9th Cir. 2001) (same); *Tanner v. Oregon Health Sciences Univ.*, 157 Ore. App. 502 (1998) (finding public university must provide domestic partner benefits to employees in committed same-sex relationships).



care out-of-pocket. Ms. Lawrence's family is similarly burdened by the City's discriminatory policy. Ms. Lawrence's devoted partner of 4 years, to whom Ms. Lawrence is married in Canada, also is a stay-at-home mother who is denied coverage through the City. Ms. Lawrence's partner has at times had to forego needed health care treatment to avoid the exorbitant cost of paying for such treatment out-of-pocket. The City's gay and lesbian employees simply deserve better, and should be treated with the same fairness, dignity and respect for their committed family relationships as other City employees.

Both Ms. Wilson and Ms. Lawrence have requested domestic partner benefits on behalf of themselves and their colleagues through collective bargaining negotiations during their respective tenures as President of the Redmond Police Association. The City's repeated denial of these benefits not only runs afoul of Washington's constitutional guarantees of equal privileges and immunities, intimate association and privacy, but also fails to provide its gay and lesbian employees the equal compensation and respect they have earned and fully deserve as a basic matter of workplace fairness.

**I. Denying Domestic Partner Benefits Violates The Equal Privileges and Immunities, Intimate Association and Privacy Guarantees of Washington's Constitution.**

The City's discriminatory compensation of its gay and lesbian employees violates Washington's constitutional guarantees of equal privileges and immunities, intimate association and privacy. Other states and municipalities that have taken the same position as Redmond does here have failed to justify their discriminatory treatment once their position was tested in court. *See Alaska Civ. Liberties Union v. State of Alaska*, 122 P.3d 781 (2005) (holding that the denial of domestic partner benefits to employees with same-sex partners could not withstand scrutiny under the equal protection clause of the Alaska Constitution); *Snetsinger v. Mont. Univ. Sys.*, 325 Mont. 148 (2004) (finding constitutional violation where university permitted unmarried employees with different-sex partners to obtain domestic partner benefits, but prohibited employees in same-sex relationships from obtaining such benefits); *Tanner v. Oregon Health Sciences Univ.*, 157 Ore. App. 502 (1998) (holding that denying benefits to gay and lesbian employees because they are not married to their life partners violates Oregon's privileges and immunities clause). Even without resort to constitutional analysis, however, basic considerations of employment equity dictate the same "equal pay for equal work" conclusion.

**II. Providing Equal Compensation In The Form of Equal Family Benefits Is A Simple Matter of Fairness.**

A failure to provide gay and lesbian employees with domestic partner benefits is a denial of equal compensation for equal work. Employee benefits typically comprise 30% to 40% of employee compensation, and the family benefits provided to employees who have spouses



constitute a financially and emotionally valuable portion of this compensation.<sup>2</sup> By withholding these family benefits, the City insists that its gay and lesbian employees in committed relationships should not receive the same rate of pay for their job performance, yet neither Ms. Wilson nor Ms. Lawrence are excused from performing any part of their job responsibilities, nor are their positions less dangerous than those of their married colleagues. This discriminatory compensation scheme is no less invidious than if the City insisted gay and lesbian employees accept a lower base pay than that of their married colleagues. There is no legally cognizable justification for providing married heterosexual employees with a different-sex spouse significantly greater compensation than lesbian and gay employees with a committed same-sex partner. *See e.g., Alaska Civ. Liberties Union*, 122 P.3d at 794 (“Programs allowing the governments to give married workers substantially greater compensation than they give, for identical work, to workers with same-sex partners cut against these constitutional principles yet further no legitimate goal of the governments as public employers.”)

### **III. The Savings To Be Accrued From Recruiting and Maintaining a Talented Workforce Far Outweigh The Negligible Cost of Providing Domestic Partner Benefits – A Lesson In Cost-Effectiveness That Already Has Been Embraced by Corporate America And Many Government Bodies.**

In an era of limited budgets and increasing health care costs, employers are sensibly concerned about monitoring their employee health care costs. The common myth, however, that providing domestic partner benefits significantly increases an employer’s expenses is borne out neither by the growing body of empirical, non-partisan research, nor by the preponderance of private and public employers who have adopted domestic partner benefits as a sound business practice over the past twenty years.

The costs of domestic partner benefits are substantially limited because of a typically low rate of utilization by eligible employees.<sup>3</sup> The pool of gay and lesbian employees is a limited

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<sup>2</sup> Stanford University Committee on Faculty and Staff Benefits, Report of the Subcommittee on Domestic Partners’ Benefits ii (June 1992). *See also* Seattle Ordinance No. 119748 (“WHEREAS, employee benefits routinely comprise between 30 and 40 percent of total employee compensation; and WHEREAS, discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work...”), available at <<http://www.seattle.gov/contract/equalbenefits/eb-ordinance.htm>> (last viewed on June 14, 2007).

