

A Brief History of Domestic Partnerships

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IT WAS THIRTY YEARS AGO, in 1978, that the city of Berkeley passed a sexual orientation non-discrimination ordinance whereby the city promised to provide equal treatment regardless of sexual orientation. When Tom Brougham began working for the City of Berkeley in 1979, he found that he could not sign up his life-partner, Barry Warren, for health and dental benefits because they were available only to the married spouses of city employees.

Brougham saw an opportunity to test the new anti-discrimination legislation in a way that the city had not considered. Berkeley had resolved not to discriminate based on sexual orientation, but marriage was assumed to be the sole vehicle for providing benefits to committed couples. Since marriage was defined by state law, Brougham saw a contradiction that could not produce an equitable outcome for same-sex couples. So he started to think outside the box. In two letters dated August 21, 1979, Brougham described the problem and proposed a solution.

In the first letter, he analyzed the effect of using marriage as the sole eligibility criteria and asserted that Berkeley had a responsibility to end uneven effects in its own programs and in its contracts with health care providers. In the second letter, Brougham proposed a solution: Berkeley could resolve the dilemma by creating a new category called "domestic partnership." He recognized that there would have to be strict criteria that determined when such a relationship existed and limited an employer's or health care provider's responsibilities. **Brougham aimed to create a new category for same-sex couples that would have the same degree of stability and strictness as marriage itself. His approach was to deconstruct marriage into its component parts (without the opposite-sex requirement) and to bundle the remaining requirements together.** To qualify, the couple would have to sign an affidavit attesting to the fact that they met all the requirements. He proposed that the city of Berkeley use this new category within any of its benefit programs.

Initially, the affidavit had three requirements: "1) She/he would be qualified to marry the employee but for the fact that she/he is the same gender as the employee; 2) she/he resides with the employee; and 3) she/he is declared as the sole domestic partner of the employee." Over the next several years, two additional points were added: a requirement of mutual financial responsibility, and a rule that both persons be at least eighteen years of age and able to enter into a legal contract.

Brougham and Warren's emphasis was on the rights and benefits provided by their employers. They were not interested in letting the city of Berkeley or the University of California (Warren's employer) off the hook because some *other* authority had defined marriage in a discriminatory way. They were not concerned about social validation or, at that time, a comprehensive public policy. Rather, they saw in practical terms the discriminatory effect of employers, unions, and businesses choosing to use marriage as the sole criterion for benefits.

During 1980 and 1981, Brougham and Warren, working essentially alone, continued to make a long series of proposals to the City of Berkeley and the University of California. Working

with Berkeley City Council members and local unions, they persistently but unsuccessfully pushed the issue. In early 1982, San Francisco Supervisor Harry Britt was inspired by a presentation that he heard Brougham make on domestic partnerships at a meeting of California gay student unions. Britt had been approached by constituents with the problem that same-sex couples did not have spousal benefits, and he thought Brougham's idea could be the solution.

Unfortunately, Britt rushed the proposal forward with no advance preparation vis-à-vis the San Francisco gay community and without preparing himself for the predictable controversy. He did not offer an adequate defense when opponents distorted his domestic partners proposal. Although the proposal was mainly about equitable benefits, his opponents transformed it into a debate about "the sanctity of marriage." The press coverage was vicious, the religious community became riled up by Britt's comments, the gay community was confused, and, although it passed San Francisco's Board of Supervisors, Mayor Diane Feinstein vetoed the bill. The only good result was that the world now knew the term "domestic partnership." Most straight people regarded it negatively and many gay people thought it was a pipe dream.

Even though it was not totally understood, thousands of San Francisco's gays and lesbians had embraced domestic partnerships as an issue of basic fairness. The community was enraged with the Mayor. As luck would have it, a fringe political group known as the White Panthers had been circulating recall petitions against Mayor Feinstein because she supported a local gun control law. No one took the White Panthers' recall seriously until she vetoed domestic partnerships. At that point, lesbians and gay men couldn't sign the recall petitions fast enough. All of a sudden, the (extremely homophobic) White Panthers had successfully forced a recall election on the Mayor of San Francisco because she vetoed domestic partnerships. In politics, timing is everything.

Cooler heads prevailed by the time the recall election was held. The lesbian/gay community was split. Mayor Feinstein, a moderate Democrat, was San Francisco's first successful politician to have campaigned in gay bars and was generally thought to be a friend to our community. The White Panthers' wanted the mayor recalled because she supported gun control, which the gay community generally supported. It didn't help the recall effort that the White Panthers were known as a macho and homophobic organization. In the end, Feinstein defeated the recall with seventy percent of the vote.

