

STATEMENT OF
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before the

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE
AND THE DISTRICT OF COLUMBIA

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U. S. HOUSE OF REPRESENTATIVES

on

H.R. 2517, THE "DOMESTIC PARTNERSHIP BENEFITS AND OBLIGATIONS ACT
OF 2009"

JULY 8, 2009

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

Thank you for affording me the opportunity to testify today on behalf of President Obama and the Administration in support of H.R. 2517, which would provide health, life, and survivor benefits to the same-sex domestic partners of Federal employees.

I first want to applaud Representative Baldwin and the cosponsors of H.R. 2517 for introducing this bill, and you, Mr. Chairman, for holding this hearing. The White House and the Office of Personnel Management (OPM) wholeheartedly endorse passage of this bill. In my remarks today, I will briefly describe the basis for our endorsement of the bill and offer a few technical suggestions regarding the language of the legislation.

At my confirmation hearing, I said that two of my primary goals as the Director of OPM would be to make the Federal Government the country's model employer and to attract the best and the brightest Americans to Federal service. The passage of H.R. 2517 is essential to the accomplishment of both of these goals.

Under current law, the Federal Government cannot offer basic benefits like health insurance, life insurance, and dental and vision insurance to the domestic partners of our gay and lesbian Federal employees. Opposite sex domestic partners are not eligible for these benefits either, but they may gain eligibility through a valid marriage. Except in a few States, same-sex partners do not have that option. And even where they do, their marriages are not recognized for purposes of Federal benefits because of Public Law 104-199, the Defense of Marriage Act (DOMA). In the interest of full disclosure, I personally

stand to benefit from this legislation, as my partner of 13 years will be eligible to enjoy the benefits of this legislation, if enacted.

This policy is unjust and it directly undermines the Federal Government's ability to recruit and retain the nation's best workers. Historically, the federal government has in many ways been a progressive employer, but we're behind the private sector and 19 states, including Alaska and Arizona, on this one. Almost 60 percent of Fortune 500 companies already offer similar benefits to the same-sex domestic partners of their employees. These companies include American Airlines, Chevron, Archer Daniels Midland and Lockheed Martin. The Federal Government does not effectively compete with these companies for every talented person when we fail to offer comparable job benefits to our employees.

The President took an important first step toward addressing these shortfalls when he signed a memorandum last month directing Federal agencies to extend benefits to same-sex domestic partners of Federal employees to the extent permitted by existing law. As the President noted when he issued that memorandum, however, statutory changes are necessary before the Government can offer its gay and lesbian employees some of the most important benefits, including health and life insurance. Enacting this bill would address the problem and provide for true equality in benefits for all Federal employees and its passage is supported by the President.

The bill proposed by Representative Baldwin, H.R. 2517, would provide benefits for same-sex domestic partners of Federal employees. They would be eligible for coverage under Title 5 insurance-benefit programs, retirement and disability benefits, the Family and Medical Leave Act, and the Federal Employees' Compensation Act, among others.

I suspect that the Committee is interested in knowing how much it will cost the Federal Government to provide these benefits. The cost of extending these benefits to same-sex domestic partners is negligible.

Any additional premiums for providing life, dental, and vision insurance to same-sex domestic partners will be borne entirely by the gay and lesbian employees who enroll their partners in those benefit plans. To add domestic-partner health-insurance and survivor benefits for both Federal workers and retirees would cost approximately \$56 million in 2010. This marginal increased cost – which equates to about 2-tenths of a percent of the entire cost to the Federal Government of Federal employee health insurance – would be funded by the additional Government contribution payments for self and family health insurance plans. This includes \$19 million in savings because retirees who elect survivor benefits for their domestic partners will experience a reduction in their annuity payments. In addition, as drafted, the bill does not address the tax treatment of the resulting benefits. Under current law, employer-provided health to a non-spouse, nondependent such as a domestic partner is taxable income to the employee. There may also be tax issues with respect to providing other benefits to nonspouse/nondependents of employees. The bill should clarify the tax treatment of the benefits. The Administration also notes that this legislation may have implications for

other benefits programs, for example Social Security, across government. The intent of Congress regarding these other benefit programs needs to be clarified.

Simply put, extending benefits to same-sex partners would be a good business decision. American Airlines and the other sixty percent of the Fortune 500 companies who provide these benefits can testify to that. Therefore, I am pleased to provide my full support to passage of H.R. 2517.

Technical Comments

After reviewing the text legislative language of H.R. 2517, we have some technical comments. I want to describe for you a few examples of technical concerns that, I believe, illustrate the need to revise the bill's structure to ensure that it meshes with the laws governing the particular benefits programs that would be affected. Revising the bill to address these concerns would eliminate ambiguity regarding some of its effects and would greatly facilitate effective implementation.

One of our technical concerns is that the bill provides for coverage of domestic partners of Federal employees, but does not include current Federal annuitants. That means the current language of the bill would exclude annuitants with same-sex partners from electing benefits coverage. In addition, a strict interpretation of the bill would raise questions as to whether benefits would continue to be available to same-sex partners once employees retire.

Second, this would require that affidavits pertaining to the eligibility of domestic partners for Federal benefits be filed with OPM. We do not think it is practicable for OPM to play this role. Each Federal agency carries out human resources management functions, including benefits enrollment and payroll deductions, for its own employees. Requiring affidavits to be filed with OPM would be at odds with current provisions of law and regulation governing Federal employee benefits, which recognize that OPM is not a central clearinghouse for all Federal employees.

Third, the legislation needs to take into account that differences in the administration of benefits between a domestic partnership, certified with an affidavit, and a State-sanctioned marriage may occur. The bill provides that, if a domestic partnership dissolves except by death, the former domestic partner will have the same rights and obligations as a former spouse. By law, a former spouse is eligible to enroll in the Federal Employees Health Benefits (FEHB) Program if he or she meets certain eligibility criteria. The former spouse must be entitled to a portion of an annuity and must not have remarried before the age of 55.

Under H.R. 2517, there is no language allowing us to enforce a similar obligation for the former domestic partner under the same circumstances. Entitlements and obligations for former spouses under the involuntary division of property are attributed to court orders with respect to divorce, annulment, and legal separation. In the absence of domestic

relations law for domestic partnerships in many States, we believe that we would need more prescriptive language in the bill to avoid potential legal hurdles that could occur.

In order to fully address these and other technical issues, we strongly encourage you to amend the applicable provisions of the United States Code. This would provide continuity and would resolve ambiguities highlighted by the examples I have provided. It would also preserve the accuracy of Title 5 for those who administer its provisions in the future.

We would be pleased to work with the Committee to resolve the technical concerns expressed here today and offer you our technical assistance to ensure the legislative intent of this bill is embedded in Title 5.

Conclusion

Again, we welcome the introduction of this bill and strongly support its passage. By your efforts, you have provided a valuable a valuable opportunity for the Federal Government to not only enhance the benefits it can offer as a recruitment and retention tool, but, most importantly, to prove that we recognize the value of every American family and are committed to the ideal of equal treatment under the law that our Founders envisioned.

Thank you. I look forward to continuing our work together, and I will be glad to answer any questions.