<sup>3</sup> *See* Michael A. Ash and M.V. Lee Badgett, *Separate and Unequal: The Effect of Unequal Access To Employment-Based Health Insurance On Same-Sex And Unmarried Different-Sex Couples*, 24 Contemporary Economic Policy, 582, 597 (July 31, 2006) (reporting that businesses providing domestic partner benefits to same-sex couples would see on average less than a 0.1%-0.3% rise in enrollment), available at <<http://www.law.ucla.edu/williamsinstitute/publications/>>



one, and of those in same-sex relationships, not all will enroll for domestic partner benefits. Offering domestic partner benefits, therefore, generally results in a very small increase in the total number of employees accessing such benefits.<sup>4</sup> The State of Washington has a typically low rate of domestic partner benefits utilization, with fewer than one half of one percent of state employees utilizing benefits as of 2001.<sup>5</sup> The ultimate cost of providing such benefits – separate and apart from the fiscal gains that accrue from recruiting and retaining valuable talent – is therefore generally considered an inconsequential percentage of an employer’s larger health care budget.<sup>6</sup>

While the costs associated with providing domestic partner benefits are generally negligible, a lack of such benefits makes a dramatic difference to the families who must do without them, as Ms. Wilson and Ms. Lawrence demonstrate. Domestic partners are forced to incur far greater expense to provide their partners with needed healthcare, while married couples can take those benefits, and the peace of mind they bring, for granted. As the Washington Supreme Court recently recognized, “many day-to-day decisions that are routine for married couples are more complex, more agonizing, and more costly for same-sex couples” because “same-sex couples do not have the same rights with regard to their life partners that facilitate practical day-to-day living, involving such things as medical conditions and emergencies.”

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HealthInsuranceInequality.pdf> (last viewed June 14, 2007); M.V. Lee Badgett, *The Cost to Ocean County of Providing Pension Benefits to Employees’ Domestic Partners*, 1 (Jan. 2006) (finding that only 0.3% of New Jersey state employees enrolled a partner in the State’s health benefits plan between July 2004 and January 2006), available at <<http://www.law.ucla.edu/williamsinstitute/publications/Ocean%20County%20Study.pdf>> (last viewed June 14, 2007).

<sup>4</sup> See e.g., Stephenie Steitzer, *Gay Couple Benefits Gaining*, The Kentucky Post (July 24, 2006) (a spokesperson for Toyota reports that “less than 1 percent of the company’s 38,000 U.S. manufacturing workers participate” in the company’s domestic partner benefits program).

<sup>5</sup> “Gays and Lesbians Claim Partner Benefits Less Than Expected,” Seattle Times (January 10, 2001).

<sup>6</sup> See American Civil Liberties Union, *Helgeland v. Wisconsin - The True Cost of Providing DP Health Benefits* (July 13, 2005) (reporting that the State of Illinois began offering domestic partner benefits in 2006, based on the Illinois Department of Central Management Services’ estimate that such benefits would cost an estimated one tenth of one percent of Illinois’ health care budget for employees), available at <<http://www.aclu.org/lgbt/relationships/20306res20050713.html>> (last viewed on June 14, 2007); Carole Biliczky, *Ohio Colleges Give Gay Pairs Work Benefits – Critics Say The Practice Violates State Ban On Same-Sex Marriages, Defenders Say It’s A Work Contract*, Akron Beacon Journal (Feb. 10, 2006) at A1 (Miami University, where only 30 employees have enrolled for domestic partner benefits, estimated its costs of providing such benefits at approximately two tenths of one percent); Adam Behsudi, *City May Consider Same-Sex Benefits*, Asheville Citizen-Times (Feb. 10, 2006) at 1A (with less than 20 employees enrolling for domestic partner benefits, the city of Durham, North Carolina has experienced no additional costs).



*Andersen v. King County*, 138 P.3d 963, 985 (2006). Providing partner benefits thus frees gay and lesbian employees of the emotional distress and sometimes overwhelming financial burdens that accompany the illness of an uninsured partner, paving the way for greater productivity, in precisely the same way that offering family benefits helps heterosexual employees.<sup>7</sup>

The positive benefits of domestic partner benefits, both for workers and employers, should not be underestimated. Employees who receive domestic partner benefits are “healthier, more satisfied, and less likely to leave their jobs.”<sup>8</sup> A supportive and inclusive environment in which gay and lesbian employees are valued and equally compensated results in employees that report greater job satisfaction and less turnover.<sup>9</sup> In fact, 48% of gay and lesbian workers report that domestic partner benefits would be the most significant factor in weighing another job opportunity.<sup>10</sup>

Offering domestic partner benefits provides employers with the significant additional benefit of increasing “the competitiveness of employers in recruiting and retaining talented and committed employees,”<sup>11</sup> a key concern that Bellevue Mayor Grant Degginger cited in Bellevue’s recent decision to approve domestic partner benefits.<sup>12</sup> Employers failing to absorb this lesson have learned it the hard way by losing valuable and talented employees.<sup>13</sup> Ms.