At about this time, the East Bay Lesbian/Gay Democratic Club was being formed in Berkeley. Brougham and Warren joined the group and introduced them to the concept of domestic partnership. The EBL/GDC, mindful of the disaster in San Francisco, adopted the proposal and developed a methodical four-prong approach for implementing it: 1) educate the East Bay community; 2) organize a gay voting block; 3) educate East Bay candidates for office; and 4) elect supporters of domestic partners policy. Through several years of public forums, hearings, press coverage, endorsements, and political campaigns, the group got the Berkeley School District and the City of Berkeley to adopt the policy in 1984. In July of that year, the Berkeley City Council adopted the policy in principle but refused to implement it, fearing the cost of health coverage. Progressives were sharply critical of the city council's failure to take concrete action. Implementing domestic partnerships became one of the main campaign issues of the November 1984 city council election. All those who voted against implementing domestic partnerships were defeated. Unlike Mayor Feinstein's recall election with its contradictory issues and personalities, the Berkeley election was strictly about the issues. It was the first time the

benefits of marriage for same-sex couples was a clear and significant electoral issue. And we won.

Regardless of the political support, domestic partnerships would have been dead in the water without the participation of the health care organizations. For this reason, the policy was sensitive to the needs of these businesses from the beginning. At first Berkeley implemented only dental benefits and various employee leave benefits. It took nearly a full year before same-sex partners had medical coverage for the first time. The city broke the resistance of its medical contractors through firmness and simply by guaranteeing to pay whatever excess costs they might incur. It soon became clear, however, that same-sex partners were no more expensive to care for than opposite-sex partners.

The genie was out of the bottle and the idea spread. In late December 1984, the area of West Hollywood bordering Los Angeles incorporated as a city. In this heavily gay district, a lesbian and a gay man were elected to West Hollywood's first city council and domestic partnerships was quickly on their agenda. In 1985, the City of West Hollywood passed a domestic partnerships law. And going one better than Berkeley, West Hollywood created a registry for all residents so that any citizen of West Hollywood could register their partnerships. Other cities followed, and these registries proved invaluable when non-civil-service unions began to bargain for domestic partnership benefits. Employers could no longer claim they did not wish to be in the business of certifying an employee's domestic relationship, because these registries did it for them. Domestic partnerships started to become a real possibility in the marketplace.

During the late 1980's and 1990's cities across the U.S. started offering domestic partnership benefits to their employees. Lesbian and gay union activists encouraged their unions to negotiate for domestic partner benefits. In 1992, the software company Lotus became the first publicly traded company to offer domestic partner benefits. Also in 1992, Stanford and the University of Chicago announced they would offer domestic partner benefits to faculty, staff, and students.

Today, more than half of all Fortune 500 companies offer domestic partner benefits. This is tangible success for our community. In many parts of the country, offering domestic partnership benefits has become the normal business practice of employers, unions, and health care providers. It has become a self-replicating policy, naturally expanding while requiring little political maintenance by the GLBT community.

In 1999, California became the first state to recognize same-sex couples with its statewide domestic partner registry. The law was not prompted by court action but was passed by the legislature and signed by the governor. It included few of the rights of marriage, but it was a beginning. The legislative plan was eventually to add all the benefits of marriage, so that domestic partners would practically be indistinguishable from married spouses. In 2003, Assembly Bill 205 did just that. It was passed by the legislature and signed by the governor. The backlash against it was manageable. The plan's step-by-step approach through the legislature had worked to secure all of the rights and benefits of marriage that California could confer.

Progress in the intervening decade has been fitful at best. A good argument could be made that the march toward nationwide recognition of domestic partnerships was derailed by the insistence on "full marriage," which became a drumbeat of the GLBT movement starting in the 1990's and growing louder in the current decade. As far back as 1996, the U.S. Congress passed and President Clinton signed the federal Defense of Marriage Act or DOMA. Although marriage laws had traditionally been controlled by the states, the federal government now entered the fray.

And since it is the federal government that hands out many of the big prizes associated with marriage, such as immigration rights, social security pensions, tax breaks, etc., these benefits had now been foreclosed for same-sex couples regardless of what the fifty states did.

The culmination of this push for marriage, per se, rather than the rights of marriage, came in 2003, when the high court of Massachusetts declared that banning same-sex marriage violated the state constitution. While same-sex marriage was implemented in the commonwealth in the following year, there was a huge backlash in the rest of the country that found many states voting in referendums to outlaw same-sex marriage, in many cases by amending the state constitution, in the 2004 election. Worse, this backlash extended into the area of domestic partnerships and civil unions when many states saw fit to include a ban on these types of relationships along with same-sex marriage. When the dust had settled after the 2006 election cycle, fully 45 states had banned same-sex marriage, including seventeen that expressly outlawed civil unions or domestic partnerships, as well. History may well judge that the push for marriage by the GLBT community was premature, dramatically slowing down a development that was moving us inexorably closer to that eventual goal.

As we go to press California's Supreme Court has lifted their ban on same-sex marriage noting this does not grant more legal rights than domestic partnerships. Last week Michigan's Supreme Court ruled their anti-same-sex marriage amendment strips public employees of domestic partnership benefits. An anti-same-sex marriage constitutional amendment is on California's November ballot.

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