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<sup>7</sup> Sarah Coppola, *Another bout for partner benefits*, Austin American-Statesman (April 3, 2006) at A1 (when Beverly Bottorff-Patton’s uninsured partner of 15 years was diagnosed with a tumor, the couple had to deplete their savings and take out a \$25,000 home equity loan to cover the costs of tests and surgery).

<sup>8</sup> M.V. Lee Badgett and Gary J. Gates, *The Effect of Marriage Equality and Domestic Partnership on Business and the Economy*, 1 (Oct. 2006) (hereinafter, “The Effect of Domestic Partnership”), available at <<http://www.law.ucla.edu/williamsinstitute/publications/MarriageEqualityontheEconomy.pdf>> (last viewed on June 14, 2007).

<sup>9</sup> *The Effect of Domestic Partnership*, at 2; see also Bill Novak, *County Extends Partner Benefits*, The Capital Times (June 2, 2006) (County Supervisor John Hendrick explains, “By providing similar benefits to all employees, we will have better loyalty and satisfaction by our employees if we care about the people they care about”).

<sup>10</sup> *The Effect of Domestic Partnership*, at 3.

<sup>11</sup> *The Effect of Domestic Partnership*, at 1. See also Amy Joyce, *For Gays, Some Doors Open Wider*, The Washington Post (Sept. 24, 2006) at F1 (“Companies are finding it is a business imperative to take diversity, including sexuality and gender issues, into account. For one, employees need to feel their company supports them. But even more, companies need to show that they are inclusive to attract and retain the right employees in a tight, competitive market”).

<sup>12</sup> Ashley Bach, *Bellevue OKs benefits for domestic partners*, Seattle Times (June 5, 2007) (“Degginger said he hopes the new benefits will help the city retain and recruit workers. ‘It’s a challenging job market out there,’ he said”).

<sup>13</sup> Ryan J. Foley, *Research ‘Superstar’ Resigning Nanotechnology Expert Carpick Cites Lack of Benefits for Partner*, St. Paul Pioneer Press (Aug. 24, 2006) (“A promising University of



Wilson and Ms. Lawrence provide a stark illustration of the “penny wise and pound foolish” approach the City has pursued until this point. Both are outstanding employees whose excellent job performance has been recognized through their promotions to their current positions as Commander and Lieutenant, respectively. Collectively, they bring over 30 years of experience to the Police Department. When the City treats its gay and lesbian employees unequally, and fails to provide the basic day-to-day incentive to remain, it risks losing the talent, experience, and significant training investments made in dedicated employees like Ms. Wilson and Ms. Lawrence. And when gay and lesbian employees leave, most likely to be replaced by newer, less experienced, married heterosexual employees, the City will find itself offering the very family benefits in question to the new, less skilled workers. The City also will bear the costs that accompany lowered employee morale in the face of their employer’s message of discrimination and devaluation of their hard work. This point was underscored recently during the June 12, 2007 City briefing for mayoral candidates, during which each of the Planning, Public Works, Police, Fire and Human Resources departments emphasized recruitment and retention as significant ongoing concerns for the City.

For these reasons, thousands of private employers have recognized that affording equal benefits to domestic partners is a wise fiscal decision. Today, 79 of the Fortune 100 companies offer domestic partner benefits to employees with a same-sex partner, and a majority of the Fortune 500 companies offer domestic partner benefits.<sup>14</sup> The Washington Supreme Court has more than once recognized the reasoned business logic behind such policies, as have other state courts. “Bottom-line, business decision-making explains it: Respected employees perform better and stay longer.” *Andersen*, 138 P.3d at 985, n. 17 (2006), quoting *The Federal Marriage Amendment is Bad for Business*, Wall St. J., Oct. 5, 2004, at B2; *Heinsma*, 144 Wn.2d at 562 (“We recognize that the city [of Vancouver, Washington] has a strong interest in retaining

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Wisconsin-Madison researcher who has won millions of dollars in grants says he is leaving the school, citing its lack of health insurance benefits for his domestic partner”).

<sup>14</sup> *The Effect of Domestic Partnership*, at 2; Human Rights Campaign, *State of the Workplace for Gay, Lesbian, Bisexual and Transgender Americans 2005-2006*, 3, available at <[http://www.hrc.org/Template.cfm?Section=Get\\_Informed2&CONTENTID=32948&TEMPLATE=/ContentManagement/ContentDisplay.cfm](http://www.hrc.org/Template.cfm?Section=Get_Informed2&CONTENTID=32948&TEMPLATE=/ContentManagement/ContentDisplay.cfm)> (last viewed June 14, 2007).



qualified employees...”).<sup>15</sup> In addition to the State of Washington, many Washington municipalities also have applied these lessons to their significant benefit.<sup>16</sup>

Offering family benefits to compensate partnered gay and lesbian employees equally, and fostering an environment of inclusion and respect, should be understood as simply in line with the City’s vision statement: “Together we create a community of good neighbors.”<sup>17</sup> This laudable commitment to the community of Redmond will serve the City well as it seeks to attract highly skilled and dedicated workers to serve the City’s growing needs. We urge the City to make its commitment to “good neighborliness”<sup>18</sup> a reality for its gay and lesbian employees by swiftly adopting a domestic partner benefits plan, as have many of Redmond’s neighbors and major employers.<sup>19</sup> We also recommend that the City make such benefits available to all of its employees with a committed, non-marital domestic partner – as most other Washington municipalities have – without discriminating on the basis of sex or sexual orientation.

We request the courtesy of a response to the employees’ request for domestic partner benefits by the close of business on Friday, July 6, 2007, so that we may know best how to

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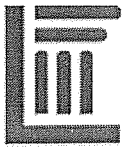
<sup>15</sup> See also *Schaefer v. City & County of Denver*, 973 P.2d 717, 719 (Colo. Ct. App. 1998) (explaining that “the authority to define the scope of employee compensation, including benefits, is of particular importance to a local government because of its impact on a city’s ability ‘to both hire and retain qualified individuals’”) quoting *Colo. Springs Fire Fighters Ass’n v. City of Colo. Springs*, 784 P.2d 766, 773 (Colo. 1989)); *Crawford v. City of Chicago*, 304 Ill. App. 3d 818, 827 (1999) (finding that cities must be able to offer good employment benefits in order to be able to hire and retain qualified individuals).

<sup>16</sup> A non-exhaustive list of the Washington municipalities offering domestic partner benefits includes Anacortes, Bainbridge Island, Bellevue, Bothell, Burien, Covington, King County, Kirkland, Lacey, Lake Forest Park, Newcastle, Olympia, Pullman, Sammamish, Seattle, Snohomish County, Spokane, Tumwater, and Vancouver.

<sup>17</sup> See <<http://www.redmond.gov/insidecityhall/mayorsoffice/mayor.asp>> (last viewed on June 14, 2007).

<sup>18</sup> See <<http://www.redmond.gov/insidecityhall/mayorsoffice/vision.asp>> (last viewed on June 14, 2007).

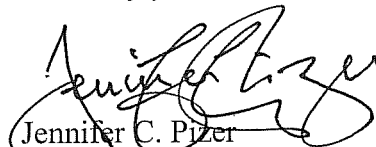
<sup>19</sup> Private sector employers with headquarters in Redmond that offer domestic partner benefits in one or more of their offices include Advanced Digital Information Corp., Avidex Industries LLC, Dennis R. Craig Construction, Inc., Emmett Koelsch Coaches, Inc., Financial Consulting Solutions, Golder Associates, Inc., Hawk Mechanical Contractors, Inc., Hilton Valve, Inc., Hutton Communication, Inc., Lanoga Corp., MCSi Inc., Medtronic Physio-Control Corp., Medtronic Emergency Response Systems, Microsoft Corp., Onsite Environmental Inc., Pacific Construction Consultants, Schindler Elevator Corp., Teknon Corp. and Zetron, Inc. See Human Rights Campaign Foundation’s “Workplace Project” database, available at <[http://www.hrc.org/Template.cfm?Section=Search\\_the\\_Database&Template=/CustomSource/WorkNet/srch\\_list.cfm](http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch_list.cfm)> (last viewed on June 14, 2007).

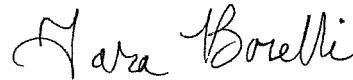


advise Ms. Wilson and Ms. Lawrence regarding their options. Please do not hesitate to contact Jennifer C. Pizer at [jpizer@lambdalegal.org](mailto:jpizer@lambdalegal.org) or (213) 382-7600, ext. 223, or Tara L. Borelli at [tborelli@lambdalegal.org](mailto:tborelli@lambdalegal.org) or (213) 382-7600, ext. 231, should you have any questions.

This letter is not intended to set forth a complete statement of all of the legal rights or remedies of Ms. Wilson, Ms. Lawrence or any other similarly situated Redmond employees, nor of all of the facts nor the legal or equitable bases on which those rights and remedies rest, nor to waive or compromise them in any way.

Sincerely yours,

  
Jennifer C. Pizer  
Senior Counsel



Tara L. Borelli  
Staff Attorney